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INDICE

GIANLUCA CUNIBERTI

PROCEDURE GIUDIZIARIE E RICONCILIAZIONE SOCIALE NELL'ATENE DI SOLONE

Abstract

La necessità urgente di azioni e procedure per la risoluzione dei conflitti è originaria della società greca arcaica. In questa prospettiva il presente contributo indaga la trasformazione sociale e politica che avviene ad Atene ad opera di Solone. Due principi regolano la sua azione: l'applicazione del criterio del *to ison* e l'armonizzazione della società attraverso lo strumento dei *thesmoi* che possono rendere *artios* la situazione. Ma quali sono questi provvedimenti legislativi? Anzitutto l'estensione del diritto di ricorrere all'azione giudiziaria e la definizione di regole, scritte e uguali per tutti, in grado di realizzare un'efficace gestione della lite privata e, con essa, del conflitto sociale. Infatti, nei suoi versi, Solone mostra di non avere proposto una soluzione della *stasis* in termini socio-economici: introduce invece nella *polis* ateniese una vera e propria cultura della giustizia, fondata su regole scritte e istituzioni pubbliche, che superano il personalismo dell'arbitro/mediatore nel quale la tradizione ha al contrario rinchiuso Solone stesso: la riforma soloniana, così interpretata, mostra infine di essere ispirata da un profonda revisione dell'idea di giustizia e del rapporto uomini-dei che in essa si realizza.

The urgent need of actions and procedures for the resolution of conflicts is characteristic of ancient Greek society. In this perspective, the paper investigates the social and political transformation that takes place in Athens by Solon. Two principles govern his action: the application of the criterion *to ison* and the harmonization of the society through the instrument of *thesmoi* that can make the situation *artios*. But which are these legislative measures? First of all, the extension of the right to take legal proceedings and the definition of written and equal laws to realize an effective judicial management of the private dispute and, in the same time, of the social conflict. In fact, in his verses Solon proves not to have proposed a solution of *stasis* in socio-economic terms: instead, he introduces into the Athenian polis a real culture of justice, based on written laws and public institutions that exceed the personalism of the arbitrator/mediator in which Solon himself has been locked by tradition: the solonian reform finally shows to be inspired by a thorough revision of the idea of justice and the connected relation between men and gods.

Recenti studi intorno al lessico e ai temi storiografici della concordia e della riconciliazione[1] mi hanno condotto ad evidenziare quanto una

1. In particolare G. Cuniberti, *Lyein: la necessita dell'azione nella risoluzione dei conflitti*, in S. Cataldi

concezione che privilegi azioni e procedure all'interno di strategie per la risoluzione dei conflitti sia stata propria e originaria della società greca antica e in modo particolare di quella arcaica. In questa prospettiva intendo mettere in luce la relazione fra questa modalità di concepire la necessità di risolvere il conflitto e la trasformazione sociale che, secondo la tradizione antica, sarebbe avvenuta ad Atene all'inizio del VI secolo a.C. ad opera di Solone e che si connota per essere imperniata intorno alla ridefinizione dell'idea di giustizia[2] (o meglio, come avremo modo di osservare, delle procedure di giustizia) quale oggetto allo stesso tempo politico e poetico[3].

A premessa si tenga presente che a partire dai poemi omerici si può annotare l'essenzialità della gestione del conflitto quale prima motivazione dell'elaborazione poetica nella quale si propone a chi è in lite di fermarsi, di scordare il torto subito, di ricevere così la ricompensa e scansare l'ira degli dei[4]. In quest'ottica la sintesi stratigrafica di tradizioni e società testimoniate

- E. Bianco - G. Cuniberti, *Salvare le poleis, costruire la concordia, progettare la pace*, Alessandria 2012, 385-396.

2. Su *dike* al centro del "pensiero soloniano" cfr. W. Jaeger, *Paideia*, I, Firenze[3] 1967 (ed. orig. Berlin-Leipzig 1936[2]), 265 (echi esiodei); M. Gagarin, *"Dikē" in Archaic Greek Thought*, "CPh", 68 1974, 190-192; E.A. Havelock, *Dike. La nascita della coscienza*, Roma-Bari 1983 (ed. orig. Cambridge Mass. 1978), 307-323; J.D. Lewis, *"Dike", "Moira", "Bios" and the Limits to Understanding in Solon, 13 (West)*, "Dike", 4 2001, 113-135; Id., *The Intellectual Context of Solon's Dike*, "Polis", 18 2001, 3-26; J.A. Almeida, *Justice as an Aspect of the Polis Idea in Solon's Political Poems. A Reading of the Fragments in Light of the Researches of New Classical Archaeology*, Leiden-Boston 2003, 207-236; F. Blaise, *Poésie, politique, religion. Solon entre les dieux et les hommes (L' "Eunomie" et l' "Élégie aux Muses", 4 et 13 West)*, "RPhA", 23 2005, 6-7; Id., *Poetics and Politics: Tradition Re-worked in Solon's "Eunomia" (Poem 4)*, in J.H. Blok - A.P.M.H. Lardinois (eds.), *Solon of Athens. New Historical and Philological Approaches*, Leiden-Boston 2006, 115-119; sul rapporto *dike-hybris* cfr. H. García, *Dike y ubris en contrapunto en la poética de Solon*, "Analecta", 1 2006, 59-88.

3. Significativamente e diversamente paralleli i casi di Esiodo, indispensabile per la comprensione del concetto di giustizia che matura nel periodo arcaico, e di Teognide, o meglio dei *Theognidea*: per entrambi in questa sede non ci soffermeremo sui punti di contatto evidenti e ben noti. Per quanto attiene Solone e il *corpus* teognideo, cfr. A.P.M.H. Lardinois, *Have we Solon 's Verses?*, in Blok - Lardinois, *Solon of Athens*, cit., 15-35; E. Irwin, *The Transgressive Elegy of Solon?*, in Blok - Lardinois, *Solon of Athens*, cit., 51-72; A. Aloni - A. Iannucci, *L'elegia greca e l'epigramma dalle origini al V secolo*, Firenze 2007, 141-145; cfr. anche E.L. Bowie, *The Theognidea: A Step towards a Collection of Fragments?*, in G. Most (ed.), *Collecting Fragments - Fragmente Sammeln*, Göttingen 1997, 53-66. Su Esiodo e la sua ricezione in Solone, cfr. K.A. Raaflaub, *Solone, la nuova Atene e l'emergere della politica*, in S. Settis (a cura di), *I Greci. Storia, cultura, arte, società*, II.1, Torino 1996, 1039-1042. Su Esiodo nelle stesse prospettive qui percorse, cfr. ora P. Cobetto Ghiggia, *L'aspirazione alla concordia nel mondo delle Opere e i Giorni di Esiodo*, in P. Anello [et alii], *Reciprocità e relazioni interstatali nel mondo greco (Palermo 7-9 settembre 2011)*, Palermo cds.

4. Si ricordino, per la loro centralità narrativa, anzitutto il conflitto Agamennone-Achille, vero motore della narrazione dell'Iliade, simbolo di una lite che si può e si deve risolvere senza violenza, oppure la questione giuridica che dà avvio all'Odissea (assenza di Odisseo, Penelope sola e *oikos* ambìto da pretendenti aggressivi, ruolo del figlio che diviene maggiorenne), lite quest'ultima che si risolve in un bagno di sangue fermato all'ultimo momento dagli dei. In entrambi i casi è l'intervento di Atena a indicare una soluzione al conflitto. Per quanto riguarda l'Iliade (spec. I 181-247) i celebri versi del dialogo fra Atena e Achille sono mirabile sintesi della proposta etica che questo poema vuole, nelle sue parti più tarde, avanzare. La dea, infatti, invita l'eroe ad aderire a una vera e propria procedura di conciliazione: 1) cessare l'odio (ricondurre a razionalità la gestione del conflitto), azione espressa con un insisto ricorrere ai verbi con questo significato all'interno di una notevole diversità di usi tra i quali prevale però l'attestazione di *pauo*; 2) rinunciare alla violenza fisica e attivare un conflitto verbale in assemblea (anche ricorrendo a insulti); 3) sotto reciproco giuramento accettare dal nemico un dono a risarcimento del danno o della violenza subiti (tre volte più grande) e allo stesso tempo accettare il consiglio degli dei sapendo così di poter contare sul loro aiuto, sulla loro ricompensa. Parimenti nell'Odissea, Atena giunge da Telemaco e, in un discorso di cui la critica ha messo in luce le diverse contraddizioni, gli suggerisce la procedura per

dai poemi omerici ricorda al cittadino greco che, a fronte di una lite, occorre anzitutto mettere fine al conflitto, aderire all'obbligazione del dono, anche in funzione risarcitoria[5], e dimenticare, condizione indispensabile per ristabilire la situazione precedente il conflitto, considerata evidentemente ideale o comunque preferibile al cambiamento che il conflitto potrebbe portare. Tale posizione muove anzitutto da una consapevolezza, da una paura e da una possibilità: 1) una consapevolezza: il conflitto che nasce anzitutto da una lite privata può divenire a tal punto destabilizzante nella *polis* da assumere una dimensione sociale; esso infatti porta in sé una violenta forza distruttiva che mette a rischio la convivenza sociale e che costringe a essenzializzare gli obiettivi della *polis*, la quale anzitutto deve mirare a salvarsi e a conservare i vantaggi che, in forma diversificata, derivano anzitutto ai cittadini[6]; 2) una paura: il conflitto può innestare una trasformazione che modifica la società in termini non soltanto di distribuzione di ricchezze, ma anche di partecipazione alla cittadinanza e ai diritti (residenza, proprietà di beni immobili, matrimonio, partecipazione alla vita sociale e in particolare religiosa ...[7]); 3) una possibilità: a fronte della consapevolezza e della paura indicate, è sempre possibile porre fine alla lite riducendone il danno grazie alla sostituzione della vendetta con

cercare di risolvere il conflitto fra i pretendenti che saccheggiano la sua casa e la madre che gestisce in modo anomalo, per certi versi illegale, l'assenza, forse per sempre, del marito. Telemaco parlerà in un'assemblea che non è convocata da anni, simbolo quindi del degrado sociale in cui è caduta Itaca (II 25-98): non troverà nessun aiuto e dovrà assistere al fallimento di quella procedura (suggerita da Atena, ma anche prevista nel fallimento dalla stessa Atena); tuttavia proprio da questo fallimento prenderà avvio il viaggio di Telemaco, l'intreccio con quello del padre e soprattutto troverà legittimazione la soluzione finale violenta. Tale finale viene però interrotto, come sappiamo, da un nuovo intervento di Atena che giunge all'improvviso in un blocco di pochi versi che chiude il poema. In XXIV 482-486 Zeus decide: "Ora che il chiaro Odisseo punì i pretendenti, concludano patti leali ed egli regni per sempre, mentre noi sulla strage di figli e fratelli porremo l'oblio: essi vivano come in passato, concordi (meglio *philoi*), e vi sia ricchezza e pace in gran copia". E così Atena, dopo aver sostenuto la vendetta contro i colpevoli, grida in XXIV 531-532: "Smettetela con la guerra funesta, Itacesi, perché subito, senz'altro sangue, vi separiate". In realtà ci vorrà una folgore di Zeus per fermare Odisseo, che allora obbedirà alle parole di Atena (XXIV 543-544: "fermati, arresta la mischia di guerra che tutti livella, che non si adiri con te il Cronide, Zeus dalla voce possente") e, cessato il conflitto, si scoprirà felice. Cfr. Havelock, *Dike*, cit., 151-169 (Iliade), 146-150, 171-182 (Odissea); M. Moggi, *Strategie e forme della riconciliazione: μὴ μνησικακεῖν*, in Cataldi - Bianco - Cuniberti, *Salvare le poleis*, cit., 133-160, spec. 145-149.

5. Sul dono e in generale le dinamiche di scambio anche all'interno della gestione di un conflitto, resta fondamentale M. Mauss, *Saggio sul dono. Forma e motivo dello scambio nelle società arcaiche*, in M. Mauss, *Teoria generale della magia e altri saggi*, Torino 1965, 153-292, molto utilmente discusso, con significative precisazioni e notevoli avanzamenti (anche in riferimento a una più accurata definizione di "fatto sociale totale"), da A. Maffi, *Rilevanza delle «regole di scambio» omeriche per la storia e la metodologia del diritto*, in *Symposion 1974*, Köln-Wien 1979, 22-62; in riferimento alla trasformazione che porterà alla nascita della moneta, N. Parise, *La nascita della moneta. Segni premonetari e forme arcaiche dello scambio*, Roma 2000, 7-14.

6. Sul tema della salvezza della *polis*, con un'ampia analisi del tema nelle fonti antiche a partire da uno sguardo approfondito su Teognide, vd. ora S. Cataldi, *"L'onda inghiottirà la nave" (Theogn. 680). Un percorso introduttivo al concetto di soteria tes poleos,* in Cataldi - Bianco - Cuniberti, *Salvare le poleis*, cit., IX-XL.

7. Naturalmente oltre ai diritti che tendiamo a definire come strettamente politici secondo una nostra concezione che a mio giudizio tende troppo spesso a guardare, per la Grecia antica, a una sola parte dell'ampio spettro dei diritti fondamentali, dandone per acquisiti, forse a torto, una parte e contemporaneamente esaltando, forse eccessivamente, il percorso verso l'estensione della possibilità di partecipazione alla vita politica (nel senso stretto da noi inteso in termini di cariche pubbliche, elezioni e votazioni).

la compensazione dell'offesa tramite beni preziosi (e più tardi denaro) all'interno di una procedura che dovrebbe essere favorita e garantita dal gruppo dirigente della *polis* (ora i *leaders* in armi, ora gli "anziani" ...), che si riunisce e decide nell'*agora* in assenza non solo di leggi scritte, ma anche di una vera e propria istituzione giudiziaria in grado di intervenire sulla lite privata con la celebrazione di un vero e proprio processo[8]. Questi tre punti costituiscono un punto cardinale della cultura stratificata che i poemi omerici testimoniano indicando con precisione lo stato di *prédroit* o meglio di "protodiritto"[9] sul quale vengono a maturare le trasformazioni poleiche del VI secolo.

In rapporto a queste considerazioni[10] ritengo che sia utile verificare la tradizione sull'opera riformatrice di Solone, il quale, com'è noto, è rappresentato come conciliatore all'interno di un violento conflitto sociale che, a più riprese secondo la storiografia antica, caratterizzò Atene arcaica: per questo indagare Solone vuol dire anzitutto esplorare, nelle sue enigmatiche contraddizioni, il personaggio che già dagli antichi è stato indicato, in un modo che resta da verificare, come il simbolo della concordia e della legislazione pro-concordia nella società ateniese.

Com'è noto, tale è presentato anzitutto nell'*Athenaion Politeia* all'interno di un contesto di *stasis* permanente che segue, in questo racconto, il processo per sacrilegio che porta all'esilio degli Alcmeonidi e che attraversa due diverse fasi costituzionali prima dell'intervento richiesto a Solone[11].

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8. Centrale è a questo proposito la discussa interpretazione della scena rappresentata sullo scudo di Achille (*Il.* XVIII) a simbolo dell'azione del *dikazein*: pur all'interno di un ben più ampio dibattito, cfr. H. Van Effenterre - M. Van Effenterre, *Arbitrages homeriques*, in *Symposion 1993*, Köln 1994, 2-15; G. Nagy, *The Shield of Achilles. Ends of Iliad and Beginning of the 'Polis'*, in S. Langdon (ed.), *New Light on a Dark Age*, Columbia-London 1997, 194-207; S. Fusai, *Il processo omerico. Dall'histor omerico all'istorie erodotea*, Padova 2006, 10-13. In particolare sulla natura del procedimento descritto, cfr. G. Thür, *Zum dikazein bei Homer*, "ZRG", 87 1970, 426-444; M. Talamanca, *Dikazein e krinein nelle testimonianze greche più antiche*, in *Symposion 1974*, cit., 103-133, spec. 110; H. Hommel, *Die Gerichtsszene auf dem Schild des Achilleus: zur Pflege des Rechts in homerischer Zeit*, in *Symbola. Kleine Schriften zur Literatur- und Kulturgeschichte der Antike*, Zurich-New York 1988, 46-82; E. Cantarella, *Dispute Settlement in Homer. Once again on the Shield of Achilles*, in J. Strangas (ed.), *Mélanges en l'honneur de P.D. Dimakis*, Athènes 2002, 156; Z. Papakonstantinou, *Lawmaking and Adjudication in Archaic Greece*, London 2008, 32-34.

9. L. Gernet, *Droit et prédroit en Grèce ancienne*, in *Anthropologie de la Grèce antique*, Paris, 1968, 175-260 (cfr. anche *Le droit*, ms. di L. Gernet, pubblicato a cura di A. Taddei, "Dike", 3 2000, 207-216), nonché M. Gagarin, *'Dike' in the Works and Days*, "CPh", 69 1973, 81-94; M. Gagarin, *Early Greek Law*, Berkeley-Los Angeles-London 1989[2], 3, 8-10, 136, 144 (con eccessi interpretativi che portano a una concezione della trasformazione in atto fortemente e rapidamente evoluzionistica secondo tre fasi: "prelegal", "proto-legal", "fully legal") e soprattutto, per la lettura che maggiormente valorizza la complessità della stratificazione omerica, E. Cantarella, *A proposito di diritto e prediritto*, "StudStor", 1 1984, 75-81, spec. 78; Ead., *Tra diritto e prediritto*, "DHA", 13 1987, 149-160, spec. 158; Ead., *Modelli giurisdizionali omerici: il giudice unico, la giustizia dei vecchi*, in *Symposion 1997*, Köln 2001, 3-19 (con la perfetta sottolineatura della pluralità delle esperienze giuridiche descritte nei poemi); Ead., *Dispute Settlement*, cit., 147-165 (contro un'unica lettura del "processo omerico" come arbitrale; cfr. anche H.J. Wolff, *The Origin of Judicial Litigation among the Greeks*, "Traditio", 5 1946, 31-87). Complessivamente per una messa a punto dei valori della cosidetta civiltà omerica, E. Cantarella, *Itaca. Eroi, donne, potere tra vendetta e diritto*, Milano 2002, spec. 24-33.

10. Il legame fra Solone e i poemi omerici, in particolare l'Iliade, è stato recentemente focalizzato da A. Sauge, *«L'Iliade», poème athénien*, Bern 2000, 401-410, 460-496.

11. *Ath. Pol.* 1-5, 1. Tale rappresentazione è ovviamente frutto di una lettura orientata delle fonti da parte della scuola aristotelica, nella quale è stata elaborata l'*Athenaion Politeia* secondo una necessità ordinatoria che, in carenza di informazioni, ha portato a forzare l'organizzazione del materiale. Cfr. A. Santoni, *Aristotele, La Costituzione degli Ateniesi. Alle radici della democrazia occidentale*, Bologna 1999, 162; G.E.M. De Ste. Croix, *Athenian Democratic Origins and other Essays*, eds. D. Harvey

Da un punto di vista lessicale la descrizione del conflitto sociale si regge su due pilastri nei quali poche, ma non assenti, sono le tracce di lessico arcaico direttamente attribuibile a Solone, nonostante si assista a un uso disinvolto di lessico anacronistico (*in primis* l'opposizione democrazia/oligarchia, ma anche usi specializzati del lessico della riconciliazione come *diallasso* e i suoi derivati oppure *symballo* o *symbibazo*):

1) la *stasis*, la cui descrizione è potenziata dall'uso dei verbi *antistemi* e *antikathemai*, ma anche di *nosountes* che ne sottolinea la distruttività; si noti inoltre che la *stasis* diventa *philonikia* quando il conflitto è definito all'interno di un parere attribuito a Solone stesso e tale rimane, dopo le riforme di Solone, creando le condizioni per la tirannide di Pisistrato[12];
2) il ruolo di Solone rispetto alla *stasis*: Solone è detto *diallaktes* e *archon*[13]; così sarebbe stato nominato in seguito a un comune accordo tra le parti che gli affiderebbero la riforma della *politeia*; su questo comune accordo, poi, Solone insisterebbe per risolvere il conflitto (il lessico è fortemente anacronistico). Secondo l'aristotelica *Athenaion Politeia* Solone è quindi esempio di medietà fra le istanze contrapposte, moderato, o meglio misurato, e imparziale (*metrios*[14] e *koinos*[15]) a tal punto da rinunciare alla tirannide privilegiando il bene e la salvezza della *polis* al proprio interesse.

In continuità, ma con significative integrazioni, possiamo affiancare la testimonianza di Plutarco che ribadisce il ruolo di Solone, ma, sommando testimonianze e tradizioni articolate, ne estende la portata.

Se infatti coincide nelle due fonti l'anacronistica definizione di Solone anzitutto come *diallaktes*[16], allo stesso tempo però Plutarco ha la cura di

- R. Parker - P. Thonemann, Oxford 2004, 283-322; H.-J. Gehrke, *The Figure of Solon in the Athênaiôn Politeia*, in Blok - Lardinois, *Solon*, cit., 276-289.

12. *Ath. Pol.* 5, 1-2; 13, 1-3.

13. *Ath. Pol.* 5, 2. Sul potere conferito a Solone apparentemente assoluto e straordinario, cfr. F. Jacoby, *Atthis. The Local Chronicles of Ancient Athens*, Oxford 1949 (rist. Salem 1988), 175-176; L. Piccirilli (introd. e comm.), *Plutarco, La vita di Solone*, a cura di M. Manfredini - L. Piccirilli, Firenze-Milano 1977, 181-183. Sull'arcontato, cfr. M.F. McGregor, *Solon's Archonship: The Epigraphic Evidence*, in J.A.S. Evans (ed.), *Polis and Imperium. Studies in Honour of E .T. Salmon*, Toronto 1974, 31-34.

14. Come avremo modo di vedere, questo aggettivo caratterizza Solone anche in Plutarco e si segnala come elemento originariamente soloniano. Infatti il concetto di "misurato e misurabile" (quale condizione per la realizzazione del *kosmos* oppure quale condizione per un'azione politica *kata kosmon* o comunque finalizzata alla realizzazione del *kosmos*) emerge come centrale nei frr. 1, 11. 51-52; 5, 4; 23, 17 G.-P. In riferimento al *noos*, cfr. R.A. Prier, *Some Thoughts on the Archaic Use of Metron*, "CW", 70 1976, 161-169, spec. 165. In rapporto alla moderazione quale indicazione sapienziale delfica, cfr. J.P. Vernant, *Le origini del pensiero greco*, Roma 1993 (ed. orig. Paris 1962), 76-78; Id., *Mito e pensiero presso i Greci. Studi di psicologia storica*, Torino 2001[3] (ed. orig. Paris 1971[2]), 405; A. Podlecki, *Solon's Vision*, "Ktema", 27 2002, 169-171. Sul rapporto *dike*, *kosmos* e l'azione riformatrice di Solone finalizzata a creare una *polis-kosmos*, cfr. Lewis, *Solon*, cit., 20, 108-130. Per il confronto con comparabili attestazioni teognidee, cfr. D.B. Levine, *Symposium and the Polis*, in T.J. Figueira - G. Nagy, *Theognis of Megara. Poetry and the Polis*, Baltimore-London 1985, 176-196, spec. 180-182.

15. *Ath. Pol.* 6, 3.

16. Vd. per le prime attestazioni Thuc. IV 60, 1; 64, 4. Cfr. A. Masaracchia, *Solone*, Firenze 1958, 135; P.J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia*, Oxford 1981, 120-122; Piccirilli, *Plutarco*, cit., 182.

evidenziare che quella che potremmo definire la naturale vocazione attribuita a Solone di risolvere un conflitto si manifesta anche in due altri episodi decisivi della politica ateniese: il conflitto Atene-Megara per il possesso di Salamina e quello che segue il sacrilegio di Megacle contro i Ciloniani[17].

Infatti, prima Solone, con l'astuzia di una finta pazzia e di una elegia pronunciata quale araldo buffo e apparentemente improvvisato[18], interpreta e risolve il disagio della parte più giovane della aristocrazia convincendo i suoi concittadini a riprendere la guerra e ritirare la legge che vietava non solo di proporre ma anche di parlare in pubblico della conquista di Salamina. In seguito, dopo la vittoria in guerra, Solone accetta di rimettere i diritti ateniesi sul possesso dell'isola, già conquistata, a una procedura di conciliazione presieduta da cinque spartani, *diallaktai* e *dikastai*, di cui Plutarco riferisce anche i nomi[19]. Durante l'arbitrato, il cui esito, pur taciuto da Plutarco, sembra esser stato favorevole, Solone si sarebbe impegnato personalmente per sostenere la legittimità del possesso ateniese sulla base di tre elementi: l'omerico catalogo delle navi; la consegna dell'isola agli Ateniesi da parte dei figli di Aiace, Fileo ed Eurisace, in cambio della cittadinanza; la prova "archeologica" delle sepolture a Salamina (orientamento e numero di defunti per tomba); il tutto sostenuto da oracoli pitici a favore delle affermazioni fatte da Solone anche con probabili manipolazioni[20].

Un ruolo altrettanto importante Solone lo avrebbe avuto nella gestione del conflitto seguito al sacrilegio compiuto da Megacle e da quelli della sua fazione (oppure insieme agli altri arconti a seconda delle fonti[21]) contro i Ciloniani: a fronte di un conflitto fra le diverse fazioni, Solone convinse Megacle a sottoporsi a processo[22] e quindi a condanna, permettendo tra il

17. Plut. *Sol.* 8-10, 12. Sugli "scivolamenti" cronologici relativi alle vicende che coinvolgono Ciloniani e Alcmeonidi anche in riferimento alle datazioni non solo di Dracone e Solone, ma anche della tirannide di Teagene a Megara, cfr. F.E. Adcock, *Tradition and Early Greek Code-Makers*, "Cambridge Historical Journal", 2 1927, 102; M. Lang, *Kylonian Conspiracy*, "CPh", 62 1967, 248; Ed. Lévy, *Notes sur la chronologie athénienne au VIe siècle*, "Historia", 27 1978, 513-521; Gagarin, *Early Greek Law*, cit., 35; A. Giuliani, *Il sacrilegio ciloniano: tradizioni e cronologia*, "Aevum", 73 1999, 21-35; L. Prandi, *I Ciloniani e l'opposizione agli Alcmeonidi in Atene*, in M. Sordi (a cura di), *L'opposizione nel mondo antico*, *CISA* 26, Milano 2000, 3-20; V. Parker, *Two Notes on Early Athenian History*, "Tyche", 19 2004, 140-141; G. Camassa, *Atene. La costruzione della democrazia*, Roma 2007, 22-24.

18. Plut. *Sol.* 8, che, al paragrafo 2, è uno dei testimoni del fr. 2 G.-P. di Solone.

19. Plutarco, in 10, 1-2, indica come *diallaktai* e *dikastai* gli spartani e *dike* la procedura: l'imprecisione lessicale non confonde circa la certezza di trovarci di fronte a un arbitrato interstatale. Cfr. L. Piccirilli, *Gli arbitrati interstatali greci I: dalle origini al 338 a.C.*, Pisa 1973, 46-48 e n. 10; Id., *Plutarco*, cit., 136.

20. Sull'episodio di Salamina e sullo stratagemma messo in opera da Solone quale appropriazione, o invenzione, di uno spazio pubblico di comunicazione politica, cfr. J. Fredal, *Rhetorical Action in Ancient Athens. Persuasive Artistry from Solon to Demosthenes*, Carbondale 2006, 39-45, 67-70. Cfr. anche L. Piccirilli, *Solone e la guerra per Salamina*, "ASNP", 8 1978, 1-13; A. Mastrocinque, *Gli stracci di Telefo e il cappello di Solone*, "SIFC", 77 1984, 25-34, spec. 32-34; O. Vox, *Solone. Autoritratto*, Padova 1984, 17-48; F.J. Frost, *Solon and Salamis, Peisistratos and Nisaia*, "AncW", 30 1999, 133-139; M. Noussia (introd. e comm.), *Solone. Frammenti dell'opera poetica*, a cura di H. Maehler - M. Noussia - M. Fantuzzi, Milano 2001, 226-227; E. Juhász, *Solon, the Herald of Salamis*, "AAntHung", 48 2008, 201-206. L'episodio ha ovviamente come sfondo la problematica ricostruzione della storia di Megara arcaica per la quale vd. R.P. Legon, *Megara. The Political History of a Greek City-State to 335 B.C.*, Ithaca-London 1981, spec., sul periodo di Teagene, 46-79, 116-119.

21. Oltre a Plut. *Sol.* 12, 1-4, spec. Hdt. V 69-72; Thuc. I 126.

22. Il processo, riguardante un caso di omicidio plurimo e insieme di sacrilegio, si svolse sulla base delle leggi di Dracone e in particolare di quella sull'omicidio, non a caso l'unica secondo la tradi-

resto un recupero del fronte ciloniano e, senza volerlo, di quello dei Megaresi che, secondo Plutarco, sarebbero tornati a impossessarsi di Salamina. In seguito Solone si sarebbe giovato dell'arrivo di Epimenide di Festo, invitato per purificare quella comunità dall'incubo dell'empietà e della contaminazione: ispirato dagli dei e vicino alle pratiche misteriche, Epimenide avrebbe aiutato Solone a impostare le sue leggi, a riformare le pratiche religiose (riducendo le prerogative femminili) e soprattutto a rendere la città più arrendevole alla giustizia e meglio disposta alla concordia, purificandola e consacrandola con cerimonie propiziatorie ed espiatorie, nonché con la costruzione di templi[23].

Queste vicende, tra molti anacronismi lessicali ed episodi storici dubbi, contengono tuttavia elementi importanti: Solone è colui che sta in mezzo fra le parti nel conflitto interno, è anche colui che lotta per la propria patria nel conflitto esterno, ma in entrambi i casi è descritto soprattutto come colui che cerca una via giudiziaria del conflitto riducendone così i danni. È seguendo questo ragionamento, infatti, che Plutarco giunge, dopo 12 capitoli, a quello che per noi è il nucleo della vicenda soloniana e arriva dunque a illustrare, con motivazioni e ingenuità non prive di incoerenze e nuovi anacronismi[24], che, dopo i disordini ciloniani, riprende il vecchio conflitto interno per la *politeia*, per i diritti dei cittadini: a causa

zione che Solone avrebbe poi conservato: possiamo quindi ipotizzare un procedimento giudiziario nel quale al ruolo dei *basileis* si affianca con compiti diversi il collegio di efeti con la presenza quindi delle caratteristiche istituzionali che possono ricondurci alla celebrazione di un vero e proprio processo. Tuttavia la tradizione ora osservata segnala che è stata necessario il convincimento di Solone affinché Megacle si sottoponesse a processo: la *polis* dunque non sembra ancora avere tutti gli strumenti che le consentano di applicare il procedimento penale senza che siano necessarie improprie trattative in seno all'aristocrazia locale (cfr. E. Ruschenbusch, *Untersuchungen zur Geschichte des athenischen Strafrechts*, Köln-Gratz 1968, 11-21). Sulla legge di Dracone, vd. *IG* I^3 104 e cfr. R.S. Stroud, *Drakon's Law on Homicide*, Berkeley-Los Angeles 1968; Piccirilli, *Plutarco*, cit., 205; M. Gagarin, *Drakon and Early Athenian Homicide Law*, New Haven-London 1981; J.M. Modrzejewski, *La sanction de l'homicide en droit grec et hellénistique*, in *Symposion 1990*, Köln-Wien 1991, 3-16; S. Humphreys, *A Historical Approach to Drakon's Law on Homicide*, in *Symposion 1990*, cit., 17-45 (con la risposta di S.C. Todd, 47-51); G. Thür, *The Jurisdiction of the Areopagos in Homicide Cases*, in *Symposion 1990*, cit., 53-72 (con la risposta di R.W. Wallace, 73-79); E.M. Harris, *How to Kill in Attic Greek. The Semantics of the Verb (apo)kteinein and their Implications for Athenian Homicide Law*, in *Symposion 1997*, cit., 75-87; W. Schmitz, *«Drakonische Strafen»: die Revision der Gesetze Drakons durch Solon und die Blutrache in Athen*, "Klio", 83 2001, 7-38; D.D. Phillips, *Avengers of Blood. Homicide in Athenian Law and Custom from Draco to Demosthenes*, Stuttgart 2008, spec. 38-57; ora soprattutto L. Pepe, *Phonos. L'omicidio da Draconte all'età degli oratori*, Milano 2012, 11-80, per l'ampio dibattito giuridico su questa legge e in particolare per la puntuale valutazione della funzione di *dikazein* attribuita ai *basileis* e di quella di *diagnonai* indicata per gli efeti.

23. Indubbiamente le riforme di Solone si caratterizzano per una forte ed essenziale dimensione religiosa che si realizza e trova il risultato più rilevante nell'incorporazione e nell'organizzazione di Eleusi e dei suoi culti misterici, i quali diventano a loro volta chiave interpretativa importante per l'esegesi della produzione poetica di Solone stesso: cfr. L.M. L'Homme-Wéry, *La perspective éleusinienne dans la politique de Solon*, Genève 1996, 90-113. Cfr. anche O. Vox, *Solone "nero". Aspetti della saggezza nella poesia solonica*, "QS", 18 1983, 305-321; M. Valdés Guía, *Política y religión en Atenas arcaica*, Oxford 2002, 175-185, 213-231. Sull'intervento di Epimenide ad Atene, cfr. E. Federico, *La katharsis di Epimenide ad Atene. La vicenda, gli usi e gli abusi ateniesi*, in E. Federico - F. Visconti, *Epimenide cretese*, Napoli 2002, 77-128; M. Valdés Guía, *El culto a Zeus y a las Semnai en Atenas arcaica: exégesis eupátrida y purificación de Epiménides*, "Ostraka", 11 2002, 223-242.

24. Plut., *Sol.* 13, 2: così i riferimenti a democrazia e oligarchia oppure la suddivisione in Diacri, Pedieci, Parali, per la quale cfr. R. Sealey, *Regionalism in Archaic Athens*, "Historia", 9 1960, 169; J.R. Ellis - G.R. Stanton, *Factional Conflict and Solon's Reforms*, "Phoenix", 22 1968, 95-99; Piccirilli, *Plutarco*, cit., 162-169; Almeida, *Justice*, cit., 246-251.

delle esasperate differenze sociali, la città si trova in un clima di estrema instabilità che non sembra poter avere soluzioni diverse dalla tirannide.

A fronte del coalizzarsi dei più forti dei *pleistoi*, dall'altra parte quelli che Plutarco definisce i più saggi (evidentemente fra gli *oligoi*) si accordano per eleggere arconte Solone affidandogli *ta koina*[25] e chiedendogli di porre fine alle divergenze[26]. Secondo la tradizione Solone diviene così non solo arconte, ma anche *diallaktes* e *nomothetes*, rifiutando a più riprese la tirannide secondo un impegno verso la riconciliazione che si manifesterà, sempre secondo Plutarco, anche al momento del fallimento delle riforme e del riesplodere del conflitto sociale che porterà alla tirannide di Pisistrato.

Due principi regolano la sua azione: l'applicazione del criterio del *to ison* e l'armonizzazione della situazione.

Quanto alla prima, Plutarco segnala che proprio l'enunciazione di questo principio, quale via privilegiata per evitare il conflitto, convinse la popolazione ad accettare la mediazione di Solone sia pure con una diversa interpretazione del principio stesso di *to ison* in quanto i possidenti pensavano che l'applicazione avrebbe avuto a riferimento l'*axia* e l'*arete*, mentre i nullatenenti il *metron* e l'*arithmos*[27]: ne deriva chiaramente che *to ison*, su cui avremo modo di tornare, non è da intendersi come stretta uguaglianza, ma come proporzionalità nella distribuzione dei diritti. Solo così, infatti, l'enunciazione del principio si differenzia nell'applicazione in base al criterio adottato, in quanto non ha come obiettivo una distribuzione in parti uguali, ma una partizione dei diritti quantificata in proporzione a un criterio di riferimento[28]; altrettanto evidente è che questa lettura di *to ison* era condivisa da entrambe le parti in lotta che vedono proprio in questo principio la possibilità di prevalere l'una sull'altra. Per questo inoltre,

25. Con un'espressione che è protagonista del più recente dibattito politico italiano, tornato così alla lettera del termine greco, possiamo tradurre *ta koina* con "i beni comuni" conservandone la primitiva genericità che dovrebbe però sempre costringere a dettagliare quale sia e come sia composto il sistema di cose (territorio, acqua, natura ...) e diritti che viene sentito come comune. Anche per Solone è questo probabilmente il più utile punto di partenza: leggendo infatti la vicenda soloniana si può infatti descrivere *ta koina* anzitutto come l'insieme di quanto viene sottoposto a legislazione.

26. Plut. *Sol.* 14, 1-3. Per la scelta di Solone quale fase di un conflitto interno all'*élite* ateniese, cfr. S. Forsdyke, *Exile, Ostracism, and Democracy. The Politics of Expulsion in Ancient Greece*, Princeton-Oxford 2005, 90-101.

27. Plut. *Sol.* 14, 4. Poco prima però lo stesso Plutarco, in 14, 2, attribuisce a Fania di Lesbo (discepolo di Aristotele, "filosofo e storico competente" secondo lo stesso Plutarco nella *Vita di Temistocle*, 13, 5) una diversa valutazione della proposta politica di Solone, il quale sarebbe autore di una promessa ingannevole (*apate*) avendo prospettato agli indigenti la distribuzione della terra, ai possidenti la conferma dei contratti creditizi: cfr. Piccirilli, *Plutarco*, cit., 178-179.

28. È evidente la concezione geometrica del *to ison* soloniano: se da un lato questa indicazione sembra rimandare alla codificazione operata da Aristotele nel V libro dell'Etica Nicomachea (1131 a-b), si mostrerà in questa sede che *to ison* è contenuto evidente e originario del pensiero politico attribuibile a Solone. In questa prospettiva l'idea di giustizia distributiva in proporzionalità geometrica sembra permeare queste vicende di Atene arcaica, evidenziando quanto la sperimentazione nella prassi politica preceda la teorizzazione e la codificazione di IV secolo nel pensiero politico. Sul principio di proporzionalità e il suo "legame genetico" con l'uguaglianza, cfr. in termini generali e attualizzati S. Cognetti, *Principio di proporzionalità. Profili di teoria generale e di analisi sistematica*, Torino 2011, spec. 11-22. Ancora in riferimento a Solone, sul concetto di proporzionalità, cfr. anche M.M. Sassi, *Ordre cosmique et "isonomia": en repensant Les Origines de la pensée grecque de Jean-Pierre Vernant*, "PhilosAnt", 7 2007, 196-197, circa la determinazione da parte di Solone di classi censuarie ineguali caratterizzate da differenze in equilibrio gerarchico secondo principi cosmologici anassimandrei, ma che ritroviamo anche nel pitagorismo di Archita.

secondo Plutarco, la riforma di Solone è anzitutto diversa da quella di Licurgo, il quale avrebbe invece imposto ai propri concittadini un'assoluta uguaglianza e così avrebbe attuato la riforma migliore al fine della salvezza e della concordia sia pure usando la violenza più della persuasione[29]; per questo la riforma di Solone fallisce perché i vari gruppi sociali cercano privilegi e non equa proporzionalità nella distribuzione dei diritti, cercano sopraffazione e non concordia nelle relazioni con gli altri[30].

Parallelamente Plutarco sottolinea che obiettivo di Solone è stabilizzare la società armonizzandola nel migliore dei modi e armonizzando ad essa le leggi.[31]

Entrambi questi punti spiccano perché, al contrario di molti altri, ci permettono di trovare diretta corrispondenza nei versi che la tradizione attribuisce a Solone e che la stessa tradizione ha utilizzato per ricavare informazioni sull'operato di Solone documentando così, là dove possibile, la propria ricostruzione[32].

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29. Plut. *Sol.* 16, 1-2. Cfr. K.A. Raaflaub, *Athenian and Spartan Eunomia, or: what to do with Solon's Timocracy*, in Blok - Lardinois, *Solon*, cit., 390-428.

30. Plut. *Sol.* 29, 1.

31. Plut. *Sol.* 15, 1; 22, 3; 29, 2. Circa l'armonizzazione delle leggi alla società (interpretazione amplificata da Plutarco, o più probabilmente dalle sue fonti, rispetto alle indicazioni che a riguardo offrono i versi di Solone, spec. fr. 30, 19 G.-P.), oltre al citato 22, 3, vd. anche Plut. *Sol.* 5, 5, secondo cui Solone, interrogato da Anacarsi, avrebbe sostenuto di aver adattato, o meglio armonizzato, le leggi ai cittadini in modo da mostrare che è meglio agire secondo giustizia che contro le leggi. Cfr. Piccirilli, *Plutarco*, cit., 127-128. Il fatto che si tratti di una probabile interpretazione dell'esegeta antico, o comunque di una notizia in forma non originaria, può essere confermato anche dal fatto che la posteriorità dell'affermazione rispetto a Solone è segnalata dall'uso del plurale *nomoi* al posto di *thesmoi.* Sui due termini confronta in sintesi M. Ostwald, *Nomos and the Beginning of the Athenian Democracy*, Oxford 1969, 9-54; C. Mossé, *How a Political Myth Takes Shape: Solon, "Founding Father" of the Athenian Democracy*, in P.J. Rhodes (ed.), *Athenian Democracy*, Edinburgh 2004, 245-246; J. De Romilly, *La legge nel pensiero greco*, Milano 2005 (ed. orig. Paris 2001), 17; A. Mele, *Dalla comunità militare allo stato cittadino*, in G. Carillo (a cura di), *Unità e disunione della Polis*, Avellino 2007, 67-144. Circa il principio distributivo alla base dell'originario uso di *nomos* anzitutto al singolare, cfr. G. Camassa, *Aux origines de la codification écrite des lois en Grèce*, in M. Detienne (éd.), *Les savoirs de l'écriture en Grèce ancienne*, Lille 1992 (1988), 137; E.A. Havelock, *Cultura orale e civiltà della scrittura. Da Omero a Platone*, Roma-Bari 1995 (ed. orig. Oxford 1963), 51; M. Moggi, *Nomoi e politeiai in Erodoto*, in A. D'Atena - E. Lanzillotta (a cura di), *Da Omero alla costituzione europea. Costituzionalismo antico e moderno*, Roma 2003, 66; J.-P. Vernant, *Mito e religione in Grecia antica*, Roma 2009 (ed. orig. Paris 1990), 17; G. Camassa, *Scrittura e mutamento delle leggi nel mondo antico*, Roma 2011, 91-98. Utile è anche il confronto con *themistes*, indicante probabilmente le norme derivanti dalle sentenze dei giudici/*basileis*, cfr. R. Bonner, *Administration of Justice in the Age of Homer*, "CPh", 6 1911, 12-13; E. Cantarella, *Norma e sanzione in Omero. Contributo alla protostoria del diritto greco*, Milano, 1979, 246; K.-J. Hölkeskamp, *Arbitrators, Lawgivers and the "Codification of Law" in Archaic Greece*, "Metis", 7 1992, 61-62; G. Camassa, *Leggi orali e leggi scritte. I legislatori*, in Settis, *I Greci*, cit., 561; L. Bertelli, *Nomos, scrittura e identità civica*, in Carillo, *Unità*, cit., 33-39; A. Mele, *Legislazioni arcaiche fra tradizione e innovazione*, in D'Atena - Lanzillotta, *Da Omero alla costituzione europea*, cit., 1-5. In generale per un utile e aggiornato quadro sulla terminologia della giustizia e delle leggi, cfr. M. Faraguna, *Tra oralità e scrittura: diritto e forme della comunicazione dai poemi omerici a Teofrasto*, "Etica & Politica", IX, 2007, 75-111, spec. 81-82; C. Bearzot, *La giustizia nella Grecia antica*, Roma 2011^2, spec. 28-29; C. Pelloso, *Themis e dike in Omero. Ai primordi del diritto dei Greci*, Alessandria 2012, spec. 70-102, 129-138.

32. Circa le cautele necessarie nell'affrontare la produzione poetica che la tradizione ha conservato e attribuito a Solone occorre tenere presente in estrema sintesi quanto segue: 1) non possiamo dimenticare che questi stessi versi sono in gran parte unico appiglio documentale per la ricostruzione, fin dal IV secolo, ma probabilmente già dal V a.C., della vicenda storica soloniana e quindi possono attivare pericolosi ragionamenti circolari nella dimostrazione delle ipotesi; 2) è difficile escludere manipolazioni di questi testi durante la lunga trasmissione, ma soprattutto al momento delle loro edizioni, anzitutto ateniesi, in V e IV secolo a.C.; 3) non è sempre detto che il contenuto dei versi sia specchio fedele delle posizioni e del pensiero del Solone politico: su questo è oppor-

Con questi presupposti interrogheremo ora i versi di Solone per cercare di capire che cosa effettivamente fece per risolvere il conflitto e se il ruolo fu effettivamente quello dell'arbitro, del mediatore estraneo alle parti in causa, così come la tradizione suggerisce.

Sinteticamente la questione ruota intorno a due domande: come si autodefinisce Solone? Fu davvero arbitro in una posizione di neutralità e costante mediazione[33]?

Un primo dubbio nasce dai vv. 5-6 del fr. 1 G.-P. nei quali il poeta, dopo aver invocato le Muse[34], chiede loro *olbos* da parte degli dei, *doxa*[35] da parte degli uomini e infine, grazie a questi doni, rivolge la supplica "di essere dolce agli amici e amaro ai nemici, visto con rispetto dai primi, con timore dagli altri"[36], per i quali tuttavia non chiede di essere un danno diretto[37].

Un secondo dubbio deriva dalla nota, e discussa, legge sulla necessità di schierarsi da una parte o dall'altra in caso di conflitto[38]. Inoltre nei versi

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tuno probabilmente operare distinzioni fra la produzione in distici elegiaci e quella in tetrametri trocaici e giambi, simposiaca la prima, più personale la seconda; 4) i componimenti traditi celano un aspetto importante, non ancora pienamente compreso, rispetto all'auto-descrizione dei provvedimenti soloniani: i versi infatti, con un'impostazione quasi oracolare, ricordano che il percorso politico di Solone genera provvedimenti legislativi che, sia pure all'interno di un primo processo di astrazione, sono un oggetto talismanico, segno del potere di chi li detiene, fonte di *kydos* (cfr. fr. 40 G.-P.), vantaggio, privilegio, fatto sociale totale, non separabile, ma analizzabile, nelle sue dimensioni religiose, giuridiche, politiche, economiche.

33. Cfr. a proposito E. David, *Solon, Neutrality and Partisan Literature of Late Fifth-Century Athens*, "MH", 41 1984, 129-138; A. French, *Solon's Act of Mediation*, "Antichthon", 18 1984, 1-12.

34. Cfr. O. Vox, *Le Muse mute di Solone (e lo specchio del suono)*, "Belfagor", 38 1983, 515-522.

35. Circa il superamento in Solone del modello aristocratico di un *kleos* fondato sull'*arete* contrapponendovi il valore di una *doxa* che deriva dalla conoscenza della verità e della giustizia come ordine e misura che tiene tutto e tutti nei limiti (come ad esempio si può evincere dal fr. 29, 4 G.-P.), vd. ora molto utilmente, non solo per l'ampio dibattito storiografico esaminato, ma anche per una coerente ricostruzione "teologica e cosmologica" del pensiero soloniano, N. Reggiani, *La Giustizia cosmica. Le riforme di Solone fra religione e politica*, Tesi di Dottorato, Università degli Studi di Parma, 2011, spec. 151-219. Sulla *doxa*, in rapporto alla valutazione operata da Solone stesso in merito alle ricchezze e al potere tirannico, cfr. J.D. Lewis, *Solon the Thinker. Political Thought in Archaic Athens*, London 2008^2, 94-110.

36. Le traduzioni dei versi di Solone sono quelle di M. Fantuzzi (*Solone. Frammenti dell'opera poetica*, a cura di H. Maehler - M. Noussia - M. Fantuzzi, Milano 2001).

37. Cfr., al contrario, Theogn. 869-872 W., là dove il poeta, tra il resto, vuole saper essere "cruccio e rovina grande per i nemici".

38. *Ath. Pol.* 8, 5; Plut. *Sol.* 20, 1. Con evidenza infatti tale legge ha per obiettivo la partecipazione del cittadino e la necessità di un suo chiaro posizionamento in caso di contrasto politico piuttosto che la necessità di una mediazione a oltranza: forse si potrebbe descrivere la proposta politica soloniana come da un lato finalizzata a creare nella procedura di legge un luogo di soluzione del conflitto, dall'altro a richiedere al cittadino partecipazione e decisione. Cfr. B. Lavagnini, *Solone e il voto obbligatorio*, "RFIC", 25 1947, 81-93; C. Pecorella Longo, *Sulla legge "soloniana" contro la neutralità*, "Historia", 37 1988, 374-79; P.B. Manville, *Solon 's Law of Stasis and Atimia in Archaic Athens*, "TAPhA", 110 1989, 213-21. Tuttavia, com'è noto, di questa legge è stata messa in dubbio l'autenticità con buoni motivi soprattutto sulla base del confronto con Lys. *Phil.* (31) 27-28: cfr. E. Graf, *Ein angebliches Gesetz Solons*, "HG", 47 1936, 34-35; R. Develin, *Solon's law on stasis*, "Historia", 26 1977, 507-508; E. David, *Solon, Neutrality and Partisan Literature of Late Fifth-Century Athens*, "MH", 41 1984, 129-138; a favore dell'autenticità cfr. J.A. Goldstein, *Solon's law for an activist citizenry*, "Historia", 21 1972, 538-545; V. Bers, *Solon's law forbidding neutrality and Lysias 31*, "Historia", 24 1975, 493-498; Forsdyke, *Exile*, cit., 2008; per una sintesi della questione, e i puntuali raffronti nelle testimonianze antiche, vd. Rhodes, *A Commentary*, cit., 157. Certamente le fonti citate riguardo a questa legge mostrano una tensione tipicamente di inizio IV secolo fra una valutazione positiva di impronta democratica e negativa di provenienza oligarchica. In questa sede interessa però soprattutto sottolineare che, quand'anche fosse stata davvero concepita, o anche solo prospettata, cronologicamente lontano da Solone, questa legge esprime, nell'attribuzione al legislatore, un'idea portante della legislazione soloniana

di Solone sembra impossibile trovare qualcosa di simile a una vera attività di mediazione sui contenuti di una lite: infatti, l'unica attestazione che, nei versi di Solone, potrebbe esservi ricondotta è il complemento *es meson* riferito all'*aletheia*[39], ma ritengo che non si possa attribuirvi significato di medietà o di mediazione, ma più semplicemente l'indicazione di mettere in pubblico la verità, alla vista di tutti[40].

Di sé poi Solone dice di essere scudo (*krateron sakos*: fr. 7, 5-6 G.-P.)[41], lupo fra cagne[42], *horos* (fr. 31,9 G.-P.)[43] fra le parti in lotta, impedendo all'una di

in nulla coincidente con il ruolo permanentemente mediano voluto dalla tradizione aristotelica.

39. Fr.14 G.-P.

40. Cfr. M. Detienne, *Les maitres de vérité dans la Grece archaique*, Paris 1967, 89-91; Hölkeskamp, *Arbitrators*, cit., 76-77; L.-M. L'Homme-Wéry, *La notion d'harmonie dans la pensée politique de Solon*, "Kernos", 9 1996, 148; Noussia, *Solone*, cit., 287.

41. Cfr. Vox, *Solone*, cit., 63-65 (scudo come simbolo di protezione per se stesso); Noussia, *Solone*, cit., 270 (scudo come garanzia delle diverse *timai* di ognuno, ma anche con cenni alle diverse ipotesi).

42. Simbolo di coraggio, astuzia, azione anche solitaria, nonché protagonista della favolistica antica quale amico fedele e nemico invincibile. Cfr. Vox, *Solone*, cit., 127-130; N. Loraux, *Solon au milieu de la lice*, in *Aux origines de l'Hellénisme. La Créte et la Grèce. Hommage à H. van Effenterre*, Paris 1984, 207; E.K. Anhalt, *Solon the Singer: Politics and Poetics*, Lanham 1993, 125-139; P. Melissano, *Solone e il mondo degli* ἐσθλοί, "QUCC", 47 1994, 49-58; Sauge, *«L'Iliade»*, cit., 463; Noussia, *Solone*, cit., 362-364; A. Domínguez Monedero, *Solon de Atenas*, Barcelona 2001, 132. La contrapposizione a cagne è stata letta come un potenziamento dell'attacco denigratorio contro gli avversari allargando, con il femminile, la polarità dei termini contrapposti: cfr. C. Franco, *Questioni di genere e metafore animali nella letteratura greca*, "AOFL", 1 2008, 73-94, spec. 83.

43. In riferimento a questo verso Stinton (*Solon, Fragment 25*, "JHS", 96 1976, 161-162) ha proposto l'emendamento *ouros* al posto di *horos* sulla base di Il. XII 421-424: la correzione, pur interessante, non sembra necessaria anche perché in termini di significato proprio i versi iliadici conducono all'idea di un confine conteso, oltre che di baluardo che separa le schiere. Al contrario ritengo che questo verso di Solone sia stato sottovalutato (non da M. Chambers, *Aristoteles. Werke X.1: Staat der Athener*, Berlin 1990, che infatti ha pensato a un unico componimento unendo i frr. 30 e 31 G.-P.) rispetto alla possibile correlazione con l'azione riformatrice esplicata da Solone stesso in 30, 6, là dove rivendica di aver tolto, eliminato (più difficilmente "sollevato") gli *horoi*. Da una lettura integrata risulta che Solone è *horos* al posto di altri *horoi*: è lui a stabilire le regole, i limiti, le misure (anche in senso tecnico attraverso la riforma dei pesi e delle misure) come risulta evidente dall'insistita attenzione delle "sue" leggi ai problemi dei confini terrieri, ma più in generale dei limiti da darsi alle azioni private e ai relativi abusi che incidono sulla collettività. Infatti, alla luce del fr. 30 G.-P., la funzione dell'azione di Solone – attraverso le leggi e parimenti grazie all'intervento sugli *horoi* e, in correlazione, all'essere *horos* egli stesso – è in ogni caso evidente: 1) rendere *eleutheros* chi prima era schiavo, 2) liberare "la Terra nera, madre grandissima dei numi olimpici", in altre parole 1) dare i pieni diritti ai cittadini, 2) attribuire al popolo libero e sovrano i diritti su Gea, sul suo culto, sulla regolamentazione del suo uso e del suo possesso. Sugli *horoi* nella poesia di Solone, cfr. W.J. Woodhouse, *Solon the Liberator. A Study of the Agrarian Problem in Attika in the Seventh Century*, London 1938, 74-87 (in riferimento alla proprietà terriera), 98-116; Fredal, *Persuasive Artistry*, cit., 77-81; Noussia, *Solone*, cit., 36-40 con una breve sintesi circa l'ampio dibattito storiografico sull'identificazione del significato tecnico degli *horoi* al tempo di Solone: cippi indicanti ipoteca o confine o ancora possesso e occupazione abusiva di un terreno (soprattutto se sacro o pubblico) oppure, in ultimo, prevalenza di un significato metaforico nell'uso soloniano. Per tale dibattito cfr. H.T. Wade-Gery, *Horos*, in *Mélanges Gustave Glotz*, II, Paris 1932, 877-887; J.V.A. Fine, *Horoi. Studies in Mortgage, Real Security, and Land Tenure in Ancient Athens*, "Hesperia" Suppl. 9, Baltimore-Princeton 1951; A. French, *The Economic Background to Solon 's Reforms*, "CQ", 6 1956, 11-25; A. French, *Land Tenure and the Solon Problem*, "Historia", 12 1963, 242-247; M. Finley, *Studies in Land and Credit in Ancient Athens*, 500-200 BC*: The Horos-Inscriptions*, New Brunswick 1951; M. Cataudella, *Atene fra il VII e il VI secolo. Aspetti economici e sociali dell'Attica arcaica*, Catania 1966, 83; D. Asheri, *Leggi greche sul problema dei debiti*, "SCO", 18 1969, 10; V. Ehrenberg, *From Solon to Socrates. Greek History and Civilization during the Sixth and Fifth Centuries B .C.*, London-New York 1973, 59; L.R.F. Germain, *Les horoi*, in *Symposion 1971*, Köln-Wien, 333-346; H. van Effenterre, *Solon et la terre d'Éleusis*, "RIDA", 24 1977, 91-130, spec. 103; Rhodes, *A Commentary*, cit., 175; B. Bravo, *Theognidea, 825-830: un témoignage sur les horoi hypothécaires de l'époque archaique*, in *Mélanges Pierre Lévéque*, V, Besançon-Paris 1990, 41-51; F.

prevalere sull'altra, ponendo loro dei limiti. Anche a questo proposito possiamo quindi chiederci in seconda istanza: quale soluzione, quali eventuali contenuti di mediazione sono proposti da Solone?

Leggendo i versi colpisce anzitutto l'abbondanza di indicatori lessicali della situazione negativa in atto, caratterizzata anzitutto da ingiustizia nella distribuzione delle ricchezze, esito di soprusi e sopraffazioni. L'opposizione positiva a tante sfaccettature dell'ingiustizia è *dike*, la giustizia che discende dagli dei: essa si realizza anche attraverso *ate* che porta rovina, ma può trovare compimento pure quando il vento cessa di agitare la situazione, la quale senza vento può diventare giusta, secondo l'immagine usata due volte da Solone[44]. È questa la via indicata da Solone, il quale la precisa nel celebre canto all'*Eunomia*[45], là dove sintetizza il proprio progetto:

> Questo l'animo mi ordina di insegnare agli Ateniesi:
> che *Dysnomia* procura moltissimi mali alla città,
> mentre *Eunomia* mette in luce ogni cosa ordinata (*eukosma*) e adatta (*artia*)
> e spesso appone i ceppi agli ingiusti,
> leviga le asperità, fa cessare l'insolenza, fiacca la tracotanza,
> dissecca sul nascere i germogli della rovina,
> raddrizza le sentenze distorte e mitiga
> le azioni superbe, fa cessare gli atti di sedizione,
> fa cessare il rancore di dolorosa contesa:
> per suo effetto tutto tra gli uomini è convenienza (*artia:* adatto, armonico, proporzionato) e saviezza[46].

Protagoniste della riconciliazione sono dunque le leggi, quelle che Solone stabilisce, con un'azione che il legislatore condivide con le divinità e soprattutto con Zeus e, significativamente, con il medico: proprio le leggi possono rendere la situazione *artios*[47].

Questo aggettivo, presente due volte in questi pochi versi, è con *dike* uno dei termini positivi più ripetuti nei versi di Solone[48]. Il significato forte di "adatto", "che si incastra bene" rimanda alla sua radice indoeuropea (*ar, *arma) che ci

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Blaise, *Solon, fragment 36 W. Pratique et fondation des normes politiques*, "REG", 108 1995, 24-37, spec. 31; B. Bravo, *Una società legata alla terra*, in Settis, *I Greci*, cit., 527-60; Raaflaub, *Solone*, in Settis, *I Greci*, cit., 1056; E.M. Harris, *A New Solution to the Riddle of the Seisachtheia*, in L.G. Mitchell - P.J. Rhodes (eds.), *The Development of the Polis in Archaic Greece*, London-New York 1997, 103-112; L. Gallo, *Solone, gli "hektemoroi" e gli "horoi"*, "AION(archeol)", 6 1999, 59-72; P.B. Manville, *Il cittadino e la polis. Le origini della cittadinanza nella Atene antica*, Genova 1999 (ed. orig. Princeton 1990), 139, 153-155; P.V. Stanley, *The Economic Reforms of Solon*, St. Katharinen 1999, 193-197; De Ste. Croix, *Athenian Democratic Origins*, cit., 109-128; J. Ober, *Solon and the Horoi: Facts on the Ground in Archaic Athens*, in Blok - Lardinois, *Solon*, cit., 441-456.

44. Frr. 2, 18-22; 13 G.-P. Cfr. B. Gentili, *La giustizia del mare: Solone, fr. 11D, 12 West. Semiotica del concetto di dike in greco arcaico*, "QUCC", 20 1975, 159-162.

45. Per un commento complessivo, cfr. Noussia, *Solone*, cit., 234-257; C. Mülke, *Solons Politische Elegien und Iamben (Fr. 1-13; 32-37 West). Einleitung, Text, Übersetzung, Kommentar*, Leipzig 2002, 88-159, spec. 145-159.

46. Sol. fr. 3, 30-39 G.-P.

47. Sull'uso di *artios* insieme a *Eunomia*, cfr. M. Gigante, *Nomos basileus*, Napoli 1956 (ried.1993), 49; L'Homme-Wéry, *La notion d'harmonie*, cit., 145-146. Per l'uso di *tithemi* a indicare l'azione attuata da Solone, cfr. frr. 1, 53. 62; 24, 2; 30, 15 G.-P.; da questo verbo discendono direttamente i *thesmoi*, per i quali vd. 30, 18; 40, 2 G.-P. e cfr. *supra* n. 30.

48. Vd. anche frr. 5,5; 8, 4.

riconduce infine ad *armozo* e quindi alla funzione armonizzatrice già ricordata nella testimonianza di Plutarco e che esplode letteralmente ai versi 15-19 del fr. 30 G.-P.:

> queste cose ho compiuto con il mio potere,
> abbinando (armonizzando) assieme forza (*bia*) e giustizia (*dike*),[49]
> e sono arrivato in fondo alle promesse che ho fatto,
> e ho scritto le leggi (*thesmoi*) ugualmente per l'umile e il nobile,
> conciliando (armonizzando, rendendo adatta) per ciascuno una retta giustizia (*dike*).

È evidente che armonizzare *bia* e *dike* non vuol dire seguire una via di mezzo, ma rendere l'una cosa *artios* dell'altra, compatibile, armonizzata attraverso lo strumento dei *thesmoi*.

Ma a quali provvedimenti si riferisce? Non certo all'abolizione di tutti i debiti[50], che tanto ha attirato l'attenzione degli antichi perché tema forte della propaganda politica, ma che Solone non realizzò anche perché, in una società agraria e premonetaria, avrebbe coinciso in gran parte con la redistribuzione delle terre, ovvero con un provvedimento che, secondo

49. A commento di questo verso cfr. Vox, *Solone*, cit., 131-137; M.L. Zunino, Ὁμοῦ βίαν τε καὶ δίκην ξυναρμόσας. *Solone e la creazione della giustizia*, "Klio", 86 2004, 6-11 (in particolare sull'uso di *bia*); Ober, *Solon*, cit., 445. Sulla questione filologica relativa all'oscillazione nelle attestazioni fra *nomou* e il più probabile *homou*, cfr. Noussia, *Solone*, cit., 359, senza però trascurare, a favore di *nomou*, gli argomenti esposti da Masaracchia, *Solone*, cit., 347-348; G. Ferrara, *La politica di Solone*, Napoli 1964, 93-102.

50. Cfr. *Ath. Pol.* 6: fatto salvo l'intervento sui debiti generanti schiavitù in quanto contratti sulla garanzia del proprio corpo, mi sembra evidente che i riferimenti a *chreon apokopai* derivano da un fraintendimento circa il significato della *seisachtheia* che la tradizione indicava come un sacrificio connesso alla realizzazione delle riforme soloniane (Plut., *Sol.* 16, 4) e che, analizzata etimologicamente, trasmetteva l'idea di una liberazione dai pesi, intesi come quelli dei debiti contratti. Cfr. anzitutto Asheri, *Leggi greche*, cit., 89-104. Sulla *seisachtheia*, anzitutto in relazione al fr. 30, cfr. anche W. Watkiss Lloyd, *Seisachtheia*, "CR", 4 1890, 271; Woodhouse, *Solon the Liberator*, cit., 169; N.G.L. Hammond, *The Seisachtheia and the Nomothesia of Solon*, "JHS", 60 1940, 71-83; Id., *Land Tenure in Attica and Solon's Seisachtheia*, "JHS", 81 1961,76-98; F. Creatini, *Riflessi sociali della riforma ponderale di Solone*, "SCO", 34 1984, 127-132; Piccirilli, *Plutarco*, cit., 186-199; E. Luján Martinez, *Un nuevo trímetro de Solón*, "Emerita", 63 1995, 303-307; L.-M. L'Homme-Wéry, *L'Athènes de Solon comme modèle dans l' "Hymne homérique à la Terre"*, "Kernos", 8 1995, 139-150; Ead., *La perspective éleusinienne*, cit., 25-60; Ead., *Eleusis and Solon 's Seisachtheia*, "GRBS", 40 1999, 109-133; M. Valdés Guía, *La sisactía de Solón y el jurarmento de los Heliastas*, "ARYS", 2 1999, 35-47, a completamento di quanto indicato *supra* n. 43. Tra ipotesi riduttive e altre democratico-radicali già elaborate dagli storici antichi (e probabilmente prima di loro dalla politica ateniese di IV secolo a.C.), ritengo che la *seisachtheia* debba essere anzitutto riportata all'unico significato attestato ovvero quello di un sacrificio nel quale la comunità ateniese celebrava, in termini religiosi prima che economici, la possibilità di uno "scuotimento dei pesi" che collettivamente la *polis* sentiva gravare su di essa: se l'attenzione già dell'esegeta antico si è concentrato sui pesi caratterizzanti etimologicamente il vocabolo, più rilevante sembra invece nella stessa etimologia la presenza del verbo *seio* che indica non un alleggerimento, ma un forte scuotimento come un terremoto o, da parte degli uomini, l'azione di agitare le lance o un forte sconvolgimento emotivo. Questo significato, forte dell'azione esercitata su ciò che grava, pesa, schiaccia, risulta adatto a un rito con il quale si cerca la comunicazione con gli dei per chiedere o ringraziare: esso inoltre appare contestualizzabile nelle strategie religiose operate da Solone anche sulla scorta, secondo la tradizione, dell'intervento di Epimenide. Sulla funzione del sacrificio in una prospettiva che potrebbe essere utile a comprendere quella soloniana, cfr. J.-L. Durand, *Sacrificare, dividere, ripartire*, in C. Grottanelli - N. Parise (a cura di), *Sacrificio e società nel mondo antico*, Roma/ Bari 1988, 193-203; N. Parise, *Sacrificio e misura del valore nella Grecia antica*, in *Sacrificio e società*, cit., 253-265.

tutti i dati storici e la sua stessa testimonianza (fr. 29b, 10 G.-P.[51]), Solone certamente non attuò, se non limitatamente alla remissione dei debiti inequivocabilmente connessa alla liberazione di chi per debiti era divenuto schiavo (anche se probabilmente, in questo caso, la schiavitù è stata soltanto sostituita da un diverso grado di dipendenza[52] che comunque nel tempo risarciva almeno in parte il creditore)[53].

Leggendo l'*Athenaion Politeia* e la *Vita* plutarchea ritengo che sia possibile individuare uno dei cardini dell'intervento di Solone in un aspetto forse trascurato e che invece appare decisivo: per la risoluzione delle situazioni conflittuali Solone apre a tutti i cittadini la possibilità di accedere alle azioni giudiziarie sia quale parte lesa sia quale giudice (*Ath. Pol.* 9, 1; Plut. *Sol.* 18, 4.6), ovvero offre a tutti i cittadini la possibilità di trovare una soluzione che li tuteli, contrastando il diritto del più forte con la costruzione di un livello istituzionale in grado di accogliere le istanze del cittadino e portare a compimento le procedure che assicurano la giustizia[54].

In questa estensione del diritto di ricorrere all'azione giudiziaria rientrano a pieno titolo gli interventi sulla schiavitù, sul rientro degli esuli, sui contenziosi legati al possesso e all'uso della terra e delle sue risorse[55],

51. Cfr. V. Rosivach, *Redistribution of Land in Solon, fragment 34 West*, "JHS", 111 1992, 153-157.

52. Sulle categorie di lavoratori agrari con gradi diversi di dipendenza, cfr. Cassola, *La proprietà del suolo*, cit., 78-79; A. Biscardi, *Nota minima sugli "ectemoroi"*, in *Aux origines de l'Hellénisme*, cit., 193-197; Piccirilli, *Plutarco*, cit., 170-177; G. Schils, *Solon and the Hektemoroi*, "AnSoc", 22 1991, 75-90; B. Bravo, *I Thetes ateniesi e la storia della parola Thes*, "AFLP(C)", 15-16 1991-1993, 69-97; H. Sancisi-Weerdenburg, *Solon's Hektemoroi and Pisistratid Dekatemoroi*, in H. Sancisi-Weerdenburg - R.J. van der Spek - H.C. Teitler - H.T. Wallinga (eds.), *De agricultura. In memoriam P.W. De Neeve (1945-1990)*, Amsterdam 1993, 13-30; B. Bravo, *Pelates. Storia di una parola e di una nozione*, "PP", 51 1996, 268-289; L. Gallo, *Lo sfruttamento delle risorse*, in S. Settis, *I Greci. Storia, cultura, arte, società*, II.2, Torino 1997, 434-437; Stanley, *The Economic Reforms*, cit., 44-48, 176-178; V. Rosivach, *Zeugitai and Hoplites*, "AHB", 16 2002, 33-43; De Ste. Croix, *Athenian Democratic Origins*, cit., 109-118; J.K. Davies, *Classical Greece: Production*, in W. Scheidel - I. Morris - R. Saller (eds.), *The Cambridge Economic History of the Greco-Roman World*, Cambridge 2007, 353-354.

53. Su questi temi all'interno delle istanze e delle rivendicazioni che hanno animato quel conflitto sociale, cfr. T.J. Figueira, *A Typology of Social Conflict in Greek Poleis*, in A. Molho - K.A. Raaflaub - J. Emlen (eds.), *City States in Classical Antiquity and Medieval Italy*, Stuttgart 1991, 293-294.

54. Circa quali fossero i luoghi istituzionali nei quali si celebrasse l'azione giudiziaria, cfr. C. Hignett, *The History of the Athenian Constitution to the End of the Fifth Century B.C.*, Oxford 1952, 97-98; Masaracchia, *Solone*, cit., 170-171; Ruschenbusch, *Untersuchungen*, cit., 78-82; Ehrenberg, *From Solon to Socrates*, cit., 69; M.H. Hansen, *The Athenian Heliaia from Solon to Aristotle*, "C&M", 33 1982, 27-39; Piccirilli, *Plutarco*, cit., 211-212; Raaflaub, *Solone*, in Settis, *I Greci*, cit., 1066; M. Valdés Guía, *Politica y religión en Atenas arcaica: la reorganización de la polis en época de Solon. Una revisión de la documentación arqueológica, literaria y religiosa*, Oxford 2002, 38-40; Ead., *Areópago y prítanos ton naukraron: crisis política a finales del s. VII a.C. (de Cilón a Solón)*, "DHA", 28 2002, 65-101. Tra indicazioni documentali incerte possiamo registrare una presenza diffusa di magistrature giudicanti centrali e locali (incluse quelle arcontali, e quindi anche il ruolo svolto da Solone stesso, e, sempre anteriormente a Solone, i pritani dei naucrari e gli efeti draconiani: vd. Plut., *Sol.* 19, 3-5; Poll. VIII 125, 1-2; per il ruolo svolto da Dracone nella determinazione dei presupposti istituzionali del potere giudiziario, vd. *supra* n. 22 in riferimento alla legge sull'omicidio); su di esse Solone innesta la possibilità per ogni cittadino di intentare un procedimento giudiziario anche se non direttamente coinvolto. Più precisamente Solone sembra partecipare al percorso di sottrazione dell'Areopago all'egemonia delle famiglie aristocratiche (attraverso l'accesso all'istituzione di ex-arconti con requisiti in base al censo e non al lignaggio): allo stesso tempo però la tradizione gli attribuisce l'istituzione di un Consiglio contrapposto all'Areopago stesso. In questo modo Solone crea le "due ancore" della *polis*, secondo la suggestiva immagine di Plut., *Sol.* 19, 2, le quali condividerebbero anche diverse competenze giudiziarie che, per il Consiglio, sarebbero simili a quelle che saranno dell'Eliea e includerebbero anzitutto il diritto di *ephesis* e l'interpretazione sulle leggi controverse (*Ath. Pol.* 9, 2; Plut., *Sol.* 18, 3-6).

55. Cfr. Woodhouse, *Solon the Liberator*, cit., 42-97; Fine, *Horoi*, cit., spec. 178-180; French, *The Econo-*

provvedimenti essenziali per l'armonizzazione del corpo civico e per eliminare, fra i cittadini, le condizioni di limitazione della libertà, quale primo ed evidente impedimento all'estensione dei diritti: è così che Solone per il passato libera chi era divenuto schiavo, per il presente libera dai debiti contratti sulla persona, per il futuro vieta di contrarre debiti sulla persona e di vendere i propri figli.

Ma con quali strumenti realizzò questi obiettivi?

Secondo la tradizione (in realtà non senza contraddizioni) i provvedimenti *una tantum* avrebbero preceduto l'attività legislativa di Solone[56]: questo ha portato a una descrizione che segnala gli effetti di questi interventi, ma non i contenuti precisi né gli strumenti tecnici adottati. In realtà è possibile osservare una corrispondenza stringente fra questi due aspetti.

In particolare tutta la normativa relativa al mondo agrario[57] è chiaramente finalizzata a gestire le liti private di quell'ambito: i confini, l'utilizzo dei pozzi, le coltivazioni e il relativo commercio dei prodotti sono evidentemente i temi decisivi che richiedono la formulazione di regole da porre a base di sentenze giudiziarie uguali per tutti su questa materia. Allo stesso modo la riforma dei pesi e delle misure, interpretata fin dall'antichità come intervento di svalutazione per la riduzione dei debiti (con il limite di una visione monetaria applicata in una società premonetaria), in realtà è anzitutto lo strumento necessario per pesare e misurare con univocità, assicurando la tutela della parte più debole. A queste leggi possiamo

mic Background, cit., 11-25; E. Will, *Aux origines du regime foncier grec. Homere, Hésiode et l'arriere-plan mycénien*, "REG", 59 1957, 5-50; Masaracchia, *Solone*, cit., 106-107; Hammond, *Land Tenure*, cit., 83-88; French, *Land Tenure*, cit., 242-247; F. Cassola, *Solone, la terra e gli* ectemori, "PP", 19 1964, 26-68; D. Asheri, *Distribuzioni di terre nell'antica Grecia*, Torino 1966; M.I. Finley, *The Alienability of Land in Ancient Greece*, "Eirene", 7 1968, 25-32; Asheri, *Leggi greche*, cit., 10; M.I. Finley, *The Use and Abuse of History*, London 1975, 153-160; S. Link, *Landverteilung und sozialer Frieden im archaischen Griechenland*, Stuttgart 1991, 15-34; Bravo, *Una società legata alla terra*, cit., 560; Stanley, *The Economic Reforms*, cit., 176; Domínguez Monedero, *Solon*, cit., 21, 26, 55-56, 221 n. 32; Almeida, *Justice*, cit., 29-43; S. Forsdyke, *Land, Labor and Economy in Solonian Athens: Breaking the Impasse between Archeology and History*, in Blok - Lardinois, *Solon*, cit., 334-350; M. Valdés Guía, *La tierra "esclava" del Ática en el s. VII a.C.: campesinos endeudados y hectémoros*, "Gerión", 24 2006, 143-161. In modo specifico sulla distinzione terre private e/o comuni (pubbliche o private), cfr. F. Cassola, *La proprietà del suolo in Attica fino a Pisistrato*, "PP", 28 1973, 75-87, spec. 76-78; E. Lévy, *Réformes et date de Solon. Réponse à F. Cassola*, "PP", 28 1973, 88-91, spec. 89; T.W. Gallant, *Agricultural Systems, Land Tenure and the Reforms of Solon*, "ABSA", 77 1982, 111-124, nonché Stanley, *The Economic Reforms*, cit. 179-189; Manville, *Il cittadino*, cit., 136-137 e, ora, N. Papazarkadas, *Sacred and Public Land in Ancient Athens*, Oxford-New York 2011, 111-162 (sulle proprietà dei demi), 163-211(sulle proprietà delle associazioni "non-costituzionali"), 212-236 (sulle proprietà pubbliche non sacre). Più in generale cfr. C. Ampolo, *Il sistema della "polis". Elementi costitutivi e origini della città greca*, in Settis, *I Greci*, cit., 320-322.

56. Sulle leggi di Solone (testimoniate anzitutto da Plut., *Sol.* 17-25) e le questioni connesse è ora punto di riferimento la relativa sezione di Blok - Lardinois, *Solon*, cit., con i seguenti contributi che confermano, all'interno del progetto politico soloniano, la centralità delle leggi e delle relative procedure istituzionalmente codificate: A.C. Scafuro, *Identifying Solonian Laws*, 175-196; J.H. Blok, *Solon's Funerary Laws: Questions of Authenticity and Function*, 197-247; P.J. Rhodes, *The Reforms and Laws of Solon: an Optimistic View*, 248-260; M. Gagarin, *Legal Procedure in Solon's Law*, 261-275 e soprattutto E.M. Harris, *Solon and the Spirit of the Laws in Archaic and Classical Greece*, 290-318.

57. Cfr. E. Ruschenbusch, ΣΟΛΩΝΟΣ ΝΟΜΟΙ. *Die Fragmente des solonischen Gesetzeswerkes mit einer Text- und Überlieferungsgeschichte*, Wiesbaden 1966, 91-93, che rimane fondamentale in modo particolare per la puntuale ricostruzione dell'insieme del *corpus* legislativo e le modalità di pubblicazione e archiviazione delle leggi per iscritto (spec. 14-22, 25-38) e che è ora aggiornato e completato nel commento ai singoli "frammenti" delle leggi da E. Ruschenbusch, *Solon: Das Gesetzeswerk – Fragmente. Übersetzung und Kommentar*, Stuttgart 2010.

aggiungere tutti gli altri provvedimenti legislativi sul diritto di famiglia[58] e in ambito religioso, utili a definire lo spazio della *polis* limitando fortemente il ruolo della donna e delle famiglie degli eupatridi su questo terreno. Inoltre, a titolo di significativo esempio, si può ricordare una legge citata nel *corpus* demostenico[59]: se un cittadino, divenuto schiavo come prigioniero di guerra, è riscattato da un concittadino, ma poi non riesce a restituire quanto è stato speso, diventa temporaneamente schiavo (meglio direi "dipendente") di colui che lo ha riscattato. Questa norma può indicare la modalità di creazione di uno strumento, efficace, realizzabile, ma certo non rivoluzionario, per consentire il rientro di cittadini costretti come schiavi all'estero. Complessivamente, infine, l'insieme delle norme rivela la creazione di regole condivise che possono offrire l'opportunità di risolvere liti in corso, ma anche di ridiscutere, al momento dell'approvazione delle leggi, decisioni precedentemente prese in assenza di una precisa normativa scritta, "raddrizzando così le sentenze distorte" (per ripetere le parole del legislatore stesso)[60].

È evidente che in questo modo Solone ha determinano regole, scritte e uguali per tutti, in grado di realizzare un'efficace gestione giudiziaria della lite privata e, con essa, del conflitto sociale, percepito anzitutto quale esito di ripetute e non risolte liti private e di continui abusi contro la comunità improntati all'ingiustizia[61]. Riguardo a quest'ultimo aspetto ritengo infatti che Solone, nei suoi versi e nei provvedimenti a lui attribuibili, mostri di non avere attuato una lettura della *stasis* in termini strettamente sociali ed economici[62]: se infatti agisce da un lato sui gruppi sociali attivi nella vita politica attraverso la determinazione delle classi censuarie, dall'altro la maggior parte dei suoi provvedimenti, quando si cerchi di analizzarne i dettagli, mostrano l'intenzione di agire sulle liti private, proponendo soluzioni improntate a giustizia in grado di offrire diritti anche a chi, nei rapporti di forza interni alla società, ne sarebbe altrimenti escluso. In questo senso Solone mi parrebbe aver determinato

58. Cfr. D.F. Leão, *Sólon e a legislação em matéria de direito familiar*, "Dike", 8 2006, 5-31.
59. Demosth., *C. Nicostr.* (LIII) 11. Cfr. A.R.W. Harrison, *Il diritto ad Atene*, ed. it. a cura di P. Cobetto Ghiggia, Alessandria 2001 (ed. orig. Oxford 1968), I, 172-173.
60. Sulla retroattività delle leggi, con riferimento specifico al Codice di Gortina, vd. il dibattito fra Gagarin (*The Economic Status of Women in the Gortyn Code: Retroactivity and Change*) e Maffi (*Risposta a Michael Gagarin*) in *Symposion 1993*, cit., 61-78.
61. In questo modo la legge soloniana si propone quale unico strumento di prevenzione, controllo e soluzione dei conflitti; in modo particolare, forte di questa esclusività, si pone al di sopra di ogni decisione presa all'interno di forme associative (politiche, religiose, commerciali ...) diverse dalla *polis*: cfr. P. Ismard, *Les associations en Attique de Solon à Clisthène*, in J.-C. Couvenhes - S. Milanezi, *Individus, groupes et politique à Athènes de Solon à Mithridate*, Tours 2007, 17-33, spec. 20-25; Id., *La cité des réseaux. Athènes et ses associations VIe-Ier siècle av. J.-C.*, Paris 2010, 44-57.
62. In questo senso Solone, a fronte di istanze di natura sociale provenienti da un ampio gruppo di cittadini che chiede l'*isomoiria* della fertile terra patria, riconosce, nel fr. 29b G.-P., di non voler accogliere tali istanze: consapevolmente, dunque, ritiene di non poter percorrere una soluzione che collettivamente modifichi in modo radicale la società in merito al possesso della terra. In questo senso ritengo che Solone abbia deciso di gestire singolarmente le liti, anche in relazione al possesso e all'uso della terra, mostrando un'idea di giustizia che non ha una dimensione sociale, ma interpersonale: soltanto caso per caso le leggi e le procedure possono portare giustizia, mentre non sono possibili provvedimenti di portata collettiva e rivoluzionaria che scardinerebbero identità e stabilità della *polis* e che comunque per realizzarsi avrebbero bisogno della sopraffazione di una parte sull'altra.

una riforma che, prima che politica, potremmo definire strettamente giuridica o, più precisamente, giudiziaria, mostrando una mentalità riformatrice fondata su prospettive innovative anzitutto religiose, che in queste ultime pagine cercheremo ora di cogliere. Si tratta infatti di prospettive fondamentali che hanno spinto Solone a introdurre nella *polis* ateniese una vera e propria cultura processuale, fondata su regole scritte e istituzioni pubbliche che superano il personalismo dell'arbitro/mediatore nel quale la tradizione ha invece rinchiuso Solone stesso.

Con questo sguardo possiamo forse accedere a una conoscenza di Solone che sia libera della lettura socio-economica definitasi a partire dal IV secolo: in modo particolare possiamo cogliere la riforma soloniana nella sua natura essenzialmente giuridica ispirata però da un profonda revisione dell'idea di giustizia e del rapporto uomini-dei che in essa si realizza.

Infatti, se in Iliade e Odissea la riconciliazione, priva degli strumenti che saranno offerti dal diritto, è tesa a ristabilire la situazione precedente alla lite anche cancellando la memoria sull'accaduto, l'intento di armonizzazione di Solone, legato all'esperienza e al ricordo dell'esperienza anche attraverso l'arte poetica, è invece qualcosa di nuovo perché costituisce un primo tentativo, in parte riuscito, di estendere l'accesso alla procedura di riconciliazione (giudiziaria, ma anche allo stesso tempo religiosa) anche a chi, fino a quel momento, non ne aveva avuto la possibilità: è attraverso l'azione giudiziaria che le procedure definite dalla legge riescono ad armonizzare, a rendere compatibile l'una con l'altra le istanze contrapposte di chi è in lite. Questo però costringe Solone a ripensare il rapporto fra questa procedura di applicazione della giustizia e gli dei. In modo particolare un aspetto dovette risultargli inconciliabile: guardando a tutta la popolazione residente e in modo particolare alla corpo civico (rideterminato nell'appartenenza, ma anche nei ruoli proprio da Solone), era impossibile avanzare una proposta di risoluzione della lite e del conflitto costruita sulla base del dono di ricchezza che si riceverebbe direttamente dagli dei per l'adesione alla procedura di riconciliazione. Questo sistema tradizionale di riconciliazione, supportato al massimo da un arbitro e non da un'istituzione giudiziaria, si basava sulla composizione tendenzialmente omogenea del gruppo coinvolto nella controversia, gruppo che aderiva a un'etica aristocratica fondata sullo scambio del dono e al reciproco riconoscimento dell'appartenenza al gruppo. Ora invece era evidente a Solone che una parte cospicua dei cittadini viveva in una situazione di ricchezza negata e irraggiungibile e che per essa il modello "omerico", o meglio aristocratico, necessitava di correzioni che toccavano in maniera significativa l'idea di giustizia e la sua applicazione. Infatti, l'esperienza quotidiana di molti cittadini sembrava smentire la promessa di una ricchezza che sarebbe discesa dagli dei quando si percorresse una via di giustizia: in realtà molti si trovavano a soccombere di fronte ai soprusi dell'ingiusto senza trovare giustizia, e spesso una sorte iniqua fatta di incidenti (ad esempio in mare) e malattie poteva peggiorare la situazione già critica di chi né aveva risorse per reagire, né poteva sperare di partecipare ai meccanismi di reciprocità e di parità "aristocratica" dai quali era escluso. Tutto questo poteva portare una parte della popolazione a non riconoscere la priorità del valore della giustizia e l'intero sistema

etico e religioso fondato su di esso: di tutto questo risulta chiara la portata distruttiva per la comunità poleica che Solone cerca invece di mantenere unita attribuendo alla stessa comunità la piena amministrazione della giustizia sulla base di regole uguali per tutti. In questo modo leggi e sistema giudiziario diventano il tramite per permettere, almeno idealmente, ad ogni cittadino di veder realizzata, anche soltanto in piccola parte, la propria speranza di giustizia riguardo a un danno subito o a un diritto sottratto, nonché di poter riconoscere in quell'atto l'azione legittimante degli dei.

In questa prospettiva penso che si potrebbe ripensare, nella cosiddetta elegia alle Muse, la seconda parte[63] con il significativo elenco delle persone per bene (chi naviga per mare, il contadino – dipendente e/o asservito –, il poeta, l'indovino, il medico ...), le "brave persone", le quali, mentre possono finire in grave e dura rovina, vedono premiare l'ingiusto che riceve assoluzione dall'ignoranza per benigna fortuna (così intendo il sintagma *syntychien agathen, eklysin aphrosynes* del v. 70)[64]. Allo stesso modo si può anche rivedere il fr. 29° G.-P., là dove Solone mette in versi la critica che gli viene fatta di non aver assunto la carica di tiranno (v. 2): facendo così non avrebbe accettato i doni, i benefici degli dei. Solone sembra suggerirci che guardando a un'opportunità di potere o a una ricchezza acquisita non è facile distinguere se sia oppure no un dono del dio; allo stesso modo debolezza e povertà non possono essere intese come negazione del dono. Al contrario è solo la qualità dell'azione con la quale si è acquisita la ricchezza[65] che permette di distinguere se essa discende o no dal dio e dalla giustizia: tale qualità dell'azione si verifica sulla base della condivisione giurata delle regole e delle procedure all'interno della comunità poleica, prima fra tutte la gestione del conflitto in riferimento a una proporzionata reciprocità, evidentemente incompatibile con abusi e soprusi da parte del più forte nonché, per Solone stesso, con la tirannide.

63. Fr. 1 G.-P., dal v. 35. Per l'ampio dibattito intorno a questa seconda parte, della quale è stata messa in dubbio anche l'autenticità (G. Perrotta, *L'elegia di Solone alle Muse*, "A&R", 5 1924, 251-60), cfr. Noussia, *Solone*, cit., 188-189; K. Stoddard, *Turning the Tables on the Audience: Didactic Technique in Solon 13W*, "AJPh", 123 2002, 149-168.

64. Su questi versi cfr. L.M. Positano, *L'elegia di Solone alle Muse*, Napoli 1947, 68-82. Sulla traduzione del v. 70, cfr. Ferrara, *La politica di Solone*, cit., 85 e n. 19.

65. In estrema sintesi è questo nei versi di Solone il problema denunciato quale rovinoso per la società ateniese: esso è lucidamente espresso dai vv.12-16 del fr. 3 G.-P.: "senza rispettare minimamente né i beni sacri né i pubblici rubano razziando chi da una parte chi dall'altra e non rispettano gli altari sacri di Dike, che nel suo silenzio è testimone delle cose che sono e di quelle che furono, e col tempo in ogni caso viene a far pagare il fio". Oltre alla prima attestazione di *demosios* e di una distinzione fra quanto è sacro e quanto è del *demos* fuori dalla sfera del sacro, è bene evidenziare che l'oggetto di ricchezza acquisito ingiustamente è indicato come *kteana*, termine che sottolinea l'acquisizione del possesso senza qualificare quale mobile o immobile il bene acquisito e negando quindi una dimensione solamente agraria al problema affrontato da Solone.

DOMINGO AVILES

"ARGUING AGAINST THE LAW". NON-LITERAL INTERPRETATION IN ATTIC FORENSIC ORATORY

Abstract

Scholars often maintain that Athenian juries cared little for what the statutes had to say and ruled according to their own whims rather than following any written norms. This paper aims to show that, on the contrary, whenever a statutory norm was directly applicable to the case at hand (which, however, seems quite rare) its wording posed a definite boundary to acceptable legal argument and could not easily be argued away. In the extant forensic speeches, only in a particular set of cases do we find arguments for a departure from the letter of the law (which I call, borrowing an expression used by Aristotle, "arguing against the law"): when the speaker argues for narrowing the scope of application of a statutory norm to fewer cases than the literal reading implies.

Such "arguments against (the letter of) the law" are not to be confused either with the addressing of ambiguities that result from the "open texture" of legal language or with the concept of equity as a corrective to strict law. The former remains within the compass of the norm as defined by its wording; as for the latter, orators never frame their arguments as a request to bypass strict law in the name of justice or fairness. Seeming appeals to equity turn out, on closer inspection, to be instances of legal construction. Nonetheless, at the end of the paper a suggestion is made as to how considerations of equity could have played a role in decision-making.

Spesso si legge che i tribunali ateniesi non si preoccupassero troppo di rimanere fedeli alla legge scritta ma decidessero in modo soggettivo. Lo scopo di quest'articolo è dimostrare che, al contrario, laddove esistesse una norma di legge applicabile al caso trattato (il che, però, sembra avvenisse raramente), la lettera limitava decisamente il numero delle possibili argomentazioni e non poteva essere messa in discussione con facilità. Nelle orazioni conservate, solo in una serie di casi particolari gli oratori osano richiedere al tribunale di scostarsi dalla lettera della legge (fatto che, ispirandomi ad un'espressione aristotelica, definisco "argomentare contro la legge"): si tratta delle situazioni in cui propongono di ridurre l'estensione dell'applicazione della norma a meno casi di quanti sembrerebbero impliciti nella formulazione letterale della stessa.

Tali "argomenti contro la (lettera della) legge" non vanno confusi né con la risoluzione di ambiguità dovute a imprecisioni nel linguaggio legislativo, né con l'appello all'equità come correttivo a un'interpretazione troppo rigida. Nel primo caso, l'interpretazione rimane all'interno dell'ambito circoscritto dall'espressione letterale; per quanto riguarda l'equità, gli oratori non chiedono mai di violare la lettera della legge in nome di considerazioni di giustizia. Quando sembrano farlo, a un'analisi più approfondita risulta che si tratta, in realtà, di particolari modi di interpretare le leggi. Ciononostante, alla fine dell'articolo propongo un possibile modo in cui l'equità potrebbe aver svolto un ruolo nelle decisioni giudiziali.

Dike, 14, 2011, p. 19-42

According to the *Athenaion Politeia* (11.1-2), Solon decided to leave Athens after he began to be approached by fellow Athenians asking him to interpret provisions of his laws for them. As explanation for his decision to embark on a trip, as the writer has it, he alleged that he did not think it appropriate for the lawgiver himself to interpret his own laws but, on the contrary, everyone should simply do as was written[1].

The point of this anecdote is probably that the lawgiver, once he has promulgated his laws, has to step out of the picture, letting the laws speak for themselves[2]. By itself, however, this contention, that one should just "follow the laws as they are written", seems quite naïve. In many cases it would not help just to refer to "what is written" when facing a problem of legal interpretation, and such cases are found in ancient Greece as well. If an Athenian statute grants seemingly unlimited freedom of contract, stating that whatever the parties agree upon is to be binding[3], and another one establishes that anyone who sells grain grown in Attica abroad is to be fined[4], how should a court rule in a suit in which someone who has made a contract about the sale of grain abroad demands that his contract partner abide by the terms of that contract? How is a court supposed to do simply as is written under such circumstances? Should the court force the defendant to abide by the contract? And if someone then prosecutes the defendant for exporting grain out of Attica, should the court of this subsequent lawsuit punish him for breaking the law, although a former court of the same state forced him to do so?

Or one could even imagine a person agreeing to another's proposal to murder someone for money and the relative "contract" being agreed to in due form, or two people reaching an understanding to commit any other major violation of the law and giving it "legal" force by fulfilling whatever formal requirements may apply. (In fact, in most legal systems no law explicitly states that murder is forbidden: there are sanctions for murder, to be sure, but the phrase "murder is illegal" is found nowhere[5] and if we are simply to "do what is written" we may be at a loss in this respect.) Nonetheless, it would be absurd to expect any legal system to recognize such covenants as valid and declare the designed assassin bound by the contract he has made to perpetrate the murder. If any court really accepted this point of view there would be an intolerable contradiction between the law that forbids murder and the law on contracts; the same would apply to any other law challenged by a contract and the whole corpus of law would be worthless.

These examples alone show that any application of statutory law requires a certain amount of interpretation. Apart from that, literal application of the law can result in what many people see as injustice, a fact that the Romans as early as Cicero's time knew so well that it had already

1. Ath Pol. 11.1: οὐ γὰρ οἴεσθαι δίκαιον εἶναι τοὺς νόμους ἐξηγεῖσθαι παρών, ἀλλ' ἕκαστον τὰ γεγραμμένα ποιεῖν.
2. This is a common trait of all ancient lawgiver stories: see Szegedy-Maszak 1978.
3. Dem. 42.12; 47.77 and others; see below, II.1.
4. Dem. 34.37; 35.50; Lyc. 1.27.
5. Least of all in Draco's homicide law (IG I3 104), which was still in force in Classical Athens.

become proverbial[6]. A ruling that is formally correct but unjust is likely to undermine the people's faith in the legal system, which is supposed to produce just results; on the other hand, statute as the supreme source of law cannot be simply brushed aside whenever the judge believes it leads to injustice. In such cases, those involved may feel there is a need to find a way of interpreting the statute other than through its literal application, an interpretation that makes it yield a just result while not calling into question the fundamental obedience due to it. Both considerations – that literal application can lead to injustice and that, even if one were to take a fully legalistic-positivistic stand, literal interpretation is often simply impossible anyway – point to the conclusion that there have to be methods for construing written law, which we may call – a phrase I borrow from Steven Johnstone[7] – interpretive protocols.

Establishing these interpretive protocols is one of the tasks and challenges of any legal system: rarely do the statutes themselves tell the litigants and judges how they are to construe them. In modern states, an entire class of professional jurists are concerned with this matter; interpretation protocols are laid down in the writings of legal scholars and are invested with more or less binding force through court decisions that constitute – formally or informally – precedents to which future rulings are expected to conform. In ancient Athens, however, there was no legal literature, and judgments did not entail discussion among the judges, let alone publication of the grounds on which the court adhered to a particular interpretation of the law and discarded another. Consequently, whatever interpretive protocols there were can hardly have been written down in any kind of text to be handed down to future judges. Due to the lack of explicitly stated rules of statutory construction, it is tempting to infer that there were none at all[8].

In this paper I will attempt to show that, contrary to this notion, interpretive protocols did exist at least as far as the respect of the letter of the law was concerned: the letter of the law posed a nearly absolute limit to any interpretation, a limit that, contrary to what many scholars have claimed, could not be overstepped at whim. Only in a particular way, involving the narrowing down of the scope of a legal norm, was it possible for a speaker to propose that a jury disregard the literal meaning of a statutory provision in ruling on a given case. First, however, I will deal with the concept of equity, which is often thought to have enabled Athenian juries to bypass strict law; then I will analyze those passages in Attic oratory where the speaker does propose to depart from the literal meaning of the law; in the final remarks I will sum up the argument and, besides, try to suggest a way in which equity may have played a role in the juries' decision-making.

I. Equity II. "Arguing against the law" in Attic oratory. II.1 Hypereides, *Against Athenogenes*. II.2 Demosthenes and Aeschines over the crown. II.2.a

6. Cic. De officiis 1.33: "summum ius summa iniuria" factum est iam tritum sermone proverbium.
7. Johnstone 1999: 22-33.
8. So basically Yunis 2001: 174; cf. Phillips 2009: 117-8.

Proclamation in the theatre. II. 2.b. Proclamation before the audit. III. Final remarks.

I. Equity

Some scholars maintain that a source of law separate from statute and sometimes overriding it is found in equity. Equity is regarded as something opposed to the literal meaning of statutory dispositions[9]. The origin of this idea lies in Aristotle's views on ἐπιείκεια as well as his suggestions about how to "argue against the law"[10]. I will address these topics next, considering how they have become the conceptual framework within which every scholar addresses the issue. It is impossible to read modern literature on equity in the Athenian legal system without being confronted with Aristotle's treatment of the matter. Therefore, it is necessary to address Aristotle's ideas even if one thinks (as I do) that they do not really correspond to the actual practice of the law courts and forensic oratory in fourth-century Athens[11]: the very concept of equity, its opposition to literal interpretation and the idea that it may be a source of law different from statute is ultimately based on a reading of the philosopher's works themselves, so it is important to spell these premises out in order to be fully aware of them while analyzing the relevant passages in the orators. Otherwise, we would run the risk of subconsciously reading Aristotle's ideas into the texts at hand[12].

Aristotle discusses his concept of ἐπιείκεια[13] first and foremost in the *Nicomachean Ethics* (5.14 1137a31 - 1138a3). Within this passage we find some assertions about equity being a corrective to an overly literal interpretation of the laws (1137b11 - 28):

> "[...] Equity (τὸ ἐπιεικές), though just, is not legal justice, but a rectification of legal justice (ἐπανόρθωμα νομίμου δικαίου). The reason for this is that law is always a general statement, yet there are cases which it is not possible to cover adequately in a general statement. So in matters where, while it is necessary to speak in general terms, it is not possible to do so adequately, the law takes into consideration the majority of cases, although it is not unaware of the error this involves. And this does not make it a wrong law; for the error is not in the law nor in the lawgiver, but in the nature of the case: the material of conduct is essentially irregular. When therefore the law lays down a general rule, and thereafter a case arises which is an exception to the rule, it is then right, where the lawgiver's pronouncement is defective and erroneous because of its absoluteness, to rectify the defect by deciding as the lawgiver would himself decide if he were present on

9. See Harris 2004:1-4 with further literature.
10. Cf. Arist. Rhet. 1375b15: μάχεσθαι ταύτῃ πρὸς τὸν νόμον; 1376b16 (in the part on contracts): ἅπερ ἄν τις πρὸς νόμον ἐναντίον μαχέσαιτο and the following, interesting remarks.
11. On this subject see Harris 2006: 162-66.
12. Cf. Todd 1993: 23, where he criticizes MacDowell (1978) for trying to study Athenian law "without preconceptions" while he himself fails to become aware of his own modern preconceptions (such as the one that substance is more important than procedure, a notion with which Todd disagrees), which consequently inform his treatment of the material.
13. For a more complete discussion of Aristotle's concept of ἐπιείκεια see Brunschwig 1996.

> the occasion, and would have enacted if he had known about the case in question. Hence, while the equitable is just, and is superior to one sort of justice, it is not superior to absolute justice, but only to the error due to its absolute statement. This is the essential nature of the equitable: it is a rectification of law where law is defective because of its generality[14]."

From this passage we can see that Aristotle considers equity to be, as we may put it, a way of construing statutory law. Although he does not make an explicit distinction between the "letter" and the "spirit" of the law, the expression νόμιμον δίκαιον, "legal justice", must refer to what we call the "letter of the law", whereas its corrective, τὸ ἐπιεικές, is linked to the actual will of the lawgiver, so that we could identify it with our "spirit of the law". That by νόμος, or the adjective νόμιμος, he means the wording of a statutory provision and not the deep meaning that may be attached to it is shown by the sentence where he says that the lawgiver, though knowing the error implied in stating things in general terms, is nonetheless forced to do so and be content with a defective pronouncement[15] as well as by the passage in which he implies that the lawgiver himself, had he had a chance to rule on the case at hand, would have expressed himself differently[16]. Therefore, it is apparent that Aristotle here does not envision equity as a source of law lying outside and possibly going against the lawgiver's intention, nor does he leave room for the idea that legal rules could *per se* be at odds with justice.

The subject of equity is found again in *Rhetoric* 1.13 1374a-b, where the underlying concept of νόμος is qualified by the adjective γεγραμμένος as referring specifically to "written" law. The philosopher is, again, apparently mainly concerned with the literal meaning of the law rather than what we would call its spirit: he maintains that equity characteristically leads the judge to side with the lawgiver instead of with the written law and to look not at what the lawgiver says but at what he means[17], a statement that would not make sense if by "the law" he did not mean its strict wording as opposed to the intention underlying it.

Close to this is another passage, *Rhet.* 1.15 1375a25-b25, which addresses the issue of how to argue against a law that favours the opponent. Statutes are listed among the so-called non-technical proofs (ἄτεχνοι πίστεις: 1375a 22), thus as a kind of evidence. Like the other non-technical proofs, they can favour either the speaker's own case or that of the opponent; therefore, arguments are needed either to support or to undermine their use in the case at hand. The arguments for and against written law as evidence are expounded systematically. The author orders them in a parallel way: each of the arguments to be used when the law favours the opponent's case – so that one has to argue against following the letter of the law – is opposed to another argument which one is to use when the law favours one's own

14. Transl. by H. Rackham, with some modifications.
15. EN 1137b 14-16: ἐν οἷς οὖν ἀνάγκη μὲν εἰπεῖν καθόλου, μὴ οἷόν τε δὲ ὀρθῶς, τὸ ὡς ἐπὶ τὸ πλέον λαμβάνει ὁ νόμος, οὐκ ἀγνοῶν τὸ ἁμαρτανόμενον.
16. Ibid. 22-24: ὃ κἂν ὁ νομοθέτης αὐτὸς ἂν εἶπεν ἐκεῖ παρών, καὶ εἰ ἤδει, ἐνομοθέτησεν.
17. 1374b 11-13: (It is ἐπιεικές) καὶ τὸ μὴ πρὸς τὸν νόμον ἀλλὰ πρὸς τὸν νομοθέτην, καὶ μὴ πρὸς τὸν λόγον ἀλλὰ πρὸς τὴν διάνοιαν τοῦ νομοθέτου σκοπεῖν.

case and has to argue for adherence to it (see Mirhady 1990). In 1375b8-13, however, Aristotle introduces a passage that does not fit into this scheme. Mirhady (1990: 404) maintains that it concerns "the interpretation of a law or laws and the obsolescence of a law" and goes on to state that "interpretation is needed both where there is a conflict between two laws or between clauses of a single law and where there is some ambiguity in a law". The reason why Aristotle inserts this passage even though it disrupts the parallelism is probably to be seen in the fact that, as Mirhady himself points out, these arguments can only be used if certain conditions are given, whereas the others can be used in any situation.

It is questionable, however, whether Aristotle here is actually concerned with the interpretation of the law. This entire passage on the rhetoric of law (1374a25-b25) is devoted to the arguments available to a litigant when a statutory norm favouring the opponent's case is brought forth as evidence; in this event, the litigant has to use one of the retorts expounded here. Pointing out contradictions between the law cited by the opponent and another legal norm, or its ambiguities or obsolescence, is a means to refute the opponent's claims as far as they are based on that particular statute; in other words, it is an instance of "arguing against the law", just as much as any other of the anti-legal arguments found in this passage. So the passage at hand is hardly about interpreting "the law" (*ius*) as a whole, but only concerns itself with a single legal norm (*lex*) – the one that the opponent might cite in his favour – and provides rhetorical tools for countering arguments from the text of a statute.

At any rate, equity only plays a limited role in the "arguments against the law". It is listed in 1375a 30-1 as but one of the arguments that can be opposed to the opponent's use of a citation from a statute. In forensic speeches no passage is found where the speaker actually asks the judges to put equity above written law. It is necessary to make a distinction between equity and – to use Aristotle's own words – "arguing against the law". In the following I will try to show how far, if at all, one can witness these two things going together.

II. "Arguing against the law" in Attic oratory

With respect to what actually happens in Athenian forensic rhetoric rather than to Aristotle's intention, Mirhady's statement as reported in the previous chapter is, in fact, accurate: when statutes or different provisions of the same statute contradict each other, then interpretation is needed, since in actual practice there is no way an orator can openly ask the court to disregard any statutory norm and place equity or unwritten law above statute[18]. Aristotle's description in *Rhet.* 1.5 1375b8-13, on the other hand, is right in so far as wherever a contradiction between statutory norms is found the judges must bypass literal interpretation and follow a non-literal interpretive protocol in construing the law, thus making a decision against the letter of the statute in question. As I have argued above, such cases are bound to happen in any legal system. In fourth-

18. As we shall see below and is confirmed by the findings in Harris 2006.

century Athens there must have been lawsuits where it was necessary for either party to "argue against the law" and ask the jury to depart from a literal reading of a statutory norm. The question is now how far in actual forensic speeches there are legal arguments that are, explicitly or implicitly, directed against a literal construction of statutory norms. To answer it, we need to find out whether arguments implying bypassing the letter of the law are actually found in the orators and, if they are, what kind of deviations from it are concretely envisaged. Assessing the respect that a legal system has for the law requires inquiring into the form and extent that non-literal interpretation is actually expected to assume, and the measure of this is the kind of arguments litigants use in practice. In the following, therefore, I will analyze corresponding passages from those speeches in which we find arguments aimed at persuading an Athenian court to disregard the precise wording of a statute.

In fact, not many speeches are preserved whose line of argument actually turns on the construction of statutes[19]. In most cases, the outcome of the dispute depends on questions of fact or more general considerations regarding the character of the opponent and the like. This applies even to the passages quoted by scholars to support their views on the role of equity in Athenian judicial practice[20]. In most of the cases that they either invoke or try to rule out as evidence for equity considerations, no statutory clause is explicitly dealt with. In Dem. 21.71-5, for instance, the legality of the use of deadly force is at issue. Demosthenes reports a lawsuit against one Euaion, who was found guilty of killing a certain Boiotos in a fight that ensued after his victim had hit him once with his fist. Euaion was found guilty; Demosthenes points out that he lost the suit by one single vote and surmises that those judges who voted to acquit the killer thought it was proper for him to retaliate in that way, whereas the others found he had overstepped the limits of legitimate self-assertion. As we do not know the exact wording of the statutory norm or norms on which the case turned, we cannot determine whether bypassing strict law played a role or whether judgment both for and against the defendant depended on two equally possible ways of construing the statutes[21].

In the same way I will not consider other passages that, though named in the literature on equity, cannot be linked to any precise statutory norm. Arguments dealing with general considerations of fairness, humanity and the like without being opposed to the concrete wording of a statutory norm lie outside the scope of this paper[22]. After these cases are excluded, three

19. Cf. Harris 2007: 345: "Relatively few of the cases for which the preserved speeches were written involve disputes about the meaning of the law".
20. For these see Meyer-Laurin 1965; Harris 2004.
21. My concept of "arguing against the law" ought not to be confused with that of "open texture" (Harris 2000). While "open texture" refers to the possibility of construing the wording of the law in different ways, "arguing against" it means that a litigant proposes a construction that is at odds with its literal meaning; this can happen regardless of whether or not there is any doubt about what this meaning is. The former is a quality of the law itself; the latter is a kind of legal argument dealing with statutory norms.
22. These are studied mainly in Meyer-Laurin 1965 and Harris 2004. The passages that either scholar (or both) uses as examples of appeals to equity are: Aes. 1. 8-25; Dem. 18. 274; 21.43; 21.71-75; 21.90 and 94; Dem. 30 and 31 in general; 59.80-83; Din. 1.55-59; Isoc. 18.34, and the passages listed

passages remain which contain arguments against the letter of the law: Hypereides 3 (5), *Against Athenogenes*, 13-22; Aeschines 3, *Against Ctesiphon*, 35-48 (with the corresponding passage in Demosthenes' defense speech, Dem. 19.120-21); and ibid., 9-31 (Dem. 19.111-19). I will now analyze these passages in the same order as listed.

II.1 Hypereides, Against Athenogenes

Hypereides' speech *Against Athenogenes* deals with a case where the law on contracts is liable to cause the same problems that I have outlined at the beginning of this paper. Hypereides' client, a young man named Epikrates[23], claims to have been cheated into stipulating a sale contract with the defendant, an Egyptian metic by the name of Athenogenes, who owned a perfumery loaded with debts. In order to get rid of these debts, Athenogenes, according to Epikrates' account[24], took advantage of the young man's love for one of the slaves who belonged to the business, tying up the sale of the boy with that of the perfumery as a whole. The love-struck Epikrates was so eager to conclude the transaction and get a hold of the boy that he failed to pay attention to the fine print of the written sale contract prepared by Athenogenes, which contained a clause establishing that the buyer was to discharge all debts the business had incurred[25]. One of the business slaves, Midas, had, in fact, caused a certain amount of debt. As it turned out after the transaction was concluded and Epikrates became the owner of the perfumery, those debts amounted to the horrific sum of five talents, which Epikrates could never have surmised from the information he had received during the contract negotiations. Consequently, he sued Athenogenes in what was probably a *dike blabes*[26], in which he hoped for the court to release him from the self-incurred duty to take Athenogenes' debts upon himself.

Now in Athens there was a statutory norm, which Phillips (2009) refers to as "the general law of contracts", which established that whatever the parties had agreed upon was to be valid[27]. The text of the statute is nowhere cited directly but just paraphrased; therefore, there is a great amount of doubt as to its exact wording, including the crucial question whether or not it contained a clause specifying that the rule applied only to legal or

below.

23. The name has been reconstructed by editors in a fragmentary passage in chapter 24; see Whitehead 2000: 327.

24. In this paper I will simply assume that Epikrates' version of the story (the only one we know, and defended by adducing evidence that is now lost beyond recovery) is true, and ask what legal consequences it may have. In other words, I will not be concerned with questions of fact but exclusively with questions of law.

25. Maffi 2008: 212 claims that Epicrates would have assumed the debts independently of the contract just on account of the sale; see however Talamanca 2008, who points out that in the speech itself there is little to confirm this theory.

26. Since the beginning and the end of the speech are lost, we do not know for sure what kind of lawsuit Epikrates chose to file and what the exact terms of the dispute were. Scholars generally agree that he filed a dike blabes and wanted the court to void the contract, although he may conceivably have restricted his requests to the nullification of the deceptive clause.

27. On the question of the possible invalidity of contracts and other transactions in Athenian law see Cantarella 2012a.

fair agreements. Phillips (2009: 93-106) has argued, based on a thorough study of all ancient sources for that law[28], that it contained no such rule – nor any further limitation, for instance willingness of one party, lack of deceit and force, and so on – and therefore, if taken literally, declared any and every contract to be valid, including fraudulent and even illegal ones[29].

In particular, he shows that the passages where philosophers speak of such a requirement are most likely concerned with hypothetical cases, hardly with Athens' actual legal system. Even the passage in Aristotle's *Rhetoric* that we have seen above[30], according to Phillips (95), does not necessarily refer to any actual Athenian situation. But even if it does, it actually confirms his position: the philosopher speaks of two different statutes, one (ὁ μέν) stating that any and every contract shall be valid, and another (ὁ δέ) prohibiting illegal contracting. There is no hint of any limitation in the first statute of the freedom of contract: only the second one limits it, thereby contradicting the other one, which is likely to be the general law of contract on which the present dispute turns.

But if Aristotle is referring to an actual statute, one may wonder if the second law he introduces in this section also has its counterpart in real Athenian legislation. If it does, however, why does Hypereides not quote it? I assume, by way of hypothesis, that the second law Aristotle hints at is the one found in *Digest* 47.22.4 (Arnaoutoglou 1998 no. 34). There, the Roman jurist Gaius reports a statute, generally believed to be Solonian, which established that

> If the inhabitants of a deme, or members of a *phratria*, or members of groups aiming to hold religious feasts, or sailors, or members of groups dining together or providing for their burial, or members of religious clubs, or individuals engaged in some enterprise for plunder or trade, whatever they agree between themselves will be valid unless forbidden by public statutes[31].

28. The strongest confirmation that there was no justice requirement is however Hyp 3.13 itself, as we shall see below.

29. Kußmaul 1969: 34-7 argues that the word ὁμολογία and the related verb forms originally referred to a *pactum*, a settlement aimed at rendering a given situation final, thus barring further dispute (cf. Carawan 2006), rather than a *contractus*, which creates obligations for the future. The statute on ὁμολογία must then have meant that no claim or state of affairs prior to the settlement could later be held against it (for instance, if a creditor has renounced part of his claim he is henceforth bound by this decision). In the fourth century, however, this norm had come to be understood as applying to any agreement. If this is correct, it is no longer surprising that the statute as devised by the original lawgiver did not contain any legality or justice requirement: no obligation ensued for the contractors to do anything (save refrain from challenging the new situation), so they could not be bound by the settlement to do anything illegal, either; besides, such a clause would likely have opened up the case for further litigation, thereby defeating the very aim of the statute. A justice requirement seems just as superfluous, provided each party to the agreement waives his rights willingly; if anything, we would expect a volition clause.
Kußmaul also compares a Hellenistic statute from Ephesus (Syll.^{3} 364), which deals with land ownership and contains a clause very similar to the Attic law of contracts (ll. 85-7). This clause obviously refers to *pacta* in the sense he explains and does not contain any legality or justice requirement; interestingly, it does contain a volition clause (ll. 75-7 and loc. cit.) which betrays the concern that some people may have been forced (βιασθέντες) to accept the settlement.

30. 1375b 8-11: οἷον ἐνίοτε ὁ μὲν κελεύει κύρια εἶναι ἅττ' ἂν συνθῶνται, ὁ δ' ἀπαγορεύει μὴ συντίθεσθαι παρὰ τὸν νόμον.

31. Transl. by Arnaoutoglou.

Now while it is quite plain to see how in certain cases a contradiction is bound to arise between this statute and the general law of contracts, Epikrates' case obviously does not fall under it. The law Gaius reports only concerns agreements made within associations, not between unrelated individuals. Furthermore, it does not address questions of justice but its aim is obviously to establish a hierarchy of norms within the state; none of this is relevant to the case dealt with in Hyp. 3.

In sum, all available evidence points to the wording of the general law of contracts not imposing any limitation on the validity of agreements and thus validating even such agreements that were obviously at odds with justice. This looks like a textbook case of *summum ius summa iniuria*: while the law says that Epikrates must assume all the debts of the perfumery, it is certainly not fair that an inexperienced young man, after being hoodwinked by a crook taking advantage of his romantic feelings into buying a business encumbered by an enormous amount of debt, should now be liable for it although he had no part in bringing it about. This seems precisely the kind of situation in which a litigant is to follow Aristotle's rhetorical tactics in order to reject the text of a law. Hypereides could make Epikrates state, for instance, that unwritten law provides a higher standard to follow than statute or any other of the lines of argument listed in the passage of the *Rhetoric* described above, including the appeal to equity. Instead, Epikrates argues that a justice requirement is indeed contained, albeit not stated explicitly, in the statute. To do so, he embarks on a quite lengthy analysis of statutes that, in his view, show that in Athenian law only just agreements or dispositions are recognised as valid (13-22)[32].

First of all, Epikrates discloses to the jury the argument he expects Athenogenes to put forth, that is, a reference to the general law of contracts to claim that the contract is valid in any case (ἐρεῖ δὲ πρὸς ὑμᾶς αὐτίκα μάλα Ἀθηνογένης, ὡς ὁ νόμος λέγει, ὅσα ἂν ἕτερος ἑτέρωι ὁμολογήσῃ, κύρια εἶναι). To this he opposes his take on the meaning of the law:

> τά γε δίκαια, ὦ βέλτιστε· τὰ δὲ μὴ τοὐναντίον ἀπαγορεύει μὴ κύρια εἶναι.
>
> Yes, just contracts, my friend: the unjust ones (the law) declares invalid.

Pace Harris (2000: 49), the statement "the unjust ones (the law) declares invalid" is very likely nothing more than Epikrates' own interpretation of the statute on contracts. If there were a statute with such wording, the following passage with its lengthy quotation of a series of statutes unrelated to the present case would be pointless (Kästle 2012: 193, 202), especially since at least two of the four statutes quoted in 14-18 – the one on brides in 16 and the one on testaments in 17 – do not contribute anything to the assessment of what is just in the present case, and the speaker himself only draws attention to the fact that they contain a justice requirement[33]. The main aim of this passage is not to define justice more concretely but to

32. Long paraphrases and analyses of this argument are found especially in Harris 2000: 48-54 (who, however, thinks that the law did contain a justice requirement); Phillips 2009: 106-14.

33. This does not prevent Epikrates from drawing direct parallels to his case whenever the opportunity presents itself, as he does in 18. Of course, every argument available will be used.

prove that the law that seemingly favours Athenogenes must be construed as if it contained a justice requirement.

The words that follow the sentence cited above confirm this interpretation. The sentence ἐξ αὐτῶν δέ σοι τῶν νόμων ἐγὼ φανερώτερον ποιήσω contains an odd transition from the singular ὁ νόμος to the plural οἱ νόμοι. In Athenogenes' supposed argument the word νόμος is most naturally taken to refer to the particular statute known as the law of contracts; when Epikrates retorts that "the law" only allows just contracts and invalidates unjust ones he is likely referring to that particular statute as well; otherwise the change of grammatical subject would be overly awkward. Moreover, taking the sentence ἐξ αὐτῶν σοι τῶν νόμων φανερώτερον ποιήσω to mean that Epikrates is now going to expand on the substantial content of the justice requirement[34] is far-fetched. Without any direct object of the expression φανερώτερον ποιήσω explicitly stated, it must be taken to refer to the content of the preceding sentence, which states no more than that "the law declares unjust contracts to be invalid." Then, however, what follows must be an explanation of why it is so, not a disquisition aimed at filling the justice requirement with concrete meaning. And if it is indeed such an explanation and if there were a statute declaring illegal contracts void, this very statute is what would come next. Instead, Epikrates in 14 speaks about the law that forbids lying in the market place, and also the subsequent laws too are all unrelated to the present case[35].

Thus, the only satisfying interpretation (also confirmed by the results of Phillips' analysis) is that Hypereides contends that the general law of contract forbids unjust contracts in spirit, although not literally, and then goes on to "make it clear", that is, make it plainer for Athenogenes (and the jurors) to see that the system of the laws as a whole requires contracts to be just. This requirement can then be said to be made by the law on contracts as well, if we assume (as Hypereides here obviously does) that a unique legislative intent underlies the entire legal system.

To be sure, in order to detect a principle contained in the laws as a whole a litigant must infer it from the texts of the actual statutes. Therefore, Hypereides makes his client cite several statutory norms that back up his contention of an implicit justice requirement. The first is the one that forbids lying in the market place[36] (ch. 14); Epikrates points out that Athenogenes did lie to him to persuade him to agree to the sale contract. The second establishes that any ailment that escaped notice on the sale of a slave leads to the nullity of the sale, even if the seller did not know about it (15). If so, Epikrates argues, then the sale contract at hand must *a fortiori* be nullified since the seller was well aware of the defect afflicting the slaves he sold along with the perfumery. Then he goes on to show that contracts referring to free people, too, must be just in order to be valid: engagements, which in Athens were contracts between the groom and the bride's father, are void by law if the father has lied to the groom about some important characteristic of the bride such as legitimacy or citizenship (16). Next, he

34. As Harris (2000: 49-50) apparently does.
35. With the exception of those cited in 22, on which see below.
36. On this rule see Cantarella 2012b.

refers to the well-known Solonian law on inheritance, which explicitly declares wills invalid if, for example, the testator has been influenced by a woman and in a few other cases (17). Again, he uses the statute at hand for an argument *a fortiori*: if one may not even freely dispose of his own property by way of an unjust testament, then one certainly cannot make arrangements for somebody else's property by means of an unjust contract, as Athenogenes is trying to do. Then the same statute is highlighted again from a different point of view: wills are invalid if the testator was under the influence of a woman; Epikrates acted under the influence of Antigona, a former prostitute now united in a kind of joint venture with Athenogenes, therefore his contract is invalid. Thus Epikrates tries to narrow the compass of the norm from contracts in general to just ones. Linguistically, this is expressed in particular by the particle γε in the phrase τά γε δίκαια in chapter 13[37], a particle one of whose main usages is precisely limitation or narrowing down[38].

Scholars generally assume that Epikrates is trying to persuade the jury that the array of statutes he cites in 13-22 have a direct bearing on his case and should therefore be applied directly. Since there is little doubt that none of them really applies (with an exception which will be stated below), he is thought to be trying to fool the jury into thinking they do. While there can be an element of this as well (as usual, one can discover several argumentative strategies being employed at the same time), the main line of the argument is aimed at uncovering a justice requirement that, in Epikrates' opinion, is implicit is the legal system of Athens as a whole. The unrelated statutes are thus cited not because they "apply" but because they help disclose the real meaning of the law on contracts (cf. Harris 2004: 12).

In chapter 22 Epikrates cites two more statutes. The immediate context is his anticipation of a possible defense strategy: Athenogenes may claim not to have known about the debts his slave had incurred. Here yet another statute, which the speaker explicitly refers to as Solonian, comes into play, establishing that liabilities incurred by a slave must be paid by the master for whom the slave was working when he or she caused the damage. Epikrates then blames his opponent for not heeding the law but basing his argument on breach of contract, and to back this up he mentions the statute establishing that a decree cannot override a statute: if so, an unjust contract can *a fortiori* not do so either.

Phillips is unique in arguing that the law about the liability for damages caused by slaves actually applies to Epikrates' case[39]. Since it is the slave Midas who has incurred the debts that now plague the perfumery, the speaker can arguably demand that the person who owned him when the debts were incurred be held responsible for them. Whitehead (2000: 324) thinks that if this law really applied, Epikrates would not have had to present his battery of unrelated statutes; however, this overlooks the fact that in forensic speeches several different and often intertwined lines of argument are often present. The speaker puts forth each and every

37. This is already observed by Phillips 2009: 92 n. 11.
38. Denniston 1950: 140.
39. For criticism of this view see Kästle 2012: 201. For the sake of argument, I will follow Phillips' interpretation as far as I think it possible.

argument he thinks can persuade some jurors, and the redundancy is useful because very probably not all jurors are going to be persuaded by the same arguments, so those who do not buy into line of argument A may find line of argument B convincing and vice versa[40]. In particular, in Athens it was apparently not at all clear that private contracts were subordinate to the law: litigants could at least argue the opposite in court and try to persuade the jury to decide according to this principle (Phillips 2009: 95-7).

There is some room for doubt about the actual meaning of the provision. Phillips takes it to regulate cases in which a slave is borrowed by someone who is not his or her master and, while working for that person, causes losses (whether they are debts or fines depends on how we fill a lacuna in the papyrus text) and to establish that they are to be paid by the borrower instead of by the owner (in the following simply "the liability law"). Hypereides' quotation of the statutory norm runs as follows:

> τὰς ζημίας ἃς ἂν ἐργάσωνται οἱ οἰκέται καὶ τὰ ἀναλώματα (ἀδικήματα) διαλύειν τὸν δεσπότην παρ' ὧι ἂν ἐργάσωνται οἱ οἰκέται.

Phillips (112) translates: "Whatever losses and expenses slaves occasion shall be discharged by the master for whom the slaves are working," which is also the translation printed by Whitehead. Phillips accuses Hypereides of misrepresenting the meaning of the law, which he claims refers to slaves borrowed by another person and not sold to a new master. Nonetheless, the wording of the law itself points to ownership, and thus sale, not to borrowing, for through borrowing alone no one can become master (δεσπότης) of a slave. If the borrower of the slave were meant, the text would simply say "he for whom the slaves are working", not "the master for whom..." The way the norm is phrased only makes sense if we interpret it as Blass[41] and Wyse (s.u.) do, that is, as regulating cases in which a slave, after causing damage or incurring a debt, was sold to another person prior to the filing of a lawsuit or the beginning of other litigation regarding the damage or debt in question. In such situations, uncertainty arose as to who was to be held responsible for the expense, the old master or the new one. This is the kind of problem that col. VII 10-15 of the Gortyn Code also answers[42]. The Athenian statute comes down on the side of the former master being responsible for it. We cannot ignore the fact that the statute speaks explicitly of a δεσπότης, but we must conclude that the legal responsibility can only be borne by someone who is the legal master of the slave who has caused the debt and that the clause "for whom the slaves are working" specifies that the duty to cover the slave's debts or damages is on the person who was his master at the time he caused them. This conclusion is confirmed by the

40. Cf. Wohl 2010: 8-9.
41. Cf. his Latin paraphrase (Blass 1869 ad loc.): *is dominus cuius erat servus cum damnum intulit*.
42. See Wyse 1904: 506; Willetts 1967: 70, who expounds the traditional interpretation according to which the buyer had sixty days' time to return the slave who had caused a damage to free himself from liability. Jakab 1997: 93 takes this provision to mean that the buyer had sixty days to surrender the slave who has caused the damage to the person affected. For the discussion see ibid. n. 34 with further literature.

parallelism of the two clauses τὰς ζημίας ἃς ἂν ἐργάσωνται οἱ οἰκέται and παρ' ὧι ἂν ἐργάσωνται οἱ οἰκέται (one can also wonder whether the second of these clauses is not best translated as "under whom they cause the loss", with ζημίας being understood with ἐργάσωνται; cf. Blass's Latin paraphrase referred to above).

It is, therefore, more plausible to interpret the provision in the same way as Hypereides does and to assume that on this point there is really no misrepresentation on his part. If so, we have indeed a statute that is both directly applicable to the case at hand and favours Epikrates. This means, however, that a conflict exists between this law and the general law of contract, which in turn raises the question of the relationship between the two norms.

Phillips (113-4) suggests an interpretive protocol that could be used by Athenogenes in refuting Epikrates' prosecution. He seems to assume that his is the correct one, whereas the one that is entertained in the speech and on which Epikrates' line of argument is based is wrong, and draws this conclusion from the text of the general law of contract itself, claiming that its lack of a legality requirement proves that other legal norms concerning sales are *ius dispositivum*[43] and thus overridden by the agreement undergone by Epikrates. This, however, is highly questionable, since there is no *a priori* answer to the question whether the lawgiver's silence about legality and justice requirements is accidental (he forgot or did not think it necessary to spell them out) or in itself meaningful (the lawgiver embraced the principle *caveat emptor*, so that any buyer or seller who found himself cheated had to blame only himself and live with it instead of seeking redress with the *polis* – which is, I admit, a perfectly conceivable legislative decision). The very notion that the law has to be construed according to the lawgiver's will, intuitive as it is, is nonetheless an assumption external to the law itself, and in fact sophisticated jurists are likely to dismiss it. Legal construction is conceivably simply a matter of assessing the scope of a given norm and establishing the meaning it assumes in the context of the legal system as a whole, and not of reconstructing what the original lawgiver may have meant by it.

Phillips' position seems to imply that any statutory norm that conflicts with the general law of contract is to be construed as *ius dispositivum*, thus only applying by default whenever the parties have not agreed otherwise. He reaches this conclusion on the grounds that said law contains no legality requirement. This view, however, faces serious objections. First of all, it simply assumes that a statute's application can only be limited by another legal norm if there is a special clause to this effect in the statute itself. This is questionable because, as I argue at the beginning of this paper, the limitation of legal rules by other ones that overlap with them is a logical requirement

43. Following a definition common in civil-law systems, I call *ius dispositivum* statutory norms that apply only by default, that is, if the parties have not agreed otherwise; ius absolutum, on the other hand, refers to norms that cannot be dispensed with and therefore automatically nullify any contract clause that contradicts them. In European civil codes the nature of a rule as ius dispositivum or absolutum is sometimes explicitly stated in the statute, but in many cases it has to be established by way of interpretation. This is not to be confused with Phillips' own use of the word "dispositive" (113 n. 74), by which he obviously means "decisive", "settling the question".

of any legal system rather than something subject to the discretion of a single legislator. Moreover, if we agree that Athenian statute law had to be to some extent open to change, and if – as Phillips himself points out (p. 107) – in ancient Athens changes were customarily brought about by new legislation rather than by a rewriting of the old statutes, it makes little sense to maintain that a statutory provision could only be overridden if it said so in the statute itself. Besides, quite a few statutes undisputedly limited the law of contract in Athens[44]. It is not clear why these ones would override the law of contract but the liability law would not. Phillips fails to provide a plausible criterion as to which statutes override which, so one could simply assert the opposite and maintain that the liability statute is just another one of those laws that limit the application of the contract law. Finally, there is little to suggest that Athenian lawgivers ever meant any statute they enacted to be only *ius dispositivum* rather than a fully binding norm expressing the will of the *polis*. If statutory texts were to be interpreted in that way we should at least expect there to be a conditional clause to the effect that "(the provision contained in the main clause) is valid unless the parties have agreed otherwise". Such sentences are, at best, rare in actual Greek statutes, and there is no hint that the liability law contained one. Therefore, one could well regard it as more appropriate to follow the principle *lex specialis derogat legi generali*[45], which privileges the law that has a smaller compass (applies to fewer cases) over the one with a more general bearing[46]. If we do so, then the law cited by the speaker in 22, being the one with the smaller compass, overrides the more general law of contract, so that Epikrates' legal interpretation is to be regarded as correct and Phillips' (and, hypothetically, Athenogenes') as wrong[47].

The subject of the present inquiry, to be sure, is not what we modern scholars think is the proper way of construing Athenian statutes, but what the Athenian themselves thought about the matter. Hypereides does not use the counter-arguments that I have just listed but phrases the question rather differently. Possibly, he had to make use of all kinds of legal arguments available to him because the letter of the general law of contract was obviously a formidable obstacle to making his case in front of an Athenian jury. He could not afford to assert without further qualification that "legal provision A breaks legal provision B" but had to explain away

44. Phillips 2009: 107-9.

45. For this principle in modern legal systems see for instance DuPasquier 1942: 147-50 (for continental Europe; in Common Law countries this principle hardly seems to play a role, but see Solan 1993: 37, who mentions it briefly). This rule of statutory construction is well known in continental Europe. If a statute says "oral agreements are just as binding as written ones" and another says "bank loans need to be put in writing to be valid", it will not help a hypothetical banker demanding that an oral bank loan be declared valid to refer to the general law about the formlessness of agreements and argue that loans are agreements and therefore the general law about the validity of agreements applies. The norm that refers to bank loans in particular overrides the one about agreements in general and not the other way around.

46. The American principle that the newer law overrides the older one was probably unavailable to the Athenians, who, as far as we can tell, lacked records of the dates of the enactment of their statutes.

47. Since the specific law is contained in the general one, if the general one were given precedence the specific one would be overridden in any single case, which would make it meaningless. Such a legal construction would be untenable.

the wording of provision A, narrowing its literal meaning to a set of cases into which his own did not fall. In 13-18 he has his client marshal an array of unrelated statutes which he maintains prove that the general law of contract had an implicit justice requirement; then he tackles the question whether the legal evaluation would change if Athenogenes did not know about the debts incurred by Midas[48]. Should Athenogenes claim that in such a case it is only fair for the present owner of the perfumery and its slaves to be held responsible for the debts attached to it, Epikrates has a response handy: he points to another law – supposedly a Solonian one – in which the opposite principle is upheld (22). Thus Hypereides does not embark on an abstract line of argument concerning statutory construction such as those Phillips or I use in a lawyer-like manner. Instead, he constantly tries to depict an ideal of justice and fairness (we might say: equity) to which Solon was allegedly committed and to show that it is actually embodied in the written laws of the city. Abstract rules such as *lex specialis derogat legi generali* are likely to work only with professional jurists used to such abstraction; the man on the street will be more responsive to arguments about justice and fairness.

II.2 Demosthenes and Aeschines over the crown

The narrowing of a statutory norm and the assessment of the limits of its application are also the cornerstone of the most famous legal dispute in Attic oratory, the one between Aeschines and Demosthenes over the crown that Ctesiphon had proposed in the Assembly be awarded to the latter. Quite uniquely, we have the speeches of both sides, that is, Aeschines 3 (*Against Ctesiphon*) and Demosthenes 18 (*On the Crown*); and we also know how the court ruled, that is, in favour of Ctesiphon, the defendant[49], whom Demosthenes supported with the speech mentioned above. Aeschines filed a *graphe paranomon* against Ctesiphon on several grounds, disputing his contention that Demosthenes deserved the award and also claiming the decree proposed by Ctesiphon to be illegal on two accounts: at the time of the proposal Demosthenes was still subject to audit for his term of office as *teichopoios*, and the law prohibited magistrates to be awarded crowns before the audit; besides, Ctesiphon's decree provided that the awarding of the crown be publicly announced in the theatre, whereas according to Aeschines the law imposed that such announcements be made in the Assembly only. In the following, I will first analyze the second point in dispute and then turn to the first, which has caused more debate among scholars.

II.2.a Proclamation in the theatre

In his prosecution speech, Aeschines contends that it is illegal to announce the award of a crown to a citizen in the theatre: the law, he alleges,

48. At this point in the speech Epikrates explicitly suggests that agreements should only be regarded as valid if the parties fully understood what they were agreeing to. On this topic see Carawan 2006: 346-50.
49. Plut. Demosthenes 24.

establishes beyond any doubt that the proper place to do so is exclusively the Assembly (Aes. 3. 32-48). He first cites a statute[50] according to which crowns awarded by the Council or the Assembly must be announced at their respective place itself and nowhere else (32). Ctesiphon's decree contradicts this law and Aeschines has it read out (33-4). He then goes on to refute an argument that he foresees Ctesiphon and his co-litigant Demosthenes will put forth: that the Dionysiac law, as he himself calls it[51], explicitly permits the announcement of the award in the theater whenever the Assembly sees fit to do so (35-6). This would amount, he argues, to admitting the existence of two statutes contradicting each other; such a situation would not only be unbearable, but also impossible since "the lawgiver who founded the democracy" has introduced a body of *thesmothetai* tasked precisely with reviewing the laws every year and amending them whenever it proves necessary, thereby eliminating any contradiction between different statutes (37-40).

Aes. 3.37-40 displays a "rhetoric of law" much different from that which we have seen above in Epikrates' case. He forcefully and graphically equates contradictions between statutes with a state of political degeneracy, and he basically asks his listeners the following question: What kind of state would we be living in if the same thing was both imposed and prohibited by the laws (37)? One might reply: It would simply be a situation in which one has to regard the more specific norm as an exception to the other. As I have shown above, such a situation is given in any state with written laws, and there is nothing "degenerate" or "anarchic" about it. Aeschines' rhetoric aims at making the listeners think the opposite. Nonetheless, such an argument is not sufficient in itself: Aeschines must dispose of the other law, as the following shows. Apparently, the jury cannot be expected to be content with an outright denial that there might be a contradiction between statutes but needs some sort of explanation of why the wording of the statute favouring the opponent is no obstacle to deciding in favour of the speaker.

In 41-8 Aeschines goes on to explain why the Dionysiac law does not apply to the case at hand. He tells a story about the custom of having things announced in the theatre growing more and more disturbing to the participants at the Dionysia as well as furthering false claims to glory that ultimately had negative effects on the democracy. To put an end to this situation, some lawgiver decided to prohibit making announcements in the theatre altogether except for those of crowns awarded to an Athenian citizen by foreign cities. Proof of the correctness of this interpretation, Aeschines argues, is to be found in a clause that provides that crowns announced in the theatre be dedicated to Athena and thus taken away from the person crowned. Such a poor treatment of the awardee, who is awarded a crown and deprived of it at the same time, is only possible in the case of honours conferred by foreign states (46). As Carey ad loc. notes[52],

50. The transmitted text of Aes. 3 contains no documents (statutes, decrees, and the like). The response speech, Dem. 18, does, but the documents are regarded as spurious by virtually all scholars.
51. This speech is our only source for this statute. Dem. 21.51 speaks of "the laws that concern the Dionysia", which probably refers to the same statute that is mentioned here.
52. Carey 2000: 181.

Aeschines slips over this point rather quickly, presumably in order that the jurors may not stop to think that the dedication of the crown to a god, especially the goddess who bears the same name as the city itself, actually enhances rather than reduces the honour.

We do not know the content of the Dionysiac law except for what Aeschines and Demosthenes tell us about it. While the former only paraphrases it, the latter actually has it read out (Dem. 19.120; the orator does not call it "Dionysiac law", but it is clear that it is about crowns announced in the theater, so we must assume it is not the same statute that Aeschines has the court secretary read out at 3.32). There is little doubt that the statutory text the manuscripts of Demosthenes display at this point is spurious, therefore, what knowledge we have of the Dionysiac law is based on the paraphrases found in both speeches. That said, the picture of its content that the two speeches provide is coherent, and the difficulty of reconstructing it has often been exaggerated. It is true, however, that the argument made by Aeschines in 3.41-45 and the one made by Demosthenes in 19.120-21 do not match: Demosthenes does not address Aeschines' argument that the Dionysiac law only applies to crowns awarded by foreign states; instead, he puts forth the very argument Aeschines has anticipated, pointing out the clause that establishes an exception to the prohibition whenever the Council or the Assembly votes to allow the proclamation of the crown in the theatre. I suggest that this is one case in which either speech (probably Aeschines') was revised for publication after delivery in court, thus disrupting at some point the correspondence between the arguments[53].

Aeschines' interpretation of the statute is hardly persuasive. In his own paraphrase or quotation of its text in 44 and 45, after the indication that crowns bestowed by a deme or *phratria* may not be proclaimed in the theatre, we find the words μήθ' ὑπ' ἄλλου μηδενός, which are shown by the addition of φησί to be a verbatim quotation from the law. Now there is no reason to assume that "nobody else" should be taken to mean "nobody except foreign states". But then the prohibition must apply equally to any crown, not only foreign ones, and so must the exceptions contained in the statute. Therefore, the words πλὴν ἐάν τινας ὁ δῆμος ἢ ἡ βουλὴ ψηφίσηται· τούτους δ' ἀναγορευέτω (Dem. 19.120) must apply to all possible crowns, including those bestowed by the Athenian people, as is the case with the one Ctesiphon's decree provided be given to Demosthenes. Aeschines' argument is flawed.

It is clear, at any rate, that Aeschines in 41-8 is trying to cope with a statute whose wording favours the opponent. The way in which he does it, contrived though it is, is worth paying attention to. It should be noted that the legal opinion Aeschines argues for implies a departure from the letter of the law only in as far as it introduces a limitation of its scope that is not contained in the wording itself. Obviously unable to find in the text of the Dionysiac statute itself any explicit indication that it applies exclusively to crowns awarded by foreign states, Aeschines infers this limitation from the fact that it provides that the crown is to be dedicated

53. On the evidence of revision in Aes. 2 see Harris 1995: 10-11; Carey 2000: 93-4 (cf. 95 n. 10). Carey 2000: 165 also states that Aes. 3 too shows evidence of editing before publication.

to Athena. Whatever we may think of his argument that this dedication belittles the receiver and people will be more thankful to their city if the crown hangs on their wall rather than in a temple, the interpretive protocol used here is basically the same that is found in *Against Athenogenes*: an apparent contradiction between statutes is resolved by limiting the scope of application of the statute that favours the opponent to include only cases other than that which the dispute at hand is concerned with. This is done by reconstructing the lawgiver's intention. The main difference from the Athenogenes dispute is that Aeschines does not cite other statutes to infer from them a legal idea which, as the whole corpus of statutes is supposed to form a coherent system, is then generalized. Instead, he has to use the provisions of the Dionysiac law itself to prove his point. It is indeed difficult to see what general legal idea could come to his aid here. His whole case is based not on justice or a broader sense of legality but on technicalities of procedure (and this may well be the fundamental weakness of his case). His attempt to discover at the bottom of the statute a particular logic that would support his case may be flawed, but it reflects a kind of argument that is attested in other speeches as well[54].

II.2.b Proclamation before the audit

Aeschines' second line of attack concerns the proposal to crown Demosthenes in and of itself. In 9-31, Aeschines claims that it is against the law to crown a magistrate who is still subject to audit. When Ctesiphon introduced his motion Demosthenes had not yet undergone the audit for the office of *teichopoios* he had held[55], so the motion was illegal and rightly questioned by means of a *graphe paranomon*. Demosthenes 18.111-19 retorts that according to Ctesiphon's decree the crown is to be awarded not for his term of office but for donating money out of his own pocket to finance the building of the fortifications. His use of his private wealth, Demosthenes argues, is not subject to audit in the way the performance of a public office is. Therefore Aeschines' accusation is frivolous.

Against the opinion held by most scholars ever since antiquity, E. M. Harris has argued that Demosthenes is right also in this respect[56]. He reconstructs the statutory provision in question as stating ἀρχὴν ὑπεύθυνον μὴ στεφανοῦν, which he maintains can be translated in two ways: either "a magistrate still subject to audit shall not be crowned" or "a term of office for which the audit has not yet taken place shall not be awarded a crown[57]". Indeed, the word ἀρχή in Attic Greek can mean both "magistrate" and "term of office". Harris thus assumes that the dispute turns on which

54. Cf. for instance, besides the line of argument used in the Athenogenes speech studied above, Aes 1.7-25; 3.9-45.
55. Aeschines takes issue with the expected objection that teichopoios was not an office subject to audit. In fact, Demosthenes' speech does not contain any such claim, thereby implicitly agreeing with what Aeschines says here, so we can ignore this side of the issue.
56. See especially Harris 1994: 140-47. Further Harris 2000: 59-67; 2006: 164-65; contra, for instance, Meyer-Laurin 1965: 32. Carey 2000: 161, while seriously considering Harris' arguments, still sees a possibility to make a case for Aeschines' opinion.
57. Harris' position is developed over several papers (see the previous footnote). Here I sum it up as it stands at present.

one of these two meanings is intended in this context: Aeschines claims that the law speaks of a "magistrate"; Demosthenes, on the other hand, takes the passage to refer to a "term of office". In this view, the dispute is one between two equally possible literal meanings of the provision; no departure from the letter of the law is envisioned in either case, but there is only incertitude as to what this literal meaning actually is.

However, I would like to suggest an alternative view of this construction problem, a view that I think is more compatible with Attic idiom. The verb στεφανοῦν is generally used with respect to a person: rarely is any inanimate object "crowned", and crowning something as abstract as a "term of office" is outside of what seems to be natural Attic idiom[58]. If this is correct, we are left with the first translation, "a magistrate still subject to audit shall not be crowned," and must accept the fact that the statute *literally* says that no one who is still subject to audit for any office he has held may be awarded any crown at all. This interpretation, however, meets the objection from common sense that Harris (1994:146) raises: anyone who holds several offices one after another could never receive a crown unless he either stepped down or failed to get re-elected, and this would apply especially, paradoxical though it is, to a popular and successful politician like Perikles, who was elected general fifteen times in a row (Plut. *Pericles* 16.3) and therefore, if we accept Aeschines' legal standpoint, would never during this time have been able to be awarded a crown by the Athenian people.

As should have become clear by now, I do not think that the literal interpretation of a statute is necessarily the correct one; more to the point, from what we have seen so far, we have to conclude that it was, in fact, possible for Athenian litigants to argue for a non-literal construction of a statutory norm, at least within the limits I have expounded above. It was acceptable even for Athenian jurors, who were bound by their oath to follow the (written) laws, to depart from their literal meaning as long as the departure consisted only in narrowing their application to fewer cases than the wording seemed to allow. Demosthenes' counter-argument seems actually to point in this direction. By narrowing the scope of the legal norm to apply exclusively to what the magistrate does in his term of office, he argues for a departure from what, according to the most idiomatic interpretation, is the literal meaning of the law, a departure that, however, as the evidence considered so far suggests, was probably regarded as relatively unproblematic in Athenian legal culture.

Although the case in point was arguably judged principally on account of Demosthenes' political career rather than of legal technicalities, more than four fifths of the jurors did not think it at odds with their conscience and their oath to vote for the defendant, Ctesiphon, and acquit him and his decree from the charge of illegality, although they had sworn to uphold the laws of Athens. Epigraphic evidence also suggests that crowns such as the one proposed by Ctesiphon were not rare in fourth-century Athens

58. The verb is used in Eur. Tr. 1030 with Ἑλλάδα as its object; in And. 4.26 with τὴν πόλιν καὶ τὴν οἰκίαν. These words can however be regarded as collective nouns, thus referring ultimately to people. In all other passages in Attic prose that I know of the object of the verb is a person.

(Harris 1994: 146-7). Obviously, most Athenians did not share Aeschines' opinion about the correct understanding of the statutes he cites. If the reconstruction of the legal texts proposed by Harris is correct (which is admittedly uncertain), the Athenians apparently had little difficulty accepting a non-literal application of a statutory norm – "non-literal" in the sense that it restricted the application of the written norm at hand to a smaller compass of cases than was apparent from the norm itself and thus ignored its wording in a certain range of occurrences. On the other hand, the restrictive construction of the Dionysiac law proposed by Aeschines was not accepted, probably because his reconstruction of the supposed will of the lawgiver was too far-fetched. Unlike this statute, the one prohibiting the crowning of magistrates still subject to audit was not applied literally, presumably because common sense told the Athenians that what the lawgiver actually meant was that no magistrate should be crowned *for any of the things for which he was still subject to audit*, not that he was forbidden from being crowned altogether.

III. Final remarks

It should be clear by now that the Athenian jurors in deciding this case did not blatantly ignore their own laws but followed an interpretive protocol that did not consist in simple literal interpretation. As I have argued above, literal interpretation is not always a viable protocol for construing statutes, so it is hardly surprising that a legal culture with even a modest degree of sophistication would have discarded it and turned to more sophisticated ones. If, as seems likely, some of the jurors sitting in any fourth-century court, while not being by any means professional jurists, at least possessed a fairly long forensic experience, they must have been aware of the difficulties that too literal a reading of the written laws raised. On the other hand, as the examples show, the wording of a statute cannot simply be ignored. No doubt speakers in Athenian courts can and do from time to time claim they are expounding the will of the lawgiver and implicitly oppose this to literal-minded construction, but they apparently also couch their interpretation in a context where it is assumed that that will can only be reconstructed correctly by taking proper account of what the law actually and literally says. Obviously, the lawgiver cannot be made to say something that directly contradicts any of the words he uses; but he can be second-guessed in such a way as to narrow the scope of his statements to fewer cases than the wording of the statute might imply.

This, however, begs the question: which interpretive protocol is one to follow in a given case? Which interpretive protocol did the average Athenian judge choose and what criteria informed his choice? Certainly he did not get his instructions from a Supreme Court or from writings of professional jurists, since there were no such things in classical Athens. The lack of written legal science probably prevented the legal culture from crystallizing into a fixed system of interpretive rules. Under an authoritarian system of statutory construction, just about every legal norm is couched in a long tradition of construction and application. At Athens, on the other hand, while this may have been the case with a few

widely known norms (the one on the crowning of officials being an obvious candidate), it is hardly conceivable that this could have been the case with most of the statutes that were in force by the fourth century.

Here equity may come into play. We may imagine that equity was the way in which Athenian jurors chose between different interpretive protocols, none of which was regarded as inherently more correct than any other. This could account for the fact that litigants use so many words trying both to depict themselves as righteous men and good citizens and their opponents as lowlifes and to persuade the jurors that justice is on their side. The dikastic oath, on the other hand, demands that the court avoid breaking statutory law by its ruling; conceivably, then, strictly legal arguments will provide the jurors with an interpretive protocol showing them that to decide in favour of the speaker does not constitute a breach of law and a violation of their oath but, on the contrary, is in conformity with the spirit, if not the letter, of the statutes. Thus the jurors can in good conscience rule in favour of the speaker.

Note that something similar to the hypothesis thus exposed is known also from modern times. In the 19th century, a European school of legal thought called *Interessenjurisprudenz* also suggested that the judge start his inquiry about the merits of a case, so to speak, form the other side: he should first establish what is just and equitable in a given case, and only afterwards begin looking for a formal justification of his ruling[59]. This view was put forth in direct opposition to the *Begriffsjurisprudenz*, which saw the judge basically as an automaton whose only function was to deduce the solution to the case at hand from the applicable legal norms in an almost mathematical way, without his own ideas of justice and fairness entering into the equation. One may doubt that this view of the judicial process ever corresponded to reality. In the USA, Lawrence M. Solan has argued that while judges have a set of interpretive rules in dealing with statutes, these are often contradictory, and there are no identifiable criteria as to which one of them is to be used in any specific situation, but courts seem to pick whichever one best suits the desired outcome[60]. It is no stretch, therefore, to imagine something similar happening in Athenian law courts, prompting an experienced speechwriter to put forth one of several possible interpretive protocols to help the jurors combine the desired outcome, of whose fairness he tried to convince them in the speech, with their duty to stay faithful to Athens' corpus of written law.

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59. DuPasquier 1942: 210-12.

60. Solan 1993 (see esp. 59-63); Solan 2010 expresses a somewhat more moderate view. Scholarly criticism of the canons of statutory construction is much older, see Milkva/Lane 1997: 25-7.

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DEBORAH KAMEN

RECONSIDERING THE STATUS OF *KHÔRIS OIKOUNTES*

Abstract

In describing the Athenians' preparations for war, Demosthenes states: "We resolve that the fleet shall be manned by metics (*metoikous*) and *khôris oikountes*, then again by ourselves [i.e., citizens], then by substitutes" (Dem. 4.36-37). Debate on the meaning of the phrase *khôris oikountes* began at least as early as the second century CE, when the lexicographer Harpocration identified the group as freedmen, since "freedmen lived by themselves, apart from their manumittors." A Byzantine lexicographer concurred with Harpocration but added a secondary definition: "Or slaves living apart from their masters." Since then, scholars have tended to adopt one or the other of these definitions, generally without any explanation for their choice. In this article, I make the case that *khôris oikountes* must refer to freed slaves, thereby broadening our understanding of the range of status groups recognized in classical Athens.

Descrivendo i preparativi bellici ateniesi, Demostene afferma: "Decidiamo che per gli equipaggi della flotta dobbiamo reclutare meteci (metoikous) e choris oikountes, poi decidiamo che noi stessi dobbiamo imbarcarci, poi di nuovo quelli precedentemente nominati" (Dem. 4. 36-37). Il dibattito sul significato della locuzione choris oikountes è iniziato almeno a partire dal II sec. d.C., quando il lessicografo Arpocrazione identificò il gruppo con i manomessi, in quanto "i manomessi vivevano per conto loro, separati dai loro manomissori". Un lessicografo bizantino concorda con Arpocrazione ma aggiunge una seconda definizione: "Oppure schiavi che vivono separati dai loro padroni". Da allora gli studiosi hanno adottato l'una o l'altra di queste definizioni, generalmente senza fornire spiegazioni della loro scelta. In questo articolo avanzo l'ipotesi che con choris oikountes ci si riferisca agli schiavi liberati, ampliando così i criteri di classificazione degli status personali riconosciuti nell'Atene classica.

In the First Philippic, Demosthenes ends his description of the Athenians' time- consuming preparations for war in the following way: "We resolve that the fleet shall be manned by metics (metoikous) and khôris oikountes, then again by ourselves [i.e., citizens], then by substitutes (ἐμβαίνειν τοὺς μετοίκους ἔδοξε καὶ τοὺς χωρὶς οἰκοῦντας, εἶτ' αὐτοὺς πάλιν, εἶτ' ἀντεμβιβάζειν)..." (Dem. 4.36-37). This article poses the following question: Who does Demosthenes mean by "khôris oikountes," literally, "those living apart"? The answer, I hope, will not only illuminate this passage of Demosthenes but also broaden our understanding of the range of status groups recognized in classical Athens.

Dike, 14, 2011, p. 43-53

I.

Debate on the meaning of the phrase *khôris oikountes* began at least as early as the second century CE, when the lexicographer Harpocration identified the group as freedmen (*apeleutheroi*), since "freedmen lived by themselves, apart from their manumittors."[1] This definition is also adopted by the Suda and Photios (s.v. τοὺς χωρὶς οἰκοῦντας). A Byzantine lexicographer agreed with Harpocration that *khôris oikountes* refers to freed slaves, but also added a secondary definition: "Or slaves living apart from their masters."[2] Since then, scholars have tended to adopt one or the other of these definitions, or both, generally without much explanation for their choice.[3]

Following the lexicographers, a handful of scholars—especially commentators on and translators of Dem. 4—take *khôris oikountes* to mean freedmen.[4] A related explanation, offered by Hans Klees, is that the phrase refers to a specific subgroup of freedmen: namely, those fully freed slaves who lived apart from their former masters, as opposed to those who still lived with (or near) their former masters and performed remaining obligations for them.[5] In what follows, I will make the case for why, in accordance with primary definition offered by the lexicographers, *khôris oikountes* most likely refers to freed slaves. We will return to the question later of whether it refers, more narrowly, to the subcategory Klees has in mind.

The majority of scholars, however, interpret *khôris oikountes* as "slaves living apart."[6] In his 1893 work on metics in Athens, Michel Clerc argued that the phrase, as used in Dem. 4.36, could not refer to freedmen, since

1. Harp. s.v. τοὺς χωρὶς οἰκοῦντας· Δημοσθένης Φιλιππικοῖς "καὶ μετὰ ταῦτα ἐμβαίνειν τοὺς μετοίκους ἔδοξε καὶ τοὺς χωρὶς οἰκοῦντας "τῶν δεσποτῶν." οὐ μὴν ἀλλὰ καὶ χωρὶς τοῦ προσκεῖσθαι φανερὸν ἂν εἴη τὸ δηλούμενον, ὅτι οἱ ἀπελεύθεροι καθ' αὑτοὺς ᾤκουν, χωρὶς τῶν ἀπελευθερωσάντων, ἐν δὲ τῷ τέως δουλεύοντες ἔτι συνῴκουν.

2. Bekker *Anec.* I 316.11 s.v. χωρὶς οἰκοῦντες· οἱ ἀπελεύθεροι, ἐπεὶ χωρὶς οἰκοῦσι τῶν ἀπελευθερωσάντων. ἢ δοῦλοι χωρὶς οἰκοῦντες τῶν δεσποτῶν.

3. For the various interpretations of this phrase, see Kazakévich 2008 [1960], with bibliography listed in 347-49nn.11-13. Because Kazakévich thoroughly surveys the bibliography on this question (with post-1960 bibliography added in my edited version of the article in 2008), I limit myself to a briefer treatment here.

4. Freedmen: Davies 1907 ad loc.; Busolt 1920: 274 and 1926: 985; *RE* s.v. *misthophorountes* (1932); Gernet 1955: 169 with n.4; Paoli *NDI* IX s.v. *liberti*; Lipsius 1966: 622n.6 and 798n.29; Klees 1998: 307n.62; Bearzot 2005: 84; Wooten 2008 ad loc. See also the Loeb ("freedmen") and Budé translations ("les affranchis") of Dem. 4.36.

5. Fully freed slaves: Klees 2000: 15-17. Perhaps the best-known example of fully freed slaves in Athens comes from the late-fourth-century BCE *phialai exeleutherikai* inscriptions, which appear to record the names of freed slaves granted freedom from remaining obligations through (either fictive or genuine) *dikai apostasiou*. For these inscriptions, see *IG* II^2 1553-78 Ag. Inv. I 3183 (Lewis 1959); Ag. Inv. I 4763 (*SEG* XXV.178); Ag. Inv. I 5656 (Lewis 1968 #49 and 50; *SEG* XXV.180) Ag. Inv. I 5774 (*SEG* XXI.561); Ag. Inv. I 1580 (*SEG* XLIV.68) (possibly; see Meyer 2010: 141-42); Ag. Inv. I 4665 (*SEG* XLVI.180). That these inscriptions represent dedications of *phialai exeleutherikai* after *dikai apostasiou* is the conventional wisdom (for a recent discussion, see Zelnick-Abramovitz 2005: 282-90 and passim); but cf. Meyer 2010, who argues that they represent instead prosecutions of metics in *graphai aprostasiou*.

6. Slaves: Clerc 1893: 276, 281, 283; Gilbert 1893: 191; Beauchet 1897: 445-50; Partsch 1909: 136; Zimmern 1922: 264 n.2; Diller 1937: 145n.47; Morrow 1939: 18, 73; Westermann 1955: 12, 16-17, 23, 38, 122; Ehrenberg 1961: 188 n.6; Harrison 1968: 167; Perotti 1974 and 1976; de Ste. Croix 1981: 142 with 563 n.9; Garlan 1988: 71; Hansen 1991: 121; Cohen 1992: 97; Trevett 1992: 155; Fisher 1993: 52; Todd 1995: esp. 188; Cohen 1998; Cohen 2000: 130-54; Cohen 2003: 218; Zelnick-Abramovitz 2005: 269, 289, 293; Cohen 2006: 101; Cohen 2007: 162, 165; Herrmann-Otto 2009: 94-95; Meyer 2010: 17 with n.26.

freedmen did not represent a recognized unit of the Athenian military. Slaves, on the other hand, did, and so he concluded that the *khôris oikountes* must have been slaves. But this argument has its problems: first of all, there is no reason to assume that each of the groups Demosthenes enumerates is necessarily a formal unit of the military; instead, his list might simply represent the full range of city dwellers who could be drafted. Secondly, it has been suggested—provocatively if not entirely provably—that freedmen, even if they were not a recognized unit of the military, were conscripted from separate census lists of freed slaves.[7] Nonetheless, many scholars have (implicitly or explicitly) followed Clerc's interpretation, including most notably Edward Cohen in his discussions of the prominent role played by these "living-apart slaves" in the Greek economy. These scholars have understood *khôris oikountes* to be those "privileged" slaves who worked, and sometimes lived, apart from their masters, conducted their own businesses, and handed over some fraction of their earnings, called the *apophora*, to their masters. Such slaves held on to the rest of their earnings, to spend presumably at their own discretion. The most famous examples of these types of slaves in Athens are Pasion and Phormion, slave bankers who earned their freedom and ultimately their citizenship.[8]

Still other scholars, most recently Rachel Zelnick-Abramovitz and Nick Fisher, argue that *khôris oikountes* could refer to *either* freedmen *or* (privileged) slaves, or both, depending on the context in which the phrase is used. By this argument, *khôris oikountes* is less an official status term than a vague, perhaps deliberately vague, catch-all term covering a range of (similar) statuses higher than the average chattel slave but lower than a freeborn person.[9] This may well be correct, in general, but it is also possible, as I will argue, that in the context of Dem. 4.36-37, Demosthenes has in mind a specific referent, namely freed slaves.

Finally, Emily Kazakévich, in an article entitled "Were the *khôris oikountes* slaves?," suggests that they were *neither* freedmen *nor* slaves. First, she says, the lexicographers are an insecure basis—being both late and tentative in their definitions—on which to argue that *khôris oikountes* were freedmen. Secondly, although there were indeed slaves in Athens who lived and worked apart from their masters, ranging from lowly workers in the mines to privileged slave-bankers, these slaves were far from forming a monolithic group of "living-apart slaves." As such, there is little reason for Demosthenes, or anyone else, to lump together a diverse group of slaves solely because they shared the attribute of not sleeping under their master's roof. The term *khôris oikountes*, she concludes, must refer to a group of foreigners who were not registered as metics. Unlike *metoikoi*, who "lived with" or "among" Athenian citizens, she suggests that the *khôris oikountes* were defined by the fact that they "lived apart from" the Athenians, that is, were not integrated into their community.[10]

7. Bearzot 2005: 90-91.
8. On Pasion and Phormion, see Trevett 1992; Cohen 1992: ch. 4 and 2000: ch. 5.
9. That it might refer to either, or both: Diller 1937: 147; Zelnick-Abramovitz 2005: 215-16; Fisher 2006: 337 and 2008: 126-27.
10. Neither slaves nor metics: Kazakévich 2008 [1960]. Some scholars, moreover, profess uncertainty either way: Calderini 1908: 374-75; Whitehead 1977: 25n.87.

II.

Given the lack of consensus on this issue, I think it is necessary to reconsider our evidence for the status of *khôris oikountes*. The syntax of Demosthenes' sentence is a good starting point. The syntactic connection of *khôris oikountes* and *metoikoi* indicates that Demosthenes considered the two groups in some way similar to each other without being identical, set apart grammatically and semantically from citizens and substitutes. In a society where the main status divisions were slave, metic, and citizen,[11] it is unlikely that any Athenian would consider "slaves living apart" a status group similar to metics. In addition, a number of other factors suggest that "slaves living apart" is an improbable rendering for this phrase. First of all, as I have already mentioned, Kazakévich makes the compelling point that the Greeks would not have classified together such a wide variety of slaves simply on the basis of whether they lived in their masters' houses—a characteristic that was considerably less important than the type of labor they performed. Moreover, given that the last category in Demosthenes' list is "substitutes," literally, "those we put on board instead of us," and given that substitutes were in general slaves (though not always),[12] it is unlikely that *khôris oikountes* were slaves as well. Finally, there is no good linguistic reason to take *khôris oikountes* as synonymous with *khôris oiketai* ("servants [working] apart").[13] Whereas the noun *oiketês* represents a known class of slave (namely, the household servant), *oikountes* is simply a participial modifier from the verb *oikeô*, "to live." Unlike *khôris oiketês*, then, there is nothing about the phrase *khôris oikountes* that necessarily implies reference to slaves.

If "slaves living apart" are not an ideal candidate for *khôris oikountes*, what about the definition proposed by the majority of the lexicographers: namely, freed slaves? While the substantive *khôris oikountes*, as such, is otherwise unattested, at least one use of the finite verb *oikeô* paired with *khôris* suggests a connection with freed slaves.[14] In a pseudo-Demosthenic speech, a freedwoman-nurse is described thus: "She was released by my father as free and lived apart (*khôris ôikei*) and had a husband" (ἀφεῖτο γὰρ ὑπὸ τοῦ πατρὸς τοῦ ἐμοῦ ἐλευθέρα καὶ χωρὶς ᾤκει καὶ ἄνδρα ἔσχεν; [Dem.] 47.72).[15] Neither this nor the lexicographic evidence is definitive, of course, but both are at the very least suggestive.

To further support my interpretation of *khôris oikountes* as freed slaves, it will be useful first to investigate the ways in which freedmen were similar to metics, and then turn to the ways in which they were distinct.[16] Although

11. See, e.g., Hansen 1991: 86-88; Todd 1995: ch. 10; Hunter 2000.
12. On *antembibazein* here referring to substitution by slaves or hirelings, see Davies 1907 ad loc; Wooten 2008 ad loc. On slave participation in the Greek military, see Hunt 1998.
13. For the term *khôris oiketai*, see, e.g., Aesch. 1.97.
14. The combination of *khôris* and the verb *oikeô* is also found in contexts referring to free people: see the discussion in Kazakévich 2008 [1960]: 361-63. Thus Kazakévich concludes that the phrase refers to some sort of separation from the household (*oikos* in its broader sense of "household," rather than "house"), without reflecting the free or slave status of the individual in question.
15. Cf. Plato's description of the women who are to take care of the children of the guardians as *trophous khôris oikousas* (*Rep.* 5.460c); might they be freedwomen?
16. For a concise summary of similarities and differences between metics and freedmen, see Gar-

conventional wisdom generally holds that freed slaves were assimilated to metic status,[17] I share the opinion, recently gaining some traction, that freed slaves occupied a legal and (especially) social status very similar to but ultimately distinct from metics[18]—that is to say, if we take metics in the narrow sense of freeborn foreigners who had moved to Athens from elsewhere. "*Metoikos*" could of course also be used in a loose sense to describe any resident foreigner registered as such with the city.[19]

The most obvious similarity between freed slaves and (freeborn) metics is their non-Athenian origin—and sometimes, especially in the case of freed slaves, their non-Greek origin. Second, both had to pay the *metoikion* tax: twelve drachmas per year for men, six for women (Harp. s.v. *metoikion*). Third, both freed slaves and metics were required to have a citizen *prostatês.* Although the exact role of the *prostatês* is not clear to us, it is generally assumed that at least by the fourth century BCE, his role was mostly nominal.[20] Fourth, both freed slaves and metics, unlike citizens, came under the jurisdiction of the Polemarch, who farmed out their cases or heard them himself ([Arist.] *Ath. Pol.* 58.3). Fifth, both lacked the political rights of citizens: among other things, they could not participate in the assembly or council, they could not serve on juries, and they had no right of land or home ownership unless they were granted it specially. Both, however, were required to serve in the military—albeit in segregated ranks—and if sufficiently rich, both were required to pay the *eisphora* tax with wealthy citizens (Dem. 22.61).

But, as I have already indicated, there are also a number of differences between (freeborn) metics and freed slaves. I mentioned that both paid the *metoikion*, but, at least according to Harpocration, freedmen paid a triobolon in addition to the regular metic tax.[21] It is unclear whether this extra triobolon was paid only once, or once a year,[22] but in either case, this additional tax, while minimal from a financial perspective, served the symbolic role of marking freed slaves as "other." Second, although both (freeborn) metics and freedmen had to have *prostatai*, metics had free choice in selecting their *prostatês*, whereas freedmen were required to have

lan 1988: 80-82.

17. That freedmen were assimilated to metics in Athens, see, e.g., Clerc 1893: 282; Beauchet 1897: 481 and passim; Foucart 1896: 50; Calderini 1908: 307 and 372; Paoli *NDI* IX s.v. *liberti* and *NDI* X s.v. *manumissio*; Diller 1937: 149; Caillemer *DAGR* s.v. *apeleutheroi*; Whitehead 1977: 16-17, 114-116; MacDowell 1978: 82; Finley 1998 [1980]: 165; Biscardi 1982: 95 ("in un certo senso"); Garlan 1988: 80 ("if not identical, at least very similar"); Gauthier 1988: 29; Cohen 1992: 109-10; Andreau 1993: 180; Klees 2000: 6 (with some qualification); Cohen 2000: 150; Fisher 2008: 125-26; Hermann-Otto 2009: 102.

18. That freedmen were distinct from metics: Harrison 1968: 181-86; Bearzot 2005: 79-85; Zelnick-Abramovitz 2005: 308-19; Gärtner 2008; Dimopoulou-Piliouni 2009.

19. It is in this sense that one can say that freedmen were a *sub-category* of metic: see, e.g., Whitehead 1977: 116; Hansen 1991: 119; Lape 2010: 47. It is unclear whether slaves became metics (in the broad sense) automatically after being released from remaining obligations to their former master (Klees 2000: 6), or whether this entailed a separate registration process (Zelnick-Abramovitz 2005: 310; Dimopoulou-Piliouni 2009). I am inclined to think it is the latter.

20. See Whitehead 1977: 90-91 with bibliography.

21. See Harp. s.v. *metoikion*. But cf. Hesychius s.v. *metoikion* and Pollux 3.55, which imply that the three-obol tax was paid by all payers of the *metoikion.*

22. On this question, with bibliography, see Zelnick-Abramovitz 2005: 311.

their former master as their *prostatês*.[23] Third, freedmen had less license than metics in bequeathing their estates: if freedmen died childless, all of their personal property automatically reverted to their former master. This is well illustrated in an oration of Isaios, in which two men, eager to get their hands on a deceased man's money, go so far as to pretend that he was their freedman (Is. 4.9). Metics, on the other hand, could presumably leave their estates to whomever they wanted. Fourth, there apparently existed in Demosthenes' day a set of "freedman laws" (Pollux 3.38), the content of which is unfortunately opaque to us; but their very existence indicates that freedmen were considered, at least for some purposes, a juridical category.[24] Finally, Athina Dimopoulou-Piliouni has recently catalogued a number of additional differences between (freeborn) metics and freedmen: metics, unlike freedmen, were (generally) citizens of another city who had moved willingly to Athens; metics, unlike freedmen, do not seem to have owed formal obligations (what is later called *paramonê*) to their *prostatai*; and metics and freedmen were liable to different lawsuits for abandoning their *prostatai*: the *graphê aprostasiou* in the case of former, the *dikê apostasiou* in the case of the latter.[25]

Moreover, some ancient texts explicitly distinguish between (freeborn) metics and freedmen. Aristotle, in his discussion of Athenian-born manual laborers and artisans (*banausoi*), asks how these individuals can be classified if not as citizens—after all, they are neither *xenoi* (foreigners) nor metics. But then again, he says, "slaves are not in one of the aforementioned [constituent parts of the city, i.e., foreigners and metics], nor are freedmen (*apeleutheroi*)" (οὐδὲ γὰρ οἱ δοῦλοι τῶν εἰρημένων οὐδέν, οὐδ' οἱ ἀπελεύθεροι; Arist. *Pol.* 1278a1-2). To Aristotle, at least in this context, freedmen were seen as a group distinct from metics. One gets a similar impression when the Old Oligarch says that it is illegal in Athens for "a slave, or a metic (*metoikon*), or a freedman (*apeleutheron*) to be struck by a free man" (τὸν δοῦλον ὑπὸ τοῦ ἐλευθέρου τύπτεσθαι ἢ τὸν μέτοικον ἢ τὸν ἀπελεύθερον; [Xen.] *Ath. Pol.* 1.10). Finally, epigraphic evidence attests to the fact that, at least outside of Athens, distinctions between metics and freed slaves were commonly made. To give just one example,[26] a third-century BCE law from Keos specifies that a feast be given "to the citizens, and to those whom the city invited, and to the metics (*metoikous*), and to the freedmen (*apeletherous*)" (ἑστιᾶν δὲ τούς τε πολίτας καὶ οὓς ἡ πόλις κέκληκεν | καὶ τοὺς μετοίκους καὶ τοὺς ἀπελευθέρους; *LSCG* 98).[27]

To summarize thus far: Although metics and freed slaves shared similar political and legal rights, these rights were not identical, and the differences, while small, were often symbolically important. Perhaps even more significant was the distinction in their *social* status. Freedmen, unlike

23. Gernet 1955: 171; Harrison 1968: 185; Garlan 1988: 77.
24. On "freedman laws," see Zelnick-Abramovitz 2005: 301-06 and 2009.
25. For a survey of these and other differences between freedmen and metics, see Dimopoulou-Piliouni 2009. The only point she makes that I think should not be pressed too far is that metics, unlike freedmen, do not undergo fictive consecration to gods (41); while true, we should not expect freeborn metics to undergo this procedure, since it was designed as a mode of manumission.
26. For more epigraphic examples, see Dimopoulou-Piliouni 2009: 47-49.
27. One could argue, however, that this distinction is made in other cities, but not in Athens: see, e.g., Gauthier 1988: 29.

(freeborn) metics, were inescapably viewed as former slaves[28]—especially, but not exclusively, in the eyes of their former masters.[29] In an oft-cited but somewhat cryptic statement, the third-century BCE Stoic philosopher Khrysippos is reported to have said that "a slave (*doulon*) differs from a domestic servant (*oiketou*) in that freedmen (*apeleutherous*) are still slaves (*doulous*), whereas those who have not been released from ownership are domestic servants" (διαφέρειν…δοῦλον οἰκέτου…διὰ τὸ τοὺς ἀπελευθέρους μὲν δούλους ἔτι εἶναι, οἰκέτας δὲ τοὺς μὴ τῆς κτήσεως ἀφειμένους; Athen. 267b). Unfortunately, it is unclear what, precisely, Khrysippos meant by this. Perhaps he was referring to the (servile) obligations freedmen often owed their former masters, or perhaps he was referring to the lingering stigma of servility attached to freed slaves.

Either way, it is evident that freedmen were in fact thought of, in many contexts, as "still slaves." This phenomenon is particularly well attested in Attic oratory, where freedmen are sometimes explicitly referred to as *douloi* or slaves. In a speech of Isaios, the speaker calls an associate of his opponents, the *hetaira* Alke, a *doulê*, although it is suggested elsewhere in the speech that she is a freedwoman (Is. 6.49). In another case, Demosthenes twice refers to the freedman Lykidas, the former slave of his opponent, as a *doulos* (Dem. 20.131-3), even though Lykidas is not only freed but a *proxenos*. Attic oratory also contains extended attacks using what I call "servile invective"—that is, accusations or insinuations of servile history—which are designed to play on the jury's prejudices against freed slaves.[30] Perhaps the most dramatic examples can be found in the rhetoric of Apollodoros against Phormion, the former slave of Apollodoros' father Pasion ([Dem.] 45). Apollodoros repeatedly calls the now-free Phormion a *doulos* and vividly calls to mind Phormion's purchase day. The message one gets is that no matter how far Phormion has advanced financially and politically, he is always, in some sense, the slave of Pasion.

III.

This unique status of freed slaves—similar to but at the same time legally and socially distinct from (freeborn) metics—makes them, to my mind, a particularly good candidate for the identity of the mysterious *khôris oikountes*. If we accept this identification, however, we then have to ask: why would Demosthenes use this phrase, itself hardly a technical term, to refer to freed slaves? Kazakévich, for example, asserted that if Demosthenes had wanted to indicate freed slaves in this passage, he would have used the more common term *apeleutheroi*.[31] After all, Demosthenes does use the word

28. See, e.g., Zelnick-Abramovitz 2005.

29. As Demosthenes says in his speech *Against Timocrates*, "Those who have become free, you know, gentlemen of the jury, are never grateful to their masters for their freedom, but hate them more bitterly than they hate anyone else, as sharing in the secret of their having been slaves" (Dem. 24.124).

30. On "servile invective," see Kamen 2009; for the examples cited above, see Kamen 2009: 48.

31. Kazakévich 2008 [1960]: 368. See also Klees 2000: 16n.60, who addresses this objection, saying that the reason Demosthenes does not use *apeleutheroi* is that he wants to indicate a specific subgroup within the broader group of *apeleutheroi*. See further Zelnick-Abramovitz 2005: 99-126 on the distinction between the terms *apeleutheroi* and *exeleutheroi*—only the latter being, she argues,

apeleutheros elsewhere to refer to a freed slave. In one of his speeches against his guardians, *Against Aphobos* I, Demosthenes refers to a certain Milyas as "our freedman (*apeleutheros*)" (Dem. 27.19). Indeed, Milyas' status is germane here: as we learn in *Against Aphobos* III, Aphobos demanded that Demosthenes offer up Milyas for *basanos* (slave torture), prompting Demosthenes to argue that Milyas could not be tortured, since he had already been manumitted (Dem. 29.25-26).[32] I would like to argue, then, that while Demosthenes was capable of using a term more explicitly meaning "freed slave" (as in 27.19), he deliberately chose *khôris oikountes* in 4.36-37 for a couple of reasons.

In this passage of the speech, Demosthenes is facing competing motivations. On the one hand, he wants to criticize the Athenians' lengthy and disorganized process of preparing for war, as compared to the ease with which they put on religious festivals. This is, in fact, his primary aim. On the other hand, while he is compelled to admit, grudgingly, that mercenaries participated in the Athenian military, he does not want to draw attention to the fact that part of the Athenian navy was slaves and freedmen—a fact which everyone knew, but which nonetheless ran counter to Athenian ideology, as Peter Hunt (1998) has so convincingly demonstrated. That is, even if the ideological link between citizen and soldier had begun to dissolve by the mid-fourth century BCE, the ideology that those of servile stock were not part of the Athenian military remained.[33] As a result, Demosthenes, like other orators and historians of the fifth and fourth centuries, wanted to be as indirect as possible on the subject.[34] If he had used the technical term *apeleutheroi*, literally "freed from (slavery)," he would have called too much (unwanted) attention to the fact that former slaves manned the fleet. Likewise, if he had used a periphrastic phrase like *doulos metoikos*, "(former-)slave metic" (see, e.g., in Arist. *Pol.* 1275b36f), he would also have over-stressed the servile nature of these men. It is true that Demosthenes could have omitted mention of freed slaves entirely, folding them into *hoi metoikoi* as used in its broad sense, but that would have made the passage less rhetorically effective.

The term *khôris oikountes*, therefore, was a perfect compromise: while it was presumably clear enough in meaning for Demosthenes' audience, it had the advantage of de-emphasizing the fact that freed *slaves* manned their ships.[35] In addition to its desirable euphemistic qualities, this term also captured particularly well the social dimension of freedmen: In the eyes of Athenian citizens, freedmen were not merely resident foreigners but their own former slaves (see Dem. 27.19, above),[36] who had once lived with them and worked for them, and who now lived and worked apart from them. This was probably especially the case with those freed slaves who

completely freed (but cf. Meyer 2010: 55n.154). Dimopoulou-Piliouni 2009: 36-38, by contrast, argues that *exeleutheroi* were born free and then enslaved, whereas *apeleutheroi* were born enslaved.

32. Cf. Apollodoros referring to Nikarete, the madam who raised the young slave-prostitute Neaira, as an *apeleuthera* ([Dem.] 59.18). This detail is relevant, since it stresses Neaira's servile roots and bolsters the case for her spurious citizen status.

33. In fact, Demosthenes does not even use the word *douloi* to refer to the (mostly) slave-substitutes: instead, he uses the verb *antembibazein*, "to put on board instead (of us)."

34. On the Greek historians' silence on the subject of slave participation in warfare, see Hunt 1998.

35. Cf. Fisher 2008: 127, who suggests that the term is deliberately ambiguous.

36. See also Clerc 1893: 288; Zelnick-Abramovitz 2005: 333.

no longer had obligations to their former masters and lived farther away—hence Klees' appealing argument that *khôris oikountes* refers specifically to this subgroup of freedmen. Working against his interpretation, however, is the fact that it is hard to explain why only *one* subcategory of freed slave would be conscripted for naval service. For that reason, I think it more likely that *khôris oikountes* is a broad term encompassing all (or nearly all) freed slaves, who, regardless of where they lived, were no longer part of their former masters' households (*oikoi*) in the same way they had been as slaves.

Ultimately, the distinction Demosthenes makes here—between freeborn and former-slave resident foreigners in Athens—demonstrates one of the ways in which Athenian social and legal status was more complex than we sometimes acknowledge. Although a simple division of the population of Athens into three status groups—slave, metic, citizen—was indeed sufficient for many purposes, at other times it was necessary, or at least desirable, to make distinctions within the many intermediate categories.

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MIRKO CANEVARO

THE TWILIGHT OF NOMOTHESIA: LEGISLATION IN EARLY-HELLENISTIC ATHENS (322-301)[1]

Abstract

The article surveys the evidence for *nomothesia* procedures in the twenty years after the end of the Lamian war. It argues that fourth-century *nomothesia* could not survive the constitutional reforms imposed by Antigonus. Its procedures were later replaced by the individual action of the *nomothetes* Demetrius of Phalerum, who at the same time imposed on the Assembly the check of *nomophylakes* who took over the powers of the *graphe paranomon* and the *graphe nomon me epitedeion theinai*. Finally, after the restoration of democracy in 307, *nomothetai* reappeared for the last time, but were not, like before 322, in charge of voting on new proposals and enacting new legislation. They were special magistrates, possibly introduced by Demetrius Poliorcetes, in charge of proposing new laws to the Assembly for the purpose of reforming the constitution after the regime of Demetrius of Phalerum. After this last appearance of *nomothetai* in the late fourth century, in the third century no recognizable specific *nomothesia* procedure survived, and laws were enacted by the Assembly like decrees. The reason for the disappearance of *nomothesia*, it is argued, must be understood both in the context of the evolution of the relevant institutions, and in that of the abuse of the relevant terminology by Macedonian-controlled regimes at the end of the fourth century.

L'articolo discute le fonti rilevanti per la ricostruzione delle procedure di *nomothesia* nei vent'anni successivi alla guerra Lamiaca e argomenta che la *nomothesia*, nella versione comune nel quarto secolo, non sopravvisse alle riforme costituzionali imposte da Antipatro. Le sue procedure furono dopo il 317 soppiantate dall'azione individuale di Demetrio di Falero, che assunse il ruolo di nomoteta e impose sull'Assemblea il controllo di un gruppo di *nomophylakes* con poteri che un tempo erano stati esercitati attraverso la *graphe paranomon* e la *graphe nomon me epitedeion theinai*. Dopo la restaurazione della democrazia ad opera di Demetrio Poliorcete un gruppo di nomoteti fa capolino per l'ultima volta nelle fonti. Il loro ruolo tuttavia non è quello di approvare le proposte di legge, come avveniva perima del 322, ma quello di proporre nuove leggi all'Assemblea, allo scopo di riformare la costituzione dopo la caduta di Demetrio di Falero. La loro istituzione

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negli ultimi anni del quarto secolo è probabilmente da collegare all'azione esplicita di Demetrio Poliorcete. Dal terzo secolo in poi non c'è alcuna traccia di una procedura separata di *nomothesia*: le leggi vengono probabilmente approvate dall'Assemblea allo stesso modo dei decreti. Nella conclusione si sostiene che la ragione della scomparsa della *nomothesia* vanno cercate tanto nell'evoluzione intrinseca delle procedure di *nomothesia* lungo il quarto secolo quanto all'abuso di questa terminologia da parte di vari regimi filomacedoni negli ultimi anni del quarto secolo.

Introduction

The legislative procedures implemented by the Athenians after democracy was restored at the end of the fifth century BCE have been the subject of several studies. There has been much debate both about the procedures used to revise and reform the Athenian constitution in the last decade of the fifth century[2] and about how the Athenian legislated in the fourth.[3] In a recent article Edward Harris and I have shown that at the end of the fifth century a board of *anagrapheis* was given the task of finding the laws of Draco and Solon, submitting them to the Assembly for ratification and then reinscribing them on *stelai* placed in front of the *Stoa Baileios* (a process started in 409). The Assembly also elected a board of *nomothetai* to propose new laws to the Athenians, restoring and, in the process, reforming the constitution.[4] Among the measures proposed by the *nomothetai* and ratified by the Assembly were rules creating a clear distinction between *psephismata* (decrees), measures passed by the Assembly and enacted either for a short period or for individuals, and *nomoi* (laws), permanent rules applying to all Athenians alike, which were instead passed through a new procedure called *nomothesia*. The new procedure involved a mandatory vote by the Assembly before any proposal for a new law could be proposed, publicity of the proposals, both in front of the monument of the Eponymous Heroes and through repeated reading in the Assembly, and the appointment of *nomothetai* who would then decide whether the new proposals would become law or not. A *psephisma* could be indicted through a *graphe paranomon* and repealed by a popular court, while a law could be repealed through a very similar procedure, the *graphe nomon me epitedeion theinai* (public action against an inexpedient law). This new system on the one hand was designed to maintain the stability of the laws and the constitution, which could not be overthrown by a simple vote in the Assembly as happened in 411 ([Arist.] *Ath Pol.* 29.2-3; Thuc. 8.67.1). At the same time, the new procedure provided a clear and consistent hierarchy of rules, as well as a definite procedure for revising and altering the laws of the city and for proposing new laws. This procedure was democratic because it was open to every Athenian citizen and promoted the rule of law by assuring consistency through the removal

2. Cf. e.g. Harrison (1955), Robertson (1990), Rhodes (1991), Carawan (2002).
3. Cf. in the last fifty years in particular MacDowell (1975), Hansen (1979-80; 1985), Rhodes (1984), Piérart (2000) and Canevaro (2013).
4. Canevaro-Harris (2012).

of contradictory laws.[5]

Some scholars have argued that whatever the *nomothetai* intended at the end of the fifth century when they devised this system, it had broken down by the middle of the fourth century when the Assembly was once again the unchecked legislative body of the Athenian state.[6] This assumption is not supported by the evidence: there are nine epigraphical texts of laws,[7] and whenever it is possible to check, the enacting body are the *nomothetai*. Moreover the rules enacted in these laws are usually permanent norms valid for all Athenians, and the only temporary rules approved by the *nomothetai* appear to be financial arrangements. This is due to the fact that the allocation of the funds of the Athenian state was fixed by a law determining the *merismos*, and therefore any change in the allocations of the *merismos* had to be passed as a law, since no decree could have higher validity than a law. There is moreover no clear example in the epigraphical record of general permanent rules passed as *psephismata* in the fourth century. Hansen has surveyed also the literary evidence for laws and *nomothetai* in the fourth century down to the Lamian war, and shown that the Athenian adhered very strictly to their new rules about legislation.[8]

Whatever the disagreement about the details and even the nature of the fourth century legislative procedure, one can still agree that in the fourth century down to Lamian war there was a strict distinction between laws and decrees, a more complex procedure for enacting laws, which were not ratified by the Assembly, but by a body of *nomothetai*, multiple checks to guarantee the consistency of the 'legal code', and a judicial review of new enactments, both laws and decrees, which was however activated on a voluntary basis by an individual Athenian. But what happened after Athens lost its independence to Macedon? In the turbulent years following the Lamian war, through the multiple changes of regime, the many oligarchic (or pseudo-oligarchic) constitutions and the following (alleged) democratic restorations, did the Athenians preserve this complex and delicate legislative system? Was it ever repealed, and restored? Whatever happened in these years, scholars have sometimes simply assumed that the legislative procedures of the late fifth century were revived in 307 together with most democratic constitutional features when Demetrius Poliorcetes freed Athens from the regime of Demetrius of Phalerum, and survived through the third century. For instance, Hansen relies on a partially published inscription (*SEG* 37.89) and argues that they continued into the third century, and O'Sullivan assumes their existence in the years immediately following the democratic restoration of 307.[9] Most other scholars simply do not discuss the problem.

5. Cf. Canevaro (2013).
6. E.g. Busolt (1920: 458), Kahrstedt (1938: 12-8), Harrison (1955: 27), Quass (1971: 71).
7. In chronological order *SEG* 26.72; R. S. Stroud, *The Athenian grain-tax law of 374/3 B.C.* (*Hesperia Supplement* 29) (Princeton 1998); Agora Excavations, inv. no. I 7495 (unpublished); *IG* II^2 140; *IG* II^2 244; *SEG* 12.87; *IG* II^2 334 + *SEG* 18.13; *IG* II^2 333; *SEG* 35.83. *Cf.* also the regulations for the Mysteries at Eleusis in a fourth-century inscription (K. Clinton, *Eleusis: The Inscriptions on Stone. Documents of the Sanctuary of the Two Goddesses and Public Documents of the Deme.* Vol. IA: *Text* [Athens 2005] no. 138 and Vol. II: *Commentary* [Athens 2008] at 116).
8. Hansen (1978; 1979).
9. Hansen (1983: 206), O'Sullivan (2009: 214 n. 57). Cf. also Lambert (2004: 109 n. 84).

This article will examine and discuss the (scanty) relevant epigraphical and literary evidence for the years 322-301. It will attempt to interpret the changes in legislative practices in these years both within the framework of the wider constitutional changes occurred due to external shocks and Macedonian power, and in the light of previous developments and arrangements in *nomothesia* from the end of the fifth century. The Athenians (and their Macedonian overlords), when reforming legislative institutions after the Lamian war, responded to problems and needs dictated by their current political and constitutional circumstances, yet always acted within a tradition and consistently with assumptions about what is appropriate when it comes to legislation which had their roots in previous institutional arrangements. These, in the context of the various changes in legislative procedures in these years, played the role of blueprints, legitimizing and making recognizable to the Athenians solutions which were largely innovative.[10] In detail, I shall argue that *nomothesia* as it was practised in the fourth century did not survive the limitation of the full-right citizens imposed by Antipater in 322, and that later Demetrius of Phalerum assumed himself the role of *nomothetes*, while at the same time using a board of *nomophylakes* (which replaced the *graphe paranomon* and the *graphe nomon me epitedeion theinai*) as a pre-emptive check on the legislative activity of the Assembly. When democracy was 'restored' in 307 by Demetrius Poliorcetes the *nomothetai* found in our sources (their last attestation in the record) were not the same as the pre-322 *nomothetai*, but rather a special board, possibly imposed by Demetrius himself, in charge of proposing laws for the purpose of facilitating the 'democratic transition', and submitting them to the Assembly for approval. The old procedure of *nomothesia*, which provided a separate procedure for passing laws and multiple checks to assure the consistency of the laws of the city, was not revived in 307, and in all likelihood never reappeared in Hellenistic Athens.

Antipater's regime and the first 'restoration'

After Antipater's victory at the battle of Crannon in 322 the Lamian War was over.[11] Antipater forced each Greek city to negotiate individually, and the Athenians were among the last to enter negotiations. They sent

10. The way I tackle these issues has been heavily influenced by the work of modern historical institutionalism (see the foundational essay, March-Olsen 1984, and 2006 for a synthesis), and in particular by what has been defined as 'ideational historical institutionalism': an approach particularly (and appropriately) popular in the study of public law (see e.g. Smith 2006 and Lieberman 2002). Change in institutions must be explained in terms of gradual development, and described as the result of inherent features of both the relevant institutions and their relevant (embedded) ideas. Critical junctures when exogenous factors accelerated developments and brought about rapid institutional change still saw new legislative solutions being created in accordance with persistent legislative habits and shared ideas (if not ideals) of what is appropriate when creating laws. However, rather than providing an analysis structured around specific theoretical assumptions, I decided in this context to provide a reconstruction which is structured as a detailed analysis of the source material and does not depend on any specific theoretical preconceptions. The complexity of the sources, often rather sparse, and the need to assess thoroughly their reliability and their relationships make in this context such an approach necessary.
11. Cf. Habicht (1997: 36-42)

envoys to Thebes where the Macedonians were standing by ready to launch an invasion of Attica. The most important persons in this embassy were Phocion and Demades (whose citizen rights were reinstated for this very purpose), but Demetrius of Phalerum also makes an early appearance. Antipater required unconditional surrender, and the Athenian envoys, despite having been made plenipotentiary by the Assembly, went back to Athens to have the authorization to negotiate on these terms confirmed. Presumably it was by then quite clear that the final settlement would involve some substantial constitutional reform, and the envoys did not want to run the risk to be indicted for *katalysis* of the *demos*. Plutarch (*Phoc.* 27.3) and Diodorus (18.18.3-4) provide us with the details of the agreement struck by the envoys: the Athenians were to enter *philia* and *symmachia* with Antipater, accept a garrison at Munichia, surrender the orators who had fomented the war, lose Oropus and, following a ruling by Perdiccas, Samos. Even more important, Antipater restricted citizenship to those who owned at least two thousand drachmas, which reduced number of citizens with full rights to 9000. The Athenians who lost rights as a result of this reform are estimated at 12000 by Plutarch, and 22000 by Diodorus.[12] Such an imposition of constitutional reform is in line with what we see in the extant *diagrammata* with which Alexander and Ptolemy imposed constitutional changes to Chios, Tegea and Cyrene.[13] The king would send a *memorandum* to which the city has to adhere in reforming particular institutions. Sometimes the *diagramma* goes into detail about the new constitutional arrangements, sometimes it only provides for the constitution to be made timocratic or democratic and has the citizen appoint suitable magistrates to take care of the transition.

In this case, even if we assume that Antipater imposed only the census of 20 minas, this constitutional change must have involved a general reform of democratic institutions: it is unthinkable that democracy could have continued working as before after its citizen body was reduced by two thirds. 9000 citizens over eighteen were certainly not enough to provide annually 6000 citizens over thirty years old to act as judges in the lawcourts. The evidence for the institutional changes that occurred following these peace arrangements is scanty, but we must assume that they were extensive. *Suda* (*s.v.* Demades) reports that these changes brought about the destruction of the lawcourts and of the rhetorical contests. This piece of information is often discarded, and there is some possible evidence from this period for

12. On these years see in general Habicht (1997: 42-53) and Tracy (1995: 7-30) and more in detail and with abundant bibliography Poddighe (2002). See also Williams (1983) and Dreyer (1999: 157-9) For recent discussions of the constitutional changes see e.g. Rhodes with Lewis (1997: 39-41) and Oliver (2003: 40-51) On these estimates see recently Van Wees (2011: 107-10): he argues convincingly that both figures are ultimately unreliable, as they are both derived from Demetrius'census compared with the known figure of 9000 with citizenship rights under the regime of Antipater. Following his calculations, it is likely that 9000 conserved their rights out of a total citizen population before the peace agreement of between 28000 and 32000..

13. *Chios* 32; *IPArk* 5; *SEG* 9.1. Cf. recently Bencivenni (2003: 11-2, 15-38, 79-104), *RO* 84 on the *diagramma* for Chios, and Martini (2011) on that for Cyrene. Two decrees from Mytilene (*SEG* 36.750; *SEG* 40.673), as well as a dossier of documents from Eresus (*IG* XII.2 526), also refer to *diagrammata* from Alexander (cf. Bencivenni 2003: 39-78). This seems to be the standard mode by which Macedonian kings at this date imposed constitutional changes in the Greek *poleis*.

lawcourt *dokimasia* in a grant of naturalization, which would show that the lawcourts did survive in some form.[14] Nevertheless, it should be recognized that nothing like the judicial system in force through the fourth century could have survived such a reduction in the numbers of full-right citizens.[15] Once again, the constitutional changes here must have been extensive. This already suggests that some changes must have occurred in the legislative procedures: the judicial review on a voluntary basis of laws and decrees throught the *graphe paranomon* and the *graphe nomon me epitedeion theinai*, if it survived, must have lost much of its effectiveness, and must have been performed by a judicial board whose composition and selection methods were much different from the earlier fourth century. On the other hand, as we shall see, it is more likely that the profound institutional changes occurred in the three years of this regime were not hampered by the cumbersome procedure of *nomothesia*, and the *graphe paranomon* and the *graphe nomon me epitedeion theinai* most likely had been repealed straightaway together with the first reforms, to guarantee smooth constitutional restructuring, or else they simply stopped being used.

Changes must also have been implemented to deal with the significantly lower number of men who had a right to attend the Assembly. To give just a couple of examples, through the fourth century a law ordered that grants of citizenship to foreigners had to be ratified with a *quorum* of no less than 6000 voting by secret ballot ([Dem.] 59.89-90). The same *quorum* was a requirement to grant an *atimos* or state-debtor (or anybody else on his behalf) the right to address the Assembly (Dem. 24.45). Hansen has shown that out of a citizen body of around 30000 citizens the average number of citizens who attended most Assembly meetings must have been comfortably over such a *quorum*.[16] With a severely reduced citizen body of around 9000 such a *quorum* would have prevented any grant of citizenship or *adeia* to speak, and it is safe to assume that the validity of this rule was discontinued in these years, and the second vote on naturalization (attested e.g. by *Agora* 16.101) was performed without a *quorum*. We have six extant naturalization decrees from these years.[17] A further grant (*IG* II^2 398), presumably from the year 319/8, shows that the ratification of the grants became at some point the task of a panel of judges. Osborne considers this an indication of a democratic constitution and attributes the decree to the period after the restoration of democracy. The prescript of the decree is not preserved, but this change in the practice of naturalization could as well be a late result of the reduction in the numbers of citizens: a procedure that could work only imperfectly with the reduced number of citizens was discontinued and eventually, perhaps after the restoration of democracy, replaced by a different one. In such matters, as well as in the composition and working of the lawcourts, even when we cannot conclusively find in the sources any clear evidence of changes and constitutional rearrangements, we should definitely postulate that such changes happened and were extensive,

14. *IG* II^2 387 (Osborne D36). This decree however is dated by Osborne to 319/8 after democracy had been restored. See also Rhodes with Lewis (1997: 40).
15. Cf. Banfi (2010: 14 n. 22); O'Sullivan (2009: 28).
16. Hansen (1983: 1-20).
17. Osborne D29-34.

otherwise we could not make sense of how the Athenian state kept working between 322 and the royal decree of Polyperchon in the autumn of 319. Once again, it is very unlikely that in a context in which so many reforms of this nature were passed in a very short time (three years at the most), Athenians with full rights still retained the right to indict every new law for review in a law court. It is also improbable that every reform had to go through the complex *nomothesia* procedure followed earlier in the fourth century.

The selection of magistrates, their functions and their numbers, must also have been reformed following the introduction of the 20 minas requirement. In the fourth century the Athenians selected around 1200 magistrates every year (including the members of the *Boule*), of whom 1100 were selected by lot. All magistrates had to be more than 30 years old, and no Athenian could hold more than one office in a given year.[18] Given that the selection of magistrates in Athens was held only among those who decided to run for office, and not among the whole citizen body, it must have been very difficult to find enough candidates to fill 1200 positions in a citizen body of 9,000. It must have been even more difficult to find in the poorest demes enough suitable candidates who owned more than 2000 drachmas for the Council, as the candidates for the Council were nominated in the individual demes. In fact, we have some evidence that reforms in this area where performed: for example the office of the *apodektai*, widely attested until 323, disappears from our records afterwards.[19] Diodorus (18.18.4) even seems to imply that selection by lot was abolished and magistrates were selected only through election, but the interpretation of this passage is controversial.[20] The most famous of the reforms of these years is certainly the institution of the *anagrapheus*, who was probably elected and replaced the *grammateus kata prytaneian* selected by lot. This official must have been so important that in inscriptions of this period he even precedes the eponymous archon.[21] Once again, these many reforms, enacted in a very short period of time, are unlikely to have been subjected to the cumbersome fourth-century procedure of *nomothesia*. One further reform in this area, preserved in an inscription (*IG* II^2 380), makes it virtually certain that *nomothesia* did not survive Athens' defeat in the Lamian war. This inscription contains a statute proposed by Demades: because the duties of the *astynomoi*, in the Peireus at least, are transferred to the *agoranomoi*, the statute lists the new duties of these officials in policing the Peireus. This statute is clearly a general norm intended to be valid forever, and involves the ordinary (not special) duties of an ordinary office.[22] Before 322 it would have surely been enacted by the *nomothetai* as a law, and yet this inscription reports a decree of the *demos*,

18. Cf. Hansen (1991: 225-45).
19. Rhodes (1993: 591) suggests that also the *diaitetai* were abolished.
20. Oliver (2003: 50) doubts that the evidence can be conclusive on this respect, and believes sortition was retained.
21. See Dow (1963) for the classic discussion on this topic, Henry (1977: 50-66) for a survey of the *anagrapheus* in inscriptions, and Rhodes with Lewis (1997: 37-40) for some usefull considerations.
22. Oliver (2003: 50-1 n. 41) has some doubts that this transfer of duties could have been as general as is usually assumed. It may indeed refer only to some of the old duties of the *astynomoi*, but the trasfer is not temporary and the measure is a general one, as the language of the inscription makes very clear.

and the motion and enactment formulas are *edoxen toi demoi* and *dedochthai toi demoi*. That this statute was enacted as a decree of the Assembly is clear evidence that in 320 laws were no longer the province of a specific board of *nomothetai*, and were instead enacted in the Assembly as decrees.

To sum up, not only the reduction in the number of citizens in the years 322-318 and the massive number of institutional and constitutional reforms that this made necessary make it very unlikely that the individual reforms had to go through the cumbersome procedure of *nomothesia*; a measure passed in these years, which would have been a *nomos* ratified by the *nomothetai* earlier in the fourth century, is enacted by the Assembly as a simple decree, which makes it virtually certain that the previous *nomothesia* procedures were discontinued following the defeat in the Lamian war.

Our sources for the short period of the restoration of democracy following the edict of Polyperchon are too scanty to allow us to follow the fate of the legislative procedures in Athens. Polyperchon issued his edict in autumn 319 and the Athenians returned to democracy in spring 318, around the last day of Xandicus (in the Macedonian calendar).[23] Diodorus (18.55.2, 4, 56.3, 65.6) claims that the Athenians immediately overthrew the existing officials and restored the most democratic offices, yet a decree from the end of the year 319/8 that still mentions the *anagrapheus* rather than the *grammateus* shows that the Athenians did not immediately proceed to restore all the offices of the democracy, but rather let the year finish before fully restoring them.[24] With the year 318/7 we find once again the *grammateus* instead of the *anagrapheus*, which indicates that the offices of democracy had been fully restored.[25] We can assume that the census requirement for enjoying full citizen rights must also have been lifted. The grant of citizenship to Euphron of Sicyon, destroyed by the oligarchy and reinscribed by the democracy (*IG* II^2 448), states that 'now the *demos* has returned and has recovered the laws and the democracy'. To what extent this actually happened, and whether 'the laws and the democracy' were recovered to such an extent to include also the fourth-century legislative procedures, is difficult to say. Yet this restored democracy did not last long and by the summer of 317 a peace treaty with Cassander had appointed Demetrius of Phalerum in charge of the Athenian state and brought about other constitutional changes. *Argumenta ex silentio* are dangerous, but it must be noted that we have no evidence whatsoever for any systematic procedure of democratic restoration (similar to that of 403 or, as we shall see, of 307), with the actual enactment of laws restoring and reforming the constitution. In fact, such a systematic procedure is very unlikely, given the very short time this democratic regime survived. It could be the case that such a process was interrupted by the peace treaty with Cassander, and yet during the year and a few months of the regime something like that was actually in the process of being performed (despite the lack of evidence in our sources). Alternatively, since the oligarchic regime inaugurated by Antipater had lasted only under three years, it is possible

23. See in general Habicht (1997: 47-53) and Rhodes with Lewis (1997: 40-1) for a discussion of the constitutional changes after the restoration of democracy.
24. *IG* II^2 387 = Osborne D35.
25. Cf. *IG* II^2 448 = Osborne D38.

that the restoration of democracy was effected as a blanket restoration, a return to the *status quo* before the peace treaty with Antipater. If this was the case, it is not impossible that the old legislative procedures made a brief reappearance at this point, although there is no guarantee that they were actually used.

Demetrius' regime

Whatever happened in this year and few months, the peace treaty with Cassander in summer 317 put an end to it. This peace agreement was negotiated by Demetrius of Phalerum, and although the text of the treaty is not preserved Diodorus (18.74.3-11) provides us with reliable information about its contents. This settlement made the Athenians allies of Cassander, with full control of their city, of Attica, of their revenues, of their fleet and of everything else. On the other hand the fort of Munichia would remain in Macedonian hands until the end of the current war, and the constitution would be reformed and made timocratic, with significant number of citizens losing their franchises, and only 21000 conserving their citizen status.[26] Again a Macedonian king imposed constitutional changes on the city, in line with the provision of the extant *diagrammata* of the same years. This limitation of the full-right Athenian citizens must have again involved considerable changes in the working of the Athenian constitution, and yet we have only two inscriptions safely dated to the ten years before Demetrius Poliorcetes freed the city once again, not enough to discover much about such reforms, except that we find that the usual *grammateus* once again seems to disappear. In fact, the few inscriptions from this period do not mention any secretary, so it is hard to know what official performed the role.[27] On the other hand, we have plenty of literary evidence for the new legislation enacted during this decade, which is attributed to Demetrius of Phalerum.[28] The nature of Demetrius' powers and the extent of his legislation as well as one particular office which seems to have been introduced by him, the *nomophylakes* strongly suggest that the legislative procedures typical of fourth-century democracy were either repealed or not restored by Demetrius.

I shall briefly discuss the powers Demetrius held during these ten years

26. See in general Habicht (1997: 53-66) and the two recent monographs on Demetrius Banfi (2010) and O'Sullivan (2009). On Demetrius' role in negotiating the peace, and on its conditions see for a survey of the sources and different accounts Banfi (2010: 53-7) and O'Sullivan (2009: 40-7). The information on Demetrius census comes from Athen. 272c. Diod. 18.74.3 adds that the property-qualification was 1000 drachmas, but see recently Van Wees (2011) who has argued that this was the threshold only for the highest offices, and that the minimum property-qualification for the 21000 citizens was between 300 and 500 drachmas.

27. *IG* II^2 450 = D42; 451; 453 (cf. Rhodes with Lewis 1997: 42 nn. 41 and 42). See Tracy (1995: 36 ss.), who argues however that the lack of inscribed decrees from these years is due to the attempt from Demetrius to reduce expenses and luxury (see also O'Sullivan 2009: 116-7 for a similar explanation). Banfi (2010: 89-95) convincingly refutes this theory and argues that the reason is simply reduced activity of the Assembly.

28. See Banfi (2010: *passim*) and O'Sullivan (2009: *passim*) for Demetrius' legislation.

of government and how this affects our discussion, and then move to the significance of the office of the *nomophylakes*. In addition to imposing a change of the constitution in fact Cassander appointed an *epimeletes*, an overseer of the city of Athens. Cassander chose for this task the negotiator himself, Demetrius. Such offices are typical of Macedonian bureaucracy, and we find in early Hellenistic times overseers at Sardis, Ilium, Megalopolis, nominated by Alexander, Cassander and Antigonus.[29] If this was the case with Demetrius, one wonders how this office was integrated into the Athenian constitution. Some scholars (in particular O'Sullivan) have argued that this office marked only the relationship between Demetrius and Cassander, yet had no particular validity in Athens. Demetrius, much like Pericles in the fifth century, governed and legislated through his personal influence, supported perhaps by pressure applied by the presence of a Macedonian garrison in Munichia.[30] The problem with this interpretation is that a deme decree from Aixone (*IG* II^2 1201), which honours Demetrius for his achievements from 317, in particular for securing the peace agreement with Cassander, reports, although in fragmentary fashion, that Demetrius was indeed elected by the Athenians to some kind of office. The passage in question states that Demetrius [--9-- αἱ]ρεθεὶς ὑπὸ τοῦ δήμο[υ τοῦ Ἀθηναίων νόμους] ἔθ[η]κεν καλ[οὺς καὶ συμφέροντας τεῖ πόλε]ι. Most of the restorations are uncontroversial: [--]ρεθεὶς must be restored into αἱρεθεὶς, and the *demos* must be that of the Athenians (surely he was not elected by the deme of Aixone). Likewise, it is clear that he νόμους] ἔθ[η]κεν καλ[οὺς καὶ συμφέροντας τεῖ πόλε]ι, an expression which is found elsewhere in similar fashion (cf. e.g. [Plut.] *Vit. X Or.* 852b; *Agora* 16.257.1 l. 9; *Agora* 16.261.1 = *IG* II^3 1292 l. 15). This means that Demetrius, once he was elected to some office (notice the participle), in that quality proceeded to legislate. There has been much speculation about what this office must have been. Some proposals (*anagrapheus* and *thesmothetes*) are too long to fit the 9-spaces lacuna, and anyway unlikely.[31] Ferguson and Gehrke proposed *strategos* on the basis of a statue basis, *IG* II^2 2971 which gives this title to a Demetrius son of Phanostratus from Phalerum, yet Tracy has recently shown that this inscription must be dated to the late third century, and refers to Demetrius' grandson, and not to Demetrius himself.[32]

The two most likely restorations are *epimeletes*, following Diodorus's account of the treaty with Cassander, and *nomothetes*. One problem with *epimeletes* is that it is ten letters long and would violate the *stoichedon* arrangement of the inscription. Another problem is that this is not an Athenian office, but rather a Macedonian one. A third problem is that

29. Hammond (1985: 160 and *passim*).
30. O'Sullivan (2009: 40-6, 90-103 and *passim*). See also Tracy (1999) for a similar view. Against such interpretations see in particular Bayliss (2011: 61-93).
31. Cf. Dow-Travis (1943: 150) and Banfi (2010: 58-9) against these restorations. *Thesmothetes* is a normal office which does not carry any legislative power, while *anagrapheus* as the office of the early 310s was an elective office and changed every year, while as an office concerned with legislation, as the inscription wants it, is the office held by Nicomachus in the late fifth century, but it involved only finding Solonian laws and submitting them to the Assembly for approval. Both offices are unlikely to have been those to which Demetrius was elected.
32. Ferguson (1911: 47 ff.) and Gehrke (1978: 137 ff.), but see Tracy (1995: 172-4), Banfi (2010: 60-2) and O'Sullivan (2009: 97).

Diodorus explicitly says that Cassander nominated Demetrius *epimeletes*, whereas the inscription from Aixone states that he was elected by the Athenians to this office.[33] The restoration *nomothetes* on the other hand is suggested by the inscription itself: after and because he was elected to the office (participle aorist) Demetrius proceeded to pass laws (νόμους] ἔθ[η] κεν). This proposal is confirmed by plenty of external evidence: Syncellus (Dem. Phal. fr. 20 B Fortenbraugh), who calls Demetrius the third *nomothetes* of Athens after Solon and Draco, might be too late a source to be given too much credit, but the *Marmor Parium* (B 15-16, *Ep.* 13) records specifically that Demetrius νόμους ἔθηκεν. Moreover Plutarch (*Arist.* 27.3-5) reports that Demetrius himself in his work *Socrates* states that he granted the descendants of Aristides a small revenue νομοθετῶν, that is in quality of *nomothetes*. Duris (Demetrius 43a Fortenbaugh) must have alluded to this title when he claims that Demetrius lived a life *anomothetos*.

The case for Demetrius being elected to the office of *nomothetes* has been forcefully made by Dow and Travis, and although it is likely that no truly conclusive argument can be brought for or against this restoration, this remains the strongest proposal.[34] It is not impossible, and in my opinion quite likely, that the peace treaty briefly summarized by Diodorus may have contained (or implied) that the Athenians should elect the *epimeletes* of Cassander to a suitable office to facilitate the transition to a timocratic constitution. At any rate, Plutarch's citation of Demetrius' words in the *Socrates* is at least clear evidence that Demetrius liked to characterize himself as a *nomothetes*, and as such he was later remembered. Strabo (9.1.20) formed the impression, apparently from reading Demetrius' 'memoirs' (*hypomnemata*), that he not only did not dissolve the democracy, but rather corrected it (ἐπενώρθωσε). This once again shows that Demetrius characterized his political action as that of a constitutional reformer, one who acted within the framework of the *patrios politeia*. He portrayed himself as a *nomothetes* like Draco and Solon while at the same time exploiting the long standing debate on the *patrios politeia*, which had been invoked since the late fifth century by reformers and aspirant reformers alike, whether of democratic or oligarchic belief. To confirm this, one should also point out that his most apologetic works deal with his constitutional reforms and with his legislation, and among his best attested scholarly interests we find laws and legislation. Banfi has also convincingly argued that in his work in five books περὶ τῆς Ἀθήνησι νομοθεσίας Demetrius not only dealt with various Athenian laws and institutions (e.g. the Assembly, the *eisangelia*, the demarchs, the duties of the resident aliens) but often, as with arbitration and *parastasis*, proceeded to criticize them and discuss the changes and reforms that he had introduced himself.[35] Once again, the use of the word *nomothesia* in the title is circumstantial evidence that this was the office to

33. *Epimeletes* is the restoration of Wilhelm in *IG* II^2 1201 and has been more recently endorsed by Tracy (1995: 43-46), Dreyer (1999: 161 n. 205), Gagarin (2000: 348), Banfi (2010: 53-63), Paschidis (2008: 60-1). Haake (2008: 90, 98) also seems to accept that this was Demetrius' title in Athens. Against this restoration see recently O'Sullivan (2009: 96-7).
34. This restoration, after Dow-Travis (1943: 148-59), has been recently endorsed by Rhodes with Lewis (1997: 41) and O'Sullivan (2009: 95-7).
35. Banfi (2010: 45-51).

which Demetrius was elected.

In fact, there is evidence (Chios 32 = RO 84) that in 334 Alexander sent a *diagramma* instructing the Chians to elect *nomographoi* who would write and correct (*grapsousi kai diorthosousi*) the laws to effect a change in regime. In this case the regime was to be made into a democracy. His choice was apparently that of having local magistrates, bearing a recognizable office name, elected to reform the constitution, rather than impose specific changes and rules as we find in other *diagrammata*.[36] A similar arrangement, with *nomographoi* in charge of creating new laws, seems to have been imposed by Antigonus to the Teans and the Lebedians at some date between 306 and 302 (*Teos* 59): they also had to elect *nomographoi* to propose new laws.[37] It is not inconceivable that Cassander not only appointed Demetrius of Phalerum the Macedonian *epimeletes* in Athens, but also ordered or recommended that he be elected *nomothetes* in order to write and correct the laws to facilitate the transition to a timocratic constitution. But even if we do not accept this, it is at least clear that Demetrius characterized his action as that of a *nomothetes*, and brought substantial changes to the laws of Athens over the whole period of his regency. In such a context it is very difficult to believe that he may have allowed a board of *nomothetai* to have the final word about his legislation, and every reform of his to go through such a cumbersome procedure for approval as laws did at least until 322. It is also hard to believe that he would characterize himself through a term that would technically mark him as a member of the board in charge of accepting or rejecting his legislation.

We have no way of knowing in what precise form Demetrius passed his legislation. There are only three extant public inscriptions from the decade of his power, and none of these can be described as a law. On the other hand, one particular board of officials that he created or whose powers he expanded, the *nomophylakes*, also suggests very clearly that no procedure of review of new laws such as fourth-century *nomothesia* was in place during the period of his power. As Banfi has convincingly shown, all fourth century sources, from Plato to Xenophon and Aristotle, agree that the *nomophylakes* were a typically aristocratic magistracy.[38]

The main source for their existence and their functions in Athens is the entry about these magistrates in the *Lexicon Rhetoricum Cantabrigense* (*s.v.*. νομοφύλακες), which draws extensively on Philochorus. The entry first of all specifies that these officials were not the same as the *thesmothetai*, then provides the source of this piece of information: the seventh book of Philochorus. This has been conclusively identified by scholars as the book dealing with Demetrius' decade of power, which strongly suggests that Philochorus named these officials while describing one of Demetrius' reforms.[39] The entry then proceeds, following Philochorus, to show how the

36. Cf. Magnetto (1997: n. 10) and Bencivenni (2003: 33-4). Laronde (1987: 85-128, 249-56) argues that the *nomothetai* mentioned at the end of *SEG* 9.1 had the same role: they had to propose new legislation along the lines indicated in his *diagramma*.
37. Cf. Bencivenni (2003: 193, 196, 199).
38. Banfi (2010: 142-5). It should be noticed that in the *diagramma* for Cyrene (*SEG* 9.1) Ptolemy also mentioned *nomophylakes*.
39. Cf. Jacoby (1949: 115); Pearson (1942: 11); Bearzot (2007: 51); O'Sullivan (2001: 51).

nomophylakes are different from the *thesmothetai*: while the archons went up to the Areopagus wearing crowns, the *nomophylakes* wore headbands at the dramatic representations, sat before the archons and led the procession for Pallas. In addition to this, and more interestingly for our purposes, they controlled that the magistrates acted in accordance with the laws, and sat in the Council and in the Assembly together with the *proedroi*, preventing things inexpedient for the *demos* from being performed. The Greek here is revealing: the *nomophylakes* sat κωλύοντες τὰ ἀσύμφορα τῇ πόλει πράττειν. The word ἀσύμφορα brings to mind the procedure against inexpedient laws (*nomon me epitedeion*) which was indicted by *ho boulomenos* in the pre-322 democracy, and their role seems here to be exactly that of performing a control on whether something *paranomon* or *me epitedeion* is passed in the Assembly. The difference of course is that rather than a democratic control performed on a voluntary basis in the popular lawcourts, they seem to perform a pre-emptive control on whether something can be discussed or not in the Assembly, as their seat alongside the *proedroi* suggests. They seem to have replaced the democratic procedures of judicial review with a discretionary power acting directly in the Council and the Assembly. Other sources, all drawing from the same passage of Philochorus, seem to confirm that they replaced, or at least were perceived as replacing, the *graphe paranomon* and the *graphe nomon me epitedeion theinai*. Harpocration (*s.v.*. νομοφύλακες), like the *Lexicon Rhetoricum Cantabrigense*, notes that the *nomophylakes* are different from the *thesmothetai*, and that Philochorus in book 7 states they were in charge of making sure that the magistrates acted in accordance with the laws. Pollux (8.94) reports that they were crowned with a white headband (which indentifies Philochorus as the source of the information) and confirms that they sat in the Assembly with the *proedroi* and prevented the voting of ἀσύμφορα. Suda (*s.v.*. οἱ νομοφύλακες τίνες) reports the same pieces of information (including the differences between them and the *thesmothetai*, and their ritual roles), but its wording is even more significant: they κωλύοντες ψηφίζειν, εἴ τι παράνομον αὐτοῖς εἶναι δόξειεν, ἀσύμφορον τῇ πόλει. They prevented the Assembly from voting anything either *paranomon* or ἀσύμφορον, that is *me epitedeion*.[40]

The sources therefore all agree that the *nomophylakes* assumed the role that was once performed by the *graphe paranomon* and the *graphe nomon me epitedeion theinai*, and replaced a democratic procedure based on voluntary action by the citizens and decision by the popular lawcourts with the discretionary power to block debate and legislation in the Council and the Assembly by a board of (probably elected) officials.[41] If this is the case, then there can be no question that the existence of the *nomophylakes* not only excludes that *graphe paranomon* and *graphe nomon me epitedeion theinai* could have existed during this period but virtually guarantees that no legislative procedures like those of the pre-322 democracy could have survived Demetrius' reforms. *Nomothesia* was performed individually by Demetrius, who acted much like the lawgivers of old, and the *demos*, far from having available any procedure for independent initiative in legislation, saw its

40. Cf. Gehrke (1978: 154-5).
41. Cf. Gehrke (1978: 151-5). Cf. also Hansen (1974: 55).

powers in this area severely curtailed by magistrates who could stop legislation in the Council and the Assembly before it could be debated and submitted to a vote.

Of course, there have been attempts to argue that the *nomophylakes* were not created by Demetrius, and some scholars hold that the Demetrian *nomophylakes* had no constitutional powers, but were rather a magistracy exercising moral control over the Athenians. If this was the case, then we should be cautious to argue that their existence is evidence that the old legislative procedures had been eliminated. The first problem originates from a passage of Harpocration (*s.v.* νομοφύλακες), where we read that the *nomophylakes* were mentioned in two speeches of Deinarchus, *Against Himereus* and *Against Pitheas*. The problem with this information is that these speeches of Deinarchus are usually dated to the 320s, and some scholars want therefore to predate the introduction of the *nomphylakes* accordingly to the regime of Antipater, or even to the Lycourgan age.[42] It must be noted however that there is no extant information about the actual date of these speeches, and they could as easily be dated to the 310s (there is no guarantee that this Himereus must be Demetrius' brother, and not another relative still alive in the 310s). Moreover we have no context for the mention of the *nomophylakes* by Deinarchus: he could even refer to a magistracy outside Athens, (proposing its introduction etc.). Deinarchus' mention cannot overweight the fact that these magistrates, their powers and their functions, were discussed by Philochorus in book 7, most likely in the context of Demetrius' constitution.[43] Finally, even if we were to accept that the *nomphylakes* were introduced before Demetrius' regime, the fact that Philochorus discusses them extensively in his book 7 makes it virtually certain that Demetrius had a special interest for them, and reformed their role and their powers.[44]

The second issue is the interpretation advanced by O'Sullivan of the role of the *nomophylakes*: she uses a passage of Pollux (8.102) as evidence that the *nomophylakes* had no function in safeguarding the laws and the constitution.[45] This passage states that the Eleven were called at the time of Demetrius *nomophylakes*. Their job was that of taking care of those in prison, of thieves, slave-dealers and robbers, of putting them to death (when they admitted to their crime) or bringing them before a law court. The door of their office (*nomophylakiou*), through which those convicted passed before being killed, was called the door of Charon. She links this passage with the statement at the end of the entry in the *Lexicon Rhetoricum Cantabrigense*, ascribed to Philochorus, that the *nomophylakes* were introduced by Ephialtes after he stripped the Areopagus of all his previous powers, to argue that the powers of constitutional control must be ascribed to the *nomophylakes* of the time of Ephialtes,[46] while Pollux reports the real powers of the Demetrian

42. Cf. e.g. De Sanctis (1913), Wallace (1989: 202 ff.), Humphreys (2004: 123-5). Jacoby (*FGH* 328 fr. 64) dates their introduction to the Lycurgan period.
43. Cf. Banfi (2010: 150-3).
44. Cf. Gehrke (1978: 151-2)
45. O'Sullivan (2001 and 2009: 72-86).
46. Gagarin (2000: 352) also believes that it is more likely that the institution of the *nomophylakes* was reintroduced, rather than created, by Demetrius.

nomophylakes. Cinzia Bearzot has recently brought several cogent objections against this interpretation.[47] Here it will suffice to summarize her main points. First of all, there is no evidence whatsoever for *nomophylakes* in the fifth century, and it is unbelievable that such a powerful magistracy could simply disappear from our sources.[48] Second, the reforms of Ephialtes are in general a topic for which fourth-century reconstructions have been shown to be dubious and often unreliable, and betray political aims relevant to the fourth century, rather than the fifth.[49] In this specific case, it is easy to see, with Bearzot, how the invention of fifth-century *nomophylakes* may have helped to legitimize Demetrius' reform and their introduction in the 310s. Finally, the passage of Pollux might well be corrupt and contain the term *nomophylakes* where the expected and correct term would be *desmophylakes*. Gehrke has already pointed out how in ancient lexicographical sources there was much confusion between *nomophylakes* and *thesmophylakes*, and between *thesmophylakes* and *desmophylakes*.[50] Cinzia Bearzot has shown that at least the second mention of the *nomophylakes* (*nomophylakiou*) is not unequivocal in the tradition, and must be a corruption: a *Scholion* of Aretas of Caesarea on Plato's *Phaedrus* (59c) quotes Pollux and has *desmophylakiou* and not *nomophylakiou*. Since Aretas had access to the archetype of Pollux, this passage is the oldest witness of the text of Pollux, and confirms that the passage dealt with *desmophylakes*. If this is the case, then also the mention of the *nomophylakes* at the beginning of the passage must be likewise corrupt.[51]

To sum up, there is no reason to believe that the *nomophylakes* were not created (or at least their role reformed) by Demetrius of Phalerus, nor to think that their functions were different from those described by the *Lexicon Rhetoricum Cantabrigense*, Harpocration and Suda. The *nomophylakes* performed a pre-emptive control of constitutionality on the initiatives of the Council and the Assembly, in fact replacing the *graphe paranomon* and the *graphe nomon me epitedeion theinai*. Their existence and their role are evidence that under Demetrius the pre-322 legislative procedures were no longer in force. Demetrius' office, *nomothetes*, was meant to legitimize and make his legislative action acceptable to the Athenians by implying continuity with previous legislative institutions and traditions of legislation, yet the institutional arrangements of legislation under Demetrius were in fact largely innovative. An institution such as the *nomophylakes* was alien to the Athenian tradition, and produced a model of *nomothesia* alternative to the previous democratic ones.

Demetrius Poliorcetes and the last *nomothetai*

Demetrius' regime did not survive the end of its first decade, when Demetrius Poliorcetes conquered Munichia and announced the liberation

47. Bearzot (2007). Humphreys (2004: 124 n. 44) and Banfi (2010: 157-61) also reject O'Sullivan's thesis.
48. Cf. Banfi (2010: 147-8). *Pace* Cawkwell (1988).
49. Cf. Gehrke (1978: 51-2 n. 6), Bearzot (2007: 41 ff.) and Banfi (2010: 146-9).
50. Gehrke (1978: 188). Cf. also Banfi (2010: 159-60).
51. Bearzot (2007: 145 ff.). On Aretas and Demetrius' archetype see Bethe's preface to his edition of Pollux at p. VI.

of Athens in 307.[52] Diodorus (20.45.5, 46.3) states that after fifteen years of Macedonian control, started with Antipater, the Athenian *demos* regained its freedom and got back its *patrios politeia*. Plutarch (*Demetr.* 10.2) confirms that in the fifteenth year they recovered their democracy. In fact, the form of democracy in power before the Lamian War was not restored in its totality, with a blanket measure. In terms of institutional development, and given the working of constitutional change in those years, this would have been impossible: every regime had probably proceeded to destroy the actual texts of some of the laws of the previous regime, and we should not think of these changes as orderly restructuring which left previous arrangement in stand-by, but neatly archived and ready to be recovered and made once again valid. If a blanket restoration is conceivable in 318, only three years after Antipater had overthrown the constitution, it is hard to conceive that after ten years of rule by Demetrius of Phalerum, who brought about enormous changes in the Athenian laws and constitution, and after fifteen years since Athens lost its freedom, the Athenian could simply decide to go back to the *patrios politeia*, whatever they thought this to be. A democratic constitution had to be reconstructed through active legislation, and there is no guarantee that all the offices and institutions of the old democracy were revived.[53] In some areas we know that the new regime proceeded to restore old offices: we find once again the *grammateus kata prytaneian*, and we find the *astynomoi* (*IG* II^2 652), an office which had been replaced under Antipater's regime. On the other hand, the office of *agonothetes* was not repealed (cf. e.g. *IG* II^2 3073, 3074, 3077, 649),[54] and *choregia* was not revived, and more importantly two tribes were added to the Cleisthenic ten, which must have involved substantial changes in the numbers of Councillors as well as in the boards of magistrates appointed on a tribal base.[55]

The years of the 'restoration of democracy' under Demetrius Poliorcetes are particularly important for our purpose, and will be the last ones to be extensively discussed. First, because they are the last period of Classical and early Hellenistic Athenian history for which abundant if patchy literary sources supplement the information we find in inscriptions. Second, the dating of the inscriptions themselves, at least in many cases, is for these years still safe, and the sequence of archons is still reported by Diodorus. Third, it is in these years that we last find a mention of *nomothetai*, and it depends from our understanding of these *nomothetai* whether we can postulate that the pre-322 legislative procedures were ever revived, and could have been used in the third century. After 301 *nomothetai* are never found again in the record (with only one possible yet very unlikely exception), which would suggest that they never existed again in Hellenistic Athens, in any form. This *argumentum ex silentio* is

52. Cf. in general Habicht (1997: 67-81).
53. Cf. Ferguson (1911: 95-107) and more recently Rhodes with Lewis (1997: 42-5) for a discussion of the constitutional changes after Demetrius of Phalerum's fall.
54. Wilson – Csapo (2012) argue that the office of *agonothetes* was in fact created in 307, which would constitute another example of restoration of democracy through active legislation, one that did not restore old institutions but rather created new ones. On the other hand, this reconstruction is problematic, and it is safer to believe that this innovation was due to Demetrius of Phalerum.
55. For all these changes see Rhodes with Osborne (1997: 42-5).

however weakened by the fact that if one looks through all the extant third century inscriptions he finds not a single unequivocal case of an enactment of general value for all Athenians meant to be valid forever. All the extant measures inscribed in the third century, at least as far I have been able to see, would have been in the fourth passed as decrees. Therefore the fact that all of them were enacted by the Council or the Assembly cannot be used as a conclusive argument against the existence of a separate procedure for passing *nomoi* in the third century. In such an evidentiary context, understanding what the *nomothetai* under Demetrius Poliorcetes were is key for advancing an hypothesis about their survival in the third century: if an ordinary board of *nomothetai*, part of an ordinary procedure for passing *nomoi,* was revived in these years, then it is at least possible that they might have performed some role in the third century, whether they were preserved or were at certain points revived as part of one of the 'democratic restorations'. If on the other hand the *nomothetai* at the end of the fourth century were not an ordinary board like those of the pre-322 democracy, part of a separate procedure for passing *nomoi* which made them more difficult to enact and alter, but rather a special magistracy which dealt with constitutional reform or 'restoration' after the fall of Demetrius of Phalerum, then the picture becomes significantly different. If the passing of *nomoi* remained also in these years the province of the Council and the Assembly, then it becomes very unlikely that the existence of a separate procedure for passing *nomoi* was ever again considered an option in the constitutional debate of the fourth century. The next unequivocally attested restoration of democracy, in 287, for which the information is scanty at best, happened 35 years after the last appearance of a separate procedure for passing *nomoi*, 35 years dense with constitutional changes, rearrangements, modifications of the role and name of magistracies and institutions, in a State that probably did not keep orderly records of all the previous laws and constitutional arrangements that had been repealed, and often actively recurred to *damnatio memoriae* of previous regimes. It is very likely that by then the need for separate procedures for passing laws had all but disappeared from the constitutional debate, replaced by considerations about the role of the popular Assembly which considered any limitations of its powers as undemocratic. Understanding the role of the *nomothetai* of Demetrius Poliorcetes' restoration of 307 is not only key for understanding the nature of this restoration, but is, before new epigraphical evidence is discovered, our best chance to advance a plausible hypothesis about *nomothesia* in the third century.

We have one certain attestation of the *nomothetai* in the epigraphical record: *IG* II^2 487 honours Euchares of Conthyle for his work under the archonship of Pherecles (304-3) in the *anagraphe* of the laws οἱ νενομοθετημένοι.[56] The use of νενομοθετημένοι makes it certain that the laws mentioned here are those that have gone through a procedure of

56. Notice that he is honoured as the *anagrapheus ton nomon*, he is not a *nomothetes*, *pace* Bayliss (2011: 103 'one of the *nomothetai*'). At p. 104 Bayliss rightly calls Euchares the 'secretary of the *nomothetai*'. These however are not the same thing.

nomothesia involving *nomothetai*.[57] Euchares took care of their *anagraphe* ὅπως ἂν ἐκτεθῶσι πάντες [...] σκοπεῖν τῶι βουλομένωι καὶ μηδὲ εἷς ἀγνοεῖν τοὺς τῆς πόλεως νόμους. Ferguson interpreted the role of these *nomothetai*, according to what was in his day the current explanation of the events of the restoration of democracy at the end of the fifth century, as that of performing a full revision of the 'code of laws' of Athens after the decade of Demetrius of Phalerum, going through every single old law and deciding whether it should be confirmed or not.[58] Yet Edward Harris and I have shown that the *anagrapheis* at the end of the fifth century were given the task of going through the laws of Solon and presenting them to the Assembly for approval. The *nomothetai* at the time did not vote on old laws, nor did they ratify law proposals. They were rather concerned with presenting new bills to the Assembly for the purpose of restoring and reforming the constitutional arrangement of the Athenian state.[59] Following their action, and one of their reforms, in the fourth century a board of *nomothetai* was then in charge of voting on new laws and enacting them.[60] It is far from clear, and would be in fact unprecedented, if in the last decade of the fourth century these laws νενομοθετημένοι were old laws that were confirmed by the *nomothetai*.

In fact we have positive evidence that these *nomothetai* dealt with new laws: Diog. Laert. 5.38, Athen. 13.610e-f and Poll. 9.42 all refer to a measure proposed by a Sophocles, which must be dated to 307/6, that imposed that all philosophical schools in Athens should be approved by the Athenian Council and Assembly, and otherwise be closed down.[61] Such a measure can safely be described as a law. Following the enactment of this measure Theophrastus had to leave Athens. We will come back to the constitutional aspects of the enactment of this measure, but right now it is important to point out that its approval involved the *nomothetai*. A fragment of Alexis' *Hippeus* (fr. 99), which was probably spoken by an old man or a *paedagogus*, reads: 'May the gods grant many blessings to Demetrius / and the *nomothetai*, for they have thrown the men / who transmit to our youth the power of discourse, as they call it, / out of Attica to the crows' (tr. O'Sullivan). In the previous line the fragment even refers to the Academy. This fragment makes clear that the *nomothetai* were involved with Sophocles' enactment, and therefore

57. Cf. *I Orop* 297 = *IG* II^3 347 from 332/1 where Phanodemus is honoured for his legislative activity and the same verb *nomothetein* is used to indicate that the law went through *nomothesia* (in this case pre-322 *nomothesia*). Cf. Lambert (2004: 106 and 109 n. 84).

58. Ferguson (1911: 103-7) brings as further evidence of a full revision of the 'code' a passage of Polybius (12.13.9-12) that reports Democharesʼ crtiticism of Demetrius of Phalerum. The passage ends in Ferguson's translation with the words 'And a fine set of laws this blondined Solon has drawn up. Let them be revised at once'. This would indeed be evidence of a revision of the 'code' of laws, yet these last two sentences are nowhere to be found in Polybius (cf. Gagarin 2000: 351 n. 11). Habicht (1997: 70, 73-4) seems to accept Ferguson' interpretation and states that 'the entire code of laws was published', but does not discuss the matter any further. Marasco (1984: 43-4) and Hedrick (2000a and 2000b) also explicitly endorse this interpretation. Gagarin (2000: 364) rejects instead Ferguson's theory and considers more likely that these *nomothetai* proposed new laws, but makes this statement only in passing, without arguing the point.

59. Canevaro – Harris (2012: 110-6).

60. Cf. Canevaro (2013).

61. For the date of the measure cf. Arnott (1996: 858-9). Cf. Haake (2007: 16-43 and 2008) for its provisions and rationale.

their task was not that of going through, revising and confirming the old laws; they rather dealt with new bills, whether proposing them or voting on them is still unclear.

Once we have established that in all likelihood the *nomothetai* dealt with new laws, we are left with two alternatives: they could either be a body like the pre-322 board of *nomothetai*, in charge of voting on and ratifying new laws, as many scholars have in recent years assumed,[62] or they could resemble the *nomothetai* of the late fifth century, in charge of proposing new laws and reforming the constitution after a period in which democracy was overthrown. In the first case, they would be an ordinary board, and their reappearance would be evidence that the pre-322 *nomothesia* was revived in 307/6. In the second case however they would be a special magistracy with the task of creating new laws (or even redrafting old ones) with the purpose of restoring the democracy. It is likely that the Assembly, like at the end of the fifth century, would have had the final word on their proposals.

To suggest a tentative answer to this question we need to move back to *IG* II^2 487. If we were to assimilate the *nomothesia* there discussed with the procedures pre-322, we would find significant difficulties. The inscription mentions *nomoi* three times in relation to the work of *anagraphe* of Euchares, which makes it clear that his job was concerned exclusively with laws. He was an *anagrapheus ton nomon*.[63] The expression σκοπεῖν τῶι βουλομένωι καὶ μηδὲ εἷς ἀγνοεῖν τοὺς τῆς πόλεως νόμους, if read in the light of pre-322 evidence, should refer to temporary records. Hedrick has shown that the expression σκοπεῖν τῶι βουλομένωι is found eight times before this date and it always refers to impermanent media, such as wooden tablets. It is used this way by Dem. 24.18 about bills to be presented to the *nomothetai* for approval: these must be set out by the proposer in front of the monument of the Eponymous Heroes 'for anyone who wishes so to see them'.[64] If this is the case also for the task of Euchares as *anagrapheus*, we can already find here a significant difference with pre-322 *nomothesia*: in the procedure described in Dem. 20 and 24 it was the task of the proposer of a new law to give it publicity, and there was no official in charge of preparing the temporary record to be set out in front of the monument of the Eponymous Heroes (Dem. 24.25; 20.94). The existence now of such an official would suggest that proposing new laws is the task of state officials, with their own special *anagrapheus*. If on the other hand we interpret the *anagraphe ton nomon* as the task of setting up the inscriptions reporting the new laws, then the difference with pre-322 practice is even more striking: laws were previously inscribed by the *grammateus tes boules* (by the year 363/2 this official was no longer a member of the *boule*, and stood in office for a whole year; the term *grammateus kata prytaneian* from this date is interchangeable

62. See e.g. Ferguson (1911: 104-7) endorsed by Hedrick (2000a); Dow – Travis (1943: Green (1990: 49); Arnott (1996: 263); Millet (2007: 25); Haake (2008: 96).
63. *Pace* Paschidis (2008: 97), who calls Euchares '*anagrapheus* of the council'. At n. 5 he mentions Rhodes (1972: 138 n. 7) in support of considering Euchares '*anagrapheus* of the council', yet Rhodes makes the opposite point, that the *anagrapheus ton nomon* at *IG* II^2 487 is not to be confused with homonymous secretaries of the Council.
64. Hedrick (2000a and 2000b: 331-3).

with *grammateus tes boules*).[65] He was the same official in charge of inscribing decrees, and there was no special official in charge of inscribing new laws. To give only one example, the law of Eucrates, passed exactly thirty years before our inscription, entrusts the *grammateus tes boules* with setting up two inscriptions, one at the entrance of the Areopagus and one at the entrance of the Bouleuterion (*Agora* 16.73 ll. 23-6). The reason for which there was no special official in charge of inscribing laws is probably that not enough laws were passed every year to justify his existence: Dem. 24.142, in a passage in which he is clearly exaggerating for the purpose of showing that politicians legislate too often, states that Athenian *rhetores* legislate 'almost every month' (πρῶτον μὲν ὅσοι μῆνες μικροῦ δέουσι νομοθετεῖν). In this speech Demosthenes argues that Timocrates enacted a law to protect his friends, and carries on arguing that politicians are debasing *nomothesia* by using it incorrectly and far too often. In the previous paragraph Demosthenes gives as an example to be followed that of the Locrians, who passed only one law in two hundred years. It is clear that the number of laws per year given by Demosthenes, almost one per month, is inflated, but even if we were to accept Demosthenes' statement, we would be left with about 10-12 laws a year. Hardly enough to justify an official expressly concerned with inscribing them. This is why with pre-322 *nomothesia* the *grammateus tes boules* (or *kata prytaneian*) was in charge of inscribing both decrees and laws.

After the restoration by Demetrius Poliorcetes the office of *anagrapheus*, in charge of inscribing the decrees, if it existed under Demetrius of Phalerum, ceases to exist, and the *grammateus kata prytaneian* is restored. *IG* II^2 487 itself is inscribed by this official. The existence of an additional *anagrapheus ton nomon* (or a board of them), whose task is preparing temporary records of proposals for new laws to be set out in front of the Eponymous Heroes, or that of inscribing the laws once they had been ratified, marks a significant difference with pre-322 *nomothesia*. First of all, it points to a very high volume of legislation at least between 307/6 and 304/3, much higher than with the previous legislative procedures, perhaps comparable with that of the restoration of democracy at the end of the fifth century. This makes sense because at this point *nomothetai* were dealing with new laws for the purpose of restoring democracy after Demetrius' regime. Second, it suggests that what we are dealing with at this point is not legislation initiated by average citizens, but rather state-directed legislation, coming out steadily from the systematic work of a board and steadily posted and inscribed by a dedicated *anagrapheus* as is enacted. The kind of procedure this analysis of *IG* II^2 487 suggests is therefore a special procedure of legislation, initiated for the purpose of enacting new laws that would undo or at least reform in democratic sense Demetrius of Phalerum's legislative action. It is not an ordinary and rather cumbersome procedure for legislation such as the pre-322 one. Such a procedure would have hampered, rather than facilitated, the enactment of new laws. It is safer therefore to believe that the *nomothetai* were at this point a board of magistrates in charge of implementing new laws for the purpose of democratic restoration, much like the *nomothetai* of the late fifth-century, and not a body whose job was to listen to proposals

65. Cf. Rhodes (1972: 134-41; 1981: 599-605) and Henry (2002: 91-4).

for new laws and approve or reject them.[66]

The law of Sophocles about the philosophical schools, provides some further confirmation that the *nomothetai* were not in 307 the same institution as in the pre-322 democracy, and to find out who enacted the new laws proposed by this special board of *nomothetai*. According to Athenaeus (13.610e-f) Sophocles drove out the philosophers from Attica through a *psephisma*, which was then indicted by Philon, the pupil of Aristoteles. This would mean that the measure, according to Athenaeus a decree, was indicted through a *graphe paranomon*. At the trial Democharas, the nephew of Demosthenes, spoke in defence of the decree. Athenaeus' words are striking, because we would expect a measure such as Sophocles' to be enacted as a *nomos*, and not as a *psephisma*. In fact Pollux (9.42), when discussing the same measure, calls it a *nomos*. Diogenes Laertius (5.38) provides the fullest account, and states that 'Sophocles the son of Amphiclides proposed a law that no philosopher should preside over a school except by permission of the Council and the Assembly, under penalty of death'. Diogenes seems to side with Pollux, and Athenaeus' *psephisma* to be simply a mistake. Yet Diogenes Laertius then continues: 'The next year, however, the philosophers returned, as Philo had prosecuted Sophocles for making an illegal proposal. Whereupon the Athenians repealed the law, fined Sophocles five talents, and voted the recall of the philosophers.' The so-called 'law' is repealed through a *graphe paranomon*, and not through a *graphe nomon me epitedeion theinai* as *nomoi* should be. It seems to be unclear in the sources whether this 'law' of Sophocles was in fact a *nomos* or *psephisma*, and the inconsistencies have been sometimes attributed to mistakes in the antiquarian tradition.[67] This is certainly possible, but we should countenance the possibility that the confusions may be due to the nature of the enactment itself. Similar confusions, as Hansen has clearly shown,[68] are very common in laws of the few years following the democratic restoration of 403, when a new legislative procedure that gave a board of *nomothetai* the task of voting on new laws had not yet been created, but *nomothetai* were nevertheless in charge of proposing the laws, which were then approved by the Assembly. Enactments of these years are often called intermittently in our sources *nomoi* and *psephismata*. We know from the

66. Errington (in Lambert 2004: 109 n. 84) suggests that a honorary decree (*IG* II^2 433 + *SEG* 16.57) where the honorands are usually restored as *thesmothetai* may instead be concerned with *nomothetai*. He rightly points out that *thesmothetai* never seem to be honoured as a board. Lambert on the other hand observes that a honour for the *nomothetai* as the pre-322 board in charge of approving new laws is also unparalleled, and would be unexpected, as the *nomothetai* were strictly speaking a constitutionally superior bode whose only job was to ratify or reject laws proposed by others. He allows however for the possibility that these may be *nomothetai* in the sense that they proposed laws, as Phanodemus *nenomotheteken* for the Penteteric Amphiaraia (*IG* VII 4253) in 332/1. We would still however have to explain why more than one proposer is honoured in the same decree. On the other hand, if these are the *nomothetai* created in 307, then a collective honorary decree for the board as a whole would make sense, since these would be the *nomothetai* appointed for making proposals for new laws and submitting them to the Assembly for approval. On the other hand, the inscription is too fragmentary, and the dating too dubious, to afford us any safe conclusion on this matter.

67. Cf. e.g. O'Sullivan (2009: 214 n. 57) and Korhonen (1997: 78). Haake (2008: 95 and 101; cf. also 2007: 18 n. 26) also notices the inconsistencies in the evidence, and claims that the problem cannot be solved given the state of our sources.

68. Hansen (1978: 319-20).

fragment of Alexis that *nomothetai* were involved in the enactment of the 'law' of Sophocles. If they were involved as the body in charge of ratifying the law, as is often assumed, that the law would have contained the formula *dedochthai tois nomothetais* or something similar, and any confusion would be difficult to explain. If on the other hand the *nomothetai* were in charge of proposing new laws, which were later ratified by the Assembly, as in the late fifth century, and Sophocles was one of them, then it is clear why the law could be attacked through a *graphe paranomon* and mistaken for a *psephisma*.[69]

There is in fact some further evidence that laws (general enactments valid forever) were ratified by the Assembly in these years. When in 303 a court fined Cleomedon, a supporter of Demetrius, Demetrius sent a letter and had the fine cancelled. The Athenians then in the Assembly voted that no citizen should bring a letter from Demetrius, but Stratocles eventually passed a further measure which ordered that whatever Demetrius commands should be just before gods and men (Plut. *Dem.* 24.3-5). Stratocles' measure is quoted by Plutarch and has the formula *dedochthai toi demoi*, which characterizes this as a *psephisma*. Yet strictly speaking this would be a rule of general application (whatever he orders, to whomever, about whatever topic) meant to be valid for a long time, which in fact gives Demetrius full sovereignty over the Athenian Assembly, and forces the Assembly to ratify whatever he asks. The sort of law that should be ratified by the *nomothetai*, if the *nomothetai* were in charge of ratifying laws.[70] Another interesting enactment is that passed by the Athenians after the battle of Ipsos: they resolved in the Assembly that no king should be allowed in Athens (Plut. *Demetr.* 30.3). It is unclear whether this is a measure meant to be valid only in the context after the battle, or was supposed to be a general rule valid for the future, as most scholars hold.[71] If this second option is the case, we have here another example of 'law' that should have been enacted by the *nomothetai* and was instead passed in the Assembly. Another piece of evidence that could suggest that the *nomothetai* were at no point after the restoration of 307 given the task of ratifying new laws is *IG* II^2 463, a decree of the Assembly usually dated to 307/6 and attributed to Democharesof Leuconoe that enacts a four-years long program of work on the walls of Athens and Peiraeus, lists specifications and assigns the work to contractors.[72] Such an enactment should not strictly speaking be a *nomos*, and yet a similar one passed in 337, *IG* II^2 244, was passed as a law. It is difficult to tell why one was passed as a law and the other was not, and the reason may be that the older one contained financial arrangements that required approval by the *nomothetai*. On the other hand it is very unclear whether the reason for which *IG* II^2 244 was enacted as a law is that it

69. Arnott (1996: 263) mentions the possibility that Sophocles may have been one of the *nomothetai*, and notes that Meinecke and Kock both thought that Alexis was referring (loosely) to Sophocles. Habicht (1997: 73) writes that the law was approved by the Assembly (which is probably correct) but does not discuss the problem.

70. About this episode cf. e.g. Habicht (1997: 78-9) and Paschidis (2008: 95-8), who reads this as an episode in a wider movement of resistance to Demetrius which developed in the first half of 303.

71. Cf. Ferguson (1911: 124-6); Habicht (1997: 81); Thonemann (2005: 64).

72. For the date see e.g. Maier (1959: 56-7), Merker (1986: 47-8); Dreyer (1999: 91, 124); Conwell (2008: 163-4).

contained financial arrangements, and moreover *IG* II² 463 is fragmentary, and there is no guarantee that it lacked similar provisions. [73] To sum up, the scanty evidence from these few 'laws' enacted as *psephismata* in the years following Demetrius Poliorcetes' restoration may not prove conclusively that laws were at this point enacted by the Assembly, and therefore the *nomothetai* did not ratify but rather proposed laws. Yet coupled with the evidence from *IG* II² 487 and the tradition about the law of Sophocles, they strongly suggest that this was the case.

A further element in the fragment of Alexis needs at least some tentative explanation: we have seen that this fragment attributes the initiative of the law of Sophocles against philosophical schools to Demetrius and the *nomothetai*. This, apart from confirming once again that their role was proactive rather than passive, suggests some kind of special link between the *nomothetai* and Demetrius, as if they acted on his orders, or their institution was somehow linked with his will.[74] Alexis may here be simply trying to tease Demetrius for meddling in the legislation of the city, and the *nomothetai* for being servile to his will. Yet we have seen above that a Macedonian king, Alexander, had in 334 imposed on the Chians the election of *nomographoi* to write and correct the laws towards a democratic constitution (*Chios* 32 = *RO* 84). Even more striking is the similarity of our *nomothetai*, according to the interpretation of their role I have offered, with the *nomographoi* imposed by Antigonus between 306 and 302 on the Teans and Lebedans (*Teos* 59): in the very same years of the action of the *nomothetai* in Athens Demetrius' father imposed that Teos and Lebedos should elect three *nomographoi* each, over forty years old, incorruptible. These men should swear an oath and then write (that is propose) the laws that they consider most expedient and fair to both cities for the new synoecized city within six months from their election. They should submit their proposals for laws to the *demos*, therefore to the Assembly, for ratification. If a citizen wants to propose a law, he must submit it to the *nomographoi*, who will then submit it to the Assembly, together with those of their own making. The laws about which the *nomographoi* disagree must be sent to Antigonus himself for review and approval. The laws that are approved by the Assembly should also be sent to the king, specifying which ones have been proposed by the *nomographoi* and which ones by other citizens, so that the king may punish the *nomographoi* if they have proposed bad laws.[75] The similarity of this procedure with what we have reconstructed of the role of the *nomothetai* in Athens between 307/6 and 301 is striking. The *nomographoi* in Teos and Lebedos (and presumably in Chios) proposed new laws, like our *nomothetai*, to effect the required change in the constitution, and then

73. Humphreys (2004: 122 n. 40) notes this, but does not discuss the circumstances. For discussions of this law see Maier (1959: 48-67); Conwell (2008: 161-5)

74. Haake (2008: 96) believes that Demetrius was mentioned only because without him freeing the city the democratic procedure that led to the approval of Sophocles' law would not have been possible. This explanation seems tenuous: the mention of the *nomothetai* as authors of the law is precise in institutional terms, and the connection of Demetrius with their action is explicitly stressed in verses 2 and 3 of the fragment. Demetrius is directly connected to the law of Sophocles as one of those who wanted it, not indirectly as the man who restored democracy and made discussion of such a law possible.

75. Cf. Bencivenni (2003: 169-202).

submitted their proposals to the Assembly for ratification. Theirs was not an ordinary magistracy, but rather a special one created to effect a major constitutional change imposed by a king. It has been argued that another board with similar functions was also imposed by Ptolemy on Cyrene (*SEG* 9.1), yet this time the officials are not called *nomographoi*, but *nomothetai* like in Athens.[76] We cannot exclude the possibility that something similar happened in Athens when Demetrius Poliorcetes 'freed' the city.[77] He may have restored democracy not simply by expelling Demetrius of Phalerum from Athens and giving back the Athenians their sovereignty. There is the possibility, and even the likelihood given the parallel with his father's arrangements in Teos, that he actively restored the democracy by imposing the election of *nomothetai* that would write and correct the laws to perform this constitutional transition.[78]

To sum up, the *nomothetai* of these years, their last appearance in the record, were probably not the same as the pre-322 ones: they were not an ordinary magistracy, and they are not evidence that the restored democracy reinstated an ordinary separate procedure for enacting *nomoi*. *Nomoi* kept being enacted by the Assembly like *psephismata*. Accordingly it is safe to say that although the *graphe paranomon* was reintroduced by the restored democracy, the *graphe nomon me epitedeion theinai* was not. *Nomoi* and *psephismata* were enacted in the same fashion, and therefore did not require separate procedures for the lawcourts to rescind them. A law like the law of Sophocles could be repealed through a *graphe paranomon*. The *nomothetai* after 307, one of whom must have been Sophocles, were on the other hand a board of officials created to draft and submit to the Assembly for approval new laws for the purpose of restoring and when necessary

76. Cf. Laronde (1987: 85-128, 249-56).

77. Paschidis (2008: 97-98) lists *IG* II^2 487 with the honours to Euchares for publishing the laws of the *nomothetai* σκοπεῖν τῶι βουλομένωι καὶ μηδὲ εἷς ἀγνοεῖν τοὺς τῆς πόλεως νόμους as one of the measures passed by the Athenians in early 303 in a climate of displeasure with Demetrius. He claims that the use of the expression σκοπεῖν τῶι βουλομένωι is a clear democratic gesture which implies a polemic against Demetrius' authoritarian behaviour. Yet Alexis' fragment is evidence that the *nomothetai*'s action was not viewed in itself as in opposition to Demetrius' will, but rather as consistent with it. Moreover Paschidis overplays the reading of σκοπεῖν τῶι βουλομένωι, which would be in his interpretation an archaic democratic expression from the fifth century used against Demetrius Poliorcetes and his partisans. Its use after 307 can certainly be read as an implicit polemic against Demetrius of Phalerum's regime (cf. Hedrick 2000a and 2000b: 331-3), yet it must be noted that the expression had a particular connection to *nomothesia*: it was used in the fourth-century law on *nomothesia* (cf. Dem. 24.18) about the advance publicity of new proposals in front of the monument of the Eponymous Heroes. If my reconstruction of the role of the *nomothetai* after 307 is correct, the expression is also consistent with the new *nomothesia* procedure after 307: the proposals of the *nomothetai* had to be ratified by the Assembly, and therefore advance publicity was necessary σκοπεῖν τῶι βουλομένωι. It is likely that such a provision was included in the new regulations of *nomothesia*, and therefore the *anagrapheus ton nomon* was praised for performing his role properly, rather than for giving to his action a particularly democratic slant, against Demetrius Poliorcetes and his partisans.

78. This would not be the only case of interference by Demetrius in the selection of Athenian magistrates in these years: an unpublished inscription reports that Adeimantus of Lampsakos, a *philos* of king Demetrius, was appointed by the king Athenian στρατηγὸς ἐπὶ τὴν χώραν two years in a row. Petrakos has published this sentence of the inscription and dated the two generalships to 306/5 and 305/4 (Petrakos 1999: 32-33 = *SEG* 49.4; cf. however Habicht 2006: 427 n. 38 who dates them instead to 294/3 and 293/2). Cf. Paschidis (2008: 89 n. 2 and 112-13 n. 4), and Wallace (2013 forthcoming) for a discussion of these generalships and more generally of the career of Adeimantus.

reform the constitution and the laws of the city, after ten years of often undemocratic legislation by Demetrius of Phalerum. Their creation is consistent with Athenian tradition, and their role resembles that of the *nomothetai* of the late fifth century, yet it is possible and even likely that they were created following an express order by Demetrius Poliorcetes after his arrival in Athens, much like the *nomographoi* were created in Chios and in Teos/Lebedos following orders from Alexander and Antigonus.

Conclusions and the third century

It is possible to reconstruct the legislative procedures of early-Hellenistic Athens because there is some literary and epigraphical evidence for the twenty years following the end of the Lamian war. Regretfully nothing like this is possible for the third century: the literary sources do not provide evidence about legislative activity detailed enough to follow the evolution of the relevant procedures. The inscriptional record can afford us only very weak hypotheses based on the *argumentum ex silentio* that *nomothetai* are never again attested in Athens before the imperial age.[79] As I noted above, there is to my knowledge no third-century Athenian decree preserved on stone that in the fourth century would have been enacted by the *nomothetai*. On the other hand, it is still striking that no *nomothetai* are ever mentioned in any decree, either for the purpose of being honoured, nor of ratifying financial arrangements, or for any other reason. They completely disappear from the record, with one exception: *SEG* 37.89 (= Themelis 2002), a partially published inscription from the Brauron sanctuary prescribing an examination of some structures of the sanctuary to determine which ones need repairing. This measure is enacted by the *nomothetai*, in a fashion that resembles fourth-century laws, yet the first scholar to publish a photo of the inscription, Papadimitriou, dated the stone to the third century and Tracy has dated its writing to 200 BCE or even a bit later.[80] In fact, the mention of officials such as the Treasurers of the other Gods, absorbed by those of Athena in the 340's,[81] and the instructions given to the *apodektai* (never attested after 323/2) and to the *poletai* (never attested after 307/6),[82] together with 'connections to the inventories of Artemis Brauronia on the Athenian Akropolis and formal epigraphic evidence' make it virtually certain that the contents of this inscription predate the Lamian war.[83] If the writing on the stone must in fact be dated to the third century, then we

79. Cf. e.g. *IG* II² 1010, 1106, 1010, 1122, 1190, 3277, *Agora* 16.333.
80. Papadimitriou (*Ergon* 1961: 24-6) and Lambert (2007: 80 n. 38) for Tracy's opinion.
81. The exact date of the merger of the treasures of Athena and of the Other Gods, with the abolition of the Treasurers of the Other Gods, has been the subject of much debate: Woodward (1940: 404-6), Linders (1975: 59-61, 101 n. 149) and D. Harris (1991: 213 n. 165) date it to 346/5; Kirchner in the commentary to *IG* II² 1455 and Ferguson (1932: 117 n. 2) date it to 342/1. Papazarkadas (2011: 30) suggests 344/3 or early 343/2.
82. The last attestation of the *apodektai* is *IG* II² 365; of the *poletai IG* II² 463. We find both officials in a small (and very fragmentary) fragment of an inscription, *SEG* 25.187, which Meritt (*Hesperia* 37, 1968: 286 no. 23) dated to the early second century BCE. Yet the fragment, as P. J. Rhodes confirmed to me *per litteras*, has careless lettering and the dating is very dubious.
83. The case for a fourth-century dating is made extensively in a forthcoming paper by Elizabeth Bose. A summary of her arguments can be found as Bose (2009).

are here, as suggested by Rhodes, before a case of reinscription of a fourth-century law in the third century.[84]

Nomothetai never appear in Hellenistic inscriptions from the third century, and the *argumentum ex silentio*, however weak, suggests that no officials of this name were in charge of ratifying laws like before 322. My reconstruction of the changes in legislation in the last twenty years of the fourth century, if reliable, should strengthen this hypothesis: institutional change and development in Hellenistic Athens was tightly linked to the institutional memory of the Athenians. When they went back to democracy, or reformed their constitution in a democratic manner, their model of democratic constitution was not necessarily the democracy of the fourth century before the Lamian war. They returned, with some changes and some reforms, to the institutions of the last time they believed, or had come to believe, that they had been democratically governed. Their records of constitutional changes were imperfect, rudimentary and debatable; there was therefore no 'proper' democratic constitution, and often what had been considered democratic at a certain point came to be considered later as an oligarchic interlude.[85]

Accordingly, the Athenians did not in an antiquarian spirit reintroduce all the institutions of the classical democracy, and a particular institution would cease to be a realistic option as soon as it disappeared from or faded in the institutional memory of living and active Athenians. I have argued that *nomothesia*, as a complex procedure of legislation which took the responsibility of enacting *nomoi* from the Assembly and gave it to a board of *nomothetai*, and which involved a special *graphe nomon me epitedeion theinai* for *nomoi*, was never revived in the twenty (and therefore probably thirty) years following the defeat in the Lamian war. If this is the case, then it is likely that as a working procedure it had by then disappeared from the options open to an Athenian politician or reformer. Statesmen as old as Democharesmight have remembered from their youth when laws were enacted differently from decrees, yet for most of their life and political career, spanning through several regimes that defined themselves as oligarchic or democratic, laws had been enacted by the Assembly. Fourth-century *nomothesia* was probably still an option in 307/6, and yet we have seen that the men who restored democracy chose not to return to it. It certainly was not an option in 287, thirty-five years after its last appearance. By then, for a separate procedure for enacting *nomoi* to be introduced, the Athenians would have needed reasons and considerations leading them almost to invent it anew. The sources provide no conclusive evidence indicating that *nomothesia* as a separate procedure for enacting *nomoi* did not exist in the third century, yet its revival is highly unlikely.

In conclusion given the largely positive account of fourth century *nomothesia* with which I have opened this article, a question remains to be answered: whether the twilight of *nomothesia* should be viewed as a step away from democracy and the reflection of a decline in democratic values.

84. Cf. Lambert (2007: 80 n. 38) for Rhodes' opinion. He has confirmed this opinion to me *per litteras*.

85. See e.g. Luraghi (2010) about this phenomenon.

Nomothesia as it was practised before the Lamian war was a remarkable achievement, which aimed to maintain a certain degree of stability in the laws by making them difficult to alter and to achieve consistency in the 'code' of laws. Finally, it provided a process of judicial review for the enactments, which strengthened both aspects. In doing this, it fulfilled to an impressive extent the requirements for achieving the 'rule of law' as the term is understood by modern theorists. To give one example, Raz argues that 'rule of law', when applied to lawgiving, involves 1) proactive rather than retroactive legislation, 2) laws that are stable, 3) clear procedures and rules for making laws, 4) courts having the power of 'judicial review' over the way in which the other principles are implemented.[86] With the twilight of *nomothesia* the Athenian state certainly went a few steps back in this respect, and legislation became more open abuse, the laws less consistent, and the constitution less secure. On the other hand, this apparent regression should be considered in fact an evolution in tune with the new contexts and times. First of all, to conserve a procedure like *nomothesia*, a state needs remarkable stability, which was impossible in the late fourth and third century, when the Athenian state was heavily dependent on what happened in the international scene. *Nomothesia* could preserve the constitution and the laws from internal disruption, but in 322 proved ineffective in preserving it from external shocks. The superior agility of the later legislative procedures allowed to the city to adapt more promptly to the requests of the new masters, and to revert as promptly to popular sovereignty and full suffrage when it was possible.

Second, there is evidence that despite the lack of a separate procedure for passing *nomoi*, the Athenians still preserved an understanding of the differences between the *nomoi* and *psephismata*. Honorary decrees for magistrates praise them for acting in accordance with the laws and with the decrees of the Council and the Assembly (e.g. *IG* II^2 404; 674; 776; 1006; 1028), politicians are still praised for passing expedient laws (*Agora* 16.261.1), and the distinction between *nomoi* and *psephismata* seems to extend to the enactments of private associations, as its use in the language of religious associations shows.[87] The division and hierarchy of laws and decrees must have taken roots in the institutional ideology of the Athenians well beyond its actual implementation, and although it is hard to tell how this may have played out in practice, it is possible that the Athenians preserved an understanding of what a law should be about, and how widely it should apply, even when they dealt with it in the Assembly as with any decree, and acted accordingly.

Third, and most important, after regimes with limited political participation, the solitary legislative action of a man like Demetrius of Phalerum who put the Assembly under control of the *nomophylakes*, possibly even the royal imposition by the Polorcetes of *nomothetai* in charge of writing and correcting the laws, allegedly for the very purpose of restoring democracy, it is likely that any form of legislation which somehow limited the sovereignty of the Assembly would have been felt as intolerable by the

86. Raz (1977).
87. Arnaoutoglou (2003: 128-9)

Athenians. The very word *nomothetai* may have become suspect after its instrumental use under Demetrius of Phalerum and the Poliorcetes. In a way, the choice in the years 307-301 and in later democratic restorations not to recreate a board of *nomothetai* in charge of ratifying the laws was a choice for a more radically democratic constitutional form, against external influence and the previous limitation to the sovereignty of the *demos*.

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RASSEGNA CRITICA

Martin Dreher

Fabian Schulz, *Die homerischen Räte und die spartanische Gerusie*, (Wellem Verlag) Düsseldorf 2011 (Syssitia. Studien zur Geschichte und Kultur Spartas und zur Sparta-Rezeption, hg. von E. Baltrusch und A. Luther Band 1), 311 S., ISBN 978-3-941820-06-7

Schulz legt mit dieser Monographie die überarbeitete Fassung seiner althistorischen Dissertation vor, mit der er an der Freien Universität Berlin promoviert wurde.

Die Arbeit ist übersichtlich in drei Kapitel gegliedert: Erstens „Die homerischen Räte", zweitens „Die spartanische Gerusie", drittens „Das Verhältnis der spartanischen Gerusie zu den homerischen Räten".

Die erfreulich knappe Einleitung in das Gesamtwerk stuft die Herrschaftsausübung der Ältestenräte, die hier untersucht werden sollen, als Gerontokratie ein. Der Ältestenrat sei „vor Alexander dem Großen weder generell (wie das Königtum und die Tyrannis) noch für einzelne Stadtstaaten (wie die athenische Boule und die Volksversammlung) untersucht worden" (S. 2). Die Untersuchung zeigt allerdings sehr bald, daß der homerische Rat nur mit Einschränkungen als Ältestenrat bezeichnet werden kann. Insofern scheint die Idee der hier vorgenommenen Zusammenstellung ihren Ausgang von der spartanischen Gerusie genommen zu haben.

Der Autor bekennt sich, und glücklicherweise benötigt er angesichts neuerer Forschungsentwicklung dazu keine Rechtfertigung mehr, zur Institutionengeschichte, möchte diese jedoch in den größeren Prozeß der Polisbildung einfügen. Die Untersuchung will, plausiblerweise, nicht über das Ende der klassischen Epoche hinausgehen. Allerdings reicht sie an mehreren Stellen des Sparta-Kapitels dann doch in die hellenistische Zeit hinein, ohne daß dies begründet würde: bei der Vorstellung der namentlich bekannten Mitgliedern der Gerusie (128f.), beim Gesetzgebungsverfahren (196ff.), bei den Entscheidungen, die die Gerusie vor der Volksversammlung trifft (203ff.).

Die homerischen Räte und die spartanische Gerusie werden nach demselben Grundschema untersucht. Die übergeordneten Gliederungspunkte lauten: Terminologie, Aufnahme, Mitgliedschaft, Verfahren, Kompetenzen, Privilegien, Verhältnis zu anderen Institutionen, Ursprung und Entwicklung. Dabei will Schulz nicht nur die Ähnlichkeiten, sondern auch die Unterschiede herausarbeiten. Neben den bewährten Methoden der klassischen Altertumswissenschaft beansprucht er auch „das Instrumentarium der Soziologie ..., um die Entscheidungs- und Legitimationsverfahren zu beschreiben" – wovon allerdings kaum etwas zu bemerken ist, sowie die Hilfe der historischen Demografie, um die Exklusivität der Gerusie zu bemessen.

Das erste Kapitel über die homerischen Räte beginnt etwas brüsk mit der

Unterscheidung von verschiedenen „Typen von Ratsszenen, die sich nach Anlass, Ziel, Rahmen und Tagungsort unterscheiden: regelmäßig wird im Anschluss an das Früh- oder Nachtmahl diskutiert, zu dem Agamemnon die Ratsmitglieder zu sich einlädt“ (7). Sowohl diese Details als auch die folgende Präsentation der Termini, die für die Räte und ihre Mitglieder verwendet werden, setzen eigentlich voraus, was erst in Abschnitt 1.4 mitgeteilt wird, von welchen Räten und Ratsmitgliedern nämlich die Rede sein soll. Dies sind folgende: a) Die „Ratsszenen der *Achaier*“ (also des zum Zug gegen Troia versammelten griechischen Heeres, das in Homers Ilias beschrieben wird), bei denen mit früherer Literatur ein kleiner und ein großer Rat unterschieden werden. b) „Von den *Trojanern* werden“ (wiederum in Homers Ilias) „weniger Ratsszenen erzählt“ (18). Zu unterscheiden seien hier Priamos' Demogeronten und Hektors Kriegsrat. c) „In der Odyssee nehmen die Ratsszenen der *Phäaken* den größten Raum ein“ (23). d) „Der Götterrat ... ist sowohl in der Ilias als auch in der Odyssee präsent“ (26). Im Resümee hält Schulz fest, daß die Räte um eine besondere Person gruppiert seien, die Teil des Gremiums sei: Alkinoos bei den Phäaken, Priamos bei den Troianern, Agamemnon im Heer der Griechen. „Es gibt den Rat mit Mitgliedern einer Stadt (Alkinoos, Priamos u.a.) und den Rat mit Mitgliedern mehrerer Städte (Agamemnon, Hektor). Der erste Rat ist mit dem Frieden, der zweite Rat mit dem Krieg verbunden; bei den Trojanern gibt es beide Räte, da im Gebiet der Stadt gekämpft wird“ (27). Der Götterrat wird in beiden Aussagen nicht genannt, er spielt auch in der übrigen Untersuchung eine geringfügige Rolle.

Da also diese Räte, die Schulz hier zusammenstellt, einen jeweils sehr unterschiedlichen Charakter aufweisen, wäre eine Begründung dafür zu erwarten, worin ihre Gemeinsamkeit besteht. Erstaunlicherweise aber sucht man eine solche Rechtfertigung, die verschiedenen Ratsszenen miteinander zu verbinden, vergeblich. Im dem kurzen terminologischen Abschnitt „Institution“ (12f.) wird nur mitgeteilt, daß der Terminus *boule* „Wille, Entscheidung, Plan, Meinung, Rat und selten Ratssitzung“ bedeute (12); später erfährt man, daß er sogar auch die Volksversammlung bezeichnen könne (37). Aber eine grundlegende Definition, was einen Rat im Sinn einer Institution ausmacht, wird nicht gegeben. Zwar wird in den einzelnen Abschnitten deutlich, von welchem Rat jeweils die Rede ist, aber spätestens bei dem abschließenden Vergleich mit Sparta, dem Ziel der Arbeit, fließen die einzelnen Aspekte zu einem einheitlichen Gebilde, *dem* homerischen Rat, zusammen.[1] Nach Ansicht des Rezensenten ist *der* homerische Rat jedoch eine Fiktion, die darauf beruht, daß Elemente aus unterschiedlichen Zusammenhängen unzulässigerweise zusammengefügt werden und suggeriert wird, daß den beiden Epen eine zeitgenössische, in sich geschlossene Vorstellung von einem solchen Rat zugrundeliegt. Hingegen ist es mehr als fraglich, ob alle Szenen, in denen mehr als zwei Personen in irgendeiner Weise beraten oder diskutieren, als Ratsszene im hier geforderten Sinn zu verstehen sind (wie es die Studie implizit nahelegt); und ebenso fraglich ist es, das vor Troia versammelte Heer der Griechen (ganz zu schweigen vom Götterrat) umstandslos mit einer Polis,

1. S. 87 wird, gegen Ruzé, die Ähnlichkeit der Räte der Ilias und der Odysse ausdrücklich postuliert.

und Heeresversammlung und Kriegsrat mit einer Ekklesie und einer Bule gleichzusetzen (wie es allerdings auch der von Schulz geschätzten älteren Literatur durchaus nicht fremd ist).

Aus den umfassenden Ausführungen zu Organisation und Kompetenzen der homerischen Räte wird die Leser dieser Zeitschrift besonders der Abschnitt über die Gerichtsbarkeit (71f.) interessieren. Dieser besteht aus einer knappen Interpretation der berühmten Schildszene (Il. 18, 497-508). Für „einen guten Überblick" zum Stand der wahrlich überreichen rechtshistorischen Forschung wird lediglich auf einen eher randständigen Aufsatz von G. Thür verwiesen, der aber nicht wirklich rezipiert wurde.[2] In der rechtshistorischen Forschung sind drei grundlegende Möglichkeiten vertreten worden, den Gegenstand des Streits zu bestimmen: a) die Höhe des Wergeldes, b) ob das Wergeld bezahlt wurde oder voll bezahlt wurde, c) ob die Verwandten des Getöteten es akzeptieren müssen bzw. welche Verwandten dazu berechtigt sind. Schulz vertritt im Text, ohne Bezug auf Literatur, die letztgenannte Möglichkeit („Der eine ist bereit, jede(?) Buße zu zahlen, und verkündet das dem Volk, der andere lehnt ab, irgendetwas anzunehmen") und erwähnt in Anm. 264 die Übersetzung Schadewalds, die mit Möglichkeit b) übereinstimmt.[3]

Die von dem Angehörigen geforderte Bestrafung sei „wohl Hinrichtung oder Verbannung". Hingegen sind sich die Rechtshistoriker einig, daß in diesem Fall nur die Zulassung der Blutrache durch Angehörige in Frage käme, denn Verbannung und erst recht Hinrichtung sind Sanktionen, die erst auf einer späteren Entwicklungsstufe der Polis entwickelt wurden und den homerischen Epen unbekannt sind. Entsprechend anachronistisch ist die anschließende Erwägung von Schulz, daß die Geronten bei der Festsetzung der Strafe „die Art und Schwere des Delikts, ob Vorsatz oder gar Heimtücke im Spiel waren", gewichtet haben mögen. Bekanntlich begegnet uns die Kategorie des Vorsatzes zum ersten Mal in der Gesetzgebung Drakons im Athen des ausgehenden 7. Jahrhunderts. Und ob Heimtücke überhaupt eine Kategorie des griechischen Rechts war, kann ebenfalls höchstens für Athen überlegt werden.

Es bleibt unklar, ob die homerischen Geronten als Gremium oder individuell die Gerichtsentscheidung treffen. „Die Geronten ... stehen nacheinander auf und sprechen Recht. Derjenige, der den besten Vorschlag macht, erhält einen Preis in Gold (unklar, von wem zugesprochen)". In Anm. 265 werden Vorschläge zitiert, welche als Subjekte der Preisverleihung eine „übergeordneten Person" (Carlier) bzw. den Demos (Ulf) benennen. In beiden Fällen hätten diese Subjekte zumindest eine den Prozeß mit-entscheidende Funktion. Schulz fährt jedoch fort: „Die Geronten entscheiden also darüber, welche Strafe angemessen ist". Die Formulierung legt nahe, daß die Geronten als Rat entscheiden, und das wäre nur möglich, wenn sie selbst als Kollektiv den Preis für den besten Spruch vergeben –

2. Anm. 263. Der Beitrag von Thür von 2007 befaßt sich mit dem griechischen Reinigungseid im Vergleich zum Alten Orient. Weitere und einschlägigere Publikationen von Thür werden auch in der Bibliographie nicht erwähnt, ebensowenig tauchen dort einschlägige Namen wie E. Cantarella, M. Gagarin, R. Westbrook oder H.-J. Wolff auf.

3. Diese Interpretation ist übrigens schon immer von G. Thür vertreten worden, der hierin H.-J. Wolff folgt.

immer vorausgesetzt, was Schulz nicht ausspricht, daß nämlich der Spruch, der den Preis erhält, auch das Urteil bedeutet. Die später, im Vergleich mit Sparta, vorgebrachte Aussage, „Die homerischen Ratsmitglieder haben individuell Recht gesprochen" (250), dürfte vor diesem Hintergrund noch mehr Verwirrung stiften.

Aus den übrigen Ausführungen sei noch der Abschnitt über die „Bedeutung der Familie" hervorgehoben, weil er in der Tat stärker als die bisherige Forschung auf die Rolle der verwandtschaftlichen Beziehungen in den Räten hinweist. Die Rolle von Brüdern und Söhnen der Ratsmitglieder wird jedoch nicht in Beziehung gesetzt zur Struktur der homerischen Gesellschaft (Oikos-Gliederung usw.).

Damit kommen wir zum grundlegenden Problem. Jede „politische" Interpretation der homerischen Epen erfordert nach Ansicht des Rezensenten eine Vorstellung vom Wesen der homerischen Gesellschaft, insbesondere in der Hinsicht, in welcher Entwicklungsphase sich die Polis in der homerischen Zeit befand.[4] Schulz verweist in der Einleitung auf die Forschungsdebatte über die Staatlichkeit der homerischen Gesellschaft (5f.). Er nimmt dazu keine Stellung, verspricht aber, „die Position des Rates zwischen Staatlichkeit und Unstaatlichkeit" (besser und üblich ist `Nichtstaatlichkeit´) mit seiner Untersuchung genauer zu bestimmen. Auf die Frage der Staatlichkeit kommt Schulz jedoch an keiner Stelle seiner Arbeit zurück. Stattdessen ist unausgesprochen von Anfang an vorausgesetzt, daß die in den homerischen Epen beschriebenen Verhältnisse sich nicht grundsätzlich von denen einer staatlich verfaßten Polis unterscheiden.

Das ergibt sich schon aus der verwendeten Terminologie. Der zuletzt zitierte Satz z.B. fragt nach der „Position des Rates ... im Gefüge der Institutionen" (6). Die Institutionalisierung von Gemeinschaftsaufgaben, Kompetenzen und vor allem von Macht, die dadurch im Sinne von Max Weber (an den auch Schulz in der Einleitung erinnert) zur Herrschaft wird, ist nach Meinung vieler, die sich damit befassen, das entscheidende Merkmal von Staatlichkeit. Es ist unverständlich, warum sich für Schulz der Terminus `Ratsherren´ „zu institutionell anhört" (12), wenn er doch den Rat gerade als Institution oder `Gremium´ betrachtet; die von ihm bevorzugte Bezeichnung `Ratsmitglieder´ scheint im übrigen nicht weniger institutionell zu sein. Das „`Amt´ des Ratsmitglieds" wird nur bei der ersten Verwendung in Anführungszeichen gesetzt (33), im folgenden aber wird die Formulierung, ebenso wie `Amtsantritt´ oder `Amtsmissbrauch´, ganz selbstverständlich benutzt. Verräterisch ist der `Staatsgast´, der entweder beim König oder bei einem Ratsmitglied untergebracht wird (73). Und wiederum beide, „der Rat und der König, bilden die Regierung" (84), die es nach meinem Verständnis nur in einem Staat geben kann.

Obwohl Schulz dem Rat also eine Mitregierung und zahlreiche Kompetenzen zuschreibt, hält er den homerischen Staat letztlich für eine Monarchie. Mehrfach wird betont, daß der König das letzte Wort habe und bei aller Suche nach Konsens im Notfall „eine Entscheidung gegen

4. Später gibt der Autor folgende Datierung: „Die Räte der homerischen Epen spiegeln danach die politischen Verhältnisse des frühen oder späten 8. Jh. (je nachdem, ob sie gleichzeitig oder fast gleichzeitig mit der Gegenwart des Dichters sind)" (S. 89).

den Willen des Volkes und der Ratsmitglieder durchsetzen kann“ (84). Dementsprechend wird der Basileus auch als „Monarch“, als „monarchischer König“, als „oberster König“ o.ä. tituliert, dem die „Souveränität“ zufalle (63f.). Als „Primus inter Pares“ wird er nur in seiner Eigenschaft als Teil des Rats-Gremiums bezeichnet (82).

Nicht zuletzt der direkte Vergleich mit Sparta, in historischer Zeit unstreitig eine Polis mit staatlicher Struktur, nach ein und demselben Grundschema setzt voraus, daß auch die homerische Polis solche Grundstrukturen besaß.

Und dementsprechend werden die Strukturen der homerischen Gemeinschaft von Schulz behandelt, als ob ihnen eine ausgearbeitete, differenzierte Verfassung im aristotelischen Sinn einer *politeia* zugrundeläge. Da wird von „Aufnahmebedingungen und –modus“ für die Ratsmitglieder, von der „Dauer der Amtsführung“ gesprochen (33), da wird über den „formalen Ablauf“ einer Ratssitzung (42) gehandelt oder die alte Diskussion über das „Rederecht“ einfacher Polis-Mitglieder in der Volksversammlung wiederaufgenommen usw., kurz, es wird eine ebensolche staatlich-formale Verfassungsstruktur vorausgesetzt, wie sie meines Erachtens allenfalls für das klassische Sparta angenommen werden kann.

Diese Position nimmt in ungewöhnlich direkter Weise Forschungsmeinungen wieder auf, die man seit den Arbeiten von Finley und den darauf aufbauenden Studien für überholt gehalten hat. Nicht umsonst wird immer wieder das Werk von A. Fanta von 1882 über den „Staat in der Ilias und Odyssee“ herangezogen. Von den neueren Werken, die sich ihrerseits von der Finley-Tradition absetzen, stützt sich Schulz insbesondere auf die Arbeiten von P. Carlier sowie auf das Buch von F. Ruzé, Délibération et pouvoir dans la cité grecque von 1997, wenngleich er beiden in manchen Details widerspricht. Mit der abgelehnten Forschungsmeinung, welche die homerische Gesellschaft als vorstaatlich einstuft und den Basileus nicht als König, sondern als Anführer (chief) betrachtet, setzt sich Schulz zu wenig auseinander. Das Buch von C. Ulf über die homerische Gesellschaft wird zwar als wichtig bezeichnet und verschiedentlich zitiert, aber die grundlegenden Argumente Ulfs bleiben unberücksichtigt. Das Buch des Rezensenten (Sophistik und Polisentwicklung, 1983) mit seiner Analyse des homerischen Königtums wird erst garnicht erwähnt. Es nimmt eine grundsätzlich konträre Position zu den Auffassungen von Schulz ein.

Dasselbe gilt für die Ausführungen des Autors zum frühen Sparta, mithin zu dem Teil des zweiten Kapitels, das sich mit dem archaischen Sparta befaßt. Hierzu hat der Rezensent seine Auffassung über „die Primitivität der spartanischen Verfassung“ 2006 unter diesem Titel dargelegt. Schulz hat den Artikel zwar in die Bibliographie aufgenommen, geht aber an keiner Stelle auf seine Argumentation ein, obwohl der Aufsatz nicht nur Interpretationsvorschläge zur auch von Schulz ausführlich behandelten großen Rhetra enthält, sondern auch die Nähe der frühen spartanischen Verfassung zu den Verhältnissen der homerischen Zeit postuliert. Unter die dort vorgebrachte Kritik am herrschenden fomalistischen und legalistischen Verständnis fallen auch die Ausführungen von Schulz zum frühen Sparta, so daß diese Kritik hier nicht wiederholt wird.

Schulz selbst hingegen nimmt die spartanische Verfassung vom

ausgehenden 8. Jahrhundert, in das er die große Rhetra datiert, bis zum Ende der klassischen Zeit im wesentlichen als Einheit. Veränderungen habe es natürlich gegeben, aber die grundsätzlichen Aufgaben und Zuständigkeiten der spartanischen Gerusie seien im Kern die gleichen geblieben.

Als stärksten Einschnitt wertet Schulz den Aufstieg des Ephorats, der sich im oder nach dem Ersten Messenischen Krieg (bei Schulz ca. 690 – 670 v. Chr.) vollzogen und zur Konsequenz gehabt habe, daß die Gerusie ihr bis dahin exklusives „Initiativrecht", also das Recht, Anträge in die Volksversammlung einzubringen, mit den Ephoren habe teilen müssen. Im Gegenzug habe die Gerusie ein Vetorecht gegen Beschlüsse der Volksversammlung erhalten, das im Zusatz zur Rhetra festgeschrieben worden sei und das Schulz wenig glücklich als „Richtungskompetenz" bezeichnet (S. 250).

Im Kern der Untersuchung stehen die richterlichen und politischen Kompetenzen der Gerusie (139ff.), die nach Schulz zeigen, daß dieses Gremium nach dem Aufstieg des Ephorats weitgehend konstant blieb, nicht zuletzt, weil diese beiden Institutionen gut neben- und miteinander funktioniert hätten (244f.). Zu den beiden Königen, die der Gerusie ja angehörten, habe hingegen eher ein Spannungsverhältnis bestanden, das Schulz als „do-ut-des-Verhältnis" kennzeichnet: „Loyalität gegen Geschenke und Verantwortung; Unterstützung in der einen Sache gegen Unterstützung in der anderen Sache" (243). Jedenfalls gelte: „Die Gerusie war kein Instrument in der Hand der Könige" (244), wie von einigen Forschern behauptet wird.

Richterliche und politische Kompetenzen zusammen müßten, da die Gerusie dadurch über die Gesetze wachten, als Nomophylakie bezeichnet werden und seien auch in der Antike schon so verstanden worden (155ff.). Die richterlichen Kompetenzen der Gerusie können, da erheblich mehr Quellenmaterial vorliegt, viel ausführlicher beschrieben werden (S. 157-189) als die oben referierten gerichtlichen Aufgaben der homerischen Räte. Schulz folgt dabei im allgemeinen dem Überblickswerk von D.M. MacDowell von 1986, Spartan Law, dem er in wenigen Details widerspricht.

Die gerichtlichen Entscheidungskompetenzen der Gerusie werden in Abgrenzung zu jenen der Könige, der Ephoren und der Volksversammlung behandelt. Das exklusive Recht der Gersuie sei es gewesen, schwere Strafen, also hohe Geldstrafen, Exil, Atimie und Tod, zu verhängen. Das Gremium sei zuständig für alle Spartiaten, inklusive der Amtsträger und der Könige, gewesen. Charakteristisch für das Vorgehen der Geronten sei „besonnene Langsamkeit" gewesen (175), da die Verfahren mehrere Tage dauerten.

Aufgrund der Klärung der Zuständigkeit, so erklärt Schulz zu Recht, „kann man auch in Prozessen, in denen die Gerusie nicht ausdrücklich genannt ist, auf ihre Beteiligung schließen" (176). Einige ausgewählte Prozesse behandelt er daher als „Musterprozesse", um die Kompetenzen der Gerusie noch genauer zu erläutern. Nur für einzelne Delikte habe das Strafmaß festgestanden; sonst habe es wohl im Ermessen der Gerusie gelegen (181). Sowohl beim Strafmaß als auch bei der Beurteilung der Schuld sei der Gerusie ein relativ großer Ermessensspielraum zugekommen (181f.) Das gelte auch für den Königsprozeß, bei dem die Gerusie zusammen

mit dem nicht angeklagten König und den Ephoren das Gericht bildete, und der separat behandelt wird (182ff.). Charakteristisch für die Gerusie sei in diesem Zusammenhang, daß allein sie ihre Urteile habe ändern bzw. aufheben können.[5]

Nicht nur durch die Gerichtsbarkeit, sondern auch durch ihre politischen Kompetenzen hat die Gerusie nach Schulz „einen direkten Einfluss auf das politische Entscheidungsverfahren gehabt". Dabei habe die Gerusie bei der Gesetzgebung eine wichtigere Rolle eingenommen als bei politischen Entscheidungen.

Schulz kommt zu dem Ergebnis, daß die Quellen die Gerusie zu Recht als mächtigste Institution Spartas angesehen hätten. Seine Untersuchung zeigt gegen die überwiegende Meinung der Forschung, „dass sich neben exekutiven und judikativen auch bedeutende politische und deliberative Kompetenzen der Gerusie abzeichnen, die die allgemeinen Quellen zur Machtfülle bestätigen" (140).

Das dritte Kapitel schließlich ist dem „Verhältnis der spartanischen Gerusie zu den homerischen Räten" gewidmet. Der eigentliche Vergleich besteht in einer recht knappen Gegenüberstellung der jeweiligen Merkmale (249-251), wobei zahlreiche Ähnlichkeiten und manche Unterschiede festgestellt werden.

In den folgenden Abschnitten, die nicht mehr den Vergleich im strengen Sinn weiterführen, werden zunächst antike und moderne Meinungen zurückgewiesen, die die spartanische Gerusie auf nichtgriechische oder griechische Vorbilder zurückführen. Mehr Sympathie entwickelt Schulz für die Vorstellung, die Gerusie habe sich aus einem Adelsrat des Königs entwickelt, wie er eben bei Homer begegne: „Es ist gut möglich, dass es in Sparta ursprünglich einen Rat des homerischen Typs gegeben hat, der sich aber erst mit der Rhetra zu einem Ältestenrat entwickelte" (206). In einem letzten Abschnitt (3.4) versucht Schulz, diese Entwicklung „vom homerischen Beirat zur spartanischen Gerusie" dann konkreter auszumalen. Seine eigene „neue Antwort" zur Entwicklung besteht in der Begründung, daß die Einrichtung eines Rates von über sechzigjährigen, also nicht mehr kriegführenden Männern der Arbeitsteilung gedient habe: Sparta konnte während eines Feldzuges durch einen intakten Rat weiterregiert werden, die jüngeren Männer konnten sich auf den Kampf konzentrieren. Das Mindestalter von 60 Jahren für die Geronten in der Rhetra könnte mithin mit der Hoplitenreform und der Integration von Amyklai am Ende des 8. Jahrhunderts zusammenhängen.

Das Buch bietet am Ende noch eine Bibliographie, einen Anhang mit deutscher nd englischer Zusammenfassung und ein in fünf Abteilungen gegliedertes Register. Schließlich macht es darauf aufmerksam, daß im Internet eine Volltextrecherche über die Homepage des Verlags (www.wellem-verlag.de) zur Verfügung steht.[6]

Einige grundsätzliche Bemerkungen seien noch gestattet.

Der größte Wert des Buches liegt meines Erachtens in der

5. Die spätere Aussage „die spartanischen Geronten bilden kollektiv den obersten Gerichtshof" bedeutet einen begrifflichen Mißgriff, denn ein „oberstes Gericht" würde ein hierarchisch geordnetes Gerichtswesen mit einem Instanzenzug voraussetzen, wovon in Sparta keine Rede sein kann.
6. Stichproben ergeben allerdings, daß die Zuverlässigkeit der Recherche nicht sehr hoch ist.

Zusammenstellung des Quellenmaterials zu den behandelten Gegenständen. Hier arbeitet Schulz gründlich, und es gelingen ihm treffende Analysen zahlreicher Einzelheiten. In vieler Hinsicht bleibt das Werk jedoch deskriptiv und ordnet das Material nicht oder nicht überzeugend in die zugrundeliegenden Zusammenhänge ein.

Dabei geht eine gewisse, in der Forschung überwunden geglaubte Quellengläubigkeit mit einer Hinwendung zu älterer Literatur (d.h. Werken des 19. und vom Beginn des 20. Jahrhunderts) einher, der die Quellenkritik der zweiten Hälfte des 20. Jahrhunderts, die Schulz nicht übernehmen will, noch unbekannt war.[7] So scheint Schulz für Ilias und Odysse einen einzigen Verfasser namens Homer anzunehmen und die Historizität des Troianischen Krieges vorauszusetzen (S. 52). Er geht von zwei Messenischen Kriegen mit klar abgegerenzter Datierung aus (154). Und er stellt sich vor, daß in den griechischen Poleis ursprünglich monarchische Könige geherrscht hätten, die in Athen von gewählten Archonten (252), in Sparta „durch eine Aristokratie bzw. Gerontokratie", in anderen Poleis durch einen Adelsrat oder Rotation des Königtums oder Tyrannis abgelöst worden seien (261 mit Verweis auf G. Busolt).

Die unzulängliche begriffliche Durchdringung des Gegenstandes soll nochmals am Umgang mit dem Adelsbegriff verdeutlicht werden. Den Autor bewegt die Frage, ob die Ratsmitglieder aus dem Adel stammen. Einerseits lehnt er die Übernahme des mittelalterlichen und neuzeitlichen Adelsbegriffs, der Adel auf edle Abkunft zurückführt, für Sparta ab (107. 110). Wenn er aber fragt: „Konnte Abkunft für den Adel der archaischen Zeit zumal in Sparta überhaupt eine Rolle spielen?" (110), setzt er voraus, daß es Adel auch ohne das Kriterium der Abkunft gegeben habe. Und so behauptet er andererseits, daß sich auch in Sparta Adelsprivilegien erhalten hätten (110. „in Sparta scheint es einen Adel gegeben zu haben, der gewisse Vorrechte genoß", 231). Als Beleg für solche Privilegien wird jedoch lediglich die Aussage Herodots herangezogen, daß die Familie der Talthybiaden die Herolde gestellt habee und dieses Amt erblich gewesen sei (Anm. 405: Hdt. 7, 134. 6, 60). Selbst wenn man das als „Adelsprivileg" akzeptiert (was ich nicht tun würde, da die Funktion des Herolds eher in den kultischen Bereich gehörte, in deren Tradition sogar in der athenischen Demokratie bestimmte Priestertümer vererbt wurden), so gälte es doch nur für ein einziges spartanisches Genos. S. 111 kommt dann aufgrund einer Aristoteles-Aussage wieder das dynastische Element, nämlich die Zugehörigkeit zu einem „Clan" (mithin die Abkunft), als Kriterium hinein, und im folgenden wird meist umstandslos weiter vom Adel gesprochen, bis dahin, daß die Gerusie zum Bollwerk des Adels gegen das aufstrebende Ephorat erklärt wird (145). Die begriffliche Unsicherheit zeigt sich schließlich darin, daß dieselbe Schicht, die als Adel bezeichnet wird, mit den anachronistischen Begriffen „Hochwohlgeborene" (112), einer neuzeitlichen Anredeform, und die „besseren Kreise" (250), einer auch ironisch gebrauchten bürgerlichen Wendung, (ohne Anführungszeichen) apostrophiert wird.

Ein sprachliches Stilmittel schließlich, das Schulz häufig verwendet, ist die Frageform, z.B.: „Wer sagt wann was über ..." (157). Besonders penetrant

7. Ungewöhnlicherweise werden konkrete Literaturbelege auch im Haupttext gegeben.

wirkt das, wenn in Abschnitt 1.5.2, „Einberufung“ (der homerischen Räte) die Unterabschnitte nur durch Fragewörter überschrieben werden: „ a) Wer?“, „b) Wie?“, „c) Wann?“, „d) Wo?“. Damit begibt er sich nicht nur auf die sprachliche Ebene etwa von Informationsflugblättern zu „events“, sondern versucht, gerade in den längeren, Themen vorgebenden Fragen, auch zu suggerieren, daß sich seine eigenen Ideen, die er vortragen möchte, dem Leser als Frage aufdrängen, um sogleich vom Autor beantwortet zu werden.

Ifigeneia Giannadaki

Christopher Carey, *Trials from Classical Athens*. London and New York: Routledge (second edition), 2012, p.xi + 288. Hardback € 80.00 (Pbk: € 22.99). ISBN: 978-0-415-61808-3 (Pbk: 978-0-415-61809-0).

Christopher Carey's (C. hereafter) book, the second revised edition of the original published in 1997, assembles a number of representative surviving speeches from the Athenian courts, arranging them in six thematic chapters: speeches dealing with homicide (Lys. 1; Antiph. 1, 5, 6); assault and wounding (Lys. 3, Dem. 54, Isoc. 20); suits concerning property (Lys. 32, Isai. 3, 4, Dem. 55); commerce (Hyp. 3, Dem. 35, 37), citizenship (Aesch. 1, [Dem.] 59, Dem. 57) and other fascinating cases, which although labelled as 'Sacred Olives and other Cases' hardly form a thematic chapter. These speeches - undoubtedly some of the most intriguing among extant Attic oratory - could be part of a 'miscellaneous' section (concerning religious aspects, Lys. 7; technicalities of the law, Lys. 10; ambiguities arising from the tangled personal life of the involved parties, Dem. 39). All twenty speeches (three new speeches are included: Aesch. 1, Dem. 39, Lys. 7) illustrate key legal, socio-political and economic aspects of classical Athens and give a variety of the fascinating complexities of law and legal procedures primarily to the Greekless postgraduate and undergraduate student (cf. C.'s *Preface* to the first edition, p. viii), who is simultaneously introduced to the rhetorical strategies of the speeches. In terms of the selection of C.'s speeches, the inclusion of key political trials (such as, Dem. 18, 19, Din. 1)—would have given a more complete picture of the variety of 'trials from classical Athens' to the reader (and might be considered for a third edition, if there is one), by illustrating the close relationship between courts and politics, which briefly but lucidly C. discusses in his introduction ('The Courts and Politics', pp. 4-5).

Despite C.'s modesty (p. viii), the basis of his selection is unarguably paradigmatic, followed closely by Gagarin (2011) *Speeches from Athenian Law*, in terms of both selection and arrangement of his material (the translations are taken from the individual volumes in the Texas series): his chapters are arranged thematically (homicide and assault, status and citizenship, family and property, commerce and economy). All the speeches he assembles are found in C.'s edition, though he also includes Antiph. 2; Lys. 23, 24; Dem. 27, 57; Isoc. 17; Isai. 1, 7, 8; his introduction is less detailed compared with C. and his emphasis is primarily on the legal issues raised in the speeches. Gagarin's book offers a brief bibliography, index and notes, while it does not include a glossary.

Besides Gagarin's work, C.'s edition has other 'rivals' too, i.e. Wolpert and Kapparis' (2011) *Legal speeches of Democratic Athens: Sources of Athenian History*, Phillips' (2004) *Athenian Political Oratory*, and the Texas series of translations of individual orators (series ed. M. Gagarin). The focus of Wolpert and Kapparis is primarily historical and their material is arranged chronologically by author (Antiph. 6, Lys. 1, 12, 16, 23, 24; Isai. 12; Dem. 21, 32, 41, 53, 54, 59; Aesch. 1); in contrast C.'s thematic arrangement enables

the reader to read the material comparatively/ complementarily and thus acquire a more complete portrayal of the Athenian legal system, strategies of persuasion and society. The former volume includes a substantial number of notes, a glossary and index. Phillips' annotated edition follows a different arrangement and includes entirely different material (Lys. 12, 13, 16; Dem. 1-9, 12; Hyp. 1, 4, 5) from that of C.. Both its content and scope differ from C.'s: Phillips' focus is almost exclusively historical from a political perspective and his introduction is very brief.

Let us now return to C.'s work. His translation is preceded by a lucid and illuminating introduction to the Athenian legal system (more concise and adequate compared with its 'rivals'), covering all the key-aspects: litigants, *dikastai*, modes of argument, evidence, proceedings of a trial and a brief outline of the life and style of the orators featured in his book. The introduction is augmented compared with the original edition and the student is substantially aided by the well-presented discussion of the Athenian political system and the evolution of the judicial system. Furthermore, each speech is preceded by a brief introduction—providing essential information about the legal procedure employed and date–suggested further reading, and is followed by a short endnote, where C. discusses the reconstruction of events, the orator's argumentation and style, potential outcome and the socio-political, religious or economic dimensions arising from a case.

The student who is less familiar with the Athenian legal system will also benefit considerably from C.'s glossary of the most important legal terms/procedures in the speeches translated (it appears as *Appendix III*—not available in the original edition); the index, where the most important terms and names are listed; the two appendices on Athenian currency and the calendar; the two maps and four black and white figures (the *kleroterion*, the Athenian agora, a *klepsydra*, the secret ballots of the *dikastai*). Detailed information concerning finance and family genealogies is elegantly illustrated by tables and diagrams respectively (e.g. pp. 99, 101, 232-4). Individual introductions and concluding sections are enlightening, but it would be useful for the student to get an idea about the structure of the speeches in a very brief outline incorporated in the introductory notes.

C.'s translation is elegant and safe, successfully fulfilling his attempt to remain 'close to the original Greek'. It also provides clarity where the Greek is obscure by incorporating brief explanatory phrases in brackets (e.g. the use of the name of Herodes in the translation when the text is potentially ambiguous for the reader, as is the case with the dense employment in the Greek of demonstrative/ personal pronouns e.g. in Antiph. 5.57, 59, 60, 62, 64). There are however some points where terminology becomes more difficult to translate, and notoriously the word *dikastes*. C. explains the problems in translating this term into English and justifies his preference for translating as 'judge'. (I would personally prefer the transliterated *dikastai* in the absence of any equivalent word in English). In general C. prefers the anglicised forms of Greek terms (e.g. 'sykophant' for *sykophantes* p. 12, 'logographer' for *logographos* p. 20, 'metic' for *metoikos* p. 10, 'stades' for *stadious* (which I think deserves a brief explanatory note to aid the reader; cf. e.g. C.'s clarity on Athenian currency in *Appendix I*). Although a work aimed

at non-specialists cannot engage in depth with modern controversies, on occasion one might have hoped for a little more information about the translation of specific terminology, as it is the case in Lys. 7 concerning *asebeia*. The translator nowhere indicates the kind of case at issue—nor, for that matter, does Todd (2007) in his recent commentary. The implications of the *terminus technicus* at chapter 2 (*apegraphen*) are not dealt with: does terminology suggest a case of *graphe* or an *apographe*? Accordingly, there is vagueness with regard to the translation of *apegraphen*, which is translated simply as 'I was charged' (thus Todd 2007, 491 'I was accused'). More might perhaps have been said on the problematic MS reading *paidikon* at Lys. 3.43—emended to *paidion* (the scribal conjecture: thus in the new *OCT*; Todd (2007) *A Commentary on Lysias' speeches 1-11*, 339; Carey (1990) *Lysias: Selected Speeches*, 111)—which has the sense 'horseplay': a brief note might have been useful here too, especially since this meaning of the word is not given in the corresponding entry in *LSJ*. Another minor point is the translation of *komazon* (Lys. 3.23): it would perhaps be more accurate to translate 'took part in a mobile drinking party' rather than 'came on a drunken visit' (cf. Todd 2007, 327; see also Dover 1980, 160). One suspects that C.'s translation is based on the *OCT* for the speeches for which an Oxford edition exists, but he never states which texts he is using. This would be particularly helpful to students who are not familiar with the various editions of the texts–especially the fragmentary ones–so that the reader is alert to possible lacunae or transpositions of paragraphs or sentences (e.g. lacunae in Hyp. 3; at Dem. 55.19 a sentence is transposed to §35 but this is noted by C. (p. 129 n.1); Isai 4.18 lacuna).

I have only found a few misprints, most of them insignificant: p. 24 read *antilanchanein* for *antilancheinen*, *graphe nomon me epitedeion theinai* for *graphe nomon me epitedeion theina* and *aphairesis eis eleutherian* for *aphairesis eis eluetherian* (the last two identified already by Whitehead *BMCR* 2012.2.46) and 'Dem. 39.38' for 'Dem. 39.3-8' (p. 24 n.43); p. 70 read 'Todd 2007' instead of 'Todd 2008' and more importantly, there is a fundamental confusion in this sentence: it should read 'There is a commentary on this speech in C. Carey... and a more detailed commentary (with translation) in S. C. Todd...'; on p. 139 (Dem. 35.10) read 'back' for 'hack', p. 281 read 'Rhodes, P.J. (2010) *A History of the Classical Greek World, 478-323 BC*, ed. 2, Chichester: Wiley-Blackwell'. There is also a slight inconsistency with the indication of long syllables (as Whitehead *ibid.* has already observed): C. almost invariably does not indicate them, but cf. *rhētorōn* p. 276, *klēteuein* p. 278. Another slight inconsistency is traced in C.'s citation of secondary bibliography in his notes (pp. 22-25): some references (including journal references) are given in full (author's name, date, title, place) although they are also found in the *Selected Further Reading*, while sometimes they are abbreviated (e.g. Todd, *Shape*; MacDowell, *Law*; Harrison, *Law of Athens*; R. G. Osborne, *Journal of Hellenic studies*, 105 (1985)). Some small details: it would very helpful for the reader if page numbers of each speech were indicated in the table of contents rather than the page numbers of each chapter alone and if notes related to speeches rather than chapters; and if a chart were given of the abbreviated forms of the ancient works (as well as modern) cited, in order to avoid inconsistency (they are sometimes abbreviated e.g. *Ath. Const.*,

[Xen.] *Ath. Const*, sometimes not e.g. *Works and Days*, Demosthenes).

Finally, C.'s first edition has been criticised for including only a few footnotes. Carawan (*BMCR* 98.6.02) writes: 'Carey gives too few explanatory notes; let us hope he will make room for more in the next edition'. In this regard, I believe, we should not criticise the author: it may have been of importance for the first edition but notes were clearly not necessary in the second edition, since this need is now covered by the Texas translations (*The Oratory of Classical Greece*) and in fact, C.'s reader is encouraged to pursue in greater detail the issues raised in the speeches by the key bibliography provided for every speech and especially the *Selected Further Reading*. This book is meant to be read in combination with its 'rivals' (which are cited under *Translations* in *Selected Further Reading*) and the detailed commentaries (which are referred to in the individual introductions to the speeches).

To sum up, although C.'s book may 'no longer enjoy the luxury of having the field all to itself' (as Whitehead *ibid.* notes), this book has been, and still is, a fundamental sourcebook not only for the student of Athenian law, but also for anyone interested in the social and economic history of classical Athens. For the most demanding student, C.'s guidance on further reading (helpfully updated in the new edition) is significant, and this clearly shows the aim of the author not only to engage, but also to direct the reader towards further study in the complementary works available. This original–in the first edition–and paradigmatic sourcebook has initiated students into both Athenian law and society for nearly fifteen years now, and it will continue to serve its purpose well for many years to come.

Alberto Maffi

RECENSIONI

L.-M. Günther (hrsg.), *Tryphe und Kultritual im archaischen Kleinasien – ex oriente luxuria?*, Harrassowitz Verlag, Wiesbaden 2012, p. 159. Si tratta degli Atti di un „workshop" tenutosi a Bochum nel dicembre 2009, il cui tema centrale è consistito nello studio delle forme di culto diffuse nella zona costiera ellenizzata dell'Asia minore, in cui si può rilevare l'influenza orientale. Di particolare interesse risulta, in questo quadro, il contributo di P. Filigheddu, *Tempelprostitution in Heiligtümern der Astarte*, p. 32-46, dove, basandosi soprattutto sull'analisi di iscrizioni fenicie, l'a. avanza l'ipotesi che la prostituzione femminile fosse esercitata nel tempio di Afrodite/Astarte non solo perché si trattava della dea dell'amore, ma perché era collegata al commercio marittimo.

M. Wiggen, *Die Laokoon-Gruppe. Archäologische Rekonstruktion und künstlerische Ergänzungen*, Verlag Franz Philipp Rutzen, Ruhpolding u. Mainz 2011, p. 322, 154 Abb., 3 Beilagen. L'autore procede ad una accuratissima critica dei tentativi, succedutisi nei secoli da parte di archeologi, artisti e restauratori, di integrare le parti mancanti della celebre statua, giungendo alla conclusione che nessuno di tali tentativi può dirsi pienamente convincente.

B. Legras (dir.), *Transferts culturels et droits dans le monde grec et hellénistique*, Paris 2012, p. 508. Si tratta di un volume ricco di contenuti per chi si interessa di diritto greco. Ciò vale soprattutto per la prima sezione (<<Transferts culturels et construction des droits durant l'époque archaïque et classique >>), dove si possono leggere i seguenti contributi: M. Gagarin, *The Laws of Crete*, p. 17-29, dove l'A. nega che le leggi epigrafiche provenienti dalle diverse località cretesi mostrino tratti comuni se si eccettua il fatto che le leggi sono sempre caratterizzate come testi scritti ("what is written"); K. Rørby Kristensen, *Defining "legal place" in archaic and early classical Crete*, p. 31-46, sottolinea la peculiarità degli ordinamenti giuridici delle città cretesi sia in relazione a gruppi interni alla città che alle comunità esterne; G. Thür, *Rechtstransfer aus dem Vorderen Orient im archaischen griechischen Prozess*, p. 47-62, cerca di dimostrare, sulla base di paralleli con fonti del periodo neobabilonese, che la norma del Codice di Gortina che impone al giudice di giudicare in base alle testimonianze (*kata maiturans*), va intesa nel senso che la sentenza obbligava i testimoni a giurare, determinando così automaticamente la vittoria della parte che li presentava in giudizio; M. Dreher, *Die Rechtskultur der Westgriechen*, p. 63-78, mette a fuoco il problema dei reciproci influssi fra le istituzioni giuridiche della Magna Grecia e quelle di altre zone del mondo greco; A. Maffi, *Les transferts de droit d'une cité à l'autre en Grèce ancienne*, p. 119-128, passa in rassegna i vari tipi di mutuazione e trasferimento da una città all'altra sia di singole leggi sia di complessi legislativi.

Nella seconda sezione (« Transferts culturels en Grèce d'Europe et en Asie Mineure durant l'époque hellénistique et romaine ») si segnalano : M. Faraguna, *Diritto, economia e società : riflessioni su eranos tra età omerica e mondo ellenistico*, p. 129-154, che mette a fuoco i molteplici significati del termine, dal banchetto omerico al prestito amichevole di età classica, per finire con l'attività di particolari tipi di associazioni, come quelle documentate nella Rodi ellenistica; A. Helmis, *Du juridique au religieux: punitions divines et amendes au profit des dieux dans les inscriptions funéraires grecques d'Asie Mineure*, p. 155-166, che, prendendo spunto dalle sanzioni destinate dai privati a proteggere le tombe dei loro cari, estende la nozione di « trasferimento culturale" all'intervento degli dei a protezione delle sepolture umane; I.N. Arnaoutoglou, *Cultural transfer and law in hellenistic Lycia: the case of Symmasis' foundation*, p. 205-224, che esamina un'iscrizione proveniente dalla Licia ellenistica, contenente l'atto costitutivo di una fondazione funeraria in onore di un certo Symmasis e di sua moglie, dove si rileva l'influsso greco sul substrato religioso e giuridico locale.

C. Kremmidas, *Commentary on Demosthenes Against Leptines. With Introduction, Text, and Translation*, Oxford University Press 2012, p. XI + 489. L'Introduzione (p. 1-69) consta di quattro sezioni: 1) riassunto della vicenda; 2) il contesto storico e il sistema delle liturgie; 3) l'accusa contro Leptine; 4) valutazioni antiche e moderne dell'orazione demostenica. Di particolare interesse le sezioni 3.5 ("the legal action employed against Leptines' law"), 3.6 ("the question of its legality"), 3.7 ("an attempt to reconstruct and evaluate the law in question") (p.2). La tesi dell'A. è che le irregolarità nell'iter che aveva portato all'approvazione della legge, rilevate da Demostene, fossero giustificate da motivi di urgenza. L'A. avrebbe potuto forse spendere qualche parola di più sulla questione della retroattività della legge e sulla violazione degli accordi internazionali sollevata da Demostene (si veda in particolare il § 37 dell'orazione e il relativo commento alla p. 261, dove mi sembra un po' sbrigativa la critica all'uso del termine *synthekai* da parte di Demostene).

B. Onken – D. Rohde (hrsg.), *In omni historia curiosus: Studien zur Geschichte von der Antike bis zur Neuzeit. Festschrift für Helmuth Schneider zum 65. Geburtstag* (Philippika. Marburger altertumskundliche Abhandlungen 47), Harrassowitz, Wiesbaden 2011, p. 402. La raccolta di studi in onore di H. Schneider, antichista che si è illustrato soprattutto come storico dell'economia e della tecnologia, è suddivisa in quattro sezioni: *Geschichte der Antike; Weiterleben und Rezeption der Antike in Gesellschaft, Kultur und Technik; Geschichte und Politik; Cassellana* (quest'ultima sezione in omaggio all'onorato nella sua qualità di rifondatore della associazione dei "Kasseler Freunde der Antike – Société des Antiquités"). Nella prima sezione particolarmente interessante il contributo di U. Walter, Praxis ohne Begriff? 'Reformen in der Antike' (p. 111-130), in cui, per quanto riguarda la Grecia antica, il concetto di riforma viene ricollegato all'opera di fondatori di città e legislatori.

H. Barta, *"Graeca non leguntur"? Zu den Ursprüngen des europäischen Rechts im antiken Griechenland. Archaische Grundlagen*, Bd. II/1, p. XVIII + 766; Bd. II/2, p. XVI + 522, Harrassowitz, Wiesbaden 2011. I due volumi contengono

il II capitolo dell'intera opera, intitolato „Drakon, Solon und die Folgen". Il primo dei due volumi consta di 10 paragrafi, il secondo di 12. Entriamo qui nel vivo della materia, con l'esposizione dello *status quaestionis* relativo ai principali settori del diritto privato greco sullo sfondo dell'opera di Draconte e Solone. Si riproducono qui le stesse caratteristiche, positive e negative, che emergevano nel primo volume dell'opera. L'A. continua la sua *defensio non petita* del valore e della dignità del diritto greco e insiste nella sua pervicace polemica contro H.J. Wolff, assunto a detrattore paradigmatico di quella dignità. L'A. prosegue anche con il suo metodo di inserire nell'opera verbose esposizioni del contenuto dei libri che ha letto e lunghe citazioni dagli stessi, che da un lato possono costituire un utile deposito di materiali, ma dall'altro finiscono per oscurare quelli che sono o potrebbero essere i contributi originali dell'A. stesso. Mi soffermerò qui molto rapidamente su due temi cruciali: la dottrina del contratto (*Der griechische Vertrag* (II/I, p. 374-437), non si sa perché inserito in un paragrafo 9, intitolato *Rechtssubjekt und Demokratie*) e il regime della proprietà (II/2 § 22), lasciando da parte temi di grande rilevanza, come quelli trattati nei §§ 4. - *Das Entstehen der Rechtskategorie 'Zufall'*- e 5. -*Vom sakralen Sühnerecht zur sekulären Schuldlehre*- del I vol. Per quanto riguarda la dottrina del contratto, la critica dell'A. alla teoria wolffiana della "Zweckverfügung", e alla connessa natura delittuale della responsabilità del debitore inadempiente, contiene elementi di un certo peso (per esempio che una dottrina elaborata in base alla struttura del contratto di compravendita non può essere estesa senza difficoltà ad altri tipi di contratto), che non possiamo qui esporre nei dettagli. E' però viziata intanto dal tono apodittico che troppo spesso rende inefficaci se non inconsistenti le argomentazioni dell'A., e soprattutto perché non affronta il nocciolo del problema, cioè che dalla documentazione antica non emerge l'esistenza di azioni contrattuali con cui il creditore insoddisfatto potesse esigere dal debitore la prestazione promessa. E' infatti plausibile l'affermazione dell'A. che la *dike blabes* può derivare anche da inadempimento contrattuale e non soltanto da un illecito, ma resta il fatto che mira a un risarcimento del danno, non ad ottenere la (contro)prestazione del debitore. L'A. fa qualche sporadico accenno all'aspetto processualistico, ma non fornisce una dimostrazione argomentata della sua critica a Wolff sotto questo profilo (a p. 394, ad esempio, scrive: "es gab selbstverständlich Klagführungen aus nicht erfüllten Verträgen, wie allein die reiche Executionspraxis beweist..."). Quanto alla trattazione del diritto di proprietà, contenuta nel II volume, troviamo qui un'esposizione dei risultati raggiunti dalla dottrina dominante (con particolare riferimento all'*Eigentum und Besitz* di Kränzlein), ma nessun approfondimento effettivo dei punti più oscuri e controversi, come in particolare la tutela giurisdizionale della proprietà.

F. Gherchanoc, *L'oikos en fête. Célebrations familiales et sociabilité en Grèce ancienne*, Sorbonne, Paris 2012, p. 265. Il libro è dedicato allo studio della « sociabilité » della famiglia in Grecia, intesa come « l'aptitude et l'art de vivre ensemble" (p. 13). Vengono così esaminati i momenti di ritualità collettiva all'interno del gruppo familiare, come feste di nozze, di nascita, di morte e altre feste familiari e sovrafamiliari. Di

particolare interesse il cap. 10, intitolato "L'intervention de la cité: législations sur les fêtes de mariage et les funérailles (p. 187-204).

Di J. Mélèze-Modrzejewski segnaliamo qui due importanti pubblicazioni, a cui si aggiunge un volumetto celebrativo.

Droit et justice dans le monde grec et hellénistique, JJP Suppl. X, Varsovie 2011, p. XX + 565. Il volume (che si apre con una Prefazione di Eva Cantarella) raccoglie gli scritti di diritto greco ed ellenistico apparsi in varie sedi dopo il 1993, data di pubblicazione del precedente volume di scritti dell'A., *Statut personnel et liens de famille dans les droits de l'Antiquité*. Caratteristica preziosa del volume in esame è il fatto, sottolineato dall'A. stesso nel suo *Avant-propos*, che non si tratta di una ristampa invariata, ma di una edizione riveduta e corretta, "qui, sans modifier la substance de chaque élément, a permis d'en améliorer la forme" (p. XIX). I contributi ripubblicati sono ripartiti in cinque grandi sezioni: I) *Sources du droit*; II) *La justice à l'oeuvre*; III) *Délits et sanctions;* IV) *Actes privés*; V) *Continuité grecque dans le monde romain*. Diviene così possibile (con il contributo redazionale decisivo di Jakub Urbanik) avere sott'occhio la produzione scientifica recente di colui che è probabilmente oggi il massimo studioso del diritto tolemaico. Lo conferma, se ce ne fosse bisogno, la maestria con cui in questo volume, partendo da una documentazione sempre molto frammentata, quale è quella papirologica, riesca a creare un mosaico coerente e affascinante dei dati relativi ad alcuni fra i settori più rilevanti del diritto dell'Egitto ellenistico, arricchendolo con illuminanti incursioni nel diritto greco classico e nel mondo imperiale romano. In Appendice una serie di "Portraits de disparus" testimonia, con accenti spesso commoventi, i legami personali dell'A. con eminenti studiosi del passato prossimo.

Le droit grec après Alexandre, Dalloz, Paris 2012, p. VIII + 217. A tutti gli effetti si tratta di un manualetto di diritto ellenistico incentrato sulla documentazione papiracea, che l'A., fra i massimi giuspapirologi in attività, mette a frutto per ricavarne una sintesi magistrale. Il volume si compone di cinque sezioni: 1) *Papyrologie et histoire des droits de l'Antiquité* (p. 3-15) ; 2) *Continuité et mutations* (p. 19-72), che costituisce un vero e proprio profilo del diritto privato di età tolemaica ; 3) *La survie du droit hellénistique* (p. 75-103) nel periodo romano; 4) *Choix de papyrus documentaires* (p. 103-160), utile antologia di papiri di interesse giuridico; 5) *Annexes* (P. 161-217), che comprendono glossario, indice dei nomi, indicazioni bibliografiche, sigle papirologiche, cronologia e tre cartine.

The Ceremony of Renewal of the Doctorate of Prof. Józef Mélèze-Modrzejewski, Warsaw, 6 June 2011, p. 58, raccoglie gli interventi pronunciati in occasione della cerimonia di rinnovo del titolo di dottorato, che ha avuto luogo a Varsavia.

J. Velissaropoulos-Karakostas, *Droit grec d'Alexandre à Auguste. Personnes – Biens – Justice*; Centre de Recherches de l'Antiquité grecque et romaine. Fondation nationale de la recherche scientifique (Meletemata 66), Athènes-Paris 2011, I (p. 452) - II (p. 568). L'A., riconosciuta come uno dei più eminenti studiosi di diritto greco, realizza un'impresa ambiziosa e innovatrice: redigere un manuale di diritto ellenistico, di cui da sempre si avvertiva

la mancanza, non avendo potuto H.J. Wolff portare a termine il suo "Handbuch". Il metodo adottato dall'A. è originale, in quando combina l'impianto dogmatico con l'esegesi delle fonti: ogni enunciato storico-giuridico, infatti, non viene sviluppato sul piano dell'approfondimento teorico e dottrinario, ma viene semplicemente ed efficacemente illustrato da testi in parte di carattere normativo e in parte provenienti dalla prassi negoziale. Ogni testo antico riprodotto in originale, di cui si cita la fonte di provenienza, è accompagnato da un'utilissima traduzione francese. Ponendosi in quest'ottica, l'A. riesce felicemente ad accostare informazioni provenienti dai papiri egiziani alla documentazione epigrafica proveniente dagli altri regni ellenistici, giungendo così a riconoscere, su base documentaria, il carattere genuinamente greco degli istituti giuridici ellenistici. Il primo volume, che si apre con una prefazione di J. Mélèze-Modrzejewski, si compone di cinque capitoli che, sotto il titolo complessivo "Les personnes", costituiscono appunto la parte prima dell'opera, anche se il primo capitolo ha in realtà per oggetto "Les sources du droit". E' dal II cap., "Les sujets du droit", dedicato allo studio dello statuto dei cittadini e degli stranieri, che incomincia effettivamente la trattazione del diritto delle persone. Il terzo capitolo è dedicato a "La femme"; il quarto a "Mariage et filiation"; il quinto a "Esclaves et affranchis". Il secondo volume, che coincide con la seconda parte dell'opera, ha per titolo "Les biens", e consta di 11 capitoli (VI-XVI). I titoli dei capitoli sono indicativi del modo in cui l'A. imposta la trattazione: "Distinction des biens" (cap. VI), ha per oggetto natura, titolarità, modi di acquisto, pubblicità; "Degrés de maîtrise sur les biens" (cap. VII) affronta anche la questione della distinzione fra proprietà e possesso; "Les sûretés réelles" (cap. VIII); "Contrat et délit" (cap. IX), la cui inclusione nella trattazione relativa ai beni sembra riecheggiare, come ha ben notato Mélèze-Modrzejewski nella sua Prefazione (p. 17), la scelta di Gaio di trattare le *obligationes* nel quadro delle *res*. All'esame degli elementi costitutivi delle nozioni di delitto e di contratto, segue l'esame di singoli contratti: "La vente" (cap. X); "Le contrat de louage" (cap. XI); "Le contrat d'entreprise" (cap. XII), ovverosia di appalto, con particolare attenzione ai "Services médicaux" (p. 402-420); "Le prêt (cap. XIII); "Le cautionnement" (cap. XIV); "La succession" (cap. XV), intesa in senso di successione ereditaria, e "La dot" (cap. XVI), capitoli, questi due ultimi, che avrebbero forse potuto trovare una collocazione più coerente nel I volume. Il secondo volume si conclude con una bibliografia selezionata, l'indice delle fonti e l'indice analitico di entrambi i volumi. Si attende la pubblicazione del volume dedicato al processo, ma fin d'ora si può affermare che l'A. ha messo a disposizione degli studiosi uno strumento di orientamento e di consultazione di grande utilità.

A. Magnetto, D. Erdas, C. Carusi (cur.), *Nuove ricerche sulla legge granaria ateniese del 374/3 a.C.*, ETS, Pisa 2010, p. 304. In questo volume sono raccolti gli Atti di un Convegno tenutosi a Pisa nel giugno del 2006. All'Introduzione di R. Stroud, primo editore della legge nel 1998, fanno seguito nove interventi, rispettivamente di L. Migeotte, C. Ampolo, U. Fantasia, M. Corsaro, M. Faraguna, L. Gallo, A. Magnetto, D. Erdas, C. Carusi. In conclusione, oltre a un intervento finale di Stroud (dal titolo "Future Research on the

Athenian Grain Tax Law"), sono pubblicate *l'editio princeps* di Stroud con la sua traduzione inglese, nonché una traduzione italiana di Fantasia. In tutti i contributi si trovano osservazioni e commenti che investono aspetti giuridicamente rilevanti. Segnalo in particolare: M. Faraguna, *Il sistema degli appalti pubblici ad Atene nel IV sec. a.C.* (p. 129-148), D. Erdas, *Il ricorso ai garanti solvibili nei documenti ateniesi di età classica* (p. 187-212), C. Carusi, *La legge di Agirrio e le syngraphai ateniesi di IV secolo* (p. 213-234).

D. Piovan, *Memoria e oblio della guerra civile. Strategie giudiziarie e racconto del passato in Lisia*, ETS, Pisa, 2011, p. 356. La restaurazione democratica ad Atene, dopo la cacciata dei Trenta, è indagata attraverso l'analisi approfondita di tre orazioni lisiane (Lys. 12, 13, 25), a cui si aggiunge nell'ultimo capitolo ("Il biennio 405-403 in altre orazioni del corpus Lysiacum") l'analisi dei riferimenti contenuti in altre orazioni dello stesso oratore.

C. Lasagni, *Il concetto di realtà locale nel mondo greco. Uno studio introduttivo nel confronto tra poleis e stati federali*, Aracne, Roma 2011, p. 245. Il libro consta di una Parte prima ("Per una definizione del concetto di realtà locale") suddivisa in tre capitoli: *"Public organization" e "civic subdivisions": le realtà locali nella polis*; *Poleis et ethne: le realtà locali negli stati federali*; *Ambiguità e limiti dei concetti impiegati: le "dependent poleis"*; e di una Parte seconda ("Per un'applicazione del concetto di realtà locale") che consta di un solo capitolo: *Il rapporto teorico fra polis ed ethnos e il tema della politeia*. Come il titolo stesso del libro sottolinea, l'A. considera il concetto di realtà locale (elaborato a partire dalla ricerca anglosassone degli ultimi decenni) uno strumento privilegiato di analisi e di comprensione della realtà politica greca, sia all'interno della polis sia all'interno delle strutture interpoleiche federali. Per quanto riguarda le strutture interne della polis, secondo l'A. si può dire "*che proprio attraverso l'appartenenza a raggruppamenti istituzionali di livello locale i singoli potessero dare vita alla polis intesa come comunità politica*" (p. 64, corsivo dell'A.); mentre, per quanto riguarda gli stati federali, l'A. ha inteso mettere in luce "la stretta inteconnessione tra mondo poleico e mondo federale rispetto alla questione del rapporto tra forme locali e centrali del potere politico" (p. 239).

R. Rollinger – B. Truschnegg – R. Bichler (hrsg.), *Herodot und das persische Weltreich / Herodotus and the Persian Empire*, Akten des 3. Internationalen Kolloquiums zum Thema <<Vorderasien im Spannungsfeld klassischer und altorientalischer Überlieferungen>> (Innsbruck, 24.-28. November 2008), Harrassowitz, Wiesbaden 2011, p. IX + 827. Il cospicuo volume si articola in quattro sezioni: 1) *Der Anblick der persischen Macht und ihre Wirkung auf die griechische Welt*; 2) *Die ethnographische Erfassung des Perserreichs*; 3) *Das Bild der epichorischen Quellen und der archäologische Befund*; 4) *Der dynastische Aspekt und die Ausbreitung der Herrschaft bis zur ionischen Erhebung*. Fra i molti contributi di interesse giuridico segnalo in particolare G. Schwinghammer, *Die Smerdis Story – Der Usurpator, Dareios und die Bestrafung der 'Lügenkönige'*, p. 665-688, incentrato sull'analisi del monumento di Bisūtūn.

I. Madreiter, *Stereotypisierung–Idealisierung–Indifferenz. Formen der Auseinandersetzung mit dem Achaimeniden-Reich in der griechischen Persika-*

Literatur, Harrassowitz, Wiesbaden 2012 XVI + 237. Dopo l'Introduzione e un capitolo metodologico dedicato a "Sozialpsychologische und literaturwissenschaftliche Ansätze zur Erforschung von Fremdenwahrnehmung" segue una serie di capitoli dedicati all'opera di singoli autori di *Persika*, e precisamente Ctesia di Cnido, Dinone di Colofone, Eraclide di Cuma. L'ultimo capitolo estende l'indagine a testi retorici e teatrali (in particolare la commedia) e, fra gli oratori, a Isocrate.

B. Jacobs – R. Rollinger (Hg./Eds), *Der Achämenidenhof / The Achaemenid Court*, Harrassowitz, Wiesbaden 2010, p. IX + 941. Il volume raccoglie gli Atti di un convegno tenutosi nel maggio del 2007. Dopo le osservazioni introduttive dei due curatori, i contributi sono distribuiti in sei sezioni: 1. *Vergleichsperspektiven und systemtheoretischer Ansatz*; 2. *Der Achämenidenhof im Spiegel ausgewählter Quellen und Quellengruppen*, 3. *Die achämenidischen Residenzen und ihre Architektur*, 4.. *Hofgesellschaft und Hofzeremoniell*, 5. *Der Achämenidenhof als religions-, rechts und wirtschaftspolitische Instanz*, 6. *Der Achämenidenhof als Machtzentrum und Paradigma*. A conclusione troviamo *Resümee und Zusammenschau*. Fra i numerosi contributi va segnalato R. Rollinger, *Extreme Gewalt und Strafgericht. Ktesias und Herodot als Zeugnisse für den Achämenidenhof,* p. 559-666, un ampio saggio dove vengono analiticamente riportati tutti i casi di procedimenti penali presso la corte persiana che sono documentati dagli autori greci; nell'ultima parte viene anche svolta una comparazione con i codici mesopotamici.

J. Wiesehöfer – R. Rollinger – Giovanni Lanfranchi (Hg./Eds.), *Ktesias's Welt / Ctesias' World*, Harrassowitz, Wiesbaden 2011, p. 546. Il volume raccoglie gli Atti di un convegno tenutosi a Salzau nel maggio del 2006. Le principali questioni affrontate dai relatori riguardano l'una la figura di Ctesia stesso, in particolare se sia davvero da considerare un testimone oculare degli avvenimenti da lui narrati; l'altra la sua opera, ossia a quale genere letterario si debbano ascrivere i *Persika* e quale fosse l'intenzione perseguita dall'autore nel pubblicarli.

K. Erickson – G. Ramsey (eds.), *Seleucid Dissolution. The Sinking of the Anchor* (Philippika. Marburger altertumskundliche Abhandlungen 50), Harrassowitz, Wiesbaden 2011, p. 209. All'Introduzione dei curatori fanno seguito 12 contributi dedicati alla storia politica, culturale, economica, urbanistica e religiosa del regno seleucidico. Di particolare interesse l'articolo di G. Ramsey, *Seleucid Administration – Effectiveness and Dysfunction Among Officials*, p. 37-50, dove si sostiene la tesi che la decadenza dell'amministrazione fu dovuta al carattere marcatamente personale dei rapporti tra il re e i suoi più alti collaboratori e funzionari.

E. Dąbrowa, *Studia Graeco-Parthica. Political and Cultural Relations between Greeks and Parthians* (Philippika. Marburger altertumskundliche Abhandlungen 49), Harrassowitz, Wiesbaden 2011, p. 196. Si tratta di una raccolta di studi pubblicati nell'arco degli ultimi vent'anni in riviste e atti di convegni (salvo gli ultimi tre, pubblicati qui per la prima volta). Elemento unificatore dei contributi sono i rapporti politici e culturali fra

i Parti e i Seleucidi. Per riprendere le parole dell'autrice, le domande a cui intende rispondere sono le seguenti: "What the Parthians, governed by the Arsacid dynasty, adopted in the broad area of cultural heritage from their Greek predecessors?; how did they adapt the Greek heritage for their own needs and what was the place of this heritage in Parthian culture and what survived it?" (p. 9). Particolarmente interessanti gli articoli attinenti agli aspetti istituzionali, come "Greeks under the Arsacid Rule (2nd century BC)" (p. 83-87) o "The Parthian Kingship" (p. 111-121).

L. Pepe, *Phonos. L'omicidio da Draconte all'età degli oratori*, Giuffré, Milano 2012, p. IX + 258. Il libro si divide in due parti. La prima parte consta di un solo capitolo (p. 11-78): "Un'ipotesi interpretativa della legge di Draconte". La seconda parte ("L'età degli oratori e le riflessioni in tema di volontarietà e responsabilità") si articola in 3 capitoli, rispettivamente dedicati a "Quale volontarietà? Il *phonos ek pronoias*", "*Thumos, hamartema* e responsabilità oggettiva: il *phonos akousios*", "Quando uccidere non è reato: il *phonos dikaios*". L'A. ha saputo ripercorrere con grande chiarezza l'ormai cospicuo dibattito dottrinario degli ultimi decenni in materia di *phonos* e su ogni questione controversa ha presentato una propria opinione ben argomentata.

G.R. Wright, *Cypriot Connections. An Archeological Chronicle*, Peleus. Studien zur Archäologie und Geschichte Griechenlands und Zyperns, Band 53, Rutzen, Mainz und Ruhpolding 2010, p. 214. Raccolta di studi pubblicati nel corso di più di un cinquantennio che riguardano Cipro durante un periodo di tempo che va dal Neolitico ai nostri giorni. I temi trattati vanno dalla storia della ceramica e degli edifici alla storia politica, religiosa e giuridica.

Demosthenes, Speeches 39-49, Translated with Introduction and notes by Adele C. Scafuro, University of Texas Press, 2011, p. XXXII + 400. Si tratta del tredicesimo volume della serie "Oratory of Classical Greece", diretta da M. Gagarin, nella quale vengono pubblicate in traduzione inglese le orazioni attiche. Il volume si apre con un'Introduzione dell'A. (p. 6-31), dove, dopo un paragrafo dedicato ai problemi di autenticità delle orazioni qui pubblicate, vengono delineati i tratti fondamentali degli istituti di diritto attico che trovano qui applicazione: matrimonio, filiazione, adozione, regole successorie e rivendicazione dell'eredità. Ogni orazione è preceduta da una introduzione di una decina di pagine. Le citazioni in nota degli autori moderni rinviano alla bibliografia essenziale che si trova al termine del volume.

R. Fischer, *Die Aḫḫijawa-Frage. Mit einer kommentierten Bibliographie*, Harrassowitz, Wiesbaden 2010, p. VII + 125. L'A. ha ripreso in esame la *vexata quaestio* della identificazione con gli Achei, cioè con i Greci dell'età micenea, del termine, rinvenibile in alcune tavolette ittite databili fra 14° e 13° secolo a.C., di cui nel titolo, e, in subordine, il problema di identificare nello spazio l'ubicazione di un luogo chiamato in quel modo. Sulla base di un esame molto accurato prima di tutto del dibattito dottrinario sviluppatosi negli anni '30 del secolo scorso, poi della documentazione linguistica e archeologica, l'A. esercita elegantemente l'*ars nesciendi*, pur dovendosi riconoscere che contatti fra mondo greco e mondo anatolico sono innegabili per l'epoca in

questione. Istruttiva la bibliografia commentata che occupa le pp. 67-124.

K.A. Kitchen – P.J.N. Lawrence, *Treaty, Law and Covenant in the Ancient Near East*, 1: *The Texts*, p. XXVI + 1086; 2: *Text, Notes and Chromograms*, p. XIX + 268; 3: *Overall Historical Survey*, p. XII + 288, Harrassowitz, Wiesbaden 2012. L'opera intende presentare i principali documenti classificabili in tre categorie: leggi, trattati internazionali, accordi fra individui o fra individui e gruppi o fra individui e divinità. I documenti provengono dall'area del Vicino Oriente, inteso però in un'accezione molto lata, che comprende anche le isole dell'Egeo e i Balcani meridionali. ("In this book we gather together the main witnesses to one threefold group. Namely, of laws that govern life in a given community ... treaties that govern relations between such communities, and covenant used by or between individuals or them and groups or in dealings with deity" a partire dall'Alleanza biblica: I, p. XVIII). Il primo volume contiene il corpus di 106 documenti originariamente scritti in 10 lingue diverse, che qui vengono pubblicati trascritti in caratteri latini (in maggior parte dal cuneiforme), accompagnati dalla traduzione inglese e preceduti da un'introduzione anche bibliografica; in appendice troviamo una sezione, denominata "Excursus I", che contiene testi presentati esclusivamente in traduzione inglese, perché riportare l'originale - in demotico, in greco- è apparso superfluo, e un "Excursus II", che presenta una lista di documenti non inclusi perché non pertinenti, non pubblicati o non disponibili. Il secondo volume contiene "notes, maps and key-charts", ossia "color-diagrams that show graphically the changes in format and content of the given corpus of documents" (p. XX). I colori corrispondono a una serie di elementi caratterizzanti il documento, che sono elencati in I, p. XXII-XXIV. Il terzo volume contiene "a historical overall survey of the development and interrelations of these data in their societies" (p. XVIII.). I lettori saranno forse sorpresi di vedere incluso nella pubblicazione il c.d. Codice di Gortina, presentato qui (vol. I, p. 1069-1074) nella traduzione di R. Willetts senza originale greco a fronte. Nel secondo volume appare una brevissima nota (II, p. 107-108 e p. 266 per il cromogramma), dove gli AA. si limitano ad osservare che il CdG si inserisce in una serie di testi legislativi cretesi, conservati per via epigrafica, risalente almeno alla metà del VII secolo a.C., a cui si aggiunge una sorta di indice ragionato del contenuto del CdG, che viene dagli AA. suddiviso in 18 paragrafi di loro creazione. Più interessante la tavola di raffronti tematici fra il CdG e le raccolte orientali di testi normativi, che si trova a p. 239 del III volume; a p. 240 gli AA. sottolineano in particolare le analogie in materia di detenzione illegittima di una persona, di stupro e di adulterio, di successione legittima, pur aggiungendo che alcune delle materie contemplate sia dal CdG sia da raccolte legislative orientali "belong largely to the realm of universale (or quite common) human needs, failing and lifeways, often limited neither to early Europe or the ancient Near East but shared with peoples even worldwide in many times and climes" (III, p. 240): si tratta di un'osservazione che può suonare alquanto ingenua e antistorica, ma che non toglie utilità e interesse a un'impresa editoriale che affonda le sue radici addirittura negli anni '50 del secolo scorso, come gli AA. spiegano nell'Introduzione al I volume.

C. Bearzot, *I Greci e gli altri. Convivenza e integrazione*, Salerno, Roma 2012, p. 180. Il libro consta di sei capitoli: 1) "Identità, confronto, convivenza"; 2) "I cittadini"; 3) "Gli stranieri liberi residenti: i meteci"; 4) "Gli stranieri non

residenti"; 5) "Gli schiavi e i liberti"; 6) "Cittadini e stranieri in età ellenistica". Pur attenendosi alla forma del "piccolo saggio" (titolo della collana in cui il libro trova la sua collocazione), che spiega ad esempio la mancanza di note di approfondimento, l'A. è riuscita, con la consueta chiarezza espositiva, a fare il punto sulla questione dei rapporti fra Greci e non Greci, ponendosi efficacemente in un'ottica al crocevia fra storia politica, giuridica e culturale.

M.H. Hansen, *Polis. Introduzione alla città-stato dell'antica Grecia*, Università Bocconi, 2012, p. XXIX+316. Si tratta della traduzione italiana (di A. McClintock) dell'edizione inglese pubblicata nel 2006, ed è preceduta da un'Introduzione di E. Cantarella e seguita da una Postfazione di G. Martinotti. Opera di sintesi del lavoro di ricerca sulla città-stato nella storia (non solo antica) condotto dall'A. nell'ambito del Polis Centre da lui creato in Danimarca.

C. Pelloso, *Themis e dike in Omero. Ai primordi del diritto dei Greci*, Dell'Orso, Alessandria, 2012, p. XII + 232. Libro molto ambizioso del giovane studioso italiano che si cimenta con un tema di grande portata: niente meno che proporre una nuova definizione dei concetti di *themis* e *dike* nei poemi omerici. Le conclusioni cui giunge l'A. sono, rispettivamente: *themis* andrebbe intesa come espressione di un "magmaticamente unitario ordine teo-fisico", un ordine oggettivo diretto a disciplinare le più svariate relazioni inter-umane; *dike* come "posizione" o "situazione soggettiva", ora nell'accezione di "pretesa avanzata da una parte" (in contesti giudiziali), ora in quella di "spettanza riconosciuta ad un soggetto". A questi risultati l'A. giunge dopo una serrata critica delle opinioni avanzate in materia sia da studiosi di antica e consolidata fama sia da studiosi, giovani e meno giovani, dell'ultima generazione.

V. Azoulay et P. Ismard (eds.), *Clisthène et Lycurgue d'Athènes. Autour du politique dans la cité classique*, Sorbonne, Paris 2011, p. 406. Raccolta di saggi di autori vari intorno a un concetto di « politica allargata », cioè non limitata alla sola sfera istituzionale, che troverebbe due punti di snodo, fra loro collegabili a distanza di quasi due secoli, nelle riforme clisteniche e in quelle licurghee (così i due curatori nell'Introduzione al volume). Si succedono quindi sei sezioni per un totale di diciassette contributi di studiosi di varie nazionalità (fra cui G. Camassa e M. Faraguna, F. de Polignac e S.D. Lambert, P. Schmitt Pantel et J. Ober), a cui si aggiunge la conclusione di C. Mossé dal titolo: *Clysthène et Lycurgue d'Athènes: un bilan* (p. 325-329). I titoli delle sezioni sono indicativi dello spirito dell'opera: *L'événement et sa trace: réécritures anciennes et modernes; Politique de l'événement: mobilisation et prise de décision; Vraies coupures, fausses césures: problèmes de temporalité ; Redéfinir le koinon : cristallisations politiques ; Revisiter les normes du <<modèle athénien>> : le politique élargi ; De Clysthène à Lycurgue : parcours transversaux.*

A. Damet, *La septième porte. Les conflits familiaux dans l'Athènes classique*, Sorbonne, Paris 2012, p. 507. Il titolo enigmatico rinvia al v. 714 dei Sette contro Tebe e sintetizza efficacemente il contenuto del libro, che ha per oggetto appunto lo studio dei conflitti all'interno della famiglia. Dopo un'interessante Introduzione, che mostra l'ampiezza di vedute (e

l'entusiasmo giovanile) con cui l'A. affronta il tema, il libro si articola in cinque capitoli: I) *Fragile parenté: pour définir les contours flous de la famille*; II) *Typologie du conflit familial*; III) *Crimes et châtiments: le règlement judiciaire des violences familiales*; IV) *L'infamille: occulter et dévoiler les conflits familiaux dans l'Athènes classique*; V) *Famille en péril, cité menacée*. Per quanto riguarda le fonti, è naturale, dato l'oggetto dello studio, che l'attenzione si concentri più sulla tragedia che sulla commedia, a cui sono dedicate nello specifico non più di una decina di pagine (*La comédie et les violences familiales : le face-à-face père/fils*, p. 79-90). Si può osservare che conflitti radicali, come quelli messi in scena dalla tragedia, e liti riguardanti il patrimonio familiare forse non possono essere ricondotti senza distorsioni a una medesima nozione di "conflitti familiari". Di particolare interesse la sezione del cap. II intitolata "Le quotidien judiciaire" (p. 132-173). Qui si registra qualche imprecisione nella terminologia tecnica. Ad es. la *diadikasia* non è "un héritage litigieux", come scrive l'A. a p. 140. Vi sono altresì affermazioni in materia di regole procedurali che andrebbero meglio argomentate: ad es. che per le azioni pubbliche non vi fosse sospensione dei processi a causa di guerra (ciò che l'A. desume da Dem., *c. Steph* I, 3-4: p. 133), come si aveva invece per le cause private.

R. Rollinger, M. Lang, H. Barta (Hg.), *Strafe und Strafrecht in den antiken Welten unter Berücksichtigung von Todesstrafe, Hinrichtung und peinlicher Befragung*, (Philippika. Marburger altertumskundliche Abhandlungen 51), Harrassowitz, Wiesbaden 2012, p. 266. Il volume raccoglie gli Atti di un incontro tenutosi a Innsbruck nel giugno 2009, ed è diviso in due sezioni: "Griechisch-römische Welt", che include cinque contributi, e "Ägypten und Vorderasien", che include nove contributi. Di particolare interesse nella prima sezione i contributi di: K. Schöpsdau, *Strafen und Strafrecht bei griechischen Denkern des 5. und 4. Jahrhunderts* (p. 1-22) e P. Scheibelreiter, *Pharmakos, aries und talio. Rechtsvergleichende Überlegungen zum frühen römischen und griechischen Strafrecht* (p. 23-48). Il primo contributo passa in rassegna le prese di posizione dei principali storici, letterati e filosofi in materia penalistica; il secondo mette a confronto alcune norme delle XII Tavole con i principi che emergono dalla legislazione greca (con particolare attenzione al principio del taglione rappresentato dalla massima „occhio per occhio").

Academy of Athens, *Research Centre for the History of Greek Law*, 43, Athens 2011, p. 226. Da segnalare: D.F. Leão, *In defense of Medea: a legal approach to Euripides*, p. 9-26. Analisi delle relazioni fra Giasone, Medea e la figlia di Creonte dal punto di vista del diritto di famiglia ateniese; P. Ismard, *Les esclaves publics des cités grecques: qu'est-ce qu'un statut personnel?*, p. 27-41 : l'A. si interroga sulla possibilità di attribuire agli schiavi pubblici uno statuto giuridico preciso e ne trae spunto per concludere che gli statuti personali nella polis classica ed ellenistica rivelano un carattere composito e pluridimensionale; I.N. Arnaoutoglou, *Legal sideffects of oligandria* (in greek), p. 43-61: l'articolo prende spunto da un'iscrizione di età romana di Chersonesos Taurica, in

cui si prevede la riduzione del numero dei giudici e la possibilità di *reiectio.*

D. Kreikenborn, *Lepcis magna unter den ersten Kaisern*, Harrassowitz, Wiesbaden 2011, p. VII + 32 con 12 tavole di fotografie. Si tratta del „Quaderno" 22 (2009) del „Trierer Winckelmannsprogramm". Mettendo a frutto la documentazione letteraria e storico-archeologica, l'A. riesce a fornire un interessante quadro dei mutamenti vissuti dalla città nel passaggio dall'età repubblicana, quando ancora era fortemente caratterizzata da elementi culturali punici e greci, alla piena acquisizione dell'identità romana.

H.-A. Rupprecht (ed.) u. Mitarb. v. J. Hengstl u. R. Ast, *Sammelbuch griechischer Urkunden aus Ägypten, B. XXVII (Index zu B. XXVI), Teil 1, Abschnitt 1,* e H.-A. Rupprecht (ed.) u. Mitarb. v. R. Ast, *Teil 2: Abschnitt 9,* Harrassowitz Verlag 2012, Wiesbaden, VI+149 pp. L'opera si divide in due parti: la prima riguarda i documenti catalogati per contenuto, luogo di provenienza, editori e luogo di conservazione; la seconda gli indici dei nomi di persona, geografici e di rilevanza istituzionale, per terminare con l'indice generale delle parole greche e latine: il tutto pubblicato con l'abituale alto livello di precisione e la bella veste redazionale. Colpisce, nel "Vorwort" alla prima parte, l'accorata rievocazione della gloriosa storia della ricerca papirologica presso l'"Institut für Rechtsgeschichte und Papyrusforschung" della Philipps-Universität di Marburg, terminata con l'Emeritierung nel 2006 di H.-A. Rupprecht, che così detta l'epitaffio della papirologia giuridica in Germania: "Damit ist die Geschichte der Papyrologie als eines eigenständigen Faches in Marburg beendet. Dies ist umso bedauerlicher, als die Papyrologie nunmehr in den juristichen Fakultäten Deutschlands nicht mehr vertreten ist". Resta soltanto da rallegrarsi del fatto che il „Sammelbuch" verrà comunque continuato presso l'Istituto di Papirologia di Heidelberg per le cure di Andrea Jördens.

G. Matino, *Lex et scientia iuris. Aspetti della letteratura giuridica in lingua greca*, D'Auria, Napoli 2012, p. 217. Pur essendo fuori dai limiti cronologici di cui questa rivista si interessa, il libro dell'A. merita di essere segnalato per il fatto di essere uno dei rari contributi filologici allo studio della lingua giuridica greca. Il libro si articola in tre parti: "Le *Novelle* di Giustiniano ed i commenti al *Corpus Iuris Civilis*"; "La codificazione degli Isauri e la restaurazione dei Macedoni"; "La trattatistica", a cui segue un'appendice di testi in traduzione italiana.

ANTONIO BANFI

XVIII SYMPOSION

La seconda settimana di settembre 2011 si è svolto a Parigi, presso la Galerie Colbert dell'INHA, il Diciottesimo Symposion di diritto greco ed ellenistico, organizzato da Bernard Legras, con il patrocinio dell'Université Paris I Panthéon-Sorbonne, del CNRS e dell'École des hautes études en sciences sociales. La prima sessione si è così aperta la mattina del 7 settembre sotto la presidenza di Joseph Mélèze Modrzejewski.

Françoise Ruzé (Caen), *Dire le droit: retour sur la grande rhètra*, ha affrontato nuovamente la questione della Grande Rhetra di Sparta, analizzando il testo plutarcheo (Lyc. 6.6) e il relativo «emendamento» (Lyc. 6.8), insieme all'*Eunomia* attribuita a Tirteo (Diod. VII.12.6; Plut. Lyc. 6.1-10), con l'intento di gettare nuova luce sull'organizzazione dell'ordinamento della Sparta arcaica e dunque sui problemi posti dall'evolvere della legislazione in un periodo di trasformazioni. Attraverso l'analisi critica delle fonti e anche grazie alla proposta di alcuni emendamenti testuali, Ruzé mira a chiarire in particolare il ruolo dell'assemblea e i suoi rapporti con gli altri organi costituzionali in una fase storica in cui muta la stessa concezione del diritto, ormai non più monopolio esclusivo dei *basileis*. *Respondent* è stato Michael Gagarin (Austin, Texas).

Antonio Banfi (Milano), *Considerazioni sul controllo di costituzionalità ad Atene*, si è dedicato al problema del controllo di costituzionalità nell'Atene del IV sec., concentrandosi in particolare sui meccanismi impiegati per esercitare tale controllo nella restaurata democrazia e sulle loro intrinseche manchevolezze. Manchevolezze che – secondo il relatore - sconsigliano di parlare di controllo di legittimità in senso stretto, *e* suggeriscono piuttosto di inquadrare i meccanismi in questione nel più generale concetto di controllo di legalità, nei limiti nei quali tale concetto è utilizzabile in un contesto nel quale manchi la divisione dei poteri. L'esame delle deficienze del sistema contribuisce a chiarire perché il nuovo regime di Demetrio Falereo scelse, invece, di affidare tale controllo a un collegio di *nomophylakes* appositamente costituito e dotato di ampi poteri. *Respondent* è stato Jean-Cristophe Couvenhes (Parigi).

Adriaan Lanni (Harvard), *Social Sanctions in Classical Athens*, si è concentrata sulla questione delle «sanzioni informali» applicate nell'Atene classica da individui o gruppi senza alcun intervento pubblico. Nel pensiero di Lanni, lo studio di tali pene private è di particolare rilievo in quanto contribuisce a chiarire come l'ordine pubblico in Atene potesse mantenersi pur in assenza di istituzioni statali particolarmente sviluppate. La questione è analizzata anche attraverso uno studio dell'ideologia ateniese della vita associata, che chiarisce come l'atteggiamento del pensiero democratico rispetto alle sanzioni sociali fosse in realtà ambivalente, il che contribuisce a spiegare perché esse fossero applicate quasi esclusivamente a seguito di violazioni molto gravi delle norme di condotta generalmente condivise. *Respondent* è stata Eva Cantarella (Milano).

Robert Wallace (Evanston), *When the Athenians did not Enforce their Law*, ha affrontato la questione del rispetto della legge e della *rule of law* nell'Atene classica, concentrandosi in particolare sui casi in cui il dettato di talune previsioni normative rimaneva inapplicato, e sulla verosimiglianza delle osservazioni di parte conservatrice intorno a un diffuso stato di illegalità nel regime democratico. Dopo aver raggruppato i casi di mancata applicazione delle leggi in sette distinte categorie, Wallace osserva come nella stragrande maggioranza dei casi si sia trattato di una disapplicazione motivata dall'interesse comune, che nulla ha a che vedere con l'illegalità. Quanto alla mancata abrogazione delle norme disapplicate, essa si spiegherebbe con la volontà di non alterare il *corpus* delle leggi, per via della reverenza ad esse generalmente tributata. *Respondent* è stato Paulin Ismard (Parigi).

A causa dell'assenza dell'Autrice, La relazione di Aude Cassayre (Bordeaux), *Le rétablissement de la réalité juridique à l'époque hellénistique*, è stata letta da Jean-Cristophe Couvenhes. Il testo di Cassayre è incentrato sul processo in età ellenistica, del quale esamina in particolare le formalità preliminari, la costituzione in giudizio e la formazione della sentenza, soprattutto attraverso il ricorso a fonti epigrafiche e papirologiche. Cassayre si concentra particolarmente sul ruolo del giudice e sui casi nei quali egli non si limita a fornire un verdetto non motivato di colpevolezza o innocenza, ma è tenuto a rendere una pronunzia più articolata, come accade quando occorre pronunciarsi sul valore della controversia, oppure riqualificare l'atto che è oggetto del contendere. A tale categoria di giudizi «motivati», Cassayre ritiene appartengano le *apophaseis*. Il testo si conclude con l'esame delle origini dell'appello: a giudizio dell'Autrice, i sistemi giuridici greci presentano un elevato grado di rigidità, che spiega l'attrazione esercitata dalle corti romane sui greci. *Respondent* è stato Bernhard Palme (Vienna).

Delfim Leão (Lisbona), *The Myth of Autochtony, Athenian Citizenship and the Right of Enktesis*, si è dedicato al diritto di cittadinanza in Atene, con particolare attenzione alla legislazione periclea, nella quale viene ravvisato un principio di esclusione strettamente connesso ad un'opera di valorizzazione ideologica del «mito dell'autoctonia», costruito a dispetto di un'aristocrazia tradizionalmente usa a imparentarsi con esponenti di rilievo di altre *poleis*. In tale contesto, sono esaminate le concessioni dell'*isoteleia* e dell'*enktesis*; in particolare la configurazione di quest'ultima testimonia dell'importanza anche simbolica attribuita alla proprietà fondiaria come segno tangibile di autoctonia. Nella seconda parte della relazione, i concetti già esaminati sono utilizzati per condurre un'approfondita analisi dello *Ione* di Euripide. *Respondent* è stata Adele Scafuro (Providence).

Michele Faraguna (Trieste), *Società, amministrazione, diritto: lo statuto giuridico di tombe e periboloi ad Atene*, ha affrontato alcuni aspetti del diritto funerario attico, concentrandosi in particolare sulla condizione giuridica dei terreni sui quali sorgevano tombe e monumenti sepolcrali, questione particolarmente rilevante, poiché dalle fonti emerge che uno degli elementi caratterizzanti il cittadino rispettabile era dato proprio dalla possibilità di indicare i luoghi di sepoltura dei propri avi. L'analisi delle fonti esaminate da Faraguna indica chiaramente che i terreni utilizzati per i sepolcri erano comunemente di proprietà privata; ciò tuttavia non

consente in alcun modo di escludere che vi fossero necropoli site su terreni pubblici, destinate non solo a coloro che dovevano essere sepolti per pubblica cura, ma eventualmente anche a meteci e stranieri. Sulla base di queste considerazioni Faraguna giunge a riconsiderare la situazione amministrativa del Ceramico, quale necropoli almeno parzialmente di proprietà pubblica, sulla quale si esercitava talora la competenza dei demi, talora dell'intera *polis*: ne emerge una nuova visione della complessità dell'organizzazione amministrativa della *polis*. *Respondent* è stata Kaja Harter-Uibopuu (Vienna).

François de Polignac (Parigi), *Délégation, juxtaposition ou intervention? Les rapports des cités aux creations de cultes non civiques à l'époque classique*, ha incentrato la sua relazione sulla questione del processo di integrazione di culti stranieri nell'Atene classica. In particolare, le vicende del culto di Asclepio nel corso del IV sec., forniscono lo spunto per una riflessione su culti privati, culti pubblici e culti civici e sui loro reciproci rapporti. L'analisi dei modi e dei tempi in cui è evoluto lo *status* delle celebrazioni e dei santuari dedicati ad Asclepio dimostra, secondo de Polignac, come non si possa postulare, come spesso si è fatto, una ineluttabile trasformazione del culto in culto civico e come si tratti di un processo non lineare, soggetto a variazioni a seconda del luogo e del tempo. *Respondent* è stata Claude Mossé.

Edward Cohen (Philadelphia), *Commercial Contracts with Slaves at Athens in the Fourth Century BCE*, si è nuovamente dedicato alla questione del ruolo dello schiavo nelle transazioni commerciali ad Atene. In un serrato confronto critico con le opinioni di Maffi e Talamanca, Cohen ha voluto rimarcare il paradosso di una società, come quella ateniese, il cui ordinamento tende a considerare lo schiavo come una nullità, almeno dal punto di vista giuridico, e che tuttavia fonda una parte non insignificante della sua economia sull'attività commerciale e imprenditoriale dello schiavo. L'analisi delle fonti prova, secondo Cohen, che ad Atene si costituì una configurazione affatto particolare della responsabilità dello schiavo, al quale fu anche attribuita una limitata capacità processuale, che non trova paragone nel mondo romano: l'analisi degli istituti del diritto attico relativi a queste questioni dimostra che ci troviamo di fronte a un caso di progressivo adeguamento del diritto alla realtà economica e sociale. *Respondent* è stata Athina Dimopoulou (Atene).

Cristophe Pébarthe (Bordeaux), *Droit et marché en Grèce ancienne*, ha affrontato alcuni problemi di storia economica, non trascurando di analizzare dal punto di vista teorico l'applicabilità di concetti della moderna analisi economica al mondo antico. Rifacendosi in particolare al pensiero di Weber, il mercato è definito da Pébarthe come un luogo sociologico all'interno del quale il diritto svolge un ruolo decisivo. In questo quadro, è sottoposta a critica la concezione moderna secondo la quale moneta e diritto sono elementi extraeconomici necessari al funzionamento del mercato: tale impostazione non si addice al mondo dell'Atene antica, dove le sfere politica economica e sociale appaiono strettamente interconnesse. *Respondent* è stato Guido Pfeifer (Francoforte sul Meno).

Julie Velissaropoulos (Atene), *Périègeta, un nouveau terme du vocabulaire de la vente*, ha esposto la sua interpretazione di un'epigrafe di Paro recentemente pubblicata, risalente al III sec. a.C., analizzandone testo e

contenuto. Particolare attenzione è stata dedicata all'*hapax* "*periegeta*", utilizzato nell'epigrafe per designare una somma di danaro. Il significato del termine è stato ricostruito da Velissaropoulos grazie al confronto con il testo papiraceo di una legge alessandrina contemporanea all'epigrafe paria: l'analisi dei due testi dimostra come in quest'epoca, ad Alessandria come a Paro, la compravendita immobiliare si perfeziona con il pagamento del prezzo e con il trasferimento all'acquirente di un atto comprovante la sua posizione di proprietario. *Respondent* è stato Martin Dreher (Magdeburgo).

Gerhard Thür (Graz – Vienna), *Dispute over Ownership in Greek Law: Thoughts about a New Inscription from Messene*, ha discusso il testo di un'epigrafe, ancora parzialmente non edita, proveniente da Messene e databile al 182 a.C. L'iscrizione contiene il resoconto di una serie di vicende processuali che videro opporsi Messene a Megalopoli in una controversia di carattere territoriale. La complessa vicenda, nonostante il suo carattere internazionale, consente di riaprire il dibattito sugli strumenti processuali posti a difesa del diritto di proprietà in diritto greco: l'iscrizione messenica, infatti, pare confermare la tesi che questi strumenti avessero natura indiretta e delittuale. *Respondent* è stata Maria Youni (Komotini).

Lene Rubinstein (Londra), *Individual and Collective Liability of City Officials in the Late Classical and Early Hellenistic Period*, ha indagato il tema delle sanzioni imposte collettivamente contro i componenti di collegi di magistrati, un fenomeno attestato per via epigrafica per numerose città greche. Si tratta di sanzioni di carattere economico che miravano a rendere più efficiente il funzionamento degli organi collegiali. Nell'interpretazione di Rubinstein, le sanzioni collettive, derogando al principio della responsabilità individuale, offrivano alla *polis* un duplice vantaggio: incentivare i componenti dei collegi a denunziare le malefatte dei colleghi per sfuggire all'imposizione della multa che avrebbe colpito anche loro in quanto componenti dell'ufficio e, allo stesso tempo, nel caso in cui vi fosse connivenza tra colleghi ed una situazione di diffusa corruzione, assicurare alla città una soddisfacente riparazione economica per i danni subiti grazie alla sanzione imposta collettivamente a tutti i membri del collegio. *Respondent* è stato Julien Fournier (Nancy).

Uri Yiftach-Firanko (Gerusalemme), *The Death of the Surety?*, ha affrontato il tema delle garanzie personali in diritto tolemaico. A un'analisi storico-giuridica la posizione del garante nell'Egitto tolemaico appare difficilmente sostenibile: il garante infatti era tenuto a comparire in giudizio al posto del debitore che si fosse reso contumace e paradossalmente rischiava la chiamata in giudizio anche se il debito era estinto o addirittura non esistente. Essendo la sua capacità di opporsi a tali pretese assai limitata, spesso i creditori si rivolgevano direttamente al garante per avere soddisfazione, anzichè al debitore principale. Di qui un gran numero di condotte abusive, ben attestate nella documentazione papiracea, che condussero, intorno al 135 a.C., a una riforma dell'istituto. *Respondent* è stato Hans-Albert Rupprecht (Marburgo-Lahn).

Andréas Helmis (Atene), *La problématique de la fiction dans le droit de l'Égypte hellénistique*, ha dedicato la sua relazione alla questione del ricorso alla *fictio iuris* in diritto ellenistico. Dopo aver esaminato alcuni possibili esempi di finzione, desunti dalle fonti papiracee attinenti alla materia contrattuale,

alle convenzioni matrimoniali ed anche al diritto penale, Helmis è ritornato sulla configurazione romana della *fictio iuris*, distinguendola nettamente dal ragionamento per analogia. A parere di Helmis, gli esempi citati non consentono di parlare di finzione, ma solo di analogia: bisogna dunque abbandonare la tesi secondo la quale il ricorso alle *fictiones* fu proprio anche del diritto ellenistico. *Respondent* è stato Andrea Jördens (Heidelberg).

Da ultimo, Alberto Maffi (Milano), *Le principe de majorité dans le droit grec: origine, développement et mode d'emploi*, ha esaminato le origini e l'applicazione del principio di maggioranza nel diritto pubblico greco. Rimarcando le differenze fra i sistemi politici antichi e moderni, Maffi ha osservato come il principio di maggioranza non sia riscontrabile solo nei regimi democratici, e come in ogni caso sia difficile se non impossibile parlare di un confronto dialettico fra minoranza e maggioranza, analogamente a quanto accade nel mondo moderno. Appartiene, però, alla democrazia antica la concezione secondo la quale la decisione maggioritaria vale come se fosse espressione della volontà dell'intera collettività. D'altro canto, se pure il principio di maggioranza, nella pratica e nella teoria politica greca, sembra affermarsi come strumento in grado di assicurare la *reductio ad unum* della molteplicità, non si può comunque trascurare quanto le fonti ci dicono intorno alle criticità del sistema, rilevate non solo dagli esponenti di parte oligarchica. *Respondent* è stato Stephen Todd (Manchester).

I lavori si sono conclusi la mattina del 10 settembre con l'assegnazione ad Adriaan Lanni (Harvard) del compito di organizzare negli Stati Uniti il prossimo Symposion.

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