

**THE JUSTICE OF DIKĒ: ON THE FORMS AND SIGNIFICANCE OF DISPUTE
SETTLEMENT BY ARBITRATION IN THE *ILIAD*.**

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Abstract

This thesis explores the forms and significance of dispute settlement by arbitration, or 'δίκη', in the *Iliad*. I take as my focus the 'storm simile' of *Iliad XVI*: 384-393, which describes Zeus' theodical reaction to corruption within the δίκη-court, and the 'shield trial' of *Iliad XVIII*: 498-508, which presents a detailed picture of such a court in action, and compare the forms and conception of arbitration that emerge from these two ecphrastic passages with those found in the narrative body of the poem. Analysing the terminology and procedures associated with dispute settlement in the *Iliad*, I explore the evidence for the development of an 'ideology of δίκη', that valorises arbitrated settlement as a solution to conflict, and that identifies δίκη as a procedure and a civic institution with an objective standard of fairness: the foundation of a civic concept of 'justice'. I argue that this ideology is fully articulated in the storm simile and the shield trial, as well as Hesiod's *Works and Days*, but that it is also detectable in the narrative body of the *Iliad*. I further argue that the poet of the *Iliad* employs references to this ideology, through the narrative media of speech and ecphrasis, to prompt and direct his audience's evaluation of the nature and outcome of the poem's central conflict: the dispute of Achilles and Agamemnon.

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Preface

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σοὶ δὲ θεοὶ τῶνδ' ἀντὶ χάριν μενοεικέα δοῖεν

Introduction

The aim of this thesis is to compare the picture of dispute settlement, or 'δίκη'¹, found in the 'storm simile' of *Iliad XVI* (384-93) and the 'shield trial' of *Iliad XVIII* (498-508) with that presented in the narrative body of the poem. In doing so I hope to address the following questions: Are those respective pictures consistent in terms of their conceptualisation of dispute settlement, the terminology they employ to describe it, and the actual procedures referred to? If they are *not* consistent; if, as appears to be the case from a preliminary reading, the two 'ecphrases'² present a more developed, complex and ethically charged view of δίκη than the narrative foreground they illustrate, then how can this discrepancy be accounted for? Can we conceive of a developmental shift, allied to the evolution of an 'ideology of δίκη' that valorises arbitrated or mediated settlement as a solution to conflict?³ If this is the case, how and why might such an ideology have developed, and why might it be evident in these two particular locations? Alternatively, might the reason be sought in the narrative function of these two species of ecphrasis: the simile and the descriptive excursus? In order to address these questions I have devoted the first three chapters of this thesis to a study of δίκη in the *Iliad* generally: its conceptualisation, terminology and procedures in turn, with comparanda taken from the *Odyssey*, the Hesiodic poems, and some of the earliest lyric poets. The fourth and fifth chapters look in turn at the storm simile and shield trial in detail.

Chapter 1 is an analysis of the conceptualisation of δίκη. I have approached this problem by attempting to locate and classify arbitrated dispute settlement within the broader realm of social interactions. Using anthropological models described by Beidelman, Donlan and Wilson⁴, I look first at conflict and its potential solutions. Within the conceptual framework of 'agonistic exchange', articulated in Homer by 'τίμη': 'honour' or 'individual worth', conflict is viewed as a matter of individual gain and loss, which may be addressed by

¹ The various meanings of the word 'δίκη' will be discussed below, particularly in chapter 2. I use it here, and wherever an alternative meaning is not specified, in the sense of 'settlement through arbitration'. See Gagarin 1973: 83, cited below, p.45.

² I use the term 'ecphrasis' in the broad sense of a descriptive passage that intrudes on the main narrative, and employ it throughout this thesis to refer to both these passages, which occur as an extended simile, and within a descriptive excursus respectively.

³ For my use of the term 'ideology', see the Appendix to this thesis, p.142.

⁴ Beidelman 1989; Donlan 1982; Wilson 2002.

compensatory 'pay-back', or redress, properly quantified. Redress, as a solution to conflict, may take a number of forms however, ranging from violent revenge to formal, material compensation. I identify δίκη as the forum in which formal compensation may be negotiated and quantified, in a public context. It is the process of submitting a dispute to a third party for arbitration: a third party who is either selected *ad hoc* as unbiased in the eyes of the disputants, or a third party who regularly performs this function on behalf of, and with the sanction of, the community at large: an individual who represents the community in this role. As such, the process of δίκη consists of a tension, or interplay, of two core features. The first is the individual impetus to re-establish self-worth in the context of agonistic exchange, which will be satisfied by any form of redress. The second is the communal impetus to solve conflict in a peaceful and formal manner that averts escalation of vengeance into feud by quantifying redress with reference to custom, precedent and the shared evaluative beliefs of the community. The ideology of δίκη is grounded in the second feature. Dispute settlement by arbitration is valorised by public sentiment in order to engage disputants. It is conceived of as a fair solution to conflict, whose fairness is upheld by Zeus. Willingness to engage in such a process is moreover conceived of as a civic virtue in itself: as 'consideration', as opposed to violent impulse. The result is that δίκη as 'arbitrated dispute settlement' is idealised, first as 'fair settlement' and then as 'fairness' itself: 'justice', as it occurs in Hesiod. As an objective standard of fairness and the community's mechanism for conflict resolution are identified, the latter becomes the symbol of the former. Δίκη is conceived of as an objective sense of right, based upon the community's ability to solve conflict by self-regulation.

Chapter 2 analyses the terminology associated with references to δίκη, focussing on two word groups in particular: 'θέμις', 'δίκη', and their respective derivatives, in early Greek poetry. Looking at both the concrete uses of these words ('θέμιστες' as 'customary laws', and 'δίκαι' as 'judgments' or 'claims') and their abstract uses (as 'right'), I attempt to substantiate the conceptual framework established in the first chapter. I conclude that δίκη does appear to have a more consistent moral sense in post-Homeric literature, referencing 'what is fair' or 'right' rather than simply 'judgment' or 'arbitrated settlement'. I also conclude that δίκη appears to displace θέμις as the primary symbol of the agora-based justice system, and as a symbol of 'what is right'. I argue that this pattern may reflect the

strengthening of civic institutions in the developing polis system: that an objective concept of 'right' is increasingly referenced by the public process of adjudicated settlement rather than the traditional norms that inform that process. This conclusion suggests the possibility that the ideology of δίκη-type settlement described in the first chapter, and evidenced by the abstract uses of the term 'δίκη', is a feature of an ethical system contemporary with the composition of the poems referred to, including the *Iliad*.

Chapter 3 considers the descriptions of dispute settlement found in the *Iliad*, the *Odyssey* and the Hesiodic poems. Focusing primarily on the central dispute of Achilles and Agamemnon, and that of Menelaos and Antilochos in the funeral games of *Iliad XXIII*, I discuss both the formal features that these instances of dispute settlement have in common, and the extent to which the ideology of δίκη described in the first two chapters is in evidence. I conclude that, while many features, such as the participation of a third party arbitrator and a public forum for arbitration and settlement, are shared, important differences are present. The latter are however to some extent attributable to the narrative context of each dispute. In particular, scenes in which the focus is the role of judge contain more formal features than scenes, such as those found in the narrative body of the *Iliad*, in which the focus is the dispute itself. In the latter, relative paucity of formal elements is due to the fact that arbitration occurs *ad hoc*, rather than in a civic context.

Chapter 4 turns to the two ecphrases themselves. I apply the discussion of the three foregoing chapters to the storm simile and the shield trial in order to evaluate the terminology employed, the procedure described, and the concept of δίκη that underpins each passage. I conclude that, while the ideology of δίκη does correlate in important ways with that present in the examples of dispute settlement discussed in chapter 3, significant discrepancies exist between the two ecphrastic pictures of δίκη and the *Iliad's* narrative instances of dispute settlement. In the storm simile the theodical role of Zeus and the abstract use of the term 'δίκη' are notable, as well as the clear relationship between this passage and Hesiod's *Works and Days*. In the shield trial, discrepancies include the fact that a panel of arbitrators is present, and that these are 'elders'. In addition, the shield trial's picture of the reaction to homicide appears to differ from that found in the biographies of several characters in the *Iliad*, which suggest that the invariable outcome of murder in the heroic tradition is exile for the killer, rather than settlement.

My fifth and final chapter looks at these discrepancies in detail. In the case of the storm simile I consider the arguments for interpolation, and reject them in favour of the theory that the simile provides a window, not only on a contemporary ideology of δίκη, but on a parallel poetic tradition which formulates that ideology in terms of theodicy and the associated terminology which the simile shares with the *Works and Days*. I then turn to the shield trial, and attempt to account for the differences between its picture of δίκη as a procedure and that of the narrative, in terms of the narrative function of the shield itself. I conclude with the argument that both the storm simile and the shield trial are grounded in a contemporary ideology of δίκη that is also incorporated into the speeches of the characters and their ethical *exempla*, and which the poet references through these narrative devices in order to provide a subtle commentary on the heroic action of the poem: a commentary that resonates with his audience's conception of the value and significance of arbitrated dispute settlement.

Note on paragraphing, the referencing and translation of the Greek texts, and the spelling of Greek names:

Paragraphs are indented, but new sub-sections are indicated by a line space with no indent. Line references to the *Iliad* and *Odyssey* follow the old convention of giving a Greek letter: a capital one for books of the *Iliad* and a lower case one for books of the *Odyssey*. The 24 books of each poem are represented by the 24 letters of the alphabet. Although this system is not often used now, it is economical where both poems are being cited regularly. Whole books of the *Iliad* and *Odyssey* are referenced in italic Roman numerals. So, the storm simile occurs at π.384-93, but in *Iliad XVI*. All translations of Greek texts, unless specified, are my own. The transliteration of the names of poetic characters is phonetic rather than latinate, with the exception of the letters 'υ' and 'κ', which I have given as 'y' and 'c' respectively (e.g. 'Patroclus', 'Theoclymenos'). The names of Greek authors however, are in their latinate or anglicised forms (e.g. 'Hesiod', 'Tyrtaeus').

Chapter 1. Δίκη and conflict resolution

In order to analyse the procedural features of δίκη-type settlement and its conceptualisation in the *Iliad*, I want to begin by locating it within the sphere of social activity that it forms a part of: conflict and its solutions. I will argue, following Beidelman, that the basis of conflict and conflict resolution in the Homeric poems is 'agonistic exchange': the negotiation and quantification of individual statuses within a community. Wrongs committed against an individual may be measured against the index of that individual's status, 'worth' or 'τίμη', and appropriate redress calculated accordingly. Redress however, the counter-action of a wrong, may take several forms, depending on the manner in which it is negotiated and the nature of the wrong in question, and I will consider this range of reactions as the *Iliad* presents it. My goal in this chapter is to establish where δίκη-type settlement fits into this picture. I will consider the kinds of redress δίκη supports as well as the kinds it seeks to avoid, and attempt to establish what, as a result, δίκη represents, both to the community as a whole, and to the individuals it has the potential to reconcile.

1.1 Τίμη and agonistic exchange

I begin this chapter by looking at the principle that underpins both conflict and redress in the Homeric poems. Τίμη, 'honour', 'status' or, more literally, 'individual worth' is the index by which Homer's characters measure themselves and others in a social context. Homeric society may be mapped as a dynamic mosaic of τίμωι, or 'statuses', which, by determining how individuals perceive others in relation to themselves, guide both the manner in which they treat others, and the manner in which they expect to be treated. Such statuses are informed by a number of factors. Position within a social hierarchy is perhaps the most stable index of τίμη. Kings in the *Iliad* are marked out by both the rights and the responsibilities that their position demands (M.310-21). Τίμη may also be gained or lost however by an individual's actions, such as military prowess (e.g. I.302-4), or skill in counsel (I.954-8). Τίμη may then be relatively fixed, but it may also be negotiated with reference to

a shifting index of personal achievement, and conflict may arise, as it does in the central *νεῖκος* of the *Iliad*⁵, where there is a failure to incorporate one or more of these indices into one's evaluation of another.

The dynamism of such a *τίμη*-system has been analysed by Beidelman, who argues that conflict, in its broadest sense, is an essential feature of the way in which *τίμη* is negotiated⁶. Beidelman employs the term 'agonistic exchange' to describe the mechanism whereby individual *τίμαι* are negotiated in the *Iliad*, and I follow his model here as conceptual basis for understanding the way in which *τίμη* underpins both interpersonal conflict, and the means by which such conflict is resolved.

Beidelman forms his model for interpreting the concept of *τίμη* in the Homeric poems as a synthesis of the ways in which two early 20th century anthropologists, Marcel Mauss and Georg Simmel, approach exchange. Mauss, who coined the term 'agonistic exchange', viewed the competitive interactions of individuals within a group as socially cohesive: as a means of constructing a social identity through constant negotiation. Simmel, while focussing on the divisive nature of exchange, also described it in terms of competition and the 'imposition of the identity'⁷. Both scholars' primary focus was the physical exchange of gifts, but, as Beidelman shows, the link between negotiation itself and social identity, between *agōn* and *timē*, is fundamental. Individuals will attempt to impose their perception of themselves on others: to modify or maintain their society's view of them, by a continual negotiation of their status.

Agonistic exchange... works out discrepancies between the 'inner' individual and the socially recognised 'outer' person. Their struggles determine whether a protagonist's estimation of himself, of his respect, is commensurate with that held by others.⁸

⁵ See below, chapter 3, p.65f.

⁶ Beidelman 1989: 227f.

⁷ Mauss 1924, Simmel 1900 (cit. Beidelman 1989: 228-9).

⁸ Beidelman identifies this subjective 'respect' with the Greek term 'αἰδώς' (*ibid*: 248), distinguishing it from the objective 'esteem', which characterises the perception of others, and which he labels *τίμη*. While I recognise the usefulness of the distinction, I would rather label both concepts, the internal perception and the external, as *τίμη*. *Τίμη*, 'worth', 'value', better encapsulates the quantifiable nature of both sides of this perception, and this quantification is essential: agonistic exchange is a mechanism for calculating social worth.

The fora of this type of competition vary widely: gift exchange, reward, conflict, games, debate, and in the Homeric poems we find, as mentioned above, that *τίμη* may accordingly be measured against a number of indices. When Diomedes protests that he has status enough to speak in the *βουλή* (Ξ.110-127), he lists a number of factors against which one's *τίμη* may be measured.

μή τι κότη ἀγάσησθε ἕκαστος
οὔνεκα δὴ γενεῆφι νεώτατός εἰμι μεθ' ὑμῖν
πατρός δ' ἐξ ἀγαθοῦ καὶ ἐγὼ γένος εὖχομαι εἶναι
Τυδέος, ὃν Θήβησι χυτὴ κατὰ γαῖα καλύπτει.

τὼ οὐκ ἄν με γένος γε κακὸν καὶ ἀνάλκιδα φάντες
μῦθον ἀτιμήσαιτε πεφασμένον ὃν κ' ἐϋ εἶπω.

(Ξ.111-4,126-127)

[Let none be amazed in anger because I am the youngest of you by birth. I too can boast my birth is of a noble father, Tydeus, whom the heaped earth covers in Thebes... Therefore you could not, saying my birth is base and unwarlike, dishonour any word that I speak, if I speak it well.]

Age, being the son of an 'ἀγαθός', the ἀρετή and wealth of one's ancestors, and one's ability to speak well, all determine whether a person is accorded the honour of speaking in council, and of having his advice respected. The one factor that Diomedes does not mention – and perhaps he does not need to – is his own ἀρετή: his prowess as a warrior. *Τίμη* may be due to individuals by virtue of their ancestry and inherited rank within the social hierarchy, or it may be earned by skill in speech and action. Whether founded on rank or prowess however, it must be continually negotiated and quantified by the actions and attitudes of an individual's associates. As Beidelman argues, the individual's estimation of himself conditions, but is also conditioned by, his estimation in the eyes of the group.

1.2. Typologies of exchange

The status accorded to an individual is revealed by the actions others take with reference to them, but, as Mauss and Simmel show, it may also be measured empirically by economic exchange. In his 1982 paper⁹, Donlan provides an analysis of the relationship between modes of exchange and social formation, with a view to locating the type of society described by Homer along an evolutionary continuum. Donlan's analysis is based upon a typology of 'reciprocities' formulated by Sahlins¹⁰, which categorises forms of exchange along a scale that ranges from pure altruism (giving something for nothing), to violent exploitation (getting something for nothing). Within this scale Sahlins defines three main groups or 'modes' of exchange: 'generalised reciprocity', which includes pure gift, generosity and hospitality, 'balanced reciprocity' (gift exchanges, peace agreements, marriage transactions), and 'negative reciprocity' (trade for profit, plunder and theft). Sahlins argues that the mode of reciprocity is determined by two main factors: a 'horizontal axis', of social distance (the closer the social relationship of two individuals the more their interactions will be characterised by generalised reciprocity and vice versa), and a 'vertical axis' of relative social rank within a hierarchy.

Conflict will arise where a given mode of exchange results in the exploitation of an individual, or a conscious diminution of that individual's status that is committed in the interest of the other party to the exchange. This is clearly the case in the more extreme forms of negative reciprocity, in attempts to get *quid pro nihilo* such as theft. This form of negative exchange is, as mentioned, more likely to occur where there is a large 'social distance' between individuals¹¹, where it is likely that the wrong can be committed with impunity. Conflict may also occur where one side of an agreement in an instance of balanced reciprocity (*quid pro quo*) is not upheld, resulting in the exchange slipping down Sahlins' scale from 'balanced' to 'negative'.

Within the larger category of balanced reciprocity, Sahlins identifies two subgroups, 'compensatory' and 'compactual'. The former consists of material exchanges (debts, wages,

⁹ Donlan 1982: 137f.

¹⁰ Sahlins 1968, 1972 (cit. Donlan 1982: 139-141).

¹¹ Donlan 1982: 140.

rewards, redress), the latter of notional ones (alliances, agreements)¹². It is under the subheading of 'compensatory balanced reciprocity' that we can locate the two empirical means by which status is negotiated within the heroic society described in the *Iliad*. These are reward and redress: reactions, respectively, to positive and negative actions. The former is an explicit formulation of a Homeric hero's status within the group. In the war context of the *Iliad*, it constitutes the warrior's γέρας, his division of the spoils of war, which must be correctly calculated to reflect both his social rank and his individual prowess. The central conflict of the *Iliad* is precipitated by the conscious miscalculation of Achilles' γέρας by Agamemnon¹³. By appropriating Achilles' prize, Agamemnon diminishes him publicly: he diminishes the external perception of Achilles' τίμη.

ἦ γάρ μ' Ἀτρεΐδης εὐρὺ κρείων Ἀγαμέμνων
ἠτίμησεν· ἐλὼν γὰρ ἔχει γέρας αὐτὸς ἀπούρας.

(A.355-6¹⁴)

[Now wide ruling Agamemnon, the son of Atreus, has dishonoured me, for he has taken and keeps my prize.]

Achilles has been treated as an 'ἀτίμητον μετανάστην' (Π.59), a dishonoured vagabond: a man who has no stake in a community, and so no status and no τίμη¹⁵. Several subsidiary forms of γέρας are described in the *Iliad*. The γέρας of old men is to take counsel on behalf of the people (I.422) and to have that counsel listened to (Ξ.323). The γέρας of the dead is a tomb, a stele and to be lamented¹⁶. The γέρας of the gods is the smoke and savour of sacrifice (Δ.49, Ω.70). In all these instances, γέρας is the 'portion' appropriate to a particular index of τίμη.

Redress is, as stated above, a reciprocal reaction to the kind of conflict-generating exchange that Sahlins identifies as 'negative'. Its purpose is to re-establish social equilibrium by quantifying the wrong done by one individual to another in terms of both the nature of

¹² *Ibid*: 143.

¹³ See below, p.14, n.30.

¹⁴ Cf. A.507, B.240, I.111,344.

¹⁵ Cf. Tyrtaeus' homeless man, who suffers every 'ἀτιμία' (Fr.10).

¹⁶ Π.475, 675, Ψ.9. The size of the tomb is commensurate with its inhabitant's status: Patroclus' modest mound will be expanded to accommodate Achilles (Ψ.245-8).

the harm and the status of the victim. It can thus be said to have two facets, or motivating factors: a social one, aimed at restoring social stability, and an individual one, aimed at restoring the *τίμη* or status of the person that has been wronged. The latter of these is essential. Redress is a feature of agonistic exchange and is primarily sought by an individual who wishes to make good a loss, whether material and social (in such cases as theft or murder) or merely social (for example insult). It is part of the individual's negotiation of his or her status in the wake of a negative action performed by another. The form redress takes however, is conditioned by the extent to which the community involves itself, in the interests of restoring or preserving social harmony. The result of this duality of motives is the distinction that may be drawn between the two forms redress may take: violent exaction or revenge, and negotiated compensation. The individual impulse to seek redress may be satisfied with, or prefer, revenge. The social impulse, if present, will encourage and endorse compensation as the form of redress that obviates the potential for continued violence. Compensation is favoured by community sentiment because it is itself, as Donlan argues, a mechanism for preserving social stability¹⁷.

1.3. Redress: revenge and compensation

When a wrong is committed as a result of negative reciprocity, a loss is sustained by the victim. This loss may be located in one of a number of 'spheres' of wealth identified by Wilson, with reference to the Homeric poems, as 'subsistence goods', 'prestige goods', 'persons' and 'cultural wealth'¹⁸. Redress is concerned with making good that loss, either by a restoration made in the same sphere, or by establishing an equivalence of value between two spheres, and repaying loss within one with redress taken from another. Bohannan labels these two types of exchange 'conveyance' and 'conversion' respectively¹⁹.

Conveyance – the payment of like for like – is, as Wilson argues, rarely problematised.

Conversion however, is. A framework of social rules must exist to regulate the equivalence

¹⁷ Donlan 1982: 151.

¹⁸ Wilson 2002: 17-18.

¹⁹ Bohannan 1959: 496 (cit. Wilson 2002: 18).

of, for example, goods for life, or compensation, in the case of murder²⁰. In Homer, the material and immaterial aspects of τίμη may be regarded as the medium of conversion between spheres of wealth. Since 'worth' and 'status' are encoded in both material possessions and what Wilson labels 'cultural wealth' (social cachet, earned by skill in speech or action), the loss of τίμη in one sphere may be made good by quantified repayment of τίμη in another. Bourdieu calls this process of converting the separate spheres of wealth into an exchangeable concept of individual worth (or τίμη) 'symbolic capital'²¹.

Symbolic capital... refers to the conversion of other forms of wealth, by a cultural strategy of misrecognition, into seemingly natural properties of one's person for purposes of achieving or maintaining position (= honor, status, power).²²

To maintain Bourdieu's metaphor, Homeric τίμη is the socially recognised 'currency' of symbolic capital. It is the means of establishing equivalence and exchangeability between spheres of wealth for the purpose of quantifying appropriate redress in the form of compensation. Conversion is however, as noted above, unstable. In order for such an exchange to be successful it must be negotiated with reference to these shared beliefs about the equivalence of loss and redress in different spheres. If it is to provide a mutually acceptable solution to conflict which will restore harmony within a group, it must be negotiated bilaterally.

If we return to the forms that redress might take, we can apply these labels to analyse the issues that might be at stake in each instance, from a social perspective. The two forms of redress already described, revenge and compensation, may be conceived of not so much as isolated options but as features of a sliding scale that ranges from violent exaction to mediated agreement. Violent exaction may also be termed unilateral redress: it occurs where victims act independently to take satisfaction from those who have harmed them. This may happen because the wrongdoer is unrepentant, and the victim has no expectation of negotiating a settlement, or where the victim is too emotionally charged to accept settlement: i.e. where the desire to settle by means of conversion is not shared by both

²⁰ *Ibid*: 18-20.

²¹ Bourdieu 1977: 171-97 (cit. Wilson 2002: 19).

²² Wilson 2002: 19.

parties to the dispute. The type of redress for a wrong in these circumstances is invariably conveyance: harm exacted for harm done within the same sphere. In the case of murder this will take the form of violent revenge, a life for a life.

Unilateral redress will take place more frequently in proportion to Sahlins' 'sectoral distance': the greater the distance, the smaller the chance of negotiated settlement. Revenge is more likely to take place then between individuals of different communities, or between communities themselves, in which case the method of exacting redress will be war. Within a community unilateral redress is destabilising. It may lead to feud between contending kin groups and the community therefore has an interest in encouraging settlement by conversion, or compensation. Revenge however always remains an option, and there are several instances in the *Iliad* which must be considered, where unilateral redress is insisted upon and the offender is driven into exile to escape it. This appears to be particularly frequent where a murder is committed within the kin group that would normally negotiate settlement collectively²³. The Trojan war itself is an example of a communal attempt to exact redress for the crime of abduction. In the truce of the third book of the *Iliad*, an attempt is made to negotiate appropriate compensation. Peace is possible if the Trojans repay what Paris took, and in addition a 'τίμη' that is fitting: a 'price' that addresses the insult of the abduction (Γ.284f.). If however the agreement fails, as it does, the Achaeans will continue to fight 'εἵνεκα ποιῆς' (Γ.288), to exact redress violently.

The desire for revenge in this context is often expressed by the middle verb form 'τίνομαι', 'to make (someone) pay'²⁴. Unilateral redress of this kind, or vengeance, is also frequently referred to on the battlefield in the pre-fight threats and post-fight vaunts of the contending warriors²⁵, as well as in the prayers or wishes expressed off the battlefield by characters powerless to attempt exaction themselves²⁶. In these instances 'τίνω' in the active voice (most frequently 'τίσεις', 'you will pay'), or one of the verb's cognates ('τίσις', 'ἄτιτος'), is invariably employed.

An interesting subgroup of the instances of 'battlefield vengeance', which might be labelled 'τίσις', consists of the three passages in which the narrator, rather than a character,

²³ See below, p.19 and chapter 5, p.130.

²⁴ B.356, 590, Γ.28, 284, 351, 366, O.133, π.394.

²⁵ Threats: Agamemnon Λ.122, Euphorbos Π.34, Achilles Φ.135, Χ.20, Ares Φ.396. Vaunts: Deiphobos Ν.410, Idomeneus Ν.445, Menelaos Ν.620, Aias Ξ.471, Akamas Ξ.483, Automedon Π.535, Athena 21.412.

²⁶ Chryses Α.42, Ares O.133, Hecabe Ω.214.

describes death in battle in terms of the compensatory blood-price for murder, or ‘ποινή’²⁷. The term ‘ποινή’ is only used once in this context elsewhere²⁸, and appears to be employed figuratively by the narrator. Violent redress – harm for harm vengeance – is not a natural part of ποινή’s semantic field. Ποινή may describe this form of redress figuratively, but it is properly used of conversion type redress: of goods for harm, or compensation²⁹. Ποινή, as redress involving goods for harm, is invariably negotiated bilaterally, as opposed to unilaterally exacted ‘τίσις’, or harm for harm. It is ‘compensation’ as opposed to ‘vengeance’.

Compensation may be offered or sought by one party, or it may be mutually negotiated, but in each of these cases there is an attempt at reasoned engagement. Examples in the *Iliad* of compensation sought include Agamemnon’s demand that the Achaeans replace his lost γέρας (A.118-9), as well as the passage cited above, in which Agamemnon demands that, if Menelaos wins his duel with Paris, the Trojans

Ἐλένην καὶ κτήματα πάντ’ ἀποδοῦναι,
τιμὴν δ’ Ἀργείοις ἀποτινέμεν ἢν τιν’ ἔοικεν

(Γ.285-6)

[give back Helen and all her possessions, and repay the Argives a price that is fitting.]

Compensation is offered in several instances. In response to Agamemnon’s demand for a new γέρας, Achilles offers multiple redress (‘τριπλῆ τετραπλῆ τ’ ἀποτείσομεν’) on behalf of the Achaeans (A.128). The ‘gifts’ Agamemnon offers Achilles in book nine, and eventually pays in book nineteen, are ποινή for the insult of book one. As Wilson has shown however, the neutral terms ‘δῶρα’ and ‘ἀρέσαι’ are diplomatically substituted for ποινή by Nestor

²⁷ N.656, Harpalion’s father receives no ποινή for his son’s death; Π.398, Patroclus, slaughtering Trojans ‘πολέων δ’ ἀπετίτυτο ποινήν’; Φ.28, Achilles sacrifices twelve youths as ‘ποινήν Πατρόκλοιο... θανόντος’.

²⁸ Ξ.483, but cf. Γ.288, referred to above.

²⁹ The two instances of exacted redress found in ‘external analepses’ (to use Wilson’s term [Wilson 2002]), or ‘para-narratives’ (to use Alden’s [Alden 2000]) also avoid the term ‘ποινή’. At B.743 Perithoos ‘έτίσατο’ the Pheroi; at Λ.670f. Nestor exacts the ‘ρύσια’ from the Epeians. The latter is the only clear instance in the *Iliad* of ‘peace-time’ communal reprisal, in this case for cattle rustling. ‘Τὸ ρύσιον’, ‘reprisal’, ‘compensation’, derives from ‘ρύομαι’, ‘to draw to oneself, to rescue, deliver’ (LSJ s.v.). It describes an unproblematic instance of ‘taking back’ goods within the same sphere of wealth, or conveyance.

and the envoys in book nine, and by Achilles himself in book nineteen³⁰. Ποινή is also paid twice by Zeus. In an external analepsis it is paid to Tros for the loss of Ganymede in the form of horses³¹, and in the main narrative to Hector, as recompense for his coming death, in the form of 'μέγα κράτος' (P.206-7). Besides these examples of ποινή offered and accepted, there is Aias' *exemplum* at I.632f. of the theoretical man who accepts ποινή for the death of his son or brother:

τοῦ δέ τ' ἐρητύεται κραδίη καὶ θυμὸς ἀγήνωρ
 ποινήν δεξαμένω·

(I.635-6)

[and his heart and lordly anger are curbed when he accepts the blood-price.]

Two broad paths of redress are available then when a wrong has been committed. The first is violent redress, vengeance or τίσις, which repays harm for harm in kind, by conveyance, and is exacted by the victim or the victim's associates. The second is negotiated redress, compensation or ποινή, which repays goods for harm, by conversion, and is bilaterally sought, offered or negotiated, either privately or publicly. In a given case a choice must be made that determines which of these courses of actions the victim will pursue. The victim's desire to restore his or her τίμη will be satisfied by either: both forms of redress form part of the greater system of agonistic exchange which negotiates that τίμη. Only the latter however, accords with a community's desire for a stable and sustainable means of reestablishing equilibrium after a wrong has been committed. Compensation by conversion,

³⁰ I.112, 165, 260, 679, T.145, 172, 243. Wilson 2002: 71-108. Agamemnon himself disingenuously refers to the compensation as 'ἄποινα', intimating that the payment is not redress for harm so much as ransom paid for the deliverance of his army. Wilson treats the terms 'ἄποινα' and 'ποινή' as the twin facets of a broader compensation theme, rather than broadly synonymous (ibid:15-39), and I accept the distinction she draws. Ἄποινα is properly ransom. As *ἀπό-ποινα (Chantraine 1968 sv. Ποινή) it is reverse compensation, travelling from the victim to the offender instead of from the offender to the victim. It uses conversion to redeem the loss of a person by means of material goods, while entrenching the loss itself and the offender's position of advantage. By describing Achilles' ποινή as ἄποινα, Agamemnon can be said to appropriate the role of victim rhetorically.

³¹ E.265-6. When the same story is told in the *Ilias Parva* (Fr.29) and the *Homeric Hymn to Aphrodite* (210), the term used is ἄποινα. There is evidently some confusion over the appropriate form of payment here. In terms of 'direction' of payment (from the offender to the victim) it is properly ποινή, as in Homer; as payment for a captive, ἄποινα may have seemed more appropriate to the later poets. The two terms do become synonymous however in later writers, as generalised 'compensation' (Cf. Aesch.*Pers.*808, 'ὑβρεως ἄποινα'; Pind.*Pg.*2.14, 'ἄποιν' ἀρετᾶς').

of goods for harm, regulates in the community's interest the universal impulse for redress by averting the possibility of revenge escalating into feud. The impulse to extract redress is constant then, but, insofar as compensation cannot be enforced³², the community's ability to regulate that impulse is not. Where a wrong is committed across the community boundaries, violent redress must be pursued, unless the victim's community itself can bring to bear force that is sufficient to compel the rival community to pay compensation. This is the case in the failed agreement to pay and accept a 'τίμη' in *Iliad III*. The key issue here is the breadth of the power structure that is able to mediate objectively between contending parties, or the size of the community that has a stake: both parties must belong to it if the community is to have an interest in promoting settlement, and if the parties are to believe that mediation will be objective. Even within a community however, an individual who has been wronged cannot be compelled to accept material compensation, and violent redress always remains an accepted option³³. In order to support the negotiated type of redress that is in the community's interest, a mechanism for negotiation must exist, application to which is endorsed by custom and public sentiment. This mechanism for the negotiation of redress is δίκη.

If compensation cannot be agreed upon privately, disputants may submit their case to a third party. The third party may be a person in a position of authority (a king, or a local notable), an elder, or merely one or more people whom the disputants believe are qualified to make an impartial decision, based upon a shared conception of 'symbolic capital'³⁴. The degree of formality varies, arguably depending on the degree to which the community is involved, but also on the disputants' circumstance and choice, from the *ad hoc* selection of a third party, to a fixed and formal process conducted in the ἀγορά by one or more individuals who regularly perform this function, and whose authority is sanctioned by public sentiment because of their rank or their knowledge of custom and precedent. This type of formal arbitration by 'judges' is the kind described in the storm simile of π.387-8, and at (relative) length in the shield trial of Σ.497-508.

³² See below, n.33.

³³ Bonner 1911: 13, 19; Gagarin 1986: 28; Cantarella 2001: 477. See chapter 4, p.99, 108: this is the main issue at stake in the various interpretations of the shield trial of *Iliad XVIII*. As Cantarella notes, even in 6th century Athens a murder victim's kin could not be compelled to accept ποινή.

³⁴ Kings, notables, cf. δικασπόλοι A.238, I.99, π.542 (and cf. the appeals to Achilles as the sponsor of the games in book 23, discussed below: chapter 3 p.76); elders Σ.503; peers Ψ.573f. Gagarin 1986: 43-44. See also chapter 5, p.128-9.

The nature and forms of δίκη-type settlement will be discussed in the following chapters. It is the goal of this chapter to show what δίκη represents in the broader context of agonistic exchange as manifested through conflict and redress. It is a social means of channelling the potentially disruptive impulse to avenge a wrong into a form of redress that is both socially stable and mutually acceptable to contending parties because perceived to be objectively 'fair'. Δίκη validates and encourages material compensation as a solution to conflict. It cannot enforce settlement of this kind because it is not itself a compulsory process: application to settlement through arbitration is voluntary. It is not unsupported however. The social benefits of δίκη are underwritten by public sentiment, the religious belief that it has the support of the gods, and in the context of the *Iliad*, by the thematic tenor of the narrative.

1.4. Dike supported: ethical motivators

The material basis of δίκη is then the negotiation of compensation in the settlement of conflict, as an alternative to violent redress. As a mechanism for exacting redress its field of activity is agonistic exchange, the evaluation of individual worth, or τίμη, in the construction of a social identity. Settlement is concerned with establishing loss sustained in a particular sphere of wealth and calculating by conversion of 'symbolic capital' the redress necessary to make good that loss, with reference to the type of harm inflicted, the status of the victim and the sectoral distance between the disputing parties. Δίκη is moreover a means of social regulation. It is settlement by arbitration and involves a third party who is believed to be able and willing to evaluate a settlement that is objectively fair: a third party who represents the community at large and will base his decision on the community's customs, its shared conception of symbolic capital, and on precedent (a shared concept of the correct course of action as sanctioned by past experience of similar instances of conflict). The formality of such a process of arbitration is dependent on the degree to which the community is involved. The *Iliad* itself describes a range of instances which will be considered in chapters 3 and 4 of this thesis. The fact that the community is involved however, and that it has an interest in promoting settlement through arbitration over unilateral redress, means that

δίκη has a moral aspect. Individual disputants, as noted, cannot be compelled to participate in arbitration, but they can be motivated by certain social or ethical pressures. Public opinion, the 'δήμου φήμις' supports participation³⁵. Chapters 3 and 4 will explore the examples of δίκη in the Homeric and Hesiodic poems, and simultaneously look at the association of compensatory settlement with a range of 'social virtues' including rational consideration and compassion. Chapter 2 will consider the association of δίκη terminology with an objective concept of 'right' that is in turn based on 'θέμις', the established customs and traditions of the community. It remains in this chapter to examine another important aspect of δίκη's ethical basis: the belief that it is supported by the gods.

Two gods are associated with δίκη-type settlement in early Greek poetry, Themis and Zeus. Themis is the personification of custom or customary law³⁶ and presides over the community's regulatory institutions: the assembly and the δίκη court, both of which are located in the agora³⁷. In the *Iliad* she convenes the assemblies of the gods (Υ.4) and in the *Odyssey*, those of men:

Λίσσομαι ἡμὲν Ζητὸς Ὀλυμπίου ἠδὲ Θέμιστος
ἢ τ' ἀνδρῶν ἀγορὰς ἡμὲν λύει ἠδὲ καθίζει.

(β.68-9)

[I beg you by Olympian Zeus and Themis, who dissolves and convenes the assemblies of men.]

Her association with the δίκη court is not explicit in either poem, but the *Iliad's* T Scholia suggest that the 'ἱερὸς κύκλος' in which the judges of the shield trial sit (Σ.505) is sacred to her. The phrase 'ἀγορή τε θέμις τε' (Λ.807), apparently used as shorthand for the place of both assembly and judgment also implies an association which Hesiod makes explicit in the *Theogony* (902), where Themis and Zeus are presented as the parents of the three Horai,

³⁵ Cantarella 2001: 475.

³⁶ For the uses and meanings of the substantive, θέμις, and its plural form θέμιστες, see chapter 2 p.27-43. These may be provisionally translated 'custom' and 'customary laws' respectively, but I keep the Greek form in this chapter.

³⁷ Vos 1956: 32f.

Dikē, Eunomiē and Eirēnē. Themis' link with Zeus in this capacity is also evident in the *Odyssey* passage just quoted, and in the *Homeric Hymn to Zeus*:

Ζῆνα θεῶν τὸν ἄριστον αἰείσομαι ἠδὲ μέγιστον
εὐρύοπα κείοντα τελεσφόρον, ὃς τε Θέμιστι
ἐγκλιδὸν ἐζομένη πυκνικούς ὀάρους ὀαρίζει.

(*Hy.Jov.*1-3)

[Zeus, best and greatest of gods I'll sing, wide-seeing lord accomplisher, who with Themis leaning close, whispers wise words.]

Zeus' association with δίκη appears to work on two levels: as the god of theodicy or divine justice, and as the patron of authority figures. The role of arbiter is frequently performed by an individual occupying a position of formal authority. In the *Iliad* the king has the right of judgment, symbolised by his possession of the sceptre, a role that is bestowed upon him by Zeus, and which he performs on Zeus' behalf:

εἷς κοίρανος ἔστω,
εἷς βασιλεύς, ᾧ ἔδωκε Κρόνου παῖς ἀγκυλομήτεω
σκῆπτρόν τ' ἠδὲ θέμιστας, ἵνα σφίσι βασιλεύῃ.

(B.204-6)

[Let there be one marshall, one king, to whom the crooked-counselled son of Kronos has given the sceptre and the θέμιστες to rule with.]³⁸

³⁸ Cf. I.96-99: Ἀτρεΐδη κύδιστε ἄναξ ἀνδρῶν Ἀγάμεμνον
ἐν σοὶ μὲν λήξω, σέο δ' ἄρξομαι, οὐνεκα πολλῶν
λαῶν ἔσσι ἄναξ καὶ τοι Ζεὺς ἐγγυάλιξε
σκῆπτρόν τ' ἠδὲ θέμιστας, ἵνα σφίσι βουλευῆσθα.

The king's right of judgment is a widespread motif. See Diamond 1971: 11f. Cf. for example Gilgamesh: in the Sumerian poem 'Bilgames and the bull of heaven', Ishtar/Inanna tries to prevent Gilgamesh from performing his royal duties, which are symbolised by his role as judge. 'O lord Bilgames, you shall be my man... | in my temple Eanna I will not let you pass judgment | in holy Gīpar I will not let you go to render verdicts' (George 1999: 170). For the king as judge in Greek poetry, cf. *Theogony* 83-90, the 'βασιλῆες' of the *Works and Days*, and perhaps the names of Agamemnon's daughters, Chrysothemis and Laodikē (I.145).

Similarly, at A.237-9 the sceptre Achilles swears by is that which the 'sons of the Achaeans carry in their hands as 'δικασπόλοι', 'judgement-wielders', who guard the θέμιστες for Zeus'.

Zeus' interest in δίκη is thoroughly explored by Hesiod in the *Works and Days*. From the opening prayer, in which Zeus is asked to 'straighten the θέμιστες with δίκη' (9), to the beginning of the 'works' section, Zeus is presented as the source of 'ιθείαι δίκαι' ('straight judgments', 36), and father of the maiden Dikē (256). He 'does not fail to see what kind of δίκη there is in a city' (268-9) and rewards or punishes accordingly. This overriding concern with the kind of δίκη practised is briefly mirrored in the storm simile of *Iliad XVI*, in which Zeus sends a flood to destroy a community, enraged by judges who have corrupted the judgment process, without concern for the gaze, or anger of the gods ('θέων ὄπις'³⁹). Zeus grants judges the privilege of their position: the authority that their function requires derives from his. But the positive sanction they receive from Zeus as the patron of authority figures is balanced by the threat of punishment for the abuse of that privilege. Zeus' theodical concern with δίκη matches his concern for oaths, the guest-host relationship and suppliants, for significant reasons. Zeus is believed to guarantee oaths⁴⁰ because of the epistemological issues at stake. The swearer could be lying, or may later break his or her oath, and the sky god sees all⁴¹. Guests and suppliants are strangers within a community, and their rights need divine support because a crime committed against a stranger, or by a stranger, can have no sanction when it is the kin-group's responsibility to seek one⁴². Δίκη, as a fair and objective process for the settlement of disputes, is protected by Zeus for similar reasons. Like oaths, there is an issue of trust involved: judges must be trusted to deliver an impartial verdict. Like the treatment of guests and suppliants, δίκη requires divine support because addressing the corruption of δίκη falls beyond the regulatory scope of the community. A judge occupies a position of authority, whether that authority derives from social position (in the case of a king, or local notable), or from the communally entrusted position of judge-ship itself. Wrongs committed by a person in a position of authority, in particular in a position of authority over the institution that exists to evaluate wrong and

³⁹ The storm simile and this term in particular will be considered in detail in chapter 4 (p.95f.).

⁴⁰ Γ.103-7, 298-301, Δ.166-8.

⁴¹ Zeus shares this role with the underworld gods and Helios. Γ.103-7.

⁴² Cf. Heracles and Iphitos, φ.24-30, and Gagarin 1986: 14.

redress, cannot be addressed by the community itself. Δίκη is held to be sacred to Zeus, subject to the 'θέων ὄπις', because it is susceptible to corruption. Judges may exploit their position to deliver a verdict that is in their own interests rather than objective, and this, as with all forms of corruption, undermines the validity and effectiveness of the institution itself. Application to settle a dispute in a public forum, rather than violently, is in the community's interest. As noted however, arbitration remains voluntary, and disputants will not apply for it if they cannot expect a fair outcome. This potential for corruption, and the resulting conception that there is an ideal form of δίκη that the gods support, is significant. In both the storm simile and the *Works and Days* (220-5) the distinction between actual δίκη and ideal δίκη is made explicit. In the storm simile δίκη is 'driven out' of the agora by corrupt judges; in the *Works and Days* it is both 'dragged in' and 'driven out'. Δίκη, in the sense of the actual *process* of arbitration, continues to be practised in both cases, but in the sense of the *ideal* of fair arbitration, it is either absent or present in appearance only. The value of impartial arbitration to the community results in the idea of settlement developing into an ideal of fairness: an independent concept of justice itself, based upon the community's mechanism for settlement, but supervening, generalised, and upheld by the gods.

To conclude this section on the ethical basis of arbitrated settlement: δίκη is supported by public opinion because it has the potential to solve disputes in a stable manner that obviates violence: by negotiating redress through conversation with reference to a shared index of symbolic capital. It is also believed to be sanctioned and protected by the gods, by Zeus in particular, because it must be authoritative, and the ideology of authority is allied to the dispensation of Zeus, and because it is susceptible to corruption, and divine support is deemed necessary to guarantee the ideal of impartiality. This belief in divine support for the process of arbitration must affect both the process itself and the way it is perceived by those who have a dispute to submit. The process will become more formal, even to some extent ritualised, as appears to be the case in the shield trial of *Iliad XVIII*. Moreover, as the concept of an ideal process becomes the cornerstone of a developing ideology of fairness or justice, the association of δίκη-type settlement and that ideology will become entrenched.

The δίκη-court will increasingly be viewed as the forum of what will later be termed 'δικαιοσύνη'.

1.5. Conclusions

As a procedure for the settlement of disputes, δίκη has a material basis. The method of resolution it advocates is material compensation, properly quantified by a disinterested third party. Δίκη differs from other forms of response to conflict in that it has a moral element that is grounded in its social purpose and value: its ability to restore or preserve harmony within the community. Δίκη as arbitrated settlement is idealised, conceived of first as fair arbitration, and later as fairness itself. The community's mechanism for dispute resolution becomes the symbol for an objective sense of right based upon rational compromise and the re-establishment of social equilibrium through independent evaluation of loss and redress.

The following chapter will explore this semantic development by analysing the terminology associated with δίκη-type settlement; specifically the two words 'θέμις', 'custom', and 'δίκη', 'settlement', and their derivatives, in the Homeric and Hesiodic poems. It will attempt to show how δίκη is increasingly valorised and to consider the extent to which the concept of 'right' or 'justice' is transferred from the lexical field of θέμις to that of δίκη, and thus from the conceptual field of an established dispensation, mapped by custom, to that of a community's active ability to regulate itself.

Chapter 2. The terminology of justice: θέμις and δίκη

In the previous chapter I attempted to locate δίκη as a formal procedure for establishing settlement within its appropriate sphere of social activity: conflict and redress. I also examined some ethical forms of support that δίκη receives, that is to say the motives that draw disputants into this procedure, motives grounded in δίκη's social value as a sustainable method of resolving conflict. I suggested that, since δίκη is a voluntary option as a response to harm, it must be perceived to be a fair and objective process. In practice however, δίκη is only as fair as the person fulfilling the role of arbitrator. It is susceptible to corruption. It is, partly as a result of this, conceived to be protected and upheld by Zeus, part of a group of interactions that are subject to his supervision. This belief entails the conceptualisation of an ideal form of δίκη which *should* be practiced, and which Zeus will take action to ensure is practised. The term δίκη may as a result be used to describe both the actual process of arbitration, and the ideal of that process, fair and impartial arbitration.

This chapter will examine the 'moralisation' of δίκη in detail. I will look at the specific uses of the word itself, as well as its adjectival and compound forms, in archaic Greek poetry⁴³, and attempt to establish the range of meanings it is intended to convey. My aim is to consider whether the idealised sense of δίκη found in the storm simile of *Iliad XVI* in particular, is mirrored in the rest of the *Iliad*. I also want to consider whether there is evidence for the development of δίκη as a concrete term into a generalised reference to 'fairness', or 'righteousness', and ultimately 'justice'. If such a development can be mapped across the range of archaic Greek poetry, this chapter will form a useful basis for contextualising the storm simile both within the *Iliad*, and within the poetic tradition which that poem stands at the head of.

I argue that δίκη and its derivatives do appear to acquire a more generalised moral sense, which is founded upon the idealisation of the δίκη process discussed in the previous chapter. I also argue that δίκη tends to displace θέμις and its derivatives as the primary symbol of the agora-based 'justice system', and as the signifier of a broad concept of 'right' or 'righteousness'. In order to understand the relationship between these two key terms, I

⁴³ Sc. Homer, Hesiod, the *Homeric Hymns*, the fragments of the Epic Cycle, Archilochus, Callinus, Tyrtaeus, Mimnermus and Semonides.

intend to analyse them in turn. I begin by studying the application and meanings of θέμις specifically at how it is used in a judicial context, and the extent to which it describes a generalised concept of 'right'. I then look at δίκη in the same light, and finally consider the relationship between the two word groups.

This chapter forms a pair with chapter 3. Both are intended to contextualise the two Iliadic passages that form the focus of this thesis. The subject of this chapter is the core terminology of dispute settlement used in the Homeric and Hesiodic poems, which is particularly relevant to the storm simile, where analysis can be based on little more than this terminology. The following chapter will look at the features of dispute settlement, in particular at the manner in which that procedure is described in the same group of poems. This in turn will inform my analysis of the second passage, the shield trial, in which that process is more fully described.

2.1. Etymology and definitions of θέμις and δίκη

Both θέμις and δίκη display a range of uses in early Greek literature that has been subject to academic discussion. As regards δίκη, I have preempted the subject of this chapter to some extent by using it in a specific sense in chapter 1: as a formal process of arbitrated dispute settlement. Δίκη does describe this process in both Homer and Hesiod, but this is only one of the meanings it exhibits, and one that appears to have developed from other, anterior uses. Whether δίκη, or θέμις, have a primary sense from which their extended meanings derive, is itself a matter of debate. Several attempts have been made to identify such a primary sense, by studying the etymologies of these words. While this approach may be criticised from a methodological point of view (semantic shift can carry the use of a word far from its etymological roots), a look at the purported origin of these words is a convenient place to begin.

The traditional etymology⁴⁴ derives θέμις from the PIE root *dhē-2, 'to put, place' (together with the verb τίθημι), and δίκη from *deik-, 'to show' (and so cognate with

⁴⁴ LSJ s.v. θέμις.

δείκνυμι)⁴⁵. Θέμις would accordingly derive from an intermediate form 'dhēm̄n', together with θέμα (something placed or laid down), with a root meaning of 'that which is laid down or established by custom'. Cognates with a similar 'institutional' sense include: Old Indic 'dhā man-', 'statute, law'; Avestan 'dāmi-', 'creation'; Welsh 'deddf', Irish 'dedm' and Greek 'θέσμος', all 'law' (from the form *dhe-dh-mā). From the ō-grade form of the same root derive Gothic 'doms', 'judgment'; Russian 'dúma', 'council'; OHG 'tuom', 'judgment, custom, status' (whence the English 'doom')⁴⁶.

Δίκη's root meaning 'to show', or 'an indication', groups it semantically, as well as etymologically, with the Old Indic 'diś-', 'indication, direction'; Avestan 'ādišti-š', 'directive', 'doctrine'; Latin 'dictio' and Old English 'tiht', both 'accusation'; Latin 'iudex', 'judge'; Gothic 'taikn' and OHG 'zeihan', both 'mark, sign'; and the English 'token'⁴⁷.

While etymology is not an infallible guide to a word's meaning, these root associations are informative, and if taken as authoritative may help distinguish words such as θέμις and δίκη, which in later Greek become increasingly synonymous. It is worth noting at this stage that according to these etymologies, θέμις has a root meaning of something that is established independently of the individual (whether by social tradition or the gods), while δίκη contains (in germ) the idea of individual agency.

Hirzel disputes these etymologies, suggesting that θέμις derives (with θεμόω) from a root *θεμ- (rather than *θε- with τίθημι), that its core meaning is 'counsel', and that this is reflected in the goddess Themis' role as Zeus' counsellor⁴⁸ and her epithet 'εὐβούλος'⁴⁹. Δίκη on the other hand he derives from the verb δίκειν, 'to throw', arguing that its root meaning was the stroke of the sceptre of justice against the ground which a judge made when delivering his verdict⁵⁰. According to this interpretation, an 'ἰθεῖα δίκη' would be a straight-down strike; a 'σκολιή' one would incline towards one party in a dispute, showing bias⁵¹. In sum, θέμις is for Hirzel 'der Rath höherer Wesen'; δίκη 'der Richterspruch'⁵².

⁴⁵ Pokorny 1959 s.v. 'dhē-2' & 'deik-'; Chantraine 1968 s.vv. δίκη, θέμις.

⁴⁶ Pokorny 1959 s.v. 'dhē-2'.

⁴⁷ *Ibid.* s.v. 'deik-'.

⁴⁸ Eg. *H. Hymn to Zeus 2; Cypria* (in Proclus' *Chrestomathia 1*); Pind. *Ol.* 8.22.

⁴⁹ Pind. *Ol.* 13.8, *Is.* 8.31, *Fr.* 30.1. Cf. Aesch. *Prom.* 18 'ὀρθόβουλος'.

⁵⁰ Hirzel 1907: 94-7.

⁵¹ See below, p.47, n.141.

⁵² Hirzel 1907: 358.

Amongst other interpretations, Ehrenburg supposes, on the basis that the religious sense must be the original one⁵³, that 'θέμιστες were primarily oracles⁵⁴. Ruipérez suggests that the original reference is to the 'polished stones' on which elders sat in the agora (cf. Σ.504)⁵⁵. Vos accepts the derivation from '*dhē-', but argues for a much broader meaning than custom or usage: 'order', natural, social or moral, from which both senses of 'right, duty, prerogative' and 'rule, law' would derive⁵⁶.

Palmer identifies δίκη as part of an Indo-European 'semantic structure' of 'order', in the sense of 'a dispensation or system of provinces within which all the activities of a community are parcelled out and co-ordinated'⁵⁷. This argument is based on his study of the word's etymology (from *deiǵ-), and the 'semantic field' of concepts which are associated with a similar root meaning of 'mark' or 'boundary mark'. 'Mark' may include concepts such as 'indication', 'characteristic', 'aim, goal' (hence δίκειν, 'throw'). 'Boundary mark' may lead to the spatial senses of 'limit', 'measure', or 'territory' (cf. Old Norse 'teigr', 'region, 'place'; Old English 'tīg', 'tīh', 'meadow'), the temporal senses of 'opportune moment' or 'season', or the metaphorical sense of 'dividing line', 'decision', 'judgment'. Palmer thus identifies two core meanings for δίκη: 'mark' (whence 'characteristic', 'habitual behaviour'), and boundary mark (whence both 'judgment' and 'allotted portion' – the latter being his basis for the normative sense of 'δίκαιος' and for identifying δίκη with a distributive concept of order⁵⁸).

Latte prefers 'pronouncement' for δίκη, Thompson 'path'. Ehrenburg agrees with Hirzel⁵⁹. Wolf favours 'allotment' ('Zuteilung') or 'claim' (Anspruch)⁶⁰. Chantraine takes 'règle, usage' to be δίκη's primary meaning, which leads to 'justice', and later 'judgment', as 'justice prononcée'⁶¹ Gagarin agrees with Palmer's identification of two core meanings (rejecting however a meaning of 'lot' or 'right') but moves the debate away from origins to

⁵³ Ehrenburg 1921: 6. (cit. Vos 1956: 18n.2): 'θέμις kann ihrem Ursprung nach nur in dem Urkreis einer primitiven Religion gehören'.

⁵⁴ Based on an interpretation of θέμις as a 'mound' or 'heap' (i.e. like θωμός), the seat of an oracular earth goddess. Ehrenburg 1921 (cit. Palmer 1950: 150).

⁵⁵ Ruipérez 1960: 99-123.

⁵⁶ Vos 1956: 29. See below, p.42-3.

⁵⁷ Palmer 1950: 164.

⁵⁸ *Ibid.* 153-68.

⁵⁹ All cited in Palmer 1950: 149-50.

⁶⁰ Cited in Gagarin 1973: 89.

⁶¹ Chantraine 1968 s.v. δίκη.

the moral sense of δίκη in Homer, Hesiod and early lyric. In a series of articles, Gagarin argues that in the second field that Palmer defined ('boundary mark', 'judgment'), δίκη keeps its concrete sense: that it may describe 'legal procedure' (as an extension of 'judgment'), but never any generalised concept of 'justice'⁶². Havelock agrees with Gagarin that δίκη denotes 'procedure not principle'. He translates δίκη as justice but maintains that as a concept, 'justice' is not described verbally in Homer, but that it is implicit in the narrative, a core function of which is to communicate that concept⁶³. Dickie on the other hand argues strongly, against Gagarin in particular, that δίκη may be translated 'justice' (in its abstract sense) in certain contexts⁶⁴. Rodgers⁶⁵, like Gagarin, argues for a non-moral sense, defining δίκη (and basing her argument chiefly on its uses in the *Works and Days*) as essentially 'that which benefits' (as opposed to ὕβρις, which brings disaster) – an argument which, as Dickie points out, would make Hesiod's excursus on the benefits of δίκη something of an extended tautology. Finally, Yamagata⁶⁶ sums up δίκη as 'a way, customary behaviour', arguing that from 'the way things are' (normally), it developed the sense 'the way things should be' (normatively), and that δίκη as 'judgment' has the core sense of 'a decision on customary behaviour'⁶⁷.

To summarise, the suggested meanings of θέμις include 'custom', 'counsel', 'oracle', 'law', 'order', 'right' or 'prerogative', chiefly deriving from a core sense of 'what is established'. The meaning of δίκη may be 'habit', 'cast', 'mark', 'boundary mark', 'path', 'allotment', 'claim', 'decision' or 'judgment', chiefly deriving from a core sense of 'indication'. Critics have posited either a root meaning from amongst these, from which all others derive (Hirzel, Ehrenburg, Chantraine, Yamagata), or a group of meanings that, while connected, do not necessarily form a 'derivative hierarchy' (Palmer, Gagarin).

The first problem that needs to be addressed here then, is how to reconcile these widely differing uses. I intend to approach this question by attempting to categorise the instances in which θέμις and δίκη are used in Homer and Hesiod, according to context and associated

⁶² Gagarin 1973, 1974, 1986.

⁶³ Havelock 1978: passim.

⁶⁴ (aptissime appellatus) Dickie 1978.

⁶⁵ Rodgers 1971.

⁶⁶ Yamagata 1994: 61-92.

⁶⁷ *Ibid.* 72.

terminology. This approach may show whether certain meanings predominate in what appear to be earlier contexts.

A second essential question is, to what extent do these terms come to describe an abstract concept of justice? *Θέμις* has a basic association with individual right, as established by custom, or 'propriety', but does it describe what is 'right' in specific circumstances, or 'right' in general terms? *Δίκη* also possesses or acquires a moral sense (Gagarin's arguments to the contrary will be considered below). It may also describe propriety, particularly in its adjectival form: does this function develop from the meaning 'characteristic', 'habit', or from the meaning 'judgment'? I have already referred to the idealised arbitration process described in the storm simile of *Iliad XVI*; is the moral force of '*δίκη*' the result of this idealisation of 'settlement' into 'fairness', as I have suggested, or is it intrinsic to the word itself?

A final question concerns the relationship between *θέμις* and *δίκη*: do they 'compete' for the emerging territory of an abstract concept of justice? In later writers, *δίκη* appears to displace and absorb *θέμις* in a number of ways⁶⁸. The two words move towards synonymity, with *θέμις* becoming *δίκη*'s poetic equivalent. Possible reasons for this semantic interaction, for the emergence of *δίκη* as the lexical basis for a developing concept of justice, will also be considered after the analysis of the terms themselves.

2.2.1. *Θέμις*: custom, right or law?

A primary distinction in the different uses of *θέμις* lies between the use of the singular and the plural. The concrete sense ('custom', 'customary law', 'decree') is generally expressed in the plural. The singular is (with two exceptions in the *Iliad*) used phrasally, and in an almost adjectival manner⁶⁹, to describe given forms of behaviour. In the positive sense, the phrase '*ἢ θέμις ἐστίν*' is the most common form⁷⁰. The *ἢ* here, often written *ἦ* ('as') in older

⁶⁸ See below, p.41, 62.

⁶⁹ In later writers its use becomes almost entirely adjectival. Cf. Hesychius s.v. '<*θέμις*> *δίκαιον*'; and below, n.73.

⁷⁰ '*ἢ θέμις ἐστίν*' occurs at *Λ.779*, a relative clause that qualifies *ξείνια*.

editions, is the demonstrative pronoun⁷¹; 'this is θέμις', 'this is the custom'⁷². The negative form ('οὐ θέμις' + inf.) is more properly adjectival, and, as we will see, is used in the more general sense of 'it is not right (to...)'; particularly as regards matters of religion or fate in the *Iliad*⁷³. To identify what these phrases mean in a given context, I will consider briefly the contexts themselves. It appears that, in Homer, θέμις in its more general (singular) sense is strongly associated with particular areas of behaviour.

2.2.2. The θέμις of kings

In the second book of the *Iliad*, Agamemnon decides to test the army's resolve before sending them to battle:

Ἄλλ' ἄγετ' αἶ κέν πως θωρήσομεν υἷας Ἀχαιῶν
πρῶτα δ' ἐγὼν ἔπεσιν πειρήσομαι, ἣ θέμις ἐστί,
καὶ φεύγειν σὺν νηυσὶ πολυκλήϊσι κελεύσω
ὁμοῖς δ' ἄλλοθεν ἄλλος ἐρητύειν ἐπέεσσιν.

(B.72-5)

[But come, let us see if we might arm the Achaeans. First I will test them with words - this is the custom – and bid them flee in the many-benched ships. But you, here and there, check them with words.]

Vos identifies this use of θέμις as an example of 'die θέμις von Königs'⁷⁴; it is the king's 'prerogative', his right and his duty, to address the army *first* (then the other captains may speak). I believe that this sense is there, but not primary. The dative 'μοι' would be needed to make the phrase so specific. 'ἣ θέμις ἐστίν' here signifies the customary way that armies are addressed: first by their leader – 'this is the custom'. I agree with Vos however that the

⁷¹ LSJ s.v. ἤ; Vos 1956; 7, 33, calls the construction a 'parataktische Formel'.

⁷² Chantraine 1968 s.v. θέμις; 'ἣ θέμις ἐστί «ce qui est établi par la coutume, conforme à l'usage»'.

⁷³ See p.30f. The adjectival sense of 'οὐ θέμις' is expressed grammatically in later writers; 'οὐ θεμιτόν' (+ inf.) occurs in the *H.Hymn to Demeter* 207, *Pind.Pyth.*9.42, *Soph.OT.*993, *Eur.Orest.*97.

⁷⁴ Vos 1956: 2.

custom referred to is associated with the king's role, rather than the testing of armies before battle, which is unlikely to be customary⁷⁵.

At Ω.650f., Achilles warns Priam that

τις Ἀχαιῶν
ἐνθάδ' ἐπέλθῃσιν βουλευφόρος, οἳ τέ μοι αἰεὶ
βουλὰς βουλευούσι παρήμενοι, ἢ θέμις ἐστί

(Ω.650-2)

[some Achaean councillor might come here: they are always sitting with me to take counsel – this the custom.]

It is the custom here that a king's (here Achilles') subordinates should come to him to take counsel⁷⁶. A further example of θέμις as it applies to the role of a king is found in the *Theogony* (396). Zeus will give 'τίμη' and 'γέρας' to whoever fights with him against Kronos – 'ἢ θέμις ἐστίν'. It is the custom for a king to reward military support and loyalty in this way⁷⁷. In these three instances, θέμις may be translated 'right', but in a very specific sense: the sense that it is the king's prerogative to act in this way, a prerogative sanctioned by custom.

2.2.3. Θέμις and the agora

The association of θέμις with ἀγορή is for the most part bound up with the concept of θέμις (or more frequently θέμιστες) as customary law, which is exercised and ruled upon in assembly. There is however a reference to θέμις in the generalised sense of an individual's right or prerogative in the context of agora. At I.33 Diomedes states that he will quarrel with

⁷⁵ Cf. however, Westbrook 1992: 65.

⁷⁶ Vos (1956: 6) distinguishes between 'Königsrecht', as it applies to Agamemnon, and the 'Fürstenrecht' of lesser princes. I see no reason to do so. The 'θέμιστες' of kings (see below, p.34-6) are associated with both Agamemnon and Achilles.

⁷⁷ Yamagata (1994: 80) takes this to be an 'anachronistic' use of θέμις: the 'offices' assigned by Zeus cannot be 'customary' if newly created. But θέμις here, as I argue, refers to the customary behaviour of kings, not the customary nature of the offices created.

the king, and that 'ἡ θέμις ἐστὶ ἀγορῆ'. It is his customary right as an individual to speak freely in this context.

More specific are the uses of θέμις in a legal setting, again associated with agora. Menelaus tells Antilochos to take an oath in the dispute that follows the chariot race of book 23 (Ψ.581); 'ἡ θέμις ἐστί'. It is the (legal) custom for a litigant to do so in the context of dispute settlement. The single use of θέμις as an abstract is also likely to be associated with legal process. At Λ.807 Patroclus passes the ships of Odysseus, the place 'ἵνα σφ' ἀγορῆ τε θέμις τε'. Θέμις must mean something more specific than 'custom' here. 'Customary law', the sense often conveyed by the plural 'θέμιστες', is likely. If this is the case, 'ἀγορῆ τε θέμις τε' is shorthand for the place of 'assembly and justice', where council is held and where disputes are settled publicly, and θέμις is employed here as the symbol of a 'legal system', in much the same way as δίκη is in the storm simile and in the *Works and Days*. Although this phrase is the only instance in which the singular form of θέμις is used in this way, the plural 'θέμιστες', more specifically 'laws', is also employed to symbolise a broader legal process in several instances, which will be considered below.

2.2.4. Θέμις and guests, religion, fate

The 'θέμις of guests' is referred to in the *Iliad* at Λ.779, where Nestor describes the 'ξείνια' that Achilles gave him in Phthia as 'ἅ τε ξείνοις θέμις ἐστίν': 'which are customary for guests'. The adjectival sense of θέμις is stronger here, as it describes a particular norm, and accordingly the sense is broader: 'which are *right* for guests', or even 'which are *the right* of guests' makes sense.

Θέμις in the context of guest-host relationships is however, a clearer case of rights and duties than is the θέμις of kings. In the several instances we find in the *Odyssey* of 'guest θέμις', this is evident:

1. γ.187: Nestor will tell Telemachos all, 'ἡ θέμις ἐστίν'.
2. ι.268: Odysseus supplicates Polyphemos for a guest gift, 'ἡ τε ξείνων θέμις ἐστίν'.
3. ξ.96: 'θέμις ἐστίν' for Odysseus to speak freely (as a guest).

4. ω.286: Laertes: Odysseus would give ξείνια in return, were he alive, 'ἢ γὰρ θέμις ἐστίν'.
5. ξ.56: Eumaios: 'οὐ μοι θέμις ' to dishonour a guest.

In 1 and 4, the duty of the host is emphasised. Although 'ἢ θέμις (ἐστίν)' still has the primary sense of 'this is the custom' (as regards 'ξείνιη'), 2 is an interesting variation on *Iliad* λ.779. Where in the Iliadic passage, ξείνιοις is in the dative, here it is in the genitive: the former describes what is right in the context of guest-host behaviour, the latter refers more explicitly to the guest's 'right'. 3 gives us 'θέμις ἐστίν' without the demonstrative pronoun, which limits the independent force of the word. Like the Latin 'fas est', it is strictly an adjectival phrase, and this is the form of the positive statement that persists in the tragic poets⁷⁸. Finally 5 is an example of the negative statement 'οὐ θέμις ', which is essentially adjectival and has a sense closer to 'right' than 'custom': 'it is not θέμις for me to dishonour a guest'. 'ἢ θέμις ἐστίν' may frequently preserve the sense of 'custom'; οὐ θέμις ' (like θέμις + the infinitive) conveys the idea that something is wrong (or right) by an objective standard of behaviour⁷⁹.

'οὐ θέμις ' only occurs in the *Iliad* where religion and fate are concerned. At ψ.44 Achilles states that it is 'οὐ θέμις ' to wash before Patroclus is buried: it is 'wrong' (according to the customary duty of the bereaved) to do so. The sense here is of an action that is taboo in quasi-religious terms⁸⁰. Similarly in the *Homeric Hymn to Demeter*, the goddess refuses wine: it is 'οὐ θέμιτον' for one in mourning to drink it⁸¹. Properly religious θέμις is not referred to in the *Iliad*. In the *Odyssey* however, we have two instances of it. At γ.45 Peisistratos says that Telemachos must 'pour and pray' to Poseidon, 'ἢ θέμις ἐστίν'. This is custom as religious duty. At κ.73, Aiolos refuses to accept Odysseus as a guest, as 'οὐ γὰρ μοι θέμις ἐστίν' to receive one hated by the gods⁸².

'οὐ θέμις ' moves furthest from the idea of custom where it refers to fate. Twice in the *Iliad* the narrator describes an action that is 'οὐ θέμις' because it is impossible, or

⁷⁸ LSJ s.v.θέμις.

⁷⁹ This is the form that we find in the majority of the instances of θέμις in Greek tragedy. See below, p.42.

⁸⁰ Vos 1956: 17.

⁸¹ *H.Hymn Cer.* 207. The 'duty' of the bereaved is also referred to in the Hesiodic *Shield* (22), where Amphitryon's duty to avenge his wife's brothers is described as 'ὄ οἱ Διόθεν θέμις ἦεν'.

⁸² Cf. also *WD* 137: the demise of the Golden Age came about because men did not sacrifice, 'ἢ θέμις ἀνθρώποις κατὰ ἦθεα'.

transgresses the limits of αἴσα. At Ξ.386 Poseidon rages through the army, 'τῷ δ' οὐ θέμις ἐστὶ μιγῆναι | ἐν δαῖ λευγαλέῃ, ἀλλὰ δέος ἰσχάνει ἄνδρας'. It is not θέμις for men to fight Poseidon, or any god.⁸³ At Π.796 Apollo knocks Patroclus' helmet to the ground; before this time 'οὐ θέμις ἦεν | ἱππόκομον πῆληκα μαιίνεσθαι'. It was not possible in terms of fate, because Achilles wore it⁸⁴.

'ἢ θέμις ἐστίν' describes custom in a particular context, as it applies to a group (kings, guests), or an area of behaviour (agora, law). 'οὐ θέμις' may also (for example where it describes the duties of the bereaved), but as a more purely adjectival phrase it acquires a more general sense⁸⁵; 'what is not *proper*'. Where the phrase refers to fate (and to some extent where it refers to religious duty) it describes a more universal system: natural law as opposed to social law or custom. That this distinction was recognised by the Greeks is perhaps reflected in Hesiod's mythological treatment of the goddess Themis. In the *Theogony* she has two sets of children: the Horai, spirits of social order (Eunomiē, Dikē, Eirēnē), and the Moirai, the spirits of natural order⁸⁶.

Θέμις as custom does have a normative sense. The customary way is, in a social context, the 'proper' or 'right' way, a way that is sanctioned by tradition. Instances do occur however, where this normative sense is slight or altogether absent. In the *Odyssey* on two occasions, 'ἢ θέμις ἐστίν' refers to behaviour that is 'habitual' rather than socially established.

Agamemnon at λ.451 tells Odysseus that Telemachos will embrace him on his return, 'ἢ θέμις ἐστίν' (for a son). Similarly Eumaios tells Odysseus at ξ.130 that Penelope weeps for him, 'ἢ θέμις ἐστὶ γυναικός' (when her husband has died abroad). This θέμις refers to the natural behaviour of a type of person, beyond any specific social context. There is still a normative sense: it is natural, and proper, that sons and wives should behave in this way. But the use of θέμις here is very close to 'δίκη + the genitive', which has no normative sense at all⁸⁷. In the *Iliad*⁸⁸, Agamemnon must swear an oath that he never slept with Briseis, 'ἢ θέμις ἐστὶν ἄναξ ἥτ' ἀνδρῶν ἢτε γυναικῶν'. This is even further removed from a social

⁸³ Cf. the special dispensation Diomedes requires in book 5, and the complaints of Aphrodite and Ares (376f, 872f.).

⁸⁴ Cf. *Shield* 447: Athene tells Ares to leave Heracles, 'οὐ γὰρ τοι θέμις ἐστίν' (to kill him).

⁸⁵ Cf. δίκη and δίκαιος; below, p.53.

⁸⁶ *Theogony* 901f. Cf. Pind. *Ol.* 9.15-16; 13.8; Fr.30.1.

⁸⁷ See below, p.52-3.

⁸⁸ I.276=134=T.177.

context, and describes customary behaviour in a natural sense, without reference to right or wrong. This sense – the θέμις of humans generally – is also referred to in the *Homeric Hymn to Apollo* (541), where the god tells his Delphic priests to behave, avoiding ‘ὑβρις, ἢ θέμις ἐστὶ καταθνήτων ἀνθρώπων’. While hubristic behaviour may be ‘usual’, it is obviously not ‘proper’ or ‘right’. Vos argues that θέμις + the genitive used in this way is a later construction, which loses its normative force by attraction to δίκη + the genitive⁸⁹. This is possible, and the argument will be considered in more detail when I discuss the latter construction⁹⁰.

The range of meanings that θέμις expresses in Homer includes, in a social context, ‘customary right’, ‘customary duty’, ‘custom as law’; in a familial, or a generalised human context ‘customary or natural behaviour’; and in the negative, general ‘wrong’, in terms of either society, religion or fate. It does appear to shift from a concrete sense of ‘custom’, particularly in the social uses of ‘ἢ θέμις ἐστίν’, to a more strongly normative, and general, sense of ‘right’ or ‘wrong’, in phrases that lack the demonstrative pronoun and consequently become adjectival⁹¹. Positive and negative, we find these phrases predominantly in contexts that describe fate, religion and the quasi-religious areas of guest-treatment and mourning. It can be argued that the shift in sense from ‘this is the custom’ to ‘it is customary to... / it is not customary, improper, impossible to...’ prefigures the abstraction of the term as ‘justice’ in later writers⁹².

2.2.4. Θέμιστες

If the primary meaning of θέμις is ‘custom’, that of θέμιστες is its concrete form: ‘customs: customary norms, rules, laws’. As such, they often refer to a ‘legal’ process. Θέμιστες are not ‘laws’ in the codified sense, but they are applied in dispute settlement by an arbitrator

⁸⁹ Vos 1956: 22f.

⁹⁰ P.52-3.

⁹¹ The only post-Homeric instances of the formula ‘ἢ θέμις ἐστίν’ I can find (in pre-Hellenistic poetry) are *Theogony* 396 (of kings) and *H.Hymn Ap.541* (of men), and Pythagoras, *Carmen Aureum* 52.

⁹² Much as δικαιοσύνη is reached through δίκαιος. See below, p.53, n.168.

as a form of precedent. In the *Iliad* this sense occurs in the singular⁹³. At E.761 Hera complains that Ares is 'ἄφρων': 'οὐ τίνα οἶδε θέμιστα' – he knows not a single 'convention' (he has been fighting mortals). Different meanings do occur however, and in the plural form an interesting way to distinguish the various uses of θέμιστες is to examine the vocabulary they are associated with. It is arguable that these allied terms fall into two main groups (a third group of 'oracular' θέμιστες will also be considered). The first group, occurring predominantly, perhaps exclusively, in the *Iliad*, associates θέμιστες with kings and the royal sceptre. The second, found in both Homeric poems and Hesiod, associates the term with δίκη, judges and the agora. Zeus is common to both.

2.2.5. Σκήπτρον and θέμιστες

On two occasions in the *Iliad*⁹⁴ Agamemnon is described as the βασιλεύς or ἄναξ, to whom Zeus has granted

σκήπτρόν τ' ἠδὲ θέμιστας, ἵνα σφισι βουλευήσθα.

(I.99)

[the sceptre and the θέμιστες, that you might take counsel with them.]

Vos takes θέμιστες here to mean 'royal dignity, akin to the 'θέμις of kings' described above⁹⁵. The θέμιστες are evidently a symbol of royal power. Together with the sceptre they are bestowed by Zeus as the 'tools' of governance, the means whereby the king 'takes counsel' for his people. Despite being given by Zeus, they need not be 'divine ordinances'. As with the sceptre, they are a symbol of the status which Zeus grants to kings. As discussed in the previous chapter however⁹⁶, the king's right and duty to sit in judgment is an essential feature of his role, and θέμιστες in this context may refer to that function: the king as judge is the guardian of the customary laws that inform his verdicts.

⁹³ See also above, on Λ.807 (p.30).

⁹⁴ B.206, I.99.

⁹⁵ Vos 1956: 3 ('die Privilegien des Königs'). Cf. LSJ s.v. θέμις: 'prerogatives'.

⁹⁶ Chapter 1, p.18.

At *Iliad* A.237-9, the judicial nature of such θέμιστες is explicit. The sceptre that Achilles swears by is that which the

υἱες Ἀχαιῶν
ἐν παλάμῃς φορέουσι δικασπόλοι, οἳ τε θέμιστας
πρὸς Διὸς εἰρύεται·

(A.237-9)

[sons of the Achaeans hold in their hands as judges, who guard the θέμιστες for Zeus.]

These θέμιστες, again associated with the sceptre, are the province of δικασπόλοι, literally 'judgment-wielders'⁹⁷. They are then the customary norms that form the basis of arbitration. They are again associated with Zeus, but he is not so much their author as their overseer. The δικασπόλοι are not specifically kings here, and it is uncertain whether they perform their function collectively or individually. Yamagata believes that they are kings, equating δικασπόλος with βασιλεύς and ἄναξ⁹⁸, and interpreting the θέμιστες of B.206 and I.99 as 'laws' accordingly. This interpretation is supported by both Leaf and Ameis-Hentze⁹⁹. Vos and the LSJ favour 'rights' or 'privileges' in these passages, without reference to judicial function. As Hainsworth notes however, the two interpretations may be reconciled if 'laws' is taken to symbolise those privileges by referring to the king's juridical function¹⁰⁰.

The case for θέμιστες as 'customary laws' is less certain at I.156=298, where Agamemnon promises Achilles cities whose inhabitants will honour him as a god with gifts,

καὶ οἱ ὑπὸ σκήπτρῳ λιπαρὰς τελέουσι θέμιστας.

(I.156)

[and accomplish the shining θέμιστες beneath his sceptre.]

⁹⁷ See below, n.146.

⁹⁸ Yamagata 1994: 70. Cf Eustathius 2.666 on I.99: 'ἔχει καὶ θέμιστας οἷα καὶ δικασπόλος'.

⁹⁹ Leaf 1898 on. I.99: "the sceptre and the dooms". The body of traditional decisions and principles (a sort of primitive common 'law') on which the king has to administer justice". Ameis-Hentze 1894 *ad loc.* I.99: 'die Bezeichnung des Richtersamt'. Cf. Crusius s.v. θέμις (*ad loc.*): 'laws'.

¹⁰⁰ Vos 1956: 3; LSJ s.v. θέμις (*ad loc.*); Hainsworth 1993: 71: 'it is Agamemnon's Zeus-given privilege to decide what is themis and what is not'.

The sense of θέμιστες here has been much debated. The ancient scholia suggest 'judgments', 'ordinances' or 'dues'¹⁰¹. Modern critics have generally favoured 'dues'¹⁰². Leaf however reads 'will fulfill his peasant ordinances', and Hainsworth seems to agree, pointing out that θέμιστες elsewhere are 'ordinances, decisions', and that θέμιστες as 'φόροι' has no parallel beyond this passage¹⁰³. Yamagata interprets θέμιστες here as simply 'god-given customs'¹⁰⁴. 'Λιπαράς' is problematic, and suits the concrete sense of 'φόροι' better (cf. Scholia A 'λαμπρούς'; D 'πλουσίας')¹⁰⁵. If the sense of the line is as Scholia A suggest however, 'ὑπ' αὐτοῦ βασιλεόμενοι εἰρηνικῶς βιώσονται', it could refer to ordinances, or customs that bring prosperity.

Dues, ordinances, laws, or the customs he guards, these θέμιστες form part of the king's prerogative. Like the sceptre, his association with them symbolises his royal authority, which derives from Zeus. It appears likely however, that the right of judgment does form an important part of that royal ideology, and that the θέμιστες that inform those judgments are employed as the symbol of that role.

The sceptre figures again in the trial scene at Σ.497f., but without reference to θέμιστες or a king. Here it is wielded by judges in the agora, and in this context it does have a definite judicial significance¹⁰⁶. As in the hands of a king it represents royal authority, in the hands of judges it symbolises the judicial authority that is vested in them by the community¹⁰⁷.

¹⁰¹ ΣβΤ: λιπαράς δὲ τὰς θέμιστας καλῶν τοῦτο δηλοῖ ὅτι τὸ κρίνειν καλῶς εὐδαιμονίαν ἄγει. (ie. they refer to a judicial function); A: ὅσα δεῖ βασιλέα - λαμπρούς φόρους τελέουσιν. ('Dues'); D: as A (<λιπαράς> πλουσίας).

¹⁰² Crusius, LSJ, Ameis-Hentze ('Gebühren'), Vos (1956: 7).

¹⁰³ Leaf 1898: *ad loc*; Hainsworth 1993: 78-9. I would argue that the meaning 'ordinances' is nowhere uncontested. Against his claim that 'dues' is unprecedented, Chantraine notes that *timito* occurs in the linear B tablets where it has been translated 'tribut' (Chantraine 1968: s.v. θέμις).

¹⁰⁴ Yamagata 1994: 76: 'It seems most natural to take [l. 156] as referring to the residents' faithful practice of religious rites, orderly assembly, respect for the king and good manners in general'. Cf. Eustathius 2.687, who says that the people achieve happiness 'διὰ τὴν θέμιν καὶ τὸ δίκαιον', noting *WD.225* on the just: 'τοῖσι τέθλη πόλις, λαοὶ δ' ἀνθεῦσιν ἐν αὐτῇ'.

¹⁰⁵ It is interesting to note that in the *Theogony* (901), 'λιπαρή' is given as an epithet of the goddess Themis; it is more probable however that she inherited it from the Homeric phrase than the other way round.

¹⁰⁶ As must the 'θεμιστεῖον σκᾶπτον' that Hiero wields in Pind. *Ol.* 1.12. This might in fact be adduced as evidence for the judicial sense of θέμιστες when associated with king and sceptre in Homer. It must be considered however that Pindar may have the θέμιστες of Homer's 'δικη group' in mind (see below); the sense of 'laws' moreover is likely to have become more explicit after the introduction of written law codes in the 7th century. (See Gagarin 1986: 121f.)

¹⁰⁷ Cf. Eustathius 4.234: 'καὶ σκῆπτρα δὲ οὐ μόνον βασιλεῦσιν, ἀλλὰ καὶ δικασπόλοις'.

2.2.6. Θέμιστες and δίκη

It has already been shown that at A.238, the θέμιστες are associated with 'δικασπόλοι' and (implicitly) the 'ἀγορή', and the association of 'ἀγορή τε θέμις τε' at Λ.807 has been considered. The second group of references to θέμιστες must include these two examples: in them θέμιστες are described in the context of assembly and judicial process. Λ.807 makes no mention of δίκη itself (as 'legal process'), nor does the similar passage that occurs in the *Odyssey* at ι.112, where the Cyclopes are said to be entirely without social institutions:

τοῖσιν δ' οὔτ' ἀγοραὶ βουλευφόροι οὔτε θέμιστες.

(ι.112)

[they have neither assemblies for counsel nor θέμιστες.]

Here, however, (as with Λ.807) the association with ἀγορή makes it likely that θέμις / θέμιστες are shorthand for the judicial process itself¹⁰⁸: they are the body of customs that form its basis. Together with the principle of communal political activity (ἀγορή), these customs are, for Homer, the essence of civilised society¹⁰⁹.

The Cyclopes are described again at ι.215 (with particular reference to Polyphemos) as 'ἄγριον, οὔτε δίκας ἐὺ εἰδότα οὔτε θέμιστας. Again they are 'savage', with no knowledge¹¹⁰ of δίκαι ('legal procedures'¹¹¹) or θέμιστες ('customary laws'). They are, to use Hesiod's

¹⁰⁸ 'Custom' and 'community' do together imply communal regulation, decision making and dispute settlement.

¹⁰⁹ This passage goes on to say that each Cyclops 'θεμιστεύει' for his own wife and children (ι.112) – 'makes rules / decrees'. Evidently the verb has a more generalised sense than the noun or this would be contradictory. The sense here is that their only social frame of reference is the family unit. The verb does not occur in the *Iliad*, but appears again in the *Odyssey* at λ.569, where Odysseus sees Minos 'θεμιστεύοντα' for the dead: again 'speaking laws, giving decrees'. In the *Homeric Hymn to Apollo* (253=293) it means 'prophecy'; see below, p.41, n.124.

¹¹⁰ οἶδα is a verb frequently associated with δίκη and θέμις in this context. Cf. Ares at E.761, and the phrases 'ἄθεμίστια ἦδη' (ι.189), 'ἄθεμίστια εἰδώς' (ι.428, υ.287). Similarly Nestor 'περίοιδε δίκας' (γ.244) and the Cyclops 'οὔτε δίκας ἐὺ εἰδότα οὔτε θέμιστας' (ι.215). Cf. also the judicial sense of the cognate 'ἴστωρ' (Σ.501, Ψ.486).

¹¹¹ I provisionally follow Gagarin here (1973: 85-6); see below, p.44-5.

term, 'χειροδίκαι'; they act without reference to communal principles and assert themselves by force¹¹².

These are the kind of θέμιστες described most explicitly in the storm simile of π.384f., where Zeus is enraged with men

οἱ βίη εἰν ἀγορῇ σκολιάς κρίνωσι θέμιστας,
ἐκ δὲ δίκην ἐλάσωσι θεῶν ὅπιν οὐκ ἀλέγοντες.

(π.387-8)

[who with violence choose crooked θέμιστες, and drive out δίκη with no concern for the gaze of the gods.]

The plural 'οἱ' must refer to the kind of judges or elders described in the trial scene at Σ.497f: both passages describe an instance of agora-based dispute settlement. These corrupt judges 'choose crooked θέμιστες' and 'drive out δίκη'. Dikē here will be considered later (see below, p.50), but I will provisionally read it as 'justice', in the sense of 'correct legal process'¹¹³. To choose θέμιστες is, as Janko says, to pick bad precedents as a basis for a judgment:

Oral precedents (θέμιστες) formed the basis for decision by judges whose duty it was to pick (κρίνειν) the right ones and decide accordingly.¹¹⁴

So too Yamagata:

The judge must 'choose' relevant codes and precedents on each occasion from the unwritten corpus of local rules.¹¹⁵

¹¹² Cf. the 'lover of civil strife' at I.63, 'ἀφρήτωρ ἀθέμιστος ἀνέσιός', and 'ἀθέμιστος / ἀθεμιστιος' ('law-less'), of Cyclopes (l.106) and suitors (p.363, σ.141).

¹¹³ It is possible that this phrase has the more concrete sense of 'dismiss a claim / case'.

¹¹⁴ Janko 1992: *ad loc.*

¹¹⁵ Yamagata 1994: 90, n.40. Gluckman (1965: 208) describes an interestingly similar process in dispute settlement among the Barotse. The judges, after cross-examining the parties to a dispute and listening to evidence, decide that right lies with one side or another and then 'state the law in such a way that it supports their judgment'. Exposition or interpretation of the law to support a judgment and 'choosing themistes' as the basis for a 'dikē' are essentially the same process.

It is a difficult reading. *θέμιστες* as 'judgments' or 'claims' would be easier¹¹⁶, but unless the word has simply been used as a gloss for 'δίκαι', these meanings are hard to reconcile with the sense the word has elsewhere in Homer. Chapter 5 will consider in detail the relationship of this passage to the poem as a whole. I want to focus here on the sense and use of *θέμιστες*, and consider the terms it is associated with. In the passages quoted above the word is connected with judges and the agora: only here in the *Iliad* is it mentioned with *δίκη* (if we except *δικασπόλοι* at A.238), and with one of the two adjectives which are commonly employed in the *Odyssey* and Hesiodic poems to qualify *δίκη*, 'ἴθυσ' and 'σκόλιος'.

The parallels with several Hesiodic passages are marked. At *Theogony* 80f. the Muses are said to give the βασιλεύς eloquence,

οἱ δέ τε λαοὶ
πάντες ἐς αὐτὸν ὀρῶσι διακρίνοντα θέμιστας
ἰθειήισι δίκηισιν· ὁ δ' ἀσφαλῆως ἀγορεύων
αἴψα τι καὶ μέγα νεῖκος ἐπισταμένως κατέπαυσε·

(*Theog.* 84-6)

[and all the people look to him to settle the *θέμιστες* with straight judgments, and he, speaking surely, quickly puts a wise end to even a great dispute.]

The sense of *θέμιστες* here cannot be 'judgments' if we are to avoid tautology; it must be Janko's 'oral precedents'. The process is further explained with reference to the agora:

τούνεκα γὰρ βασιλῆες ἐχέφρονες, οὔνεκα λαοῖς
βλαπτομένοις ἀγορῆφι μετὰτροπα ἔργα τελεῦσι
ῥηιδίως, μαλακοῖσι παραιφάμενοι ἐπέεσσιν·

¹¹⁶ Ameis-Hentze reads 'krumm Rechtsprüche fällen' – 'pass crooked judgments' (*ad loc.*). So too Crusius (s.v. *θέμις*, *ad loc.*: 'judicial sentences'), and Leaf (*ad loc.*), who believes that *θέμιστας* here = *δίκας*. Cf. also Scholia A: '<θέμιστας> ὅτι ἀντὶ τοῦ δίκας'. Vos (1956: 10) argues that the original meaning of the phrase 'κρίνειν θέμιστας' was 'Rechtsregeln wählen', and that it has this sense here, but that in Hesiod it becomes 'urteilsprechen', as *θέμις* is increasingly identified with *δίκη*. LSJ (s.v. *θέμις*, *ad loc.*) and Latte (1946: 65, cited by Vos, 1956:10) read 'claims' here ('Rechtsansprüche').

(Theog. 88-90)

[For this reason are kings wise, because when the people are misguided in agora, they turn the matter about with ease, advising with gentle words.]

By 'settling' or 'separating' or 'picking out' (here 'διακρίνειν' is more specific than 'κρίνειν') the θέμιστες, the βασιλῆες resolves disputes and guides the assembly.

In the prayer to Zeus that begins the *Works and Days*, the poet asks the god to 'δίκη δ' ἴθουε θέμιστας': to 'straighten the θέμιστες with δίκη'. As at Π.387 the θέμιστες may be straight or crooked, and again the meaning of the word is consequently unclear. Gagarin reads 'straighten decisions with legal processes'¹¹⁷, implying that θέμιστες is a gloss for δίκαι (as Amiens-Hentze, Leaf and Scholia A suggest for Π.387), employed to avoid repetition. It is possible however that this phrase may be read as 'clarify the customs / precedents with justice (or legal process)'. The most noteworthy feature of both these passages is that the 'ἴθους/σκόλιος' terminology has been transferred from δίκη to the θέμιστες. As a result, δίκη is presented as a more permanent, abstracted 'ideal'; it, rather than θέμις (as at Λ.807), is being employed as the shorthand term for justice itself¹¹⁸.

At line 221 of the *Works and Days* the θέμιστες are referred to in another instance of dispute settlement.

τῆς δὲ Δίκης ρόθος ἐλκομένης, ἧ κ' ἄνδρες ἄγωσι
δωροφάγοι, σκολιῆς δὲ δίκης κρίνωσι θέμιστας.

(WD. 220-221)

[There is a roar when Dikē is dragged to the place where gift-eating men lead her, men who choose the θέμιστες with crooked judgments.]

This is very close to the phraseology of the storm simile: there are corrupt judges, an implied agora, 'κρίνειν θέμιστας', 'ἴθους/σκόλιος' and δίκη: 'there is a roar when Dikē is

¹¹⁷ Gagarin 1973: 91, n.53.

¹¹⁸ Cf. Yamagata 1994: 81: 'The roles of θέμις and δίκη are somehow reversed from what we see in Homer. Here the former is something that men can fiddle with and present for divine inspection while the latter is the basis of justice applied to "straighten" our particular conduct'.

dragged into the place where gift-eating men lead her and pick precedents with crooked judgments'. Leaf believes this to be the model for the storm simile trial¹¹⁹. It is certainly arguable that 'ἴθυσ' and 'σκόλιος' are properly suited to 'δίκαι' as judgments¹²⁰, and that 'σκόλιος' has been transferred to θέμιστες in the Iliadic passage because at the point that that passage was composed, δίκαι and θέμιστες had become to some degree synonymous. If this were the case, we would be justified in reading, with Latte¹²¹, 'claims' for θέμιστες in all these passages. What is certain is that π.387 strongly echoes the three Hesiodic passages referred to. Why this is so, and what the relationship between these passages is, will be considered in chapter 5. Any conclusion on the sense of θέμιστες in the storm simile must be dependent on a proper consideration of that relationship.

I have so far identified several uses of the word 'θέμιστες', which appear to be related to the terms it is associated with in a given context. Θέμιστες are a body of custom which form part of a king's prerogative in the passages of the *Iliad* where they are paired with the σκῆπτρον. It is used as 'customary laws', almost certainly in passages where it is paired with ἀγορή, and possibly in the passages that refer specifically to dispute settlement and associate it with δίκη. I have grouped the last two uses (θέμιστες / ἀγορή and θέμιστες / δίκη) because it seems to me that the 'θέμις' in both these instances is explicitly associated with 'justice' and judges, rather than individual kings. It may be however that θέμιστες and the ἀγορή, or θέμιστες as the object of 'οἶδα'¹²², should be distinguished from θέμιστες as the object of κρίνω or διακρίνω. The former are customary laws; the latter may be, but may have assimilated some of the senses of δίκαι: 'judgments' or 'claims'.

A final group to consider are oracular θέμιστες. Ehrenburg suggests that 'oracle' was the primary meaning of θέμις¹²³. This sense of the word does not occur in the *Iliad*¹²⁴, and may

¹¹⁹ Leaf 1898: *ad loc.* π.387.

¹²⁰ Cf. Palmer 1950: 159.

¹²¹ See n.116.

¹²² See above, n.110. Cf. also *Theogony* 233-6 on Nereus: 'Νηρέα δ'... καλέουσι γέροντα, | οὔνεκα νημερτῆς τε καὶ ἦπιος, οὐδὲ θεμιστέων | λήθεται, ἀλλὰ δίκαια καὶ ἦπια δήνεα οἶδεν'. It is interesting to conjecture that Nereus is given these attributes because he is 'ὁ γέρων', and they are associated by the poet with 'elders' in their public / judicial role (cf. γέροντες at Σ.503). His children's names are similarly illustrative (*Theog.*240f, esp. 257f.), and include Ληαγόρη, Εὐαγόρη, Λαομέδεια, Πουλυνόμη (MSS, otherwise Πουλυνόη), Εὐπόμπη, Θέμιστώ, Προνόη and Νημερτής: a catalogue of civic virtues.

¹²³ Ehrenburg 1921 (cit. Palmer 1950: 150).

derive from θέμιστες as a king's 'ordinances' (itself derived from θέμιστες as 'laws'). When a god proclaims his will or counsel through an oracle, these are the divine 'θέμιστες' or 'decrees'.

2.2.7. Θέμις: conclusions

Θέμις is essentially custom, particularly in a social context (although as an adjectival phrase it may mean 'habit', or natural custom, or what is possible in terms of fate). In the plural 'customs' acquires the specific meaning of 'customary laws', 'oral precedents'. It may have a specifically judicial sense, particularly when associated with the agora or dispute settlement. It may refer to the body of customary behaviour that a society adheres to in general, which is protected by a king – a function which in part defines his royal status. In the singular its meaning appears to shift from the nominal ('ἢ θέμις ἐστίν') to the adjectival (θέμις / οὐ θέμις + the infinitive). 'ἢ θέμις ἐστίν' disappears in later writers, while 'οὐ θέμις' in the generalised sense of 'not right', 'nefas' tends to predominate, accounting for half the instances of θέμις in Aeschylus and Sophocles and two thirds in Euripides¹²⁵. In Sophocles and Euripides most remaining instances consist of the phrase 'εἰ θέμις ἐστίν', or the interrogative 'is it θέμις?': further evidence that θέμις had by the 5th century lost its concrete sense, becoming an abstracted concept of 'what is right or wrong' in a given situation, which could be conjectured where no clear precedent existed.

Vos maintains that the original meaning of θέμις was not 'custom' or 'usage'¹²⁶. He argues that the essential meaning of the word was comprehensive: 'order' itself, social, natural, judicial and moral:

¹²⁴ It does however in the *Odyssey*: π.402-3, θέμιστες = βουλὰς θεῶν. Cf. also *H.Hym.Apol.*253=293, 394 and *Pind.Py.*4.54. Themis as an oracular goddess: *Pind.Py.*11.9 and *Aesch.Eum.*2.

¹²⁵ Aeschylus: 4/10, Sophocles: 11/23, Euripides: 21/32 (based on an electronic search of the *Thesaurus Linguae Graecae*).

¹²⁶ Vos 1956: 6: 'Die Bedeutung von θέμις war immer 'Recht', und nicht 'Brauch' oder sogar 'Gebote, Sprüche, Weisungen'.

Θέμις ist eine archaische Konzeption und bedeutet grundsätzlich die Ordnung in einer Welt, die zwischen der Naturordnung, dem wesensrichtigen Benehmen, der Rechtsordnung und der Sozialen und moralischen Ordnung nicht unterscheidet.¹²⁷

Concepts of overarching order, often founded on the idea of 'apportionment', or the connection of parts did of course exist at this date and earlier¹²⁸. Palmer argues that this widespread idea is evidence for a common Indo-European concept of justice¹²⁹. But the generalisation of θέμις as 'what is right', 'justice', seems to be a relatively late development, that became pervasive as the original sense of 'custom' disappeared. We do see θέμις applied to fate and natural law in the *Iliad*, but the phrases it occurs in in these instances (οὐ θέμις, θέμις + the genitive) appear to be later, generalised developments: the former, as mentioned, in the direction of universal normativity, the latter away from normativity altogether, towards what is simply normal. A core sense of 'custom', 'established norm' is supported by the etymology. It is primarily a feature of society: the 'tradition' that forms a society's regulatory principle before laws are codified, which encapsulates both the norms of behaviour in a given situation and the 'rights' of individuals.

In the context of dispute settlement, specific 'norms' are cited by arbitrators or judges as precedents for their decisions ('δίκαι'), and these θέμιστες are used by both Homer and Hesiod as a shorthand term for the legal process itself. Δίκη, as we will see, comes to perform the same function.

2.3.1. Δίκη: way or judgment

The uses of δίκη in Homer appear to fall into two distinct categories: δίκη as 'way', 'habitual behaviour' (always in the singular and qualifying a noun in the genitive), and legal or moral δίκη. The latter group, like θέμις, may be broadly divided into a concrete sense chiefly expressed by the plural 'δίκαι' ('judgments') and a generalised one expressed by the

¹²⁷ *Ibid.* 29.

¹²⁸ Cf. Egyptian 'ma'at', Sanskrit 'ṛtá', Old Persian 'arta-', Avestan 'aša': 'holy right, holy order' (cognates with Greek ἀρτύω, ἀραρίσκω etc: see Pokorny s.v. 'ar-1*' '>'ṛt-', 'art-'; 'joint together'), and Greek αἴσα (not etymologically related).

¹²⁹ Palmer 1950: 162f.

singular ('right', justice'). The relationship between these two groups is problematic. Chantraine gives the former (which I will refer to as 'δίκη 1') as the primary sense¹³⁰, and Yamagata agrees, deriving the normative sense (of 'δίκη 2') from 'δίκη 1' as an expression of what is 'normal'¹³¹. One difficulty with this interpretation is that 'δίκη 1' does not occur in the *Iliad*; it appears first in the *Odyssey* (where however it accounts for the majority of the uses of δίκη). Havelock takes the opposite view, arguing that 'δίκη 1' does in fact have a normative sense: that it does not describe a 'characteristic', but 'what is supposed to happen' with reference to specific persons in specific situations¹³².

Palmer and Gagarin argue against the attempt to derive one sense from the other:

Not seldom philological interpretations are distorted by the arbitrary selection and over-emphasis of certain constituents of the semantic field to the neglect of others.¹³³

Palmer, as mentioned above (p.25), describes a range of ideas which δίκη and related terms might express and groups them around two core meanings: 'mark' and 'boundary mark'. The former would give the sense 'characteristic', 'normal (identifying) behaviour' (i.e. 'δίκη 1'), while the latter would describe the limits of an individual's property, and perhaps metaphorically their status. As early dispute settlement would frequently entail the settlement of boundaries¹³⁴, this root would lead to 'δίκη 2' as 'ruling', 'settlement', 'judgment' or 'claim' in the concrete sense, and '(dispute) settlement' or 'legal procedure' in a generalised one.

As with θέμις, it will be necessary to consider the uses of δίκη in the early epic and lyric poets. This should provide a basis for deciding which attempt to define the core meaning of the word fits the evidence best. As the *Iliad* is the focus of this study, and only 'δίκη 2' occurs in that poem, I will start with the second group, beginning with the concrete, plural sense. Moving from the concrete sense to the generalised one should also provide a basis for considering the second question that the use of δίκη in Homer poses: to what extent is it used as an abstract, to describe a general concept of 'justice'?

¹³⁰ Chantraine 1968: s.v. δίκη.

¹³¹ Yamagata 1994: 72.

¹³² Havelock 1978: 181-3.

¹³³ Palmer 1950: 151. Cf. Gagarin 1973: 82.

¹³⁴ Cf. 'πεῖραρ' as 'settlement' at Σ.501, and the simile of the boundary dispute at M.421.

2.3.2. Δίκαι

Gagarin's description of dispute settlement in the Archaic era will form a useful backdrop to this study of δίκη's 'legal' meanings:

When two parties had a dispute over land or any other property (cattle, a wife, a murdered kinsman, etc.), they could settle the matter by force (βίη). If however they desired a peaceful settlement (δίκη), but could not agree to a settlement by themselves, they might agree to look for a third, disinterested person to propose a settlement (δικάζειν). They might agree to abide by the opinion of a particular judge (δικασπóλος), or they might solicit proposals for settlements (δίκαι) from several people and agree to abide by the one most acceptable to both sides (the 'straightest'). In the process, each litigant might propose his own settlement (δικάζεσθαι – presumably in his own interest), and this proposal (or plea) would be his δίκη. The whole process could also be called a δίκη, but it differed from our trial in that neither an individual nor the state, in Homeric society at least, could compel anyone to submit to δίκη.¹³⁵

As we can see, the entire process was rather impoverished in terms of legal terminology. Δίκη does duty for a). 'peaceful settlement' (in the general sense), b). 'proposed settlements' ('judgments' if proposed by judges – δικάζειν, 'claims' or 'pleas' if proposed by a disputant – δικάζεσθαι), generally in the plural, and c). the legal procedure itself: 'trial' or 'arbitration'. In the *Works and Days*, δίκη is also used to refer to the substance of a settlement – 'satisfaction' or 'punishment',¹³⁶.

A δίκη proposed by a litigant ('claim' or 'plea') occurs in the *Iliad* at Ψ.542 in the chariot race dispute. Achilles wants to award Eumelos the second prize and Antilochos protests:

Πηλεΐδην Ἀχιλῆα δίκη ἠμείψατ' ἀναστάς.

(Ψ.542)

[He stood up and answered Peleus' son Achilles with a claim.]

¹³⁵ Gagarin 1973: 83.

¹³⁶ *WD*. 239, 249, 712. Cf. also T.180, considered below (p.49).

Literally, he answers Achilles 'with a δίκη': he came second, he deserves the prize. Achilles concedes and so there is no need to involve a third party. In the *Odyssey's* 'Nekyomanteia' (λ.568-71), Minos is described

θεμιστεύοντα νέκυσιν,
ἤμενον, οἱ δέ μιν ἀμφὶ δίκας εἴροντο ἄνακτα.

(λ.569-70)

[speaking θέμιστες to the dead; sitting while around the king they spoke their claims.]

The ghosts make their claims and Minos judges them (θεμιστεύοντα, 'speaking the θέμιστες' see above, n.68). The dispute between Hermes and Apollo over stolen cattle in the *Homeric Hymn to Hermes* contains the formula 'δὸς δὲ δίκην καὶ δέξο παρὰ Ζηνὶ Κρονιονί' (312), which must mean 'make your claim and receive mine', or 'make your claim and accept a judgment'.

In the *Iliad*, δίκαι as 'settlements' or 'judgments' occurs twice. At π.542, Glaucos announces that Sarpedon has fallen, 'ὄς Λυκίην εἴρυτο δίκησί τε καὶ σθένει ῶ'. The two chief prerogatives of a king are summarised here: to maintain domestic peace through 'settlements', as an arbitrator, or 'δικασπόλος'¹³⁷, and to guard against foreign threats by his 'σθένος', as war-leader. Here the δικασπόλος is the king; in the trial scene at Σ.497f., we have a 'panel' of elders, who 'δικάζον' in turn. A reward is provided (presumably by the litigants¹³⁸),

τῷ δόμεν ὃς μετὰ τοῖσι δίκην ἰθύντατα εἴποι.

(Σ.508)

[to give to the one that among them would speak a δίκη most straightly.]

To give to (the judge) who proposed the most acceptable settlement. The voluntary nature of the kind of arbitration that Gagarin describes is evident here, although the direct

¹³⁷ Cf. *H.Hymn.Cer.*149-52: Callidice tells Demeter who the 'chief men' of Eleusis are, those who guard the city with their counsels and 'ἰθειρσιν δίκησιν'.

¹³⁸ See chapter 4, p.103-4.

involvement of the 'λαοὶ' (Σ.497) suggests the pressure of public opinion on the litigants to pursue peaceful settlement¹³⁹.

Many instances of δίκαι as judgments occur in Hesiod¹⁴⁰. There is not space here to consider these in detail. It is worth noting however that in all these instances (as at Σ.508) the δίκαι are described as being 'ἰθείαι' or 'σκόλαι': 'straight/fair' or 'crooked/biased, corrupt'. These adjectives are strongly (and almost exclusively – see below on Hes.Fr.286) associated with δίκαι as 'judgments', and underscore the influence of the individual on the process. Δίκαι are proposed *ad hoc*. They may rest upon a knowledge of custom or precedent (θέμιστες: v. *Theog.*86, *WD.*221), but they are ultimately dependent on the character of the δικασπóλος¹⁴¹. Δίκη in the concrete sense of 'trial' is not found in Homer, but occurs in the *Theogony*, the *Works and Days* and Hesiod Fr.338¹⁴².

2.3.3. Δικάζειν

As Gagarin notes, the verb δικάζειν derives from the concrete sense of δίκη. In the active voice it means 'to make a δίκη', 'to deliver a judgment', 'to judge'; in the middle 'to deliver a judgment on one's own account' – 'to make a claim'. So, at Σ.506, the elders 'ἀμοιβηδὶς δὲ

¹³⁹ See chapter 4, p. 105f.

¹⁴⁰ *Theogony* 86, 434; *WD* 9, 36, 124, 219, 221, 225, 250, 262, 264, 265.

¹⁴¹ Cf. West 2007: 412-3, who identifies the semantics of 'straight' or 'crooked' judgments with the Indo-European terminology of 'ruler'. 'King' in Vedic ('rájan-' <MIE *(H)rēǵ-ō / (H)rēǵn-) and Italo-Celtic (Latin 'rex', Irish 'rí' <MIE *(H)rēǵ-) are all derived from the verbal root *(H)rēǵ-: 'to straighten', 'direct', 'rule' (cf. Vedic 'rāsti/rajati', 'to direct, rule'; Latin 'rego', 'straighten, rule'; Gaulish 'regu', 'straighten'): 'The relationship between the word for 'king' and the verb meaning 'make straight, direct' is a strong clue to the original nature of kingship. There is a clear semantic connection between making things straight, drawing straight boundaries, guiding something in a straight line, and governing justly and efficiently'. It is however equally possible that the 'straight/crooked' imagery has judicial basis. Hirzel (see above, p.24) argues that a 'δίκη' is a 'cast' of the judge's sceptre, which may be straight or biased towards one party. The etymology on which he bases this argument is disputed, but its substance is supported by the 6th dynasty Egyptian didactic poem 'The Instruction of Ptahhotep' (Lichtheim 1973: 71. This passage is also referred to below, chapter 5, p.124):

If you are a magistrate of standing,
Commissioned to satisfy the many,
Hew a straight line.
When you speak don't lean to one side,
Beware lest one complain:
"Judges he distorts the matter!"
And turn your deeds into a judgment of (you).

¹⁴² *Theog.*434: Hecate sits beside kings in 'δίκη'; *WD.*39: corrupt kings long to judge such a 'δίκη'; Hes.Fr.338: hear both sides before you judge a 'δίκη'.

δίκαζον', 'deliver judgments in turn'. At Ψ.573-4, Menelaos calls upon the Ἀργείων ἡγήτορες' to judge the claim he has made against Antilochos:

ἐς μέσον ἀμφοτέροισι δικάσατε, μὴ δ' ἐπ' ἀρωγῆ.

(Ψ.574)

[judge both in the midst, without bias.]

With ἀμφοτέροισι in the dative, the sense is 'judge between the two of us'. Four lines later he has a better idea – he will make the judgment himself:

εἰ δ' ἄγ' ἐγὼν αὐτὸς δικάσω, καὶ μ' οὐ τινὰ φημι
ἄλλον ἐπιπλήξειν Δαναῶν· ἰθεῖα γὰρ ἔσται.

(Ψ.579-80)

[come, I myself will make a judgment, and I say no other man of the Danaans will find fault with it, for it will be a straight one.]

This is the active voice: Menelaos is not stating his claim, he is assuming an objective role and proposing a settlement¹⁴³.

At Θ.431, δικάζειν is used metaphorically to describe the decision Zeus makes between the Trojan and Danaan armies. Hera tells Athene that they cannot oppose his will,

κεῖνος δὲ τὰ ἅ φρονέων ἐνὶ θυμῷ
Τρωσὶ τε καὶ Δαναοῖσι δικάζέτω, ὡς ἐπιεικές.

(Θ.430-1)

[let him decree for the Trojans and Danaans whatever he thinks in his heart, as is fitting.]

As at Ψ.574 the two parties that are the object of the decision take the dative¹⁴⁴.

¹⁴³ Δικάζειν in the active voice: λ.547, the Trojans and Athene judged Aias and Odysseus' dispute; Hes.Fr.43a, no mortal could judge Sisiphos and Aithon's dispute. Athene does and speaks a [straight?] δίκη. For the expression 'δίκην δικάζειν', see *WD*.39 and Hes.Fr.338.

The middle voice of δικάζειν does not occur in the *Iliad*¹⁴⁵. At λ.545 however, Odysseus states that he won the dispute with Aias ‘δικαζόμενος παρὰ νηυσί’. The simile of the judge at μ.440 has the nameless judge ‘κρίνων νείκεα πολλά δικαζομένων αἰζηῶν’; ‘judging the disputes of vigorous claimants’¹⁴⁶.

2.3.4. Δίκη as ‘right’, ‘due process’

This section will consider the instances in which δίκη conveys an abstract sense that has traditionally been translated as ‘justice’¹⁴⁷. At T.180, Odysseus tells Achilles to accept a feast from Agamemnon as part of the latter’s settlement, ‘ἵνα μή τι δίκης ἐπιδευῆς ἔχησθα’ (‘that you might have no lack of δίκη’). Gagarin translates this ‘settlement’, in the sense of what is owed to someone as the result of a settlement¹⁴⁸. Havelock gives ‘justice’ (in inverted commas), but goes on to qualify this:

Achilles receives an adequacy of justice... Justice, whatever it is, can be seen as something exchanged between parties, or added to both in the course of a settlement.¹⁴⁹

Havelock’s ‘justice’ then is not a principle, it is in effect Gagarin’s ‘settlement’. I agree that this is the concrete sense of δίκη in this passage, but it is perhaps noteworthy that δίκη here is a desideratum in itself. It is not just a settlement, it is a fair settlement: the proper redress that Achilles deserves (or requires)¹⁵⁰.

¹⁴⁴ Δικάζειν as simply ‘decide’ occurs at A.542, again of Zeus: ‘αἰεὶ τοι φίλον ἔστιν ἔμευ ἀπὸ νόσφιν ἔόντα | κρυπτάδια φρονέοντα δικαζέμεν’.

¹⁴⁵ Lattimore translates Σ.506 ‘The two men... took turns speaking their cases’. The active voice however shows that the subjects of δικάζον are the γέροντες rather than the disputants. See below, chapter 4 p.102.

¹⁴⁶ The term δικασπóλος is of course also a direct reference to ‘legal’ δίκη. The δικασπóλος is simply a ‘dealer in judgments’ (Hesychius, ‘<δικασπóλος> δικαστής’; Schol.D in A.238, ‘οἱ περὶ τὰς δίκας ἀναστρεφόμενοι βασιλεῖς καὶ νόμους’. It may also be used simply to describe the public role of a noble (βασιλεύς): in this capacity, Telemachus must provide feasts on Ithaka (λ.186). The formula ‘θεμιστοπόλοι βασιλῆες’ occurs in the Hesiodic *Catalogue* (Frr.10.1, 10a.25) and the *Homeric Hymn to Demeter* (103), in lieu of the Homeric ‘διοτρεφέες β.’.

¹⁴⁷ E.g. π.387: Chapman (1598), Cowper (1791), Derby (1864), Butler (1898), Rieu (1950); ξ.84: Pope (1715), Butcher and Lang (1879), Lattimore (1951).

¹⁴⁸ Gagarin 1973: 85.

¹⁴⁹ Havelock 1978: 132.

¹⁵⁰ A sense echoed in *WD*.712: ‘if a man that has harmed you offers δίκη (settlement, satisfaction), take it’.

In the storm simile of book 16, the corrupt judges are said to ‘drive out δίκη’, choosing crooked θέμιστες. This δίκη is very close to an abstract. Again, Gagarin argues for a concrete meaning: ‘legal process, peaceful arbitration’¹⁵¹, a generalised form of δίκη as settlement. This is in essence correct, but the significance of this use of δίκη lies in the fact that it is not just the process of settlement: that must remain intact even when it is corrupted. Δίκη here is valorised, it is fair and proper settlement. It is not just the procedure any longer, it is the *ideal* of fair procedure. As I have argued in chapter 1¹⁵², if it were not the ideal, it could not be driven out. If it were not fair (or good in some way) it would not be negated by corrupt judgments. And, if this is the case, then we are some way into the process of ‘settlement’ becoming ‘fairness’ or ‘right’; of ‘justice’ in its concrete sense of legal procedure becoming the more familiar abstract¹⁵³.

This is the kind of δίκη that Hesiod has in mind when he uses the word in the singular¹⁵⁴, and which he personifies as the daughter of Zeus¹⁵⁵. It is legal process idealised, the source of a community’s peace and prosperity, in effect what Homer in the *Odyssey* calls more explicitly ‘εὐδικία’ (τ.111)¹⁵⁶.

Another instance of idealised δίκη occurs in the *Odyssey* at ξ.84, where Eumaios tells Odysseus,

οὐ μὲν σχέτλια ἔργα θεοὶ μάκαρες φιλέουσιν,
ἀλλὰ δίκην τίουσι καὶ αἴσιμα ἔργ’ ἀνθρώπων.

(ξ.83-84)

¹⁵¹ Gagarin 1973: 86.

¹⁵² Chapter 1, p.20.

¹⁵³ So Dickie 1978: 98: ‘The driving out of Dike in Hesiod is not an expulsion of legal procedure from the city, but a driving forth of what is uncorrupt and unbiased in the administration of justice. A legal process still exists, but is corrupt and biased. Similarly in the Homeric passage [π.386-88], it is not legal process that is driven forth by those who pronounce crooked judgments with βίη. It is rather that quality that makes a judge pronounce straight (i.e., impartial) judgments, and that quality is justice or equity’.

¹⁵⁴ *WD.* 9, 213, 254, 269, 275, 278, 279, 820.

¹⁵⁵ *WD.*220, 256; *Theog.*902.

¹⁵⁶ Cf. Δίκη as one of the ‘Horai’, sister of Εὐνομία and ‘flourishing’ Ειρήνη (*Theog.*902). The concept of prosperity being linked to δίκη is also found in the *Works and Days* (225-37, 279) and the *Odyssey*’s ‘king simile’ cited above (τ.110-114). West (2007: 422-4) argues that the motif of ‘the king’s justice and the land’s fertility’ has Indo-European origins, but also notes Mesopotamian and Semitic parallels (see also West 1997: 136, and cf. Frazer 1911: i.353-6).

[The blessed gods do not love wicked works, but they honour δίκη and the decent works of men.]

Δίκη here is contrasted with 'σχέτλια' deeds and equated with 'αἴσιμα' ones. It may still mean 'legal process' as Gagarin contends¹⁵⁷, but legal process has become a symbol of moderate, 'just' behaviour¹⁵⁸.

There are a small number of instances where this generalised sense of δίκη is expressed in the plural; I find two, both in the *Odyssey*. In book 3 Telemachus says that Nestor

περίοιδε δίκας ἠδὲ φρόνιν ἄλλων
τρὶς γὰρ δὴ μὶν φασιν ἀνάξασθαι γένε' ἀνδρῶν
(γ.244-5)

[he knows more than others of δίκαι and prudence, for they say he has lived through three generations of men.]

Here 'δίκας' is the object of a compound of οἶδα, as θέμιστας is elsewhere, particularly in its concrete sense of 'laws'¹⁵⁹. It seems at least possible that δίκαι has displaced θέμιστες here as a shorthand term for 'laws', or 'law'. Nestor knows much about 'judgments' or 'settlements' in the same way that Nereus never forgets 'custom and law'¹⁶⁰; he is an elder with knowledge of the mechanisms that guide peaceful society. This identification of the two terms is made explicit at ι.215, where both follow οἶδα: the Cyclops is

ἄγριον, οὔτε δίκας ἐὺ εἰδότα οὔτε θέμιστας
(ι.215)

[wild, knowing nothing of δίκαι or θέμιστες.]

¹⁵⁷ Gagarin 1973: 86.

¹⁵⁸ Dickie 1978: 97: 'The immediate context... indicates that *dike* at *Odyssey* 14.84 means "righteousness" or "justice".'

¹⁵⁹ cf. E.761, Theog.233-6: see n.109 above.

¹⁶⁰ See n.121 above.

literally 'knowing nothing of judgments or the traditions that guide them'; both terms symbolise here the 'law' that distinguishes civil society from an unsocialised state of savagery.

2.3.5. Δίκη as habit

Δίκη with the genitive is something of a conundrum. It does not occur in the *Iliad* or the Hesiodic poems, yet accounts for more than half the uses of δίκη in the *Odyssey*¹⁶¹. It has no normative sense, but describes the 'habitual behaviour'¹⁶² of a given group. So the δίκη of kings is to favour some, hate others (δ.691); the δίκη of servants is to be continually afraid when ruled by young masters (ξ.59); the δίκη of suitors on Ithaca is not what it used to be when they would provide the feasts and gifts (σ.275)¹⁶³. It is the δίκη of one long absent from home to grieve in remembering (τ.168), and that of elders to sleep on a soft bed (ω.255). This δίκη may also describe the 'nature' of something: It is the δίκη of mortals to become ghosts when they die, and that of a god to have supernatural powers (λ.218, τ.43). This is very close in meaning to θέμις with the genitive (see above, p.30f.) Vos suggests that θέμις with the genitive describes a social rule, while δίκη with the genitive refers simply to a natural characteristic, and that the instances where θέμις appears to lack a normative force are the result of its conflation with 'δίκη 1'¹⁶⁴. An alternative solution to the problem would be that δίκη with the genitive is for the poet of the *Odyssey* merely a gloss on the θέμις construction ('custom' does appear to be the sense of both). It may be that as θέμις and

¹⁶¹ See also *H.Hym.Apol.*458; Archilochos Fr.124a, 177; Semonides Fr.12.

¹⁶² Havelock disputes this (1978: 181-3) arguing that δίκη here implies what is expected in a given situation, and thus what is proper: 'It symbolises what one has a "right" to expect, what it is "just" to expect, of given persons in given situations. The expectation, in order to be "just", must fit with the kind of behavior that pragmatic common sense would view as normal in specific cases, and therefore as normative, in the sense that the crazy-quilt variety of behavior patterns adds up to a total for the society which is socially cohesive and "works"'. (183) This is to argue that what is normal is essentially normative. There is a distinction to be made however between δίκη as the right way for a group of people to behave in a social context, or a δίκαιος person as one who behaves in a way that is objectively approved of, and this basic statement of 'what is invariably the case'. I do not believe that there is any implied 'should' in the examples of 'δίκη 1' cited above.

¹⁶³ Penelope certainly tells the suitors here that their present behaviour is wrong, but this need not mean that the 'μνηστήρων δίκη' of times past that is referred to describes anything more than 'the way they usually acted'.

¹⁶⁴ Vos 1956: 22f.

δίκη moved toward synonymy in a legal / agora context¹⁶⁵, as δίκη began to displace θέμις as the shorthand term for ‘law’ or ‘justice’, the poet felt able to use the words interchangeably in this construction too. If δίκη with the genitive were a neologism on the part of the *Odyssey* poet, this might explain why the phrase does not occur in the *Iliad*, and why both δίκη and θέμις with the genitive are found in the *Odyssey*. On the other hand, if this construction does contain the primary sense of δίκη (as Yamagata and Chantraine contend¹⁶⁶), or even one of the word’s basic meanings (Palmer, Gagarin), it is strange that it does not appear in what is purported to be the earlier poem¹⁶⁷.

2.3.6. Δίκαιος

It is perhaps natural that it is the adjective of δίκη that acquires a properly moral sense. I have cited instances of δίκη describing a generalised concept (‘settlement’, ‘legal process’), as well as instances of an idealised form of that concept (‘fair settlement or process’). Δίκαιος takes that generalisation further. It describes the kind of person that would adhere to that process. Insofar as this is a desirable thing in a social context, a δίκαιος individual is one that acts in the spirit of fairness: he or she is in fact ‘just’. In the same way that the abstract term ‘justice’ derives from ‘iustus’, the adjective of the concrete term ‘ius’, it is from δίκαιος that the classical term for the concept of ‘fairness’ derives: δικαιοσύνη¹⁶⁸.

The adjective occurs three times in the *Iliad*, and in each instance is closely related to δίκη as ‘justice, legal process’. At T.181, Odysseus tells Agamemnon that, once Achilles has received his full ‘δίκη’¹⁶⁹,

Ἀτρεΐδῃ σὺ δ’ ἔπειτα δικαιότερος καὶ ἐπ’ ἄλλῳ
ἔσσειαι.

(T.181-2)

¹⁶⁵ See above on θέμιστες at Π.387, and on δίκαι at γ.244 and ι.215.

¹⁶⁶ See above, p.25-6.

¹⁶⁷ See e.g. Janko 1982: 200.

¹⁶⁸ Δικαιοσύνη first appears in the *Titanomachia* (Fr.11: see below, p.54 n.173) and Theognis 147 (=Phocylides Fr.10). But cf. ‘τὸ δίκαιον’: *WD*.213, 225, 278; Hes.Fr.343 (discussed below, p.56).

¹⁶⁹ See above, p.49.

[you, son of Atreus, be more δίκαιος to another man (next time?¹⁷⁰)]

In its context this must mean something like 'more inclined to settlement'; readier to look for a settlement through compromise and less inclined to assert one's claim by force¹⁷¹. Δίκαιος here is a good thing to be; the more δίκαιος, the better. The superlative is used twice in the *Iliad*. Cheiron is described as the 'δικαιότατος' of the Centaurs (Λ.832). It is possible that he is called 'δικαιότατος' here in comparison with the Centaurs of the Lapith myth¹⁷², but more probable that the adjective refers to the fact that Cheiron was a mythological model of the 'wise teacher'¹⁷³. As such, a Hesiodic collection of maxims, 'The Precepts of Cheiron' was extant, a surviving fragment of which does concern δίκη:

μηδὲ δίκην δικάσης, πρὶν ἄμφω μῦθον ἀκούσης

(Hes.Fr.338)

[Do not judge a case before you hear both men's story.]

Whether Homer was familiar with these maxims can only be guessed at, but the use of the specific epithet 'δικαιότατος' here may be an allusion to Cheiron's association with δίκη in a paraenetic tradition of wisdom literature¹⁷⁴. At N.6, the Abioi, a northern tribe, are said to be 'δικαιότατοι ἄνθρωποι'. There is nothing to qualify the adjective here other than the name 'Ἀβιοί', which seems to have suggested 'δίκη' to the poet as the opposite of 'βίη'; the 'Unviolent' must be the 'most law-abiding' of men¹⁷⁵.

¹⁷⁰ Havelock 1978: 132: 'you thereafter more just on any other ground as well shall stand'.

¹⁷¹ Gagarin 1973: 87: 'less quarrellsome, readier to reach agreement'.

¹⁷² Cf. φ.295-304.

¹⁷³ West 1978: 23-4. Cf. *Titanomachia* Fr. 11 on Cheiron:

εἷς τε δικαιοσύνην θνητῶν γένος ἤγαγε δείξας
ὄρκους καὶ θυσίας καλὰς καὶ σχήματ' Ὀλύμπου.

¹⁷⁴ Cf. chapter 5, p.125-6.

¹⁷⁵ Whether there is any connection with Pindar's Hyperboreans (Pind.*Py.*10.29-59) is uncertain. See Janko 1992 *ad loc.*

Δίκαιος in the *Odyssey* has a more general meaning that appears to refer broadly to ‘proper behaviour’¹⁷⁶. Peisistratos is described at γ.52 as ‘πεπνυμένος’ and ‘δίκαιος’ because he has shown Athene (sc. an elder and a guest, in the guise of Mentor) respect. He has acted ‘properly’, in a way that is considerate of proprieties, and ‘righteous’ is therefore a suitable translation for δίκαιος. The majority of instances of δίκαιος in the *Odyssey* are negative however. Perhaps, as with ‘οὐ θέμις’, the adjective comes closest to a purely moral sense by describing the array of its opposites¹⁷⁷. Both the suitors and the Argives on leaving Troy are described as being neither ‘νοήμονες’¹⁷⁸, nor ‘δίκαιοι’ (β.282, γ.133; cf. ν.209): the former because they abuse the guest-host relationship, the latter because they paid no respect to the gods. Here we are very much on the territory of θέμις¹⁷⁹, but the terminology is more general. It is not merely wrong (οὐ θέμις) to do a particular thing in the context of guests or gods¹⁸⁰: these people are ‘unrighteous’ according to the proprieties of ‘ξεινία’ and religion in general.

The references to these two areas of behaviour continue. At ζ.120-1 Odysseus wonders whether the Phaeacians are,

ἧ ῥ’ οἷ γ’ ὑβρισταί τε καὶ ἄγριοι οὐδὲ δίκαιοι,
ἦε φιλόξενοι καὶ σφιν νόος ἐστὶ θεουδής;

(ζ.120-1)

[violent, wild, unrighteous, or guest-friendly, with a mind that is godly?]

¹⁷⁶ It is possible that here it has attracted the sense of ‘δίκη 1’; that a δίκαιος person is one that has knowledge of ‘the way things are’, and hence ‘the way they ought to be’. See Havelock 1978: 184, Yamagata 1994:64, Gagarin 1978: 86. The argument I have outlined above (see p.53 on ‘δίκη 1’) would suggest that, as with ‘δίκη 1’, δίκαιος in the *Odyssey* has absorbed the normative (and in particular the adjectival) sense of θέμις.

¹⁷⁷ Might it be easier to identify behaviour as ‘wrong’ than ‘right’ in a general sense before an ethical system is fully articulated? Where morals are firmly rooted in ‘mores’, behaviour that transgresses those mores may be more susceptible to a common label than behaviour that is essentially normal. Alternatively, when the root of δίκαιος is specific (δίκη), the positive form may retain that specific reference longer than the negative.

¹⁷⁸ As with πεπνυμένος, the implication of the associated adjective is that being δίκαιος involves being thoughtful or rational; not acting on impulse or in a self-interested manner.

¹⁷⁹ See above (p.30f.) on the θέμις of guests and religion.

¹⁸⁰ This sense does occur however at υ.294=φ.312: it is ‘οὐ δίκαιον’ to mistreat Telemachus’ guests.

Δίκαιος here implies being 'φιλόξεινος' and god-fearing. The same formula recurs at ι.175, υ.201 and θ.575 (with χαλεποί for ὑβρισταί)¹⁸¹.

Gagarin associates the Iliadic sense of δίκαιος with 'δίκη 2' and the Odyssean with 'δίκη 1'. I think it is at least possible that the normativity we encounter in 'δίκη 2' passages such as π.388 and ξ.87 has contributed to the sense of δίκαιος in the *Odyssey*. It is δίκη as 'legal process, lawful behaviour' that is contrasted with ὕβρις in the *Works and Days* (213, 225-247), as δίκαιος is with 'ὕβριστής' in the formula quoted above. Whether we accept Palmer's view that 'δίκη 1' is a primary use of the word, or my suggestion that it is a gloss on θέμις + gen, in post-Iliadic literature δίκαιος seems to have met 'δίκη 1' and 'δίκη 2' halfway. It applies the normative sense of the latter to the general behavioural reference of the former. It tells us what is 'just' or 'righteous' not only in terms of dispute settlement (the former province of δίκη and the source of its normative force), but in terms of social behaviour as a whole (the former province of θέμις).

2.3.7. Τὸ δίκαιον, τὰ δίκαια

Δίκαιον as a neuter substantive is the generalised sense of δίκη made explicit. It is the precursor to δικαιοσύνη: 'what is just', 'justice'. It does not occur in Homer¹⁸², but Hesiod tells us that 'the better path goes towards 'τὰ δίκαια' (WD.213), that men who give straight judgments do not go aside from 'τὸ δίκαιον' (WD.225), and that if a man knows 'τὰ δίκαια' and is ready to speak it, Zeus gives him prosperity¹⁸³. The 'δίκαιον' here is an ideal, an 'end' in itself (as the metaphor of the path in 213 and 225 suggests). It is a concept of 'just actions' that points to an objective standard of behaviour.

¹⁸¹ The generalised sense of the negative in particular is evident in the apparently later form 'ἄδικος'. In the *Homeric Hymn to Hermes* (316) Apollo is said to have seized Hermes 'οὐκ ἀδικῶς', i.e. he had a right to. In terms of δίκη as 'settlement', this is actually the opposite of what he should have done. Again at WD.270, Hesiod complains that there is no point in being 'δίκαιος' if the 'ἀδικώτερος' has the greater 'δίκη'. This would be contradictory if δίκαιος and ἀδικώτερος did not convey a generalised sense of 'just' and 'unjust' which δίκη (used here in the concrete sense of 'settlement' – Gagarin 1978: 89) does not.

¹⁸² But cf. 'ἄθεμισα' in the *Odyssey* (ι.189,428, υ.287).

¹⁸³ Cf. Tyrtaeus Fr.4: the men of the Spartan δῆμος should speak 'τὰ καλά' and do 'πάντα δίκαια'.

2.4. Θέμις and δίκη as moral terms

The second question posed in the introduction to this chapter was, are θέμις and δίκη (or their derivatives) 'moral' terms? There has been some debate on this question (see above, p.26). Gagarin maintains that 'δίκη does not apply to actions outside [the] narrow area of law and does not have any general moral sense'¹⁸⁴. He explains his reservations with translating it as 'justice' in these terms:

One of the reasons for avoiding the translation 'justice' for δίκη is that, although 'justice' may be used as an equivalent for 'legal process', we naturally think of a compulsory legal process sanctioned by some higher moral authority, or at least by a social contract. Thus 'justice' for us is often merely equivalent to 'righteousness' and usually has strong moral overtones which probably δίκη never possessed, certainly not in Homer and Hesiod.¹⁸⁵

Certainly our 'justice' carries the semantic accretions of the last two millenia; it is not the same thing as δίκη, or even δικαιοσύνη. But Gagarin's insistence that 'δίκη 2' means nothing more than legal process is too limiting. The word does appear to possess a normative sense, in its generalised use as 'law' or 'fair legal process', and particularly in its adjectival form, δίκαιος¹⁸⁶. It may be used as the quality that is absent from corrupt judgment (π.388), or the equivalent of 'αἴσιμα ἔργα' and the opposite of 'σχέτλια' ones (ξ.83-4). As Dickie argues,

The society implied by Gagarin's account of the meaning of dike is a strange and unfamiliar one, inhabited by men concerned not with questions of right and wrong but with whether a legal process has been followed.¹⁸⁷

It may be unfair to claim Gagarin goes so far¹⁸⁸, but others have. Latte denies that the Homeric hero has any moral consciousness at all¹⁸⁹, arguing that in a 'shame culture' such as

¹⁸⁴ Gagarin 1973: 81.

¹⁸⁵ *Ibid.* 81.n.3.

¹⁸⁶ Cf. Havelock 1978: 184: 'In the adjectival extensions, which make dike an attribute of a person, the seeds are sown of a moral criterion which to a degree transcends mere propriety'. Gagarin explains the normative force of δίκαιος in the *Odyssey* by associating it with 'δίκη 1' (1978: 86-7).

¹⁸⁷ Dickie 1978: 96.

that described in the *Iliad*, men will not act in terms of what they believe is right or wrong by any objective standard, but in terms of whether they believe their actions will be praised or condemned by their peers. The obvious flaw in this argument¹⁹⁰ is, what then is the basis for their peers' approval or condemnation? Latte seems only to have defined morality as a term out of the picture: he does not mean that a concept of 'morality' of some sort does not exist.

Williams broadly distinguishes 'shame culture' from 'guilt culture' by the internality or externality of sanction for negative behaviour¹⁹¹. In a shame culture the individual experiences a negative emotion at the thought that he is not measuring up to a socially prescribed ideal. In a guilt culture it is the threat of external sanction, especially punishment, that triggers the negative emotion¹⁹². Guilt cultures will tend to be associated then with societies that have more developed institutions (religious or secular) for safeguarding norms, or laws, by imposing fixed penalties for infractions against them. But any society must combine internal and external sanction to some degree¹⁹³. In Homer, the exile that murderers must undergo must form at least a partial check on the impulse to commit murder.

Even in a largely 'shame' society, morality must exist however. There will be a concept of what kind of behaviour is good or bad in terms of the community's expectations. The last qualifier in the previous sentence is key here: I do not mean a universal concept of right and wrong (except to the extent that certain taboos, such as incest or kin-murder, might cross social boundaries). Morality exists in the world of the *Iliad*, as it must exist in any society, but has a strong social basis. It is defined by the community whose indignation at certain

¹⁸⁸ He is however silent on the associated terms ὕβρις, θέμις, αἴσιμος, which help to define the moral sense of δίκη (cf. Dickie 1978: 96)

¹⁸⁹ Latte 1946: 64 (cited by Dickie 1978: 92).

¹⁹⁰ As Dickie points out (1978: 92-3).

¹⁹¹ Williams 1993: 75-103. See also Campbell 1964: 327-8 (cited by Lloyd-Jones 1971: 25).

¹⁹² Williams 1993: 89-90: 'What arouses guilt in an agent is an act or omission of a sort that typically elicits from other people anger, resentment or indignation. What the agent may offer to turn this away is reparation. He may also fear punishment or may inflict it upon himself. What arouses shame on the other hand is something that typically elicits from others contempt or derision or avoidance. This may equally be an act or omission, but it need not be: it may be some failing or defect.'

¹⁹³ Cf. Lloyd-Jones (1971: 25-6): 'from the start a shame-culture must contain elements of a guilt-culture.'

actions provokes shame, or which may take action to preserve its *mores*: Homeric morality is founded upon the *mores* of the group¹⁹⁴.

We may go further and distinguish essential 'morality' and 'justice' in this context. Morality concerns the *mores* that are subject to internal safeguards (i.e. shame). Justice concerns the norms that are subject to external controls (redress, settlement – formal patterns of behaviour which restore social accord by 'righting a wrong' or settling a dispute). This is a very spare definition, and the limitations of the concepts of morality and justice thus defined must be recognised. Morality here is limited to the community whose *mores* form its basis (that guests and suppliants need special protection in Homer is evidence of this: they have no rights *per se* within the community). Justice is even more circumscribed. In terms of community-based dispute settlement, it cannot enforce participation, or enforce a proposed settlement when arbitration is sought by the disputants¹⁹⁵. It cannot prevent 'self-help' or feud. In fact, as suggested above ('righting a wrong'), as an alternative, customary method of securing redress, vengeance itself may be counted as a primary form of justice. Justice in these terms then, may be considered a formalised method of securing redress or settlement, sanctioned by public opinion or custom.

The parameters of morality and justice thus defined are not constant however. As the public institutions of the community develop, public opinion or central authority asserts a preference for arbitrated settlement over individual vengeance, which may escalate into feud. The process of arbitration becomes formalised in an 'agora' setting, and is conceived of as conducive to a peaceful society. This is apparent in the idealisation of *δίκη* that has been discussed above¹⁹⁶. This is the process that leads from 'shame-culture' to 'guilt-culture'. As the institutions that safeguard *mores* strengthen, as the community develops into a polity, the control of society over the individual, represented by formal judicial process (and finally codified law) consolidates. The territory of *mores* is increasingly ceded

¹⁹⁴ This is of course a very broad definition of morality. Gagarin (1987) minimizes the role of morality in the Homeric poems by defining it as 'a sense of consideration for others not closely tied to rational self-interest'. In this he follows Bernard Williams' (1985) distinction between 'a broad area of ethics and a narrower field of morality'. Williams' own distinction however lies between an all-encompassing social value system and the narrower, obligatory one framed by Christian and Kantian thought. Adkins (1960) takes the broader view of morality, as a set of values that encompasses both the 'competitive' and 'cooperative' virtues of Homeric society.

¹⁹⁵ See Gagarin 1973: 83; 1986: 107.

¹⁹⁶ Chapter 1, p.20, above, p.50. Cf. also the association of *δίκη* with prosperity, p.50 and n.154.

to that of *leges*¹⁹⁷. In Homer we are looking at a transitional stage, and it is possible that the transition is detectable in the contrast between 'archaism and realism'¹⁹⁸, between contemporary process and the idealisation of *δίκη* in epiphysis or simile, and traditional process in the main narrative¹⁹⁹.

Δίκη is evolving then, from concrete 'judgment', 'settlement', through 'formal judicial process' to 'fair, socially desirable process'; and *δίκαιος* is acquiring the sense of 'what is just or fair'. *Δίκη* is not an abstract in the way that the words 'justice' or '*δικαιοσύνη*' are, it does not describe what is universally right. But it does acquire a normative force in its generalised sense, as 'the socially desirable way to behave', and in its adjectival form, 'just'. Insofar as what is normative prescribes what should be done, these uses of the word are 'moral'.

Θέμις is essentially a moral term. I have argued above that Homeric morality is based on the community's *mores*, and these are its *θέμιστες*. *Θέμις* describes from the outset what precedent prescribes, and therefore what is 'proper' behaviour in a given situation. The fact that it appears to be largely subsumed by *δίκη* is evidence in fact for the 'moralisation' of the latter term.

2.5. Conclusions

Θέμις appears to have a core sense of 'what is established by custom'. In the singular it is invariably used phrasally, describing a particular action in a particular context. As regards individuals, for example kings, it may describe 'right' or 'prerogative': the customary appurtenances of an individual's social position. As regards areas of behaviour (guest-treatment or assembly for example), it describes the course of action sanctioned by

¹⁹⁷ In Babylonia, a literate and centralised state, this kind of codification took place at an early date: Hammurabi's code dates to the 18th century BCE. In Greece the earliest 'nomothetes' (e.g. Zaleucos in Locri, Draco in Athens) appear in the 7th century. Diamond 1971: 13f; Gagarin 1986: 51f.

¹⁹⁸ Cf. Havelock 1978: 180-1.

¹⁹⁹ Cf. Yamagata 1994: 88-92: 'The epic poets seem to have two levels of moral climate ever ready to alternate, one of the age of heroes and another of the age of iron... In Homer, this world is confined to small slots of similes, descriptions, digressions and moral speeches, and is not allowed to burst into the mainstream of the narrative.' (p.92). The view that the narrative portions gives us however is not entirely consistent: the dispute between Menelaos and Antilochos for example bears many more of the hallmarks of formal '*δίκη*' than Achilles and Agamemnon's. This will be considered in the next chapter.

precedent. The specific uses of θέμις, together with the phrase ἡ θέμις ἐστί' appear to give way to a more generalised sense of 'right' or 'justice', a sense nascent in Homer in the negative phrase 'οὐ θέμις', and prevalent in the Attic tragedians. Θέμις as 'justice' then, derives from this adjectival sense of 'what is right' or 'what is customary'.

The plural form 'θέμιστες' may also describe an individual's (particularly a king's) prerogatives, or the 'dues' that are owed to him. Its chief use however is the concrete sense 'customary laws'. These are frequently associated with the process of dispute settlement, as the judicious application of precedent forms the basis of individual judgments, or 'δίκαι'. Plural 'θέμιστες' are employed by Homer as a shorthand term for the legal process itself, particularly when that process is associated with kingship.

Δίκη has two main uses in Homer. It may mean 'way', 'characteristic' or 'habit', with the genitive of the group it describes, or it may mean 'indication' or 'decision' in a judicial context, giving rise to a range of concrete meanings: 'claim', 'judgment', 'settlement', 'penalty'²⁰⁰, 'trial', or 'arbitration process'. The relationship between these two uses remains unclear, but the fact that the first is only found in the *Odyssey*, and that 'θέμις + gen.' is used in the *Iliad* to convey the same idea, suggests that the former construction may be a gloss on the latter. Δίκη as 'arbitration process' is idealised as 'fair' or 'due process', and in the *Odyssey* and later poetry, the term is used to describe 'fair' or 'righteous' behaviour generally: the kind of behaviour associated with equitable settlement. This abstract sense is perhaps first evident in the use of the adjectival form 'δίκαιος' to describe a person who acts equitably, in a manner that is respectful of 'rights' and socially regulative institutions such as the arbitration process.

Δίκη, like θέμις, comes to reference 'correct behaviour', specifically in a social context. It is employed to describe 'justice' in general, abstract terms, and in later writers displaces θέμις in this sense. The two terms become synonymous, with the latter used as the poetic equivalent of the former in the tragic poets. An important distinction that should be noted however is that the moral force of θέμις as 'right' or 'justice' derives from its core sense of 'custom' rather than its specific association with the legal process. Δίκη on the other hand comes to describe 'right' or 'justice' as a result of its core judicial meanings. The 'justice of

²⁰⁰ Δίκη as 'penalty' has not been treated in this study; it is a specified form of 'judgment'. See *WD*.239, 249.

δίκη' is the result of the idealisation of the legal process of which δίκη as 'settlement' is the chief symbol.

Three instances of the concrete uses of δίκη occur in the *Iliad* (π.542, σ.508, ψ.542) and possibly two of its general uses (π.388, τ.180 – in the latter it may be simply 'settlement'). It is not a common term in the *Iliad*, far less common than θέμις. This is not because dispute settlement and conflict resolution are not important to the poem: as the next chapter will argue, they are central to it. Δίκη is closely associated with community-based dispute settlement. Its arena is the agora, and perhaps the polis. This may provide a key to understanding why in the *Iliad*, it is most fully expressed in a simile that reflects a, perhaps contemporary, civic situation²⁰¹.

Havelock suggests that in Homer justice is administered 'archaistically' by kings and 'realistically' by magistrates²⁰². If the justice of kings rests on the 'θέμιστες' and may be symbolised by θέμις, where the justice of magistrates is concerned, δίκη is the primary signifier. As I have argued in chapter 1, this use of what is originally a concrete term for 'judgment', 'claim' or 'settlement' as a reference to just behaviour generally, involves a semantic shift that can be traced through the intermediate stages of δίκη as 'trial' or arbitration process, and δίκη as fair, due process. It is a shift dependent on the idealisation of arbitration as a communally sanctioned means of resolving conflict. The key concept here is that justice is not dependent on a single personality; it transcends (potentially corrupt) individuals, and is symbolised by the procedure itself. 'What is right or fair' in the community is conceived of less as a matter of traditional norms (and an individual with the authority to assert them) than as the ability to re-establish social harmony in a formal, public manner. Θέμιστες as precedents still play an important role here, but the essence of settlement is conceived of not as the rule, but as the procedure itself. Communities in search of an objective standard of civic behaviour have found one in the idealised process of resolving conflict in a peaceful and publicly sanctioned manner. It is tempting then to connect the elevation of δίκη to 'justice' with the strengthening and development of civic institutions in Greek *poleis* of the Archaic period²⁰³.

²⁰¹ See below, chapter 5 p.123f.

²⁰² Havelock 1978: 180-1.

²⁰³ Austin & Vidal-Naquet 1977: 49f; Forrest 1986: 19f.

2.6. Summation: τίμη, θέμις and δίκη

In the first chapter of this thesis, I described τίμη as the underlying principle of social interaction in the *Iliad*. This principle consists of the idea that each individual has a value, determined by (and upholding) his or her status. When a wrong is committed, redress will be sought (or exacted) by the injured party which quantifies and represents the τίμη lost in the injury. This transferral of 'worth' (in the form of either ποίνη or τίσις), restores the proper apportionment of τίμη. Where does this principle fit in with the concepts of θέμις and δίκη discussed above?

Θέμις is custom, or customary norm; θέμιστες *mores* or laws. It is a broad term that describes traditional modes of behaviour. It goes beyond inter-personal dispute: all 'proper behaviour' may be described by it, including what is right regarding guest-treatment, religion and fate. Where conflict is concerned, the desire to restore τίμη may form the basis for settlement, but θέμις will define the terms of the dispute: who has committed the wrong? What action may be taken to secure redress? Τίμη is the principle against which rights and dues are measured. It is the 'currency' of agonistic exchange. Θέμις is the tradition that underpins those rights and provides a communal body of precedent for restoring them where they are infringed upon.

Δίκη is specifically a communal procedure for settling disputes. In the context of δίκη, τίμη will still serve as the index for quantifying a wrong and the amount of restitution necessary to 'right' it; any proposed settlement must take τίμη into account. Δίκη is however an alternative to seeking redress on one's own terms (τινέσθαι). While τίμη is the principle that drives any form of redress, violent or arbitrated, δίκη is confined to the latter and attempts to formalise the manner in which redress is procured in the interests of social harmony.

All these terms form part of the 'semantic field' of justice. Τίμη defines individual relations as the basis of 'proper behaviour'. Θέμις and δίκη describe the methods, the precedents and procedures respectively, whereby those relations are regulated in a social context. The next chapter will look at these concrete manifestations of 'justice' in detail, considering the instances of conflict resolution and dispute settlement in the *Iliad*.

Chapter 3. The procedures of justice: dispute and settlement

This chapter will describe the mechanisms and external forms of δίκη that appear in the *Iliad* and compare them with those found in the remaining Homeric and Hesiodic poems. The actual instances of peaceful dispute settlement, particularly by means of arbitration, are few in the *Iliad* and largely limited to simile or ecphrasis, for reasons that will be considered in the next chapter of this thesis. The principle behind δίκη however, conflict resolution, and the modes of behaviour that enable or hinder it, is of course central to the poem. I will begin this chapter by looking at the crucial νεῖκος of the *Iliad*, that of Achilles and Agamemnon, considering the extent to which, and means by which, settlement is attempted. This should help to answer two questions: Are any of the forms of judicial δίκη that appear in the storm simile and the shield trial reflected in the main narrative? And is 'settlement' shown to be a desirable thing in itself, in a way that might echo, or prefigure, its valorisation in the storm simile?

Havelock has described the representation of conflict resolution as a feature of oral epic which fulfils a basic function:

The nomos and ethos continually recalled and illustrated in Homeric narrative and rhetoric are normative. They state and restate the proprieties of behaviour as these are assumed and followed. But this oral medium, in order to fulfil its function as the verbalised guide of the culture, will also be required to describe situations and frame statements which are corrective rather than merely normative, which, describing how the mores are abrogated, therewith describe also the means and manner whereby they are restored. The master symbol of this corrective process, which is also a procedure, is the Homeric 'dikē'.²⁰⁴

Havelock's views are based on a theory of orality that has not found universal support²⁰⁵, which is effectively summarised above by a description of epic as 'the verbalised guide of the culture'. But the suggestion of a didactic function in the *Iliad's* concern with conflict resolution is interesting. It may be that conflict itself provides the dramatic tension that the poet employs to draw his narrative together, but the significance of settlement in the *Iliad*,

²⁰⁴ Havelock 1978: 124.

²⁰⁵ See e.g. Gagarin 1980, Lloyd-Jones 1982.

and the 'consideration' necessary to achieve it, may well indicate that the poet (or, to follow Havelock, the poetry), wants to convey to the audience an opinion on the value of resolving conflict in a measured and rational manner²⁰⁶.

3.1.1. Achilles and Agamemnon: dispute

The dispute between Achilles and Agamemnon evolves along rather complicated psychological lines that blur the objective merits of either character's claim. Agamemnon's claim is based on his distress at having his *τίμη* materially and emotionally diminished by the loss of his *γέρας*. His first statement in response to Chalcas' prophecy is already emotionally charged. He will return the girl – it is his responsibility as king to do so – but his people should compensate him for the loss he has incurred on their behalf. Responsibility is matched by right, and it would be 'unfitting' (*οὐδέ εἶοικε*, A.119) for him to experience the former but not the latter. It is a fair claim, and although 'ἀχνύμενος', Agamemnon expresses it in a formal and measured way. Achilles' response is immediately antagonistic. Agamemnon's concern with his status is interpreted in purely material terms (*φιλοκτεανώτατε πάντων*, A.122). Besides this preliminary insult however, the counter claim that Achilles makes on behalf of the Achaeans is also reasonable. There is no spare prize: all have been apportioned and it would be 'unfitting' (*οὐκ ἐπέοικε*, A.126) to recall them. Achilles acts then as spokesman for the army, in defence of the 'rights' of all, but his confrontational manner suggests personal animus; his own *τίμη* is evidently a sensitive topic. Agamemnon should accept the compromise offered, but his reaction to Achilles is emotional. Achilles is ordering him to give up Chryseis, and insulting his authority. He

²⁰⁶ It is in fact possible to describe the entire structure of the *Iliad* in terms of conflict resolution, and the need to set a rational term to one's anger. Briefly, the first 8 books cover Achilles' 'justified wrath' and its effects; books 9-17, his rejection of reasonable settlement, his irrational pitilessness and the disaster that it results in. Books 18-22 describe the resolution of the first conflict and a new 'justified wrath'; his desire to avenge Patroclus. This should be appeased with the death of Hector, but again Achilles' anger is beyond measure. As in book 9, resolution does not occur at the socially prescribed point. Books 22-24 again describe 'unjustified wrath', which continues until the gods intervene to impose a settlement. The culmination of the poem, the ransoming of Hector, is a final, and emotionally emphatic, instance of conflict resolution. Two main movements are discernable, each concerned with a specific kind of conflict (the first is intra-social and open to arbitration, the second is extra-social self-help or vengeance). Each movement additionally describes the means by which the conflict ought to be resolved, and the effects of pursuing one's claim beyond measure.

consequently accuses Achilles of trying to cheat him, identifying Achilles' motive as personal and perceiving the suggested settlement as a direct threat to his *τίμη*. If a prize is not forthcoming, he will take one by force, asserting his right as king. This assertion of authority is however merely a threat, they will discuss the topic further. The implication is that once he has calmed down, a reasonable settlement will be found.

Beyond the initial wrong of refusing Chryses' ransom, Agamemnon has not been unreasonable to this point. He has claimed compensation that he has a right to, which he requires to offset the loss that he has incurred in the public interest. When this has been withheld, he has asserted his authority with a threat. The threat is ill-considered as it places his claim in direct competition with the rights of the other leaders, but it remains a threat, made under emotional pressure, and the possibility of avoiding conflict remains. Achilles' reaction removes that possibility. He responds with a string of insults that constitute a direct challenge to Agamemnon's authority, and the latter must make good his threat to save face. Achilles questions any man's duty to obey the king (A.150-1). His motive is now entirely personal. If Agamemnon's assertion is based on a perceived threat to his *τίμη*, and by extension his authority, Achilles' response reveals his own insecurity. He is already dissatisfied with the *τίμη* he receives, which he feels is not commensurate with his 'worth', and even this is being threatened. Agamemnon's surliness provokes Achilles' wrath. Both are jealous of their *τίμη*, both see it jeopardised. The extremity of Achilles' reaction is bound up in his personality – Achilles is an extremist by nature – but it is also dependent on the fact that he faces an individual challenge; Agamemnon, to this point, has only imagined one. Agamemnon's threat is thus formalised, and his primary concern made explicit:

πάρ' ἔμοιγε καὶ ἄλλοι
οἳ κέ με τιμήσουσι

(A.174-5)

[there are others with me who will show me honour.]

In taking Briseis he will exercise his threatened authority, demonstrate to Achilles how much 'φέρτερος' he is, and consequently, 'στυγέη δὲ καὶ ἄλλος | ἴσον ἐμοὶ φάσθαι καὶ

ὁμοιωθήμεναι ἄντην' ('another man will shrink from calling himself my equal and likening himself to me', A.186-7). Agamemnon's general claim has become an individual dispute, and Achilles first impulse is violent redress. Athene checks him however; if he can stop his 'μένος' he will receive redress in the form of compensation. Her promise echoes that made by Achilles to Agamemnon less than 100 lines earlier (A.128): if Achilles is reasonable and patient, if he does not exact immediate redress, he will receive 'three times' as much compensation in the future (A.213). Achilles is no more inclined to consideration at this point than Agamemnon was, but he must obey the goddess, 'καὶ μάλα περ θυμῷ κεχωλομένον' (A.217).

Apart from the 'dea ex machina' that obviates murder, the dispute has so far been unmediated. Nestor now attempts to negotiate settlement, in a speech that constitutes an extended argument for 'δίκη' – for consideration and settlement through compromise. He first addresses the concrete wrong: Agamemnon should not take the girl, 'ἀγαθός' though he is. She is a 'γέρας' given publicly (as Achilles said in a calmer moment 'οὐκ ἐπέοικε' - A.126). He then tries to diffuse the insult each has done the other by describing the respective τίμαι they are due, which in each case have been threatened, provoking the emotional reactions that underlie the dispute:

μήτε σὺ Πηλεΐδη ἔθειλ' ἐριζέμεναι βασιλῆϊ
ἀντιβίην, ἐπεὶ οὐ ποθ' ὁμοίης ἔμμορε τιμῆς
σκηπτοῦχος βασιλεύς, ᾧ τε Ζεὺς κῦδος ἔδωκεν.

(A.277-9)

[nor, Peleides, seek to strive face to face with the king, since no one has a share of honour equal to that of a sceptre-bearing king, to whom Zeus has given glory.]

Achilles must respect the τίμη the king is due, and which Agamemnon is trying to protect. Agamemnon must consider Achilles 'worth' in battle:

Ἄτρεΐδη σὺ δὲ παῦε τεὸν μένος· αὐτὰρ ἔγωγε
λίσσομ' Ἀχιλλῆϊ μεθέμεν χόλον, ὃς μέγα πᾶσιν
ἔρκος Ἀχαιοῖσιν πέλεται πολέμοιο κακοῖο.

(A.282-4)

[You, Atreides, hold back your anger. Even I beseech you, lay aside your wrath for Achilles, who is a great bulwark in evil battle to all the Achaeans.]

The speech is eloquent and reasoned, and focuses on the psychological core of the dispute²⁰⁷. It is, as Agamemnon says, 'κατὰ μοῖραν' (A.286), in that it identifies the respective rights of the disputants, according to which they should act. It is a model 'δίκη', but it comes too late. The threat to his *τίμη* is not something Agamemnon can overlook (A.287-9), nor can Achilles back down without appearing 'δειλός'²⁰⁸.

The dispute then, while built around the principle of competing *τίμαι*, is developed psychologically, in terms of the protagonists' emotional responses to threatened *τίμη*. It escalates as each character's reaction serves to enflame the anger, and irrationality, of the other. The remedy, suggested by Achilles at A.128, Athene at A.213, and particularly by Nestor at A.245-284, is consideration, but each escalation renders compromise less likely. A settlement cannot be imposed, because there is no authority capable of imposing one. Although the dispute takes place in *agora*, although mediation is attempted, the involvement of the king means that this conflict, and the method whereby it is resolved, differ materially from other instances of dispute settlement in the *Iliad*. The disputants do not refer the issue to an arbiter: Nestor's settlement is volunteered. However, the fact that settlement can be rejected is not inconsistent in itself: the other instances of dispute settlement in early Greek poetry also suggest that a third party may advise, but even in a formal context will lack the authority to impose a settlement that is not mutually acceptable to disputants²⁰⁹.

²⁰⁷ Nestor is 'ἠδυεπής', 'λιγύς Πυλίων ἀγορητής'; cf. the eloquence that the Muses give kings as judges *Theogony* 81f., and, interestingly, the name of Nestor's daughter, 'Peisidikē' (ps-Apollodorus *Bibliotheca* 1.94; Hesiod Fr.35).

²⁰⁸ The ultimate remedy that Nestor recommends, returning Briseis, is not mentioned. The conflict must be maintained and this is best achieved by continuing to focus on the pride of the protagonists.

²⁰⁹ See below, chapter 4, p.105f.

3.1.2. Achilles and Agamemnon: settlement

Agamemnon's remorse for his lack of consideration in the dispute is first expressed at B.375f. If he had ten such counsellors as Nestor the war would soon be won:

Ἄλλά μοι αἰγίοχος Κρονίδης Ζεὺς ἄλγε' ἔδωκεν,
ὄς με μετ' ἀπρήκτους ἔριδας καὶ νείκεα βάλλει.
Καὶ γὰρ ἐγὼν Ἀχιλεὺς τε μαχεσσάμεθ' εἴνεκα κούρης
ἀντιβίοις ἐπέεσσιν, ἐγὼ δ' ἦρχον χαλεπαίνων·

(B.375-8)

[But the aegis-bearer, Zeus son of Cronos, has given me pains, who has cast upon me useless strifes and quarrels. For I fought with Achilles for the sake of a girl with words of conflict, and I was the first to be angry.]

Consideration and acceptance of reasonable advice are profitable; strife and dispute 'ἀπρήκτοι', 'fruitless'. The mention of Zeus here also implies the 'daemonic' cause behind irrational anger: ἄτη, a concept that Agamemnon develops more fully in books 9 and 19²¹⁰.

The need to offer Achilles redress is articulated by Nestor at I.96-136. Before this however he has said, somewhat cryptically in context:

ἀφρήτωρ ἀθέμιστος ἀνέστιός ἐστιν ἐκεῖνος
ὄς πολέμου ἔραται ἐπιδημίου ὀκρούοντος.

(I.63-4)

[clan-less, law-less, hearth-less is that man who loves chilling civil war.]

The reference is to the dispute. Contentiousness is wrong and socially destructive, and the person that delights in strife can place no value on 'tribe, law or hearth'²¹¹.

²¹⁰ I.114f; T.85f.

²¹¹ This is the charge levelled at Achilles by Agamemnon at A.177.

The proposed settlement begins by affirming Agamemnon's rights as king (I.96-102), as well as his duty to listen to advice. Nestor then details the wrong done (the girl was taken, against the will and counsel of all – I.106-9), the reason for, and the result of the wrong (because of Agamemnon's 'μεγαλήτωρ θυμός'; the result – 'ἀτιμάζειν' Achilles), and the remedy required to right it: redress by apology and material compensation (I.111-113). Agamemnon agrees. He was 'mad', 'φρεσὶ λευγαλέησι πιθήσας' (I.116, 119), to dishonour in anger a man of Achilles' worth, without any consideration of the consequences, and will pay immense 'ἄποινα' to make good (I.120)²¹². The settlement is not unqualified however. Achilles for his part must acknowledge Agamemnon's authority (I.160-1).

The embassy of book 9 that attempts to persuade Achilles to accept this compensation makes two main points. Consideration ('φιλοφροσύνη' at I.256) is better than anger, and both consideration and 'θέμις' require that compensation is accepted. Odysseus puts the former point into Peleus' mouth:

τέκνον ἐμὸν κάρτος μὲν Ἀθηναίη τε καὶ Ἥρη
 δώσουσ' αἶ κ' ἐθέλωσι, σὺ δὲ μεγάλητορα θυμὸν
 ἴσχειν ἐν στήθεσσι· φιλοφροσύνη γὰρ ἀμείνων·

(I.254-6)

[My child, as for strength, Athena and Hera will give it if they please, but you, hold back the great-hearted temper in your breast: consideration is better.]

'Φιλοφροσύνη' is better than impulse, which results in conflict:

ληγέμεναι δ' ἔριδος κακομηχάνου, ὄφρα σε μᾶλλον
 τίωσ' Ἀργείων ἡμὲν νέοι ἠδὲ γέροντες.

(I.257-8)

[leave off ill-devising strife, so that the Achaeans, young and old, honour you all the more.]

²¹² On the use of the term 'ἄποινα' here, see chapter 1, p.14, n.30.

Phoinix expresses the same sentiment in the allegory of the Λίται. ‘Φιλοφροσύνη’ requires that one relents when supplicated, suppressing one’s anger, which is ἄτη. This is not easy: the Litai are lame, wrinkled, squint, and follow behind ἄτη, which is strong and footsure. The easier, more natural path is anger. But if a man honours the Litai, if he yields to apology or settlement, they bring him great advantage (τὸν δὲ μέγ’ ὤνησαν – I.509)²¹³. Conversely, if a man rejects them they ask Zeus to send him ἄτη (as ‘ruin’ now), ἵνα βλαφθεὶς ἀποτίσῃ’ (I.512).

The propriety of accepting redress when it is offered is alluded to by Odysseus (ἄξια δῶρα – I.260) and Phoinix (I.515-9), and illustrated by precedent in the tale of Meleager that Phoinix relates (I.529-599). It is most strikingly expressed by Aias in the brief speech that Achilles says he finds most ‘μοι κατὰ θυμὸν’ (I.645):

Ἀχιλλεὺς

ἄγριον ἐν στήθεσσι θέτο μεγαλήτορα θυμὸν
 σχέτλιος, οὐδὲ μετατρέπεται φιλότητος ἐταίρων
 τῆς ἧ μιν παρὰ νηυσὶν ἐτίομεν ἔξοχον ἄλλων
 νηλῆς· καὶ μὲν τίς τε κασιγνήτοιο φονῆος
 ποινήν ἢ οὔ παιδὸς ἐδέξατο τεθνηῶτος·
 καὶ ῥ’ ὁ μὲν ἐν δήμῳ μένει αὐτοῦ πόλλ’ ἀποτίσας,
 τοῦ δέ τ’ ἐρητύεται κραδίη καὶ θυμὸς ἀγήνωρ
 ποινήν δεξαμένῳ·

(I.628-36)

[Achilles has made savage the great-hearted temper in his breast. Wicked, nor is he moved by the love of his friends, with which we honoured him beyond others beside the ships. Pitiless. And yet a man would take the blood-price for his brother slain or his murdered child. And the other man stays there in the community when he has paid much; but that man’s heart and manly temper are curbed when he takes the blood-price.]

²¹³ Cf. Agamemnon at B.375.

It is the custom that a man accepts compensation (ποιῖνη) from his brother's or his child's killer, rather than be ruled by anger and seek violent redress. Custom dictates that Achilles should do so now: not to do so, to reject a fair settlement offered, is to be 'νηλής', 'pitiless'.

There is a binary opposition of sorts that is outlined in the Embassy, but already prefigured in the quarrel of book 1. Irrational impulse, manifesting as violent anger or stubbornness, versus consideration, which consists of managing that impulse in the interest of peaceful settlement, of accepting apology and due compensation. Irrational impulse may be described as 'ἄτη', but it also results in 'ἄτη'; it is destructive²¹⁴. The former brings advantage, as its result is social harmony and stability. 'Φιλοφροσύνη' recognises and seeks the personal and communal benefits of 'δίκη'²¹⁵.

To this extent the *Iliad* does have a 'moral', the didactic function that Havelock suggests. Failure to accept compromise and settlement has disastrous consequences: for Agamemnon, following book 1, in the reverses the Achaean army suffers, and for Achilles, following book 9, in the death of Patroclus (a fulfilment of the 'ἀποτίσις' predicted by Phoinix at I.512). The poem's resolution gives us a final example of settlement accepted. Achilles would continue to exact vengeance from Hector's corpse, 'κωφήν γὰρ δὴ γαῖαν ἀεικίζει μενεαίνων' ('dishonouring the mute earth as he rages' Ω.54). As with the wrath that occupies the first 17 books of the poem, the wrath of the final 7 books appears unswayable:

ᾧ οὐτ' ἄρ φρένες εἰσὶν ἐναίσιμοι οὔτε νόημα
γναμπτόν ἐνὶ στήθεσσι, λέων δ' ὡς ἄγρια οἶδεν.

(Ω.40-1)

[there are no thoughts of justice in his breast, or a mind that can be bent; his thoughts are savage, like a lion's.]

²¹⁴ Cf. Achilles at Σ.107f.

²¹⁵ Cf. the material advantages of δίκη described in the *Odyssey* τ.110-14, the *Works and Days* 225-37, 279, and implicitly in the *Iliad* B.376, I.509.

Achilles' temperament is 'beyond measure', excessive. The gods intervene however, and Achilles yields: he is not altogether 'ἄφρων οὐτ' ἄσκοπος οὐτ' ἀλιτήμων' (Ω.186). The poem ends with anger tamed by 'consideration', with an instance of settlement accepted.

The formalities of settlement are described in detail in the 19th book. The agora is summoned (T.40-6). Each party publicly expresses regret at the 'νεῖκος' (Achilles T.56-73, Agamemnon T.78-144). Agamemnon, as the wrongdoer, does this with specific reference to his actions, but substitutes daemonic impulse, ἄτη, for personal motivation. This does not excuse the fact of the wrong; compensation is still necessary²¹⁶. It is in effect a manner of saying that no malice was involved, and that he acted on an irrational impulse:

ἐγὼ δ' οὐκ αἰτιός εἰμι,
ἀλλὰ Ζεὺς καὶ Μοῖρα καὶ ἠεροφοῖτις Ἐρινύς,
οἳ τέ μοι εἰν ἀγορῇ φρεσὶν ἔμβαλον ἄγριον ἄτην,
ἦματι τῷ ὄτ' Ἀχιλλῆος γέρας αὐτὸς ἀπηύρων.

(T.86-9)

[I am not to blame, but Zeus and Moira, and air-treading Erinys, who put savage ruin in my mind in the assembly, on that day when I took away Achilles' prize]

Achilles would postpone the formalities of settlement, but Odysseus insists they take place. The dispute has had public consequences and must be resolved with reference to, and in view of, the δῆμος. The δίκη will consist of three elements, all of which will be public. Agamemnon will bring the material portion of the settlement to the agora (T.172-4), 'ἵνα πάντες Ἀχαιοὶ | ὀφθαλμοῖσιν ἴδωσι' (T.173-4). He will then swear an oath (T.175-8, 249-68), and finally will provide a feast 'ἵνα μὴ τι δίκης ἐπιδευὲς ἔχησθα.' (T.179-80). Achilles will thus lack nothing of proper settlement, and Agamemnon is encouraged to be 'δικαιοτέρος' hereafter, readier to offer settlement when he has wronged a man²¹⁷:

οὐ μὲν γάρ τι νεμεσητὸν βασιλῆα
ἄνδρ' ἀπαρέσσασθαι ὅτε τις πρότερος χαλεπήνη.

(T.182-3)

²¹⁶ Dodds 1951: 3f.

²¹⁷ See chapter 2, p.53-4.

[for there is no fault when even a king appeases a man, when he was the first to be angry.]

In terms of settlement, the mutual insults of book 1 are forgotten: Achilles has nothing to apologise for. It is the concrete wrong alone that is addressed, and in this respect the wrong is all Agamemnon's.

I should now be in a position to reconsider the two questions asked at the start of this section: are any forms or procedures of arbitrated settlement described in the dispute between Achilles and Agamemnon? and is 'settlement' (δίκη) assigned an absolutely positive value? The answer to the latter is yes, and the poet's approbation of δίκη is not merely implicit in his story of 'conflict and resolution', and the disasters that may attend the anger of pride. The advantages of consideration over impulse, or rapprochement over obstinacy, and of settlement over self-help are constantly stated and explored.

With regard to the former question, several features of formal δίκη are present. It is in the agora that the initial attempt at settlement (A.245-84), the decision to offer settlement (I.105f.) and its eventual implementation (T.40f.) occur. The public context is essential. The agora formalises the decision making process and acts as witness to and guarantor of the final δίκη²¹⁸. The disputants do not formally submit their claims to arbitration, but they do state them in the assembly. The assembly does not give an opinion, as it does in favour of Chryses (A.22-3), but its support of Achilles is reflected in both Thersites' speech (B.239-40) and Agamemnon's acknowledgement at T.85-6 that he has been exposed to public censure.

Nestor performs many of the functions of an arbitrator. He proposes settlement both during the dispute and after it. He does not have the formal authority to impose his 'δίκη' on either party, but he does represent the type of eloquent 'γέρων' that is associated with judgment at *Theogony* 81f. and in the shield trial of book 18. Finally, oath plays a key role in formalising settlement, as well as in quantifying it, by establishing the wrongdoer's level of guilt.

²¹⁸ Havelock 1978: 132-3. 'Though the feud which calls for such procedure occurs between two parties, justice can be applied only with the participation of the agora, functioning as a forum of rhetoric addressed to the issues that have arisen... Since no documentary evidence of the settlement is available to be exchanged, the witness of a mass audience who will remember what they have heard and seen is vital'.

While the circumstances of the dispute, the status of the parties to it, and above all the poetic tradition all preclude a formal and authoritative process as a means of resolving the conflict, many of the features of such a process have been incorporated into the various stages of the dispute. Quantified redress, public appeal, third party arbitration, oath, and valorised δίκη itself, are shown to be indispensable elements of formal conflict resolution.

3.2. Menelaos and Antilochos

The funeral games of book 23 contain three instances of dispute settlement, all bound up with the prevailing spirit of competition (all in fact associated with the chariot race), or agonistic exchange in the culturally managed context of games, and consequently of relatively minor significance. A comparison of these three instances reveals a variety of means whereby settlement may be achieved, and suggests that together they may form an interesting commentary on the settlement issues of the main narrative.

The first involves Idomeneus and Aias. Idomeneus suggests that Eumelos has fallen out of the race and Aias rudely tells him that he's not young enough to see that far (ψ.448-87). Insults are traded and the quarrel is escalating; Idomeneus suggests that they appeal to Agamemnon to be ἴστωρ, 'arbiter'²¹⁹. However it is Achilles rather than Agamemnon who intervenes and rebukes them (ἐπεὶ οὐδὲ ἔοικε' ψ.493). As the sponsor and director of the games, he has the authority to do so, and they obey him – a position no one could claim in Achilles' own dispute.

The second involves a claim made by Antilochos. Achilles, pitying Eumelos, decides to give him the second prize, and all approve him. Antilochos protests (ψ.541) that the prize is his, and says that he is ready to fight for it if he must. As in book 1, a stolen prize is the basis of the dispute. Here however, Achilles is gracious enough to restore it; he gives Eumelos another prize. Again, Achilles is in a position to solve the dispute peacefully.

The third quarrel is treated at length and shows several features of formal dispute settlement. Menelaos rises to make a claim against Antilochos. The herald hands him the sceptre and calls for silence, and he states his δίκη: Antilochos has cheated him of second

²¹⁹ On the meaning of ἴστωρ, see chapter 4, p.101.

place by cutting him off during the race (Ψ.570-2). He asks the Achaean leaders to judge who should receive the prize:

ἀλλ' ἄγετ' Ἀργείων ἡγήτορες ἠδὲ μέδοντες
ἐς μέσον ἀμφοτέροισι δικάσατε, μὴ δ' ἐπ' ἀρωγῆ,
μὴ ποτέ τις εἵπησιν Ἀχαιῶν χαλκοχιτώνων·
Ἀντίλοχον ψεύδεσσι βησάμενος Μενέλαος
οἴχεται ἵππον ἄγων, ὅτι οἱ πολὺ χείρονες ἦσαν
ἵπποι, αὐτὸς δὲ κρείσσων ἀρετῆ τε βίη τε.

(Ψ.573-8)

[But come, leaders and lords of the Argives, judge between us in the midst, without favour, so that no one of the bronze-shirted Achaeans might ever say 'Menelaos, forcing Antilochos with lies, leads off and keeps the horse for himself, since although his horses were far worse, he himself is mightier in valour and force'.]

Menelaos has the power to assert his claim forcibly, but wants his claim to be recognised publicly and judged objectively on its merits. Judicial 'δίκη' here is presented as the antidote to 'βίη'. Before the Argives can respond however, Menelaos thinks of his own method of settlement (δίκη), which will be unbiased. Antilochos must swear an oath to establish his guilt and consequently the validity of Menelaos' claim:

εἰ δ' ἄγ' ἐγὼν αὐτὸς δικάσω, καὶ μ' οὐ τινὰ φημι
ἄλλον ἐπιπλήξειν Δαναῶν· ἰθεῖα γὰρ ἔσται.
Ἀντίλοχ' εἰ δ' ἄγε δεῦρο διοτρεφές, ἦ θέμις ἐστί,
στὰς ἵππων προπάρριθε καὶ ἄρματος, αὐτὰρ ἰμάσθλην
χερσὶν ἔχε ραδινὴν, ἧ̄ περ τὸ πρόσθεν ἔλαυνες,
ἵππων ἀψάμενος γαιήοχον ἐννοσίγαιον
ὄμνυθι μὴ μὲν ἐκὼν τὸ ἐμὸν δόλω ἄρμα πεδῆσαι.

(Ψ.579-85)

[But come, I will make a judgment, and I say not one of the Danaans will find fault with it, for it will be a straight one. Antilochos, come here, Zeus-nourished, this is right: stand before

the horses and chariot, hold in your hands the slender whip, with which you drove them before, lay your hand on the horses and swear by the earth-holding earth-shaker that you never willingly used trickery to block my chariot.]

The terminology employed here has been discussed in the preceding chapter: the active voice of 'δικάσω' (Ψ.579) shows that this is an objective 'judgment', not a personal 'claim'. Menelaos is justified in proposing it, as it will be 'ίθεϊά', 'unbiased'. Finally the substance of the judgment is an oath, and this is 'θέμις' (Ψ.581): it is the customary method of establishing guilt or innocence in the absence of witnesses²²⁰.

'Πεπνυμέμος' Antilochos avoids taking the oath. He artfully submits to Menelaos, not on the strength of the latter's claim, but on account of his status (Ψ.586-95, Menelaos is 'πρότερος καὶ ἀρείων'; Antilochos is young and the young are rash, 'λεπτή δέ τε μήτις'). He offers Menelaos the prize unconditionally, and more besides, rather than fall from his favour. The speech, worthy of a son of Nestor, is so effective that Menelaos is disarmed:

τοῖο δὲ θυμὸς
ἰάνθη ὡς εἶ τε περὶ σταχύεσσιν ἐέρση
ληΐου ἀλδήσκοντος, ὅτε φρίσσουσιν ἄρουραι·

(Ψ.597-600)

[but his anger melted, as dew on the ears of corn in a growing crop, when the fields are rustling.]

He lets Antilochos off with a warning and gives him the mare.

²²⁰ Cf. Aesch.*Eum.*429 (Orestes has refused to take such an oath); Gagarin 1986: 43.n.66; Diamond 1971: *passim*, esp. 298-312, citing many examples from the law codes of the post-Roman Germanic kingdoms (e.g. Lex Salica, 6thc.CE, an oath may be sworn by the defendant 'si certa probatio non fuerit'). Diamond calls this the 'oath of purgation': 'that is to say, it determined the issue: the defendant who took the oath successfully was acquitted: he who failed to take it was guilty' (*ibid.*: 300). In the Germanic codes, it apparently only became widespread with the adoption of Roman law and Christianity (influenced by biblical precedents such as 1 *Kings* 8:31 and *Exodus* 22:10-11), and replaced an earlier tradition of trial by ordeal (*ibid.* 300-301). In the Lex Burgundionum (XLV, cit. *ibid.* 302), the plaintiff may reject the oath and pursue a trial by combat. Oath, ordeal and combat would each constitute a form of 'iudicium dei'. Cf. Westbrook 1992: 64 n.31 (on the oath of purgation in Hammurabi's code): 'Taking the oath was not an easy option. The consequences of divine wrath were feared and the litigants would often settle rather than face the procedure'.

τῷ τοι λισσομένῳ ἐπιτείσομαι, ἥδ' ἐ καὶ ἵππον
δώσω ἐμήν περ ἑοῦσαν, ἵνα γνῶσι καὶ οἶδε
ὥς ἐμὸς οὐ ποτε θυμὸς ὑπερφίαλος καὶ ἀπηνής.

(Ψ.609-10)

[I will hear your supplication, and I will even give you the horse, though she is mine, so that these men know that my temper is never excessive or rough]

Menelaos' τίμη and his pride are restored by Antilochos' public statement of respect. He is consequently able to show the 'consideration' of being persuaded by entreaty (unlike Achilles in book 9), and evidently expects the approbation of his peers for doing so.

The dispute is settled by the parties themselves; in particular by the deference of Antilochos, a form of consideration which allows Menelaos to act in a similarly gracious manner. But the terminology employed by Menelaos in formalising his claim describes a more detailed and structured process. The claim is made in public (as in the agora), with the sceptre that symbolises judicial authority, and is administered by heralds. Arbitration by social peers is sought as an alternative to violent action. The judgment is proposed by the claimant himself, but it is suggested that it is one of many that might have been proposed: this one will be acceptable to all because it is 'ἰθεῖα', unbiased, and founded upon 'θέμις'. In an arbitrated dispute both parties must agree to the 'δίκη' – the proposed settlement. Here the process remains incomplete, as one party concedes and the judicial character of the settlement comes to an end. Up to this point however, the features of judicial procedure are very similar to those described in the shield trial of book 18.

Thematically, the chariot race, and the funeral games as a whole, form an interesting coda to the inter-Achaean dispute that forms the poem's main narrative thread. We see a snapshot here of a society interacting in a peacefully regulated manner, under the auspices of a 'director' who reflects many of the attributes of a king. The three disputes described above, and the peaceful, rational manner in which they are resolved, reflect back on several of the issues that were at stake in the conflict between Achilles and Agamemnon: insults and rash words, a 'stolen' prize, damaged pride, the grace of accepting apology as opposed to arrogant intransigence. They give us examples of the way in which intra-societal conflict

should be resolved that both serve as a commentary on the foregoing conflict and look forward to the final act of settlement that occurs in book 24.

3.3. Dispute settlement in the *Odyssey*, the Hesiodic poems and the Homeric Hymns

This chapter has so far looked at the two main instances of dispute settlement in the narrative body of the *Iliad*. The following chapter will consider the two examples described in simile and ecphrasis (π.387-8, Σ.497f.). The remainder of this chapter will move beyond the *Iliad*, to look at the similar instances of dispute settlement found in the *Odyssey*, the Hesiodic poems and the Homeric Hymns. These will provide useful comparanda for the discussion of the storm simile and shield trial in chapter 4, which should help to contextualise those passages within a body of literature that is both broadly contemporary²²¹ and the product of, or imitative of, a related poetic tradition.

The *Odyssey* contains three descriptions of judicial arbitration and settlement, as well as a failed attempt to offer redress (χ.54-9). Two occur in the 'Νέκυια' of book 11²²². Towards the end of the underworld episode, Odysseus encounters the implacable ghost of Aias and recalls their dispute over the arms of Achilles²²³:

οἷη δ' Αἴαντος ψυχὴ Τελαμωνιάδαο
νόσφιν ἀφεστήκει, κεχολωμένη εἵνεκα νίκης,
τὴν μιν ἐγὼ νίκησα δικαζόμενος παρὰ νηυσὶ
τεύχεσιν ἀμφ' Ἀχιλῆος· ἔθηκε δὲ πότνια μήτηρ.
παῖδες δὲ Τρώων δίκασαν καὶ Παλλὰς Ἀθήνη. (λ.543-7)

²²¹ See Janko 1982 *passim*. Janko's approximate date for the *Odyssey* is c.730 BCE; for the *Theogony* c.675 BCE and for the *Erga* c.660 BCE (Janko 1982: 200). West argues for a 6th century date for the Hesiodic *Catalogue of Women*, but as a compilation of regional genealogies that date back to the 8th (1985: 164f.). On the Mestres myth specifically, see below, p.85f. Consensus places the *Homeric Hymn to Hermes*, cited here, somewhat later. Görgemanns (1976: 113-128) argues for a 5th century date, while Janko (1982: 143) favours the late 6th century on the basis of linguistic evidence.

²²² Various sections of book 11 are suspected to be later interpolations, including the Minos scene at λ.568-71, which clearly conflicts with the description of the 'νεκύων ἀμενηνὰ κάρηνα' found earlier in the book. See Page 1955: 25. My interest in the scene is not eschatological however, and the imagery and terminology employed here to describe a king in judgment agree substantially with those employed in the similar passages treated here.

²²³ Recounted in the *Aethiopsis* (Proclus *Chrestomathia* ii).

[but the ghost of Aias Telamon's son stood far off, apart, enraged at the victory I won when I stated my case by the ships, for the arms of Achilles. His lady mother placed them there, and the sons of the Trojans and Pallas Athene gave judgment.]

The dispute was settled publicly ('παρὰ νηυσί'), with each party stating its claims ('δικαζόμενος'). 'ἀμφ' if taken literally, suggests that the arms were placed in the middle, in public view, as Agamemnon's 'ἄποινα' is (Τ.243f.). Unbiased judges are chosen: the 'παῖδες Τρώων' and the goddess Athene, who again appears in the *Catalogue of Women* as judge in a dispute that no mortal could solve²²⁴. As discussed in the preceding chapter, the middle voice of δικάζειν is used to describe the 'δίκαι' or claims made by the disputants, while the active voice refers to the 'δίκη' as 'judgment' or 'settlement' proposed by the judges. In this instance there is no settlement however in the sense of a compromise: the arms are awarded to one party. This is not a dispute but a contest ('ἄεθλον' λ.548).

Immediately after Aias, Odysseus sees Minos sitting in judgment over the dead (it is possible that the 'δίκη' theme has served as an associative link between these two scenes).

ἔνθ' ἦ τοι Μίνωα ἴδον, Διὸς ἀγλαὸν υἱόν,
χρύσειον σκῆπτρον ἔχοντα, θεμιστεύοντα νέκυσσι,
ἦμενον, οἱ δέ μιν ἀμφὶ δίκας εἴροντο ἄνακτα,
ἦμενοι ἑσταότες τε κατ' εὐρυπυλῆς Ἄϊδος δῶ.

(λ.568-71)

[there I saw Minos, Zeus' shining son, holding a golden sceptre, speaking laws to the dead, and around the king as he sat they spoke their claims, some sitting, some standing through the wide-gated hall of Hades.]

This is the clearest description of the role of a judge found in either of the Homeric poems. Minos sits in state, holding the golden sceptre that symbolises his judicial authority, and 'speaks laws'²²⁵ to the dead. The disputants gather round him, voluntarily seeking

²²⁴ Hes.Fr.43a.36-43.

²²⁵ Or 'administers justice' – see chapter 2, p.37, n.109. The sense of θεμιστεύειν is not as specific as δικάζειν (to give a judgment). Evidently it refers to θέμιστες in their judicial sense of 'laws', but Minos is not making

authoritative arbitration, and ‘speak their claims’. Minos will consider the relative merits of these and presumably deliver a ‘δίκη’, a settlement or judgment that is ‘ἰθεῖα’. Minos judges alone, as a king would. His function in the Underworld is judicial, not royal, but his role in death is conditioned by and founded upon his role in life, and the imagery of sole king-judge is preserved.²²⁶

The third description of judgment occurs in a simile: Charybdis disgorges the wreck of Odysseus’ ship late in the day, about the time that a judge leaves the agora:

ὄψ’ ἤμος δ’ ἐπὶ δόρπον ἀνήρ ἀγορήθεν ἀνέστη
κρίνων νείκεα πολλὰ δικάζομένων αἰζηῶν,
τῆμος δὴ τά γε δοῦρα Χαρύβδιος ἐξεφαάνθη.

(μ.439-41)

[late, at the time when a man stands up to go home for his meal from the agora where he judges the many disputes of litigious young men – at that time the beams reappeared from Charybdis.]

The judge that appears in this simile appears to sit alone in judgment, in the agora. No special status is described: he is simply an ‘ἀνήρ’ whose business is arbitration. In fact the

laws here: he is either passing ‘decrees’ (i.e. judgments), or, as suggested here, ‘administering justice’ in a generalised sense (cf. the use of θέμις at Λ.807. Alternatively the verb could be shorthand for ‘κρίνειν θέμιστας’, ‘selecting precedents’ (cf. Π.387, *Theog.*85, *WD.*221).

²²⁶ The mythical tradition of Minos as a judge in the underworld may be based on the tradition that he was a lawgiver (‘νομοθέτης’) in life. Pausanias says the Cretans claimed this (3.2.4), and cites *Od.*19.178-9 (‘Μίνως... Διὸς μεγάλου ὀαριστής’). Plato records the same tradition (*Leg.*624a-625a, [*Minos* 318e-320d]), again citing the Homeric description of Minos as ‘Zeus’ familiar’. Cf. ps.Apollodorus 3.7 (‘Μίνως δὲ Κρήτην κατοικῶν ἔγραψε νόμους’), Photius, who groups him and Rhadamanthys with Draco, Lycurgus, Solon and Zaleucus (*Biblioth.*311b) and Eustathius (*Comm.Od.*2.198). It is possible that the tradition originated with Plato. The author of the *Minos* notes that some interpreted the *Odyssey* reference as meaning only that he was Zeus’ cupbearer. On the other hand he also describes a law attributed to Minos (forbidding excessive drinking). In addition, the Cretans do seem to have had a reputation for possessing the oldest laws in Greece. Gagarin notes that the earliest historical ‘νομοθέτης’, Zaleucus, is said to have compiled his laws from those of the Cretans and Spartans (1986:61). The underworld tradition is also referred to by Plato (*Apol.*41, *Gorg.*523e). In the *Gorgias* however, Minos (together with Aeacus and Rhadamanthys) delivers judgments on men’s souls (‘ἡ κρίσις ἣ περὶ τῆς πορείας τοῖς ἀνθρώποις’). Homer’s Minos does not judge the dead, he merely settles their disputes – a more archaic notion of both the role of a judge and the afterlife. For an interesting mythological parallel (and possible model), cf. the Sumerian poem on the death of Gilgamesh, ‘The great bull is lying down’: the gods decide that despite being a demi-god, Gilgamesh must die, but that he will keep his royal status in the underworld and pass judgement on the dead, together with the underworld deities Ningishzida and Dumuzi (George 1999: 199).

emphasis is quite domestic; he performs a public service, and at the end of the working day he goes home to dinner. The kind of service he provides consists literally of 'settling disputes'. He listens to competing claims, which are energetically asserted by 'δικαζομένων αἰζηῶν', by the interested parties, and decides which claim is stronger. He may decide in favour of one party (as in the contest between Odysseus and Aias), or propose a compromise settlement. Many such cases are brought to him each day²²⁷. The social status of the judge is not described, but his function is identical to that of Minos. In either case the motivation to settle apparently lies with the disputants, who voluntarily apply to an objective and authoritative third party to propose a fair settlement to their dispute.

Judges in both the *Theogony* and the *Works and Days* are 'βασιλῆες'. The term does not appear to describe a monarch however, so much as a headman or local person of influence²²⁸. Βασιλῆες function as δικασπόλοι, and in the *Theogony* their effectiveness in this role is said to be dependent on their eloquence: their ability to persuade litigants that the δίκη proposed is fair. This eloquence is the gift of the Muses:

τῷ μὲν [βασιλεῖ] ἐπὶ γλῶσση γλυκερὴν χεῖουσιν ἐέρσην,
τοῦ δ' ἔπε' ἐκ στόματος ῥεῖ μείλιχα· οἱ δέ τε λαοὶ
πάντες ἐς αὐτὸν ὀρῶσι διακρίνοντα θέμιστας
ἰθείησι δίκησιν· ὃ δ' ἀσφαλέως ἀγορεύων
αἴψά κε καὶ μέγα νεῖκος ἐπισταμένως κατέπαυσεν·
τοῦνεκα γὰρ βασιλῆες ἐχέφρονες, οὔνεκα λαοῖς
βλαπτομένοις ἀγορῆφι μετὰτροπα ἔργα τελεῦσι
ῥηιδίως, μαλακοῖσι παραιφάμενοι ἐπέεσσιν.

(*Theog.*83-90)

[upon his tongue they pour sweet dew, and gentle words flow from his mouth. All the people look to him to pick out the laws with straight judgments. And he, speaking securely, quickly puts a wise end to even a great quarrel. For this reason are kings wise, because when the people are misguided in assembly they turn the matter about with ease, advising with gentle words.]

²²⁷ Cf. *WD.*27-28. The 'νεῖκα' of the agora seem to have afforded Perses full-time entertainment.

²²⁸ Murray 1980: 40-41; Halverson 1985: 134-6. See below, n.233 and chapter 5, p.128.

The 'λαοί' expect the βασιλεύς to provide authoritative arbitration: to distinguish the laws with straight judgments, (διακρίν[ειν] θέμιστας | ιθείησι δίκησιν). Knowledge of customary norms is a prerequisite for success in dispute settlement, and by judicious reference to these norms even a great dispute may be resolved quickly and 'έπισταμένως'. Again the physical setting for this kind of arbitration is the agora.

Agora-based dispute settlement features prominently in the *Works and Days*²²⁹, but is most specifically alluded to in lines 27-39, where Hesiod outlines his dispute with Perses.

ὦ Πέρση, σὺ δὲ ταῦτα τεῶ ἐνικάτθεο θυμῷ,
μηδέ σ' Ἔρις κακόχαρτος ἀπ' ἔργου θυμὸν ἐρύκοι
νεϊκε' ὀπιπεύοντ' ἀγορῆς ἐπακουὸν ἐόντα.
ῶρη γάρ τ' ὀλίγη πέλεται νεϊκέων τ' ἀγορέων τε,
ῶτινι μὴ βίος ἔνδον ἐπηετανὸς κατάκειται
ῶραϊος, τὸν γαῖα φέρει, Δημήτερος ἀκτὴν.
τοῦ κε κορεσσάμενος νεϊκεα καὶ δῆριν ὀφέλλοις
κτῆμασ' ἐπ' ἀλλοτρίοις. σοὶ δ' οὐκέτι δεύτερον ἔσται
ῶδ' ἔρδειν· ἀλλ' αὔθι διακρινώμεθα νεϊκος
ιθείησι δίκης, αἵ τ' ἐκ Διὸς εἰσιν ἄρισταί.
ἤδη μὲν γὰρ κλῆρον ἐδασσάμεθ', ἀλλὰ τὰ πολλὰ
ἀρπάζων ἐφόρεις μέγα κυδαίνων βασιλῆας
δωροφάγους, οἳ τήνδε δίκην ἐθέλουσι δικάσσαι.

(WD.27-39)

[O Perses, lay this up within your heart: do not let ill-rejoicing Strife keep your heart from work, while you gape and listen to the quarrels of the agora. There is little time for quarrels and agoras for the man who does not have sufficient livelihood laid up within, fruits of the season, that the earth bears, Demeter's corn. When you have got enough of that, you can incur disputes and contests over other men's goods. But you will have no chance to do that a second time. Come, let us settle our dispute right now with straight judgments, which are from Zeus and best. For we had already shared the inheritance, but you seized the majority

²²⁹ WD. 36f; 124; 221f; 250; 262f; 269; 279.

and carried it off, greatly glorifying the gift-eating lords, who love to judge a case such as this.]

Perses has apparently been wasting his time in the agora, following the ins and outs of the 'law-courts' and consequently avoiding gainful employment. 'Νεῖκεα' and 'ἀγόρη' are closely associated here (29-30), in much the same way as the agora is with 'θέμις/θέμιστες' at Λ.807 and ι.112. Perses has moreover used his familiarity with legal procedure to exploit the system and raise disputes for profit (33-4). Hesiod claims that by these means Perses has cheated his brother of his fair share of the patrimony, specifically by bribing the judges ('βασιλῆες δωροφάγοι') to deliver a crooked judgment in his favour (38-9)²³⁰. Hesiod consequently rejects the formal 'δίκη' proposed and seeks to establish a 'straight' one privately ('ἀλλ' αὖθι διακρινώμεθα νεῖκος | ἰθεῖησι δίκης, αἴ τ' ἐκ Διός εἰσιν ἄρισται'. 35-6). 'Διακρίνειν', elsewhere used to describe a judge's act of settlement²³¹, appears here in the middle voice. As with 'δικάζεσθαι' the middle is used when the subject of the verb is a party to the dispute²³².

The description of judges in this episode is informative. They are 'βασιλῆες', but in this context the word appears to mean no more than an individual of local standing²³³, perhaps a minor aristocracy. They are referred to in the plural and it is likely that they sit together as a panel (cf. Σ.497f.), although it remains possible that each judges separately in the agora. Cases are brought before them voluntarily. Hesiod and Perses had reached a prior settlement (37) before Perses decided to make a 'δίκη', claiming additional property, and sought to have this claim formally recognised. It may be assumed that Hesiod also submitted to the judges' arbitration voluntarily, in the expectation that Perses' unjust claim would be rejected²³⁴. Finally, the judges may be corrupt, 'gift-eating', and this may undermine the formality of their function. If the authorised δικασπóλοι cannot be relied

²³⁰ This may refer to the 'wager' payable to the court, rather than a bribe. Σ.507 is a possible example of this (see p.103 below). Whether Perses is bribing the judges, or merely staking money on a favourable outcome, the δωροφάγοι βασιλῆες stand to gain.

²³¹ *Theog.*85.

²³² Gagarin 1986: 34.n.46.

²³³ The fact that there are a number of them in a village as small as Ascra, or even Thespiis, is evidence of this.

²³⁴ The voluntary nature of this process is also implicit in the fact that Hesiod appeals that the proposed settlement be rejected. A formal δίκη may be authoritative but it is not necessarily binding: private settlement remains an option.

upon to deliver a straight judgment, disputants may prefer the kind of private settlement that Hesiod is seeking. Public opinion may also be outraged by corruption: the indignant noise of the crowd is a possible interpretation of the 'ρόθος' in line 220, which arises when Dikē is dragged into the agora by 'δωροφάγοι' who apply the law with 'σκολιῆς δίκης'. This type of process certainly has a public character. Not only is it practised in the agora: as in the shield trial of Σ.497f., the opinions of the δῆμος seem to play an important role in determining the 'straightness' of a proposed 'δίκη'.

Another, unfortunately fragmentary, instance of formal dispute settlement appears in the Hesiodic *Catalogue of Women* (Hes.Fr.43a). The passage in question recounts the myth of Mestre²³⁵. Sisyphos has taken Mestre, the daughter of Aithon, as a wife for his son Glaucos and given, or promised to give, a bride-price of cattle (15-25). Mestre changes form and returns to her father's house (30-1). Sisyphos finds her there and a dispute arises between him and Aithon (35-6):

αἴψα [δ' ἄ]ρ' ἀ[λλ]ήλοισ[ι]ν ἔρις καὶ ν[εῖκος] ἐτ[ύχθη
 Σισύφωι ἢ δ' Αἴθωνι τανισφύρο[υ εἶ]νεκα [κούρης,
 ο]ύδ' ἄρα τις δικάσαι [δύ]νατο βροτός· ἀλλ' ἀραπ[
 ἐπ]έτρεψαν καὶ ἐπήνεσαν· ἢ δ' ἄρα τοῖ[σιν
 ἀ]τρεκέως διέθηκ[ε] δίκην δ.[²³⁶

(Hes.Fr.43a.36-40)

[Quickly strife and d{ispute aro}se between them, Sisyphos and Aithon, for the sake of the slight-ankled {girl}. Nor could any mortal make judgment, but {to Athena} they entrusted and commended {the suit}. And she set it forth to them exactly {and spoke a straight} judgement.]²³⁷

²³⁵ For the myth of Erysichthon/Aithon, see Callimachus Hymn 6, Ovid *Met.* 8.846-74.

²³⁶ West provides these supplements (West 1963: 754-5):

αἴψα [δ' ἄ]ρ' ἀ[λλ]ήλοισ[ι]ν ἔρις καὶ ν[εῖκος] ἐτ[ύχθη
 Σισύφωι ἢ δ' Αἴθωνι τανισφύρο[υ εἶ]νεκα [κούρης,
 ο]ύδ' ἄρα τις δικάσαι [δύ]νατο βροτός· ἀλλ' ἄρ' Α[θήνη]
 νεῖκος ἐπ]έτρεψαν καὶ ἐπήνεσαν· ἢ δ' ἄρα τοῖ[σιν
 ἀ]τρεκέως διέθηκ[ε] δίκην δ' [ιθεῖαν ἔειπεν·

²³⁷ West's supplements are translated in parentheses.

No mortal can give judgment and, as in the dispute between Odysseus and Aias, the settlement is (apparently – see note 33) referred to Athena. The substance of her settlement is quoted, but the lacunae make interpretation difficult:

“εἴτε τις ἀντ' ὄνοιον χατίζηι χ[ρῆ]μ' ἀνελεῖσθαι,
ἀμφὶ μάλα χρῆν ὤν[ον]. τῆμον [
οὐ γὰρ δὴ μεταμειπ[τόν, ἐπὴν τὰ] πρῶτ' [ἀποδώηι.”

(Hes.Fr.43a.41-3)

West paraphrases this: ‘if a vendor], instead of accepting the agreed price, wants to take his goods back, there must be a resale(?) and a new valuation must be made(?); for once the goods have changed hands they cannot be re-exchanged for the money originally tendered’²³⁸.

Perhaps the most interesting feature of Athene’s ‘δίκη’ is that it takes the form of a 3rd person singular conditional sentence. This is the construction invariably found in early legal codes²³⁹. West takes the ‘δίκη’ to be an aition for an historical Athenian law of contract²⁴⁰. It may however reflect the form an oral ‘δίκη’ might take. In several instances in the Homeric and Hesiodic poems a δικασπóλος is said to ‘choose the θέμιστες’²⁴¹ with reference to a particular settlement. We may in fact have an oral ‘θέμις’ here, which has been selected as relevant to the present dispute and cited as the general basis of the specific δίκη proposed²⁴². If written laws are so regularly expressed in the conditional, it is possible that the oral laws that precede them may be too. This would provide some insight into the way in which the originally distinct concepts of θέμις and δίκη became so closely

²³⁸ West 1963: 754-5. Gagarin (1986:36): ‘when one wishes to recover the price one has paid for something [without giving up the object], one must lose both the object and the payment, “for once payment is made, it cannot be reclaimed”’.

²³⁹ Gagarin 1986: 53, 56; Diamond 1971: 45: ‘All genuine codes are couched in the natural language of statutory legislation, namely conditional sentences in the third person, the protasis containing the facts supposed, and the apodosis the sanction’.

²⁴⁰ West 1963:754; 1985: 169.

²⁴¹ π.387; *Theog.*85; *WD.*221. See above, chapter 2, p.38f.

²⁴² As Gagarin suggests (1986: 36, n.51): ‘It is not impossible that there is some reference to a law of Solon, but it seems equally possible that the allusion is to a general (unwritten) rule’.

linked semantically, as I have argued in the previous chapter²⁴³: the 'δίκη' in this instance is in fact a 'θέμις'.

The last post-Homeric description of settlement that I want to consider is perhaps the most extensive. The main narrative of the *Homeric Hymn to Hermes* concerns the dispute that arises when the infant Hermes steals Apollo's cattle. Apollo accuses Hermes of the theft, and the latter offers to swear a (false) oath that will establish his innocence (273-7). Apollo then seizes him²⁴⁴ and Hermes suggests that they seek arbitration:

δὸς δὲ δίκην καὶ δέξο παρὰ Ζηνὶ Κρονίωνι.

(*H.Hymn to Hermes* 312)

[Make your claim and receive mine (or 'receive judgment'?) before Zeus.]

They come before Zeus and an assembly²⁴⁵ of the gods, 'κεῖθι γὰρ ἀμφοτέροισι δίκης κατέκειτο τάλαντα' (324). The 'scales of judgment' are an apt metaphor for the process: the merit of each party's claim will be weighed by the arbitrator²⁴⁶.

Apollo makes his formal accusation (333-363) and Hermes his 'defence' (368-386), which contains a number of formal features. He will be 'truthful' ('νημερτής'²⁴⁷ 369, 380) in his deposition; Apollo has made his accusation without witnesses (372) and has asserted himself with force (373); he is willing to swear an oath by Helios (381-4). Again the oath does not materialise. The δίκη of Zeus is that Hermes should show Apollo where the cattle are hidden (391-4), and he bows his head to signal the formality of his judgment²⁴⁸. The

²⁴³ Chapter 2, p.61f.

²⁴⁴ 'οὐκ ἀδικῶς' (316). An example of the generalisation of δίκη in its adjectival form: violent seizure may be 'just' in the general sense of 'warranted', but it is not in accord with the actual process of δίκη which Hermes appeals for. See chapter 2, p.56, n.178.

²⁴⁵ 'οὐμίλη' (325): Allen's emendation of MSS. 'εὐμίλη'.

²⁴⁶ Cf. Θ.69 = X.209, Π.658, Τ.223. In the *Iliad* the metaphor is used of Zeus' judgment between two individuals or armies in combat. It is a literal 'iudicium dei', in terms of Zeus' role as arbiter of fate (in the first two examples cited the contents of the scales are 'δύο κῆρε τανηλεγέος θανάτοιο'. Nilsson (1933: 267) traces this motif to a Mycenaean vase painting from Enkomi, c.1300 BCE.

²⁴⁷ The epithet of Proteus (δ.349f.) and Nereus (*Theog.*235), and the name of one of the Nereids (Σ.46, *Theog.*262). I suggested in the previous chapter (p.41, n.121) that the term was associated with Nereus as 'ὁ Γέρον' because 'the Elder' conveyed the idea of a judicial function.

²⁴⁸ 'νεῦσεν'. Cf. A.528-30 = P.209 (also Agamemnon Θ.246). As with the τάλαντα, the image may originally have been associated with the administration of justice.

cattle are recovered, but Hermes has already killed and skinned two of them, and the dispute continues (Apollo attempts to bind Hermes again), until compensation in the form of the lyre is given. The dispute is resolved peacefully:

ἡσυχίως καὶ ἔπειτα διακρινέεσθαι ὄϊω²⁴⁹.

(*H.Hymn to Hermes*.438)

[and then I think we shall settle peacefully.]

The dispute is settled then by a combination of arbitration (whereby Hermes is instructed to return the cattle) and private settlement (διακρινέεσθαι). The formal arbitration takes place in a specific location, in the presence of community, and is presided over by a figure of authority, a king-judge. Both parties state their case and a judgment is delivered which they must be persuaded to accept ('ἔπεπειθέτο' of Hermes, 395). Witnesses and oaths may play a role in establishing the facts of the case. The alternative to this process is violent self-help that consists of seizing the person accused. Finally, the private settlement that addresses the additional wrong of the two slaughtered oxen consists of offering acceptable compensation.

3.4. Conclusions

The several instances of dispute settlement described in this chapter differ in a number of particulars. A primary distinction may be drawn between those in which the dispute is the basis of the description, and those in which a judge, or the process of arbitration, is itself the focus. The latter include the Minos vignette and the judge simile of *Odyssey XI* and *XII* respectively, and the βασιλεύς description of *Theogony* 83f. In each of these a single arbiter is presented, settling the disputes of claimants who have voluntarily submitted their cases. The process described is unproblematic in these passages because the individual cases are unspecified: the focus is on the arbiter himself, and his ability to fulfil that role. The process

²⁴⁹ Cf. *WD*.35 for the middle voice of διακρίνειν, and p.84-5 above.

is presented in an idealised manner: as it should operate, rather than how it does operate in specific circumstances.

In the remaining examples considered in this chapter the dispute itself is the focus and, as a result of the variety of circumstances surrounding these disputes, the forms of settlement achieved differ in certain respects. The desire to settle, or to seek arbitration, may originate with the offender (Agamemnon, Hermes), or with the victim (Menelaos). The two parties to the dispute may both decide to seek arbitration (Odysseus and Aias, Hesiod and Perses, Aithon and Sisyphos). The 'δίκη' proposed may originate with one of the interested parties (Agamemnon, Menelaos), or with a third party arbitrator (Athene and the Trojans, Hesiod's βασιλῆες, Athene in the *Catalogue*, Zeus in the *Hymn to Hermes*). In spite of these discrepancies however, a number of core features remain consistent. A third party is involved. In the case of Agamemnon and Achilles, this role is performed by Nestor in *Iliad I* and by the envoys in *Iliad IX*. In that of Menelaos and Antilochos, the Achaean leaders are originally appealed to, and implicitly sanction the agreement which the disputants independently achieve. A second consistent feature is that settlement occurs in a public forum (only in the Aithon / Sisyphos dispute is this not explicit). Formal dispute settlement takes place in the agora. This is universally the case where private settlement is concerned. Achilles and Agamemnon settle formally in assembly. Menelaos and Antilochos do not, but the public character of their settlement is essential. The rhetoric of both parties is aimed at validating their respective positions before the witnesses to their dispute.

The formality of settlement is dependent on the nature of the dispute, but each of the instances described in this chapter partakes to a large extent of what may be considered the essential features of δίκη-type settlement: the voluntary submission of a dispute to a third party arbitrator in a public forum. Variable factors which may modify this formal type include the reluctance of one party to settle (Achilles and Agamemnon), the proposal of the final δίκη by one of the disputants rather than the arbitrator (Menelaos and Antilochos), and the nature of the arbitrator him or herself. This role may be filled by one or more individuals selected *ad hoc* by the disputants (the Achaean leaders, Athene), or by an individual who customarily performs this function by virtue of their social position (Minos, the βασιλῆες of Ascrea, and Zeus). Dispute settlement in both these cases has a public character, but inasmuch as the authority of a 'professional' arbitrator has a social basis, the

process he presides over is to a greater degree a public institution, formalised by custom and sanctioned not only by the disputants themselves, but by the community within which it operates.

Chapter 4. The storm simile and the shield trial

Having looked at the terminology and methodology of arbitration and judgment found in early Greek epic and didactic poetry, I now want to consider how these are reflected in the *loci classici* of 'justice' in the *Iliad*: the storm simile of book 16 and the shield trial of book 18. Both passages are notoriously contentious: the interpretation of their content and the relationship of each to the poem as a whole have attracted a great deal of critical comment. This section will attempt to address the former issue: what exactly is the nature of the judicial process described in each instance? The latter issue, their relationship to the *Iliad* as a whole, and consequently the picture of justice that the poem presents, will form the substance of the final chapter of this thesis.

4.1. The storm simile

ὥς δ' ὑπὸ λαίλαπι πᾶσα κελαινὴ βέβριθε χθῶν
ἤματ' ὀπωρινῶ, ὅτε λαβρότατον χέει ὕδωρ
Ζεὺς, ὅτε δὴ ῥ' ἄνδρεςσι κοτεσσάμενος χαλεπήνη,
οἷ βίη εἰν ἀγορῇ σκολιὰς κρίνωσι θέμιστας,
ἐκ δὲ δίκην ἐλάσωσι θεῶν ὅπιν οὐκ ἀλέγοντες·

(π.384-8)

[As beneath a hurricane all the black earth is burdened, on an autumn day when Zeus pours down the most furious waters, when he rages, angered by men who, in the agora, with violence pick crooked θέμιστες and drive out δίκη, caring nothing for the gaze of the gods]

The sound of Hector's horses as they thunder over the plain is as the torrent of water that falls in a thunderstorm, a storm which Zeus sends when enraged by the corruption of men who, with no regard for the gods, abuse the principles of justice. The interest of this passage lies in three areas: the action taken by Zeus to punish wrongdoing, the process of justice that is referred to, and the terminology employed to describe that process. The terminology

has been considered in the previous chapter, but it will be useful to relook at the conclusions arrived at there as any analysis of the procedure will rest upon it.

‘Οἱ βίη εἰν ἀγορῆ σκολιάς κρίνωσι θέμιστας’: The θέμιστες described here belong to the ‘δίκη’ group defined in chapter 2: θέμιστες which occur in a specifically judicial context and refer to customary laws. Janko and Yamagata interpret the phrase ‘κρίνειν θέμιστας’ as ‘to pick precedents’ (as a basis for judgment)²⁵⁰. This reading accords with the sense of θέμιστες found in other passages in Homer where they are associated with the agora (Λ.807, ι.112,115). It remains problematic however. Both the verb ‘κρίνειν’ and the adjective ‘σκόλιος’ imply a more relative sense than ‘laws’; something that is informed by an individual’s decision, and that may be ‘crooked’, depending on the integrity of that individual. Both Leaf and Latte²⁵¹ accordingly follow the A Scholia here in reading θέμιστας as a gloss on ‘δίκας’, either in the sense of choosing crooked judgments, or of picking crooked claims. This interpretation is supported by the fact that ‘ἴθυσ’ and ‘σκόλιος’ are, in the *Odyssey* and the Hesiodic poems, more commonly associated with δίκη. Indeed it makes sense that individual decisions, rather than the customs that inform them, should be described as ‘straight’ or ‘crooked’, ‘unjust’,. If θέμιστες here has attracted the associated vocabulary of δίκαι, it is possible that it has also attracted δίκαι’s core sense²⁵². This argument is contestable however. Θέμιστες as ‘customary laws’ may be ‘selected’ as the basis of individual judicial decisions, or ‘δίκαι’. The sense of ‘σκολιάς’ may moreover be adverbial, describing the manner in which those laws are selected.

We have two options then for the meaning of θέμιστες in the storm simile. The first, ‘customary laws’, ‘precedents’, has the advantage of according with the sense of judicial θέμιστες found elsewhere in Homer. The second (= ‘δίκαι’) is suggested by the associated terminology, but finds its strongest parallels in Hesiod and would imply (but not prove) a relatively late date for the passage. In the previous chapter I favoured the first option and will maintain it here, again with the provision that any firm conclusion must be dependent on an analysis of the relationship of the entire passage with the *Iliad* as a whole, which will form part of the final chapter of this thesis.

²⁵⁰ Janko 1992 *ad loc*; Yamagata 1994: 90, n.40.

²⁵¹ Leaf 1898 *ad loc*; Latte 1946: 65.

²⁵² For the increasing synonymy of these two terms, see Chapter 2 p.53, 61-2, and γ.244, ι.215.

The men that Zeus is angry with ‘pick crooked precedents’ in the agora, with violence (βίη). The agora setting links the process described here with those previously considered in this chapter. That the judges perform this action ‘βίη’, with force, is informative. Βίη in the sense of ‘violence’ appears as the antithesis of δίκη in several other instances. In the *Iliad*, the Abioi are described as ‘δικαιοτάτοι ἀνθρώπων’ (N.6), and Menelaos asks the Achaeans to judge his case impartially, lest someone should say he won Ἐπίλοχον ψεύδεσσι βηισάμενος’, by virtue of his being ‘κρείσσων ἀρετῆ τε βίη τε’ (Ψ.576-8).

As ‘violence’, βίη is associated with ὕβρις in the *Odyssey* (ο.539, π.565), which is itself contrasted with δίκη (ζ.120=ι.175=ν.201)²⁵³. Hesiod emphasises this antithesis of violence and δίκη at several points in the *Works and Days*. The race of iron are ‘χειροδίκαι’: amongst them settlement is achieved by force (‘δίκη δ’ ἐν χειρσί’) and men praise ὕβρις (*WD* 189-192). Perses is told to obey δίκη and abandon βίη (275)²⁵⁴. In the passage that mirrors the storm simile most closely, force is also figuratively associated with the corruption of δίκη; it is implied in the description of δίκη being dragged into the agora (‘τῆς δὲ Δίκης ῥόθος ἐλκομένης’, *WD* 220). Violence is the antithesis of formal settlement. In essence it is the manner in which claims are asserted in the absence of peaceful arbitration. It is also clearly associated with the corruption of the legal process: using formal judicial process, the external *forms* of ‘δίκη’ to an ends that is contrary to the *spirit* of ‘δίκη’ in its idealised sense of ‘fairness’.

This brings us back to the meaning of δίκη in this passage. In the previous chapter I argued that it goes beyond Gagarin’s definition of concrete ‘legal process, peaceful arbitration’²⁵⁵. More than a generalised form of δίκη as ‘settlement’, it is an idealised concept. The corrupt judges here do not drive out the legal process or peaceful arbitration, they drive out the ‘fairness’ which that process, properly conducted, has come to symbolise. The formal features of the process itself remain intact: it is the ‘spirit’ of it that is undermined.

The idea expressed here of δίκη being expelled from the process of justice has much in common with Hesiod’s description of the abuse of δίκη in the *Works and Days*²⁵⁶. In both

²⁵³ Cf. also p.485 (ὕβρις / εὐνομία) and ξ.90 (δικαίως / ὑπέρβιον).

²⁵⁴ Cf. *WD* 214 (δίκη / ὕβρις).

²⁵⁵ Gagarin 1973: 86.

²⁵⁶ τῆς δὲ Δίκης ῥόθος ἐλκομένης, ἧ κ’ ἀνδρες ἄγωσι

passages δίκη is roughly handled, a victim of βίη. Hesiod however has two images of δίκη in this passage. In the first she is dragged into the agora against her will; in the second she has been expelled, and wanders the land weeping and bringing evils to those who have abused her. The latter image is very close to the storm simile description (both poets use the verb ἐξελαύνω). While the first image seems likelier to be Hesiod's modification of the existing motif found in Homer (and itself elaborated in the *Works and Days*: the personification is much more developed), it can be argued that the 'expulsion' image goes further in abstracting the concept of δίκη. In the first image of the *Works and Days*, δίκη is fair legal process, the appearance of which is coopted to lend credence to corrupt dealings. In the second, as in the storm simile, the 'fairness', or ideal, has been detached. The idea is similar: δίκη is coopted, but Homer expresses this idea by conceiving of 'ideal' δίκη as a separate, supervening quality which *may* be detached. The corrupt judges here carry out the external forms of δίκη, while expelling her soul. The δίκη that Homer describes is an abstract quality, a counterpart to the concrete practice but separable from it²⁵⁷.

Hesiod's personification of 'the maiden Δίκη' is explicit, in the passage cited, at *WD* 256f, and in the *Theogony* (902). Homer's is not, and Janko argues that the evidence for personification in π.388 is too slight²⁵⁸. The similarity between the storm simile and *WD* 224 however suggests that Hesiod interpreted either the Iliadic passage, or an existing motif that Homer also drew from, as an instance of personification that he could elaborate upon²⁵⁹. The personification of abstract concepts in the *Iliad* is not unusual however. The spirits of Strife, Fear, Panic and Terror are frequently described as Ares' companions, or participants on the battlefield in their own right²⁶⁰. This and other groups of associated

δωροφάγοι, σκολιῆς δὲ δίκης κρίνωσι θέμιστας,
 ἢ δ' ἔπεται κλαίουσα πόλιν καὶ ἦθεα λαῶν,
 ἡέρα ἔσσαμένη, κακὸν ἀνθρώποισι φέρουσα,
 οἳ τε μιν ἐξελάσσωσι καὶ οὐκ ἰθεῖαν ἔνειμαν. (WD.220-4)

[there is a roar when Dike is dragged to the place where gift-eating men lead her, who pick the laws with crooked judgments. And weeping she follows to the city and haunts of the people, wrapped in mist, bringing evil to the men who drove her out and did not dispense her straightly.]

²⁵⁷ Havelock interprets this passage metaphorically (1978; 137): the litigant who has 'justice' on his side must be physically removed from the agora - his 'justice' is expelled. He need not go so far: it is possible to interpret δίκη in a more concrete sense here, and say that the 'case' is expelled (Janko 1992: *ad loc.*).

²⁵⁸ Janko 1992 *ad loc.*

²⁵⁹ This issue will be examined below, chapter 5, p.122f.

²⁶⁰ Δ.440, Ε.739, Ι.2, Λ.37, Λ.74, Ν.298, Ο.113, Σ.535, Υ.48.

abstracts are moreover often found in ecphrasis or simile²⁶¹. As in the present simile, these personifications are employed pictorially, as shorthand descriptions of appropriate qualities or types of experience. They range from the purely abstract (κυδοιμός, Σ.535; θελκτήρια, Ξ.214) to the fully deified (Eris, and cf. Hypnos and Themis). It is entirely in keeping with this descriptive method that δίκη should be personified in the storm simile.

A final, and perhaps the most significant, feature of the storm simile is its religious aspect. The storm itself is the result of Zeus' anger, but the corrupt judges are also said to act 'θεῶν ὄπιν οὐκ ἀλέγοντες'. The original meaning of ὄπις is 'regard' (it is cognate with ὄψομαι²⁶²), but, as the word mainly occurs in phrases describing the gods' regard for particular crimes, it acquires the more specific sense of 'punishment'²⁶³. In the *Odyssey* it is chiefly associated with abuse of the guest-host relationship²⁶⁴ and may mean either 'regard' or 'punishment'. In the *Theogony* the sense of 'punishment' is generalised²⁶⁵. Again, however, the closest parallel to its use in the storm simile occurs in the *Works and Days*. Hesiod warns the βασιλῆες that the gods are watching:

ἐγγύς γὰρ ἐν ἀνθρώποισιν ἐόντες
 ἀθάνατοι φράζονται, ὅσοι σκολιῆσι δίκησιν
 ἀλλήλους τρίβουσι θεῶν ὄπιν οὐκ ἀλέγοντες.

(*WD*.249-51)²⁶⁶

[for the immortals are near amongst men and take notice of those who oppress others with crooked judgments, caring nothing for the gaze of the gods.]

'The eye of Zeus sees all' (*WD* 266); he is told by the maiden Dikē when anyone harms her (256-62). The phrase 'θεῶν ὄπιν οὐκ ἀλέγοντες' appears to be formulaic, and may be taken

²⁶¹ On the aegis (E.739-42), on the shields of Agamemnon (Λ.36-7) and Achilles (Σ.525-7), on the zone of Aphrodite (Ξ.214-8), in the simile of the Thracian armies (N.298), and in the extended allegorical (direct speech) descriptions of the Litai (I.504f.) and Atē (T.91f.).

²⁶² Chantraine 1968 s.v. 'ὄπις'; Pokorny 1959 s.v. 'okw-'.
²⁶³ Burkert 1981: 199 (cit. Allan 2006: 11).

²⁶⁴ ξ.82, the suitors eat Odysseus' sheep 'οὐκ ὄπιδα φρονέοντες ἐνὶ φρεσὶν', but the gods honour δίκη and αἴσιμα ἔργα: υ.215, the suitors again 'οὐδ' ὄπιδα τρομέουσι θεῶν': φ.28, Heracles killed Iphthitos his guest, 'οὐδὲ θεῶν ὄπιν ἠδέσασ' οὐδὲ τράπεζαν'.

²⁶⁵ *Theog.* 222, the Moirai 'ἀπὸ τῶ δώωσι κακὴν ὄπιν, ὅς τις ἀμάρτη'.

²⁶⁶ Cf. also *WD*.187, the men of the race of iron dishonour their parents 'οὐδὲ θεῶν ὄπιν εἰδότες': 706, 'εὖ δ' ὄπιν ἀθανάτων μακάρων πεφυλαγμένος εἶναι'.

as evidence of an element of the oral tradition that espouses the idea that the gods have a direct concern in human behaviour. As noted, the original meaning is ‘they have no care for the gods’ gaze’, but in Homer this sense of passive concern is to some extent displaced by the idea of active involvement; gaze becomes punishment. The simile itself describes a form this punishment might take.

The areas of behaviour for which the gods have an ‘ὄπις’ are δίκη itself (specifically its abuse, here and at *WD.251*²⁶⁷), and associated types of social propriety: ‘ξείνια’ (in the *Odyssey*) and parent-child relationships (*WD.187*). These are the same crimes that, as Hesiod warns his brother at *WD.327-34*, provoke the wrath of Zeus²⁶⁸. The formula generalises the ‘regard’ to that of the ‘gods’, but it is specifically the regard of Zeus, and this is reflected in the substance of the simile²⁶⁹.

Does the storm simile describe a similar concept of legal process to that found in the examples previously considered? We have a procedure whereby certain individuals possess the authority to settle disputes in a public forum. They do so by choosing appropriate precedents or customary laws as a basis for deciding in favour of one of the disputants. This procedure is itself ‘δίκη’. In its concrete elements, the storm simile trial is consistent. Its departure, as regards the *Iliad*, from its broader context, lies in the fact that the ‘δίκη’ described is idealised to an unprecedented degree, and in the interest that Zeus explicitly takes in the legal process, expressed descriptively in the storm itself, and ‘proverbially’ in the ‘θεῶν ὄπις’ formula. These features find their closest parallels in the *Works and Days*, and the next chapter will discuss why this might be the case. At this point however it is worth noting that the ‘gap’ between the storm simile and the *Iliad* as a whole is not as great

²⁶⁷ Cf also *WD.706f*. The list of actions that might provoke the ‘ὄπις’ of the immortals starts with behaviour associated with δίκη: do not wrong a friend, repay a wrong suffered and accept satisfaction when offered.

²⁶⁸ Ἴσον δ' ὅς θ' ἰκέτην ὅς τε ξεῖνον κακὸν ἔρξη,
 ὅς τε κασιγνήτοιο ἐοῦ ἀνὰ δέμνια βαίνη
 κρυπταδίδης εὐνής ἀλόχου, παρακαίρια ῥέζων,
 ὅς τέ τευ ἀφραδίδης ἀλιταίνεται ὄρφανὰ τέκνα,
 ὅς τε γονῆα γέροντα κακῶ ἐπὶ γήραος οὐδῶ
 νεικείη χαλεποῖσι καθαπτόμενος ἐπέεσσιν'
 τῷ δ' ἦ τοι Ζεὺς αὐτὸς ἀγαιέται, ἐς δὲ τελευτὴν
 ἔργων ἀντ' ἀδίκων χαλεπὴν ἐπέθηκεν ἀμοιβήν. (WD.327-34)

[Equally he that does wrong to suppliant or guest, and he that goes up to his brother's bed and in secret love with his wife commits immoderate acts; and he that in thoughtlessness sins against orphaned children; and he that quarrels with an elderly parent at the evil threshold of old age, and assails him with harsh words. With that man Zeus himself is angry, and in the end he lays upon him a harsh requital for his unrighteous deeds.]

²⁶⁹ See chapter 1, p.18f.

as it first appears. Δίκη is valorised in the *Iliad*. The examples of dispute settlement discussed in the previous chapter suggest that ‘settlement’ is conceptualised as part of an associative group that includes consideration, compassion and the rational acceptance of compromise. They also suggest that an important function of the narrative is to champion these concepts as an ‘antidote’ to excessive or impulsive behaviour where disputes arise. Reasoned compromise and acceptance of settlement are conducive to social harmony. If an individual pursues them, they, like the Litai, ‘τὸν δὲ μέγ’ ὤνησαν’. Impulse, intransigence and violence on the other hand are destructive; they lead to social discord, and the poem suggests, god-sent, personal ἄτη. The storm simile expresses a similar idea, contrasting δίκη with βίη. If it does so in a more explicit, abstract manner, that may in part be due to the fact that it is a simile: a condensed and iconographic narrative device.

4.2. The shield trial

The last, most enigmatic, and arguably the most significant passage to consider, is the ποινή dispute that figures on the shield of Achilles. This chapter cannot explore the full range of interpretations that this passage has attracted: writing 120 years ago, Leaf could say of it that ‘there are probably no twelve consecutive lines in the Homeric poems which have been obscured by so many explanations’²⁷⁰. As with the other passages considered in this chapter however, I will try to describe the type of process found here, and establish how far it conforms with, or differs from, the settlement procedures found elsewhere in the *Iliad*.

λαοὶ δ’ εἰν ἀγορῇ ἔσαν ἀθρόοι· ἔνθα δὲ νεῖκος
 ὠρώρει, δύο δ’ ἄνδρες ἐνεΐκεον εἵνεκα ποινῆς
 ἀνδρὸς ἀποφθιμένου· ὃ μὲν εὐχέτο πάντ’ ἀποδοῦναι
 δῆμῳ πιφαύσκων, ὃ δ’ ἀνάινετο μηδὲν ἐλέσθαι·
 ἄμφω δ’ ἰέσθην ἐπὶ ἴστορι πεῖραρ ἐλέσθαι.
 λαοὶ δ’ ἀμφοτέροισιν ἐπήπυον ἀμφὶς ἀρωγοί·

500

²⁷⁰ Leaf 1887: 122.

κῆρυκες δ' ἄρα λαὸν ἐρήτυον· οἳ δὲ γέροντες
 εἶατ' ἐπὶ ξεστοῖσι λίθοις ἱερῶ ἐνὶ κύκλῳ,
 σκῆπτρα δὲ κηρύκων ἐν χέρσ' ἔχον ἠεροφώνων· 505
 τοῖσιν ἔπειτ' ἥϊσσον, ἀμοιβηδὶς δὲ δίκάζον.
 κεῖτο δ' ἄρ' ἐν μέσσοισι δύω χρυσοῖο τάλαντα,
 τῶ δόμεν ὄς μετὰ τοῖσι δίκην ἰθύντατα εἴποι.

(Σ.497-508)²⁷¹

The people (λαοί) are gathered in the agora, where a 'νεῖκος' has arisen between two men, over the ποινή of a man who has been killed. This much is clear: the problem concerns the exact nature of their competing claims, which are stated in 499-500:

ὁ μὲν εὐχετο πάντ' ἀποδοῦναι...
 ...ὁ δ' ἀναίνετο μηδὲν ἐλέσθαι.

The first interpretation (a) is 'the one claimed to have paid everything; the other denied having received anything': Has the ποινή been paid or not? The second (b) is 'the one promised (or claimed the right) to pay everything; the other refused to accept anything': Is ποινή payable? The meaning of every verb here is debatable: What is εὐχετο? What is ἀναίνετο? Do the infinitives that follow them express past, present, or future action?

Arguments in favour of (a): 'the one claimed to have paid everything; the other denied having received anything'.

This is the meaning suggested by the Scholia²⁷². The infinitives here describe past action, as do the infinitives that follow εὐχομαι at Θ.254, Φ.501 and λ.261. 'Claim' is, according to Raubitschek, a better reading for εὐχόμενος than 'promise'²⁷³. Wolff argues that

²⁷¹ As several features of this passage require discussion, I will reserve a translation to the end of this section (below, p.111-2).

²⁷² ἔστι δὲ ἡ στάσις καταστοχαστική. τοῦ μὲν λέγοντος δεδωκέναι τὴν ποινὴν, τοῦ δὲ ἀρνούμενου εἰληφέναι (bT).

²⁷³ On the basis of its use in dedicatory epigrams. Raubitschek (cit. Edwards 1991: 214).

ἀποδιδόναι is always used for 'a debt already incurred', and that the issue must therefore be whether the existing debt has been paid or not²⁷⁴.

Grammatical considerations aside however, Lipsius (1890), Sidgwick (1894), Bonner (1911), Thür (1970), Havelock (1978), Gagarin (1986) and Cantarella (2001) have all favoured this reading, because they cannot reconcile the second interpretation with the attitude to πωινή and δίκη found elsewhere in the *Iliad*:

There is nothing to show that relatives could be forced to accept blood-money; neither is there any evidence of a growing popular sentiment in favour of settlement.²⁷⁵

This is the crux of the argument in favour of the first interpretation, and I will return to it.

Arguments in favour of (b): 'the one promised (or claimed the right) to pay everything; the other refused to accept anything'.

This reading seems to have been adopted by Eustathius²⁷⁶. Ανάινομαι with the infinitive invariably means 'to refuse (to do something)': only twice in Homer (I.916, ξ.19) does it mean 'to refuse an idea'; 'to deny'²⁷⁷. Edwards too argues (following Chantraine) that 'refuse' is the obvious meaning, and that 'deny would require 'οὐδέν' rather than 'μηδέν'²⁷⁸. Perpillon²⁷⁹ and Westbrook²⁸⁰ suggest that εὔχομαι need not mean 'promise' here to preserve this interpretation. Citing an instance of εὔχομαι in a linear B tablet²⁸¹, they argue that in a juridical context, εὔχομαι would mean 'to claim the right (to do something)'. Edwards adopts this reading, concluding that 'the straightforward interpretation of the two statements... would thus be: "The one man was claiming <to be

²⁷⁴ Wolff 1946: 44-46.

²⁷⁵ Bonner 1911: 26. Cf. Cantarella (2001: 480, n.17): '[interpretation (b)] would imply that an authority existed that was capable of forcing the relatives of the murdered person to accept the blood-price... such authority did not exist.'

²⁷⁶ Eustathius 4.235: 'Καὶ «ὃ μὲν», φησὶν, «ἠὔχετο πάντ' ἀποδοῦναι», ἤγουν χρεωστικῶς δοῦναι, χρέος γὰρ τι καὶ ἡ πωινή. ὁ δὲ ἀπαιτῶν τὴν πωινήν ἔλεγε μηδὲν ἐλέσθαι'.

²⁷⁷ Leaf 1887: 124.

²⁷⁸ Edwards 1991: 215.

²⁷⁹ Perpillon 1970: 537 (cit. Edwards 1991: 215).

²⁸⁰ Westbrook 1992: 73.

²⁸¹ Pylos tablet Ep.704: 'Erita the priestess holds *and claims the right* (e-u-ke-to-qe) to hold etonijo land on behalf of the god'.

able, to have a right> to pay everything (i.e. to be free of other penalties), the other refused to accept anything (i.e. any pecuniary recompense in place of the exile or death of the offender)."²⁸²

But grammatical studies are not conclusive in themselves here. As with interpretation (a), the strongest argument in favour of (b) is a negative one: that the alternative is *more* problematic. Leaf sums up the central objection to interpretation (a):

[interpretation (a)] is a bare question of fact; had a certain price been paid or not?.. Why such popular ferment, with the machinery of heralds and councillors and prizes for forensic eloquence, about a simple matter which could only be settled, if at all, by oaths and witnesses?²⁸³

The procedure described does not seem to fit the nature of the dispute suggested by interpretation (a). Again, this is a crucial point, and one I will return to.

Another argument in favour of (b) is made by Andersen²⁸⁴: it is thematically congruent. A dispute over the acceptability of *ποινή* parallels the issue at stake in the main *νεῖκος* of the poem: should Achilles accept Agamemnon's ransom or not? If (b) is adopted, the shield dispute would illustrate Aias' argument in favour of accepting compensation (l.632-4), anticipate the acceptance of *ἄποινα* in book 19, and look forward to Achilles' acceptance of the ransom for Hector in book 24. Thetis describes the last as *ἄνεκροῖο ἄποινα*: ransom for the corpse, but in some sense also compensation for the death of Patroclus²⁸⁵. This is an attractive, if not conclusive point.

Each of the two interpretations is thus problematic, and several attempts have been made to preserve either reading while solving its essential problem. I will return to this central issue however, after looking at the rest of the scene, in which a number of secondary issues arise.

²⁸² Edwards 1991: 215.

²⁸³ Leaf 1887: 123.

²⁸⁴ Andersen 1976:14-16.

²⁸⁵ Nagy 1997: 202-3.

The 'defendant'²⁸⁶ states his case 'δήμῳ πιφαύσκων' (Σ.500). This can be read as 'displaying' either his claim, or the ποινή itself, as Agamemnon does in book 19. Leaf argues for the latter, suggesting that 'πάντα' (499) is properly the object of πιφαύσκων. In either case, the presence of the 'δήμος' is significant. Müllner, citing the same Linear B tablet as Westbrook²⁸⁷, argues that the δῆμος is not simply a synonym for λαός, but a legal entity in its own right: a 'district' or 'community'. Nagy goes further and interprets it as 'a prototype of the polis'²⁸⁸. If this is the case, then the 'γέροντες' who judge the case could be seen as the representatives, or embodiment, of the δῆμος.

'ἄμφω δ' ἰέσθην ἐπὶ ἴστορι πεῖραρ ἐλέσθαι' (501): the disputants go to obtain a 'limit' from the 'ἴστωρ'. The ἴστωρ is interpreted as either 'witness' or 'judge'. Most scholars derive it from the same root as οἶδα²⁸⁹. The scholia favour 'witness' (ΣbT), although scholia A give 'μάρτυρι ἢ κριτῆ', as does Eustathius²⁹⁰. In favour of 'judge' is Aias' use of the term at Ψ.486, where he suggests that Agamemnon be 'arbiter' between himself and Idomeneus. It is also worth noting the description of Nestor in the *Odyssey* as one who 'περίοιδε δίκας ἡδὲ φρόνιν ἄλλων', who 'has knowledge' of δίκαι (δ.244).

Against 'judge' is the fact that, when the case does come to court, there are many 'elders'. Leaf interprets the ἴστωρ as the original arbiter that is sought²⁹¹. He argues that, as the issue is 'seen to be one of public importance', the ἴστωρ refers the case to the council of elders, as Athene refers Orestes' case to the Areopagus in the *Eumenides*. It is possible however that this is to read too much detail into the scene. Line 501 may simply be a formulaic way of saying that the parties sought arbitration: in the cases of dispute settlement seen so far, there was a single arbiter, whether the king or not. The formula is based upon this norm; it is the plurality of judges here that is descriptive of the scene on the shield.

²⁸⁶ Gagarin notes that the terms 'defendant' and 'plaintiff' may be inappropriate here (1986: 28). Whether they are or not is itself dependent on the nature of their dispute.

²⁸⁷ See note 68. Müllner 1976: 104 (cit. Nagy 1997: 200).

²⁸⁸ Nagy 1997: 200.

²⁸⁹ Eg. Chantraine (1974 s.v. 'οἶδα'), Pokorny (1959 s.v. 'μ(ε)id-2'). Edwards (1991: 216) cites Floyd (1990: 157-66) as proposing an alternative derivation, from 'ἴζειν'.

²⁹⁰ Eustathius 4.236: 'ἴστωρ δὲ ἢ ὁ μάρτυς παρὰ τὸ εἰδέναι, ἐφ' οὗ καὶ ὁ ἴδρις, καὶ παρὰ τὸ ἴσημι, τὸ γινώσκω, ἵνα δηλοῖ τὸν ἐπιστήμονα μάρτυρα. ἢ ὁ κριτὴς διὰ τὸ ἐπίστασθαι καὶ αὐτός.' In favour of 'witness' however, he cites Aelius Dionysius, who says that witnesses were called 'ἰδύοι' by Draco and Solon.

²⁹¹ Leaf 1887: 127.

‘Πεῖραρ’, ‘limit’, is usually taken to mean ‘judgment’: ‘an extension of the sense “boundary between lands” since property is the object of adjudication’²⁹². Westbrook suggests it refers to the arbiter’s role in setting a ‘limit’ to the ransom or vengeance imposed on the murderer²⁹³. It may however simply refer to settlement as the ‘resolution’ of the dispute, as ‘finis’ in the legal phrase ‘reipublicae interest ut sit finis litium’²⁹⁴.

This is the first scene then (497-501): a dispute in the agora, with claims made before the people. In the second scene (502-8), a formal court is convened²⁹⁵. The λαοί are again present, but have divided into factions that call out in support of either party. Heralds, officials of the agora²⁹⁶, keep the λαοί in order while the elders take their seats on the smoothed stones of the holy circle, holding the herald’s sceptres as symbols of judicial authority²⁹⁷. The circle is sacred either to Zeus, as the patron of δίκη²⁹⁸, or, as the T Scholia suggest, the goddess Themis. The two are however closely associated in this regard at β.68-9²⁹⁹.

The subjects of the verbs in line 506 have been debated: disputants or judges? Most editors have assumed ‘judges’³⁰⁰, following on from line 505, and this is the likelier reading: ‘δικάζειν’ in the active voice is ‘to judge’. ‘To state a claim’ is expressed by the middle voice in the Odyssey³⁰¹. Edwards accepts that the γέροντες are the subject of δικάζον, but takes the disputants to be the subject of ἤϊσσον: ‘they dashed to the [elders]’ rather than ‘they shot up with the [staves]’³⁰². This may give a clearer sense for ἤϊσσον, but involves a rather abrupt alternation of subjects. The entire description is very concise, but ‘ἀμοιβηδὶς’

²⁹² Bergren 1975: 43-5 (*cit.* Edwards 1991: 217).

²⁹³ Westbrook 1992: 75.

²⁹⁴ Cited by Leaf in a different context (1887: 125). Leaf does however draw a parallel with the ‘αἰτίας τέλος’ sought of Athena in the *Eumenides* (434) (1887: 129).

²⁹⁵ On the episodic nature of the shield narrative, Edwards 1991: 207, 217.

²⁹⁶ Cf. B.50, 97, 437; I.10; Λ.684.

²⁹⁷ See chapter 2, p.34-7 and n.106.

²⁹⁸ See chapter 1, p17f. Cf. B.205-6; I.98-9; Π.388, and the *Works and Days* (9 etc.).

²⁹⁹ ‘λίσσομαι ἡμὲν Ζητὸς Ὀλυμπίου ἠδὲ Θέμιστος, | ἢ τ’ ἀνδρῶν ἀγορὰς ἡμὲν λύει ἠδὲ καθίζει’. Cf. also *Theog.* 901.

³⁰⁰ E.g. Ameis-Hentze 1894: *ad loc.*; Leaf 1898 *ad loc.*

³⁰¹ See chapter 2, p.49 (on λ.545 and μ.440). Havelock (1978: 137) and Lattimore (1951) both take the subjects to be the disputants.

³⁰² Edwards 1991: 217.

suggests that the elders stand up in turn to propose a settlement, one of which will be judged 'the fairest'³⁰³.

The confusion over subject persists in the final two lines of the scene however: 'there lay in their midst two talents of gold, to give to him who amongst them should speak the straightest δίκη'. Again, the more common interpretation is that the talents are a prize for the most successful judge³⁰⁴, but several scholars argue that they are awarded to the successful litigant³⁰⁵. Analogies with different legal systems are interesting and informative, but ultimately inconclusive. Diamond describes a number of forms of 'forensic wager' which the two talents might represent³⁰⁶. In Rome for example, the wager, or 'sponsio' formed part of the procedure by oath known as the 'legis actio per sacramentum'. It was paid by either party to the court 'as remuneration for trouble and loss of time'³⁰⁷. A later form of wager however was the 'poena sponsionis et restipulationis', which was paid to the winner by the loser³⁰⁸. In Athens the 'παρακαταβολή' was a similar form of wager, which went to the court or the successful litigant depending on the nature of the case³⁰⁹. These analogies make it very likely that Homer's gold talents are a form of wager³¹⁰, but shed little light on whether they are to be paid to the court or the successful litigant. If the same

³⁰³ Gagarin compares this with Bohannan's description of settlement amongst the Tiv of West Africa: 'litigants... go from one elder of the community to another until they discover one who [can] penetrate the details of the case and emerge with [the] "correct" solution'. Bohannan 1957: 64-5 (cit. Gagarin 1986: 31.n.36).

³⁰⁴ 'ἄθλον δικαιοκρίσιος' (ΣβΤ); Eustathius: 'δικαστῆ τὰ δύο τοῦ χρυσοῦ τάλαντα δικαιοκρίσιος ἄθλον' (4.235); Leaf 1887: 128; Wolff 1946: 53; Gagarin 1986: 30.

³⁰⁵ Bonner 1911: 25; Havelock 1978: 137; Cantarella 2001: 479.

³⁰⁶ Diamond 1971: 394: 'In all litigation in ancient Rome, as in ancient India and modern Ethiopia, the wager... plays a prominent part, whatever the nature of the issue to be tried. Any stake may be made, but in Ethiopia it is usually either a 'mule' or a 'horse' or 'honey'. If, for example, a man stakes a 'mule' on the result and loses, he pays a judgment fee of twenty Maria Theresa dollars, and if he wins he receives ten dollars from the other side. No doubt a high stake impresses the court with the sincerity of the wagerer'.

³⁰⁷ Leaf 1887: 128, citing Maine 1861: 375-7. The custom itself was recorded on the XII Tables (Gaius *Institutes* 4.14).

³⁰⁸ The jurist Gaius notes the distinction: 'qui uictus erat, summam sacramenti prae stabat poenae nomine; eaque in publicum cedebat praedesque eo nomine praetor<i> dabantur, non ut nunc [2ndc.CE] sponsionis et restipulationis poena lucro cedit aduersarii, qui uicerit'. (*Institutes* 4.13)

³⁰⁹ Meier and Schömann 1824: 815 (cit. Bonner 1911: 30). Diamond describes a similar practice among the Ashanti: both parties pay the court, the loser as a fine, the winner as 'aseda' or thanksgiving money (1971: 391-3).

³¹⁰ Lipsius (1890: cit. Sidgwick 1894: 2) believed that the gold talents are the ποινή itself, on public display. It is difficult to see however why this might be awarded to the killer. In addition it has long been recognised that the amount is too small: two talents are the fourth prize in the horse race (ψ.269); of lesser value than an unfired cauldron. Ridgeway (1887: 136) argues that the Homeric talent was the equivalent of an ox: in 7th century Kent the normal 'wergeld' was 100 shillings, representing 100 cows. In 9th century Wessex it was graded according to the victim's status (200, 600 or 1200 shillings – rather less for a Welshman), but wherever it is stipulated in the earliest legal codes, it consists of 'an enormous quantity of cattle'. (Diamond 1971: 63).

process is referred to by Hesiod in his description of the 'δωροφάγοι βασιλῆες' (WD 38-9), there may be slight evidence for identifying the court as the beneficiary³¹¹.

Do the litigants 'speak a δίκη', or the elders? Both interpretations are possible. Cantarella argues that the verdict of the judges can only be 'yes' or 'no', and that there is therefore no basis for an award³¹². This argument is based however on her interpretation of the dispute itself as regarding whether ποινή has been paid or not. If the issue is whether ποινή *should* be paid or not, and the role of the judges is to determine whether there are any mitigating circumstances that might decide this³¹³, then there is scope for a number of 'judicial' proposals. It would then be possible to argue, with Allan, that 'the straightest judgement is that which best expresses the shared evaluative beliefs of the people'³¹⁴.

We return then to the nature of the dispute itself. Is the issue at stake whether the ποινή has been paid or not, or whether it is payable or not in this instance? The key arguments, as I noted above, are negative: that the alternative interpretation is untenable, and critics seem to be driven into one of the two camps by them. Once there however, attempts to rationalise that position proliferate.

The first interpretation described above (which I have labelled (a)) poses immediate logical problems. If one disputant claims that ποινή has been paid, and one insists that it has not, then one of them is lying and has nothing to gain by bringing the matter to arbitration. Why stake money on an outcome that is a simple matter of fact and can be established empirically? Why moreover is there any need for a panel of judges and (presumably) a range of judicial proposals? If the money has been paid, the 'plaintiff' can have no further recourse. If it has not, the 'defendant' must pay it or run.

Thür has suggested as a solution to the second problem that the judges are in fact proposing the most suitable method for establishing the truth³¹⁵. But even supposing that the litigants would pay for this rather elementary service, the first problem remains. Cantarella argues that the issue is whether *all* of the ποινή has been paid: presumably some

³¹¹ See chapter 3, p.84, n.230.

³¹² Cantarella 2001: 478.

³¹³ Westbrook 1992: 74.

³¹⁴ Allan 2006: 11.

³¹⁵ i.e. oath, ordeal or combat: the *judicia dei* of early Germanic law. See chapter 3, p.77, n.220. Thür 1970 (cit. Gagarin 1986: 28-9).

has, but the plaintiff wants more and the judges must decide the appropriate amount³¹⁶. This would be a perfect solution, were it not for the fact that the plaintiff has clearly said that he (has taken / will take) *nothing*. Gagarin aims for the same conclusion, but also addresses the problem of the plaintiff's intransigence. He suggests that 'accepting nothing' is an extreme 'bargaining position' that the victim's family formally adopt: in fact they will agree to an arbitrated amount³¹⁷. An alternative interpretation advanced by Gagarin is that there is a backdrop dispute among the victim's kin, some of whom want to accept *ποινή*, while others do not. The dispute presented on the shield thus arises between the killer, who *has* paid *ποινή* to the willing relatives, and the relative who does not want to accept it³¹⁸. This is ingenious, but arguing as Gagarin does that the shield description 'only hints at the full complexity of the case'³¹⁹ may, as Westbrook notes³²⁰, be questioned on methodological grounds. Why moreover would the poet choose such a complex case to illustrate life in a town at peace? As with the wedding procession, one would expect him to portray a stock event, one instantly familiar and intelligible to his audience.

Interpretation (a) can be supported by reading *ἴστωρ* as the 'witness' who saw the payment of *ποινή*, or by supposing that the judges debate the appropriate amount of *ποινή*, or by assuming that the talents are awarded to the successful litigant. The litigants' claims however, if taken at face value, remain problematic.

The second interpretation (b) means that the issue debated is more fundamental: is *ποινή* payable? And, by extension, can the plaintiff be coerced into accepting it against his will? The other instances of dispute settlement found in the Homeric poems suggest that he cannot be coerced. Arbitration appears to be voluntary wherever it is described, and in the Iliadic passages where murder is alluded to, the outcome seems inevitably to have been the flight of the killer. So far from *ποινή* being enforceable, it appears, *prima facie*, rarely to have been accepted. This interpretation thus involves the logical problem of why the

³¹⁶ Cantarella 2001: 478.

³¹⁷ Gagarin 1986: 33. Cf. Steinwenter (1948: 13, cit. Westbrook 1992: 68), who similarly argues that the dispute itself is a formality: one claims, the other refuses (interpretation (a)). Unlike Gagarin however, he maintains that the issue submitted to arbitration is whether *ποινή* should be paid or not (interpretation (b)).

³¹⁸ Gagarin 1981: 13-16; 1986: 32.

³¹⁹ Gagarin 1986: 33.

³²⁰ Westbrook 1992: 54.

plaintiff would agree to arbitration if the default position in response to murder is the revenge he presumably desires.

Bonner's conclusion³²¹ is the standard view: *ποινή* cannot be enforced, nor is there anything to show that popular opinion favoured settlement³²². The former statement is true; the latter however, as I have tried to show in the previous chapter, is not. Aias' words alone would be enough to disprove this (l.632-6³²³), but the poet of the *Iliad* repeatedly argues, through his characters and through his narrative, for the advantages of peaceful settlement³²⁴.

Can the coercion implicit in this interpretation of the shield trial be reconciled with the voluntary nature of dispute settlement found elsewhere in the *Iliad*? Westbrook argues that it can. Comparing a number of Anatolian, Syrian and Mesopotamian legal systems, he describes an 'ancient Near Eastern model', a 'common legal tradition' that spanned the Fertile Crescent in the Bronze Age. In this model the role of the court in a homicide case is twofold: to decide whether revenge or compensation is the appropriate sanction, and to establish the amount (or degree) of the sanction authorised³²⁵. The basis for the court's decision is whether there are any mitigating factors. The default result of murder is a choice made by the victim's kin between taking revenge or accepting compensation. If however the killer has been provoked, or acted unintentionally ('not knowingly'), then the kin can be compelled to accept compensation by the court³²⁶. The key feature of this system is that coercion is possible: the defendant can be summoned to court, and the court's decision can be imposed:

The courts of the ancient Near East were therefore more than merely arbiters of disputes voluntarily submitted to them. They formed a coercive framework.³²⁷

³²¹ Cited above, p.99.

³²² Bonner 1911: 26.

³²³ Noted by Leaf (1887: 124), who however believes that these lines form part of one of the 'latest portions of the poems'.

³²⁴ See chapter 3, p.69f.

³²⁵ Westbrook 1992: 55-8.

³²⁶ *Ibid.*: 61-64.

³²⁷ *Ibid.*: 57.

The ability of the courts to overrule a family's desire for revenge, or their free choice between revenge and compensation, is based upon the fact that revenge itself 'was conceived of as a *legal* remedy, not the mere expression of a personal vendetta'³²⁸. Both revenge and 'ποινή' are incorporated into the legal apparatus of the state. Westbrook believes that the same model was found in the Mycenaean kingdoms, and is detectable in the *Iliad*, most explicitly in the shield trial³²⁹. According to this theory, the shield trial's defendant argues that there were mitigating factors in the murder, while the plaintiff argues that there were none; that he need not accept ποινή. The court of elders performs the function described by the 'ancient Near Eastern model': it determines whether ransom or revenge is appropriate in this case, and fixes the amount³³⁰. If this coercive system appears incompatible with the many descriptions of exiled murderers found in the *Iliad*, that may, Westbrook argues, be because the shield trial describes homicide at a village level, while the *Iliad*'s exile narratives concern a privileged nobility which is better able to escape the consequences of the law³³¹. He also suggests that the exile motif is a literary device, employed by the poet to elaborate his characters' pasts, and thus occurs more frequently in the poem than it would have in reality. He concludes that there is nothing inconsistent in Homer's treatment of homicide: the same system is represented, but from different perspectives³³².

There are two points to contend here: is the 'ancient Near Eastern model' a valid model for Homer, and is Westbrook's argument that Homer's presentation of homicide is broadly consistent viable? The Mesopotamian court system was founded upon a high degree of political centralisation and control. Westbrook notes that the kind of society revealed by the Linear B tablets could support it³³³. Homer's society is not Mycenaean however³³⁴. There is no evidence of a complex bureaucracy here, or of the codification of laws that appears to be a parallel development of the legal model Westbrook describes³³⁵. Coercion in a king's

³²⁸ *Ibid.*: 58.

³²⁹ *Ibid.*: 65-76.

³³⁰ *Ibid.*: 73-6. As noted above, Westbrook interprets 'πέρας' as the 'limit' of sanction which the court determines.

³³¹ *Ibid.*: 69.

³³² *Ibid.*: 69.

³³³ *Ibid.*: 56, 66.

³³⁴ Snodgrass 1974: 114f; Austin & Vidal-Naquet 1977: 38; Finley 1978: 154f; Donlan 1982: 137f.

³³⁵ Westbrook 1992: 60.

court, or in outlying regions under a centralised government, is more likely than it is in the fractured political landscape that Homer describes. The prevalence of exile as the outcome of homicide may be symptomatic of just that kind of landscape: refuge in an independent polity was never far away³³⁶.

Cantarella also supports the idea that the shield trial shows evidence of the incorporation of revenge into a legal system (or the 'legalisation of revenge')³³⁷. She describes the avenger in the Homeric system as a 'social agent', rather than a private one who acts under the auspices of a judicial authority³³⁸. But Cantarella envisages this tendency to regulate revenge as a process that leads from unregulated vendetta to formal criminal law. Unlike Westbrook, Cantarella does not claim that, in Homer, the process is complete, with all that implies for the kind of political system that would be required to control such a developed legal system. She argues that in the shield trial we see a 'moment of transition, when a system of revenge gives way to a system of criminal law'³³⁹. The process of regulation is not however sufficiently advanced to allow for coercion: even in Draco's 7th century code, compensation *may* be paid for involuntary homicide, but the victim's family cannot be compelled to accept it. If only one member of the family refuses ποινή, the murderer must go into exile³⁴⁰. The evidence of Draco's law is, to my mind, decisive³⁴¹. The mechanisms for determining a killer's level of guilt and the appropriate sanction are present in the shield trial, but the political authority that sponsors them cannot exert sufficient control to force the victim's kin to accept compensation.

Is there any way to maintain interpretation (b) without supposing that ποινή can be enforced? Wolff argues that the default state of affairs, exile or revenge, is only temporarily suspended in the shield trial. The defendant has sought the community's protection, and this immunity will last until the court makes its decision. If it decides that revenge is

³³⁶ It seems unlikely furthermore that the 'δῆμος', or community, even if taken as an administrative unit with a 'legal personality' (Westbrook 1992: 66), could fulfil the role of a centralised government in formalising a legal system. As I argue below, the δῆμος might bring the force of public opinion to bear in support of a court's decision, but it does not exert the political control that is necessary to enforce such a decision.

³³⁷ Cantarella 2001: 476.

³³⁸ *Ibid*: 479.

³³⁹ *Ibid*: 476, 480.

³⁴⁰ *Ibid*: 477. Cf. Gagarin 1986: 87-8.

³⁴¹ It might also be held against Gagarin's theory that one of the victim's kin has refused ποινή (see above, p.105).

justified, the community will give up the defendant and he will, presumably, flee³⁴². It is possible however to go further and suggest that if the court decides that compensation is appropriate, the community will again give up the defendant and the plaintiff will be able to make his choice (since he cannot be coerced): public opinion however will exert pressure on him to accept the court's decision.

Both litigants' motives for seeking arbitration can be explained in this way without presupposing that the court's decision is enforceable. The plaintiff will be willing to take the matter before the court, rather than simply taking revenge, because he will remain free to pursue revenge in either case. If the court recommends *ποινή*, public opinion will exert pressure upon him to accept it, but he can override it. If the court decides in his favour he will have the community's approbation for taking revenge. The defendant can only gain: the chances of the *ποινή* being accepted are greatly increased if the judge's decision and public opinion support him. If the court rules in favour of the plaintiff, there is only a reversion to the default position, and he must flee.

Cantarella notes the role that may be played by public opinion, as opposed to formal coercion, in 'rule enforcement':

Homeric society... has a system for settling disputes, and even if there is no specific authority to enforce settlements this does not mean that the rules were not enforced. Comparative evidence shows that in these situations obedience to social rules is often determined by a force perhaps even more compelling than the action of a specific social authority. In early Greece, this force was the *dēmou phēmis*, the 'popular voice' whose importance is fundamental in the cultures that anthropologists have defined as shame cultures.³⁴³

It is possible to envisage a situation in the shield trial where the appropriateness of *ποινή* is disputed; where public opinion leads the disputants to seek a formal decision on the matter; where the community, represented by its *βουλή γερόντων*, decides according to the facts of the case (and presumably with reference to appropriate *θέμιστες*); where public opinion sanctions the decision that seems 'fairest', and where the force of public opinion

³⁴² Wolff 1946: 34-48 (cit. Gagarin 1986: 27-8).

³⁴³ Cantarella 2001: 475. Cf. Leaf 1887: 124-6. Leaf does however believe that public opinion amounts to coercion.

encourages or even compels the disputants to abide by that decision. This is substantially interpretation (b), but, I hope, a version of it that addresses the twin problems of the plaintiff's motive, and the degree of coercion available to the court. The court cannot impose its decision; it cannot take away the plaintiff's right to choose between revenge and *ποινή*. But the very nature of its decision-making process reveals the nature of the authority that supports it. It delivers a range of proposals, the most popular of which literally represents the *δήμου φῆμις*. The force of public opinion, rather than political control, draws the disputants to arbitration and validates the court's decision. It is compelling, but not binding.

As I have argued, public opinion does back settlement in the *Iliad*. It supports the peaceful resolution of disputes; disputes over honour, disputes over property, and disputes over murder. In this respect the shield trial is consistent. But the interpretation of the trial that I have suggested above does not accord with the other Homeric instances of dispute settlement in all its particulars. The process described here is more formal. Instead of a single arbiter, an *ἴστωρ*, we have a full *βουλή γερόντων*: the community itself is involved³⁴⁴. The process is moreover not entirely voluntary, as it appears to be elsewhere. The force of public opinion must be compelling enough to motivate the plaintiff to submit to arbitration.

The other instances of dispute settlement however do not concern homicide. This is not a squabble over a boundary (M.421), or a prize (Ψ.566f.), or a dispute over a crime such as theft (*HyHerm.*³⁴⁵): a homicide has the potential to have an impact on the community as a whole if revenge escalates into vendetta, and so the community involves itself³⁴⁶. The disputants seek arbitration (*ἄμφω δ' ἰέσθην ἐπὶ ἴστορι*), but a single *ἴστωρ* would not have the authority to make a case for settlement which could sway the plaintiff. Arbitration by a single *ἴστωρ* must be voluntary. The council of elders does have sufficient authority. It makes a formal decision that represents the judgment of the community at large, and it does this in a number of ways: as the body that symbolises the *δῆμος*, as the elders who

³⁴⁴ Cf. however the chariot race dispute, where Menelaos calls on his peers, the *Ἀργείων ἡγήτορες ἠδὲ μέδοντες* to adjudicate (Ψ.573-4).

³⁴⁵ Chapter 3, p.87f.

³⁴⁶ Cf. again Aias' speech (I.632-6). The man who accepts compensation for his brother's or child's murder is a paragon of 'consideration'. A brother's or child's murder is the worst wrong Aias can imagine.

'know' the appropriate θέμιστες of the community, and as a 'panel' whose most popular δίκη is publicly approved³⁴⁷. This is essentially the argument put forward by Leaf:

The matter is... one of public importance; it is taken up by the people at large, and referred to the council of γερόντες to be decided with all the formalities of a public debate.³⁴⁸

I would argue that the differences between the shield trial and the other instances of dispute settlement hinge upon the nature of the crime. Public opinion, the δήμου φῆμις, plays a more formal role here than elsewhere in the *Iliad*, but it is detectable elsewhere. Both Agamemnon and Menelaos feel the pressure of it (τ.85-6, ψ.610-1). It appears that it would moreover favour settlement, or ποινή, if possible. There remains however the question of whether this interpretation of the shield trial can be reconciled with the other instances of *homicide* in the *Iliad*. If public opinion favours settlement, and if public opinion is compelling, why is exile the invariable sanction for murder? The question of whether the shield ecphrasis describes a more developed, or simply different, social reaction to homicide will be considered in the next chapter. Before concluding this chapter however, it remains to provide a translation of the shield trial, based upon the interpretive arguments I have given above:

λαοὶ δ' εἰν ἀγορῇ ἔσαν ἀθρόοι· ἔνθα δὲ νεῖκος
ὠρώρει, δύο δ' ἄνδρες ἐνεΐκεον εἵνεκα ποινῆς
ἀνδρὸς ἀποφθιμένου· ὃ μὲν εὐχέτο πάντ' ἀποδοῦναι
δήμῳ πιφαύσκων, ὃ δ' ἀναίνετο μηδὲν ἐλέσθαι·
ἄμφω δ' ἰέσθην ἐπὶ ἴστορι πεῖραρ ἐλέσθαι.
λαοὶ δ' ἀμφοτέροισιν ἐπήπυον ἀμφὶς ἀρωγοί·
κήρυκες δ' ἄρα λαὸν ἐρήτυον· οἳ δὲ γέροντες
εἶατ' ἐπὶ ξεστοῖσι λίθοις ἱερῶ ἐνὶ κύκλῳ,
σκῆπτρα δὲ κηρύκων ἐν χέρσ' ἔχον ἠεροφώνων·
τοῖσιν ἔπειτ' ἦϊσσον, ἀμοιβηδὶς δὲ δίκάζον.

³⁴⁷ Cf. Leaf (1887: 127): 'The question of the punishment for homicide is seen to be one of public importance by the zeal with which the people have taken it up. The ἴστωρ therefore cannot determine it alone; he must call the council to his aid'. As I have noted above however, the ἴστωρ in this instance may simply be an expression rather than a conceptualised individual.

³⁴⁸ Leaf 1887: 126.

κεῖτο δ' ἄρ' ἐν μέσσοισι δύω χρυσοῖο τάλαντα,
τῷ δόμεν ὃς μετὰ τοῖσι δίκην ἰθύντατα εἶποι.

(Σ.497-508)

[The people were gathered in the agora. Then a dispute arose, and two men fought over the blood-price of a murdered man. One claimed the right to pay all, declaring it to the *demos*, but the other refused to take anything. Both went to the judge to get a settlement. The people around them shouted out in support of either party; but the heralds held the people back, and the elders sat upon polished stones in the holy circle. They held in their hands the air-voiced heralds' sceptres, and spoke judgment in turn. And there lay in the midst of them two talents of gold to give to whoever among them spoke a judgment most straightly.]

4.3. Conclusions

In all the instances discussed in this chapter and in chapter 3, dispute settlement is arbitrated in a public context, either by an individual whose opinion is deemed authoritative by virtue of his status, knowledge or age, or by a panel that represents the community as a whole. With the possible exception of the shield trial, submission to arbitration is voluntary, and the settlement proposed must be either mutually satisfactory, or supported by the community. Although voluntary, 'δίκη' is valorised: it is preferable to seek settlement than to support one's claim violently (βίη). The quality of a settlement is variable however and dependent on the arbiter that proposes it. An ideal δίκη is a 'straight' one; it aims at fairness and should be based upon a judicious reference to existing mores (θέμιστες). The process itself may however be corrupted for personal gain, and to support the concept of fair and objective δίκη, it is conceived of as sacred to Zeus: part of a group of associated elements of social propriety which require divine protection that includes the correct treatment of guests and suppliants and the veracity of oaths.

Chapter 5: Δίκη in narrative and ecphrasis

The final chapter of this thesis will consider how the picture of δίκη found in the two passages analysed in Chapter 4 may be reconciled with the *Iliad* as a whole. I will look at the degree to which the storm simile's and shield trial's respective conceptualisation and description of δίκη-type settlement is consistent with its treatment in the broader narrative, as well as the ways in which they differ. With reference to the storm simile, I will also look at how this passage relates to the Hesiodic poems, and consider arguments for and against labelling it an interpolation.

5.1.1. The storm simile

The storm simile does not describe a particular instance of dispute settlement. In two lines it presents a condensed picture of corruption: of the kind of process that is found in a town that Zeus has chosen to punish. The men of this town 'pick crooked precedents with violence in the agora and drive out fair process'. They attract divine punishment by exploiting their public function as arbitrators in their private interests. The terminology employed here has been discussed in chapters 2 and 4. While these terms are not unique in themselves within the *Iliad*, their use in this passage does raise questions about the relationship between the simile and the poem as a whole. Δίκη here is an abstract noun, describing an ideal form of dispute settlement. The θέμιστες are presented as having relative value: they may be 'crooked' or 'straight' and can be selected accordingly. The interest Zeus takes in dispute settlement is explicit here. Corrupt judges have no concern for the 'gaze of the gods', and that 'gaze' or 'anger' is graphically described in the flood that forms the substance of the simile. In all of these respects the presentation of δίκη in the storm simile appears to have far more in common with the *Works and Days* than it does with the narrative body of the *Iliad*. Several scholars have as a result argued that it is, all or in part, and interpolation, based upon, or influenced by two Hesiodic passages in particular:

WD 220f, and 251f. Von der Mühl and Munding³⁴⁹ take the theology of the simile to be irreconcilable with the *Iliad* as a whole.

To what extent is theodicy otherwise evident in the *Iliad*? Zeus is associated with oath taking (Γ.103f.), supplication (implicitly perhaps I.508f.) and, as Zeus Xeinius (N.625) with the treatment of guests. It is believed by the human characters that he will take action to punish infractions within these spheres of behaviour. Agamemnon is certain that Troy will fall as punishment for the broken truce of book 3 (Δ.163-8, 234-9), and Menelaos expresses confidence that Zeus will grant him vengeance for Paris' crime of host-abuse (N.620f.). But the Zeus characterised by the poet of the *Iliad* shows little inclination to fulfil this role. At Γ.302, the narrator explicitly states that Zeus will not act to uphold the truce-oath in the way that the human actors expect him to (ὥς ἔφαν, οὐδ' ἄρα πῶ σφιν ἐπεκράιναινε Κρονίων: 'so he said, but in no way would the son of Cronos bring it to pass for them'). In fact it is Zeus, incited by Hera, who sends Athene to make the Trojans break the truce (Δ.70-2). Even Menelaos wonders why the punishment he anticipates for the Trojans is not forthcoming:

Ζεῦ πάτερ ἧ τέ σέ φασι περὶ φρένας ἔμμεναι ἄλλων
ἀνδρῶν ἠδὲ θεῶν· σέο δ' ἐκ τάδε πάντα πέλονται·
οἷον δὴ ἀνδρεσσι χαρίζεται ὑβριστῆσι

(N.631-3)

[Father Zeus, they say you surpass all others in wisdom, men and gods. But all this is accomplished by you. It is you who shows favour to men of violence.]

Winterbottom describes Menelaos' speech as 'a picture of men attributing to gods the enforcement of laws of which those gods are shown to be quite unaware'³⁵⁰. Adkins too notes that, contrary to the theological beliefs of the human characters, the gods of the *Iliad* are, in their actions and stated motives, 'far from just'³⁵¹. With particular reference to Zeus, Dodds finds 'no indication in the narrative of the *Iliad* that Zeus is concerned with justice as

³⁴⁹ Von der Mühl 1952: 247; Munding 1961: 161f, 1962: 60f.

³⁵⁰ Winterbottom 1989: 33.

³⁵¹ Adkins 1960: 62.

such³⁵². Yet the storm simile is an important exception to this rule, and if we are to avoid what Lloyd-Jones criticises as ‘the convenient explanation’ of interpolation³⁵³, favoured by von der Mühl and Munding, the apparent theological discrepancy must either be refuted or explained.

The charge of interpolation is problematic in itself. As Kirk notes in his analysis of linguistic and structural anomalies in the *Iliad* and the *Odyssey*, many apparent inconsistencies are due ‘not to post-Homeric activity... but to the complexity of the material used by each main composer and to their inevitable difficulties in assembling different elements of their repertory into unified epics of huge length and scope³⁵⁴. The oral method of composition admits a degree of inconsistency due to both the amalgamation of variant traditions and the fusion of traditional material with innovatory elements introduced by a given poet. Similes, particularly extended similes are a case in point. Shipp established that these contain a substantial number of ‘late’ linguistic forms³⁵⁵, and Lee has interpreted this finding as evidence that the extended similes of the *Iliad* are later additions to the poem³⁵⁶. As Kirk argues however, ‘late’ does not mean ‘post-Homeric’, and the fact that many of the extended similes perform a particular narrative function³⁵⁷ suggests that such ‘anomalies’ should not be interpreted as evidence of interpolation so much as innovation on the part of the main poet³⁵⁸. Moulton makes the further point that ‘it would be a mistake by definition to require, as many have, the homogenous integration of the similes of the *Iliad*. For they were plainly meant to stand out from the rest of the narrative to some extent³⁵⁹. This argument is true of cultural references as well as linguistic features. If we find, particularly in the extended similes, references to daily life which appear to differ sociologically and materially from the world of the narrative³⁶⁰, it may be because the similes are employed by the poet to enliven or illustrate more traditional narrative elements with contemporary references that speak directly to his audience.

³⁵² Dodds 1951: 32.

³⁵³ Lloyd-Jones 1971: 6.

³⁵⁴ Kirk 1962: 251.

³⁵⁵ Shipp 1953.

³⁵⁶ Lee 1964: 2-3.

³⁵⁷ For example, see Moulton on the storm simile itself (1977: 33-38).

³⁵⁸ Kirk 1962: 202. See also Moulton (1974) and Scott (1974).

³⁵⁹ Moulton 1974: 382.

³⁶⁰ Kirk: 1962: 188.

A similar function may be served by speeches. Griffin cites Krarup's observation that the *Iliad's* speeches contain many more abstract nouns than the narrative³⁶¹, and himself argues that the speeches show a greater incidence of ethical terminology, concluding that, in both general character and verbal detail, the speeches show more evidence of innovation than their narrative context³⁶². I will return to Griffin's argument with specific reference to the storm simile. The point I want to make here is that atypical diction and atypical cultural references, particularly when they occur in direct speech, similes, and other ecphrases such as descriptions and anaphora, need not be taken as evidence of post-Homeric interpolation. The theory of oral composition provides for the possibility that tradition and innovation, or variant traditions, may be combined at any point in the compositional process³⁶³. It is moreover likely that the seams between such elements should be visible where narrative forms with divergent purposes, such as ecphrasis and narrative proper, meet. To return to the storm simile of π.384f, I will now look at specific arguments against interpolation, considering diction, theology and the Hesiodic connection in turn.

5.1.2. Diction and ethics

Δίκη is employed as an abstract noun, which may be translated 'justice', and this is unprecedented in the *Iliad*. As Gagarin notes however, the concrete meaning 'legal process', 'peaceful arbitration', is present³⁶⁴. Δίκη is here, as I have argued in chapters 1, 2 and 4, 'justice' symbolised by the idealised conception of legal process. In this respect the use of the word at τ.180 is a close parallel: Odysseus encourages Achilles to allow Agamemnon to provide him with a feast ἵνα μή τι δίκης ἐπιδευῆς ἔχησθα: 'so that you will have no lack of δίκη'. The primary sense of the word here is 'settlement', but it may again be translated 'justice' in the sense of 'fair' or 'proper settlement'. The remaining instances of the term δίκη in the *Iliad* are properly concrete ('judgment' π. 542, σ.508; 'claim' ψ.542); they are also few in number. The extent to which 'δίκη' in the storm simile is personified is

³⁶¹ Krarup 1948: 1-17 (cit. Griffin 1986: 36).

³⁶² Griffin 1986: 37-40.

³⁶³ Lord 1960; Parry 1971. See also Kirk 1962: 80-83; Fowler 2004: 220-232.

³⁶⁴ Gagarin 1973: 86.

unclear³⁶⁵. The similarity between this passage and *Works and Days* 220f, where Dikē is explicitly personified is not conclusive. Hesiod may have developed the nascent personification found here. As I noted in the previous chapter however, the personification of abstract concepts is not unusual in the *Iliad*, and frequently occurs in simile or descriptive ecphrasis³⁶⁶. The use of the word 'δίκη' in the storm simile is unusual then in the context of the *Iliad* as a whole, but it is not unique. As noted above moreover, the fact that it occurs in an extended simile, of a type which frequently contains linguistic and cultural anomalies, may account for this. In this regard, Griffin's observations concerning direct speech form an interesting corollary. Griffin argues that the poet of the *Iliad* and the *Odyssey* reserves ethical terminology and 'contemporary linguistic modes' for the speeches; that direct speech was considered to be a more appropriate context for both innovation and ethical comment than the narrative sections of the poem³⁶⁷. 'Δίκη', for example, and its cognates appear 37 times in speech in the two epics, and five times in narrative. The ratio for 'θέμις' is 33: 4. He concludes that speeches are employed to give the audience prompts to the moral interpretation of narrated action, and that this function may be shared by ecphrasis:

The narrator depicts events in a way which leaves the understanding of their moral significance to the audience – an audience whose presence is never acknowledged. That significance is brought out partly by the sequence of events themselves, and partly by such devices as the similes: but above all it emerges from direct speech... That is where the crucial moral terms appear³⁶⁸.

The abstract use of δίκη in the storm simile, and the moral tone of the passage in general are accountable if Griffin's argument for the narrative function of direct speech is extended to simile.

As regards the ethical system that underlies the idealisation of δίκη, I have argued in chapter 3 that, while formal δίκη-type settlement is not described in the narrative portion of the *Iliad*, elements of it are: in the central *neikos* between Achilles and Agamemnon, and in the chariot race disputes. Analysis of these disputes and the processes of settlement

³⁶⁵ Janko 1992: 366.

³⁶⁶ Chapter 4, p.94-5.

³⁶⁷ Griffin 1986: 37-39.

³⁶⁸ Griffin 1986: 39.

associated with them suggests that peaceful settlement, formal or not, is valorised in the *Iliad*. It forms part of an associative group of civic virtues that includes consideration, reasoned compromise and compassion: virtues that are described in direct speech by such advocates of settlement as Nestor in book 1 and the ambassadors of book 9. Anger (θύμος), impulse (ἄτη) and violence (βίη) are the antitheses of these virtues³⁶⁹.

5.1.3. Theology

The theology of the storm simile likewise has parallels in the *Iliad*, but ones that also occur in direct speech or ecphrasis. Zeus does not play a theodical role in the narrative portions of the poem, but the direct speech prayers of Agamemnon referred to above show that it is at least a feature of the human characters' belief system. Griffin also notes a number of instances where the will or emotions of the gods manifest as natural portents³⁷⁰. Zeus' grief for Sarpedon provokes tears of blood that fall to the ground as rain (π.459). When he plans a battle, Zeus thunders all night (H.478-9). In several similes the force of nature that forms the basis of the comparison is described as a portent. At M.278 Zeus sends a snow storm, 'πιφασκόμενος τὰ ἄ κῆλα': 'showing forth what shafts he has'. The thunderbolt is wielded by Zeus as a 'σῆμα βροτοῖσιν' (N.244), as is the rainbow ('τέρας' P.548). A close parallel to the storm simile, as Moulton notes³⁷¹, is found at Φ.522-4, in which Achilles inflicts destruction on the Trojans,

ὡς δ' ὅτε καπνὸς ἰὼν εἰς οὐρανὸν εὐρὺν ἵκηται
ἄστεος αἰθομένοιο, θεῶν δέ ἐ μῆνις ἀνήκε,
πᾶσι δ' ἔθηκε πόνον, πολλοῖσι δὲ κήδε' ἐφῆκεν

Φ.522-4

[As when smoke goes up into the wide sky from a burning city; the anger of the gods sends it up, and it sets toil on all and sorrows on many.]

³⁶⁹ Chapter 3, p.72. Cf. I.256-7, 502f.

³⁷⁰ Griffin 1980: 41.

³⁷¹ Moulton 1977: 37.

Lloyd-Jones goes further and argues that the 'justice of Zeus' is evident in the main narrative of the poem, in the fact that the destruction of Troy forms part of Zeus' plan³⁷²:

In decreeing Troy's eventual destruction [Zeus] is fulfilling not only the wishes of the pro-Achaean gods but also the demands of justice.³⁷³

Allan develops this argument, taking the elaboration of the oath-breaking in book 4 as evidence of the poet's desire to illustrate a 'pattern of reciprocal justice'³⁷⁴. He explains the apparent inconsistency of Zeus' 'ironic' involvement in the breaking of the oath: besides his personal debt to Thetis,

Zeus has a further reason to encourage the breaking of the truce: the wider narrative indicates that he approves of Troy's fall, both because of the Trojans' errors and because it is part of the larger cosmic order which is his to enforce.³⁷⁵

I do not find this argument convincing. If the poet of the *Iliad* had wished to present the destruction of Troy as an instance of divine punishment, Zeus' stated motives would surely express this. Where his plan is laid out in most detail however, it is his promise to Thetis which he identifies as motive (O.59-77). As far as the destruction of Troy in particular is concerned, the τιμη-based desires of Hera and Athene appear to force his decision: Zeus himself would prefer peace (Δ.5-72):

ἡμεῖς δὲ φραζώμεθ' ὅπως ἔσται τάδε ἔργα,
ἢ ῥ' αὖτις πόλεμόν τε κακὸν καὶ φύλοπιν αἰνήν
ὄρσομεν, ἢ φιλότητα μετ' ἀμφοτέροισι βάλωμεν.
εἰ δ' αὖ πως τόδε πᾶσι φίλον καὶ ἡδὺ γένοιτο,
ἦτοι μὲν οἰκέοιτο πόλις Πριάμοιο ἄνακτος,
αὖτις δ' Ἀργεῖην Ἑλένην Μενέλαος ἄγοιτο.

(Δ.14-19)

³⁷² O.59f.

³⁷³ Lloyd-Jones 1971:13.

³⁷⁴ Allan 2006: 4.

³⁷⁵ *Ibid*: 4.

[Let us take thought of how these matters will be: whether we will again stir up ill war and the terrible battle din, or cast friendship among them. If somehow this could be dear and sweet to all, then the city of king Priam might still be dwelt in, and Menelaos might once more take Argive Helen.]

Allan explains this passage as an attempt to annoy Hera and Athene into breaking the truce, as a back-handed way of ensuring Troy's destruction³⁷⁶. I do not think that such clearly stated motives should be dismissed however. The divine apparatus of the *Iliad* is characterised with human emotions and motives, Zeus included, and this thorough anthropomorphisation is integral to the narrative role it plays. The gods perform a number of functions. They accentuate the tragic or dramatic tenor of a given episode by casting the action of the human characters in the light of the broader, often capricious, reality that shapes it. They relieve the war narrative with humorous interludes. They provide a cue to audience response by their commentary on, and involvement in, human affairs³⁷⁷. All these effects depend on the gods acting, *mutatis mutandis*, as humans do, motivated above all by pride, anger, love and loyalty. Theology in the narrative plays a subordinate role to poetic function. If the gods are an additional narrative layer that has developed around the human tradition of the war in order to explain events in that tradition and to provide the audience with cues and reinforcements to their emotional response, they cannot be treated as independent agents whose motives may be theorised. Unless Zeus is portrayed as explicitly demanding the destruction of Troy for the sins of the Trojans, we must divorce the events of the poem from notions of theodicy, as the poet intends us to³⁷⁸. Homer's Zeus nowhere shows himself bound to, or willing to punish the Trojans for Menelaos' sake. The poet appears to be more concerned to exploit the dramatic effect of a Zeus whose motives are equivocal and humane – who does pity the Trojans and is even-handed in his sympathies – than to portray him as a stern champion of human justice.

³⁷⁶ *Ibid.*: 6.

³⁷⁷ Griffin 1978: 1-22, Janko 1992: 2.

³⁷⁸ Cf. van Erp Taalman Kip 2000: 385. 'I am convinced that the desire to justify the [amoral] ways of the Homeric gods has not died out. Otherwise I cannot explain why a number of scholars, in discussing the gods and their reasons for dealing with men as they do, consistently ignore the narrator, disregarding what he tells us and filling in what he does not'.

I do not think that the disjunction between the theology of the storm simile and that of the main narrative can be dismissed. The former describes the Zeus of cult, of popular beliefs such as those expressed by Agamemnon and Menelaos; the latter a Zeus that is the organic creation of a poetic tradition³⁷⁹. That is not to say however, that the storm simile should be labelled an interpolation, as von der Mühl and Munding contend. The Zeus of the storm simile is evident in the parallel ‘portent’ passages cited, as well as in the direct speech assertions of the human characters concerning oath-breaking and abuse of the guest-host relationship. He is also recognisable in the Zeus of Phoinix’ *Litai exemplum*. It may be possible then to interpret this theological disjunction in the light of the differences between speech or ecphrasis and the main narrative that seem to account for the abstract use of δίκη. The following section will explore the relationship between the storm simile and Hesiod, and attempt to draw some conclusions about those differences.

5.1.4. The storm simile and Hesiod

Leaf athetised π.387-8 as a couplet simply taken from *Works and Days* 221-4 and 250-1³⁸⁰. The clear affinity of sentiment and above all phraseology (‘σκολιῆς δὲ δίκης κρίνωσι θέμιστας’, 221; ‘ἐξελάσωσι’, 224; ‘θεῶν ὄπιν οὐκ ἀλέγοντες’, 251) is perhaps a more positive argument for interpolation than the negative one of inconsistent theology or ethical tone. π.387-8 do appear to be a condensed version of Hesiod’s lines. Homer’s βίη and ἀγορή are implicit in Hesiod’s description of Dikē manhandled, ‘dragged’ into the place of judgment. The difficult phrase ‘σκολιάς κρίνωσι θέμιστας’ (π.387) seems to make more sense as Hesiod’s ‘σκολιῆς δὲ δίκης κρίνωσι θέμιστας’. As noted in chapter 4 (p.92), unless we give Homer’s ‘σκολιάς’ an adverbial force, it is easier to read ‘θέμιστας’ as ‘judgments’ than ‘precedents’, as Leaf, Latte and the A Scholia do. If ‘θέμιστας’ is used here as a gloss on ‘δίκας’, it would suggest that Hesiod’s phrase has priority. It would suggest that, *metri gratia*, the poet of the *Iliad*, or the interpolator of these lines, has reworked a model that accurately rendered ‘judgments’ as ‘δίκας’, at a time when ‘θέμις’ and ‘δίκη’ were

³⁷⁹ Redfield 1975: 133: ‘The Homeric theology is a poet’s theology’.

³⁸⁰ Leaf 1898: *ad loc.* The two passages in question are cited in chapter 4, p.93 (n.253), and p.95.

approaching synonymy as labels for 'what is right': i.e. at a relatively late date. Finally, 'ἐκ-έλάσσωσι' and the phrase 'θεῶν ὄπιν οὐκ ἀλέγοντες' find their exact parallels in *WD*. 224 and 251 respectively.

The use of 'θέμιστας' as 'judgments' might qualify as an 'anti-traditional' feature, of the kind that Kirk deems necessary to justify labelling a passage as an interpolation³⁸¹. There is however one instance in Hesiod in which θέμιστες are associated with the relativising ἴθυσ/σκολιός terminology. At *WD*.9 Zeus is asked 'δίκη δ' ἴθυνε θέμιστας': 'straighten the θέμιστες with δίκη', or 'righteously'. As noted in chapter 2 (p.40), Gagarin reads 'θέμιστας' here as 'decisions', used instead of 'δίκας' to avoid repetition³⁸². It is possible however to read ἴθυνε θέμιστας' here as 'clarify the customs / precedents'. If this is the case, then the storm simile's description of 'precedent' as 'straight' or 'crooked' has at least a parallel in Hesiod: it need not be a post-*Hesiodic* development. This does not resolve the problem of the affinity between the storm simile passage and Hesiod. Θέμιστες are 'precedents' elsewhere in Homer³⁸³, but only in Hesiod are they 'picked' (*WD*.221; cf. 'διακρίνοντα θέμιστας', *Theog*.84), and only in Hesiod are they qualified as 'σκολιός' or 'ἴθυσ'.

The alternative to concluding that the storm simile is modelled on the *Works and Days* is to posit either a contemporary ideology of δίκη, or a poetic tradition, from which both Homer and Hesiod are drawing: one that associates the ideology of dispute settlement with the terminology they share: 'θέμιστες', 'δίκαι', 'βίη' or 'ὑβρις', 'ἴθυσ', 'σκολιός' and the 'θεῶν ὄπις'. Dodds argues that both Hesiod and the storm simile represent a contemporary conception of dispute settlement, one that Hesiod employs as the basis for his excursus on justice. The storm simile constitutes

a reflex of later conditions, which, by an inadvertence common in Homer, has been allowed to slip into a simile.³⁸⁴

³⁸¹ Kirk 1962: 204: 'anti-traditional... implying not merely innovation or modernisation but the definite maltreatment of traditional language – in particular of the language of well-established and frequent verbal formulas'.

³⁸² Gagarin 1973: 91, n.53.

³⁸³ See chapter 2, p.34f.

³⁸⁴ Dodds 1951: 52, n.16.

Similarly, and a little more dramatically, Nilsson describes the simile as 'a cry from the deep'³⁸⁵. Lesky considers it to be 'one of those similes which bring Homer's own world into his poetry'³⁸⁶. The abstraction, and perhaps personification of δίκη, and the associated terminology grouped above would all form elements of this shared ideology. Yamagata draws the same conclusion:

We may suspect then, that most of the so-called 'Hesiodic' elements in Homer are in fact a reflection of the morality of common people in Homer's day, or possibly of his own moral opinions.³⁸⁷

If this is the case, then the argument that innovation is more clearly detectable in speech and ecphrasis than in the narrative portions of the *Iliad* may be employed to account for the similarity between the storm simile and the *Works and Days*, and, *a fortiori*, for the simile's apparently anomalous treatment of δίκη and theodicy:

It is more practical to assume that the poet does present the contemporary moral climate at times along with contemporary landscapes and institutions through the window of similes, speeches and ecphrases.³⁸⁸

Attribution to a 'contemporary moral climate' may account for the ideology of δίκη found in the storm simile, as well as its theology. Insofar as that theology is also in evidence in the prayers of Agamemnon and Menelaos, and direct speech is another innovatory narrative element (Griffin 1986), it seems probable that Dodds' 'reflex' theory is correct. In speech, simile and ecphrasis a window is opened up into the theological beliefs of the poet's audience.

The terminology shared by the storm simile and the *Works and Days* may however suggest a more formal relationship. This may be based on a common poetic tradition whose focus is didactic or paraenetic rather than epic. Such a tradition may have focussed on civic virtues, the ideology of leadership and justice, and the theodical involvement of the gods in

³⁸⁵ Nilsson 1955: 421.

³⁸⁶ Lesky 1966a: 69.

³⁸⁷ Yamagata 1994: 89.

³⁸⁸ *Ibid.*: 90.

civic institutions. It is possible that Hesiod draws directly from this tradition in the *Works and Days*, as well as in the 'βασιλεύς' episode of the *Theogony* (84f.), and that Homer references it in the storm simile. If this were the case, the 'reflex' need not be to contemporary modes of thought; it may be to a parallel poetic tradition whose theology is grounded in the moral agency of the gods rather than the dramatic exigencies of epic³⁸⁹. In Greek literature, Hesiod is the earliest surviving example of such a genre, but it need not be assumed that he is its originator. West describes several Near Eastern traditions of wisdom literature which share a number of features with Hesiod: 'the presentation of moral-didactic material within a framework of a tale of injustice', devastation of nature as a consequence of injustice, and the concept of divine justice³⁹⁰. In the Egyptian text *The Instruction of Ptahhotep*, dated by Lichtheim to the 6th dynasty, c.2200 BCE³⁹¹, there is an interesting echo of the phraseology employed in the storm simile and in the *Works and Days*:

If you are a magistrate of standing,
Commissioned to satisfy the many,
Hew a straight line.
When you speak don't lean to one side,
Beware lest one complain:
"Judges, he distorts the matter!"
And turn your deeds into a judgment (of you).

(*The Instruction of Ptahhotep* c.28)³⁹²

The straight/crooked imagery applied to justice is also found in the Middle Kingdom narrative *The Eloquent Peasant*:

Is it not wrong, a balance that tilts,
A plummet that strays,
The straight becoming crooked?
Lo, justice flees from you,

³⁸⁹ Cf. West 1978: 7, n.2. on divine justice: 'Those who claim to find a development in this respect between Homer and Hesiod are, I think, misinterpreting a generic difference between narrative epic and wisdom'.

³⁹⁰ West 1978: 3-15.

³⁹¹ Lichtheim 1973: 62.

³⁹² *Ibid.*: 71.

Expelled from its seat!
The magistrates do wrong,
Right-dealing is bent sideways,
The judges snatch what has been stolen.

(*The Eloquent Peasant* l.95f.)³⁹³

Here we have not only the straight/crooked imagery, but corrupt judges driving justice from its seat. Similar imagery, as well as a parallel for the 'θεῶν ὄπις', occurs in the Hebrew *Book of Isaiah*:

So justice is driven back, and righteousness stands at a distance; truth has stumbled in the streets, honesty cannot enter. Truth is nowhere to be found, and whoever shuns evil becomes a prey. The Lord looked and was displeased that there was no justice.

(*Isaiah* 59: 14-15 NIV)³⁹⁴

The relationship between the Near Eastern and Greek wisdom genres is unclear. As West notes, similarities may be 'evidence not so much of interaction between one literature and another as of basic similarity between ancient peoples in their moral outlook and to some extent in their forms of expression'³⁹⁵. West does however argue that Mycenaean 'gnomic tradition', perhaps influenced by Near Eastern models, survived in Ionia, adducing as evidence Hesiod's use of the Ionian month-name Lenaion. West also cites in support of this theory the similarity between Hesiod's rhetorical technique and that of Homer's speeches, and the use of gnomes, or αἶνοι, in the *Iliad*'s *exempla* and ecphrases³⁹⁶. If there were an existing Greek tradition of didactic or paraenetic wisdom poetry, it is likely that the poet of the *Iliad* was not only familiar with it, but would be able to incorporate elements of it into

³⁹³ *Ibid*:173. Cf. also the Old Testament *Book of Micah*: the rulers of Israel are said to 'detest justice and make crooked all that is straight' (3:9 NIV).

³⁹⁴ West (1997: 320-1) notes the affinity of this passage with *WD*. 220f.

³⁹⁵ West 1978: 27.

³⁹⁶ *Ibid*: 27.

his epic poem at appropriate points. These would include direct speech, similes and other descriptive ecphrases³⁹⁷.

The theology of the storm simile may be a reflection of realistic, perhaps contemporary beliefs concerning Zeus' involvement in human justice. Similes do frequently offer the poem's audience a window on the 'real world' of people engaged in day to day activities. As Yamagata argues, 'if the poet is freer in introducing objects and people of his own time into similes and descriptions, then why not contemporary religious beliefs?'³⁹⁸. The purpose of similes is to illustrate the narrative, and the poet does this not only by providing visual or auditory cues that speak directly to his audience, as in the nature similes, but also by describing actions or cultural practices which his audience can immediately relate to³⁹⁹. This function is not incompatible with the theory that we have in the storm simile a reference to a parallel, didactic poetic tradition, as the moral tone, poetic diction and associated terminology suggest. Such a tradition may also be familiar to the audience: a stock feature of their conception of the way Zeus interacts with men, that is paratactically attached to the main simile's description of the destructive flood. Such floods are sent by Zeus: Zeus sends them when he is enraged: the corruption of men is a familiar cause of that rage. If this is so, π.387-8 may be considered not as unique, but as formulaic in the context of another tradition, employing stock terminology as a shorthand cues for the concept of theodicy that find immediate resonance with the poet's audience, in the same way as the nature imagery and cultural references of the other similes.

To conclude: The unusual features of the storm simile, and its close affinity with Hesiod's *Works and Days* may be the result of a 'reflex' to contemporary attitudes to justice and theodicy. They may also be the result of a reference within a heroic epic to a parallel poetic tradition in which the focus is ethical or didactic, and the description of δίκη and treatment of the gods differ accordingly. These two arguments are not exclusive: the contemporary concept and ideology of δίκη may well have been shaped by such a tradition. Whether, as

³⁹⁷ Cf. the description of Cheiron as 'δικαιότατος Κενταύρων' (Λ.832): a possible reference to Cheiron's association with δίκη in maxims such as those later collected in the paraenetic poem 'The Precepts of Cheiron'. See above, chapter 2, p.54.

³⁹⁸ Yamagata 1994: 89.

³⁹⁹ Edwards 1991: 35: 'The purpose of a simile is to encourage the listener's imagination by likening something in the narrative of the heroic past to something which is directly within his own experience'. *Ibid.*: 39: 'The Homeric simile for a moment unites the narrator and audience in *their* world, not that of the heroes'.

Dodds contends, the reference to that ideology is the result of ‘an inadvertence’, or whether it has, like the speeches of Agamemnon and Menelaos, and the *Litai exemplum*, a deliberate thematic resonance within the broader narrative, is a question that I will address after returning to the second passage in question: the shield trial.

5.2.1. The shield trial

The relationship between the description and forms of δίκη-type settlement found in the shield trial of *Iliad XVIII*, and in the narrative body of the poem, poses different questions. Theology is not an issue here, nor is there an evidently close affinity with Hesiod or any other archaic author. Interpolation has never been suggested: the shield trial is an integral part of the larger shield ecphrasis, and the shield is an integral part of the *Iliad* as we possess it⁴⁰⁰. There are differences however, between the procedure of settlement presented on the shield, and the kinds of settlement we find in the narrative. The shield describes a formal, structured process. We are shown sceptre-wielding judges, heralds who regulate the action, the ‘polished stone benches’ of the place of judgment. The plurality of judges deliver a range of ‘δίκαι’, which are themselves evaluated before the ‘straightest’ is chosen and applied. We also have a vivid picture of the involvement of the community, who not only take sides and supervise the process, but also arguably play the role of jury, determining which solution is fairest. Echoes of this process are evident in the narrative. Arbitration is attempted by Nestor in Achilles’ and Agamemnon’s dispute (A.247f.). Compensation is offered as a solution to the conflict (I.119f.). The eventual solution in book 19 is a formal affair, conducted in assembly with heralds administering the oath and sacrifice⁴⁰¹. The dispute of Menelaos and Antilochos displays more formal features. Menelaos publicly appeals to his peers for arbitration. A herald hands him the sceptre and quietens the crowd when he makes his claim. A formal ‘δίκη’ is proposed, albeit by the claimant, which is ‘ἰθεῖα’.

⁴⁰⁰ Taplin 1980: 4f; Byre 1992: 34-5.

⁴⁰¹ See chapter 3, p.73f.

5.2.2. Judge or judges

The two instances of dispute settlement in the *Iliad* are however informal to the extent that the arbitrators described either volunteer their own services or are appealed to *ad hoc*. Where the role of judge is presented as a fixed and formal one, as it is in the 'δικασπόλοι' passage at A.238, and at I.99 and π.542, it appears to be associated with kingship or an aristocracy, rather than a panel of elders of the kind described in the shield trial. The role of judge is not specifically attributed to 'elders' elsewhere in the *Iliad*. The link may be implied in Nestor's assumption of the role of arbitrator at A.247f. and I.52f. As a paradigmatic elder, the *Odyssey* describes a Nestor who 'περίοιδε δίκας ἠδὲ φρόνιν ἄλλων' (γ.244). He is eloquent (A.248) and eloquence is a desired characteristic of a 'δικασπόλος' (*Theog.*81f.). The link may also be implied in the *Theogony's* association of 'ὁ γέρων' Nereus with 'θέμιστες' and 'δίκαια δήνια' (235-6). Leaf sees the council of elders as an institutional development from the heroic 'king-judge'. Such a council would originally have been a king's council which could advise the king in the administration of justice:

This is really the elementary process by which the king's council has in so many cases become the highest legal tribunal. The house of Lords in England is in this respect only the counterpart to the Areopagos at Athens.⁴⁰²

If this is the case, we may again have recourse to Dodds' contemporary 'reflex'. It may be that the heroic tradition associated kingship with judgeship, but that the shield is a window on the poet's world, and as a realistic picture of formal δίκη, kings are excluded as anachronous. Nilsson takes a different view, arguing that there is in fact no association between king and judge in Homer, and that the δικασπόλοι of A.238 are noblemen⁴⁰³; βασιλῆες perhaps, but of the type referred to in the *Works and Days* (38f.). Halverson and Murray contend that βασιλῆες are simply noblemen in the Homeric poems⁴⁰⁴, and plural 'kings' are referred to as judges in Draco's homicide law⁴⁰⁵. Calhoun moreover notes that

⁴⁰² Leaf 1898: 456.

⁴⁰³ Nilsson 1933: 223-4.

⁴⁰⁴ Murray 1980: 40-1; Halverson 1985: 134-6.

⁴⁰⁵ '...δικάζειν δὲ τοὺς βασιλέας αἴτιον φόνου εἶναι τὸν ἐργασάμενον ἢ βουλευσάντα'; 'the basileis are to judge whether the killer or the planner is guilty of murder'. Cit. Gagarin 1986: 87.

'gerontes are often called βασιλῆες and in general are accorded the same titles and epithets as the king⁴⁰⁶. It is also arguable that the association is valid in both directions: the council that Agamemnon convenes at B.53 is a βουλή 'μεγαθύμων γερόντων'. 'Elders' here refer to the Achaean leaders generally. It is possible then that references to γέροντες, βασιλῆες and δίκασπολοι in a judicial context should be identified as a single group: individuals who by virtue of their status fulfil within the community the role of arbitrator. The fact remains however that such arbitrators may act individually (as, for example in the judge simile of μ.439-41), or collectively (as in the shield trial). It may be that references to a single judge represent an older tradition and references to plural judges a contemporary institution, concomitant with the development of the polis⁴⁰⁷. It may alternatively be the case that the number of judges is dependent on the nature of the dispute. In the shield trial we have a dispute over murder, and the formality of the full βουλή γερόντων may reflect the seriousness of the issue at stake, as I have argued in the previous chapter⁴⁰⁸.

5.2.3. The exile motif

Another discrepancy between the shield trial and the narrative portions of the *Iliad* concerns the status of the murderer. In every biographic ecphrasis that describes a murder, the result is the flight or exile of the killer⁴⁰⁹, yet in the shield trial, and in Aias' *exemplum* at I.632f, it is implied that public opinion favours the acceptance of a blood-price. There are a number of arguments that can address this problem. Bonner argues that flight is the normal reaction to homicide; that compensatory settlement, while possible, was 'comparatively rare'⁴¹⁰. It is possible that the shield trial and Aias' *exemplum* describe an ideal to be aspired to, which in practice is rarely adhered to.

⁴⁰⁶ Calhoun 1962: 437.

⁴⁰⁷ Gagarin 1986: 46. See also Havelock 1980: 180-1; chapter 2 p.62.

⁴⁰⁸ Chapter 4, p.110-1.

⁴⁰⁹ Tlepolemos B.661-7; Medon N.695-7, O.334-6; Lycophron O.432; Epeigeus Π.573-4; Patroclus Ψ.85f.; the simile of the murderer Ω.480-2. Cf. also the three instances in the *Odyssey*: Odysseus' fictitious Cretan v.258; Eumaios' Aetolian ξ.379; Theoclymenos ο.224, 276.

⁴¹⁰ Bonner 1911: 18.

Beye and Lesky however argue that the exile motif is not so much the realistic reflection of a social norm, as a useful narrative device⁴¹¹. Lesky suggests that it may be employed by the poet to account for the association of a particular character with more than one location (a 'Lokomotionssaga'). As a biographical detail, whether traditional or innovatory, as Lesky's theory implies, it is at least pertinent: home or place of origin are core elements, together with family, of Homer's biographies and accounts of flight relate directly to these. Bonner implies this, noting that, while exile is invariably the result of murder in the *Iliad*,

these figures are not entirely conclusive, because there is little occasion for mentioning those who fell victim to the vengeance of the enraged kinsmen, or those who paid the blood-price.⁴¹²

In contrast to the exile motif, alternative reactions to murder such as vengeance or settlement would serve little biographical purpose. Another possibly relevant feature of the exile motif is that when the victim is specified it is frequently a family member⁴¹³. Diamond notes that, in the Anglo-Saxon kingdoms, the size of the blood-price meant that responsibility for paying it was shared by the killer's kin-group⁴¹⁴. It is possible that settlement is impossible where the recipients of the blood-price, and those responsible for paying it, are the same people⁴¹⁵. Finally, Westbrook, as noted in chapter 4 (p.107) suggests that exile may have been an option more readily available to members of an aristocratic class with sufficient resources to effect it in the manner of Tlepolemos: with a navy and followers⁴¹⁶. The problem with this argument however is that those resources might more easily be used to pay settlement. Exile for murder is only an option insofar as it is an alternative to a violent death: presumably any individual would pay the blood-price if he

⁴¹¹ Beye 1964: 358; Lesky 1966b: 27-44.

⁴¹² Bonner 1911: 17.

⁴¹³ Tlepolemos: uncle; Medon: step-mother's brother; Epeigeus: cousin. Lycophron's victim is not named.

⁴¹⁴ Diamond 1971: 65. See chapter 1, p.19, n.41; chapter 4, p.103, n.307.

⁴¹⁵ This is, admittedly, a rather tendentious argument, but crimes committed within the family do appear to have been subject to external sanction in the form of the Erinyes, in the same way that perjury and crimes against guests and suppliants, are held to be punished by Zeus. Althaia curses her son Meleager in the Furies' name for the sake of her murdered brother (I.569f.). Similarly, Amyntor curses Phoinix (I.454f.), Ares is warned of his mother's Furies (Φ.412-3), and Poseidon of his brothers' (O.204). The story of Orestes' pursuit by his mother's Furies does not occur in Homer (it first appears in Stesichorus Fr.40), but it is more likely that Homer is selective with the details of the myth than that he was unaware of this aspect of it.

⁴¹⁶ Westbrook 1992: 69.

were able to as an alternative to flight. This is of course the very issue at stake in the shield trial.

There are several potential solutions then to the problem of the apparent contradiction of the shield trial and the exile motif. It may be that flight was the usual reaction to murder, or that it was the usual reaction to kin-murder. It may be that the poet employs the motif as a literary device, or that the motif preserves the memory of a traditional norm. It may be that the shield describes a civic norm, the motif an aristocratic one. As noted in chapter 4 however (p.108), the discrepancy can only be seen as a contradiction if the process described on the shield is compulsory: if the plaintiff can be compelled to accept the blood-price, flight would only be necessary if the blood-price could not be paid. But as most critics have argued, the shield process is not compulsory. Vengeance, and consequently flight, remained a valid option into the classical era⁴¹⁷. The problem is not that exile is described, but that it is invariably described. A conclusion on this matter must ultimately depend on what we make of the shield trial. Does Homer attempt to present it as a norm, or as an ideal? If it is the latter, then flight may frequently have been the result of murder. If the former, then one or more of the potential explanations suggested above for the prevalence of the exile motif must be adopted. To answer this question, I will briefly look at the shield's place in the *Iliad*, and the trial's place in the shield.

5.2.4. The trial within the shield within the poem

The shield ecphrasis occupies the final quarter of *Iliad XVIII*. It concludes the great central day of the poem, and the battle that spans book 11-18. Taplin argues convincingly that this central portion of the poem represents one of three performance units, or 'movements', together with books 1-9 and 19-24⁴¹⁸. The shield's position is emphatic. Book 18 has seen the culmination of Achilles' conflict with Agamemnon in the news of Patroclus' death and the start of his conflict with Hector. Achilles has made the decision to return to battle in the knowledge that he will die shortly (Σ.88f.) and Hector has made his decision not to retreat

⁴¹⁷ See chapter 4, p.108.

⁴¹⁸ Taplin 1992: 11-22. Taplin excludes the Doloneia of book 10 from this scheme.

into the city, but to stay and fight Achilles (Σ.285f.): decisions that, as Homer stresses⁴¹⁹, have sealed their respective fates. This is the immediate backdrop to the shield ecphrasis. As a narrative set piece it marks off the battle of the second movement from the renewed battle of the third, within a frame of the mourning for Patroclus and the settlement of book 19⁴²⁰. Its imagery is moreover thematically congruent: it is not just a narrative interlude. As Edwards notes, 'the poet portrays on the shield which the hero will bear into battle the everyday life which he has given up'⁴²¹. The shield graphically illustrates the loss presaged by the fatal decisions made by Achilles and Hector. It also, as Taplin argues, puts the war itself into perspective. The violence, loss and suffering of the war are highlighted by contrast with the scenes of peace: they form a part of the shield, but are reduced to one vignette of many; a single episode in the greater round of human experience⁴²². The shield is a microcosm of the world beyond the poem that contextualises both the *Iliad* and war itself. The aspects of life it depicts are, in contrast to the frenetic action of the poem, timeless. Like the similes of everyday life that continue permanently in the present tense, its episodes are 'paradigms of ever-continuing human social activities'⁴²³, 'life seen *sub specie aeternitatis*'⁴²⁴.

As Schadewaldt argues, the individual scenes within the shield are thematically linked by antitheses: urban and rural, peace and discord, work and play, youths and maidens⁴²⁵. There are three groups of episodes: the two cities, the four seasons in the country, and the dances. The first two groups are linked by the urban-rural antithesis; the second and third by that of work and play. The first group is divided by the peace-discord antithesis into the city at peace and the city at war, and within these subgroups there are the individual scenes: the siege, ambush and battle in the city at war, and the marriage procession and trial scene in the city at peace.

The shield trial forms one of two vignettes that characterise the city at peace. Collectively this diptych illustrates the pleasures and the advantages of civic life. The marriage

⁴¹⁹ Σ.94-5; 312.

⁴²⁰ Becker 1964:114 (cit. Byre 1992: 41).

⁴²¹ Edwards: 1991: 208.

⁴²² Taplin 1980: 11-15; Byre 1992: 34.

⁴²³ Edwards 1991: 208.

⁴²⁴ Byre 1991: 34.

⁴²⁵ Schadewaldt 1959: 352-74.

procession symbolises the shared joy of festivity; the trial symbolises the shared benefits of the institutions that regulate civic life and solve conflict. As with its pair, the marriage procession, the δίκη-court's emphasis is life as a community. The λαοί, gathered in the agora are the witnesses to the dispute. The λαοί range themselves in support of either side, shouting their support as the disputants take their case to arbitration. The emphasis then shifts to the formality of the process. The λαοί are held back by heralds as the elders take their seats in the sacred circle of polished stones that represent time-worn tradition. The process is measured and restrained: each elder gives his verdict in turn, sceptre of authority in hand. The tone of the passage moves from noisy commotion to practised formality as the νεῖκος is regulated, managed and resolved⁴²⁶. But the public element is constant. It is the community that brings the weight of public opinion to bear on the matter and guide the plaintiff to arbitration⁴²⁷. It is the community's traditions that the court represents, and, presumably, it is the community that decides which of the judges 'δίκην ἰθύντατα εἶποι'.

This is what δίκη, the formal arbitration of disputes, represents to Homer. It is the symbol of the advantages of civil society. To return to the question posed at the end of the last section, is the procedure described here normal or ideal? It is ideal. It is a paradigm of an institution functioning as it should. Like the marriage procession however, it is also a picture drawn from life. The similarity between the shield and the similes drawn from everyday life has already been noted. Like the similes, the images it presents must resonate with the poet's audience⁴²⁸. The microcosm Homer creates must be familiar not only broadly but in its details. As with the similes, it is the finely drawn details of the shield's imagery – the housewives at their doors, the polished stone benches in the agora – that spark the audience's imaginations and bring the poet's illustrations to life. The picture of δίκη presented in the shield trial is a paradigm: not all conflicts could be solved in this way, but it must show how the process of arbitration *could* operate, and it must be a faithful representation of the details of that process. It is not necessarily a picture of the normal way conflict is addressed, but it is one of the normal ways in which conflict is addressed when it is submitted to formal arbitration.

⁴²⁶ It is not of course actually resolved; the two talents are never awarded and the action is left frozen as the description moves on. In Byre's words, 'the scenes congeal again into the static artistic representations which began to be described in their first lines.' (1992: 40).

⁴²⁷ According to the interpretation I argued for in chapter 4 (p.108f.)

⁴²⁸ Edwards 1991: 208-9.

To return to the difference between the procedure described in the shield trial and the dispute settlement in the narrative: It remains possible that the narrative makes reference to an older concept of judgment or arbitration, presided over by a king who guards and applies the *θέμιστες* of custom and precedent, and that in the shield we are presented with a picture of contemporary modes of judgment: of arbitration in a civic context and as a civic institution. The immediate purpose of the trial scene is to underscore the advantages of life as a political community. It is also the case however that, as with the judge simile of *Odyssey XII* and the Minos vignette of *Odyssey XI*⁴²⁹, the shield's picture of dispute settlement is presented for the sake of showing a picture of arbitration in action. It is a complete picture of the *δίκη* process. The instances of dispute settlement that occur in the narrative however, present a picture whose focus is the dispute, and the methods of settlement must vary according to the context of each dispute⁴³⁰. They do not occur in a town at peace: they occur among warrior princes in a camp of war. Elements of *δίκη*-type arbitration are present: third parties are called upon, or volunteer their services; claims are made in public; and settlement, in the case of Menelaos and Antilochos, is negotiated and made in public. The dispute between Achilles and Agamemnon cannot of course be settled: the narrative is dependent upon its not being settled. What is significant is that it is viewed, particularly by the embassy, within the ideological framework of the kind of *δίκη* that we see fully-fledged in the shield trial. This is a point I will return to.

If the number of judges is variable in the narrative, this will depend upon the fact that the circumstances of the disputes are variable. An arbitrator, or arbitrators are selected *ad hoc*: they do not perform a formal function within a civic institution. In such a situation the number of judges will be determined by who the disputants think is best qualified to fill that role. Even within a civic institution however, it may be that a single *ἴστωρ* arbitrates, or a panel of judges, perhaps depending on the nature of the dispute⁴³¹.

The exile motif is problematic in that it makes no reference to dispute settlement. As has been noted however, arbitration is always voluntary⁴³²; there is nothing unusual in the fact

⁴²⁹ Chapter 3, p.80-2.

⁴³⁰ Chapter 3, p.88-9.

⁴³¹ Chapter 4, p.110.

⁴³² Chapter 1, p.15; chapter 2, p.45; chapter 4, p.99, 108.

that in certain cases vengeance is pursued. The prevalence of the exile motif may be due to the twin facts that flight was a normal result of murder, and that the motif serves a literary purpose. It is relevant as a biographical detail, and, as Bonner notes, a successfully solved dispute would not be – quite the opposite for successfully executed vengeance, as there would be no further biography to speak of.

5.3. Conclusions

If the differences and apparent contradictions between the shield trial and the narrative's presentation of conflict and settlement can be accounted for, it remains to discuss what settlement in ecphrasis and narrative have in common, from an ideological, rather than a procedural perspective.

In the shield trial we are presented with a picture of δίκη as an institution that is integral to the functioning of civil society, and moreover a symbol of the benefits of such a society. The storm simile is its negative corollary: it is a metaphor for the ruin attendant on the abuse of that institution. There is an echo in these two pictures of Hesiod's figurative description of the benefits of δίκη (*WD.* 225-37), and the tribulation caused by its absence (*WD.* 238-51). As I have argued in reference to the storm simile, it is possible that this echo is attributable to a shared reference to a parallel didactic poetic tradition. Homer's shield trial does not parallel Hesiod as closely as does his storm simile, but if the parallel tradition expounded on the figurative advantages of δίκη as Hesiod does, it may well have provided a rationale for presenting δίκη as his symbol of a flourishing city.

The ideology of δίκη is fully developed in these two ecphrases. Fair arbitration is idealised; it is conceptualised as instrumental to social stability and, in the storm simile, it may already be presented as a symbol of fairness, or justice itself. If these ecphrases are, as seems probable, 'windows' on the contemporary life and beliefs of the poet and his audience, then this is an ideology which that audience is likely to have both been familiar with, and espoused. To what extent is it in evidence in the main narrative? As I have argued in chapter three, settlement is valorised in the narrative, specifically through the speeches and *exempla* of the characters tasked with persuading Achilles to accept it. Willingness to

settle is presented as a civic virtue, dependent on 'φιλοφροσύνη' (I.256), and compassion (allegorised as the Λίται, I.502f.). It is the antidote to strife and destruction, themselves dependent on irrational impulse and violent anger. So too, Menelaos forgives Antilochos so that the witnesses to their dispute will know that his θυμός is never 'υπερφίαλος και άπηνής' (Ψ.610). This ethic is arguably also implicit in the result of Achilles' conflict. The result of his intransigence and refusal to settle is 'άτη' of the type Phoinix predicts: he is 'paid back with harm', and left to regret his decision.

ώς έρις έκ τε θεών έκ τ' ανθρώπων άπόλοιτο
και χόλος, ός τ' έφέηκε πολύφρονά περ χαλεπήναι
ός τε πολυ γλυκίων μέλιτος καταλειβομένοιο
άνδρων έν στήθεσσιν άέξεται ήυτε καπνός

(Σ.107-10)

[That Strife would vanish from gods and men, and anger, that makes a man enraged, thoughtful though he may be; that, much sweeter than dripping honey, swells like smoke in the breasts of men.]

The speeches of the embassy and the narrative *exempla* of the disputes over the chariot race provide the poem's audience with a commentary on Achilles' failure to accept settlement. They do this by referencing an ideology of δίκη which the audience is familiar with, one that conceives of the publicly negotiated resolution of conflict as the antidote to strife and instability, and the frame of mind that is amenable to it as a cornerstone of the civic virtues. I would argue that the storm simile and the shield trial perform a similar function. They are the poet's own *exempla*. They articulate this ideology of δίκη in a context that stands free of the narrative: in ecphrasis. The shield trial and storm simile present paradigmatic models of δίκη, positive and negative respectively. Through them, the poet invites the audience to view the action of the narrative in the light of their own conception of the value of fair settlement. This is subtle moralising, but effective. The poet does not pass judgement on his characters' decisions or actions, but hints at what is at stake in the pursuit of conflict with a glimpse of the normative model of δίκη that resonates with his audience. The storm simile and shield trial should not be viewed then as accretions, or

inadvertent reflexes to the contemporary ideology of dispute settlement through arbitration. They may be seen as windows on a wider world beyond the poem, which cast the light of the audience's own ideals onto the tension of conflict resolution in the *Iliad*, and bring it into ethical relief.

Conclusion

The aim of this thesis has been to understand the relationship between the storm simile, the shield trial and the narrative body of the *Iliad*, in terms of the respective pictures of δίκη that they present. As I suggested in my introduction, a preliminary reading of the two ecphrases suggests that they describe a fully articulated ideology of arbitration: one that views δίκη as an essential civic institution that possesses the potential to preserve social equilibrium through the mediated settlement of conflict, and the sponsorship of compensatory redress over unilaterally exacted vengeance. The importance of such an institution is reflected in the fact that δίκη appears to be taken to be the symbol of both a divinely supported standard of fairness, or justice, and of functioning political society itself, in the storm simile and shield trial respectively. These associations are moreover evident, and fully articulated, in Hesiod's *Works and Days*. As the latter is generally accepted to post-date the *Iliad*, the question of the relationship between the two Iliadic ecphrases and Hesiod must be addressed. Apart from that of the Hesiodic connection, the questions I set out to answer were these: To what extent does the picture of δίκη presented in the ecphrases differ from that of the main narrative? How can any discrepancies be accounted for? Might a solution be found in the idea of a developing ideology of δίκη which is either adjoined to the poem in the ecphrases in the latest phase of the poem's composition, or excluded from the narrative? Alternatively, might the discrepancies be attributable to the narrative function of ecphrasis itself? Might the poet simply be drawing a distinction between a 'heroic' ethos and a realistic one?

I approached these questions by attempting, in my first three chapters, to describe the picture of δίκη that emerges from the *Iliad* as a whole, which might then be used to contextualise the two ecphrases. I focussed on three aspects of dispute settlement: its conceptualisation against the backdrop of conflict and redress, the terminology employed to describe it, and the physical details of the procedures that the *Iliad* associates with arbitration.

My first chapter concluded that arbitrated settlement is valorised because it provides an authoritative forum for the negotiation of compensation as a solution to conflict. The social

value of solving conflict in a stable manner, as an alternative to retaliatory violence, is reflected in the idealisation of δίκη-type settlement. In order to draw disputes into such a system, that process must be conceived of as a means to a fair outcome: one that has the sanction of public opinion and negotiates settlement by quantifying redress with reference to the 'shared evaluative beliefs' of the community⁴³³. The qualities that make an individual amenable to settlement, such as consideration, are thus presented as civic virtues (e.g. I.632f.) which public opinion supports. The process itself is moreover conceived of as sacred to Zeus in particular, as a theodical guarantee against potential corruption by the individuals who administer it. Δίκη is thus conceived of not only as arbitrated settlement, but as the ideal of fair settlement that Zeus supports and which may be presented to disputants as a valid alternative to unilateral redress.

The idealisation of δίκη as fair process leads in turn to its abstraction as 'fairness' or 'right': a sense it consistently possesses in the *Works and Days*, and potentially evident in the storm simile. The ideology of δίκη then, is grounded in the social value of dispute settlement by arbitration as a civic institution. From a concrete basis, δίκη develops into an objective standard of fairness or 'justice' in a specifically civic context.

In my second chapter I attempted to illustrate this development by a detailed study of the terminology employed to describe arbitration in the *Iliad*. Comparing and categorising the uses of θέμις, δίκη and their derived terms in the *Iliad*, the *Odyssey* and the Hesiodic poems, I concluded that a semantic shift is evident. The 'moral' uses of δίκη are more consistently found in post-Iliadic literature, and the term appears to displace 'θέμις' as the chief symbol both of an agora-based justice system and of an objective concept of 'right'. I argued that this development may be linked to the strengthening of civic institutions in the emerging polis, insofar as the conceptual shift is underpinned by the valorisation of one of those institutions, the δίκη-court.

Chapter 3 analysed the specific instances of dispute settlement in the narrative body of the *Iliad*, as well as those occurring in the remainder of the Homeric and Hesiodic corpora. I concluded that, while many of the formal features of dispute settlement are variable, common elements do exist, including the valorisation of the process itself. Comments made by characters within the *Iliad* (specifically Nestor in book 1, the envoys in book 9 and

⁴³³ Allan 2006: 11.

Menelaos in book 23) echo the ideology of δίκη outlined in the first two chapters. Variations in the details of the procedure are chiefly attributable to whether the focus of a given passage is the role of judge, or the dispute itself, and, in the latter case, to the narrative context of each dispute, which determines whether arbitration is *ad hoc*, or takes place in a formal environment.

In my fourth and fifth chapters I turned to the two ecphrases themselves. Using the first three chapters as a contextual framework, I discussed the pictures of δίκη that the storm simile and the shield trial present, in terms of the ideology that underpins them, the terminology they employ, and the procedures they describe. Having established how they compare with the *Iliad's* narrative instances of dispute settlement, in my final chapter I considered possible explanations for the demonstrable differences in ideology and procedure. I concluded that procedural differences may be accounted for by the narrative contexts of the disputes that occur in the *Iliad*, and that the formality of the arbitration system described is dependent on whether the dispute in question is settled in a specifically *civic* forum, or not, as is the case in the disputes of Achilles and Agamemnon, and Menelaos and Antilochos. As regards the ideological difference between the ecphrases and the narrative, I concluded that the storm simile and the shield trial articulate a developed and contemporary conception of δίκη. Not uniquely however: the same ideology is evident in the speeches of the characters and in *exempla* such as the Λιταί passage and the ποιηή *exemplum* of *Iliad IX*.

It remains to synthesise these individual conclusions, and to apply them to the questions posed in the introduction to this thesis. The introduction suggested two alternative explanations for the difference between the pictures of δίκη in the simile and the shield, and that presented by the narrative: a 'developmental shift' based upon an evolving ideology, and the differing narrative functions of ecphrasis and narrative. To some extent both these theories have been vindicated in the foregoing chapters. Chapter 2's analysis of the terminology of dispute settlement suggests that an evolution in the concept of δίκη is detectable in early Greek poetry, in the fact that δίκη as both a concrete and an abstract term is more frequently found in post-Iliadic literature, while conversely the phrase ἡ θέμις ἔστι disappears. This conclusion supports the idea that there is a shift between a heroic

concept of justice, present in the *Iliad*, whose key feature is the customary law that informs judgment, and an 'archaic' (in the pre-classical sense) concept, whose key feature is δίκη: arbitration as a civic institution. On the other hand however, the analysis of instances of dispute settlement undertaken in chapters 3 and 4 suggests that, in terms of procedure, the context of each dispute determines the number of formal features present, while in terms of ideology, the commentary provided by the characters themselves through their rhetoric and *exempla* agrees substantially with the conception of δίκη present in the two ecphrases. These two broad conclusions have, I hope, been squared in the conclusions of the final chapter, but I want to reformulate the manner in which they may be reconciled in this conclusion to the thesis as a whole.

There has been a development in the way that 'justice' is conceived of. An older association with the king who guards the θέμιστες is superseded by a new association: with δίκη as a civic institution intrinsic to political life. The former association appears to be embedded in the heroic tradition, while the latter is revealed in the *Iliad* through the speeches of the characters and ecphrases, and is fully articulated in the *Works and Days*. This is not to say that a simple chronological sequence exists that runs from the *Iliad*, through the *Odyssey* to the Hesiodic poems. Rather, the generic character of these poems plays an important role in determining the manner in which the developed ideology of δίκη is revealed. As a didactic work that directly addresses the contemporary issue of institutional corruption, the *Works and Days* presents a full picture of this ideology. The *Iliad* does not. The role of the king is a core feature of the heroic tradition that its narrative operates within, and references to a traditional notion of the king as judge and protector of the θέμιστες are embedded within that tradition. In addition, the dramatic requirements of the genre require that overt moralising is minimised. As with the disjunction between the 'moral' gods of the human characters' beliefs and the 'amoral' gods of Homer's divine apparatus, the emotional force of the story is best served by reserving notions of right and wrong behaviour to the beliefs expressed by the characters themselves. Despite this however, the developed ideology of δίκη is detectable in the *Iliad*. Settlement is valorised in the rhetoric of the human characters, and it is fully articulated through the two ecphrases that have formed the focus of this thesis. Together, these narrative elements form a window on the contemporary beliefs of the poet's audience, which, as I have argued,

provide a commentary on the central conflict of the poem by contextualising it in terms of the normative model of δίκη which that audience knows and to which it subscribes. The *Iliad's* world of conflict, violence and suffering plays out unimpeded. But the audience is simultaneously led to view that action through the prism of their *own* ideology of the value of settlement, peaceful compromise and compassion. They make their own judgments on the actions of the heroes and their attendant consequences.

The two theories of development and narrative function are complementary. The ideology of δίκη has developed in tandem with the evolution of the epic tradition, within the context of the development of the polis and its civic institutions, and possibly encoded in a didactic or paraenetic tradition of its own, which Homer references through speech and ecphrasis, and which Hesiod builds his poem around. It is an ideology that valorises the ability of the community to provide a fair and authoritative forum for settlement – for negotiating compensation as a solution to conflict – in the agora-based δίκη court. Within that ideology δίκη, formal arbitration, has become a symbol of the advantages of civic society, and both index and cause of the prosperity or ruin of the state. It has moreover become a symbol of fairness itself, and the foundation of a civic conception of justice.

Appendix: The use of the term 'ideology' in this thesis

'Ideology' is a term that has a broad periphery of meanings but lacks a core definition. It is not so much a concept as, in Eagleton's words, 'a text, woven from a whole tissue of divergent conceptual strands' (Eagleton 1991: 1). I have, however used it extensively in this thesis, and it is desirable that I should attempt to pin down the sense in which I have employed it. Eagleton argues that, while definitions based upon theoretical standpoints may proliferate, and often contradict each other, the received meanings of 'ideology' range from the general to the specific. At the broader end of this spectrum, it may refer to 'the general material process of production of ideas, beliefs and values in social life'. This definition may be progressively narrowed to the 'ideas and beliefs' of a particular group or class within a society; to 'the promotion and legitimation of the interests of social groups in the face of opposing interests'; to 'the promotion and legitimation' of the interests of a 'ruling group or class' (*ibid*: 28). The social character of ideology is constant then, but its 'political' aspect, still more its association with a dominant group, may be limited to the narrower range of its definitions. The sense in which I have used this term may be located midway through this range. I do not mean by it a 'dominant political ideology', nor do I mean the sum of a group's social ideas and beliefs. By the 'ideology of δίκη', I mean a particular set of associated ideas and beliefs that is aimed at articulating a socio-political ideal: the ability of a community to regulate its internal conflicts by a formal process of arbitration. This 'set' of ideas amounts to a conception of that ideal 'in the round'. It includes associated imagery (the judge's seat, the staff of office, the mournful figure of 'Dikē expelled'); associated terminology ('ἰθύς', 'σκολιός', 'ἴστωρ'); associated religious concepts ('the gaze of the gods'; and associated forms of human behaviour ('νηλής', 'φιλοφροσύνη'). This complex, multi-dimensional concept has, moreover, a social purpose. It is aimed at codifying, explaining and communicating the value of the ideal of a successful arbitration process, within the group that subscribes to that concept. To return to Eagleton, 'an ideology may be seen as not simply expressing social interests, but as rationalising them' (*ibid*: 51). By an 'ideology of δίκη' then, I mean more than the 'ideal of δίκη': the socio-political force of this set of ideas gives it an added dimension. It is a collection of associations generated by the term 'δίκη' in the collective imagination of a particular group of individuals, to which both the poet and

the audience of the *Iliad* belong, which has been assembled, elaborated and cross-referenced with related spheres of behaviour, in order to promote the value of the basic concept of formal arbitration in the shared interests of that group.

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