

## CHAPTER 1

# Justice

# Classical Greece (circa 430 BCE)



Athenian Empire or allies



Peloponnesian League or Spartan allies

0

100 miles

0

100 km

Thracian Cities

Byzantium

Black Sea

HELLESPONT

Aegean Sea

Lesbos

Chios

Euboea

Athens

ATTICA

Samos

IONIA

CYCLADES

CARIA

Rhodes

Sea of Crete

Crete





## Civilizing *hubris*

‘Their justice is violence.’<sup>1</sup> So the Greek poet Hesiod, sometime about 700 BCE, scathingly described the peasants among whom he lived in the mountainous region of Thebes, and indeed the whole generation to which he belonged. A small farmer embittered by losing a tussle over family land to his brother, Hesiod claims to have risen above his loss by taking the high road, writing an ambitious poem, *Erga kai Hemera* (*Works and Days*), to instruct his brother in how to farm. Meanwhile he records his harsh assessment of the injustices practised by the likes of his brother in their generation, comparing their contemporaries unfavourably with the idealized justice of a legendary golden age.

Hesiod is one of the two major epic poets, with Homer, who wrote during what is called the archaic period of Greek history, from roughly the 8th through the 6th centuries BCE. Both Homer and Hesiod recount the doings of the panoply of gods whom the Greeks acknowledged in various hierarchies. (One set of gods, the Olympian gods headed by Zeus, had won a power struggle with an earlier set headed by Kronos; complex familial and affective ties existed among each set of gods, and between gods and favoured mortals.) These two poets likewise recount generations of human politics,

interwoven with divine interventions. While Homer, considered as the author of poems composed somewhat earlier than those of Hesiod, looked back to earlier centuries dominated by Bronze Age kings, Hesiod centred *Works and Days* on the politics of the archaic period itself, which was dominated by alliances of aristocratic families as well as by internal power struggles among them. These 'oligarchical' polities, interrupted by bouts of tyranny when one family or individual would obtain the upper hand, were the crucibles in which dramatic changes in technology and social organization – such as the development and spread of coinage, writing and new military tactics – were forged. Struggles for power, among these polities and within them, came to include a new set of players: the non-elite multitude who were relatively poor, and who first asserted themselves in Athens in the 5th century BCE (the century most often counted as the beginning of classical Greek history) in the establishment of a democratic regime.

The fundamental political idea of justice can already be found in archaic poetry, and it is there that we will first explore it, moving on to some of its subsequent developments in poetry and philosophy, especially those in classical Athens. Setting the terms of right or fair treatment, justice was widely seen by the Greeks as the key to civilization. Living in over 1,000 separate communities of different sizes, scattered across a mountainous mainland with its Peloponnese peninsula as well as hundreds of islands, calling themselves Hellenes but speaking diverse dialects, the Greeks were acutely aware of how recently human societies

had become civilized and how precarious the fruits of civilization remained. They knew themselves to be relative late-comers in comparison with the long-settled communities of Mesopotamia or Egypt from which they had learned much. Civilization freed humans from bare subsistence by developing arts and sciences such as agriculture, metallurgy, navigation, architecture and the very poetry that Hesiod composed. For Hesiod, whose poetic voice gave substance to archaic Greek ideas, it was justice that made all this possible. Why? Because without it, humans would be in the same position as the nightingale seized by a hawk, described in Hesiod's poetic fable. 'As I wish, I will make my meal of you, or let you go,' says the hawk to his hapless victim clutched in his talons (WD 209). Without justice, human society could never have risen beyond such an incessant struggle to kill or be killed.

We can think of justice as opposed to the idea of *hubris*, which in Greek signified a form of status violation, a disrespecting of what is owed to someone. Justice is giving people what they are owed. The disrespect involved in *hubris*, by contrast, upsets the natural order and threatens to bring down divine retribution. In the bitterness of Hesiod's words quoted at the outset of this chapter, we find evidence that the Greek attachment to justice was as vulnerable as it was deep. Justice is not an idea unique to the Greeks, but they developed powerful understandings of what it might require, especially between the rich and the poor, alongside corrosive challenges to the claim that it merits being followed at all. We will explore their statements of aspiration to justice, as well as their challenges to its nature and value.

## Rich and Poor

In ancient societies, justice among citizens was as important as it was regularly threatened in the relations between rich and poor. Each Greek city-state harboured a small but powerful group of wealthy families, together with a much larger body of the poor. Some of the rich had inherited their wealth, largely in land and in the harvests of grain, grapes or olives that it could provide. Others would engage in trade, financing ships sailing to trading posts like Persia and Egypt, or (especially from the 5th century onwards) investing in industries like shipbuilding. Greek vases depict the good life that the rich enjoyed: wining and dining, listening to the music of hired musicians, adorning themselves with jewellery. By contrast, many of the poor lived at the margin of survival – as landless peasants or urban scavengers – although others made a decent living as artisans or small farmers. Whatever their actual income or wealth, all of those considered members of the ‘many’ lacked the luxury and status possessed by the ‘few’ and bestowed by wealth, especially the relatively secure wealth of the landed elites.

The elites thought of themselves as *hoi aristoi*, the best men, from which we get our word ‘aristocracy’; in Athens, their families were known as the *Eupatridae*, the well-born.<sup>2</sup> Sometimes they simply called themselves, or were called by others, *hoi oligoi*, the few, contrasted with *hoi polloi*, the many. That so few are rich that the rich can even be defined as ‘the few’, while the vast multitude are destined to be relatively or absolutely poor – such an equation is not a matter of strict logic, for why, in principle, can’t there be more than



a few who are rich? Yet it was endemic in ancient Greek history, and it remains a powerful description of many societies today. A society based on a class between rich and poor – on a middling class – would be an alternative, as Aristotle would come to recognize, and as Americans especially would demonstrate in the 20th-century post-war boom. But as many societies currently slide into further polarization of wealth, the key question of Greek politics from 600 BCE onwards is increasingly resonant again: on what terms can the rich and the poor live together in a single polity?

The poor must not routinely threaten the lives or property of the rich; otherwise, social peace is impossible. But unless the laws are fair enough to the poor, why should they respect them? (History shows that the margin of fairness required has often been far less than an impartial observer would have imagined necessary.) In seeking that balancing act, some regimes simply imposed terms by force. But even then the rulers had to define ‘justice’ and present their laws as embodying it. The struggle to establish justice between rich and poor – or to label the arrangements that were imposed *as* just – was the fundamental point of intersection between economic and political power, then as now.

We find a perfect vantage point from which to view this process in the work of Solon (c. 630–c. 560 BCE), an Athenian aristocrat who made a name for himself as a ‘wise man’ and poet, but most of all as a legislator called on by his countrymen to help quell the bitter struggles between rich and poor and set his city on a new just path. Solon wrote new laws that amounted to what we might call a new constitution

(the idea of a constitution is discussed in Chapter 2).<sup>3</sup> By giving the poor a defined role in politics, Solon put an end to exclusive aristocratic domination and so marks a crucial point in the transition from archaic towards classical Greek politics.

How did Solon achieve civic peace? By focusing on economic relations. Like certain lawgivers and rulers in other ancient societies, including the Near Eastern societies of Egypt and Phoenicia with which the Greeks traded goods, stories and ideas, he abolished the right of the poor to pledge their bodies as security for debt and so, upon defaulting, to be seized or sold as slaves by their creditors.<sup>4</sup> This was clearly a restriction on the contractual liberty of the poor: they were not to be allowed to incur debts with such security, even should their children starve for want of cash. But it was a restriction of their contractual liberty for the sake of protecting their political liberty: as Solon explained it, for the sake of justice. Wherever the poor are vulnerable to contracts that make them potentially liable to be used or sold as slaves, they cannot be equal citizens, because they cannot be secure in their status as citizens at all. They are in those circumstances always at risk of falling into some form of bondage. The abolition of bodily security for default on debt among citizens, then, was crucial to the establishment of the justice that could make poor and rich alike full citizens of Athens.

Without a balanced regime that gives the poor some political clout, they will always be at the mercy of the rich. Law is the most important way in which a city can achieve justice. Solon claimed to have combated *hubris* – the violence

and insolence that threaten justice – by the establishment of *eunomia*, or a condition of good laws and law-abidingness. He boasts in his poetry: ‘These things prevail, power and justice [*dike*] having been fit together by me, and I saw it through as I had undertaken. I wrote laws [*thesmoi*] too, the same for the poor and the rich, and inscribed straight justice fitly for each’ (w 36). Indeed, while both sides agreed to abide by Solon’s proposed constitution in order to put an end to civil strife, neither side liked it. That is a good measure of his success: as Solon himself describes it, he established ‘a strong shield’ for each side against the other, ‘not allowing victory to either unjustly’ (w 5).

## Justice for Whom?

Some people in the Greek world lacked the full protection that justice offered. That was true above all for the slaves, who in Greek societies were mainly non-Greek (though Greeks were liable to be seized as slaves should they find themselves on the losing side of battles abroad, or simply unlucky in their encounters there: the philosopher Plato is said to have been put up for sale as a result of his unhappy experiences with a tyrant in Syracuse). Most slaves were captured in warfare or piracy, sold either en masse from conquered cities (often women and children, all of whose menfolk had been massacred) or as individual prisoners (though many of these were ransomed by remaining friends or family).

A slave was the conceptual opposite of a free person. Indeed, it has been argued that it was in Greek reactions to

the social role and experience of slavery that the concept of freedom was fully born.<sup>5</sup> The conceptual opposition between slavery and freedom would become enshrined in the first title of the *Digest* of Roman Law, which made no effort to conceal the conventional, rather than natural, origin of the status of slaves (adapting the original Greek contrast between *nomos* and *phusis*): ‘Slavery is an institution of the *ius gentium* [the law common to all peoples], whereby someone is against nature made subject to the ownership of another.’<sup>6</sup> In the Greek and Roman legal systems, while certain legal provisions for slaves varied, slaves were nonetheless broadly conceived as chattel. They were property, not persons. Justice was left behind, or almost so, in the near-absence of any legal protections or secure entitlements for slaves.

Athenian slaves, for example, were almost entirely excluded from the very site of justice, the law-courts. They could not generally bring suit or serve as witnesses, and their testimony was admitted only if obtained under torture and if both contending parties agreed.<sup>7</sup> They could not marry without their master’s consent; in this sense Athenian slaves were as Roman slaves would later be described, under an alien jurisdiction (*alieni iuris*) rather than their own (*sui iuris*). Their labour was more varied: while some slaves worked the city’s silver mines in nightmarish conditions, others ran households for their masters or were even deployed by the city as public administrators.

Alongside the formal public role of some slaves, the crowded and informal collective life of Athens led to slaves in general being accorded some legal protections in practice even though they were deprived of them in theory.<sup>8</sup> For

example, in classical Athens, as in republican Rome, slaves wore clothes that were indistinguishable from those of free persons.<sup>9</sup> Likewise, Athens, like most Greek cities, prohibited by religious customary law the killing of a slave (or of anyone), in that case in stark contrast to Rome, where the lives of all members of the household – wives, slaves and children – were in the absolute power of its head, or *paterfamilias*. Still, while such maximally harsh (capital) punishment of slaves was allowed in Rome, a Roman master might mourn a slave boy's accidental death, as a bust of 'the dearest Martial, a slave child, who lived two years, ten months and eight days', commissioned by his master sometime between 98 and 117 CE, suggests.<sup>10</sup> Yet, overall, the fundamental point remains: slavery was conceptually alien to justice.

What did it mean for the Greeks to tolerate such an abrogation of justice as slavery, at the same time that they celebrated justice as one of the foundations of civilized society? We can follow the lead of the late British moral philosopher Bernard Williams here, in seeing slavery as having been understood at the time as the imposition of necessity.<sup>11</sup> The Greek view of slavery seems generally to have been not that it was *un-just*, but that it was *non-just*. It marked the limits of where justice could apply. Beyond that was a matter of sheer necessity. Williams pointed out that those in wealthy democratic societies today tolerate gross abrogations of justice too. The existence of the global poor is seen as a regrettable by-product of capitalism, or of feudal economic relations, but too often it is not seen as something that can be made just. It is tolerated as if it were a necessity, or at least an inevitability, as an institution.<sup>12</sup> For any one individual, being

enslaved was a matter of cruel and unlucky fate. Just as most slaves were indeed hapless prisoners of war, so most commentators on their lot saw it not as a matter of nature, but of misfortune, as in a fragment of Sophocles:

One day showed us all to be one tribe of humans,  
born from father and mother; no one is by birth  
superior to another.

But fate nourishes some of us with misery  
and some with prosperity, while others are compelled  
to bear the yoke of slavery.<sup>13</sup>

By and large, the Greeks did not see slavery as a case of injustice. Rather, justice arose as a question only among those who were not slaves; slaves were outside the reach of its full protection. Although they did receive certain minimal protections in the law, these were not protections that they could themselves act legally to claim. In extraordinary circumstances however, further legal protections could be bestowed, as in the case of the personal freedom and political citizenship bestowed by the grateful Athenians upon their slaves who had helped to man the fleet in the battle of Arginusae in 406 BCE.<sup>14</sup>

Other groups in the *polis* also stood at a certain distance from justice, but they were not as wholly alienated from it as were slaves. Athens, for example, harboured an especially large population of free-born foreigners, mainly from other Greek cities. Some, like the travelling ‘sophists’ (intellectuals and orators) or visiting merchants, were merely passing through. But other foreigners settled in the city and could, if sponsored by a citizen, gain the legal status of ‘metic’, which

was, broadly speaking, in between that of slave and full citizen. Metics paid special taxes and were obliged to serve in the military; they were recognized in certain religious processions, as an honoured foreign contingent in the city; and they could trade on equal terms with citizens (apart from having to pay a special fee for establishing a market stall).<sup>15</sup> But they could not vote in the assembly, hold office or serve as court jurors. They could use the courts to bring lawsuits seeking justice, but they could also be subjected to torture to elicit evidence, and certain crimes against metics were punished less severely than those against citizens.

Plato's *Republic* is set at the house of one of the wealthiest and most prominent metic families; one son would die fighting for the restoration of the democracy and another would become famous as a speechwriter. As shown by the dialogue's depiction of the patriarch of that family (Cephalus, originally from Syracuse), metics could conceive of justice in their economic relationships with other men (paying their debts) and in their relationship with the gods (paying the debts, as it were, of their sacrifices), even though they were aliens to political justice in its fullest form. Perhaps the most famous metic in Athenian history is Aristotle, who wrote his account of man as a political animal while living outside his own political community, unable there to fully exercise his own nature as a citizen.

Last but not least on the list of those systematically excluded from full political justice were women and children. Women were in one sense citizens – in Periclean Athens, Sparta and Rome, only a child born to a married citizen-mother and citizen-father was straightforwardly

counted as a citizen. Spartan women were educated and trained publicly as citizens until puberty; in all cities of the ancient world, women played special civic and religious roles as priestesses and in various forms of religious cult. Spartan women and Roman women could own property, though their ability to conduct legal transactions was limited, whereas Athenian women could not own property and played a less visible role in the economy outside of the household than would many Roman women. But, from the standpoint of politics, while Athenian and Roman women played important roles in religious practices and in giving birth to citizen children (in marriages to male citizens), they had no voice in the institutional forums of civic decision-making.

While the Athenians may have silenced their adult women in the ‘agora’ (marketplace) and assembly, their playwrights gave their traumatic vulnerabilities unforgettable voice – even though female characters were played on stage by male actors. The ethical perils of women’s passivity – and the risk that they would eventually lash out, like Medea, against the cruel and arbitrary way in which they were treated – preoccupied the tragic playwrights. We see the centrality of concern with the peculiar and painful status of women threaded through the titles and characters of Greek tragedy: *Suppliant Women*, *Phoenician Women*, Medea, Phaedra, Antigone. Yet it remained true that women’s peculiar status of citizenship, even in Sparta and Rome, where women could (for the most part) inherit and own property, was largely insulated from justice. Lawsuits might be held about them, their status might be legally defined and circumscribed (as in the obsession with female heiresses in certain periods in Sparta and Rome),



but they were not active participants in politically defining the justice of the terms on which they were treated. As for children, male children entitled to full citizenship would of course claim it in due course. Yet their exclusion during their minority was severe. Roman fathers had in theory the power of life and death over their children, a power that Athenian masters did not have even over their slaves.

## Justice: Natural or Conventional?

Return to Hesiod, the poet with whom this chapter began. Like other poets of his day, perched between archaic and classical Greece, writing epic or didactic poems to educate and shape the values of his fellows, Hesiod sought to explain the origins of justice by connecting it to the intentions and laws given by the gods. He proclaimed justice to be sponsored by the gods: first, the pre-Olympian head of the gods, Kronos, and then his Olympian supplanter, Zeus:

This is the *nomos*<sup>16</sup> Kronos laid down for human beings;  
to fish and beasts and winged birds it is allowed to eat  
one another,  
since there is no justice among them;  
but to human beings he gave justice, which is become  
far superior.  
For if someone is willing, knowingly, to say what is just,  
wide eyed Zeus gives him well being,  
but if someone lies, voluntarily, while testifying as a  
witness,

so wounding justice, he shall be irremediably damaged  
himself (WD 276 83).<sup>17</sup>

The gods come off well in this presentation, as the sources and defenders of justice. But in the myths and poems of traditional Greek religion, while the gods were officially assigned the role of upholding justice and were acknowledged in religious rites for that purpose, many stories were told of their exploits that could undermine human trust in their reliability in that role. Described in anthropomorphic ways as engaging in passionate love affairs and attendant quarrels, with one another and with mortals, the gods' influence on human affairs had the potential to disturb justice as much as to ensure it. If Zeus raped women like Leda and Europa, if the god Poseidon inflicted shipwrecks out of vengeance and the goddess Athena sided with the Greeks against the Trojans in the Trojan War out of pique, could humans put full faith in divine punishment of the unjust and reward of the just?

As Greek societies struggled with political unrest and military and economic changes from roughly the 8th into the 6th and 5th centuries, this kind of question started to become unsettling. In response, a few thinkers scattered across the mainland and islands began to place justice on a broader and so potentially more secure canvas: not merely as a gift of the gods to humans, but as inscribed in the order of the universe itself (the Greek word translated as 'universe', *kosmos*, means literally 'order'). If archaic poets like Hesiod and Homer had propounded mythic and sometimes problematic narratives of the gods' doings and sayings, these

new ‘wise men’ developed arguments in more abstract terms, rethinking divinity and nature in relation to the basic workings of elemental forces. Rather than recount the deeds and misdeeds of anthropomorphic gods, they devised accounts of the natural world as governed by principles of symmetry and balance, of the same kind as those by which human societies were ideally governed.

Consider Anaximander, one of the early Greek philosophers, born in Miletus, in Asia Minor, in the 6th century BCE. He claimed that the forces of the cosmos ‘pay penalty and retribution to each other for their injustice, according to the assessment of time’.<sup>18</sup> Working out the balance of such cosmic scales led other Greeks – such as the followers of Pythagoras, who set up communities in cities across southern Italy in the 5th and 4th centuries BCE – to delve further into mathematical formulations of harmonious relations that could structure music and politics alike.<sup>19</sup> In the works of these pioneering philosophers, men and women could find a new form of reassurance that the universe was indeed fundamentally steered by justice. If hubristic or greedy humans violated its equilibrium, they would suffer for it.

Yet the assurances of these philosophers, like those of the poets, did not succeed in settling the issue. Again, the Greeks were not unique in the dissatisfaction that began to be felt with traditional assurances about justice. At about the same time that Hesiod wrote, the assurance that the unjust man will suffer for his vice rang hollow to the author or compiler of the book of Job. While the Hebrew scriptures address the question of justice through sacred histories and laws, classical Greece developed a different genre of writing and

performance in which to probe the origins of justice. This was the tragic drama, first institutionally staged at civic-religious festivals in Athens in the late 6th century BCE and spreading from there throughout Greece and later to Rome. In the dramatic representation of the fates of legendary and historical figures, and in the musings of the choruses that offered reflection on the action, these plays emphasize how some humans desire to act unjustly, others do so all unwittingly, and the just often suffer fates that are as bad as, or worse than, those that befall the unjust.<sup>20</sup> The tragic playwrights also raised questions about the boundaries of justice: who is excluded from its sphere? And, while some playwrights insisted on the divine sponsorship of justice and its fundamental human importance, others began to challenge the sacred origins and the naturalness of justice that had so long underwritten its role in society.

Three tragic plays produced in Athens in the 5th century BCE – in the beginning of the classical epoch and during the flourishing of its democratic politics – illustrate these themes. Building on the poet Hesiod's ascription of the general origins of justice among humans to Zeus, the playwright Aeschylus describes its specific origins in Athens as sponsored by Athena, daughter of Zeus and patron deity of the city that bore her name. The final play of Aeschylus' *Oresteia* trilogy, produced in 458 BCE, called the *Eumenides*, portrays how justice was established there in the form of the 'Areopagus', the aristocratic court that served religious as well as judicial functions. In the play, Athena sets up the court and serves in its first case as one of the twelve jurors, sitting alongside eleven Athenian mortals, to try the prince

of Argos, Orestes, for the murder of his mother and her lover. Although Orestes had in fact committed this murder to avenge his father, Agamemnon, Athena casts the deciding vote to acquit him in order to break the cycle of vengeance and instead establish new terms of justice.<sup>21</sup> The image of a goddess deliberating as one member of an otherwise human jury underscored the divine nimbus attached to the idea of justice, the awe with which it had to be surrounded if social ties were to withstand the many breakdowns and violations of justice that everyday life inevitably entailed.

The *Oresteia* shows that even when justice was believed to be sponsored by the gods or rooted in nature, humans still had to act politically to reach and impose just verdicts. It also shows how important procedures, and in particular judicial decisions, were in Greek law. If law can generally be understood as a public and formal procedure to settle a dispute, early Greek law is unusual in focusing more on procedures than on substantive laws.<sup>22</sup> There was a 'deeply rooted Greek view, going back to Homer, that a fair procedure for litigation is an essential requirement of justice'.<sup>23</sup> Inscribed on blocks of stone or wood or on bronze tablets (the earliest archaeological record of a written law in Greece is an 8th-century stone inscription in Dreros), the laws might be recognized as made by humans – ascribed to a lawgiver, a king or an assembly – but they were also often regarded as having some kind of ultimate divine sanction or source. Whatever their sources, it was vital, though not necessarily guaranteed, that laws should be fairly applied in human courtrooms. It was no accident that Hesiod's definition of an unjust man was someone who testified falsely in court. One mark of a good

society for ancient Greek philosophers from Plato onwards would be a lack of lawsuits.

Fifty years after Aeschylus' play was performed, a playwright of the next generation – Euripides (c. 484–406 BCE), who won prizes in the Athenian dramatic festivals more than twenty times, expressing a more disabused view of the gods than his dramatic predecessors – wrote a play – *Phoinissai* (*The Phoenician Women*) – that recapitulates the view of justice as rooted in nature, and shows how vulnerable it can nevertheless be to abuse. Its chorus is a group of women from Phoenicia on their way to sacrifice at the shrine of Delphi. Unable to make their way out of Thebes on account of war, they witness the main action of the play, which centres on the mythical figure of the Theban queen Jocasta, the mother of Oedipus, who had unwittingly also become his wife, and the fate of the children born to that incestuous and so god-offending marriage.

Despite her unhappy fate in life so far, Jocasta attests to the natural source and value of justice, praising 'Fairness, [which] binds together friends with friends, cities to cities, and allies to allies'.<sup>24</sup> But the dramatic action soon shows how vulnerable just bonds are to unravelling through neglect or violence. The brotherly bond between the two sons of her marriage to Oedipus is ripped apart by a breach of fairness of one towards the other in the breaking of an agreement to alternate in ruling Thebes each year. This breach of fairness leads to a double murder: each brother dies while simultaneously inflicting a mortal wound upon the other. As this play shows, justice was all too often undone by greed or lust, by ruptures of faith not inhibited by the fragile civilizing

emotions of awe and justice. Yet justice was still honoured, in a sense, even in the breach. Euripides dramatized its importance by demonstrating the bleak consequences of its failure.

In Euripides' play, one of the daughters of Jocasta and Oedipus survives to accompany her blinded and stricken father out of the city. That account of Antigone's fate is less well known than a different version told earlier in the *Antigone* of Sophocles, the third of the great Athenian tragic playwrights. It was this play that, in about 441 BCE, pressed an unforgettable case against the arbitrariness of human law in comparison with divine law. It did so by challenging the primacy of the city's public justice when set against the natural bonds of kinship and the divine sanction underpinning them.

Sophocles begins his play after Antigone's two brothers have killed one another. Ironically, the one (Eteocles) who had broken his word to share power has been buried by the city with full honours; having been its ruler at the time of his death, he (or rather his corpse) benefits from the determination of the new ruler, Creon, to connect his legitimacy with the former regime. But the other brother (Polyneices), who suffered the injustice of his brother's breach of faith, is lying indecently unburied in the dust, Creon having forbidden the dignity of a proper religious burial or of any interment at all on the grounds of his having rebelled against the city's prior ruler. Is Polyneices' mistreatment unjust? Not according to Creon's law, or, rather, to the decree that he has issued as the self-appointed ruler of the city. But it is unjust – avers Antigone – according to the 'unwritten laws' of the gods, which prescribe a profound and inviolable obligation to bury one's kin.<sup>25</sup>

Antigone's description of divine laws as 'unwritten' reflects debates at the time that Sophocles wrote. The Athenians were beginning to write down more and more laws passed by the relatively newly democratic regime; but such new laws might – so the *Antigone* implies – not be worth the stone or bronze on which they were inscribed. They might readily appear as the puffed-up and self-important orders of a hubristic political community, which, as with Creon's commands, fail to acknowledge that the power and validity of human laws pales in comparison with the older laws embodied in the religious customs of hearth and home. Antigone dies a heroine. The arrogant Creon suffers a worse fate, as Antigone's death prompts the suicides of his son (her betrothed) and then his wife from successive waves of grief. His political power to give orders is shown to be hollow, mocked for its *hubris* in contesting the inexorable ordinances of the gods and fates. *Antigone* reinforces faith in a divine order of justice. But it does so by casting doubt on the merits of the cadre of merely human laws and decrees.

## The Sophistic Challenge: Is Justice Natural?

Sophocles' *Antigone* makes human law seem paltry in comparison with divine law. But it does not question the nature or value of the justice that it finds rooted in divine law. The public teachings of a new breed of 'sophistic' thinkers and teachers, questioning whether law and justice were anything more than arbitrary human conventions, offered an even sharper attack on the verities of the older poets. These new sophists were not the students of nature who had made



up previous generations of philosophers. Rather, they were specifically students of human society, who took it upon themselves to become teachers. This puts them among the earliest contributors to political theory, focusing their attention primarily on human affairs rather than on the constituents of cosmic order. The sophists were not unique in thinking about politics, but they were unusual in the proto-professional ways in which they positioned themselves and sought to profit from their reflections.

As well as offering their knowledge and advice free to their own cities and assemblies, these sophists travelled the Greek world seeking rich fathers who would pay for their advice to be transmitted to their sons, in the hope especially that a training in rhetoric – the art that many sophists claimed to have mastered – could help their sons to win power and fame. The spectacle of men seeking to influence politics not by playing their parts in the appointed duties and established institutions of their own cities, but by showing off their ability to train others to do so for a fee, was controversial. Men like the Sicilian sophist and teacher Gorgias (c. 483–c. 376 BCE), who toured the Greek world showing off a set-piece speech arguing that Helen of Troy was not to blame for having caused the Trojan War, disturbed the conservative assumption that rhetoric would always lead to just decisions.

Central to the teaching of many sophists was the drawing of a distinction between *nomos* and *phusis*, between law and nature.<sup>26</sup> In that context, they used *nomoi* (plural of *nomos*) to refer not to divine laws, as had Antigone, but to the kinds of laws passed by humans, by rulers, whether individual or

in groups. Man-made *nomoi* were human conventions. ‘Law’ in that sense, born of the happenstance of human contrivance, whether a tyrant’s whims or an assembly’s close-run vote, was presented as contrasting with the real nature of things – a nature that might be governed by a justice or law that is altogether different from the laws passed by humans. To contrast *nomos* and *phusis* was to call attention to the conventions of human contrivance, in comparison with the unalterable nature of reality – and, for the most part, *nomos* came off worse.

The most controversial sophists interpreted the claim that *nomoi* were man-made as the claim that they were made by *some* men for imposition upon *others* – that they offered the dominators all the advantage, and their hapless victims only disadvantage. These thinkers presented ‘nature’ as something like the red-in-tooth-and-claw view that early social Darwinists would later propose: they contended that it was natural for the strong to pursue their ends with impunity, making prey of the weak to suit their own desires. The Athenian character Callicles in one of Plato’s dialogues is an example of someone who has imbibed these arguments and presents them in an indelible form.

Even then, if what was natural was the rule of the strong, that left open the question of how human conventions should respond, and how their merits should be evaluated. Should one respond by attacking the strong for exploiting the weak, using natural justice as a critical tool to expose the exploitative dimension of human laws? The first recorded criticism of the injustice of slavery as an institution (rather than of particular abuses) is framed in these terms. It treats

slavery as a merely human law that violates the divinely sponsored and natural condition of liberty: ‘The deity gave liberty to all men, and nature created no one a slave’ is a saying of Alkidamas recorded by an anonymous note-taker in the margin of Aristotle’s *Rhetoric*.<sup>27</sup>

Using the *nomos/phusis* distinction to advance that radical critique of slavery or of any other particular law did not find many takers, however. More common was the argument that the bulk of laws do serve human interests in general – but they do so only as a kind of second-best, not serving them to the fullest possible extent.<sup>28</sup> Individual humans would be best served by pursuing the justice of nature, which is a justice in which the strong rule the weak, but only if they are assuredly among the strong. The difficulty of being sure that one would win out leads to a second-best solution, of accepting human law as a way of ensuring that one gets something rather than nothing. The best thing for each individual would be to dominate others without being punished. But the worst thing for him would be to try to dominate, and get caught and punished. So justice was the middle of the road, the second-best option. Forgo the fruits of being a dominator, but thereby ensure that you don’t suffer the pains of being dominated.<sup>29</sup> Plato has the character Glaucon lay out this view – while distancing himself from endorsing it – in the *Republic*: justice is ‘intermediate between the best and the worst. The best is to do injustice without paying the penalty; the worst is to suffer it without being able to take revenge. Justice is a mean between these two extremes. People value it not as a good but because they are too weak to do injustice with impunity.’<sup>30</sup>

According to this view, justice is a good fallback, but not inherently the most advantageous path to take. It may be achieved by using law as a ‘guarantor’ that people will treat each other justly, even though this will not make them more inherently good or just. Yet this solution is itself unstable. If justice is only a second-best solution to the problem of how to live with others, why shouldn’t you act unjustly whenever you can get away with it – thereby reaping the best possible benefits brought by injustice, while benefiting too from everyone else obeying the laws?

Such a relativizing of the value of justice – making it something we put up with when necessary, but not what is most beneficial or advantageous for our own happiness – marks an important challenge to the full-throated (if wistful) defences of justice in the poets with which this chapter began. We have seen that as new figures came on to the public stages of Greek society – from the older poets and philosophers, to the tragic playwrights and then the sophists – the consensus on the meaning of justice began to fray. Was justice central to the survival of civilization, or a swindle practised by the rich upon the poor? Greek thinkers put these questions on the table; the passionate debates, dramatic stories and tragic fates of real people and literary characters alike proved their testing ground.

## The Powerful and the Weak

As we have seen, only a limited form of justice was available to slaves, resident foreigners, women and children within the *polis*. But what about justice beyond its borders, in the

relations between one *polis* and another, or between a *polis* and other kinds of political entities, such as the Persian empire to the east of the Greek cities, where a powerful empire had been ruled since the 6th century BCE by descendants of its founding king, Cyrus the Great? Where there were treaties and alliances binding political units together, justice was a recognizable way of talking about keeping to agreed terms – though, even then, the question of whether the actions of a *polis* should be governed by justice and injustice, or rather by advantage, was far from settled. In a situation of no alliances and the prospect of force, the question of whether justice even obtained could be made to appear quixotic.

That was the view taken by ambassadors who were sent by the Athenians to negotiate the surrender of the inhabitants of the island of Melos in 416 BCE, in the midst of the Peloponnesian War between democratic Athens and the oligarchically leaning regime of Sparta, even though the Melians had done the Athenians no harm and had announced their neutrality. (The Athenians considered themselves to be at war with the Melians nevertheless.) As presented by the historian Thucydides, the Athenian ambassadors advance what they claim to be a stark truth of human affairs:

we both know that it is necessary to decide what is just in human debates only when the sides are equal, but decisions about justice are made in human discussions only when both sides are under equal compulsion; but those who are able to take advantage, get what they are able to get, while those who are weaker must acquiesce (5.89).

Most discussions of this so-called ‘Melian Dialogue’, a set-piece in Thucydides’ history, home in on its international context, arguing that justice has no place either in any war or at least between an imperial power and those brought (even by circumstance) under its sway. Indeed the willingness of the democratic Athenians to act as tyrants in their empire, while celebrating their maintenance of justice at home, was shocking to some observers and participants at the time. But consider an even more unsettling feature of the Athenians’ ultimatum to the Melians: their claim that justice cannot obtain in any situation in which one side is stronger. If one side is stronger, that side will get whatever it can, while the weaker side will simply have to bear its exploitation.

Can this be true? This chapter has argued that the Greeks saw justice as especially crucial in the setting of terms between rich and poor. One would think that Melos was precisely a situation where one party is stronger, the other weaker, so that the Athenian ambassadors’ dictum would in this case overturn not only the prospect of international justice, but also the prospect of justice at home, or in any context in which it might actually be needed. Yet, at the same time, the Athenian ambassadors provide us with a clue to a resolution. For we might rethink the hasty assumption that the rich are the stronger and the poor the weaker. In individual encounters between a rich man and a poor one, the poor person will almost always be more vulnerable. But with the abolition of debt-bondage to protect him and his fellow poor – the ‘many’, after all – with whom he makes common cause, there is a sense in which the poor may at least sometimes be able to assert a collectively greater strength. The

poor have numerical power, and, if properly armed (sometimes even without proper arms), military power.

We should not think of this as simply mob-rule. Rather, the greater strength of the many arises not merely from numbers, but from their capacity to organize themselves in their numbers for productive collective action. The very name of democracy (*demo* – *kratia*) may refer to the power (*kratos*: literally, ‘grip’) of the *demos* in the sense of its capacity to act and not merely in the sense of brute force.<sup>31</sup> So, in setting fair terms between rich and poor, the poor need to be protected against individual dependence and subordination, but, equally, the rich need to acknowledge the collective power of action of the poor. Justice protects the weak against the strong, but the weak may be able to muster a strength of their own.

If we picture the ‘Melian Dialogue’ as a clear-cut case of overwhelming force on one side, we see in this light that it is a rather unusual military situation, rather than a paradigm of the human condition. Even in empire, the dominated have forms of economic, political and moral power, though they may be subject to partisan suasion and arbitrary coercion by the ruling few. And in all regimes the potential power of the multitude (however cowed, fragmented and undermined it may be) is as much a threat to unjust contracts as it is a prod to the formation of fair ones. Justice is a radical idea, because if people’s sense of fairness is strained too far, their very sense of belonging and commitment to a common political community may snap.

This chapter has explored how archaic Greeks valued justice as part of the divine order governed by the gods, and how, in archaic and increasingly in classical times, a range of challenges to the human trust in divine justice was explored in poetic, sophistic and philosophical writings – engendering new ways to explore the relation between human and divine justice. The idea of Justice is one that, for Greek thinkers, underpins human civilization; yet it is vulnerable to divine and human misdeeds and misconstruals. To establish justice, therefore, requires not only divine sanction, but also human institutions capable of upholding justice for the most vulnerable participants in them – especially, as we saw, the poor in the face of economic and political dominance by the rich. We will next consider the ways in which different Greek constitutions sought to respect or to restrain the power of the multitude, and their treatment of the claims of the elite: to see how justice was put into action in constitutional thinking.