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ARCHAIC THOUGHT AND SOPHISTRY IN HERODOTUS' *HISTORIES* 3.38.1 SOME REMARKS ON THE CONCEPT OF ΝΟΜΟΣ[*]

ABSTRACT: The concepts of νόμος and φύσις were key to sophistical thinking. The sophistical opposition between the two concepts exerted a great influence in the fifth century BC. The objective of this contribution is to identify the presence of sophistical elements in Herodotus' *Histories*, taking a historical perspective. The approach will include an analysis of the notion of νόμος ('custom'). This examination is intended to demonstrate the thesis that Herodotus uses intellectual discussions from the fifth century BC but also transposes the concept of sophistry in order to restore an archaic conception of νόμος.

SOMMARIO: Le nozioni di νόμος e φύσις sono concetti-chiave nel pensiero sofistico. L'opposizione sofistica tra queste due nozioni esercitò una notevole influenza nel V secolo a.C. Lo scopo di questo contributo è identificare la presenza di elementi sofistici nelle *Storie* di Erodoto, assumendo una prospettiva storica. Lo studio conterrà un esame della nozione di νόμος ('costume'). La presente analisi intende dimostrare la tesi per cui Erodoto

usufruì effettivamente delle discussioni intellettuali di V sec. a.C. e traspose il concetto di sofisma per ripristinare una concezione arcaica di νόμος.

1. *Introduction*

The emergence of sophistry as an intellectual movement in Athens in around the fifth century[1] has been one of the most-questioned developments in the field of philosophy. The negative images of the Sophists provided mainly by Plato and Xenophon, as well as by Aristotle in the fourth century, demonstrate the intellectual tensions inherent in the formation of concepts at this time. These images can be considered the result of a range of prejudices that existed, from which the ideas promulgated by the sophist movement were produced and then invested with new meanings by later authors (primarily Greco-Roman, Alexandrian and Christian scholars in diverse intellectual contexts). Notably, the fragments of sophistical thought that have been preserved and the testimonies contemporaneous with the sophist movement do not offer a homogeneous, uniform image. Indeed, texts from the fifth century lack criteria for the definition of the movement, despite indicating the influence that the sophists had upon intellectual development in the classical period. The concepts produced by this movement, as well as the logics enabling the articulation of such discourses, play key roles in various fifth-century discursive records from fields including dramatic art (tragedy and comedy), medicine, philosophy and historiography. For this reason, recovering the sophistical traces present in the thought of the fifth century is of vital importance in understanding the political logics that operated in this intellectual context.

The aim of this paper, therefore, is to analyse the acceptance of the sophistical concept of νόμος in Herodotus' *Histories*. In conceptual terms, this acceptance represents a novel stance and a rupture with previous thought, in which meaning developed from the emergence of a new articulatory logic typical of the context of Athenian democracy. Thus, analysing this concept also entails studying the logic that allowed it to be articulated. As the relationship between the concept and the articulatory

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[1] All the dates given in the paper refer to the era before Christ. All further references to dates should be understood as pertaining to the BC period, although the abbreviation 'BC' has been omitted for the sake of brevity.

logic can be considered a historical development, the use of a method that takes the historical dimension into account is proposed here.

Traditionally, the study of the concepts of νόμος and φύσις has been approached from a philological or a philosophical perspective due to, firstly, the importance that these ideas acquired within tragic and philosophical discourses[2] and, secondly, the legal dimension of the concept of νόμος.[3] Since the *linguistic turn* in the mid-twentieth century, the need to examine concepts from a historical perspective has become a central aspect of theoretical-historiographic research.[4] Indeed, this approach has acquired

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[2] Cf. J. W. Beardslee, *The Use of* φύσις *in Fifth-Century Greek Literature*, Chicago, The University of Chicago Press, 1918; F. Heinimann, *Nomos und Physis: Herkunft und Bedeutung einer Antithese im Griechischen Denken des 5. Jahrhunderts* [1945], Darmstadt, Wissenschaftliche Buchgessellschaft, 1980; M. Pohlenz, "Nomos und Physis", *Hermes*, 81 (4), 1953, p. 418-38; M. Gigante, *Nomos basileus*, Napoli, Bibliopolis, 1993; W. K. C. Guthrie, *The Sophists*, Cambridge, Cambridge University Press, 1977; F. Reimer, "Natürliche Gleichheit und gesetzliche Unterscheidung - Zur Nomos-Physis-Antithese bei Hippias von Elis", in S. Kirste, K. Waechter, M. Walther (Hrsg.), *Sophistik. Entstehung, Gestalt und Folgeprobleme des Gegensatzes von Naturrecht und positivem Recht*, Stuttgart, Franz Steiner Verlag, 2002, p. 83-103; in addition to the papers presented at the Patras' congress, edited by A. L. Pierris (ed.), Phúsis *and* Nómos*. Power, Justice and the Agonistical ideal of Life in High Classicism*, Patras, Institute for Philosophical Research, 2007.

[3] Cf. M. Ostwald, *Nomos and the Beginnings in the Athenian Democracy*, Oxford, Clarendon Press, 1969; M. Gagarin, *Antiphon the Athenian*, Austin, University of Texas Press, 2002.

[4] See in Germany, on one hand, the development of hermeneutics (H.-G. Gadamer, *Wahrheit und Methode II: Ergänzungen Register*, in *Gesammelte Werke*, Band 2, Tübingen, Mohr, 1993, p. 77-91), and, on the other hand, the *Begriffsgeschichte* (R. Koselleck, *Vergangene Zukunft*, Frankfurt am Main, Suhrkamp, 1995; Id., *Kritik und Krise. Eine Studie zur Pathogenese der bürgerlichen Welt*, 1959, trans. K. Tribe, *Critique and Crisis. Enlightenment and the Pathogenesis of Modern Society*, Cambridge, The MIT Press, 1988), as well as in England the theoretical contributions of the 'Cambridge School' (Q. Skinner, "Meaning and Understanding in the History of Ideas", *H&T*, 8.1, 1969, p. 3-53 and J. Pocock, "The History of Political Thought a Methodological Inquiry", in P. Laslett and W. G. Runciman (eds.), *Philosophy, Politics and Society*, New York, Barnes and Noble, 1962, p. 183-202; reprinted in *Political Thought and History*, Cambridge, Cambridge University Press, 2009, p. 3-19) and the 'Post-Marxist School' (E. Laclau & Ch. Mouffe, *Hegemony and Socialist Strategy. Towards a Radical Democratic Politics*, Second Edition, London and New York, Verso, 2001); in France the development of 'archeology' (M. Foucault, *Les mots et les choses*, Paris, Gallimard, 1966; Id., *L'archéologie du savoir*, Paris, Gallimard, 1969), the analysis of discourse (R. Robin, *Histoire et Linguistique*, Paris, Armand Colin, 1973) and recently the *histoire conceptuelle du politique* (P. Rosanvallon, "Pour une histoire conceptuelle du politique (note de travail)", *RS*, 4 (1-2), 1986, p. 93-105; Id., *La dèmocratie inachevée*, Paris, Seuil, 2000; Id., *Pour une histoire conceptuelle du politique*, Paris, Seuil, 2003).

even greater relevance in recent decades.[5] The area of study has been under-examined, however, in relation to classical studies.[6] The current study can be considered part of the historical approach to the research of concepts, although the existence of multiple historiographical traditions is presupposed here.[7] It is also assumed that political concepts can be thought of as expressions of the social struggle for meaning.[8] In this context, texts are defined as 'speech-acts',[9] within which the contradictions and ambiguities that underlie the definition of concepts are inscribed by historical actors. As such, the study is framed in the 'history of the political',[10] offering an analysis in which the text is considered a method of political intervention[11] in the *hegemonic struggle*.[12]

In this paper, I will analyse the characterisation of the concept of νόμος in Herodotus' *Histories*, 3.38.1. The hypothesis utilised here is that the transposition of sophistical concepts enables Herodotus to reveal the controversial tensions inherent in the articulation of such concepts.

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[5] In addition to the growing literature on particular concepts, there are journals dedicated specifically to this field of studies that have been developed, such as *Contributions to the History of Concepts* (Helsinki University) or in Spanish *Conceptos históricos* (National University of San Martín), as well as the Ibero-American Conceptual History Project: *Iberconceptos* (University of the Basque Country).

[6] Pioneer in this field: Ch. Meier, *Die Entstehung des Politischen bei den Griechen*, 1983, trans. D. McLintock, *The Greek Discovery of Politics*, Cambridge, Harvard University Press, 1990; Id., *Introduction à l'anthropologie politique de l'Antiquité classique*, Paris, Presses Universitaires de France, 1984.

[7] For reasons of space, theoretical-historiographical considerations regarding the articulation of these traditions have not been examined further here (see *supra*, note 4). For an elaboration of the relevant points, please refer to J. E. Palti, "The 'Theoretical Revolution' in Intellectual History: From the History of Political Ideas to the History of Political Languages", *H&T*, 53, 2014, p. 387-405.

[8] Cf. Rosanvallon, "Pour une histoire conceptuelle", p. 17-31; Koselleck, *Vergangene Zukunft*, p. 114; Q. Skinner, "'Social Meaning' and the Explanation of Social Action", in J. Tully (ed.), *Meaning and Context*, Cambridge, Polity Press, 1988, p. 79-96, especially 90-96; see the application of this perspective in: S. Barrionuevo, "La praxis filosófica como praxis política. Una lectura de 'lo político' en el *Fedro* de Platón", *Praxis Filosófica*, 41, 2016, p. 59-82.

[9] Cf. J. Austin, *How to do Things with Words*, Oxford, Clarendon Press, 1962, p. 94-131. For its application to the field of historical study: Skinner, "Meaning and Understanding"; Pocock, "The History of Political Thought".

[10] Cf. Rosanvallon, "Pour une histoire conceptuelle".

[11] Cf. Skinner, "Meaning and Understanding"; Id., "Conventions and the Understanding of Speech Acts", *PhQ*, 20.79, 1970, p. 118-138.

[12] Cf. Laclau & Mouffe, *Hegemony*, p. 111-115, 134-145; E. Laclau, *On Populist Reason*, London and New York, Verso, 2005, p. 83-93; Id., *Emancipation(s)*, London and New York, Verso, 1996, p. 36-46; Id., *Los fundamentos retóricos de la sociedad*, Buenos Aires, Fondo de Cultura Económica, 2014, p. 99-125.

2. *The concept of* νόμος *in Herodotus*

The formulation of the νόμος-φύσις opposition is attributed to sophistry by the doxographical tradition.[13] In Plato's dialogue *Protagoras* (337c-e), this opposition is placed in Hippias' thoughts, being described as the axis from which 'shame' is formed (ἡμᾶς οὖν αἰσχρὸν τὴν μὲν φύσιν τῶν πραγμάτων εἰδέναι). Dümmler[14] assumes not only that this is an authentic fragment from Hippias, but also that lines 337c7-e2 can be considered the first application of the opposition νόμος-φύσις to the legal and moral arenas.[15] While 'sophists' are absent as such in the *Histories*,[16] they are present in a comparison made by Herodotus, in which discourses are introduced in a way that creates a transposition within the subject of enunciation. Thus, sophistical logic appears in the operative eristic form,[17] as well as in the constitutive opposition of thought (νόμος-φύσις also appears in Herodotus, 7.102-104).[18] Here, the Sophists are presented not as an enunciation agent, but as a discursive operation – the text is inscribed as a 'speech-act', in as much as it seeks to produce a discussion around this conceptual dispute.[19]

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[13] Cf. S. Barrionuevo, "Nota sobre una atribución de la oposición *nómos-phúsis* a la sofística (Platón, *Protágoras* 337d1-3)", *Mutatis Mutandis*, 6, 2016, p. 119-122.

[14] Cf. F. Dümmler, *Akademika: Beiträge zur Literaturgeschichte der sokratischen Schulen*, Gießen, Ricker, 1889, p. 252.

[15] This statement is shared, among others, by E. Dupréel, *Les sophistes: Protagoras, Gorgias, Prodicus, Hippias*, Neuchatel, Éditions du Griffon, 1948, p. 213, and H.-T. Johann, "Hippias von Elis und der Physis-Nomos-Gedanke", *Phronesis*, 18, 1973, p. 15-25, especially p. 16, for whom, despite Gomperz's objections, this evaluation acquires great acceptance.

[16] The term occurs three times only throughout the work – twice in the plural nominative (σοφισταί, Hdt. 1. 29.3 and 2. 49.6) and once in the singular dative (σοφιστῇ, 4.95.2). The use of the singular dative refers to Pythagoras as a 'member of the seven sages', while the plural nominative form constitutes a reference to 'the wise' in a general sense. Herodotus never uses the term to refer to a clearly defined social group.

[17] It is not just the term 'eristic' (Hdt. 7.50.2) that appears as a type of logical sophistry in the *Histories*; the concept of 'antilogy' (1.1-5, 126-127, 1.80-82, 9.41.2, 7.10a) is also mentioned.

[18] Cf. R. Thomas, *Herodotus in Context: Ethnography, Science and the Art of Persuasion*, Cambridge, Cambridge University Press, 2002, p. 109-112, 123-125. For a analysis of Xerxes and Damaratus dialogue, see A. Dihle, "Herodot und die Sophistik", *Philologus*, 106, 1962, p. 207-220; S. Forsdyke, "Athenian Democratic Ideology and Herodotus' *Histories*", *AJPh*, 122 (3), 2001, p. 329-358, especially 341-354; G. J. Basile, "Jerjes y Demarato en las *Historias* de Heródoto: identidades cruzadas entre lo griego y lo bárbaro", *Circe clás. mod.*, 18(1), 2014, p. 81-99.

[19] Cf. Austin, *How to do Things with Words*, p. 94-131. This characteristic allows us to consider them as 'intellectuals', see S. Barrionuevo, "'Intelectuales' en el mundo antiguo.

Given the limits established by my own objective in this paper, however, I will dwell on the transposition made by Herodotus in relation to the concept of νόμος only.

Herodotus dedicates an *excursus* to the νόμος concept in 3.38.1. In the passage, he tries to explain the cause behind the follies (ἐκμαίνω) of Cambises (Hdt. 3.27-37), citing the mocking (καταγελᾶν) of sacred things (ἱροῖσι) and of those sanctioned by custom (νομαίοισι) as the key issues. The argument is based on Herodotus' conception of νόμος, which can be seen in the following text:

> εἰ γὰρ τις προθείη πᾶσι ἀνθρώποισι ἐκλέξασθαι κελεύων νόμους τοὺς καλλίστους ἐκ τῶν πάντων νόμων, διασκεψάμενοι ἂν ἑλοίατο ἕκαστοι τοὺς ἑωυτῶν· οὕτω νομίζουσι πολλύ τι καλλίστους τοὺς ἑωυτῶν νόμους ἕκαστοι εἶναι.
>
> For it were proposed to all nations to choose which seemed best of all customs, each, after examination made, would place its own first; so well is each persuaded that its own are by far the best (Hdt. 3.38.1).[20]

The assumption made in the extract is based on a 'cultural experiment' carried out by Darius (3.38.3-4), who asks the Greeks whether they would be able to eat each other's corpses, as well as asking the Indians whether they would choose to incinerate corpses. Both sets of people respond indignantly that such actions would constitute blasphemy. In an examination of this passage, Thomas[21] argues that the ethnographic work of Herodotus would have been influenced by new ideas arising in around the fifth century. She attributes the conceptualization of νόμος to the framework established by the antithesis νόμος-φύσις. Thomas concludes that "the Darius experiment [...] forms one of the best concrete illustrations of 'sophistic relativism' that we have", adding that "Herodotus was a sophist too".[22] In support of her claim, Thomas appeals to the sophistic 'cultural relativism'[23] seen within the Protagorean influence, as

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Notas sobre un concepto histórico", *Anuario de la Escuela de Historia – Virtual*, 9, 2016, p. 1-16.

[20] For the Greek text I follow: H. B. Rosén, *Herodoti Historiae*, 2 vols. (Bibliotheca Scriptorum Graecorum et Romanorum Teubneriana), Leipzig, Teubner Verlagsgesellschaft, 1987; and quote the English translation of A. D. Godley, *Herodotus. Histories*, 4 vols. (Loeb Classical Library), Cambridge, Harvard University Press, 1961-6.

[21] Thomas, *Herodotus,* p. 122-34.

[22] *Ibid*. 126.

[23] Cf. Protágoras: Pl., *Tht.* 167c4-5; 171-2 [= *EGPh* 31 R9b (Laks & Most)]; *Prt.* 327, 334 y *Tht.* 151e-152a [= DK 80B1 = *EGPh* 31 R4 (Laks & Most)]; *Anonymus Iamblichi* Iambl., *Protr.* 95.13-104 [= DK 89A1 = *EGPh* 40 (Laks & Most)] y Ps.-Tuc. 3.84.1 [= DK 89A2* (adición: ed. Untersteiner 2009 = ed. De Romilly 1969)]; Hippias:

affirmed by a passage from Plato's *Theaetetus* (but attributed to Protagoras):

> ἐπεὶ οἶά γ᾽ ἂν ἑκάστῃ πόλει δίκαια καὶ καλὰ δοκῇ, ταῦτα καὶ εἶναι αὐτῇ, ἕως ἂν αὐτὰ νομίζῃ.
> I claim that whatever seems right and honourable to a state is really right and honourable to it, so long as it believes it to be so (Pl., *Tht.* 167c4-5).[24]

Cartledge[25] and Romm[26] also note the parallel between Darius' cultural experiment and Protagorean thought revealed by these two passages. On this point, Humphreys[27] states that, "if the passage is taken in isolation, out of context, Herodotus appears as a cultural relativist". She adds that the reference to Pindar's poem in Herodotus 3.38.4 should also be taken into account here: ὀρθῶς μοι δοκέει Πίνδαρος ποιῆσαι νόμον πάντων βασιλέα φήσας εἶναι ("it is, I think, rightly said in Pindar's poem that use and wont is lord of all"). With this in mind, Humphreys[28] asserts that the Herodotean conception of νόμος oscillates between two extremes: on one hand, it allows human behaviour to be explained in terms of the predictability of a social group (which is from whence the 'madness' of Cambises is derived), while, on the other hand, a general principle cannot be established (as evident in the 'aberration' generated between the Greeks and the Indians). While the content of the 'empirical νόμος' cannot be deduced via a universal principle, a defence of 'cultural relativism' is not necessarily implied here. This can be seen in Herodotus' explanation of 'madness' as 'being outside of itself' (ἐκμαίνω), in which a transcendental rule is established, the operation of which is independent of the culture in which the rule is developed. In this case, the transcendental rule can be understood as a process that eliminates excess.[29]

Pl., *Prt.* 337d [= DK 86C1 = *EGPh* 36 D17 (Laks & Most)]; Antiphon: *POxy* XI n. 1364 (ed. Hunt [= DK 87B44 = *EGPh* 37 D38, R7 (Laks & Most)]) y *CPF* 17 F1-2 (ed. F. D. Decleva Caizzi & G. Bastianini, *Corpus dei papiri filosofici greci e latini*, I.1*, Firenze, Olschki, 1989 [= *EGPh* 37 D38a-c (Laks & Most)]).

[24] Greek Text and Translation: H. N. Fowler, *Plato's Theaetetus* (Loeb Classical Library), Cambridge, Harvard University Press, 1967.

[25] P. Cartledge, *The Greeks: A Portrait of Self and Others*, Oxford, Oxford University Press, 2002, p. 74-75.

[26] J. Romm, *Herodotus*, New Haven, Yale University Press, 1998, p. 98, 178.

[27] S. Humphreys, "Law, Custom and Culture in Herodotus", *Arethusa*, 20, 1987, p. 211-220, especially p. 212.

[28] *Ibid.*, p. 219.

[29] Cf. J. A. S. Evans, "Despotes nomos", *Athenaeum*, 43, 1965, p. 142-153, especially p. 147; H. R. Immerwahr, *Form and Thought in Herodotus*, Cleveland, Press of Western Reserve University, 1980, p. 320; V. Ehrenberg, *Die Rechtsidee im frühen Griechentum*, Leipzig, Hirzel, 1921, p. 119; T. Harrison, *Divinity and History: The Religion of*

For Humphreys,[30] this position places Herodotean thought closer to the pre-Socratic conception of νόμος than to the sophistical one. She demonstrates this by referring to Heraclitus, fr. 53 DK:[31]

πόλεμος | πάντων μὲν πατήρ ἐστι, πάντων δὲ βασιλεύς, | καὶ τοὺς μὲν θεοὺς ἔδειξε τοὺς δὲ ἀνθρώπους, | τοὺς μὲν δούλους ἐποίησε τοὺς δὲ ἐλευθέρους.
War | is father of all (beings) and kind of all, | and so he renders some gods, others men, | he makes some slaves, others free (Hippol. IX 9.4).[32]

The distinction between gods and men in this passage is interpreted in the light of fr. 62 DK[33] by Gomperz.[34] Kirk[35] also accepts the connection between the two fragments but considers that it should not try to explain it from this connection. If we analyse πατήρ and πάντων δὲ βασιλεύς (i.e. the attributes[36] of πόλεμος) in relation to the excerpt above, similarities with

Herodotus, Oxford and New York, Clarendon Press, 2000; J. Mikalson, "Religion in Herodotus", in E. Bakker, I. de Jong and H. van Wees (eds.), *Brill's Companion to Herodotus*, Leiden, Brill, 2002, p. 187-198; Id., *Herodotus and Religion in the Persian Wars*, Chapel Hill, University of North Carolina Press, 2003.

[30] Humphreys, "Law", p. 214.

[31] Here, I refer to the DK edition used most widely in the twentieth century. For both the Greek text and the English translation, I follow M. Marcovich's critical edition, *Heraclitus: Greek Text with a Short Commentary*, editio maior, Mérida, The Los Andes University Press, 1967. I have included the numbering for this edition in brackets, as well as to the relevant modern editions in each case (see in particular the recent edition by A. Laks & G. W. Most, *Early Greek Philosophy*, 9 vols. (Loeb Classical Library), Cambridge, Harvard University Press, 2016).

[32] DK 22B53, *EGPh* 9 D64 (Laks & Most), 29 Marcovich, A19 Colli, 83 Kahn, 12 Fronterotta.

[33] Hippol. IX 10.6 [= *EGPh* 9 D70 (Laks & Most), 47 Marcovich, A43 Colli, 92 Kahn, 21 Fronterotta]: ἀθάνατοι θνητοί, θνητοὶ ἀθάνατοι, | ζῶντες τὸν ἐκείνων θάνατον, | τὸν δὲ ἐκείνων βίον τεθνεῶτες ("Inmortals are mortals, mortals are inmortals; | for (the former) live the death of the latter, | and (would) die their life").

[34] Th. Gomperz, *Zu Heraklits Lehre und den Überresten seines Werkes*, Wien, Akademie der Wissenschaften in Wien, 1886.

[35] G. S. Kirk, *Heraclitus: The Cosmic Fragments*, Cambridge, Cambridge University Press, 1975, p. 248.

[36] W. Burkert, *Griechische Religion der archaischen und klassischen Epoche*, Stuttgart, Kohlhammer, 1977, p. 203, state that: "Mit alle dem ist Zeus 'Vater', 'Vater der Menschen und Götter'. 'Vater' sagen zu ihm auch die Götter, die nicht seine leiblichen Kinder sind, und alle Götter stehen vor dem Vater auf. Als 'Vater' rufen ihn auch die Menschen im Gebet, offenbar seit indogermanischer Zeit. Zeus in seiner Souveränität trifft die Entscheidungen, die den Lauf der Welt bestimmen. [...] Niemand kann Zeus zwingen oder Rechenschaft von ihm fordern, und doch sind seine Entscheidungen weder blind noch einseitig. Dass Zeus die Metis verschluckt hat, bedeutet die Vereinung von Macht und Klugheit. Vom 'planenden Erfassen', *nóos*, des Zeus ist im Epos immer wieder die Rede. Dieser *nóos* ist stets stärker als der der Menschen; es mag 'noch' verborgen sein, worauf er hinauswill, aber Zeus hat sein Ziel und wird es erreichen".

Zeus can also be appreciated: ἕν, τὸ σοφὸν μοῦνον, | λέγεσθαι οὐκ ἐθέλει καὶ ἐθέλει Ζηνὸς ὄνομα ("One [being], the only [truly] wise, | is both unwilling and willing to be called by the name of Zeus").[37] Thus, it can be said that πόλεμος, like Zeus, is established as a 'transcendental unit' (ἕν) that articulates both the life principle and the death principle,[38] and, as such, can be given one or several different names.[39] This is because the concept demonstrates both unity (as a transcendental principle) and multiplicity at once – i.e. life and death, freedom and slavery.

This point is illustrated further in fr. 67 DK, which, firstly, affirms the property of being 'one and multiple' (via ὁ θεός) and, secondly, places πόλεμος as substitution instance of ὁ θεός:

ὁ θεὸς | ἡμέρη εὐφρόνη, χειμὼν θέρος, | πόλεμος εἰρήνη, κόρος λιμός: | ἀλλοιοῦται δὲ ὅκωσπερ <πῦρ, | ὃ>[40] ὁκόταν συμμιγῇ θυώμασιν | ὀνομάζεται καθ' ἡδονὴν ἑκάστου.
God is | day and night, winter and summer; | war and peace, satiety and hunger; | and he takes various shapes (or undergoes alteration) just as fire, | which, when it is

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[37] Clem., *Strom*. V 115.1 [= DK22B32, *EGPh* 9 D45 (Laks & Most), 84 Marcovich A84 Colli,118 Kahn, 10 Fronterotta].

[38] Cf. Burkert, *Griechische Religion*, p. 200: "Wo Geburt ist, ist auch der Tod: Dass diesem jungen Zeus auf Kreta auch das berüchtigte 'Grab des Zeus' polar zugeordnet ist, wo die Kureten Zeus bestatten, ist eine naheliegende Vermutung".

[39] G. Colli, *La sapienza greca*, vol. III, Milano, Adelphi, 1980, p. 177, suggests that Heraclitus develops a transposition of the enigma presented to Homer in this fragment (A24 Colli = DK 22B56 = *EGPh* 9 D22 [Laks & Most]), which would coincide with one of the fundamental themes of Heraclitus: "la tendenza cioè a considerare il fondamento ultimo del mondo come qualcosa di celato". From this, Colli argues that "Il nome di Zeus è accettabile come simbolo, come designazione umana del dio supremo, ma non è accettabile come designazione adeguata, proprio perché il dio supremo è qualcosa di nascosto, inaccesibile". Colli links this fragment to A92 and A20 Colli [= DK 22B123 and B54 = *EGPh* 9 D35, D50 (Laks & Most)].

[40] Diels adds πῦρ from Pindar's fr. 114b (ed. Bowra) (cf. H. Diels & W. Kranz, eds., *Die Fragmente der Vorsokratiker*, 3 vols., Berlin, Weidmann, 1958). In Marcovich's *Heraclitus*, p. 415-16, Diels' amendment is taken on board, although he also adds ὃ for the sake of syntactic coherence (suggesting that its initial absence is a copying error) and because the amendment gives meaning to a comparison with ὁ θεός. This reasoning is also followed in F. Fronterotta, *Eraclito*, Milano, BUR, 2013. In Colli's *La sapienza*, Diel's correction is also accepted, being presented without square brackets (although Colli does not agree with the reasons given by Diels for the change, which are based on the hypothesis that the 'doctrine of the fire' can be said to articulate Heraclitean thought). On the contrary, in Ch. Kahn, *The Art and Thought of Heraclitus*, Cambridge, Cambridge University Press, 2011, and R. Cornavacca, *Presocráticos: Fragmentos*, 2 vols., Buenos Aires, Losada, 2008, Diel's correction is rejected. In the present study, although I follow Marcovich's edition, I share Colli's belief in the need to avoid entering into debates about the place of 'fire' (πῦρ) in the thought of Heraclitus.

mingled with spices, | is named according to the scent of each of them (Hippol. IX 10.8).[41]

In this fragment, the 'nominal multiplicity' (ὀνομάζεται) upon which the oppositions given are based is no more than a symptom of appearances (καθ' ἡδονὴν ἑκάστου); the god (ὁ θεὸς) remains a unit,[42] just like that which is mixed (δὲ ὅκωσπερ <πῦρ>), despite any mutations that occur (ἀλλοιοῦται). The power of πόλεμος (i.e. "he makes some slaves, others free" – τοὺς μὲν δούλους ἐποίησε τοὺς δὲ ἐλευθέρους) is equated with the power of Zeus, with the superiority of this power being established by its capacity to take on different forms. This idea is also reinforced in fr. 114 DK:

> ξὺν νόῳ λέγοντας | ἰσχυρίζεσθαι χρὴ τῷ ξυνῷ πάντων, | ὅκωσπερ νόμῳ πόλις | καὶ πολὺ[43] ἰσχυροτέρως· | [5] τρέφονται γὰρ πάντες οἱ ἀνθρώπειοι νόμοι | ὑπὸ ἑνός, τοῦ θείου· | κρατεῖ γὰρ τοσοῦτον ὁκόσον ἐθέλει | καὶ ἐξαρκεῖ πᾶσι | καὶ περιγίνεται.
>
> Those who will speak [*i.e.* act] with sense | must rely on what is common to all | as a city relies on its law, | and much more firmly: | [5] for all human laws | are nourished by one law, the divine law; | for it extends its power as far as it will | and is sufficient for all [human laws] | and still is left over (Stob., *Flor.* I 178).[44]

In this fragment, Heraclitus not only establishes 'the divine' (τοῦ θείου) as a unit upon which all things (ὑπὸ ἑνός) rely (like πόλεμος and Zeus in fr. 53 and fr. 32 respectively); he also equates the divine with the relationship

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[41] DK 22B67, *EGPh* 9 D48 (Laks & Most), 77 Marcovich, A91 Colli, 133 Kahn, 28 Fronterotta.

[42] In Colli, *La Sapienza*, p. 156, this is interpreted in a similar way to the 'unity of opposites' invoked by Apollo and Dionysus (Apollo: day = summer, satiety, peace; Dionysus: night = winter, hunger, war). He indicates, however, that ὁ θεός does not suggest that πόλεμος is a 'unifying principle'; on the contrary, it operates as a 'scattering principle' because "rivela, scopre, dimostra, ἔδειξε, la natura e il foggiare delle individualità essenziali che lo precedono, τοὺς μὲν θεοὺς... τοὺς δὲ ἀνθρώπους". Heraclitus thus requires λόγος as a 'unifying principle' because, for Colli, it is a pure form that operates on the level of representation, eliminating the noumenal dispersion of individualities and enabling the harmonious union of opposites, and thus facilitating the articulation of the phenomenon in its radical multiplicity (συνάψιες ὅλα καὶ οὐχ ὅλα – A27 Colli = DK 22B10 = *EGPh* 9 D47 [Laks & Most], cf. Colli, *La sapienza*, p. 184-185). Nevertheless, this interpretation, in spite of its theoretical richness, presents a hermeneutic problem: it presupposes the plane of representation to be the intellectual framework in which Heraclitean concepts operate. This presumption is problematic insofar as such theoretical developments acquire meaning only from the *Schwellenzeit* produced in modernity. Here, intellectual operations linked to the development of concepts such as 'consciousness', 'will', 'interiority' and 'abstraction' are also required.

[43] πόλις in the codices, corrected by Schleirmacher.

[44] DK 22B114, *EGPh* 9 D105 (Most & Laks), 23 Marcovich, A11 Colli, 30 Kahn, 6 Fronterotta.

between νόμος and πόλις. Provencal,[45] following Humphreys,[46] considers this passage to be an expression of the Heraclitean conception of the 'divine νόμος', adding that this description has a greater degree of similarity to Herodotus' notion of νόμος than that which can be seen in the 'cultural relativism' of the sophists. Both the Ionian philosopher and the historian of Halicarnassus state that every human norm (located in the plane of multiplicity: πάντες οἱ ἀνθρώπειοι νόμοι) is governed by divine norms (located on the plane of the unit: ὑπὸ ἑνός), thus rendering νόμοι subject to a universal principle.[47]

In contrast, Berruecos Frank[48] appeals to the equivalence between τῷ ξυνῷ πάντων in Heraclitus and the use of κοινός (meaning 'the State' or 'the government' in Herodotus – 1.67.5, 5.85.1, 9.117, 5.109.3, 6.14.3, etc.) to suggest that ξὺν νόῳ λέγοντας (fr. 114 DK) represents 'the ideal rulers'. This idea can be supported by an analysis of 7.8.δ.2, in which Xerxes contrasts ἰδιοβουλέειν (linked with the sovereign) with τίθημι τὸ πρῆγμα ἐς μέσον. Berruecos Frank thus argues that, in fr. 109 DK (κρύπτειν ἀμαθίην κρέσσον ἢ ἐς τὸ μέσον φέρειν),[49] ἐς μέσον refers to power, government and the command of public affairs. He contends that fr. 109 DK should be read in consonance with fr. 114 DK as such an approach enables to one consider πόλεμος as the νόμος of πόλις. Thus, the use of the verb ἰσχυρίζεσθαι in fr.

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[45] Cf. V. L. Provencal, *Sophist King. Persian as Others in Herodotus*, London, Bloomsbury, 2015, p. 51-52.

[46] Humphreys, "Law".

[47] In Á. Cappelletti, *La filosofía de Heráclito de Éfeso*, Caracas, Monte Ávila, 1969, p. 101-104, it is asserted that this principle places the law above the ruler in Heraclitean thought. This reading coincides with the interpretation of the passage in Pindar fr. 169 Snell [= Bowra 152] proposed by Guthrie in *The Sophist*, p. 131-134, for whom both gods and men are subject to the power of νόμος – a position also taken in Kirk's *Heraclitus*, p. 248, for whom in Heraclitus' fr. DK 22B67 [= *EGPh* 9 D48 (Laks & Most)] πόλεμος would refer to a 'universal war'. The problem with Cappelletti's proposal lies in the anachronistic interpretation of νόμος as 'law (writing)' – cf. T. Vitek, "Heraclitus, DK 22 B 44 (frg. 103, Marcovich)", *Emérita*, 130 (2), 2012, p. 295-320 (especially p. 302-308).

[48] B. Berruecos Frank, "ΠΟΛΥΠΕΙΡΟΣ ΣΟΦΙΑ. Heródoto en la historia de la filosofía griega", Ph.D. Thesis, supervised by Jaume Pòrtulas, Barcelona, Universidad Autónoma de Barcelona, 2013, p. 396-402.

[49] Stob. III 1.175 [= DK 22B109, 110 Marcovich, 68 Colli, 107 Kahn, 53 Fronterotta]. Berruecos Frank, ΠΟΛΥΠΕΙΡΟΣ, p. 398, follow here the reading of A. García Calvo, *Razón común*, Madrid, Lucina, 2006, p. 93, who accepts the reading of *Florilegio*, against Marcovich, *Heraclitus*, who considers the reading derived from (a^1) Plut. *an virtus doceri possit* 439D, (a^2) *De audiendo* 43D, (a^3) *qu. conviv.* III 1: ἀμαθίην κρύπτειν ἄμεινον. In this reading Marcovich is followed by Kahn, *The Art*, and Fronterotta, *Eraclito*. Although Colli, *La sapienza*, follows the *Florilegio* – like Berruecos Frank and García Calvo – he excludes ἢ ἐς τὸ μέσον φέρειν.

114 DK is equated with νόμος ἰσχυρός in Hdt. 7.102.1, in which 'the force' is situated as a representation of the superlative degree of judicial logic and, hence, a secularisation of the 'divine law'. This reading of the rupture between the conception of νόμος in Heraclitus and Herodotus, upon which Berruecos Frank argues the rejection of a *lectio facilior* in fr. 109 DK is based, presents at least two problems: *(a)* it presupposes a defence of democracy on the part of Herodotus, which is somewhat difficult to affirm definitively[50] and *(b)* it neglects one of the aspects pointed out by Provencal[51] – i.e. that democratic discourse is placed in the words of the Persians or the 'barbarians' in Herodotus' narrative, which renders the defence of democracy difficult. Nonetheless, although this 'rupturist reading' of Herodotus' stance regarding archaic thought is hard to sustain, a wholesale rejection of the use of methodological ruptures in other archaic narrative practices is not implied here.

Before considering Herodotus' role in the defence of the rupture produced by 'sophistical cultural relativism', therefore, we can assert that the notion of νόμος elaborated by Herodotus presents a reaffirmation of the archaic notion of the term. This contention is based on an understanding of 'divine normativity' as a transcendental norm that establishes the order of the πόλις, in which divine punishment is the consequence of its non-fulfilment.

3. *Concluding remarks*

An examination of the concepts that constitute the sophistical νόμος-φύσις opposition in Herodotus' discourse highlights the ways in which the

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[50] In Herodotus the equivalence of the terms δημοκρατίη (6.131.1), δημοκρατέεσθαι (6.43.3), ἰσοκρατίη (5.92α.1, cf. 4.26.2) and ἐλευθερίη (3.142.2), is carried out in opposition to τύραννος. Cf. D. Asheri, A. Lloyd & A. Corcella, *A Commentary on Herodotus Books I-IV*, edited by O. Murray & A. Moreno, Oxford, Oxford University Press, 2007, p. 474-475; J. Gallego, *La democracia en tiempos de tragedia*, Buenos Aires, Miño y Dávila, 2003, p. 279-280; D. Plácido Suárez, "De Heródoto a Tucídides", *Gerión*, 4, 1986, p. 17-46, espec. p. 20-24; P. Georges, *Barbarian Asia and the Greek Experience*, Baltimore, Johns Hopkins University Press, 1994, p. 37-46; A. W. Saxonhouse, *Athenian Democracy. Modern Mythmaker and Ancient Theorist*, Notre Dame, University of Notre Dame Press, 1996, p. 31-57; Id., "The Tyranny of Reason in the World of the Polis", *APSR*, 82 (4), 1988, p. 1261-1275, especially p. 1263.

[51] Provencal, *Sophist King*, p. 179-180. Cf. F. Hartog, *Le miroir d'Hérodote. Essai sur la représentation de l'autre*, 1980, trans. J. Lloyd, *The Mirror of Herodotus. The representation of the Other in the Writing of History*, Berkeley, University of California Press, 1988, p. 237-248.

context of the symbolic struggle for power is inscribed upon the text itself. Furthermore, as hypothesised, the conceptual framework in which these concepts are articulated shifts the meanings attributed by sophistry, revealing the problematic nature of the referent.

Although the Herodotean conception of νόμος infers the intellectual debates demarcated by sophistry, this cannot be considered a mere reproduction of the debate; rather, the text reveals a particular historical position. This finding demonstrates the problematic nature of the definition of these concepts in the context of the development of Athenian democracy. Disputes over the tension between nature and convention do not respond to the idle needs of a group of foreign intellectuals in search of eccentricity; rather, they turn out to be an index of the problematic situation established by life in the polis. Herodotus and the sophists can be considered to have operated as intellectuals who sought to intervene in political decisions through theoretical dispute, albeit from the plane of 'the political' (that is, outside the institutional mechanisms established by the polis). Thus, the discourses that circulate in the textual plane assume performative roles, being devices of ideological production. Here, the context is inscribed upon the text, thus blurring the distinction between opposing positions because existing closed systems are not reproduced; instead, fields are opened up that facilitate disputes about hegemony.[52]

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[52] Here, I refer to the Gramscian concept of 'hegemony', according to which the direction of a class is defined not only by a society's political leadership, but also by its intellectual, cultural and moral leadership. This implies that a series of practices and symbolic representations functions in the exercise of power (A. Gramsci, *Quaderni del carcere*, 4 vols., Torino, Einaudi, 1977, vol. II, p. 703-704, and vol. III, p. 1518-1520). Although this concept was designed to explain the hierarchy of domination in modern capitalist societies (and may prove, therefore, to be irrelevant when applied wholesale to pre-capitalist societies), such a formulation could be useful in relation to other societies, if limits are established regarding the relevant conditions of conceptual production (i.e. absenting modern philosophies of consciousness) and the appropriate conditions for conceptual application (i.e. modifying the focus on capitalist societies). Although the space is lacking here to develop such points further, an interesting discussion on such possibilities can be found in Laclau and Mouffe, *Hegemony*, p. 134-45; Laclau, *Los fundamentos*, p. 99-125; E. Balibar, "Laclau, hegemonía, Europa", in *Debates y combates*, Edición homenaje a Ernesto Laclau, 2015, vol. II, p. 49-62; J. Butler, "Competing Universalities", in J. Butler, E. Laclau & S. Žižek, *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left*, London-New York, Verso, 2000, p. 136-181.

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