SOLON THE ATHENIAN AND DEIOCES THE MEDE: THE POLITICS AND POLITICAL THEORY OF THE ANCIENT ARBITRATOR

By Josiah Ober

Summary: The traditions concerning Deioces, King of the Medes, and Solon of Athens, preserved in Herodotus, [Aristotle] *Ath. Pol.*, and Plutarch each concern a public arbitrator who is granted special authority through an agreement reached among rationally self-interested members of his community. In each case, the eventual outcome is the establishment of a regime in which public law enables the conditions of peaceful coexistence. Yet the differences are also stark, revealing how the Greek tradition addressed the compatibility of political liberty and social order. In each case, the agreement can be modeled as a strategic game: Deioces and the Medes play a variant of an Ultimatum Game from which Deioces emerges as absolute sovereign. By contrast, through the intermediary of Solon, rich and poor Athenians play a Bargaining Game, leaving both sides better off than they would have been through fighting, and setting the stage for collective self-government.

My friend, colleague, and longtime intellectual sparring partner, Mogens Hansen, was a preeminent historian of ancient Greek political institutions *and* of Greek political thought. Moreover, while an astute investigator of features unique to ancient cultures, he also recognized that Greek political theorists and legislators alike sought solutions to perennial problems of social organization, arising from fundamental features of human existence. Pursuing the insight that at least some of what we learn from studying the ancient Greeks is applicable to our own political circumstances surely helped Mogens Hansen to become a celebrated commentator upon and participant in the political life of his beloved native country. In that spirit, I revisit two familiar stories about ancient arbitrators, coincidentally depicted as near contemporaries of the early sixth century BCE. Rather than worrying about their historical veracity,

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I review the stories through the lens of modern theories of strategic behavior, treating them, here, as models of ancient theorizing about liberty and regime formation, two issues that were of great interest to Mogens Hansen.[1]

The traditions concerning Deioces (in Herodotus) and Solon (in [Arist.] *Ath. Pol.* and Plutarch's *Life*) are at least superficially similar: Each developed an early reputation for impartial justice. Each man's aloofness from passions and partiality in a time of social crisis led his community to elevate him to an extraordinary position from which he played a decisive role. Each resolved the crisis in a way that had profound consequences for the future of his community, and for the liberties enjoyed or foregone by its members. Each had a keen understanding of instrumental, means-to-ends, reasoning and each acted on the correct assumption that relevant others (groups as well as individuals) would, in the end, make instrumentally rational choices. But the different political games played by Deioces and the Medes and by Solon and the Athenians led to very different outcomes, illuminating divergent possibilities for rational social organization. The choices made by Deioces, Solon, and those in their respective communities, led either to tyranny or to laying the groundwork for democratic self-government – a divergence that has considerable resonance in the 21st century.

Deioces and the Medes: An Ultimatum Game

Herodotus introduces the story of Deioces by noting that the nations of western Asia had previously liberated themselves from Assyrian domination. He announces (1.96.1) that he will explain how these peoples, all of them self-governing (αὐτόνομοι), "came once again to be subjected to tyranny" (αὖτις ἐς τυραννίδα). His explanation hinges on choices made by the Medes as a community and by Deioces, a man "in love with tyranny" (ἐρασθεὶς τυραννίδος).

1 This essay is based in part on ideas first presented in Ober 2022: 137-45 and 177-95. Translations are my own adaptations of those available in the Loeb Classical Library.

As the story begins, the Medes were suffering from lawlessness (*anomia*). Already locally prominent, Deioces enthusiastically devoted himself to justice, that is to the fair arbitration of disputes (1.96.2). The locals thus chose him to be their judge. Because Deioces wanted to rule, he was straight and just in his judgments; his arbitrations were praised for their excellence. As Deioces' fame spread, the Medes, previously victimized by unfair judges, refused to have anyone else arbitrate their disputes.[2] But then Deioces went on strike, claiming it was unprofitable to himself (οὐ γάρ οἱ λυσιτελέειν: 1.97.1) to judge others' cases, while neglecting his own affairs. His retirement precipitated a return of robbery and lawlessness. So, the Medes gathered in assembly to deliberate about what to do (1.97.2). Herodotus supposed that the main speakers at the meeting were Deioces' friends, who argued that there must be a king. They claimed that a king would end lawlessness, allowing each of the Medes to get on with his own affairs. "Saying these things, they [the Medes] persuaded themselves to be ruled by a king" (1.97.3). Upon becoming king, Deioces hired bodyguards and embarked on massive building projects: He ordered the Medes to build him a palace and treasury in the center of a fortified royal city; the Median people (δῆμος) were made to dwell outside the wall (1.98.2-99.1). He ordered that he be seen by no one and inaugurated elaborate rules of royal protocol (1.99.1-2). With these arrangements in place, Deioces became a harsh guardian (φυλάσσων χαλεπός) of justice, employed a network of spies, and meted out proportionate (κατ' ἀξίην) punishment for wrongdoing upon anyone he caught acting arrogantly (ὑβρίζοντα: 1.100.1-2). Herodotus concludes: "Deioces, then, united the Median nation and he alone ruled it" (1.101).[3]

2 Herodotus does not indicate what constituted fairness for the Medes, but Deioces' dispute resolution formula must have involved hard-to-reproduce expertise; for what that might have entailed, if we assume rational Medes, see Barry 1989: 25-29.

3 Walter 2004 is the best analysis known to me of Herodotus' Deioces story as an example of Greek political theory, emphatically concerned with regime formation as a rational process (88: "In der stringenten Rationalität der konstruierten Geschichte spielen dabei kontingente Faktoren keine Rolle.") – rather than merely spurious Iranian history. Walter compares the Deioces story with Herodotus' accounts of Dareios and Peisistratus, and shows that, read together, they constitute a significant contribution to the fifth-century theory of tyranny.

Herodotus characterizes Deioces' motives as straightforward and his actions as rational means to his desired end of tyranny. He carefully constructed his reputation by consistently resolving disputes through straight judgments. Deioces clearly had a conception of justice that, while shared by the other Medes, was rarely manifest in their judicial practice. The hinge of the story is Deioces' success at becoming a monopoly supplier of justice. As shown by his temporary retirement, absent Deioces' straight judgments, lawlessness was the default condition of Median society.

Deioces' strike proved to the Medes that his refusal to judge without adequate compensation was no bluff. So, the Medes, depicted as gathered in a deliberative constitutional assembly, had to choose between lawlessness and establishing a law-enforcing ruler.[4] They had experienced the high costs of lawlessness and were eager to attend to their private affairs. So, they rationally chose to have a ruler, and they followed his orders thereafter. With reference to early modern political theorizing, the Medes' decision prefigures the social contract developed in Thomas Hobbes' *Leviathan* (1996 [1651]: Chapter 2.3). Legitimacy, and thus the grounds of willing obedience, were established by a voluntary agreement among self-interested individuals. The contracting parties are the Medes themselves. They gather in assembly and conclude that the best available solution to the problem of social order is the establishment of a sole ruler. Moreover, Herodotus sketches a distinctively Hobbesian regime: Deioces, as sovereign, becomes the unique source of positive law. While not vicious, his authority is absolute: a strict enforcer of the law, he remains unconstrained by civil law.

Both Deioces and the Medes are depicted by Herodotus as having ordered preferences and both parties seek to maximize their own expected utility by the choices they make: Deioces' most prefers to rule as king. Failing that, he prefers to attend to his own affairs. Judging without adequate recompense is ranked last. The Medes want to get on with their private affairs without having to worry about robbery and lawlessness. They most prefer to have order at no cost to themselves, which means having Deioces continue to act, as he previously had done, as *pro bono*

4 Walter 2004: 82 points out that the Medes' assembly was not an established institution; we are given no hint that it was convened on a regular basis.

judge. But that top-ranked preference is not available, given Deioces' credible commitment to remain in retirement if not established as king. In proper Hobbesian fashion, the compact is made by and among those who will be subject to sovereign authority – it is not a contract *with* the king, but rather a compact with one another, to bring about a sovereign. In their assembly, the Medes "persuaded themselves" to have a king, the best *available* option, given that they least prefer disorder.

What the Medes do not know, *ex ante*, is what sort of king Deioces will be. Will he willingly share some part of his royal authority with the other Medes, perhaps in the form of an advisory council?[5] While the Medes do not know the answer in advance they do have a choice *ex post*, after Deioces has been made king. By their revolt against the Assyrians, the Medes had demonstrated a capacity to unite in rejecting tyrannical domination. If Deioces demands what they take to be an unfair share of political authority, the Medes could revolt again. Having been made king by a compact among the Medes, Deioces remains king only if they assent to the terms on which he rules.

Herodotus' story is readily modeled as a simple game: Suppose that Deioces' share of rule (k), is somewhere between 0 (having no more authority than anyone else) and 1 (absolute monarchy). The Medes' share of rule (their capacity to limit the king's authority) is the part of authority not monopolized by the king ($1-k$). In the terms of game theory, Deioces as king and the Medes as subjects played an Ultimatum game.[6] In the standard version of the game, the organizer provisionally grants Player 1 a sum of money, say $1. Player 1 chooses how much of that sum (between 0 and 1) to offer to Player 2. If Player 2 accepts the offer, each keep their share of the money and the game ends. If Player 2 refuses the offer, the money is forfeited; each get nothing. Deioces, having been chosen king, is in the position of offering the Medes some measure of positive freedom, a share in ruling, by accepting limits on his own authority.[7] If the Medes refuse the offer, because the share he offers is too little, they

5 Stasavage 2020 offers a comparative and historical analysis of governments in which an advisory council not selected by the monarch acts as a constraint on the ruler's authority.

6 Ultimatum Game variants: Thaler 1988; Nowak et al. 2000; Camerer 2003: Chapter 2.

7 Greek conceptions of freedom and 'sharing in ruling': Ostwald 1996.

revolt. Deioces is no longer king and the Medes regress to a condition of lawlessness. As in the game played with money, both sides return to the *status quo ante*, getting nothing. The questions that hover behind Herodotus' story are these: How much will Deioces, who passionately desires tyranny, offer the Medes, in term of limits on his royal authority? What will the Medes, who have a demonstrated capacity to reject a ruler they regard as tyrannical, accept as a decent offer?

Deioces rightly believed that the Medes value lawfulness, understood as a peaceful social order, so highly that they will sacrifice positive liberty to have it. So, Deioces made a minimal offer to the Medes. He will continue as their fair (if harsh) judge, but that is all they will get. By their willing obedience, Herodotus' Medes accept Deioces' offer of impartial dispute resolution with no other limits on his royal authority. For anyone who values political freedom, the Medes paid a very high price: They have sacrificed liberty for lawfulness.[8]

When Herodotus began the story of Deioces, he emphasized that the Medes had previously liberated themselves: They had "proved good men in fighting for freedom (περὶ ἐλευθερίης) against the Assyrians; casting off slavery they freed themselves" (ἐλευθερώθησαν: 1.95.2). They were, as we saw, self-governing, unconstrained by externally imposed law (αὐτόνομοι: 1.96.1).[9] But at the same time, and apparently as a negative consequence of their collective autonomy, they were victims of lawlessness (ἀνομίη). They subsequently escape lawlessness through the establishment of a king who is one of them and of their own choosing. But they were no longer free men. Rather they were permanently ruled over, by a tyrant. As such, in Herodotus' terms, even though they were now free to pursue their lawful private affairs, having sacrificed positive liberty, they returned to a condition of slavery. So long as they obey the king's law, they will not be chained or otherwise physically constrained (thus, in

8 Dewald 2003 suggests that Herodotus offers Deioces as a model of the Asiatic despot – the 'tyrant type' of classical Greek political thought. Yet, unlike the standard Ultimatum Game, which ends when the offer is accepted or refused, we might suppose that the Medes retained a credible 'revolution threat', thereby securing Deioces' commitment to sustaining lawfulness; see n. 30.

9 Walter 2004: 83 notes that Herodotus used the term only twice; the other time (8.140) in reference to the Athenians.

Hobbesian terms, they were free). But, like Greek slaves, they were under regular supervision (the royal spies) and suffered harsh penalties if their master found them to be arrogant.

Herodotus' readers are, I suppose, meant to conclude that, having "persuaded themselves" to be ruled by a king, the Medes paid too high a price for lawfulness, in terms of foregone political freedom. Herodotus' story assumes that the Medes were instrumentally rational in having ordered preferences and making their choices accordingly. The new regime was an equilibrium solution, enforced by the tyrant with the tacit consent of the governed. The Medes' choice revealed a preference ranking that set having someone else taking care of the problem of social order and getting on with their own private affairs above remaining free from despotism. That ranking was different from that of Herodotus' presumptively positive freedom-loving Greek readers.[10] In terms of the Ultimatum game, Herodotus' Medes acted like model-type rational economic agents, accepting a very small share when the alternative was getting nothing. Herodotus' Greek audience was more closely aligned with the real-world players in modern behavioral experiments, who, if offered an inadequate share (typically, below about 40%), refuse the offer, depriving themselves while punishing the proposer. Yet Herodotus also shows his readers that the Medes, no less than the Greeks, were quite capable of gathering in assembly, deliberating over available options, and making a public choice among them. Could the Medes have devised a self-enforcing lawful yet non-tyrannical social order? Herodotus' reader is left to ponder the counterfactual.

Solon and Rich vs Poor Athenians: A Bargaining Game

The tradition represented by the Aristotelian *Ath. Pol.* and Plutarch's *Life of Solon* depicted Solon, lawgiver (νομοθέτης) and arbitrator (διαλλακ-

10 See, in general, Munson 2001 and 2009. Cf. Gorg. *Pal.* (Laks & Most 2016: no.32.D25) for the claim that it is implausible that even barbarians would willingly accept a tyrant, given that slavery is the worst thing of all.

τής), at a moment of social crisis.[11] The crisis was precipitated by conflict between opposing Athenian factions: the wealthy and individually powerful few on the one hand, and the impoverished, individually weak many on the other. The tradition details the sources of the conflict, Solon's bargaining solution to it, and his subsequent lawmaking. It also includes Solon's own and other writers' reflections concerning what he sought to accomplish and how successful he was.[12]

The tradition clearly sees the crisis that led to Solon's appointment as a protracted, at least potentially violent conflict (στάσις) between two parties (schematically, Rich and Poor) in which each side sought to maximize its share of valued resources, again schematically: Land, Debt, Labor (use of the bodies of persons), and Offices (authority to make and enforce rules, legal judgment).[13] Among the questions posed by the Solon tradition are these: Why did the opposing parties agree to ask Solon to arbitrate their dispute? How did Solon decide on the division of the various resources under dispute? Why, given that Solon could not impose his solution by fiat, did both sides accept it?

Solon's arbitration can be understood as a solution to a bargaining problem.[14] In a two-party bargaining game, one side may gain more than

11 *Ath. Pol.* 5.2; Plut. *Sol.* 14.2. LSJ translates διαλλακτής as 'mediator'; the root meaning of the verb διαλλάσσω is 'exchange': LSJ s.v. II. On the epigraphic evidence for the role of διαλλακταί as arbitrators/mediators in Hellenistic-era socio-political crises, see Simonton 2019: 195-96, with literature cited.

12 The Solon tradition is discussed in the essays collected in Blok & Lardinois 2006; see especially Noussia 2006 (Solon's rhetoric); Harris 2006 (Solon and law). Mogens Hansen's seminal contributions to the literature on Solon are summed up in Hansen 1999.

13 Two parties are rich vs poor: *Ath. Pol.* 5.1-2; Plut. *Sol.* 13.2, 14.1-3. The entire *demos* was in debt to the rich: Plut. *Sol.* 13.2. Dispute was protracted and violent: *Ath. Pol.* 5.2. Dispute had reached a peak: Plut. *Sol.* 13.2. Goals of the poor: Plut. *Sol.* 13.3, 14.1, 16.1. Goals of the rich: Plut. *Sol.* 14.1, 16.1. Plutarch's mention of three contending parties (Plut. *Sol.* 13.1) – extreme democrats, extreme oligarchs, and those preferring a moderate and mixed government – is an outlier in the tradition and seems to play no role in his narrative of the origins of the crisis or Solon's subsequent reforms. It is unclear who Plutarch imagines the "many citizens, too, who belonged to neither party" (Plut. *Sol.* 14.3) might have been.

14 On bargaining in game theory, see Barry 1989: 12-49; Dixit & Skeath 1999: chapter 16; Camerer 2003: 151-98; Serrano 2008.

the other, depending on the outcome, but the game is not a zero-sum competition: one side's gain does not equal the other's loss. Rather both sides expect to gain if and when they come to an agreement. It is the expectation that each party could be better off having made the bargain than not having made it that brings them to the bargaining table. In brief, a successful bargain creates a social surplus: more divisible resources than if no agreement is made. In the case of the crisis confronted by Solon, the potential surplus was produced by the difference between ongoing civil conflict in which each side's share was degraded and insecure, and productive social cooperation. Each side was self-interested, in that each wanted as much of the surplus as they could get: The Poor sought improvement in their social and economic circumstances.[15] The Rich hoped for a return to the social and economic conditions, favorable to themselves, that had preceded the conflict.

The solution to a bargaining game depends on three factors. First is the 'backstop' payoff to each side. The backstop is each party's best alternative to a negotiated agreement – that is, what they expect to have should negotiations fail (Pinkley et al. 1994). Since if negotiations end without a bargain, each party expects to retain its backstop, neither will accept a bargain with a payoff less than the backstop. Here, the backstops are the shares of Land, Debt, Labor, and Offices that Rich and Poor held when the arbitration began.

The second factor involved in the solution is the full potential value of the bargain – that is, the social surplus that could be realized and divided if all goes as well as possible. The third factor is the relative bargaining strength of the two parties. If either party comes to the table with a superior bargaining position (more willing to settle for its backstop, less risk averse, more patient), it will end up with relatively more of the surplus. Rationally self-interested parties to a dispute will agree to arbitration under certain conditions (Barry 1989: 24-30). First: Neither side has reason to believe it can gain everything it hopes for by fighting or direct bargaining. Next: Each side believes it will do at least as well from arbitration as it would from direct bargaining. Third: Each believes

15 Based on the poetic fragments, Edwards 2024 argues that the goals of the Poor were liberation from debt slavery, redistribution of arable land, and for Solon to be a tyrant.

that the arbitrator is both realistic and impartial. A realistic arbitrator *does* attend to the backstops and relative bargaining strength of the parties to the dispute; an impartial arbitrator *does not* personally favor either side.[16] Fourth: Each side has reason to fear the results of a failure to come to an agreement. Finally, we may add, given the high stakes of ancient Greek politics, Fifth: Neither has reason to believe that the arbitrator will use his position to establish himself as a tyrant, à la Deioces.[17]

Both Rich and Poor had a lot to lose in the case of a failure to reach an agreement.[18] Each had a credible and not yet fully realized violence threat; for the Rich, this was based on their superior wealth-power; for the Poor, their superior numbers.[19] Unrestrained violence threatened to collapse the social order; neither side could be fully confident of retaining their backstop share. Meanwhile, there was an external threat: conflict with Megara over control of Salamis,[20] and an internal threat: the emergence of a tyrant.[21] Each of these conditions weighed especially heavily on the Rich, reducing their advantage in bargaining strength. According to the tradition, Solon was a credible arbitrator because he had

16 Barry 1989: 76-77 cites Harsayani's super-thin 'veil' – a decision maker (arbitrator), who knows all about the differences between the two parties, but has an equal chance of being in either party.

17 Barry 1989: 50, "arbitration can most straightforwardly be seen as (to adapt Clausewitz) a continuation of bargaining by other means. The object of the arbitrator is to resolve a conflict on terms acceptable to both parties, when the parties consult their own interests in determining what is acceptable. This entails that the arbitrator should seek to arrive at an adjudication that will as far as possible mimic the outcome of rational bargaining."

18 *Ath. Pol.* 11.2: "the people had thought that he would institute universal communism of property, whereas the notables had thought that he would either restore the system in the same form as it was before or with slight alteration." Plut. *Sol.* 14.3: "both parties were in high hopes."

19 Rich are powerful: Plut. *Sol.* 5.2. Organization of the many poor under emergent leadership: ibid. 13.3.

20 Conflict with Megara: Plut. *Sol.* 8-10.

21 Tyranny threat: Plut. *Sol.* 13.2, 14.3-4.

a reputation for probity and concern for the whole community. Moreover, as a 'man of the middle', he lacked affiliation with either side.[22] He was (based on his public statements and behavior) credibly committed to opposing Megarian encroachments and rejecting tyranny.[23]

The philosophically inflected tradition regards Solon as virtuous: wise (included in canonical lists of the 'Seven Sages'), moderate (neither despising wealth and honors nor seeking them in excess), and courageous (willing and able to fight, but not rash). He was certainly concerned with achieving an outcome that could be widely accepted as just.[24] But his bargaining solution to the dispute was in no sense ideal in respect to an external standard of justice. An arbitrator's decision must reach an equilibrium: that is, neither player has a better move to make in the game. Given that the arbitrator does not, himself, have the power to enforce the decision, the equilibrium must be *self-enforcing*: to preclude resort to violence it must be regarded (even if grudgingly) as 'good enough' by *both* sides, which means it will *not* be considered ideal by *either* side.[25] Two passages from Plutarch's *Life of Solon* illuminate Solon's arbitration and lawmaking as a bargain, rather than an instantiation of ideal justice.

In the first passage Plutarch (15.2) reports that, "when [Solon] was afterwards asked if he had enacted the best laws (ἄριστοι νόμοι) for the Athenians, he replied, 'The best they would receive (προσεδέξαντο).'" This is a succinct statement of a bargaining solution: There were, by implication, 'better' (more just) laws. But the unwillingness of both parties to 'receive' less than they believed they could gain by fighting constrained Solon's options regarding the distribution of resources.

The second key passage is a story that Plutarch tells about Solon's interchange with his fellow Sage, the Scythian Anacharsis.[26]

22 *Ath. Pol.* 5.3: Solon as being among the middling citizens (μέσοι); Plut. *Sol.* 14.1-2: the rich accepted him readily because he was well-to-do, and the poor because he was honest; 16.2: he was δημοτικός and μέσος.

23 Solon rejects tyranny: Solon frs. 33-34; Plut. *Sol.* 14.5.

24 Solon's virtues: *Ath. Pol.* 5.3; Plut. *Sol.* 2.3, 3.2, 30.3.

25 Solon's lack of coercive authority: Plut. *Sol.* 16.2: "relying as he did only on the wishes of the citizens and their confidence in him."

26 On the Greek tradition of the Seven Sages as performers of wisdom, and Anacharsis the Scythian Sage, see Martin 1993 and 1996.

> When [Solon] was already engaged in public affairs and compiling his laws, Anacharsis, accordingly, on learning what Solon was about, laughed at him for thinking that he could check the injustice and rapacity (πλεονεξία) of the citizens by written laws, which were just like spiders' webs; they would hold the weak and vulnerable who might be caught in their meshes, but would be torn to pieces by the rich and powerful. To this Solon is said to have answered that men keep their agreements (συνθῆκαι) with each other when for neither party is there profit (λυσιτελές) in breaking them, and he was adapting his laws to the citizens in such a manner as to make it clear to all that the practice of justice was preferable (βέλτιον) to the transgression of the laws. (Plut. *Sol.* 5.2-3).

Here, the practice of justice is predicated on the prudent obedience to the laws by self-interested agents. It is, furthermore, a clear statement of the core feature of a bargaining solution: In response to Anacharsis' challenge, Solon asserts, in the language of game theory, that neither player has a better move. Each party has got all it can hope for, considering the moves available to the other party. The bargaining solution has been 'adapted to' the expectations of the players and therefore accepting the outcome is more advantageous to each player than is breaking the agreement.

These two passages, along with other comments attributed to Solon and the content of his laws, show that Solon's arbitration can be modeled as a bargaining game. He was concerned with what each party would accept, with the relative strength of each party's position, and with the full value of social cooperation that was being foregone by the conflict. He sought a stable and maximally productive outcome. Of course, each side sought to convince Solon that their bargaining position was strong. The wisdom of the arbitrator is seeing through these ploys.

Per above, the dispute between the Athenian parties concerned Land, Debt, Labor and Offices. The Rich prefer the *status quo ante* – their share before the outbreak of the conflict. They controlled most of the agricultural land and were unwilling to give it up. They were creditors to impoverished debtors and had enslaved many of them. The Rich had maintained control of the political system through their monopoly on the

public offices, and through the immunity of office-holders to legal prosecution. The Poor, on the other hand, were clearly willing to fight, if necessary, even at the risk of social collapse, and might support a tyrant if the alternative was the *status quo ante*. They wanted agricultural land to be redistributed. They wanted existing debts to be cancelled and those Athenians who had been enslaved for debt to be freed. They wanted a greater share in public offices and more control over those who held them.

These multiple issues might seem to have rendered the arbitrator's job so complicated as to be impossible. But according to modern bargaining theory it is the opposite. As Dixit & Skeath (1999: 544-55) point out, "Often the enlargement of the ... set of issues actually makes it easier to arrive at a mutually satisfactory agreement." This is because, "When two or more issues are on the bargaining table at the same time, and the two parties are willing to trade more of one against less of the other at different rates, then a mutually beneficial deal exists." Solon divided the Land resource mostly in favor of the Rich, declining to redistribute real estate. He distributed Debt and Labor mostly in favor of the poor many: He mandated a one-time cancellation of debts and liberated Athenians who had been sold into slavery, without reimbursement to former creditors and former owners. On the other hand, there were no reparations for Athenians who had lost their land and years of freedom under the old regime. Finally, Solon reorganized the public offices and access to legal redress (Plut. *Sol.* 18.1-5) by distributing the major offices according to income (with the highest offices reserved for the Rich) while formalizing the right of the Poor to attend the assembly and try cases of public malfeasance by office-holders. In brief, he "trade[d] more of one against less of the other at different rates."

Barry notes further that effective arbitrators do not announce the result *as* a bargaining solution. Rather, "they come up with some formula for relating the award to some principle, some comparison, or some precedent" (Barry 1989: 108). In Solon's case, the 'formula' was equitability, and the 'principle' was justice – albeit of a practical rather than ideal sort (i.e. justice as mutual advantage, not as morality: Barry 1989: 1-9). In poems alluding to his legislation, Solon repeatedly states that he distributed the relevant goods to both parties according to their desert (Solon

frs. 5, 34, 36, 37; *Ath. Pol.* 12.1, 12.3-4; Plut. *Sol.* 18.4). He represents each side as seeking to maximize its own advantage and as careless of the justice of the other side's claims (Solon frs. 6, 34; *Ath. Pol.* 12.2-3). And thus, initially, each side, hoping to gain more at the expense of the other side, expressed dissatisfaction at the outcome of the arbitration (*Ath. Pol.* 6.3, 11.2; Plut. *Sol.* 16.1-2; 25.4). In his elegies, Solon analogizes his own position to that of a wolf beset by dogs on all sides (Solon fr. 36) and elsewhere to a boundary marker (ὅρος), set between two hostile armies (Solon fr. 37). In brief, he advertised himself as having served as an impartial judge, beset by those who urged him to be partial to their side, and his solution as just because it was as fair as possible to both sides.

In the short run, at least, the bargain held. Both Rich and Poor ultimately accepted the results of the arbitration on land, debt, and labor as the best they could get in light of moves in the game available to the other side. Both sides allowed Solon to continue with his political reforms of rules governing access to offices and legal redress (Plut. *Sol.* 16.3). As noted above, Solon's non-tyrannical solution would only work if it were self-enforcing: that is, the parties to the bargain, rather than an external authority (a Hobbesian sovereign: 'Leviathan'), must undertake to defend it. Plutarch's Solon acknowledges this. When, asked what *polis* was best, he replied, "That *polis* in which those who are not wronged, no less than those who are wronged, exert themselves to punish the wrongdoers" (Plut. *Sol.* 18.5). Here we have a reference to the necessity of cooperation in punishment – the key to the emergence and persistence of stable social order in the sophist Protagoras' 'great speech' in Plato's dialogue (*Protagoras* 324b).[27] The Aristotelian *Ath. Pol.* (11.1) implies something similar, in explaining Solon's decision to leave Athens after his laws had been established: "He did not think it fair for him to stay and explain his laws, but for everybody to carry out their provisions for himself."

It is in connection with the necessity that the equilibrium be self-enforcing that we should understand the tradition that one of Solon's laws

27 Walter 2004: 82, 84 notes that the myth offered by Plato's *Protagoras* also has certain parallels with Herodotus' Deioces story, including the concern with punishment of violations.

mandated that any citizen who held aloof in a *stasis* was to be disenfranchised.[28] Solon here appears to be driving up the cost of conflict to prevent its outbreak. Rather than allowing a matter to be violently contested only among rival factions with strong preferences over outcomes, Solon pushed ordinary citizens into the fray. This incentivized those in the middle to join one side or another and punish the losers. Those with strong preferences must ask themselves how certain they were of victory: If the likelihood and the costs of losing were high enough, the expected value of fighting would fall below the value of the status quo and *stasis* would be avoided. The equilibrium sustaining the new regime would be self-enforcing.

Conclusions: Ancient and Modern Regime Theory

Taken as contributions to political thought, the stories of how Deioces and Solon ended social crises and established political order anticipate and illuminate prominent issues in early modern and contemporary political theory. Both stories concern the question of how the rational pursuit of self-interest can lead to a cooperative social order. They also confirm, and help to elaborate, the roles of deliberative reason-giving and collective decision-making in constitutionalism. In Herodotus' story when the Medes assemble to address the problem of widespread lawlessness, their public deliberations follow procedural norms familiar from democratic Athens: Oral arguments were presented by public speakers in favor of available options. The arguments were made, and attended to, by persons who will be bound by the decision. Following debate, the assembled Medes chose to establish a monarch as sovereign authority over themselves. Readers are left to imagine the mechanism as either Athenian-style hand-voting or Spartan-style acclamation. As noted above, the

28 Solon's *stasis* law: *Ath. Pol.* 8.5; Plut. *Sol.* 20.1. Van't Wout 2010 argues that Solon's law on *stasis* (probably a product of fourth-century political debates) should be read as requiring citizens to play an active role in the resolution of a conflict, if necessary by use of arms, but to do so on a basis of neutrality: standing up for the community as a whole, rather than for either faction. For another skeptical view of the historicity of the law on stasis, see Teegarden 2014.

procedure and outcome anticipate Thomas Hobbes' *Leviathan* in characterizing the creation of sovereign authority through a social contract, established by and among self-interested persons. As with Hobbes, the contract is struck to escape an intolerable condition of lawlessness and the sovereign, once established, is the unique source, interpreter, and enforcer of law. He is unaccountable except through rebellion; until and unless the Medes rise up to depose him, Deioces' authority is absolute.

In the Solon tradition, by contrast, the deliberations that led to a public decision and a new social order took place within Solon's mind – *in foro interno*. Having thought through the problem, he presented the Athenians with a compromise solution that fully satisfied neither side but was ultimately accepted by both. Solon's arguments in favor of the compromise were made public after the fact, in his lyric poetry. *Ath. Pol.* and Plutarch make a point of quoting Solon's lyrics justifying the bargain: Solon is presented as offering the Athenians reasons for the solution he proposed and they had accepted – including reasons for why the constitutional order did not fully please either side in the dispute, and for why it was rightly regarded as equitable, even while it fell short of ideal standards of justice.

The Solonian constitution was, in modern terms, republican (Skinner 1998; Pettit 1997, 2013) rather than absolutist: Citizenship was defined by what are now called positive as well as negative liberties.[29] Athenian citizens gained both immunity from enslavement in their own community and a role, as assemblymen, in legislation. Public officials, selected from a wealthy elite, served limited terms and were made continuously accountable to ordinary citizens through a judicial process. Herodotus' conception of freedom as non-domination, requiring collective self-rule, is very different from that of Thomas Hobbes, who asserted that substantial individual freedom is compatible with absolutist government, because each subject remains free just insofar as he is not physically constrained (in chains or prison). Likewise, Isaiah Berlin (1969) regarded liberty negatively, as non-interference in the pursuit of persons' chosen private ends, and therefore argued that autocracy could be compatible with freedom.

29 On positive and negative liberties in classical Athens, see Hansen 1996.

Herodotus' Deioces and the Solon tradition underline a general point with significance for contemporary debates between deliberative and agonistic democrats. Deliberative democrats emphasize the importance of public debate centered on giving and taking reasons for individual preferences over outcomes. The only form of legitimate power inequality is the superior force of the better argument. Preferences are taken as potentially amendable to being changed through the deliberative process. A consensus solution, even if not achieved, is often seen as ideal. Democratic agonists, by contrast, regard vigorous competition among rival factions, each firmly committed to deeply opposed positions, as the essence of politics. Power is rightly seen as domination; conflict is healthy and can be characterized as war between friends and enemies. The victorious majority sets the rules; what it decides is deemed to be in the common interest.[30]

The Greek political tradition, as represented by the Deioces and Solon stories, takes a middling position: The role of deliberation (internal and external) is not discounted in favor of raw power and credible threats. Nor, however, is deliberation elevated to an ideal of public reason that could eliminate power inequality and delegitimize strategic behavior. The Greek tradition of political theorizing recognized the essential role of both reasoned arguments and strategic calculation of interests in the creation of social order through collective choice. Likewise, the Greek tradition recognized the necessity of the active support of citizens to the persistence of democratic regimes, and the tacit consent of subjects to monarchical regimes.

Herodotus' Deioces was an arbitrator of disputes, both before and after he became king. Among the key differences with the Solon tradition is that Deioces achieved his reputation by arbitrating private disputes and suppressing criminality, whereas Solon was chosen as an arbitrator by competing social groups facing the risk of civil war. In the Deioces story, Herodotus' Medes remain self-interested individuals, each aiming

30 Contemporary normative literature, notably including work by Habermas (1996) and Rawls (1996), seeks to eliminate the role of unequal social power in processes of law-making and adjudication. Normative theories tend to regard agreements as ideally achieved through deliberation, Deliberative versus agonistic democracy debate: Contrast Fishkin 1991 and 2009 with Mouffe 1993 and 2000.

to pursue his private affairs free from fear of criminal interference. The Solon tradition, by contrast, imagined the Athenians as organized into coherent factions whose interests, and thus preferences over social outcomes, were defined by differences in wealth. What this meant in practice was that the primary risk for the Athenians was civil war should they fail to strike a bargain: the arbitrator offered them a way to avoid that outcome through a self-enforcing republican equilibrium. For the Medes, having agreed to exchange positive freedom for law enforcement, the risk was that the sovereign would renege on the provision of lawfulness by becoming a vicious, lawless, tyrant. The contract was self-enforcing insofar as subjects accepted the ruler's sovereignty so long as lawfulness was preserved and rebellion remained a credible threat.[31]

Both stories invoke the language of freedom (ἐλευθερία) and law (νόμος) and raise the question of how these are related. Herodotus' Medes, as a people (δῆμος), gave up their freedom, understood in the 'positive liberty' sense of a share of rule, to be free to pursue their private affairs. In Solon's case, the *Ath. Pol.* (6.1) claims that Solon made the Athenian *demos* free (ἠλευθέρωσε) by establishing laws that forbade debt slavery. In Herodotus' story, the Medes enslaved themselves (and subsequently enslaved the other residents of Asia), by sacrificing positive liberty as self-government. In the Solon tradition, the effect of Solon's legislation was both to free poor individual Athenians from actual slavery, and to establish some of the preconditions that would eventually enable the *demos*, as the body of citizens in which the poor were a majority, to rule the state – i.e. democracy. The author of the Aristotelian *Ath. Pol.* (9.1) writes that the three "most democratic" (δημοτικώτατα) of Solon's reforms were the prohibition of loans secured upon the person, the rule allowing any Athenian who so wished to prosecute on the behalf of another, and, most especially, the right of appeal to a jury-court: "For the *demos*, being master (κύριος) of the vote (ψῆφος), becomes master of the *politeia*." The questions of the identity of the *demos* (whether 'the whole citizenry' or 'the non-elite as a socially defined class'), the relationship between lawfulness and freedom, and the fair distribution of the surplus

31 On the 'revolution constraint' as an incentive for autocratic rulers to remain concerned with the welfare of subjects, see Landa & Pevnick 2025: 70-73 with literature cited.

value of social cooperation, were major issues for Greek political thought – and remain central concerns for political theorists to this day.

Finally, a persistent set of questions addressed by Greek political writing concerned how deliberations about the needs of a community, and choices of free men faced with a social crisis, could result in an elective autocracy: the exchange of positive liberty for stable social order. Herodotus had no knowledge of the events of 411 and 404 BCE, when the *demos* of Athens, under extreme duress, twice voted itself out of existence in favor of what proved to be a tyrannical oligarchy. But those late fifth-century *metabolai* were of great interest to Thucydides, Xenophon, and the Aristotelian author of the *Ath. Pol.* Plato probably knew Herodotus' Deioces story, given that he borrowed Herodotus' tale (1.8) of how the usurper Gyges (or his ancestor) became king of Lydia (*Resp.* 359d). Plato's account of the emergence of a tyrant from within a democracy in *Republic* book 8 follows a somewhat different trajectory but asks a similar question about the transition from freedom to autocracy. Today, understanding the ways in which democratic processes can give rise to a charismatic dictator, or, alternatively, can preserve self-government by citizens in the face of social crisis, remain among the most pressing issues for democratic theory, empirical political science, and practical politics.[32] I dearly wish that we had the benefit of Mogens Hansen's wisdom concerning the currently fraught political situation in Europe and America. But we can honor his legacy by seeking to illuminate our own democratic dilemmas with reference to the thought and practice of the ancient Greeks.

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32 See, for example, Pevnick 2024.

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