AKTEN DER GESELLSCHAFT FÜR GRIECHISCHE UND HELLENISTISCHE RECHTSGESCHICHTE
30

SYMPOSION 2024

AUSTRIAN ACADEMY OF SCIENCES PRESS

SYMPOSION 2024

ÖSTERREICHISCHE AKADEMIE DER WISSENSCHAFTEN
PHILOSOPHISCH-HISTORISCHE KLASSE
ÖSTERREICHISCHES ARCHÄOLOGISCHES INSTITUT
ABTEILUNG ALTERTUMSWISSENSCHAFTEN

AKTEN DER GESELLSCHAFT FÜR GRIECHISCHE UND HELLENISTISCHE RECHTSGESCHICHTE

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Band 30

SYMPOSION 2024

Comunicazioni
sul diritto greco ed ellenistico
(Milano, 2–4 settembre 2024)

Vorträge zur
griechischen und hellenistischen Rechtsgeschichte
(Mailand, 2.–4. September 2024)

a cura di / edited by
Michele Faraguna

AUSTRIAN
ACADEMY
OF SCIENCES
PRESS

Questo volume è stato finanziato con il contributo del progetto PRIN 2020 "'Sharing in the Polis': Citizenship and Society in the Greek World (VII-II Century BC)", responsabile scientifico prof. Michele Faraguna, Dipartimento di Studi Letterari, Filologici e Linguistici, Università degli Studi di Milano.



POLITEIA

Editors of
Akten der Gesellschaft für griechische und hellenistische Rechtsgeschichte
since 1975:
1 (1975) – 4 (1983) H. J. Wolff
5 (1989) – 12 (1998) A. Biscardi, J. Mélèze Modrzejewski, G. Thür
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27 (2018) E. Cantarella, M. Gagarin, G. Thür, J. Velissaropoulos
28 (2021) – 29 (2023) A. Dimopoulou, M. Dreher, M. Faraguna, K. Harter-Uibopuu, A. Lanni
30 (2024) A. Dimopoulou, M. Faraguna, K. Harter-Uibopuu, A. Lanni, P. Scheibelreiter

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ISBN 978-3-7001-5072-5
Copyright © Austrian Academy of Sciences, Vienna 2026
Layout: Sarah Tafuro, Ledizioni Ledipublishing, Milano
Printed: Prime Rate, Budapest
https://epub.oeaw.ac.at/5072-5
https://verlag.oeaw.ac.at
Made in Europe.

Accepted by the publication committee of the Division of Humanities
and Social Sciences of the Austrian Academy of Sciences by:

Michael Alram, Rainer Bauböck, Andre Gingrich, Hermann Hunger,
Sigrid Jalkotzy-Deger, Nina Mirnig, Renate Pillinger, Franz Rainer, Oliver Jens Schmitt,
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This publication was subject to international and anonymous peer review.
Peer review is an essential part of the Austrian Academy of Sciences Press evaluation process.
Before any book can be accepted for publication, it is assessed
by international specialists and ultimately must be approved by the
Austrian Academy of Sciences Publication Committee.

The paper used in this publication is DIN EN ISO 9706 certified
and meets the requirements for permanent archiving of written cultural property.

Contact address for product safety:
Austrian Academy of Sciences Press
Dr. Ignaz Seipel-Platz 2, A-1010 Wien
Tel.: +43-1-51581-3420
E-Mail: verlag@oeaw.ac.at

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PREMESSA

Il XXIV *Symposion* della *Società Internazionale di Storia del Diritto greco ed ellenistico* / *Internationale Gesellschaft für griechische und hellenistische Rechtsgeschichte* si è tenuto all'Università degli Studi di Milano nei giorni 2-4 settembre 2024. La riunione ha visto la partecipazione di 29 studiosi, 15 relatori e 14 respondents, di dieci paesi, oltre naturalmente all'Italia: Austria, Francia, Germania, Grecia, Israele, Regno Unito, Spagna, Stati Uniti, Svizzera e Ungheria.

Secondo la consuetudine dei *Symposia*, anche la riunione di Milano non ha avuto come oggetto un tema specifico e unitario, questo soprattutto al fine di consentire ai partecipanti di presentare liberamente i risultati e le prospettive più recenti delle ricerche nell'ambito del diritto greco ed ellenistico. Gli argomenti discussi nei diversi contributi di questo volume, tra istituzioni e diritto pubblico da un lato, e diritto privato dall'altro, tra studio di nuovi documenti e riletture di altri già da tempo noti, si caratterizzano per questa ragione per una notevole varietà, pur mantenendo nello stesso tempo una coerenza di fondo nei contenuti, nei metodi e negli approcci. Si individuano in particolare una serie di nuclei tematici portanti, riassumibili come segue.

Un primo nucleo è dedicato a **diritto, cultura giuridica e società**: Lene Rubinstein (Londra) esamina le diverse modalità di trasmissione di leggi e procedure da una *polis* all'altra attraverso una serie di networks presenti nel mondo greco già in età arcaica e nella prima età classica, prima quindi del consolidarsi dell'impero di Atene. La risposta di Athina Dimopoulou (Atene) allarga il quadro concentrandosi sulla pluralità delle forme della mobilità e dell'interazione tra i Greci nell'area del Mediterraneo. Mirko Canevaro (Edimburgo) pone le basi metodologiche per un'analisi del rapporto tra dinamiche di classe e istituzioni giuridiche nel mondo greco, evidenziando come le norme fossero spesso il frutto di un compromesso tra élite e classi popolari, se non addirittura il riflesso degli interessi e dei valori di queste ultime. La risposta di Stefano Ferrucci (Siena) si sofferma soprattutto sul rapporto tra diritto e *agency* popolare nella democrazia ateniese.

Un secondo nucleo tematico riguarda il **diritto arcaico**: Ilias Arnaoutoglou (Atene) analizza un documento di Olimpia da poco pubblicato riportante la risoluzione (*dokimia*) di tre giudici stranieri di Pellana probabilmente in rapporto ad un quadro di contese civili nella città di Ledrinoi. Nikolaos Papazarkadas (Atene), nella sua risposta, prende in esame soprattutto il ruolo delle *hetaireiai* come suddivisioni del corpo civico. Winfried Schmitz (Bonn) indaga la figura della *noxae deditio* nel diritto greco e propone di collegare a tale istituto l'origine della ilotia a Sparta. Edward Harris (Durham e Edimburgo), nelle sue note di commento, si focalizza in primo luogo sull'estradizione degli autori di un omicidio o di altri gravi reati nei rapporti tra città (o con un sovrano straniero).

Un terzo piuttosto consistente nucleo tematico è costituito da una serie di interventi in materia di **contratto e obbligazioni**. Maria Youni (Komotini) porta un contributo alla discussione sulla natura del contratto nel diritto greco mediante una disamina delle attestazioni epigrafiche, finora poco considerate, di *homologia* e *homologein*. Laura Pepe (Milano) nella sua risposta allarga il discorso alle occorrenze più antiche di tali termini in Eraclito, Esopo, Erodoto e Tucidide. Riguardo ai contratti di prestito Philipp Scheibelreiter (Vienna) analizza le transazioni finanziarie descritte nella *Contro Nicostrato* del *corpus* demostenico, un'orazione ricca di spunti per la storia giuridica, economica e sociale di Atene su cui si concentra la risposta di Michele Faraguna (Milano). Donatella Erdas (Milano) si occupa di una serie di documenti attestanti prestiti pubblici contratti dalle città dell'isola di Amorgo nella prima età ellenistica. La risposta di Uri Yiftach (Tel Aviv) prende in esame il formulario di tali testi anche alla luce del confronto con la parallela documentazione dell'Egitto tolemaico. Thomas Kruse (Vienna) e Andreas Victor Walser (Zurigo) dialogano nel tentativo di comprendere in che cosa consistesse l'atto giuridico della *epikatabole* nell'Egitto tolemaico e romano, mentre José Luis Alonso (Zurigo) propone una nuova tassonomia delle forme di garanzia reale documentate dai papiri. Éva Jakab (Budapest), seguita da Mª Carlos Sanchez-Moreno Ellart (Valencia), ritorna sulla questione della natura consensuale o meno del contratto greco, confermando la validità della tesi della *Zweckverfügung* di Hans Julius Wolff ma proponendo nel contempo delle precisazioni riguardo alla natura delle prestazioni che davano origine all'obbligazione. Al tema della cultura giuridica come elemento identitario, nel quadro della comunità giudaica di Herakleopolis, si iscrive la relazione di Patrick Sänger (Münster) dedicata alle funzioni del *horkos patrios* nelle petizioni agli arconti del *politeuma* per inadempimenti contrattuali. Nella sua replica Lucia Criscuolo (Bologna) approfondisce soprattutto gli aspetti linguistici di tali documenti.

Un quarto nucleo tematico è costituito dal **diritto delle città cretesi**. Alberto Maffi (Milano) analizza le norme del Codice di Gortina considerandole come il riflesso della transizione da una società premonetaria ad una in cui l'uso della moneta si andava sempre più consolidando. Nella sua risposta Gerhard Thür (Vienna) si sofferma in particolare sulle dinamiche evolutive del *klaros* come fondamento della società guerriera dorica. Michael Gagarin (Austin) presenta i risultati del lavoro per la pubblicazione del secondo volume delle leggi iscritte delle città cretesi, tra il *c*. 400 e il 67 a.C., cui Anna Magnetto (Pisa) fa seguire alcune osservazioni soprattutto sul tema della democrazia nelle *poleis* di Creta discusso da Gagarin nella sua relazione.

Il quinto nucleo tematico concerne le **istituzioni delle città greche in età ellenistica**. Alain Bresson (Chicago) e David Lewis (Edimburgo) riprendono in esame il dossier di iscrizioni sulla *oktobolos eisphora* di Messene come riflesso del sistema di tassazione romano in Grecia, discutendone nel dettaglio aspetti tecnici e cronologia. Lorenzo Gagliardi (Milano), infine, si riallaccia al recente dibattito sul significato e le implicazioni dell'*isopoliteia* nei rapporti bilaterali tra città, respingendo la tesi della cittadinanza "*minor*" secondo cui si potevano far valere anche soltanto alcuni dei di-

ritti connessi alla *politeia*. Christel Müller (Parigi) per parte sua ribadisce con nuovi argomenti l'idea della "doppia nazionalità" e della possibilità di beneficiare soltanto di "frammenti di cittadinanza", distinguendo tra lo statuto di cittadino e i privilegi ad esso connessi, comunque esercitabili separatamente secondo una gradazione dei livelli di partecipazione.

Il *Symposion* dei cui contenuti si è dato conto si è svolto durante tre giorni intensi caratterizzati da un'atmosfera amicale e da una vivace e sempre fruttuosa discussione tra i partecipanti, cui rivolgo qui il mio sentito ringraziamento. L'organizzazione dell'incontro e la pubblicazione del volume che ne è il risultato rientrano nelle attività del progetto PRIN 2020 "'Sharing in the Community': Citizenship and Society in the Greek World (VII-II Century BC)" cofinanziato dal Ministero dell'Università e della Ricerca, di cui sono stato responsabile scientifico.

Desidero esprimere la mia gratitudine a quanti nel corso degli anni hanno reso lo svolgimento di questo *Symposion* possibile: un caloroso ringraziamento va innanzitutto ai membri del Comitato scientifico degli *Akten der Gesellschaft für griechische und hellenistische Rechtsgeschichte*, Athina Dimopoulou, Martin Dreher, Adriaan Lanni e Kaja Harter-Uibopuu, così come a Michael Gagarin, Philipp Scheibelreiter e Gerhard Thür, i quali mi hanno accompagnato con il loro consiglio nell'organizzazione scientifica del convegno e nella preparazione del volume; ai due revisori anonimi per la lettura del volume e i loro suggerimenti; alla Ledizioni di Milano e, in particolare, a Sarah Tafuro per la disponibilità e il sempre attento e accurato lavoro redazionale; alla collega Donatella Erdas per l'aiuto e la collaborazione prima e durante la riunione; ai nostri studenti Serena Barbuto, Mauro Fontana e Giulia La Cognata per l'assistenza durante i giorni dell'incontro; al Dipartimento di Studi letterari, filologici e linguistici e al suo Segretario amministrativo Sergio Longo per il sostegno sempre prezioso e competente; ad Alberto Maffi per la squisita e festosa ospitalità offerta ai partecipanti nell'occasione dell'incontro milanese.

Un ultimo grato ringraziamento è rivolto ad Eva Cantarella per la sua vicinanza e per avere generosamente aperto il *Symposion 2024* con una lezione inaugurale dal titolo *I Greci oggi tra mito e disincanto*.

Milano, 4 febbraio 2026
Michele Faraguna

IN MEMORIAM
HANS-ALBERT
RUPPRECHT

GERHARD THÜR (WIEN)

IN MEMORIAM HANS-ALBERT RUPPRECHT (16. APRIL 1938 – 13. FEBRUAR 2024)

Hans-Albert Rupprecht wurde am 16. April 1938 als Sohn des Studienrats Albert Rupprecht und dessen Ehefrau Charlotte in Erlangen geboren. Sein Vater unterrichtete Latein und Griechisch, schließlich 1951 bis 1967 als Direktor des humanistischen Theresien-Gymnasiums in München, Schüler Leopold Wengers.[1] Kriegsbedingt besuchte Hans-Albert 1944 die Volkschule in Oberbayern, in Waging am See, 1945–48 dann in München. Prägend für sein Leben war wohl der Besuch des renommierten humanistischen Maximilians-Gymnasiums in München, wo er 1957 das Abitur ablegte. Anschließend studierte er Rechtswissenschaften, legte 1962 die Erste und 1966 die Zweite Juristische Staatsprüfung ab. Er war und blieb ein vorzüglich ausgebildeter, am aktuellen Rechtsleben lebhaft interessierter deutscher Jurist.

Wir ehren ihn hier als letzten Professor des Faches „Papyrologie“ an einer juristischen Fakultät. Antike Rechtsgeschichte war ihm durch seinen Vater, Schüler Leopold Wengers (note 1), in die Wiege gelegt. Der Sohn Hans-Albert trat sogleich nach Abschluss seines Studiums 1963 eine Stelle im Leopold-Wenger-Institut für Papyrologie und Antike Rechtsgeschichte an. Er war wissenschaftliche Hilfskraft bei den Professoren Wolfgang Kunkel und Erich Gerner (ebenfalls noch Schüler Wengers), avancierte zum Vertreter einer Assistentenstelle und war schließlich 1966–1969 wissenschaftlicher Assistent der gesamten Münchener Fakultät. Rupprecht gehörte mit den späteren Professoren Dieter Simon, Heinrich Honsell, Uwe Wesel und anderen zu dem Team, das die 1956 von Kunkel erworbene Bibliothek Leopold Wengers im Münchener Institut katalogisierte und aufstellte. Sie bildeten auch den Kern des legendären „Kunkel-Seminars“, in dem die Herren Assistenten neben der Wissenschaft angeblich auch ihre verschiedenen Pfeifentabake ausprobierten. Das Institut für Römisches Recht der Universität Catania stellte damals jungen Juristen zur Mitarbeit an der Zeitschrift IVRA Stipendien zur Verfügung;

[1] Wenger vertraute Vater Albert Rupprecht die Erstellung eines „Wortindex zum Codex Iustinianeus“ an. Einige Korrespondenz mit Wenger ist noch unter dessen Namen in der „Sammlung Rogg“ (derzeit im Aufbau) im Archiv der Österreichischen Akademie vorhanden (3 Postkarten aus 1933/35/40). Das Projekt war schon zu den Druckfahnen bis mindestens S. 322 gediehen, die Unterlagen wurden allerdings in den Nachkriegswirren vernichtet. Eine geplante Fertigstellung aus inzwischen erschienenem elektronischem Material wurde in den 1970er Jahren endgültig aufgegeben.

dabei konnte auch Rupprecht 1966 seine Italienischkenntnisse perfektionieren.

Vor die wissenschaftliche Öffentlichkeit trat Rupprecht 1967 mit der Monographie „Untersuchungen zum Darlehen im Recht der graeco-aegyptischen Papyri der Ptolemäerzeit“. Mit dieser Schrift wurde er 1965 an der Münchener Fakultät promoviert, Erstgutachter war Johannes Herrmann, Erlangen. 1971 folgte die Schrift „Studien zur Quittung im Recht der graeco-ägyptischen Papyri“, mit der er sich 1969 in München habilitiert hatte. Seine venia umfasste Antike Rechtsgeschichte und Römisches Recht. 1969 wurde er zum ordentlichen Professor für Papyrologie an der juristischen Fakultät der Universität Marburg ernannt, wo er bis zu seiner Emeritierung 2006 wirkte, zwei Mal als deren Dekan. Deutsches Bürgerliches Recht musste er nicht unterrichten. Er konnte sich vielmehr auf die drei von seinem Vorgänger Emil Kießling übernommenen papyrologischen Großprojekte „Wörterbuch der griechischen Papyrusurkunden“, die „Berichtigungsliste der griechischen Papyrusurkunden“ und das „Sammelbuch griechische Urkunden aus Ägypten“ konzentrieren. Das Sammelbuch wurde vom XXVII. bis zum XXX. Band (2023) von seiner Schülerin Andrea Jördens fortgeführt. Selbstlos hat Rupprecht auch den I. Band des von Hans Julius Wolff unvollendet hinterlassenen Handbuchs „Das Recht der griechischen Papyri Ägyptens“ 2002 herausgegeben. Seine persönliche Handschrift zeigte er mit der „Kleinen Einführung in die Papyruskunde“ 1994, die 2000 auch in einer zweiten Auflage auf italienisch erschienen ist. Daneben hinterließ Rupprecht einen reichen Strauß von profunden Studien zu einzelnen Urkunden oder speziellen Sachproblemen in den Papyrusurkunden; sie wurden von Andrea Jördens 2017 in den „Beiträgen zur Juristischen Papyrologie“ in Auswahl zusammengestellt, begleitet von einer ausführlichen Bibliographie.

Ehrungen wurden Rupprecht international durch die Präsidentschaft der Association internationale de Papyrologues zuteil, die er 1989–1995 bekleidete, und durch seine Wahl zum Mitglied der Akademie der Wissenschaften und der Literatur in Mainz 2001. Mit unserem Symposion war er seit 1977 verbunden, in Dankbarkeit erinnern wir uns an das von ihm in Rauischholzhausen veranstaltete „Symposion 2003“. Er war ein geselliges Mitglied unserer Gelehrtengemeinschaft, ein weitgereister und hilfsbereiter Kollege. Mit seiner Witwe Ute und den beiden Söhnen trauern wir um ihn.[2]

Gerhard.Thuer@oeaw.ac.at

2 Ein ausführlicher Nachruf aus der Feder Andrea Jördens‘ erscheint in ZRG-R 142, 2025.

LENE RUBINSTEIN (LONDON)

AEGEAN NETWORKS: DISSEMINATION OF LEGAL CULTURE FROM THE ARCHAIC TO THE EARLY HELLENISTIC PERIOD*

Abstract: In his chapter 'Les transferts de droit d'une cité à l'autre en Grèce ancienne', Alberto Maffi (2012) discusses the development of a shared Greek legal culture that was shaped by the voluntary adoption by one *polis* of laws and procedures developed in other communities. This paper aims to develop Maffi's theme further, focussing in particular on the available literary and epigraphical evidence for communities in the Aegean and on the western seaboard of Asia Minor. The discussion includes legal terminology and features that are rarely attested in our Athenian evidence, but ubiquitous in the rest of the Greek world, and above all in Delphi. It will be argued that the archaic and early classical networks, which predated the consolidation of Athenian power, and in which regional and transregional sanctuaries were the most important nodes, played a significant part in the dissemination and voluntary adoption of legal norms and practices.

Keywords: judicial *koine*, convergence, *gnome dikaiotate*, immunity of officials, Delphi, Independent Delos, Paros

I. Introduction: A 'great convergence'?

In his recent monograph *Polis*, John Ma devoted an entire chapter to a discussion of what he calls the 'Great Convergence', a process of apparent constitutional and political alignment. According to Ma (2024: 222-223) and several of his predecessors, this process began and gained momentum in the years between ca. 350 and 280 B.C. as a result of horizontal engagement between communities within and across regional boundaries. More importantly, there is widespread agreement that the process led to a general proliferation of political institutions and practices which had been associated

* I am grateful to Professors H. Beck, A. Dimopoulou, M. Faraguna, K. Harter-Uibopuu, and Dr. D. J. Thompson for their generous support, comments, and inspiration. All errors are my own.

primarily with democratic types of constitution – what Gauthier (1993: 218) famously referred to as a *koinè démocratique*.

Especially to Anglophone specialists in the field of Hellenistic legal history, this reconstruction may appear both familiar and uncontroversial. To be sure, there has been increasing emphasis in recent years on uniformity rather than diversity in modern discussions of Greek legal culture in the archaic and classical periods, which has significantly narrowed the gap between Anglophone and continental scholarship. Numerous publications have drawn attention to important shared features of the institutional and legal architecture attested for communities that in several important respects differed significantly from each other in terms of political organisation and its ideological underpinnings.[1]

Many of these shared features, in some instances masked by dialectal variations, are attested for the early fifth century, and some appear in our epigraphical evidence at least as early as the sixth century B.C. Nevertheless, there is a still a broad consensus that the two centuries after the death of Alexander the Great were characterised by an acceleration in the process of convergence and the formation of a 'judicial *koine*' that can be observed particularly in the evidence from Ptolemaic Egypt and other regions where Hellenic or Hellenising communities developed from the late fourth century onwards.[2]

That there was an ongoing process of alignment during this period can hardly be doubted; the phenomenon can be observed in legal enactments passed by, for example, communities in Hellenistic Arkadia, Crete, and central Greece.[3] Yet, it is often difficult to gauge in each individual case how far this alignment was primarily linguistic, or whether we are observing a process of convergence also at a deeper level of substance, institutions, and procedures.

To give just one example of the former, Bubenik (2018: 156) notes that in Delphic honorific decrees granting the honorand permission to acquire real estate, the dialect term ἔμπασις attested in grants of *enktesis* for the third century B.C. has largely been replaced by the formula γᾶς καὶ οἰκίας ἔνκτησις by the end of the second century B.C. A similar development can be observed in Korkyra, where the term ἔμπασις is attested for the late fourth century (*IG* IX, 1^2 4 786), while ἔγκτασις is used in decrees

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1 See *e.g.* Gehrke (2009: 398-405), and at the level of detail *e.g.* Simonton (2017: 87-88) on the use of secret ballots in non-democratic contexts. Simonton highlights the reference in the *Rhetoric to Alexander* 1424b1-3 to the use of the secret ballot for the election of significant offices in oligarchies, in contrast to the oligarchic preference for open voting in other contexts as a means of quelling dissent (2017: 130-133).

2 The discussion and division between different scholarly traditions have been especially pronounced in the areas of legislation that pertained to individuals, their households, and their economic activities. See Vélissaropoulos-Karakostas (2011) for a survey of epigraphical evidence from communities across the Eastern Mediterranean. For references to the recent debate, see Faraguna and Boffo (2021: 386-387 with n. 31).

3 For Arkadia, see *e.g.* Dubois (2014), for Crete *e.g.* Bile (2020) and (2021), for central and north-western Greece *e.g.* Bubenik (2018).

dating from the second century.[4] In this example, the alignment is clearly at the level of terminology only, rather than substance.[5]

The adoption of the more ubiquitous term may have been motivated by a desire to facilitate communication with the community to which the honorand belonged, as well as with a wider Hellenophone audience, across regional boundaries, in order to encourage potential future benefactions. Such terminological modifications may well reflect an increased awareness on the part of smaller or medium-sized communities such as Korkyra of the importance of increasing their geographical reach and appeal in their engagement with other communities.[6] However, the widespread practices of restricting the acquisition of real estate to citizens, as well as the granting of dispensations from this restriction to deserving non-citizens, were not themselves the result of a late classical and Hellenistic process of convergence: the practices of restricting the acquisition of land and buildings, and granting dispensation as a privilege, are attested already for Chaladra in the early fifth century,[7] and it appears to have been widespread across the Greek world at least as early as 378/7 B.C.[8]

Conversely, apparent terminological congruence attested in the epigraphical evidence may mask important underlying differences, not unlike the problems that have been noted and discussed with reference to so-called 'EU legal English'.[9] Terms that are well-attested in literary and epigraphical evidence for classical Athens sometimes turn out to be false friends when we encounter them in other regions.[10]

Likewise, beneath formulas that appear reassuringly familiar on the surface there often lurk substantial institutional and procedural variations. In an important study of documents and institutions in late classical and Hellenistic Aiolis, Fröhlich (2019)

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4 *IG* IX, 1² 4 789, 790, 792.

5 The term ἔμπασις/ἔππασις is attested in numerous decrees passed by Megara, as well as by *poleis* in Arkadia and Boiotia (both federal decrees and decrees passed by individual *poleis*) in the third and second centuries. Notably, one Boiotian federal decree passed in 363 B.C. for a Byzantian honorand (*SEG* 34: 355) uses the term ἔνκτησις, while ἔππασις seems to be the norm in Boiotian federal decrees from the third and early second century. Megara used also the term ἔπαρχα (*IG* VII, 2 and 3) alongside ἔμπασις in the third century. The terms may have been used interchangeably; alternatively ἔπαρχα may have referred more narrowly to revenue derived from real estate in territory controlled by Megara, similar to what Xenophon may have enjoyed at Skillous (Xen. *Anabasis* 5.3.7-13). For a distinctly Megarian decree culture, see Liddell (2009: esp. 423-425) and for Megarian constructions of a distinct identity, see Beck (2018:35-41). For a recent list of epigraphical attestations of grants using the term ἔνκτησις/ἔνκτασις, see Harris (2024: 149-150).

6 See Douthe (2011: 108-109).

7 Minon (2007: 85-91, no. 12, Chaladra 500-475 B.C.).

8 The Athenian undertaking in 378/7 not to permit Athenian citizens to acquire land in the territories of their allies (*RO* 22 ll. 35-44) suggests that such restrictions applied in a large number of communities across the Aegean and the Greek mainland at this point.

9 See *e.g.* Richard (2012) and Cean-Cosmulescu (2022) on convergence and 'pseudo-convergence'.

10 See *e.g.* the verb προθῆι in the sense of 'pay' rather than 'propose' in *Milet* I, 6 187 l. 10 = *OR* 123, ca. 450-440 B.C. For other examples of 'false friends', see Rubinstein (2003: 104-107).

has drawn attention to evidence for significant retention of local legal and institutional traditions and practices – in some respects a *koinè régionale* and even *microrégionale* (2019: 63-64) – and also for notable institutional differences between individual cities within the region throughout the third and second centuries B.C.[11] As Fröhlich argues, this diversity, which is even more conspicuous in the neighbouring regions of Caria and especially Ionia, points to the conclusion that institutional and legal convergence may have been considerably more shallow than is generally believed.

Finally, implicit in the term 'convergence' is the assumption that most communities followed roughly the same direction of travel, although different communities and different regions may have travelled at different speeds. It is often assumed that, until the mid-second century B.C., the direction was towards some form of *demokratia*, followed by a widespread tendency towards democratic backsliding over the centuries that followed. Until recently, it has also been widely assumed that the institutions, principles, and practices that are often interpreted as 'democratic' can ultimately be traced back to Athens. According to this reconstruction, their dissemination was a direct result of Athenian domination of the islands and shores of the Aegean for most of the fifth century and for much of the fourth, with the Macedonian powers subsequently adopting the hegemonic infrastructure developed by the Athenians and adapting it for their own purposes.

There is a growing consensus that the traditional reconstruction underestimates the agency of individual communities in the shaping and development of their laws and institutions. What follows will be an attempt to contribute further to that debate with a discussion of some of the evidence that suggests an earlier starting point for the process of convergence. It will be suggested that some of the phenomena that are widely attested across the Greek world may have been modelled on institutional and procedural templates developed in the context of larger regional sanctuaries and their administration.

II. Horizontal engagement, diversity, and uniformity

It is now widely agreed that the type of constitution that Aristotle and his contemporaries would have recognised as a *demokratia* did not have a single cradle, but several, and that it was not necessarily Athens that had given birth to the eldest democratic baby.[12] Likewise, there is broad agreement that laws and institutions that are conventionally interpreted as evidence for constitutions at the democratic end of a constitutional spectrum were not necessarily spread by hegemonic *fiat*.

In his discussion of the dissemination of legal culture between Greek communi-

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[11] See *e.g.* Fröhlich's comments (2019: 49-51) on the concentration of several remits in the hands of the *exetastai* and the *strategoi*, and on the attestations of certain types of city official not known from cities outside the region.

[12] For a discussion of early attestations of institutions and practices associated with *demokratia*, see Robinson (1997). For Argos as providing an example of a broad-based constitution developed on different foundations from and independently of Athens, see Piérart (2020: esp. 77-78 and 162-163).

ties, Maffi (2012) outlined at least four ways in which voluntary adoption of laws and institutions by one community from another may have come about. The first is when a community invites reputable individuals from outside to draw up legislation. The second is when a newly founded *polis* adopts laws and institutions from one or more communities that claim a stake in the foundation. The third is through horizontal cultural interaction and reciprocal exchange – or 'peer polity interaction', to adopt the terminology applied by Ma.[13] The fourth, which Maffi regards as particularly important in the Hellenistic period, is the exchange and adaptation that might result from the formulation and implementation of agreements on *sympoliteia*.

A horizontal model operating with parallel legal and institutional developments in communities that retained their agency, rather than having laws and institutions forced upon them from above, definitely has its attractions. If communities were in a position to mix and match at their own pace, emulating laws and institutions developed elsewhere and adapting them for their own purposes and in line with their own traditions and identity, this helps to account for the significant regional variations that continued to be in evidence for centuries, as in Hellenistic Aiolis, despite a general tendency towards convergence.

On the other hand, even the most committed proponents of horizontal dissemination recognise that it does not replace, but rather complements, the more traditional reconstructions that have focussed primarily on the influence exercised by hegemonic powers, especially in the fifth and early fourth centuries. The complementarity of horizontal and vertical dissemination is outlined by Maffi (2012: 121), and it has informed the debate also more generally. Especially in discussions of the legal and political culture(s) on the islands and shores of the Aegean Sea, it is first and foremost classical Athens that scholars identify as pioneering institutions, procedures and principles, even when the communities in question modified institutions for which Athens had been the original source of inspiration. As Ma puts it (2024: 226-227):

> *Various items of political culture were clearly influenced by Athens or derived from the developments in the Athenian laboratory and diffused through peer-polity interaction (after a period of direct imposition by Athens in the fifth and early fourth centuries BCE).*

While warning against an excessive emphasis on Athens serving as a direct model for other communities, Ma (2024: 227 with n. 107) mentions as examples of Athenian inspiration the designation of certain types of official (*e.g. euthynoi*), the organisation and conduct of assembly debates, and striking similarities in the contents and phrasing of legislation, *e.g.* the law that permits a buyer to return an enslaved person with a concealed disability and the legal procedures attested for second-century Paros (*SEG* 33: 679).

As far as the latter are concerned, Wörrle and Lambrinudakis (1983: 314) high-

[13] Ma (2003), developed further in Ma (2018).

light the clause that instructs the volunteer prosecutor responsible for initiating a public action (*demosia dike*) to enter on his writ the penalty that the offender should 'suffer or pay' (ὁ δὲ γραφόμενος περὶ πάντων γραφέσθω δημοσίαν δίκην κατὰ τὸν νόμον πρὸς τὸμ βασιλέα τίμημα ἐπιγραφόμενος τί χρὴ παθεῖν ἢ ἀποτεῖσαι). They note the close similarity with attested Athenian terminology, and suggest that this is a concrete example of an enduring Athenian legacy surviving from the fifth-century Athenian *arche*.

A very similar *timesis* clause is attested in the monetary pact between Mytilene and Phokaia concluded in the (late?) fifth century, which specifies that if a defendant is found to have contravened the regulation without intent, 'the court is to assess what he should suffer or pay' (τιμάτω τ[ὸ] δικαστήριον ὅττι χρὴ αὖτ<ο>ν πάθην ἢ κατθέ[μ]-εναι).[14] It is not clear how the *timesis* process would have been conducted in practice, or whether the person(s) responsible for launching the prosecution would have been asked to suggest an appropriate penalty. Nevertheless, the wording is so close to the Parian *timesis* clause that a certain interdependence between the texts is beyond doubt; the attestation of nearly identical clauses also in Delos (*IG* XI, 4 1299, C3) and in the Macedonian foundation document of the Hellenic League (*Svt.* III, 446, l. 37, 302 B.C.) is further evidence that might point to a shared origin.

It is precisely in cases such as these that a vertical process of dissemination – i.e. a top-down imposition of legislation and procedures – might appear particularly attractive as an explanatory model. Yet, caution is called for before jumping to the conclusion that the origin of such *formulae* is to be found in Athens, even when a given phenomenon is attested in a range of communities that were geographically quite distant from each other, but which had a shared history as subjected to Athenian hegemonic dominance at various points in their history. It is worth considering potential alternatives, including the possibility that phenomena attested for communities in and around the Aegean may have been developed *outside* the Athenian 'laboratory', and that some of the most important regional hegemonic powers, especially Naxos and Paros, may have contributed significantly to their dissemination already before the Persian Wars. This applies not only to institutions and procedures, but also to values and principles that were of fundamental importance to a functioning *demokratia*, but which were not necessarily perceived by contemporary or later Greeks as intrinsically democratic in themselves. Several of these are found articulated in the reconstructed text of the Athenian heliastic oath, to which the discussion will now turn.

III. *Gnome dikaiotate*

Few clauses have attracted as much attention from modern legal historians as the undertaking made by Athenian *dikastai* to pass their verdict according to the laws and decrees of the Athenian *demos* and, on matters about which there were no laws, to judge according to their most just *gnome* ('judgement' or 'opinion').[15] It is beyond

[14] *OR* 195 ll. 15-18.

[15] See *e.g.* Triantaphyllopoulos (1968) and (1985), Biscardi (1999), Harris (2007), Mirhady

the scope of the present paper to join the long and still ongoing discussion of the clause in the specific context of the Athenian heliastic courts, including the use of the clause by Athenian litigants as part of their rhetorical strategies. The main concern here is with a number of non-Athenian epigraphical parallels, which, like the *timesis* clauses discussed above, are so close to the Athenian example in phrasing and vocabulary that the interdependence of the texts cannot be doubted. Triantaphyllopoulos (1968) discussed most of these parallels in detail, and they have featured prominently in a host of subsequent discussions.

There may be an early allusion to the clause already in Aischylos *Eumenides* 674-675,[16] but Demosthenes' *Against Leptines*, 20.118, usually dated to 355/4 B.C., provides the first secure Athenian literary attestation of the sworn commitment to apply one's *gnome dikaiotate* when making decisions on matters where written enactments contain no guidance. To be sure, it is asserted in Dem. 24.148 that the heliastic oath was introduced by Solon, but as Canevaro points out (2016: 379), this may well be an example of the Athenian rhetorical convention of invoking the name of the lawgiver in order to endow the text cited with additional authority. It is thus not safe to use the references to the oath in fourth-century forensic oratory as evidence for the precise wording of the heliastic oath in the sixth century or even the fifth century before the oligarchic revolutions and the restoration of the democracy in 403/2.

The earliest example of the clause in an Athenian context is found in the oath to be sworn by the members of the Amphiktyonic council at Delphi. The wording of the oath is followed by regulations pertaining to the administration of assets belonging to the sanctuary, and the text is inscribed on a stele that carries the date of the Athenian eponymous archon Pytheas (380/79):[17]

> [Π]υθέο ἄρχοντος, [ἐπ]ὶ τῆς [Ἱ]π[π]οθ[ων]τίδος τρίτη[ς πρυτανείας — — —]
> [.].O[…] vac.
> δικα[ξῶ τ]ὰς δ[ίκ]ας ὥς κα δ[ικ]αιοτάτα[ι γ]νώμα[ι, τ]ὰ μὲγ γε[γρ]αμμ[ένα —— τὰ δὲ ἄ]γρα[πτα (?) κ]ατὰ γνώμαν τὰν αὐτοῦ καὶ [ο]ὐ κερδαν̣ῶ τᾶν δ[ικ]ᾶν οὐ[δεμιᾶι (?) — — — —— —]ΠΟΚΛ…Ι τὰ καταδικασθέντα ἐκπραξέω ἐν δύνασιν ...[— —
> *In the archonship of Pytheas, in the third prytany of Hippothontis [---]*
> *I shall judge the lawsuits with as just an opinion as possible, what is written [---], what is not written (?) according to my own opinion, and I shall not benefit financially from the lawsuits in any [way? ---] and I shall exact the judgement debts as far as possible [---*

The surviving text offers no clue as to where it was originally displayed, but the Athenian dating formula suggests a location in Athenian territory.[18] More problemati-

(2007), Kremmydas (2012: 389-390), Canevaro (2016: 379-381), Pepe (2023).

[16] ἤδη κελεύω τούσδ' ἀπὸ γνώμης φέρειν | ψῆφον δικαίαν, ὡς ἅλις λελεγμένων. There is *consensus codicum* on δικαίαν, but some editors have suggested emending to δικαίας.

[17] *CID* IV, 1 = *CID* I, 10 (*cf. IG* II^2 1126).

[18] Boeckh (1828: 804) noted that the inscription had been transported from Aigina, and it was

cally, the text does not provide any indication as to what had motivated its inscription on stone. Rougemont (1977: 102) cited Roux for a suggestion that the date on the stone refers to the date of the Athenian acceptance and ratification of the Amphiktyonic regulations. If this is correct, the regulations may have been subject to recent revision that may have included amendments or the insertion of additional clauses, while also preserving clauses of a much earlier date.[19] Alternatively, as Lefèvre suggests (2002: 33), the text may be a copy of a much older enactment, which the Athenians chose to republish and display for political reasons that now elude us.[20]

In either case, the inscription still provides the oldest example so far in both our extant literary and epigraphical evidence, Athenian as well as non-Athenian, of the requirement that decisions are to be based on the swearer's most just opinion in combination with a distinction between matters regulated by written enactments and matters on which there were no guidelines set out in writing. From the second half of the fourth century onwards, clauses that show clear verbal similarities to the Amphiktyonic oath are attested epigraphically for a number of communities around the Aegean, as well as for Ptolemaic Egypt.

It appears, with some subtle variations, in an enactment passed by fourth-century Eresos in Lesbos, which sets out provisions for the trials of the city's deposed tyrants (*RO* 83 γ side iii ll. 9-20):

> ὄμνυν δὲ τοὶς πολίτ[αις] τοὶς δικάζοντας ["ν]αὶ δικάσσω τὰν [δίκαν ὄ]σσα μὲν ἐν τοῖς [νόμ]οισι ἔνι κατ τοὶ[ς νόμο]ις, τὰ δὲ ἄλλα ἐ<κ> [καδεμ]ονίας ὡς ἄριστα κ[αὶ δ]ικαί<ο>τατα, καὶ τιμά[σ]ω, αἴ κε κατάγνω, ὄρθω[ς] καὶ δι<καί>ως· οὕτω ποήσω ναὶ μὰ Δία καὶ Ἄλιον."[21]
>
> *The citizens sitting as judges must swear: I shall decide the lawsuit according to the laws on matters included in the laws, and on other matters with solicitude as well and as justly as I can, and if I convict, I shall assess the penalty correctly and justly. This I shall do, by Zeus and by Sun.*

In the gymnasiarchal law from second-century Beroia (*EKM* I *Beroia* 1 A col. i. 26-32), the oath to be sworn by the gymnasiarch is as follows:

> [ὀ]μν[ύ]ω Δία, Γῆν, Ἥλιον, Ἀπόλλω, Ἡρακλῆν, Ἑρμῆν· γυμνασιαρχήσω κατὰ τὸν νόμον τὸν γυμνασιαρχικόν, ὅσα δὲ μὴ ἐν τῶι νόμωι γέγραπται γνώμη τῆ[ἐ]μαυτοῦ χρώμενος ὡς ἂν δύνωμαι [ὀ]σι<ώ>τατα καὶ δικαιότατα, οὔτε φίλωι χαριζόμενος οὔτε ἐχθρὸν βλάπτων παρὰ τὸ δίκαιον καὶ τῶν ὑπαρχουσῶν

most likely a *pierre errante*.

[19] Rougemont (1977: 103), who also drew attention to the striking absence of both Delphic and Athenian preambles except for the Athenian dating formula.

[20] Lefèvre (2002: 47-48) tentatively suggests that the (re)publication of the text may have been a response to Spartan activities in Central Greece, and in particular their occupation of the Theban *kadmeion* in 382. A reinscription and display of the text may have served as a reaffirmation and consolidation of the Athenian position *vis à vis* the sanctuary during the turbulent period after the Peace of Antalkidas.

[21] I have adopted Mirhady's restoration (2007: 54) [καδεμ]ονίας.

προσόδων τοῖς νέοις οὔτε αὐτὸς νοσφιοῦμαι οὔτε ἄλλωι ἐπιτρέψω εἰδὼς τρόπωι οὐδὲ παρευρέσει οὐδεμιᾶι·

I swear by Zeus, Earth, Sun, Apollon, Herakles, Hermes. I shall serve as gymnasiarch according to the gymnasiarchal law, and on matters not written in the law with application of my own judgement as piously and as justly as I can, neither obliging a friend nor harming an enemy in contravention of what is just, and I shall not myself embezzle any of the revenue designated for the young men, nor shall I knowingly allow anyone else to do so by any manner or means.

The sworn commitment not to abuse one's position for financial gain that was included in the Amphiktyonic oath recurs here, albeit in the form of an undertaking to refrain from embezzlement, rather than from accepting bribes. The latter undertaking is included, however, in the oath to be sworn by a board of Knidian judges appointed to resolve disputes between the inhabitants of Temnos and Klazomenai (*Svt.* IV 781 ii 28-37, C2 B.C., *cf.* Ager (1996: 186-192 no. 71)):

δικῶ τὰς δίκας [Τη]μνίταις [καὶ Κλ]αζομενίοις καὶ τοῖς μετο[ίκοι]ς καὶ τοῖς λοιποῖς το[ῖς] κατοικ[οῦσι]ν ἐν ταῖς πόλεσιν πρὸς οὕς [εἰσι]ν αἱ δίκαι κατὰ τὰς συνθήκας· π[ερὶ ὧ]ν δὲ μὴ γέγραπται ἐν τῆι συνθήκηι γνώμηι τῆι δικαιοτάτ[η]ι καὶ τὰς τιμητὰ[ς] δίκας τὰς καταδικασθείσας τιμήσω τῆς ἀξίας, καὶ δῶρα οὐκ ἔλαβον οὐδὲ λήψομαι τῶ[ν δ]ικῶν ἕνεκεν οὔτε αὐτὸς ἐγὼ οὔτε ἄλλος ἐμοὶ οὔτε ἄλλη{ι} ο[ὔτε τ]έχνηι οὔτε παρευρέσει οὐδεμιᾶι, καὶ κατὰ μάρτυρα οὐ δικῶ ἐὰ[ν] μή μοι δοκῆι τἀληθῆ μαρτυρεῖν·

I shall judge the lawsuits for the Temnitai and the Klazomenians and the metics and the rest of the inhabitants in the cities against whom lawsuits take place according to the treaty arrangements. On those matters not set out in writing in the treaty, with my most just judgement and I shall make due assessments upon convictions in lawsuits subject to timesis, *and I have not received and shall not receive gifts on account of the lawsuits either personally or with someone receiving them on my behalf nor in any other way or on any pretext, and I shall not base my verdict on a witness, if I think that he is not giving true testimony*.

The clause that commits the judge not to take a witness statement into account, if he suspects that the statement may be false, is not paralleled in the inscriptions discussed above, but it does form part of the oath administered to the judges deciding a dispute over a public loan between the *polis* of Kalymna and the descendants of one of the two original creditors who had advanced the loan (*IG* XII, 4, 5, A 25-32, early C2 B.C.).[22] While noting that both documents related to disputes decided by judges recruited from Knidos, Herrmann (1979: 268-269) prefers to place the text of the oath in a broader Panhellenic context.[23]

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[22] *cf. e.g.* Magnetto (1997: 91) on *IG* XII, 4, 5 4044. While this inscription appears to have required the judges to decide according to their most just opinion (almost entirely restored in A28-29), it does not combine this with a clause requiring compliance with written enactments.

[23] Herrmann's suggestion may be further supported by Aristotle's *Rhetoric*, 1376a19-20, in which the author applies the term γνώμῃ τῇ ἀρίστῃ to a situation where a speaker cannot

In some respects, the enactments that include the undertaking to apply one's best or most just judgement where written texts provide no guidance are striking because of their diversity, not least in terms of the positions and remits of the persons who are required to swear them, and the types of written documentation that must serve as the primary point of reference for the decision-makers. Yet, one feature that recurs in the four documents cited here is that the persons to whom the oath is administered are all entrusted with varying levels of discretion when it comes to penalty assessment.

In the provisions for trying the tyrants at Eresos (*RO* 83 β side i 19-27, γ front ii 15-20) on capital charges, the judges have discretion to choose, in a *timesis* section of the hearing, between two modes of execution proposed by the prosecutors and the defendants respectively.[24]

In *CID* IV, 1.23-25, the *hieromnemones* are authorised to 'impose whatever penalty that they believe to be just' (αἰ δέ τις τ[ὸς νόμος τούτους παρβαίνοι τοὶ ἱ]αρομν[άμ]ονες ζαμιόντων ὅτινί κα δικαίωι σφ[ι]ν δόκηι εἶμεν κτλ.) on persons who have breached the regulations on the use of certain buildings.

At Beroia, the gymnasiarch is authorised to impose summary fines, and in the surviving part of the law, most fines are specified in the text – but not all. If a young man were to enter the boys' area and chat up the children, then the gymnasiarch was to fine him and stop him.[25] Here, the size of the penalty is left open: the gymnasiarch is apparently expected to exercise his discretion, on the understanding that he would be held accountable for his penal decisions at his *euthynai* on expiry of his term of office.

A young man who had been unjustly or disproportionately fined would evidently have a strong incentive for taking the gymnasiarch to task, and the law further permitted prosecution by volunteers, *boulomenoi*, at this stage (B 107-109). By contrast, the *euthynai* would be less effective as a deterrent in cases where the gymnasiarch had been bullied or bribed or motivated by personal affection into turning a blind eye

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corroborate his argument with witnesses, but has to base it on probabilities, and advises that the speaker should add that probabilities cannot be tempted by bribes or found guilty in an action for false testimony. Mirhady (2007: 52) notes that Aristotle's recommendation here, as also in *Rhetoric* 1402b29-34, is unparalleled in extant Athenian forensic oratory; *cf.* also Harris (2007: 59-60) on the advice in 1375a5-1375b12. However, since the *Rhetoric*, like the *Rhetoric to Alexander*, was most likely aimed at a broad Hellenophone audience, we should expect to find advice and argumentation that would be applicable in other communities and in situations for which surviving Attic oratory offers limited or no direct evidence.

[24] *RO* 83 β side i 19-27: [κ]ρίνναι μὲν αὖτον [κ]ρύπται ψάφιγγι κα[τ]ὰ τὰν διαγράφαν τ[ῶ β]ασίλεος Ἀλεξάνδ[ρω κ]αὶ τοὶς νόμοις· [αἰ δέ κ]ε καταψαφίσθηι [κατ'] αὖτω θάνατος, ἀ[ντιτι]μασαμένω Εὐρ[υσιλά]ω τὰν δευτέραν κρί[σ]ιν ποήσασθαι διὰ [χ]ειροτονίας, τίνα [τ]ρόπον δεύει αὖτον [ἀπ]οθάνην; γ front ii 15-20: κρῖνα[ι μ]ὲν αὖτον κρύπται ψάφιγγι ὀμόσσαντας περ[ὶ θ]ανάτω· αἰ δέ κε καταψαφίσθη θάνατος, ἀντιτ[ι]μασαμ[έ]νω Ἀγωνίππω τὰν δευτέραν διαφόραν ποήσασθαι, τίνα τρό[πο]ν δεύει αὖτον ἀποθάνην. See recently Dimopoulou (2015: 240).

[25] *EKM* I, 1 B ll. 13-15: περὶ παίδων· εἰς τοὺς παῖδας μὴ εἰσπορευέσθω τῶν νεανίσκων μηθείς, μηδὲ λαλείτω τοῖς παισίν, εἰ δὲ μή, ὁ γυμνασίαρχος ζημιούτω καὶ κωλυέτω τὸν ποιοῦντά τι τούτων.

to the infraction – or imposing a symbolic fine that was not commensurate with the offence. Neither the offending youth, nor the gymnasiarch himself could be expected to blow the whistle, so the gymnasiarch's dereliction of duty would most likely be exposed only if another adult had been present with the children when the offence was taking place.

The gymnasiarch's undertaking to apply his judgement as piously and as justly as possible, without favouring friends or harming enemies, makes eminent sense in cases such as this, where the law offered no precise guidance on the appropriate penal response. A comment in Aristotle's *Politics* 1287a24-29, which connects the application of one's *gnome dikaiotate* with administrative decisions and summary judgements on matters left open by the laws, suggests that this clause may have been included regularly in the oaths sworn by city officials, whose remit included penal authority, already in the fourth century.[26]

Finally, the connection between the promise to apply one's most judgement and *timesis* is discernible in the treaty (*syntheke*) *Svt*. IV 781 forming the basis of lawsuits between the inhabitants of Temnos and Klazomenai. Here it is also envisaged that the judges would have to apply it, if litigants brought to bear evidence of a type that had not been clearly set out in the treaty text.

Scafuro (1997: 54-56) has made the important observation that the clause in the Athenian heliastic oath is likewise of direct relevance to the *timesis* sections of *agones timetoi*, in which the *dikastai* had to apply their own fairest judgement when deciding between two alternative penalty proposals. So while the clause is attested only rarely in extant Athenian forensic oratory,[27] one must be aware that it may have played a far more important part in speeches delivered during the *timesis*, of which not a single one has survived in our corpus.[28]

In all of these instances, it appears to have been an important priority to secure the integrity of the process by which a penalty was matched to the offence in those cases where an enactment (be it a law, a decree, or a treaty) entrusted the decision makers (be they officials, councillors, or dicasts) not only with deciding on the question of guilt or liability, but also on what the convicted person was to suffer or pay.[29]

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[26] ἀλλὰ μὴν ὅσα γε μὴ δοκεῖ δύνασθαι διορίζειν ὁ νόμος, οὐδ᾽ ἄνθρωπος ἂν δύναιτο γνωρίζειν. ἀλλ᾽ ἐπίτηδες παιδεύσας ὁ νόμος ἐφίστησι τὰ λοιπὰ 'τῇ δικαιοτάτῃ γνώμῃ' κρίνειν καὶ διοικεῖν τοὺς ἄρχοντας, ἔτι δ᾽ ἐπανορθοῦσθαι δίδωσιν ὅ τι ἂν δόξῃ πειρωμένοις ἄμεινον εἶναι τῶν κειμένων. *Cf.* Gauthier and Hatzopoulos (1993: 55) on the relevance of the clause to the entire remit of the gymnasiarch. For an overview of summary fines imposed by officials outside Athens, see Rubinstein (2018).

[27] See *e.g.* Harris (2007: 62).

[28] This is not counting Sokrates' *timesis* speech as dramatised in Plato's *Apology*.

[29] An echo of the clause likewise seems to be present in the oath to be sworn by nine Zeleian citizens (*Syl.*[3] 279 ll. 9-16), who are to be elected to identify public land in private possession. An important part of their remit is to assess the values of the plots 'correctly and justly according to his own judgement' (καὶ τιμήσειν τῆς ἀξίης ὀρθῶς καὶ δικαίως κ[α]τὰ γνώμην τὴν ἑαυτοῦ) – assessments that will have direct financial consequences for the occupants of the plots, who will be required either to pay over the value to the *polis* or else vacate the

In several respects, then, the clause might be regarded as an excellent example illustrating the combination discussed by both Maffi and Ma of vertical and horizontal dissemination, which contributed to the creation of a Greek legal, procedural, and ideological *koine*, and which can be observed in increasingly abundant late classical and Hellenistic epigraphical and papyrological records from the Greek world outside Athens. The unmistakable similarities between the texts suggest a single, shared origin. The versatility and variation both in wording and in the application of the clause to suit the purposes and needs of specific enactments point to the kind of voluntary adoption and adaptation by individual communities of a shared legal heritage that may originally have been pioneered by the Athenians, but which subsequently became part of a living, Panhellenic legal tradition.[30] Moreover, as Ma suggests (2018: 290), later generations of Greeks may not necessarily have associated this with a specifically Athenian legacy.

Yet it remains a question how far this legacy did indeed have its origins in an archaic or early classical Athenian 'laboratory'. Difficult though it is for us to imagine Athenian democratic justice in the classical period without the values and principles articulated in their heliastic oath, this does not itself imply that the Athenians were the first to articulate them.

IV. Athenian legacies?

As mentioned earlier, in the fourth century the Athenians themselves did not hesitate to attribute their heliastic oath to Solon, along with other features of their legislation such as volunteer prosecution and procedures with which officials and politically influential citizens could be held accountable. Some modern scholars have been prepared to accept this Athenian claim to the position as *protoi heuretai*. One example is Triantaphyllopoulos' discussion (1968: 53) of the oath in a broader, Panhellenic context, in which he regarded it as probable that the Amphiktyonic oath in *CID* IV, 1 had been directly influenced by the Athenian oath.

This hypothesis cannot be dismissed *a priori*: there is evidence for major organisational changes at the sanctuary during the second quarter of the sixth century, with fourth-century Athenian tradition placing Solon in an important role as advisor to the Amphiktyonic council in connection with the First Sacred War.[31] The presence

land. Another association between the clause and a process of *timesis* is found in *RO* 63 = *IG* II^2 1183, passed by the deme of (probably) Hagnous, dating from the last quarter C4 or the first half of C3 (Wilson 2011: 79 with n. 2).

30 In her discussion of the similar wording of an oath included in *IG* II^2 1196, an enactment passed by the deme of Aixone (330-320 B.C.), and in *RO* 63, Ackerman (2018: 232-233) points out that even the Athenian civic subdivisions do not appear slavishly to have copied the phrasing of the heliastic oath, but adapted it to suit their own specific purposes. She suggests that they may have tapped into a more general Panhellenic religious tradition, rather than modelling their practices (especially their sanctuary administration) directly on those of Athens' central administration.

31 For recent discussions of this problematic tradition in the context of fourth-century Athenian politics in Central Greece, see Lefèvre (1998: 14-16), Westwood (2020: 290-294) and

and activities of the exiled Alkmaionidai later in the sixth century provide a further possible context for Athenian influence on Amphiktyonic practices and procedures.

Nevertheless, it is a distinct possibility that the influence may have been the other way around, *i.e.* that some of the laws, procedures, and principles attested for fifth and fourth century Athens may originally have been inspired by those developed in Delphi and in other major sanctuaries.[32] More importantly still, many of the laws, procedures and institutions attested in fifth and fourth-century inscriptions from the Aegean and Asia Minor may be developments that happened independently of Athenian influence, despite the superficially reassuring similarities with their well-attested Athenian parallels.

A difficult methodological question is how far it is possible to identify the former and distinguish them from the latter. Dialectal variations, such as the terminology relating to the acquisition of real estate discussed above in Section II or the many alternatives to the verb for volunteering (βούλομαι, (ἐ)θέλω, χρήζω, λῶ), are not in themselves sufficient evidence. Even when forcing or encouraging legislative change on a subordinate community, a hegemonic power might still see an advantage in allowing the recipient community to adapt the phrasing of the text in line with its own local conventions and so disguise its origins as an external imposition.[33]

There are nevertheless some instances where the divergence seems to run deeper. The fifth-century coinage agreement between Mytilene and Phokaia discussed above may serve as an illustration (*OR* 195). Lines 15-18 run:

> αἰ δέ κε ἀπυφ[ύ]γηι μ[ὴ] θέλων ἀμβρότην, τιμάτω τὸ δικαστήριον ὅττι χρὴ αὖτ<ο>ν πάθην ἢ κατθέ[μ]εναι· ἀ δὲ πόλις ἀναίτιος καὶ ἀζάμιος [ἔσ]τω·
>
> *If the defendant is acquitted of having committed the crime willingly, then the court must decide what he must suffer or pay. The* polis *shall be guiltless and not liable to a penalty.*

The verb κατατίθημι in the sense of 'pay' is relatively rare in surviving Athenian inscriptions, where it is used primarily (though not exclusively) in the context of the administration of sacred funds.[34] On the other hand, there seems to be an echo of a similar clause in Dem. 21.99,[35] so in the present context its main interest is that this paying verb is put in the mouth of the Mytilenaian defendant in Antiphon 5.77, and that the term is also epigraphically attested for early fourth-century Delphi and

Franchi (2020). For a recent outline of Athenian activities in sixth century Delphi, see e.g. Bowden (2020: 517-519).

[32] For a discussion of this question, see *e.g.* Kyriakidis (2019).

[33] This was almost certainly envisaged in Alexander's arrangements for Chios in *RO* 84: the elected *nomographoi* were local (A 4-6), and their constitutional revision project was to be based on existing Chian legislation rather than on an externally imposed template, with their revisions and additions subject to external hegemonic vetting.

[34] *e.g. IG* I^3 8 (Poseidon), *OR* 144 = *IG* I^3 52 B l. 20 ('treasury of the other gods'), *IG* I^3 256 (Nymphs), *I. Rhamnous* II 180 (Hermes).

[35] οὐ γάρ ἐστιν ὅφλημ' ὅ τι χρὴ καταθεντ' ἐπίτιμον γενέσθαι τουτονί, κτλ. *cf.* Dem. 24.115.

fifth-century Lindos, both of them in contexts related to sacred funds.[36]

More significant is the immunity clause, which exempts the offender's *polis* from liability and penalty. The Greek vocabulary denoting immunity from prosecution or punishment is remarkably rich, including ἀθῶ(ι)ος, ἀνυπόδικος, ἀν(υπ)εύθυνος, ἀνάατος and ἀζάμιος/ἀζήμιος/ἀττάμιος/ἀδάμιος (the most widespread by far across the Greek world from the late fourth century onwards).[37] In surviving Athenian inscriptions, this vocabulary is conspicuous by its absence throughout the classical and Hellenistic periods. I have so far found only one single epigraphical attestation of the immunity vocabulary (ἀζέμιος), used in an Athenian treaty with Methone (*OR* 150 = *IG* I^3 61, 430-425 B.C.). Thus, it is probable that the Phokaians and Mytilenaians did not have an Athenian template in mind, but that they had drawn their inspiration for their enactment from elsewhere. Similar considerations apply more generally in connection with immunity clauses in the later classical and Hellenistic periods that provide an abundance of attestations – except in the surviving Athenian inscriptions.

There are several other examples of terminology that are attested for Delphi and numerous other communities, while being only sparingly attested in classical and Hellenistic Athenian inscriptions. Among the more conspicuous is the compound verb ἐκπράσσω that is applied to the exacting of judgement debts in the Amphiktyonic oath (*ID* IV, 1 l. 5 and l. 19).

There are only two secure epigraphical attestations for Athens prior to the Roman imperial period: one is found in the regulations for Eleusis (*OR* 106 A l. 30, before 460 B.C.), the other in an enactment regulating the treasury of Apollon Lykeios (*IG* I^3 138, before 434 B.C.). What is more: Demosthenes' speech *Against Aristokrates* (23.205) provides the sole attestation of the compound in extant Attic oratory, where speaker applies it in his account of the fine allegedly imposed on and exacted from Kimon a more than a century earlier.[38] By contrast, the compound is attested in inscriptions from the *polis* of Delphi (C5), Naryx (Ozolian Lokris, C3), the Aitolian *koinon* (C2), Eretria/Tamynai (C4), Thasos (C4), Beroia (C2), Erythrai (Ionia, C5/4),

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[36] *CID* I, 9 = *RO* 1 A ll. 48-49 and *LSS* 85 = *IK Rhodische Peraia* 251, ll. 7-10 and 47-52.

[37] ἀθῶ(ι)ος: Issa (C3), Thasos (C4), Demetrias/Korope (C2), Phalanna (C3/2); ἀνυπόδικος: Arkesine (C4, C2), Delos (C3), Kyme (C2), Koroneia (C3), Lebadeia (C2), Arkades (C3), Biannos (C3), Hierapytna (C3), Istron (C3), Knossos (C3), Lato (C3), Sybrita (C3), Korkyra (C2), Amyzon (C3/2), Daulis (C2), Delphi (*polis*, C2), Tomis (C2/1), Larisa/Thessalian *koinon* (C2/1); ἀν(υπ)εύθυνος: Delos (C3), Aitolian *koinon* (C2), Koroneia (C3), Erythrai (Ionia) (C3), Physkeis (C2), Daulis (C2), Delphi (*polis*, C2), Elateia (C2), Phalanna (C3/2); ἀνάατος: Elis (C4), Oianthea/Chaleion (C5), Stymphalos/Sikyon (C4), Eleutherna (C6/5, Eltynia (C6/5), Gortyna (C5) (see Genevrois (2017: 60-64)); ἀζήμιος: Arkesine (C4, C2), Delos (C3), Ilion (C3), Kyme (C2), Alipheira (C3), Stymphalos/Sikyon (C4), Koroneia (C3), Lebadeia (C2), Apollonia (C3), Arkades (C3), Biannos (C3), ?Gortyna (C5), Istron (C3), Knossos/Lato/Olous (C2), Lato (C3), Sybrita (C3), Boion? (Doris, C2), Elis (C4), Ephesos (C3), Mytilene/Phokaia (C5), Amyzon (C3/2), Naryx (C3), Delphi (amphiktyony, C3), Delphi (*polis*, C2); Stiris (C2), Tomis (C2/1), Larisa (C2).

[38] On this problematic passage, see Zajonz (2022: 602-605). Some of the manuscripts have variant readings, including εἰσέπραξαν which is the standard compound in both Athenian inscriptions and oratory. ἐξέπραξαν is clearly the *lectio difficilior*.

Miletos (C4), Kyme (C3), Kos (C4) and Itanos in Crete (C3).

The third example to be mentioned here is the term ἡμιόλιον, where Athens is likewise the odd one out. Only one litigant, the young Bosporan nobleman who delivered Isokrates 17, uses the term with reference to an arbitration process to be decided by the Bosporan King Satyros, far away from Athens (17.19). It appears in the Athenian epigraphical record only once, in the deme decree of Hagnous (*RO* 63) – apart from that, it is not (so far) attested epigraphically until the second century CE.

Outside Athens, the earliest epigraphical attestations are found in Elis (Minon (2007) no. 22 l. 8, 475-450 B.C.) and in the treaty between Oianthea and Chaleion (*IG* IX, 12 717 ll. 6-7, C5). It is later attested for Delphi (Amphiktyony, C4; *polis* of Delphi C3, C2), in the treaties between Delphi and Pellana (C3), and between Stymphalos and Demetrias/Sikyon (C4), in Thyrreion (Akarnania, C3), Naupaktos (C2), Epidauros (C3), Lebadeia (C2), Thespiai (C3), Karthaia (Keos, C3), Arkesine (C4, C2), Aigiale (C2), Beroia (C2), Kolophon (C3), Mylasa (C2), Amos (C2), Olymos (C2), Sinuri (C2), Pergamon (C2), Zeleia (C4), and – last but not least – independent Delos, already in the first two decades after its independence in 315 B.C. (*IG* XI, 2 142 and *ID* 503) as well as in inscriptions throughout the following century.

Because of the uneven chronological distribution of inscriptions on stone in different regions of the Greek world, the significance of this terminological distribution has to be cumulative. We may well wonder if contemporary Greeks would have been sensitive to these quite subtle differences in terminology, and also whether they would differentiate between vocabulary and phrasing that were associated with Athenian hegemonic influence and those which were not.

Here the case of independent Delos is of considerable interest. The Delians had had to endure almost continuous Athenian control of their sanctuary and its administration for nearly two centuries. Although the relationship was anything but harmonious in the fourth century, Chankowski (2007: 382-385) has argued that, after independence, the Delians continued to use a number of procedures, practices and legislation that had been developed under the Athenian administration. She further suggested that independent Delos and its sanctuary subsequently functioned as a vector in the dissemination to other Kykladic islands and beyond of their administrative and legal culture that had had its roots in Athens.[39]

Nevertheless, there is broad agreement that, after 315, the Delians acted decisively and radically in reshaping their sanctuary and their landscape, asserting their control and their identity to themselves and to the outside world.[40] In her later study of Hellenistic Delos, Chankowski (2019: esp. 12-60) has further highlighted the very significant changes that can be detected in the Delian administrative records, including a reversal to the traditional Delian calendar as a symbolic signal of their determination to revert to their ancestral constitution and the *status quo ante*.

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[39] For a recent discussion of Delos' position in the Nesiotic League, see further Constantakopoulou (2017: 44-50).

[40] See *e.g.* Constantakopoulou (2017: esp. 57-78).

To the changes discussed by Chankowski may be added the appearance in the post-315 inscriptions of not only the *hemiolion* but also of the vocabulary of immunity.[41] Rather than interpreting these changes as the result of Antigonid and Ptolemaic influence, the early attestations of this vocabulary in sanctuary contexts and documents pertaining to inter-state relations suggest that they represented a conscious attempt by the Delians to signal a break with their Athenian legacy, in the same way as their reversal to their ancestral calendar.

As for the nature of their 'ancestral constitution', referred to as a *demokratia* in the very fragmentary *IG* XI, 4 566, Vial's systematic discussion of the institutions of independent Delos identified a number of changes and deviations from comparable institutions attested for classical Athens. She pointed out (1984: 190-191) that the selection and appointment of officials 'does not appear to have been of a particularly democratic character', and it should be added that granting officials and other agents in the public sphere immunity from prosecution in certain contexts was not merely a cosmetic change. At least if we believe Aischines (3.17), this represented a departure from a fundamental Athenian principle of governance.

Although Vial characterised most of the post-independence reforms as 'minor', she also concluded (1984: 280) that 'the Delians, attached to their traditions, did not regard the Athenian regime as a model to follow'. On the other hand, she still assumed that important aspects of their administration of justice had originally been borrowed from Athens. Given the almost continuous Athenian presence on the island throughout the classical period, this is a plausible proposition; on the other hand, some of the features of the Delian administration of justice deviate quite conspicuously from Athenian democratic practices and principles, despite the many apparent terminological similarities. This is the case, for example, in the law on the sale of wood and wood products (*ID* 509, C3). In lines 14-27, we find an invitation to 'anyone who wants from among the citizens' to report (*eisangellein*) any infractions to the board of *agoranomoi*, who must ensure that the case is heard within a month by 'The Thirty-One'.[42] This sounds reassuringly familiar, but the arrangement is not as 'democratic' as it might at first appear: in lines 21-22 it is prescribed that the volunteer must pay the salary (*misthos*) of the Thirty-One as a deposit when launching his case. Even if the *misthos* may have been a modest sum, it still exposed the volunteer to a financial risk, which for a poor person could be significant. At Athens, the volunteer prosecutor risked a fine of a thousand drachmai only if he failed to get 20% of the dicasts' votes; at Delos, the volunteer risked financial loss if he failed to get more than 50%. The implication is that there was a *de facto* property qualification for volunteer

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[41] ἀζήμιος and ἀνυπόδικος (*ID* 502, 297 B.C.), and ἀνεύθυνος (*ID* 509, 230-220 B.C.?, *SEG* 23: 498, late C3).

[42] ἐὰν δέ τις παρὰ τὰ γεγραμμένα πωλεῖ, πεντήκοντα δραχμὰς ὀφειλέτω, καὶ ἐξέστω εἰσαγγέλλειν τῶι βουλομένωι τῶμ πολιτῶν πρός τοὺς ἀγορανόμους· οἱ δὲ ἀγορανόμοι εἰσαγόντων τὰς εἰσαγγελίας ταύτα ⟦—⟧ ς εἰς τοὺς τριάκοντα καὶ ἕνα ἐν τῶι μηνὶ ἐν ὧι ἂν εἰσαγγελθεῖ.

prosecution, especially since the volunteer had to pay the deposit up front, before the commencement of the trial.

In other words, although the Delian law is linguistically cloaked in Greek judicial *koine*, this *koine* is not particularly democratic – at least not in the sense that we normally associate with classical Athens. The question remains if the Delians had kept an Athenian institution, but reshaped it and taken it in a less democratic direction, or whether we are observing an institutional phenomenon that had a much longer Delian pedigree, and which may have predated the Athenian domination of the sanctuary and the rest of the island community. Parallels from other communities in the Aegean and Asia Minor may point us in the direction of the latter.

V. Hegemonies, sanctuaries and networks

A similar combination of features and vocabulary that appear familiar because of their resemblance to those attested for classical Athens, but which turn out to be considerably less democratic once we look beneath the surface, are attested in several communities in and around the Aegean from the mid-fifth century onwards. Among them is Teos, for which a number of enactments passed in the late fourth and early third centuries displays a similar blend of the familiar and unfamiliar as the material from independent Delos. The first is a series of decrees passed by the Teians (*SEG* 49: 494, 287/6-283 B.C.), which set out processes and procedures concerning funds advanced for the ransoming of hostages and loans to this end. Some of the terminology is very similar to terminology attested for classical Athens, as for example in lines 49-58:

> ὀμόσαι δὲ [πάντας τὸν νόμιμον ὅρκ]ον· ἐπιμεληθῆναι δὲ τοῦ ὅρκου τοὺς στ[ρατ]ηγοὺς καὶ τ[οὺς τιμούχους· ἐὰν δέ τις μὴ ὀμόσ]ηι κατὰ τὸ ψήφισμα ἐπιδημῶν ἀποτινέτ[ω] δραχμὰς πε[ντακοσίας (?) καὶ μὴ ἐξέστω] δίκην ἔχειν κατὰ μηθενός· κατὰ δὲ ἐκείνο[υ] τῶι βουλομένω[ι ἐνδεῖξαι ἐξέστω·]- - - - - - - αὐτοῖς εἶναι παραγενομένοις ἐν ἡμέραις ε[ἵκ]οσι ὀμόσαι καὶ ἐ[νέχεσθαι (?) κατὰ τὰ αὐ]τὰ ἐν τῶι ψηφίσματι· (vac.) τοὺς δὲ ὀμόσαντας [τὸ]ν ὅρκον ἀναγ[ράψαι οἱ στρατηγοὶ καὶ οἱ τ]ιμοῦχοι εἰς λευκώματα καὶ ἐκτιθέτωσαν ε[ἰς τ]ὴν ἀγο[ρ]ὰν ἐφορᾶ[ν πᾶσιν· ἐὰν δέ τις] φωραθῆι κεκτημένος τι τῶν ἀπειρημέ[νων] καὶ [ὅτ]αν ἐνηνοχώ[ς - -] - -ΣΛΤΩΝ εἶν[α]ι· καὶ εἶναι τῶν εὑρηθέντων τ[ὰ] μὲν ἡμίση τοῦ φήναν[τος, τὰ δὲ ἡμίση τῆς πόλεω]ς·
>
> *All must swear the customary oath. The generals and* [*the* timouchoi] *are to take charge of the oath.* [*If anyone does not swear*] *according to the decree, despite being present in the city, he must pay* [*500*] *drachmai and it shall not be permitted for him to bring a legal action against anyone, but it shall be possible for anyone who wishes to bring an* [*?*endeixis][---]*, for them it shall be possible to swear within twenty days upon their return to the city and they shall* [*be encompassed?*] *by the same terms in the decree. --- The generals and the* timouchoi *must register those who have sworn the oath on white-washed boards and display them in the Agora for everyone to see. If anyone is detected in possessing any of the forbidden items, and when* [*someone*] *has brought* [*the items? ---*]*. And half of the items found are to belong to the person who has brought the* phasis*,* [*and the other shall belong to the city*].

Because of the Teians' historical connections to Athens, the familiarity of the 'showing verbs' φαίνειν and ἐνδεικνύειν, along with the encouragement for volunteers to participate in the process of enforcement, may invite the conclusion that the measures adopted by the Teians reflected an Athenian legacy that the Teians had subsequently made their own. It is also entirely reasonable to approach the constitutional context of the Teian enactments as a possible example of Hellenistic *demokratia*.[43]

However, there are some marked parallels between the evidence from independent Delos and third-century Teos, which point away from the classical Athenian model. On the restoration and interpretation of *SEG* 49: 494 II line 19 by Meier (2017: 133), the *strategoi* and the *timouchoi* had played a very prominent role in the framing of the policies; more importantly, their boards had been complemented by an *ad hoc* addition of appointed members to form a *Sonderkommission*, similar to the *ad hoc* board identified by Walser (2008: 94) for Ephesos ca. 300 B.C. Since the Teian measures were clearly a response to an emergency, these appointments may not have been undemocratic in themselves. But when *SEG* 49: 494 is combined with the roughly contemporary Teian enactment concerning its merger with (or incorporation of) Kyrbissos (*Svt.* IV 601.8-15), the measure takes on more significance. These lines document a property qualification that had to be met by candidates for the position as garrison commander: an eye-watering four talents' worth of unencumbered property. This is a staggering sum even by oligarchic or aristocratic standards. The passage runs:

> ἀποδείκνυσθαι δὲ καὶ φ[ρούραρχο]ν εἰς Κυρβισσὸν μὴ νεώτερον τριήκοντα ἐτέων κατὰ τετρά[μηνον ὧι] ἐστι τίμημα γῆς καὶ οἰκίας ἐλεύθερον τεσσέρων ταλάν[των· κατά]ρχειν δὲ τὸμ βουλόμενον τῶμ πολιτῶν ὀμνύντα ἐν τῆι ἐκκλη[σίαι· ὁ] δὲ ὅρκος ἔστω· κατάρξω φρούραρχον εἰς Κυρβισσὸν ὅστις μο[ι ἂν δόξηι] ἄριστα καὶ δικαιότατα ἐπιμελέσε[σ]θαι τῆς φυλακῆς τοῦ χωρί[ου] καὶ διαφυλάξειν τὸ χωρίον τῆι πόλει ναὶ μὰ τὸν Ἀπόλλ[ω --] κτλ.
>
> *There is also to be appointed a garrison commander at Kyrbissos for a period of four months who is no younger than thirty years old and whose unencumbered real estate is worth four talents. The one who wishes from among the citizens may appoint, swearing an oath in the Assembly. The oath shall be: 'I shall appoint as garrison commander at Kyrbissos the man whom I believe will manage the defence of the town in the best and most just way possible and carefully preserve the town for the* polis *by Apollon*...etc.'

The *phrourarchos'* term was limited to four months, and there was a five-year ban on iteration. Neither of these are peculiar to democratic constitutions, any more than are the principles of accountability and publicity, which are clearly priorities in both documents. Nor is the invitation to any citizen who wishes to take part in the election process in the Assembly, but without himself being eligible for the office in question unless he meets the property requirement.

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[43] See *e.g.* Hamon (2018: 365-366). There is as yet no documentation earlier than *IK Erythrai* 504 (268-262 B.C.), a decreee of the Ionian League which refers to the 'Ionian *poleis*' generally (and thus by implication Teos) as democracies.

The distinct non-democratic features in the material from both Delos and Teos could be interpreted as temporary democratic backsliding in both communities, *i.e.* a gradual attrition of democratic features that had originally been part of their Athenian legacy. Furthermore, in the case of Teos – unlike in Delos – the aristocratic or oligarchic features may have been the result of a long period of non-democratic governance over the decades following the Peace of Antalkidas, and perhaps since the Ionian War. Yet, several of the features in the Teian documents bear a conspicuous resemblance to those attested for neighbouring C3 Erythrai, *e.g.* the four-month tenure of the *phrourarchos*, as observed by J. and L. Robert (1976: 197-198).

More significantly, *OR* 122 A lines 5-22 from mid-fifth century Erythrai provides early evidence for a similar combination of clearly non-democratic features with features that we conventionally associate with democratic Athens. Here we find property qualifications, appointment of officials by election, and the inclusion of ordinary citizens in political and legal processes:

> δίωξιν δ’ ἔναι τῶι βολομένωι, καὶ τῶι καταλαβόντι τῶμισυ, τὸ δ’ ἥμισυ τῆς πόλεως. ἢν δ’ ἐκχωρῆι ὁ διώξας, ὀφελέτω ὅπερ οἳ νικῶντι γίνεται, καὶ τούτο δίωξιν ἔναι κατὰ ταὐτά. δικάζεν δὲ ἀπὸ τῶμ φυλέων ἄνδρας ἐννέα ἀπ’ ἑκάστης οἵσίν ἐστιν μὴ ἐλάΤονος ἄξια ἢ τριήκοντα στατήρων, ὀμόσαντας τὸν αὐτὸν ὅρκον τῆι βολῆι δικᾶν κατὰ νόμος καὶ ψηφίσματα.
>
> *Prosecution shall be possible for the one who wishes, and half of the penalty shall belong to the person who secures a conviction, and the other half shall belong to the city. If the prosecutor abandons the case, he shall owe the sum that would have come to him if he had won the case, and it shall be possible to bring a prosecution for this on the same terms. Nine men from each tribe with property worth no less than thirty stateres shall judge, having sworn the same oath as the Council to judge according to laws and decrees.*

In this text, too, the sworn undertaking of the judges may sound like an echo of the heliastic oath; yet it is not only the judges’ property qualification that makes the Erythraian procedure diverge from classical Athenian practice, but also the nature of the financial penalty imposed on the prosecutor who drops his case. Moreover, A lines 28-32 provides a further example of vocabulary that is attested only very rarely for classical and Hellenistic Athens:

> ἐσάγεν δὲ τ[ὰ]ς δίκας καὶ συγγρά[φεν] πρυτάνεας, καὶ [γράφε]σθαι τὸν ὀφ[έλο]ντα· ἢ]ν δὲ μή, αὐτ[ὸς ὀφέλεν· ἐ]γδικάζ[εσθαι..5..]ην[—]
>
> *The prytaneis are to introduce and write up the lawsuits and register the person convicted. If they do not, they shall owe the debt themselves.* [*??*] *shall prosecute ...*[

The verb ἐγδικάζεσθαι is another example of vocabulary that is frequently attested in inscriptions from Delphi as well as for numerous other Greek communities in Asia Minor, the islands and northern coast of the Aegean, and even as far away as

Herakleia in Italy,[44] but only once for Athens in surviving pre-Roman inscriptions, in a phratry document relating to the lease of land,[45] and only once in extant Attic oratory (Lys. 17.6). As with the texts discussed above, there are reasons to pause before concluding that the institutions and procedures in early classical Erythrai had been inspired by similar institutions in Athens, let alone directly modelled on them. The same applies in the case of early fifth century Teos and its institutions: while recognising striking parallels between the Teian assembly curse in *OR* 102 and its Athenian counterpart, Adak and Thonemann (2022: 139) concur with Herrmann (1981: 25) in regarding Athenian influence as unlikely, and preferring to assume a 'parallel but independent development'.

The occurrence of shared features in the legal and political institutions of neighbouring Erythrai and Teos can be readily explained as an example of a regional *koine* of the type identified by Fröhlich (2019) in Aiolis – conspicuous in the third century and later, and observable already in inscriptions dating from the early fifth century, as pointed out by Herrmann (1981: 26), and between institutions attested for classical Teos and Abdera. The latter connection may have contributed to the exchange of legal and political culture between the Ionian seaboard and those on the northern coast of the Aegean. This may account for some of the marked similarities between procedures attested for fifth-century Erythrai and Thasos, including the important part played by volunteers incentivised by promises of financial rewards as in the Thasian wine law, *OR* 103 A, in a constitutional context that in other respects displays features that indicate a much less inclusive type of governance than that attested for Athens in the same period.[46]

At the same time, the Thasian evidence also suggests a further connection that takes us in the direction of Paros and its thalassocracy, and which predates the Athenian dominance of the Aegean. In 2003, Matthaiou published a remarkable inscription from Paros (*SEG* 51: 1071) dating from the 6th century B.C. It currently constitutes our earliest epigraphical attestation of volunteer involvement in the enforcement of legislation:

> ἔσο τοῦ ἡώρον πρὸς τὴν πυρὴν μὴ τιθέτο σωρὸν μηδὲ ὠστέα μηδὲ μνῆμα μηδὲ ἐπὶ τῆι πυρῆι· hω δὲ π[ω]ιέον π[αρ]ὰ τὰ γεγρα[μ<μ>έ]να πεντακ[οσί]ας δραχ<μ>[έας] ὠφελέ<το> το[ι ἐθ]έλωντι π[ρήχσ]ασθαι το[ν φρη]τέρον.
>
> *No-one must place a coffin or bones or a funerary monument inside the boundary markers either near the area designated for funerary pyres or on it. The person who breaches this written enactment must owe five hundred drachmai*

[44] See above all *CID* IV, 9 (Delphi 337/6), the reconciliation agreement from Dikaia (*SEG* 57:576 a 29-30), and the regulations of sacred land in Herakleia in Italy (Pernin 2014: 460-462 no. 259 I 49, 129-130, C4). In the Hellenistic period, the compound appears in the gymnasiarchal law of Beroia (C2), in addition to treaties and interstate disputes involving communities in the Cyclades, Caria, Ionia, Aiolis, Thessaly, and Phokis.

[45] Pernin (2014: 75-78 no. 14) = *IG* II^2 1241, 300/299 B.C.

[46] See *e.g. OR* 104.29-30 and 35-36, in which the *epistatai* are to be rewarded with 50% of the penalties exacted by them – a practice that is so far unattested for classical Athens.

to anyone from among the phratry members who wants to exact it.[47]

The part played by volunteers is attested also for the fifth century (*IG* XII, 5 107 and 108): volunteer participation was clearly an important feature of the Parian legal system. In the sixth century, the ties between Paros and its *apoikia* were so close that it was possible for the same person to hold important offices in both communities.[48] It is highly likely that the legal culture and institutions in Thasos, as a Parian *apoikia*, had been directly influenced by those developed in Paros. There is also evidence for Paros being very active as a founder of *apoikiai* in collaboration with Miletos and Erythrai, allowing us to establish a link between Paros and the communities on the Asian seaboard.

More importantly still, Herodotos relates (5.28-29) how the Milesians, riven by an intractable internal conflict, appealed to the Parians for assistance. The Parians sent 'their ten best men', who proposed the solution that political power should be vested in those landowners who were deemed to have been the most competent managers of their estates. If true, Herodotos' account suggests that the Parians offered more than just a negotiated settlement of the conflict, and that their proposal in fact entailed some substantial changes of the Milesian constitution.

The reason why the faction-riven Milesians could agree on turning to the Parians for a solution was almost certainly the prestige of Paros as a major player in Aegean inter-state relations. In addition to control of its own large Apollo sanctuary, Paros was vying with Naxos for influence over Apollo's sanctuary in Delos from the 550s onwards.[49] Moreover, archaic Paros maintained its own direct connections with Apollo's sanctuary in Delphi,[50] which very likely reflected its prestige, as well as adding to it.

When Paros was called in by the Milesians, the solution it proposed may well have contained features of its own (aristocratic/oligarchic) constitution, but as a lasting compromise its effectiveness and legitimacy were most likely due to the incorporation of features that would have been familiar to both factions from the administration of assets belonging to divinities, Apollo in particular, and well-documented for the major sanctuaries. These included the principles of publicity, accountability and efficient sanctioning in response to offences (especially those committed by individuals entrusted with the administration of shared assets), and integrity in the penal decisions and their implementation, whether by officials, sanctuary personnel, or *dikastai*. They would have been familiar to all who had visited them as pilgrims, traders and *theoroi*.

Both as the (co)founder of important *apoikiai* and as mediator, Paros, together with its thalassocratic rivals, seems to have played an important part in the dissemi-

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47 See Matthaiou (2021) for a revised edition of the text.
48 Reger (2004), 764-768.
49 Prost (2014: 45-56, esp. 54-56).
50 Berranger (1992: 323-324).

nation of legal culture and institutions. As suggested by the Parian example, they may also have provided a less divisive blueprint for the development of legal and political solutions to conflicts, whether internal or between communities.

Although this reconstruction does call into question the Athenian position as 'first inventors', it does not mean that they played no part in the process of convergence in the fifth century especially. But it is important to factor in the possibility that Athens itself took over a legal, administrative and political infrastructure that was already in place in the Aegean, with the Apollo sanctuaries as important hubs, adapting this infrastructure to suit their own purposes, just as the Macedonians appear to have done from the middle of the fourth century onwards. If so, this supports Maffi's proposal that the 'great convergence' was not a phenomenon that began in the fourth century or even in the fifth: it can be traced much further back in time.

Subtle variations in legal vocabulary that transcended regional and dialectal boundaries, but which are scarcely attested or even entirely absent from the Athenian epigraphical record and from Attic forensic oratory, may be interpreted as Apollo's 'fingerprints', such as the vocabulary of immunity and certain compounds of verbs relating to the enforcement of penal decisions discussed above. This applies also when we encounter them in the epigraphical record from Hellenistic communities, ultimately pointing us in the direction of Delphi, rather than classical Athens.

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ATHINA DIMOPOULOU (ATHENS)

THE MULTIPLE CHANNELS OF EXCHANGE OF LEGAL CONCEPTS AMONG THE GREEKS: RESPONSE TO LENE RUBINSTEIN

Lene Rubinstein's dense and well-argued article - nicely weaving together epigraphic, institutional, and linguistic evidence to challenge the traditional Athenocentric narrative - supports the idea that transregional sanctuaries, especially those dedicated to Apollo, starting with that of Delphi, functioned as hubs of interaction where communities could exchange ideas, norms, and practices, leading to a shared legal and institutional culture among the Greeks. This convergence was not simply the result of Athenian influence, but rather a more complex process involving multiple actors and regions. Athens' prominence in the classical period could have amplified its influence on these shared norms, giving the impression of Athenian origins. As the case of archaic Paros and other *poleis* brought forth by Lene Rubinstein suggest, the roots of many common legal and administrative practices were likely far more ancient and widespread, embedded in the fabric of the Greek world long before Athens rose to prominence.

In support of Lene Rubinstein's thesis, transregional sanctuaries indeed encouraged legal cross-pollination among the Greeks, through several channels. The annual *panegyris* of the sanctuaries, attracting crowds from different regions of Greece, offered also the occasion to expose before a wider Greek public important decisions from foreign cities, coalitions or, in Hellenistic times, *koina*, routinely published in the great sanctuaries of Delphi or Delos. In places of worship, people from different civic backgrounds had to abide to common sacred laws and rules, including for the initiation in the Mysteries in Eleusis and in Andania and for the administration of the Amphiktyonic council at Delphi, as the example of the wording of the Amphiktyonic oath brought in Rubinshtein's article attests. Religious norms could also be exported and influence secular norms and vice-versa. The close relationship between religious customary practices, considered as legal norms common to all the Greeks, is underlined by the term used to designate them: they were called simply τὰ νόμιμα. The *nomima* included elements such as the religious norms and sacred calendar and were a common feature of all Greek cities. Plato in the *Laws* speaks about "*what are commonly termed "unwritten laws." And these as a whole are just the same as what men*

call "ancestral customs."[1] Those unwritten norms, such as the obligation to properly bury the deceased, are called in Euripides' *Suppliant Women* "*what all Greece holds lawful"*. [2] It is the same norms that Antigone in Sophocles' play famously calls "*the unwritten and unfailing ordinances of the gods*".[3] These norms could be generic or take a precise form in different cults, resulting in impeachements for *asebeia* if transgressed. Breaking the rules of sacred rite called "τὰ νόμιμα καὶ τὰ καθεστηκότα", the laws and institutions of the Eumolpidae, the Heralds, and Priests of Eleusis, was what Alcibiades was impeached and condemned for in Athens.[4] According to Thucydides,[5] these *nomima* shared among the Greeks also prescribed the continuation of the usual rites in the sanctuaries in invaded lands. Thus, the norms related to the management of lands belonging to the Gods also formed a common legal arsenal of rules shared among the Greeks, as correctly pointed out by Lene Rubinstein. In the case of the purification of Athens, in the early 6th c. from the pollution of the Cylonian' affair by the Cretan sheer Epimenides, following an oracle of Delphi, something which Plutarch links directly to the Solonian reforms,[6] several indications in the sources may connect the dots between Delphi, Athens and Crete in the form of a wider transplant of religious norms.[7]

Legal terminology and institutions never being static, but in a constant flow within any given time and setting, the interaction among sanctuaries and believers in the dissemination of legal developments may have been a two-way street. For individual believers, travelling to oracular centers would often combine a religious, political and legal agenda, as in the case of questions submitted to Pythia in Delphi. Which must have necessitated for the priesthood to follow and be able to understand institutional and legal developments across the Greek world. In Dodona, among the questions preserved in the divination tablets, several have a legal context, from people facing

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1 Pl. *Laws* 793B: τὰ καλούμενα ὑπὸ τῶν πολλῶν ἄγραφα νόμιμα· καὶ οὓς πατρίους νόμους ἐπονομάζουσιν.

2 Eur. *Suppl.* 306-313: νυνὶ δὲ σοί τε τοῦτο τὴν τιμὴν φέρει κἀμοὶ παραινεῖν οὐ φόβον φέρει, τέκνον, ἄνδρας βιαίους καὶ κατείργοντας νεκροὺς τάφου τε μοῖραν καὶ κτερισμάτων λαχεῖν ἐς τήνδ' ἀνάγκην σῇ καταστῆσαι χερί, νόμιμά τε πάσης συγχέοντας Ἑλλάδος παῦσαι· τὸ γάρ τοι συνέχον ἀνθρώπων πόλεις τοῦτ' ἔσθ', ὅταν τις τοὺς νόμους σῴζῃ καλῶς.

3 Soph. *Ant.* 450-457: οὐ γάρ τί μοι Ζεὺς ἦν ὁ κηρύξας τάδε, οὐδ' ἡ ξύνοικος τῶν κάτω θεῶν Δίκη τοιούσδ' ἐν ἀνθρώποισιν ὥρισεν νόμους, οὐδὲ σθένειν τοσοῦτον ᾠόμην τὰ σὰ κηρύγματ' ὥστ' ἄγραπτα κἀσφαλῆ θεῶν νόμιμα δύνασθαι θνητά γ' ὄντ'· ὑπερδραμεῖν. οὐ γάρ τι νῦν γε κἀχθές, ἀλλ' ἀεί ποτε ζῇ ταῦτα, κοὐδεὶς οἶδεν ἐξ ὅτου ᾽φάνη.

4 Plut. *Alc.* 22: παρὰ τὰ νόμιμα καὶ τὰ καθεστηκότα ὑπό τε Εὐμολπιδῶν καὶ Κηρύκων καὶ τῶν ἱερέων τῶν ἐξ Ἐλευσῖνος.

5 Thuc. 4.98.2: τὸν δὲ νόμον τοῖς Ἕλλησιν εἶναι, ὧν ἂν ᾖ τὸ κράτος τῆς γῆς ἑκάστης, ἤν τε πλέονος ἤν τε βραχυτέρας, τούτων καὶ τὰ ἱερὰ αἰεὶ γίγνεσθαι, τρόποις θεραπευόμενα οἷς ἂν πρὸ τοῦ εἰωθόσι καὶ δύνωνται.

6 Plut. *Sol.* 12: ἐλθὼν δὲ καὶ τῷ Σόλωνι χρησάμενος φίλῳ πολλὰ προσυπειργάσατο καὶ προωδοποίησεν αὐτῷ τῆς νομοθεσίας.

7 Garland 1984.

similar legal problems regardless of their provenance.[8] The panhellenic Olympic, Isthmian, Nemean and Delphic games celebrated in the great sanctuaries also brought forth the creation of common rules of access and competition, to be judged by arbiters common to all the Greeks, as the *Ellanodikai* in Olympia, acting on behalf of and overseeing all the Greek competitors, although they came from Elis.[9] The games had also Greek-wide implications, such as the common truce during the Olympics and offered the occasion for political show-off, international negotiations and legal exchanges and agreements, as meeting places of not only the elite of athletes, but of the political elite from around the Greek world as well.

Expanding further than the role played by sanctuaries in creating a *koine* of legal thought among the Greeks, we may also stress the extent of interconnectedness, the great mobility and the constant interaction among the Greeks, on multiple levels: not only civic and religious, but also, not to be forgotten, individual, in a world where the common people travelled a lot, from city to city or sanctuary, not only on official missions, but also for trade and to participate in various religious, athletic and artistic festivals, or to visit healing and religious centers such as Epidaurus and Kos. This mobility brought constant interaction among Greeks of different sub-ethnic, civic and tribal backgrounds, fuelling legal exchanges and convergence among them, other than in a top-down or hegemonic context. For example, wandering artists and artistic competitions allowed a flow of ideas that could bring forth legal or institutional reforms. In the 7th century BC, following an oracle, Terpander from Antissa in Lesbos was summoned to Sparta to help resolve *stasis* by his music.[10] The popularity of Alcaeus' *stasiotic* poetry across the Greek world,[11] like his verses comparing the city divided by civil strife to a ship battling a storm, [12] or the verses of Theognis' from Megara[13] deploring the decay of old aristocratic ideals, were appreciated by like-minded people in other cities, serving as sources for inspiration, action or reaction. From the 5th century onwards, the building of hundreds of theaters across the Greek world (170 identified within the borders of modern Greece today, with dozens more scattered around the Mediterranean), attests to the great popularity of theater plays, which, filled as they are with political innuendos and even legal terminology, carried far and wide ideas on political and legal institutions as well.

In the archaic period, the creation of colonies, as mentioned by Lene Rubinstein, was the most systematic effort of legal transplants. Here Thucydides[14] is using the

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8 Chaniotis 2018.

9 Romano 2007.

10 Suda M 701: ὅτι οἱ Λακεδαιμόνιοι στασιάζοντες μετεπέμψαντο ἐκ Λέσβου τὸν μουσικὸν Τέρπανδρον, ὃς ἥρμοσεν αὐτῶν τὰς ψυχὰς καὶ τὴν στάσιν ἔπαυσεν.

11 Nagy 2004.

12 Alc. fr. 326.

13 Cobb-Stevens 1985.

14 Thuc. 6.4: νόμιμα δὲ Δωρικὰ ἐτέθη αὐτοῖς. ἔτεσι δὲ ἐγγύτατα ὀκτὼ καὶ ἑκατὸν μετὰ τὴν σφετέραν οἴκισιν Γελῷοι Ἀκράγαντα ᾤκισαν, τὴν μὲν πόλιν ἀπὸ τοῦ Ἀκράγαντος ποταμοῦ ὀνομάσαντες, οἰκιστὰς δὲ ποιήσαντες Ἀριστόνουν καὶ Πυστίλον, νόμιμα δὲ τὰ Γελῴων

expression τὰ νόμιμα in order to designate the transfer of secular legal rules in the process of creation of the Sicilian colonies, such as the Dorian institutions exported to Gela, those of Gela to its own colony, Acragas and those of Chalcis to Imera, as their defining attribute. These *nomima*, in the form of sets of regulations carried from the mother city, included other than religious norms, the names and numbers of tribes, the types and terminology of institutions and magistracies, which constituted the social and religious order of the new community. As stated by Irad Malkin, the very phenomenon of copying comprehensive sets of *nomima* was encouraged by the connectivity among the cities, whereas "*the transfer of nomima, particularly those concerned with the sacred calendar, point to the role of religion (aside from Delphi) in forming and intensifying Greek networks*".[15] In this context, *nomima* were also pivotal in marking differences among the Greek sub-ethnic groups of the Dorians, Ionians and Aiolians, some cities sharing the main characteristics of their *nomima* from one group, while integrating specific features from another.

Diplomacy on the other hand, the declaration of war and the conclusion of peace, evolved around shared legal norms and practices among the Greeks,[16] the beginnings of which are lost in time, even transgressing the limits of the Greek world. These rules are called by Herodotus "*all human law*", when Xerxes says that the Lacedaemonians made havoc thereof by slaying heralds.[17] Thucydides has the Plataens use the expression "*the common rules of warfare among the Greeks*", when they say they surrendered to the πίστις of the Lacedaemonians, expecting fair treatment, only to be disappointed.[18] The progressive institutionalization of the orally concluded σπονδαί,[19] the international pacts of alliance or truce based on πίστις and oath-giving, which evolved into written συνθήκαι, the ἐγγράπτους πίστεις mentioned by Polybius (9.36), also followed common legal rituals.

As maintained by Lene Rubinstein, the ritual of oath-giving in particular was a combined religious and legal instrument common to all Greeks, part of a living, Panhellenic legal tradition. The ritual of oath-giving itself seems to transcend time. First described in the Iliad (3.264-317),[20] when a duel between Menelaus and Paris was envisaged as a resolution to the war, oath-giving will be, from then on, omnipresent in Greek international, public and private law and relations, from public endorsement of duties to private conclusion of agreements and from formal undertaking of prom-

δόντες.

15 Malkin 2011: 55, 212, 189-197.

16 Harris 2024: 136-137.

17 Hdt. 7.136: Ξέρξης ὑπὸ μεγαλοφροσύνης οὐκ ἔφη ὅμοιος ἔσεσθαι Λακεδαιμονίοισι· κείνους μὲν γὰρ συγχέαι τὰ πάντων ἀνθρώπων νόμιμα ἀποκτείναντας κήρυκας,

18 Thuc. 3.59: Οὐ πρὸς τῆς ὑμετέρας δόξης, ὦ Λακεδαιμόνιοι, τάδε, οὔτε ἐς τὰ κοινὰ τῶν Ἑλλήνων νόμιμα καὶ ἐς τοὺς προγόνους ἁμαρτάνειν οὔτε ἡμᾶς τοὺς εὐεργέτας ἀλλοτρίας ἕνεκα ἔχθρας μὴ αὐτοὺς ἀδικηθέντας διαφθεῖραι.

19 Baltrush 1994.

20 Kitts 2005: 51-52; Karavites 1992, 24.

ises to dispute resolution.[21] Regarding the γνώμη δικαιοτάτη referred to in the judicial oaths when no specific law exists, I wonder if, prior to the epigraphic examples brought forth by Lene Rubinstein, the concept of using one's most just opinion does not echo the dispute resolution instruments going back to the time when the law was unwritten, and therefore if it cannot be traced back to a single civic origin. Perhaps we could see a very old ancestor of this concept behind the famous line of the Iliad, from the dispute resolution scene of Achilles' shield[22] "*the one who among them should utter the straightest judgment"*.[23]

On the level of inter-personal relations, the archaic customs of ξενία[24] and τράπεζαι,[25] the rules of hospitality offered universally among Greeks to foreigners, were not only generally respected, but allowed to both form bonds and interactions among members of different sub-ethnic Greek groups and to learn from the visitors' narrative about their home rules. We must not forget that the people that travelled across the Greek world on public or private missions, were also the same ones participating locally in the assemblies and the popular courts or routinely exercising public functions. They had a first-hand knowledge of the law and institutions of their home city - to a far greater extent than the average modern tourist - thus being ideal vectors of transmission of legal and institutional innovations. The panhellenic institution of the *proxenoi*, often occurring in the same families, offered generation after generation of locals, familiarity with the institutions of the city the interests of which they served. [26] Among the individual carriers and transplanters of legal ideas we may also count the exiles and refugees,[27] who, during periods of political unrest, formed numerous communities in different parts of Greece, constantly pushing for their return back home. Even more so since the educated among them often made a living as teachers for local children, who they could infuse with their ideas. Isorates[28] wrote a letter to Mytilene's oligarchic government, in favor of his grand-childrens' exiled music teacher, Agenor, praising them for the return of the properties of the exiles. The legal puzzle of the reintegration of exiles and the handling of their properties was often solved in parallel, in different cities across Greece, following Alexander's interventions.

The epigraphic habit itself which, along with literacy,[29] spread across the Greek world like wildfire from the Archaic period onwards,[30] shows that inscriptions were addressed at the widest audience possible, from the regional level to the civic, but

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21 Thür 1996.
22 O'Donnell 1995.
23 Il. 18.508: ὃς μετὰ τοῖσι δίκην ἰθύντατα εἴποι.
24 Gauthier 1972: 18-27.
25 Gallo 2018.
26 Gauthier 1972: 27-61.
27 Rubinstein 2018.
28 Isoc. *Ep.* 8.3.
29 Harris 1989.
30 Gagarin 2008: 67-92.

also the international, and from the different collectives to the individual, including foreign travelers or visitors. Inscriptions with laws, decrees, *symbola*, could be copied by visitors and serve as a source of inspiration for legal transplants. A process echoed by Clinias in Plato's *Laws*, saying that when Knossos was planning a new colony, "*We are bidden also to frame laws, choosing such as we please either from our own local laws or from those of other countries, taking no exception to their alien character, provided only that they seem superior*."[31] Even hidden inscriptions, such as the *katadesmoi* found across the Greek world, some of which curse,[32] in similar wordings, the tongues and hands of the plaintiffs and their legal assistants to be tied, show that people in litigation facing similar challenges often resorted to similar -supernatural- "solutions", despite the differentiations of local legal systems and procedures, as a last resort to the unknown powers, which certainly circulated word-of-mouth among Greeks of different backgrounds, of which no single source of origin could ever be traced.

A most important source of shared legal norms, the ever-going current of navigation and commercial exchanges among foreigners, necessitated the mise-en-place of legal instruments both for securing the process of sale of goods and the resolution of disputes. [33] The institution of *syla* and its counter-effect, the creation of the right of *asylum* and of *asylia* and *symbola* agreements,[34] were common instruments developed among the Greeks, of which not one original source can be identified. Trade practices and similar problems faced in securing commercial exchanges helped develop common legal terminology and common legal instruments, especially for contracts and for securing obligations and debts.[35] Exchanges among foreigners were made possible thanks to an intangible concept, cited in all sorts of sources for Homer onwards, the notion of *pistis*, a very ancient principle of universal character instinctively understood and relied upon among Greeks of all sub-ethnic backgrounds, which permeates social ethics, the political, judicial, commercial and diplomatic life and everyday transactions, being considered a regulator of human relations regardless of civic legal norms, or as a complement to these.[36]

Another area of convergence of legal norms in the Greek world, arising from shared practical experience in the archaic period, is public construction projects, especially of temples, which were characterised by intense mobility between contractors and craftsmen from different regions of Greece.[37] The epigraphic sources recording the assignments and notices of public procurement from different regions

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[31] Pl. *Laws,* 702C: ἅμα δὲ καὶ νόμους τῶν τε αὐτόθι, εἴ τινες ἡμᾶς ἀρέσκουσι, τίθεσθαι κελεύει, καὶ εἴ τινες ἑτέρωθεν, μηδὲν ὑπολογιζομένους τὸ ξενικὸν αὐτῶν, ἂν βελτίους φαίνωνται.
[32] Eidinow 2007: 171-72.
[33] Velissaropoulos 1980: 268-311.
[34] Gauthier 1972 : 62-104.
[35] Pringsheim 1950 : 92-126.
[36] Faraguna 2012.
[37] Pitt 2016.

of mainland and island Greece attest that common management practices of such big public projects were largely developed and, on the basis of practical experience, a similar legal and contractual framework was progressively established. The public and contractual conditions for the execution, supervision, financing and payment of major construction projects, and relevant dispute-resolution methods, which we often see reproduced verbatim from one city to another, probably followed legal standard texts that were in circulation, which were constantly copied, supplemented and refined, adopting an accumulated and largely shared legal experience and terminology.

This constant flow of legal know-how throughout the Greek world culminated in the Hellenistic period, with the almost universal adoption of the institution of the μετάπεμπτοι δικασταί,[38] the visiting judges from foreign cities, a process from which Athens, as well as Rhodes, are notably absent. Thus, while Athens certainly contributed to the dissemination and perhaps the standardization of certain democratic practices, and the sanctuaries did operate early on as hubs of legal exchange, these must have been two among the pieces of a bigger puzzle, in a larger, interconnected Greek world, where legal concepts flowed through multiple channels, including the individual Greeks from all ethnic and civic backgrounds travelling around and sharing legal know-how, terminology and practices among them.

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[38] Robert 1973.

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A SHRED OF RECONCILIATION IN EARLY CLASSICAL ELEIA[1]

Abstract: In 2021 Klaus Hallof published a remarkable early 5th cent. inscription found in Olympia containing the resolution of three judges (*dikastēres*) from Pellana. The eighteen-lines long inscription contains, I argue, two different texts, part of a decision of these judges, called *dokimia* (ll. 1-10), and part of a decision of a corporate body (ll. 10-18). I comment on the term *dokimia*, the nature of the imposed prohibitions in ll. 2-5, the sanctions threatening those who violate them (ll. 5-10), and the rule of ll. 10-11. Finally, I suggest that this text may derive from a reconciliation agreement following a period of civic strife, due perhaps to the (re)foundation of Elis.

Keywords: *dokimia*, Ledrinoi, mediators, Olympia, reconciliation

One of the challenges historians (even more so legal historians) face is to get a grip on fragmentary, isolated pieces of evidence; that means to comment, interpret, and integrate them into a larger narrative about a particular institution. Often, apart from their fragmentary condition, pieces of evidence are severed from their immediate socio-political context, therefore our understanding is limited to analyzing and interpreting a particular statute or decree. The text I am commenting on encompasses most of these challenges; it is not fragmentary, but probably a collage of two different documents, and we have only a slight idea of its historical context. That is fertile ground for speculation and arguments from probability.

In December 2011 in the excavations of the sanctuary of goddess Eileithyia in Olympia[2], southwest of the Kronios Hill, a bronze tablet of a modest size (0,138 x

[1] I am grateful to the organizing committee of *Symposion 2024* and especially to Michele Faraguna for their invitation to be part of an exceptionally vibrant meeting, during which participants raised interesting and challenging questions and arguments. Epigraphic publications are abbreviated in accordance with the *List of Abbreviations of Editions and Works of Reference for Alphabetic Greek Epigraphy* available in https://aiegl.org/grepiabbr.html. All translations are mine and dates are BCE unless stated otherwise.

[2] Results of recent excavations on the sanctuary of Eileithyia, which document the use of the structure since Archaic times: Kollia (2023).

0,277 x 0,01m) was unearthed. It has holes at its edges and in the middle and it is kept currently in the Museum of Olympia (M 3837). The enigmatic eighteen lines-long text has been published in an exemplary fashion by Klaus Hallof in 2021 (duly noted in *BÉ* 2022, no. 205). It is dated based on letterform to the first half of the fifth century (500-450). The linguistic investigation led by Sophie Minon published also in 2021 established that it contains a text composed in the eastern Achaean dialect with an Eleian influence.

Text and translation[3]

δοκιμία τοῖς Πελλανέσι τρισδικασστέρεσι˙
ὅκκαι καζικία γέναται, μὲ θοινάζεν μεδὲ συν-
ϙλοαν ποιϝεῖν μεδ᾽ ὅπλα συνφάρεν μεδὲ σκαλείεν σκ-
άλαν μεδεμίαν ἑταριτικὰν μεδ᾽ ἐπὶ μάντι θύεν μαδέν-
ϙ, αἰ μέπὶ τοῖς δαμοσίοις τᾶς πόλιος˙ αἰ δέ τις ταύτον ποιϝέο-
ι, τὸν μὲν ἀρχαγὸν ϝάρρεν, τὰ δ᾽ αὐτῶ δαμευτᾶμεν ποτῶ Διὸς
τὀλυνπίο, τὰ[ς μ]*εγίστας χόρας ἐν τρῆς ἄνδρες, τὸ*{ς} *δὲ λοιπὸν ἐ-*
ν πέντε ἄνδρες˙ ἀποτεῖσαι ζέκα μνᾶς ϝέκαστον˙ τὸς δὲ λοιπό-
ς πάντες ὅσοι συννεῖαν ἀποτεῖσαι μνᾶν ϝέκαστον ἀργυρῶ˙ τὰς δ-
ὲ ζαμίας πάνθας καθυτὰς ἔμεν τῶ Διὸς τὀλυνπίο˙ ἐπὶ ἒ μολοῖαν
τοὶ δικαστᾶρες ἒ ἀποϝείποιαν, μὲ μολῆσαι˙ αἰ δέ τις τὸ γράφος τα-
ῦτο καζαλέοιτο καὶ ὀποίαι τέχναι καὶ μαχανῆι εὐρόμενος κᾳ[ζ]*-*
ικέοντι τοὶ ξένοι Τιμαῖος, Πίθακος, Δεξξικλῆς, ἐν τοῖ μεγίστοι
ἔχεσαι τῶν ταύτε ἐγραπένον˙ αἰ δέ τις τῶν Κιλικικῶν δικάζ-
οιτο, αἰ δὲ δικάζοι καὶ δι᾽ ὃ ἒ οἷον λόγον εὕρομες, ἐν τοῖ μ-
εγίσστοι ἔχεσαι τῶν ταύτε ἐγραπένον, αἰ δὲ ξένος, αἰ δὲ ϝ-
ασστὸς. τὰ δὲ κατεδίκαζαν τοῖ Πελλανῆς τοῖς Λεδρίνοις ἐπ[ίν]*-*
ομα καὶ τέλεια ἔμεν. ὁ δὲ πίναξ <ἔ> *α ἰαρὸς τῶ Διός.*

Resolution of the three judges from Pellana.
When a judgement is reached (and pronounced), (the convicted individuals) shall not take part in feasts, or get together, or carry arms in common, or till lands belonging to *hetaireiai*, or sacrifice in front of a seer, except in front of one among the public (seers) of the city. If anyone does anything of the above, the leader shall be exiled, his property shall be confiscated in favour of Olympian Zeus; the largest lands (will be auctioned) by (a commission of) three men, the rest by (one of) five men, or (they (i.e. the commissioners) shall pay) a fine of ten minas of silver each. All the accomplices shall pay each a silver mina. All the fines shall be consecrated to Olympian Zeus.
When the judges hear the arguments of the litigants or announce (their verdict), there shall not be any (further) legal proceedings.
If anyone damages this writing and, after it has been established (lit. found out) by what way and method, the foreign(ers) (judges) Timaios, Pithakos,

[3] See the commentary on various readings in Hallof (2021: 105-6). L.10: *μολ<έ>οιαν* – Hallof (2021: 113-4). L.12: *εὐρόμενοι* – Hallof (2021: 115-6) and Minon (2021: 128).

> Dexikles, shall find (him) guilty, imposing the heaviest of the penalties provided here.
> If anyone among the 'Cilicians' initiates legal proceeding (and) we find out who is judging it and by what way, he (the adjudicator) shall be liable to the harshest (penalty) of what is written here, whether (he) is a foreigner or a citizen.
> What the Pellaneis (judges) have decided about the case of Ledrinoi shall be lawful and valid. This tablet shall be sacred (possession) to Zeus.

The text of the inscription is puzzling, not only due to its language, but also to a presumed but omitted context. Its provisions remain vague and ambiguous, and they raise, in fact, more questions than provide answers. Despite these problems, what we have is, clearly, part of a verdict rendered by three judges, concerning the affairs of Ledrinoi[4], a community of so-called *perioikoi* under Eleian suzerainty, on an unknown occasion. If the interpretation of these judges as foreign is accurate, then we have the first occurrence in classical Greece (so Hallof (2021: 105)) of what was thought to be a Hellenistic feature in the administration of justice. For reasons of convenience, the inscribed text can be divided in five sections: ll. 2-10 concern the imposition of a sanction and its enforcement, ll. 10-11 deal with the jurisdiction of the judges, ll. 11-14 focus on the protection of the inscribed text, ll. 14-17 regulate the case of the enigmatic group of *Kilikikoi*, and ll. 17-18 relate to the validity and the dedication of the inscribed text to Zeus.

Since the discussion of almost every term and word of such a text requires more time than the available, and in this respect Klaus Hallof has done a great service to the academic community providing a detailed commentary, I shall focus on three particular points: i) the term *dokimia* and its meaning, ii) the sanctions of ll. 2-5, and iii) the procedural principle enunciated in ll. 10-11. These remarks contribute, I hope, to a somewhat improved understanding of the text.

I. The inscribed text begins with a challenging term: *dokimia*. What is *dokimia*? From a grammatical point of view, it may be a feminine noun, singular nominative, *hē dokimia*; or it could be a neuter noun, plural nominative, *ta dokimia*, corresponding to sing., *to dokimion*[5]. That is how far grammar goes. The feminine *dokimia* is not attest-

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[4] Ledrinoi was situated 21 km west of Olympia, close to modern Pyrgos; see Roy (1997: 282-3), Ruggero (2004: 171), Kõiv (2013: 326), Bourke (2018: 32), Roy (2018: 271), and Gehrke (2023: 190-5). For the Eleian *perioikoi* see Gschnitzer (1958: 7-17). It is assumed that Ledrinoi in the late 6th and 5th cent. was an autonomous settlement of *perioikoi* dependent on Eleians (dedication of a bronze sieve to Zeus, *I.Olympia Suppl*. 207 = Minon, *I.dial. éléennes* 47 (c. 525-475) *ἰαρὸν τō Διός· Λεδρίνον* and X. *HG* iii 2.23-25 & 30; iv 2.16). They were released from Eleian control in 400 (X. *HG* iii 2.21-31; D.S. xiv 17.4-21; Paus. iii 8.3-5), but by the middle of the 4th cent. they were again under it. Paus. vi 22.8 in the 1st cent. CE calls it a *polisma*.

[5] See *LSJ* s.v. *δοκέω* I.4.B και *δοκιμεῖον*/ *δοκίμιον* (plus dative) and *Brill Dictionary of ancient Greek* (Fr. Montanari) *δοκιμεῖον*/ *δοκιμίον* = proof, means of examining or testing, *δοκιμεῖος*/ *δοκίμιος* = proven, tried, valid, esteemed considerable, approved. The etymol-

ed but as a place name in Asia Minor[6]. In contrast the neuter *dokim(e)ion*, *dokim(e)ia* is attested in Plato[7], in the fourth-century accounts of Athena's treasurers in Athens, in similar accounts from Delphoi, Delos and Oropos[8], and in three inscriptions from Hellenistic and Imperial Asia Minor[9], where it means exemplars, proofs, clearly not suiting the Olympian text (note the spelling *dokimeia*). An occurrence in the *Corpus Hippocraticum*[10] suggests that the neuter form may well denote the method, the manner, but this is also a far cry. Hallof (2021: 104-5) suggested a plausible derivation from the verb *dokeō*/*dokō*, from which we have the term *dogma*, that is decision, resolution. This proposal is strengthened by the noun *to dokēma* (i.e. resolution of a corporate body) attested in inscriptions from fourth- and third-century Argos[11]. On

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ogy is discussed in Chantraine, *Dictionnaire etymologique*, s.v. δοκάω. See now Hallof (2021: 104-5) and Minon (2021: 150-1).

6 Str. 12.8.14, 6: *ἐπέκεινα δ' ἐστὶ Δοκιμία κώμη καὶ τὸ λατόμιον Συνναδικοῦ λίθου*. (And beyond it is Docimaea, a village, and the quarry of "Synnadic" marble – transl. H. L. Jones).

7 Pl. *Timaeus*, 65c, 7: *ὅσα μὲν γὰρ εἰσιόντα περὶ τὰ φλέβια, οἷόνπερ δοκίμια τῆς γλώττης τεταμένα ἐπὶ τὴν καρδίαν, εἰς τὰ νοτερὰ τῆς σαρκὸς καὶ ἁπαλὰ ἐμπίπτοντα γήϊνα μέρη κατατηκόμενα συνάγει τὰ φλέβια καὶ ἀποζηραίνει, τραχύτερα μὲν ὄντα στρυφνά, ἧττον δὲ τραχύνοντα αὐστηρὰ φαίνεται*: (For all the earthy particles which enter in by the small veins -which, extending as far as to the heart, serve as it were for testing-instruments of the tongue,- when they strike upon the moist and soft parts of the flesh and are melted down, contract the small veins and dry them up; and these particles when more rough appear to be" astringent," when less rough "harsh." – transl. R. G. Bury). The passage is repeated by Gal. xi 446 and Stob. 1.55.2.

8 *IG* ii^2 1424a, 40-41: [δο]*κιμε*[ῖα] *λε*[ῖα]*ι χρυσαῖ τετταράκοντα*/ [ἕξ], *σταθμὸν* ΠΔΔΔ ΓΗΗΗΗΙΙΙ (369/8); *IG* ii^2 1415, 9; 1421, 6; 1425, 35; 1436, 58; *SEG* 15.120, 17-19 (346/5-336/5) *IG* ii^2 1443, 214; 1455, 15-17; 1460, 29-31: *δοκι*[μ]*ε*[ῖα ἐν κιβωτίοι σεσημασμένα τῆι δημοσί]/*αι σφρα*[γῖδι· see Harris, D. (1991) *The inventory lists of the Parthenon treasures*, 363-4, PhD thesis Princeton. Delphoi: *CID* ii 102, II, A, 5 & 10 (324/3); 108, 20 (322): δοκιμ]*εῖα τὰ ἐν ταῖς ἕνδεκα μ*[να]/[ῖς καὶ ἄλλα δοκιμεῖα?] *τοῦ κρατῆρος τὰ ἐν τα*[ῖς ---]. Delos: *I.Délos* 439, 86 (181); 442, 96 & 149 (179); [443]; 448B, 19 (175): δοκιμεῖα ΓΙΙΙΙ·, *I.Délos* 1449 A a b II, 32-33 (= 1450): *φιάλας χρυσᾶς* ΔΔ *καὶ δοκιμεῖον, αἷς ἐπιγραφή· Δήλιο*[ι Ἀ]*πόλλωνι, Ἀρτέμιδι, Λητ*[οῖ, ὧν ὁλκὴ]/ *σὺν τῶι δοκιμείωι* ΧΧ·. Oropos: *IG* vii^2 (2) (1) 233, 28-31 (= *I.Oropos* 324 = *IG* vii 303; 205/4): *ἐγδότω δὲ ἡ ἀρχὴ*/ [κ]*αὶ ἐξ οὗ ἂν παραλάβηι χρυσίου ἀσήμου καὶ ἐπισή/μου, κατασκευάσαι τῶι θεῶι φιάλην χρυσῆν,* v/ *καταλιπομένη δοκιμεῖον·*.

9 See the honorary decree for the deceased Attalid queen Apollonis, *I.Hierapolis Judeich* 30, 15-16 (238-165?): *καὶ τῆ*(ς) *πρὸς θεοὺς εὐσεβείας ἔ*[ργ]*ωι καλλί*[σ]/[τω]*ι οὐ μεικρὸν δοκιμεῖον ἀπέλιπεν* …, the honorary inscription for Dionysodoros, *SEG* 63.1402, 10 (= *Scienze dell'Antichità* 17 (2011) 477-507) (Seleukeia on Kalykandos, 142-161 CE): *ἀνὴρ ἐδήμων κε μετη*[..] *δοκι*[μῖον] *δεδωκὼς τῆι πατρίδι* and the honorary inscription on a statue of the architect M. Aur. Aphrodeisios son of Onesimos set up by his sons, *I.Nysa* 460, 4-7 (2nd-3rd cent. CE): *ἀρχιτέκτονα ἐν*/ *πολλοῖς καὶ φθάνουσιν ἔρ*/*γοις δοκιμεῖα δόντα ἐπὶ ταῖς*/ *ἐργοδοσίαις*.

10 Hippocrates, *Prorrhētikon*, 2.3.22: *Ἔξεστι δὲ καὶ ταῦτα καταβασανίζειν κάλλιστα καὶ τἆλλα τοῖσι δοκιμίοισιν, οἷσιν ἔχομέν τε καὶ χρεόμεθα εὖ πάντα*. (We must investigate thoroughly this and everything else, deploying all the available to us methods in the best way).

11 E.g. *SEG* 16.246, 6-7 (= *BCH* 80 (1956) 598 no. 1); *SEG* 16.248 (= *Mnemosyne* 43 (1915) 383 no. 1); *SEG* 16.255 (= *BCH* 81 (1957) 181-202; c. 170); *SEG* 17.142 (= *BCH* 82 (1958) 5 no. IIA); *SEG* 30.360, 16-18 (= *BCH* Suppl. 6 (1980) 256 no. 1): *καὶ ἀν*/*γράψαι τὸ δόκημα ἐν στάλαι ἐν τῶι τοῦ*/ *Λυκείου ἱερῶι·*; *SEG* 30.357, 10-11 (= *BCH* Suppl. 6 (1980) 269 no. 4).

balance, then, I am inclined to accept Hallof's association of the term with the verb *dokeō* and to regard it as the first confirmed case of the unattested so far term *hē dokimia*. However, it would be unduly restrictive to consider *dokimia* as judgment, a *stricto sensu* decision; it seems to have a wider meaning, including that of a verdict but not limited to it. It could mean the decision(s) of any collective body after some sort of deliberation, a resolution.

Who issued this resolution? The inscription refers to three *dikastēres* from Pellana in Achaia[12]. Their names appear in l. 13. The form *dikastēres* is attested in the almost contemporary, well-known inscription of the Locrian colony in Naupaktos (*IG* ix (1)^2 718, 32-33, 500-450, also a bronze)[13]. Their position suggests that they were invited either by (a group of?) Ledrinoi or the Eleians but their remit remains elusive[14]. I wonder whether they should not be considered as judges but more broadly as mediators *qua* conciliators, like the *diallaktai* attested elsewhere in the Greek world[15]. The

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See also Argeian decrees found in the vicinity of Argos, *SEG* 34.282 (= *Hesperia* 53 (1984) 191-216, Nemea); *SEG* 41.274 (= *Hesperia* 18 (1949) 76 no. 9, Kleonai); *SEG* 58.402 (= *Pharos* 15 (2007) 200-2 (summary), Thisoa – Arkadia); or outside Argos, *IG* xii (3) 1259, 2-10 (337), *ISE* 40, 27-28 (beg. 3rd cent.).

12 For Pellana see Morgan & Hall (2004: 484-5) and Hallof (2021: 102-3). Epigraphical evidence: a 5th-cent. dedication to Zeus Meilichios (Rizakis (2008: no. 186)), an amphictyonic honorary decree for Pellaneis judges(?), *CID* iv 41 (= *FD* iii (3) 190, 260), and a reference to a Pellaneian judge in an honorary inscription from Larissa, *IG* ix (2) 508, 25, c. 49/48. Pellana was a member of the Achaean League, Rizakis (2008: 255-9).

13 Other attestations of the term: Brixhe (1976: no. 3) (Sillyon, Pamphylia, 4th cent.); *FD* iii (1) 294 II, 15 (Delphoi, 425-375), and *FD* iii (1) 486 I, A, 7, 12-13 (treaty of Pellana (Lakonia)-Delphoi, 285-280), and perhaps in the fragmentary *SEG* 37.494, 12 (*sympoliteia* agreement between Gomphoi and Thamai, Thessaly, c. 230-200).

14 The standard remit of foreign judges (if the Pellaneians were simply judges) is best illustrated in *IG* xii (4) 4043, 36-45 = *I.Iasos* 82 (c. 260-250): *οἳ παραγενόμενοι/* [πᾶσ]*αν σπουδὰν ἐποιήσαντο* {υ} *τοῦ διαλυθέντ*<α>*ς τοὺς/* [πολ]*ίτας τὰ ποτ' αὐτοὺς πολιτεύεσθαι μετ' ὁμονοίας/* [καὶ ἀ]*πογραφεισᾶν δικᾶν εἰς τὸ δικαστήριον* [πλε]*όνων/* [ἢ τρι]*ακοσιᾶν πεντήκοντα, τὰς μὲν πλείσ*<*τας*>* διέλυσαν/* [πείσ]*αντες τοὺς ἀντιδίκους, ὅπως μὴ διὰ ψάφου τῶν πρα/*[γμά]*των κρινομένων εἰς πλέω ταραχὰν ὁ δᾶμος/* [καθισ]*τᾶται· τινὰς δὲ καὶ διαίτασαν συμφερόντως/* [ἑκα]*τέροις τοῖς ἀντιδίκοις· δέκα δὲ δικᾶν εἰσαχθεισᾶν/* [εἰς τὸ] <δι>*καστήριον ἔκριναν διὰ ψάφου κατά τε τὸ διάγραμ*/[μα τοῦ] *βασιλέως καὶ τοὺς νόμους*. (the foreign judges arrived and made every effort to achieve that citizens will live in concord, having settled the disputes among the citizenry and being lodged more than 350 suits to courts, the foreign judges have mediated in most of them, persuading the litigants not to proceed to resolve the dispute by voting what would lead the people to more trouble, in some cases they have arbitrated reaching an outcome beneficial to both litigants, and ten cases being introduced in court they have decided by voting, following the royal decree (*diagramma*) and the laws (of the *polis*)).

15 For *diallaktai* see the discussion in Berti (2012); *katartistērai*, Hdt. iv 161 and v 28, *synallaktai* in *SEG* 57.576; *synlytai* in *IPArk* 17. See also *SEG* 17.415, 3-4 (Thasos, late 4th cent.); *Ag*. 19, L4a: 2-6 (363/2): *ἐπὶ τοῖσ*[δ]*/ε διήλλαξαν οἱ διαιτηταὶ Σαλαμινίος τὸς ἐκ τῶ/ν Ἐπταφυλῶν καὶ Σαλαμινίος τοὺς ἀπὸ Σονίο ὁμο/λογοῦντας ἀλλήλοις καλῶς ἔχειν ἃ ἔγνωσαν οἱ δι/αιτηταὶ* and 80-81: *Ἀρχένεως εἶπεν· ὅπως Σαλαμίνιοι τὰ ἱερὰ θύωσι αἰεὶ τοῖς θεοῖς καὶ τοῖς ἥρωσι κατὰ τὰ πάτρια καὶ/ γίγνητα*[ι] *ἐφ' οἷς διήλλαξαν οἱ διαλλακταὶ ἀμφοτέρους καὶ οἱ αἱρεθέντες ὤμοσαν*, (2-6: On the following terms the arbitrators reconciled the Salaminioi of the Seven Tribes and the Salaminioi from Sounion, both parties agreeing with each other

sanctions they impose suggest a radical intervention in the affairs of Ledrinoi, who were probably shaken by internal divisions. A similar interference is envisaged in a fragmentary inscription from early fourth-century Amorgos, in which among others, it is sanctioned that the *diallaktai* will instruct the officials which lawsuits should be introduced in the *polis'* lawcourts[16]. In this respect, I consider the judges from Pellana as a judicial committee, which not only dealt with specific violations, but also put forward a normative framework to be implemented by the *polis*(?) authorities, in the future. In other words, Pellaneian *dikastēres* did not operate as mere foreign judges[17].

II. Following the mysterious *dokimia* and *dikastēres* there is an equally enigmatic clause announcing a series of sanctions in case of conviction (*kazikia*)[18]. These sanctions have a social, financial and cultic aspect as they aim to limit but not to sever the convicted individuals from the broader social life[19]. I believe I do not exaggerate if I

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that the terms proposed by the arbitrators were good, 80-81: Archeneos proposed: in order that the Salaminioi may always make the sacrifices to the gods and heroes according to ancestral custom and that the terms on which the conciliators reconciled both parties and to which those elected swore oaths shall be put into effect, - transl. *Attic Inscriptions Online* https://www.atticinscriptions.com/inscription/AgoraXIX/l4a); *IG* xii (4) 132 Bb, 138-40 (Kos, c. 300); *IG* xii (4) 135, 2-4 (c. 280).

16 *IG* xii (7) 3, 27-46 (Amorgos, early 4th cent.): *μηδὲ ὅσαι δίκα/ι ἀπεγράφησαν ἐπὶ τὸς* [ἐ] *σαγωγέας τὸς ἀμ/φὶ Εὐρύδικον*, *ταύτας μὴ εἶναι δικάσασθαι/ μήτε αὐτῶ μήτε ἐν ἐκκλήτωι μηδαμῶ,/ ἐὰμ μὴ οἱ διαλλακταὶ γράψαντες καταλεί/πωσιν οἷς δεῖ τὰς δίκας ἐπὶ τῶ ἀστικῶ δικαστη/ρίο γενέσθαι·* (or those lawsuits have been lodged with the *eisagogeis* around Eurydikos, these must not be decided either there or by foreign judges, anywhere, unless the *diallaktai* leave written instructions which lawsuits will be judged by the city's law-courts).

17 In this respect the Pellaneian *dikastēres* are not dissimilar to the *xenikon dikastērion* and its involvement in settling property disputes arising out of the restoration of Tegean exiles in 324, *IPArk* 5, 24-37 (324) (Rhodes & Osborne (2003: no. 101); Brun (2017: no. 80)): *τὸ δὲ δικαστήριον τὸ ξενικὸν δικάζεν ἐξ̣ήκ/οντα ἀμερᾶν· ὅσοι δ' ἂν ἐν ταῖς ἑξ̣ήκοντα ἀμέραις μὴ/ διαδικάσωντοι, μὴ ἦναι αὐτοῖς δικάσασθαι ἐπὲς τ/οῖς πάμασι ἐν τοῖ ξενικοῖ δικαστηρίοι, ἀλλ' ἐν τοῖ/ πολιτικοῖ ἀΐ· εἰ δ' ἄν τι ὕστερον ἐφευρίσκωνσι, ἐν ἀ/μέραις ἑξ̣ήκοντα ἀπὺ τᾶι ἂν ἀμέραι τὸ δικαστήριο/ν καθιστᾶ· εἰ δ' ἂν μηδ' ἐν ταῖννυ διαδικάσητοι, μηκέ/τι ἐξ̣έστω αὐτῶι δικάσασθαι· εἰ δ' ἄν τινες ὕστερον/ κατέ̣νθωνσι, τῶ δικαστηρίω τῶ ξενικῶ* [μ]*ηκέτι ἐόντ/ος, ἀπυγραφέσθω πὸς τὸς στραταγὸς τὰ πάματα ἐν ἀμ/έραις ἑξ̣ήκοντα, καὶ εἰκ ἄν τι αὐτοῖς ἐ*[π]*απύλογον ἦ/ι, δικαστήριον ἦναι Μαντινέαν· εἰ δ'* [ἂν μὴ] *διαδικάσ/ητοι ἐν ταινὶν ταῖς ἀμέραις, μηκέτ*[ι] *ἦναι αὐτοῖ δι/κάσασθαι*. (The foreign court shall give judgment for sixty days. As many as are not adjudicated in the sixty days, it shall not be possible for them to go to law in the foreign court with reference to property, but always in the city's court: if they find anything later, in sixty days from the day when the court is established; and if it is not adjudicated in this period, it shall no longer be possible for him to go to law. If any return later, when the foreign court is no longer in existence, let him register the property with the *strategoi* in sixty days, and if there is any defence against him the court shall be Mantinea; and if it is not adjudicated in these days, it shall no longer be possible for him to go to law. – transl. Rhodes & Osborne).

18 This is a contracted dialectal form of the substantive *katadikē* (καταδίκη), see *IPArk* 24, 8 (Alipheira, 273), Hallof (2021: 106), and Minon (2021: 131).

19 It is interesting to note that the convicted individuals are excluded from cultivating public lands only. These lands belonged to *hetaireiai*, probably subdivisions of Ledrinoi citizenry, closer to the Cretan counterparts, for which see Gagarin & Perlman (2016: Dr 3) (c. 650-

claim that the intention is to marginalize them. But vital details remain obscure; who were the convicted individuals, what they were charged with, which judicial organ (single or collective? local or foreign?) would issue a verdict, and finally, were these sanctions to remain permanently in force? Given all these gaps, we cannot avoid speculation. As far as the offense(s) is concerned, it is striking that the sanctions do not include capital punishment, exile, expropriation, or loss of civic rights (*atimia*)[20], a feature that makes sedition, treason or overthrow of the regime less likely. I think that a case of stealing sacred property (*hierosylia*), impiety (*asebeia*), or homicide[21] are possibilities we cannot easily dismiss.

What is, however, clear is that these sanctions aim to curb collective action; this is expressed with a series of *syn*-compounds (*synaloan*[22], *hopla synpharen*[23]), banning communal activities like feasting (*thoinazen*[24]) and limiting the presence of private

600), Gagarin & Perlman (2016: G42) (c. 500-450?), Gagarin & Perlman (2016: G72 x, 38), *I.Cret*. I xix 3, *SEG* 23.566, and *SEG* 28.753. The terminology of cultivation re-appears in Siewert (2021: 153) under the form *σκαλέΓοντα*.

20 See Youni (1998).

21 Note the similarity of these prohibitions with the Athenian *prorrhēsis*, D. 20 (*Against Leptines*) 158: *ἐν τοίνυν τοῖς περὶ τούτων νόμοις ὁ Δράκων φοβερὸν κατασκευάζων καὶ δεινὸν τό τιν᾽ αὐτόχειρ᾽ ἄλλον ἄλλου γίγνεσθαι, καὶ γράφων χέρνιβος εἴργεσθαι τὸν ἀνδροφόνον· σπονδῶν· κρατήρων· ἱερῶν· ἀγορᾶς· πάντα τἄλλα διελθὼν οἷς μάλιστ᾽ ἄν τινας ᾠετ᾽ ἐπισχεῖν τοῦ τοιοῦτόν τι ποιεῖν· ὅμως οὐκ ἀφείλετο τὴν τοῦ δικαίου τάξιν· ἀλλ᾽ ἔθηκεν ἐφ᾽ οἷς ἐξεῖναι ἀποκτιννύναι· κἂν οὕτω τις δράσῃ· καθαρὸν διώρισεν εἶναι·* (Now Draco, in this group of laws, marked the terrible wickedness of homicide by banning the offender from the lustral water, the libations, the loving-cup, the sacrifices and the market-place; he enumerated everything that he thought likely to deter the offender; but he never robbed him of his claim to justice; he defined the circumstances that make homicide justifiable and proclaimed the accused in such case free from taint. – transl. J.H. Vince). See also *Ath. Pol*. 57.4: *καὶ ὁ προαγορεύων εἴργεσθαι τῶν νομίμων οὗτός ἐστιν* and Antiph. 6 (*On the choreutes*) 35-36.

22 Hallof (2021: 108): "Das Verbot eines Erntfestes wurde ebenso wie ein generelles Versammlungsverbot in die Rede der Interdiktionen Z. 2-4 passen" is unnecessarily generalizing; see X. *Oec*. viii 13, Plu. *Publicola*, 8.2, Musonius Rufus, *Dissertatio a Lucio digestarum reliquiae* 11 (Stobaeus, 4.15^{a}.18), Photius A 1021 (*Ἔτυμ. Μέγ*. 69, *Συναγ. Λέξεων* A 986, *Lex. Seg*. A76), Chaniotis (1996: no. 59, 58-59). See also related terms (ἁλοήσας, ἁλοήση) in Ptolemaic agricultural land-leases, *BGU* iv 1264, 23-24 (215/4), xiv 2387, 12 (3rd cent.), in letters, *P. Cair. Zen*. iv 59658, 13 (3rd cent., Philadelpheia), *SB* xxii 15710, 2, 7, 10 (= *ZPE* 100 (1994) 74 no. 2) (2nd cent., Philadelpheia) and in 6th-cent. CE contracts, e.g. *P. Cair. Masp*. I 67095, 15 (548 CE, Aphrodito), ii 67129 (549 CE, Aphrodito), *SB* vi 9593, 21, 24 (= *JÖB* 8 (1959) 1-15) (6th -7th cent. CE, Herakleopolis). *Ἅλως*, *ἅλωος* in Delphoi, *Syll*^{3} 672, 58-59 +*FD* iii (3) 238, 8-10 (160/59); *Syll*^{3} 631, 7-8 (182).

23 See Hallof (2021: 108). Similar prohibition but more circumscribed in an inscription recording an agreement to restore concord in Hellenistic Sagalassos in Pisidia, *SEG* 57.1409, A 4-5 (= *AncSoc* 37 (2007) 121-39) *μηδὲ στασιάζειν μηδένα* μηδὲ ὅπλα ἐκ/φέρειν μάχιμα μηδένα. Note that Aristotle, *Politics* 1311a refers to tyrannical regimes removing weapons from the *demos*, διὸ καὶ τὴν παραίρεσιν ποιοῦνται τῶν ὅπλων. Cf. Siewert (2021: 154) in which ὅπλα means agricultural tools.

24 Hallof (2021: 106). See Aeneias Poliork. 22.17 (time of festivals, propitious for uprisings and revolts), Aelianus, frg. 267 (*Suda* E 3795), frg. 111 (*Suda* M 217), Clemens Alex. *Stromata*, 2.18.94.1. *IPArk* 2, 11-12 (Tegea, 5th /4th cent.): *ἰν Ἀλέαι με νέμεν μέ¯τε ξένον μέ¯τε Ϝαστόν εἰ με ἐπὶ θοίναν hίκοντα*, *CID* 1, 9 (Delphoi, beg. 4th cent.) and *SEG* 58.1220 (= *EA* 41 (2008) 39-52) (Labraunda-Caria, second half of 2nd cent.).

seers, probably to officiate over sacrifices accompanying oath-giving[25]. Not observing these restrictions had severe repercussions, as it resulted in exile[26] and expropriation[27] (to the benefit of Olympian Zeus) for the leader(s) and payment of a fine for the accomplices[28]. The decision spells out in some detail the process of expropriation and the liability of the supervising boards of magistrates for carrying out appropriately the whole process[29].

III. Lines 10-11 contain a vague clause that puzzled Hallof (2021: 113). In the clause the activity of the judges is described as follows: ἐπὶ ἢ μολοῖαν/ τοὶ δικαστέρες ἢ ἀποϜείποιαν. These two verbs do not contradict but complement each other, as they describe two different stages of the judicial process, the discussion and confrontation before the judge(s) and the announcement of the verdict. Hence, the prohibition not to bring to justice, μὴ μολέσαι, pertains to both stages.

The whole interpretation rests on the meaning of the two key verbs, μολοῖαν and ἀποϜείπειαν. Μολοῖαν comes from the infinitive μολεῖν *(*μολέω*)*, second aorist of the verb βλώσκω, meaning 'to come'. Subject of the verb is *τοὶ δικασστέρες* (so Hallof

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[25] See Hallof (2021: 110). Of similar nature is the removal from an altar on record in the inscription Minon, *I.dial. éléennes* 19, 6-7 (c. 475-450) concerning the condemnation of Timokrates son of Malex: *κάπὸ τō βōμō ἀποϜε*[λέστο ---] (and he will be debarred from the altar---). Athina Dimopoulou suggested to me that another possibility to interpret this unusual prohibition is the avoidance of any conspiracies founded on an oath sworn following a sacrifice, on the example of archaic Mytilene, Dimopoulou-Piliouni (2015: 68-70).

[26] See Gehrke (1985: 216-24), Minon (2007: ii 522), Hallof (2021: 110-11). For the verb *Fárρεν*, *Férεν* see Minon, *I.dial. éléennes* 12, 6 (= *I.Olympia* 2) (c. 500-475), Minon, *I.dial. éléennes* 20, 2 (= *I.Olympia* 11) (c. 475-450), and I.*Olympia Suppl*. 8 (= Minon, *I.dial. éléennes* 30) (360-324). Offences punished with exile outside Athens, Gray (2015: 112-3 Table 3.1), van Effenterre – Ruzé (1995: I, 105; 107; 19); Hatzopoulos (1996: II, 40); *I.Ilion* 25; *I.Cret*. I viii 9 II 22-32; iv 176, 29-38; Rhodes & Osborne (2003: no. 83 γ back II, 23-28).

[27] See Gehrke (1985: 210-4) and Hallof (2021: 111). Usually confiscation is accompanied (not necessarily or always) by exile or death, see *IG* ix (1)^2 (3) 609, 9-14 (Naupaktos, c. 500): *hόστ*/ις *δὲ δαιθμὸν ἐνφέροι ἢ ψᾶφον διαφέροι ἐν πρείγαι*, *ἐν πόλι*, *ἐ*/*ν ἀποκλεσίαι ἢ στάσιν ποιέοι περὶ γαδαισίας*, *αὐτὸς μὲ*/*ν ϝερρέτο καὶ γενεὰ ἅματα πάντα*, *χρέματα δὲ δαμευόσθον*/ *καὶ ϝοικία κατασκαπτέσθο κὰτ τὸν ἀνδρεφονικὸν τετμ*/*όν*. (anyone who will introduce a proposal to redistribution or shall vote for it, in the Council of the Elders or in the assembly of the city or in the Council of the Elected, or incite civil strife over land redistribution, he shall be forever cursed, himself and his family, his property will be confiscated and his house shall be razed to the ground, according to the law on homicide); *IG* iv 554 (= *Nomima* I 107) (Argos, 480-470); Koerner (1993: no. 62) (= Brun (2017: no. 10) (Chios, 479-450); *SEG* 57.576, 18-19 (Dikaia, 364). *IG* ii^2 111, 35, 41-42 (Ioulis-Keos, 363/2); *I.Iasos* 1, 4-5 (list of confiscated properties and buyers, 367-354), *I.Mylasa* 2, 10 & II p. 7 (confiscation, 361/60); *Syll*^{3} 194 (= Tod, *GHI* 150, 11-12, Amphipolis, 357); D.S. 15.58.2 (Argos); 16.24.3 (Delphoi), and *SEG* 26.1306, 25 (agreement between Teos and Kyrbissos, 3rd cent.).

[28] See *BÉ* 2024, no. 195 where it is reported the association of the verb *συννείαν* not with the verb *σύνειμι* but with the verb *συννεύω* without altering the meaning of the clause.

[29] I do not find compelling the argument of Hallof (2021: 113) that the Pellaneian judges had the jurisdiction to impose these sentences, i.e. expropriation and exile. The way the sanctions are described suggest that they may be violated long after a reasonable period elapsed, and the judges returned to Pellana.

(2021: 113)), i.e. the three Pellaneian judges. This verbal form is attested for a third time in the epigraphy of Olympia[30], all of them fragmentary. However, we find the same verb in Cretan Gortyn at the beginning of the fifth century, where it has acquired a particular technical meaning, namely 'to go to court' (*ἐπὶ τᾶι δίκαι* [μο]*λίον, μολε¯ν*[31]), and by extension 'to deploy legal arguments' (*μολιόμενα*[32]), 'the litigants' (*ἀνπότεροι μολίοντες*[33]), and the 'adjudication process' ([πρὶν] *μολέθαι τ*[ὰν δίκαν][34]). It is also attested in the composite forms *ἀντιμολία* and *ἀντίμολος*[35]. If this distinctly procedural meaning of *μολέω* was valid in early fifth-century Eleia (and I cannot see why not), then we may legitimately assume that the form *μολοῖαν* signifies not only going to law, bring a suit, but also arguing a case before judges, and consequently the hearing of a case. What, however, is of particular importance is that subject of *μολοῖαν* is the judges and not the litigants as in most cases attested in Gortyn. Does that mean that we have a unique, so far, extension of the meaning of the verb to include the hearing before judges? Such a semantic extension is attested in a clause of the Gortynian 'law-code', Gagarin & Perlman (2016: G72 I, 49-51): *αἰ δὲ κ' ἀποθάνει μ/ολιομένας τάδ' δί*[κ]*ας, τὰν ἀπλ/όον τιμὰν κατ<α>στασεῖ.* (And if he (the disputed person?) dies while the case is being tried, he will pay the simple value. - transl. Gagarin & Perlman)[36]; it is true that the Gortynian passage employs a middle voice verb (*μολοῦμαι*), while the Eleian an active (*μολέω*) but both convey the same mean-

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30 Minon, *I.dial. éléennes* 3 (= *I.Olympia* 5; van Effenterre - Ruzé, *Nomima* I 4) *ὀ δέ κα ξένος, ἐπεὶ μ<ό>λοι ἐν τία*[ρὸν ---] (late 6th cent.). Minon, *I. dial.* éléenes 8, 6 (= *I.Olympia Suppl.* 4): [---] *τρίτα μόλοι*. (c. 500). It is frequently attested in metrical funerary inscriptions, e.g. *SEG* 23.434 (= *REA* 66 (1964) 311 no. 2) from early 3rd cent. Demetrias in Thessaly.

31 Gagarin & Perlman (2016: G1; G9; G13; G21; G41.6; G42A, 6-7; G72 I 15, 53; vii 43-44; ix 22) with a discussion by Calero Secall (2010: 51-53). See also the form *ἐπιμολὲν* in Gagarin & Perlman (2016: G72 ix, 28-29, 31-32). Outside Gortyn, the verb *μολε¯ν* is attested in an inscription from 6th - 5th cent. Eleutherna, Gagarin & Perlman (2016: Ele 15, 3) and Chaniotis (1996: no. 71a, 8) (= *I.Cret*. iv 165) (c. 240-222): *μωλεν δὲ τὸν βωλόμενον …* part of a treaty between Gortyn and Phaistos. The type *μōλετὰν* is attested on a bronze tablet from Dodona, *I.Dodone Evangelidi* 1422A (400-375): *ἦ τοῦ παιδōλέτου παι*(δὸ)*ς μōλετὰν ἔχōν τύχοιμι* (Am I going to find myself involved in legal proceedings for the slave-killer slave?), for which see Chaniotis (2018: 330).

32 Gagarin & Perlman (2016: G42B, 4-6; G72 v 43-44, vi 53-55, x 21-22, xi 29-31; G82, 9-10).

33 Gagarin & Perlman (2016: G13; G21, 1; G41.3; G42; G47A, 12, 15; G72 I, 18).

34 Gagarin & Perlman (2016: G75A, 10-11; G81, 11-16; G85, 6-7).

35 See Gagarin & Perlman (2016: A10, 4; G13, a1, b1; G21, 3; G72 I, 1-2; ix, 18-19). Particularly interesting for the composite forms of *μολέω* is the following passage from Gortyn, Gagarin & Perlman (2016: G72 vi, 25-31): *αἰ δὲ κ' ὀ ἀντίμ/ōλος ἀπομōλε¯ι ἀνπὶ τὸ κρ/έος ὀ κ' ἀνπιμōλίōντι μ/ὲ¯ ἔμε¯ν τᾶς ματ*[ρ]*ὸς ἢ τᾶ/ς γυναικὸς, μōλὲν ὅπε κ' ἐπ/ιβάλλε¯ι, πὰρ τοι δικαστᾶι/ ἐ Γεκάστō ἔγρατται.* (if the opposing litigant contends (in court) that the item about which they are contending, is not the mother's or wife's, the matter is to be tried where it belongs, before the judge where it is written in each case – transl. Gagarin & Perlman) and similarly in Gagarin and Perlman (2016: G72 ix, 18-19). The term [ἀντ]*ιμολεῖν* is restored in the agreement of judicial assistance between Delphoi and Laconian Pellana, *FD* iii (1) 486, IV B.I, 4 (285-280).

36 Also attested in Gagarin & Perlman (2016: G72 x, 20-25).

ing, a pending case, and hence it is plausible to argue that the collocation *μολοῖαν τοὶ δικαστέρες* in the Ledrinoi bronze means that the case is pending before the judges.

The verb *ἀποFείπειαν* means not only 'speak out, declare' but in a legal context it may imply the announcement of a verdict[37]. Therefore, the clause would signify that for the time a case is pending in a court of law or even after the announcement of the verdict, no recourse to any other law court (local or trans local) is allowed and hence an appeal against the Pellaneian judges' verdict is ruled out[38].

The clause does not merely secure the exclusive jurisdiction of the Pellaneian judges to issue a binding decision but introduces also the irrevocable and final character of it[39]. Of these features the final character is particularly important as these *dikastēres* have been invited to judge some, unknown to us, offences, offences that have split right down to the middle the local community. It would have been contradictory to invite judges from an outside community and at the same time to retain the right of appeal against their verdict (in which court of law?), a recipe to prolong division and strife. This observation pertains also to the clause concerning the enigmatic group of *Kilikikoi* in ll. 14-17. According to this clause, if anyone, citizen or foreigner, (re-)introduces into a law court any of the disputes involving *Kilikikoi* (i.e. cases that were already decided) and passes a verdict, he will be punished with the severest penalties. That, simply put, re-enforces the binding character of the earlier verdict about them[40].

IV. The first editor assumed that the text is one, integral decision of the Pellaneian judges. However, the structure of similar documents has been discussed thoroughly by Thür (1987)[41]; moreover, there are some unsettling indications that suggest a more

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[37] See Gagarin & Perlman (2016: A11; G4; G72 ix, 37-38: *ἐ δὲ κ' ἀ/ποFείποντι*, *δικαδδέτω ὀμόσ/αντα αὐτὸν καὶ τὸνς μαίτυρ/ανς νικε¯ν τὸ ἀπλόον*. (and when they (the witnesses) have spoken, let (the judge) rule that when he (the plaintiff) and the witness have sworn, he is to win the simple amount – transl. Gagarin & Perlman); G73A: [αἰ τίς] *κα διαρύε¯ι ὕδōρ ἐς το γείτονος*, *προ*[Feίπαντι ἄπατον] *ἔμε¯ν αἰ μὲ¯ διαρεῖ. αἰ δ' ἀποFείπαντος* [διαρύοι, δαρκνάν κα]*τασασεῖ κάτ' ἀμέραν ὀττάκιν κα δι*[αρύε¯ι], (if someone leads water across from his neighbor's (property), if he asks before, he is not to be liable unless it flows across (his neighbor's field?). But if [he leads it across) when he says no, he shall pay a drachma per day as long as he leads it across – transl. Gagarin & Perlman), G93; Pr7). In the sense of a negative statement, rejection see Gagarin & Perlman (2016: G72 x, 10-12, 16-17).

[38] The clause is interpreted differently by Minon (2021: 128) 'Jusqu' à ce que les juges viennent ou s'expriment, ne pas procéder'; this interpretation leaves open the possibility of appeal against the decision of Pellaneian judges.

[39] So Hallof (2021: 114).

[40] Similar clauses in *SEG* 57.576, 30-36. The identity of the group is thoroughly discussed by Hallof (2021: 116-7); see now the comment of Papazarkadas in this volume. I should note the existence of the personal name *Κιλλίκων* from Miletos, in the late 6th/ early 5th cent., a synonym of traitor, mentioned in Aristophanes, *Peace*, 363.

[41] In a way of illustration see *IG* ix (1)^2 (1) 138 (*SEG* 54.540 = *ZPE* 147 (2004) 93-106) (4th/ 3rd cent., Kalydon-Aitolia)
θεός, τύχα. ἐδίκαξαν οἱ Θράιστιοι
Πύρρος, Ἐρίφυλος, Αἰμονίδας, Θεοτέλης, Ἀ[ν]-

fragmented nature, so much so that regarding it as a compilation should be seriously entertained. In particular, the *asyndeton* of l.8 where the infinitive *apoteisai* should be supplemented with a subject and a conditional clause to be meaningful. The political and juridical clauses introduced in ll. 10-18 cannot have been part of a court decision. The Pellaneian judges could not have imposed the irrevocability of their verdict, had they not been authorized by those who have invited them. The same judges cannot call themselves *xenoi*, or to be called by name. It is my opinion that we have two different texts, one of the judges from Pellana, ll.1-10, and then ll.10-18, a decision of the sovereign body, probably the one that invited the judges; that body was most probably the Eleians.

From the above, the original scope of the inscription and its dedication is clear; it was not compiled to provide a historical document but to contextualize and legitimize the claim of the sanctuary on the deposition of the imposed fines in its chest. Ledrinoi, a community of *perioikoi* according to Xenophon, went through a period of internal tension, perhaps civic unrest and sedition. This undesirable situation was remedied with the appointment of a judicial committee made up of three foreign individuals who resolved all outstanding disputes and provided rules to avoid recurring tension, under the auspices or even due to the initiative of the hegemonic power of Elis. The new inscription evinces a sense of asymmetrical relations between Ledrinoi, the judges and the community that invited them, probably Elis. Ledrinoi are at the receiving end of the regulations, they appear at the end of the second document as the recipients of the resolution of *dikastēres*, something that no other *polis* would have accepted.

δρίας Θέρειον νικῶντα τὰν δίκαν καὶ τὰν Καμύδωνος γενεὰν καὶ τὰν συγγένειαν, ὅσσοι ἀ-
{α}πὸ τᾶς ματέρος τᾶς Θερείω, καὶ Κλέαιχμον τὸ σῦλον. εἰ δέ τις ἐπιθιγγάνοι ἢ Μουδύωνν ἢ γενεὰ ἢ Καλλίας ἢ γενεὰ ἢ Πράθος ἢ γενεὰ ἢ ἄλλος ἐκ τούτων εἴτε χηρὶ εἴτε λόγωι λ-
έγων εἴτε προξενέοι ἐπὶ κακῶι, ἀποτεισ-
άτω ἀργυρίω τριάκοντα μνᾶς κατ' ἕκαστον ἀδίκημα καὶ ἐπίπομπος ἔστω. ἁ δ-
ὲ δίκα ἐδικάσθη ἐπὶ Ἀνοχίδα καὶ Κεφ-
άλω δαμιοργέοντος, Ταμαχρίδα
καὶ Ἐριφύλ<ω> δαμονομέοντος.
ὁ δὲ πίναξ ἱαρὸς ἔστω τᾶς Ἀρτέ-
μιδος.

(God. Good luck. The citizens of Thraistos: Pyrrhos, Eriphylos, Haimonidas, Theoteles, Andrias declared by their verdict Thereios as the winner in the case, as well as Camydon's *genea* and *syngenea*, that is, all those descendants from Thereios' mother, and as to Cleaichmos, they granted him the right to keep the property he seized. In case of transgression committed by Moudyon or his *genea*, or by Callias or his *genea*, or by Prathos or his *genea*, or by any other among them, whether by act or by speech or if anyone gives false evidence as a *proxenos*, he shall pay the fine of 30 minae for every act of violation and will be outlawed. The verdict was given when Anochidas and Cephalos were *damiorgoi* and when Tamachridas and Eriphylos were *damonomoi*. This tablet shall be sacred to Artemis. – transl. *BCH* 54 (1930) 45 (Poulsen) modified by Zelnick-Abramovitz (2004: 101)).

In a sense, the arrangement is similar - but not identical - to the reconciliation at Dikaia (364/3) in which a third party, the Macedonian king Perdikkas, played a vital role as guarantor of the sworn oaths and the drafted agreements between the two factions, *SEG* 57.576, 21-27: *μάρτυρα δ*[ὲ] *καὶ συνίστορ*[α]/ *τῶν ὅρκωγ καὶ τῶμ πιστωμάτωμ π*[ά]*ντωμ Περδί*[κ]/*καμ ποιήσασθαι· δεηθῆναι δὲ αὐ*[το]*ῦ, ἄν τινές πρ*/ *τε τοὺς ὅρκους ϰ*[αὶ] *τὰ πιστώματα ἐ*[γβ]*άλλωσι, τού*/*τους δυνατὸν* [ἐ]*όντα, θανάτωι ζ*[ημι]*ῶσαι, ἤν τε*/ *φύγωσι, ἀγωγίμους εἶν᾽ αὐτοὺς Δι*[και]*οπολίταις ἐ*/*κ τῆς χώρης πάσης ἧς ἐπάρχει Π*[ερ]*δίκκας* (and let Perdikkas be made a witness and observer of all the oaths and pledges; and request of him that, should ever anyone cast aside the oaths and the pledges, if he is powerful over them to punish them with death and should they flee, that they be liable to seizure back to the Dikaiopolitai from all the land over which Perdikkas rules - transl. Driscoll (2016: 153))[42]. At about the same time (363/2) in Ioulis of Keos the Athenians masterminded and supervised the re-establishment of the pro-Athenian regime, which was overthrown earlier; the graphic sequence of events is reported in a long inscription[43].

Hallof (2021: 121) claimed that the situation envisaged in the Ledrinoi-bronze resembles closely to a *stasis* attested indirectly at Skillous in the third quarter of the fifth century[44]. Of course, it is very likely but still not verifiable that dissension

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[42] *SEG* 57/576 (= *Ancient Macedonia* 7, 253-74, Thessaloniki 2007; Brun (2017: no. 57)); the inscription contains five assembly decrees. Ll. 8-10 deal with the inscription of the oath and the pledges (*pistōmata*) in the sanctuary of Athena. Ll. 17-21 sanction the penalty of confiscation of property to those refusing to swear the oath, to the benefit of Apollon Daphnephoros. Ll. 27-45 introduce a special process for treating pending homicide cases (ll. 30-36) and the dispute between Demarchos and Xenophon. Ll. 45-67 concern particular terms for swearing an oath for the sons of Hermippos, Epichares and Demopheles, as well as for Daphnon son of Polyzelos and Kephisodoros son of Agathokles.

[43] *IG* ii^2 111, 27-36 = Rhodes & Osborne (2003: no. 39): *ἐπειδὴ δὲ Ἰουλιητῶν οἱ παραβάντες τὸς ὅρκ*/*ος καὶ τὰς συνθήκας καὶ πολεμήσαντες ἐναντία τῶι δή*/*μοι τῶι Ἀθηναίων καὶ Κε*[ί]-*οις καὶ τοῖς ἄλλοις συμμάχο*/*ις καὶ θανάτο αὐτῶν καταγνωσθέντος κατελθόντ*[ε]*ς ἐς*/ *Κέω τάς τε στήλας ἐξέβαλο*[ν], *ἐ*[ν αἷ]*ς ἦσαν ἀναγεγραμ*[μ]*έν*/*αι αἱ συνθῆκαι πρὸς Ἀθηναίος καὶ τὰ ὀνόματα τῶν παρα*/*βάντων τὸς ὅρκος καὶ τὰς συνθήκας καὶ τὸς φίλος τὸς Ἀ*/*θηναίων, ὃς κατήγαγεν ὁ δῆμος, τὸς μὲν ἀπέκτειναν, τῶν*/ *δὲ θάνατον κατέγνωσαν καὶ τὰς ὀ*[σ]*ίας ἐδήμευσαν παρὰ*/ *τὸς ὅρκος καὶ τὰς συνθήκας Σατυρίδο καὶ Τιμοξένο κα*/*ὶ Μιλτιάδο* (Since those of the Iulietans who broke the oaths and the agreement and made war against the people of Athens and the Ceans and the other allies, and when they had been condemned to death returned to Ceos and overturned the *stelai* on which were written the agreement with Athens and the names of those who had contravened the oaths and the agreement; and of the friends of the Athenians whom the people had reinstated they killed some and condemned others to death and confiscated their property contrary to the oaths and agreements (the latter being Satyrides and Timoxenus and Miltiades) - transl. Rhodes & Osborne). See recently Duszyński (2020).

[44] See the admirable restoration and translation of the text by Minon, *I.dial. éléennes* 22 (= *I.Olympia* 16; *DGE* 418; *LSAG* 17; Koerner (1993: no. 44); van Effenterre & Ruzé (1995: I no. 56) with Taita (2012).

[ἀ ϝράτρα τοίοις καταστατοίοις τῶν Σκιλλοντίῶν π]*αρ᾽ τᾶς καταστάσιος, Νικαρχίδαι ϰαὶ*
[Πλεισταίνοι. ὅστις τῶν Σκιλλοντίῶν ἀπ]*ειθέοι, κατιστα*<ί>*ε¯*<κ>*᾽ ἀ δαμιοργία ἐ᾽ στά-*
[σιος δίκαν·--- $^{c.10}$ --- μνᾶν ἀποτινέτ]*ω τᾶς ἀ*<μ>*έρας, αἱ μὰν λεοίταν, ὁσίαν, αἱ δ᾽ ἰ-*
[αρὰν λεοίταν, καθύταν τοῖ Δὶ Ὀλυνπίοι· αἱ δ]*ὲ μὲ¯ταύτας ποταρμόξαιτο, πέντε μνᾶ-*

in Ledrinoi developed into a fully blown *stasis*; however, it seems to me that the response was quite different. Skillous[45], a *polis* situated in the district of Triphylia, south of Ledrinoi and Alpheios river, shaken by civil conflict (terms like *apeitheo* in

5 [ς τᾶς ἀμέρας ἀποτινέτō καθύτας τοῖ Δὶ] *Ὀλυνπίοι· αἰ δὲ μὲ¯ ταυτᾶν ποταρμόξαι-*
[το, --- c.10 --- μνᾶς τᾶς ἀμέρας ἀποτι]*νέτō καθύτας ⁝ τοῖ Δί. ⁝ αἰ δ' ἀξιόσυλος ⁝ γένο-*
[ιτο, ἀλλύοιτό κα --- c.20 ---], *συναλλύοιτο δέ κ' ἀ πόλις· αἰ δὲ μὲ¯ συναλλύ-*
[οιτο --- c.25 --- κ' ἐ¯]*μιολίζοι ἀ πόλις ⁝ τοῖ Δὶ Ὀλυνπίοι ἐκάστō ϝέ-*
[τεος --- c.25 --- ϝέ]*τεα. ⁝ αἰ δέ τις στάσιν ποιέοι ⁝ τῶν Σκιλλōντί-*
10 [ōν, ἐ' στάσιος δίκαν κ' αὐτὸν κατισταιά]*ταν Νικαρχίδας καὶ Πλείσταινος, ⁝ ποθελομ-*
[ένō --- c.10 --- ἄνδρες τοῦν Σκιλλō]*ντίōν ⁝ ὁμόσαντες πο' τὸν θεὸν τὸν Ὀλύν-*
[πιον·--- c.25 --- μνᾶ]*ς κ' ἀποτίνοι τᾶς ἀμέρας καθύτας τοῖ Δὶ Ὀλυ-*
[νπίοι·--- c.25 --- τ]*ο, ⁝ ἐπὲ¯ κελοίσταν ⁝ τὸ¯ καταστάτō τὰν δα-*
[--- c.30 --- ἐν τ]*οῖ ταύτε¯ γεγραμένοι ⁝ τεπιάροι ⁝ κ' ἀ πόλις*
15 [ἐνέχοιτο. θυσίαι δέ κα τὸν θεόν, ἐπὲ¯ εἴε¯] *μεὺς Ὀλυνπικός, εὐσαβέοι ⁝ ἄντινα ⁝ Νικαρ-*
[χίδας καὶ Πλείσταινος λεοίταν. κατιστ]*αιάταν δέ κα ⁝ καὶ δαμιοργεοίταν τένταῦ-*
[τα γεγραμένα --- c.20 ---]*ιστ' ὀ¯ς ἐπὲ¯ έ<πέ>τραπον ⁝ τοῖρ Μαντινέσι· τᾶρ δὲ*
[ϝράτρας ἐναντία οὐδέτερος αὐτοίοις κα πο]*ιϝέοι· αἰ δὲ ποιέοι, ἐν τοῖ μεγίστοι ἐνέχοι-*
[το κα δικαίοι. αἰ δέ τις μανύοι ἄλλον τινὰ ὀ¯ς] *τὸ γράφος τόδε καζαλέ¯μενον, γνοία* vac.
20 [κα --- c.5 --- καὶ ὸ καζαλέ¯μενος ἐν τεπιάροι κ'] *ἐνέχοιτο το*[ῖ τ]*εδε γεγραμένοι* vac.
[--- c.30 ---]ος· ὅσοι δ' Ε.[.2-3. κ]*ριθέντōν ἀνδροφό*[νοι ---]
[--- c.15 --- Νικαρχίδα(ν?) καὶ Π]*λείσταιν*[ο(ν?) κα κ]*ρίνοιτο. αἰ δέ τι*[ς] *καὶ σ*[--- 3-4---]
[--- c.10 --- ἐν τεπιάροι κ' ἐνέχοιτο τοῖ τ]*έ*[δε γεγρα]*μένοι· ταὶ δὲ δίκαι* [.3-4.]
[--- c.30 --- ἔκ]*ϙαστον δὲ ϝίδι*[ον --- 7-8 ---].

[Décision pour les préposés] Nikarchidas et [Pleistainos], relative au rétablissement de l'ordre [à Skillous].
[Quiconque parmi les Skillontiens] se rebellerait, la damiurgie le traduirait [en justice pour sedition --- , qu'il (ou qu'elle?) paye une mine] par jour, qui serait la propriété de la communauté si (les deux agents de l'ordre) le voulaient, ou [qui serait consacrée à Zeus Olympien, s'ils voulaient qu'elle fût sacrée]. S' (il ou elle?) ne venait pas à composition à ce prix, [qu' (il ou elle?) paye] cinq mines [par jour, consacrées à Zeus] Olympien; s' (il ou elle) ne venait pas (plus) à composition à ce prix, [qu'(il ou elle?) paye – mines par jour], consacrées à Zeus. S'(il ou elle?) devenait saisissable, [(il ou elle?) se libérait (de sa dette) -] et la cité se libérerait avec (lui ou elle?). S'(il ou elle) ne se libérait pas, [---] la cité multiplierait (sa dette) à Zeus Olympien par un et demi chaque année [--- a]ns (?).
Si un Skillontien fomentait une sédition, Nikarchidas et Pleistainos [le traduiraient en justice pour sédition], avec le concours de [--- hommes pris parmi les Skillo]ntiens, qui auraient prêté serment devant le dieu olympien. [---, (le coupable)] payerait [---] mines par jour, consacrées à Zeus Olympien. [---], lorsque les deux préposés l'ordonneraient à la da[---]; la cité [serait soumise] à l'amende sacrée susdite.
On honorerait [le dieu] au mois olympique [avec le sacrifice] qu'[ordonneraient] Nikar[chidas et Pleistainos]. Les deux hommes établiraient et appliqueraient comme damiurges [ce qui est ecrit] ici [---] comme lorsqu' ils (les Skillontiens ou les Eléens) s'en remettaient aux Mantinéens. [Aucun des deux n'] agirait [contre la decision]; s'il le faisait, il serait soumis à [l'amende] la plus forte.
[Si l'on dénonçait quelqu'un] comme cherchant à endommager la présente inscription, [---] déciderait [--- et le coupable] serait soumis à [l'amende sacrée] ci-inscrite [---].
Que tous ceux qui [---] soient jugés homicides [--- Nikarchidas et] Pleistainos, [et] il serait jugé. Si quelqu'un aussi [--- il serait soumis à l'amende sacrée] ci-[inscrite]. Les jugements [---]; chaque particulier [---].

45 For Skillous see the entry in the *An inventory of archaic and classical poleis* and Maddoli (1991: 152).

l. 2 and *stasis* in l. 9 suggest so) resorted to restoring the overturned constellation of power by appointing two Eleian *katastatoi* (l. 13)[46], responsible, among others, to prosecute anyone who disobeyed the rules of the new legal framework (ll. 2-3; 9-10). Nevertheless, the penalties for such serious offenses are only pecuniary (see ll. 3, 6). In contrast, the offenses in the Ledrinoi inscription are not mentioned at all, and the severe penalties provided for violation of the imposed sanctions are more appropriate for a civic peace-threatening crime.

In the case of Ledrinoi, the cause of the civic unrest remains elusive, but I would suggest that the reason may lie in the (re)foundation of Elis in 471/0 and the unwillingness of the inhabitants of Ledrinoi to be part of it[47].

The most reliable source of this event, Diodoros of Sicily xi 54.1, speaks about a physical relocation of the people living dispersed in villages and hamlets to a more centralized location; whether this entailed the creation of a new constitutional order, with the creation of extra tribes and participation in the assemblies remains unascertainable but attractive. Any attempt to *synoikizein* has had two interrelated aspects, a demographic and a political one[48]; these may not be thoroughly implemented but a movement of population is always attested. The epigraphically attested *synoikismoi* from neighbouring Arkadia in the first half of the fourth century are drafted as agreements between two *poleis* on an equal standing, *ἐπὶ τοῖς ἴσοις καὶ τοῖς ὑμοίοις* (*IPArk* 15, 4-6 (Orchomenos-Euaimon, 360-350) and similarly in *IPArk* 9, 4 (Mantineia-Helisson, 350-340)[49]. From the status of Ledrinoi as *perioikos polis*, one may assume that equality would not have been a feature of any possible agreement, rather the decision to take part in the re-foundation of Elis would have been presented as compulsory, with an ultimatum[50]. Therefore, a reaction of, at least, some inhabitants

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[46] See the convincing argument put forward by Minon (2007: ii 162).

[47] Archeological evidence suggests that in the site of Elis there was a settlement since the 9th cent., but public buildings appear in the 6th cent., Nafissi (2003: 24). For the *synoikismos* see D.S. 11.54.1: *ἐπ᾽ ἄρχοντος δ᾽ Ἀθήνησι Πραξιέργου Ῥωμαῖοι μὲν ὑπάτους κατέστησαν Αὖλον Οὐεργίνιον Τρίκοστον καὶ Γάιον Σερουίλιον Στροῦκτον. ἐπὶ δὲ τούτων Ἠλεῖοι μὲν πλείους καὶ μικρὰς πόλεις οἰκοῦντες εἰς μίαν συνῳκίσθησαν τὴν ὀνομαζομένην Ἦλιν* with Moggi (1976: 157-62 no. 25) (the synoecism of Elis led to a transformation of their political regime to a democracy), Demand (1990: 61-65), Ruggeri (2004: 173), Kõiv (2013: 323-4), Roy (2018: 35-36), Bourke (2018: 30-32), and Grote (2019) who argues that synoecism meant a political fusion, perhaps some sort of political enfranchisement, not a mere relocation. The discussion of the concept of *synoikismos* by Musiolek (1981) is rather obsolete now. The interpretation of the aborted *synoikismos* between Teos and Lebedos by Landucci Gattinoni (1994) is attractive and demonstrates that the leading force behind the whole project were the Teians, while the Lebedians employed delay tactics to postpone or even to derail the whole endeavour.

[48] See Moggi (1976: 65) and Landucci Gattinoni (1994: 169-70).

[49] Note that in similar documents of the late 4th and 2nd cent. there is an exhaustive array of provisions to regulate all aspects of merging two communities into one, see esp. *Syll*^{3} 344 (Teos-Lebedos, c. 306-303), *IG* ix^2 (1) 748 (Myania-Hypnia, c. 190), *IG* ix (1) 32 (Stiris-Medeon, c. 170), and *I.Delphinion* 149 (183-164).

[50] See Nafissi (2003: 25-27). For the features of a dependent community see Hansen (2015: 869-73).

of Ledrinoi should have been anticipated, even if it led to dissension and split among them[51].

The Ledrinoi-inscription is a challenging text that provides new insights into the modes of exclusion from civic life, of innovative penal sanctions against those who threaten the *polis'* stability and reaffirms the long history of legal principles like the well-known *ne bis in idem*.

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[51] Compare the reaction of the inhabitants of the island of Lesbos once it was rumoured that the Athenians had a plan to synoecize the island in Mytilene, a reaction that led to the siege by the Athenians and the near slaughter of the Lesbians, Thuc. 3.2-3 and D.S. 12.55 with Dimopoulou-Piliouni (2015: 43-44). Another case of armed resistance is the one reported by Pausanias vii 3.4 in the context of the foundation of Ephesos-Arsinoe by Lysimachos in 295/4, Landucci Gattinoni (1994: 182-3).

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THE *HETAIREIAI* OF LEDRINOI: RESPONSE TO ILIAS ARNAOUTOGLOU*

I have been assigned the unenviable task of commenting on a text first published by one of the leading epigraphists, linguistically analyzed by the foremost authority on the Eleian dialect, and now scrutinized in the volume at hand by one of the top experts on ancient Greek law. What could I possibly add? I am in agreement with Ilias Arnaoutoglou's interpretation of the three Pellanean *dikasteres* as conciliators, as well as his view of the document as a composite of two interrelated yet distinct texts. My intention is to build upon these insights and address a couple of additional issues. First, I need to lay out some basic facts.

Ledrinoi (or Letrinoi), probably located in the area of Pyrgos, capital of the modern prefecture of Eleia, was a dependency, i.e. a perioecic polis, of the city-state of Elis.[1] During the late 5th-century war that culminated in Elis' defeat by the Spartans, Ledrinoi was one of the political communities that sought independence (Xen. *Hell.* 3.2.25). The abrupt dissolution of Elis is often seen as evidence of the enduring centrifugal forces among several communities that were supposedly compelled to join, partly or fully, Elis throughout the 6th and 5th centuries B.C. There is, however, good epigraphic evidence that attests to Ledrinoi's agency as a community, namely an inscribed bronze wine-sieve from Olympia dedicated to Zeus by Ledrinoi in the late Archaic/early Classical period (Minon, *I.dial. éléennes* 47). This evidence has been interpreted in two ways: some scholars believe that the dedication reflects Ledrinoi acting on their own initiative,[2] while others argue that it was one of Ledrinoi's obligations as an Elean perioecic community.[3] I will come back to this at the end of my response. However, my primary focus lies on another aspect of Ledrinoi.

In the *editio princeps*, Klaus Hallof noted that the issue at hand likely involved some form of dissension within Ledrinoi. Analyzing the main opening clause alongside the legal provisions of lines 14-17, Hallof hesitantly hypothesized that the

* For the invitation to the *Symposion* in Milan I am grateful to Michele Faraguna. I would also like to thank Ilias Arnaoutoglou and Sophia Zoumbaki for long and helfpul discussions.

1 Ruggeri 2004, 168-171; Roy 2004, 499-500; Roy 2018, 271-272; see also Arnaoutoglou, in this volume, n. 4.

2 E.g. Taita 2007, 47, 79.

3 E.g. Bourke 2018, 161.

primary villains were the previously unattested Kilikikoi. Regarding their identity, Hallof fluctuated between viewing them as an ad hoc association and considering them a more formalized entity, perhaps a *hetaireia*.[4] However, he refrained from fully endorsing the latter interpretation, which I believe to be the only plausible.[5] Now, Athenocentrism, the infantile disorder of Greek history–to paraphrase Lenin–, means that when we encounter *hetaireiai*, we tend to think of the notorious aristocratic clubs that operated in Athens during the tumultuous 410s.[6] Outside Athens, however, associations called *hetaireiai* often operated in a more official capacity.[7] In Classical Cyrene, *hetaireiai* seem to have been one of the main civic subunits of the state: in the well-known fourth-century Cyrenean decree Theraean residents in Cyrene were granted Cyrenean citizenship by registering in a tribe, in a *phratry* and in one of the nine *hetaireiai* (Meiggs - Lewis, *GHI* no. 4, ll. 15-16: κ̣αὶ καταστᾶμεν ἐς φυλὰν καὶ πάτραν ἔς θε | ἐννῆα ἑταιρήας). In the famous Gortyn law-code, it is stated that when fathers introduced adopted sons they had to offer a sacrifice and a libation to their (*h*)*etaireia* (Gagarin & Perlman 2016, no. G72 col. X, ll. 37-39: ὸ δ’ ἀμπανάμενος δότο τᾶ|ι ἑταιρείαι τᾶι ϝᾶι αὐτ̃ ἰαρέ|ιον καὶ πρόκοον ϝοίνο); this has been taken to suggest that all Gortynian citizens belonged to (*h*)*etaireiai*.[8] At any rate, the Gortynian (*h*)*etaireiai* would appear to control access to citizenship in the same way that in, say, Athens, phratries and even *gene* (indirectly) did.[9] To my mind, the way *hetaireiai* are mentioned in the new text from Olympia strongly suggests a similar official framework of operation.[10]

As Hallof understood and Arnaoutoglou has now emphasized anew, the sanctions imposed by the three Pellanean *dikasteres*, were meant to curb collective action. If the collectivities targeted were *hetaireiai*, as has been argued by all previous commentators, the sanctions mentioned in the opening clause of the new text indirectly delineate the scope of operation of these associations: they organized collective sacrificial meals, they threshed together,[11] formed military corps (μεδ’ ὅπλα συνφάρεν in line 3, which I will revisit presently), performed collective sacrifices, and even owned and tilled lands.[12] Here one is reminded of the extensive landed assets of several public and semi-public associations, from tribes and demes to phratries and *gene*, of Classical Athens.[13] Perhaps the best known case is that of the *genos* of the Salamin-

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4 Hallof 2021, 117.
5 The identification of the Kilikikoi as a *hetaireia* is accepted by Minon 2021, 158; cf. Hallof 2021, 108.
6 See Murray 1990.
7 Jones 1987, 219, 222.
8 Gagarin & Perlman 2016, 417.
9 Phratries: Lambert 1993, 43-57; *gene*: Ismard 2010, 107-110 and Blok 2017, 217-225. For the relation between citizenship and associations in Archaic Athens, see Ismard 2018.
10 The hypothesis analyzed here is briefly raised by Arnaoutoglou in this volume, n. 19.
11 Here I am in agreement with the subtle analysis of Minon 2021, 163, contra Hallof 2021, 107-108.
12 The crucial collocation is “σκάλαν . . . ἑταριτικάν”, for which see Minon 2021, 157-158.
13 Papazarkadas 2011, 99-190.

ioi, who owned and exploited agricultural land and other types of realty even in the late Classical and Hellenistic periods, long after the Cleisthenic reforms had rendered them politically insignificant (*Agora* XIX L4a and L4b). At first sight, one of the most remarkable features of the Ledrinian *hetaireiai* is their military role, as seemingly inferred from line 3. I would like however to bring attention to a new bronze tablet from Olympia, published by Peter Siewert soon after the document under consideration.[14] Siewert interpreted his document as a set of agricultural provisions: we encounter there, for instance, the verb σκαλέFω, a variant of the rare epichoric verb σκαλείω of Hallof's text.[15] Most importantly, Siewert's document contains three references to ὅπλα, which the editor astutely and correctly identified not as weapons but as agricultural tools. In this light, I contend that the expression μεδ' ὅπλα συνφάρεν should be translated as "nor should they make communal use of agricultural tools". In other words, the Ledrinian *hetaireiai* are prevented from engaging in any sort of agricultural activity. Here we should remember that associations routinely exploited their agricultural assets to fund their cultic activity. The Pellanean *dikastai* made sure that the condemned *hetaireiai* were prohibited from carrying out their cultic duties, by, amongst others, depriving them from their main source of funding, i.e. agricultural produce.

We could push this point further. In recent years, scholars have turned anew their attention to notions of citizenship in the Archaic period.[16] Although the debate remains unsettled, there is a growing understanding that Archaic citizenship was not the carefully defined concept familiar to us know from Aristotelian analysis. This idea was aptly expressed more than twenty years ago by F. Ruzé, who stated that political participation in late Archaic Greece relied on "la sécurité des biens et des personnes et la garantie de pouvoir jouir des fruits de sa propriété".[17] But in my reading of the new text from Olympia, "fruits de sa propriété" is exactly what every member of the guilty *hetaireia* would have been deprived of upon being condemned. In this light, I contend that the Pellanean verdict might have targeted not only the unhindered cultic activity of the errant *hetaireia*, but also, in effect, the right of their members to exercise their political rights–whatever that may have meant in the framework of Ledrinoi.[18]

We do not know how many *hetaireiai* existed in late Archaic/early Classical Ledrinoi. They definitely had a hierarchical structure, as evinced by the fact they had a recognizable leader, an *archagos*, an office I take to be equivalent to, for example, the archons of the two branches of the Salaminians (Rhodes-Osborne, *GHI* 37, ll. 69-70). We can speculate further: in the penultimate clause of the new text, the Kilikikoi, one

[14] Siewert 2021.
[15] Cf. Minon 2021, 141-142.
[16] See, for instance, the recent collection of essays in Duplouy & Brock 2018.
[17] Ruzé 2003, 170; cf. Ismard 2018, 149.
[18] In fact, the two components of this syllogism are closely interconnected. Another aspect that has been highlighted in recent studies of citizenship in antiquity is that religious participation was an integral part of civic participation; see, e.g. Blok 2017, passim.

of the Ledrinian *hetaireiai*, are prohibited from initiating legal action. Strikingly, the text targets not the initiators of such proceedings but the legal authority that might undertake such a case, be it a foreign or a civic agency. Here, I would like to highlight another peculiar institution attested in Gortyn: the *judge (dikastas) of the (h)etaireiai.* (Gagarin & Perlman 2016, no. 42, col. B, l. 12). It is not impossible, even though it cannot be proven, that a similar legal authority existed in Ledrinoi, and it was their potential initiative that was preemptively regulated by the relevant legal prohibition.

To sum up, it is my contention that the main collective bodies targeted by the Pellanean sanctions, so clearly elucidated by Arnaoutoglou, were the Ledrinian *hetaireiai*. What we see here is a snapshot of a process well-known from other parts of the Greek world, whereby *poleis* sought strengthening political cohesion by checking the power of old collectivities of real or imaged aristocratic origin and further integrating in their political structure.[19] What is striking in the case of the new bronze tablet, however, is the employment of foreign conciliators. And this brings me to the second point of my brief response.

As I mentioned earlier, Ledrinoi is known to have been a perioecic community of the city-state of Elis. Hallof,[20] and now Arnaoutoglou, have argued that the Pellanean judicial committee may have been invited by Elis to mediate its affairs. At first glance, this hypothesis appears plausible. However, it runs into a significant difficulty: if Elis was the primary interested party, why would it invite foreigners to adjudicate a seemingly secondary domestic issue?[21] Would it not be more logical for Elis to resolve such a matter on its own? To approach the issue from another angle: can we imagine Sparta ever seeking outside assistance to address a problem concerning one of its perioecic communities? [22] But perhaps I am begging the question and the difference is one of degree of power. Despite the apparent similarities in the institutional frameworks of perioecic dependencies, it is possible that fifth-century B.C. Elis had not yet attained a level of consolidation comparable to that of Sparta.[23] If this is the case, the innovative and nuanced legal arrangements observed in this new document could represent a stage in Elis' gradual progression toward becoming a more unified state.

Nevertheless, there is another possibility that merits consideration—that Elis had nothing to do with the Pellanean reconciliation and that the initiative originated from the independent *polis* of Ledrinoi. In fact, the assumption that this document was generated by Elis is largely based on its find-spot and the hypothesis that Elis had the shrine of Olympia under its firm control. This is not the space to delve into the specifics of the ongoing debate, but it is important to remember that a respected minority

[19] Gehrke 2009, esp. 400.
[20] Hallof 2021, 120-122; cf. Minon 2021, 127.
[21] This becomes more tantalizing if we consider the scholarly consensus that the perioecic communities of Elis were "weak and insignificant" (thus Roy 2018, 272).
[22] Cf. Shipley 1997, esp. 211: "The perioikic poleis may have had a degree of autonomy, but they were certainly not *autonomoi*".
[23] For a comprehensive analysis of Elis' relations with its *perioeci,* see Roy 1997, 291-298.

of Eleian experts continue to argue that, at an earlier stage, the shrine of Olympia was not exclusively controlled by Elis but by an amphictyony of a sort, which included Elis and other regional political entities, such as Ledrinoi.[24] Even proponents of the alternative view, however, believe that the perioecic communities were connected to Elis through a series of alliances (συμμαχία), that is they maintained a façade of independence.[25]

What is particularly striking about this new document is the absence of the institutional bodies typically associated with Elis and/or Olympia: we hear nothing of the *damiorgoi*, the *iaromaoi,* the *theokoloi* or the *proxenoi*.[26] The only exception seems to be the clause requiring sacrifices to be conducted in the presence of public, rather than private, *manteis*. Hallof identified these *manteis* as those of Elis;[27] however, a compelling argument can be made for the opposite view. Recall that three of the four major clans of seers at the time came from Elis. Yet, during the famous Battle of Plataea in 479 BC, one of these clans sided with the Persians, while another supported the Greek army, an indication that these mantic clans were not firmly under the control of any single polis and, more specifically, Elis.[28]

To summarize, we should not dismiss out of hand the possibility that the initiator of the legal process in the new text was not Elis, but the polis of Ledrinoi. After all, Ledrinoi are known to have acted on their own initiative in the roughly contemporary inscribed dedication mentioned above (Minon, *I.dial. éléennes* 47). This could mean, but does not have to, that Ledrinoi had not yet been reduced to perioecic status.[29] Unfortunately, as noted above, we do not know when Ledrinoi became a perioecic polis of Elis. Besides, the theory that Ledrinoi act in their own capacity in the new document is not necessarily incompatible with their status as a perioecic polis, for it is generally assumed that the *perioeci* of Elis enjoyed a substantial degree of autonomy.[30] At any rate, the new document provides a glimpse into the activities of the local *hetaireiai*, which might have been one of the main subunits of the political community of Ledrinoi.

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[24] The "amphictyony" of Olympia was first postulated by Kahrstedt 1928; see now, e.g., Siewert 1991 and Taita 2007, 126-130.

[25] E.g. Siewert 1994 (who sees these alliances as a successor to the "amphictyony"); Roy 1997. Bourke 2018, 160-163, however, maintains that the perioecic cities were different from Elis' allies.

[26] For these offices, see Minon 2007, 498-500, 524-529, 535-536.

[27] Minon 2007, 529-532.

[28] Flower 2008, 38.

[29] Note that Panessa 1999, 66-67, has ingeniously argued that Pausanias 6.22.10 (φιλία γάρ σφίσιν ὑπῆρχεν ἐξ ἀρχῆς ἐς Λετριναίους) might echo a *philia*-treaty between Elis and Ledrinoi dating back to a time when the relationship between the two partners would still have been much fairly balanced.

[30] See n. 23 supra.

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WIEDERGUTMACHUNG FORDERN

Abstract: According to archaic law of obligations, an injured party could demand the surrender of a tortfeasor. The injured party could do as he pleased with the person handed over to him; he usually let this person work for him or sold him or her into slavery. This practice was also used in conflicts between people from different poleis. Anyone who had stolen cattle, failed to pay debts, killed another person, robbed a woman or caused damage through a war campaign was demanded to be handed over in order to make amends. Helotry as a special form of slavery may have derived from this legal practice.

Keywords: debt law, debt slavery, extradition, helots, Messenia

Euaiphnos, der Viehdieb

Nach der vernichtenden Niederlage der Spartaner in der Schlacht von Leuktra 371 v. Chr. holten die Thebaner zum entscheidenden Schlag aus, indem sie gleich im darauffolgenden Jahr unter Führung des Epameinondas ein Heer auf die Peloponnes entsandten. Die Messenier wurden nach etwa zweihundertdreißig Jahren aus dem Joch der Sklaverei befreit. Epameinondas rief die Messenier, die im späten 7. Jh. und nach dem Helotenaufstand der 460er Jahre auf die ionischen Inseln, nach Unteritalien und Sizilien ausgewandert waren, dazu auf, in ihre Heimat zurückzukehren und eine zentrale Siedlung an den Hängen des symbolträchtigen Bergs Ithome zu gründen. Bemühungen, einen „gemeinsamen Frieden", eine *koinḗ eirḗnē*, zu stiften, scheiterten im 4. Jh. mehrfach daran, dass Sparta nicht bereit war, auf Besitzansprüche hinsichtlich Messeniens zu verzichten.[1] Es mögen diese Jahre und Jahrzehnte nach der Befreiung Messeniens gewesen sein, in denen kontroverse Diskussionen über Ursprung und Anlass der Messenischen Kriege geführt wurden. Sie schlugen sich in der Darstellung des Myron von Priene nieder, der den Messeniern in den *Messeniaka* eine Geschichte schuf, die freilich mehr einem historischen Roman gleicht denn einer authentischen Darstellung. Das Werk Myrons ging weitestgehend verloren, doch stützt sich der Perieget Pausanias in seiner historischen Einführung zur Landschaft

[1] Dazu Jehne 1994, 80 f. (zu den Verhandlungen von Delphi 369/8), 82–84, 88 und 106 f. (zur *koinḗ eirḗnē* von 365 und von 362 v. Chr.), der zu Recht darauf verweist, dass Sparta mit seinem Beharren auf dem Herrschaftsanspruch über Messenien in der griechischen Welt weitgehend isoliert war.

Messenien auf dieses Werk, ebenso wie Diodor, von dessen achtem Buch allerdings auch nur Fragmente erhalten geblieben sind. Seine Darstellung der Ereignisse geht auf Kallisthenes von Olynth und Ephoros von Kyme zurück, zwei Historiker des 4. Jh. v. Chr. Übernommen haben beide Autoren, Diodor und Pausanias, die Geschichte vom Viehdiebstahl des Euaiphnos, der Anlass zum Ausbruch des ersten Messenischen Kriegs im 7. Jh. gewesen sein soll.[2]

Der Messenier Polychares, nach Diodor ein reicher Grundbesitzer vornehmer Abkunft, schloss einen Kontrakt mit dem Spartaner Euaiphnos über die Nutzung seiner Rinderherde ab, eine *agélōn koinōnía*. Polychares gab die Tiere mitsamt den dazugehörenden Hirten in Obhut des Euaiphnos (Diod. 8 fr. 7,1).[3] Statt der im Vertrag festgelegten Nutzung und späteren Rückführung der Tiere verkaufte jedoch der Spartaner Euaiphnos einige der Rinder mit den Hirten. Den Viehhändlern nahm er das Versprechen ab, dass sie Rinder und Hirten außer Landes bringen müssten, damit der Vertragsbruch nicht ans Licht kam. Dem Messenier Polychares gegenüber behauptete Euaiphnos, er sei von Räubern überfallen worden, offenbar ein Umstand, der in solchen Verträgen Berücksichtigung fand.[4] Doch die Viehhändler kamen auf der Fahrt um die Peloponnes in einen schweren Sturm und ankerten nahe dem Festland, um den Sturm abzuwarten. In der Nacht flohen die Hirten – ganz offensichtlich waren es Sklaven – vom Schiff und konnten entkommen. Sie kehrten nach Messenien zurück und berichteten ihrem Herrn von den Vorkommnissen. Polychares versteckte die Hirten, ließ seinen Vertragspartner aus Sparta kommen und stellte ihn zur Rede. Euaiphnos behauptete hartnäckig, die Hirten seien von den Räubern im Gebirge teils entführt, teils getötet worden. Als Polychares ihm daraufhin die zurückgekehrten Hirten vorführte und damit den Betrug offenbar machte, bat Euaiphnos um Nachsicht und versprach, die Rinder zu ersetzen. Polychares' Sohn kehrte mit Euaiphnos nach Sparta zurück, um die Entschädigung in Empfang zu nehmen. Euaiphnos jedoch tötete den Sohn des Polychares, der daraufhin von Sparta verlangte, den Schuldigen auszuliefern (Diod. 8 fr. 7,6: τὸν αἴτιον ἐξαιτεῖν). Die spartanischen Behörden wa-

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[2] Benedetto Bravo setzt die Entstehung der Geschichte im 4. Jh. oder in hellenistischer Zeit an (1982, 146).

[3] Diod. 8 fr. 7,1: συνθέσθαι ἀγελῶν κοινωνίαν πρὸς Εὔαιφνον Σπαρτιάτην. Dass es um eine vertraglich vereinbarte Nutzung der Herden ging, bestätigt die Überlieferung bei Paus. 4,4,5: ὅτε ὁ Πολυχάρης […] Σπαρτιάτῃ σφᾶς δίδωσιν Εὐαίφνῳ βόσκεσθαί τε ἐν ἐκείνου καὶ μοῖραν εἶναι καὶ Εὐαίφνῳ τοῦ καρποῦ τῶν βοῶν. Die Formulierung Diodors entspricht der eines solonischen Gesetzes, in dem es wahrscheinlich nicht um ein Exportverbot landwirtschaftlicher Produkte, sondern um Erntekontrakte mit Fremden ging, die – vermutlich bei heiligem oder öffentlichem Land – nur bei Olivenöl zulässig waren (Plut. *Solon* 24,1: Τῶν δὲ γινομένων διάθεσιν πρὸς ξένους ἐλαίου μόνον ἔδωκεν, …). Infolge semantischer Veränderungen hat Plutarch in der römischen Kaiserzeit τῶν γινομένων διάθεσις πρὸς ξένους nicht mehr als „Erntekontrakt mit Fremden", sondern als „Verkauf von Ernteprodukten an Fremde" verstanden und ein Exportverbot aller landwirtschaftlicher Produkte daraus abgeleitet. Dazu LegDrSol F 76; Schmitz 2024, 24–31. Fremde Lohnarbeiter, die als Schnitter bei der Ernte eingesetzt werden sollen, sind in Plut. Tiberius et Caius Gracchus 34,2 für das republikanische Rom genannt.

[4] Vgl. Isokr. 6,19.

ren um eine Schlichtung bemüht: In einem Schreiben boten sie an, Polychares solle vor den spartanischen Ephoren und den Königen Anklage gegen Euaiphnos erheben. Doch Polychares zog es vor, Gleiches mit Gleichem zu vergelten, und tötete seinerseits den Sohn des Euaiphnos, den die spartanischen Behörden als Boten geschickt hatten. So übte Polychares Vergeltung an der Stadt Sparta, weil sie Euaiphnos nicht ausgeliefert hatte.[5]

Die zweifelsohne erfundene Geschichte hat legitimierende Funktion und diente der Sinnstiftung. Warum, so fragten sich die Messenier nach ihrer Befreiung, war es zu den kriegerischen Auseinandersetzungen zwischen Messeniern und Lakedaimoniern gekommen? Wer trug die Schuld an dem Krieg, der den Messeniern eine jahrhundertelange sklavenartige Unterdrückung aufgebürdet hatte? Die Geschichte über den Viehdiebstahl schob die Schuld den Spartanern zu.[6] Der Spartaner Euaiphnos war es gewesen, der den mit Polychares abgeschlossenen Vertrag in grober Weise verletzt hatte. Indem er Polychares' Sohn getötet hatte, obwohl beide Gastfreunde waren, hatte Euaiphnos mit der vorsätzlichen Tötung noch ein schweres religiöses Vergehen hinzugefügt. Angesichts dessen hätten die spartanischen Behörden Euaiphnos unverzüglich ausliefern müssen.

Nach der Version des Pausanias (4,4,5–8) sei Polychares nicht nur ein angesehener Messenier gewesen, sondern hätte auch bei der vierten Olympiade im Stadionlauf gesiegt.[7] Dann folgt eine Ausschmückung, die beweist, dass Pausanias oder seine Quelle keine rechte Vorstellung von Pachtverträgen der Art hatte, wie ihn Polychares mit Euaiphnos abgeschlossen hatte. Polychares hätte nicht genügend eigenes Land als Weide für die Rinder gehabt und die Tiere deswegen dem Euaiphnos zur Weide auf seinem Land übergeben. Dies ist aber bei solchen Nutzungsverträgen unwahrscheinlich, da in der Regel reiche Grundbesitzer bestimmte Arbeiten, z. B. die Ernte des Getreides oder das Aufsammeln und Pressen der Oliven, an ‚Pächter' gaben, die dafür einen Anteil an den Produkten erhielten.[8] Zutreffend ist, dass der Vertrag unter

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[5] Diod. 8 fr. 7,1–6 (aus Constantinus VII Porphyrogenitus, *Excerpta de virtutibus et vitiis* vol. 1 p. 213 Büttner-Wobst / Roos). Bravo 1980, 942: „Dans les deux récits, donc, le comportement de Polycharès apparaît comme contraire au droit." Ebenso Bravo 1982, 149–151. Zu einem möglichen Prozess gegen Euaiphnos Bravo 1982, 145–149. Auf ein Gesetz Solons soll die Bestimmung zurückgehen, dass in Athen den Verwandten eines gewaltsam Getöteten Geiselnahmen (*androlēpsíai*) erlaubt sind, wenn weder Genugtuung geleistet noch der Täter herausgegeben wird (Lex ap. Demosth. *or.* 23,82: ἕως ἂν ἢ δίκας τοῦ φόνου ὑπόσχωσιν ἢ τοὺς ἀποκτείναντας ἐκδῶσι; vgl. *Glossae rhetoricae* s.v. ἀνδρολήψιον καὶ ἀνδροληψία [Anecd. graec. I p. 213,30–214,2 Bekker]). Ausführlich dazu Bravo 1982; vgl. Schoemann 1873, 7 f. Entgegen der Ansicht von Benedetto Bravo halte ich es für wahrscheinlicher, dass sich das Gesetz auf Tötungen eines anderen Atheners, nicht eines Fremden bezieht. Bravo geht hingegen davon aus, dass bei der Tötung eines Fremden es nicht erlaubt sei, einen beliebigen Mitbürger der anderen Stadt zu töten, wohl aber bis zu drei Geiseln zu nehmen und sie zu versklaven.

[6] In Isokr. 6,16–33 ist die Geschichte verschwiegen. Stattdessen wird dem Messenier Neleus die Schuld für einen Viehdiebstahl an den Herakliden gegeben.

[7] Nach Paus. 4,4,5 war es die vierte Olympiade, die die Eleier begingen.

[8] Verträge dieser Art überliefert Cato *agr.* 136, 137, 144–148. Ein Mustervertrag über die

der Bedingung eingegangen wurde, dass Euaiphnos „Anteil (*moíra*) an dem Ertrag der Rinder“ haben sollte (Paus. 4,4,5).[9] In der Darstellung des Pausanias sei Polychares mehrfach bei den Königen und Ephoren in Sparta wegen des getöteten Sohnes und des erlittenen Schadens vorstellig geworden. Als Polychares trotz ständigen Insistierens keine Genugtuung (*timōría*) erhielt (Paus. 4,4,8), habe er wie von Sinnen in seiner Erbitterung jeden Lakedaimonier getötet, den er greifen konnte. Die Spartaner hätten daraufhin ihrerseits von den Messeniern die Auslieferung des Polychares verlangt, und als dies verweigert worden wäre, hätten die Lakedaimonier deswegen und wegen der vorausgegangenen Tötung ihres Königs Teleklos den Krieg gegen die Messenier begonnen.

Die Geschichte erfährt also bei Pausanias eine andere Wendung: Nun ist Polychares derjenige, der wahllos Spartaner tötete und damit ihnen gegenüber schuldig wurde, was eine Auslieferung zu rechtfertigen schien. Trotzdem kann dies nicht die von spartanischer Seite verbreitete Version der Geschichte gewesen sein; denn auch in dieser Version ist der Spartaner Euaiphnos derjenige, der den Vertragsbruch begeht und anschließend Polychares’ Sohn aus Habgier tötet. Und erst als Polychares von den Königen und den Ephoren immer wieder abgewiesen wird, tötet er andere Spartaner, aber nicht aus Gewinnsucht, sondern weil er von Sinnen ist, erbittert und rücksichtslos auch gegen sich selbst, wie Pausanias (4,4,2–3) wiedergibt.[10] Wenn Polychares in dieser Weise „wie von Sinnen“ wütet, dann haben die Götter die Hände im Spiel. Sie haben dem Geschehen ihren Lauf gelassen und den Messeniern, obwohl

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Schafhaltung in Cato *agr.* 150. Wer das Nutzungsrecht an der Schafherde erwerbe, müsse je Schaf eineinhalb Pfund Käse, die Hälfte davon hartgetrocknet, sowie die Milch, die er an Feiertagen gemolken hat, zur Hälfte und darüber hinaus eine Urna Milch (etwa dreizehn Liter) an den Eigentümer abführen. Bis zum Ende des Nutzungsrechts am 1. Juni verkaufe der Pächter nicht mehr als 30 Lämmer. Denn sonst wären dem Eigentümer zu hohe Erträge aus der Milch verloren gegangen. Zwei Schafe, die nicht gelammt hätten, rechne man bei der Ertragsrechnung als ein Schaf. Von der Molke ziehe er auf zehn Schafe ein Ferkel auf. Außerdem müsse der Pächter dem Verpächter für zwei Monate einen Hirten stellen, der als Pfand dienen solle, bis der Pächter dem Eigentümer Sicherheit geleistet oder alles entrichtet habe. Cato *agr.* 149 bietet einen Mustervertrag auch über das Grünfutter der Winterweide. Für das Abweiden der Winterweideplätze solle man genaue Grenzen angeben; der Pächter könne sie vom 1. September an nutzen bis zur Blüte des Birnbaums. Dem Eigentümer verbleibe aber das Recht, ein Paar zur Feldarbeit abgerichtete Ochsen und einen Wallach auf der Fläche weiden zu lassen. Für Gemüse, Spargel, Brennholz, Wasser, den Weg und die Viehtrift bleibt das Nutzungsrecht beim Eigentümer. Wenn der Pächter, seine Hirten oder sein Vieh dem Eigentümer irgendeinen Schaden zufügen, ersetze der Pächter ihn „nach dem Ermessen eines redlichen Mannes“ und ebenso umgekehrt. Bis zum Ausgleich sollen Vieh und Sklaven (*familia*) als Pfand dienen. Wenn es darüber Streit gebe, ergehe das Gerichtsurteil in Rom (Übersetzung Dieter Flach). Dass es im antiken Griechenland ähnliche Verträge gab, darauf deutet das Verb *tetrachízein*, „arbeiten für ein Viertel [des Ertrags]“ (Poll. 7,152; Hesych. τ 639; Phot., *Lex.* τ 196; Ps.-Zonaras, *Lex.* p. 1725; *Etym. M.* p. 754 s.v. τετραχίζειν; LegDrSol F 102; Schmitz 2024, 14).

9 […] καὶ – οὐ γὰρ ἐκέκτητο ἰδίαν γῆν ὡς νομὰς ταῖς βουσὶν ἱκανὰς εἶναι – Σπαρτιάτῃ σφᾶς δίδωσιν Εὐαίφνῳ βόσκεσθαί τε ἐν ἐκείνου καὶ μοῖραν εἶναι καὶ Εὐαίφνῳ τοῦ καρποῦ τῶν βοῶν.

10 ebd. ἐκ τοῦ νοῦ καὶ τῷ θυμῷ χρώμενος, ἅτε ἔχων ἀφειδῶς ἤδη καὶ αὐτοῦ,

sie eigentlich im Recht waren, Verderben vorbestimmt. Auch in dieser Version also geht es um Sinnstiftung, um die Beantwortung der Frage, warum die Messenier vom Schicksal so hart getroffen worden waren. Und die Antwort lautet: Es war eine unglückliche Verkettung von Ereignissen, für die aber – aus messenischer Perspektive – letztendlich Spartaner die Verantwortung trugen.

Der Viehdiebstahl ist nicht die einzige legitimierende und sinnstiftende Erzählung, die in der Kontroverse ins Feld geführt wurde, wer die Schuld am Ausbruch des Messenischen Kriegs trug. Die Spartaner ihrerseits warfen den Messeniern vor, sie hätten eine Gruppe von jungen Frauen während eines Festes in dem im Taygetos gelegenen Artemis Limnatis-Heiligtum überfallen, sie vergewaltigt und getötet. Bei dem Versuch sie abzuwehren sei der spartanische König Teleklos getötet worden.[11] Nach einer anderen Version (Ephoros *FgrH* 70 F 216) habe der spartanische König bei einem Opfer in Messenien den Tod gefunden.[12] Die Spartaner forderten von den Messeniern daher Wiedergutmachung, und ein Teil der Messenier habe sich bereit dazu gefunden, sie zu leisten. Doch von der Mehrheit wurden sie überstimmt, ja sogar im Zuge einer *stásis* aus der Stadt verdrängt. Sie schlossen sich einem Oikistenzug nach Rhegion in Unteritalien an.

Weil die Messenier für die Freveltat (*hýbris*) keine Genugtuung geleistet hätten (*ou didóntōn díkas*), so gibt Strabon seinen Gewährsmann Ephoros wieder (Strab. 8,4,9, p. 362 C.), soll es zum Krieg gekommen sein.[13] Auch gemäß der in Strabons

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[11] Diod. 15,66,2–3; Strab. 8,4,9, p. 362 C. (nach Ephoros *FgrH* 70 F 116); Iustin. 3,4,1; Oros. 1,21,3. In der Archidamos III., dem Sohn des herrschenden Königs Agesilaos, in den Mund gelegten Rede lässt Isokrates den Königssohn den Anspruch Spartas auf Messenien mythhistorisch begründen. Verfasst hat Isokrates die Rede vermutlich um 366 v. Chr., als die Thebaner den Spartanern die Herrschaft über Messenien genommen und die Bevölkerung befreit hatten. Nach dem Tod des Eurystheus hätten die von ihm verfolgten Herakliden auf Weisung des delphischen Orakels in das Land ihrer Väter, Argos, zurückzukehren versucht. Als den einzigen noch lebenden Nachkommen aus dem Geschlecht des Perseus gehöre ihnen Lakedaimon, das durch Schenkung des Tyndareos an Herakles gelangt sei. Messenien hingegen gehöre ihnen als Kriegsbeute. Als dem Herakles die Rinder von Neleus geraubt worden waren, habe er Messene eingenommen, die Frevler getötet und die Polis dem Nestor als Pfand gegeben (19: Νέστορι δὲ παρακατατίθεται τὴν πόλιν), da er als einziger der Söhne des Neleus nicht an dem Raub beteiligt war. Nachdem die Messenier ihren eigenen König Kresphontes getötet hatten, hätten die Spartaner auf Bitten der zu ihnen geflohenen Söhne und im Auftrag des delphischen Gottes ihn gerächt und das Land nach Belagerung und Unterwerfung in ihren Besitz gebracht (23). Messene dürfe daher den Spartanern genauso wenig streitig gemacht werden wie Lakonien selbst (24–25), zumal sie bereits vierhundert Jahre im Besitz dieses Landes seien, in früheren Friedensvereinbarungen dies immer anerkannt worden sei und Delphi die Eroberung Messeniens gutgeheißen habe (26–33) (Isokr. 6,16–33).

[12] Ephoros *FgrH* 70 F 216 (= Strab. 6,3,3, p. 279 C.) aus der Gründungsgeschichte Tarents.

[13] […] μετὰ δὲ τὴν ὕβριν οὐ διδόντων δίκας τῶν Μεσσηνίων συστῆναί φασι τὸν πόλεμον. Als *hýbris* ist die Tat auch in Herakl. Lemb. 26 Dilts bezeichnet. Es entspricht dem griechischen ‚Völkerrecht', dass für das Vergehen eines Einzelnen, wenn dessen Auslieferung verweigert wird, die ganze Polis haftet. So schon Hes. *erg.* 240: „Oft schon trug eine Stadt insgesamt eines Schlechten Verschulden" (πολλάκι καὶ ξύμπασα πόλις κακοῦ ἀνδρὸς ἀπηύρα). Dagegen Bravo 1980, 959: „Si nous admettons que la « dette » (χρείος) était ce qu'on devait

Geographie in Fragmenten erhaltenen Gründungsgeschichte Rhegions hätten sich an der Gründung der unteritalischen Stadt Messenier beteiligt, die aus ihrer Heimat hätten fliehen müssen, weil sie sich dafür ausgesprochen hatten, den Spartanern Genugtuung für die in Limnai vorgefallene Schändung der Jungfrauen zu leisten (*doúnai díkas*).[14] Sie hätten die Gefahr gesehen, dass eine Ablehnung der spartanischen Forderungen einen Krieg provozieren würde. Sie hätten sich jedoch mit ihrem Votum nicht durchsetzen können und seien zur Auswanderung gezwungen worden.

Wie beim Viehdiebstahl des Euaiphnos reagierten diesmal die Messenier mit einer Gegenforderung: Nicht Messenier hätten bei dem Fest spartanische junge Frauen vergewaltigt, sondern als Frauen verkleidete Spartaner hätten junge messenische Männer angegriffen und getötet. In beiden Fällen, dem der Schändung der Jungfrauen und dem des Viehdiebstahls des Euaiphnos, standen also gegenseitige Forderungen im Raum. Doch beide Seiten lehnten eine Auslieferung der Schuldigen ab. Es ist davon auszugehen, dass diese Zwischenfälle nicht historisch sind und nur zur – nachträglichen – Legitimation eines Krieges oder zur Deutung eines schicksalhaften Geschehens dienten. Mir kommt es darauf an, dass die gegenseitigen Forderungen auf rechtliche Kategorien zurückgreifen, auf die Forderung, „Wiedergutmachung zu leisten" (*doúnai díkas*) und zwar durch „Herausfordern des Schuldigen" (*tón aítion exaiteín*).[15]

Die Übergabe des Schuldigen an den Geschädigten

Die Übergabe des Schuldigen an den Geschädigten ist eine aus dem frühen Schuldrecht bekannte Forderung. Durch ein solonisches Gesetz ist bestimmt, dass ein bissiger Hund – so wie jedes andere Tier, das Schaden verursacht hat – übergeben werden muss (*paradoúnai*), an einer drei Ellen langen Fessel (Plut. *Solon* 24,3).[16] Ein entsprechendes Gesetz ist auch für das römische Zwölftafelrecht nachgewiesen (*Leg.*

payer à la suite d'un délit, il ressort de là que la communauté n'était pas co-responsable du délit d'un particulier contre un étranger." Vgl. auch ebd. 960–962 : „La 'justice privée' à l'encontre d'étrangers n'est pas une action soustraite à tout contrôle social, mais une forme de 'justice', une action qui doit se conformer à certaines normes du droit coutumier, et qui est censée frapper exclusivement le coupable ou un membre de la cité coupable."

[14] Strabon beruft sich dabei auf den Bericht des Antiochos von Syrakus (*FgrH* 555 F 9; Strab. 6,1,6, p. 257 C.: καὶ οἱ Μεσσηνίων φυγάδες τῶν ἐν Πελοποννήσῳ καταστασιασθέντες ὑπὸ τῶν μὴ βουλομένων δοῦναι δίκας ὑπὲρ τῆς φθορᾶς τῶν παρθένων τῆς ἐν Λίμναις γενομένης τοῖς Λακεδαιμονίοις). Zur Frage, ob diese Passage Antiochos zugeschrieben werden kann, Kiechle 1959, 6–9, der sich dafür ausspricht. Im Konflikt hätten sich die unterlegenen Messenier an das Orakel in Delphi gewandt. Das an die Messenier (bzw. Chalkidier) ergangene Orakel ist bei Diod. 8 fr. 23,2 überliefert (vgl. Dion. Hal. *ant.* 19,2,1). Dazu Bernstein 2004, 81–92.

[15] Seit wann griechische Poleis Fremden anbot, ihnen in solchen Fällen die Möglichkeit einer Klage einzuräumen, lässt sich nicht genau bestimmen (dazu Bravo 1982, 151 f.).

[16] Solon F 35 Ruschenbusch und Leão/Rhodes; LegDrSol F 104: Ἔγραψε δὲ καὶ βλάβης τετραπόδων νόμον, ἐν ᾧ καὶ κύνα δάκνοντα παραδοῦναι κελεύει κλοιῷ τριπήχει δεδεμένον. – „[Solon] hat auch ein Gesetz über den durch Tiere herbeigeführten Schaden erlassen, in dem er anordnete, auch den bissigen Hund zu übergeben (*paradoúnai*), gebunden an einer Fessel von drei Ellen Länge."

XII tab. 8,6).[17] Auf dieses altertümliche Recht der Übergabe dessen, was eine Schädigung verursacht hat, beruft sich offenbar auch der Athener Kallikles, der noch im 4. Jh. v. Chr. vom Angeklagten die Übergabe des Nachbargrundstücks forderte, weil abgeleitetes Wasser Schäden auf seinem eigenen Land angerichtet hatte. Durch eine vom Vater errichtete Mauer war bei einem Starkregen das Wasser am Grundstück vorbeigeleitet worden und über den Grund und Boden des Kallikles geflossen. Nun klagte Kallikles wegen Schädigung (*blábē*) auf Übergabe des Grundstücks, von dem die Schädigung ausgegangen war.[18]

Auch für Schäden, die ein Sklave verursacht hatte, musste der Herr aufkommen; dies ist durch eine Gerichtsrede des Hypereides (3,22) bezeugt, auch wenn nicht weiter ausgeführt wird, ob dies durch Übergabe des Sklaven oder eine Entschädigungszahlung erfolgen sollte.[19] Unmissverständlich war dies aber im römischen Recht geregelt: „Wegen eines Vergehens (*ex maleficio*) von Haussöhnen und Sklaven, z.B. wenn sie einen Diebstahl (*furtum*) begangen oder jemandem etwas Gesetzwidriges (*iniuria*) zugefügt haben, sind Klagen auf Haftung für Schädigungen (*actiones noxales*) eingeführt worden, …“ (Gaius *inst.* 4,75).[20] Und dies galt bis in die justinianische Zeit hinein: „Wegen der Delikte (*maleficia*) von Sklaven – zum Beispiel wenn sie einen Diebstahl begangen, Sachen geraubt, einen Schaden zugefügt oder eine Personenverletzung begangen haben – sind Noxalklagen geschaffen worden, bei denen dem verurteilten Eigentümer gestattet wird, entweder den Schätzwert des Streitgegenstandes zu leisten oder den Sklaven als den Schädiger auszuliefern (*noxae dedere*)“ (*Inst. Iust.* 4,8 pr.).[21] Man wird davon ausgehen können, dass das griechische Recht ähnliche Regelungen vorsah.

Konnte oder wollte der Herr also nicht für den Schaden aufkommen, musste er die Person, die den Schaden angerichtet hatte, an den Geschädigten ausliefern. Wurde ein Sklave oder auch der *filius* oder die *filia familias* dem Geschädigten ausgelie-

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[17] Ulpianus in *Dig.* 9,1,1, pr.: *si quadrupes pauperiem fecisse dicetur, actio ex lege duodecim tabularum descendit; quae lex voluit aut dari id, quod nocuit, id est id animal, quod noxiam commisit, aut aestimationem noxiae offerri*. – „Wenn ein vierfüßiges Tier Schaden (*pauperies*) angerichtet hatte, folgt die Klage (*actio*) nach dem Zwölftafelrecht; dieses Gesetz will, dass entweder das, was die Schädigung verursacht hat, und dies ist das Tier, das die Schädigung begangen hat, übergeben wird (*dari*) oder dass [dem Geschädigten] die Schätzsumme des Schadens (*aestimatio noxiae*) angeboten wird“ (Übersetzung Behrends/Knütel/Kupisch/Seiler). Die Noxalklage bei Tierschäden galt bis in justinianische Zeit (*Inst. Iust.* 4,9 pr.).

[18] Dazu überzeugend Wolff 1961.

[19] Hyp. 3 (*Athen.*), 22 (col. 10): „Da er [Solon] wusste, dass in der Stadt viele Käufe getätigt wurden, gab er ein gerechtes Gesetz, […], dass für die Schäden, die die Sklaven (*oikétai*) verursacht haben, derjenige Herr (*despótēs*) gemäß Vergehen aufkommen muss, bei welchem die Sklaven gearbeitet haben. Und das mit Recht“ (eigene Übersetzung).

[20] Gaius *inst.* 4,75 (= *leg. XII tab.* 12,2b) (Übersetzung nach U. Manthe). Im römischen Zwölftafelrecht heißt es: *si servus furtum faxit noxiamve nocuit*. – „Wenn ein Sklave einen Diebstahl beging oder Schaden zugefügt hat, …“ (Ulpian, *Dig.* 9,4,2,1; *leg. XII tab.* 12,2a). Dazu Flach 1994, 200–202.

[21] Übersetzung Behrends/Knütel/Kupisch/Seiler.

fert, konnte dieser frei entscheiden, ob er diese Personen als *nexi* für sich arbeiten lassen oder sie in die Sklaverei verkaufen wollte. Diese Praxis galt sowohl im antiken Griechenland als auch im antiken Rom von der Zeit des Zwölftafelrechts an bis in justinianische Zeit. Auch das römische Noxalrecht sah vor, dass nicht nur Tiere, sondern auch Sklaven und sogar freie, der Hausgewalt des *pater familias* unterstehende Kinder, die einen Schaden (*noxa*) verursacht hatten, an den Geschädigten übergeben werden mussten. Die Übergabe des Tieres oder des Sklaven wurde in der Rechtssprache mit *noxae dedere* bezeichnet, und so spricht man beim Schadensrecht, bei dem der Schädiger dem Geschädigten übergeben wird, von Noxalrecht.[22] Im frühen Rom war die Übergabe des Schädigers das primär geltende Prinzip. Die Übergabe konnte nur abgewendet werden, wenn der Geschädigte einverstanden war, dass der Besitzer des Tieres, des Sklaven oder der Sklavin beziehungsweise der Hausvater für den Sohn den Schaden ersetzte.

In früher Zeit galt die Übergabe der Person in die Gewalt des Geschädigten unbegrenzt; die Person verfiel dem Geschädigten und ging in dessen Gewalt über, der frei über sie verfügen konnte. Mitunter wurde dies später abgemildert. So heißt es in der Kultinschrift zu den Mysterien in Andania hinsichtlich der von Sklaven verursachten Schädigungen: Wird für den Sklaven die Strafe nicht gezahlt, „soll der Herr den Sklaven (*oikétēs*) dem Geschädigten zur Abarbeitung [des Schadens] (*apergasía*) ausliefern; andernfalls zahle er das Doppelte“ (Syll.[3] 736 Z. 77 f.).[23] Dabei ist offenbar vorausgesetzt, dass nach Abarbeiten des Schadens der Sklave an den Eigentümer zurückgegeben wird.

Was in der Antike über viele Jahrhunderte für Tiere und Sklaven galt, hatte in der Frühzeit auch Gültigkeit bei freien Personen. Dies betraf vor allem Schuldner, die die aufgenommenen Darlehen nicht zurückzahlen konnten. Auch sie mussten dem Geschädigten, also dem Darlehensgeber, ausgehändigt werden, und dieser konnte darüber entscheiden, ob er die ihm übergebene Person für sich arbeiten lassen wollte oder sie in die Sklaverei verkaufte. Selbst wenn er auf den Verkauf in die Sklaverei verzichtete, geriet die dem Geschädigten übergebene Person dennoch in eine sklavenähnliche Abhängigkeit, war nicht mehr Person eigenen Rechts und hatte an politischen Entscheidungen nicht mehr teil.

Einen zeitgenössischen Beleg aus dem frühen 6. Jh. für diese Praxis bietet eine

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[22] Zur Herausgabe des Haussohns siehe Gaius *inst.* 4,75–80. Dazu Kaser 1971, Bd. 1, 163: „Sie [die *actiones noxales*] richten sich gegen den Gewalthaber und stellen ihn vor die Wahl, entweder den Täter dem Verletzten auszuliefern (*noxae deditio*) oder die auf die Tat gesetzte Buße zu bezahlen.“ Und ebd. 631: „Die *noxae deditio*, mit der sich der Gewalthaber befreien kann, besteht in der Übertragung der Gewalt auf den Verletzten, also in der *mancipatio* des Hauskindes, in der *mancipatio* oder *in iure cessio* des Sklaven.“ Zur Noxalhaftung im römischen Recht siehe das grundlegende Werk zu den rechtshistorischen Aspekten von de Visscher 1947; außerdem Lisowski 1940; Benöhr 1980; Gamauf 2000; Silver 2012; Pennitz 2017 mit weiterer Literatur.

[23] LSCG 2 aus dem Jahr 92/91 oder 91/90 v. Chr.: ἂν δὲ μὴ ἐκτίνει παραχρῆμα, παραδότω ὁ κύριος τὸν οἰκέταν τῶι ἀδικηθέντι εἰς ἀπεργασίαν, εἰ δὲ μή, ὑπόδικος ἔστω ποτὶ διπλοῦν. Ziehen 1925; Piolot 1999; Harter-Uibopuu 2002.

der Elegien Solons. Er rechtfertigt seine weitreichenden Reformen mit den Worten:

> „Und viele hab' ich nach Athen, ins Land der Väter, gottgeschenkt,
> zurückgeführt, die man verkauft (*prathéntes*), den einen wider's Recht (*ekdíkōs*),
> den andern rechtens (*dikaíōs*), ferner die, die – gezwungen aus der Not –[24]
> geflüchtet sind (*phygóntes*), gar nicht Attisch mehr
> beherrschten, weil sie vielerorts weit weg umhergeirrt.
>
> Und die, die hier am Ort schmachvolle Sklaverei (*doulíē*)
> ertrugen, zitternd vor den Launen ihrer Herren (*despótai*),
> die hab' ich frei (*eleútheroi*) gemacht!" (Solon fr. 36 West Z. 8–15)[25]

Offensichtlich handelt es sich bei den Personen, die rechtens, aber auch jenseits des Rechts in die Sklaverei verkauft worden waren oder auf den Gütern reicher Grundbesitzer in sklavenartiger Abhängigkeit Arbeit leisten mussten, um solche, die andere geschädigt hatten, vor allem wohl durch nicht zurückgezahlte Schulden. Sie hatten deswegen dem Geschädigten übergeben werden müssen. Durch Solons *seisáchtheia* waren diese Abhängigkeitsverhältnisse (vermutlich nicht die Schulden selbst) aufgehoben worden, so dass die Abhängigen nun wieder Personen eigenen Rechts waren und ihre politischen Partizipationsrechte zurückerhielten.[26]

Auch wenn der Viehdiebstahl des Euaiphnos vor allem erzählerische Funktion hatte und beide Seiten daraus eine Rechtfertigung ableiteten, so orientierte sich die Ausgestaltung der Erzählung dennoch an rechtlichen Konventionen. Die Forderung des Polychares, Euaiphnos müsse ihm wegen des Viehdiebstahls und der Tötung seines Sohnes von den Königen und Ephoren Spartas ausgeliefert werden, um so Genugtuung zu erhalten, ist meines Erachtens in den Kontext des archaischen Schuldrechts zu stellen. Die Spartaner hätten sich von der berechtigten Forderung

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[24] Zur Lesung ἀναγκαίης ὑπὸ χρειοῦς mit der Übersetzung „gezwungen aus der Not" Noussia-Fantuzzi 2010, 471 (ebenso Lewis 2004, 28f.). Sie geht davon aus, dass ἐκδίκως/ἀδίκως und δικαίως der Rechtssprache entnommen sind: Wie in Gerichtsreden des späten 5. Jh., „also δίκαιος and ἔκδικος (…) likely focus here on the formal aspect of justice, … mean 'legally'/'illegally', in formal terms." ἀναγκαίης ὑπὸ χρειοῦς könne sich auf Schulden beziehen (und so verstand es Plutarch, der davon spricht, dass sie διὰ τὴν χαλεπότητα τῶν δανειστῶν aus Attika geflohen waren), müsse aber nicht darauf bezogen werden, da auch andere Notlagen in Betracht gezogen werden könnten (ebd. 38f.).

[25] Solon fr. 36 West, 30 Gentili/Prato Z. 8–15 (Aristot. *Ath. pol.* 12,4; Aelius Aristides, *or.* 28,138 p. 185,5–186,21 Keil; Plut. *Solon* 15,5–6): πολλοὺς δ' Ἀθήνας πατρίδ' ἐς θεόκτιτον, / ἀνήγαγον πραθέντας, ἄλλον ἐκδίκως, / ἄλλον δικαίως, τοὺς δ' ἀναγκαίης ὑπὸ / χρειοῦς φυγόντας, γλῶσσαν οὐκέτ' Ἀττικὴν / ἱέντας, ὡς δὴ πολλαχῆι πλανωμένους· / τοὺς δ' ἐνθάδ' αὐτοῦ δουλίην ἀεικέα / ἔχοντας, ἤθη δεσποτέων τρομεομένους, / ἐλευθέρους ἔθηκα. Übersetzung nach J. Latacz. Vgl. Solon fr. 4 West Z. 23–25: ταῦτα μὲν ἐν δήμωι στρέφεται κακά· τῶν δὲ πενιχρῶν ικνέον / ται πολλοὶ γαῖαν ἐς ἀλλοδαπὴν / πραθέντες δεσμοῖσί τ' ἀεικελίοισι δεθέντες. – „Das sind Missstände hier bei uns im Volk. Doch von den Armen (*penichroi*) gelangen viele in ein Land, das ihnen völlig fremd, für Geld verkauft (*prathéntes*), in Fesseln voller Schmach gebunden." Siehe dazu auch Allan 2017.

[26] Zur *seisáchtheia* LegDrSol F 105; Schmitz 2022.

des Geschädigten lösen können, wenn sie den Schädiger, den Viehdieb Euaiphnos, an Polychares übergeben hätten. Polychares hätte den Euaiphnos in sklavenartiger Stellung für sich arbeiten lassen oder ihn in die Sklaverei verkaufen, vermutlich ihn auch töten können, da er frei über ihn hätte verfügen können. Die Formulierungen bei Pausanias zeigen, dass bei der Ausgestaltung der gegenseitigen Forderungen in diesen rechtlichen Kategorien gedacht wurde:

> „Wie er aber trotz ständigen Erscheinens bei den Behörden keine Genugtuung (*timōría*) erhielt, da wurde Polychares von Sinnen und tötete in seiner Erbitterung, rücksichtslos auch gegen sich selbst geworden, jeden Lakedaimonier, dessen er habhaft werden konnte. Die Lakedaimonier behaupten also, sie hätten Krieg geführt wegen der Nichtauslieferung des Polychares und wegen des Mordes an Teleklos, nachdem sie schon früher argwöhnisch geworden seien wegen des Betrugs des Kresphontes bei der Landverteilung“ (Paus. 4,4,8).[27]

In beiden Fällen wurde die Forderung zurückgewiesen, und damit sahen sich die Spartaner dazu berechtigt, den Krieg zu beginnen.[28]

Viehdiebstähle und andere Vergehen, die zu Forderungen nach Wiedergutmachung führen

Viehdiebstähle waren in archaischer Zeit offenbar ein verbreitetes Phänomen oder wurden als verbreitetes Phänomen imaginiert.[29] In einer Episode der *Odyssee* schildert Homer, wie Odysseus als noch junger Mann im Auftrag seines Vaters und des Ältestenrats als Gesandter von Ithaka nach Messenien geschickt wurde, „um eine Schuld (*chreíos*) einzufordern, die die ganze Gemeinde schuldete.“ Messenische Männer hatten aus Ithaka dreihundert Schafe mitsamt den Hirten auf Schiffen weggeschleppt (Hom. *Od.* 21,16–21).[30] Für den Schaden hatte, auch wenn er von einzelnen Personen verursacht worden war, die gesamte Gemeinde (*pás dḗmos*) zu haften, wenn sie die Schuldigen nicht auslieferte.[31] Und ausgesandt war Odysseus nicht von

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[27] Übersetzung Ernst Meyer.

[28] Zu den Argumenten, mit denen sich die Messenier verteidigten und die Forderungen der Spartaner zurückwiesen, Paus. 4,5,1–5.

[29] Von der verbreiteten Befürchtung in agrarisch geprägten Gesellschaften, beim Hüten von Rindern betrogen zu werden, wenn man sie einem anderen in Obhut gibt, zeugt z. B. die Darstellung in dem Buch von Leïla Slimani, Das Land der Anderen, München 2022, 90–97. Auch in diesem geschilderten Fall wird der Verlust Räubern zugeschrieben, die die Hirten gefesselt und die Tiere weggeführt haben sollen.

[30] *Od.* 21,16 f.: ἦ τοι Ὀδυσσεὺς ἦλθε μετὰ χρεῖος, τό ῥά οἱ πᾶς δῆμος ὄφελλε. *Od.* 21,18 wird von Paus. in 4,1,3 zitiert. Vgl. dazu Bravo 1980, 958 f., Nowag 1983, 108 f. und Gschnitzer 2001, 157: „Der rechtliche Inhalt der Stelle läßt sich etwa mit folgenden Schlagworten kennzeichnen: Deliktschuld, völkerrechtliche Haftung des Staates für seine Angehörigen, Vertretung der Geschädigten durch König und Rat (…), offizielle Gesandtschaft. Zu beachten ist der gehäufte Gebrauch von Rechtstermini.“

[31] Ziegler 1975, 20–23: „Es ist ein durchgehender Zug im Rechtsdenken der Griechen, der hier schon für die homerische Zeit in Anspruch genommen wird, daß die Pfandnahme im zwischenstaatlichen Verkehr Repressalienmaßnahmen nicht nur gegen den Pfandnehmer selbst und seine Familienangehörigen, sondern auch gegen seinen δῆμος, das heißt gegen

den Geschädigten selbst, sondern von den Repräsentanten Ithakas, vom Ältestenrat (*gérontes*) und seinem Vorsteher.

Von einem ähnlichen Fall berichtet der greise Nestor im elften Gesang der *Ilias*: Als er noch ein junger Mann gewesen sei, hätte es einen „Streit wegen des Rinderraubs" mit Elis gegeben. Offenbar war Elis nicht bereit gewesen, die Rinderdiebe auszuliefern oder für den Schaden aufzukommen. In den daraufhin entstandenen kriegerischen Auseinandersetzungen hätte Nestor den Elier Itymoneus getötet, die umwohnenden Bauern vertrieben und reiche Beute gewonnen, Herden von Rindern, Schafen, Schweinen, Ziegen und Pferden, die Nestor ins messenische Pylos trieb. Am folgenden Morgen hätten Herolde jeden aus Pylos herbeigerufen, der gegenüber Elis eine Schuldforderung hatte, „denn vielen schuldeten eine Schuld die Eleier" (Hom. *Il.* 11,670–705).[32] In einer Zeit nämlich, als Pylos zu schwach zur Verteidigung war, hätten die Eleier die Stadt gewaltsam überfallen, viele frevelhafte Dinge verübt und alle Brüder Nestors getötet, weswegen sich Nestor eine Rinder- und eine Schafherde mit den Hirten aus der gewonnenen Beute als Wiedergutmachung ausgewählt hätte. Denn auch ihm sei „eine große Schuld geschuldet" worden (Hom. *Il.* 11,698: καὶ γὰρ τῷ χρεῖος μέγ' ὀφείλετ' ἐν Ἤλιδι δίῃ).[33] Die Kleinräumigkeit der griechischen Landschaften bot also immer wieder Anlass zu Streitigkeiten um Weiderechte oder wegen Viehdiebstählen. Man war bemüht, Schädigungen auf friedfertige Weise zu klären, indem Wiedergutmachungen gefordert oder geleistet wurden. Wurden die berechtigten Forderungen jedoch abgelehnt, war der Schritt zu kriegerischen Auseinandersetzungen nicht groß.[34]

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alle in seiner Heimatgemeinde lebenden Bürger, auslösen konnte" (20). Skeptischer ist hingegen Bravo 1980, 956, wonach die in *Ilias* und *Odyssee* geschilderten Situationen nicht mit dem Pfändungsrecht verglichen werden können, das ein Einzelner gegen eine fremde Stadt ausüben kann, die ihm Unrecht zugefügt hat. In Hom. *Il.* 11,670–762 und *Od.* 21,11–41 gehe es vielmehr um eine Schuld (χρεῖος).

[32] Hom. *Il.* 11,685 f.: κήρυκες δ' ἐλίγαινον ἅμ' ἠοῖ φαινομένηφι τοὺς ἴμεν οἷσι χρεῖος ὀφείλετ' ἐν Ἤλιδι δίῃ; und 688: πολέσιν γὰρ Ἐπειοὶ χρεῖος ὄφειλον (dazu Schoemann 1873, 4; Bravo 1980, 954–959; Jackson 1993, 68–70, 73 f.; siehe aber auch oben Anm. 11). In *Il.* 24,262 ist von „Räubern von Lämmern und Ziegen im eigenen Volke" die Rede; vgl. auch *Il.* 1,153–157 (Achill stellt klar, dass ihm die Troer nichts zuleide getan hätten, „niemals trieben sie je meine Rinder mir fort oder Pferde, und nie in der fruchtbaren männernährenden Phthia merzten sie mir aus die Feldfrucht"; *Od.* 11,401 f.); Dass Viehdiebstahl ein verbreitetes Übel im frühen Griechenland war, bestätigt auch Plut. Theseus 30,2. Im dritten Gesang der *Odyssee* verlässt Athena (in Gestalt Mentors) das Haus Nestors mit der Begründung, sie wolle früh am Morgen mit dem Schiff zu den „hochgemuten Kaukonen" aufbrechen, um von ihnen „Schuld einzufordern, die nicht neu ist noch gering" (*Od.* 3,366–368: ἀτὰρ ἠῶθεν μετὰ Καύκωνας μεγαθύμους εἶμ', ἔνθα χρεῖός μοι ὀφέλλεται, οὔ τι νέον γε οὐδ' ὀλίγον; dazu kommentierend Strab. 8,3,17, p. 345 f. C. mit dem Hinweis, dass die nicht unbedeutende Schuldforderung abgeleugnet werden könnte; *Schol. Strab.* 8,3,11, p. 342 C.).

[33] Dazu Ziegler 1975, 18–23; Baltrusch 2008, 24: „Kriege waren ein Mittel der Rechtsexekution, wenn andere Formen versagten: Der Trojanische Krieg, die Messenischen Kriege, der Lelantinische Krieg auf Euboia sind allesamt frühe Kriege, und zwar solche, die wenigstens der Überlieferung nach um die Wiedergutmachung von Unrecht geführt wurden." Ähnlich Wagner-Hasel 2018, 300.

[34] Gegenseitige Viehdiebstähle werden auch als Auslöser des Konflikts zwischen Lokrern und

Ebenso wie Viehdiebstähle ein verbreitetes Phänomen waren, so waren es auch geforderte und abgelehnte Wiedergutmachungen. Am Anfang seiner *Historiai* nennt Herodot seinen Beweggrund für die Abfassung seines historischen Werks (Hdt. 1 praef. und 1,1–4.): Damit man erfahre, warum Griechen und Perser gegeneinander zum Krieg geschritten seien. Viele seien der Ansicht, der gegenseitige Raub von Frauen habe zu der bereits Jahrhunderte andauernden Feindschaft geführt. Phönizische Händler vom Roten Meer hätten, nachdem sie ihre Waren verkauft hatten, die argivische Königstochter Io geraubt und nach Ägypten gebracht. Aus Rache hätten im Gegenzug Griechen – vermutlich seien es Kreter gewesen – im phönizischen Tyros die Königstochter Europa geraubt. Doch dabei beließen sie es nicht. Als sie auf der Suche nach dem goldenen Vließ ins Land der Kolcher – im heutigen Georgien – kamen, hätten sie die Königstochter Medea geraubt. Daraufhin hätte der König der Kolcher eine Gesandtschaft nach Griechenland geschickt, die für den Raub der Tochter Wiedergutmachung verlangte (*aitéein díkas*) sowie die Rückgabe der Tochter.[35] Die Griechen hätten das abgelehnt, da jene ihnen für den Raub der Io aus Argos ebenfalls keine Genugtuung gegeben hätten (*oudé … édosan díkas*).[36] Als Paris, der Sohn des trojanischen Königs Priamos, den Plan fasste, eine Frau aus Griechenland zu rauben, habe er schon im Voraus gewusst, dass er keine Sühnung zu leisten habe, weil ja auch die Griechen abgelehnt hatten, sie für Medea zu geben (Hdt. 1,3,1).[37] Und so kam es auch: Nachdem Paris Helena geraubt hatte, hätten die Griechen beschlossen, Boten nach Troja zu entsenden, die Helena zurückfordern und eine Genugtuung für den Raub verlangen sollten. Die Troer verwiesen auf den Raub der Medea und die bei ihr verweigerte Wiedergutmachung (Hdt. 1,3,2).[38] Statt die Sache aber auf sich beruhen zu lassen, hätten die Griechen wegen einer entführten Frau aus Lakedaimon – gemeint ist Helena – ein gewaltiges Heer gerüstet, zehn Jahre lang Krieg gegen Troia geführt und am Ende das Reich des Priamos zerstört. Auch dies sind konstruierte Rechtfertigungen, die in der griechischen Überlieferung kursierten, die sich dennoch an griechischen Rechtspraktiken orientierten. Ob sich Ephoros von Kyme und Myron von Priene in ihren pseudohistorischen Darstellungen zum Ausbruch des ersten Messenischen Kriegs an Herodots Aufzählung gegenseitiger Vorwürfe orientierten, wissen wir nicht. Aber gegenseitige Forderungen um Wiedergutmachung waren im

Phokern in einem von beiden Seiten beanspruchten Grenzgebiet genannt (*Hell. Oxy. fr.* D col. 18,3 Bartoletti; 21,3 Behrwald; vgl. Xen. *hell.* 3,5,3; Paus. 3,9,9). Zum verbreiteten Viehdiebstahl insgesamt Nowag 1983, 148–158.

35 Hdt. 1,2,3: πέμψαντα δὲ τὸν Κόλχων βασιλέα ἐς τὴν Ἑλλάδα κήρυκα αἰτέειν τε δίκας τῆς ἁρπαγῆς καὶ ἀπαιτέειν τὴν θυγατέρα.

36 Hdt. 1,2,3: τοὺς δὲ ὑποκρίνασθαι ὡς οὐδὲ ἐκεῖνοι Ἰοῦς τῆς Ἀργείης ἔδοσάν σφι δίκας τῆς ἁρπαγῆς.

37 Hdt. 1,3,1: Ἀλέξανδρον τὸν Πριάμου ἀκηκοότα ταῦτα ἐθελῆσαί οἱ ἐκ τῆς Ἑλλάδος δι' ἁρπαγῆς γενέσθαι γυναῖκα, ἐπιστάμενον πάντως ὅτι οὐ δώσει δίκας· οὐδὲ γὰρ ἐκείνους διδόναι.

38 Hdt. 1,3,2: οὕτω δὴ ἁρπάσαντος αὐτοῦ Ἑλένην τοῖσι Ἕλλησι δόξαι πρῶτον πέμψαντας ἀγγέλους ἀπαιτέειν τε Ἑλένην καὶ δίκας τῆς ἁρπαγῆς αἰτέειν. τοὺς δὲ προϊσχομένων ταῦτα προφέρειν σφι Μηδείης τὴν ἁρπαγήν, ὡς οὐ δόντες αὐτοὶ δίκας οὐδὲ ἐκδόντες ἀπαιτεόντων.

antiken Griechenland offenbar geeignet, einen Krieg zu rechtfertigen.[39]

Wer in seinem Recht beschädigt wurde, konnte also „Wiedergutmachung", „Genugtuung", sein „Recht" (*díkē*) verlangen. „Wiedergutmachung leisten" wird mit *díkēn didónai* zum Ausdruck gebracht, „Wiedergutmachung gewähren" mit *díkēn lambánein* oder *díkēn déchesthai*.[40] Gemäß archaischem Schuldrecht kann die Forderung nach Wiedergutmachung durch Auslieferung des Schuldigen erfüllt werden, formuliert mit *aitéein díkas* oder *tón aítion exaiteín*, die Übergabe mit *paradoúnai*.[41] Als Adrastos bei der Jagd versehentlich den Sohn des Kroisos getötet hatte, brachten die an der Jagd beteiligten Lyder den Leichnam vor Kroisos; Adrastos stellte sich vor die Leiche und „lieferte sich Kroisos aus (παρεδίδου ἑωυτὸν), indem er die Hände ausstreckte und flehte, ihn über dem Toten zu opfern". Kroisos aber erkannte, dass ihm die Götter dies zugefügt hatten. Von Adrastos habe er völlige Genugtuung erhalten (ἔχω […] πᾶσαν τὴν δίκην), da er sich selbst des Todes für schuldig befunden hätte (Hdt. 1,45,1–2).[42] Genugtuung soll also hier zunächst durch Übergabe der schuldigen Person geschehen, und der Geschädigte kann mit dem Übergebenen verfahren, wie er will, ihn im Extremfall auch töten.

Das Motiv, Schuldige zur Auslieferung zu fordern, belegt Herodot (9,86–88) ein weiteres Mal nach der siegreichen Schlacht bei Plataiai am Ende seines Werks. Die Griechen hatten die Toten bei Plataiai bestattet und trafen zu einer letzten Beratung zusammen. Sie beschlossen, gegen Theben zu ziehen, das sich den Griechen im Kampf gegen die Perser nicht angeschlossen hatte. Man verlangte die Auslieferung (ἐξαιτέειν) der Perserfreunde,[43] vor allem die des Timagenides und Attaginos, die als deren Wortführer galten. Wenn Theben sie nicht herausgäbe (ἐκδιδῶσι), würde man die Stadt belagern. Sie taten, was sie beschlossen hatten, zogen vor Theben, belagerten die Stadt und forderten die Thebaner zur Auslieferung der Männer (ἐκδιδόναι τοὺς ἄνδρας) auf.[44] Als die Thebaner dies verweigerten, verwüsteten die Griechen ihr Land und griffen die Mauern an. Nach zwanzig Tagen der Belagerung riet Timagenides dazu, die Thebaner sollten den verbündeten Griechen Geld aus der öffentlichen

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[39] Ziegler 1975, 18–24, 26, 66 u.ö.; Gehrke 1994.

[40] Harp. s.v. σύμβολα; Ziegler 1975, 32–35 mit literarischen und epigraphischen Belegen.

[41] *doúnai díkēn* wird in klassischer Zeit vielfach auch im Sinne von „(dem Kläger und dem Gericht gegenüber) Buße schuldig sein" (Lys. 12,26), „strafen" verwendet. Vgl. Aischyl. *Suppl.* 701–703: Fremden soll man vertragsgemäß ihr Recht geben (ξένοισί τ' εὐξυμβόλους, …, δίκας ἄτερ πημάτων διδοῖεν). Gemäß Hdt. 5,106 bat Histiaios den Perserkönig Dareios, ihn freizugeben, damit er nach Milet zurückkehren könne, um seinen Stellvertreter, der für den Abfall der Stadt verantwortlich sei, dem Perserkönig ausliefern zu können (106,5: με πορευθῆναι ἐς Ἰωνίην, ἵνα τοι κεῖνά τε πάντα καταρτίσω ἐς τὠυτὸ καὶ τὸν Μιλήτου ἐπίτροπον τοῦτον τὸν ταῦτα μηχανησάμενον ἐγχειρίθετον παραδῶ). Zur Begrifflichkeit Ziegler 1975, 25–26.

[42] Hdt. 1,45,1: στὰς δὲ οὗτος πρὸ τοῦ νεκροῦ παρεδίδου ἑωυτὸν Κροίσῳ προτείνων τὰς χεῖρας, ἐπικατασφάξαι μιν κελεύων τῷ νεκρῷ. 45,2: Ἔχω, ὦ ξεῖνε, παρὰ σεῦ πᾶσαν τὴν δίκην, ἐπειδὴ σεωυτοῦ καταδικάζεις θάνατον (Übersetzung Josef Feix).

[43] Hdt. 9,86,1: ἐξαιτέειν αὐτῶν τοὺς μηδίσαντας.

[44] Hdt. 9,86,2: κελεύοντες ἐκδιδόναι τοὺς ἄνδρας· οὐ βουλομένων δὲ τῶν Θηβαίων ἐκδιδόναι τήν τε γῆν αὐτῶν ἔταμνον καὶ προσέβαλλον πρὸς τὸ τεῖχος.

Kasse als Entschädigung anbieten; wenn ihnen aber an den genannten Personen liege, die sie in ihre Hand bringen wollten, sollte man dem spartanischen König Pausanias durch einen Boten melden, die Thebaner würden die beiden Männer ausliefern (ἐκδιδόναι τοὺς ἄνδρας).[45] Aber auf diese Einigung hin floh Attaginos aus der Stadt; so wurden seine Kinder abgeführt (ἀπαχθέντας). Doch Pausanias sprach sie von der Schuld frei, weil Kinder nicht für die Freundschaft mit den Persern mitverantwortlich gemacht werden könnten.[46] Die Thebaner hofften, dass die anderen Männer, die sie tatsächlich auslieferten, sich rechtfertigen und eine Geldzahlung als *Wiedergutmachung* ausmachen könnten. Als Pausanias sie aber in seiner Hand hatte, ließ er sie nach Korinth bringen und dort töten.[47]

Ein Ablauf wie der gerade geschilderte lässt sich im Rahmen des antiken Schuldrechts lesen. Wer einen Schaden verursacht hatte, sei es durch einen Vertragsbruch, sei es durch ein Vergehen, konnte ergriffen und abgeführt oder musste dem Geschädigten übergeben werden. Der Grundsatz galt für Einzelpersonen, aber auch im ‚zwischenstaatlichen' Bereich, war griechisches ‚Völkerrecht'.[48] Kam die Polis der Forderung nicht nach, sahen die Angreifer einen Krieg für gerechtfertigt an. Im Prinzip standen die Nachfahren in derselben Schuld, auch wenn es dem herodoteischen Spartanerkönig Pausanias als zu grausam erschien, die Kinder des Attaginos für die Flucht des Vaters büßen zu lassen.

Zumindest in den Konfliktfällen, die uns die antike Überlieferung bietet, wird die Forderung nach Auslieferung meist abgelehnt. Und in der Tat ist die Situation nicht einfach. Konnte eine Gemeinschaft ein eigenes Mitglied der Polis an eine andere Polis ausliefern, dem der Tod, die Versklavung oder eine sklavenartige Abhängigkeit drohte? Im Grundgesetz der Bundesrepublik Deutschland ist in Artikel 16,2 geregelt: „Kein Deutscher darf an das Ausland ausgeliefert werden. Durch Gesetz kann eine

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[45] Hdt. 9,87,1–2: ἡμεῖς ἡμέας αὐτοὺς ἐς ἀντιλογίην παρέξομεν. κάρτα τε ἔδοξε εὖ λέγειν καὶ ἐς καιρόν, αὐτίκα τε ἐπεκηρυκεύοντο πρὸς Παυσανίην οἱ Θηβαῖοι θέλοντες ἐκδιδόναι τοὺς ἄνδρας.

[46] Hdt. 9,88: ὡς δὲ ὡμολόγησαν ἐπὶ τούτοισι, Ἀτταγῖνος μὲν ἐκδιδρήσκει ἐκ τοῦ ἄστεος, παῖδας δὲ αὐτοῦ ἀπαχθέντας Παυσανίης ἀπέλυσε τῆς αἰτίης, φὰς τοῦ μηδισμοῦ παῖδας οὐδὲν εἶναι μεταιτίους.

[47] Hdt. 9,88: τοὺς δὲ ἄλλους ἄνδρας τοὺς ἐξέδοσαν οἱ Θηβαῖοι, οἱ μὲν ἐδόκεον ἀντιλογίης τε κυρήσειν καὶ δὴ χρήμασι ἐπεποίθεσαν διώσεσθαι· ὁ δὲ ὡς παρέλαβε, […]. Zur Forderung, Timagenides und Attaginos auszuliefern, Seibert 1979, 39. Die von Seibert zusammengestellten und ausgewerteten Belegstellen für Auslieferungsforderungen beziehen sich aber meist auf Kriegsflüchtlinge, verbannte politische Gegner oder Feinde, die sich in anderen Städten aufhielten (zu Forderungen nach Auslieferung im antiken Rom siehe Mommsen 1955, 108 f.). Oft begaben sich Flüchtlinge und Verbannte in ein Heiligtum, um als *hikétai* nicht ausgeliefert werden zu können.

[48] Nach Hdt. 7,136,2 sei es ein Bruch der „Regeln aller Menschen" (τὰ πάντων ἀνθρώπων νόμιμα), Herolde zu töten, nach Thuk. 3,58,3 sei die Tötung von Personen, die sich freiwillig ergeben haben, „in Hellas nicht rechtens" (ὁ δὲ νόμος τοῖς Ἕλλησι μὴ κτείνειν τούτους). Ähnlich Xen. *Kyr*. 7,5,73, wonach nach „Völkerrecht" eine im Krieg eroberte Stadt den Eroberern gehöre, mit ihren Einwohnern und ihrer Habe (νόμος γὰρ ἐν πᾶσιν ἀνθρώποις ἀίδιός ἐστιν, ὅταν πολεμούντων πόλις ἁλῷ, τῶν ἑλόντων εἶναι καὶ τὰ σώματα τῶν ἐν τῇ πόλει καὶ τὰ χρήματα). Siehe dazu Schoemann 1873, 1 f.

abweichende Regelung für Auslieferungen an einen Mitgliedstaat der Europäischen Union oder an einen internationalen Gerichtshof getroffen werden, soweit rechtsstaatliche Grundsätze gewahrt sind.“ Es ist daher verständlich, wenn schon in der Antike der Geschädigte auf den Rechtsweg verwiesen wurde, wie es die Spartaner dem Polychares angeraten hatten, oder wenn ein Schiedsgericht angeboten wurde. Konflikte um die Forderung nach Auslieferung wurden in der Regel nur dann gelöst, wenn sich der Schuldige selbst in die Hände des Geschädigten übergab.[49] Dem Geschädigten stand es frei, mit der ihm übergebenen Person zu verfahren, wie er es wollte; ein Darlehensgeber konnte den in seine Hände gekommenen zahlungsunfähigen Schuldner für sich arbeiten lassen oder ihn in die Sklaverei verkaufen. Im ‚zwischenstaatlichen‘ Verkehr bot sich zwar grundsätzlich ebenfalls der Verkauf in die Sklaverei an, doch der spartanische König Pausanias sah in der Hinrichtung der ‚schuldigen‘ Thebaner die einzig angemessene Strafe.

In diesem rechtlichen Rahmen zu lesen ist eine weitere von Herodot überlieferte Episode (Hdt. 8,114–115). Nach der Schlacht von Salamis 480 v. Chr. hätten die Lakedaimonier gefordert, die Perser sollten den Großkönig Xerxes als Schuldigen am Perserkrieg an die Griechen ausliefern. Ob es diese Forderung tatsächlich gegeben hat, sei dahingestellt; einmal mehr geht es Herodot darum, in einer für den Rezipienten ansprechend gestalteten Erzählung Vorausdeutungen zu geben und sinnstiftende Spannungsbögen anzulegen. Er bezieht sich dabei jedoch auf geltende rechtliche Prinzipien. Als sich Xerxes nach der Seeschlacht bei Salamis nach Thessalien zurückgezogen hatte, hätten die Spartaner – so schildert es Herodot – aus Delphi ein Orakel erhalten, sie sollten für den Tod des Leonidas von Xerxes „Genugtuung fordern“ (αἰτέειν δίκας) und das, was immer von ihm gegeben werde, annehmen. Die

[49] Hdt. 7,134,2. In Aischyl. *Suppl*. 605–612 findet sich ein früher Beleg für ein ausdrückliches Verbot, Personen eigenmächtig und gewaltsam fortzuführen. Danaos verkündet den „Schutzflehenden“, die Athener hätten einmütig beschlossen, sie (vermutlich zielt dies auf die aufständischen Messenier) sollten „Metöken sein, freie Personen (*eleútheroi*) und unter *asylía* nicht wegreißbar (*arrhysíastoi*) durch irgendwen; und keiner der Bewohner und kein Fremder soll sie wegführen (*ágein*).“ Forderungen zur Auslieferung von Schuldigen, die für einen Vertragsbruch die Verantwortung trugen, gab es in entsprechender Weise auch im antiken Rom. Nach ihrer vernichtenden Niederlage im Jahr 322 berieten die Samniten, ob sie die Sühne für die Vertragsverletzung mit dem schuldigen Blut weniger oder mit dem unschuldigen aller leisteten (Liv. 8,39,10–11: *id referre tantum, utrum supplicia noxio paucorum an omnium innoxio praebeant sanguine*). Als verantwortlich für den Vertragsbruch wurde Brutulus Papius, ein mächtiger *vir nobilis* unter den Samniten, angesehen. Die Fetialen hatten aufgrund des Vertragsbruchs Wiedergutmachung gefordert, nach menschlichem und göttlichem Recht (39,13: *quaeque res per fetiales ex foedere repetitae essent, secundum ius fasque restituerentur*). Auf den Beschluss, Brutulus Papius den Römern auszuliefern (39,13: *praetores decretum fecerunt, ut Brutulus Papius Romanis dederetur*), hatte er sich das Leben genommen. Sein Leichnam wurde mit seinem Besitz ausgeliefert (39,15: *Placuit cum corpore bona quoque eius dedi*). Doch von diesem Besitz nahmen die Römer nichts an, außer den Kriegsgefangenen und das, was jemand aus der Beute als sein Eigentum wiedererkannte. Die Übergabe (*deditio*) anderer Dinge wurde nicht zugelassen (Liv. 8,39,10–15; 9,1; davon deutlich abweichend Cass. Dio 8 fr. 36,8). Vgl. Mommsen 1955, 108.

Formulierung bleibt bewusst vage und enigmatisch. Die Spartaner entsandten einen Herold, der Xerxes die Nachricht überbrachte: „König der Meder, die Spartaner und die Herakliden aus Sparta fordern Wiedergutmachung für eine Tötung, weil du ihren König getötet hast, als er Griechenland schützen wollte“.[50] Der Großkönig hätte diese Forderung nur lächerlich gefunden, auf den neben ihm stehenden Feldherrn Mardonios gezeigt und geantwortet, Mardonios werde den Spartanern die Genugtuung geben, die sie verdienen.[51] Dies weist auf die letzte große Schlacht bei Plataiai voraus und soll dem Leser die Überheblichkeit des Perserkönigs vor Augen führen, der sich eines Siegs gewiss war. Doch schon der Rückzug über den Bosporos erwies sich als ein schmachvolles Desaster.[52]

In klassischer Zeit tritt die Forderung nach Genugtuung durch Übergabe des Schuldigen in den Hintergrund. Solon hatte durch Gesetz den Zugriff auf den zahlungsunfähigen Schuldner, aber auch jede andere freie Person, die einen Schaden verursacht hatte, verboten, ein Verbot, das auch die Kinder umfasste.[53] Fortan konnten sich Forderungen auf Auslieferung des Verursachers eines Schadens nur noch auf Sklaven, Tiere oder Sachen beziehen. Die gleiche Entwicklung des Rechts können wir im antiken Rom greifen, nur dass die *filii* formal erst durch ein Gesetz Justinians von der Verpflichtung der Auslieferung ausgenommen wurden. Die Veränderungen, die in den Stadtrechten beobachtet werden können, setzten sich auch im ‚zwischenstaatlichen‘ Verkehr durch. Für die klassische und hellenistische Zeit sind literarisch und epigraphisch zahlreiche, zwischen einzelnen Poleis abgeschlossene Verträge, *symbolaí* bzw. *synthḗkai*, nachgewiesen, in denen ein eigenmächtig ausgeübtes „Wegführen“ (einer Person) und „Wegnehmen“ (einer Sache) unterbunden wurden.[54] Dabei ging es vielfach um die Durchsetzung gerechtfertigter Ansprüche, die

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[50] Hdt. 8,114: „Ὦ βασιλεῦ Μήδων, Λακεδαιμόνιοί τέ σε καὶ Ἡρακλεῖδαι οἱ ἀπὸ Σπάρτης αἰτέουσι φόνου δίκας, ὅτί σφεων τὸν βασιλέα ἀπέκτεινας ῥυόμενον τὴν Ἑλλάδα.“

[51] Hdt. 8,114,2: Τοιγάρ σφι Μαρδόνιος ὅδε δίκας δώσει τοιαύτας οἵας ἐκείνοισι πρέπει.

[52] Hdt. 8,115.

[53] Aristot. *Ath. pol.* 6,1; 9,1; Diod. 1,79,3–5; Plut. *Solon* 15,2, vgl. 13,5. Auf den Schutz des wegen nicht vorsätzlicher Tötung Verurteilten vor einer Verfolgung jenseits der Grenze bezieht sich ein Gesetz Solons (LegDrSol F 9; *lex apud Demosth. or.* 23,44: Ἐάν τίς τινα τῶν ἀνδροφόνων τῶν ἐξεληλυθότων, ὧν τὰ χρήματα ἐπίτιμα, πέρα ὅρου ἐλαύνῃ ἢ φέρῃ ἢ ἄγῃ, τὰ ἴσα ὀφείλειν ὅσα περ ἂν ἐν τῇ ἡμεδαπῇ δράσῃ. – „Wenn jemand einen der [aus dem Land] herausgegangenen verurteilten Täter (*androphónoi*), deren Besitz ehrbar (*epítimon*) [also ihr eigen] bleibt, jenseits der Grenze verfolgt, beraubt oder greift, so soll er dasselbe schulden, als wenn er es im eigenen Land getan hätte“). Ist das *phérein kaí ágein* unrechtmäßig, ist die Tötung des Angreifers rechtmäßig: Καὶ ἐὰν φέροντα ἢ ἄγοντα βίᾳ ἀδίκως εὐθὺς ἀμυνόμενος κτείνῃ, νηποινεὶ τεθνάναι. – „Auch wenn [jemand] einen sofort bei der Abwehr tötet, der mit Gewalt und unrechtmäßig wegträgt (*phérein*) oder wegführt (*ágein*), der sei bußlos (*nēpoineí*) umgekommen“ (LegDrSol F 10b; *lex apud Demosth. or.* 23,60).

[54] Als frühestes Beispiel nennt Ziegler 1975, 25 f. Rechtshilfeverträge, die die ionischen Städte Kleinasiens mit dem persischen Satrapen Artaphrenes abschließen mussten, wonach das *phérein kaí ágein* untereinander verboten sei (Hdt. 6,42 vom Anfang des 5. Jh.; vgl. 43,1; Cataldi 1983, Nr. 1). Ein sehr früher und meist übersehener Beleg liegt in Aischyl. Suppl. 701–703 vor; der Formulierung nach zu urteilen, liegt auch hier der Zugang zu den Gerichten vor, der Fremden gewährt wird (ξένοισί τ’ εὐξυμβόλους, …, δίκας ἄτερ πημάτων

aber Bürger in innerstädtischen Auseinandersetzungen aufgrund von Gesetzen und im zwischenstaatlichen Verkehr aufgrund von Rechtshilfeverträgen nicht in Form eigenmächtigen Handelns umsetzen konnten, sondern erst nach einer gerichtlichen Entscheidung.[55] Durch den Vertrag wurde der Angehörige der fremden Stadt als Kläger zu einem Gerichtsverfahren zugelassen – wenn auch nur vertreten durch einen *prostátēs* – und ihm der Zugang zu den Gerichten der Partnerstadt erlaubt, weil die Stadt damit eine mögliche Haftung aller Mitbürger aufgrund des Verschuldens eines Einzelnen verhinderte. Konnte sich der fremde Kläger vor Gericht durchsetzen, war ihm die strittige Sache zurückzuerstatten oder Schadenersatz zu leisten.[56] Wiedergutmachung wurde aber in aller Regel in Form von Rückerstattung oder Schadenersatz geleistet, nicht durch Auslieferung des Schädigers an den Geschädigten.[57]

Vielfach allerdings fehlen genauere Angaben, in welcher Form Wiedergutmachung gefordert oder geleistet wurde. So hatte im Sommer 418 König Agis eigenständig das spartanische Heer zurückgeführt, nachdem er mit den Argeiern Thrasylos und Alkiphron – auch diese ohne von der Stadt dazu autorisiert gewesen zu sein – einen Frieden auf vier Monate vereinbart hatte. Thrasylos und Alkiphron hatten eine Schlacht abgewendet, indem sie Agis gegenüber verkündet hatten, die Argeier seien bereit, „Wiedergutmachung zu leisten und anzunehmen von gleich zu gleich“ (Thuk. 5,59,5).[58] Δίκην διδόναι καὶ λαμβάνειν wird zu einem festen Ausdruck für „Recht geben und nehmen“, im Sinne von „verklagt werden können“ und „das Klagerecht erhalten“.[59]

διδοῖεν). Vgl. Ziegler 1975, 32–35; zur älteren Bezeichnung als *symbolaí* gegenüber der jüngeren als *sýmbola* ebd. 62–65.

55 Ziegler 1975, 64. Aus dem 5. Jh. sind meist Rechtshilfeverträge überliefert, die Athen mit Bündnerstädten abgeschlossen hat (Gauthier 1972, 157–173; Ziegler 1975, 36–51; ein Corpus der literarisch und epigraphisch überlieferten Rechtshilfeverträge des 5. Jh. v. Chr. hat Cataldi 1983 vorgelegt). Einige solcher Rechtsverträge sind erhalten, in anderen Verträgen wird auf sie mit der Formel διδόναι καὶ δέχεσθαι τὰς δίκας κατὰ τὰς συμβολὰς τὰς ὅσας verwiesen. Zu entsprechenden Verträgen aus dem hellenistischen Kreta Chaniotis 1996, bes. 144–147; Gegenstand des Rechtsstreits waren vielfach Zugriffe auf Freie oder Sklaven oder Streitigkeiten um Weiderechte.

56 Ziegler 1975, 42, 73 f.; bei Isopolitieverträgen waren Bürger aus der Partnerstadt auch ohne rechtliche Vertretung zu Gerichten zugelassen (Chaniotis 1996, 144–147).

57 Die Apollonier boten dem Euenios wegen dessen Blendung als Genugtuung zwei Äcker und ein Haus an (Hdt. 9,94).

58 Thuk. 5,59,5: ἑτοίμους γὰρ εἶναι Ἀργείους δίκας δοῦναι καὶ δέξασθαι ἴσας καὶ ὁμοίας. Perikles wirft den Spartanern vor, sie hätten sich nicht an die Vereinbarungen des Friedens von 446/5 v. Chr. gehalten, gegenseitige Streitigkeiten durch ein Schiedsgericht schlichten zu lassen (Thuk. 1,140,2: εἰρημένον γὰρ δίκας μὲν τῶν διαφορῶν ἀλλήλοις διδόναι καὶ δέχεσθαι, ἔχειν δὲ ἑκατέρους ἃ ἔχομεν, οὔτε αὐτοὶ δίκας πω ᾔτησαν οὔτε ἡμῶν διδόντων δέχονται, βούλονται δὲ πολέμῳ μᾶλλον ἢ λόγοις τὰ ἐγκλήματα διαλύεσθαι, καὶ ἐπιτάσσοντες ἤδη καὶ οὐκέτι αἰτιώμενοι πάρεισιν. – „Es war ausgemacht, daß wir bei gegenseitigen Streitigkeiten ein Schiedsverfahren anbieten und annehmen wollen, beide im Besitz dessen, was wir besitzen; trotzdem haben sie uns noch nie vorgeladen noch nehmen sie unser Angebot an, sondern wollen durch Krieg statt durchs Gespräch die Beschwerden beilegen; jetzt kommen sie schon nicht mehr mit Anklagen, sondern sie befehlen“ (Übersetzung P. Landmann).

59 Ps.-Xen. *Ath. pol.* 1,18, wonach die Bundesgenossen für Prozesse nach Athen kommen, um

Bestand zwischen zwei Poleis kein Rechtsabkommen, blieb dem Geschädigten nur die Selbsthilfe durch Repressalien, auch gegenüber den Mitbürgern des Schädigers, in Form des συλᾶν. Da die betroffene Polis dadurch einen erheblichen Schaden erleiden konnte, war ihr daran gelegen, dass solche Schuldforderungen gegen ihre Bürger beglichen wurden.[60] Für die Stadt Kyrene ist inschriftlich belegt, dass Gesandte von dort in verschiedene griechische Städte gereist sind, um all die Schulden zu bezahlen, die einige ihrer Bürger in diesen hinterlassen hatten, um der Gefahr eines gegen Kyrene gerichteten Repressalienrechts zu entgehen.[61] In einigen Fällen lässt sich nachweisen, dass der Geschädigte, wenn er in einem Gerichtsverfahren gesiegt hatte, das Recht des (nun rechtmäßigen) *ágein* und *phérein* erteilt bekam. In einem Vertrag aus dem späten 3. Jh. v. Chr. zwischen Stymphalos und Aigeira wurde geregelt, dass ein *sylán* nur dann gestattet war, wenn der Anspruchsberechtigte, der συλῶν, Bürgen stellte und die Archonten das συλᾶν erlaubt hatten. Unter bestimmten Auflagen, nämlich in Gegenwart von Bürgern beider Städte, war das ἄγειν, also die Ausübung gerechtfertigter Selbsthilfe gemäß dem Rechtshilfevertrag sowie das χρήματα ἀφαιρεῖσθαι erlaubt.[62]

Im 7. Jh. gab es solche Rechtshilfeverträge noch nicht, die Polychares für die Einforderung einer Wiedergutmachung hätte nutzen können. Doch wenn die Spartaner dem Polychares auf seine Forderung zur Auslieferung des Euaiphnos hin in einem Schreiben anboten, er solle in Sparta vor den Ephoren und den Königen Anklage erheben – ja doch wohl um die Ansprüche in einem Rechtsverfahren zu prüfen –, dann hatte zumindest der Autor, auf den diese bei Diodor überlieferte Version der Geschichte zurückgeht, offenbar bereits eine Vorstellung von Rechtshilfeverträgen, durch die Fremden Zugang zu den Gerichten gewährt wurde (Diod. 8 fr. 7,6; vgl. Paus. 4,4,8). Sparta wäre zumindest in diesem Einzelfall dazu bereit gewesen. Pausanias berichtet von einer solchen Zulassung zum Gericht in Sparta nicht, und auch in anderen frühen Überlieferungen ist von einem vertraglich zugesicherten Zugang zu den Gerichten nicht die Rede, nicht in den homerischen Epen, nicht bei Herodots mythhistorischen Schuldzuweisungen, die zum Trojanischen Krieg und letzt-

Klagen zu führen oder verklagt zu werden: δίκην δοῦναι καὶ λαβεῖν (ähnlich Hdt. 5,83,1; dazu ausführlich Ziegler 1975, 45–49). Zu *lambánein díkēn* im Sinne von „Strafe erhalten" auch Hdt. 1,114–116, bes. 115,3; zu *díkēn doúnai* im Sinne von „Strafe zahlen" z. B. Xen. *oik.* 7,31. Siehe schon das angeblich einzige direkte Zitat aus Anaximandros, wonach *archḗ* und *stoicheíon* der seienden Dinge das Unendliche (*ápeiron*) sei. „Aus welchen die seienden Dinge ihr Entstehen haben, dorthin findet auch ihr Vergehen statt, wie es sein muss, denn sie leisten einander Recht und Strafe für das Unrecht, gemäß der zeitlichen Ordnung (διδόναι γὰρ αὐτὰ δίκην καὶ τίσιν ἀλλήλοις τῆς ἀδικίας κατὰ τὴν τοῦ χρόνου τάξιν)" (Anaximandros DK 12 B 1; = Simplikios, *in phys.* 9,24,13 f.).

60 Ziegler 1975, 74, 81 f. mit Verweis auf Ps.-Aristot. *oik*. 2,10 und Ps.-Demosth. *or*. 35,13.26.

61 SEG 20, 716; 23/24, 103 (4. Jh.). Ziegler 1975, 84 f., Bravo 1980, 918–926; ähnlich im Falle von Salamis auf Zypern Ziegler 1975, 87 (Isokr. 3,33).

62 StV Bd. III Nr. 567 Z. 89–93 und Z. 94–100 (dazu S. 369 f.); Steinwenter 1953, 17 f.; Ziegler 1975, 100 f.; zum Recht, gegen fremde Städte oder deren Bewohner Repressalien zu ergreifen, umfassend Bravo 1980; zu *ágein kaí phérein* ebd. 792–808; vgl. Schoemann 1873, 3–8.

lich zu den Perserkriegen geführt haben sollen. Wenn nach der Schlacht von Plataiai der Thebaner Timagenides den verbündeten Griechen statt der Auslieferung zweier Hauptschuldiger eine Entschädigungszahlung aus der öffentlichen Kasse anbot, weist dies auf später bezeugte Praktiken voraus, bei denen Städte wie Kyrene ausstehende Schulden in anderen Städten beglichen, um Repressalien gegen die Stadt als Ganze zu entgehen. Eine weitere Möglichkeit der Konfliktbeilegung bestand darin, einen Streitfall vor ein unabhängiges Gericht zu bringen, so wie die Messenier den Spartanern angeblich angeboten hätten, die gegenseitigen Forderungen um Wiedergutmachung, die aus dem Viehdiebstahl des Euaiphnos und dem tödlichen Zwischenfall im Heiligtum der Artemis Limnatis resultierten, einem Gericht in Argos oder dem Areopag in Athen vorzulegen (Paus. 4,5,2). Für die klassische Zeit sind solche Schiedsgerichte Dritter belegt, zahlreich sind sie in hellenistischer Zeit. Für das frühe 7. Jh. jedoch, also für die Zeit des Ausbruchs des Messenischen Kriegs, sind sie anachronistisch.[63]

Die Entstehung der Helotie

Was immer der Auslöser für den erbittert geführten Krieg zwischen Spartanern und Messeniern im 7. Jh. v. Chr. war – plausibel ist, dass es gegenseitige Forderungen zur Auslieferung und Ansprüche auf Wiedergutmachung waren, die eine Rolle spielten, und sei es nur zur späteren Rechtfertigung des Kriegs. Wurde die Forderung von den Institutionen der Polis, der der Schuldige angehörte, abgelehnt, konnte das Gemeinwesen als Ganzes für die nicht beglichene Schuld in die Verantwortung genommen und konnten die Ansprüche durch einen Krieg eingefordert werden.

Angesichts dessen ist zu erwägen, ob nicht die Spartaner nach ihrem Sieg das Recht hatten, die Messenier gemäß Schuldhaftung zu greifen, sie in eine sklavenartige Abhängigkeit zu zwingen und für sich auf dem eroberten Land arbeiten zu lassen.[64] Die Messenier konnten als „Ergriffene“ (*heílōtes*) für unbegrenzte Zeit zu abhängigen Diensten, zum *douleúein*, gezwungen werden, so wie die Schuldsklaven im Athen der vorsolonischen Zeit. Die siegreichen Spartaner hatten nach den Prinzipien der archaischen Schuldhaftung das Recht, die besiegten Messenier in ihre Abhängigkeit zu bringen und sie – analog zum attischen Schuldrecht – entweder für sich arbeiten zu lassen oder sie in die Sklaverei zu verkaufen. Ich halte es für gut möglich, dass bei den Verhandlungen über die Übergabe, lateinisch gesprochen bei der *deditio*, vereinbart wurde, dass das Land Messenien an Sparta fiel und die Bewohner das Land gegen eine feste Abgabe zu bestellen hatten, dass aber Sparta darauf verzichtete, sie nach auswärts in die Sklaverei zu verkaufen, ein Recht, das Sparta als Geschädigtem grundsätzlich nach Schuldrecht zustand. Dieses Verkaufsverbot ist in der Überlieferung belegt.[65]

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[63] Zum hellenistischen Kreta Chaniotis 1996, 150–152.

[64] Zur Inbesitznahme des Landes Ephoros *FgrH* 70 F 216 (= Strab. 6,3,3, p. 280 C.): τὴν μὲν οὖν Μεσσηνίαν κατενείμαντο. – „Messenien denn verteilten sie unter sich.“

[65] Für eine Selbstbindung der Spartiaten treten Link 1994, 6 f. und Lewis 2018, 125–146

Da es Schuldhaftung in Form der Übergabe des Schädigers an den Geschädigten auch schon in früherer Zeit in Sparta gegeben haben wird, ist es gut möglich, dass analog zur spartanischen Eroberung Messeniens auch besiegte Bewohner der Landschaft Lakonien sich den Spartanern nach einer Niederlage hatten ausliefern müssen und als *heílōtes* in eine Abhängigkeit geraten waren, dass es also vor Entstehung der messenischen Helotie bereits Heloten in dem von Sparta eroberten Lakonien gab.[66] Nicht entscheiden lässt sich, wie groß unter den lakonischen Heloten der Anteil von Einzelpersonen war, die durch nicht zurückgezahlte Darlehen oder Schädigungen anderer Art ihre persönliche Freiheit verloren hatten, und wie groß der Anteil derer war, die aufgrund einer militärischen Niederlage in diese Abhängigkeit gezwungen worden waren, zumal in den Fällen, bei denen eine verweigerte Forderung nach Wiedergutmachung oder der Auslieferung von Schuldigen den Krieg ausgelöst hatte.[67] Bezieht man die rechtlichen Konsequenzen der Schuldhaftung ein, lassen sich meines Erachtens die lakonische und die messenische Helotie als besondere Form der Sklaverei und deren Genese genauer erfassen.[68]

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ein. Nach Ephoros *FgrH* 70 F 117 (= Strab. 8,5,4, p. 365 C.) seien die besiegten Messenier bereit gewesen, sich in ihr Schicksal zu fügen, wenn derjenige, dem sie gehörten, sie weder freilassen noch über die Grenzen verkaufen würde (… καὶ κριθῆναι δούλους ἐπὶ τακτοῖς τισιν, ὥστε τὸν ἔχοντα μήτ' ἐλευθεροῦν ἐξεῖναι μήτε πωλεῖν ἔξω τῶν ὅρων τούτους). Sie seien gewissermaßen „öffentliche Sklaven" gewesen, denen die Spartaner bestimmte Wohnorte und besondere Dienstleistungen angewiesen hätten (τρόπον γάρ τινα δημοσίους δούλους εἶχον οἱ Λακεδαιμόνιοι τούτους, κατοικίας τινὰς αὐτοῖς ἀποδείξαντες καὶ λειτουργίας ἰδίας); vgl. Paus. 3,20,6, der von „Sklaven des Gemeinwesens" spricht. Eine Freilassung war nur auf Beschluss der spartanischen Volksversammlung möglich.

66 Die Herleitung der Bezeichnung ‚Heloten' von der Eroberung der Stadt Helos im Süden Lakoniens wird zu Recht vielfach abgelehnt, auch wenn es prinzipiell möglich ist, dass Sparta auch gegenüber lakonischen Städten wegen Schädigungen Genugtuung verlangt und, wenn dies abgelehnt worden war, nach dem Sieg die Übergabe von Stadt, Land und Bewohnern gefordert hatte. Zur Etymologie siehe Hellanikos *FgrH* 4 F 188; Theopomp *FgrH* 115 F 13 mit Lotze 1959, 26 f., der wegen der abweichenden Quantität der ersten Silbe die Herleitung von Helos ablehnt; εἵλωτες müsse von ἁλίσκομαι abgeleitet werden, so dass die Deutung als Kriegsgefangene näherliegend, wenn auch nicht sicher sei. Bereits um 1920 hatte Ulrich Kahrstedt (1919 und 1922, 57 f.) gewichtige Zweifel daran geäußert, dass die Helotie eine Abhängigkeitsform war, die auf die Landnahme der Lakedaimonier in den Dark Ages zurückgeht. Bei den Heloten handle es sich vielmehr um kriegsgefangene Messenier und die infolge des Messenischen Krieges entwickelte neue Form der Abhängigkeit habe ein Vorbild abgegeben, spartanische Bauern auch in Lakonien selbst in eine Form der Leibeigenschaft zu zwingen, so dass die Helotisierung der lakonischen Bauern der Eroberung Messeniens zeitlich folgte. Im Kontext der Schuldhaftung in archaischer Zeit wird man dies neu zu bewerten haben.

67 Nino Luraghi (2002, 236–238, 240 f.; vgl. 2003) hat die Entstehung der Helotie im 7. Jh. v. Chr. angesetzt und interne Prozesse, nicht Kriege als Ursache geltend gemacht. Es seien vielmehr arme, in Not geratene Personen gewesen, die nicht in der Lage waren, aufgenommene Kredite zurückzuzahlen, so dass sie infolge dessen ihre persönliche Freiheit eingebüßt hätten. Auch Hans van Wees (2003, 33–37, 48–53, 74) wendet sich zwar gegen eine Entstehung der Helotie in den Dark Ages (und gegen die These von Nino Luraghi), geht aber dennoch von einer durch Krieg hervorgerufenen Abhängigkeit aus. Es könnte durchaus beides zutreffen.

68 Nach der Kapitulation Athens am Ende des Peloponnesischen Kriegs hegten die Theba-

Dass die attische Schuldsklaverei und die solonische *seisáchtheia* auf der einen Seite und die spartanische Helotie auf der anderen Seite einen gemeinsamen Nenner haben könnten, legen auch die Formulierungen nahe. Der Dichter Tyrtaios gebraucht – vermutlich für die Unterwerfung der Messenier – die Worte:

> „Eseln vergleichbar, gebeugt unter drückenden Lasten (*megála áchthē*), müssen sie ihren Herren (*despósynoi*), schmählich gezwungen, die Hälfte geben von allem Ertrag, der aus dem Acker erwächst" (Tyrtaios fr. 6 West = Paus. 4,14,5).[69]

Die Worte mahnen an Solons Elegie: Er habe die Athener, die „gezwungen aus der Not" vor der Schuldhaftung geflohen seien oder in Athen „schmachvolle Sklaverei" erdulden mussten und „Furcht vor ihren Herren (*despótai*) hatten", wieder zu Freien gemacht (ἐλευθέρους ἔθηκα). Umgekehrt ächzten die Messenier nach ihrer Niederlage gegen die Spartaner nun unter „schweren Lasten", unter „schmählichem Zwang". Tyrtaios verwendet also dieselben Bilder, fasst das Abhängigkeitsverhältnis in ähnliche Worte und damit vermutlich auch in ähnliche rechtliche Kategorien.[70]

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ner und Korinther den Verdacht, „Sparta könne Attika zu eigenem Gebiet machen" (Xen. *hell.* 2,4,30: ἔπραττον δὲ ταῦτα, ὅτι ἐγίγνωσκον Λακεδαιμονίους βουλομένους τὴν τῶν Ἀθηναίων χώραν οἰκείαν καὶ πιστὴν ποιήσασθαι). Ob die von den Thebanern und Korinthern heraufbeschworene Gefahr, Sparta könnte aus Attika ein zweites Messenien machen und die Bewohner nach Schadensrecht in eine sklavenartige Abhängigkeit, also in die Helotie, zwingen, historisch ist, sei dahingestellt. Xenophon könnte mit einer solchen Unterstellung die Spartaner in gutes Licht gerückt haben, weil sie sich nicht nur der angeblich ebenfalls von den Thebanern und Korinthern geforderten vollständigen Vernichtung Athens und der Versklavung aller Bewohner entgegengestellt hätten (*hell.* 2,2,19f.; 6,5,46), sondern auch keinerlei Absicht zeigten, die Athener zu Heloten zu degradieren.

69 Tyrtaios fr. 6 West: ὥσπερ ὄνοι μεγάλοις ἄχθεσι τειρόμενοι, δεσποσύνοισι φέροντες ἀναγκαίης ὕπο λυγρῆς ἥμισυ πάνθ' ὅσσων καρπὸν ἄρουρα φέρει. Aus den überlieferten Versen des Tyrtaios selbst geht zwar nicht hervor, dass sie sich auf die unterworfenen Messenier beziehen, doch Pausanias zitiert die Verse in seiner Erzählung über das Ende des ersten Messenischen Krieges. Nach ihrem Sieg hätten die Spartaner den Messeniern einen Eid auferlegt, niemals von ihnen abzufallen oder Neuerungen zu betreiben (πρῶτον μὲν αὐτοῖς ἐπάγουσιν ὅρκον μήτε ἀποστῆναί ποτε ἀπ' αὐτῶν μήτε ἄλλο ἐργάσασθαι νεώτερον μηδέν), und angeordnet, von allen Erzeugnissen des Bodens die Hälfte nach Sparta abzuliefern (οἳ δὲ τῶν γεωργουμένων τροφῶν σφισιν ἀπέφερον ἐς Σπάρτην πάντων τὰ ἡμίσεα). Dafür nennt Pausanias die Verse des Tyrtaios als Beleg. Die moderne Forschung ist zurückhaltender: Tyrtaios könnte auch die Spartaner durch die ihnen vor Augen geführte Gefahr, im Falle einer Niederlage in Abhängigkeit der Messenier zu geraten, zum Kampf animiert haben. Schließlich könnte es sich um eine allgemeine Warnung handeln, welches Schicksal Besiegten drohte (so Meier 1998, 266–269; ähnliche Bedenken bei Luraghi 2003, 113–115; dagegen jedoch van Wees 2003, 35 Anm. 6).

70 Auf den Versen des Tyrtaios beruhen wahrscheinlich die Ausführungen Aelians, die aber über diejenigen des Pausanias hinausgehen, also davon unabhängig sind. Auch gemäß Aelian hätten die Lakedaimonier nach ihrem Sieg über die Messenier diesen die Hälfte dessen, was das Land hervorbringt, genommen. Einen Teil der Männer hätten sie dort belassen, um das Land zu bebauen, andere verkauft, wieder andere getötet (Ail. *var.* 6.1: Λακεδαιμόνιοι Μεσσηνίων κρατήσαντες τῶν μὲν γινομένων ἁπάντων ἐν τῇ Μεσσηνίᾳ τὰ ἡμίση ἐλάμβανον αὐτοί, … τοὺς δὲ τῶν ἀνδρῶν ἀπέλιπον γεωργεῖν, οὓς δὲ ἀπέδοντο, οὓς δὲ ἀπέκτειναν). Es sind dies die prinzipiellen Möglichkeiten, die der Geschädigte gegenüber dem Schädiger hatte.

Auch die den besiegten Messeniern auferlegten „Lasten“ waren eine extreme Form der Abhängigkeit, vergleichbar mit der Sklaverei.[71] Solon hatte die in Abhängigkeit geratenen Athener durch seine *seisáchtheia* von schweren „Lasten“ (*áchthē*) befreit; die Spartaner hatten den Messeniern „schwere Lasten“ (*megála áchthē*) aufgebürdet, weil sie sich den Forderungen nach Wiedergutmachung widersetzt hätten.[72] Hoffnungen auf eine *seis-áchtheia* konnten die besiegten Messenier nicht haben, vor allem nicht nach ihrem Aufstand, der zum zweiten Messenischen Krieg, dem „Krieg gegen die Heloten“, geführt hatte (Ephoros *FgrH* 70 F 117).[73]

Auch dem Abhängigkeitsverhältnis der besiegten Messenier könnte also die Vorstellung einer Schuldhaftung zugrunde gelegen haben, und die Heloten könnten „Ergriffene“ in diesem Sinne gewesen sein, so wie die Schädiger nach attischem, vorsolonischem Recht *agṓgimoi*, „Abführbare“, waren.[74] Zumindest hatten sie von den Spartanern die Zusicherung erhalten, nicht als Sklaven nach auswärts verkauft zu werden, eine Möglichkeit, die das Schuldrecht prinzipiell bot. Auch wenn in den Quellen zum archaischen Griechenland eine direkte Unterwerfung mit ihren rechtlichen Konsequenzen nicht überliefert ist, könnte eine bei Livius überlieferte Tradition ein mögliches Modell dafür bieten, wie man sich eine solche Unterwerfung vorzustellen hätte. In die römische Frühzeit zurückprojiziert, gibt Livius die Form der Übergabe der sabinischen Stadt Collatia an Tarquinius wieder:

> „Der König stellte die Frage: ‚Seid ihr als Gesandte und Sprecher vom Volk von Collatia geschickt worden, um euch und das Volk von Collatia zu übergeben (*dedere*)?‘ – ‚Ja, das sind wir.‘ – ‚Ist das Volk von Collatia sein eigener Herr?‘ – ‚Ja, das ist es.‘ – ‚Gebt ihr euch und das Volk von Collatia, die Stadt, das Land, das Wasser, die Grenzsteine, die Heiligtümer, die Geräte und alles, was Göttern und Menschen gehört, in meine und des römischen Volkes Gewalt?‘ – ‚Ja, das tun wir (*dedimus*).‘ – ‚Und ich nehme (die Übergabe) an‘ “ (Liv. 1,38,1–2).[75]

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[71] Nach Diod. 15,66,3 hätten die Messenier den Lakedaimoniern „Sklavendienste leisten müssen“ (ὕστερον δὲ δουλευόντων Μεσσηνίων τοῖς Λακεδαιμονίοις, …); vgl. Oros. 1,21,6.

[72] Luraghi 2002, 240 verweist ausdrücklich auf Solon fr. 36 Z. 13–15 West: „These verses shed a sudden light on what is otherwise a rather murky landscape. In some ways, they bear an uncanny resemblance to Tyrtaeus’ verses discussed above. However the context remains obscure.“

[73] Ephoros *FgrH* 70 F 117 (= Strab. 8,5,4, p. 365 C.): τὸν πρὸς τοὺς Εἵλωτας πόλεμον.

[74] Einen Überblick über die verschiedenen Modelle, wie die Helotie in Lakonien und Messenien entstanden sei, geben Ducat 1978, 11–13; Welwei 2008, 1–7.

[75] Übersetzung Hans Jürgen Hillen. War eine Stadt Rom im Krieg unterlegen, konnten sich die Besiegten den Siegern durch *deditio in potestatem* oder *deditio in fidem* übergeben. Damit gingen die Bürger dieses Gemeinwesens, das Land und jeglicher Besitz an Rom über. Aus der *deditio* konnte sich die Versklavung ergeben oder die an Bedingungen geknüpfte Rückgabe der Freiheit und des Besitzes (Pol. 20,9,10–12). Angesichts der förmlichen Unterwerfung, wie sie Livius für die latinische Stadt Collatia schildert (Liv. 8,39,10–15; s.o. Anm. 48), scheint nicht ausgeschlossen, dass es bei der Unterwerfung zu einer Abmachung mit den Unterworfenen gekommen war. Möglicherweise war die formale *deditio* nur möglich, wenn die Fetialen vorher offiziell Wiedergutmachung und die Auslieferung von Menschen und Sachen gefordert hatten und dies abgelehnt worden war (Liv. 1,32,5–9; dazu Zack 2001, 21–31). Nach Serv. *Aen.* 9,52 (und *Schol. Dan. Aen.* 9,52) erklärten die Fetialen

Hatten sich in ähnlicher Form die besiegten Messenier mit ihrem Land und ihrer gesamten Habe den Lakedaimoniern unterwerfen müssen? Unterwerfungsbedingungen nach einer Niederlage konnten aber sehr unterschiedlich ausfallen. Als die Plataier nach einer längeren Zeit der Belagerung ausgehungert waren, ergaben sie sich im Sommer 427 v. Chr. den verbündeten Peloponnesiern. Der spartanische Befehlshaber wollte gemäß den Anweisungen aus Sparta erreichen, dass sich die Plataier selbst übergeben. Denn wenn es zu einem Frieden mit Athen kommen würde, hätten beide Seiten die im Krieg eroberten Städte zurückzugeben, nicht aber die freiwillig übergetretenen Städte. Ein in die Stadt geschickter Bote sollte erfragen, ob sich die Plataier den Spartanern freiwillig ausliefern und deren Urteilsspruch annehmen würden. Die Schuldigen würden bestraft, doch niemand gegen das Recht (Thuk. 3,52,2).[76] Die Plataier öffneten die Tore, erhielten für einige Tage Verpflegung und warteten auf die fünf Männer aus Sparta, die richten sollten. Doch statt ein reguläres Gerichtsverfahren abzuhalten, legten die fünf Männer den Plataiern nur die Frage vor, ob sie den Spartanern und ihren Bundesgenossen während des Krieges einen Dienst erwiesen hätten. Der Wortführer der Plataier verwies auf die Verdienste Plataias in den Perserkriegen und auf die den Spartanern geleistete Hilfe bei dem Helotenaufstand in den 460er Jahren, wohingegen an der späteren Feindschaft die Spartaner selbst Schuld trügen, denn wegen der Übergriffe Thebens hätten die Plataier die Spartaner um ein Bündnis ersucht, seien aber abgewiesen worden. Die Thebaner hätten Plataiai mitten im Frieden besetzt, und dies an einem Festtag. Nach dem für alle geltenden Gesetz sei die Abwehr eines Angreifers ‚völkerrechtlich' erlaubt. Nun da sich die Plataier freiwillig und mit vorgestreckten Händen ergeben hätten,[77] dürften die Spartaner sie nicht an die Thebaner ausliefern. Denn sie hätten sich den Spartanern auf Treu und Glauben übergeben (Thuk. 3,58–59).[78] Nach der Gegenrede der Thebaner wiederholten die spar-

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den Krieg „aufgrund gewisser Gründe" (*propter certas causas*), weil der Gegner „Bundesgenossen geschädigt oder sie geraubtes Vieh oder Straftäter nicht ausgeliefert hatten" (*aut quia socios laeserant aut quia nec abrepta animalia nec obnoxios redderent*); ähnlich Dionys. Hal. *ant.* 2,72,4 f. (ἀρξάντων δὲ παρασπονδεῖν εἰς αὐτοὺς ἑτέρων πρεσβεύεσθαί τε καὶ τὰ δίκαια πρῶτον αἰτεῖν λόγῳ, ἐὰν δὲ μὴ πείθωνται τοῖς ἀξιουμένοις, τότ' ἐπικυροῦν τὸν πόλεμον; 72,5: τὰ δίκαια αἰτῶσι […] ἐγκαλεῖν τοὺς ἐνόχους ταῖς αἰτίαις συλλαβόντας ἐκδότους τοῖς ἀδικηθεῖσι παραδιδόναι) (dazu Zack 2001, 31–47 und 61–67). Solange die zu *deditio noxae* vorgesehene Person im Amt war, war eine Auslieferung nicht zulässig (App. *Gall.* 4,3; Liv. 9,9,1; Zack 2001, 73 Anm. 299). Zu *res repetere*-Forderungen und entsprechenden Gesandtschaften mit *fetiales* Dionys. Hal. *ant.* 15,7,8–8,13; 3,2 f.; 9,60; 10,23; vgl. 8,64). Zur *deditio* siehe Dahlheim 1968, 5–67, zur *deditio in fidem* ebd. 25–52; zu den *fetiales* und dem Fetialrecht insgesamt Rüpke 1990, 97–122; Zack 2001, 13–73. In der Forschung wird kontrovers diskutiert, ob den Heloten wegen ihres Status als Unfreie überhaupt Rechte hätten zukommen können (dazu z. B. Link 1994, 3–8). Lewis (2018, 126–139) spricht sich mit Nachdruck dafür aus, dass die Heloten im Besitz einzelner Spartiaten waren, doch bleibt dies umstritten.

[76] Thuk. 3,52,2: εἰ βούλονται παραδοῦναι τὴν πόλιν ἑκόντες τοῖς Λακεδαιμονίοις καὶ δικασταῖς ἐκείνοις χρήσασθαι, τούς τε ἀδίκους κολάζειν, παρὰ δίκην δὲ οὐδένα.

[77] Thuk. 3,58,3: ἑκόντας τε ἐλάβετε καὶ χεῖρας προϊσχομένους.

[78] Thuk. 3,59,4: […] ἐκ τῶν ὑμετέρων χειρῶν καὶ τῆς ὑμετέρας πίστεως ἱκέται ὄντες, ᾧ Λακεδαιμόνιοι, παραδοθῆναι, […].

tanischen Richter nur ihre Frage, ob die Plataier ihnen in diesem Krieg einen Dienst erwiesen hätten. Ähnlich wie bei den Messenischen Kriegen sahen sich die Spartaner veranlasst, ein hartes Vorgehen gegen die besiegten Plataier zu rechtfertigen: Schon längere Zeit hätten die Spartaner von den Plataiern verlangt, gemäß dem Vertrag des Hellenischen Bundes, der zur Abwehr der Perser geschlossen worden war, friedlich zu bleiben. Eine diesbezügliche letzte Forderung sei noch vor der Belagerung erfolgt, wonach sich die Plataier gegen beide Kriegsparteien gleich zu verhalten hätten, was jedoch von den Plataiern abgelehnt worden sei. Damit sei der Vertrag verletzt und auch für die Spartaner nicht mehr bindend und die Feindschaft erwiesen.[79] Die Richter ließen jeden Einzelnen vortreten, stellten die Frage nach einem für die Peloponnesier geleisteten Dienst erneut und richteten die Personen, die dies verneinen mussten, hin. Zweihundert Plataier und fünfundzwanzig Athener seien so getötet, alle Frauen in die Sklaverei verkauft worden. Die Stadt wurde auf ein Jahr denjenigen Megarern zum Bewohnen übergeben, die aufgrund einer *stásis* aus ihrer Heimat vertrieben worden waren. Später rissen die Spartaner die Stadt bis auf die Grundmauern nieder, zogen das Land ein und verpachteten es auf zehn Jahre, wobei die Thebaner daraus den Nutzen ziehen sollten (Thuk. 3,68,1–3).[80] Die ‚*deditio*' der Plataier führte im Jahr 427 also nicht zur Helotisierung der Bewohner, sondern zu deren Tötung beziehungsweise Verkauf in die Sklaverei, was mit der Vertragsverletzung, also einer Schädigung, legitimiert wurde; die langfristigen Pachterlöse des eingezogenen Landes gingen an die Thebaner. In dieser Situation erwiesen sich die Spartaner bei ihrer Forderung, Wiedergutmachung für einen Vertragsbruch zu erlangen, als unerbittlich.

Stellt man die Überlieferungen, die historisch belegbaren wie die zur Rechtfertigung als historische Argumente vorgebrachten Forderungen um Auslieferungen und Wiedergutmachungen, in den rechtshistorischen Kontext des Schuldrechts, können nach meiner Ansicht der Anlass und die Folgen von Konflikten besser erklärt und kann die Relevanz von rechtlichen Verfahren bei solchen historischen Prozessen genauer bestimmt werden. Die Prinzipien des Schuldrechts wurden auch in den ‚zwischenstaatlichen' Verhältnissen als gültig anerkannt – auch wenn die Auslieferung des Schädigers an den Geschädigten schwer durchsetzbar war – und eigneten sich damit auch zur Rechtfertigung eines Krieges. Wenn die besiegten Messenier nach den Prinzipien des Schuldrechts ergriffen wurden und als solche *heílōtes* waren, könnte das erklären, warum sie sich lange Zeit in ihr Schicksal fügten: Die Schädiger zu ergreifen, war nach Schuldrecht legitim und das sklavenartige Abhängigkeitsverhältnis galt unbegrenzt. Auch die in den Quellen überlieferte prinzipielle Alternative, die Ergriffenen für sich arbeiten zu lassen oder sie in die Sklaverei nach auswärts zu

[79] Thuk. 3,68,1: διότι τόν τε ἄλλον χρόνον ἠξίουν δῆθεν αὐτοὺς κατὰ τὰς παλαιὰς Παυσανίου μετὰ τὸν Μῆδον σπονδὰς ἡσυχάζειν καὶ ὅτε ὕστερον ἃ πρὸ τοῦ περιτειχίζεσθαι προείχοντο αὐτοῖς, κοινοὺς εἶναι κατ' ἐκεῖνα, ὡς οὐκ ἐδέξαντο, ἡγούμενοι τῇ ἑαυτῶν δικαίᾳ βουλήσει ἔκσπονδοι ἤδη ὑπ' αὐτῶν κακῶς πεπονθέναι.

[80] Thuk. 3,68,2–3: τὴν δὲ πόλιν ἐνιαυτὸν μέν τινα [Θηβαῖοι] Μεγαρέων ἀνδράσι κατὰ στάσιν ἐκπεπτωκόσι καὶ ὅσοι τὰ σφέτερα φρονοῦντες Πλαταιῶν περιῆσαν ἔδοσαν ἐνοικεῖν· […] τὴν δὲ γῆν δημοσιώσαντες ἀπεμίσθωσαν ἐπὶ δέκα ἔτη, καὶ ἐνέμοντο Θηβαῖοι.

verkaufen – auf Letzteres verzichtete Sparta –, findet im Schuldrecht der archaischen Zeit eine plausible Erklärung.

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THE EXTRADITION OF CRIMINALS IN ANCIENT GREECE AND THE STATUS OF THE HELOTS: RESPONSE TO WINFRIED SCHMITZ

Schmitz begins his paper with a story found in a fragment of Diodorus (8 fr. 7,1) about the origin of the war between the Messenians and the Spartans. He then discusses the practice of noxal surrender in early Greece and ends with a proposal about the origin of the status of the Helots. It is important to start by analysing carefully the story about the origin of the war between the Spartans and the Messenians. One must preface the discussion with a cautionary note. As Schmitz himself recognizes, the account is historical fiction and is only one of several stories about the origin of Sparta's domination of Messenia. Its value as evidence for the status of the Helots is therefore very questionable as several scholars have observed.[1] Yet this does not prevent Schmitz from using the story as support for his argument about the status of the Helots.

According to Diodorus, Polychares of Messene was a wealthy landowner who made a contract with the Spartan Euaiphnos by which the former entrusted his herd of cattle to the latter. Euaiphnos sold some of the cattle and their enslaved herdsmen to merchants, believing that they would be taken out of the area. Euaiphnos then told Polychares that the missing cattle had been stolen by robbers. On their way to Sicily, the merchants were forced to land on the coast of Messene, and the herdsmen were able to escape and tell Polychares what had happened. Polychares summoned Euaiphnos to Messene without giving a reason, then after his arrival brought forth the herdsmen with their story. Euaiphnos promised to restore the cattle. When Polychares sent his son to receive his rights, Euaiphnos killed the son. Polychares then demanded the guilty person (τὸν αἴτιον ἐξαιτεῖν); the Greek terminology is important here and will be discussed. The Spartans did not pay attention to his request but sent the son of Euaiphnos to invite Polychares to bring charges in front of the ephors and kings. In revenge, Polychares killed the son of Euaiphnos and plundered the city. The term is ῥυσιάζειν.

Schmitz then discusses the practice of noxal surrender in early Greek law and

[1] See in particular Luraghi 2003. On the credibility of the sources for early Spartan history Starr 1965 is still valuable.

draws on a recent essay published in *Ancient Society.*[2] Schmitz believes that the phrase τὸν αἴτιον ἐξαιτεῖν is to be understood as a procedure of noxal surrender found in the early law of obligations. According to this procedure, the creditor had the right to seize a debtor who had failed to pay a debt or other obligation and to reduce him to a status of "slave-like dependency." In his analysis of the phrase Schmitz claims that the Spartans were to hand over Euaiphnos for the theft and for the murder, but the Greek in the passage makes it clear that Polychares made his demand not as a result of the theft but for the murder - the relative pronoun οὗ after the verb ἀνελεῖν makes this clear. Schmitz further claims that the Spartans could have freed themselves from the charge by handing over Euaiphnos, who could have been made to work off his debt, but the charge was murder, not the theft of cattle. Besides, there is no evidence for the extradition of a person for a private debt but, as we will see, only for murder or treason. In response, the Spartans proposed that Polychares should bring charges before the ephors and kings. When Polychares took revenge on the son of Euaiphnos, it was clearly for the murder according to the *lex talionis* (τὸν δὲ Πολυχάρη τυχόντα τῶν ἴσων τόν νεανίσκον ἀνελεῖν). For the theft of the cattle, Polychares took property through the procedure of ῥυσιάζειν, a practice similar to *sylan*. Moreover, Polychares sent his son to receive compensation from Euaiphnos, not to seize him and to reduce him to a lower status.

The phrase τὸν αἴτιον ἐξαιτεῖν has nothing to do with noxal surrender of a debtor but with the extradition of a murderer who has killed someone in one community and fled to another community, which is then asked to turn over the murderer to the community of the victim for punishment.[3] As we will see, the procedure can also be used for other crimes. The best parallel can be found in a passage of Herodotus (1.73-74). A tribe of Scythians escaped into Median territory ruled by Cyaxares, who received them as suppliants and gave them boys to be taught their language and archery. One day, the Scythians went hunting and caught nothing for Cyaxares, who was angry and insulted them. The Scythians thought they did not deserve this treatment and cut up one of the boys in their care and made his body look like an animal caught in the hunt. They gave the body to Cyaxares, who had the flesh cooked and served to his guests. The Scythians fled to Alyattes for protection. Cyaxares then demanded that Alyattes surrender the Scythians to him for punishment, but Alyattes refused, which led to war between the Lydians and the Medes. As in the story of Polychares, the verb is found in the context of a demand to extradite murderers from the country where they have taken refuge to the country of the victim. The parallel is quite close. One also finds the phrase τὴν ἐξαίτησιν τῶν ἀνδροφόνων in an honorary decree of Priene (*IK Priene* no. 75, lines 25-26), which shows that extradition for this purpose continued into the Hellenistic period.

The verb is used in another case of extradition for treason by Demosthenes in *On*

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2 Schmitz 2022.

3 On extradition in Ancient Greece see Lonis 1988.

the Crown (18.41) who alludes to how he was "demanded" (ἐξῃτούμην) by Alexander.[4] The verb (ἐξαιτή|[σαντος) is also found in the honorary decree for Lycurgus (*IG* II^2, 457, lines B17-21), who was also demanded for extradition in 335 BCE. The incident is described at length by Diodorus (17.15). After the fall of Thebes, Alexander sent men to Athens to demand (ἐξαιτήσοντας) the surrender of ten Athenians who had opposed him, the most prominent being Lycurgus and Demosthenes. One must recall that the Athenians were allied to Philip in the League of Corinth in 338, and Alexander inherited his position as hegemon after Philip's murder in 336. At a meeting of the Assembly, Phocion recommended that they should sacrifice themselves like the daughters of Leos and Hyacinthos, but the Athenians drove him from the speaker's platform and were persuaded by Demades to pass a decree promising to Alexander to impose the penalty prescribed by law. Here the extradition is for a political offence, treason, but the procedure and the verb used to denote the procedure is the same.

Schmitz draws attention to another example of extradition in Herodotus (9.86-88). In this case, the leaders of the Greek victors at Plataea demanded that the Thebans surrender those who had medized (ἐξαιτέειν αὐτῶν τοὺς μηδίσαντας).[5] The verb is the same as that found in Diodorus. If the Thebans did not surrender those demanded, they promised to besiege the city, which they did when the Thebans did not comply. On the advice of Attaginus, the Thebans surrendered the guilty men on the understanding that they would be put on trial. Pausanias suspected that they might try to bribe the judges and sent them to Corinth where they were put to death. Once more, the use of the Greek verb *exaitein* has nothing to do with noxal surrender arising from a private contract but from a public crime. It is interesting that in all of these cases the community in which the guilty party resides is reluctant to turn him over to another community because this would be a violation of their independence and sovereignty. The verb is also used to express a demand for extradition in the case of the Athenians demanding the surrender of Alcibiades for impiety (Isocrates 16.9), the demand of Satyrus to surrender the son of Sopaios, a friend of Pasion, for treason (Isocrates 17.5), the Persian demand to surrender Paktyes for rebellion (Herodotus 1.159), the Spartan demand to Admetus to surrender Themistocles for treason (D. S. 11.56.2), and the demand of Antipater and Olympias to the Athenians to surrender Harpalus for embezzlement of state funds (D.S. 17.108.7). In each case the verb must be placed in the context of interstate relations and public offences, not in the context of private contracts or any relationship of *nexum.*

There is also no reason to believe that the Greeks of the Archaic or Classical period had a practice of noxal surrender for free persons. Schmitz discusses several passages in his argument that such a practice did exist, but none are relevant to the topic. In the speech *Against Callicles* (Dem. 55) the speaker mentions the possibility of handing over a property, not a person. In *Against Athenogenes* (Hyperides 3.22)

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4 On the passage see Wankel 1976, 297-298.

5 On this incident see Flower and Marincola 2002, 256-260, who appear to be unaware of Lonis 1988.

the speaker Epicrates cites a law requiring that masters are responsible for damage caused by their slaves; the passage has nothing to do with free persons. In the law about the Mysteries at Andania (*Syll*.[3] 736, lines 77ff.) there is a rule that slaves can be handed over for unpaid debts, not free persons. Finally, there is no reason to believe that Solon (fr. 36 [West], lines 8-15) makes a distinction between those who are enslaved and sold abroad and those who remain in Attica in a dependent status of debt-bondage. Those who remain in Attica are slaves as the text makes clear because they "have demeaning slavery" and fear their *despotai*, the word for masters of slaves (τοὺς δ᾽ἔνθαδ᾽αὐτοῦ δουλίην ἀεικέα /ἔχοντας, ἤθη δεσποτέων τρομεομένους).[6] Finally, these lines have nothing to do with the *seisachtheia*, which was an abolition of payments for protection by *hektemoroi* to powerful leaders.[7] Solon did not abolish debt-bondage, which continued to exist into the Classical period as several sources indicate and as several scholars have recognized.[8]

In the final part of his paper, Schmitz claims that the status of the Helots in Archaic and Classical Sparta was similar to the status of those in debt-bondage before Solon. This is not an original idea. One finds a similar view in the essay of Eduard Meyer in his "Die Sklaverei in Altertum," which was based on a lecture he gave on 15 January 1898.[9] Schmitz relies solely on a passage from Strabo (8.5.4 = Ephorus *FGrHist* 70 F 117), but his interpretation of the passage is not convincing. He claims that there was an agreement like the Roman *deditio* with a promise by the Spartans not to sell the Helots abroad into slavery ("Sparta darauf verzichtete, sie nach auswärts *in die Sklaverei zu verkaufen*, ein Recht, das Sparta als Geschädigtem grundsätzlich nach Schuldrecht zustand. Dieses Verkaufsverbot ist in der Überlieferung belegt"), which implies that the status of the Helots was not slavery. But there is no phrase "into slavery" found in the Greek text: κριθῆναι δούλους ἐπὶ τακτοῖς τισιν, ὥστε τὸν ἔχοντα μήτ᾽ἐλευθεροῦν ἐξεῖναι μήτε πωλεῖν ἔξω τῶν ὅρων τούτους (trans. "they were adjudged slaves with the conditions, that the owner should not be allowed to give them their liberty, nor sell them beyond the boundaries"); Schmitz has inserted this without justification. According to Strabo, who draws on Ephorus, the Helots were slaves captured in war. Strabo misrepresents his source by calling the Helots public slaves in a way; contemporary sources consistently call the Helots

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6 For the meaning of *despotes* see Harris 2006, 271-279.

7 On the nature of the *seisachtheia* see Harris 1997. Blok and Krul 2017 attempt to argue that the *seisachtheia* was a cancellation of debts, but this view is not convincing. They also misrepresent the analysis of Harris 1997. See the detailed refutation in Harris and Lewis 2022, 257.

8 For Solon abolishing enslavement for debt and not debt-bondage, which continued to exist in Classical Greece (see Menander *Heros* 18-38; Harpocration s.v. *apergasamenos;* Plato *Euthyphro* 4c), see Harris 2006: 249-269, which has been endorsed by Lewis 2018, 274; van Wees 2009; Karev 2023, 19; Osborne 2023, 141, 222.

9 Meyer 1910, 171-212. For criticism of Meyer's view see Lewis 2018, 12-13. The view of Finley about the growth of slavery in ancient Greece differs on some details but is essentially the same as that of Meyer despite Finley's assertions to the contrary. See Harris 2012.

slaves and indicate that they were owned by private individuals.[10] Ducat rightly saw the implications of this passage in 1990,[11] and his reading of the passage has been correctly endorsed by Luraghi,[12] Nafissi,[13] Kennell,[14] Zurbach,[15] Paradiso,[16] Ismard,[17] Hodkinson,[18] and Vlassopoulos.[19] Three key passages from the Classical period confirm this reading of Strabo.

1) Antiochus of Syracuse - *FGrHist* 555 F 13 = Strabo 6.3.2

> περὶ δὲ τῆς κτίσεως Ἀντίοχος λέγων φησὶν ὅτι τοῦ Μεσσηνιακοῦ πολέμου γενηθέντος οἱ μὴ μετασχόντες Λακεδαιμονίων τῆς στρατείας ἐκρίθησαν δοῦλοι καὶ ὠνομάσθησαν Εἵλωτες, ὅσοις δὲ κατὰ τὴν στρατείαν παῖδες ἐγένοντο, Παρθενίας ἐκάλουν καὶ ἀτίμους ἔκριναν.
>
> Translation: In speaking of the founding of Taras, Antiochus says: After the Messenian war broke out, those of the Lacedaemonians who did not take part in the expedition were adjudged slaves and were named Helots, and all children who were born in the time of the expedition were called Partheniai and deprived of their rights.

2) Thucydides 1.101.2

> οἱ δὲ ὑπέσχοντο μὲν κρύφα τῶν Ἀθηναίων καὶ ἔμελλον, διεκωλύθησαν δὲ ὑπὸ τοῦ γενομένου σεισμοῦ, ἐν ᾧ καὶ οἱ Εἵλωτες αὐτοῖς καὶ τῶν περιοίκων Θουριᾶταί τε καὶ Αἰθαιῆς ἐς Ἰθώμην ἀπέστησαν. πλεῖστοι δὲ τῶν Εἱλώτων ἐγένοντο οἱ τῶν παλαιῶν Μεσσηνίων τότε δουλωθέντων ἀπόγονοι: ᾗ καὶ Μεσσήνιοι ἐκλήθησαν οἱ πάντες.
>
> Without informing Athens, Sparta promised and intended to do so, but was prevented by the occurrence of the earthquake, accompanied by the secession of the Helots and the Thuriats and Aethaeans of the Perioeci to Ithome. Most of the Helots were the descendants of the old Messenians who were earlier enslaved; for this reason they (i.e. the rebels) were all called Messenians.[20]

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[10] The quotation of Ephorus in Strabo 8.5.4 does not include the information about the Helots being public slaves. See Lewis 2018, 128-9, drawing on Hodkinson 2000, 117. Cartledge 2024 claims that the passage of Ephorus is not reliable without giving reasons. The passages from Antiochus, Thucydides and Isocrates however confirm its reliability.

[11] Ducat 1990, 19-29.

[12] Luraghi 2002a.

[13] Nafissi 2009, 121.

[14] Kennell 2010, 75-88.

[15] Zurbach 2013.

[16] Paradiso 2013.

[17] Ismard 2015, 26.

[18] Hodkinson 2000, 113-117.

[19] Vlassopoulos 2021, 48, 166-176.

[20] On this passage see Luraghi 2002b, who shows that Thucydides indicates the the majority of the Helots who revolted were Messenians, not that the majority of Helots were Messenians.

3) Theopompus *FGrHist* 115 F 122 = Athenaeus 6.265b-c

> πρώτους δ᾽ ἐγὼ τῶν Ἑλλήνων οἶδα ἀργυρωνήτοις δούλοις χρησαμένους Χίους, ὡς ἱστορεῖ Θεόπομπος ἐν τῇ ἑβδόμῃ καὶ δεκάτῃ τῶν ἱστοριῶν: ‘ Χῖοι πρῶτοι τῶν Ἑλλήνων μετὰ Θετταλοὺς καὶ Λακεδαιμονίους ἐχρήσαντο δούλοις, τὴν μέντοι κτῆσιν αὐτῶν οὐ τὸν αὐτὸν τρόπον ἐκείνοις.., ’’ Λακεδαιμόνιοι μὲν γὰρ καὶ Θετταλοὶ φανήσονται κατασκευασάμενοι τὴν δουλείαν ἐκ τῶν Ἑλλήνων τῶν οἰκούντων πρότερον τὴν χώραν ἣν ἐκεῖνοι νῦν ἔχουσιν, οἱ μὲν Ἀχαιῶν, Θετταλοὶ δὲ Περραιβῶν καὶ Μαγνήτων, καὶ προσηγόρευσαν τοὺς καταδουλωθέντας οἱ μὲν εἵλωτας, οἱ δὲ πενέστας. Χῖοι δὲ βαρβάρους κέκτηνται τοὺς οἰκέτας καὶ τιμὴν αὐτῶν καταβάλλοντες.’

> Translation: I know that the Chians were the first of the Greeks to use slaves bought with silver as Theopompus states in the seventeenth book of his *Histories*: “The Chians were the first of the Greeks after the Thessalians and the Lacedaemonians to use slaves though they did not acquire them in the same way. For it will be clear the Lacedaemonians and the Thessalians established their enslaved population from Greeks previously living in the territory, the [Lacedaemonians] making slaves of Achaeans, the Thessalians of Perrhaebians and Magnesians, and the former called those enslaved Helots, the latter *penestai*. The Chians acquired barbarian slaves and paid a price for them.

To these one can add the entry of Harpocration, which relies on a passage from Isocrates. Harpocration s.v. εἱλωτεύειν: τὸ δουλεύειν Ἰσοκράτης Πανηγυρικῷ (4/131): εἵλωτες γὰρ οἱ μὴ γόνῳ δούλοι Λακεδαιμονίων, ἀλλ᾽ οἱ πρώτοι χειρωθέντες τῶν Ἕλος τὴν πόλιν οἰκούντων, ὡς ἄλλοι τε πολλοὶ μαρτυροῦσι καὶ Ἑλλάνικος ἐν τῇ α᾽(323a F 29 J).

These traditions differ about the origins of Helot status, but they all agree that this status was slavery.[21] There were some distinctive features in the strategy the Spartans devised to manage their Helot population, but they cannot be explained by any speculation about *nexum* or about principles derived from the law of obligations. The status of the Helots had its origins in the status of the *dmoes* and the *douloi* of the *Iliad, Odyssey* and Hesiod’s *Works and Days*, who, as I showed in an essay published over a decade ago, were slaves over whom their masters exercised all the powers of ownership.[22] This view has been widely accepted.[23] David Lewis has recently shown that the best way to explain the unusual restrictions on the powers of Spartan masters over their slaves such as the prohibitions against sale abroad (which as Ducat saw over thirty years ago implies the ability to sell within Spartan territory) and against

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[21] On the various stories about the origins of the Helots see Luraghi 2003.

[22] Harris 2012. Cartledge 2024, 194-195, claims that the Greeks had only very vague notions of ownership, but this is not true: the Greeks understood all the basic incidents of ownership recognized by other legal systems. See Kränzlein 1963. For ownership and slavery in Greece see Lewis 2018, 25-56.

[23] See Lewis 2018, 107-124; Vlassopoulos 2021, 36: “As Edward Harris has shown, slavery is the main source of elite income in Homer and Hesiod, and accordingly the idea that it first became so after Solon cannot stand.”

manumission is to examine the distinctive features of Spartan institutions and not to resort to unverifiable guesses about debt-bondage.[24]

There are several lessons to be learned here. First, one needs to take a critical approach to the sources for early Spartan history. Second, one should not cherry-pick the sources for this period, but examine every piece of information. Third, one should study the sources in the original Greek and not add phrases that are not in the original Greek to translations or paraphrases. Fourth, when analysing the meaning of a Greek word such as ἐξαιτεῖν, one should look for parallels in other sources where similar situations and practices are being described. Fifth, one should be careful about reading Roman practices into the laws of the early Greek city-states unless there is good evidence in the sources for such an analysis.[25]

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[24] Lewis 2022.

[25] See for example Harris 2006, 373-390, which shows that the equivalence of the expression *ep'autophoro* with the expression *furtum manifestum* in Justinian *Institutes* 4.1.3 and in the *Digest* 47.2.3 is supported by an analysis of the sources for the terms. I would like to thank David Lewis and Alberto Esu for reading a draft of this essay and offering suggestions for improvement.

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CLASS AND GREEK LAW: FOR THE ELITE, BY THE ELITE?

Abstract: This contribution offers a preliminary framework for analysing the intersection between class dynamics and legal institutions in the ancient Greek *poleis*. Drawing parallels between ancient debates on the rule of law and modern critiques of legal systems as instruments of class power, the chapter examines how different socioeconomic groups—particularly the popular classes—exercised agency through legal means. The investigation proposes a taxonomy of popular agency in Greek law, identifying four primary manifestations: procedural agency through institutional access; the institutionalisation of popular justice practices within formal legal structures; substantive influence over legislative content; and class-oriented values embedded in legal frameworks. By examining examples ranging from Solon's ban on slavery for debts to regulations concerning grain trade, wood, and charcoal supply, the paper explores how the popular classes secured legal protections for their economic interests against elite exploitation. Contrary to scholarly traditions emphasising elite competition and exclusively procedural concerns, this analysis reveals Greek law's substantive orientation toward regulating behaviour along class lines. The contribution argues that even when elites controlled legal institutions, their codification of laws created spaces for popular agency by establishing fixed standards that all (citizens) could appeal to. The chapter contends that bringing class analysis to ancient legal history is not anachronistic but rather follows threads of ancient reflection on power relations, offering new interpretative possibilities for understanding Greek legal traditions and their socioeconomic foundations.

Keywords: class struggle, popular agency, rule of law, inequality, legislation

1. Socioeconomic groups, class and the law

Class, socioeconomic background, interests, and agency have played a surprisingly limited role in modern scholarship on ancient Greek law (as in recent scholarship on the Greek *polis* more widely). Social and economic historians have long underplayed the centrality of class divisions and struggles in Greek society, and legal historians have generally approached Greek legal institutions and norms without sustained attention to how they reflected, mediated, or were shaped by the interests and agency of

different socioeconomic groups.[1] This is rather striking, given that ancient observers themselves, and Aristotle most prominently, placed class dynamics at the centre of their analysis of Greek political and legal institutions. For Aristotle, the fundamental division of the citizenry into rich (*plousioi*) and poor (*penetes*) – with further complex subdivisions based on occupation – was key to understanding both the constitutional arrangements of Greek cities and their legal frameworks. The struggle between these groups for dominance, and how their preferences became instantiated in oligarchic or democratic institutions, lay at the heart of his political and legal analysis.[2]

Some recent scholarship has begun to reassert the centrality of class and socioeconomic relations for understanding Greek political, social and legal history.[3] This renewed attention to class dynamics – to be understood not as rigid economic structures but as historically contingent relations between groups with different economic experiences and interests[4] – makes an investigation of how different socioeconomic

* This chapter has been partially written within the framework of the UKRI/ERC project on 'Class Struggle in Ancient Greek Democracy' (Edinburgh), and I thank UKRI for the support. I also thank David Lewis, Edward Harris, Alberto Esu and Alain Bresson for much advice in thinking through these topics and writing the chapter, and all participants to the Symposion 2024, and Michele Faraguna in particular, for their friendly remarks and feedback. I also thank Stefano Ferrucci for much discussion of these topics, well beyond what appears in this volume.

1 Finley 1999 [1973] (cf. also Finley 1981) is the foundational work of the 'substantivist' school of ancient economic history (an inheritor of economic primitivism), which essentially denied that issues of class were relevant to the economy and the politics of the Greek cities – their economies were not sophisticated and complex enough, and problems of (legal) 'status' were more central (this is criticised e.g. by Ste. Croix 1981: 85-96; Rose 2013: 4-12; also, from a non-Marxist perspective, by Davies 2017). More recent approaches to the ancient Greek economy, often informed by New Institutional Economics have stressed the complexity of the ancient Greek economy in terms of market reliance and labour differentiation (see e.g. Harris 2002; Bresson 2000; 2016; Ober 2015; Lewis 2020; van Wees 2022), making class analysis and an appreciation of class dynamics possible and, indeed, topical, yet this route has not yet been taken (issues of efficiency, growth, efflorescence, and lowering transaction costs have taken centre stage so far). For (the lack of) attention to class in studies of Greek law, the overreliance on historical paradigm of elite competition, and the occasional exceptions, see below nn. 5-6, pp. 119-120.

2 Sample passages where Aristotle associates constitutional arrangements with the prevalence of certain classes (rich or poor, and even particular occupational groups) are Aristotle, *Politics* 3.7-8.1279a 22-1280a 6; 4.4.1291b 11-37; 4.12.1296b 24-30; 6.1.1316a 22-28. I refer to the commentaries (and introductions) in Accattino and Curnis 2013; Besso, Canevaro, Pezzoli, and Curnis 2014 and De Luna and Zizza 2016 for discussion and further references, and to Accattino 1986, Canevaro and Esu 2018, and Pezzoli 2025 for the socioeconomic basis of Aristotle's constitutional taxonomies.

3 See e.g. Rose 2013; Canevaro 2017b; 2021; 2024; forthcoming b; forthcominhg c; Cecchet 2015; Zurbach 2017; Taylor 2017; Simonton 2017; van Wees 2008; 2023; Canevaro-Lewis 2024.

4 In my opinion, the most historically productive understanding of class (as a historical relation rather than a structure) is that deployed in Thompson 1963 (on Thompson's understanding of class see in particular Meiksins Wood 1995: 96-107; Cunningham 2024). It is not necessary here to discuss in detail the issues with defining class (which I shall discuss in further work, in relation to the Greek *polis*), as long as it is clear that I understand class as

groups engaged with, influenced, and were affected by legal institutions particularly urgent. Law, as both a cultural and institutional form, was central to how class relations and conflicts manifested themselves in the Greek *poleis*. Yet we still lack a systematic framework for analysing the intersection between class and law in the Greek world.

This chapter represents a preliminary attempt to develop such a framework. It offers a taxonomy of the different ways in which class dynamics and socioeconomic relations shaped, and were shaped by, Greek legal institutions and norms. While not aiming to be comprehensive, this taxonomy will hopefully help structure future investigations of how different socioeconomic groups exercised agency through law, how their interests were reflected in legislation, and how legal institutions mediated class relations in the Greek cities.

The main issue with such an investigation has to do with where, and how, we can identify instances or evidence of class agency in legal norms, institutions, discourses – particularly of popular class agency. The popular masses, it is fair to say, have not played much of a role in scholarly discussions of Greek law and legislation. Most scholarly reconstructions of Archaic lawmaking and the emergence of legal culture, for instance, tend to align with Osborne's belief that the purpose of Archaic laws 'was not to control the powers of the elite with regard to the people, nor to restrict the arbitrariness of those in power, but to control the distribution of powers within the elite. This is elite self-regulation, motivated not by any sense of overwhelming injustice but by a concern about which individuals have power'.[5] As we move to the Classical period, and to Athenian democracy in particular, the popular masses loom large, of course, in arguments about the composition and ethos of the Athenian lawcourts (and in disagreements about the ultimate legislative authority in Athens), but their interests, their point of view, their concerns are normally downplayed. Legislative and legal agency is often represented as in the hands of feuding members of the elite, wealthy politicians, powerful orators and generals, or self-interested demagogues.[6]

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an oppositional historical relation whose grounding is in economic inequality, domination and (potentially but not invariably) direct exploitation – see Olin Wright 2015 for a survey of approaches and a proposal for an eclectic understanding.

5 Osborne 1996: 187; cf. e.g. Foxhall 1997, Hölkeskamp 1999, Anderson 2005, Forsdyke 2005, Hawke 2011 are only some examples of what has long been a dominant paradigm within the study of Archaic Greek law (and Archaic Greece more widely). Some push-back in Schmitz 2004; van Wees 2008; Kõiv 2011; Ma 2016; 2024a; Simonton 2016: 9-20; Zurbach 2017; Harris and Lewis 2022; Canevaro 2022 (and in Rose 2012 from a Marxist angle).

6 Jones 1957: 36-7, 124 argued that in fourth-century Athens the judges were mainly well-off or middle-class; *contra* e.g. Markle 1985, Rhodes 1981: 691, Hansen 1991: 185-6 and Todd 1990. Todd's discussion is the most detailed, but his conclusion that the courts represented a distinctive class of farmers with their own values that constituted the majority of the Athenian population is dependent on an outdated picture of the social and economic composition of the Athenian population (see Harris 2002 and Lewis, Harris and Woolmer 2015 for the prominence of market exchange and horizontal work specialization, and Hansen 2006: 67-84 for the high level of urbanization). MacDowell 1995: 156-8 believed that, despite some

And, accordingly, the question has often been whether lawcourts and legal institutions upheld something resembling modern notions of the rule of law or were rather arenas for feuding, power struggles, contests of distinction, or even just proxies for political influence and control.[7]

In past work, including in the previous volume of the *Symposion* series, I have made the point that an ideal of legality – of the rule of law – was ideologically the basic criterion of legitimacy across the constitutional options that faced off in the Greek world in the fifth and fourth centuries BCE.[8] There was little disagreement – whether in Athens or in Sparta, or in a thinker like Aristotle – on whether the sovereignty of the law is desirable. In fact, the legitimacy and quality of this or that constitutional option was predicated on its commitment to the rule of law (as opposed to the rule of man). The disagreement was rather on whether democracy (or oligarchy) could in fact uphold the rule of law, and why, with democrats claiming that oligarchy was the arbitrary rule of the wealthy above the law and oligarchs claiming that democracy was the arbitrary rule of the poor above the law.

What needs to be added to this analysis is the following: in such an ideological context – and with distinctive anti-democratic undertones – the little criticism of *nomos* which is found in the sources assumes in fifth- and fourth-century (Athenian) thought a strong class colouring. The most prominent example is found in Plato's *Gorgias*, where Callicles argues against Socrates that justice is (or should be) the power of the strongest and presents law as the tool of the weaker to subvert this basic principle. He states: 'But I suppose the makers of the laws are the weaker sort of men,

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exaggeration, the picture of the judges provided in Aristophanes' *Wasps* – as mostly poor, urban citizen in their old age – is reliable, and so do I, cf. Canevaro 2017b: 50-2. For disagreements about the locus of ultimate legislative authority in fourth-century Athens (with problematic notions of moderation, change and transition between fifth and fourth century) see in particular (among many others) Hansen 1974; 1975; 1991; Ostwald 1986; *contra* Canevaro 2015; Harris 2016 (cf. Esu 2024: 3-6, 177-8, 214-15 for issues with Hansen's conception of sovereignty). For the alleged preponderance of wealthy politicians and powerful orators both in the Assembly and in the lawcourts see e.g. Hansen 1991: 142-4; Christ 1998; 2006; also Ober 1989 for whom the lawcourts were an arena for elite competition before the watchful eyes of the *demos* (similarly Osborne 1985 and Cohen 1995, however with little notion of the taming effect of popular participation).

7 This debate has developed over many years, and most notably in the pages of the works cited in this footnote, with (roughly) the following holding that the Athenians abided (however imperfectly) by principles akin to modern notions of the rule of law: Harris 2006; 2013; Ostwald 1986; Sealey 1987; Rubinstein 2000; Rhodes 2004; Gowder 2014; Canevaro 2015, 2017; Pelloso 2021; Harris and Esu 2025; and the following holding that they did not: Osborne 1985; Ober 1989; Todd 1993; Cohen 1995; Christ 1998; Lanni 2006; 2016 (Forsdyke 2018 believes that Athens abided by some principles of the rule of law and not others). For studies that approach related problems from the point of view of New Institutional Economics, rational choice theory and game theory, see Carugati 2014; Carugati, Hadfield and Weingast 2015; Carugati 2019. Unlike Hansen and Ostwald, Harris does not believe that the concern with the rule of law was an innovation of the fourth century BCE, to temper the 'extreme' democracy of the fifth, see in particular Harris 2016.

8 Canevaro 2017a (also about different approaches to the rule of law); 2023.

and the more numerous. So it is with a view to themselves and their own interest that they make their laws and distribute their praises and censures; and to terrorize the stronger sort of folk who are able to get an advantage, and to prevent them from getting one over them, they tell them, that such aggrandizement is foul and unjust, and that wrongdoing is just this endeavour to get the advantage of one's neighbours: for I expect they are well content to see themselves on an equality, when they are so inferior' (483b-c; tr. Lamb). In Callicles' cynical and heterodox understanding – much like in the Old Oligarch, for instance – law is about power and power only: the power of a particular class to impose its interests and priorities over another class (here the many over the few).[9] This is the same notion of the law as a tool of class power expressed in Pericles' dialogue with Alcibiades (and denounced by Alcibiades) in Xenophon's *Memorabilia* (1.2.42). When answering Alcibiades' question as to what *nomos* really is, Pericles states: 'Laws are all the rules approved and enacted by the masses (*plethos*) in the assembly, whereby they declare what ought and what ought not to be done'.[10] Note the class undertones of *plethos*, which means mass, multitude, with a focus on the lower classes.[11]

If Callicles and Pericles/Alcibiades controversially generalise this partisan, class-based notion of the law so as to characterise *all laws* as nothing more than instruments of class power, their (extreme) understanding is based on (and radicalises) widespread criticism of the function performed by laws in actual regimes which are perceived as also class-based (to the detriment of the rule of law).[12] In book 5 of the *Politics*, Aristotle provides many examples of *stasis* and *metabole* caused by the breakdown of the rule of law and by the use of legislation and legal process as an instrument of class oppression – which in the end pushes the oppressed party to revolution.[13] He offers some examples of oligarchies behaving in this way, but the more numerous are of democracies which use the law as a tool for oppressing the wealthy – along the lines of what is lamented by Callicles. Famously, the better democracies and the better oligarchies are, for Aristotle, those where the law is still sovereign (however aligned to the class-*ethos* of their determinant groups), while the worse regimes are those where the power of the dominant class is total and arbitrary – above

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[9] For Callicles' position (and the contradictions they entail) see e.g. Irwin 1979: 178-9; Kahn 1983: 100; Saxonhouse 1983: 159-62; Newell 2000: 14-16; Woolf 2000; Kamtekar 2005: 319-24; Stauffer 2006: 85-92; Irani 2017: 67-87.

[10] On Alcibiades' contention (against Pericles) that all law is based on violence (of a group over another) and therefore unjust see now Danzig 2014: esp. 16-19 (and Dorion 2000-11, i.105–6, *ad loc.*).

[11] By the mid-fifth century, *plethos* indicates the mass of ordinary citizens – the *demos* as characterised by the preponderance of the lower classes. See Ruzé 1984: 247-264: the term translates the 'sociological *demos*' into its political weight, at times sliding towards a generic meaning of 'populace'.

[12] For an exploration of ancient conceptions of power (as violence), which takes this point of view seriously (albeit without exploring its class dimension) see Gotter 2008.

[13] See De Luna-Zizza-Curnis 2016: *passim* and Cairns-Canevaro-Mantzouranis 2020; 2022; 2023 for this analysis of *stasis*.

and beyond the law.[14]

What we see in these texts is, on the one hand, a near-universal ideological commitment to legality and the primacy of the law; on the other, an understanding that laws and legal systems are cultural forms (like any other) that are enlisted and weaponised by the particular social groups which happen to be dominant and hegemonic in a given regime, to their advantage. What Aristotle, specifically, brings to the table is a terse understanding of the desirability of legality and the rule of law *even* within regimes that are fundamentally structured around the 'hegemony' of a particular socioeconomic group (with laws conforming to their class ethos and expressing class interests and power). A democracy cannot but have democratic laws, framed to the advantage of the masses (otherwise it would be something else), yet a democracy which abides by its own laws (however democratic) is better, for both the poor and the wealthy, than one where the masses exercise their power unfettered by the requirements of legality. And the same goes for oligarchies. Aristotle, in sum, reconciles an absolute commitment to the rule of law (derived from mainstream ideological tenets espoused in his day across the board) with a pragmatic understanding of the law as determined by class power relations within a given constitution.[15]

What is striking in this ancient theoretical and ideological dynamic is that the parameters of the ancient debate, as I have just reconstructed them, map closely onto certain twentieth-century debates about legality, the rule of law, and the relation between law and (class) power. From the 1960s and 1970s onwards, in legal history and legal theory, a dominant paradigm which has studied the rule of law, its requirements, limits and conditions, as a staple of a liberal (and democratic) order – I am thinking of Fuller and Raz and MacCormick and Waldron, among many others[16] – has been the object of sustained criticism from the (Marxist-inspired) so called Critical Legal Studies movement.[17] The Critical Legal Studies movement challenges traditional legal theory (and legal scholarship) by arguing that law is not neutral or objective, but rather a tool which reinforces existing power structures, inherently biased against the weaker sections of society. On one side, the rule of law as a normative ideal; on the other, the law as a tool of (class) power – just like in the Greek reflections we have just summarised. The twist, as it were, is that while modern criticism of the rule of law as an absolute ideal come from the Left – according to which the law underpins the class dominance of the rich and powerful – ancient criticism of the rule of law as an absolute ideal comes mainly, as it were, from the Right – from those who see the law as a tool of class oppression of the poor over the wealthy. But the basic frame-

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[14] See in particular Arist. *Pol*. 4.4.1292a 4-38; 4.5.1292b 5-7; 4.14.1298b 14-16. For the opposition between rule of law and rule of man see Arist. *Pol*. 3.16.1287a 16-17; 3.17.1288a 1-2.

[15] For Aristotle's positions about the law and the rule of law see now Canevaro 2025b, with more extensive discussion and further reference. See also Miller 2007 and Bertelli 2020.

[16] E.g. Fuller 1969: 39; Raz 1979: 14-18; Finnis 1980: 170-1; MacCormick 2005; Waldron 2011. For a summary see Tamanaha 2004: 91-113

[17] See e.g. (for summaries and reappraisals) Hunt 1986; Ward 2004; Bauman 2021.

work of the debate and of the disagreement is remarkably similar, down to the dominance of an ideology of the rule of law as the authoritative criterion of legitimacy and the pragmatic-realist undertones of class-based criticism of the law.

In fact, even Aristotle's more nuanced and troubled position finds a prominent parallel in the scattered (yet based on extensive empirical work) reflections on the rule of law by the most prominent and influential Marxist historian of the twentieth century: E. P. Thompson, the author of *The Making of the English Working Class*.[18] Against much (dismissive) Marxist reflection on law as little more than a tool of class oppression, Thompson – in his later book *Whigs and Hunters*, about eighteenth century English class struggle about and within the law, and the Black Act in particular – managed both to expose the ways in which the English ruling class used the law to expropriate, oppress, exploit and control, and to highlight how reliance on legal institutions and principle, codification, and widespread commitment to the rule of law still remained an instrument for the peasants and the poor to maintain a sense of their own rights and to challenge (sometimes successfully) elite abuse. For Thompson, in eighteenth-century England as at any other time in history, *laws* can be a tool of power, framed to advance class interest and to oppress, yet at the same time the rule of law, the principle of legality – a widespread commitment to it – however unfair the laws, remains an 'unqualified human good' which restrains the powerful and creates spaces of popular agency even against the intention of the legislator.[19] As in Aristotle, in Thompson the most oppressive class-based regime is still somewhat *better* when the laws – its laws – are sovereign. The arbitrary, unfettered power of man is the ultimate evil.

I bring these considerations to the table – these parallels between ancient reflection on what the law is and does and modern debates within history, legal theory and political thought – as a way of justifying the topic of this preliminary contribution, and of the wider investigation it will hopefully underpin. Bringing class analysis to bear on legal history is not imposing anachronistic notions on the ancient evidence. It is rather following the thread of ancient reflections on ancient problems, realising in the process the analogies (and the differences) between those reflections and those problems on the one hand, and modern problems and reflections on the other. The aim is to formulate, through this ongoing dialogue between ancient and modern reflections, some pertinent questions that we can ask of the more directly *legal* evidence of ancient laws, inscriptions and forensic orations.[20]

If we follow this thread, then the primary questions to ask are the following: is it true, as Callicles and Aristotle (and many others) clearly believed, that laws could be

[18] Thompson 1963.

[19] Thompson 1975: 202-12, with Cole 2001 on the ensuing debate. A good example of these dynamics, in Greek history, is provided by the analysis of Forsdyke 2024, on how laws designed to disempower slaves produced spaces of agency. See also, for similar dynamics in the private sphere, Canevaro 2025a.

[20] I cannot refrain here from referring to Ginzburg 2015, a wonderful reflection of the interplay of 'emic' and 'etic' in the historian's work.

and sometimes actually were (particularly in participative and democratic regimes) to the advantage of the lower classes and to the disadvantage of the elite? If so, what specific 'lower' socioeconomic groups found a voice in particular laws – found protection for their goals and interests? And how? How was the agency of the lower classes exercised in the legal domain at different times and in different contexts? Through legislation? Through the administration of the legal system? Or even just through the exploitation of the codified norms produced and approved by others and for others? It is not my intention to attempt, here, to provide comprehensive answers to these questions. My more modest aim is to offer some summary examples and identify some promising areas for investigation, contributing thus to formulating a taxonomy of sorts of forms of popular agency in the law.

2. Access, procedure, codification and the agency of the popular classes

The most obvious, and most widely investigated, kind of legal agency available (in certain contexts) to the lower classes is what we might term 'procedural agency'. Precisely because it has been widely investigated, and is well understood, I shall only touch upon it quickly, in the process pointing to some particular areas which might benefit from further investigation in terms of popular agency and class dynamics. It is obvious that the agency of the popular classes in the legal and legislative spheres increases as they gain access to direct participation in the relevant institutions.[21]

No popular input whatsoever in making laws means a complete lack of institutional power, with agency available only as informal pressure or the threat of popular unrest.[22] Some advisory role for a popular assembly brings with it a modicum of empowerment, of course. And a fully sovereign popular assembly represents a high level of empowerment, although there is still much variation in who has the right to make proposals, in where the veto points are, and in who is responsible for them – the

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[21] The story of the progressive institutionalisation of popular agency is very much that told in Ma 2024a: 69-152, in his account of the early stages of *polis* history (and see also Faraguna 2025 on the institutionalisation of citizenship). It is also, implicitly, the focus of much research on the institutional history of ancient Athens (from standard accounts such as Hansen 1991 to debates about the locus of sovereignty such as those cited above, p. 119 n. 6) and of the Hellenistic *polis* (with the ongoing debate about its 'democratic' features, see e.g. recently Grieb 2008; Carlsson 2010; Hamon 2009; Mann and Scholz 2012; Müller 2018; Canevaro and Gray 2018; Ma 2018; 2024a: 153-258; Simonton forthcoming). And studies of Greek law have long held that Athenian law and Greek law more widely were primarily procedural in nature and concerns (i.e. concerned with regulating how to bring a case to court, and who should decide, rather than how individuals should or should not behave), see e.g. Hansen 1975: 10, 14, 21; 1980: 94; Todd and Millett 1990: 5; Todd 1993: 65; 2005: 98; Foxhall and Lewis 1996: 3; Scafuro 1997: 7-9 with note 18; Osborne 1996: 187; Ober 2000: 541; Anderson 2005: 179; Lanni 2006: 87; Gagarin 2008: *passim*; Papakonstantinou 2008: *passim*; Hawke 2011: *passim*. This contention is untenable – most attested Greek laws are in fact primarily concerned with substantive issues of behaviour and conduct, see Harris 2013: 138-74; Harris and Lewis 2022 and below pp. 128-31.

[22] This is already visible in the heavily hierarchical political structures of the *Iliad*, see e.g. van Wees 1992: 31-6; Ruzé 1997: 13-106; Haubold 2000; Hammer 2002.

demos or powerful magistrates, as becomes common in the later Hellenistic period.[23]

Likewise, it matters who runs the courts and administers verdicts. There is no denying that the introduction of *ephesis* (as in Athens, by Solon) and/or of popular courts changes radically the orientation of legal institutions: members of the *demos* who would have felt well out of their comfort zone arguing against members of the elite (i.e. in front of judges resembling the Hesiodic *basileis*) must have felt instead rather at home arguing for their rights before a panel of their peers – familiar and naturally sympathetic to their plight.[24]

Along the same lines, a pertinent question might also be what the effect of the spread, in the context of Hellenistic democracy, of foreign judges might have been in terms of popular procedural agency. Foreign judges were usually elite politicians, part of elite peer-polity networks operating across the world of the Hellenistic *poleis*. As more and more disputes were referred to them to decide, and popular courts accordingly lost some of their prerogatives, this (however rational, efficient, even necessary in the context of small *poleis*) might conceivably have represented a shift in terms of popular power and agency – more citizens of Hellenistic democracies found themselves arguing their case in front of foreign, wealthy, elite characters as opposed to in front of popular courts of their peers. Foreign judges, of course, were more likely to be impartial when it came to adjudicating between conflicting private interests of different individuals, families, social networks. But what about the interests of different socioeconomic groups? How would elite foreign judges behave (as opposed to popular lawcourts) in the context of a debt crisis, for instance? These are questions that need asking.[25]

Contrast this with trials transferred to Athens from the cities of the empire in the fifth century – these were criticised, of course, as a violation of local autonomy, yet at the same time provided an avenue whereby members of the popular classes had the chance to argue their cases in front of a sympathetic popular audience of Athenian judges (rather than in front, at times, of elite fellow citizens). This is the scenario explicitly lamented by the Old Oligarch when he claims that the Athenians judges in these trials always side with the supporters of the Athenian *demos*, i.e. with the popular classes of the allied cities ([Xen.] *Ath. Pol.* 1.16-18; cf. 1.14 and 3.7).[26]

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[23] For a summary discussion of these institutional variants, and the connected developments, with several examples primarily from the Classical and Hellenistic periods (and references to secondary works), see now Canevaro (forthcoming a). For a notable (and notably well-investigated) case study see Fabiani 2012; 2015; 2025.

[24] On *ephesis* see now Pelloso 2016; 2017. I make a case for the Athenian lawcourts as an institutional space hegemonized by the popular classes in Canevaro 2017b.

[25] On foreign judges see in particular Crowther 1992, 1993, 1994, 1995, 2007; Walser 2012: 96–204; Scafuro 2014; Magnetto 2015.

[26] For the class-dimension of the Athenian Empire see Ste. Croix 1954 and now Canevaro-Lewis 2024. The earliest example of such measures is probably *IG* I^3 40, lines 70-76; even earlier examples have been considered the decrees for Phaselis (*IG* I^3 10) – OR 120: 450s?, but see Papazarkadas 2009: 70-71: 420s? (James 2023 has shown, however, that this is not in fact an example of the transfer of trials, but just allowed citizens of Phaselis to

But there is also a kind of procedural popular agency that can be found (or posited) even in contexts of full elite control of both legislative processes and legal institutions and procedures – without any direct popular empowerment. Laws and legal procedures made (allegedly) for the elite and by the elite, as in much research concerned single-mindedly with elite competition (particularly on Archaic Greece and Archaic Greek law), can still create spaces of popular agency.[27] This is another point that requires more study – along the lines of what E.P. Thompson argued for eighteenth-century England. Even in such a scenario, obliterating the historical agency of the masses from our historical narratives and reconstructions cannot but lead to defective readings and interpretations. Much work has been done on the formalisation, institutionalisation, even codification of informal practices into written laws.[28] Such laws were then meant to be valid and enforced regardless of the contingent vested interest of the very elites that enacted the relevant statutes – they were there for all to use, to appeal to.[29] This, historically, created spaces of popular agency, as the elites, as it were, bound themselves by writing down laws and procedures, committed themselves to upholding them, and these could then be creatively exploited even by those whose interests were secondary in their creation. Laws such as Draco's on homicide, as well as early laws about property and mutual obligations were liable to open spaces of legal agency for the masses, whatever their initial purpose, giving them a sense of their rights and prerogatives *under the law*.[30]

3. Institutionalising popular justice: *moicheia*

Popular agency and control are found not only in the level of popular access and decision-making power. They are also found in the values that legal procedures and institutions reflect – in their procedural, substantive, and ideological content. If laws formalise norms and practices that often pre-exist them, whose values, culture, and ideology do they reflect? Do they invariably reflect elite perspectives, or can they fol-

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have their trials heard when in Athens) – and for Erythrai (*IG* I^3 14) – OR 121 and Lambert 2020: 450s, but see Papazarkadas 2009: 70, 78: 420s. For a possible example of Athenian judicial imperialism in the fourth century see RO 39 (*IG* II^2 111), lines 45-9, from 363/2 (an agreement between Athens and Ioulis on Ceos – this is the reading in RO 39 (p. 203) and in Accame 1941: 184, *contra* Cargill 1981: 139-40; Guagliumi 2004: 41. For the positive effects of such measures on the popular classes of the allied cities see Ste. Croix 1954: 38; Zaccarini (forthcoming). See also Faraguna 2023 (and Bresson 2016: 319-21) for the positive effects of such measures in terms of an effectively regulated trade system and, indeed, the rule of law (cf. e.g. Thuc. 1.77.1-2; Isoc. 12.66).

27 See the references at p. 119 n. 5.

28 The key reference on this, now, is Faraguna in Boffo and Faraguna 2021: 101-32 (with exhaustive references to previous works and debates).

29 Again, cf. Forsdyke 2024 and Canevaro 2025b for the fundamental (social and legal) workings of such dynamics.

30 For my understanding of the origin, aims, and effects of Draco's law on homicide, see now Harris and Canevaro 2023: 44-9. For an abundance of Archaic laws whose substantive concerns were liable to be exploited by the popular classes (and for a reading which highlights their agency) see, again, Harris and Lewis 2022.

low at times norms of popular justice and morality? Some recent work has shown that several Athenian statutes prescribe practices that in other societies scholars would define as forms of popular justice.[31] These practices are embedded in the legal system, explicitly authorized by the formal institutions of the city.

The Athenian legal system, then, is a good example of how popular justice can be integrated into formal institutions. Unlike many societies where popular justice exists outside official channels, Athens embedded practices typically associated with informal, popular justice directly into its laws and procedures.[32] A key example are the laws concerning *moicheia*, which I have discussed along these lines elsewhere – I only quickly summarise my argument here.[33] These laws allowed for the immediate killing of seducers caught in the act; permitted public humiliation (e.g. anal penetration with radishes, pubic hair removal); authorized private imprisonment until payment of compensation; and enabled the offended party to inflict any non-lethal punishment in court. For women involved in *moicheia*, the laws prohibited their participation in public cult ceremonies and even allowed citizens to tear off their clothes and beat them (without killing or mutilation).

Such practices, typically associated with extrajudicial popular justice, were explicitly authorized by Athenian law. This incorporation of popular justice into the formal legal system reflects the level of popular control on the Athenian legal and political system. It demonstrates that the formal institutions of the *polis* were, to a significant degree, a manifestation of the customs, values, and beliefs of the masses. The legal system fostered a culture that reflected the worldview and practices of the 'people' of Athens, rather than just the elite.[34]

So, if my first 'form' of popular empowerment was about procedural access to legal institutions, this second 'form' is about the institutionalisation of legal norms and practices: what is actually institutionalised in the city's laws? Whose values? Whose practices? Of what group? Of what class?

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[31] Schmitz 2004; Forsdyke 2012; Canevaro 2017b.

[32] As Forsdyke 2012: 45-6 correctly recognizes, 'the "formal" institutions of the Athenian democracy incorporated various forms of popular justice within the "official" frame'. For definitions and approaches to popular culture and popular justice stressing its 'unofficial', 'unauthorised' dimension, see my discussion in Canevaro 2017b.

[33] Canevaro 2017b: 53-7, with full references.

[34] It is worth noting that in the Gortynian regulations on *moicheia* (Gagarin and Perlman 2016, no. G72, col. II vv. 16-45), on the other hand, the only penalties contemplated are financial, and the only case in which one can deal with a seducer as one pleases is if the seducer is not ransomed within five days. No forms of public humiliation for the woman seem to be contemplated, and as long as the seducer pays what he owes in time, the law forbids any form of 'private' punishment against him, and any form of humiliation. Gortyn, like the other Cretan poleis, was an oligarchy controlled by the elite, in which only a minority of the inhabitants had any representation in the formal institutions of the state (Link 2002; 2008; Chaniotis 2005; see now Seelentag 2015: ch. IV; *pace* Perlman 1992; 2005). Accordingly, laws and legal institutions there reflect the culture and practices of the elite, and show little sign of the forms of popular justice reflected instead in the Athenian legal system (see Canevaro 2017b: 56-7).

4. The substance of the law: popular values, popular interests

Many Greek legal scholars have long held the view that Greek law, in the Archaic period as well as in Classical Athens, was primarily concerned with procedure, rather than with substance.[35] The purpose of legislation and institutionalisation, that is, was to provide legal means of dispute resolution – institutional channels through which disputes could be handled and resolved without recourse to violence, with its wider destabilising effects. This understanding of Greek law has naturally gone hand in hand with readings of Greek law as the product of, and dealing with, elite competition. The point of Greek law was to channel elite competition into institutional fora, defuse it and even institutionalise it.[36]

In more recent years, scholars such as Edward Harris and David Lewis in particular have stressed that, in fact, Greek laws were as concerned, if not more concerned, with regulating behaviour and imposing actual, substantive behavioural and moral standards as they were with bringing disputes to court.[37] The point was not simply to manage conflict, but rather to foster, in all social, economic, and political contexts, behaviour that was considered just and outlaw or penalise behaviour that was considered unjust. In a recent contribution, they have stressed that acknowledging and foregrounding the substantive – behavioural, even moral – dimension of Greek laws naturally leads us to a more nuanced understanding of whom Greek laws were for, and by.[38] Elite competition and elite decision-making become no longer sufficient as the interpretative paradigm for many of the rules that were enacted by the Greek cities, at various points in time. Popular interests, popular values, popular agency – even anti-elite values, in fact – are obvious in their formulation and intended effects. Their very enactment reveals either outright popular legislative authority or, at least, strong popular pressure and elite fears of popular unrest.

The examples are manifold, and I cannot even begin to discuss them comprehensively here, but identifying and analysing them is essential to any attempt to write a history of class dynamics and class struggle in the Greek cities.[39] For now, a few rather obvious examples will suffice. As far as the Archaic period is concerned, there is little denying (and yet it has often been denied), for instance, that initiatives such as Solon's outlawing of enslavement for debts (and not of debt-bondage!) were 'populist' in their orientation. Solon explicitly (fr. 36 West) discusses the problem of the enslavement of Athenians within the framework of the opposition between 'leaders' and *demos*, with the greed and *hybris* of the elite leading to the excessive exploitation of the people. The outcome, Solon explains, can only be *stasis* and *ate* (ruin). Preventing the most extreme effect of that exploitation – enslavement of the poor for

[35] See the references above, p. 123 n. 20.
[36] See the references above, p. 119 n. 5.
[37] Harris 2013; Harris and Lewis 2022; see Ma 2024b who also makes similar points (within a wider argument about Archaic institutionalisation), agreeing with Harris and Lewis 2022.
[38] Harris-Lewis 2022: 253-6.
[39] This is the aim of the new UKRI/ERC project on 'Class Struggle in Ancient Greek Democracy' started in Edinburgh in September 2024.

debts contracted with the rich – is a substantive measure meant to defuse this explosive situation and goes directly to the advantage of the lower classes. If it helps also the 'leaders', it is only indirectly, in avoiding the risk of *stasis* as – here – popular unrest. We can debate on whether such a measure was a 'conquest' of the people or a concession of the elite (through Solon) but, regardless, it is hard to imagine such an initiative without popular pressure and elite fears of popular unrest. Solon represents himself as holding a middle-ground between the powerful and the people, both pressing him to do their bidding. This means powerful political and, therefore, legal agency from both sides. What we have here (as in many other cases) is an initiative explicitly inspired and even demanded by the popular classes, to their particular advantage. Elite-based explanations fall short, there is no way around it.[40]

I could multiply such examples, but, before discussing in some more detail some specific (and, in one case, less obvious) cases, I should mention that an even stronger substantive concern with popular values and (economic and cultural) interests can of course be detected in the laws enacted by full-fledged democracies. Attention to their value- and interest-orientation can contribute to debates about the extent to which Greek democracies were in fact dominated by political and economic elites or, conversely, by different sections of the popular classes (e.g. the urban demos of craftsmen and traders or the naval demos of rowers or fishermen). And it can contribute also to a more granular study of the actual economic and cultural interests of different classes in Greek democracies.

Here, I am thinking of wide-ranging measures such as the Athenian law on *hybris* – this of course covered a number of different attitudes and forms of abusive behaviour, but the prototypical understanding of *hybris* in our sources represents it explicitly as a defective attitude of arrogance, entitlement and over-confidence which characterises the wealthy in particular, in their dealings with their social inferiors.[41] In its Classical understanding, the *hybris* that is sanctioned by the law is a character trait and a pattern of behaviour which is typical of the wealthy, and the fact that this is criminalised is explicitly read by democratic sources as a measure which protects the rights and the honour of the (relatively) weaker in society. Dem. 21.123 makes this

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[40] See Canevaro 2022 for a comprehensive analysis of this poem and Solon's wider action, with full discussion of previous scholarship. See also Loddo 2019 and van Wees 2008 on these issues (and with accounts which are mostly compatible with my own). For the issue of slavery for debt and debt-bondage see Harris 2006: 249-70: Solon banned slavery for debt, not debt bondage. Ma 2024a, 139-42, makes the excellent point that the elite-competition and self-regulation thesis fails as an explanation because of what came at the end of the archaic period, i.e. democracy. As he points out, a system produced wholly out of elite self-regulation would have looked more like Rome than Athens.

[41] The classic studies of *hybris* and the Athenian *hybris* law (with contrasting views) are MacDowell 1976; 1990: 18-22; Fisher 1976; 1979; 1992. See now Cairns 1996; 2020; forthcoming; Canevaro 2018; 2024; Cairns, Canevaro and Lewis 2025: 19-22, for an interpretation which stresses both the dispositional element of *hybris* (and the traditional diagnosis of *hybris*) and other-regarding (in fact, disrespecting) dimension implicit in its bidirectionality.

clear, also underscoring the class dimension of such accusations of *hybris*:

> Yet practices and schemes like this, men of Athens, which involve heaping still more troubles on those who bring just cases to court to protect themselves, are not things that deserve my anger and indignation but should be ignored by the rest of you. Far from it. All of you ought to feel as angry as I do when you take into account the following considerations, that those among you, men of Athens, who are the poorest and most vulnerable are also the most likely to be the victims of casual mistreatment, whereas these disgusting men who have money are the most likely to commit *hybris* and avoid punishment for their actions but retaliate by hiring men to cause trouble. (tr. modified from Harris)[42]

Narrower measures have even clearer 'populist' undertones, and clearly reflect particular concerns of the lower classes. An appreciation of the distinctive economic experiences, labour relations and (oppositional) class identities of the different groups involved in legislation and political decision-making – of how these structured their daily and social lives, and of how these groups were constructed, and constructed themselves, as political and social agents in opposition to one another – can help us make sense of some striking legislative initiatives. Two quick examples are illustrative, before I spend some more time on two particular areas of popular legal agency.

First, the law that made it illegal to insult citizens for working in the marketplace.[43] Members of the elite often attempted to disqualify the citizen credentials of members of the *demos* by pointing to their involvement in crafts and minute commerce, likening them (because of the contiguity of life and economic experience) to slaves.[44] Yet craftsmen, day-workers and small traders formed the backbone of Athenian democracy, and the majority of Assembly attendants. It is significant that this kind of insult was at a certain point outlawed outright – and it is not hard to see whose interests, and whose agency, such an initiative reflects.

Second, the law, attributed to Lycurgus, which provided that 'no woman should go to Eleusis in a carriage, lest the women of the people appear inferior to the rich, and if any woman should be caught doing this, she should pay a fine of six thousand drachmas' ([Plut.] *Vit. X Or*. 12). Sumptuary legislation is often read as a means to

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[42] τοῦτο μέντοι τὸ τοιοῦτον ἔθος καὶ τὸ κατασκεύασμ᾽, ὦ ἄνδρες Ἀθηναῖοι, τὸ τοῖς ὑπὲρ αὑτῶν ἐπεξιοῦσι δικαίως ἔτι πλείω περιιστάναι κακά, οὐκ ἐμοὶ μὲν ἄξιόν ἐστ᾽ ἀγανακτεῖν καὶ βαρέως φέρειν, ὑμῖν δὲ τοῖς ἄλλοις παριδεῖν, πολλοῦ γε καὶ δεῖ, ἀλλὰ πᾶσιν ὁμοίως ὀργιστέον, ἐκλογιζομένοις καὶ θεωροῦσιν ὅτι τοῦ μέν, ὦ ἄνδρες Ἀθηναῖοι, ῥᾳδίως κακῶς παθεῖν ἐγγύταθ᾽ ὑμῶν εἰσιν οἱ πενέστατοι καὶ ἀσθενέστατοι, τοῦ δ᾽ ὑβρίσαι καὶ τοῦ ποιήσαντας μὴ δοῦναι δίκην, ἀλλὰ τοὺς ἀντιπαρέξοντας πράγματα μισθώσασθαι, οἱ βδελυροὶ καὶ χρήματ᾽ ἔχοντές εἰσιν ἐγγυτάτω.

[43] Dem. 57.30; see e.g. MacDowell 1978: 128; Kamen 2020: 106-9 for discussions of this law. For the rationale of such insults (and of similar insults addressed to more affluent citizens because their occupations were somewhat contingent to selling in the *agora*) see now Lewis 2025.

[44] See Canevaro (forthcoming b) for the deployment of such strategies and popular reactions, and see Lewis 2025 for the full range of class slurs and its entanglement with the experience of slavery.

tame intra-elite competition – a mechanism of self-regulation aimed at preventing conflict and the escalation of competition for prestige.[45] Here we see how it could function as a means by which the lower classes curtailed the elite's attemps to secure social distinction through wealth, imposing social hierarchies where such hierarchies did not belong – in the public spaces and contexts of the Athenian *polis*.[46]

4.1 Non-elite fears and elite practices: piracy

When it comes to deciding to whose benefit certain laws actually were, a certain amount of guesswork is inevitable. Yet a heightened attention to social and economic reality can help us detect the particular interests of the lower classes even in measures that have often been read as rather ecumenical in their effects and inspiration. A case in point is the widespread concern in Archaic and Classical legislation with the suppression of piracy, often read as to do exclusively with fostering trade and connected trade-tax state revenues.[47] As Gabrielsen has shown, most piracy was not an exogenous problem in the early Classical Aegean, but an endogenous one, because pirate crews were basically constituted on the old Homeric model of Greek galley-owning aristocrats and their *hetairoi* going on summer plundering raids.[48] That this was deeply unpopular with the *demos* is clear at least as early as the Homeric poems, where we hear e.g. a story about Eupeithes raiding the friendly neighbouring Thesprotians; Eupeithes thereby brought down on his head a furious lynch mob composed of the Ithacan *demos* whose wrath was curbed only by Odysseus' diplomatic skill (Hom. *Od.* 16.424-30).[49] Why is the Ithacan *demos* depicted as being so furious? Homer does not elaborate, but the implication is that Thesprotian reprisals for this injustice would fall, as reprisal raids generally did, on any member of the community of the aggressor, and that one ought not therefore to raid friendly neighbours.[50] In other

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[45] See e.g. Simonton 2017: 76-9 about sumptuary legislation and the moderation of luxury in oligarchic elites, and van Wees 2018 for similar dynamics among Archaic elites (see also Hawke 2011: 180, 181). More generally on such laws see Bernhardt 2003; and also Garland 1985; 1989; Morris 1987: 50-52; Toher 1991; Sourvinou-Inwood 1995; van Wees 2009: 462–63.

[46] And such legislative measures were part and parcel of a broader culture of elites – at least the politically active ones – trying to keep a low profile, materially speaking, lest they incur the enmity of the *demos*. Swaggering about like some Thessalian dynast was not deemed acceptable conduct in democratic Athens; and Demosthenes observed (3.25-6) that Athens' great leaders had aligned their consumption habits with the *ethos* of the political regime, living in modest houses. For readings of Archaic sumptuary legislation as attempts by the common people to foster more egalitarian lifestyles among the elites see e.g. Morris 1987: 50-2; Osborne 1996: 84. To be clear, I do not think that sumptuary laws were never tools of intra-elite self-regulation (cf. Canevaro 2025c) – they clearly were, at times – but rather that in different contexts they could serve a different (more widely egalitarian and demotic) purpose, and sometimes they could serve both purposes at once.

[47] This section reproduces (and partially recasts) Canevaro and Lewis 2024: 196-8.

[48] Gabrielsen 2001; 2014. See also van Wees 2013: 53-68; Lewis 2019.

[49] See van Wees 2008, incidentally a key study calling into question the widespread notion that the *demos* was politically passive in Archaic and Classical Greece.

[50] See e.g., Hom. *Il.* 11.669–97. On the rules of raiding see Jackson 1995; on reprisals see

words, plundering raids by resource-hungry archaic elites generally triggered tit-for-tat violence that mainly fell on innocent members of the *demos*.

The bitterness felt against this antisocial elite practice is volubly expressed in the famous curse inscription from Teos dating to the 470s (OR 102), which curses not just practitioners of such raiding but those who harbour foreign raiders, presumably as elite guest friends (lines 20-21). Here we find legislation aimed at outlawing overtly elite practices hated by the popular masses because their negative effects were felt primarily by them. That their point of view and interests should find expression in a formal document/monument of the *polis* is a sign of popular agency – of direct popular influence on the legislative process and choices of the city – which is confirmed, as we shall see, by other provisions in *Dirae* I.

Piracy was of course outlawed also in democratic Athens, and Athens forcefully combated piracy across the Aegean. The Teian curse in fact dates to the early years of the Delian League (at a time when Teos was probably already a member), and this is probably no coincidence. The construction of the League had the effect of locking most of the Aegean *poleis* into a formal mutual alliance that, at a stroke, placed member states outside the 'fair game' category for elite-led private raiding – again, an obvious benefit for the *demos* of member states, yet simultaneously a curb on the traditional elite practices of violent economic predation.[51] For the average member of the *demos* of this or that Aegean state within the alliance, the fear of a boatload of heavily armed aristocrats and their hangers-on appearing on the local coastline, smashing and burning one's property, and carrying off one's wives and daughters into slavery, was accordingly much diminished – and this cannot have been a change much lamented by members of the *demos* in allied states, however much it spoiled the vicious fun of their violent – and for the most part oligarchically leaning – local elites. This underscores how suppression of piracy was not simply a gain for merchants (or for states that taxed trade): since Greek piracy was often amphibious, its suppression was a major boon for any coastal dweller, and particularly for the lower classes who were the main victims of piracy and ensuing reprisals.

4.2 Lower-class work, lower-class life: grain, wood, and charcoal

A low-hanging fruit for this kind of investigation are of course the several laws (from Athens and from elsewhere) concerned with the grain trade, grain production, and the provision of other foodstuff and staples. Such laws are already attested from a very early period, even though the relevant sources are late and there are doubts about the reality of the measures they mention. Plut. *Sol.* 24.1 discusses a law which prohibits all exports of agricultural produce except for oil. Plutarch notes that these rules changed later, when certain market crops (most notably honey and figs) became standard and renowned Athenian exports. Many a historian and an archaeologist be-

Bravo 1980; Lintott 2004.

[51] Cf. Jackson 1995: 99.

lieve the late-seventh and early-sixth century saw a notable increase in population, leading Athens for the first time towards a condition which will become its standard one for centuries to come: Attica's agricultural production (and grain production in particular) could not sustain the whole of the Athenian population.[52] In such a context, forbidding all exports of agricultural produce would not be meant, generically, just to ensure that enough food was available. It would have been specifically meant to curtain landowners' practices to the advantage of the popular masses, in a volatile context of popular pressure and unrest – grain revolts are common through history, and are also known for ancient Greece, all the way down to the first century AD, as attested for instance for Aspendos in Philostratus' *Life of Apollodorus of Tyana*, 1.15.2-3.[53] Exports need to be forbidden because large landowners will export a portion of their produce abroad, even at times of scarcity, for the joint purpose of drawing a profit from exports and securing better sale prices at home.[54] Significantly, Solon also – we are told – legislated towards fostering crafts and craft production in Attica (Plut. *Sol.* 22.1) as well as towards attracting foreign craftsmen: if Attica's grain production was insufficient, it was necessary not only to make sure that all local produce stayed in Attica, but also to attract foreign trade, which requires having something to sell, and sources of revenue for the common people which can pay for foodstuff.[55] The orientation of these laws is clearly towards the popular masses, and their occasion is popular pressure and unrest.

The sources for these laws of Solon may be late and their reliability less than certain, yet the existence of such measures already in Archaic and early-Classical Greece is confirmed by the epigraphical evidence. The famous curse inscription from Teos dating to the 470s (OR 102)[56], which we have already discussed in connection with piracy, ends with this provision (lines 47-51):

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[52] See e.g. Moreno 2007: 312-13 with discussion of further scholarship.

[53] See Garnsey 1988: 76-7 and Bresson 2016: 394-5.

[54] Cf. recently Osborne 2023: 207-8, who argues for the authenticity of this law on the basis of the mention of the axon number, and discusses connected archaeological evidence (i.e. oil amphoras). See also Bresson 2016: 402-3 for a similar reading (and a similar justification for taking the law seriously). For this law (and discussions of its reliability) see F65 in Ruschenbusch 1966 and Ruschenbusch 2010: 130-1; Garnsey 1987: 110-12; Descat 1993; Stanley 1999: 229-34; Leão and Rhodes 2016: 108-9; Loddo 2018: 681-3; and now Schmitz 2023: 499-503, with abundant references to previous discussion yet proposing a completely different reading of the law (in his interpretation it was harvest contracts that were allowed, with foreigners, only for oil). Papazarkadas 2011: 272-3 discusses how this law conflicts with another mentioned in Schol. Pind. *Nem.*10.64b, which states that only winners at the games were permitted to export olive oil from Athens. He suggests that this law could genuinely be from Solon's time but had likely fallen out of use by the Classical period.

[55] Cf. now Bresson 2016: 403. For this Solonian law see Leão and Rhodes 2016: 94, 96 (56a Ruschenbusch); Schmitz 2023: 864-5; see also Loddo 2015 for this cluster of Solonian laws about economic activity.

[56] On this curse inscription from Teos see now Adak and Thonemann 2022: 95-149, with further references. Also OR 102 and, previously, ML 30 A; *SEG* 31 984–85; *Nomima*, vol. 1, 366-70, no. 104. See Bresson 2016: 393-4 for this measure.

> 'Anyone who prevents the importation of grain into Teian territory by whatever manoeuvre or means, whether by sea or by land, or once the importation has been completed, re-exports it, let him die, along with his family.' (tr. modified from Bresson)[57]

Grain scarcity is addressed in two ways, here: first, the inscription sanctions those who wish to prevent grain imports. Why would anyone? Obviously, it is in the interest of local producers (and primarily of large landowners who have grain to sell) to limit grain imports, securing therefore a certain scarcity which would push grain prices up. And it is to the disadvantage of the lower classes – often employed in crafts or at sea, in such a context – who cannot rely on their own production and need to be able to buy cheap. Second, the inscription appears to forbid re-export (if this is what ἀνωθεοίη means, as one would assume – Adak and Thonemann translate it literally as 'pushes away', but the implication seems clear)[58]. In doing so, our text makes sure that all imported grain is available for the masses to buy and consume, rather than being subject to further trade and speculation from the wealthy. Bresson sensibly suggests that some other law of Teos must have prohibited grain exports altogether.[59]

In the Classical period, similar laws multiply and come to regulate different aspects of the grain trade, expressing an even stronger popular orientation, borne out of direct popular legislative authority – they reflect popular needs, preferences and interests. Ps.-Aristotle's *Economics* (2.2.17) informs us that around 360 BCE all grain exports were prohibited in Selymbria. As for Athens, we have a series of laws from the Classical democracy that all point in the same direction.[60] One law (cited in Lys. 22.6) forbids purchasing more than 50 *phormoi* of grain at a time. The law is clearly meant to prevent wealthy merchants from hoarding grain, thus artificially keeping grain prices high and damaging the popular classes (and particularly the urban masses employed in crafts and trade) who need to buy their grain from the market. It bans economic practices that are directly to the detriment of the popular classes and to the advantage of certain sections of the wealthy. Another law makes it a capital offence

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[57] ὅστις : ἐς γῆν : τὴν Τηΐην : κ/ωλύοι : σῖτον : ἐσάγεσθαι : /ἢ τέχνηι : ἢ μηχανῆι : ἢ κατ/ὰ θάλασσαν : ἢ κατ᾽ ἤπειρο/ν /: ἢ ἐσαχθέντα : ἀνωθεοίη : /ἀπόλλυσθαι : καὶ αὐτὸν : κ/αὶ γένος : τὸ κένο *vac.*

[58] Adak and Thonemann 2022: 115-16. They suggest, in fact, a slightly different scenario (following Bravo 1983: 22-3): 'the aim of the latter clause must be to prevent wealthy grain-producers at Teos from forcing potential grain-importers to depart with their cargo without selling it at Teos, in order to keep local grain-prices high and maximize their own profits'. This interpretation, albeit different from one based on a ban on re-exporting, still involves a demotic concern and elite attempts to keep prices high. Teos' issues with grain provision are still visible in the epigraphical evidence over a century later, in the late fourth century, at the time of the synoecism of Teos and Lebedos by Antigonus the One-Eyed, when the inability of the city to produce sufficient grain is explicitly mentioned in Welles, *RC* 3, lines 72–101, at line 78, see Adak 2021: 237-41.

[59] Bresson 2016: 393-5; see also cf. Moreno 2007: 334.

[60] On these laws, see now particularly Moreno 2007: esp. ch. 5; Bissa 2009: 193-206; Bresson 2016: 393-5; 402-5, with reference to, and discussion of, previous work.

for persons resident in Attica to ship grain anywhere else but the Piraeus (Dem. 34-7; 35.50; Lyc. 1.27). Here a city that depends on grain imports imposes a duty on its residents to ship grain to Athens even when shipping it elsewhere would be more profitable. The needs of Athens' population, and most notably of the urban population, are put above the economic interest of its individual merchants. And, in fact, another law (Arist. *Ath. Pol.* 51.4) orders that, of all grain that is unloaded at Piraeus, two-thirds need to be transported and sold in the *asty.* There are many conflicting interpretations of this law, and of whether it allowed for re-exporting the one-third which stayed at the *agora* of the Piraeus.[61] But what is clear, at least, is that its aim is to make sure that a majority of all grain imported and unloaded in Athens is available to the urban masses of the city itself to buy – to the craftsmen and sellers and producers and petty traders who form the backbone of the classical Athenian democracy and who depend on the market for grain.[62] One further, relevant measure which speaks to popular interests and concerns is found in the famous Law of Agyrrhius from the 370s (RO 26). In the previous arrangement – before the law – the contracts to collect the grain from the taxes were farmed out, but the tax-farmers made their payments in cash. This allowed them to collect the tax in grain and to keep the grain while giving the state cash. This obviously permitted hoarding and could lead to manufactured price increases which would damage the *demos*. The new law required the tax-farmers to pay in grain, which allowed the state to stock-pile grain. This grain was then put on the market in Anthesterion, which was right before the grain harvest when prices were high. By selling the grain at this point, it lowered prices using market mechanisms, thus favouring the lower classes and ensuring the availability of affordable grain.[63] Migeotte has also studied the (mostly Hellenistic) epigraphical evidence for grain funds meant for stock-piling grain and keeping prices down at times of heightened need, avoiding speculation by grain merchants and ensuring the availability of grain for all sections of the population, including the poorer ones.[64]

Such measures were not limited to grain. In an illuminating forthcoming contribution, Alain Bresson has offered a compelling reading of Delos' law on firewood and charcoal from the second half of the third century BCE (*I.Delos* 509) which is fully consistent with a demotic preoccupation.[65] Bresson argues that the law is concerned

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[61] Garnsey 1988: 140; Garland 1987: 89; Gauthier 1981; Bresson 2000: 189-90; Oliver 2007: 25-7.

[62] See Canevaro (forthcoming c) for the centrality of craftsmen and *banausoi* to the democracy, and its class implications.

[63] Harris 2006: 152. Stroud 1998 published and commented on the text, and several alternative readings and interpretations have followed, see in particular Harris 1999; Faraguna 1999; 2010; 2017; Engels 2000; Moreno 2003; Jakab 2007; Stroud 2016; Hansen 2009; and the contributions in Magnetto, Erdas and Carusi 2010.

[64] Migeotte 1991.

[65] Bresson (forthcoming) (a preview of the argument is available at http://youtu.be/uqXKPmEZonQ&t=3544s). For this text see Prêtre 2002: 195-8 and, particularly, the new edition by Chankowski (2012). For previous studies on various aspects, and different interpretations of the need to control the prices of wood and charcoal, see Gauthier 1977; Reger

with keeping prices low on Delos not only by forbidding the re-exporting of firewood and charcoal (which could cause local scarcity and inflate prices, along the lines of the aims of laws banning the re-exporting of grain, see above) but also, effectively, by forbidding any intervention of middlemen in the import and sale of these goods. If merchants importing grain and other staples were much valued by Greek democracies (as the evidence of honorary decrees regularly shows), middlemen profiteering from these imports and artificially raising prices were hated and reviled by the *demos* (cf. Lys. 22 for negative popular attitudes towards such middlemen). It is not hard to see in whose interest such a law was enacted, primarily. And it is worth noting that what is at stake here is not just the needs of the poor to be able to afford firewood and charcoal to keep warm in winter. Delos (like Athens) was a *polis* heavily invested in, and dependant on, craft production, and craftsmen formed (here as in Athens and elsewhere) the backbone of the *demos*.[66] Plentiful and cheap charcoal was necessary for a number of crafts – it was the basic fuel for anything from metalwork to the production of pottery and more. State-directed price-management and the banning of profiteering on goods that were essential to the economic activity and the livelihood of vast (and key) sections of the citizen population, in a regime that was by and large a full-fledged democracy, can hardly be read as anything else but clear evidence of the political and legal agency of the working classes, exercised in their own interest.[67]

One provision of this law (lines 8-11) is particularly revealing. The law states: 'It shall be permissible for importers only in person to sell them and they shall not sell for higher than they have declared to the collectors of the tax of the fiftieth, nor for lower'.[68] This is at first sight puzzling: only the importers themselves can sell – fine. And they cannot sell at a price higher than what they have declared on unloading – fine. But why are they not allowed to sell at a lower price? Bresson draws attention to a similar measure proposed (according to a comic fragment of Alexis' *Cauldron*, 130 K.-A.) in Athens by Aristonicus, to do, however, with fish. Aristonicus was a prominent politician close to Lycurgus (he proposed with him the law on the Little Panathenaia), incidentally also the proposer of a decree for deploying a fleet against pirates. The fragment goes:

> 'There's never been a better legislator than the wealthy Aristonikos. He's currently proposing a law that any fish-seller who offers to sell someone a fish and then lowers the amount, and gives it to him for less than the price he specified initially, is to be hauled off to jail immediately. The hope is that they'll get

1994: 171-6; Descat 2001: 129; Chankowski 2020. For a detailed economic commentary of the inscription (and an interpretation which anticipates Bresson [fortchcoming]) see in particular Bresson 2006 (as well as Bresson 2016: 327-31).

66 Bresson 2016: 238 for a summary of the evidence for Delos' craft production, connected to the issues with wood and charcoal provision.

67 For the religious, political, and economic history of Hellenistic Delos see in recent years Constantakopoulou 2007; 2017; Chankowski 2008; 2023; Collar 2013; Raptopoulos 2014.

68 μηδὲ ἐξέστω πωλεῖν ἀλλ᾽ αὐτοῖς τοῖς / εἰσάγουσιν, μηδὲ πλείονος πωλεῖν ἢ ὅσου ἂν / ἀπογράψωνται πρὸς τοὺς πεντηκοστολό/γους μηδὲ ἐλάσονος.

> scared and be satisfied with a cheap price, or else haul all their fish home in the evening rotten. Then every old woman, old man, or slave who's sent for fish will buy what he's supposed to' (tr. Yonge)

The rationale of such a measure – as understood and presented in a fourth-century text – is clear and is clearly demotic in its orientation.[69] Forbidding traders from changing the price of imported goods in the *agora*, through haggling and bargaining, upwards and even downwards, is an incentive for them to keep their prices low (favouring therefore the buyers in the market). If the price is too high and cannot be modified at the point of sale, there is a risk, if the trader sets too high a price, that the goods may end up rotting unsold (or, in the case of the Delian law, may need to be reloaded, and then unloaded again at a lower price, with the import tax paid twice). Conversely, flexibility in price setting in the *agora* favours sellers and those who buy from a position of strength – in bulk, in large quantities, or with the benefit of experience and inside knowledge – while damaging the weaker members of the community ('every old woman, old man, or the slave sent by his master to buy') who do not have the means to assess or question the price they see imposed upon them, on goods they need.

5. Conclusion

As I come to the end of this preliminary investigation into the entanglement of class and legal agency, I am aware that what I offered is indeed rather little: some case studies of the agency of the popular classes in the law, organised in such a way as to provide a tentative taxonomy of the forms that such agency could take at different points in time and in different *polis* contexts. In summarising this tentative taxonomy, I stress that much of this is revisable and that more research is needed to map fully the forms that popular agency, involvement, and control could and did take in the context of the long history of the Greek city-states.

1) A first scenario is one of full elite control of both legislative processes and legal institutions and procedures. Even under elite control of legislative and legal institutions, excluding the masses from historical narratives and reconstruction tends to lead to flawed interpretations. Elite-crafted laws, once formalized and codified, created spaces for popular agency, allowing non-elites to utilize legal avenues that were not initially intended for their benefit. Elites, bound by their own laws, unintentionally opened opportunities for broader legal engagement. The rule of law, even in its most minimal form, proves beneficial by enabling legal agency for all, not just those by whom and to whose advantage the laws were initially formulated.

2) But full elite control of both legislative processes and legal institutions and procedures is hard to come by, and even Archaic laws (let alone laws of the Classical and Hellenistic periods) are often better understood as a compromise between elite

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[69] On this law and its goals see in particular Davies 2016, as well as Arnott 1996: 363-4 and Lytle 2010: 286-8.

interests and popular interests – Solon, as we have seen, is explicit about this. Popular pressure can lead elites to moderate their claims and their arrogance, and even force the banning of practices such as piracy and enslavement for debts whose detrimental social and economic effects on the masses could engender explosive social unrest. Thus, a second scenario is popular agency as pressure on elite-controlled legislative and legal institutions, which leads to partially demotic outcomes – to some attention to popular demands.

3) A third scenario is one of direct popular legal agency as participation in, or control of, certain legal institutions, be it the Heliaia and the popular courts or the actual legislative bodies of the *polis*. This is a procedural agency of sorts – however it is gained, through *stasis*, as a concession from the elites, or as a compromise – which gives the masses actual decision-making power in the legal sphere. It changes the way verdicts are reached, laws are interpreted, litigants treated, altering the very dynamics of the legal process by changing the demographic compositions of the 'deciders'. This is, of course, the form of popular agency that has been most studied by scholars interested in the emergence, workings and development of Greek democracy.

4) But the 'procedural' agency of the lower classes leads also to substantive legislative outcomes, both in the particular kind of justice that is enshrined in the laws – closer to popular values and practices than to elite habits – and in the very offences, in the very crimes that are criminalised by the laws, in the particular groups that gain – through these laws – an advantage or a disadvantage. This is a fourth scenario – of effective popular 'shaping' of the laws by the lower classes.

It is here, I think, that there is more work to do, and that more can be gained by bringing a new attention to class dynamics to bear on legal analysis – in identifying popular interests and demands in laws that have often been read taking an elite point of view as the default. Without fully aligning ourselves with Callicles (or the Old Oligarch), I believe it is worth taking seriously the basic insight that a regime controlled by the popular classes will tend to legislate primarily to the advantage of the popular classes. If polis institutional forms did converge towards democratic forms, in what John Ma has called the Great Convergence, then we should expect to see that reflected in the laws that Greek democracies enacted – in their underlying values, in the economic interests they protected, in the 'side' they implicitly took. And if, as others have argued, Hellenistic democracy was soon emptied of all genuinely popular control and 'captured' by the elites, that should also be reflected in legislation and legal institutions.[70]

Questions about the rule-of-law credentials of the relevant legal systems will not lose any of their poignancy, but will gain from being recast from a class perspective: there is a difference between a legal and political system geared towards fostering the interests of a particular class (against those of another) but in which legal require-

[70] See above, p. 123 n. 21 for references to the debate on the nature of Hellenistic democracy.

ments and outcomes remain fairly clear and predictable for all (however skewed they might be) and one where the dominant class exercises their power without legal limits, oppressing other social groups arbitrarily and without restraint. These are very Aristotelian questions, and remain very good questions to ask.

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STEFANO FERRUCCI (SIENA)

PER UNA DEFINIZIONE DEL CONFLITTO DI CLASSE NELLA *POLIS* GRECA: OSSERVAZIONI SUL RAPPORTO TRA CLASSE, DELIBERAZIONE E *POLITEIA*. RISPOSTA A MIRKO CANEVARO

1. La centralità delle dinamiche di classe nell'analisi storica merita di essere rilanciata e valorizzata nelle prospettive di studio per il mondo antico. L'impostazione che Mirko Canevaro ha presentato è di grande rilievo, per la chiave di lettura storica privilegiata e per l'attenzione a fornire una cornice metodologica meditata e aggiornata. Il dialogo con le scienze sociali è decisivo per riflettere sulla nozione stessa di classe e sulle forme specifiche che essa assume nel mondo greco, nelle relazioni tra gruppi sociali diversi e tra i loro interessi.[1] Altrettanto imprescindibile, naturalmente, è l'attenta analisi delle modalità con cui le fonti antiche richiamano i rapporti e i conflitti tra gruppi sociali distinti e di norma contrapposti, spesso – ma non sempre – in modo binario. Santo Mazzarino nel *Pensiero Storico Classico*, circa 60 anni fa, aveva già affermato che nel pensiero storico greco di età classica e in particolare nel IV secolo il conflitto tra ricchi e poveri costituiva "il" tema dominante nella rappresentazione del presente delle *poleis* e nell'interpretazione del loro passato, un tema che Mazzarino vedeva strettamente connesso, in particolare all'interno della scuola socratica, con quello della giustizia e quindi delle leggi.[2]

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[1] Alla ricca e aggiornata serie di riferimenti richiamati da Canevaro vorrei solo aggiungere, per il versante italiano e in relazione a temi di storia politica e sociale più che legale, Mazzarino (cfr. nota successiva); Musti 1981; 1986; 1995. Sull'uso di prospettive marxiste, spesso assai poco omogenee, nell'analisi della democrazia e in particolare nello studio dell'*Athenaion politeia* dello pseudo-Senofonte cfr. Ferrucci 2020, 269-279 e nn. 52, 72; Müller 2020, 237-256.

[2] Mazzarino 1963, I, 471-472 («Mai nessuna epoca, nella storia della cultura antica, parlò di "ricchezze" e "povertà" con l'insistenza tenace con cui ne discuteva il 4° secolo a.C.»), incentrato sulla produzione storiografica più che giuridica ma fondamentale per mettere in luce come, almeno nel IV secolo a.C. e in relazione alla dialettica tra storiografia tucididea ed elaborazione socratica, il mondo greco avesse piena consapevolezza della centralità della dinamica del rapporto di classe per gli eventi storici e politico-costituzionali; cfr. anche pp. 438 ss. per il tema del conflitto di classe in Aristotele.

Canevaro ha delineato in modo insieme chiaro e articolato, nella prima parte del suo intervento, le fondamenta di questa prospettiva e alcune necessarie cautele per non riproporre schemi di lettura superati o rivelatisi poco produttivi e ha illustrato su basi molto solide come interagire con quelle categorie, come aggiornarle e, eventualmente, ripensarne alcuni tratti. L'uso di categorie marxiane non dovrebbe spaventare lo storico, anche lo storico del diritto. Mi sembra che il lavoro di Canevaro abbia ben messo in luce come una premessa indispensabile riguardi il valore euristico del concetto di classe e come esso si applichi al mondo greco. In questo senso, sembra necessario che la nozione stessa di classe sia da inquadrare in modo specifico nel paesaggio sociale greco, in particolar modo in relazione alla complessa realtà sociale dell'Atene classica. L'approccio "olistico" allo studio delle relazioni di classe – e delle implicazioni sul terreno della storia del diritto – proposto da Canevaro, così come le sue perplessità verso rappresentazioni esclusivamente elitarie delle dinamiche politiche, legislative e giudiziarie, che finiscono per accogliere in modo molto parziale la complessità delle interazioni tra classi, mi sembrano costituire una preziosa indicazione sulla strada da percorrere.

2. Il primo spunto che vorrei introdurre riguarda la questione del legame tra classi sociali e forme di *politeia*, un legame molto chiaramente presente e anzi fondante nelle riflessioni del mondo greco, soprattutto (ma non solo) in Aristotele. Parto dal problema della modalità di individuazione delle classi. Le opzioni fornite dalle discussioni greche sono, in fondo, limitate. Come si applicano la nozione flessibile di classe e il suo riconoscimento come un "fatto storico" alle formulazioni e prospettive che le fonti greche ci offrono? La prima è più prevedibile distinzione è quella dicotomica tra πλούσιοι / πένητες, affiancata con le formulazioni alternative (εὔποροι/ ἄποροι; γνώριμοι/δῆμος; χρηστοί /πονηροί; ἄριστοι *o* βέλτιστοι / χείρους eccetera), che possono grosso modo corrispondere all'opposizione tra *leisure class / working class*, o *upper* e *lower class*, classi dominanti e classi subalterne.[3] Ciascuna delle coppie, tanto greche quanto moderne, comporta uno scarto non irrilevante di *focus,* ma mantiene, alla base, la centralità di un'opposizione binaria (almeno tra i liberi). È lo schema adottato dal Vecchio Oligarca, come è noto, ma si trova frequentemente in Aristotele e in un'infinità di ricorrenze tra storiografia, oratoria, teatro. Una visione più articolata tuttavia introduceva una terza classe, quella dei μέσοι, a partire dalle *Supplici* di Euripide;[4] una categoria di cittadini "di mezzo" era implicitamente

[3] La qualificazione aristotelica sembra suggerire che con ἄποροι si connotino coloro che dovevano lavorare per vivere, anche se, da un punto di vista patrimoniale, non necessariamente poveri, cfr. Accattino 2013, 176-182.

[4] Eur. *Suppl.* 238-245; cfr. Musti 1995, 44-7 e 374 n. 10, un'immagine evanescente dei *mesoi* nel V secolo a favore del modello della contrapposizione sociale binaria, si ritrova invece, ad esempio, in Vannier 1984; Carter 1986, 88-98; l'oratoria giudiziaria ateniese mostra profili patrimoniali di cittadini ateniesi che sembrerebbero rientrare nel novero dei *mesoi*, benestanti ma non di livello liturgico (assumendo che questo sia un confine plausibile per indicare gli *euporoi*, come in Arist. *Pol*. IV 1291a 33-34), cfr. ad es., per la testimonianza di

presupposta da Pericle nell'*epitafio*, ad esempio quando richiamava le "belle case private", quelle connotate dal livello di εὐπρέπεια (2. 38. 1), che è più della sussistenza ma meno della σεμνότης o πολυτέλεια delle case dei ricchi che scandalizzavano Demostene nella *Terza olintiaca*, contrapposte a un livellamento delle abitazioni dei *leaders* ateniesi dell'inizio del V secolo, la cui storicità appare peraltro assai dubbia.[5] Questi e altri sollievi dalla fatica erano disponibili per gli Ateniesi: non garantiti a tutti, ma, in astratto, aspirazione legittima, ideologicamente non preclusa e graduata secondo le diverse condizioni economiche e sociali dei cittadini.

Nell'elaborazione di una sociologia del benessere nella comunità, i testi più vicini alle teorie democratiche includono diverse realtà sociali che hanno accesso a quel benessere e articolano in modo più complesso la realtà sociale della *polis* rispetto alla contrapposizione binaria. Anche Aristotele evocava i *mesoi* come la salvezza della città, ma non li poneva al centro della democrazia *teleutaia* – al contrario del Teseo di Euripide e, direi, di Pericle –.[6] La ricerca del *cui prodest* delle leggi democratiche ad Atene potrebbe dunque rivelarsi preziosa per cogliere la dinamica (ed eventualmente le oscillazioni) del rapporto tra i *mesoi* e i *penetes*, nel delineare i confini della "lower class" e della sua *agency*, nel precisarne i rapporti con la *middle class* (se solidali, antagonistici o, come sembra più plausibile, variabili) mettendone in luce gli obiettivi specifici, anche in relazione alle diverse sotto-categorie collegate a occupazioni e interessi particolari. L'associazione tra *politeiai* e interessi di classe riprende, indubbiamente, un'impostazione del problema elaborata dal pensiero politico greco, in particolare da Aristotele.[7] Se l'opposizione non è binaria, la ricerca esclusiva del soddisfacimento di interessi specifici e propri di una sola parte, di una sola classe, non può tuttavia costruirsi in modo altrettanto radicale e totalizzante rispetto a uno scontro diretto e immediato tra ricchi e poveri in cui chi vince prende tutto – anche sotto il profilo legislativo e istituzionale. La complessità ateniese credo suggerisca la

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Iseo, Ferrucci 1998, 92-5, 100-2; 2005, 19-23, 38-43.

5 Dem. III 25-26; XXIII 206; XIII 29. Per un inquadramento sul significato sociale del richiamo alle dimore private e l'elaborazione di un *topos* egualitario nei passi di Demostene cfr. Ferrucci 1996.

6 Sul ruolo di un richiamo alla classe media in Pericle e, in generale, nei testi che rimandano a una «teoria democratica della democrazia» cfr. Musti 1985; 1995, 3 ss., 195 ss. per una lettura che si discosta da quella di Hansen 1974; 2003, 142 ss. Aristotele, *Pol.* IV 11, 1295b 39 – 1296a 16, indicava come nelle città grandi i *mesoi* fossero presenti in misura quantitativamente rilevante e concorressero ad abbassare il tasso di conflittualità nella *polis*, aggiungendo che le democrazie sono più sicure e durature delle oligarchie *grazie al ceto medio* (διὰ τοὺς μέσους); cfr. Besso 2014, 255-9; Gastaldi 2024, 75-7. I *mesoi* sono definiti da Aristotele come terza componente accanto a *euporoi* e *aporoi* (*Pol*. IV 3, 1289b27-38): la loro fisionomia sociale è anzitutto di carattere economico-patrimoniale ma si caratterizza poi per le attività svolte e per il fatto di dover lavorare per vivere; cfr. per un eccellente inquadramento del passo Pezzoli 2014, 178-181; per le implicazioni sulla classificazione delle *politeiai* Bertelli 2018, 94-6. La questione più rilevante è se i *mesoi* siano socialmente assimilabili al *demos*, anche se economicamente ben distinti dai poveri in senso stretto.

7 Come notato da Canevaro, i passi più espliciti in tal senso sono Aristotele, *Politica* 3.7-8,1279a 22-1280a 6; 4.4,1291b 11-37; 4.12,1296b 24-30; 6.1,1316a 22-28.

necessità di articolare il legame tra atti legislativi e promotori e/o beneficiari sociali in una forma capace di dar conto di quella complessità. Aristotele introduce i *mesoi* come elemento equilibratore delle dinamiche conflittuali della *polis* e questo anche mi sembra possa essere un aspetto da approfondire in relazione al *class struggle*: davvero la classe media si astiene da comportamenti conflittuali? O non li trasferisce su piani diversi e meno immediatamente percepibili?

A questa si affianca una questione di carattere più generale, in rapporto alle prospettive ideologiche presenti nelle fonti: qual è lo spettro entro il quale si colloca, nel rapporto con la posizione dominante di un gruppo sociale, l'idea dell'"interesse comune" (*koinon*)? E quale, sia a livello dogmatico che nella prassi legislativa ateniese, il confine tra interventi legislativi per l'intera comunità e interventi diretti a soddisfare i bisogni di una sua componente particolare?

3. Provo ad approfondire il punto. Un aspetto che distingue le caratterizzazioni delle democrazie provenienti dai suoi sostenitori da quelle degli oppositori risiede nella capacità dei regimi democratici di far convivere e partecipare gruppi diversi, per estrazione sociale, cultura, ricchezza, mezzi, persino stili di vita, assicurando a tutti un riconoscimento paritario, certamente sul piano formale ma, entro i limiti consentiti dalle circostanze, anche sostanziale. Le leggi svolgono da questo punto di vista un ruolo decisivo: per menzionare ancora l'*epitafio*: κατὰ τοὺς νόμους … πᾶσι τὸ ἴσον. La sovranità delle leggi è un principio che, una volta introdotto in una comunità politica, si auto-alimenta, espandendosi entro la società a coinvolgere progressivamente gruppi, settori, classi originariamente esclusi: è una premessa di grande valore per inquadrare il tema.[8] L'estensione dello stato di diritto, del *rule of law*, è dunque un processo che porta necessariamente alla democrazia? Sul piano astratto si potrebbe rispondere affermativamente e certo le democrazie antiche, quella ateniese in testa, lo pensavano, come attestano le affermazioni di Eschine e Licurgo, una celebrazione dello stato di diritto rivendicato nel suo luogo d'elezione, il tribunale popolare, combinando argomenti politici, giuridici, procedurali.[9] Anche gli Spartani, non c'è dubbio, ritenevano il loro stato ben governato e la loro *eunomia* prevedeva certo la stretta osservanza delle leggi.[10] Il crinale passa non tanto attraverso il rispetto del *nomos*, quanto attraverso la disomogeneità sociale di coloro che sono chiamati ad osservarlo – ma anche a stabilirlo -, indipendentemente dalla loro identità sociale. Il tema della società di ὅμοιοι è infatti centrale nelle voci meno favorevoli quando non esplicitamente contrarie alla democrazia (dal Vecchio Oligarca a Platone ad Aristotele, sia pure con importanti scarti al loro interno) mentre non è una condizione richiesta dalle teorizzazioni democratiche, nelle quali vale semmai la valorizzazione di ciò che rende tutte le diverse componenti della società dei cittadini comunque riconoscibili sotto la comune designazione di *politai*. Nella democrazia ateniese sono Ἀθηναῖοι a pieno

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8 Musti 1995, 148-172; Harris 2006 e 2013.
9 Aeschin. *c. Tim.* [I], 4-6 e Lyc. *c. Leocr.* [I] 4.
10 Sia sufficiente richiamare Erodoto 7. 102-4 e la formulazione legata al *nomos despotes*.

titolo tutti i *politai*, dai più ricchi ai più poveri e, anzi, la democrazia si qualifica per aver sottratto a censo e rango la funzione di selezionare l'accesso alle funzioni principali (deliberativa, giudiziaria e magistratuale secondo i *tria moira* aristotelici).[11] La convinzione che ogni classe imponesse, quando in posizione di forza, i propri interessi – i ricchi nelle oligarchie, il *demos* e i poveri nelle democrazia; ancora i ricchi, ma con il beneplacito dei poveri ricondotti a una condizione di dipendenza anzitutto (ma non solo) economica nei fautori della *patrios politeia*[12] – allontana la possibilità che la diversificazione sociale che connota la democrazia, in forme e con rapporti di forza mutevoli nel tempo, possa riflettersi o persino guidare le pratiche legislative e le stessa elaborazione dell'idea di giustizia verso un punto di mediazione capace di soddisfare gli esponenti di quella diversità.

Difficile negare che, come nota Canevaro, i rimproveri dei fautori di un sistema politico ai propri avversari sono spesso speculari: i democratici accusano le oligarchie di stabilire leggi nell'interesse dei ricchi, gli oligarchici la democrazia di favorire, con le leggi, i poveri. Esemplificazioni della casistica nei due sensi sono facili da trovare. Mi sembra che ci sia però, da questo punto di vista, un distinguo necessario. L'oligarchia disconosce intenzionalmente e formalmente potere e diritti ai membri del *demos* e ai poveri: per sua natura, esclude.[13] Il Vecchio Oligarca intendeva l'*eunomia* come un asservimento del *demos* ai *beltistoi*; una condizione che si può confrontare con la descrizione che nell'*Athenaion Politeia* Aristotele attribuiva alla condizione dell'Atene pre-soloniana: una *politeia* rigidamente oligarchica con feroce esercizio della posizione dominante dei ricchi verso i poveri.[14] Mi sembra che, nel valutare le legislazioni delle *poleis* greche in relazione alla *agency* delle classi sociali, si debba distinguere tra governi oligarchici e democratici: fermo restando che in entrambe le *politeiai*, come indica anche Aristotele, si può riscontrare un pieno rispetto della sovranità delle leggi,

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[11] Altro problema è, naturalmente, quello dell'influenza che ciascun gruppo o membro della collettività riesce effettivamente ad esercitare: su un piano generale risposte convincenti sono state proposte da Canevaro 2017a; 2023; cfr. anche Barbato 2020, Esu 2024. Il riconoscimento degli elementi culturali che definiscono il *demos* e il loro rapporto con un sistema di valori aristocratico è un aspetto rilevante della questione e proprio Canevaro ha portato i maggiori contributi recenti sul tema – e su quello, per molti aspetti connesso, della mobilità sociale: cfr. ad es. Canevaro 2017b e 2022.

[12] Sulla formalizzazione aristotelica (*Ath. pol.* 28. 5; 29. 3; 30-32) che indica la nascita di un 'terzo polo' moderato che supera il bipolarismo democrazia/oligarchia cfr. Musti 1995, 176-184.

[13] La formulazione più chiara del carattere inclusivo della democrazia ed esclusivo dell'oligarchia è nel discorso di Atenagora, Thuc. 6. 39. 1-2, sul quale cfr. Musti 1995, 349 n. 2; Mosconi 2022, 74-85, 132-45; per una contestualizzazione del discorso di Atenagora nel quadro delle vicende siracusane degli anni della guerra del Peloponneso cfr. Giangiulio 2015, 89-95; Intrieri 2021, 92-8.

[14] Arist. *Ath. Pol.* 2. 2, 3. La sovrapposizione dei membri del *demos* con gli schiavi è motivo ricorrente, declinato in modo assai diverso da Aristotele, che non la approvava nel passo appena citato, e, ad esempio, nel Vecchio Oligarca, che la trovava invece desiderabile (Ps. Xen., *Ath. Pol.* 1. 8-9); i sostenitori della democrazia giustificavano la loro rivendicazione della più alta forma di libertà associata alla loro *politeia* con la capacità di assegnare a tutti cittadini facoltà che li distinguessero dagli schiavi, Arist. *Pol.* VI 2, 1317a 40-b 17.

la centralità del gruppo al potere e dei suoi interessi è strutturalmente prevista nelle oligarchie, assai meno definita nelle democrazie, nelle quali quel gruppo di potere non è così facilmente identificabile, soprattutto in ragione della sua appartenenza di classe, e i rapporti di forza possono mutare senza incrinare la stabilità istituzionale. Le oligarchie sono unidirezionali in questo senso, la *agency* è tutta rivolta ai membri del gruppo dominante e ai loro interessi specifici. In democrazia la *agency* delle classi socialmente (ma non politicamente) inferiori è certamente in primo piano, ma non direi che il potere si accentri in modo esclusivo su di esse.[15]

La democrazia introduce un cambio di paradigma che origina dalla definizione specifica del principio di uguaglianza insito nella cittadinanza. Per tornare alla fondamentale formulazione periclea dell'*Epitafio*, nel *pasi to ison*, il *pasi* non ha connotazione di classe, è inclusivo e comprende anche i ricchi, gli aristocratici, persino gli oligarchici. Non solo sul piano delle tutele e dei diritti: anche su quello della *agency* politica e del potere, come l'autore dei *Dissoi logoi* (7. 5-6), non senza un certo gusto paradossale, indicava nel ritenere poco saggia l'attribuzione delle cariche per sorteggio ad Atene, perché avrebbe potuto premiare anche un avversario della democrazia.

4. Passo a qualche considerazione sui casi specifici presentati da Canevaro. La casistica è ricca e molto ben selezionata e mi limiterò ad alcune annotazioni a margine. La legge richiamata dalla *contro Eubulide* sulle sanzioni per chi offende lavoratrici o lavoratori nell'*agora* è squisitamente democratica, nel senso della protezione di una classe debole a partire dalla sua *timè*.[16] Una legge che include gli *agoraioi* nella tutela della loro reputazione sociale, senza escludere per questo altri. Si può fare un confronto con la legge di Tebe richiamata da Aristotele nel terzo libro della *Politica*, con la quale si esclude dalla partecipazione alle *archai* chi abbia svolto commerci nell'*agorà* nel decennio precedente: ἐν Θήβαις δὲ νόμος ἦν τὸν διὰ δέκα ἐτῶν μὴ ἀπεσχημένον τῆς ἀγορᾶς μὴ μετέχειν ἀρχῆς.[17] La legge democratica difende i lavoratori dell'agorà e non richiede alle altre classi se non di rispettare la tutela imposta. Il suo valore, tanto concreto quanto simbolico, è chiaro: gli *agoraioi* sono inclusi a pieno titolo nella cittadinanza e la loro *timè* è protetta. A Tebe chi ha frequentato l'agorà è al contrario escluso, anche se ricco. Se anche, come ha suggerito Lupi in un bell'articolo di qualche anno fa, dietro la norma si nascondesse un rito di passaggio nella *antropopoiesi* dei Tebani, sulla falsariga di quella spartana, la prescrizione

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[15] Non mi dilungo qui sull'esempio di Callicle usato da Canevaro (ne ho scritto in Ferrucci 2013, 43 ss), ma mi limito a osservare che, se le posizioni espresse nel *Gorgia* hanno certo una coloritura di classe, esse avvengono dentro il quadro della democrazia e distinguono in modo chiaro la posizione di Callicle rispetto a quella del Vecchio Oligarca: se pur da avversario e antagonista di classe, Callicle partecipa al gioco democratico e così facendo ne avalla la legittimità.

[16] Dem. 57. 30; cfr. sulla legge Loddo 2018; Poddighe-Loddo 2022, 116-20.

[17] Arist. *Pol*. 3. 5, 1278a 26-27. Sulla legge, oltre al commento di Accattino 2013, 166-70, cfr. Moggi 2017, 405-22; si veda anche Arist. *Pol*. V 6, 1305b 2-18 sul caso di Massalia, con l'ottimo commento di De Luna 2016, 356-8.

legislativa si rafforza con una pratica culturale e formativa incentrata sul biasimo verso l'agorà e le attività che vi si svolgono.[18] Aristotele menziona la legge di Tebe all'interno di una discussione su quale posto i lavoratori devono avere nella *politeia*: quanto ampia è la protezione della loro posizione? Per il filosofo, un'aristocrazia esclude dalla piena cittadinanza tanto *banausoi* quanto *thetes*; un'oligarchia esclude i poveri (cioè, i *thetes*), ma non sempre i *banausoi*, perché i *technitai* possono anche essere ricchi; «in alcune *politeiai*» (certamente la democratica), è necessario che siano cittadini *banausoi* e *thetes* – ma, naturalmente, non *solo* loro. L'oligarchia nega, in forme e misure certo molte diverse, la cittadinanza ai poveri; la democrazia non fa lo stesso con i ricchi (al massimo, può renderne alcuni *atimoi*, come lamenta il Vecchio Oligarca). Che *demos* non significhi la stessa cosa per gli oligarchici e per i democratici è fatto ben noto: per questi ultimi, comprende, almeno formalmente, anche i "nemici di classe" del popolo. In democrazia quanti sono pari giuridicamente non sono uguali, omogenei, ὅμοιοι, dal punto di vista sociale ed economico. Ma hanno gli stessi diritti, il che significa che i loro interessi diversi hanno la stessa legittimità, almeno come principio generale.

5. Sulla *Procedural agency* sono d'accordo sia nella presentazione generale di Canevaro che su quanto dice a proposito della *ephesis*;[19] segnalo tuttavia l'affermazione dell'*Athenaion politeia* aristotelica rispetto al fatto che Solone riconobbe ai teti e alla massa "solo" il diritto di *ekklesiazein kai dikazein*. Quel "solo" ha un forte significato e mostra come le procedure prendono un valore politico (e giuridico) pregnante a fronte delle condizioni sostanziali cui si accompagnano: se il potere è in mano ai magistrati, reclutati con requisiti censitari e di rango che escludono le classi inferiori, la procedura di partecipazione all'assemblea e tribunali ha impatto politicamente limitato sulla collettività. I tre provvedimenti *demotikotatoi* di Solone (abolizione della schiavitù per debiti, la possibilità per chiunque volesse di chiedere giustizia contro chi gli avesse fatto ingiustizia e la *ephesis*) vanno dalla parte del *demos* ed esprimono principi certo condivisi dalla cultura giuridica della democrazia ateniese classica, ma non producono perciò una democrazia, al massimo ne costituiscono un presupposto (la ἀρχὴ τῆς δημοκρατίας, come appunto la definisce Aristotele, è, al più, una premessa alla democrazia).[20]

Sulla caratterizzazione dei tribunali popolari come luogo istituzionale egemonizzato dalle classi popolari[21] credo si possano approfondire gli aspetti di una dialettica

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[18] Lupi 1996; le sue posizioni sono discusse in Moggi 2017, 401-2.

[19] Un eventuale passo ulteriore rispetto al tema giudiziario sarebbe nello stabilire, all'interno del regime democratico, la correlazione tra l'identità dei "pari" in una *politeia* con l'appartenenza di classe: i *politai* sono formalmente "pari" anche se distribuiti in realtà sociali disomogenee. Lo stesso *demos,* inteso in senso civico, non coincide con un'unica categoria sociale né si presenta come unità sociale uniforme.

[20] Arist. *Ath. pol*. 7. 3 (τοῖς δὲ τὸ θητικὸν τελοῦσιν ἐκκλησίας καὶ δικαστηρίων μετέδωκε μόνον.); 9. 1

[21] Canevaro 2017b.

dei valori 'popolari' intesi come specifici di una classe e di quelli assunti come comuni alla collettività e ridefiniti nella negoziazione delle posizioni legate ai singoli casi discussi. Da questo punto di vista, ammetto che l'uso della nozione di giustizia popolare che Canevaro propone mi sembra richieda di essere meglio precisata. Mi chiedo se intravedere una connotazione antropologicamente distinta tra giustizia delle élite e giustizia popolare nelle forme di spettacolarizzazione e condivisione pubblica delle sanzioni per alcuni crimini non sottovaluti un'evoluzione della sensibilità giuridica cui partecipano, come destinatari se non come promotori, anche le classi inferiori, quando sono coinvolte attivamente nell'amministrazione della giustizia, tra aspetti tradizionali e riformulazioni o risemantizzazioni successive. In relazione all'esempio delle leggi sull'adulterio, il caso dell'adulterio di Ares e Afrodite cantato nel libro VIII dell'*Odissea*, che non manca di 'spettacolarizzare' la procedura, si inserisce nella cultura giuridica e insieme sociale che i poemi esprimono e che mi risulta difficile considerare non elitaria. Su un piano più propriamente storico-legale, che le sanzioni pecuniarie presenti nel codice di Gortina siano l'espressione di una realtà oligarchica mentre la presenza giuridicamente riconosciuta di sanzioni fisiche, ad Atene, si denoti come un tratto popolare (in senso specificamente sociale) è una conclusione necessaria? E, se anche così fosse, mi chiedo se la nozione di *popular justice* va intesa come un *empowerment* dei deboli e dei poveri, o non piuttosto come concessione a una moralità considerata 'popolare', con una riduzione della ricerca di giustizia in una dimensione di *circenses* idonea a blandire il *demos*. Ho qui forzato la questione allo scopo di suggerire una possibile problematizzazione del tema, che potrebbe essere utile definire in maniera più articolata: che il sistema giudiziario ateniese sia organizzato intorno alla piena legittimazione dei valori che i *politai* portano con sé è un dato che pare anche a me caratteristico e non discutibile, a partire dalla considerazione che sono i membri del *demos* a comporre le giurie. L'individuazione di componenti specifici per i valori che sarebbero propri ed esclusivi del *demos* inteso come classe sociale richiede tuttavia, mi sembra, di essere svolta con molta attenzione a non estendere più del lecito l'assimilazione tra appartenenza sociale ed elaborazione di valori specifici e propri di un gruppo.

6. La ricerca di altre leggi da prendere in considerazioni in rapporto all'impostazione data da Canevaro alla sua ricerca sarebbe qui futile: il campo di applicazione delle sue premesse metodologiche è evidentemente enorme e una raccolta sempre più ampia di esemplificazioni costituirà, immagino, uno degli obiettivi della ricerca sua e del suo gruppo di lavoro. Più come curiosità personale richiamo alcuni esempi che a me sembrano possibili fertili sviluppi di approfondimenti, tra i molti possibili. Oltre a casi forse più prevedibili, dalla legge periclea sulla cittadinanza ai provvedimenti a favore di orfani e vedove di guerra, spesso ricondotti a forme di assistenzialismo di stampo democratico ma presenti, secondo Aristotele, già nella formulazione dell'*ariste politeia* proposta da Ippodamo di Mileto, che credo trarrebbero nuova luce interpretativa se analizzati secondo la prospettiva esposta da Canevaro, richiamo, in conclusione,

la legge sulle acque per la concia delle pelli, recentemente oggetto di un importante commento di Roberta Fabiani: se pur connessa con motivazioni di ordine sacrale,[22] la legge presenta importanti ricadute di ordine sociale nell'organizzazione dell'attività lavorativa della concia per l'introduzione di divieti topografici e ambientali che ne limitano la diffusione, segnalando un conflitto tra aree della città occupate da edifici cultuali e la presenza di attività produttive invasive. Gli aspetti cultuali e religiosi sono stati molto ben evidenziati dal lavoro della Fabiani, ma le implicazioni sociali mi sembra possano essere ulteriormente approfonditi, nella direzione indicata da Canevaro.

Queste suggestioni sono solo una piccola testimonianza della ricchezza della proposta di Canevaro. La prospettiva che ci ha esposto è di sicura rilevanza e non c'è da dubitare che apporterà risultati di rilievo nel ridefinire i contorni del rapporto tra legiferazione e conflitto di classe.

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REISEGELD, LÖSEGELD, KREDIT. ZU DEN FINANZTRANSAKTIONEN IN DEMOSTHENES 53 (GEGEN NIKOSTRATOS)*

Abstract: The speech against Nicostratus from the *Corpus Demosthenicum* (or. 53) is remarkable in many respects: in his plea, Apollodorus seems to deemphasise the actual topic, a complaint (ἀπογραφή) by the public debtor Arethusius regarding the latter's disputed ownership of a slave. In the first part of the speech, he focuses on his friendship with Nicostratus, Arethusius' brother, which has now broken down. In his speech, Apollodoros outlines several financial transactions that he had entered in order to be able to lend money to Nicostratus. Nicostratus had been captured and sold while travelling and had only been able to buy his way out of captivity with the help of anonymous 'strangers' (ξένοι); he was now being pressured by the ξένοι to repay the sum they had lent him. The aim of this study is to carry out a dogmatic analysis of the two loans that Nikostratos receives from Apollodoros. Both legal transactions are conceived according to the model of the payment order (*delegatio solvendi*) with the involvement of third parties. During this exegesis, it is also necessary to assess the credibility of the account (whether by Apollodoros, who quotes Nikostratos, or by Nikostratos) and to contextualise the consequences threatening the ξένοι in relation to defaulting loan debtors in terms of legal history.

Keywords: loan of money (δάνειον, ἔρανος), *delegatio solvendi*, ransom money, *redemptio ab hostibus*

* Mein Dank gilt Michele Faraguna (Milano), sowohl für die Veranstaltung des ebenso ertragreichen wie schönen Symposions in Mailand im September 2024, als auch für sein gewichtiges *responsum* zu diesem Beitrag, sowie allen Teilnehmerinnen und Teilnehmern an der Diskussion meines Vortrags vom 2. September 2024. Wichtige Anregungen habe ich auch aus einer Diskussion mit Alberto Maffi (Milano) erhalten, dem ich herzlich dafür danken möchte. Weiters verpflichtet bin ich Frau Yaiza Araque Moreno (Madrid), welche mir dankenswerterweise ihre noch unpublizierte Dissertation aus dem Jahr 2024 zugänglich gemacht hat, und meinem Mitarbeiter Herrn Dr. Michael Binder (Wien) für die Diskussion der Schriftfassung meines Vortrags.

Einleitung

Es ist eine in der Forschung weit verbreitete Ansicht, dass die Rede gegen Nikostratos, welche im *Corpus Demosthenicum* mit der Nummer 53 versehen ist, zu den stilistisch und kompositorisch weniger eindrucksvollen Zeugnissen der attischen *orationes* gehört[1]. Schon seit dem Altertum gilt die Rede als pseudo-demosthenisch und wird – im Verbund mit der im *Corpus* vorangereihten Rede gegen Kallippos (Dem. 52) – den von Apollodoros verfassten Reden zugerechnet[2].

Als besonders auffällig ist vor allem die Tatsache herauszustreichen, dass der Redner – Apollodoros[3], der Sohn des eben verstorbenen Bankiers Pasion[4] – das eigentliche Thema seines Rechtsstreites nur kursorisch behandelt[5]: Diesem liegt eine Anzeige (ἀπογραφή) des Apollodoros zugrunde[6], dass zwei Sklaven, welche Nikostratos und sein Bruder Deinon als ihnen gehörig deklariert haben, in Wirklichkeit beider Bruder Arethusios gehören. Dieser hatte einen Prozess wegen der falschen Angabe, als Ladungszeuge fungiert zu haben[7], verloren, und war nun Staatsschuldner in der Höhe der Urteilsschuld von einem Talent. Daher sind die Sklaven des Arethusios auch Gegenstand der Pfändung seines Vermögens für dessen dem Staat geschuldete Strafe von einem Talent[8]. Apollodoros tritt also als Populärkläger auf und zeigt an, dass die Sklaven, welche Arethusios gehören, von ihm fälschlich als die seiner Brüder ausgewiesen worden waren.

Bereits Blass hat festgestellt, dass „es keineswegs gerechtfertigt sei, dass die volle Hälfte der Rede nicht zur Sache gehört.“[9] Auch Millett hebt hervor, dass von den 29

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1 Sehr kritisch äußert sich etwa Blass (1893) 461-462 [520]: „Die Rede ist überhaupt in Behandlung und Form viel weniger als mittelmäßig …“.

2 Blass (1893) 459 [518]; Bers (2003) 12-15; MacDowell (2009) 99-100. Ausführlich dazu Trevett (1992) 50-76.

3 Zu Apollodoros, geboren 394/93 v. Chr., vgl. Trevett (1992); Engels (1996) 856-857.

4 Pasion starb 370/69 v. Chr. Schaefer (1949) 2064 nimmt ein Mindestalter von 60 Jahren an; vgl. auch Schmitz (2000) 384.

5 Zum Kontext der Rede vgl. Blass (1893) 459-463 [518-522]; Murray (1939) 98-99; Beyer (1968) 189-192; Bers (2003) 56-57; Wolpert / Kapparis (2011) 161-163; Phillips (2013) 95-96 und 387-389. Die Rede ist nach der Trierarchie des Apollodoros zu datieren, also nach 368/67 v. Chr. – so etwa Blass (1893) 460-461 [519]; Bers (2003) 57. Harris (2006) 89 datiert sie in das Jahr 366 oder 364 v. Chr., Bogaert (1968) 78 in das Jahr 365 v. Chr.; Wolpert / Kapparis (2011) 163 datieren sie in das Jahr 366 v. Chr.

6 Vgl. allgemein zur ἀπογραφή Lipsius (1908) 303-308; MacDowell (1978) 58.62.166 u. 256; Harrison (1971) 211-217; Osborne (1985) 44-47; Todd (1993) 118-119.

7 Zu dieser γραφὴ ψευδοκλητείας vgl. Thür (2007) 139.

8 Osborne (1985) 44 definiert diese Form der ἀπογραφή wie folgt: „Denunciation maybe away of raising the sum of a debt owed to the public treasury by listing property sufficient to meet the debt.” Die einzelnen Fälle dieser ἀπογραφή sind gelistet bei Osborne (1985) 54.

9 Blass (1893) 461 [520]. Dies ist beachtlich in Anbetracht des von Thür (2007) 144-149 aufgezeigten Umstands, dass die in der Rede gebrachten Argumente maßgeblich am Wortlaut des schriftlich eingebrachten Klagebegehrens orientiert gewesen sind; zum Problem vgl. auch Scheibelreiter (2018) 211-212. Versteht man die ἀπογραφή mit der herrschenden Meinung, welche hier nicht angezweifelt werden soll, als Anzeige von Vermögenswerten eines Staatsschuldners, so kann sich der Text nur auf eine Auflistung der Vermögenswerte (konkret: zweier Sklaven) bezogen haben, die Arethusios dem Staat vorenthielt, vgl. so

Paragraphen der Rede nur ganze sieben sich auf die ἀποραφή konzentrieren. Der Redner jedoch lässt gleich einleitend ziemlich unverblümt durchblicken, dass es ihm vordringlich darum gehe, sich an Nikostratos zu rächen[10]. So würde Apollodoros, wenn siegreich, auf den ihm dann zukommenden Anteil am von ihm angezeigten Vermögenswert[11] zugunsten des Staates verzichten, „weil es mir selbst genügt, Rache geübt zu haben": αὐτῷ δ' ἐμοὶ τετιμωρῆσθαι ἀρκεῖ μόνον[12]. Der Begründung für sein Rachebedürfnis, nämlich der enttäuschten Freundschaft zu Nikostratos und dem von diesem anstelle von Dank erlittenen Undank, der sich schließlich zu schikanösem Verhalten auswuchs, ist der erste Teil der Rede gewidmet[13].

In Zusammenhang mit seiner gut entwickelten Erzählung skizziert Apollodoros einige Finanztransaktionen, welche dazu gedient hätten, den Nikostratos mit Geld auszustatten. Zumindest sieben solche Finanztransaktionen[14] werden in Paraphrase erwähnt[15].

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etwa auch Gagarin (2008) 194. Schwerlich konnte Apollodoros in der ἀπογραφή, die er selbst verfasst hat (vgl. Dem. 53,1: τὴν ἀπογραφὴν ἐποιησάμην bzw. αὐτὸς ἐγὼ ἔγραψα sowie Dem. 53,2), auf die lange Vorgeschichte und seine wachsende Feindschaft mit Nikostratos, der hier ja gar nicht Prozessgegner war, eingehen, vgl. so auch Lanni (2018) 193. Liegt hier also ein Argument gegen die Bindung der Parteien an die Klageschrift vor, wie es etwa Lanni (2005) und Lanni (2006) 41-74 propagiert hat? Lanni (2006) 47-48 erklärt die bemerkenswerte Tatsache, dass Apollodoros erst das letzte Viertel seiner Rede ihrem eigentlichen Thema, dem Eigentum an den Sklaven widmet, daraus, dass die Richter in den sozialen Kontext eingeführt werden müssen, um den Fall entscheiden zu können. Die Diskussion, inwiefern die Schilderung der langen Vorgeschichte, die „nicht zur Sache gehörte", für die ἀπογραφή beweiserheblich (relevant) war, kann hier nicht vertieft werden. Dies könnte aber sehr wohl ein Argument der Gegenseite gewesen sein, welches wir nicht kennen und welches auch nicht in der Rede gespiegelt wird.

10 Vgl. so etwa Dem. 53,1: οἰόμενος δεῖν τιμωρεῖσθαι τὴν ἀπογραφὴν ἐποιησάμην. Harris (2013) 69 A. 22 empfindet eine in einer Rede so offen zur Schau gestellte Feindschaft eher als „exception to a general rule". Rubinstein (2005) 138 A. 20 verweist auf insgesamt neun Gerichtsreden, wo Rache als persönliches Motiv, Klage zu erheben, genannt wird.

11 Im Text ist „vom dritten Teil" (τρία μέρη) zu lesen, was gemeinhin, etwa noch bei Blass (1893) 460 [519] oder Murray (1939) 98, als 3/4 verstanden wurde. Aufgrund epigraphischer Evidenz hat Osborne (1985) 44-45 nun für 1/3 plädiert, ihm folgen etwa Todd (1993) 118 A.18; Bers (2003) 58 A. 8; MacDowell (2009) 108 A. 27 („τρία μέρη should be corrected to τρίτα μέρη"); Wolpert / Kapparis (2011) 164 A. 6.

12 Dem. 53,2.

13 Trevett (1992) 126-127 hat hier auch politische Implikationen überlegt, muss es aber aufgrund der knappen Darstellung und des Umstandes, dass über die Brüder Nikostratos, Arethusios und Deinon sonst nichts bekannt ist, bei der Überlegung belassen, dass der als Nachbarschaftsstreit charakterisierte Disput möglicherweise eine größere, politische Dimension aufgewiesen haben könnte.

14 So auch Millett (1991) 58.

15 Es sind dies, in Vorwegname der Ergebnisse dieser Studie, (1) die Finanzierung der Reise von Deinon durch Apollodoros, (2) die Vorfinanzierung des Lösegeldes für Nikostratos durch die ξένοι, (3) der Freikauf des Nikostratos durch die ξένοι, (4) das erste Darlehen zwischen Apollodoros und Nikostratos über 1000, welches sich aufsplitten lässt in (4.1.) das Darlehen des Theokles an Apollodoros über 1000 und (4.2.) das Darlehen über 1000 bzw. die Schenkung von 1000 von Apollodoros an Nikostratos, ferner (5) das zweite Darlehen zwischen Apollodoros und Nikostratos. Auch dieses lässt sich aufgliedern in (5.1.)

Diese Geldgeschäfte sollen in der Folge näher untersucht und auch auf ihre dogmatische Struktur hin analysiert werden[16]. Wie sich zeigen wird, ist die Darstellung des Apollodoros, der ja wiederum mehrfach auch nur eine Erzählung oder Argumente des Nikostratos referiert, nicht immer widerspruchsfrei. Ungereimtheiten ergeben sich so bereits in Nikostratos' Darstellung seiner Zwangslage. In der Literatur wurde ferner bisher der Fokus weniger auf die Fragen gelegt, zwischen welchen Parteien und auf welche Weise die einzelnen Rechtsgeschäfte jeweils zustande gekommen sind[17]. Vom wirtschaftlichen Resultat her betrachtet lassen sich zum Beispiel die beiden Zahlungen als Kredite des Apollodoros an Nikostratos verstehen. Dieses Ergebnis wird jedoch auf unterschiedlichem Wege erzielt.

1. Apollodoros und Nikostratos

Apollodoros beschreibt einleitend das gute Verhältnis zu seinem Nachbarn Nikostratos. Dieses äußerte sich auch darin, dass er diesen, wenn er verreisen musste, bedenkenlos mit der Verwaltung (διοικῆσαι) seines Landgutes betrauen konnte. Diesbezüglich sei Nikostratos in allen Angelegenheiten verfügungsbefugt[18] (κύριος ἁπάντων)[19] gewesen. Als Apollodoros im Jahr 368 v. Chr.[20] in seiner Funktion als Trierarch nach Sizilien reisen musste[21], setzte er den Nikostratos, wohl brieflich[22], als Verwalter seines Landgutes ein „wie schon früher" (ὥσπερ καὶ ἐν τῷ ἔμπροσθεν χρόνῳ)[23]. Wenn

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das Darlehen über 1600 von Arkesas an Apollodoros und (5.2) das Darlehen über 1600 von Apollodoros an Nikostratos. Nikostratos versichert ferner, dass er ein Freundschaftsdarlehen aufgenommen hat / aufnehmen werde, um seine Schulden zu begleichen.

16 Aus Gründen der anschaulichen Darstellung werden dabei auch Konstruktionen des römischen Privatrechts vergleichend herangezogen werden. Es soll hier keinesfalls unterstellt werden, dass zB. das Anweisungsdarlehen in der Form, wie es für das klassische römische Recht überliefert ist, auch im Recht von Athen aus dem 4. Jh. v. Chr. konzipiert war, und sich athenische Sachverhalte nach römischem Recht lesen und lösen lassen. Vielmehr dient der Vergleich bloß dem Zweck einer besseren Sichtbarmachung von dogmatischen Problemen.

17 Ausführlich dazu vgl. Millett (1991) 53-59 und ferner Scafuro (1997) 334-336; MacDowell (2009) 106-109; Faraguna (2012) 140-141; Harris (2013) 89-90; Phillips (2013) 95.

18 Das Wort κύριος definiert Kränzlein (1964) 24 in diesem Zusammenhang als jemanden, „der eine Person oder Sache in der Weise beherrscht, dass er über ihr Schicksal Bestimmungen treffen kann."

19 Dem. 53,4. Mit Kränzlein (1963) 24 ist zu betonen: „Es liegt auf der Hand, daß keine Eigentumsübertragung gemeint sein kann." Röhrmann (1968) 109-111 führt aus, dass sich die Verfügungsbefugnis des κύριος nicht auf die Vertretung der Person, welche ihm diese erteilt habe, bezieht, sondern auf dessen dem κύριος anvertrautes Vermögen: „Das Handeln des Vermögensverwalters berührt gewissermaßen den Vertretenen gar nicht, sondern spielt sich im Verhältnis zwischen Vertreter und ‚vertretenem Vermögen' ab". Hunter (1994) 11 spricht, ebenfalls in Bezug auf Dem. 53,4, von „the responsibility delegated to the neighbour in caring for a man's property while he was away from Athens".

20 Blass (1893) 460-461 [519] datiert die Trierarchie aufgrund der Verhandlungen mit Dionysios in die Jahre 370-368; ebenso Beers (2003) 59 A.11; Kapparis / Wolpert (2011) 165 A. 9.

21 Vgl. dazu Trevett (1992) 33.

22 So Ceccarelli (2013) 89.

23 Dem. 53,5: τούτῳ δὲ προσέταξα ἐπιμελεῖσθαί τε τῶν οἴκοι καὶ διοικεῖν, ὥσπερ καὶ ἐν τῳ ἔμπροσθεν χρόνῳ.

Apollodoros den Nikostratos wörtlich dazu „anweist", die Liegenschaft zu betreuen (τούτῳ δὲ προσέταξα ἐπιμελεισθαί τε τῶν οἴκοι καὶ διοικεῖν)[24], so schwingt in der Verwendung des Verbs προστάττειν[25] ein bestimmender Unterton mit. Faraguna versteht die Beziehung zwischen dem reichen Apollodoros und seinem weniger vermögenden Nachbarn Nikostratos daher auch als „rapporto (…) gerarchico e non paritario"[26].

Während der nun folgenden Abwesenheit des Apollodoros entlaufen drei Sklaven von dem Landgut des Nikostratos[27]: ἐν τῇ ἐμῇ ἀποδημίᾳ ἀποδιδράσκουσιν αὐτὸν οἰκέται τρεῖς ἐξ ἀγροῦ παρὰ τούτου, οἱ μὲν δύο ὧν ἐγὼ ἔδωκα αὐτῷ, ὁ δὲ εἷς ὢν αὐτὸς ἐκτήσατο. – In meiner Abwesenheit nun laufen ihm drei Sklaven weg von seinem Landgut, zwei von denen, welche ich ihm gegeben habe, einer aber, welchen er selbst erworben hat.

Wie Apollodoros beiläufig erzählt, hatte er zwei der flüchtigen Sklaven einst dem Nikostratos zusammen mit anderen „gegeben": οἱ μὲν δύο ὧν ἐγὼ ἔδωκα αὐτῷ[28]. Da das von Apollodoros benutzte Verb διδόναι sowohl eine Übergabe zur Leihe als auch eine Übergabe als Schenkung bezeichnen könnte, geht aus seinem Gebrauch alleine nicht eindeutig hervor, wem die beiden Sklaven gehörten, welche Apollodoros dem Nikostratos „gegeben" hatte[29]. Die kontrastierende Darstellung des Redners (ὁ δὲ εἷς – οἱ μὲν δύο) jedoch, der zufolge der dritte Sklave einer von jenen war, den Nikostratos selbst erworben hatte (ὁ δὲ εἷς ὢν αὐτὸς ἐκτήσατο), lässt den Umkehrschluss zu, dass die Übergabe der Sklaven von Apollodoros an Nikostratos in keinem Erwerb des Nikostratos resultierte. Demnach flohen zwei Sklaven des Apollodoros mit einem des Nikostratos[30].

Bei ihrer Verfolgung wird Nikostratos gefangen genommen, nach Aigina ver-

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[24] Dem. 53,5.

[25] Vgl. dazu nur Faraguna (2012) 141 A. 48.

[26] Faraguna (2012) 141.

[27] Dem. 53,6.

[28] Die Formulierung δύο ὧν ἐγὼ ἔδωκα αὐτῷ lässt vermuten, dass Apollodoros dem Nikostratos gleich mehrere Sklaven zur Verfügung gestellt hatte, zwei von diesen waren nun entlaufen. Diese Tatsache wertet Faraguna (2012) 140-141 als weiteres Indiz dafür, dass Nikostratos ökonomisch und faktisch in einem Abhängigkeitsverhältnis zu seinem Nachbarn gestanden ist und diesem daher nicht gleichgestellt war. Übersetzungen wie jene von Kapparis / Wolpert (2011) 165 machen diesen Umstand nicht deutlich, wenn dort zu lesen ist von „two whom I had given him".

[29] Ähnlich neutral wie der griechische Text ist hier etwa auch die Übersetzung bei Murray (1939) 105, wenn dort von „three household slaves of Nicostratus" zu lesen ist und „two of those whom I had given him, and one of a number whome he had purchased for himself"; ähnlich Kapparis / Wolpert (2011) 165. Noch allgemeiner schreibt Bers (2003) 59: „(…) two of whom I had given him myself and one he had bought himself."

[30] Zuzustimmen ist daher etwa auch Hunter (1994) 134 und Harris (2006) 217, welche festhalten, dass Nikostratos bei der Verfolgung „seines Sklaven" („persuing his fugitive slave") gefangen worden sei; ebenso Faraguna (2012) 141, welcher zwei der Sklaven dem Apollodoros zuordnet. Aus juristischer Perspektive daher unrichtig argumentieren Millett (1991) 54: „three of Nicostratus' agricultural slaves ran away" und MacDowell (2009) 106: „(…) three of Nicostratus' slaves ran away."

schleppt und verkauft[31]. Dass es sich bei den Entführern nicht um Piraten gehandelt habe, sondern um feindliche Soldaten, möchte Pritchett[32] aus der Tatsache schließen, dass Nikostratos von Trieren und damit: Kriegsschiffen gefangen genommen worden ist[33]. Denkbar wäre, dass es sich bei der Entführung um eine feindliche Reaktion auf im frühen 4. Jh. v. Chr. gängige, teilweise mit Konfiskationen verbunden Repressalien Athens gegenüber fremden Schiffen gehandelt hat[34]. Nur 20 Jahre zuvor soll es in Aigina, im frühen 4. Jh. v. Chr. stets auf Seiten der Gegner Athens stehend[35], freilich kriegsbedingt[36] einen Volksbeschluss gegeben haben, dass athenische Bürger, welche auf der Insel ergriffen worden waren, als Sklaven verkauft werden sollten[37]. In diesen Kontext passt auch die Entführung des Nikostratos. Deinon, der aus Briefen seines Bruders, vielleicht sogar auch durch einen von diesem abgeschickten Boten, von der Gefangenschaft des Nikostratos erfahren hat[38], berichtet dem eben aus Sizilien

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31 Dem. 53,6.

32 Pritchett (1991) 248.

33 Dem. 53,6: ἁλίσκεται ὑπὸ τριήρους; vgl. so auch Wolpert / Kapparis (2011) 161, welche von einem „foreign warship“ sprechen. Andererseits stellen Piraten in Aigina im 4. vorchristlichen Jahrhundert für die Athener eine stete Gefahr dar, vgl. nur Aristot. Met. 1025a25-27; zu weiteren Belegen vgl. Dreher (1995) 277 A. 5. Zeitlich zusammenfallen könnte die Entführung des Nikostratos nach Aigina auch mit den Aktivitäten des athenischen Strategen Chares (Arist. Pol. 1306a4-6), vgl. dazu Figueira (1990) 47-48. Eindeutig einem Piratenüberfall zuordenbar ist da die Erzählung des Apollodoros in Dem. 52,5, wo Lykon von räuberischen Schiffen (ὑπὸ λῃστρίδων νεῶν) attackiert und dabei durch einen Pfeilschuss getötet wird.

34 So ordnet De Souza (1999) 36 die Entführung des Nikostratos ein.

35 Hirschfeld (1897) 967; Kalczyk (1990) 322.

36 Der Krieg zwischen Athen und Aigina dauerte von 389-387 v. Chr.

37 Plut. Dion. 5,7: Διὸ καὶ λέγεται Πόλλις εἰς Αἴγιναν φέρων ἀποδόσθαι Πλάτωνα, πολέμου πρὸς Ἀθηναίους ὄντος αὐτοῖς καὶ ψηφίσματος, ὅπως ὁ ληφθεὶς Ἀθηναίων ἐν Αἰγίνῃ πιπράσκηται. – Deshalb soll Pollis Platon nach Aigina gebracht und verkauft haben, wobei diese gerade Krieg hatten mit den Athenern und es einen Volksbeschluss gab, dass ein Athener, wenn aufgegriffen, in Aigina verkauft werden solle. Nach Diogenes Laertios bzw. dessen Quelle Favorinus von Arelate (Diog. Laert. 3,19) habe das von einem gewissen Charmandros eingebrachte äginetische Gesetz (νόμος) vorgesehen, den ersten Athener, welcher Aigina betrete, ohne Prozess hinrichten zu lassen; dem sei Platon entkommen, weil er als Philosoph (oder in Variante: aufgrund seines eindrucksvollen Annehmens der Strafe) verschont und „wie ein Kriegsgefangener“ (τῷ τρόπῳ τῶν αἰχμαλώτων) verkauft wordenist. Die näheren Umstände der hier beschriebenen Versklavung und Befreiung Platons 388/87 v. Chr. sind umstritten – vgl. etwa Bordt (1999) 21, zustimmend Wilamowitz (1959) 194-195 – und hier nicht Thema. Immerhin sprechen auch zwei andere Quellen (Diog. Laert. 3,18-21; Philodem., Index Academic.) von einem Verkauf in Aigina und in diesem, wenn auch anderen Kontext, von einem Gesetz aus Aigina (Diog. Laert. 3,19); allgemein zur Quellenlage vgl. Porter (1952) 52-54, welcher folgert (54): „We may conclude that Plato, shortly after leaving Sicily in 387, was captured by Aeginetan privateers in circumstances which we have not transpired. He was offered for sale as a slave by Anniceris (…) and set at liberty.“

38 In Dem. 53,6 berichtet Deinon, dass ihm sein Bruder Briefe geschrieben habe (πέμποντος τούτου αὐτῷ ἐπιστολάς) und dass er von dessen schweren Schicksal gehört habe (λέγων πρὸς ἐμὲ ὡς ἀκούοι αὐτὸν δεινῶς διακεῖσθαι). Ceccarelli (2013) 89 folgert daraus, dass Nikostratos sowohl Boten als auch Briefe abgeschickt hatte „to inform his brother of what had happened and of his actual situation”. Ein Botenbericht könnte immerhin in dem Verb

zurückgekehrten Apollodoros vom Schicksal des Bruders. Dies dient auch der Vorbereitung einer Bitte um finanzielle Unterstützung.

2. Das Reisegeld (ἐφόδιον) für Deinon

Deinon stellt dem Apollodoros nämlich neben der traurigen Situation seines Bruders auch die eigene Mittellosigkeit vor Augen: Deinon selbst ist nicht in der Lage, eine Reise zu seinem Bruder zu finanzieren, eine Reise, mit dem Ziel, den Freikauf des Nikostratos zu organisieren. So könne er, Deinon, nicht das nötige Reisegeld (ἐφόδιον) aufbringen[39]. Apollodoros nun lässt sich nicht lange bitten und versorgt Deinon mit 300 Drachmen als Reisegeld[40]:

> ἀποσποτέλλω τὸν Δείνωνα τὸν ἀδελφὸν αὐτοῦ εὐθὺς ἐπὶ τοῦτον, δοὺς ἐφόδιον αὐτῷ τριακοσίας δραχμάς. – Sofort nun schicke ich dessen Bruder Deinon zu diesem, nachdem ich ihm 300 Drachmen gegeben hatte.

Dies zeitigt Wirkung, denn bald kehrt Nikostratos, voll des Dankes, zurück und besucht seinen Retter[41]:

> ἀφικόμενος δ' οὗτος καὶ ἐλθὼν ὡς ἐμὲ πρῶτον, ἠσπάζετο καὶ ἐπῄνει ὅτι παρέσχον τὰ ἐφόδια τῷ ἀδελφῷ αὐτοῦ. – Als dieser (Nikostratos) ankam, suchte er zuallererst mich auf, umarmte mich und zeigte sich dankbar, dass ich dessen Bruder das Reisegeld ausgelegt hatte.

Der Sachverhalt ist so verknappt dargestellt[42], dass seine genauere rechtshistorische Würdigung notwendig scheint. Das Reisegeld (ἐφόδιον) – der Begriff wird vor allem für Reisediäten von Gesandten gebraucht[43] – ist mit insgesamt 300 Drachmen sehr hoch bemessen[44]. So werden etwa in den Acharnern des Aristophanes Reisediäten von zwei[45] oder sogar drei Drachmen[46] pro Tag angeführt, was gemeinhin als

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ἀκούειν angedeutet sein.

39 Dem. 53,6.

40 Dem. 53,7.

41 Dem. 53,7.

42 Dazu siehe sogleich.

43 Vgl. Boerner (1905) 2859; Rhodes (1997) 1087 mit Belegen aus epigraphischem Material; vgl. dazu zuletzt auch Magnetto (2023) 200-201.

44 Das Taggeld für Gesandte beläuft sich laut Dem. 19,158 für zehn Gesandte, die 69 Tage unterwegs waren, auf 1000 Drachmen, vgl. dazu etwa auch Boerner (1905) 2859. Pritchett (1991) 254 schließt aus der Höhe der Summe, dass Nikostratos von seinem Eigentümer von Aigina aus noch weiter verschleppt worden war.

45 In Ar. Ach. 600-602 ist davon zu lesen, dass junge Männer für einen Verdienst von drei Drachmen in Thrakien seien: ὁρῶν πολιοὺς μὲν ἄνδρας ἐν ταῖς τάξεσιν, | νεανίας δ' οἵους σὺ διαδεδρακότας, | τοὺς μὲν ἐπὶ Θρᾴκης μισθοφοροῦντας τρεῖς δράχμας, […]). Zwar könnte das μισθοφορεῖν hier aufgrund des militärischen Kontextes (Vers 600: τάξεις) auf einen Sold zu beziehen sein, den Söldner erhalten. Der Gegensatz beruht hier aber darin, dass die alten (grauhaarigen) Männer kämpfen müssen, wohingegen die jungen Männer als Gesandte gutes Geld verdienen mit hohen Weggeldern, vgl.so auch Boerner (1905) 2859; Rhodes (1997) 1087.

46 Ar. Ach. 65-67: ἐπέμψατ' ἡμᾶς ὡς βασιλέα τὸν μέγαν | μισθὸν φέροντας δύο δράχμας τῆς

parodistische Übertreibung gewertet wird[47]. Trotz dem zeitlichen Abstand von 60 Jahren zwischen der vorliegenden Rede aus den 60er-Jahren des 4. Jh. v. Chr. und der Uraufführung der Acharner (425 v. Chr.) ergäbe die Summe von 300 Drachmen für eine Reise von Athen nach Aigina ein Vielfaches der bei Aristophanes genannten Zahl, und man müsste, bei gleichem Tagsatz, eine Reise von 100-150 Tagen veranschlagen. Daher sind 300 Drachmen Weggeld angesichts der kurzen Distanz von Athen nach Aigina insgesamt schwer nachvollziehbar[48], und könnten mehr abdecken als bloß den Aufwandersatz für die Reise des Deinon[49].

Aus der Aussage des Apollodoros allein wird nicht deutlich, ob Apollodoros dem Deinon das Reisegeld bloß geborgt hat, oder gar geschenkt. Das Verb διδόναι lässt noch keine eindeutige juristische Qualifikation zu, zu welchem Zweck das Geld übergeben wurde[50]. Deinon könnte es bekommen haben, um es behalten zu dürfen (Schenkung), oder, um es zurückgeben zu müssen (Darlehen)[51]. Auch wenn Nikostratos sich später bei Apollodoros dafür bedankt, dass er die 300 Drachmen „zur Verfügung gestellt habe" (παρέχειν)[52], kann aufgrund dieses neutralen Verbums[53] keine Aussage darüber getroffen werden, wie die Übergabe des Geldes von Seiten der Empfänger interpretiert worden ist[54]. Dass Apollodoros die 300 als ihm geschuldet verstanden hat, ergibt sich erst aus seiner kurz darauf großzügig gemachten Zusicherung an Nikostratos, dass er dem Nachbarn die 300 Reisegeld erlassen wolle[55]. Da man nur eine bestehende Schuld erlassen kann, wird nachträglich klar, dass Apollodoros das Geld dem Deinon vorerst nur geliehen hatte. Typischerweise wurden ἐφόδια als „supplies

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ἡμέρας | ἐπ' Εὐθυμένους. – Ihr schicktet uns zum Großkönig, wir verdienten zwei Drachmen pro Tag, unter dem Archon Euthymenes. Rau (2016) 19 übersetzt μισθὸν mit „Reisegeld".

47 Van Leeuwen (1968) 19; Boerner (1905) 2859; Rhodes (1997) 1087.

48 Athen ist von Aigina 30 km entfernt und mit dem Schiff bei einer Geschwindigkeit von 15 Knoten in etwas mehr als einer Stunde erreichbar; vgl. dazu unten unter 4.

49 Hier ist man auf Spekulationen angewiesen; Alberto Maffi (in einem persönlichen Gespräch am 6. September 2024) hat die Vermutung aufgestellt, dass es sich um einen Lohn für den Bruder gehandelt haben könnte. Allerdings erlässt Apollodoros die Rückzahlung 300 Drachmen erst nachträglich, vgl. dazu sogleich.

50 Die Übersetzungen von Beers (2003) 59: „I gave him 300 drachmas for the trip" und Kapparis/Wolpert (2011) 165 „supplying him with 300 drachmas for travel expenses" sind hier ebenfalls neutral.

51 Vgl. dazu auch Scheibelreiter (2020b) 66.

52 Vgl. auch MacDowell (2009) 106.

53 Mit παρέχειν wird das „zur Verfügung Stellen" oder „Aushelfen" ausgedrückt. In juristischem Kontext vgl. etwa Herod. 2,180, wo die Delphier einen Anteil an den Baukosten für ihre Tempel beisteuern (παρέχειν) müssen; vgl. ferner das χρήματα παρέχειν in Thuk. 8,48,2.

54 Von einer Absicht des Deinon bei oder seiner Reaktion auf die Übergabe ist nichts zu lesen, weshalb seine Vorstellung von dem Zweck der Übergabe nicht erschlossen werden kann.

55 Dem. 53,8: (…) ἀπεκρινάμην αὐτῷ ὅτι (…) καὶ τὰς τριακοσίας, ἃς τῷ ἀδελφῷ ἔδωκα ἐφόδιον ὅτε ἐπορεύετο ἐπὶ τοῦτον, ἀφιείην αὐτῷ (…). – Ich antwortete ihm, dass ich die 300 (Drachmen), welche ich dem Bruder als Reisegeld gegeben hatte, als er sich aufmachte zu ihm, diesem erlassen würde.

for travelling“[56] vorgestreckt, und dies trifft auch auf das ἐφόδιον zu, welches Apollodoros dem Deinon gewährt hat[57].

Bereits anhand dieses ersten Darlehens des Apollodoros lässt sich ein Charakteristikum der gesamten Rede erkennen: Die geraffte Darstellung des Klägers lässt viele Details der einzelnen Transaktionen unberührt. Um diese jeweils zu ermitteln, ist eine systematische Interpretation der einzelnen Rechtsgeschäfte vor dem Hintergrund der gesamten Rede notwendig. Doch Apollodoros schickt seiner Sachverhalts-Erzählung ja auch voraus, dass er sehr oberflächlich verfahren müsse, da er sonst mehr als die doppelte Redezeit brauchen würde[58]. Er würde sich also auf das Wesentliche beschränken und einiges notgedrungen übergehen müssen[59]: τὰ μὲν οὖν μέγιστα καὶ περιφανῆ τῶν ἀδικημάτων, καὶ ὁπόθεν ἡ ἀπογραφὴ αὕτη γέγονεν, ἐρῶ πρὸς ὑμᾶς, τὰ δὲ πολλὰ ἐάσω. Die Finanztransaktionen werden somit vom Redner selbst nur als Vorspann für sein eigentliches Prozessthema, die ἀπογραφή, betrachtet[60].

Und so enthält Apollodoros den Richtern auch die Information darüber vor, auf welche Weise Deinon in Aigina die Rückkehr des Nikostratos bewirkt hat bzw. wie er darin involviert gewesen ist[61].

In diesem Zusammenhang hat Bers die folgende Vermutung aufgestellt: „Nicostratus must have promised to pay his captors the money later, counting on his friends to lend it to him“[62]. Doch dies ist aus gleich zwei Gründen nicht denkbar. Zum einen wäre ein bloßes Zahlungsversprechen des Nikostratos an seine Gläubiger, etwa in Form einer ὁμολογία, nach griechischen Rechtsvorstellungen nicht bindend. Schon allein aufgrund der internationalen Dimension[63] des Sachverhalts – der Athener Nikostratos agiert in Aigina – hätte es einer Sicherheit bedurft wie etwa der Bürgschaft, wie sie in einem vergleichbaren Fall für von Philipp II. Kriegsgefangene Athener belegt ist, welche als ἐξηγγυημένοι bezeichnet werden und sich in Pella frei bewegen konnten[64]. Doch davon, dass jemand wie zB. Deinon oder andere als Bürgen fungiert hätten, ist nichts zu lesen.

Zum anderen hat Apollodoros ja ausgeführt, dass Nikostratos unmittelbar nach seiner Gefangennahme von den Entführern an (einen) Dritte(n) verkauft worden

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56 So Liddell / Scott / Jones (1994) s.v. ἐφόδια.

57 Zu der damit verbundenen Frage, ob Deinon oder Nikostratos als der Schuldner des Reisegeldes angesehen werden muss, siehe unten unter 3.2.

58 Dem. 53,3.

59 Dem. 53,3.

60 Millett (1991) 58.

61 Allgemein sind etwa die Angaben bei Harris (2006) 217: „His brother Deinon went to rescue him“ oder MacDowell (2009) 106, wo es heißt, dass Deinon abgereist ist „to negotiate Nicostratus' release“.

62 Bers (2003) 59 A. 14. Ähnich Pritchett (1991) 248-249, welcher fälschlich davon ausgeht, dass der Eigentümer des Nikostratos diesem ermöglicht haben könnte, als Lösegeld „a several hundred per cent over the purchase price“ aufzubringen.

63 Vgl. dazu etwa das κατεγγυᾶν der beklagten Fremden in Athen, Dem. 32,29; Dem. 59,49, und dazu Hitzig (1907a) 230; Partsch (1909) 90-91.

64 Dem. 19,169; vgl. dazu unten unter 3.2.

war[65]. Und wie gleich zu hören sein wird, war er erst durch Zahlung der beträchtlich hohen Summe von 26 Minen (2600 Drachmen)[66] freigekommen. Diese Summe musste also mit dem Erwerber des Nikostratos und nicht mit seinen Entführern („his captors") ausgehandelt worden sein. Finanziert wurde sie von den ξένοι, nicht näher benannten Dritten[67]. Es liegt nahe, dass Deinon die Verhandlungen geführt und den Kontakt zu den Darlehensgebern hergestellt hat. So entspricht es auch dem klassischen Muster, wonach die Familie des Versklavten typischerweise dessen Auslösung betrieb[68].

3. Das erste Darlehen: 1000 Drachmen

3.1. Die Grundlage: φιλία

Nikostratos beklagt sich nun bei Apollodoros, dass seine Familie ihn nicht mit Geld unterstütze und bittet daher den Apollodoros um Hilfe „ὥσπερ ἐν τῷ ἔμπροσθεν χρόνῳ"[69]. Diese vom Redner gebrauchte Wendung korrespondiert hier mit der Hilfe „wie in früherer Zeit", welche Nikostratos dem Apollodoros in Verwaltung seiner Güter hatte angedeihen lassen, als dieser hatte länger verreisen müssen[70]. Dies klingt, auf einer ersten Ebene, jeweils wie ein Appell an das gute Verhältnis der beiden Nachbarn. Doch es hat auch eine rechtliche Dimension: Denn in einer zweiten Ebene könnten hier wechselseitig erbrachte Gefälligkeiten zueinander in Relation gesetzt werden. Die erwiesene Wohltat des einen schafft eine Erwartungshaltung gegen den Empfänger der Wohltat[71]. Im vorliegenden Fall bedeutet das: Da ihm Nikostratos stets geholfen hatte, solle Apollodoros diesem nun seinerseits helfen. Und so verwundert es nicht, dass Apollodoros seine Hilfsmaßnahmen für Nikostratos – dazu sogleich – damit begründet, dass er ihm „wie auch in der früheren Zeit ein wahrhafter Freund sein wolle": (…) ἀπεκρινάμην, αὐτῷ ὅτι καὶ ἐν τῷ ἔμπροσθεν χρόνῳ εἴην αὐτῷ φίλος ἀληθινός[72]. Damit greift er die Bitte des Nikostratos beinahe wortgetreu auf. Das Wort „Freund" (φίλος) hat hier einen rechtlichen Beiklang. Ohne die hier gebrauchte Begrifflichkeit überbewerten zu müssen, könnte man an die φιλία ἠθική

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[65] Dem. 53,6: διώκων οὖν ἁλίσκεται ὑπὸ τριήρους καὶ κατήχθη εἰς Αἴγιναν καὶ ἐκεῖ ἐπράθη.

[66] Beyer (1968) 190 verweist darauf, dass der Wert eines Sklaven in Dem. 53,1 mit 2,5 Minen angegeben wird.

[67] Zu diesen vgl. unten unter 3.2.

[68] Kapparis / Wolpert (2011) 165 A. 8. Garlan (1987) 15 spricht hier von einer moralischen Verpflichtung der Familie, den in der Fremde gefangenen Angehörigen mittels Aufbringens eines ἔρανος freizukaufen; der Staat habe subsidiär agiert in dem Fall, dass private Bemühungen nicht ergriffen worden oder fruchtlos geblieben waren. Freilich tragen gerade die Verwandten des Nikostratos in dessen bzw. in des Apollodoros' weiterer Darstellung finanziell rein gar nichts zur Freilassung des Nikostratos bei, vgl. dazu sogleich unten unter 3.2.

[69] Dem. 53,7.

[70] Vgl. Dem. 53,6.

[71] Vgl. dazu nur die Studie von Watson (1985); Scheibelreiter (2024) 863-872 und für das römische Darlehensrecht 846-851.

[72] Dem. 53,8.

der nikomachischen Ethik denken[73]:

> ἡ δὲ ἠθικὴ οὐκ ἐπὶ ῥητοῖς, ἀλλ' ὡς φίλῳ δωρεῖται ἢ ὁτιδήποτε ἄλλο. κομίζεσθαι δὲ ἀξιοῖ τὸ ἴσον ἢ πλέον, ὡς οὐ δεδωκὼς ἀλλὰ χρήσας. οὐχ ὁμοίως δὲ συναλλάξας καὶ διαλυόμενος ἐγκαλέσει. τοῦτο δὲ συμβαίνει διὰ τὸ βούλεσθαι μὲν πάντας ἢ τοὺς πλείστους τὰ καλά, προαιρεῖσθαι δὲ τὰ ὠφέλιμα. καλὸν δὲ τὸ εὖ ποιεῖν μὴ ἵνα ἀντιπάθῃ, ὠφέλιμον δὲ τὸ εὐεργετεῖσθαι.
>
> Die ethische Freundschaft beruht nicht auf Abmachungen, sondern man schenkt oder macht etwas anderes dieser Art wie einem Freund gegenüber. Es gehört sich aber, dass gleiches oder mehr zurückgeleistet werde, nicht, als ob einer etwas geschenkt, sondern so, als ob einer es geliehen hätte. Wenn nicht in gleicher Weise das Verhältnis begründet und wieder gelöst wird, dann wird man klagen. Dies passiert aber, weil alle oder die meisten nach dem Guten streben, dann aber das Nützliche diesem vorziehen. Es ist gut, Gutes zu tun, nicht, um seinerseits Gutes zu erlangen, Wohltaten zu empfangen ist aber dennoch nützlich.

Geschäfte, welche auf der ethischen Freundschaft (φιλία ἠθική) beruhen, basieren nicht auf positivierten Normen. Ihre Grundlage ist das Verhalten, wie es gegenüber einem Freund geübt werden soll bzw. wird[74]. Wie zuletzt Frede ausgeführt hat, ist aber auch die φιλία ἠθική auf Transaktionen gerichtet und als solche eine Subkategorie der nach ökonomischem Nutzen strebenden Beziehung (διὰ τὸ χρήσιμον φιλία)[75]. Diese beruht aber, im Unterschied zu den genau definierten Rahmenbedingungen der „rechtlichen Freundschaft"[76] (φιλία νομική) auf Gewohnheit, auf dem üblichen, redlichen Verhalten, auf dem Gedanken des freundschaftlichen Verkehrs: ὡς φίλῳ δωρεῖται. Eine Gegenleistung für das Empfangene ist nicht durchsetzbar, aber sie „gehört sich" (κομίζεσθαι δὲ ἀξιοῖ), wobei ebenso viel zurückgegeben werden soll, wie empfangen worden ist, oder sogar mehr (κομίζεσθαι δὲ ἀξιοῖ τὸ ἴσον ἢ πλέον).

Vor dieser Folie lässt sich mit der, bei oberflächlicher Betrachtung vordringlich redundant anmutenden Wortfolge[77] ὥσπερ/ὅτι καὶ ἐν τῷ ἔμπροσθεν χρόνῳ[78] und dem Verweis auf das Verhalten eines „wahren Freundes" (φίλος ἀληθινός[79]), die Beziehung von Apollodoros und Nikostratos insgesamt in eine von Nachbarschaftshilfe geprägte Welt einordnen[80]: Diese beruht auf sozialen Netzwerken, welche ein Regulativ schaffen, das in seiner normativen Relevanz nicht unterbewertet werden darf.

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73 Aristot. Eth. Nik. 1162b31-38; vgl. dazu Frede (2020) 861.

74 Vgl. zu den juristischen Implikationen dieser Stelle etwa Nörr (1993) 26-27 [1946-1947]; Martini (2003) 441-443; Faraguna (2012a) 368-369; Scheibelreiter (2021) 206-209; Scheibelreiter (2024) 870-872.

75 Vgl. so schon in Aristot. Eth. Nik. 1162b2-23.

76 Nörr (1993) 27 spricht von „gesetzlicher" Freundschaft.

77 Blass (1893) 463 [522] kritisiert insgesamt die zahlreichen Wortwiederholungen und wertet sie als symptomatisch für den schlechten Stil der Rede.

78 Dem. 53,5.7.8.12.

79 Dem. 53,7.8.

80 So auch schon Millett (1991) 54; Christ (1998) 176-177; Faraguna (2012) 140-141. Allgemein zum Phänomen der Nachbarschaftshilfe und ihrer Bedeutung für die Ausformung vertraglicher Beziehungen vgl. auch Schmitz (2004) 78-82; Scheibelreiter (2024) 841-845.

Wenn Apollodoros folglich wiederholt betont, dass er sich sozialadäquat verhalten habe, so kann er die von Nikostratos erlittene Beleidigung umso schärfer konturieren und letztendlich auch zum Rechtsbruch hochstilisieren.

Nikostratos belässt es aber nicht bei dem ersten, allgemein gehaltenen Appell an die Freundschaft, sondern wird konkret und nennt Zahlen[81]:

> καὶ κλάων ἅμα, καὶ λέγων ὅτι ἕξ καὶ εἴκοσι μνῶν λελυμένος εἴη, εἰσενεγκεῖν αὐτῷ τι ἐκέλευέ με εἰς τὰ λύτρα. – Und unter Tränen sagte er, dass er um 26 Minen ausgelöst worden sei, und ersuchte mich, etwas zu der Lösegeldsumme beizutragen.

Die hier gebrauchte Terminologie, insbesonders die Wortfolge εἰσφέρειν ... εἰς τὰ λύτρα[82], lässt erkennen, dass Nikostratos mittels „Fundraisings" erfolgreich sein und die 26 Minen (2600 Drachmen) aufstellen möchte. Er plant die Aufnahme eines ἔρανος: Mithilfe mehrerer kleiner Beiträge, welche aus einzelnen Darlehen unterschiedlicher Kreditgeber stammen[83], will er die gesamte Summe aufbringen[84]. Der Freikauf von Kriegsgefangenen oder Sklaven entspricht einem der klassischen Beweggründe zur Aufnahme eines ἔρανος[85]. In seiner Antwort greift Apollodoros diesen Gedanken auf und verspricht, zum ἔρανος beitragen zu wollen (χιλίας τε δραχμὰς ἔρανον αὐτῷ εἰς τὰ λύτρα εἰσοίσοιμι)[86].

3.2. Der Freikauf des Nikostratos

Nikostratos bittet um einen Beitrag εἰς τὰ λύτρα, wörtlich: für die Lösegeldsumme[87]. Aus der Darstellung des Nikostratos alleine ergibt sich noch nicht unmittelbar, dass dieses Lösegeld auch bereits bezahlt worden ist[88]. Doch wie sich gleich herausstellen soll, ist die Zahlung bereits erfolgt[89]: In einer späteren Passage der Rede nämlich bit-

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81 Dem. 53,7.

82 So auch Lipsius (1905-1915) 732; Millett (1991) 153.

83 So das Ergebnis zur rechtlichen Konstruktion des ἔρανος bei Meier (1969) 61-64; Gernet (1999) 46-49; Harris (2006) 335-336; Faraguna (2012) 134-135.

84 Vgl. dazu die Definition von ἔρανος bei Wolff (1965) 220 als „mittels Gemeinschaftsaktion mehrerer Personen aufgebrachte und mindestens in der Regel zinsfrei gewährte, freundschaftliche Beihilfe, mit welcher man dem Empfänger in einer augenblicklichen Notlage beisprang, oder ihm die Bestreitung einmaliger, aber seine Kräfte überschreitender Ausgaben ermöglichte."

85 Lipsius (1905-1915) 731; Wolff (1965) 220; Meier (1969) 38; Millett (1991) 54; Faraguna (2012) 138.

86 Dem. 53,8.

87 Murray (1939) 107 übersetzt: „[he] urged me to contribute something toward the cost of his redemption"; Bers (2003) 59 übersetzt: „and he asked to contribute money to win his release". Nahe am griechischen Text ist Wolpert / Kapparis (2011) 165: „and he asked me to make a contribution towards the ransom".

88 Murray (1939) 105-107 übersetzt hier: „he had been ransomed for twenty-six minae"; ebenso Bers (2003) 59 („he had been ransomed for 26 minas") und Kapparis / Wolpert (2011) 165 („he has been ransomed for 26 minas").

89 Unrichtig sind daher die Überlegungen bei Pritchett (1991) 248-249 und Bers (2003) 59 A. 14, wonach Nikostratos zur Aufbringung der Freikaufsumme nach Athen geschickt worden

tet Nikostratos den Apollodoros ein weiteres Mal um Geld, da er von den Fremden, welche das Lösegeld kreditiert haben (οἱ ξένοι [...], οἱ δανείσαντες τὰ λύτρα), auf Zahlung gedrängt wird[90]. Und kurz darauf sagt Apollodoros ja auch, dass Nikostratos den ξένοι das Geld zurückzahlen soll[91]. Darauf wird noch zurückzukommen sein[92]. Vorerst soll diese Information zum besseren Verständnis des vorliegenden Sachverhalts genutzt werden: Die „Fremden" haben die Lösungssumme kreditiert und Nikostratos damit aus der Gewalt des- oder derjenigen befreien geholfen, welche(r) den Nikostratos seinerseits von seinen Entführern gekauft hatte(n). Nikostratos bittet um Geld „non al riscatto, ma al rimborso del riscatto"[93].

Demnach war Nikostratos das Objekt zweier Kaufgeschäfte[94]: Einmal war er von seinen Entführern nach Aigina gebracht und dort an Dritte verkauft (καὶ ἐκεῖ ἐπράθη)[95], danach mit den Mitteln der ξένοι freigekauft worden[96]. Das in der Rede dokumentierte Vorliegen zweier Kaufgeschäfte entzieht auch der Überlegung, dass die ξένοι Nikostratos, vielleicht als darauf spezialisiertes Unternehmen[97], zusammen

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ist; vgl. dazu oben unter 2. und sogleich in diesem Unterkapitel.

90 Dem. 53,10.

91 Dem. 53,12: ἀποδοῦναι τοῖς ξένοις.

92 Siehe unten unter 4.

93 Maffi (1992) 206 A. 10.

94 Dies wird leicht übersehen, vgl. dazu schon oben unter 2. und e.g. Bielman (1994) 310, die den Sachverhalt wie folgt zusammenfasst: „Nicostratos (…) avait été enlevé au cours d'un voyage en mer et mis en vente sur le marché d'Égine où l'avaient racheté deux étrangers." Abgesehen davon, dass nirgends in der Rede davon zu lesen ist, dass es sich um zwei ξένοι gehandelt hat, wurde hier der Verkauf durch die Entführer an Dritte am Markt von Aigina und der Freikauf von diesen Dritten durch die ξένοι fälschlich zu nur einem Rechtsgeschäft zusammengezogen. In dem vergleichbaren Fall aus D. 49.15.6 (Pomp. 1 ex var. lect.), der Verschleppung einer römischen Frau, welche von den Entführern verkauft (*vendita*) und erst dann losgekauft (*ac redempta*) worden ist, urteilt Wacke (2009) 1494: „Bei dem Verkauf (…) und dem anschließenden Rückkauf handelt es sich demnach um zwei verschiedene Vorgänge, nicht aber um einen einzigen, wie im Schrifttum noch in jüngster Zeit angenommen." Richtig rekonstruiert den Sachverhalt von Dem. 53, 6-11 Araque Moreno (2024) 165.

95 So Dem. 53,6: διώκων οὖν ἁλίσκεται ὑπὸ τριήρους καὶ κατήχθη εἰς Αἴγιναν, καὶ ἐκεῖ ἐπράθη.

96 Dies ergibt sich aus der Aussage in Dem. 53,10, dass die Fremden den Nikostratos bedrängen würden, ihm das Lösegeld zu zahlen, welches sie kreditiert hatten: (...) ὅτι οἱ ξένοι ἀπαιτοῖεν αὐτόν, οἱ δανείσαντες τὰ λύτρα.

97 Von solchen Vereinigungen könnte gemäß D. 47, 22, 4 (Gai. 4 ad l. XII tab.) ein Gesetz Solons (fr. 117 LegDrSol = fr. 76a [Ruschenbusch] = 76a [Leão/Rhodes]) als οἱ ἐπὶ λείαν οἰχόμενοι ἢ ἐμπορίαν (Unternehmen, die zur Beutemacherei oder um Handel zu treiben in See stechen) sprechen, welches nach Schmitz (2023) 731 die Kaperung fremder Schiffe in Athen gesetzlich anerkannte und daraus resultierenden Ansprüchen der Mitglieder gerichtliche Durchsetzbarkeit verliehen habe. Nach etwa Zahn (2021) 322 A. 79 und Schmitz (2023) 731 spricht dies eher für einen Tatbestand des archaischen Rechts. Dagegen bringt Arnaoutoglou (2015) 108-109 Beispiele für zwischenstaatliche Abkommen „über die Beute" (ἐπὶ λείαν) auch aus dem 5. und 4. Jh. v. Chr., welche die Verteilung der aus Plünderung von Angehörigen von Drittstaaten erworbenen Güter regulierten. Vereinbarungen über die Aufteilung von Beute oder deren Verbot wiederum setzen Plünderung als staatlich geduldetes Phänomen stillschweigend voraus.

mit dem ganzen gekaperten Schiff, gekauft hatten und nun von Nikostratos ein Lösegeld erpressen wollten[98], den Boden. Nikostratos erzählt nun, dass er „um 26 Minen freigelassen worden war: εἴκοσι μνῶν λελυμένος εἴη[99]. Dieses Geld wiederum stammt aus einem Darlehen der ξένοι.

Die Darlehensaufnahme mit dem Zweck, damit den eigenen Freikauf zu finanzieren, ist im Kontext von Kriegsgefangenschaft auch belegt für von Philipp II. nach der Einnahme von Olynth (348 v. Chr.)[100] gefangene Athener. Als Mitglied einer zweiten athenischen Gesandtschaft nach Pella hatte Demosthenes ein Talent mitgebracht, um die Gefangenen auszulösen[101]. Einige der Geiseln, welche sich vielleicht durch Bürgenstellung einen Freigang hatten erwirken können (ἐξηγγυημένοι)[102], misstrauten freilich dem Verhandlungsgeschick des Demosthenes, der ihre Freigabe erwirken wollte, und bevorzugten es, Darlehen bei ihm aufnehmen, um auf diese Weise ein Lösegeld zahlen zu können[103]:

> ἐν ὅσῳ γὰρ οὐχὶ παρόντος πω Φιλίππου διετρίβομεν ἐν Πέλλῃ, ἔνιοι τῶν ἑαλωκότων, ὅσοιπερ ἦσαν ἐξηγγυημένοι, ἀπιστοῦντες, ὡς ἐμοὶ δοκεῖ, μὴ δυνήσεσθαί με ταῦτα πεῖσαι τὸν Φιλίππον, ἑαυτοὺς ἔφασαν βούλεσθαι λύσασθαι καὶ μηδεμίαν τούτου χάριν ἔχειν τῷ Φιλίππῳ, καὶ ἐδανείζονθ' ὁ μὲν τρεῖς μνᾶς, ὁ δὲ πέντε, ὁ δ' ὅπως συνέβαινεν ἑκάστῳ τὰ λύτρα.
>
> In der Zeit, die wir in Pella verbrachten, als Philipp noch nicht anwesend war, da waren einige der Gefangenen – die, welche unter Bürgenstellung sich freier bewegen konnten – nicht davon überzeugt, wie mir scheint, dass ich den Philipp dazu überreden können würde, und sagten, dass sie sich freikaufen und dem Philipp keinen Dank schulden wollten. Sie nahmen daher Darlehen auf, der eine drei Minen, der andere fünf, der nächste was auch immer für jeden die Lösegeldsumme war.

Demosthenes, der diese zinslosen Darlehen zur Finanzierung der unterschiedlichen Lösegeldsummen gewährte[104], erließ diesen Schuldnern nachträglich deren

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98 Auch die Interpretation von Bielman (1994) 316-317, wonach die ξένοι den Nikostratos am Markt in Aigina von Piraten (?) gekauft und dann freigelassen hatten unter der Resolutivbedingung, ihnen innerhalb von 30 Tagen die 26 Minen zu zahlen, verfängt daher nicht.

99 Dem. 53,7.

100 Zu den historischen Rahmenbedingungen vgl. etwa Fündling (2014) 76-82.

101 Dem. 19,40; vgl. dazu auch Pritchett (1999) 249.

102 Das Kompositum ἐξεγγυᾶσθαι bedeutet nach Partsch (1909) 89 als „herausbürgen", das „Bürgschaft leisten, damit ein anderer aus einer Haft oder einem Verhältnis tatsächlicher Gewalt entlassen werde"; zur Interpretation von ἐξηγγυημένοι in Dem. 19,169 vgl. Partsch (1909) 389-390 A.2, wonach sich die Gefangenen in Pella kraft Gestellungsbürgschaft auf freiem Fuße befunden haben; vgl. dazu auch MacDowell (2000) 272 und 274, der betont, dass die Bürgen oder Besteller anderer Sicherheiten selbst nicht bekannt sind (274): „Demosthenes does not say what sureties the prisoners were able to provide". Paulsen (1999) 181 spricht - damit vielleicht diese Situation nicht ganz exakt beschreibend - davon, dass sie „gegen Kaution freigelassen" worden waren.

103 Dem. 19,169.

104 Demosthenes spricht in Dem. 19,170 von τούτους οἷς αὐτὸς ἔχρησα τἀργύριον. Aus dem Gebrauch des Verbs χρᾶν lässt sich drauf schließen, dass diese Darlehen zinsenlos waren,

Rückzahlung[105], als Philipp die Freilassung aller zugesagt hatte[106]. Die Finanzierung des Freikaufs von Gefangenen mithilfe von Darlehen ist also ein gängiges Modell.

Zur Rückzahlung des Darlehens an die Darlehensgeber bedarf Nikostratos nun der Hilfe (auch) des Apollodoros. Nikostratos ersucht ihn daher um einen Beitrag zur Erstattung der 26 Minen, welche er als Kredit empfangen hatte.

Apollodoros gibt, gerührt auch von den sichtbaren Narben, welche Nikostratos' in der Gefangenschaft erlittene Fesselung belegen[107], eine gütige Antwort[108]:

> (…) ἀπεκρινάμην, αὐτῷ ὅτι καὶ ἐν τῷ ἔμπροσθεν χρόνῳ εἴην αὐτῷ φίλος ἀληθινός, καὶ νῦν ἐν τῇ συμφορᾷ βοηθήσοιμι αὐτῷ, καὶ τὰς δὲ τριακοσίας, ἃς τῷ ἀδελφῷ αὐτοῦ ἔδωκα ἐφόδιον ὅτε ἐπορεύετο ἐπὶ τοῦτον, ἀφιείην αὐτῷ, χιλίας τα δραχμὰς ἔρανον αὐτῷ εἰς τὰ λύτρα εἰσοίσοιμι.
>
> (…) ich antwortete, dass ich wie auch in der früheren Zeit ein wahrhafter Freund sei wolle, und nun in der schwierigen Lage ihm helfen wolle, und die 300 Drachmen, welche ich dem Bruder als Reisegeld gegeben habe, als er zu diesem da aufbrach, ihm erlassen würde, 1000 Drachmen aber ihm als zinsenloses Darlehen für die Lösegeldsumme beitragen wolle.

Dreierlei Wohltaten kündigt Apollodoros hier an: (1) Apollodoros sagt ganz allgemein, dass er sich wie früher auch als wahrer Freund erweisen (εἴην [ἀληθινός]) und Hilfe leisten wolle (βοηθήσοιμι). (2) Apollodoros wolle dem Nikostratos (αὐτῷ)[109] die Rückzahlung des Weggeldes von 300 Drachmen erlassen (ἀφιείην) und (3) er wolle sich mit 1000 Drachmen an dem von mehreren gemeinsam aufzubringenden Freundschaftsdarlehen (ἔρανος) beteiligen, mit welchem das Lösegeld gezahlt würde (εἰσοίσοιμι). Darauf allein hatte die Bitte des Nikostratos ja auch gelautet[110]. Nutznießer aller drei genannten Hilfestellungen ist Nikostratos (αὐτός), und gleich fünfmal liest man hier, als Objekt jedes der Verben, den Dativ des Pronomens αὐτός (αὐτῷ)[111].

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vgl. so auch Simon (1965) 57 A. 71; Millett (1991) 29; Paulsen (1999) 191; MacDowell (2000) 274; Yunis (2005) 166 A. 159.

105 Vgl. dazu Paulsen (1999) 191: Demosthenes schenkt seinen Schuldnern das Geld, damit nicht der Eindruck entsteht, dass Arme um ihr Geld gebracht werden, während die, welche noch nicht gezahlt haben, freigelassen worden sind.

106 Vgl. dazu auch Dem. 19,170: ἔδωκα δωρειὰν τὰ λύτρα.

107 Dem. 53,8; vgl. dazu auch Pritchett (1991) 248: „Nikostratos [was] … physically mistreated while in captivity."

108 Dem. 53,8.

109 Das Personalpronomen αὐτός bezeichnet in der ganzen Passage den Nikostratos (siehe dazu sogleich). Während die Übersetzungen von Bers (2003) 59 („I forgave the loan of three hundred drachmas") und Wolpert / Kapparis (2011) 166 („I said I would forgive the debt") es gar nicht übersetzen und vielleicht damit indirekt auf das juristische Problem hinweisen möchten, inwiefern Apollodoros dem Nikostratos die Schuld des Deinon erlassen könne, bezieht Murray (1939) 107 hinsichtlich des αὐτῷ eindeutig Stellung: „I therefore answered … that I forgave him the three houndred drachmae (…)".

110 Das εἰσενεγκεῖν αὐτῷ τι ἐκέλευέ με εἰς τὰ λύτρα in Dem. 57,7 korrespondiert mit dem αὐτῷ εἰς τὰ λύτρα εἰσοίσοιμι in Dem. 53,8.

111 Blass (1893) 463 [522] kritisiert, dass die Rede „Häufungen" von Pronomina enthält und etwa in Dem. 53,6-7 gleich zwölfmal in zwei nicht allzu langen Sätzen die Pronomina

In Zusammenhang mit den beiden konkreten in Aussicht gestellten Kreditleistungen ist dies auffällig: Dass die 1000 Drachmen an Nikostratos fließen sollen, ist eine unmittelbare, positive Reaktion auf die Bitte des Nikostratos, nicht aber, dass ihm das Reisegeld des Deinon erlassen würde. Denn hier wäre zu erwarten gewesen, dass Deinon der Schuldner des Apollodoros ist – ihm ja war das Geld ausgezahlt worden[112]. Wenn Apollodoros dem Nikostratos die Reisespesen seines Bruders erlässt, so ist das entweder der ungenauen oder vereinfachenden Darstellung des Redners geschuldet. Oder aber, es entspricht der Rechtswirklichkeit: Nikostratos war es gewesen, für dessen Freikauf Deinon Auslagen gehabt hatte, die er nach dem Erfolg seiner Mission beim Bruder in Rechnung hätte stellen können.

Immerhin hatte Nikostratos an seinen Bruder geschrieben und ihn gebeten, in seinem Interesse tätig zu werden. Doch aus der Tatsache, dass Nikostratos dem Deinon Briefe (πέμποντος τούτου αὐτῷ ἐπιστολάς) und wohl auch Boten geschickt hatte[113], wodurch Deinon angewiesen worden sein wird, im Interesse seines Bruders zu handeln, lässt sich kein Rechtsverhältnis zwischen Deinon und Nikostratos konstruieren: Während sich dies im römischen Recht als Auftragsvertrag (*mandatum*) qualifizieren ließe, welcher eine (wenn auch indirekte) Stellvertretung bedingen konnte, ist dies für das attische Recht, welches keinen Auftragsvertrag kannte[114], auszuschließen. Eine genauere dogmatische Würdigung des Sachverhalts und der Frage, ob hier Deinon als (direkter) Stellvertreter des Nikostratos für diesen ein Darlehen aufgenommen haben könnte, ist aufgrund des knappen Berichtes nicht möglich: Ökonomisch betrachtet hatte Deinon das Darlehen über das Weggeld für seinen Bruder (das heißt: im Sinne seines Bruders) aufgenommen, und diesem wird es wirtschaftlich zugerechnet[115]. Diese Interpretation deckt sich mit dem Ergebnis von Röhrmann, der in Zusammenhang mit Fragen der rechtsgeschäftlichen Stellvertretung im attischen Recht ein Modell verwirklicht sieht, welches nicht das Handeln im fremden Namen als wesentlich erachtet. Vielmehr wäre es relevant, zu überlegen, wessen Vermögen durch ein Darlehen bereichert und welches dadurch belastet worden ist[116]: Aus dieser – nicht-romanistischen – Perspektive wäre durch das Bereitstellen des Reisegeldes Nikostratos bereichert worden, nicht aber Deinon. Insofern kann also Apollodoros dem Nikostratos die Rückzahlung des dem Deinon gegebenen Darlehens erlassen.

αὐτός und οὗτος verwendet werden.

112 Ihm wurde es geliehen, vgl. so etwa auch MacDowell (2009) 106.

113 Vgl. dazu oben unter 2.

114 Biscardi (1982) 269 erklärt dies damit, dass es im griechischen Recht keine Prozessvertretung gab, welche ja eines der wichtigsten römischen Anwendungsfelder des *mandatum* darstellte. Zum Problem vgl. ferner Nörr (1993) 26-28 [1946-1948]; Bürge (1999) 138; Scheibelreiter (2022) 277-278.

115 Bereits Wenger (1906) 166 hat festgestellt: „Um das Ergebnis aber gleich vorwegzunehmen, so zeigen die attischen Quellen, daß den Griechen der Gedanke der direkten Stellvertretung ganz als selbstverständlich erschienen ist, und sie darum nicht die vielen Umwege nötig hatten, welche die Römer brauchten, um praktisch zum annähernd selben Ziel zu kommen."

116 Röhrmann (1968) 91 u. 128; zustimmend Kaser (1970) 353 A. 54; Dössel (2020) 7.

Keine der unterstützenden Maßnahmen, welche Apollodoros in seiner Antwort zusichert, ist zu diesem Zeitpunkt bereits geleistet worden. Apollodoros beschreibt vielmehr sein künftiges Verhalten, wie sich auch aus dem hier jeweils gebrauchten (Optativ des) Futur ergibt.

3.3. Das erste Darlehen: 1000 Drachmen

Auch die Zahlung der hohen Summe von 1000 Drachmen[117] wird also noch erfolgen. Hier schritt Apollodoros sofort zur Tat: So fährt er fort, dass er es nicht bei Worten habe bewenden lassen: καὶ τοῦτο οὐ λόγῳ μὲν ὑπισχόμην, ἔργῳ δ' οὐκ ἐποίησα, (…) – und dies habe ich nicht nur mit Worten versprochen, dann aber nicht in die Tat umgesetzt (…)[118]. Diese Aussage ist nicht nur als Stilmittel im Sinne einer Antithese[119] zu verstehen, welches den Kontrast von „*speech and doing*"[120] ausdrückt. Ein Kredit von 1000 Drachmen, den Apollodoros in Aussicht stellt, kann nämlich durch ein Versprechen (λόγῳ ὑπισχνεῖσθαι) allein nicht begründet werden, sondern bedarf zu seinem Zustandekommen eines ἔργον ποιεῖν, einer realen Verfügung, also: der Auszahlung der Darlehensvaluten[121]. Vergleichbar leiten die Darlehensgeber ihre Rede gegen Dionysodoros (Dem. 56) ein, wenn sie sagen[122]: ἡμεῖς δ' οὐ φαμεν δώσειν, ἀλλ' εὐθὺς τῷ δανειζομένῳ δίδομεν τὸ ἀργύριον. Auch hier brüsten sich die Darlehensgeber, nicht anders als Apollodoros, mit der ihnen eigenen Verlässlichkeit: Sie haben es nicht bloß bei Worten belassen, sondern ließen auch Taten folgen. Aus juristischer Perspektive ist daran zu erinnern, dass ein bloßes Darlehensversprechen unverbindlich gewesen und dem potenziellen Darlehensnehmer daraus noch kein Anspruch erwachsen wäre. Das Darlehen kommt eben erst mit der Übergabe des Geldes zustande. Nur die reale Verfügung des Darlehensgebers eröffnet die Möglichkeit, auf Rückzahlung der Darlehensvaluten zu klagen[123].

Im gegenständlichen Falle ist die Auszahlung der 1000 Drachmen aber aufgrund der Erbschaftsstreitigkeiten mit Phormion[124] nicht so einfach zu bewerkstelligen. Dieser, der Freigelassene seines Vaters und nunmehrige Stiefvater, habe ihn des väterli-

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[117] Millett (1991) 55 führt aus, dass diese Summe der durchschnittlichen, mittels Hypothek gesicherten Darlehenssumme auf Horos-Inschriften bzw. dem Zweijahres-Lohn für einen Künstler entsprochen habe.

[118] Dem. 53,9.

[119] Blass (1893) 462 [521] spricht in diesem Zusammenhang von einer „gesuchten" Antithese und übersieht dabei die juristisch relevante Implikation der Aussage.

[120] Trevett (1992) 109 unter Verweis auf Denniston (1952) 13.

[121] Pringsheim (1950) 20 überlegt, ob aus dem formellen Versprechen ein klagbarer Anspruch erwachsen könnte. Doch diese Überlegung passt hier nicht: Das Versprechen ist zum einen formlos (ein formgebundenes Versprechen wäre etwa die römische *stipulatio*, für die es im attischen Recht kein Pendent auszumachen gibt). Zum anderen betont der Redner ja gerade den Gegensatz zwischen der formlosen Zusage von Hilfe (λόγος) und der Umsetzung dieser Ankündigung in einer realen Verfügung (ἔργον).

[122] Dem. 56,1.

[123] Vgl. dazu nur Rupprecht (1967) 39-60; Simon (1965) 43; Meier (1969) 53.

[124] Vgl. zu dem Geldmangel des Apollodoros aufgrund seines Konfliktes mit Phormion auch Beyer (1968) 76-77 u.79 sowie 149-150.

chen Vermögens entreichert[125]. Deswegen verfügt Apollodoros über kein Bargeld[126]:

> (…), ἀλλ' ἐπειδὴ οὐκ ηὐπόρουν ἀργυρίου διὰ τὸ διαφόρως ἔχειν τῷ Φορμίωνι καὶ ἀποστερεῖσθαι ὑπ' αὐτοῦ τὴν οὐσίαν ἣν μοὶ πατὴρ κατέλιπε κομίσας ὡς Θεοκλέα τότε τραπεζιτεύοντα ἐκπώματα καὶ στέφανον χρυσοῦν, ἃ παρ' ἐμοὶ ἐκ τῶν πατρῴων ὄντα ἐτύγχανεν, ἐκέλευσα δοῦναι τούτῳ χιλίας δραχμάς, καὶ τοῦτο ἔδωκα δωρειὰν αὐτῷ τὸ ἀργύριον, καὶ ὁμολογῶ δεδωκέναι.
>
> Weil ich aufgrund der Zerwürfnisse mit Phormion und der Tatsache, dass ich von diesem des Vermögens beraubt wurde, welches der Vater mir hinterlassen hatte, nicht viel an Geld zur Verfügung hatte, brachte ich zu Theokles, welcher damals eine Bank betrieben hat, Trinkgefäße und einen goldenen Kranz, Sachen, die, aus dem väterlichen Vermögen stammend, sich schon bei mir befunden haben, und wies ihn an, diesem da 1000 Drachmen auszuzahlen, und dieses Geld gab ich ihm als Geschenk, und ich bestätige, dass ich es geschenkt habe.

Apollodoros begibt sich folglich zu Theokles, einem damals tätigen Bankier[127], welchem er Wertgegenstände überlässt: Trinkgefäße (ἐκπώματα) und einen goldenen Kranz (στέφανος χρυσοῦς). Nach deren Übergabe an Theokles weist Apollodoros den Theokles an, 1000 Drachmen „diesem da" (τούτῳ) auszuzahlen. An der Transaktion beteiligt sind also Apollodoros, Theokles und Nikostratos[128]. Theokles zahlt dem Nikostratos so auch die 1000 Drachmen aus, welche Apollodoros dem Freund daraufhin schenkt, was er nun, vor Gericht, nochmals bestätigt.

Aufgrund der so kurzen Sachverhaltsdarstellung des Apollodoros allein ist es nicht leicht, das Geschehen juristisch zu bewerten. Von seinem Resultat her betrachtet ist hier eine Schenkung des Apollodoros an Nikostratos im Ausmaß von 1000 Drachmen erfolgt. Anders als bei Aushändigung des Reisegeldes an Deinon ist das neutrale Verb „geben" (διδόναι) hier mit dem Wort δωρειάν (Geschenk) verbunden,

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[125] Zum Begriff des ἀποστερεῖν im schuldrechtlichen Kontext vgl. zuletzt Scheibelreiter (2020a) 188-212; in Zusammenhang mit dem Darlehen des Nikostratos vgl. dazu unten unter 5.

[126] Dem. 53,9.

[127] Über diesen ist nichts weiter bekannt, vgl. Bers (2003) 61 A. 26. Millett (1991) 55-56 mutmaßt, dass es sich bei Theokles um einen Geschäftsfreund des Pasion gehandelt haben könnte, und verweist auf Dem. 50,56, wo Apollodoros ausführt, dass er aufgrund der Kontakte seines Vaters überall in Griechenland Kredit bekommen könne. Bogaert (1968) 78 vermerkt zu Recht, dass das darauf hinweise, dass Theokles zum Zeitpunkt der Rede (also nach 366 v. Chr.) nicht mehr als Bankier aktiv, vielleicht auch schon gestorben war.

[128] Mit dem Demonstrativpronomen (τούτῳ) ist in erster Linie Nikostratos als der jetzt, bei Gericht anwesende Prozessgegner des Apollodoros gemeint: In zweiter Linie könnte damit auch angedeutet sein, dass Nikostratos bei der Banktransaktion zugegen gewesen ist. Das Demonstrativpronomen kann sich hier auch nicht auf den Redner selbst beziehen (etwa im Sinne von οὗτος ὁ ἀνὴρ = „ich"); so lauten auch die Übersetzungen einhellig darauf, dass damit Nikostratos gemeint sei, vgl. etwa Murray (1939) 107: „and bade him to give Nicostratus a thousand drachmae"; Bers (2003) 60: „and I ordered him to give Nicostratus one thousand drachmas" oder Wolpert / Kapparis (2011) 166: „and I asked him to give Nicostratus one thousand drachmas".

welches mit dem Akkusativ-Objekt ἀργύριον gleichgesetzt wird[129]: καὶ τοῦτο ἔδωκα δωρειὰν αὐτῷ τὸ ἀργύριον.

Wer jedoch hat dem Nikostratos das Geld gegeben? In nur einem Satz spricht Apollodoros davon, dass er selbst den Theokles zur Zahlung an Nikostratos aufgefordert (ἐκέλευσα δοῦναι) und dass er dieses dann dem Nikostratos geschenkt habe (ἔδωκα δωρειάν). Wieder könnte die Darstellung hier eine Lücke aufweisen, etwa, dass Theokles dem Apollodoros das Geld gegeben und dieser es dann an Nikostratos weitergeleitet habe. Dann würde der Kläger zwei chronologisch aufeinander abfolgende Transaktionen in einem Satz zusammenziehen. Doch einfacher ist es, das διδόναι δωρειάν nicht wörtlich und in dem Sinne zu verstehen, dass Apollodoros dem Nikostratos das Geld persönlich zugezählt hat. Vielmehr ließe es sich mit „schenken" im Sinne des „Erlassens der Rückzahlung" übersetzen und stünde damit in keinem Widerspruch dazu, dass Theokles dem Nikostratos das Geld gegeben hat.

Der Text selbst lässt zwar offen, ob Apollodoros die Schenkung bereits bei Auszahlung des Geldes beabsichtigte oder sie nachträglich beschlossen hat. Nikostratos hatte ihn ja um einen Beitrag zum ἔρανος gebeten, welchen er grundsätzlich zurückzahlen hätte müssen[130]. Wenn Apollodoros aber die Hingabe des Geldes als Geschenk nochmals ausdrücklich anerkennt – das ὁμολογῶ δεδωκέναι liest sich wie der Text einer Schenkungsurkunde – so betont er damit das von ihm in Bezug auf den ἔρανος eingeräumte Privileg, was auf einen nachträglichen Schulderlass hinweisen könnte[131].

Der Schenkung geht ein Rechtsgeschäft zwischen Apollodoros und Theokles voraus. Bei unbefangener Lesung der Passage ließe sich überlegen, ob Apollodoros dem Theokles die Wertsachen verkauft und ihn anweist, den Kaufpreis an den Nikostratos auszuzahlen. Allerdings gibt es keine Hinweise darauf, dass Apollodoros dem Theokles die Trinkgefäße und den goldenen Kranz übereignen möchte, und auch von einem Kaufgeschäft ist im Text nichts zu lesen.

Die hier kurz umrissene Dreieckskonstellation lässt sich verstehen als Zahlungsanweisung[132] des Apollodoros an Theokles: Die kurze Wortfolge ἐκέλευσα δοῦναι

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[129] Dem. 53,9. Deshalb kann sich Apollodoros bei seiner abschließenden, vor Gericht gegebenen Bestätigung der Schenkung, auch mit der Nennung des Verbs διδόναι allein begnügen.

[130] So schon Simon (1965) 54; Meier (1969) 44-45. Anders verhält es sich etwa mit dem ἔρανος, dessen Rückzahlung dem Aischines schenkungshalber erlassen worden sei (Dem. 18,312); nach Demosthenes war dies nur als Tarnung für Bestechungsgelder zu werten, vgl. dazu auch Meier (1969) 43-44.

[131] So auch Millett (1991) 55 und Faraguna (2012) 137 und 141. Vielleicht bezieht sich der Redner damit aber auch auf eine bereits im ersten Verfahrensabschnitt getätigte Aussage, die er hier vor dem Gerichtshof nochmals bestätigt; vgl. dazu nur Thür (2007) 134.

[132] In Dem. 53,7 erfolgt die Anweisung über eine Bank. Eine Zahlungsanweisung ist etwa auch in Dem. 52,6 wörtlich belegt, vgl. dazu Mitteis (1898) 244-245; Wolff (1957) 44-45; Jakab (1999) 374; Jakab (2003) 507-508; Jakab (2021) 359-360; Kaiser (2023) 206-207. Ob diese in Form einer Bank-διαγραφή – vgl. dazu Mitteis (1898) 213-218; Drewes (1974); Gröschler (1997) 341-352 – auch hier erfolgt ist, lässt sich nicht ausmachen; zudem ist diese Form der Buchung in den attischen Reden auch nicht bezeugt, vgl. so auch Drewes (1974) 106-107. Dass die Bankbuchführung, wie sie in Dem. 52,4 u. 6 belegt ist, wiederum der Bankdiagraphe Pate gestanden hat, hat Gröschler (1997) 352-358 aufgezeigt; zustim-

τούτῳ χιλίας δραχμάς weist die Form einer Anweisung auf[133], welche etwa auch aus der demosthenischen Rede gegen Kalippos[134] belegt ist[135]: Der Anweisende steht im Nominativ (ἔγω), der Anweisungsempfänger im Dativ (τούτῳ), die Summe im Akkusativ (χιλίας δραχμάς). Auch das Verb δοῦναι könnte dem technischeren ἀποδοῦναι eines Bankeintrages entsprechen. Apollodoros erzählt, dass er den Theokles „aufgefordert" habe (ἐκέλευσα), die Zahlung zu leisten. Für den rechtstechnischen Begriff „anweisen" einschlägig wäre hier das Verb προστάττειν[136]. Und doch ist der Gebrauch des Verbs κελεύειν in Zusammenhang mit einer Zahlungsanweisung gut dokumentiert:

Zu verweisen ist hier nur auf Demosthenes' Rede gegen Timotheos[137]. Wieder spricht hier Apollodoros und referiert von mehreren Darlehen, welche Timotheos bei seinem mittlerweile verstorbenen Vater Pasion aufgenommen hatte und ihm, dem Erben des Pasion, nun schulde. Ein erster Kredit über 1351 Drachmen und 2 Obolen kommt über die Anweisung des Darlehensnehmers (Timotheos) an den Darlehensgeber (Pasion) zustande, das Geld an einen Dritten zu zahlen, an Antimachos, welcher es für den Darlehensnehmer Timotheos empfangen solle[138]:

> καὶ ὁ δανεισάμενος τὸ ἀργύριον παρὰ τοῦ πατρὸς τοῦ ἐμοῦ Τιμόθεος ἦν καὶ κελεύσας δοῦναι Ἀντιμάχῳ τῷ ταμίᾳ τῷ ἑαυτοῦ, ὁ δὲ λαβὼν τὸ ἀργύριον ἀπὸ τῆς τραπέζης παρὰ Φορμίωνος Αὐτόνομος, ὅσπερ Ἀντιμάχῳ διατελεῖ γραμματεύων τὸν ἅπαντα χρόνον.
>
> Timotheos war es, der das Geld als Darlehen nahm von meinem Vater, und ihn anwies, es dem Antimachos zu geben, seinem Finanzverwalter. Der aber, welcher das Geld empfing von Phormion, war Autonomos, welcher als Sekretär angestellt war für den gesamten Zeitraum bei Antimachos.

Auch hier weist also der Darlehensnehmer den Darlehensgeber an, einem Dritten Geld auszuzahlen: (Τιμόθεος) … κελεύσας δοῦναι[139]. Durch Auszahlung des Geldes an Antimachos (Autonomos) kommt das Darlehen zwischen Pasion und Timotheos

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mend Jakab (1999) 375. Doch auch wenn hier nichts von διαγράφειν zu lesen ist und keine entsprechende Urkunde erwähnt wird, wird deutlich, dass der Transaktion in Dem. 53,9 eine Zahlungsanweisung zugrunde liegt. Zur Zahlungsanweisung im römischen Recht vgl. rezent und mit Forschungsstand Willems (2023) 1999-2007.

[133] Gröschler (1997) 353 spricht in diesem Zusammenhang von der Form „ὁ δεῖνα τοσοῦτον. τῷ δεῖνι ἀποδοῦναι δεῖ", wie sie in Dem. 52,4 auch belegt ist.

[134] Der Eintrag lautet dort (Dem. 52,6): Ἡρακλεώτης χιλίας ἑξακοσίας τετταράκοντα. Κηφισιάδῃ ἀποδοῦναι δεῖ. Ἀρχεβιάδης Λαμπτρεὺς δείξει τὸν Κηφισιάδην. – Lykon aus Herekleia 1640 Drachmen. Dem Kephisiades zu geben. Archebiades aus Lamptrai wird den Kephisiades identifizieren.

[135] Vgl. dazu Jakab (1999) 374; Jakab (2003) 507: „Im Mittelpunkt der Rede steht Lykons Zahlungsanweisung; (…)."

[136] Vgl. dazu Hasebroek (1920) 118-121; Kaiser (2023) 207.

[137] Dem. 49; allgemein zur Rede vgl. etwa Blass (1893) 463-467; Harris (2006) 55-64; MacDowell (2009) 102-106; Scafuro (2011) 354-363.

[138] Dem. 49,7.

[139] Vgl. so auch Dem. 49,6: ἐκελευσεν αὐτὸν χρῆσαι bzw. καὶ δοῦναι ἐκέλευσεν Ἀντιμάχῳ.

zustande. Timotheos haftet dem Pasion auf Rückzahlung des Geldes und wird als Schuldner in die Rechnungsbücher eingeschrieben[140]: δοθέντος τοίνυν τοῦ ἀργυρίου, ἐγράψατο μὲν ὀφείλοντα τὸν κελεύσαντα χρῆσαι Τιμόθεον (…)[141]. Mit dem κελεύειν des Timotheos wird aber keinesfalls ein – dem griechischen Recht ja auch unbekanntes[142] – Auftragsvertragsverhältnis (*mandatum*) begründet[143]. Die Anweisung (das κελεύειν) des Timotheos an den Pasion hat eine zweifache Funktion: Zum einen beschreibt sie die Aufforderung, dem Autonomos Geld zuzuzählen. Zum anderen wird damit dem Pasion der Autonomos als der Empfänger der Zahlung bezeichnet[144].

Ebenso weist Apollodoros den Theokles an, dem Nikostratos Geld auszuzahlen. Dadurch wird Apollodoros dem Theokles zur Rückzahlung des Geldes verpflichtet und, wovon freilich nichts zu lesen ist, wohl auch als Schuldner in das Rechnungsbuch des Bankiers eingetragen.

Ein erster wichtiger Unterschied zwischen den beiden Transaktionen aus Dem. 49 und 53 besteht darin, dass Pasion, der auch keine Zeugen für die Auszahlung an Timotheos beizieht, den Kredit ungesichert vergibt[145]. In Dem. 53 besichert hingegen Apollodoros die Rückzahlung der 1000 Drachmen an Theokles und damit das Deckungsverhältnis zwischen Theokles und Apollodoros mit (aus dem von Pasion ererbten Vermögen) beigebrachten Wertsachen[146]. Somit liegt ein Lombardkredit

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[140] Dem. 49,8. Timotheos wird als Darlehensschuldner in den Büchern des Pasion vermerkt, Antimachos als Empfänger der Zahlung und Antimachos als derjenige, welcher das Geld tatsächlich übernommen hatte, vgl. dazu auch Dössel (2020) 8.

[141] Darüber hinaus wird auch ein Beleg erstellt, welcher den Empfänger der Zahlung ausweist (Dem. 49,8): δοθέντος τοίνυν τοῦ ἀργυρίου, ἐγράψατο μὲν ὀφείλοντα τὸν κελεύσαντα χρῆσαι Τιμόθεον, ὑπόμνημα δὲ ἐγράψατο, ᾧ δὲ οὗτος ἐκέλευσε δοῦναι. Ἀντιμάχῳ, καὶ ὃν ὁ Ἀντίμαχος συνέπεμψεν ἐπὶ τὴν τράπεζαν ληψόμενον τὸ ἀργύριον, τὸν Αὐτόνομον, τὰς χιλίας τριακοσίας δραχμὰς καὶ πεντήκοντα καὶ μίαν καὶ δύ’ ὀβολώ.

[142] Vgl. dazu oben unter 3.2.

[143] Es wird also nicht etwa ein Kreditmandat erteilt, wie es das klassische römische Recht entwickelt hat: Beim Kreditmandat erteilt ein Auftraggeber (AG) dem Auftragnehmer (AN) das *mandatum*, an einen Dritten (D) ein Darlehen zu zahlen. Wenn dies geschehen ist, verbinden AG und AN ein Auftrag, den AN und den D ein Darlehen, für dessen Rückzahlung der AG dem AN *ex mandato* bürgenähnlich haftet.

[144] Die doppelte Funktion des κελεύειν, welche Rabel (1937) 214 [608] als „doppeltes Mandat“ bezeichnet, kann in Zusammenhang mit der adjektizischen Haftung eines Gewalthabers für von seinem Gewaltunterworfenen begründete Vertragsverhältnisse auch für das römische *iubere* beobachtet werden: Das *iussum*, welches vom Gewalthaber an den Gewaltunterworfenen erteilt wird, muss andererseits auch von dessen Vertragspartner bewiesen werden, damit dieser sich im Rechtsstreit auf die *actio quod iussu* stützen kann; vgl. Gaius Inst. 4,74 und dazu Bürge (2023) 2786; vgl. auch Schleppinghoff (1996) 45-47. Daher wird sich der Vertragspartner des *iussum* versichert haben, welches so auch an ihn adressiert ist. Abgesehen davon, dass im gegenständlichen Falle das κελεύειν aber primär an den Darlehensgeber adressiert ist, enthält es, anders als das römische *iubere*, keine Verfügungsermächtigung, vgl. so auch Dössel (2020) 1 A. 37.

[145] Dem. 49,2: οὔτε γὰρ ἐπ’ ἐνεχύρῳ οὔτε μετὰ μαρτύρων ἔδωκε – weder gab er (die Kredite) gegen Bestellung eines Pfandes, noch unter Beiziehung von Zeugen.

[146] Nach Shipton (2008) 110 liegt hier die einzige, in den attischen Reden bezeugte Darlehensaufnahme bei einem Bankier zum Zweck einer Lösegeldfinanzierung vor.

vor[147]: Die Wertsachen dienen dem Theokles als Pfand dafür, dass Apollodoros dem Theokles die 1000 zurückzahlen werde[148], die er auf dessen Anweisung hin an Nikostratos auszahlt[149]. Das schließt nicht aus, dass die zum Pfand von den Parteien bestellten Sachen materiell als antizipierte *datio in solutum* und damit als Objekte verstanden werden, auf die allein sich die Haftung des Apollodoros konzentrierte[150].

Ein weiterer und noch gewichtigerer Unterschied betrifft die Anzahl der Darlehen: In Dem. 49,7 hat Antimachos (Autonomos) das Geld für Timotheos empfangen. Es ist nur ein Darlehen entstanden, nämlich: jenes von Pasion an Timotheos. Demgegenüber empfängt Nikostratos in Dem. 53,9 das Geld von Theokles für eigene Zwecke und wird dadurch zum Schuldner des Apollodoros. Die Auszahlung der 1000 Drachmen von Theokles an Nikostratos zeitigt damit zweifache Rechtswirkung: (1) Im Deckungsverhältnis: Durch die Leistung von Theokles an Nikostratos wird der Apollodoros dem Theokles zur Rückzahlung von 1000 Drachmen verpflichtet[151]. (2) Im Valutaverhältnis: Durch die Leistung des Theokles an Nikostratos wird Nikostratos dem Apollodoros zur Rückzahlung von 1000 Drachmen verpflichtet[152]. Die Rückzahlungspflicht des Nikostratos wird ihm von Apollodoros allerdings (sofort, oder, was plausibler scheint, nachträglich) schenkungshalber erlassen. Es entstehen aber ursprünglich zwei Darlehen[153].

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147 So auch Hasebroek (1920) 161. Eine solche Form des Lombardkredits, also eines mit Pfändern besicherten Kredits, beschreibt Demosthenes etwa auch in einer anderen Passage aus der Rede gegen Timotheos, vgl. Dem. 49,21: Dort behauptet der Beklagte (aus Sicht des Redners Apollodoros: fälschlich), dass Pasion dem Philippos ein Darlehen gegeben habe und dieser dafür Wertsachen aus Kupfer verpfändet habe: σχεδὸν μὲν οὖν καὶ αὐτὸς οὗτος ὡμολογει πρὸς τῷ διαιτήτῃ, ἀποδοῦναι τῷ Φιλίππῳ τὸν πατέρα τὸν ἐμὸν τὰς χιλίας δραχμάς, οὐ μέντοι αὐτῷ γέ φησί δανεῖσαι, ἀλλὰ τῷ Βοιωτίῳ ναυάρχῳ, καὶ ὑποθεῖναί φησιν αὐτὸν τούτου τοῦ ἀργυρίου χαλκόν.

148 Eine Drittpfandbestellung des Apollodoros für einen Kredit des Theokles an Nikostratos kann nicht vorliegen, da Nikostratos mit dem Theokles in keinerlei rechtsgeschäftliche Beziehung tritt.

149 So auch Bogaert (1968) 354; Shipton (1997) 419; Harris (2006) 262; Harris (2013) 89. Millett (1991) 55 fasst das Geschehen etwas undifferenziert zusammen: „In this case, Apollodoros raised the sum by offering pledges to a banker."

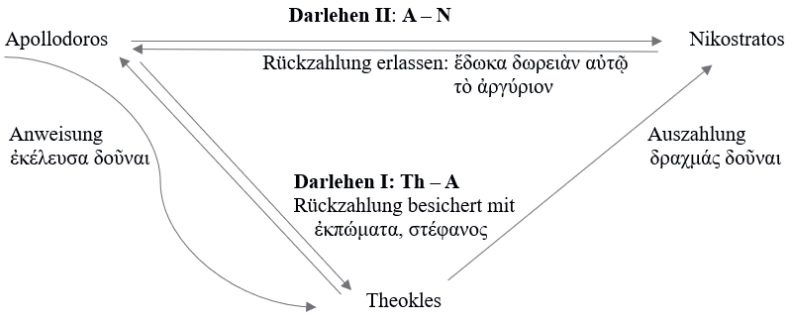
150 Zur Frage, ob die Übergabe von Pfandsachen, als antizipierte *datio in solutum* interpretiert werden könnte, vgl. Mitteis / Wilcken (1912) 145. Für diesen Hinweis danke ich José Luis Alonso (Zürich).

151 Vgl. dazu die in Bezug auf die Zahlungsanweisung (*delegatio solvendi*) des römischen Rechts die Regel D. 50.17.180 (Paul. 17 ad Plaut.): *quod iussu alterius solvitur, pro eo est, quasi ipsi solutum esset*. – Was auf Geheiß eines anderen gezahlt wird, ist so anzusehen, als ob ihm selbst geleistet worden wäre.

152 Vgl. dazu, in Bezug auf die Zahlungsanweisung (*delegatio solvendi*) des römischen Rechts, D. 46.3.56 (Paul. 62 ad ed.): *Qui mandat solvi, ipse videtur solvere*. – Wer anweist, dass gezahlt werde, der scheint selbst eine Zahlung zu leisten.

153 Vergleichbar ist diese Zahlungsanweisung einem Anweisungsdarlehen nach klassischem römischen Recht, bei dem der Darlehensgeber einen Dritten anweist, dem Darlehensnehmer Geld auszuzahlen, welches dieser dann dem Darlehensgeber aus Darlehen schuldet. Anders als im Schulfall D. 12.1.15 (Ulp. 31 ad ed.) besteht aber im gegenständlichen Sachverhalt im Zeitpunkt der Anweisung im Deckungsverhältnis (also: zwischen Anweisendem und Angewiesenen) keine Schuld, sondern wird diese durch Auszahlung an den Anwei-

Graphisch umgesetzt sähe die Konstellation wie folgt aus:



Dass diese Auszahlung des Geldes durch Theokles tatsächlich erfolgt ist – und somit die Darlehen entstanden sind –, geht aus der Rede eindeutig hervor: So bittet Nikostratos zweimal um das – zur Deckung der Gesamtkosten seines Freikaufs – „restliche Geld“: τὸ λοιπὸν ἀργύριον[154] bzw. τὸ ἐλλεῖπον τοῦ ἀργυρίου[155], und entwirft das bedrohliche Szenario, dass die 1000 Drachmen „verloren“ wären, wenn nicht auch dieser Rest beglichen würde[156]. Wenn er die 1000 Drachmen zu diesem Zeitpunkt bereits an diejenigen, die seinen Freikauf finanziert hatten, zurückgezahlt hat, so hatte er das Geld zuvor notwendigerweise schon von Theokles empfangen.

4. Das Lösegeld für Nikostratos

Doch bereits einige Tage später erscheint Nikostratos wieder bei Apollodoros. Er werde, so seine Darstellung, von denjenigen bedrängt, welche ihm ein Darlehen gegeben hatten, damit er freigekauft werden könne[157]:

> ἡμέραις δ’ οὐ πολλαῖς ὕστερον προσελθών μοι κλάων ἔλεγεν, ὅτι οἱ ξένοι ἀπαιτοῖεν αὐτόν, οἱ δανείσαντες τὰ λύτρα, τὸ λοιπὸν ἀργύριον, καὶ ἐν ταῖς συγγραφαῖς εἴη τριάκονθ’ ἡμέρων αὐτὸν ἀποδοῦναι ἢ διπλάσιον ὀφείλειν. (…)
>
> Nicht viele Tage später kam er weinend zu mir und sagte, dass die Fremden, welche das Lösegeld kreditiert hätten, das restliche Geld fordern würden. In den Vertragsbestimmungen stünde, dass er innerhalb von 30 Tagen zahlen solle oder sonst den doppelten Betrag schulde. (…)

Als Gläubiger werden hier „Fremde“ genannt[158], welche das Lösegeld gezahlt und damit dem Nikostratos vorgestreckt hätten: οἱ ξένοι, (…) οἱ δανείσαντες τὰ λύτρα. Dies lässt die folgenden Schlüsse über diese Gläubiger zu:

Es gab mehrere Gläubiger – Nikostratos sieht sich einer Gläubigermehrheit ge-

sungsempfänger erst begründet.

[154] Dem. 53,10.
[155] Dem. 53,11.
[156] Dem. 53,11.
[157] Dem. 53,10.
[158] Ebenso noch einmal in Dem. 11 u. 12.

genüber. Auch hier könnte man an einen, der Aufbringung dieser Lösegeldsumme durch die ξένοι zugrunde liegenden ἔρανος denken: Die Fremden treten durchgehend als Darlehensgeber auf[159]; auch aus dem mit ihnen geschlossenen Darlehensvertrag wird zitiert[160], aus welchem die ξένοι zu klagen drohen. Sie haben die finanziellen Mittel zur Verfügung gestellt, mit denen Nikostratos sich von den Dritten freikaufen konnte. Dabei sind zwei Optionen denkbar: (a) Die ξένοι haben Nikostratos ein Darlehen gegeben, mit dem er sich freikaufen konnte, oder (b) sie haben ihn selbst freigekauft und ihm die Rückzahlung des Geldes gestundet, was sich faktisch wie ein Kredit an Nikostratos auswirkt. Fraglich ist, ob sie, wenn sie bloße Käufer wären, mit dem technischen Wort für Darlehensgeber (δανείσαντες) bezeichnet würden. Dies gilt es im Auge zu behalten.

Andererseits sind die Gläubiger „Fremde". Wenn der Athener Nikostratos gegenüber dem Athener Apollodoros[161] ebenso von ξένοι spricht wie der Athener Apollodoros gegenüber den athenischen Richtern, so ist anzunehmen, dass die Kreditgeber aus der Perspektive der hier jeweils miteinander sprechenden Athener Fremde waren, und damit: Nicht-Athener[162]. Wenn mit dem Wort ξένοι aber Athener gemeint wären, welche in Aigina eben „Fremde" waren, dann hätte Nikostrates dem Apollodoros bzw. Apollodoros den Richtern davon berichtet.

Die Tatsache, dass die Darlehensgeber Fremde sind, könnte so auch die harten Bedingungen erklären, zu denen der Kredit vergeben worden ist[163]: Bei Nichtrückzahlung ist im Darlehensvertrag zum einen die *poena dupli* vereinbart: Wenn Nikostratos nicht innerhalb einer Frist von 30 Tagen zahlen würde, so solle er den doppelten Betrag schulden. Hier referiert Nikostratos bzw. Apollodoros aus der Urkunde – mit dem Plural συγγραφαί sind die schriftlich fixierten Bedingungen des Darlehens (δάνειον) gemeint. Die *poena dupli* als Strafe in Darlehensverträgen ist etwa auch als Vertragsstrafe beim Seedarlehen des Dionysodoros belegt[164].

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[159] In Dem. 53,10 werden sie als οἱ δανείσαντες τὰ λύτρα bezeichnet.

[160] In Dem. 53,10 werden die συγγραφαί erwähnt, vgl. dazu sogleich.

[161] Apollodoros war der 394/93 v. Chr. geborene – vgl. dazu Trevett (1992) 19 A. 5 –, älteste Sohn des Freigelassenen und damit Metöken Pasion (Dem. 36,48). Pasion wurde für seine Verdienste das athenische Bürgerrecht verliehen (Dem. 56,13; 59,2); zur Datierung dieses Volksbeschlusses vgl. Schaefer (1949) 2065; Kapparis (1999) 169-170 mit Forschungsstand sowie Schmitz (2000) 384, welcher 390 oder 376 v. Chr. als Datum annehmen möchte. Dieser Volksbeschluss umfasste auch die Aufnahme seiner Nachkommen in die athenische Bürgerschaft (Dem. 59,2): Ψηφισαμένου γὰρ τοῦ δήμου τοῦ Ἀθηναίων Ἀθηναῖον εἶναι Πασίωνα καὶ ἐκγόνους τοὺς ἐκείνου διὰ τὰς εὐεργησίας τὰς εἰς τὴν πόλιν, (...); vgl. dazu Kapparis (1999) 371. In Dem. 53,18 sagt Apollodoros ausdrücklich, dass er ein πολίτης κατὰ ψήφισμα sei und nicht für den Tod eines anderen athenischen Bürgers, des Arethusios, verantwortlich sein wolle, weshalb er die dem Arethusios drohende Todesstrafe auch nicht beantragt.

[162] Millett (1991) 56 spricht von „possibly non-Athenians"; vgl. auch MacDowell (2009) 106.

[163] So handelte es sich nach Harrison (1968) 267-268 und Millett (1991) 265-266 nicht um ein Freundschaftsdarlehen.

[164] Dem. 56,38; vgl. dazu Schuster (2005) 124-125. Grenfell / Hunt (1906) 167 nehmen auch für Darlehensurkunden des 3. Jh. v. Chr. eine *poena dupli* als typische Strafe bei Verzug mit der Rückzahlung eines Darlehens an; dagegen Berger (1911) 117. Die in den (jüngeren) Papyri dokumentierte, typische Strafe ist die ἡμιολία, die Zahlung des eineinhalbfachen

Auch die Frist, die angesichts der Tatsache, dass Nikostratos von dem Vertrag bei seinem zweiten, Tage später erfolgenden Besuch bei Apollodoros (ἡμέραις δ' οὐ πολλαῖς ὕστερον) berichtet, bald fällig sein dürfte, ist vollkommen ausreichend, um von Aigina nach Athen und wieder zurück zu reisen[165]. Es ist nicht genau zu eruieren, wie viel Zeit nach dem Abschluss des Darlehensvertrages, welcher die Frist enthalten hat, bereits vergangen ist, als Nikostratos zu Apollodoros kommt. Der eigenen Aussage nach hat er zuerst versucht, bei seiner Familie das Geld aufzubringen. Dabei habe er die Rechnung ohne den Wirt, das heißt: ohne seinen Bruder Arethusios gemacht, welcher die Veräußerung oder Belastung der Liegenschaft, welche jener des Apollodoros benachbart ist, untersagt habe[166]:

> (..) καὶ ὅτι τὸ χορίον τὸ ἐν γειτόνων μοι τοῦτο οὐδεὶς ἐθέλοι οὔτε πρίασθαι οὔτε τίθεσθαι. ὁ γὰρ ἀδελφὸς, ὁ Ἀρεθούσιος, οὗ τἀνδράποδ' ἐστὶ ταῦτα ἃ νῦν ἀπογέγραπται, οὐδένα ἐᾷη οὔτε ὠνεῖσθαι οὔτε τιθεῖσθαι, ὡς ἐνοφείλομένου αὐτῷ ἀργυρίου.
>
> Und [er sagte mir], dass dieses mir benachbarte Landstück niemand kaufen oder als Sicherheit akzeptieren würde. Sein Bruder Arethusios nämlich, dem die Sklaven gehören, welche in der Anzeige angegeben werden, duldet nicht, dass es irgendwer kaufe oder als Sicherheit nehme, weil ihm ja selbst Geld geschuldet werde darauf.

Aus den letzten Worten, dem kausal aufzulösenden *Genetivus absolutus*, ergibt sich, dass die Liegenschaft auch dem Bruder „verpflichtet ist": ὡς ἐνοφείλομένου αὐτῷ ἀργυρίου. Arethusios verbietet seinem Schuldner Nikostratos die Verfügung über diese Liegenschaft[167]: Das Kompositum ἐνοφείλειν besagt, dass eine Forderung des Arethusios „auf das Land" bestehe, dieses also eine Sicherheit für seine Forderung gegen Nikostratos darstelle. Daraus lässt sich mit Paoli[168], Fine[169], Biscardi[170], Harris[171], Thür[172] oder zuletzt Walser[173] folgern, dass das bereits dem Arethusios als Sicherheit bestellte Grundstück[174] nicht noch ein weiteres Mal belastet werden dürfe, weil er als Gläubiger dies untersagte[175]: „Ob Nikostratos sein Landgut als Sicherheit

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Betrages (etwa in Verbindung mit Zinsen), vgl. etwa Berger (1911) 118-120; Platschek (2013) 61 mit A. 187-188.

165 Die Luftlinie Aigina – Athen beträgt 36,27 km, ein Schiff benötigt für die Strecke bei einer Geschwindigkeit von 15 Knoten gerade einmal 1 Stunde und 12 Minuten.

166 Dem. 53,10; so auch Fine (1951) 81.

167 Die Liegenschaft ist freilich weiterhin im Besitz des Nikostratos, vgl. Fine (1951) 81.

168 Paoli (1930) 168 A. 1 und 188.

169 Fine (1951) 94 mit A. 117.

170 Biscardi (1969) 154. Ebenda folgert Biscardi *ex adverso*, dass die Liegenschaft aber bei Zustimmung eines vorrangigen Gläubigers sehr wohl mehrfach belastet werden hätte können.

171 Es könnte also, wie Harris (1988) 353 und ders. (2006) 166 ausführt, von der Zustimmung des Gläubigers abhängig gewesen sein, ob eine Mehrfachbelastung möglich war.

172 Thür (2008) 182 und 185 A. 73.

173 Walser (2023) 325.

174 So auch Millett (1991) 266.

175 Vgl. demgegenüber aber Harrison (1968) 291, welcher anmerkt, dass das Belastungsverbot

belasten konnte, hing mithin ganz vom Willen des Erstgläubigers ab, der dies in seinem Falle nicht erlaubte.“[176]

Nikostratos droht aber – neben der oben genannten Pönale – zum anderen auch eine gesetzliche Strafe: So ordneten „die Gesetze“ (οἱ νόμοι) an, dass ein freigekaufter Kriegsgefangener[177] demjenigen verfallen solle, welcher ihn von den Feinden freigekauft hat[178]:

> οἶσθα δ’, ἔφη, ὅτι καὶ οἱ νόμοι κελεύουσι τοῦ λυσαμένου ἐκ τῶν πολεμίων εἶναι τὸν λυθέντα, ἐὰν μὴ ἀποδιδῷ τὰ λύτρα. – Du weißt aber, sagte er, dass auch die Gesetze anordnen, dass der von den Feinden ausgelöste dem Auslöser gehören solle, wenn er die Lösesumme nicht erstattet.

Der Status des Losgekauften wird als ein „der Sklaveneigenschaft ähnliches Verhältnis“ interpretiert[179], welches etwa bis zur Abarbeitung der Schuld bestanden haben könnte[180]. Valdés Guia übersetzt ἀγώγιμος im Falle des Nikostratos mit „liable to being seized as a slave“[181]. Auf Grundlage dieser Annahme ist daher die Norm etwa von Harrison als Ausnahmetatbestand zu jenem Gesetz interpretiert worden, mit dem Solon die Schuldknechtschaft aufgehoben hat[182]. Auch Hansen hat diese Vorschrift

für Nikostratos auch aus einer speziellen Vertragsklausel resultieren könnte oder aber, dass Arethusios faktisch eine weitere Belastung verhindert habe. Thür (2008) 182 spricht ganz allgemein davon, dass Arethusios seinen Bruder „abgehalten“ habe, eine weitere Belastung der Liegenschaft vorzunehmen.

176 Walser (2023) 325.

177 Obwohl etwa Felgentraeger (1930) 66-67 A. 13 auf sie verweist, trägt die schwierige Passage aus Lys. 4,13 nichts zu der vorliegenden Frage bei, wie es um den Status des Freigekauften bestellt sein soll: In Lys. 4,13 betont der unbekannte Redner, dass er aus dem Verkauf seines Anteils an der im Miteigentum stehenden Sklavin Geld lukrieren und dieses zur Aufbringung seines eigenen Lösegeldes verwenden könnte, um in die Heimat zurückzukehren; zu diesem Argument innerhalb der Rede vgl. Todd (2007) 379. Der Redner spricht in dem von ihm entwickelten, hypothetischen Fall davon, dass er das Geld εἰς λύσιν τοῦ σώματος ἐκ τῶν πολεμίων aufwenden könnte und bezeichnet sich selbst als Sklaven (σῶμα) der Feinde. Da der Redner sich mit eigenen Mitteln freikaufen würde und somit nicht zur Diskussion steht, wem er danach in Athen sachenrechtlich zugeordnet sein würde, beschränkt sich der Erkenntniswert von Lys. 4,13 darauf, einen weiteren Beleg für die Praxis des Freikaufs von durch Feinde versklavten Athener zu enthalten.

178 Dem. 53,11.

179 Felgentraeger (1930) 66 spricht in diesem Zusammenhang davon, dass der losgekaufte Freie bis zur Rückzahlung an den Loskäufer „in einem der Sklaveneigenschaft ähnlichen Verhältnis“ stand. Partsch (1931) 286 nimmt an, dass der Freigekaufte „*servi loco* bei dem *redemptor* ist“. Metzger (1973) 52 vergleicht die Stellung des Losgekauften mit der eines Schuldknechtes. MacDowell (1978) 79 spricht von Sklaverei, Gagarin / Perlman (2016) 385 bezeichnen den Status als „a temporary indentureship that will allow him to work until his obligation is paid“.

180 Vgl. so Mommsen (1885) 262 mit A. 2; Schaube (1886) 223 („es tritt vorübergehend eine Zugehörigkeit des Befreiten zu dem Hausstand des Befreiers ein“); Schönbauer (1942) 288.

181 Valdés Guia (2021) 19 A. 82.

182 So etwa Harrison (1968) 165; Todd (1993) 181 A. 25; Bers (2003) 60 A. 21. Dem sind jedoch die Palingenesien der solonischen Gesetze von Ruschenbusch (2014) 134-137, Leao / Rhodes (2015) 113-114 und Schmitz (2023) 650-656 nicht gefolgt, welche allesamt darauf

als Ausnahme von dem Privileg athenischer Bürger verstanden, wonach diese nicht in die Sklaverei verkauft werden durften[183]. Harris hat demgegenüber festgehalten, dass hier die Versklavung nicht erst aus der Nichtzahlung einer Schuld resultiere (Schuldknechtschaft), sondern, dass die Gesetze vorsähen, dass der Losgekaufte im Eigentum desjenigen verbliebe, der ihn losgekauft habe[184]. Für die zu Dem. 53,11 parallele Bestimmung aus Gortyn, welcher ein ähnlicher Rechtsgedanke zugrunde liegen könnte[185], ist diese Deutung sehr wahrscheinlich. Sie lautet[186],

> αἰ κ' ἐδδυς[άμενον] πέ|ρα[νδε] ἐκς ἀλλοπολίας ὑπ' ἀν|άνκας ἐκόμενος κελομένο τι|ς λύσεται, ἐπὶ τοι ἀλλυσαμέν|οι ἔμεν πρὶν κ' ἀποδôι τὸ ἐμβά|λλον.
> – Wenn einer, der in eine andere Stadt hineingegangen ist und drüben von der fremden Stadt unter Zwang festgehalten wird, auf sein Ersuchen[187] hin losgekauft wird, soll er dem Auslösenden gehören, bis er das gezahlt hat, was zukommt.

Dort lautet die Formulierung darauf, dass der Freigekaufte „unter der Gewalt dessen stehen solle, der ihn losgekauft habe, bis er bezahlt hat": πρὶν κ' ἀποδôι τὸ ἐπιβάλλον[188]. Demgegenüber könnte das von Apollodoros zitierte Gesetz – freilich in dem von ihm referierten Wortlaut – einen Rückfall in die Gewalt des Auslösers suggerieren für den Fall, „dass nicht gezahlt wird"[189]: Die im Hauptsatz enthaltene Rechtsfolge der athenischen Gesetze: „dem Freikäufer … zu gehören" (τοῦ λυσαμένου … εἶναι[190]) resultiert also aus der im Konditionalsatz genannten, negativen Bedingung:

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nicht Bezug nehmen.

183 Hansen (1995) 101.

184 Vgl. Harris (2006) 63: „(…) it stipulates that the man who has become a slave through capture in war will remain a slave until a certain condition is fulfilled".

185 Vgl. Bücheler / Zitelmann (1885) 166; Willetts (1967) 69; Metzger (1973) 50 A. 33; Gagarin / Perlman (2016) 385. Koerner (1993) 514. Baunack / Baunack (1885) 133 ergänzen IC IV 72,6,46 sogar auf Grundlage der Nikostratos-Erzählung aus Dem. 53,6 u. 11.

186 IC IV 72 6, 46-51.

187 Das κελομένο ist wohl ein Partizip des Verbs κελεύειν. Ebenso lautet auch das Ersuchen um Auslösung in dem Sympolitie-Vertrag zwischen Phaistos und Milet (ICret 23,1,5), vgl. dazu sogleich. Kohler / Ziehbarth (1912) 51 verstehen es als Zustimmung des Kriegsgefangenen. Nach Calero Secall (1997) 262 hat das Verb in diesem Kontext jeweils die spezielle Bedeutung von „llamar en ayuda", also einem Hilferuf. Gagarin / Perlman (2016) 385 verweisen dazu auch auf G41,5,7-8; vgl. dazu auch Kristensen (2004) 76-79. Demgegenüber haben die älteren Ausgaben wie jene von Baunack / Baunack (1885) 107 oder Bücheler / Zitelmann (1885) 167 A. 6 κελομένο mit καὶ ἑλομένο aufgelöst und damit angenommen, dass in der Inschrift aus Gortyn das Aorist-Partizip von αἱρεῖν Verwendung finde: „ἑλόμενος ist der, der es und ihn sich wählt." In der Sache jedoch macht dies keinen Unterschied, da der *Genetivus absolutus* auf den zu beziehen ist, welcher um seine Auslösung ersucht.

188 Vgl. so auch Guarducci (1950) 161: „*Illum autem qui redemptus sit in redemptoris potestate esse iubet lex donec debitum solvat*" und Bielman (1994) 310.

189 Diesen Unterschied betont auch schon Maffi (1999) 10.

190 Der Hauptsatz wird im AcI, abhängig von οἱ νόμοι κελεύουσι referiert. Unabhängig davon ist auch denkbar, dass auch das Gesetz einen Infinitiv (εἶναι) oder einen Imperativ (ἔστω) enthalten habe. Dann läge das „in der Gewalt des Auslösers Sein" als von der Nichtzahlung ausgelöstes Ereignis jedenfalls in der Zukunft. So liest sich auch die Paraphrase bei Harris

ἐὰν μὴ ἀποδιδῳ τὰ λύτρα – „wenn er die Lösegeldsumme nicht entrichtet“. Versteht man dies wörtlich, dann wäre das Herrschaftsrecht des athenischen Freikäufers erst mit der Nichterstattung des Kaufpreises bedingt, wohingegen der gortynische Freikäufer sofort ein (resolutiv, mit der Erstattung des Preises bedingtes) Herrschaftsrecht am Freigekauften hatte[191]. Insofern könnten sich die Formulierungen der Bestimmungen aus Athen und Gortyn in unterscheiden[192].

Als ein weiterer Unterschied[193] lässt sich die Darstellung des Gewaltverhältnisses interpretieren, in welches der mit der Rückzahlung Säumige gerät: Während das τοῦ λυσαμένου ἐκ τῶν πολεμίων εἶναι in Dem. 53,11 ausdrücken könnte, dass er im Eigentum des Auslösenden stehen soll[194], beschreibt das ἐπὶ τοι ἀλλυσαμέν|οι ἔμεν aus IC IV 72,6,49-50 bloß, dass er sich „bei dem Loskäufer befinde“[195]. Dies könnte auf ein Retentionsrecht des Auslösers hinweisen, welcher den Losgekauften erst nach Erhalt des Kaufpreises herausgibt und in die Freiheit entlässt[196].

Wenn die athenischen Gesetze vorsehen, dass der Freigekaufte dem Freikäufer verfallen solle, so stellt sich im vorliegenden Fall die Frage, inwiefern dies auf die ξένοι überhaupt zutreffen könne: Nach strenger Interpretation des Wortlauts und angesichts der parallelen Bestimmungen müssten die ξένοι den Kaufpreis für Nikostratos ausgelegt haben. Dies harmoniert aber nicht damit, dass sie als Darlehensgeber tituliert werden.

Zur Interpretation der Gesetze aus Athen könnte nun eine Überlegung beitragen, welche sich aus dem griechischen Sachen- und Schuldrecht herleitet: Die Gesetze (οἱ νόμοι) sehen demnach eine Haftung des Freigekauften mit seinem eigenen Körper vor, sollte er die Kaufsumme nicht zurückzahlen können. Darin könnte man den dem griechischen Rechtsbewusstsein so nahe liegenden Surrogationsgedanken verwirklicht sehen[197], wonach „der Erwerb dinglicher Rechte aus der Verwendung von Geld

(2013) 371: „Law makes the person who has not repaid loan for ransom the property of the lender until he pays (…)“.

191 Ähnlich liegt der Fall im klassischen römischen Recht mit dem nach Wacke (2009) 1476 „durch Erstattung des gezahlten Lösegeldes auflösend bedingten (oder relativen) Eigentum“.

192 So ähnlich auch, freilich ohne dies näher auszuführen, Bielman (1994) 315-316.

193 Insogern ist Garlan (1987) 15 nicht beizupflichten, welcher für Gortyn und Athen von einer „stipulation (…) in almost identical terms“ spricht.

194 So auch Albertoni (1925) 508.

195 Vielleicht etwas undifferenziert, aber vorsichtig erwägt Partsch (1909) 390 A.1, dass sowohl in Athen als auch in Gortyn der Freigekaufte „im ablösbaren Eigentum des Losgekauften als Sklave“ gestanden sei.

196 Bücheler / Zitelmann (1885) 166; Willetts (1967) 69; anders sei nach Maffi (1999) 10, mit Parallelen aus dem Recht Gortyns, auch in IC IV 72,6,49-50 die Versklavung des Schuldners ausgedrückt. Zum Status des Freien, welcher sich selbst verpfändet hat, in den Gesetzen Gortyns, vgl. Kristensen (2004) 77, welche in Bezug auf die Ursache der Selbstverpfändung festhält: „It could be the ultimate consequnce of an involvement in legal proceedings, and (…) therefore, the consequence of several enterprises, including ransoming from captivity.“

197 So etwa Felgentraeger (1931) 68: „Es klingt wie eine Folgerung aus dem Surrogationsgedanken, daß wie die Hingabe des Kaufpreises zum Erwerbe des Sklaven in der Hand des

auf eine Sache“ resultiere[198]. Der Darlehensgeber erhält ein Zugriffsrecht auf das mit Darlehensmitteln erworbene Gut[199], bis ihm die Darlehenssumme erstattet worden ist[200].

Umgelegt auf den vorliegenden Fall würde das nun bedeuten: Egal, ob Nikostratos (a) ein Darlehen bei den ξένοι aufnahm und sich damit dann selbst freikauft, oder ob (b) diese ξένοι den Nikostratos freikauften und die Gelder ihm auf diese Weise kreditiert waren: In beiden möglichen Fällen würde Nikostratos mit den Darlehensmitteln der ξένοι „erworben“. Er selbst ist der Gegenstand, das Objekt des „Kaufs mit fremdem Geld“, und dieser Gegenstand nun haftet den ξένοι für die Rückzahlung der Darlehensvaluten. Wenn man das Zugriffsrecht der ξένοι auf Nikostratos auf diese Weise erklärt, dann erübrigt sich also, zu überlegen, ob die ξένοι nur Darlehensgeber oder auch die Freikäufer waren[201]. Hier ist auch auf das – wie Maffi herausgestrichen hat – klassisch römische Modell zu verweisen, wonach dem Freikäufer eines Kriegsgefangenen ein Pfandrecht (*ius pignoris*)[202] am Freigekauften zustand, bis ihm der Kaufpreis geleistet worden war[203].

Und noch etwas ist auffällig: Gemäß dem Recht von Gortyn kauft der Freikäufer seinen Landsmann[204] aus der Fremde zurück und holt ihn auf diese Weise „nach Hause“. Damit ist ein Problem in Zusammenhang mit der athenischen Regelung angesprochen, welches allerdings bisher wenig beachtet wurde[205]: Nikostratos ist ein athenischer Bürger. Allgemein wird vertreten, dass mit οἱ νόμοι athenische Gesetze gemeint sind[206] und nicht etwa die Gesetze Aiginas. Mit seinem einleitenden οἶσθα, ὅτι – „Du weißt, dass“ appelliert Nikostratos an die Rechtskenntnis des Apollodoros, die er zumindest für athenisches Recht eher voraussetzen kann als für fremde Gesetze[207]. Gemäß der Paraphrase der athenischen Gesetze aus Dem. 53,11 würde derjenige, welcher „von Feinden zurückgekauft worden ist“ (ἐκ τῶν πολεμίων … τὸν λυθέντα), in die Gewalt desjenigen fallen, der ihn freigekauft hat (εἶναι … τοῦ

Käufers geführt hat, nunmehr zur Rückgabe durch das Lösungsrecht die Rückerstattung des gleichen Betrags erforderlich, aber auch genügend sei“; dagegen aber Schönbauer (1942) 84-85.

198 So Pringsheim (1916) 33.

199 Thür (2019) 318: „Nach dem Formular des Seedarlehens war der Kreditgeber durch eine *hypotheke* an den mit seinem Geld erworbenen Waren gesichert“; vgl. dazu auch, in Bezug auf den Text der Seedarlehensurkunde aus Dem. 35.11, Thür (2003) 64-65 A. 30; Thür (2014) 241.

200 Vgl. dazu Simon (1965) 50 A. 40; Schuster (2005) 90-103; Scheibelreiter (2020b) 47-49 und 59-63 mit Literatur.

201 So aber Sosin (2017) 137.

202 So ist zB. in D. 49.15.19.9 (Paul 16 ad Sab.) vom *ius pignoris* [des Freikäufers] *quod in redempto habet* zu lesen.

203 Maffi (1992) 217-238; vgl. dazu auch Wacke (2009) 1476.

204 So auch Bücheler / Zitelmann (1885) 166; ebenso spricht Maffi (1983) 97 von einem „concittadino“.

205 Vgl. dazu aber Bielman (1994) 317; Maffi (1997) 9-10; Sosin (2017) 137.

206 So wohl auch Hunter (2000) 19 A. 33; Harris (2013) 371; Sosin (2017) 136-138.

207 Ähnlich auch schon Sosin (2017) 137; Araque Moreno (2024) 166.

λυσαμένου), so er die Lösungssumme nicht ersetzen konnte (ἐὰν μὴ ἀποδιδῷ τὰ λύτρα).

Die λυσάμενοι sind aber im gegenständlichen Fall des Nikostratos ξένοι, also: Nicht-Athener. Ist es vorstellbar, dass ein athenisches Gesetz angeordnet hatte, dass ein athenischer Bürger in die Gewalt eines Ausländers fallen müsse, wenn dieser ihn aus dem Ausland freigekauft hatte? Denn diese Auslegung der Gesetze, welche der Paraphrase bei Demosthenes nach für den Rückkauf aus dem feindlichen Ausland konzipiert worden waren, suggeriert Nikostratos, wenn er das ihm drohende Szenario umreißt.

Maffi sieht die Anwendbarkeit dieser Gesetze aufgrund der Tatsache, dass die Szene in Athen spiele, als zumindest faktisch beschränkt: „Quanto al fatto che coloro che hanno pagato il riscatto siano degli xenoi, ai nostri fini ha scarsa importanza perché tutta la facenda si svolge ad Atene; è vero però che se il riscattato non rimborsasse il riscatto diventerebbe agogimos e potrebbe essere portato via da Atene.“[208] Demgegenüber betont Sosin in Bezug auf die ξένοι: „(…) inasmuch they were non-Athenians operating on Aegina, the Athenian law could not have granted them any rights over his lability either.“[209]

Unproblematisch wäre es, dass der säumige Freigekaufte seinem Freikäufer zugesprochen würde, wenn dieser auch ein athenischer Bürger ist – und von diesem Fall gehen die Gesetze, die Nikostratos bemüht, wohl auch aus: Der darin beschriebene Rückkauf erfolgt „von den Feinden“ (ἐκ τῶν πολεμίων), welche also dem Rückkäufer wie dem Rückgekauften gemeinsam sind, und damit durch einen athenischen Mitbürger[210]. Wie schon oben ausgeführt, indiziert die Bezeichnung als ξένοι aber, dass die Gläubiger des Nikostratos Nicht-Athener waren.

An Fremde konnte der Schuldner nur aufgrund internationaler Verträge der Heimatpolis des Gläubigers mit Athen fallen[211] – „(…) just as ἀγώγιμος could be used internally within the state, so could it be used externally within international relations, in treaties or alliances between multiple states“[212]. Das Vorliegen eines militärischen Bündnisses Athens mit Aigina, welches selbst nicht Mitglied des zweiten Attischen Seebundes[213] war[214], ist für die 60er-Jahre des 4. vorchristlichen Jahrhunderts aber nicht belegt.

Eine weitere Möglichkeit für Fremde, Zugriff auf die Person eines athenischen

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[208] Maffi (1992) 206 A. 10. Maffi (1999) 9 relativiert diese Meinung etwas, wenn er festhält, dass es eines Gerichtsurteils (von dem in der gesamten Rede nichts zu lesen ist) bedürfte, um die Fremden zu ermächtigen, in Athen einen Athener als Sklaven abzuführen.

[209] Sosin (2017) 137.

[210] So auch Todd (1993) 181 A. 25; Hunter (2000) 19 A. 33; Sosin (2017) 137 u.140-143. Auch Ruschenbusch (1968) 30 (= 89) geht davon aus, dass gemäß Dem. 53,11 einem Athener „ein Herrenrecht an der Person des Mitbürgers“ anerkannt worden sei.

[211] Vgl. so auch Thalheim (1894) 835.

[212] Wallace (2016) 249.

[213] Das Adjektiv ἀγώγιμος ist in Zusammenhang mit dem zweiten attischen Seebund mehrfach belegt, vgl. dazu die Quellen bei Wallace (2016) 249 A. 41.

[214] So dezidiert Dreher (1995) 240 mit weiteren Verweisen in A. 234.

Schuldners zu erwirken, bestünde dann, wenn die Heimatpolis des Fremden mit Athen durch einen Rechtsgewährungsvertrag[215], ein σύμβολον verbunden gewesen wäre: Damit könnte den fremden Gläubigern eine Vollstreckung am Wohnort des inländischen Gläubigers ermöglicht worden sein[216]. Ein Beispiel dafür bietet der Rechtsgewährungsvertrag zwischen Milet und Phaistos aus der Mitte des 3. Jh. v. Chr.[217]. Darin wird eine Ausnahme zu der Regel formuliert, dass weder ein Milesier einen freien Phaistier noch ein Phaistier einen freien Milesier kaufen dürfe. Diese Ausnahme wird mit dem verneinten Konditionalsatz „wenn er ihn nicht auf Geheiß kauft“[218] ausgedrückt[219]:

> σῶμ[α] | ἐλεύθερον μὴ ὠνείσθω ὁ Μιλήσιος Φαίστιον μηδ’ ὁ Φαίστιος Μιλ[ή]|σιον, ἂμ μὴ κελομένου πρίαται. ἂν δὲ κε[λ]ομένου πρίαται, τᾶς ἰσων[ί]|ας ἀπολυσάτω.
>
> Als freien Menschen soll nicht kaufen ein Milesier einen Phaistier und nicht ein Phaistier einen Milesier, wenn er nicht kauft auf Geheiß; wenn er aber kauft auf Geheiß, so soll er ihn auslösen um denselben Preis.

Ein Milesier kann einen Phaistier kaufen (*vice versa*), wenn dieser ihn dazu auffordert (κελεύειν)[220]. Dann aber muss der Käufer den Gekauften um den gleichen Preis (ἰσωνία[221]) freigeben, um den er ihn erworben hat[222]. Bereits Felgentraeger hat daraus geschlossen, dass dem in der Fremde Versklavten ein Wahlrecht zustand, ob er lieber in der Fremde Sklave sein möchte oder bei seinem Loskäufer dienen wolle[223].

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[215] Zu diesem Begriff, der den Vertrag besser charakterisiert als der in der älteren Literatur gebräuchliche Terminus „Rechtshilfevertrag“ vgl. Thür (1995) 268; Harter-Uibopuu (2021) 150; zum Forschungsstand siehe ferner Winkel (2009) 1453.

[216] Vgl. dazu Hitzig (1907b) 62-63.

[217] Zur Datierung nach 260 v. Chr. vgl. Schmitt (1969) 153; Hermann (1975) 127 [46]; zu den kretischen Rechtsgewährungsverträgen mit Milet (260-240 v. Chr.) insgesamt vgl. auch Chaniotis (1991) 243-244.

[218] Felgentraeger (1930) 65 überträgt dies mit „wenn er ihn nicht auf sein Geheiß kauft“; vgl. dazu auch Guarducci (1950) 161-162.

[219] Milet 1,3 Nr. 140C, 3-6 = Inscr. Cret. Bd. 1. S 271 Nr. 1; zum Vertrag vgl. Schmitt (1969) 149-153 = StV III 482; Bielman (1994) 312-313.

[220] Die gleiche Bestimmung findet sich auch im Vertrag zwischen Delphi und Pellana (FD III 1, 486 = StV III 558, 285-280 v. Chr.) IB, 5-6: ὁ Δελφὸς τὸμ Πελλανέα [μὴ] ἀ[γέ]|[τω], μήδε ὁ Πελλανεὺς τὸν Δελφόν, εἰ μὴ κελ[εύοντος. (…). Partsch (1922) 582 versteht die Bitte des bei einem Dritten versklavten Bürgers einer Gemeinde, von dem der anderen als Sklave gekauft zu werden, im nämlichen Sinne: Der Sklave wurde erworben „natürlich um ihn loszukaufen“. Zum Vergleich der Verträge Milet - Phaistos und Delphi - Pellana vgl. auch Bielman (1994) 313-314.

[221] Vgl. dazu Ar. Pax 1227.

[222] So Felgentraeger (1930) 66; Schönbauer (1942) 297-298. Bielman (1994) 319 sieht in diesem betragsmäßigen Übereinstimmen der beiden Kaufpreise „probablement la règle d’usage“. Jedenfalls konnte so der Freikäufer keinen Gewinn aus der Befreiung des Landsmannes erzielen.

[223] Felgentraeger (1930) 66: „Der Gedanke ist dabei, daß der versklavte Freie, um den es sich wohl auch im Gortyner Recht handelt, die Wahl haben solle, ob er in der Fremde Sklave sein oder bei dem betreffenden Landsmann auf Loskauf dienen wolle. Die möglicherweise

Der Losgekaufte kann sich, und darin besteht die Parallele zum Demosthenes 53,11 und dem Gesetz aus Gortyn, um den gleichen Preis loskaufen, der für ihn ausgelegt worden ist. Der Rechtsgewährungsvertrag aber ermöglicht es, dass dabei der Bürger von Milet von einem Bürger aus Phaistos freigekauft wird (und umgekehrt) und in dessen Gewalt verblieb, bis er gezahlt hatte. Dies ist möglich, weil in dem Rechtsgewährungsvertrag „die einvernehmliche Regelung widerstreitender Interessen zwischen Angehörigen zweier verschiedener Bürgergemeinschaften“[224] vorliegen.

Ein vergleichbarer internationaler Vertrag Athens, etwa mit Aigina, welcher den Zugriff auf einen Bürger und ihn von einer in die andere Gemeinde wegzuführen (ἄγειν) erlaubt hat, ist nicht bekannt[225]. Prozess-Standschaft kam ξένοι in Athen grundsätzlich nur dann zu, wenn sie in Athen ein Delikt begingen[226], was hier nicht vorliegt. Auch die in Dem. 7 tradierte Feststellung des Hegesippos, wonach Makedonier in Athen und Athener in Makedonien ohne zwischenstaatliche Vereinbarung jeweils nach der *lex fori* prozessiert haben[227], ist für den vorliegenden Fall nicht auswertbar: Zum einen bezieht sich diese Darstellung auf Handelssachen, denen das Darlehen zur Finanzierung eines Freikaufs schwer subsumierbar ist. Zum anderen zeichnet dieses Zitat aus der siebten Rede des *Corpus Demosthenicum* einen bewussten Kontrast des vertragslosen Zustandes zur Zeit der attischen Vorherrschaft aus dem 5. Jh. zu dem 4. Jh. v. Chr.[228], wo es gilt, den Vorschlag Philipps II. abzuwehren, einen Rechtsgewährungsvertrag zwischen Athen und Makedonien abzuschließen. Auch dieses Beispiel lässt sich also nicht verallgemeinern.

Die Bezeichnung der relevanten Norm als νόμοι legt nahe, dass Nikostratos nicht auf zwischenstaatliches Vertragsrecht Bezug nimmt. Auffällig ist der Plural νόμοι: Dieser könnte vermuten lassen, dass es sich nicht um gesatztes Recht, sondern griechisches Gewohnheitsrecht[229] im Sinne der νόμοι τῶν Ἑλλήνων handelt[230], welchen

große Vergünstigung, durch den Rückkauf in die Heimat eine Befreiungsaussicht zu bekommen, soll also dem Sklaven nicht gegen seinen Willen geboten werden.“ So meinen auch Kohler / Ziehbarth (1912) 51 in Zusammenhang mit IC IV 72 6,50 dass es vorgekommen sei, dass sich ein Fremder in Gefangenschaft des Ausländers wohler fühle als bei einem ihm wenig genehmen Landsmann.

224 So Schönbauer (1950) 206.

225 Vgl. dazu die Liste der σύμβολα bei Gauthier (1972) 157-173, welche nach Faraguna (2013) 133-134 immer noch als nahezu abschließend anzusehen ist.

226 Vgl. Hitzig (1907a) 226-227 A. 2.

227 Dem. 7,13: ἀλλ’ ὅμως οὐδένος τοιούτου ὄντος τότε, οὐκ ἐλυσιτέλει σύμβολα ποιησαμένους οὔτ’ ἐκ Μακεδονίας πλεῖν Ἀθηνάζε δίκας ληψομένους, οὔθ’ ἡμῖν εἰς Μακεδονίαν, ἀλλ’ ἡμεῖς τε τοῖς ἐκεῖ νομίμοις ἐκεῖνοί τε τοῖς παρ’ ἡμῖν τὰς δίκας ἐλάμβανον; vgl. dazu etwa auch Trevett (2011) 119 A. 23.

228 So Gauthier (1972) 204-205; Faraguna (2023) 144.

229 Partsch (1909) 390 charakterisiert dies als „allgemeines Recht der griechischen Gemeinden“. Albertoni (1925) 507 spricht von einem „istituto generale e fondamentale del diritto degli Elleni“, Koerner (1993) 514 von „gemeingriechischem Rechtsdenken“; vgl. ferner Sosin (2017) 137 A. 32. Zur Auslösung von Kriegsgefangenen gegen Lösegeld vgl. auch Bederman (2001) 255-257, der etwa auf Thuk. 7,87 verweist.

230 Vgl. dazu Albertoni (1925) 508, der von einem „costume internazionale del mondo antico“ spricht. Allgemein zu den kriegsrechtlichen Bestimmungen, welche als νόμοι Ἑλλήνων zu-

gerade für das Kriegsrecht eine wesentliche Bedeutung zukommt. Immerhin weisen die in Dem. 53,11 zitierten νόμοι einen solchen Kontext auf, da dort der Freikauf ἐκ τῶν πολεμίων geregelt wird[231]. Für ein Verständnis von den νόμοι als athenischem Gesetzesrecht spricht aber andererseits, dass Demosthenes mit der Wortfolge οἱ νόμοι κελεύουσιν zumeist den Wortlaut von Gesetzen markiert[232].

Ferner ist zu überlegen, wie sich die mit den Darlehensgläubigern vereinbarte Strafe zu jener verhält, welche gesetzlich angedroht wird. Der Tatbestand lautet als negativ gefasster Bedingungssatz[233]: „Wenn das Geld nicht zurückgegeben werden wird, …“: ἐὰν μὴ ἀποδιδῷ τὰ λύτρα[234]. Der Vertrag wiederum enthält dieselbe Nichtrückgabeklausel, und konkretisiert diese insofern als er eine Frist von 30 Tagen benennt: καὶ ἐν ταῖς συγγραφαῖς εἴη τριάκοντ' ἡμερῶν αὐτὸν ἀποδοῦναι (…)[235].

Während die Rechtsfolge des Vertrages aber auf eine *poena dupli* lautet: ἢ διπλάσιον ὀφείλειν[236], sehen die Gesetze die Privathaft des säumigen Darlehensschuldners vor: τοῦ λυσαμένου εἶναι ... τὸν λυθέντα[237] bzw. ἀγώγιμος γενέσθαι

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sammengefasst werden, vgl. etwa Scheibelreiter (2011) 155-159.

[231] Diesem Sachverhalt ist allerdings die Gefangennahme des Nikostratos nur bei einer extensiven Auslegung von πολέμιος zuzuordnen. Diese Auslegung vertritt etwa Albertoni (1925) 362-363 A. 3, welcher auch auf D. 49.15.6 (Pomp. 1 ex var. lect.) verweist, wo fremde Völker, die eine Römerin entführt haben, als *hostes* bezeichnet werden. Harris (2006) 262 bezieht die Gesetze aus Dem. 53,11 großzügig auf „the prisoner who has been captured by the enemy or the pirates“; ähnlich auch Sosin (2017) 145; zur Frage vgl. ferner Klees (1998) 37 A. 130 mit Literatur.

[232] So spielt Apollodoros zwei weitere Male mit der Wortfolge οἱ νόμοι κελεύουσιν auf den Text jeweils eines Gesetzes an: In Dem. 53,27 und Dem. 53,28 bezeichnet der Redner damit das Gesetz über die Konfiskation des Vermögens von Staatsschuldnern, vgl. nur Harris (2013) 372. Auch in anderen Reden des *Corpus Demosthenicum* wird die Wortfolge οἱ νόμοι κελεύουσιν in diesem Sinne verwendet: Neben Dem. 46,18 u. 19, wo die betreffenden Gesetze dann als Beweismittel im Prozess auch zitiert wird (Dem. 46,18: Gesetz über Ehe, Dem. 46,20: Gesetz über Bürgenstellung), ist hier insbesondere auf Dem. 56,2 zu verweisen, wo das Homologie-Gesetz paraphrasiert wird mit τοῖς νόμοις ὑμετέροις, οἱ κελεύουσιν, ὅσα ἄν τις ἕτερος ἑτέρῳ ὁμολογήσῃ, κύρια εἶναι. Dass trotz dem Plural οἱ νόμοι ein bestimmtes Gesetz gemeint sein kann, ist auch dadurch indiziert, dass die Wortfolge ἀκούετε τοῦ νόμου ἃ κελεύει (…) aus Dem. 58,12 in einer wichtigen Demosthenes-Handschrift, dem *Codex Augustanus primus* (*nunc Monacensis*) Cod. Graec. 485 mit ἀκούετε τῶν νόμων ἃ κελεύουσιν (…) überliefert ist, vgl. dazu Rennie (1931) Dem. 58,12 *ad locum* und Dilts (2010) 277; gemeint ist hier ein Gesetz über Sykophanten. Auch der Wortlaut des νόμος βλάβης, des Gesetzes über die Vermögensschädgung (Dem. 21,35: ὁ τῆς βλάβης […] νόμος), wird in Dem. 21,43 zitiert mit οἱ περὶ τῆς βλάβης νόμοι … κελεύουσι; zum Problem vgl. Ruschenbusch (1965) 306; Scheibelreiter (2020a) 94. Weitere Beispiele dafür, dass mit οἱ νόμοι κελεύουσιν jedenfalls auf den Wortlaut von athenischen Gesetzen rekurriert wird, finden sich in Dem. 18,6; 21,44; 22,5; 23,218; 24,32; 24,65.108.120; 26,9; 32,1; 34,4.45; 37,46; 40,19.59; 42,9.27; 44,63-64; 46,6-7.14; 47,70; 48,10; 50,48-49; 56,10; 57,30; 58,60 und 59,115.

[233] So auch Rupprecht (1967) 91.

[234] Dem. 53,11.

[235] Dem. 53,10.

[236] Dem. 53,10.

[237] Dem. 53,11.

(εἶναι)[238].

Gesetz und Vertrag sehen also für die Nichtrückgabe des geschuldeten Geldes (das μὴ ἀποδιδόναι) unterschiedliche Rechtsfolgen vor.

In welchem Verhältnis aber stehen die beiden Sanktionen zueinander? Möglich wäre es, anzunehmen, dass hier eine echte Konkurrenz vorliegt und zB. die vertragliche Regelung im Verzugsfalle der gesetzlichen vorgegangen wäre: In anderem Zusammenhang spricht Demosthenes etwa einer gesetzlich vorgeschriebenen Zahlungsfrist (ἥ τ' ἐν τῷ νόμῳ γεγραμμένη … ἡμέρα) die gleiche Rechtsgeltung zu wie einer *inter partes* zugestandene, vom Gesetz abweichende Zahlungs-Frist (ἡ ὑπὸ τῶν ἀντιδίκων συγχωρηθεῖσα [sc. ἡμέρα])[239]. Dem ließe sich mit Aristoteles entgegenhalten, dass „Verträge nicht gegen das Gesetz geschlossen werden sollen" (μὴ συντίθεσθαι παρὰ τὸν νόμον)[240].

In seiner eben vorgetragenen, erneuten Bitte an Apollodoros, ihm Geld – die noch fehlenden 1600 Drachmen – zu kreditieren, stellt Nikostratos es allerdings so dar, als ob ihm jedenfalls auch die gesetzliche Rechtsfolge drohte, wenn er gegen die Vertragsbedingungen verstieße[241]: Wenn er in den 30 Tagen nicht gezahlt haben würde (dies ist vertraglich vereinbart), so wäre er ἀγώγιμος und würde in Privathaft genommen (dies ist gesetzliche Sanktion) und wären die 1000 Drachmen verloren[242]:

> Σὺ οὖν μοι, ἔφη, πόρισον τὸ ἐλλεῖπον τοῦ ἀργυρίου, πρὶν τὰς τριάκονθ' ἡμέρας παρελθεῖν, ἵνα μὴ ὅ τε ἀποδέδωκα, ἔφη, τὰς χιλίας δραχμάς, ἀπόλωνται, καὶ αὐτὸς ἀγώγιμος γένωμαι.
>
> Stelle mir du nun, sagte er, das restliche Geld bereit, ehe die 30 Tage ablaufen, damit nicht das, was ich schon gezahlt habe, die 1000 Drachmen, verloren seien, und ich selbst würde abgeführt werden.

Die Ausführungen des Nikostratos enthalten demnach eine Kombination von Gesetz und Vertrag. Der angedeutete Verlust der 1000 Drachmen ist dabei schwer einzuordnen. Wie aus der Rede ersichtlich, hat Nikostratos mit den ξένοι zwischendurch Kontakt gehabt und die 1000 Drachmen bereits erlegt. So zitiert er die ξένοι, welche von ihm „die restliche Summe" einforderten (ἔλεγεν, ὅτι οἱ ξένοι ἀπαιτοῖεν αὐτὸν

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238 Dem. 53,11.

239 Dem. 42,13: καίτοι, ὦ ἄνδρες δικασταί, τίς οὐκ οἶδεν ὑμῶν, ὅτι ὁμοίως ἥ τ' ἐν τῷ νόμῳ γεγραμμένη κυρία ἐστὶν ἡμέρα, καὶ ἡ ὑπὸ τῶν ἀντιδίκων συγχωρηθεῖσα; – Freilich, o Richter, wer von euch wüsste nicht, dass in gleicher Weise rechtsgültig ist die im Gesetz verankerte Frist und auch die von den Parteien einander zugestandene [Frist]?

240 Aristot. Rhet. 1375b 8-11: καὶ εἴ που ἐναντίος νόμῳ εὐδοκιμοῦντι ἢ καὶ αὐτὸς αὑτῷ, οἷον ἐνίοτε ὁ μὲν κελεύει κύρια εἶναι ἅττ' ἂν συνθῶνται, ὁ δ'ἀπαγορεύει μὴ συντίθεσθαι παρὰ τὸν νόμον. – Und wenn ein Gesetz einem anderen, angesehenen, oder aber auch sich selbst entgegensteht, wie zum Beispiel ein Gesetz zwar anordnet, dass maßgeblich sei, was man vertraglich festgelegt hat, ein anderes aber verneint, dass Verträge entgegen dem Gesetz geschlossen werden können.

241 So etwa auch Pritchett (1991) 248: „If the money was not paid, the sum was doubled, and he became the property of the ransomers."

242 Dem. 53,11.

... τὸ λοιπὸν ἀργύριον)[243]. Wenn Nikostratos die Zahlung dieser Summe als sinnlos darstellt, wenn er mit den restlichen 1600 in Verzug bliebe, so könnte das bedeuten, dass die Strafklausel unbeschränkt in Wirksamkeit trete, auch wenn schon eine Teilleistung erbracht worden war[244]. Jedenfalls stellt Nikostratos seine Situation so dar, dass ihm sowohl die gesetzliche als auch die vertragliche Strafe drohe[245].

Wie ein Leitmotiv zieht sich durch die Rede, dass Apollodoros nicht alles ausführen kann, was sich zwischen ihm und seinem Gegner ereignet hat. Doch für die eben markierte Ungenauigkeit in der Darstellung der Rechtsfolgen für den Zahlungsausfall des Nikostratos muss diese Generalklausel gar nicht als entschuldigend bemüht werden. Immerhin nämlich könnte die folgende Aussage des Apollodoros einen Hinweis darauf geben, dass Nikostratos die Fakten ihm gegenüber absichtlich unvollkommen wiedergegeben hat: Wenn Apollodoros sagt, er habe geglaubt, dass sein Freund ihn nicht belüge (δοκῶν οὐ ψεύδεσθαι)[246], so suggeriert er, dass Nikostratos gelogen hat. Wenn dem so wäre[247], so ließe sich dieses Lügen auf den Inhalt des Vertrages beziehen, etwa darauf, dass die zweimal zitierte 30-Tagesfrist[248] erfunden gewesen sei, um Druck auf den Freund auszuüben. An keiner Stelle ist davon zu lesen, dass dem Apollodoros die συγγραφαί vorgezeigt worden sind. Das ψεύδειν könnte aber auch in der sehr freien Interpretation der athenischen Gesetze bestanden haben, welche im konkreten Fall gar nicht anwendbar waren, da die Darlehensgeber als Fremde den Athener Nikostratos nach attischem Recht gar nicht hätten verknechten können[249].

Doch Apollodoros führt nicht aus, worin die Lüge des Freundes bestanden hatte, sondern lässt dies – vielleicht bewusst – offen. Als das Ziel der Lüge aber unterstellt er dem Nikostratos bereits jetzt Betrugsabsicht, wenn er sich als naiven jungen Mann charakterisiert, der nie geglaubt hätte, von seinem Nachbarn und Freund Unrecht zu erleiden (οὐκ ἂν νομίσας ἀδικηθῆναι). Somit muss es für die Richter so aussehen, als hätte Nikostratos bereits zu diesem Zeitpunkt geplant, das Geld, welches er

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[243] Dem. 53,10.

[244] So Rupprecht (1967) 92. Alternativ könnte er damit andeuten, dass die 1000 Drachmen in den dann insgesamt geschuldeten 5200 Drachmen aufgehen würden und ihre Zahlung angesichts der dann immer noch ausständigen Summe einem „Tropfen auf den heißen Stein" gleichkäme.

[245] Maffi (1999) 9 nimmt dies ebenfalls an und bringt beide Sanktionen in einen Zusammenhang: Wenn das Duplum nicht erlegt wird, dann drohe dem Nikostratos der Zugriff auf seine Person.

[246] Dem. 53,12.

[247] Einer anderen Interpretation folgend ließe sich diese Aussage auch auf die Arglosigkeit des Apollodoros beziehen, der in seiner jugendlichen Unschuld jede Aussage für bare Münze genommen hat, ohne sie näher zu überprüfen.

[248] Dem. 53,10 u. 11.

[249] Ähnliches überlegt etwa auch Sosin (2017) 137. Auch Ruschenbusch (1968) 30 (= 89) geht davon aus, dass gemäß Dem. 53,11 einem Athener „ein Herrenrecht an der Person des Mitbürgers" zuerkannt worden sei. Maffi (1999) 9-10 wiederum zieht einen Größenschluss: Wenn die gesetzliche Sanktion von Fremden gegenüber Athenern durchsetzbar gewesen sei (dies wird allerdings nur von Nikostratos behauptet und ist eben gerade nicht erwiesen), dann müsse dies umso mehr für Athener untereinander gelten. Doch nur von diesem zweiten Fall spricht das Gesetz.

dargeliehen zu bekommen erhoffte, nicht mehr zurückzugeben. Diesen Gedanken baut Apollodoros dann auch noch aus: Sofort (εὐθύς), als Nikostratos die fehlenden 1600 Drachmen erhalten hat, plant er gegen den edlen Freund, um das Geld zu unterschlagen[250] – dazu sogleich[251]. Auch die Absicht des Nikostratos, das Geld „bei Freunden zinslos zusammensammeln" (ἔρανον συλλέγειν) und dem Apollodoros zu erstatten[252], wird von diesem als damals nur vorgegeben dargestellt.

5. Das zweite Darlehen an Nikostratos

Apollodoros, der dem Nikostratos aushelfen möchte, kann nun wieder nicht unmittelbar auf Bargeld greifen[253]:

> ἐπειδὴ δ' ἐν τῷ παρόντι οὐ δύνασαι πορίσαι ἅπαντα τὰ χρήματα, ἀργύριον μέν μοι οὐ πάρεστιν, οὐδ' ἔχω οὐδ' αὐτός, τῶν δὲ κτημάτων σοι τῶν ἐμῶν κίχρημι ὅ τι βούλει, θέντα τοῦ ἐπιλοίπου ἀργυρίου ὅσου ἐνδεῖ σοι, ἐνιαυτὸν ἀτόκῳ χρῆσθαι τῷ ἀργυρίῳ καὶ ἀποδοῦναι τοῖς ξένοις.
>
> Weil du im Moment nicht die gesamte Summe aufbringen kannst, und auch ich keines bei der Hand habe, und ich habe selbst nichts[254], borge ich dir von meinem Vermögen, was immer du willst, und du magst es belasten im Ausmaß des restlichen Betrags, wieviel dir noch fehlt, damit du das Geld ein Jahr zinsenlos als Darlehen aufnehmen und es den Fremden zurückzahlen kannst.

Die Ausgangslage ist wie bei der ersten Transaktion zwischen Apollodoros und Nikostratos: Apollodoros macht sich erbötig, dem Freund aus seinem Vermögen Wertsachen in beliebigem Ausmaß zur Verwendung zu überlassen. Das hier gebrauchte Verb ist κίχρημι, „borgen"[255]. Nikostratos soll die von ihm gewählten Sachen leihen und zur Verpfändung benutzen[256] – das Verb τιθέναι[257] zeigt an, dass Nikostratos die

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[250] Dem. 53,13: ἀλλ' εὐθέως ἐπεβούλευέ μοι, ἵν' ἀποστερήσειε τἀργύριον (...).

[251] Vgl. dazu unten unter 6.

[252] Dem. 53,11: Σύλλεξας δ', ἔφη, ἔρανον, ἐπειδὰν τοὺς ξένους ἀπαλλάξω, σοι ἀποδώσω ὅ ἄν μοι χρήσῃς. – Ich werde dir, wenn ich die Fremden befriedigt haben werde, ein Darlehen zusammensammeln und dir geben, was du mir geliehen hast.

[253] Dem. 53,12.

[254] Die Übersetzung der Passage ist schwierig, da Apollodoros sich zu wiederholen scheint, wenn er sagt: „Ich habe kein Geld, und ich habe selbst nichts" (ἀργύριον μέν μοι οὐ πάρεστιν, οὐδ' ἔχω οὐδ' αὐτός). Murray (1939) 109 ergänzt daher: „I indeed have no funds at hand, nor have I money any more than yourself". Ähnlich interpretieren es aber auch schon Sandys / Paley (1910) 154: „The sense of the text is simply this: 'inasmuch as you are at present unable to pay the whole of the debt, although I have no money by me, nor indeed have I any at all (e.g. at my banker's) any more than yourself.' (..)." Das steht freilich so nicht im griechischen Text. Adäquater scheint hier die Übersetzung von Bers (2003) 61: „But since at the moment I cannot provide the whole amount, although I do not have the money on hand, since I do not have any myself (…) ", versehen mit der Anmerkung, dass der Gegensatz privates und auf der Bank deponiertes Vermögen betreffen könnte (A. 22).

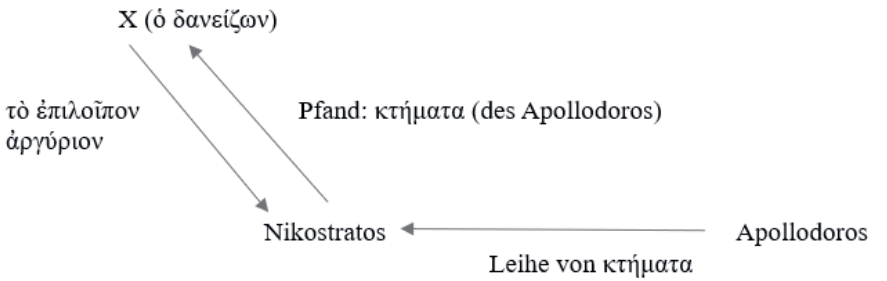
[255] Vgl. zu κίχρημι Liddel / Scott / Jones (1994) s.v. χράω B *ad locum*: „to furnish with a thing".

[256] So auch Simon (1965) 42-43.

[257] Vgl. zu τιθέναι im Sinne von „zum Pfand bestellen" Vélissaropoulos-Karakostas (2006) 286 A. 4; Harris 2013, 89-90. So lauten auch die Übersetzungen von Murray (1939) 109:

ihm fremden Sachen mit einer Hypothek belasten dürfe. Auf Grundlage dieser Sicherheit solle er ein zinsloses Darlehen aufnehmen. Damit ist die Konstruktion, die hier vorgeschlagen wird, in Bezug auf die Parteirollen eindeutig: Nikostratos selbst solle den Kreditvertrag schließen. Demnach würde, da Nikostratos selbst keine fremde Sache belasten kann[258], Apollodoros als Drittpfandbesteller für das von Nikostratos aufgenommene Darlehen fungieren. Nikostratos solle das Darlehen nach einem Jahr zurückzahlen und so die als Sicherheiten bestellten Vermögenswerte (κτήματα) des Apollodoros auslösen[259]. Der von Apollodoros in diesem Zusammenhang gemachte Vorschlag, das Geld zinsenlos aufzunehmen, lässt sich einerseits als gut gemeinter Rat einstufen, denn Nikostratos muss die Bedingungen des Kredits selbst aushandeln. Andererseits wird Apollodoros daran gelegen sein, seine Sache nicht für einen hoch verzinsten Kredit zu belasten und damit den Verfall des Pfandes zu riskieren. Auch wenn die Sicherheit von Apollodoros bestellt wird, so möchte er – nach dem Wortlaut von Dem. 53,12 – nicht Vertragspartei sein.

Graphisch ließe sich das Angebot wie folgt darstellen:



Dieses Angebot des Apollodoros wird von Nikostratos dankbar aufgenommen[260]: ἀκούσας δ’ οὗτος ταῦτα καὶ ἐπαινέσας με, (...).

Die nun folgende Transaktion des Apollodoros überrascht, da sie radikal von dem abweicht, was Apollodoros eben selbst vorgeschlagen hatte[261]:

> τίθημι οὖν τὴν συνοικίαν ἐκκαίδεκα μνῶν Ἀρκέσαντι Παμβωτάδῃ, ὃν αὐτὸς οὗτος προυξένησεν, ἐπὶ ὀκτὼ ὀβολοῖς τὴν μνᾶν δανείσαντι τοῦ μηνὸς ἑκάστου. Λαβὼν τὸν ἀργυρίον, οὐχ ὅπως χάριν τινά μοι ἀποδίδωσιν ὧν εὖ ἔπαθεν, ἀλλ’

„for you to mortgage on the balance of your debt“; Finley (1952) 84: „and you shall hypothecate it for as much money as is lacking“.

[258] An einer fremden Sache konnte kein Pfandrecht bestellt werden, vgl. dazu schon Hitzig (1895) 24-32.

[259] Dem. 53,12: συλλέξας δ’ ἔρανον, ὥσπερ αὐτὸς φής, λῦσαί μοι. – Sammle einen Eranos zusammen, wie du es selbst vorschlägst, und löse mir [die Pfänder] aus. Der *Dativus commodi* μοι („mir“ = „für mich“) in der Wortfolge λῦσαί μοι (Dem. 53,12) bezieht sich darauf, dass Nikostratos für Apollodoros das von diesem für ihn belastete Vermögen durch Zahlung an seinen Gläubiger entlasten solle; so auch Sandys / Paley (1910) 155; Phillips (2013) 387.

[260] Dem. 53,13.

[261] Dem. 53,13.

> εὐθέως ἐπεβουλεύέ μοι, (…)
>
> Ich verpfände also ein Landhaus für 16 Minen dem Arkesas von Pambotadai, mit welchem dieser (Nikostratos) selbst mich bekannt gemacht hat und welcher das Darlehen gab, zu einem Zinssatz von acht Obolen für die Mine jeden Monat. Nikostratos nahm das Geld, und – nicht, dass er mir Dank abstattete für das, was ich Gutes für ihn getan habe – plante sofort gegen mich, (…)

Der private Darlehensgeber[262], Arkesas aus Pambatodai, wurde dem Apollodoros von Nikostratos namhaft gemacht und vermittelt (προυξένησεν)[263]. Bei diesem Arkesas also werden 16 Minen als Kredit aufgenommen[264]. Aus dem bisher Gesagten ist nicht eindeutig ersichtlich, wem Arkesas das Darlehen gibt. Laut Sachverhalt übernimmt Nikostratos das Geld (λαβών τὸ ἀργύριον).

Davon, dass Nikostratos sich die Pfandsache ausgeliehen habe, um sie zu belasten, so wie es Apollodoros vorgeschlagen hatte (τῶν δὲ κτημάτων σοι τῶν ἐμῶν κίχρημι ὅ τι βούλει[265]), ist der Passage nichts zu entnehmen. Apollodoros ist der Pfandbesteller, also derjenige, der sein Haus für die 16 Minen belastet: Dies geht aus der Formulierung τίθημι οὖν τὴν συνοικίαν ἑκκαίδεκα μνῶν Ἀρκέσαντι Παμβωτάδῃ eindeutig hervor[266]. Apollodoros ist der Pfandbesteller, er sagt in erster Person, dass er das Mehrparteienhaus belastet habe (τίθημι). Zudem steht der Gläubiger, zu dessen Gunsten etwas belastet wurde (hier: Arkesas), typischerweise im Dativ[267]. Auf der Liegenschaft[268] könnte ein ὅρος aufgestellt worden sein[269]. Je nachdem, wem Arkesas

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[262] Vgl. dazu Shipton (2008) 94 A. 5 und 104 A. 21.

[263] Das προξενεῖν τινά τινι bedeutet hier „vorstellen“, „vermitteln“ oder „bekanntmachen“, vgl. dazu Gschnitzer (1973) 633. Dies ist nicht mit dem προξενεῖν gleichzusetzen, welches nicht das Vorstellen eines potentiellen Geschäftspartners, sondern das Vermitteln eines möglichen Stellvertreters bedeutet; zu diesem Unterschied vgl. Gauthier (1972) 31 mit A. 46.

[264] Shipton (1997) 420 A.142 nimmt eine Laufzeit des Darlehens von einem Jahr an. Das eine Jahr Laufzeit war aber vorgesehen für die von Apollodoros vorgeschlagene Konstruktion einer Darlehensaufnahme durch Nikostratos unter Drittpfandbestellung durch Apollodoros, welche dann nie umgesetzt worden ist; vgl. dazu sogleich.

[265] Dem. 53,12.

[266] Dem. 53,13.

[267] Einschlägig ist die Formel τιθέναι τίνα τινί – etwas für jemanden belasten; vgl. dazu nur die inschriftlichen Belege der Horos-Inschriften etwa bei Finley (1952) 119-171, wo der Begünstigte stets im Dativ steht.

[268] Die συνοικία, eine von zwei von Pasion ererbten συνοικίαι (vgl. dazu neben Dem. 53,13 auch Dem. 36,24 und 45,28), ist ein Mehrparteienhaus, das vermietet wurde. Murray (1939) übersetzt es mit *lodging house*, Finley (1952) 64 mit *multiple dwelling*, Trevett (1992) 6 mit *apartment blocks*. Faraguna (2008) 52 übersetzt συνοικία mit „abitazione da affittare“ und versteht diese als Wertanlagen. Die συνοικία verblieb im Besitz des Apollodoros, vgl. Fine (1951) 81.

[269] Finley (1952) 212 vermutet, dass dieser in der Rede in Dem. 53,13 nicht extra erwähnt werden musste, da die Verpfändung nicht Gegenstand des Rechtsstreits selbst gewesen ist. Ob ein ὅρος die συνοικία des Apollodoros als belastet erwähnt hätte, ist fraglich: So hat Finley (1951) 64 festgehalten, dass kein einziger ὅρος eine συνοικία anführt; vgl. dazu aber IG II^2 1183 (nach 340 v. Chr.): Das Dekret der attischen Deme Myrrhinous oder, wie Wilson (2011) 79 vermutet hat, Hagnous – zustimmend Faraguna (2021) 232 A. 16 – aus

den Kredit gewährt hat – dazu sogleich – wäre Apollodoros entweder der Drittpfandbesteller für ein Darlehen von Arkesas an Nikostratos, oder, er hätte selbst bei Arkesas ein Darlehen aufgenommen und ein Pfand bestellt. Erst der folgende Paragraph löst diese Frage[270]:

> Λαβὼν δὲ τὸ ἀργύριον, οὐχ ὅπως χάριν τινά μοι ἀποδίδωσιν ὧν εὖ ἔπαθεν, ἄλλ' ευθέως ἐπεβούλευέ μοι, ἵν' ἀποστερήσειε τὰργύριον καὶ εἰς ἔχθραν κατασταταίη, καὶ ἀπορούμενος ἐγὼ τοῖς πράγμασι νέος ὢν ὅ τι χρησαίμην καὶ ἄπειρος πραγμάτων, ὅπως μὴ εἰσπράττοιμι αὐτὸν τὰργύριον οὗ ἡ συνοικία ἐτέθη, ἀλλ' ἀφιείην αὐτῷ.
>
> Nikostratos nahm das Geld, und – nicht, dass er mir etwa Dank abstattete für das, was ich Gutes für ihn getan habe – plante sofort gegen mich, dass er das Geld unterschlagen könne und gegen mich feindlich würde, und dass ich (in solchen Angelegenheiten hilflos und, da jung, was ich in solcher Lage tun könnte, unerfahren in diesen Dingen) von ihm nicht eintreiben würde das Geld, wofür das Landhaus belastet worden ist, sondern ihm die Schuld erlassen.

Erstens ist hier davon zu lesen, dass Nikostratos gegen Apollodoros plante (ἐπεβούλευέ μοι), um das Geld zu unterschlagen (ἵν' ἀποστερήσειε τὰργύριον). Das ἀποστερεῖν ist *terminus technicus* für die Nichtrückzahlung einer Darlehensschuld[271], die Begriffe lassen sich in diesem Kontext eng fassen und können synonym verstanden werden[272]. Es bezieht sich auf das Geld, das Nikostratos dem Apollodoros zurückgeben müsste. Durch die Verwendung des Begriffs ἀποστερεῖν in Verbindung mit dem ἐπιβουλεῖν gegen ἐγώ (= Apollodoros) wird deutlich ausgesagt, dass Nikostratos sich selbst bereichern und Apollodoros entreichern möchte. Nikostratos will

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dem letzten Drittel des vierten vorchristlichen Jahrhunderts enthält drei Teile, welche finanzielle, religiöse und administrative Kompetenzen des Demarchen regeln; vgl. dazu auch Fine (1951) 12-13 u. 42. In den Zeilen 27-32 ist die Darlehensvergabe durch Priester der Deme festgehalten, welche gegen Bestellung von Sicherheiten erfolgen darf; sollte diese unterbleiben, so würde der Priester dem göttlichen Darlehensgeber persönlich haften müssen (Zeile 30-32). Im gegebenen Zusammenhang interessiert nur der erste Teil der Bestimmung, IG II²1183, 27-30: ἐὰν δέ τ[ινι δέ]-|ει ἀργύριον, δανείζειν τοὺς ἱερέα[ς] ἀξιοχρείοι ἐπ[ὶ χωρίω]-|ι ἢ οἰκίαι ἢ συνοικίαι καὶ ὅρον ἐφ[ισ]τάναι, οὗ ἂν εἶ [θεοῦ πα]-|ραγράφοντα ὄν⟧ του {[26]ὅτου}[26] ἂν εἶ τὸ ἀργύριο[ν. – Wenn jemand Geld benötigt, dann sollen die Priester Geld darleihen gegen eine Sicherheit, Land, ein Haus oder ein Mehrparteienhaus, und einen Horos aufstellen, wo sie dazuschreiben den Namen des Gottes, dem das Geld zugehört. Die Liste ist detailliert und soll nach Wilson (2011) 80 dazu beitragen, die Interessen des Tempels bestmöglich zu wahren. Unter den möglichen Sicherheiten wird auch die συνοικία genannt. Unmittelbar darauf folgt die Vorschrift, einen ὅρος aufzustellen und den Namen des Gottes als Darlehensgeber darin dazuzuschreiben (παραγράφειν). Aufgrund der sehr konkreten Angaben – was Finley (1951) 16 als Charakteristikum von Demen-Dekreten hervorhebt – könnte man hier vielleicht versucht sein, anzunehmen, dass auch das jeweils besichernde Objekt genannt sein musste, und damit in einem solchen ὅρος auch eine συνοικία aufscheinen könnte; vgl. dazu auch Millett (1991) 173.

270 Dem. 53,13.

271 Vgl. dazu Partsch (1909) 84 A.5; Simon (1965) 49 mit A. 35; Scheibelreiter (2020a) 188-199.

272 Vgl. dazu Scheibelreiter (2020a) 210-212.

den Apollodoros also nicht nur schädigen, etwa, indem er durch Nichtrückzahlung des Darlehens den Verfall der Hypothek bewirkt hätte, sondern ihm den Kredit nicht zurückzahlen.

Die Nichtrückzahlung aber steht zweitens in grobem Gegensatz zu dem erwartbaren Verhalten, nämlich dem Dank, den Apollodoros (zusätzlich) erhalten hätte müssen aufgrund der von ihm erwiesenen Wohltaten[273]. Die Antithese μὴ μοι ἀποδιδόναι – ἀποστερεῖν indiziert, dass Nikostratos dem Apollodoros neben dem Dank auch noch die 1600 Drachmen schuldete.

Alle Zweifel darüber schwinden drittens, wenn Nikostratos hofft, bewirken zu können, „dass ich [= Apollodoros] von ihm nicht eintreiben würde das Geld, wofür das Landhaus belastet worden ist, sondern ihm die Schuld erlassen". Nicht vollstrecken (ὅπως μὴ εἰσπράττοιμι αὐτὸν τἀργύριον) und stattdessen die Schuld erlassen (ἀλλ' ἀφιείην αὐτῷ) kann nur der Gläubiger (Apollodoros) gegenüber dem Schuldner (Nikostratos). Hier lässt sich eine Parallele zum ersten Kredit ausmachen, wo Apollodoros dem Nikostratos ja die Rückzahlung tatsächlich erlassen hatte[274].

Diese drei Hinweise auf eine vertragliche Beziehung zwischen Apollodoros und Nikostratos lassen sich zu einem Ganzen zusammenfügen: Nikostratos ist dem Apollodoros zur Rückzahlung der 1600 Drachmen verpflichtet. In Verbindung mit der Aussage, dass Nikostratos das Geld zugezählt worden ist (λαβὼν δὲ τὸ ἀργύριον[275]) ergibt sich, dass – wie schon im Zusammenhang mit dem ersten Darlehen über 1000 Drachmen – auch bei der Transaktion mit Arkesas zwei Rechtsgeschäfte zu unterscheiden sind: Das Darlehen des Arkesas an Apollodoros, der dafür eine Sicherheit bestellt hat, und das Darlehen des Apollodoros an Nikostratos. Und so lauten die Übersetzungen einhellig darauf, dass Apollodoros selbst der Darlehensnehmer des Arkesas gewesen ist[276], ganz so, als wäre ein ἐμοι das Objekt zum ἐπὶ ὀκτὼ ὀβολοῖς τὴν μνᾶν δανείσαντι τοῦ μηνὸς ἑκάστου[277]. Das Rechtsgeschäft steht demnach diametral in Gegensatz zu dem Angebot des Apollodoros: Denn dieses hat ja darauf gelautet, dass Nikostratos selbst das Darlehen aufnehmen solle.

Ein letzter, gravierender Unterschied zwischen dem Vorschlag des Apollodoros und seiner Umsetzung besteht darin, dass es sich nicht etwa um ein zinsenloses Darlehen (ἄτοκος) handelt, sondern die Summe mit 8 Obolen pro Monat (= 16 % pro

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[273] Vgl. dazu auch Faraguna (2012) 141. Pringsheim (1950) 64 A. 3 wiederum setzt die Annahme der Schenkung von Darlehen 1 des Apollodoros an Nikostratos (Dem. 53,9: καὶ τοῦτο ἔδωκα δωτειὰν αὐτῷ τὸ ἀργύριον) und die Nichtrückgabe von seinem zweiten Darlehen (Dem. 53,12-13: λαβὼν δὲ τὸ ἀργύριον, οὐχ ὅπως χάριν τινά μοι ἀποδίδωσιν ὧν εὖ ἔπαθεν) in einen unmittelbaren Zusammenhang.

[274] Dem. 53,9.

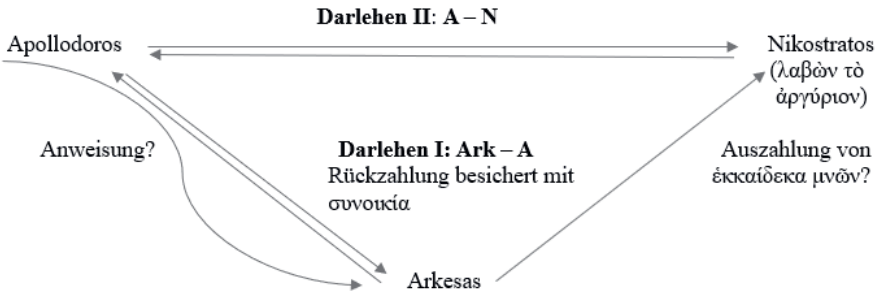
[275] Dem. 53,19.

[276] Sandys / Paley (1910) 155: „who lent me the money at an interest of 8 obols per mina per month"; Murray (1939) 111: „and he lent me the money at the interest rate of eight obols a month for each mina"; Phillips (2013) 388: „Arcesas of Pambotadae… who lent me the money (…)".

[277] Auf eine Ergänzung des Personalpronomens gibt es nach Rennie (1931) Dem. 53,13 *ad locum* oder Dilts (2010) 206 in den Handschriften keinen Hinweis.

Jahr) verzinst ist[278]: So hatte Apollodoros dem Nikostratos ja geraten, dass er ein zinsenloses Darlehen aufnehmen solle[279].

Graphisch umgesetzt könnte die Konstellation der Parteien von Darlehen II jener in Bezug auf Darlehen I entsprechen:



Zwei Unsicherheiten bestehen freilich, nämlich (1), ob Apollodoros den Arkesas angewiesen hat, das Geld an Nikostratos auszuzahlen und (2), ob Arkesas das Geld dem Nikostratos ausgezahlt hat. Während die Zahlungsanweisung des Apollodoros an Theokles mit der Wortfolge ἐκέλευσα δοῦναι τούτῳ[280] gesichert ist (und damit auch die Auszahlung von Theokles an Nikostratos erfolgt sein wird)[281], fehlt dieser wichtige Hinweis für das bei Arkesas aufgenommene Kapital[282]. Daher ist auch vertretbar, anzunehmen, dass zuerst Apollodoros das Geld von Arkesas erhalten hat und dann selbst an Nikostratos auszahlt. Für eine Anweisungskonstruktion ließe sich ins Treffen führen, dass die Übernahme des Geldes durch Nikostratos unmittelbar in Anschluss an die Pfandbestellung des Apollodoros beschrieben wird; doch diese Darstellung kann auch der Kürze der dem Redner verfügbaren Zeit geschuldet sein.

An dem Vorliegen zweier Darlehen ändert dies aber ebenso wenig[283] wie daran,

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[278] Einen Überblick über die Zinsenhöhe von Privatkrediten geben Lipsius (1915) 720-721 und Shipton (2008) 94-95 A.5. Nur 19 von 64 uns bekannten Privatkrediten sind verzinslich, fast alle jedoch zu mehr als 16 % – einen geringeren Zinssatz von 12 % weisen nur die Darlehen in Dem. 27,9; 37,4; 50,17 und Aischin. 3,104 auf.

[279] Bereits Finley (1952) 272-273 hat in Bezug auf die Abweichungen, welche die Umsetzung des Vorschlags im Verhältnis zu dem Vorschlag aufweist, irritiert festgestellt: „This text raises certain difficult legal problems which cannot be discussed here, notably in the seeming contradiction between Apollodoros' offer to Nikostratos and the final sentence indicating that he himself hypothecated the building."

[280] Dem. 53,9.

[281] Vgl. dazu oben unter 3.3.

[282] Dem Verb προυξένησεν lässt sich diese Bedeutung nicht zudenken und darin hineinlesen, dass Nikostratos zwingend anwesend gewesen sei, als Apollodoros unter Beisein des Arkesas die Belastung der Liegenschaft vorgenommen hat. Zudem ist das προξενεῖν rein zeitlich bereits vor dem συνοικίαν τιθέναι erfolgt.

[283] Da Apollodoros das Mehrparteienhaus mehrfach als Hypothek für das Geld(darlehen) bezeichnet, ist es hier unzweifelhaft, dass die συνοικία die Rückzahlung des Darlehens besichern soll und nicht als antiziperte *solutio* gedeutet werden kann; zum Problem vgl. oben

dass Nikostratos selbst nur als Darlehensnehmer des Apollodoros verstanden werden darf. Auffällig ist jedenfalls, dass sich der Vorschlag des Apollodoros[284] und dessen Umsetzung[285] überhaupt nicht decken:

Apollodoros hatte angeregt, dass Nikostratos ein zinsenloses Darlehen aufnehmen solle und er selbst dessen Rückzahlung mit eigenen Vermögenswerten besichern würde. In der Folge nimmt jedoch Apollodoros ein verzinstes Darlehen von 1600 bei Arkesas auf und besichert dessen Rückzahlung mit seiner συνοικία. Die 1600 kreditiert er seinerseits dem Nikostratos. Dies ist ein Verlustgeschäft für Apollodoros, der dem Nikostratos ja selbst keine Zinsen in Rechnung stellt. Allerdings kann bei allen Parallelen in der Konstruktion der Transaktionen zur Aufbringung beider Teilsummen des Lösegeldes hier nicht unterstellt werden, dass Apollodoros den Anschein erweckt habe, dem Nikostratos auch die 1600 Drachmen schenken zu wollen[286]. Dass beide Darlehen *uno actu*, also durch die anweisungsgemäße Auszahlung des Geldes von Arkesas an Nikostratos zustande gekommen sind, so wie es bei der Aufbringung der 1000 Drachmen belegt ist, stellt eine denkmögliche, wenn auch nicht die einzige Deutungsoption von Dem. 53,12-13 dar.

6. Die Finanztransaktionen zwischen Apollodoros und Nikostratos: Ein Resümee

Wie bereits mehrfach betont wurde, erfahren die Richter, erfährt der Leser von Apollodoros nur einen Bruchteil dessen, was tatsächlich passiert ist. Apollodoros bereitet in seinem tendenziösen, vom Leitmotiv der Undankbarkeit durchzogenen Plädoyer – dieser Undank gipfelt dann ja immerhin in einem an ihm von der Gegenseite versuchten Mord[287] – den Boden, um zu begründen, warum er selbst gegen Arethusios (und damit indirekt gegen Nikostratos) vorgeht und die Anzeige erstattet hat. Die in der Rede dargestellten Kreditgeschäfte dienen beide, in zwei Etappen, der Aufbringung des Lösegelds von 26 Minen. Dieses Geld schuldete Nikostratos seinerseits den anonymen ξένοι, welche seinen Freikauf finanziert hatten – sei es, dass sie die Lösungssumme kreditierten, sei es, dass sie selbst den Nikostratos freikauften. Nikostratos zeichnet ein beängstigendes Bild von den ihm bei Zahlungsverzug drohenden Konsequenzen: Aus dem Darlehensvertrag droht ihm die Verdopplung der Summe. Zusätzlich argumentiert er mit den „athenischen Gesetzen" über den Loskauf aus Feindeshand, welche den ξένοι ein Zugriffsrecht auf seine Person einräumen würden. Wie gezeigt, ist dieses Szenario – die Auslieferung eines athenischen Bürgers an seine Gläubiger aus Aigina – mangels eindeutig auszumachender, internationaler Rechtsgrundlage allerdings unrealistisch. Hier könnte die genannte Sanktion als ein Argument bemüht werden, um Apollodoros zu raschem Handeln zu motivieren.

Glaubt man dem Vortrag des Apollodoros, so hat er ganz allein die gesamte Sum-

unter 3.3.

[284] Dem. 53,12, erster Satz.

[285] Dem. 53,12, letzter Satz.

[286] So mutmaßt es aber MacDowell (2009) 106.

[287] Dem. 53,17.

me finanziert. Die Darstellung ist dabei aber höchst ungenau: Bei Darlehen I über 1000 Drachmen spricht Apollodoros davon, dass er den Theokles zur Auszahlung an Nikostratos angewiesen und diesem dann das Geld schenkungsweise gegeben habe. Die Schenkung wird aber wohl eher als ein Schulderlass zu verstehen sein. Bei Darlehen II über 1600 Drachmen wiederum divergieren der von Apollodoros gemachte und von Nikostratos gebilligte Vorschlag: Dieser hatte darauf gelautet, dass Apollodoros Sicherheiten bestellen wolle für die Darlehensaufnahme des Nikostratos. Tatsächlich nimmt dann Apollodors selbst einen Kredit auf und verleiht seinerseits die bei Arkesas aufgenommenen Darlehensvaluten an den Nikostratos.

Beide Darlehen des Apollodoros an Nikostratos werden unter Einbeziehung von Dritten ermöglicht, welchen sich Apollodoros selbst verpflichtet – einmal gegenüber dem τραπηζίτης Theokles[288], einmal gegenüber dem Privatmann Arkesas[289]. Beide Darlehen wurden von Apollodoros besichert, einmal durch Verpfändung wertvoller Fahrnis (ἐνέχυρα[290]), einmal durch Belastung eines Mehrparteienhauses (συνοικία[291]). Und beide Darlehen lassen sich der (altertümlichen) Kategorie der unproduktiven Kredite zuordnen[292], dienen also nicht einer Investition zu wirtschaftlichen Zwecken[293].

Insofern bestehen zwischen den von Apollodoros zur Finanzierung der 2600 Drachmen Lösegeld getätigten Bankgeschäften Parallelen. Die so aufgenommenen Gelder wiederum lässt Apollodoros dem Nikostratos zukommen, indem er jedenfalls den Theokles (und vielleicht auch den Arkesas) anweist, das Geld an diesen auszuzahlen. In keinem der beiden Fälle ist Nikostratos dadurch zum Vertragspartner der Geldgeber geworden, sondern immer nur zum Schuldner des Apollodoros. Während das erste Darlehen jedoch – vielleicht unmittelbar mit der Auszahlung – in eine Schenkung umgewandelt wird, bleibt für das zweite die Rückzahlungsverpflichtung bestehen.

Erst bei genauerer Betrachtung des Textes erschließt sich, dass jeweils Apollodoros der Darlehensgeber des Nikostratos ist. Materiellrechtlich betrachtet erlangen die Dritten wiederum bei Auszahlung der Gelder einen dinglich gesicherten Rückzahlungsanspruch gegen Apollodoros.

Shipton hat beim Versuch die Grenzen zwischen dem zinsenfreien ἔρανος und dem Geschäftskredit (δάνειον) aufzuweichen, festgestellt, dass bei der Zahlung des

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[288] Dem. 53,9.
[289] Dem. 53,13.
[290] Dem. 53, 9. Bogaert (1986) 18 bezeichnet ἐνέχυρα als allgemein Pfänder in Edelmetall. Die ἐκπώματα und der στέφανος χρυσοῦς, welche Apollodoros als Sicherheiten für den Kredit bei Theokles gebraucht, entsprechen diesem Muster.
[291] Dem. 52,13.
[292] Bogaert (1986) 18. Kritisch dazu aber Shipton (1997) 397-398, da die Unterteilung in produktive und unproduktive Darlehen für das griechische Recht keinen geeigneten Parameter darstelle; kritisch auch Faraguna (2012) 138.
[293] Diese stellen die große Mehrzahl der Kredite im Athen des 4. Jh. v. Chr. dar, vgl. Bogaert (1986) 18.

Theokles an Nikostratos beide Darlehensarten verwirklicht seien: „Thus the payment to Nicostratus is both, an eranos and a bank loan.“[294] Dies ist nur bedingt richtig. Wie gezeigt wurde, entstehen durch die Zahlung des Theokles an Nikostratos zwei Darlehen: Ein ἔρανος zwischen Apollodoros und Nikostratos und ein δάνειον zwischen Theokles und Apollodoros.

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[294] Shipton (1997) 422; ähnlich auch schon Beauchet (1897) 263.

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[DEMOSTHENES], *AGAINST NICOSTRATUS*: RESPONSE TO PHILIPP SCHEIBELREITER

In his fine and thorough paper Philipp Scheibelreiter takes a dogmatic approach and looks into the credit transactions detailed in the *Against Nicostratus* of the Demosthenic corpus ([Dem.] 53). The speech, in all likelihood the work of Apollodorus[1], was written in 366 or 365 BCE for an ἀπογραφή in which Apollodorus, acting as prosecutor, asserted that two slaves, allegedly the property of Nicostratus, in fact belonged to Arethusius and were liable to confiscation as part-payment for the fine of one talent incurred by the latter after conviction in a γραφὴ ψευδοκλητείας, a charge for falsely testifying to having served a summons to Apollodorus himself ([Dem.] 53,17)[2]. The speech consists of two discrete parts: the second section (19-25) briefly addresses the matter of the two slaves, and the argument that they "were the property of Arethusius and were part of his estate" (19: ὡς δ᾽ ἔστιν Ἀρεθουσίου τἀνδράποδα ταῦτα καὶ ὄντα ἐν τῇ οὐσίᾳ τοῦ ἐκείνου; cf. 2: ἐὰν ἀποδείξω τἀνδράποδα Ἀρεθουσίου ὄντα, οὗπερ ἐγέγραπτο εἶναι) is dealt with in not more than three paragraphs (19-21), while the first and much longer section provides the background of the trial and, despite the public nature of the suit[3], sets the ἀπογραφή within the framework of the ongoing enmity between Apollodorus and Nicostratus, tracing back its roots to a story of a betrayed friendship (1-18).

Against Nicostratus is a speech providing a wealth of insights into Athenian social, economic and legal history. Given the richness of the analysis offered by Philipp Scheibelreiter in his paper, I will only be able to touch on a limited number of issues.

1. The first point stems from Apollodorus' insistence, in recalling some episodes of his feud with Nicostratus and his brothers, that for reasons of time he cannot but "tell you the greatest and most blatant of their crimes and the origins of this *apographe* but leave many things out" (3: τὰ μὲν μέγιστα καὶ περιφανῆ τῶν ἀδικημάτων, καὶ ὁπόθεν ἡ ἀπογραφὴ αὕτη γέγονεν, ἐρῶ πρὸς ὑμᾶς, τὰ δὲ πολλὰ ἐάσω). *Praeteritio* is of course a rhetorical device, but in this particular case Apollodorus' statement

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1 Schaefer 1858, 184-193 (*Beilage* V); Sandys, Paley 1886[2], liv-lix; Trevett 1992, 50-76; MacDowell 2009, 106-109.

2 For the ἀπογραφή see Osborne 1985, 44-47, 54-55; Todd 1993, 118-119.

3 Kurihara 2003, esp. 473-475.

appears to be partly confirmed by the publication, some twenty years ago, of a letter of Apollodorus' father, the well-known banker Pasion, on a lead tablet where Nicostratus and his brothers Deinon and Arethusius are mentioned (*SEG* 53,256 = Dana 2021, 47-56 [no. 8]). Much is debated about this striking document, beginning with its authenticity and typology (letter, prayer for justice[4], *defixio*[5]?): for our purposes it is however sufficient to underline that, for all its oddities, it seems to be the result of a situation of personal conflict and contains instructions with a view to "seeking redress (τιμωρήσασθαι)[6] and prosecuting (μετελθε͂ν)" a number of people, including Nicostratus and his brothers, "because they are wronging me and plotting against me" (ll. 3-8: ἐπιστέλλω Σατυρίωνα τιμωρήσασθαι καὶ μετελθε͂ν καὶ Νικόστρατον τὸν Δείνωνος ἀδελφὸν καὶ Ἀρεθόσιον ὡς παρ᾽ ἐμὲ ἀδικο͂σι καὶ ἐπιβολεύοσι).

The very minimum one can infer from the letter is that the rivalry between Nicostratus' and Pasion's families went back to a time before Pasion's death in 370/69 ([Dem.] 46,13) and possibly had already resulted in some judicial action. The meaning of μετελθεῖν, whether it applies to legal proceedings or, quoting J.D. Sosin's colourful expression, to some "sort of extra-judicial pressure that relies more on *ergon* than on *logos*"[7], is not unambiguous. While in Antiph. 1,10 it definitely implies legal prosecution (καὶ αὐτό μοι τοῦτο τεκμήριον δίκαιον γενέσθαι, ὅτι ὀρθῶς καὶ δικαίως μετέρχομαι τὸν φονέα τοῦ πατρός, "I think I am justified in taking this as evidence that I am prosecuting my father's murderer justly and correctly"), in other cases it can cover the whole broad semantic spectrum from legitimate self-help (Aesch. *Cho*. 987-989: ὡς ἂν παρῇ μοι μάρτυς ἐν δίκῃ ποτέ, ὡς τόνδ᾽ ἐγὼ μετῆλθον ἐνδίκως μόρον τὸν μητρός, "so that he may one day appear for me in a trial, to testify that I was justified in pursuing this killing of my mother") to divine retribution (Eur. *Or*. 423: ὡς ταχὺ μετῆλθόν σ᾽ αἷμα μητέρος θεαί, "how swiftly the goddesses have pursued you for your mother's blood")[8], to other extra-judicial forms of punishment where the use of violence is implied (Aesch. 3,107; Lycurg. 1,116; Diod. Sic. 17,9,6). There is nevertheless at least a fair possibility, if not a reasonable presumption that the μετελθε͂ν in the letter alluded to legal prosecution[9] and that the *apographe* was not the first confrontation in court between Nicostratus and the well-known Athenian bankers.

This is not devoid of more general implications for our assessment of the speech *Against Nicostratus*, in particular for the crucial question of the relevance in the arguments deployed in the speech[10]. As pointed out by Scheibelreiter at the beginning of his paper, we do not know how the indictment was formulated in the case of an

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4 Ceccarelli 2013, 46 with note 88, 353-354 (no. 42).
5 Bravo, Wolicki 2015-2016; Bravo 2017.
6 For the verb τιμωρέω as "to seek redress" see Cairns 2015, 655-665.
7 Sosin 2008, 107-108; cf. also Bravo, Wolicki 2015-2016, 220.
8 Biehl 1965, 50: "nach Analogie von τιμωρεῖσθαι".
9 Cf. e.g. Jordan 2003, 28: "the verb μετελθεῖν presumably has the technical sense of 'prosecute'".
10 For the fundamental issue of the relevance of legal arguments in Athenian judicial oratory see now Harris, Esu 2025.

apographe, where a list, an "inventory" of the items of property proposed for confiscation is at any rate the first thing to be expected[11]. Whether in the first quite oversized section of the speech Apollodorus "kept to the point at issue", as he had undertaken to do on oath ([Arist.] *Ath. Pol*. 67,1: δ[ιο]μνύ[ουσι]ν οἱ ἀντίδικοι εἰς αὐτὸ τὸ πρᾶγμα ἐρεῖν), is therefore hard to establish. What can be said is nonetheless that in his narrative he was obviously quite careful in selecting from a much longer story a number of events to specifically highlight the ingratitude of Nicostratus and present himself as entitled to revenge for the wrongs he had suffered. As underlined by A.T. Alwine, in the speech "[c]haracterization is not to be disentangled from the legal point at issue… Apollodorus does not advance character arguments about who 'deserves' to win based on past behaviour but rather to support an argument from probability about who is telling the truth about the offence on trial. It is not character evidence per se that is vital to the case but character evidence as it affects the litigants' credibility and their claims"[12]. Apollodorus' arguments, although concerning the character and behaviour of his enemy, are thus in a broad sense "to the point" as they are strictly functional to the issue of the lawsuit.

2. A second point concerns the social position of the two parties involved in the lawsuit. It is generally assumed that the dispute must be situated at the level of the élite of Athenian society[13]. But is it really so? Apollodorus, even though he typically acted like a parvenu resenting his metic, and ultimately, servile origins (Dem. 36,48; 45,86)[14], was a very rich man and performed many liturgies, including the trierarchy he served in 368/7 which is mentioned in the speech ([Dem.] 53,5)[15]. But what about Nicostratus? It is certainly to be noted that Apollodorus portrays himself as his "true friend" (φίλος ἀληθινός; [Dem.] 53, 7, 8 and 12), but such friendship was clearly not on equal terms: Nicostratus used to help Apollodorus, most of the time obviously an absentee landlord, to manage his farm (ἀγρός) as a kind of ἐπίτροπος, "supervisor" (Xen. *Oec*. 12,3-4), whom he made κύριον τῶν ἐν ἀγρῷ ἁπάντων, "responsible for everything on the farm" ([Dem.] 53,4). When Apollodorus had to hastily leave for Sicily as a trierarch, he "ordered" (προσέταξα) – a verb with a more "imperative" nuance than, for instance, its synonym κελεύω[16] – Nicostratus to look after his affairs

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[11] Todd 1993, 118: "The term *apographē* describes both the document on which the property was listed, its use as a form of prosecution, and any trial to which it might give rise"; Gagarin 2008, 194: "an *apographē* required a written list of property as the basis for legal action".

[12] Alwine 2015, 76-78.

[13] See for instance Schmitz 2004, 419: "Kennzeichnend für ein Nachbarschaftsverhältnis in Kreisen der landbesitzenden Oberschicht ist das zwischen Apollodoros und Nikostratos".

[14] Trevett 1992, 174-176.

[15] Davies 1971, 438-442 (no. 11672, XI-XII); Trevett 1992, 9-12.

[16] Chantraine 1999, 1096, s.v. τάσσω, renders the verbs προστάσσω, ἐπιτάσσω, συντάσσω with "ordonner", "avec plus de rigueur que κελεύω" (see also 513, s.v. κελεύω: "le verbe conserve en principe une nuance d'exhortation et se distingue de verbes plus proprement impératifs comme ἐπιτάττω, ἐντέλλομαι, etc.").

at home and manage them, just as in the past" ([Dem.] 53,5: τούτῳ δὲ προσέταξα ἐπιμελεῖσθαί τε τῶν οἴκοι καὶ διοικεῖν, ὥσπερ καὶ ἐν τῷ ἔμπροσθεν χρόνῳ)[17]. Moreover, two of the runaway slaves of Nicostratus were actually the property of Apollodorus and, above all, as rightly noted by Scheibelreiter, they were two of a larger number ([Dem.] 53,6: ἀποδιδράσκουσιν αὐτὸν οἰκέται τρεῖς ἐξ ἀγροῦ παρὰ τούτου, οἱ μὲν δύο ὧν ἐγὼ ἔδωκα αὐτῷ, ὁ δὲ εἷς ὧν αὐτὸς ἐκτήσατο). Nicostratus therefore had a certain number of slaves working for him on his land but an unquantifiable part of the total in fact belonged to his wealthier neighbour. No wonder then that when Nicostratus found himself unable to pay his ransom, he immediately twice approached Apollodorus and "in tears" (κλάων) asked for his financial aid ([Dem.] 53,7 and 10-11). The relationship between the two was patently asymmetrical. R. Zelnick-Abramovitz as a result lists [Dem.] 53,1-14 as one of the cases where unequal relations having the characters of, or akin to, "patronage" can be securely identified in the Athenian sources[18].

3. As a third point, I now come to the credit practices described in the *Against Nicostratus*, which are at the core of Scheibelreiter's paper. The loans briefly recounted in the speech are striking for the variety of their nature, providing a prime example of how pervasive credit was in Athenian society, and cover the whole range of lending transactions from ἔρανοι ([Dem.] 53,8-9: χιλίας τε δραχμὰς ἔρανον αὐτῷ εἰς τὰ λύτρα εἰσοίσοιμι; 12) and interest-free loans[19] to loans advanced at the rather high, double than average interest rate of 16% ([Dem.] 53,13: ἐπὶ ὀκτὼ ὀβολοῖς τὴν μνᾶν δανείσαντι τοῦ μηνὸς ἑκάστου)[20] and secured by real property. In his persuasive analysis, Scheibelreiter has identified, with regard to the release of Nicostratus and the payment of the ransom (τὰ λύτρα), seven discrete financial transactions, six of which are loans. Some ambiguity remains owing to the wide-ranging meaning of διδόναι, which can refer either to a loan or to a gift.

I believe that Scheibelreiter's approach, focusing in each case, as indicated in his

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[17] For the use of προστάσσω in [Dem.] 52, 3, 4 and 18 with the meaning of "give instructions", "order" cf. also Dössel 2020, 15; Kaiser 2023, 203-206.

[18] Zelnick-Abramovitz 2000, 74-75 and 79: "patronage is defined as personal relations between two unequal parties involving an exchange of services over time. Hence, Greek *philia* corresponds to this definition in three of its components – personal relations, inequality, and the exchange of services. As for duration, such *philia* was seen as temporary, or at least as something determined by the duration of mutual interests. Admittedly, *philia* required loyalty, as demonstrated by… Apollodorus' complaint about his *philos*' lack of *charis*".

[19] For the verb κίχρημι at § 12 (τῶν δὲ κτημάτων σοι τῶν ἐμῶν κίχρημι ὅ τι βούλει) cf. Millett 1991, 29. As indicated by Apollodorus, the loan was to be "without interest for a year" (ἐνιαυτὸν ἀτόκῳ χρῆσθαι τῷ ἀργυρίῳ). See Cohen 1992, 210: "Although explicitly interest-free, and motivated by the relationship, allegedly 'friendly' between the parties, this loan is not characterized as an *eranos*: it is not part of a mutual contribution and is not payable in installments. The bank owner's advance" in turn "is to be repaid from an *eranos* loan to be collected in the future: there is no indication that this *eranos* is to be interest-free". On *eranos* loans cf. Faraguna 2012, 134-142; Thomsen 2015, 156-162.

[20] Sandys, Paley 1886, 155-156, *ad loc.* ("i.e. 12x8 obols per 600 obols").

Einleitung, on the parties involved and the character of the loan ("zwischen welchen Parteien und auf welche Weise die einzelnen Rechtsgeschäfte jeweils zustande gekommen sind"), indeed contributes to a better understanding of the transactions. On my part, as a complement to his treatment, I would like to elaborate on two points.

The first is that in the speech Apollodorus also alludes to another loan previously made by Arethusius to Nicostratus: when the latter was in need of money to pay the "foreigners" (οἱ ξένοι) for his release and wished to use his land (χωρίον) as security for borrowing money, his brother Arethusius refused to allow him to sell or pledge the plot ὡς ἐνοφειλομένου αὐτῷ ἀργυρίου, "on the grounds that money was owed to him on it" ([Dem.] 53,10)[21]. The verb ἐνοφείλω, which occurs also at [Dem.] 49,45[22], is a technical expression. It features many times in the *poletai*-records when a confiscated property was publicly auctioned and a creditor (or sometimes, interestingly, more than one creditor) formally presented a claim (ἐνεπίσκημμα) that there was a prior debt secured on it. A well-known example is provided by *Agora* XIX, P5, ll. 8-35, where it appears that the house of Theosebes of Xypete, who had been condemned for ἱεροσυλία, was pledged as security for 150 drachmas and that there were three further claims for debts for the total amount of some 154 drachmas. In all three cases the court decided that "the debt was owed" (ἔδοξε ἐνοφείλεσθαι; cf. also *Agora* XIX, P26, ll. 520-521, 560-561; P43, l. 25; P48, l. 8). Pledging the χωρίον for an additional loan, as we learn from the speech, would have required the consent of the first creditor, which in this particular case was denied[23]. The passage from *Against Nicostratus* thus indirectly confirms that, if there was agreement between the parties, the collateral form of security in credit transactions was, from a legal point of view, a viable option that, as we see from the *poletai*-records, could give rise to claims enforceable in court[24].

The second point concerns the unnamed foreigners (οἱ ξένοι) who provided Nicostratus with the money needed for his release. As narrated by Apollodorus, Nicostratus, while pursuing three runaway slaves, was captured by a trireme and taken to Aegina, where he was sold as a slave ([Dem.] 53,6: διώκων οὖν ἁλίσκεται ὑπὸ τριήρους καὶ κατήχθη εἰς Αἴγιναν, καὶ ἐκεῖ ἐπράχθη). The next thing we hear is that

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[21] Phillips 2013, 387-389 (no. 316); Walser 2023, 325.

[22] [Dem.] 49,45: πότερα γὰρ ἂν οἴεσθε ῥᾷον εἶναι τῷ πατρί, δημευθέντων τῶν Ἀντιμάχου ἐνεπισκήψασθαι ἐν τῇ οὐσίᾳ τῇ ἐκείνου ἐνοφειλόμενον αὐτῷ τοῦτο τὸ ἀργύριον, εἴπερ Ἀντιμάχῳ ἐδάνεισεν, ἢ ἀναμένειν ὁπότε παρὰ τούτου κομιεῖσθαι ἔμελλεν εὐπορήσαντος…;, "For which course of action do you suppose would have been easier for my father: to make a claim against Antimachus' estate when it had been confiscated by the city and say that the money had been secured (ἐνοφειλόμενον) on his property (supposing he really made a loan to Antimachus!) or wait until he could count on recovering the money from Timotheus…?". On this passage see the commentary by Falco 2024, 286-291.

[23] Harris 1988, 353 (= 2006, 166); Walser 2023, 325: "Ob Nikostratos sein Landgut mehrfach als Sicherheit belasten konnte, hing mithin ganz vom Willen des Erstgläubigers ab, der dies in seinem Falle nicht erlaubte". See also Isae. 2,28 with Harris 2023, 94-95.

[24] For a balanced review of the issue see Walser 2023; cf. also Harris 2013, 137-142; 2016, 128-131.

he was ransomed (λελυμένος) for twenty-six minas (i.e. 2,600 drachmas) ([Dem.] 53,7) and that some "foreigners" had lent him the money to purchase his freedom (οἱ δανείσαντες τὰ λύτρα) and were already claiming back the full amount of the loan ([Dem.] 53,10). We do not know where the *xenoi* originated from and where such transactions took place: perhaps, we may guess, in Aegina where Nicostratus was taken, but it is also possible that he was sold *outside* the island. We also learn that, according to the terms of the written contract (συγγραφαί), the money had to be repaid within thirty days and, if Nicostratus did not meet the deadline, the amount would be doubled ([Dem.] 53,10). The natural inference would be that the *xenoi* (a plural, perhaps pointing to an *eranos*) were different from the person who had purchased Nicostratus and that they gave directly to Nicostratus the money he needed for his ransom, although the alternative scenario, that it was them who paid the man who had become his owner, cannot be completely ruled out. In the first case, it was Nicostratus who redeemed himself and bought back his freedom, whereas, in the second case, we must suppose that the ξένοι, having purchased him from the first owner, still retained rights of some sort over him.

The question has implications for the issue of the legal status of Nicostratus when he approached Apollodorus. Two elements appear to point to him being already free: the first and weightiest element is that he had the legal capacity to be a party in a legal contract (contrast the argument about the two slaves Manes and Kerdon at § 20-21 of the speech); the second is that, should he not pay on time, he ran the risk of becoming ἀγώγιμος, "liable to seizure", "liable to being arrested" ([Dem.] 53,11: καὶ αὐτὸς ἀγώγιμος γένωμαι), a term that makes more sense when it is applied to a person of free status[25]. This is at least the way the term was interpreted by Nicostratus himself, since, in the narrative of the speech, he is said to have referred to some "Athenian laws" (οἱ νόμοι) to the effect that "if a man ransomed from the enemy does not pay back the ransom to the man who has provided it, he is to become the man's

[25] Bielman 1989, 33-35: "D'après ces deux textes, l'acheteur possède un droit de rétention sur le prisonnier – c'est la contrainte par corps – mais le captive devient-il, au sense juridique strict du term, l'esclave du prêteur? Perd-il ses droits et sa qualité d'homme libre, de citoyen? La réponse est certainement negative"; 1994, 316-317: "au moment du rachat, était fixé entre le captive et son «racheteur» un délai déterminé pour le remboursement de la somme due. Cet accord liait juridiquement le captive-débiteur au «racheteur»-créancier mais n'octroyait aucun droit au racheteur sur la personne du captive. Durant l'intervalle qui séparait le rachat du remboursement, le captive conservant ses droits et ses privileges d'homme libre"; Sosin 2017, 135-136: "On balance, then, virtually nothing indicates that Nikostratos was still a slave and some features of the narrative suggest that he had already been manumitted". For the meaning of ἀγώγιμος see Maffi 1999, 7-9; Valdés Guía 2021, 18-22. Contrast Harris 2002, 424-425 (= 262-263): "The situation that the law deals with has nothing to do with enslavement for debt. The law pertains only to the prisoner who has been captured by the enemy or by pirates…The person who was captured in war…became the slave of his captor. If someone paid ransom for the captive, he had two options: either he could release him for free or he could insist that the captive pay him back. If the latter, the former captive remained a slave in the ownership of the man who paid ransom until the ransom was paid".

property" ([Dem.] 53,11: οἱ νόμοι κελεύουσι τοῦ λυσαμένου ἐκ τῶν πολεμίων εἶναι τὸν λυθέντα, ἐὰν μὴ ἀποδιδῷ τὰ λύτρα). Apollodorus' reply and subsequent course of action appear to endorse this interpretation.

The problem with such laws is, however, that they were Athenian statutes, as such valid only at Athens (for a similar but, as shown by Scheibelreiter, not identical law in force at Gortyn cf. *IC* IV 72 (= *LAC* G72), VI, ll. 46-55, esp. 46-51: αἰ κ' ἐδδυσ[άμενον] πέρα[νδε] ἐκς ἀλλοπολίας ὑπ' ἀνάνκας ἐκόμενος κελομένο τις λύσεται, ἐπὶ τõι ἀλλυσαμένοι ἔμεν πρίν κ' ἀποδõι τὸ ἐπιβάλλον[26]), and in principle they could hardly apply to legal transactions concluded outside the boundaries of Attica and involving "foreigners"[27]. It may be supposed that Apollodorus deliberately mentioned them in his narrative in order to mislead the judges, making Nicostratus' plight appear even more serious, and thus impress on them the enormity of his ingratitude.

In order to better understand the legal framework of the facts, it may be useful to look at them in a different perspective and take into consideration the point of view of the *xenoi*. Nicostratus may of course have been overtly grateful for the loan of the money for his ransom and made it a matter of pride and moral obligation to repay it before the thirty-day term expired, but, in case he disappeared or tried to abscond, what kind of legal guarantees did the "foreigners" have that he would eventually settle his debt? As we have seen, he was free to go back to Athens and how could it be trusted that he would return to Aegina (or wherever the *xenoi* were based)? In our particular case, this would be true even if we supposed that they still retained some form of power (or a right of retention?) over Nicostratus or that he was their slave. What sort of legal instruments were available to the foreign lenders to put pressure on him?

Here we must admit that we can only make educate guesses, since Apollodorus' account is deliberately concise in the extreme. One possibility is that there was a σύμβολον, a bilateral interstate agreement opening the lawcourts to the citizens of each of the partner cities in the territory of the other. In the case of Aegina, which had a fundamentally hostile relationship towards Athens (see for instance Xen. *Hell*. 5,4, 60-61), we do not hear of the existence of such an agreement between the two *po-*

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[26] On the Athenian and the Gortynian laws see the analysis of Bielman 1994, 309-319, with the critical observations of Maffi 1999, 10. Bielman provides an excellent translation of the difficult text of the law from Gortyn: "Si (un homme libre) se trouve éloigné de sa patrie et si, sur sa domande, quelqu'un qui est dans l'obligation de le faire le rachète dans une cité étrangère, il sera à la disposition de celui qui l'aura racheté jusqu'à ce qu'il ait remboursé ce qu'il doit"; see also *LAC*, p. 385: "If someone, bound by necessity, ransoms someone who has gone abroad from another city at his request, he is to be in the hands of the ransomer until he pays back his obligation". Scheibelreiter's understanding of ἐπὶ τõι ἀλλυσαμένοι ἔμεν is "dass er sich 'bei dem Loskäufer' befinde", which would imply "ein Retentionsrecht des Auslösers". It can reasonably be assumed that, as for the Athenian law, the law on ransom of the Gortyn Code only applied to Gortynians: cf. the commentary by Bielman 1994, 310 on the expression ὑπ' ἀνάνκας ἐκόμενος.

[27] It should moreover be noted that, as stressed by Maffi 1999, 9-10, "il paraît étrange qu'un citoyen athénien puisse être réduit en esclavage sur le territoire attique par un étranger sans qu'il y ait eu un jugement préalable (car dans le plaidoyer il n'y a aucune allusion à la nécessité d'un arrêt du tribunal pour que les étrangers puissant s'emparer de Nicostratos)".

leis[28]. As we saw, we cannot however take it for granted that the *xenoi* were actually from Aegina. Another possibility is that somebody had stood surety for Nicostratus, and thus acted as ἐγγυητής, offering personal guarantee[29]. No mention of this is made in the speech but, as I stressed before, Apollodorus had every interest in magnifying Nicostratus' predicament. The third possibility is represented by σῦλαι, seizure of the debtor or of his relatives, associates or fellow-citizens and/or confiscation of their assets in the territory of the creditor's *polis* as reprisal for the wrongs suffered[30]. It is disputed in the literature whether such right of violent seizure could be exercised indiscriminately by an individual or entailed the proclamation of a "state of reprisal" (*état de répresailles* in B. Bravo's words) by his city[31]. This kind of remedy was at any rate ruled out should the debtor benefit from ἀσυλία, either personally as an individual or as a member of his *polis* community.

None of these legal or extra-judicial forms of protection are mentioned, or even only alluded to, in Apollodorus' *Against Nicostratus* and his narrative, biased or rhetorically constructed as it may be, remains to some extent enigmatic and reveals how difficult to pin down are the dynamics of intercommunity relations in the Greek world once they are investigated in their practicalities and concrete aspects. We must nonetheless infer that, whatever the means, if the "foreigners" let Nicostratus return to Athens, they must have felt confident enough that he would repay his debt and not abscond.

4. Something clearly went wrong between Apollodorus and Nicostratus. According to D.M. MacDowell, "[p]erhaps it was not made clear between them whether Apollodorus was giving this last sum of 1,600 drachmas to Nikostratos as a gift or merely lending it"[32]. In the speech, Apollodorus is adamant that it was meant to be a loan and that he had granted Nicostratus a year to collect an *eranos* and give him back the money ἄτοκος, "interest-free". According to his account of the events, as a sign of

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[28] See the catalogue (and critical review) of *symbola* and *symbolai* in Gauthier 1972, 157-205, with the observations in Faraguna 2023.

[29] A parallel is to be found in Dem. 19,169: ἔνιοι τῶν ἑαλωκότων, ὅσοιπερ ἦσαν ἐξηγγυημένοι, ἀπιστοῦντες… ἑαυτοὺς ἔφασαν βουλεύεσθαι λύσασθαι καὶ μηδεμίαν τούτου χάριν ἔχειν τῷ Φιλίππῳ, "some of the prisoners – indeed precisely those who had been released on bail (ἐξηγγυημένοι) – having no confidence…said they wanted to secure their own freedom (ἑαυτοὺς… λύσασθαι) and to avoid being under obligation to Philip".

[30] For συλᾶν as "une *action violente* qui consiste à *saisir* une personne ou les biens d'une personne" cf. Gauthier 1972, 210; Maffi 1999, 12: "L'ἀγωγή sur la personne et la saisie des biens sont les moyens employés pour affirmer les droits du créancier à l'égard d'un débiteur étranger, qui peut être soit un particulier soit une cité. Cette faculté d'autodéfense, qui donne lieu aux σύλαι, est admise lorsqu'entre les deux communautés il n'existe ni accord d'asylie ni traité d'assistance judiciaire (σύμβολον)". See also Lintott 2004, 340: "Σῦλα (neuter plural) and σύλη with the corresponding verb συλᾶν are wide-ranging terms, regularly found in legal texts and elsewhere, for seizure in pursuit of a remedy for a wrong. They developed a precise sense of the seizure of property, including slaves, but they can occasionally apply to free persons as well".

[31] For a critical discussion of the modern debate on σῦλαι and ἀσυλία see Maffi 2023, 64-98.

[32] MacDowell 2009, 106-107.

his goodwill he was apparently even prepared to lose the interest for the money he borrowed from Arkesas of Pambotadai at the rate of 16% ([Dem.] 53,12-13).

To conclude, it seems appropriate to go back to the passage from book 8 of *Nicomachean Ethics* on "utilitarian friendship", "friendship arising from mutual advantage" (1162b6: ἡ κατὰ τὸ χρήσιμον φιλία; cf. also 1156a6-24)[33], quoted by Scheibelreiter. Here, having stated that, unlike friendship based on virtue or on pleasure, "the friendship that exists for the sake of utility is prone to accusations" (ἡ διὰ τὸ χρήσιμον ἐγκληματική), for "the friends associate with each other for profit (ἐπ᾽ ὠφελείᾳ) and so each always wants more and thinks that he is getting less than is fitting" (1162b17-19: ἐπ᾽ ὠφελείᾳ γὰρ χρώμενοι ἀλλήλοις ἀεὶ τοῦ πλείονος δέονται, καὶ ἔλαττον ἔχειν οἴονται τοῦ προσήκοντος), Aristotle proceeds to make a distinction between two sorts of utilitarian friendship, one, the legal type (νομική), according to stated terms (ἐπὶ ῥητοῖς), where "what is owed is clear and not ambiguous" (δῆλον δὲ ἐν ταύτῃ τὸ ὀφείλημα κοὐκ ἀμφίλογον), and the other, the moral type (ἠθική), according to character, not based on stated terms (οὐκ ἐπὶ ῥητοῖς), as when presents, or whatever else it may be, are given as to a friend (ἀλλ᾽ ὡς φίλῳ δωρεῖται ἢ ὁτιδήποτε ἄλλο) (1162b31-32). According to Aristotle, complaints (τὰ ἐγκλήματα, "indictments") "especially arise when the conditions under which a claim is established and those under which payment is claimed are not the same" (1162b24-25: γίνεται οὖν τὰ ἐγκλήματα μάλισθ᾽ ὅταν μὴ κατὰ τὴν αὐτὴν συναλλάξωσιν καὶ διαλύωνται)[34] and "the giver expects to receive an equivalent or greater return, as though it had not been a free gift but a loan" (1162b32-33: κομίζεσθαι δὲ ἀξιοῖ τὸν ἴσον ἢ πλέον, ὡς οὐ δεδωκὼς ἀλλὰ χρήσας) (1162b5-35). As a consequence, utilitarian friendship is bound to be short-lived: "those who are friends because of what is useful dissolve their friendship as soon as it ceases to be of advantage to them; for it was not each other they loved, but what profited them" (1157a13-15: οἱ δὲ διὰ τὸ χρήσιμον ὄντες φίλοι ἅμα τῷ συμφέροντι διαλύονται· οὐ γὰρ ἀλλήλων ἦσαν φίλοι ἀλλὰ τοῦ λυσιτελοῦς). In other words, the complaint – and the ensuing lawsuit – originates when there is a tension between different ways of conceiving the transaction. Should we believe Apollodorus' account, there could be no better commentary on the story of betrayed friendship narrated in the speech.

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[33] For Aristotle's treatment of the three different kinds of φιλία see Gauthier, Jolif 1970, 669-724; Konstan 1997, 67-78. On friendship διὰ τὸ χρήσιμον cf. in particular 72: "Aristotle on occasion speaks as though utility or pleasure simply constituted the love that joins two people, but when he expresses himself more precisely he makes it clear that *philia* arises through or on account of (*dia*) these qualities and is thus distinct from mutual advantage, pleasure or even respect (8.3, 1156a10-16). To make the point sharper, we may note that Aristotle never suggests that two people who are useful to one another are automatically and on that basis alone friends". See also Gartner 2017.

[34] For the translation of these lines see Gauthier, Jolif 2002, 712: "Συναλλάττειν et διαλύεσθαι… ont partout dans ce passage le sens technique de *faire un contrat* et *s'acquitter* des clauses de ce contrat". Cf. also Grant 1885, 276, *ad loc.*: "συναλλάττειν is to make a contract, διαλύεσθαι to wind up a contract by the mutual performance of the terms".

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THE *OKTŌBOLOS EISPHORA* OF MESSENE: DATE AND CONTEXT

Abstract: Consisting of two decrees and an accounting document, the *oktōbolos eisphora* dossier of Messene is of particular importance for our understanding of the Roman taxation system in Greece. This study clarifies the mode of collection of the tax and its rate (1.90 per cent). While the chronology has floated between c. 130 BCE and the 40s CE, the dossier should be dated to 32 BCE, one year before Actium.

Keywords: Messene, Roman taxation, *oktōbolos eisphora*, Antony, Actium

The *oktōbolos eisphora* of Messene is a particularly important dossier for our understanding of Roman control over Greece. However, its date and historical context are still not well established, and over time various dates between 130 BCE and the 40s CE have been proposed. More recently a date between 70 and 30 BCE has gained favour, but it is not universally accepted. This study will attempt to clarify the institutional context and date of the dossier.

The texts of the *eisphora* were written on two large limestone slabs. The first bears two decrees in honour of Aristokles, the son of Kallikrates, the secretary of the board of *synedroi*—the body of officials responsible for governing the city. The first decree was passed by the *synedroi*, the second by the *synedroi* and the people. They honoured Aristokles for his good management of the collection of a property tax, an *eisphora*, aimed at paying a lump sum demanded by the Roman authorities. The second slab presents the details of the account for the collection of the tax. The two texts were published by Walter Kolbe as *IG* V.1 1432 and 1433 in 1913. The follow-

* I wish to extend my thanks to Georgia Alexopoulou, Pierre Aupert, Julien Fournier, Catherine Grandjean, Edward Harris, Frédéric Hurlet, Jane Botsford Johnson, Christel Müller, Selene Psoma, Flavio Santini, and Sophia Zoumbaki for their help in the preparation of this manuscript. I am also particularly grateful to Marie-Claire Ferriès for her advice with the case of *praetor* Vibius. I would also like to thank the participants of the 2024 Milan *Symposion* and those of the *Numismatic Meeting* in Athens on 20 January 2025, organised by the Institute of Historical Research of the National Hellenic Research Foundation, the National and Kapodistrian University of Athens and the French School at Athens, for their feedback. The author is, of course, solely responsible for the views expressed in this paper.

ing year, in 1914, they were republished with improvements by Adolf Wilhelm, who also provided a German translation and a detailed commentary that remains authoritative[1]. Although reference is made to Kolbe's numbers for the sake of simplicity, it is Wilhelm's edition that will be followed here most of the time.

The *oktōbolos eisphora*: system of accounting and tax rate

The present author has devoted a first study to this question, which can be summarised as follows[2]. The *eisphora* collected by the city was a property tax. It reached a total of almost 100,000 denarii—99,365 denarii and 2 obols, to be exact—, which was to be handed over to the Roman authorities. It was a very large sum, and it is easy to understand why Aristokles was lauded for its successful collection. The city did not have to take out a loan, which would have been disastrous for its finances, because Aristokles was able to convince everyone that it was in their best interests to pay what was asked of them. In fact, the Messenians were under the strict control of the proconsul Memmius and the praetor Vibius[3]. The latter even came to Messene to oversee the process, illustrating the importance the Roman authorities attached to this *eisphora*. Failure to pay the demanded amount could have had direct and very painful consequences for the city. Remarkably, everyone had to pay the tax, including the artists, the winners of the Olympic Games, the Roman residents, and, in general, all those who were usually exempted from paying similar taxes[4].

In analysing the method of collection, Wilhelm came to the inescapable conclusion that the tax was collected according to the TMSO (short for Talent Mina Stater Obol) accounting system. Widely used in central Greece (e.g., in Delphi) and in the Peloponnese, it was inherited from the old Aeginetan system. In this system, the talent is worth 60 minas, but there are 70 drachmas in a mina (and thus 35 didrachm staters per mina) and 4,200 drachmas in a talent. This is different from the Attic system, in which the talent is also worth 60 minas, but there are 100 drachmas in a mina and 6,000 drachmas in a talent. On this basis, Wilhelm concluded that the tax was set at a rate of 8 obols per mina. To justify this amount, Wilhelm converted the 1,242 talents, 3 minas, and 30 staters corresponding to the taxable property into obols. Using the corrected amount in minas (3, not 4), this total is 31,300,022 obols. For him, the *oktōbolos eisphora* could only be a tax of 8 obols per mina. With a mina of 420 obols, 8 obols is 1/52.5 of 420 obols. If we divide 31,300,022 obols by 52.5, we get 596,191 obols, which is the amount of the tax in obols. If we divide this amount by 6 (assuming that there were 6 obols in a drachma and in a denarius), we get 99,365.16, or 99,365 drachmas and one obol: this is almost exactly the amount written on the

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1 Wilhelm 1914.

2 Bresson 2019. In this article, p. 248, third §, read "99365,33" (Italian formatting) and p. 254, third §, "the tax of eight obols per mina".

3 *IG* V.1 1432, II, ll. 36-37: Μέμμιός τε ὁ ἀνθύπατος καὶ Ουΐβιος ὁ στραταγός.

4 On the institutional aspects of the levying of the *eisphora*, see Migeotte 2008 and 2014, 43, 75, 104 n. 77 and 279, and Doyen 2014, § 42-53.

stone, with a difference of only one obol. 1/52.5 is equal to 1.90 per cent, which, for Wilhelm, was the tax rate.

The *oktōbolos eisphora* dossier and Wilhelm's analyses and conclusions have been cited in many books and articles. Few scholars have proposed new interpretations of the evidence. However, the debate was reopened by an important contribution by Adalberto Giovannini, whose conclusions have tended to replace those of Wilhelm on several important points[5]. Giovannini accepted the principle of the levy of 8 obols per mina, but he was sceptical of the Messenian accountants' ability to manipulate millions of obols. He believed that these accountants neglected the small amounts in staters and obols and simply multiplied the number of minas by 8 and then divided by 6 to obtain the number of denarii. Since there are 1,242 talents and 60 minas per talent, we have 1242 x 60 = 74,520 minas, to which we must add the sum of the four minas recorded on the stone, for a total of 74,524 minas. Multiplying by 8 (for 8 obols per mina) and dividing by 6 (for 6 obols in a denarius) gives the total in denarii, 99,365.33—or 99,365 denarii and 2 obols, which is precisely the amount inscribed.

Giovannini's proposal for calculating the amount to be paid, which yields a result exactly equal to the sum on the stone, is entirely convincing. It preserves the core of Wilhelm's analysis—the *eisphora* was a tax of 8 obols per mina—and provides a compelling explanation of the tax accountants' method of calculation[6].We should remember that the ancient world did not use decimal notation with zero and that calculations, even with the abacus, were much more difficult than they are today. As Giovannini has shown, the clever use of the TMSO system by the Messenians made it possible to account for much smaller numbers than in Wilhelm's explanation.

On the question of the tax rate, however, Giovannini proposed a solution radically different from Wilhelm's. Wilhelm had proposed a tax rate of 1.90%. With 6 obols per drachma, an Aeginetan mina of 70 x 6 = 420 obols, and a tax of 8 obols per mina, the tax rate is actually 8 / 420 = 0.019, or 1.9%. Giovannini acknowledged that the Aeginetan system was used to calculate the value of taxable property for a tax paid in denarii[7]. But he added two crucial statements. The first was that, for the calculation of the *eisphora*, it did not matter whether the mina was the Attic one of 100 drachmas, or the Aeginetan one of 35 staters[8]. He added a second statement in a short note: since the obols of the tax were Attic and not Aeginetan, the tax rate was not about 2 per

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5 Giovannini 1978, 115-122.

6 Charles Doyen (2014 and 2017) has recently proposed yet another method of calculation, which for numismatic and philological reasons cannot be accepted (see Bresson 2019, 249-254).

7 For the actual coins used in Messene for the payment, see below.

8 Giovannini 1978, 118: "Pour le calcul de l'ὀκτώβολος εἰσφορά, c'est-à-dire d'une taxe de huit oboles par mine, seul comptait le nombre total de mines et cela ne changeait strictement rien au décompte final que pour l'estimation des fortunes individuelles on ait divisé la mine en 100 drachmes, comme cela se faisait à l'époque impériale après que le système attique se fut imposé partout, ou en 35 statères, conformément au système éginétique".

cent, but 1 1/3 per cent[9]. To arrive at this rate, we must assume the use of the Attic accounting system: with 6 obols per drachma, an Attic mina of 100 x 6 = 600 obols, and a tax of 8 obols per mina, we have a rate of 8 / 600 = 0.0133, or 1.33%. Giovannini's view of the tax rate was adopted by Léopold Migeotte in the analysis he devoted to the *oktōbolos eisphora* dossier[10]. He was then followed by Catherine Grandjean, Richard Bouchon, Frédéric Hurlet and Christel Müller, and by Marcin Pawlak[11].

But this interpretation cannot be accepted. We can be sure that the TMSO-Aeginetan accounting system was used, not the Attic one. Wilhelm has shown this irrefutably (Table 1). At some point, the accountants had counted certain properties twice, and they had to subtract a sum of 14 talents, 1 mina, and 21 staters from the total of 1,256 talents, 5 minas, and 16 staters they had previously calculated. However, they made a mistake in their deduction and wrote a total of 4 minas instead of 3. Despite this error, the result of the subtraction indicates the accounting system that was used.

	Talent	Mina	Stater	Drachm	Obol	*Chalkos*
Total before deduction	1256	5	16		10	10
Deduction	14	1	21		8	
Total after deduction	1242	4	30		2	10

Table 1: The calculation of the deduction in the property assessment (from Wilhelm 1914, 64)

To achieve a unified view of the process in question, we convert the minas to staters and compare the results in terms of the TMSO-Aeginetan and Attic systems:

Account in staters, with 35 staters per mina	5 minas x 35 = 175, 175 + 16 = 191 staters
Sum to be subtracted	1 mina, 21 staters = 35 + 21 = 56 staters
Subtraction	191 - 56 = 135 staters
Conversion in minas (with 3 minas = 105 staters)	135 - 105 = 3 minas and 30 staters

Table 2: Detail of the subtraction in the TMSO-Aeginetan accounting system

Account in staters, with 50 staters per mina	5 minas x 50 = 250 staters, 250 + 16 = 266 staters
Sum to be subtracted	1 mina 21 staters = 50 + 21 = 71 staters
Subtraction	266 - 71 = 195

[9] Giovannini 1978, 118, n. 15: "Puisque les oboles de la taxe sont des oboles attiques et non des oboles éginétiques, il en résulte que la contribution exigée n'était pas de 2% mais seulement de 1⅓%".

[10] Migeotte1997, 60, n. 32.

[11] Grandjean 2003, 254; Bouchon 2011; Hurlet and Müller 2020, 80; Pawlak 2022.

Conversion in minas (with 3 minas = 150 staters)	195 - 150 = 3 minas and 45 staters

Table 3: Detail of the subtraction in the Attic system of accounting

The result in the Attic accounting system (Table 3) is inconsistent with what we read on the stone in two ways: 1) we have a remainder of 45 staters, instead of 30; 2) we also have to correct the number of minas from 4 to 3. On the other hand, in the TMSO-Aeginetan system (Table 2), we have to correct the total in minas, which is the consequence of a careless mistake: it was tempting to subtract 1 from 5 and get 4. But the total of 30 remaining staters given by the stone corresponds perfectly to a subtraction of numbers in the TMSO-Aeginetan system. Adolf Wilhelm's *Scharfsinnigkeit* both acknowledged that the accounting system was performed in the TMSO-Aeginetan system and detected the calculation error. It should also be noted from the outset that the Attic accounting system did not use staters and that there was usually no intermediary between the drachma and the mina. So, we can be sure that the accounting system was the TMSO-Aeginetan system, not the Attic one.

Next, it should be noted that there is no logical connection between Giovannini's previously mentioned statements. Of course, paying 8 obols per mina does not change the total amount to be paid, regardless of the value of the mina. But a difference in the value of the mina radically changes the tax rate. In the Aeginetan system, with a mina of 70 drachmas, the taxable capital of 74,524 minas calculated in drachmas is 74,524 x 70 = 5,216,680 drachmas. In the Attic system, with a mina of 100 drachmas, it is 74,524 x 100 = 7,452,400 drachmas. With a lower property value and the same amount to pay, the tax rate is higher: 1.90 per cent (99,365 : 5,216,680), as calculated by Wilhelm, not 1.33 (99,365 : 7,452,400), as proposed by Giovannini. The calculation is also fundamental in assessing the value of the Messenians' property, which was significantly lower than that implied by Giovannini.

In terms of tax burden, a rate of almost two per cent is one of the highest recorded in Classical Athens, where *eisphora* rates were usually between one and two per cent[12]. It has been suggested that it was not very difficult for the Messenians to pay the tax[13]. Indeed, Messene was a rich city and, thanks to the efforts of Aristokles, it did not have to borrow money or run a deficit to pay its *eisphorai* (*IG* V.1 1432, I ll. 8-9: μήτε δανεισμὸν μή[τε ἔλ]λειμμα). This does not mean that the tax was easy to collect. The tax rate—1.90 per cent, not 1.33—was higher than previously thought. The city was under pressure from the Roman magistrates, and the second decree directly mentions their repeated demands (*IG* V.1 1432, I l. 4: εἰς τὰ ἐπιτά[γματα κ]εχώρηκε, II l. 30: γεγενημενᾶν ἐπιταγᾶν περὶ πολλῶν καὶ μεγάλων). A decree from Gythion (also in the southern Peloponnese) in 71/70 BCE illustrates this pressure.

[12] Dem. 14.27 refers to *eisphorai* rates of one and two per cent, adding that an 8 1/3 per cent rate would be unbearable; see Brun 1983, 56-73; Christ 2007; Fawcett 2016, 156-158.

[13] Migeotte 1997, 371-372.

Apparently because the Roman magistrates had imposed many heavy requisitions, Gythion had to borrow money from two Roman bankers, the Cloatius brothers, at extraordinarily high interest rates (*IG* V.1 1146; *Syll*.[3] 748; Migeotte 1984, 90-96, no. 24; Sherk 1984, 93-95, no. 74)[14]. In the same years, another decree of Gythion honoured a doctor who promised to work for free for the rest of the year, starting from the month of Laphrios, "because he noticed that the city was in financial difficulties because of the *eisphorai*" (*IG* V.1 1145, ll. 28-29: θεωρῶν τὰν π[όλιν ἐξα|πορου]-μέναν ἐν ταῖς εἰσφοραῖς)[15]. Admittedly Messene did not have to resort to borrowing. Yet, of the total of 99,365 dr. 2 ob. owed to the Roman magistrates, at the time the dossier was inscribed, the considerable sum of 15,797 dr. 5 ob. and 9 ch., or 15.9 per cent, remained unpaid.

Another question concerns the coinage in which the tax was levied. Wilhelm did not comment further on the actual coins used in the accounting process of the *oktōbolos eisphora.* He left the question to specialists in numismatics[16]. For Giovannini, the account was exclusively in denarii, which was consistent with the date he proposed for the inscription, the early Imperial period[17]. But Migeotte, who dates it to the late Hellenistic period, believes that the *eisphora* was collected in local Peloponnesian or Attic coinage, and then, in a final phase, converted into denarii[18]. But if the tax were indeed levied only in local Peloponnesian or Attic tetradrachms, it would be puzzling that *IG* V.1 1433 says nothing about a change from one coinage standard to another, and, *pace* both Giovannini and Migeotte, from one accounting system to another[19].

In our previous article we suggested that the coin standard used from the beginning was the denarius, which explains why there is no mention of other coins or standards in the accounting document. These sums in denarii were calculated using the accounting system familiar to the people of the Peloponnese, the TMSO-Aeginetan system. But this does not affect the coinage to which the tax accountants refer. As noted by Giovannini, some documents show that even in the Imperial period, some traces of the old accounting systems can still be observed. In Delphi, the manumissions of the early Imperial period could also refer to minas, reflecting the weight of tradition, but not to staters, although the mina then had 100 drachmas, not 70[20]. In Thasos, in 22 CE, a fine is denominated in staters, at a time when the denarius was the only coin in circulation[21]. However, one should note that in the *oktōbolos eisphora*

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14 Santangelo 2009.

15 See Migeotte 1984, 94, n. 284, for the date.

16 Wilhelm 1914, 65.

17 Giovannini 1978, 116-117.

18 Migeotte 1997, 51 and 59. The collection of the tax in local coinage is also accepted by D. Rousset, *Bull. ép.* 2018, 219.

19 See in detail the critique of this view in Bresson 2019, 251. For the analyses of Doyen 2014 and 2017 and their critique, see Bresson 2019, 249-251.

20 Bousquet 1986; Mulliez 1997.

21 *IG* XII, *Suppl*., 364, with Dunant and Pouilloux 1958, 76-82, no. 185, l. 17, and the new edition of Fournier 2014, who convincingly dates the document to 22 CE; see Fournier 2023 for the likely equivalence with a didrachm, viz. two denarii. On the massive circulation of

we have a complete accounting system and not just fragments of it. As for the obols, different solutions were adopted in each region for the definition of the accounting system and the forms of the fractional coinage[22].

We should conclude that in Messenia, when this *eisphora* was levied, the traditional TMSO-Aeginetan accounting system was maintained by the city authorities and used to calculate sums in denarii. It was denarii, and only denarii, that were counted. The (rare) use of drachmas in the accounts does not per se imply any reference to actual traditional drachmas, whatever they may have been. The drachma appears there only as a unit of account, along with the talents, minas, staters, and obols of the TMSO system. The question remains, however, as to the actual coins in which the *oktōbolos eisphora* was levied.

The *oktōbolos eisphora*: the question of the denarius

The mention of the *denarius* in the *oktōbolos eisphora* raises two questions. Was it in circulation in Messene and the Peloponnese when the tax was levied? And was it legal tender in the city?

As is now well known, the massive diffusion of the denarius in Greece took place rather late, not before well into the first century BCE. In Macedonia, the phenomenon can be observed from the mid-50s BCE onward, with 13 hoards between c. 55 and 32/1 BCE out of 18 Republican period hoards. Initially, a few Aesillas tetradrachms were mixed in with the denarii, but later the denarii were the only coins present in the hoards[23].

David Schwei's dissertation has conveniently tabulated the hoards of "Achaia" (from Thessaly to the Peloponnese, including the Cyclades) in the period 146 BCE-300 CE[24]. His analyses and conclusions are corroborated by those of Charikleia Papageorgiadou and Elpida Kosmidou on the circulation of denarii in Greece in the second and first centuries BCE[25].

These studies show that until the mid-first century, the vast majority of the (many) hoards in the future province of Achaia contain only local Greek coins. The exceptions are rare, and one of the most striking is the Piraeus hoard 1927 of 86 BCE (Lockyear 2007, 111), composed entirely of denarii (42 samples), which corresponds to the presence of the Sullan troops in Athens during the war against Mithridates. Peloponnesian mints producing silver coins remained active well after 146 and into the first century BCE[26]. This is why Achaian League or civic triobols are found in such large quantities in the Peloponnesian hoards of this period, where they formed a true "common coinage"[27]. It should be noted that the circulation of local Greek coins and

denarii in Thasos as early as the 40s BCE, see Fournier 2009.

22 For the obols in Thessaly, see Helly 1997. For the case of Messene, Bresson 2019, 255.

23 Amandry – Kremydi 2018, 81-82, table 1 and graph 1.

24 Schwei 2016, 360-364, App. 5.1.

25 Papageorgiadou and Kosmidou 2020.

26 Boehringer 2008; Grandjean 2007 and 2016; Papageorgiadou and Zoumbaki 2017.

27 Lists of hoards and analyses of the emergence of a common Peloponnesian monetary circu-

that of denarii were completely separate: in the hoards containing local Greek coins, denarii almost never appear, and vice versa. This conclusion was already reached independently by Christophe Flament and Patrick Marchetti[28].

Reference	*Findspot*	*Closing Date*	*Roman Denarii*	*Non-Roman Coins*	*Percentage of denarii*
Lockyear 2007, 252	Athens	49 BCE	47	0	100
CH X 184	Demetrias 1993	46/5-27 BCE	0	68	0
IGCH 351 = *RRCH* 376	Aidona 1955	c. 46 BCE	4	0	100
RRCH 465 = *CH* X 186	Delos 1905	32/1 BCE	649	1	100
RRCH 467	Euboea 1948	32/1 BCE	97	0	100
RRCH 473	Preveza-Actium 1960	32/1 BCE	41	0	100
CH VII 226 = *CH* VIII 542	Preveza-Actium 1982	32/1 BCE	122	2	98.4
Papageorgiadou – Alexopoulou 2023	Ionia Hodos	Just after 31 BCE	35	11	68.6
RRCH 533	Greece	c. 2 BCE-4 CE	424	0	100
Sidiropoulos 2011	Messene 2009	c. 2 BCE-4 CE	62	1	100

Table 4: The c. 50 BCE – turn of the era hoards from Southern Greece (from Schwei 2016, App. 5.1, 360-364, with suppl.)

After 50 BCE the picture changes (Table 4), but the situation requires close examination, especially in the case of the Peloponnese. After 50 BCE, the local Peloponnesian coins almost disappear from our current hoard evidence[29], yet we have no denarius hoard in the Peloponnese before the Messene 2009 hoard of 2 BCE-4 CE.

lation: Touratsoglou and Tsourti 1991 (using the "pre-Boehringer chronology"); Psoma and Tsangari 2003; Weidgenannt 2021.

[28] Flament 2020 and Marchetti 2020.

[29] Touratsoglou 2010, 242.

An interesting case, however, is the Ionia Hodos (Makyneia) hoard from southern Aitolia-Akarnania, south of Agrinion, and thus not far from the Corinthian Gulf and the Peloponnese. It contained 35 coins: 24 fresh legionary coins of Antony and 11 silver Greek coins from southern Greece. Of the latter, 5 were coins of the Peloponnesian League (Aigion 2, Elis 1, Patrai 1, Tegea 1) and 6 were other Peloponnesian coins (Argos 3, Patrai 1, Megalopolis 1 and Lacedaemon 1)[30]. The hoard thus reveals for the first time the circulation of Peloponnesian coins after 50 BCE, although not in the Peloponnese proper.

This raises the question of the coinage in which the tax was paid. The very last issues of Peloponnesian silver were seemingly minted until the final decade before Actium[31]. The city of Messene struck its own silver civic coinage until the 30s[32]. But the quantities involved were very small, and besides, large quantities of silver denarii had entered Greece or been minted there since 50 BCE, in the context of the Roman civil wars—especially since Antony had established control over Greece[33]. For Athens, John Kroll has observed that the massive infiltration of Roman denarii dates to the late 40s BCE, with the presence of Antony in Athens, a period that also saw the end of the local Athenian stephanephoric coinage. Commenting on the legal consequences of this new situation, he added: "The terms of the resulting legislation are beyond recovery. However much they might have accorded a preferred, de jure status of the denarius, the latter by this time was probably becoming the basic silver coin in Athens regardless, as the heavier silver of true Attic weight was being driven into savings or the melting pot".[34]

In our 2019 study, we admitted that the collection was made mainly in denarii, but did not rule out the possibility that some Peloponnesian coins were also part of the amount levied[35]. Waiting for more information from hoards or stray finds, it still seems the best solution to the puzzle. The Peloponnesian coins may well have been included in the payment, but they must have been accounted for according to a fixed rate set by the city, as was the case in Argos between 168 and 164 BCE for the conversion of the value of Ptolemaic silver tetradrachms into the local standard[36].

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30 Papageorgiadou – Alexopoulou 2023, 214 and n. 28. The presence of the autonomous coin of Patras with the moneyer ΑΓΥΣ ΑΙΣΧΡΙΩΝΟΣ invites to date the hoard right after Actium, see Haug 2008,

31 Grandjean 2003, 138-152, and specifically 146; Papageorgiadou – Zoumbaki 2017, with table 1 (chronology of the Peloponnesian mints active in the first century BCE); Papageorgiadou – Alexopoulou 2023, with table 1.

32 Grandjean 2003, 146-147; Papageorgiadou – Alexopoulou 2023, table 1.

33 For a parallel with the massive penetration of denarii in Thrace in this period, Paunov – Prokopov 2013 and Papageorgiadou 2020. For Crete, the Hierapytna 1933/34 hoard (*IGCH* 352 = *CH* II 125 = *CH* IV 76 = *CH* X 185), which was buried in 40 BCE and contained between 360 and 400 silver coins, already had about 200 Roman denarii (Stefanaki – Stefanaki 2013, 161-162).

34 Kroll 1993, 87.

35 Bresson 2019, 255.

36 Aupert 2021.

The fact that for now we do not have a denarius hoard in the Peloponnese until the end of the first century BCE does not force us to believe that the denarius was not circulating in the region, just as the absence of Peloponnesian coinage in the hoards of the Peloponnese proper after 50 BCE does not force us to admit that they were not circulating in the same region in this period. The heavy requisitions of the Roman generals in Greece, especially those of Antony in the Peloponnese since 39 BCE, may explain the rarity or even the absence in certain regions of hoards containing denarii or local coins minted in the 40s and 30s BCE.

In any case, for Messene, the reference to denarii in *IG* V.1 1233, l. 30, presupposes that it was now legal tender in the city, as already acknowledged by Iannis Touratsoglou[37]. It seems very likely that beyond Messene, and in order to simplify their accounting, the successive Roman authorities after c. 50 BCE forced all the cities of southern Greece to use the denarius in their financial transactions with them. For this reason, a date after c. 50 BCE seems to be preferred for the *oktōbolos eisphora*, a conclusion that now invites us to reopen the chronological debate in full.

The *oktōbolos eisphora*: the debate on the chronology

The date of the *oktōbolos eisphora* dossier has been much debated. Various dates between 130 BCE and the 40s CE have been proposed. In 2001, Athanasios Rizakis, and then in 2004, Athanasios Rizakis, Sofia Zoumbaki, and Claudia Lepenioti provided a useful bibliographical survey of the various hypotheses that had been suggested to date[38]. But the question needs to be re-examined in its entirety.

Kolbe, the first editor, obviously hesitated on the chronology of the dossier. In his prolegomenon p. XV, *sub anno* 39 a.C., and in the captions of the photos in pl. IV, he dated it to 39 BCE and linked it to the heavy tribute that Antony exacted from the Peloponnesians before the region was supposed to be handed over to Sextus Pompey under the Pact of Misenum[39]. However, in his commentary on *IG* V.1 1432, p. 285, he identified the proconsul Memmius of the text with P. Memmius Regulus, suffect consul in 31 CE and later governor of a joint province of Achaia, Macedonia, and Moesia (*PIR* II 364, 342; Cassius Dio 58.25.5; Joseph *Ant. Jud.* 19.1.1; *IG* III 613 and 615 and VII 87), whose governorship covered the period 35-44 CE[40]. The identification of the Memmius of the *oktōbolos* dossier with P. Memmius Regulus was also accepted by A. Giovannini, who saw in the *chrysophoria* mentioned in the decrees a reference to the *ius annuli* of the Roman knights under the empire: Aristokles would have been a Roman citizen and promoted to knighthood[41]. This identification has also been supported by Petros Themelis. For him, the *oktōbolos* dossier was of the same

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37 Touratsoglou 2010, 242.

38 Rizakis 2001, 93, n. 100; Rizakis et al. 2004, 558-559, sub *MES 276.

39 Vell. 2.77; Cassius Dio 48.36, 39.1 and 46.1; Appian *BC* 5.72 and 77. This date was also accepted by Friedrich Hiller von Gaertringen, *IG* V (1913), p. XV.

40 On this governor, see Groag 1939, 25-30, and Rizakis et al., 2001, 211-213, *ARG 192.

41 Giovannini 1978, 118-122. This date was accepted by J. and L. Robert (*Bull. ép*., 1980, nos. 75 and 243), C. Habicht (1985, 61), and S. Alcock et al. (2005, 175, n. 79).

period as that of the famous inscription of the Mysteries of Andania, *IG* V.1 1390 (*CGRN* 222), which he dated to 24 CE[42].

Wilhelm devoted a detailed study to the question of the date and context of the dossier[43]. He proposed a radically different date, in the period 130-80 BCE[44]. There were four reasons for this preference. First, his detailed analysis of the letter shapes led him to find parallels at the end of the second/beginning of the first century BCE, especially with the inscription of the Mysteries of Andania, which he dated to 92/1 BCE[45]. Then, he insisted that the dossier corresponded to a period of war and instability, which would fit well with the Sullan period, but in a period when the city still enjoyed undeniable prosperity. On the other hand, in 39 BCE, the date advocated by Kolbe and, beyond him, by Wilamowitz, the Peloponnese was, according to Wilhelm, in a phase of complete devastation, which would contradict the image of prosperity given both by the Andania inscription and the *oktōbolos eisphora* dossier[46]. Indeed, the mention of people enrolled in military campaigns (*IG* V.1 1433, l. 36: ἐν στρατευομένοις), craftsmen in public service (l. 38: χειροτέχναις λειτουργούντοις), and slave rowers (l. 39: ἐρέταις δούλοις) inevitably refers to a context of war, confirmed by the pressure of the Roman authorities to levy this *eisphora*.

Next, Wilhelm also thought of a special connection with the inscription of the Mysteries of Andania (see already above)[47]. Furthermore, he linked the Mysteries inscription to another Messenian inscription which he identified as the payment of an *eisphora* (*IG* V.1 1532), because in both texts a certain Mnasistratos appears (in a prominent role in the Mysteries inscription). Finally, he identified the Nemerius among the Roman landowners in the *oktōbolos* dossier (*IG* V.1 1433, l. 26) with the father of the Cloatius brothers, Νεμέριος καὶ Μάαρκος Κλοάτιοι Νεμερίου ὑοὶ ‘Ρωμαῖοι, active at Gythion in 71/1 BCE (*IG* V.1, 1146; *Syll*.[3] 748; Migeotte 1984, 90-96, no. 24). Wilhelm also reviewed all the known figures of the Roman elite with the *gentilicium* Memmius between 130 and 30 BCE[48]. He did not, however, propose a formal identification for any of them with the proconsul of the *oktōbolos* dossier, probably because the chronological parallel he drew between the Andania inscription

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42 Themelis 2001, 2007, and 2010, 106.

43 Wilhelm 1914, 71-119.

44 Wilhelm 1914, 97. This chronology was followed by Rostovtzeff 1941, vol. 2, 750-754.

45 Wilhelm 1914, 71-85. The date of the Andania Mysteries inscription is still hotly debated between those who, like Wilhelm, take the “year 55” of the text to refer to the Achaean era (hence a date in 92/1 BCE for the Andania inscription in the 54th year), and those who, like Themelis, link it to the Aktian era (hence a date in 23 CE for the inscription). For Themelis, this seemed to justify the global downdating of a number of other documents, including the *oktōbolos eisphora* dossier. But see already the objections of Migeotte 2008 [2015], p. 61 [376]. For a discussion of the chronology of this text, see Gawlinski 2012, 3-11, who concludes that it is currently impossible to choose between the two dates, but shows the fragility of Themelis’s chronology.

46 Wilhelm 1914, 82-83.

47 Wilhelm 1914, 86-93.

48 Wilhelm 1914, 92-93.

and the Gythion inscription mentioning the Cloatius brothers prevented him from doing so.

But going one step further, in 1931 Friedrich Münzer in *RE,* s.v. Memmius (3), identified the governor Memmius of the *oktōbolos* dossier with C. Memmius (5), who was *tribunus plebis* in 111 BCE, then candidate for the consulate of 99 BCE in 100 BCE, and in that year murdered by his opponents before the election[49]. In the same vein, Thomas Broughton suggested that this C. Memmius had been proconsul of Macedonia[50]. This identification was accepted by Jean-Louis Ferrary, although with serious reservations[51]. According to Corey Brennan, who also accepts this identification, it should be assumed that he had been praetor, which would have made it possible for him to become governor of a province such as Macedonia. C. Memmius was indeed accused and acquitted after a trial *de repetundis,* which implies that he had governed a province. C. Memmius would have been governor of Macedonia after 107 and before 101[52]. But other dates have also been proposed on the basis of general historical arguments. For example, Ulrich Kahrstedt thought that the *oktōbolos eisphora* corresponded to the contribution of the Messenians to Pompey's campaigns against the pirates (67 BCE)[53].

In 1997, Migeotte devoted a detailed study to the question of the chronology of the *oktōbolos* dossier[54]. Like Wilhelm, he begins with a detailed analysis of the orthography and script. This allows him to emphasize the many differences in the script with the Mysteries of Andania, rather than the similarities. On the other hand, the *oktōbolos* dossier shows features similar to much later inscriptions, such as the one bearing the decree and list of contributions for the repair of public monuments in Messene, which can be dated to the reign of Augustus, or the decree of the same city celebrating the advent of Emperor Tiberius[55]. However, if these remarks lead us to separate the *oktōbolos* dossier from the early first century BCE, they do not imply that the dossier itself should be dated to the Imperial period. Migeotte recalls that Wilhelm had already emphasized that the reference to Roman magistrates as οἱ ἀγούμενοι (*IG* V.1 1432, II lI. 31-32) was characteristic of the Hellenistic rather than the Imperial period, when they were called οἱ ἡγεμόνες[56]. As for the *ius annuli* granted to Aristokles advocated by Giovannini to justify a date in the Imperial period, which for him was a crucial argument in favour of it, Migeotte insists that the suggestion contradicts the evidence in the formulation and social context (there is nothing to indicate that Aristokles had become a Roman citizen, a requirement for being knighted) and that the χρυσοφορία is well attested in the Greek world independently of any

49 Münzer 1931.
50 Broughton 1951, vol. 1, 564.
51 Ferrrary 1977, 657-658, n. 138 (see below n. 87).
52 Brennan 2000, vol. 2, 523.
53 Kahrstedt 1954, 220, n. 6.
54 Migeotte 1997.
55 Respectively Migeotte 1985 (*SEG* 35 343) and *SEG* 41 328.
56 Wilhelm 1914, 46-47. See also Drew-Bear 1972, 453-455.

direct Roman influence. In fact, things are more complex, because if the χρυσοφορία was not necessarily specifically Roman, it could have been a privilege granted by local Roman authorities of the Republican period. Moreover, the right to wear a gold ring granted to Aristokles was indeed specifically Roman[57]. Nevertheless, it remains certain that the reference to the χρυσοφορία and to the right to wear a golden ring do not force us to date the *oktōbolos* dossier to the Imperial period, but on the contrary strongly suggest a Republican date.

It should also be added that, as Robert Kallet-Marx has pointed out, the identification of the Memmius of the *oktōbolos* dossier with P. Memmius Regulus, governor of Macedonia between 35 and 44 CE, cannot be accepted because the former is defined as ἀνθύπατος, proconsul, and the latter, in a series of inscriptions, as πρεσβευτὴς Σεβαστοῦ καὶ ἀντιστράτηγος, *legatus Augusti pro praetore*[58].

Migeotte concluded that the *oktōbolos* dossier should be dated to the period 70-30 BCE, although rather closer to 70 than to 30[59]. The latter point was based on two assumptions. First, the Νεμέριος of the *oktōbolos* dossier might well be the Νεμέριος, son of Νεμέριος, of the Gythion inscription honouring the Cloatius brothers (the son, not the father, as Wilhelm suggested). Second, the awkward mention of δειναρίου in *IG* V.1 1233, l. 30, before the indication of the amount to be paid to the Roman authorities would lead us to believe that the text refers to a standard rather than an actual amount in denarius coins. For Migeotte, this would show that the denarius was not yet well known to the Messenians, which would fit well with a date closer to 70 than to 30 BCE.

A date between 70 and 30 is widely accepted. Olivier Picard, commenting on the minting of tetradrachms with Thasian types in the 80s BCE, which he linked to the war against the Thracians in that period, saw in this chronology of the *oktōbolos eisphora* a parallel for the monetary levies of the Roman authorities in northern Greece[60]. Grandjean accepted a chronology between 70 and 30 BCE, but preferred a date in the period 48-42 or 39-30, under Antony. For Doyen, the *oktōbolos* dossier should be dated to the period of the Second Triumvirate, between 43 and 31, when Antony imposed a new denarial metrological system[61].

The Roman magistrates and the date of the *oktōbolos eisphora*

If the premise of this argument is correct, and if the *oktōbolos eisphora* was levied at a time when the denarius had become legal tender in Messene and was already circulating there, then the levy cannot be dated before 50 BCE. Moreover, as already

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57 Kuhn 2014.

58 Kallet-Marx 1995, 352. On the reasons for Macedonia's transition from a *provincia populi Romani* to an imperial province in the early years of the reign of Augustus, see Haensch 2018, 2.

59 See also Migeotte 2014, 43, between 70 and 30 BCE, and 75,"first half of the first century BCE".

60 Picard 2008, 483, n. 49.

61 Doyen 2017.

shown, there is no reason to believe that the genitive δειναρίου of *IG* V.1 1233, l. 30, is a reference to a standard rather than the actual coin and monetary unit, and that it betrays any unfamiliarity with this coinage[62]. This is a perfectly normal form of reference to coin units, which could be used in any period, including of course after 50 BCE.

Moreover, the *oktōbolos eisphora* makes no direct or indirect mention of an emperor, which, while not a decisive criterion, would be surprising for an imperial date in a document of such importance. Finally, as noted above, the *oktōbolos eisphora* corresponds to a period of war or war preparation, with its explicit mention of people enrolled in military campaigns, craftsmen in public service, and slave rowers. This fits perfectly into a pre-Actium context, not a post-Actium one. It is therefore safe to conclude that the *eisphora* dossier must be dated between c. 50 and 30 BCE.

But it is possible to narrow down the date in this period, and to do so one must return to the question of the identification of the Μέμμιός ὁ ἀνθύπατος, the proconsul of *IG* V.1 1432, II l. 36. Admittedly, one should be aware that our information on the proconsuls and, more generally, on the Roman magistrates of the Late Republican period is far from complete, and that we run the risk of missing crucial information on a figure who would not have left any trace in our documentation. It is also clear that many *eisphorai* were raised in the Peloponnese to meet Roman demands between the last decades of the second century BCE and Actium, and that a precise date must be based on solid evidence and not on general assumptions about one of the many "difficult periods" of the Late Republican period.

As noted above, the praetor C. Memmius of the late second century BCE could have been proconsul of Macedonia, but he could also have been given another province. It is certain, however, that he was not the Memmius of the *oktōbolos* dossier, both because the script of the inscriptions does not fit this period, and because denarii remained virtually unknown in the Peloponnese during these years[63].

There is, however, a perfect candidate for the proconsul of the *oktōbolos* dossier, one who meets all the necessary criteria for identification: C. Memmius, the suffect consul of 34 BCE, an identification that has never before been proposed. A number of men whose careers are not easy to reconstruct have borne the *nomen* Memmius, which adds to the difficulty of clarifying the career of this C. Memmius before his consulship[64]. Identifying the various branches of this family, or of these families, has proved to be difficult and one should be careful before proposing formal identifications[65]. However, it can be observed that a C. Memmius C. f. was *vir monetalis* in 56 BCE[66]. Furthermore, a C. Memmius was *tribunus plebis* in 54 BCE. It thus seems

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62 See in detail Bresson 2019, 251-253.

63 For a further reason, see below the analysis about the hierarchy between the ἀνθύπατος Memmius and the στραταγός Vibius.

64 On C. Memmius consul of 34 BCE, Ferriès 2007, 513-514, no. 166.

65 On the Memmii, see Wiseman 1967, and more recently González 1993.

66 *RRC* I, 85, table XIII, and 451-452: 427/1-2. Grueber 1910, vol. 1, 495-496, followed by Broughton 1951, vol. 2, 446 (short reference), dated him to 51 BCE, a date which compli-

reasonable that the *vir monetalis* of 56, the *tribunus plebis* of 54, and the suffect consul of 34 are one and the same man[67]. He may also have been the C. Memmius who dedicated a monument in honour of his (maternal) grandfather Sulla in Ephesos, apparently in the middle of the first century BCE[68]. One thing is certain, however: he was the first Memmius to become a consul, as his probable ancestor and namesake C. Memmius had been assassinated in 100 BCE, the year he ran for the consulship.

The suffect consulship of C. Memmius must be analysed in the context of the appointment of the consuls of the year 34[69]. The consuls of 34 were Antony himself and L. Scribonius Libo[70]. Antony resigned his consulship already on January 1. He was replaced by L. Sempronius Atratinus[71]. On July 1, Libo and Atratinus resigned, and they were replaced by Paullus Aemilius Lepidus and C. Memmius[72]. On November 1, there was a new suffect consul, M. Herennius[73]. As for the rest of the Roman elite, their loyalties changed constantly, depending on personal choices, partisan alliances, and marital unions. It remains that the year 34 seems to have been an "Antonian year". Atratinus had hitherto been a staunch supporter of Antony, which explains why the triumvir abdicated in his favour.[74] As for Libo, he had family ties to both Octavian and Antony. He may have leaned toward Antony at this time. It is not possible to determine who succeeded each of the two consuls who took office on July 1. Lepidus' partisan affiliation during this period is not clear.

We have no further evidence for the consulship of C. Memmius in 34 BCE, except that we have a Memmius proconsul in Greece in the *oktōbolos eisphora* dossier. As noted above, the *oktōbolos eisphora* necessarily dates between 50 and 30 BCE. After his suffect consulate, C. Memmius could have become a proconsul. Indeed, there should be no doubt that he was the proconsul of Macedonia (see below) in 33 and 32. The *oktōbolos eisphora* fits perfectly with the massive preparations for war that Antony was making in the eastern Mediterranean. Antony imposed heavy taxes in the regions he controlled, and Octavian did the same in Italy[75]. Tensions between Antony and Octavian had been growing since the end of 34. On both sides, 33 was taken up with preparations for war, as conflict was now inevitable. It came in early

cated the reconstruction of the career of C. Memmius.

67 See *RRC* II, 710, table LIX, for the identification of the *vir monetalis* and the *tribunus plebis*, and González 1993, 283, for the link with the suffect consul.

68 Laflı and Buora 2023.

69 Broughton 1951, vol. 2., 410-411. On suffect consuls in the years of the triumvirate and their designation and use by the triumvirs, see Pina Polo 2018 and 2020, Hurlet 2018, 373-374, and more broadly Hurlet – Pina Polo 2023.

70 On Libo, Ferriès 2007, 462-463, no. 124

71 On Atratinus, Ferriès 2007, 464-466, no. 126.

72 On Lepidus, Ferriès 2007, 464-465, 511 and 514.

73 On Herennius, Ferriès 2007, 510-511, no. 163.

74 Atratinus had been Antony's deputy in Greece (*IG* IX.2 39, ll. 4-5: πρεσβευτὰς καὶ ἀντιστράτηγος, *legatus propraetor*) between 39 and 36 BCE (see full references on his activities, particularly in the Peloponnese, in Haug 2008, 411, and n. 11).

75 On Antony's tax policy in Asia since 42 BCE, see Delrieux – Ferriès 2004ab and Wang 2023, 27. For Octavian, see Dillon 2007.

32, when the two Antonian consuls, C. Sosius and Cn. Domitius Ahenobarbus, had to leave Rome with 400 senators[76].

In order to build and man the huge fleet of 800 ships that he had first assembled in Ephesos (Plut., *Ant*. 56.1) and to pay his large army, Antony had to extract large sums of money from all the regions that were under his control, including Messenia, which perfectly explains the levy of the *oktōbolos eisphora* as well as the recruitment of soldiers, labourers, and slave rowers. Actual hostilities began in the second half of 32, with Antony's fleet moving into western Greece and the region of Epirus. Interestingly, the first major episode of the war took place in south-western Messenia in early 31, when Agrippa attacked and managed to capture the port of Methone, allowing him to cut the supply routes of Antony's fleet[77].

It is in this context that C. Memmius, who certainly supported Antony, must have been proconsul of Macedonia. This province was mostly under the authority of former praetors, but, as was the case in the 70s, it could also be assigned to former consuls[78]. The *lex de provinciis praetoriis* ("piracy law") of 100 BCE made it explicit that a praetor, propraetor, or proconsul (στρατηγός, ἀντιστράτηγος, ἀνθύπατος) could be in charge of the province (ἐπαρχεία) of Macedonia[79]. In an emergency situation, as was the case for Antony in the 30s, and given the particular importance of the region in those circumstances, it was perfectly normal to assign the province to a former consul. As for the territories south of Macedonia, their status under the Republic has been the subject of a long debate. It has recently been argued that they already constituted a province, then defined as Ἑλλάς, but that the Roman authorities did not need to appoint a governor to control them, as would happen later under the Principate, when they were called Achaia[80]. Indeed, an ἐπαρχία with the name Ἑλλάς appears in the *SC de Stratonicensibus* of 81 BCE[81]. In practice, these territories were just a patchwork of more or less officially free cities and federal states; they were under the authority of Rome, but not under its direct fiscal administration[82]. *Publicani* did not operate there, and these states had to collect the *eisphorai* themselves to satisfy the Roman demands. This would also explain why there was no need for a separate proconsul for these regions, and why the proconsul of Macedonia, being the closest to central and southern Greece, was responsible for them.

There is, however, a possible objection to the identification of the Memmius of the *oktōbolos eisphora* dossier as the suffect consul of 34 BCE. To begin with, in the first century, from 82 BCE, former praetors who had been granted a provincial governorship could receive the title of proconsul, even if they had never been consul

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76 Roddaz 1984, 145, 157-159.
77 Roddaz 1984, 159-161.
78 Brennan 2000, vol. 2, 521-539.
79 *FD* III.4 37 A ll. 27-28; C l. 8; *I.Knidos* 31 II.1 ll. 13-15; IV/B.1, ll. 5-7. On the law, see Crawford 1996, vol. I, 231-270.
80 Hurlet and Müller 2020, with full previous literature.
81 *I.Stratonikeia* 505, 75-77 and 110-111.
82 Girdvaynite 2020.

themselves[83]. With the rise in the number of praetors from Sulla and Caesar onwards, one might be tempted to imagine that the Memmius of the *oktōbolos eisphora* was one of the hundreds of praetors whom our sources do not allow us to identify[84]. One of them, another Memmius unknown to us, might have been praetor, and then proconsul, since the title of proconsul was now granted to all provincial governors—former consuls, but also former praetors. Then we would not be forced to accept the identification of the Memmius of the *eisphora* dossier with the suffect consul of 34, however tempting it might seem. But it is precisely the presence in the same context of the praetor Vibius (Οὐίβιος ὁ στραταγός, *IG* V.1 1432, ll. 6, 10, 11, 17, 36-37) that is the best answer to this objection.

As for the designation of proconsul, while στραταγὸς ἀνθύπατος was the usual form in the second half of the second century, ἀνθύπατος replaced it in the first century, as Maurice Holleaux demonstrated as early as 1918[85]. As for στραταγός, it corresponded to praetor. Because of World War I, Holleaux was only indirectly aware of Wilhelm's work on the *oktōbolos eisphora*. Believing that Wilhelm dated the dossier between 130 and 90, he suggested in an addendum to his work that because of the co-occurrence of the titles proconsul and praetor (στραταγός) in the same document, the former title had been simplified to ἀνθύπατος to avoid confusion[86]. But the obstacle disappears with a date in the first century BCE.

The difficulty of having a praetorian proconsul of Macedonia and a praetor as his subordinate was underlined by Ferrary, and it is certainly the reason why he cautioned against a date at the end of the second century BCE[87]. Probably aware of the difficulty but accepting a date at the end of the second century BCE nevertheless, Brennan prefers to see Vibius as "simply a quaestor or legate at the head of some troops, holding delegated *imperium* at the most"[88]. But a Roman legate was a πρεσβευτής, not a στρατηγός[89]. Again, the problem disappears if Memmius was the consul of 34 and thus a proconsular governor, who could have had a praetor as his subordinate.

But another difficulty remains: why do we see a praetor, a στραταγός, acting not in Rome, *domi*, but in a province? Since Sulla's reorganization of the upper magistracies of the Roman state, a praetor could only hold a proconsulship in a province after serving in Rome[90]. Admittedly, the title of praetor was often used loosely and in this sense the presence of a praetor as governor in a province would not be unexpected[91].

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83 Hurlet 2012.

84 For Sulla, Brennan 2000, 389-390. For a survey of the praetorship under the triumvirate and the reign of Augustus, and the large number of praetors whose names remain unknown to us, see Baudry 2023.

85 Holleaux 1918, 56-58.

86 Holleaux 1918, 163-164.

87 Ferrary 1977, 657-658, n. 138.

88 Brennan 2000, vol. 2, 523.

89 See for instance the already mentioned decree of Gythion of 71/70 BCE for the Cloatius brothers, see above pp. 234 and 239, with *IG* V.1, 1146, ll. 22-24.

90 Brennan 2000, 388-398; Baudry 2023, 337-338.

91 Hurlet 2012.

However, the presence of both a proconsul and a praetor as his subordinate in the same province remains difficult to explain.

One solution to the puzzle is that it is after February 32 BCE, when the Senate (or a large part of it) fled Rome and joined Antony. This would justify the presence of a praetor alongside the proconsul and the triumvir Antony[92]. In this case, the Messenian decrees, which are dated "when Agathos was priest, in the sixth month" (*IG* V.1 1432, l. 1), would be dated to perhaps the spring of 32 BCE, for it is less likely that Agathos was priest in 31 BCE.[93]

In these years before Actium, there is even a good candidate for the Vibius of the dossier: C. Vibius Varus, who was a moneyer in Rome in 42 BCE and minted for the triumvirs[94]. Thus, this man had not supported the Republicans in those crucial years. Having already held an important position in the state apparatus, even if it was not a regular magistracy of the *cursus honorum*, he was perfectly qualified to become a praetor[95]. If these identifications of Memmius and Vibius are correct, it is noteworthy that both men had been moneyers in Rome, suggesting that they were already familiar with financial matters. This fits perfectly with their role in overseeing the collection of *eisphorai* for the benefit of Antony.

It remains to justify the presence in the dossier of a Nemerius, identified by Wilhelm as the father of the Cloatius brothers, Νεμέριος καὶ Μάαρκος Κλοάτιοι Νεμερίου ὑοὶ ‘Ρωμαῖοι, active in Sparta in 71/70 BCE, and by Migeotte as one of the two brothers. The Cloatius brothers were very rich and might have wanted to invest their money in a farm located in the neighbouring city of Messene, which had a rich agricultural area. The *oktōbolos* dossier makes it clear that there were several other Roman landowners at the time of the *eisphora,* and that Nemerius was only one of them[96]. We also know from another inscription from Messene, referring to ἀπόλοιπα Ῥωμαίων, dated in the first century BCE or CE, that Romans owned property in the city at that time[97].

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92 We owe this solution, as well as the identification of the praetor Vibius, to Marie-Claire Ferriès, to whom we are particularly grateful.

93 Only three month-names are known from the Messenian calendar: Agrianios, Mnaster, and Phyll[ikos?]), see Trümpy 1997, 198. Although there were families of calendars, the details varied from city to city: for example, in Megara and Byzantium, according to Trümpy (1997, 163), the year began with the month Petageitnios, corresponding to November-December, and the sixth month corresponded to April/May. But in Rhodes (Badoud 2015, 16), the year began with Karneios, corresponding to October-November, and the sixth month corresponded to March-April. At best, one could say that the sixth month of the Messenian year fell in the spring, but this statement must be taken with all due caution. The reasons for the preference of the year 32 for the priesthood of Agathos would require a long demonstration, which does not find its place here.

94 Crawford *RRC* I, 96, table XV, and 504-508: aurei 494/10-12 (with the three triumvirs), and 494/34-35 (various deities); silver denarii 494/32 (Antony), 494/33 (Octavian) and 494/36-38 (various deities).

95 Crawford *RRC* II, 708-711 on the careers of the moneyers.

96 Migeotte 2008, 235-237.

97 *IG* V.1 1434 (*SEG* 11 1035) was dated by Kolbe to the first century BCE or CE, while

A first answer to this possible objection is that the mention of a *praenomen*, here used as a *nomen simplicium* (which was very common at the time), is not sufficient to formally identify someone[98]. Admittedly the *praenomen* Numerius is rare. In the general literature, a rough estimate suggests that its frequency is probably less than 1 per cent, far behind the very common Lucius, Gaius, Marcus, Publius, Quintus, etc. In the Peloponnese, the *praenomen* is also rare[99]. In Laconia we have only the Cloatius father and son (*LAC 331-333)[100]. In Messene, besides the Numerius (Νεμέριος) of the *oktōbolos* dossier (*MES 280), we have two other mentions of this *praenomen* (also used as a *nomen simplicium*)—one from the first century BCE (*MES 281), and another from the Augustan period (*MES 282). These three Messenian cases are also the only occurrences of the *praenomen* used as a *nomen simplicium* in the Roman Peloponnese, far behind the traditionally more common *praenomina*[101]. However, in an inscription from Delos, of 113 BCE, out of a list of 12 *magistri*, we have three Numerii (one as a patronymic) with three different *gentilicia*[102]. Thus the possibility remains fully open that the Numerius of the *oktōbolos* dossier had nothing to do with the Cloatius brothers and was simply one of the many Roman farmers who settled in Messenia[103]. Moreover, even if the Numerius of the *oktōbolos* dossier really belonged to the Cloatius family, which remains to be proved, he could be a descendant (son?) of the Numerius of c. 71/70 BCE, since the *praenomen* was traditional in that family.

Conclusion

Memmius the proconsul mentioned in the *oktōbolos* dossier was the suffect consul of 34 BCE. We have good reason to believe that the process of collecting the tax extended over two years[104]. Thus, the levy may have begun in 33 BCE and may have been completed in 32 BCE. The decrees in honour of Aristokles might date to the spring of 32 BCE. The nearly 100,000 denarii paid by the Messenians must have soon found their way into Antony's war chest, to be re-minted and added to the gigantic pre-Actium denarius strikes of late 32 and early 31 BCE, estimated at 864 dies[105].

Wilhelm (1914, 116-119) preferred to date it the first century BCE (he was followed by Tod 1926-1927, 143). The text mentions four Romans as owners of estates. The names of the properties they owned are followed by numerical indications, which Kolbe interpreted as the value of the properties in denarii, and Zoumbaki (2013, 70) as tax amounts.

98 On the use of *nomina simplicia* in the specific case of the Roman Peloponnese, see Zoumbaki 2005.

99 See the tables of Rizakis et al. 2001 and 2004.

100 The references to names from Laconia and Messenia are from Rizakis et al. 2004.

101 See Zoumbaki 2005, 157, app. 1, *praenomina* used as proper names: Marcus 42, Lucius 22 (with Λεύκιος 11), Caius 21, Publius 13, Quintus 8, Aulus 6, Decimus 5, Titus 5.

102 *ID* 1753.

103 On Roman farmers and entrepreneurs in Greece, see Zoumbaki 1998, 2012, and 2013 and Eberle and Le Quéré 2017.

104 The decrees mention two eponyms, Damon (*IG* V.1 1433, ll. 14, 21, 26) and Agathos (*IG* V.1 1432, l. 1); see Migeotte 2008, 232-234.

105 Legionary issues of Antony: *RRC* I, 539-541: 544/1-39; see Woytek 2007, esp. 503-517, Lockyear 2007, 136, López Sánchez 2010, and Rowan 2018, 111-116.

The legionary coinage was obviously (among others) the product of a recycling of the denarii that had been circulating in Greece and Macedonia, as well as a certain amount of local coinage[106]. As for Antony's legionary coinage, it was deliberately debased, to 92.2 per cent silver according to David Walker, or only 80 to 90 per cent—on average 85-86 per cent—according to Bernhard Woytek[107]. More recent analysis by Kevin Butcher, Matthew Ponting, and their team indicate an average fineness of 83%[108]. Thus their fineness was well below that of Octavian's denarii, 96.84 per cent silver according to Walker, which was close to the usual fineness of the denarii, apparently about 95 per cent[109]. Their weight, c. 3.70 g, was also below that of the mid-first century BCE Republican denarii, 3.90 g[110]. The difference in fineness and weight from the earlier denarii would perhaps be as much as c. 17 per cent in value. Given the volume of the emission, the saving was significant. As for the symbolic value of this coinage, it was perfectly clear to the troops that were mobilized.

A date for the *oktōbolos eisphora* just before Actium makes it possible to explain all aspects of the dossier: script, language, the exclusive use of denarii for accounting, the context of the war, and the ranks and names of the Roman magistrates. From the beginning to the end, the assessment of the value of the properties and the collection of the tax were accounted for in denarii, although admittedly some of the sums collected may have been in local Peloponnesian coinage, with an equivalence at a fixed rate. To facilitate their accounting, the Messenians used their traditional TMSO-Aeginetan system. The rate of 1.9 per cent of the *eisphora* (not 1.33 per cent) was high.

The sum demanded by Antony was most likely 100,000 denarii, and the rate of the *eisphora* was only the result of the calculation made by the Messenian authorities, as Migeotte rightly surmises[111]. This would fit well with the policy of the Roman authorities at the time, who seem to have been accustomed to demanding specific amounts from the cities under their control, leaving the details of tax collection to the cities themselves[112]. This implies that they were well informed about the tax potential of Messene, but also of all the cities in the province. Indeed, it seems logical to assume that the cities of the province, like Messene, had to report the value of their land resources to the Roman authorities, with an estimate in denarii. The particular

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[106] Butcher – Ponting 2014, 165-167, on the origins of the metal of Antony's legionary coinage: Taurus Mountain, Macedonia (Khalkidiki), and the island of Siphnos, close to the Peloponnese.

[107] On Octavian's coinage for the Actium campaign, Dillon 2007. On the fineness of Antony's legionary coinage: Walker 1980, 68–72, contra Woytek 2007, 508, for Walker used XRF, a technique that analyses the (richer in silver) surface of the coin and yields results higher than those of the core (see Beck et al. 2004).

[108] Butcher – Ponting 2014, 161-162.

[109] Fineness of Octavian's denarii: Walker 1976, 22; of standard denarii: Walker 1980, 66 ff.

[110] Weight of mid-first century Republican denarii: Butcher – Ponting 2014, 158-159; weight of Antony's legionary coinage: 163-164 and 167.

[111] Migeotte 2008, 32 (for the rate of this *eisphora* however, see above).

[112] See the discussions of Le Teuff 2017 for the case of Asia, and Müller 2019 for Euboea and continental Greece.

case of Antony's requisition before Actium likely shows what must have become a regular practice in the course of the previous two decades. As for the situation in 33-32 BCE, there should be no doubt that Messene was only one of the cities called upon by Antony to pay exceptional contributions in the context of preparations for the war against Octavian. It is only by chance, and the fact that the Messenians—perhaps because the city was comparatively richer than others—seem to have written much more on stone than their peers, that we have access to this information.

Still, one wonders how Messene was apparently able to pay the demanded sum, which was very large for a medium-sized city that had a rich territory but no silver mines, and was not a hub of international trade (although the activity of Messenian ports should perhaps not be underestimated)[113]. While the city did not need to borrow, individuals may have been forced to do so in order to meet their obligations. We know that tax evasion was a well-known phenomenon in classical Athens[114]. In Messene, Roman pressure was so threatening that it was imperative that even those who had not previously been required to pay taxes should do so. But despite Aristokles' competence as a financial manager and magistrate, 15.9 per cent of the *eisphora* had not been paid at the time the decrees were passed. Nevertheless, the *synedroi* and the people voted him honours, illustrating the anxiety of the Messenians—both the elite and the common people—who certainly feared the exactions of Antony's soldiers if the demanded sum was not paid.

And Antony's defeat involved yet another cost. According to Pausanias (4.31.1-2), even though other Greeks decided to support Antony, the Messenians did so for the specific motive that they were hostile to the Spartans, who supported Octavian. For this reason—and possibly because the Messenians apparently paid the full amount of the *eisphora* and contributed to Antony's war effort by providing men, craftsmen, and slaves to row in his fleet—they were punished by the victor[115].

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ABBREVIATIONS

CGRN: *Collection of Greek Ritual Norms*, online database, http://cgrn.ulg.ac.be/

CH: *Coin Hoards*, London, 1975–.

IGCH: M. Thompson, O. Mørkholm, and C.M. Kraay, *An Inventory of Greek Coin Hoards*, New York, 1973.

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[113] Messenia's fertility: Alcock et al. 2005.

[114] Christ 2006, 143-204; Cecchet 2022.

[115] On the Messene-Sparta rivalry in this period and how it played out, see Kennell 2017, 644-645. Loss of territory to Sparta and the Eleutherolakonians: Luraghi 2008, 21-22 and 265-266.

RRC: M.H. Crawford, *Roman Republican Coinage*, 2 vols., London – New York, 1974.

RRCH: M.H. Crawford, *Roman Republican Coin Hoards*, London, 1969.

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MILITARY LABOUR IN THE *OKTOBOLOS EISPHORA* DOSSIER: RESPONSE TO ALAIN BRESSON

In this short response I propose not to criticise Alain Bresson's contribution (which I find convincing), but to add some further remarks in elaboration of it. To recap briefly his conclusions: Bresson has narrowed down a probable date for the *oktobolos eisphora* dossier (viz. *IG* V,1 **1432** [honorific decrees for Aristokles] and **1433** [the accounting of the *oktobolos eisphora*]) by looking at the *termini post* and *ante quem* for the letter forms, the use of denarii for the payment, and the practice of granting honour via the bestowal of a gold ring; he has also examined the general tenor of the inscriptions – to do with raising money in a time of war – as well as possible prosopographical parallels for named individuals in order to situate the dossier in a probable historical context. By working out the possible time windows for each of these factors, Bresson proceeds, almost by the logic of a Ven diagram, to overlap them and thereby to narrow down a possible date that satisfies all of his criteria. The award of a gold ring to Aristokles fits well a Roman republican context; but more tellingly, the letter forms force a time window of *ca.* 70–30 BC and the use of denarii for payment forces at date post-50 BC. This therefore places us in the period of 50–30 BC. In terms of prosopography, the aforementioned considerations rule out several individuals identified with the proconsul Memmius (**1432** line 36) by previous scholars, viz. Publius Memmius Regulus (suffect consul in AD 31) and Caius Memmius (tribune of the plebs in 111 BC); but they allow for Bresson's suggestion of Caius Memmius, suffect consul of 34 BC, who could then have been proconsul of Macedonia in 33 or 32 BC (or in both years). It is highly probable that, since 34 was an 'Antonian year', this C. Memmius was an ally of Antony; and we know from Pausanias (4.31.1–2) that Messene supported Antony, and Sparta Octavian. Bresson therefore settles on 33 or more probably 32 BC, in the runup to the Battle of Actium (2 September 31 BC). And he can even propose a candidate for the praetor Vibius (**1432** lines 6, 10, 11, etc.), viz. the moneyer C. Vibius Varus. I propose to look at three categories of persons mentioned in the accounting document (**1433**) whose consideration must figure in any refined chronology of the events building on the conclusions of Bresson's work: the men enrolled in the army (line 36), artisans in service (line 38), and the slave rowers (line 39).

These categories appear in a perplexing section of **1433**, and a brief overview of

the document itself will place this section in context.[1] **1433** begins straightforwardly enough, with an assessment of the wealth of those in each of the five tribes – that is, of the Messenian citizens (lines 1–7). An assessment of the wealth of foreign residents follows (lines 8–10). Next comes a mop-up job of awkward categories, such as Olympic victors and *technitai* – very probably Dionysiac Artists – usually considered exempt from *eisphorai* but, due to the exceptional circumstances, included (lines 11–20).[2] However, since the assessment took some time, certain payers were erroneously double-counted, and the calculation had to subtract for this and other errors (lines 21–9). From the grand total of this assessment, the *oktobolos eisphora* is calculated, and produces a sum of 99,365 denarii, 2 obols (line 30). Then came the task of collecting the tax, but not everyone coughed up their payment promptly; lines 32–3 therefore mention a date (the 30th day of the seventh month) and the amount of the requisition collected up to that point: 83,574 (denarii), 3 chalkoi. Payment of the remainder (*loipon*) was still pending; and at this point in the document our perplexing section occurs:

λοιπὸν ὃ δεῖ πεσεῖν· μύρια πεντακισχίλια ἑπτακόσια ἐνενήκοντα ἑπτά, πέντ' ὀβολοί,
35 ἐννέα χαλκοί
τούτου ἐνστρατευομένοις τετρακόσια δέκα ἕν, ἓξ χαλκοί·
μεταλλαγότων ἐλευθέρων· τετρακόσια ὀγδοήκοντα ἑπτά, ἓξ χαλκοί·
χειροτέχναις λειτουργούντοις· ὀγδοήκοντα ἐννέα, δύ' ὀβολοί, ἓξ χαλκοί·
ἐρέταις δούλοις· ὀγδοήκοντα δύο, πέντ' ὀβολοί·

'Remainder which must be paid: 15,797 (denarii), 5 obols, 9 chalkoi.
Of this, for those enrolled in the army 411 (denarii), 6 chalkoi.
From the deceased of free status: 487 (denarii), 6 chalkoi.
For the artisans working in public service: 89 (denarii), 2 obols, 6 chalkoi.
For the slave rowers: 82 (denarii), 5 obols.'

Who were these men under arms, artisans, and slave rowers (not to mention the deceased free men)? Léopold Migeotte states in relation to this section that

> 'The deceased persons of free status appear in the genitive, as in the rest of the document, but it is curious that the others are written in the dative. This could be explained as follows: like the rowers, the enlisted men and the workers were men of servile or dependant condition, for whom their masters were indebted to the city as owners. Some could be armed valets, and others workers in the service of the forces. But since it seems to be impossible to add the total of this section to that of the next one, one could see here not arrears but sums to be subtracted entered *in extremeis* as partial exemptions, on the one hand due to the death of several taxpayers, and on the other hand in favour of those masters

[1] For a more detailed (and admirably clear) explication of **1433**, see Migeotte 2008.

[2] On Messenian Olympic victors see Themelis 2011; Makres 2020. 32 BC was in fact an Olympic year, the 187th celebration of the games according to tradition (see Christesen 2007: 400). For the *technitai* being Dionysiac artists, Migeotte 2008: 236; Bresson 2019: 246.

> who had accepted that certain servants of theirs would be sent on campaign, on land or at sea.'[3]

Other scholars besides Migeotte have supposed that the slave rowers belonged to the Messenians, and have tried to account for the sums in this section accordingly. Wilhelm, for instance, makes such a suggestion.[4] In his important study of slaves in ancient warfare, Karl-Wilhelm Welwei claimed that the Messenians were required to supply soldiers and *eretai douloi* to the Romans, and that these slaves were perhaps supplied by the Messenian elite.[5] Catherine Grandjean claims that the Messenians had to supply troops for the army and views the payments for the *eretai douloi* as a poll tax on their masters.[6] And Bresson suggests too in the conclusion to his contribution that the military labour itself was provided by the Messenians.

This scenario is certainly possible, but the documents do not actually state this in so many words – they only state that money was provided for soldiers and artisans and slave rowers. Who exactly these men were is a matter of guesswork. At any rate, we may accept Miegeotte's general point that lines 34–9 are basically adjustments to the *loipon* – the remainder still owed to the Romans – that subtract certain sums either already defrayed on military manpower and workers (presumably labouring for the army), or subtract sums because of the death of taxable persons.[7] These sums were tax-deductible because the money spent on them benefited the same party as the *oktobolos eisphora* was levied to benefit: the Romans (and more specifically, if we follow Bresson, Antony). The final section of **1433** then itemizes the outstanding amounts owing from members of each social group resident in Messene (lines 40–47). Let us turn now to the historical context of the runup to Actium and see if it sheds light on these enigmatic provisions.

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After returning from his campaign in Armenia with a great deal of booty, Antony moved to Ephesus and met up with Cleopatra, where they had gathered a huge force

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3 Migeotte 2008: 238: 'Les défunts de condition libre apparaissent au génitif, comme dans le reste du document, mais il est curieux que les autres soient inscrits au datif. Celui-ci pourrait s'expliquer ainsi : comme les rameurs, les hommes enrôlés et les ouvriers étaient des hommes de condition servile ou dépendante, pour lesquels leurs maîtres étaient redevables à la cité en tant que propriétaires. Les uns pouvaient être des valets d'armes et les autres des ouvriers au service des troupes. Mais, puisqu'il paraît impossible d'ajouter le total de cette section à celui de la suivante, on pourrait y voir, non des arriérés, mais des sommes à soustraire inscrites *in extremis* à titre d'exemptions partielles, d'une part à cause du décès de plusieurs contribuables, d'autre part en faveur des maîtres qui avaient accepté que certains de leurs serviteurs fussent envoyés en campagne, sur terre ou sur mer.'

4 Wilhelm 1914: 97.

5 Welwei 1974: 138–9.

6 Grandjean 2003: 252.

7 Doyen 2017: 430 characterises these deductions as 'un credit d'impôt'.

with which to confront Octavian.[8] As Bresson notes, by 33 war had become inevitable and preparation for it intense on both sides. According to Plutarch (*Ant.* 56.1), Antony's forces amounted to some 800 ships (including supply ships), 200 of which were provided by Cleopatra. At least 500 of these were warships (*Ant.* 61.1), and he assembled an army too, of 100,000 infantry and 12,000 horse.[9] Antony moved to Athens in May 32, and in the autumn he and Cleopatra moved their forces to Corcyra. From there, according to Cassius Dio (50. 9.2),

> '… he sailed back to the Peloponnese, the season being already late autumn, and passed the winter at Patrai, distributing his soldiers in every direction in order that they might keep guard over the strategic points and secure more easily an abundance of provisions'.[10] (tr. Cary, adapted)

Dio continues (50.11.2) by noting that Antony's forces were slow in coming together the following spring – that is, 31 BC:

> '…when spring came, Antony made no move at any point; for the crews that manned his triremes were made up of all manner of peoples, and as they had been wintering at a distance from him, they had had no practice and their numbers had been diminished by disease and desertions.'[11] (tr. Cary, adapted)

Plutarch (*Ant.* 62.1) contrasts the depleted state of Antony's forces in 31 – thinned by desertions, and replenished by forced enlistment of various persons from Greece – with the perfect organisation of Octavian's forces, and attributes his choice to fight at sea to his being beguiled by Cleopatra. Plutarch's obvious need here to illustrate Antony's moral failings casts some doubt on the veracity of his claims about Antony's forces; but Orosius (6.19.5) preserves a tradition more sympathetic to Antony, that he, in seeing that a third of his rowers had perished from disease, remarked that as long as the oars were safe, there would be no lack of rowers from Greece. So all three writers – Dio, Plutarch, and Orosius – concur in stating that Antony's forces indeed had been much diminished. We are therefore presented with several possible points between 33 and 31 when we might identify our groups of military labourers:

(i) Over the winter of 32–1 BC, Antony's huge army and naval forces (and presumably, support workers) dispersed and wintered here and there across the region. Messene, as geographically close to Patrai and as an allied city of Antony's, had already been collecting money for him via the *oktobolos eisphora* in anticipation of the

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[8] On the run-up to the Battle of Actium, see Tatum 2024: 318–39.

[9] For the naval aspects of the Actium campaign see Morrison with Coates 1996: 157–72; Murray 2012: 232–44.

[10] … ἐς τὴν Πελοπόννησον (ἤδη γὰρ ἐκ μετοπώρου ἦν) ἀναπλεύσας αὐτὸς μὲν ἐν Πάτραις παρεχείμασεν, τοὺς δὲ δὴ στρατιώτας πανταχόσε διέπεμψεν, ἵνα τά τε χωρία φυλάττωσι καὶ τῶν ἐπιτηδείων ῥᾷον εὐπορῶσι.

[11] … τοῦ δὲ δὴ ἦρος ὁ μὲν Ἀντώνιος οὐδαμῇ ἐκινήθη (οἵ τε γὰρ τριηρῖται, ἅτε καὶ σύμμικτοι ἐκ παντοδαπῶν ἐθνῶν ὄντες καὶ πόρρω ἀπ᾽ αὐτοῦ χειμάζοντες, οὔτε τινὰ ἄσκησιν ἐπεποίηντο καὶ νόσῳ αὐτομολίαις τε ἠλάττωντο·...).

financial burdens of his final showdown with Octavian. But Messene was obviously a convenient place to quarter some of the military manpower of Antony's forces, so one possibility is to identify our groups as part of Antony's forces, only being mentioned in the dossier because they were quartered temporarily in Messene and cost the Messenians money that could be deducted from their *eisphora*. On this view, that the rowers in **1433** were slaves poses no problems: other Romans in the civil wars had acquired slaves or freedmen as naval manpower (e.g. App. *BC* 5.2.6–7; Suet. *Aug.* 16), and we can well imagine that some of Antony's rowers could have been of slave status.

(ii) Alternatively, if we follow Dio, Plutarch and Orosius on the diminished state of Antony's forces by early 31, another way of identifying the categories in **1433** lines 36, 38 and 39 is to suppose that these were troops and workers levied from the Messenians themselves at that point in time, and whose costs were in some way deducted from the *oktobolos* impost.

(iii) Finally, we might suppose that the soldiers, rowers, and artisans were supplied by the Messenians themselves, but earlier in 32 when Antony's forces were still at Ephesus. This scenario fits best Bresson's provisional chronology; yet it affects how we fit the whole dossier into the period 33–31 BC. Here, we must look at the internal chronology of the dossier and the point at which the payments for military labour come into consideration.

The internal chronology of the *oktobolos* dossier can be sketched as follows. Migeotte notes that the accounting text **1433** is the earliest document in the dossier.[12] **1433** (lines 14, 22, 26) suggests that the assessment started during the priesthood of Damon and continued into a subsequent priesthood (Agathos'?), when, on the 30th day of the seventh month (line 32), stock was taken of how much money had been collected and what remained to be paid; and it also mentions court cases over disputed sums whose resolution had a deadline in the tenth month (lines 16–17). The first decree in **1432** refers to this point in time and to the visit of the praetor Vibius (lines 2–10); Aristokles' success in placating Vibius won him praise both from the praetor himself and from the Messenian *synedrion*, which honoured him with a statue bearing an inscription suggesting (through the use of the present participle γραμματίζοντα, line 19) that this decree was passed whilst Aristokles was still in office. The second decree in **1432** is the latest in the dossier, because it refers (line 35) to the honours in the first decree; but, *pace* Migeotte[13], there is nothing in its contents to suggest that the full amount had been collected and delivered to the Romans. It is possible that this second decree was voted quickly after the first one and that the whole dossier dates to a point before the final payment was discharged. Finally, the whole dossier is headed by a line of text (**1432**.1) in letters several times the size of what follows,

[12] What follows draws on Migeotte 2008: 230–2.

[13] Migeotte 2008: 231: 'À ce moment, il est clair que le reste de la réquisition avait été versé aux Romains'.

and separated by a gap. In *IG* V,1 **1432** this line reads ἐπὶ Ἀγάθοῦ [(patris nomen) — — — — — —]ς ἐκ τοῦ δόγμ[ατος], but Wilhem's re-edition restored this opening line differently, as ἐπὶ Ἀγάθου [ἱερέως μηνὸ]ς ἕκ[το]υ, δόγ[ματα.], thus providing a date in the sixth month of the priesthood of Agathos.[14] But does this date the last of the decrees, or the publication of the dossier on stone?

At any rate, the sums expended on military labour must be dated subsequently to the initial assessment because they are deducted from the *loipon* after its calculation, and not considered prior to this point. Future work on refining the chronology of the dossier must therefore locate between 33 and 31 BC: (1) the initial demand for money from the Romans; (2) the various events described in the dossier, dealing *inter alia* with the questions of magisterial term lengths at Messene and the problem of the Messenian calendar, as well as some sense of when the demand for military labour (or for billeting military labour) fits into the broader historical context; (3) the final delivery of the money, and (4) the debasing and re-striking of the coins into the legionary issues noted by Bresson.

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RECOGNITION OR AGREEMENT? OR HOW TO USE *HOMOLOGIA* IN GREEK EPIGRAPHY

Abstract: The verb ὁμολογῶ and its related noun ὁμολογία are often translated as «to agree» or «agreement», but their precise meaning can vary depending on the context in which they are used. These terms appear frequently in inscriptions from the fifth century BCE onwards, particularly in interstate and public contexts. This paper seeks to demonstrate that the primary function of ὁμολογία terminology in Greek epigraphy is to indicate mutual agreement rather than unilateral recognition or acknowledgment of a fact or legal claim. To support this argument, I will survey the epigraphic evidence, which includes a range of inscriptions from different periods and regions concerning treaties, statutes, and public loans, with a particular emphasis on cases where ὁμολογῶ appears in interstate agreements. The analysis of these contexts shows that the verb consistently denotes an act of coming to an agreement or confirming an arrangement, rather than merely acknowledging an existing fact or claim, and questions the theory of the procedural origins of ὁμολογία.

Keywords: Interstate relations, *homologia*, Greek inscriptions, international agreements

Introduction

For over a century, *homologia* has attracted considerable scholarly interest. Earlier research focused primarily on private contracts from Hellenistic and Roman Egypt, before shifting toward Athenian law, where the ongoing debate centers on whether consensual contracts existed and were legally binding in fourth-century Athens; scholars also continue to examine whether a single legal framework regulated contracts in classical Athens or whether multiple laws governed different contractual arrangements.[1]

The term *homologia* has persisted in Greek legal terminology well beyond antiquity through the Byzantine and post-Byzantine periods until the nineteenth century.[2]

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1 Alliot 1954; Biscardi 1982, 136-151; Mirhady 2004; Carawan 2006; Cohen 2006; Carawan 2007; Phillips 2009; Thür 2013; Gagliardi 2014; Gagliardi 2015; Avilés 2015; Gagarin 2018.

2 Petropoulos 1956; Wolff 1968, 515; Pantazopoulos & Tsourka-Papastathi 1974; Gofas 1994; Migliardi Zingale & Amelotti 2006.

In post-Justinianian legislation, the *Ecloga* (10.1.2; 13; 14.9) regulated *homologia* in private transactions, while the *Basilica* (21.1.42; 22.1.75) incorporated Justinianic provisions from the *Code* and the *Institutions*, many of which later influenced Armenopoulos' *Hexabiblos*. Post-Byzantine legal collections, such as the *Nomikon Procheiron* (1765), the *Syntagmation Nomikon* (1780) and Theophilos' *Nomikon* (1788), continued to address *homologia chreous* in private contracts, whereas a significant number of private documents of *homologia* have been preserved from various parts of mainland Greece, particularly from the seventeenth to the nineteenth centuries.

Despite the extensive study of *homologia* in private contracts and commercial affairs—particularly through Attic oratory and Hellenistic and Roman papyri—its role in public and international law has received far less attention. Epigraphic evidence, which has thus far been used only sporadically, provides crucial insights into the public dimensions of *homologia*. The terms *homologia, homologon*, and *homologein* appear frequently in inscriptions related to diplomacy, interstate agreements, and public decrees, meriting a more comprehensive analysis.

The emphasis on the study of private contracts in the Athenian law of the Classical period and in Hellenistic Aegypt has established the theory, put forward in the early twentieth century by A. B. Schwarz and J. Partsch, that *homologiai* were unilateral acts in the form of recognition in court, originating in judicial procedure.[3] H. J. Wolff expanded the theory that the term *homologia* denoted the recognition of a fact or a claim by the opponent, a confession in court.[4] This view was widely adopted in scholarship,[5] while G. Thür elaborated further on the procedural origin of *homologia*.[6] P. Kussmaul, on the other hand, objected to the procedural origin of *homologia,* arguing that the original meaning of the verb *homologein* was "to agree" as indicated by the earliest sources, and based his objections on inscriptional evidence.[7] The shift of focus from private to public or interstate law, and from the study of oratory and papyri to epigraphic testimonies may provide a more precise understanding of *homologia* in both a private and a public legal context, and a useful foundation for future research on Greek diplomatic and legal terminology.

In this paper, I turn to the surviving inscriptional evidence, examining the meanings and functions of *homologia* and *homologein* from the earliest attestations down to the first century BCE. By considering inscriptions from diverse regions of the Greek world, this study offers a broader and more nuanced perspective on the use of these terms beyond private transactions. Epigraphic evidence presents two key advantages: first, it is not geographically confined but instead encompasses scattered

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3 Schwarz 1961, 195-197; Partsch 1920, 525.
4 Wolff 1968, 513-515.
5 Pringsheim 1950, 26-51; Jones 1956, 221-222; von Soden 1973, 8; Velissaropoulos-Karakostas 2011, II 207-217.
6 Thür 1977, 157-158; Thür 2007, 134; Thür 2008, 55, 65-66.
7 Kussmaul 1969; Gofas 1994.

testimonies from various parts of the Greek world, allowing for a more diversified analysis; second, it documents the use of *homologia* in contexts beyond private and commercial law, particularly in international relations and public administration. Moreover, the earliest epigraphic attestations, dating to the fifth and fourth centuries BCE, offer valuable insights into the origins and early development of *homologia* and *homologein* within Greek legal and political discourse.

1. *Homologia* in epigraphy

The earliest epigraphic attestation of the verb *homologein* is found in column 6 of the Law of Gortyn, dating to the middle of the fifth century BCE, and reads as follows:[8]

> αἰ κ' ἐδδυ̣σ[άμενον] πέρ̣α[νδε] ἐκς̣ ἀλλοπολίας ὑπ' ἀνάνκας ἐκόμενος κελομένο τις λύσεται, ἐπὶ τοῖ ἀλλυσαμένοι ἔμεν πρίν κ' ἀποδοῖ τὸ ἐπιβάλλον. αἰ δέ κα μὲ ὁμολογίοντι ἀμπὶ τὰν πλεθὺν ἒ μὲ [κ]ελομέ[ν]ο αὐτο͂[λ]ύσαθθαι, τὸν δικαστὰν ὀμνύντα κρίνεν πορτὶ τὰ μολιόμενα.
>
> If someone, bound by necessity, ransoms someone who has gone abroad from another city at his request, he is to be in the hands of the ransomer until he pays back his obligation. But if they do not agree about the amount or (he claims) that it was not at his request that he ransomed him, the judge is to swear an oath and decide, with reference to the pleadings.

This passage refers to the case of a person who was enslaved abroad, either because he had been sold as a slave or captured at war or seized by pirates; it stipulates that if the captive asks to be ransomed, once he is freed he is obliged to repay the ransom, and, until he pays, he remains in the ransomer's power. Next the law addresses the eventuality of a disagreement, and provides that if the two parties do not agree (ὁμολογίοντι) about the amount to be paid or if the ransomed person claims that he did not ask to be ransomed, the case is to be decided by the judge. The subjects of the verb *homologein* are both the ransomer and the ransomed, and the object is the amount of the ransom to be paid, not a real fact.[9] Furthermore, it is not question of a confession by either of the parties. The meaning is simple and straightforward: in case there is no agreement on the amount of the ransom, the case goes to court and it is for the judge to decide the sum to be paid back. The only possible translation of *homologein* in this passage is "to agree", and this is how it is unanimously translated.[10]

An Athenian decree with regulations about Methone is the next fifth-century attestation of the verb *homologein,* and it also refers to a bilateral agreement. The stele records a series of decrees concerning Methone, a city in Pieria and member of the Delian League, the first of which dates to 430/29.[11] After receiving complaints from Methone against the Macedonian king Perdikkas, the Athenians decided to intervene

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8 *IC* IV 72 (= Gagarin & Perlman 2016, G72), VI 46-51. (Translation Gagarin & Perlman.)

9 So Wolff 1968, 514.

10 Dareste, Haussoullier & Reinach 1965, 375; Willetts 1967, 44; Gagarin & Perlman 2016. Cf. Pringsheim 1950, 26; Gofas 1994, 116.

11 See Faraguna 2017, 47.

and send an embassy to Perdikkas. According to the resolution of the assembly, the three envoys are to request the king not to interfere with Methone's trade by sea or land, and to abstain from sending military forces through Methonean territory without the city's permission. If the Methonians and Perdikkas agree on these terms, the Athenian envoys shall settle the dispute, whereas if no agreement is reached, both Methone and the Macedonian king should send plenipotentiary delegations to Athens to address the council and the assembly at the time of the Dionysia; the latter clause is phrased as follows: [12]

> καὶ ἐὰμ μὲν ὁμολ[ο]γῶσιν [hεκάτερ]οι χσυ[μβι]βασάντον hοι πρέσβες, ἐὰν δὲ μέ, [πρεσβεί]αν ἑκάτ[ερ]ο[ι] πεμπόντον ἐς Διονύσια, τέλος [ἔχοντας] περὶ hο͂[ν] ἂν διαφ<έ>ρονται, πρὸς τὲν βολὲν κα[ὶ τὸν/ [δε͂μ]ον.
>
> And if the two parties agree (ὁμολογῶσιν), the envoys shall bring them to terms; if they do not, each should send a delegation to the Dionysia, with authority about the matters in dispute, to the council and to the people.

Here again, the verb *homologein* can only mean a bilateral agreement[13], not a unilateral recognition as Wolff (1968, 514) maintained, because firstly, there is no fact or claim to recognize, and secondly, the subject of ὁμολογῶσιν is ἑκάτεροι, meaning "both". The issue at stake is the terms drawn by the Athenians, and it is on these terms that the two parties are asked to agree; furthermore, even interpreting *homologosi* as "recognize", one would have to admit that a bilateral recognition amounts in fact to an agreement.

The third attestation of *homologein* comes also from Athens and concerns the genos of the Salaminioi. In 363/2, the Athenian Assembly appointed five citizens to arbitrate a dispute between two groups of Salaminians, those of the Seven Tribes and those from Sounion. The terms upon which the arbitrators settled the dispute were recorded on the decree which begins thus:[14]

> θεοί· ἐπὶ Χαρικλείδ' ἄρχοντος Ἀθηναίοις· ἐπὶ τοῖσ[δ]ε διήλλαξαν οἱ διαιτηταὶ Σαλαμινίος τὸς ἐκ τῶν Ἑπταφυλῶν καὶ Σαλαμινίος τοὺς ἀπὸ Σονίο ὁμολογοῦντας ἀλλήλοις καλῶς ἔχειν ἃ ἔγνωσαν οἱ διαιτηταὶ Στέφανος Μυρρινόσιος, Κλεαγόρας Ἀχαρνεύς, Ἀριστογείτων Μυρρινόσιος, Εὐθύκριτος Λαμπτρεύς, Κηφισόδοτος Αἰθαλίδης·
>
> Gods. In the archonship of Chariclides at Athens, the arbitrators Stephanos of Myrrhinous, Cleagoras of Acharnae, Aristogeiton of Myrrhinous, Euthycrates of Lamptrae, and Cephisodotos of Aithalidae settled the dispute between the Salaminioi of the Seven Tribes and the Salaminioi from Sounion on the following terms, both parties being agreed with one another that the proposal was good.

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[12] *IG* I³ 61, 23-27. (Translation Osborne & Rhodes 2017, no. 150.)
[13] Cf. Fornara 1977, 145 no. 128; Osborne & Rhodes 2017, 289, no. 150.
[14] *Agora* XIX, Leases L 4a, 1-7; Rhodes & Osborne 2003, no. 37. (Translation Rhodes & Osborne.)

The phrase ὁμολογοῦντας ἀλλήλοις clearly means that both parties agreed with one another on the terms laid out by the arbitrators. The bilateral aspect of *homologein* is underlined syntactically by the word *alloiloi* meaning "both", which is used as its subject,[15] in the same way as in the previous text, where the subject of *homologein* is *hekateroi*.[16] The object of the agreement is "the following terms", an expression that is currently used in similar contexts, as for example, in a fragmentary inscription from the third or second century BCE pertaining to an arbitration of Sikinos between two unknown poleis, which starts with the words "the envoys who were sent with supreme authority agreed on the following terms" (τάδε ὡμολόγησαν οἱ πρεσβευταὶ).[17] In another inscription, recording the settlement of a dispute between Troizen and Arsinoe by king Ptolemy VI's officials, the agreement containing the agreed conditions is qualified as *homologia*.[18] The examples of *homologia* terminology denoting a bilateral agreement in the context of resolving a dispute between two parties could easily be multiplied, therefore a closer examination of the terms *homologein*, *homologia* and *homologon* as they are employed in interstate treaties is required.

2. *Homologia* terminology in an interstate context

Shortly after 338, the League of Corinth requested the city of Argos to mediate in a dispute between Kimolos and Melos over the possession of three small islands. An inscription from Kimolos preserves the judgement of the Argive arbitration which was in favor of Kimolos. Before the verdict was given, the two disputing cities "agreed to abide by whatever verdict the Argives gave about the islands" (ὁμολογησάντων Μαλίων καὶ Κιμωλίων ἐμμενέν, ἃι κα δικάσσαιεν τοὶ Ἀργεῖοι περὶ τᾶν νάσων).[19] Between 334 and 323, the cities of Miletos and Kyzikos in Asia Minor made a treaty of friendship for all time according to tradition, and gave mutual citizenship to each others' citizens; the Milesian Assembly issued a decree ratifying the treaty, which starts with the phrase "This is what the Milesians and the Kyzikeans agreed" (τάδε

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[15] Cf. Dem 42.12: ἕτερον δὲ τὸν κελεύοντα κυρίας εἶναι τὰς πρὸς ἀλλήλους ὁμολογίας, ἃς ἂν ἐναντίον ποιήσωνται μαρτύρων; 42.13: ὧν εἴ τις ἄκυρον ἡγήσαιτο δεῖν εἶναι τὴν πρὸς ἀλλήλους ὁμολογίαν, μισήσαιτ᾽ ἂν αὐτὸν ὡς ὑπερβάλλοντα συκοφαντίᾳ; Hyper. 3.15: μετὰ δὲ ταῦτα ἕτερος νόμος ἐστὶ περὶ ὧν ὁμολογοῦντες ἀλλήλοις συμβάλλουσιν.

[16] Cf. Dem. 56.2: καὶ τοῖς νόμοις τοῖς ὑμετέροις, οἳ κελεύουσιν, ὅσα ἄν τις ἑκὼν ἕτερος ἑτέρῳ ὁμολογήσῃ, κύρια εἶναι; Dem 47.77: τὸν νόμον, ὃς κελεύει κύρια εἶναι ὅ τι ἂν ἕτερος ἑτέρῳ ὁμολογήσῃ; Hyper. 3.13: ὁ νόμος λέγει, ὅσα ἂν ἕτερος ἑτέρῳ ὁμολογήσῃ κύρια εἶναι.

[17] *IG* XI, 4 1063, 1-9: θε[οί]. τάδε ὡμολόγησαν οἱ π[ρεσβευταὶ οἱ] πεμφθέντες αὐτοκρά[τορες περὶ τῆς ε]ἰρήνης Πιστ[ο]κλῆ[ς ---], Ἀντι[--- Τι] μουχίδα προσ[---ἔκ]ριναν διαδίκασθαι αὐ[---] τε αἱ πόλεις κοιναὶ εἰς [----] ὡμολόγησαν τῆι πόλ[ει τῆι Σικινητῶν?]. Ager 1996 no. 68.

[18] *IG* IV²,1 76, 1-6: [-- ἐν Τροζᾶνι -- τ]οῦ γ´ Νίκωνος, ἐν Ἀρσι[νόαι δὲ ἱερέος τᾶι] Ἀθάναι Φειδοστράτου [κατὰ τάδε ἐγένετο ἀ] ὁμολογία Τροζανίων [καὶ Ἀρσινοέων] εἰς ἅπαντα τὸν χρόνον, [ἠκόντων παρ βασιλέος] Πτολεμαίου πρεσ[βευτᾶν καὶ κριτᾶν. (Between 163-146 BCE). Ager 1996 no. 138.

[19] *IG* XII,3 1259, 5-10; Rhodes & Osborne 2003 no. 82; Ager 1996 no. 3 (Translation Rhodes & Osborne).

ὠμολόγησαν Μιλήσιοι καὶ Κυζικηνοί).[20]

The turbulent years of the wars among Alexander's successors produced a number of coalitions and treaties. Between 309 and 304 Ptolemy I made a treaty with the leaders of mercenaries who had revolted and with the city of Iasos. In a decree from Iasos recording the treaty and the oaths among the parties, the written agreement is referred to as *homologia*,[21] and all the parties to the treaty are to swear to abide by the written *homologia* (ll. 36, 44-45 and 46). Since 307/6 Antigonos had attempted to make a coalition with the Greek cities to serve his military purposes, which was finally achieved by his son Demetrios in 302.[22] The new Hellenic League, conceived as a renewal of Philip's League of Corinth, was endowed with a complete constitution, some fragments of which have survived from the Asklepieion at Epidauros. The alliance was qualified as *homologia* and it was to be engraved, along with the oaths of the cities, on stone stelai at the most important sanctuaries of the Greek cities.[23]

An insightful example of the use of *homologia* terminology in diplomacy is the letter sent by Antigonos to Skepsis in the year 311, in order to inform the city about the treaty he had concluded with Cassander, Lysimachos and Ptolemy (Diodoros 19.105.1). In the letter, Antigonos presents himself as the champion of the liberty of the Greek cities and describes the stages of the negotiations with the other generals.[24] He explains that when Cassander and Ptolemy were conferring about a truce and sent envoys to Antigonos, he overlooked Cassander's burdensome demands and chose to settle, "since there was agreement concerning the Greeks" (ἐπεὶ τὰ περὶ τοὺς Ἕλληνας συνωμολογεῖτο), which he considered as the most important issue.[25]

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[20] McCabe, *Miletos* 32: ἔδοξε τῶι δήμωι· γνώμη συνέδρων· Φιλίσκος εἶπεν· τάδε ὠμολόγησαν Μιλήσιοι καὶ Κυζικηνοί, Μιλησίωμ μὲν Φιλίσκος Ἀναξίλεω, Θεόγνητος Δημοσθένεος, Δήμαρχος Ἀθηναίο, Μίκκος Ἀντιφῶντος, Φίλιππος Φιλίνο, Κυζικηνῶν δὲ Ἀρίστων Ἀθηναίο, Πρόξενος Ἀθηναίο, Ἀκῆς Ἐφεσίο· τὰς μὲν πόλεις φίλας εἶναι ἐς τὸν ἅπαντα χρόνον κατὰ τὰ πάτρια· εἶναι δὲ τὸν Κυζικηνὸν ἐμ Μιλήτωι Μιλήσιον καὶ τὸν Μιλήσιον ἐν Κυζίκωι Κυζικηνόν, καθότ[ι καὶ πρότερον ἦσαν--]. Schmitt 1969, no. 409.

[21] *Iasos* 83, 17-18: ἀποδόντας δὲ κομίσασθαι παρὰ Μαχάονος τὰς ἄκρας [καὶ] τὰ ἐν ταῖς ἄκραις ὄντα καὶ τὴμ πόλιν καθάπερ ὠμολόγηται; 34-37: ὁ δ' ὅρκος ἔστω Μαχάονι μὲν καὶ Ἱέρωνι καὶ Σωπόλιδι καὶ τοῖς στρατιώταις ὅδε· ὀμνύω Δία Γῆν Ἥλιον Ποσειδῶ Ἀπόλλω Δήμητρα [Ἄ]ρη Ἀθηνᾶν Ἀρείαν θεοὺς πάντας καὶ πάσας καὶ τὴν Ταυροπόλον· ἐμμενῶ ταῖς ὁμολογίαις ἃς πεποίημαι πρὸς Ἰασεῖς; 42-43: διαφυλάξω τὰς ὁμολογίας ἃς πεποίηνται Ἰασεῖς πρὸς Μαχάονα καὶ Ἱέρωνα καὶ Σώπολιν καὶ τοὺς τούτων στρατιώτας καὶ πρὸς τοὺς ἄλλους τοὺς ἐν ταῖς ὁμολογίαις γεγραμμένους ἄνευ δόλου καὶ ἀπάτης. Bagnall 1976, 89-90; Launey 1987, 725-750 ; Giovannini 2004.

[22] Plut. *Demetr*. 25.3; Diod. 20.102. Ager 1996 p. 66 (no. 14).

[23] *IG* IV²,1 68 A, frg. I, 13-14: τι]να τῶν πόλεων τῶν τῆς ὁμολογίας μετεχου[σῶν. A, frg. III, 92-93: ἐὰν δέ τις πόλις μὴ ἀποστε[ίλῃι] κατὰ τὰς [ὁμολογίας το]ὺς συνέδρους εἰς τὰς συνόδους, ἀποτινέτω κ[αθ' ἕκα]στον το[ύτων δραχμὰς δ]ύο ἑκάστης τῆς ἡμέρας. B fr. V ll. 133-5: ἀναγράψαι δὲ τὰς ὁμο]λογίας καὶ τοὺς [ὅρκους τοὺς μετέχοντας τοῦ συνεδρίου εἰς στή]λας λιθίνας κα[ὶ στῆσαι. 137-8: ἀναγράψαι δὲ] τὰς ὁμολογία[ς καὶ τοὺς ὅρκους καὶ τοὺς μέλλοντας μετέχειν τοῦ συ]νεδρίου παρ' αὐ[τοῖς εἰς τὰ ἐπιφανέστατα ἱερά.

[24] *IMT Skam/NebTäler* 388. Cf. the response of Skepsis to Antigonos in *IMT Skam/NebTäler* 389. Welles 1934 no. 1.

[25] *IMT Skam/NebTäler* 388, 13-14. Cf. ll. ἕως δὲ συνωμολογ[εῖτο ἐπὶ τ]ούτοις τὴν ἔντευξιν ἐπὶ τοῦ Ἑλλη[σπόντου] ἐπ<ο>ιούμεθα. (Translation Bagnall.)

After the dealings with Cassander and Lysimachos had been completed, Ptolemy sent envoys "asking that a truce be made with him also and that he be included in the same agreement" (ll. 29-31: ἀπέστειλεν Πτολεμαῖος πρὸς ἡμᾶς πρέσβεις, ἀξιῶν καὶ τὰ πρὸς αὐτὸν διαλυθῆναι καὶ εἰς τὴν αὐτὴν ὁμολογίαν γραφῆναι). Antigonos, although the peace meant giving up any future ambition, decided to yield, taking into consideration the situation of the Greek cities, and sent his envoys to Ptolemy to draw up the agreement (ll. 45-48: ὥιμεθα καλῶς ἔχειν συγχωρῆσαι καὶ τὰ[ς δ]ιαλ[ύσ]εις ποήσασθαι καὶ πρὸς τοῦτον· σ[υνο]μολογησόμενον δὲ ἀπεστείλαμεν Ἀριστό[δ]ημον καὶ Αἰσχύλον καὶ Ἡγησίαν). And the letter continues thus (ll. 51-72):

> ἴστε οὖν συντετελεσμένας τὰς διαλύσεις καὶ τὴν εἰρήνην γεγενημένην· γεγράφαμεν δὲ ἐν τῆι ὁμολογίαι ὁμόσαι τοὺς Ἕλληνας πάντας συνδιαφυλάσσειν ἀλλήλοις τὴν ἐλευθερίαν καὶ τὴν αὐτ[ον]ομίαν, ὑπολαμβάνοντες ἐφ' ἡμῶν μὲν ὅσα ἀν[θ]ρωπίνωι λογισμῶι διαφυλάσσεσθαι ἂν τα[ῦτ]α· εἰς δὲ τὸν λοιπὸν χρόνον ἐνόρκων γενομένων τῶν τε Ἑλλήνων πάντων καὶ τῶν ἐν τοῖς [π]ράγμασιν ὄντων μᾶλλον ἂν καὶ ἀσφαλέστε[ρ]ον διαμενεῖν τοῖς Ἕλλησιν τὴν ἐλευθερίαν· [κ]αὶ τὸ συνδιαφυλάξειν δὲ προσομνύναι ἃ ἡ[μ]εῖς ὡμολογήκαμεν πρὸς ἀλλήλους· οὐκ ἄδοξον οὐδὲ ἀσύμφερον τοῖς Ἕλλησιν ἐωρῶμεν ὄν· καλῶς δή μοι δοκεῖ ἔχειν ὁμόσαι ὑμᾶς τὸν ὅρκον ὃν ἀφεστάλκαμεν· πειρασόμεθα δὲ καὶ εἰς τὸ λοιπὸν ὅτι ἂν ἔχωμεν τῶν συμφερόντων καὶ ὑμῖν καὶ τοῖς ἄλλοις Ἕλλησιν παρασκευάζειν· ὑπὲρ δὴ τούτων καὶ γράψαι μοι ἐδόκει καὶ ἀποστεῖλαι Ἄκιον <τὸν> διαλεξόμενον· φέρει δὲ ὑμῖν καὶ τῆς ὁμολογίας ἧς πεποήμεθα καὶ τοῦ ὅρκου ἀντίγραφα· ἔρρωσθε.
>
> Know then that the truce has been established and that the peace is made. We have written in the treaty that all the Greeks are to swear to aid each other in preserving their freedom and autonomy, thinking that while we lived in all human expectation these would be protected, but that afterwards freedom would remain more certainly secure for all the Greeks if both they and the men in power are bound by oaths. For them to swear also to help to guard the terms of the treaty which we have made with each other seems to us neither discreditable nor disadvantageous for the Greeks; therefore, it seems to me best for you to take the oath which we have sent. In the future also we shall try to provide both for you and for the other Greeks whatever advantage we have in our power. It seemed best to me then to write you also about these matters and to send to you Akios to speak further (on the subject). He brings you copies of the treaty which we have made and of the oath. Farewell.

3. Written nature of *homologiai* and enforcement with oaths

The decree of Iasos and Antigonos' letter both emphasize the written form of *homologiai*.[26] In the Athenian decree of Chremonides on the ratification of the military alliance between Athens and Sparta along with their allies, which was concluded under the auspices of Ptolemy II,[27] it is stated that the Spartan envoys came to Athens

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[26] Contra Velissaropoulos-Karakostas 2011, II, 214-218, who considers *homologia* as an oral and informal engagement by the parties.

[27] *IG* II³,1 912; Bagnall & Derow 2004 no. 19. Marasco 1980, 121-135; Dreyer 1999, 244-249, 331-341.

"bringing with them the *homologia* about the alliance", that is, the written document recording the resolution of the Spartan authorities about the alliance.[28] The decree and the alliance are to be inscribed on a stele erected at the Acropolis (ll. 64-66), according to the Greek habit of engraving legal and official documents and displaying them in public places. The same clause was included in a decree of the Acarnanian *koinon* concerning the joint administration of the sanctuary of Apollo at Actium with the city of Anaktorion (*IG* IX,1² 2, 583). Seeing that Anaktorion was weakening in its ability to administer the Aktian games, the League decided to send representatives to the city in order to negotiate for making the sanctuary of Apollo at Actium a shared religious center for all Acarnanians. According to the terms agreed upon, the Acarnanians would repair and finance the sanctuary, ensuring the proper conduct of the games, sacrifices, and festival; the revenues from fees and sales during the festival would be divided equally between the Acarnanians and Anaktorion; administrative roles, such as treasurers and overseers, would be distributed between both parties. Furthermore, the date of the treaty's conclusion was to determine who had possession of the sanctuary's tresor, so that offerings and treasures dedicated "before the agreement was written" would remain in the Anaktorians' possession, but any future dedications would belong to the Acarnanians.[29] To ensure the agreement's permanence, it is stipulated that the decree of the Acarnanian league and the *homologa* with Anaktorion shall be written on stelae.[30] In 166/5, the Cretan cities of Gortyn and Knossos agreed on the demarcation of their common boundaries, and had the text of the *homologia* engraved on stone stelae and displayed at the sanctuary of the Pythian Apollo in Gortyn and the sanctuary of Delphic Apollo in Knossos, whereas a third stele engraved by both cities in common was placed at the sanctuary of Athena in Rhittenia[31].

Not only the inscription and public display of *homologiai* was mandatory,[32] but

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[28] *IG* II³,1 912, 27-35: καὶ τὴν περὶ τῆς συμμαχίας ὁμολογίαν ἥκουσι κομίζοντες (269/8 BCE). Cf. the expression τὰν ὁμολογίαν ἔθεντο in an agreement between the cities of Tritea and Haleion concerning the use of land, *IG* IX,1² 3:739, 13 (late fourth or early third century BCE).

[29] *IG* IX,1² 2:583, 36-37: ὅσα δὲ κέκτηνται οἱ Ἀνακτοριεῖς ἱερὰ χρήματα τοῦ Ἀπόλλω[νος τοῦ Ἀκτίου] ἢ ἀναθέματα πρ[ὸ] τοῦ τὰν ὁμολογίαν γραφῆμεν, ὑπάρχειν αὐτοῖς ἴδια, τὰ δὲ [ἐν τῶι μετὰ ταῦτα χρόνωι] ἀνατεθέντα τῶν Ἀκαρνάνων εἶμεν.

[30] *IG* IX,1² 2:583, 61-65: ἀναγραφῆμεν δὲ καὶ εἰστάλας τό τε ψάφισμα καὶ τὰ <κατα>κεχωρισμένα ἐν αὐτῶι ὁμόλογα συνθεμένων τῶν αἱρεθέντων παρὰ μὲν τῶν Ἀκαρνάνων Διογένεος, Ἐχεδάμου, Ἀθηνογένεος, Φαίακος, Ἐπιστράτου Λευκαδίων, Σίμωνος Φοκρεᾶνος, Σωτίωνος, Εὐάλκου, Γλαυκίνου Θυρρείων, Ἀριστομένεος Ἀλυζείου, παρὰ δὲ τᾶς πόλιος τῶν Ἀνακτοριέων Ἵππωνος, Εὐδάμου, Πτολεμ[α]ίου. (216 BCE).

[31] *IC* IV 182, 16-21: ἐπιτελεθθέντων δὲ τούτω[ν] πεδ[ὰ τᾶς] τῶν θιῶν εὐνοίας, στᾶσαι τὰν ὁμολογίαν ταύ[ταν] γράψαντανς ἐστάλ[αν] λιθίναν Γορτυνίον[ς μὲ]ν ἐμ Πυτίοι, Κνωσίονς δ' ἐν τῶι Δελφιδίωι κ̣αὶ [ἄλ]λαν κοινᾶι τὰνς πόλινς ἀμφοτέρανς ἐν Ῥ̣ι[ττ]ῆ[ν]ίαι ἐν τῶι ναῶι τᾶς Ἀθαναίας. Ager 1996 no. 128

[32] In *FD* III 4:159, 14-15, the fine to be paid by Engaioi to Thronion if they fail to engrave the agreement is two talants: εἰ δὲ μὴ ἀναγράφοντι τὰν ὁμολογίαν οἱ Ἔνγαοι ἐν τοῖς γεγραμμένοις χρόνοις, ὑπόδικοι ἐόντω τᾶι πόλει τῶν Θρονιέων ποτ' ἀργυρίου τάλαντα δύο.

one of the obligations undertook by the parties was to see that the text was maintained visible and intact. This obligation is underlined in a Knossian decree concerning a previously concluded treaty of *asylia* between Miletus and the Cretan poleis,[33] where it is stated that the Milesians sent envoys to Knossos to complain that the *homologiai* previously concluded were not inscribed publicly, and to request that the Knossians rectify this error. The Knossians reply to the envoys in an apologetic tone that they had "made the *homologiai* according to Miletus' request and erected them on the walls of the sanctuary of Apollo", but the text was destroyed later when the sanctuary was burnt by arson. In an attempt to appease the Milesians, they welcome their initiative to send envoys to witness the new engravement of the *homologiai* and invoke the long-time friendship between the two cities, while they point out their own stance as the example which will incite the willingness of the rest of the Cretan cities.[34]

Publicly inscribing and displaying the text of the treaty was not simply a token of good will, but more importantly, one of the obligations inherent in the treaty and a prerequisite for the implementation and enforcement of the treaty's provisions. These considerations, and possibly the fear of a natural disaster that could destroy the city's archives or the engraved text, such as the fire at the sanctuary of Knossos, lead perhaps the two small cities of Stiris and Medeon in Phokis to an unusual solution. The *homologia* of *sympoliteia* between the two cities, probably initiated by the Phokaean League, was inscribed on a stele placed at the sanctuary of Athena, and at the same time a copy was deposited with a citizen of a third city, Lilaia.[35]

Formal oaths sworn by representatives of the parties or by the entire citizen body constituted a standard way to ensure the agreement's enforcement. Around the year 240 BCE, the Aitolian League sent a diplomatic mission to mediate in a series of outstanding disputes between Messene and its neighbor Phigalea. The reconciled cities agreed to make a treaty of *isopoliteia* and *epigamia* and to jointly exploit a particular territory, previously submitted to a boundary demarcation, and finally to conclude a *symbola* concerning the resolution of private disputes between citizens of the two

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[33] *IC* I viii 6. Ducrey 1968, 243-246; Schmitt 1969 no. 482; Gauthier 1972, 244-245; Cassayre 2014, 120-127. (after 260 BCE).

[34] *IC* I viii 6, 2-18: ὑπὲρ ὧν οἱ Μιλήσιοι τοὺς πρεσβευτὰς ἀπέστηλαν Ἀλκμεωνίδην καὶ Εὐαγόραν, ἀποκρίνασθαι τοῖς πρεσβευταῖς ὅτι καὶ πρότερον ἡμεῖς παραγενομένων τῶν παρ' ὑμῶν πρεσβευτᾶν ἐποιησάμεθα τὰς ὁμολογίας, καθότι Μιλήσιοι ἠξίωσαν, καὶ ἐθέμεθα εἰς τὸ ἱερὸν τοῦ Ἀπόλλωνος· ἐμπρησθέντος δὲ τοῦ ναοῦ καλῶς ἐποιήσατε ἀποστείλαντες τὰν πρεσβήιαν, ὅπως ἀναγραφῆι ταὐτὰ καὶ παρ' ὑμῖν ΑΜΕΜΜΕΝΩΝ καὶ μὴ ἀναγραφείσης τῆς ὁμολογίας. ὑπολαμβάνομεν γὰρ ὑμῖν πάντα τὰ φιλάνθρωπα γίνεσθαι παρ' ἡμῶν καὶ διαφυλάξομεν τὰμ φιλίαν καὶ τὰν εὔνοιαν τὰν ὑπάρχουσαν ἐκ τῶν πρότερον χρόνων πρὸς ἀλλήλους καθάπερ δίκαιόν ἐστιν. ὅπως δὲ καὶ οἱ λοιποὶ Κρηταιέων προθυμότερον ὑμῖν συγγράφωνται καὶ αὐτοί, ὑπολαμβάνομεν δεῖν συγγράψασθαι καθότι ὑμεῖς ἀξιώσατε.

[35] *IG* IX,1 32, A 1-10 (sh. bef. 170 BCE): θ]εὸς τύχαν ἀγα[θ]άν. στραταγέοντος [τ]ῶν Φωκέων Ζευξίου, [μ]ηνὸς ἑβδόμου, ὁμολο[γί]α τᾷ πόλει Στειρίων καὶ [τᾷ] πόλει Μεδεωνίων· συ[νε] πολίτευσαν Στείριοι κα[ὶ Μ]εδεώνιοι ἔχοντες ἱερά, πό[λι]ν, χώραν, λιμένας, πάντα [ἐ] λεύθερα, ἐπὶ τοῖσδε; B 65-71: [γ]ραψάντων δὲ τὰν ὁμ[ο]λογίαν ἐν στάλαν καὶ ἀν[αθέ]ντων ἐν τὸ ἱερὸν τᾶς Ἀ[θάν]ας. θέστων δὲ τὰν ὁμο[λογί]αν καὶ παρὰ ἰδιώταν ἐσ[φρα]γισμέναν. ἃ ὁμολογία π[αρὰ] Θράσωνα Λιλαιέα.

cities.[36] Messene and Phigalea were to swear to these terms, as well as to "whatever other terms they agree with each other' (ὁμολογήσωμες πὸτ ἀλλάλως), and set up inscribed stelae in the temples, whichever seemed appropriate to both the cities. A specific clause in the Messenian decree provides that if the Phigaleans do not remain in friendship with the Messenians and the Aetolian League, the entire ὁμολογία (signifying the overall agreement contained in more than one documents) shall be invalid".[37] Some years later, the Achaian League issued a decree regulating the entrance of Orchomenos into the *koinon,* which contained the terms and conditions of the agreement with Orchomenos, the provisions for taking legal action in case of transgression of the agreement, and the conditions for settling a financial dispute with Megalopolis, another member of the League (*IG* V,2 344). The magistrates of the League in Aigion and the magistrates of the city of Orchomenos are to to swear to abide by the stelai, the *homologia* and the decree of the Achaian League, and to do anything in their power to prevent transgressors.[38]

Two long inscriptions from Smyrna record the negotiations of the city with Magnesia-by-Sipylos and the agreement which sealed the end of a war between the two cities.[39] The first is the Smyrnaean decree providing for the negotiations with the soldiers at Magnesia who had revolted against Seleucus II, in order to conclude a treaty (ὁμολογία) of friendship and *sympoliteia*.[40] The second contains the terms of

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[36] *IG* V,2 419. Cf. *IG* V,1 1430; *IG* V,1 1429 with Ager 1996 no. 40; Roebuck 1941; *IPArk* no. 28; Magnetto 1997 no. 38; Harter-Uibopuu 1998, 47-52; Saba 2020, 172. For the role of the Aetolians as arbitrators between the two cities see Scholten 2000, 121-122.

[37] *IG* V,2 419, 9-23: ἔδοξε τᾶι [πόλει τᾶι Μ]εσανίων, ἦμεν τοῖς Μεσσανίοις κα[ὶ τοῖς Φια]λέοις ἰσοπολιτείαν καὶ ἐπιγαμία[ν ποτὶ ἀλλ]άλως, ποιήσασθαι δὲ καὶ συνβολάν, ἅ[νπερ δοκεῖ] ἀνφοτέραις ταῖς πολέοις, τὰν δὲ χ[ώραν καρπ]ίζεσσθαι ἑκατέρως τώς τε Μεσανίω[ς καὶ τὼς Φι]αλέας, καθὼς καὶ νῦν καρπιζόμεθα· [….9….κ]α ὁμολογήσωμες πὸτ [ἀ]λλάλως, ὁμό[σαι ἀνφοτέρω]ς καὶ στάλας καταθέσθαι ἐν τοῖς [ἱεροῖς, ὅπαι κ]α δοκεῖ ἀνφοτέραις ταῖς πολέο[ις· εἰ δέ κα μὴ ἐμ]μένωντι οἱ Φιαλέες ἐν τᾶι φιλ[ίαι τᾶι πὸτ τὼς Μ]εσανίως καὶ Αἰτωλώς, ἄκυρος ἔ[στω πᾶσα ἁ ὁμολο]γία.

[38] *IG* V,2 344, 7-10: ὀ[μ]νύω Δία Ἀμάριον, Ἀθάναν Ἀμαρίαν, Ἀφρ[οδ]ίτα[ν καὶ τοὺ]ς θ[εοὺς πάντας, ἦ μὴν ἐν] πᾶσιν ἐμμε[ν]εῖν ἐν τᾶι στάλαι καὶ τᾶι ὁμολογίαι καὶ τῶι ψαφίσματι [τῶι γεγονότι τῶι] [κοι]ν[ῶι] τῶι τ[ῶ]ν Ἀχαιῶν, καὶ εἴ τίς κα μὴ ἐμμένηι, οὐκ ἐπιτρέψω εἰς δύναμ[ιν. *IPArk* no. 16; Ager 1996 no. 43. Cf. the oath taken each year by the magistrates of Elateia in Phokis to respect the alliance between the Boeotian and Phokaean Leagues according to the *homologiai*, *IG* IX,1 98, 15-8: [ὀμνύω τ]ὸν Δία τὸμ Βασιλέα καὶ τὴν Ἥραν τὴμ Βασίλειαν καὶ τὸμ Ποσει[δᾶνα καὶ τὴ]ν Ἀθηνᾶν καὶ τοὺς ἄλλους θεοὺς πάντας καὶ πάσας ἐμ[μενεῖν τᾶ] [συμμαχίᾳ Βο]ιωτοῖς καὶ Φωκεῦσι κατὰ τὰς ὁμολογίας ἀδόλως εἰς τὸν [πάντα χρ]όνον.

[39] *Smyrna* 9 and 14. Schmitt 1969, no. 492; Bagnall & Derow no. 29; Ma 1999, 44-51.

[40] *Smyrna* 9, 18-20: οἱ δὲ ἐμ Μαγνησίαι παρακληθέντες καὶ αὐτοὶ ὄντες πρόθυμοι πρὸς τὸ διαφυλάσσειν τῶι βασιλεῖ τήν τε φιλίαν καὶ τὴν συμμαχίαν καὶ διατηρεῖν αὐτῶι τὰ πράγματα, τά τ[ε] ἀξιωθέντα ὑπὸ τῶν στρατηγῶν φιλοτίμως ἀπεδέξαντο καὶ ἐπαγγέλλονται τὴν αὐτὴν ἕξειν αἵρεσιν τῶι δήμωι τῶι ἡμετέρωι εἰς πάντα τὰ τοῦ βασιλέως Σελεύκου συμφέροντα καὶ ἀπεστάλκασιν πρὸς ἡμᾶς πρεσβευτὰς ἐγ μὲν τῶν κατοίκων Ποτάμωνα καὶ Ἰ]εροκλῆν, ἐγ δὲ τῶν ὑπαίθρων Δάμωνα καὶ Ἀπολλωνικέτην, τοὺς δ[ια]λεξομένους τε ἡμῖν καὶ ἀνοίσοντας τὴν ὁμολογίαν καθ' ἣν ἀξι[ο]ῦσιν συνθέσθαι τὴμ πρὸς ἑαυτοὺς φιλίαν· ἐπαχθέντες δὲ καὶ ο[ἱ] πρεσβευταὶ ἐπὶ τὸν δῆμον συνλελαλήκασιν ὑπὲρ ἁπάντων ἀκολ[ού]θως τοῖς ἐν τῆι ὁμολογίαι γεγραμμένοις· ἀγαθῆι τύχηι· δεδόχθα[ι] τήν τε φιλίαν συντίθεσθαι πρὸς τοὺς ἐμ Μαγνησίαι ἐπὶ πᾶσι τοῖ[ς] τοῦ βασιλέως Σελεύκου συμφέρουσιν,

the treaty by which the city of Magnesia was in fact absorbed by Smyrna, as well as the extremely detailed oaths taken by the entire citizen body in both cities,[41] which were included in the agreement. This is the oath of the Magnesians:[42]

> ἐμμενῶ ἐν ταῖς συνθήκαις αἷς συντέθειμαι πρὸς Σμυρναίους εἰς ἅπαντα τὸγ χρόνον [κ]αὶ διατηρήσω τήν τε συμμαχίαν καὶ τὴν εὔνοιαν τῶι βασιλεῖ Σελεύκωι καὶ τῆι Σμυρναίων πόλει, καὶ ἃ παρείληφα παρὰ τοῦ βασιλέως Σελεύκου διατηρ[ήσ]ω κατὰ δύναμιν τὴν ἐμὴν καὶ ἀποδώσω τῶι βασιλεῖ Σελεύκωι καὶ οὐθὲν παραβήσομαι τῶγ κατὰ τὴν ὁμολογίαν οὐδὲ μεταθήσω ἐπὶ τὸ χεῖρον τὰ γεγραμ[μ]ένα ἐν αὐτῆι οὔτε τρόπωι οὔτε μηχανῆι οὐδεμιᾶι· καὶ πολιτεύσομαι μεθ' ὁμονοίας ἀστασιάστως κατὰ τοὺς Σμυρναίων νόμους καὶ τὰ ψηφίσματα τοῦ δ[ή]μου καὶ συνδιατηρήσω τήν τε αὐτονομίαν καὶ δημοκρατίαν καὶ τἆλλα τὰ ἐπικεχωρημένα Σμυρναίοις ὑπὸ τοῦ βασιλέως Σελεύκου μετὰ πάσης προθυμ[ία]ς ἐμ παντὶ καιρῶι, καὶ οὔτε αὐτὸς ἀδικήσω αὐτῶν οὐθένα οὔτε ἄλλωι ἐπ[ι]τρέψω οὐθενὶ κατὰ δύναμιν τὴν ἐμήν· καὶ ἐάν τινα αἰσθάνωμαι ἐπιβουλεύο[ντα] τῆι πόλει ἢ τοῖς χωρίοις τοῖς τῆς πόλεως, ἢ τὴν δημοκρατίαν ἢ τὴν ἰσονομίαν καταλύοντα, μηνύσω τῶι δήμωι τῶι Σμυρναίων καὶ βοηθήσω ἀγωνιζ[όμ]ενος μετὰ πάσης φιλοτιμίας, καὶ οὐκ ἐγκαταλείψω κατὰ δύναμιν τὴν ἐμαυτοῦ· εὐορκοῦντι μέμ μοι εὖ εἴη, ἐφιορκοῦντι δὲ ἐξώλεια καὶ αὐτῶι καὶ γέ[νει τ]ῶι ἐξ ἐμοῦ.
>
> I shall abide by the agreements which I conclude with the Smyrnaeans for all time; and I shall preserve the alliance and good-will toward King Seleucus and the city of the Smyrnaeans; and I shall preserve what I have received from King Seleucus to the extent of my ability and shall return (it) to King Seleucus; and I shall transgress nothing of what is in the agreement, nor shall I change for the worse the things written in it, in any way or on any pretext whatsoever; and I shall be a citizen, with concord and without faction, according to the laws of the Smyrnaeans and the decrees of the demos, and I shall join in preserving the autonomy and the democracy, and the other things which have been granted to the Smyrnaeans by King Seleucus, with all zeal and at all times, and I shall not wrong any one of them, nor shall I allow another (to do so), to the extent of my ability; and if I perceive anyone plotting against the city, or the territories of the city, or seeking to subvert the democracy or the isonomia, I shall reveal (this) to the demos of the Smyrnaeans and shall go to its aid, contending with all zeal, and shall not desert it, to the extent of my ability. May it be well for me if I abide by this oath, but if I break it may there be ruin for myself and for the family sprung from me.

καὶ ἀποδεῖξαι πρὸς αὐτοῦ[ς] πρεσβευτὰς τρεῖς, οἵτινες τὴν ὁμολογίαν τε ἥτις ἂν δόξηι τῶι δήμωι ἀνοίσουσιν αὐτοῖς καὶ περὶ τῶγ γεγραμμένων ἐν αὐτῆι δι[α]λεγήσονται καὶ παρακαλέσουσιν αὐτοὺς δέχεσθαί τε καὶ συντελεῖν τὰ ἐν τῆι ὁμολογίαι γεγραμμένα, καὶ ἐάμπερ δέξωνται οἱ ἐμ Μαγνησίαι, ὁρκισάτωσαν αὐτοὺς οἱ ἀποδειχθησόμενοι πρεσβευταὶ τὸν ὅρκον τὸν ἐν τῆι ὁμολογίαι γεγραμμένον· προσδεξαμέν[ων] δὲ ταῦτα τῶν ἐμ Μαγνησίαι καὶ συνσφραγισαμένων τὴν ὁμολογίαν καὶ ὁμοσάντων καὶ ἐπανελθόντων τῶμ πρεσβευτῶν συ[ντε]λείσθω καὶ τὰ λοιπὰ πάντα τὰ ἐν τῆι ὁμολογίαι γεγραμμένα, καὶ τὸ ψήφισμα τόδε ἀναγραφήτω κατὰ τὸν νόμον· ἀναγραφήτω δὲ κ[αὶ εἰς] στήλας εἰς ἃς καὶ ἡ ὁμολογία ἀναγραφήσεται.

[41] *Smyrna* 14, 40-1: ὀμ]οῦνται δὲ καὶ οἱ ἐμ Μαγνησίαι Σμυρναίοις καὶ Σμυρναῖοι τοῖς ἐμ Μαγνησίαι ἑκάτεροι αὐτῶν τὸν ὅρκον τὸν ἐν τῆι ὁμολογίαι ὑπο[γε]γραμμένον.

[42] *Smyrna* 14, 61-69 (translation Bagnall & Derow). Oath of the Smyrnaeans in ll. 70-78.

4. Forms and patterns in epigraphic treaties

While papyrological testimonies from Hellenistic and Roman Egypt confirm the unilateral nature of *homologia* in private contracts, the epigraphic evidence by contrast confirms the bilateral nature of *homologia* in an interstate context, where the term eventually became a synonym of treaty. Thus the terms ὁμολογία and ὁμόλογον were used for a treaty between two cities, between a League and a city, between a king and a city or between a king and his mercenaries. The object of these *homologiai* could concern friendship, alliance, *sympoliteia*, *isopoliteia, asylia* or the settlement of boundaries between two states, and any other terms could be included, such as the regulation of private judicial matters or the consequences of breaching the agreement.

The bilateral nature of *homologia* in inscriptions pertaining to interstate relations is underlined by some syntactical and grammatical patterns in the text. Thus, the verb *homologein* appears in the third person plural, and takes two subjects in the nominative, in the form "ὁμολογῶσι X and Y", for example τάδε ὡμολόγησαν Μιλήσιοι καὶ Κυζικηνοί (*Miletos* 32) or ὁμολογησάντων Μαλίων και Κιμωλίων (*IG* XII,3 1259). Some variations of this pattern are ὁμολογῶσιν ἑκάτεροι (*IG* I^3 61), a pattern that persists until the 2nd century CE in a Roman judgement for the borders between Delphi and Antikyra[43]; ὁμολογῶσι ἀλλήλοις/πρὸς ἀλλήλους (*Agora* XIX L 4a and *IG* V,2 419); ὁμολογεῖν πρὸς τινα/ὁμολογεῖν πρὸς αὐτούς (*Ephesos* 4 and *Iasos* 83). An interesting parallel to the phrase ὁμολογεῖν ἀλλήλοις is given by Andocides in a passage where he distinguishes between peace and truce, and describes peace as a settlement of differences between equals.[44]

The noun *homologia*, on the other hand, takes either two genitives, as in ὁμολογία Τροζανίων καὶ Ἀρσινοέων (*IG* IV^2,1 76) or two datives, for example ὁμολογία τᾷ πόλει Στειρίων καὶ [τᾷ] πόλει Μεδεωνίων (*IG* IX,1 32). The noun ὁμόλογον, which is frequently used as an alternative to ὁμολογία, also takes two datives, as for example in a military convention between the cavalries of Orchomenos and Chaironeia which is qualified as ὁμόλογα,[45] or in a boundary settlement between Thronion and Skarphai, in which the *homologon* is interestingly qualified as voluntary (ἐθελούσιον).[46]

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[43] *FD* III 4:295, col. V 4-5: ἕνεκα] καὶ τούτου ἐν τ̣[ῇ Ἀντικυρέων καὶ Δε]λφῶν πρὸς ἀλλήλους ἀμ[φισβητή]σει, οἷς κριτὴς ἐδόθη<ν> ὑπὸ τοῦ μεγίστου [αὐτοκράτορος, ἐ]κατέρων ὁμολογ[ούντων, ἀναγκαῖο]ν ἐγένετο ἐπιμελεστέραν [οὕτω]ς παλαιοῦ πράγματος ποιήσασθαι τὴν [ἐξέτασιν.

[44] Andocides 3.11: εἰρήνη γὰρ καὶ σπονδαὶ πολὺ διαφέρουσι σφῶν αὐτῶν. εἰρήνην μὲν γὰρ ἐξ ἴσου ποιοῦνται πρὸς ἀλλήλους ὁμολογήσαντες περὶ ὧν ἂν διαφέρωνται: σπονδὰς δέ, ὅταν κρατήσωσι κατὰ τὸν πόλεμον, οἱ κρείττους τοῖς ἥττοσιν ἐξ ἐπιταγμάτων ποιοῦνται, ὥσπερ ἡμῶν κρατήσαντες Λακεδαιμόνιοι τῷ πολέμῳ ἐπέταξαν ἡμῖν καὶ τὰ τείχη καθαιρεῖν καὶ τὰς ναῦς παραδιδόναι καὶ τοὺς φεύγοντας καταδέχεσθαι.

[45] *SEG* 28:461, 7-9: ὁμόλογα τοῖς ἱππότης τοῖς Ἐρχομενίων κὴ Χηρωνείων ὑπὲρ τᾶν στροτειιάων (ca 287-280).

[46] *FD* III 4:42, 1-5: [ἀ]γα[θ]ᾶι τύ[χαι. ἀρχόντων ἐν Θρονίωι …]κλέος, Μνασιμάχου, μηνὸς <Ἀ>φαμίου, [ἐ]ν [δ]ὲ Σκαρφ[είαι ἀρχόντων …]ξένου, μηνὸς Ἰτωνίου τεσσαρεσκαιδεκά[τ]αι, ὁ[μό]λογον ἐθελούσι[ον ἦν πόλει Σκαρφέ]ων καὶ πόλει Θρονιέων, ὅ συνέθεντο ὑπὲρ μὲν τὰν πόλιν τῶν Σκαρφέω[ν οἵ τε ἄρχοντες κ]αὶ οἱ πρόβουλοι καὶ οἱ σύνεδροι, ὑπὲρ δὲ τὰν πόλιν τῶν Θρονιέων οἵ τε ἄ[ρχοντες καὶ οἱ σύ]νεδροι, ὥστε τᾶς χώρας τᾶς καλειμένας

In an agreement between Troizen and an unknown city, perhaps Kalauria, establishing *enktesis* and *epigamia,* and regulating judicial matters between the two cities, the dative plural αὐτοῖς refers to both parties to the ὁμόλογα; the agreement is to be engraved and displayed in three sanctuaries, after ratification by three citizens designated by the Athenian Assembly.[47] Another variation is by using the preposition ὑπὸ with the genitive in the phrase "an *homologon* was created by us and them", as in the dispute settlement between Hierapytna and Itanos by Magnesia and Rome.[48]

In some instances the word *homologos* is used as an adjective qualifying an object that was agreed upon by both parties. In the arbitration of a dispute about a piece of land on the borders between the cities of Pereia and Phylladon, on the one hand, and the city of Peuma, on the other, the stakes agreed by the parties are qualified as ὁμόλογα.[49] In a letter of the praetor Marcus Aemilius to the council and demos of Mylasa, concerning a land dispute between Magnesia and Priene, the praetor refers to the decree of the Roman Senate that authorized him to designate an independent Greek city to decide the dispute, on which both parties should agree (δῆμον ἐλεύθερον κριτὴν δῶι, ὃς ἂν ἐν αὐτοῖς ὁμόλογος γενηθῆ); if the arbitrator was not ὁμόλογος to both parties, then the praetor was to give judgement himself.[50] Similarly, in the Roman ratification of the Knossian judgement for Lato and Olous, it is the judgement (τὸ κρίμα) that is qualified as *homologon* to both parties (ὁμόλογον ἦν ἑκατέροις).[51]

A pattern which appears in the third century BCE combines the two synonymous verbs ὁμολογῶ καὶ συντίθημι, as in the phrase "these are the terms upon which the Milesians and the Pidasans agreed (ὡμολόγησαν καὶ συνέθεντο)" in a treaty on

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Χοννείας, [π]ερὶ ἃς διεφέροντο ποτ' ἀλ[λήλας α]ἱ πό[λε]ις καὶ ἐπρέσβευσαν ἐπὶ σύγκλητον, εἶ<μ>εν αὐτοῖς ὅρους τοὺς ὑπογεγραμμ[ένου]ς. (110 BCE). Ager 1996 no. 167 V.

47 *IG* IV 752, 15-19: ὅπ]ως δὲ τὰ συμφωνηθέντα κύρια ᾖι, ἀποστειλάντω πρεσβείαν [ἑκάτ]εροι εἰς Ἀθάνας καὶ ἀξιούντω δόμεν αὐτοῖς ἄνδρας τρεῖς, οἵτινες πα[ραγ]ενόμενοι τὰ γεγονότα αὐτοῖς ὁμόλογα ἐπικρίναντες ἀναθησοῦντι [ἐν] στάλαις εἰς τὰ ἱερά· τό τε ἐγ Καλαυ[ρ]είαι τ]οῦ Ποσειδᾶνος [κ]αὶ τὸ ἐ[ν] Ἔπι δαύρωι τοῦ Ἀσκλαπιοῦ καὶ τὸ ἐν Ἀθάναις ἐν ἀκροπόλει τᾶς Ἀθάνας. Cf. *IG* IV^2 1, 77, 19-25.

48 *IC* III iv 10, 25: ----] δὲ ὡς ὑφ' ἡμῶν τε κἀκείνων ὁμόλογον ἐγενήθη. (112/1). Chaniotis 1996, nos. 57a, 57b, 49. Ager 1996 no. 158.

49 *FD* III 4:351, 24-6: ἐπὶ [τοὺς σ]πόλους τοὺς ὁμολόγους εἰς τὴν ὁδὸν τὴν [δημοσί]αν (from the Kerkineus to the stakes agreed by the parties up to the public road). Ager 1996 no. 31; Bolduc 2008, annexe 1, no. 5. The Kassandreian judges who were chosen as arbitrators adjudicated the disputed land to Pereia and Phylladon, according to a previous judgement by Melitaia.

50 *Magnesia* 121, 46-51: ὅπως Μάαρκος Αἰμύλιος Μαάρκου υἱὸς στρατηγὸς δ[ῆμον ἐ]λε[ύ]θερον κριτὴν δῶι, ὃς ἂν ἐν αὐτοῖς ὁμόλογος γενηθῆ· ἐὰν δὲ ἐν αὐτοῖς ὁμόλογος [μὴ γίνη]ται, ὅπως Μάαρκος Αἰμύλιος Μαάρκου υἱὸς στρατηγὸς δῆμον ἐλεύθερον κριτὴ[ν δῶι] εἰς τούτους τοὺς λόγους οὕτως, καθὼς ἂν αὐτῶι ἐκ τῶν δημοσίων πραγμάτω[ν πίστε]ώς τε τῆς ἰδίας φαίνηται. (c. 175-160 BCE). Ager 1996 no. 120.

51 Chaniotis 1996 nos. 54/56b 7-8: ἡμεῖς ὁ Κνώσιοι ἔκριναν Λατίοις καὶ Ὀλοντίοις διὰ ταύτην τὴν αἰτίαν εἰς ἀκέραιον ἀποκατεστήσ[αμ]εν, ὅτι ὁμόλογον ἦν ἑκατέροις τοῦτο τὸ κρίμα. Ager 1996 no 164.

sympoliteia between Miletos and Pidasa.[52] In the oath that was included in the treaty between the cities of Lyttos and Olous on Crete,[53] the Olountians swear to respect and not transgress any of the terms that they shall mutually agree (καθώς κα συνθιώμεθα καὶ ὁμολογήσωμεν). In the treaty between Charadros and Ambrakia in Epirus concerning their boundaries, the terms agreed upon are introduced with the phrase τάδε συνέθεντο καὶ ἐποιήσαντο ὁμόλογα σύμβολα.[54]

The synonymous nouns *homologiai* and *synthekai* are also used jointly, as for example in an honorific decree of the Assembly of Istros,[55] in which Agathokles is praised for his efforts to renew the ὁμολογίαι καὶ συνθῆκαι with the Thracian leader Zoltes, as well as for his initiative after Zoltes transgressed the *homologiai* by making raids against their city. In the oath of the Magnesians to seal the treaty with Smyrna and king Seleucus (*Smyrna* 14) the terms συνθῆκαι and ὁμολογία are used alternatively to qualify the same agreement. Other variations include the combination of the noun *syntheke* with the adjective *homologos,* as in the treaty of alliance between the Aitolian and Acarnanian Leagues (συνθήκα ὁμόλογος),[56] or the joint use of the terms σύμφωνον and ὁμόλογον, as for example in an arrangement of the cities of Asia Minor for their debt to the sanctuary of Athena.[57] Finally, in a treaty between the cities of Engaioi and Thronion,[58] the terms *homologia* and *homologon* are used interchangea-

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[52] *Miletos* 61, 1-8 (188/7 BC): τάδε ὡμολόγησαν καὶ συνέθεντο Μιλήσιοι καὶ Πιδασεῖς, ὑπὲρ μὲν τοῦ δήμου τοῦ Μιλησίων οἱ πρυτάνεις καὶ οἱ εἰρημένοι ἐπὶ τῆι φυλακῆι καὶ οἱ ἀποδειχθέντες σύνεδροι (…) ὑπὲρ δὲ τοῦ δήμου τοῦ Πιδασέων οἱ πεμφθέντες ὑφ' αὐτῶν αὐτοκράτορες πρεσβευταὶ (…). Cf. the Milesian decree on isopoliteia, friendship and amnesty with Heraclea, *Miletos* 39, 27-33: τάδε συνέθεντο καὶ ὡμολόγησαν Μιλήσ[ιο]ι καὶ Ἡρακλεῶται συνγραψαμένων μὲν ὑπὲρ Μιλησίων τῶν τε πρυτάνεων καὶ τῶν ἠρημένων ἐπὶ τῆι φυλακῆι καὶ τῶν ἀποδειχθέντων συνέδρων (…), ὑπὲρ δὲ Ἡρακλεωτῶν τῶν ἀποσταλέντων (…).

[53] *IG* II² 1135, C, ll.11-13: καὶ οὐδὲν κακοτε]χνησίω, καθώ[ς] κα συνθιώμεθα κα[ὶ] ὁ[μολογήσωμεν, καὶ οὐδενὶ ἄλλωι ἑκὼν καὶ γινώσκων ἐ]πιτραψίω π[αρε]υρέ[σει] οὐ[δ]εμιᾶ[ι οὐδὲ τρόπωι οὐδενί. (111/0).

[54] *SEG* 35:665, block A 1-6: [ἐ]πὶ γραμ[ματιστ]ᾶ Διοφάνεος τοῦ Δαιμάχου, ἐν δὲ Χαράδροι πολιταρχοῦντος Μενάν[δρου] [τ]οῦ Μη[τροφάνεος, μη]νὸς ὡς ἑκάτεροι ἄγοντι Φοινικαίου, τάδε συνέθεντο καὶ ἐποιήσαν[το ὁ]μόλογ[α σύμβο]λα, καθὼς ἔδοξε ταῖ τε βουλαῖ καὶ ταῖ ἐκκλησίαι τῶν Ἀμβρακιωτᾶ[ν, ὡ]σαύτ[ως δὲ καὶ ἔ]δοξε ταῖ βουλαῖ καὶ ταῖ ἐκκλησίαι τῶν Χαραδριτᾶν. Cabanes & Andréou 1985.

[55] *IScM* I 15, 33-41: πά]λιν δὲ αἱρεθεὶς πρ[ε]ζ[β]ευτὴς εἰς τὴν Θράικην κα[ὶ πρὸς τὸ]ν ἄρχοντα αὐτῶν Ζ[ολ]τη[ν], ἀ[νε]νεώσατ[ο] μ[ὲν] τὰ[ς γεγε]νημένας ὁμολογίας καὶ συνθήκ[ας πρὸς α]ὐτούς· αἰσθόμεν[ος] δὲ συναγωγήν τινα γινομένη[ν πειρ]ατῶν πλειό[ν]ων, ἐν[έ][δει]ξεμ μὲν τῶι Ζολτηι, ἐνεφάνισεν [δ' ἀνε]λθὼν καὶ τοῖς πολ[ίταις, δ]ι' ὃ συνέβη τὴν ἐπιβουλὴν αὐτ[ῶν] ἄ[π]ρακτον [γ]ενέσ[θαι· παραβά]ν[τ]ων δὲ τῶν Θρ[αι]κῶν τοὺς ὅ[ρκ]ους καὶ τὰς ὁμο[λογίας καὶ π]οιο[υ]μένων ἐπιδρομ[ὰς] συνεχε[ῖ]ς.

[56] *IG* IX,1² 1:3 A, 1-5: ἀγαθᾶι τύχαι. συνθήκα Αἰτωλοῖς καὶ Ἀκαρνάνοις ὁμόλογος· εἰρήναν εἶμεν καὶ φιλίαν ποτ' ἀλλάλους, φίλους ἐόντας καὶ συμμάχους (ca. 263-2 BCE).

[57] *IMT Skam/NebTäler* 170 [A: Ilion], a.1-19: σύμφωνον καὶ ὁμόλογον ταῖς πόλεσιν ὑπὲρ τῆς πανηγύρεως·

[58] *FD* III 4:159: τὰν δὲ ἀναγρ[αφὰν] τᾶ[ς] ὁμολογίας ποιησά[σθω] τὰ[ν μὲν ἐν] Δελφοῖς οἱ Ἔγγαιοι ἐμ μηνὶ Ἑρμανίωι, ὡς Σκαρφεῖς ἄγο[ντι], τᾶς Τιμο[λ]όχου καὶ Ἀπελλέα ἀρχᾶς, τὰν δὲ ἐν Πυλαίαι [Θρο]νιεῖς ἐμ μηνὶ Ἱππείωι, ὡς Θρονιεῖς ἄγοντι, τᾶς Ἀριστ[άρχο]υ ἀ[ρ]χᾶς. φερόνθω δὲ καὶ γράμματα οἱ Ἔγγαιοι παρὰ τοῦ κοινοῦ τῶν Λοκρῶν ποτὶ τὰν πόλιν

bly, whereas *homologon* is also used as an adjective. These are some of the examples that indicate a flexibility in what concerns terminology, with the alternative or joint employment of terms considered as synonymous.

5. *Homologia* terminology in public loans

The financial crises that obliged some Greek cities in the third and second centuries BCE to borrow money from other cities or from individuals have left their traces in a small group of inscriptions, where interestingly *homologia* terminology is used both in the sense of agreement and recognition. In the early third century, Kalymnos borrowed money from two Koan bankers. After a long period during which both original creditors died, only part of the outstanding loan was repaid to their heirs, and the case ended up as an interstate dispute. The complications of the case lead the city of Kos to intervene on behalf of its citizens, and a third city, Knidos, was invited to arbitrate. One of the disputed issues was the Kalymnians' claim that they had passed a mutual agreement (*homologia*) with some of the initial creditors, which was contested by the latters' heirs:[59]

> ἀργυρί[ου τοῦ ἀποδοθέντος] ἀμῖν ἀφαιρεθέντος ἀπὸ χρέως τοῦ Παυσ[ιμάχου καὶ] Ἱπποκράτευς, τᾶς τε ἀφέσιος τοῦ ταλάντου ὅ φαν[τι] ἀφεῖσθαι Καλύμνιοι ὑπὸ Παυσιμάχου καὶ Κλευμήδευς, καὶ τᾶν φιαλᾶν καὶ τῶν ἀλσέων, καὶ τᾶν πεμπτᾶν ἀφαιρεθεισᾶν τᾶν ἀποδοσίων ἅς φαντι ἀποδεδώκεν Καλύμνιοι Παυσιμάχωι καὶ Κλευμήδει καθ' ὁμολογίαν ἅμ φαντι ποιήσασθαι Καλύμνιοι ποτὶ Παυσίμαχον καὶ Κλευμήδη, περὶ ὧν πάντων ἀμφισβατεῦντι αὐτοῖς τοὶ Κλευμήδευς κλαρονόμοι.
>
> When the money [handed over] to us from the debt of Pausimachos and Hippokrates has been deducted, and after the removal of the talent which the Kalymnians claim was removed by Pausimachos and Kleomedes, and of the bowls and the woods, and when the fifth part of the payments has been deducted, 10 which the Kalymnians claim he paid to Pausimachos and Kleomedes, according to the agreement that the Kalymnians claim was made with Pausimachos and Kleomedes - in all of which matters the heirs of Kleomedes contradict them.

A loan from the city of Thisbe to the city of Chorsiai is reported from the financial settlement (ὁμόλογον) which was reached between the two cities after negotiations

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τῶν Δελφῶν, ὅτι εὐαρεστέοντι τᾶι ἀναγραφᾶι τᾶς ὁμολογίας, ὡσαύτως δὲ καὶ Θρονιεῖς παρὰ τᾶς ἰδίας πόλιος. καταχωριζόντω δὲ καὶ ἐν τὸ σύμβολον τὸ ὁμόλογον τοῦτο, καὶ μὴ ἔστω κυρι<ω>τέρα τοῦ ὁμολόγου τούτου ἐν τῶι συνβόλωι [ὁμολο]γία μηδεμία. ἐν δὲ τὰν ἀναγραφὰν τᾶς ὁμολογίας τᾶς μὲν ἐν Δελφοὺς δόντω τὸ ἀνάλωμα οἱ Ἔγγαοι, τᾶς δὲ ἐν Πυλαίαι Θρονιεῖς. εἰ δὲ μὴ ἀναγράφοντι τὰν ὁμολογίαν οἱ Ἔνγαοι ἐν τοῖς γεγραμμένοις χρόνοις, ὑπόδικοι ἐόντω τᾶι πόλει τῶν Θρονιέων ποτ' ἀργυρίου τάλαντα δύο. (100-50 BCE).

[59] *IG* XII,4 5:4044, Face B, 5-13 (translation Bagnall). Dareste, Haussoullier & Reinach 1965 I, 158-178; Migeotte 1984, no. 59; Thür 1987, 473-474; Gofas 1994, 122; Ager 1996 no. 21. Cassayre 2014, nos. 11 & 12. These inscriptions contain an unusually detailed description of the legal process for resolving an interstate dispute.

for the overdue debt. According to the terms agreed in the *homologon,* Thisbe promised to pay the capital plus interest in eleven yearly installments.[60] The obligations undertook by both cities are stated in detail in the ὁμόλογον.[61] A similar arrangement, qualified as ὁμολογία, was made between Drymaia on the one hand and the *koinon* of the Oitaioi jointly with the treasure of Herakles on the other, concerning Drymaia's outstanding debt. By force of the ὁμολογία, Drymaia was to pay the agreed sum in four installments; if the city failed to pay each installment on time, the arrangement would become void immediately, to the effect that the conditions and ways of execution of the initial act would apply.[62] In the case of the loan to the city of Kopai from Kleuedra and Olympicha, the term ὁμολογία denotes a formal agreement made between the two women and Kopai. Kleuedra and Olympicha delivered the money to the polemarchs and then made a formal agreement (ὁμολογίαν) with the city, by which they released the city from repaying the money; in return they were granted the right of pasturage for two hundred of their own cattle. The city is to adhere to the terms of its agreements, and to show favour to those who have dealt with it.[63] The

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[60] *SEG* 22:407, 1-13: ὁμόλο[γον τῆ πό]λι Θισβείων πὸτ τὰν πόλιν Χορσιείω[ν ο]ὑπὲρ ὧν ἀξίωσε ἀ πόλις Χορσιε[ίων] τὰμ πόλιν Θισβείων περὶ τῶν χρειμάτ[ων, τὰ] ὤφλε ἀ πόλις Χορσιείων τῆ πόλι Θισβε[ίων, δρα]χμάων μουριάων χειλιάων πεντακατ[ιάων] τριάκοντα ὀκτὸ πέντε ὀβολῶν, κὴ ὃ ἐπίθωσ[ε ποτ]θέσθη τῶν χρόνων, τρεισχειλιάων ἑξακα[τιάων] πεντείκοντα δύ' ὀβολῶν, ὥστε ὁμολόγοι π[ιθο]μέναν ἀποδιδόμεν οὗτα τὰ χρείματα [τὰμ πό]λιν Χορσιείων τῆ πόλι Θισβείων διὰ ἔνδεκα ἐ[τέ]ων, τὸ ἐπιβάλλον τῶ ἐνιαυτῶ ἑκάστω δραχμ[ὰς] χειλίας τριακατίας ὀγδοείκοντα πέντ' ὀβ[ολώς.

[61] *SEG* 22:407. Chorsiai's obligations, ll. 13-21: κὴ] τὰμ μὲν πόλιν Χορσιείων καταβαλλέμεν [τῆ πό]λι Θισβείων τὰν ἐπαβολὰν κατ' ἐνιαυτὸν ἕκ[αστον], καθ' ἃ αὐτὰ ἀξίωσε, ἐπὶ χ' ὁ ταμίας τὰς ἀπ[ολογί]ας ἄγει ὁ ἐν Θίσβης, τῶ Δαματρίω μεινός, πα[ρεόν]των τῶν πολεμάρχων κὴ τῶν κατοπτάων πε[δὰ τᾶς π]λείθας· ἀρχέμεν δὲ τῶ χρόνω τὰς καταβολ[ᾶς τ]ὸν ἐνιαυτὸν τὸν ἐπὶ Ἐμπεδιώνδαο ἄρ[χον]τος Βοιωτοῖς. Thisbe's obligations, ll. 21-34: ἀ δὲ πόλις Θισβείων ἰαέτω τὰν [πό]λιν Χορσιείων καρπίδδεσθη τὰν χώραν εἴ κ[α καταβ]βάλλει τὰς καταβολὰς τὰς ἐν τοῖ ὁμολ[όγοι γεγραμ]μένας ἐν τοῖς χρόνοις τοῖς γεγραμμ[ένοις, κὴ μεὶ] ἐπικωλυέτω κὰτ τὰν οὐπεραμερίαν. ἐπ[ὶ δέ κα οἰ]κονομείσει ἀ πόλις Χορσιείων τῆ πόλι Θι[σβείων] τὰ χρείματα οὗτα τὰ ἐν τοῖ ὁμολόγοι γ[εγραμμένα], ἐσλιανάτω ἀ πόλις Θισβείων τὰν οὐπ[ε]ρ[αμε]ρίαν τὰν κὰτ τᾶς πόλιος Χορσιείων· [εἰ δέ κα] μεὶ ἐσλιήνει τὰν οὐπεραμερίαν κα[ταβε]βλειώσας τ[ᾶ]ς πόλιος Χορσιείων τὰ [χρείμα]τα κὰτ τὰ γεγραμμένα, ἅ τε οὐπεραμ[ερία] ἄκουρος ἔστω κὴ ἀποπισάτω ἀ πόλις [Θισβείων] τῆ πόλι Χορσιείων διπλάσια τὰ χρεί[ματα].

[62] *IG* IX,1 226, 1-14: [— εἰ δέ καμὴ] διοικῆ ἀ πόλις τῶν Δρυμίων τὰς [καταβολ]ὰς πάσας, καθὼς [ἐ]πρ[ε]σβεύσα[ντο καὶ] συ[νεχ]ωρήθη αὐτοῖς, κατὰ νόμον ἔ[στων ἐπὶ τὸ] δάνειον τὸ ἐξ ἀρχᾶς πᾶν τῶι θεῶι καὶ [τοῖς] Οἰταίοις καὶ Αἰ<τωλ>οῖς αἱ οἰκονομίαι αἱ κατὰ [τᾶς] πόλιος τῶν Δρυμίων. εἰ δέ κα διοικήσῃ ἀ πό[λις] τῶν Δρυμίων τὰς ἐνήκοντα μνᾶς, κα[θ]ὼς ἐν τᾶι ὁμολογίαι γέγραπται, τῶι θεῶι καὶ [τ]οῖς Οἰταίοις, ἀπολελυμένα ἔστω [το]ῦ δανείου παντός, καὶ ἀ συνγραφὰ ἀτε[λ]ὴς καὶ ἀρμένα ἔστω. τὰν ὁμολογίαν [φ]υλάσσοντι Κλεότιμος, Λόχαγος Καλλιπο[λῖται], Λαϊάδας Ἀμφισσεύς. Ἐξετείσαντο. (200-150). Gofas 121-122; Dareste, Haussoullier & Reinach 1965 II, 362-369.

[63] *SEG* 22:432: ἐπιδεὶ ἐν ὁμο[λογίη(?) τῆ] πόλι κεχρει[μ]ενάων Κλευέδ[ρας] [κὴ] Ὀλιουμπίχας ἔν τε τῦς προϊό[ντεσσι] [χρόνυς(?)], νιοῦν δὲ ἀφειώσας Κλευϝέ[δρας κὴ Ὀλιουμπίχας(?)] τὰν πόλιν ὧν ἐπιδεδ[όαν]θι χρειμάτων τὴ πολεμαρχίη ἐν τῆ ἀρ[χῆ, δοθίσας(?)] δὲ αὐτῆς κὴ ἐν τοῖ [---] ἐπινο[μί]ας πὰρ τᾶς πόλιος καθ' ὁμολ[ογίαν] ἑκατέρη βότων ἰδίων διακατίων, [νιοῦν(?)] ἐπικε[κ]ομίδαθη τὰ χρείματα· καλ[ὸν δέ] ἐστι κὴ τὰν πόλιν φανερὰν εἶμεν ἐμ[μέν]ωσα[ν ἐ]ν [τ]ῆς ὁμολογίης κὴ εὐϝεργ[ετίωσαν τὰς κ]εχρει[μέ]νως α[ὐτ]ῆ· δεδό[χθη].

surviving decree of the Kopaian assembly informs us about the true nature of such loans, and their considerable benefits for the creditors. A similar ὁμολογὰ was passed between Euboulos from Elateia and the city of Orchomenos after the loan was fully repaid, to extend his right of free pasturage for an additional period of four years.[64] Orchomenos' severe financial problems in the course of the third century BCE are reflected in a well-known inscription[65] which records all the stages of the loan by Nikareta from Thespies – perhaps originally by her father.[66] Failing to repay the loan, the city had to make an agreement (ὁμολογὰ) with Nikareta about the sum of money to pay with new terms and conditions;[67] a copy of the ὁμολογὰ was deposited with a Thespian citizen.[68]

6. The Ephesian law on mortgage debts

Finally, *homologia* terminology is used in an Ephesian law[69] on the regulation of mortgage debts, promulgated in the late fourth century BCE, after a war between Lysimachos and Demetrios which caused a general state of poverty. Among others, the law provided for an arbitrated estimation of the value of the land as an alternative to the usual practice. [70] In ll. 75-77, the law establishes that for those cases in which

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[64] *IG* VII 3171, C 25-40: ἄρχοντος ἐν Ἐρχομενῦ Θυνάρχω, μεινὸς Ἀλαλκομενίω, ἐν δὲ Γελατίῃ Μενοίταο Ἀρχελάω, μεινὸς Πράτω, ὁμολογὰ Εὐβώλυ Γελατιήυ κὴ τῇ πόλι Ἐρχομενίων· ἐπιδεὶ κεκόμιστη Εὔβωλος πὰρ τᾶς πόλιος τὸ δάνειον ἅπαν κὰτ τὰς ὁμολογίας τὰς τεθείσας Θυνάρχω ἄρχοντος μεινὸς Θειλουθίω, κὴ οὔτ' ὀφείλετη αὐτῦ ἔτι οὐθὲν πὰρ τὰν πόλιν, ἀλλ' ἀπέχι πάντα περὶ παντὸς κὴ ἀποδεδόανθι τῇ πόλι τὺ ἔχοντες τὰς ὁμολογίας, εἶμεν ποτιδεδομένον χρόνον Εὐβώλυ ἐπινομίας ϝέτια πέτταρα βούεσσι σοὺν ἵππυς διακατίης ϝίκατι, προβάτυς σοὺν ἤγυς χειλίης. Dareste, Haussoullier & Reinach 1965 I, 303-311; Cook 1987, 43; Bresson 2015, 136-137.

[65] *IG* VII 3172; Dareste, Haussoullier & Reinach 1965 I, 276-303; Thür 2010. Velissaropoulos-Karakostas 2011 II, 212-213, 436-451.

[66] Thür 2010, 757 n. 2 reconstructs the documents I–VII in chronological order: *Sungraphe* of a loan (not on the stone); 1) IV ll. 61–75: 5 *huperameriai;* 2) VII ll. 123–169: *homologa (*agreement between N. and the polis about payment of the *huperameriai;* 3) VI ll. 78–122: *sungraphe;* 4) III ll. 40–60: decree of the Orchomenians; 5) VIII ll. 169–178: *diagrapha* at a bank in Thespiae; 6) II ll. 8–40. Decree of the Orchomenians; 7) V ll. 75–77: name of the scribe in Thespiae who cancelled the *huperameriai*; 8) I ll. 1–7: title of the inscription.

[67] *IG* VII 3172, VII 123-5: Ὀνασίμω ἄρχοντος Βοιωτοῖ[ς], μεινὸς Πανάμω, ὁμολογὰ Νικαρέτη Θίωνος Θεισπικῆ, παριόντος Νικαρέτη Δεξίππω Εὐνομίδαο τῶ ἀνδρὸς Θε[ι]σπιεῖος, κὴ τῇ πόλι Ἐρχομεν[ί]ων.

[68] *IG* VII 3173 (ca 240-230 BCE) reports another loan of Orchomenos from an unknown person. See ll. 16-7: τὸ ὁμόλογον [π]ὰρ [Ὀ]νάσιμον Θιογίτονος.

[69] Cf. another decree of the demos of Ephesos from 86/85 BCE, deferring and annulling legal actions and providing incentives in the war against Mithradates, *Ephesos* 135, 48-52: προελθόντες δὲ εἰς τὸν δῆμον καὶ οἱ δεδανεικότες <κατὰ> τὰ συμβόλαια τά τε ναυτικὰ καὶ κατὰ χειρόγραφα καὶ κατὰ παραθήκας καὶ ὑποθήκας καὶ ἐπιθήκας καὶ κατὰ ὠνὰς καὶ ὁμολογί[α]ς καὶ διαγραφὰς καὶ ἐκχρήσεις πάντες ἀσμένως καὶ ἑκουσίως συνκαταθέμε[νοι] τῶι δήμωι, ἀπέλυσαν τοὺς χρεοφιλέτας τῶν ὀφειλημάτων.

[70] *Ephesos* 4, 74-77, 85-86: Cf. 24-26: ἂν δέ πως ἄλλως πρὸς αὐτοὺς ὁμολογήσωσιν ὑπὲρ τῆς διαιρέσεως καὶ ἀπογράψωνται π[ρὸ]ς τοὺς ἐπὶ τοῦ κοινοῦ πολέμου, οὕτως αὐτοῖς εἶναι, ὡς ἂν ὁμολογήσωσι πρὸς ἀλλήλο[υ]ς. Dareste, Haussoullier & Reinach 1965 I, 30-47 (part); Asheri 1969, 42-47, 108-114; Avilés 2012, 62-64; Cassayre 2014, 33-45. Translation Avilés 2012.

a creditor has already lawfully seized the debtor's landed property, if this happened before the month Poseideon, the seizure is to remain in force, except in the case that the debtor and the creditor have willingly agreed otherwise with one another (εἰ μή τι ἄλλο ἑκόντες πρὸς αὐτοὺς ὡμολογήκασιν); according to this clause, private agreements are to prevail over statutory provisions:

> ὑπὲρ τῶν δανε[ιστ]ῶν τῶν ἐμβεβηκότων εἰς κτήματα· ὅσοι μὲμ πρὸ μηνὸς Ποσιδεῶνος τοῦ ἐπὶ Δη[μ]αγόρου ἐμβάντες εἰς κτήματα κατὰ πράξεις ἔχουσιν τὰ κτήματα καὶ νέμονται, εἶναι [αὐ]τοῖς κυρίας τὰς ἐμβάσεις, εἰ μή τι ἄλλο ἑκόντες πρὸς αὐτοὺς ὡμολογήκασιν.
>
> About the creditors who have seized (the debtor's) property: For all those who before the month Posideon under the magistracy of Demagoras took possession of pieces of land by lawful seizure and now possess and cultivate them, their appropriations shall be valid, unless (those involved) have willingly agreed otherwise with one another.

Further on (ll. 85-86), the law addresses cases where agreements between the debtor and the creditor have been made without the latter having seized the mortgaged property, and stipulates that if the debtor is still cultivating the land and has voluntarily made an agreement with the creditor (ἑκόντες τι συνωμολόγηνται) without compulsion, whatever they have agreed shall be valid:

> εἰ δέ τινες μὴ ἐμβάντων τῶν δανειστῶν αὐτοὶ νεμόμενοι τὰ κτήματα ἑκόντες τι συνωμολόγηνται πρὸς τοὺς δανειστὰς μὴ βιασθέντες, εἶναι αὐτοῖς τὰ ὡμολογημένα κύρια.
>
> If the creditor has not seized the property but the debtor is still cultivating it and has voluntarily made an agreement with the creditor without compulsion, whatever they have agreed shall be valid.

The phrase ἑκόντες ὡμολογήκασιν in the Ephesian law, just like the expression ὁμόλογον ἐθελούσιον and similar as we saw above, provides an insightful parallel with the Athenian legislation on *homologia* which could shed light on the significance of the contracting parties' volition in private contracts and on the interpretation of its impact.

Conclusion

In epigraphy, *homologia* terminology is mainly attested in three categories of texts: the first, smallest, category comprises statutes (law of Gortyn, Ephesian decrees), the second includes texts referring to public loans, and the third category, by far the largest, comprises interstate agreements of various types (see Table). Epigraphic evidence offers a picture of *homologia* which differs from the one in the study of the papyri, where it usually denotes a unilateral statement, a recognition of a debt. Starting from the fifth century BCE, the terms *homologia* and *homologein* were widely used in the context of interstate relations to denote bilateral agreements between states or between states and other entities. In this context, an *homologia* sealed the formal

termination of a dispute between the parties, and contained the terms and conditions for their peaceful coexistence in the future. The terms of the *homologia* were shaped after negotiations between the two parties involved or, as it was frequently the case, they were the outcome of an arbitration or mediation from a third party, either another city or a League.[71]

The findings of the epigraphic survey shed new light on the nature and the origins of *homologia.* They do not support the assumption about the procedural origins of the term but point instead to an original meaning in accordance with the etymology of the word (*homou+lego,* "to say together"),[72] which is that of a consensus or agreement. The evidence cited in support of the procedural origin of *homologia* is based on three inscriptional records of public ships and naval equipment from Piraeus, dated to 326, 325 and 323 respectively,[73] which contain the phrase "οἵδε τῶν τριηράρχων τῶν ὁμολογησάντων ἐν τῶι δικαστηρίωι καινὰς ἀποδώσειν τριήρεις καὶ τοὺς ἐμβόλους ὀφείλουσι τεῖ πόλει, τὰς δὲ τριήρεις ἀποδεδώκασιν" (The following trierarchs *homologesan* before the court that they shall give back new triremes to the city; they owe the bronze rams but they have given back the triremes"). However, this evidence is not the earliest epigraphic attestation, and an isolated testimony amidst the large corpus of interstate agreements, whereas the very interpretation of *homologein* as "confessed" is at least questionable. A confession of guilt or a recognition of a fact or claim can only refer to the past or the present; but the infinitive *apodosein* which is the object of *homologesan* is in the future, not in the past tense. Wolff attempted to frame the future infinitive as a statement about a future fact grounded in an existing relationship, not as a declaration of intent that, by itself, constitutes a binding promise.[74] But in this passage, as in the other instances where the subject of *homologein* is

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[71] Cf. the use of *homologia* terminology in the context of private arbitration in fourth-century Athenian oratory: Dem. 33.30 (ὡμολογημένων); Is. 2.40 (ὁμολογηθέντα); Is. 5.31 (ὡμολογήσαμεν). Isocr. 17.19 (ὡμολόγησεν), Isocr. 18.11 (ὡμολογημένοις) and 18.14 (ὡμολογηκὼς).

[72] Weiss 1923, 431; Kussmaul 1969, 30; Jakab 2006, 86; Baltrusch 2008, 32; Gagliardi 2014, 177; Gagarin 2018, 42.

[73] *IG* II² 1628, B, 609-14: οἵδε τῶν τριηράρχων τῶν ὁμολογησάντων ἐν τῶι δικαστηρίωι καινὰς ἀποδώσειν τριήρεις καὶ τοὺς ἐμβόλους ὀφείλουσι τεῖ πόλει, τὰς δὲ τριήρεις ἀποδεδώκασ[ιν] (326/5 BCE); *IG* II² 1629, B, 826-30: οἵδε τῶν τριηράρχων ὀφείλουσιν τοὺς ἐμβόλου[ς] τῶν τὰς καινὰς ὁμολογησάντων ἐν τῶι δικαστηρίωι; ibid. B ll. 1085-92: οἵδε τῶν τριηράρχων] τῶν ὁμολογησάν[των] ἐν τῶι δικαστηρ[ίωι καιν]νὰς ἀποδώσειν τρ[ιήρ]εις καὶ τοὺς ἐμβόλο[υς] ὀφείλουσιν τῆι πόλ[ει], τὰς δὲ τριήρεις ἀπ[ο]/δεδώκασιν (325/4 BCE); *IG* II² 1631, 184-7: [οἵδε τῶν τριηράρχ : ὀφείλο[υσι τοὺς] ἐμβόλους τῶν τὰς καινὰς ὁ[μ]ολογησάντων ἐν τῶι δικαστηρ[ί]ωι; ibid. C 279-283: οἵδε τῶν τριηράρχων τῶν ὁμολογησάντων ἐν τῶι δικαστηρίωι καινὰς ἀποδώσειν τριήρεις καὶ τοὺς ἐμβόλους ὀφείλουσιν τῆι πόλει, τὰς δὲ τριήρεις ἀποδεδώκασιν (323/2 BCE). Καινὰς τριήρεις actually refers to putting a trireme in a complete state of repair, not to undertaking for giving a new ship.

[74] Wolff 1968, 511: "When the fulfillment of an obligation in the future (e.g., ἀποδώσειν) appears as its object, ὁμολογεῖν must also be understood in the sense of stating a future fact justified by other means, but not as a declaration of intent that, by itself, constitutes a binding promise." Yiftach 2023, 464–466 traces Roman influence of the *stipulatio* in papyrological

a future infinitive, interpreting the future infinitive as a statement referring to a future fact that is justified by other means is biased; as Kussmaul (1969, 34) suggested, the only translation which makes sense would be that the trierarchs promised or declared that they shall give back the triremes fully repaired. In this sense, ὁμολογεῖν represents a promise or commitment that, by itself, constitutes a legally binding transaction, as employed by the orators, for example by Isaeus 5.18:[75]

> συγχωρούντων γὰρ ἡμῶν τῷ ἄρχοντι μὴ συναριθμεῖν ἀλλὰ συγχέαι τὰς ψήφους, ἀφίστατο μὲν Δικαιογένης τοῖν δυοῖν μεροῖν τοῦ κλήρου ταῖς Δικαιογένους ἀδελφαῖς, καὶ ὡμολόγει ἀναμφισβήτητα παραδώσειν ἡμῖν ταῦτα τὰ μέρη. καὶ ταῦτα ἠγγυᾶτο αὐτὸν Λεωχάρης οὑτοσὶ ἃ ὡμολόγει ποιήσειν.
>
> On our agreeing with the archon not to count the votes but to mix them together, Dicaeogenes (III) gave up two-thirds of the estate in favor of the sisters of Dicaeogenes (II) and agreed to hand over these shares without further discussion, and Leochares here undertook to be surety that he would carry out his promise.

Although *homologein* in the sense of confession in court is attested in literary sources from the fourth century on, as in [Arist.] *Ath. Pol*. 52.1, this meaning is invisible in epigraphy. Furthermore, an unbiased interpretation allows a better understanding of *homologein,* which can be used with different meanings in the same period of speech, as is best illustrated in Is. 5.20: οὔτε γὰρ Δικαιογένης τὰ δύο μέρη ἡμῖν τοῦ κλήρου παρέδωκεν, ὁμολογήσας ἐπὶ τοῦ δικαστηρίου, οὔτε Λεωχάρης ὁμολογεῖ ἐγγυήσασθαι αὐτὸν τότε (for Dicaeogenes (III) did not hand over the two-thirds of the estate, though he had agreed in court to do so, and Leochares refuses to admit that he undertook to be surety on that occasion.)

In the epigraphic testimonies pertaining to interstate relations, the terms *homologein*, *homologia*, and *homologon* refer to bilateral agreements with diverse contents that generated mutual obligations. While in the fifth-century Athenian decree for Methone *homologosin* refers to a preliminary agreement on the basis of which the two parties will be brought to terms, in inscriptions from the fourth century onwards, as in the Constitution of the Hellenic League, the *homologiai* are written and publicly displayed agreements, a fact emphasized in many documents thereafter. In inscriptions from the third century and later, *homologia* becomes a synonym to *syntheke*, as in the treaty between Miletus and the Cretan poleis. These agreements were detailed and precise, and contained specific terms and conditions which in many cases survive in the document.

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instances of ὁμολογεῖν followed by an infinitive in tenses indicating future action.

[75] Translation E. S. Forster. See Kussmaul 1969, 34-35. Cf. Is. 11.24: φησὶ γὰρ ὁμολογῆσαί με τοῦ κλήρου τῷ παιδὶ τὸ ἡμικλήριον μεταδώσειν, εἰ νικήσαιμι τοὺς ἔχοντας αὐτόν. καίτοι εἰ μέν τι καὶ αὐτῷ μετῆν κατὰ τὸ γένος, ὡς οὗτος λέγει, τί ἔδει γενέσθαι ταύτην αὐτοῖς παρ᾽ ἐμοῦ τὴν ὁμολογίαν. Dem. 43.26: οὗτοι γάρ, ὅτε οἱ δικασταὶ ἐβούλοντο θανάτου τιμῆσαι τῷ Ἀρεθουσίῳ, ἐδέοντο τῶν δικαστῶν χρημάτων τιμῆσαι καὶ ἐμοῦ συγχωρῆσαι, καὶ ὡμολόγησαν αὐτοὶ συνεκτείσειν.

The ample use of *homologia* terminology in this context is supported by literary evidence. In the earliest attestations of *homologia* and *homologein* in Greek literature, which to my knowledge are to be found in Heraclitus, both terms have the meaning of agreement.[76] Furthermore, it is interesting to observe that in fr. 80 DK, 62 B, where Heraclitus contrasts the opposites, war and discord on the one hand, and peace and concord, on the other, he employs *homologia* in a context that strongly recalls inscriptional evidence:

> τῶν δὲ ἐναντίων τὸ μὲν ἐπὶ τὴν γένεσιν ἄγον καλεῖσθαι πόλεμον καὶ ἔριν, τὸ δ᾽ ἐπὶ τὴν ἐκπύρωσιν ὁμολογίαν καὶ εἰρήνην, καὶ τὴν μεταβολὴν ὁδὸν ἄνω κάτω, τόν τε κόσμον γίνεσθαι κατ᾽ αὐτήν.
>
> Of the opposites, that which tends to birth or creation is called war and strife, and that which tends to destruction by fire is called concord and peace.

Similarly, in Herodotus and Thucydides *homologia* terminology is exclusively used in the meaning of agreement. In his narration of Pisistratus' return to Athens after his first exile, Herodotus refers to Megacles' proposal, offering Pisistratus his daughter to marry along with his assistance in regaining the sovereign power. Pisistratus agreed on these terms (ὁμολογήσαντος) and when he got back the tyranny, he married Megacles' daughter according to the agreement (κατὰ τὴν ὁμολογίην).[77] Herodotus refers to an *homologia* in nine more instances, in all of which it is question of coming to an agreement for peace[78]. The terms *homologia* and *homologein* appear frequently in Thucydides' *History*,[79] where they are employed to denote various types of agreement between two states, for example an agreement setting the conditions for temporary peace, a truce (σπονδαί),[80] or as an alternative to the word alliance

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[76] E.g. Heraclitus F 51DK: οὐ ξυνιᾶσιν ὅκως διαφερόμενον ἑωυτῷ ὁμολογέει· παλίντροπος ἁρμονίη ὅκωσπερ τόξου καὶ λύρης (Men do not know how what is at variance agrees with itself. It is an attunement of opposite tensions, like that of the bow and the lyre).

[77] Hdt.1.60.2-3: περιελαυνόμενος δὲ τῇ στάσι ὁ Μεγακλέης ἐπεκηρυκεύετο Πεισιστράτῳ, εἰ βούλοιτό οἱ τὴν θυγατέρα ἔχειν γυναῖκα ἐπὶ τῇ τυραννίδι. ἐνδεξαμένου δὲ τὸν λόγον καὶ ὁμολογήσαντος ἐπὶ τούτοισι Πεισιστράτου, μηχανῶνται δὴ ἐπὶ τῇ κατόδῳ πρῆγμα εὐηθέστατον (…). 61.1: ἀπολαβὼν δὲ τὴν τυραννίδα τρόπῳ τῷ εἰρημένῳ ὁ Πεισίστρατος κατὰ τὴν ὁμολογίην τὴν πρὸς Μεγακλέα γενομένην γαμέει τοῦ Μεγακλέος τὴν θυγατέρα.

[78] Thus *homologia* is used for a treaty between Ionians and Aeolians (1.150.2); between Persia and Egypt (3.13.1); between Thrace and Persia (4.118.2); between Barcaeans and Persians (4.201.2); between Athens and Aegina (6.85.3); between Sparta and Persia (7.139.4); between Gelon and Megara Hyblaia (7.156.2); between the Pisistrtatides and the besieged Athenians (8.52.2); and between Athens and Persia (8.141.1-2).

[79] Forty-two times according to Scheibelreiter 2024, 187-8, including some metaphorical uses of the terms..

[80] E.g. Thuc. 3.4.2-3: ἀπαράσκευοι δὲ οἱ Μυτιληναῖοι καὶ ἐξαίφνης ἀναγκασθέντες πολεμεῖν ἔκπλουν μέν τινα ἐποιήσαντο τῶν νεῶν ὡς ἐπὶ ναυμαχίαν ὀλίγον πρὸ τοῦ λιμένος, ἔπειτα καταδιωχθέντες ὑπὸ τῶν Ἀττικῶν νεῶν λόγους ἤδη προσέφερον τοῖς στρατηγοῖς, βουλόμενοι τὰς ναῦς τὸ παραυτίκα, εἰ δύναιντο, ὁμολογίᾳ τινὶ ἐπιεικεῖ ἀποπέμψασθαι. καὶ οἱ στρατηγοὶ τῶν Ἀθηναίων ἀπεδέξαντο καὶ αὐτοὶ φοβούμενοι μὴ οὐχ ἱκανοὶ ὦσι Λέσβῳ πάσῃ πολεμεῖν.

(συμμαχία),[81] whereas more often *homologia* terminology is used to denote a capitulation treaty.[82] It will not come as a surprise that Polybius in his *History* refers to numerous *homologiai* (with 47 occurences) in an international law context, insisting on their written form.[83]

Although most international agreements were not based on equality,[84] they were nonetheless binding for all the parties involved,[85] since they were founded on the concept of mutual πίστις. As Polybius observes, the violation of πίστις in international sworn and written agreements (παρασπόνδημα) was as serious an ἔγκλημα as breaching the statutory and customary laws. [86] Once the agreement was signed and the oaths were formally taken, πίστις obliged the parties to keep the oaths and abide by the terms of the *homologia*, in order to avoid the consequences of non-conformity. The context of international relations and diplomacy, where the interplay of power depended on means other than court decisions, is by its nature different from private law. This diverse and nuanced picture of *homologia* offered by epigraphy[87] may inform the concept of *homologia* in other fields of ancient Greek law with a wider perspective.

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[81] E.g. Thuc. 4.132.1: περιτειχιζομένης δὲ τῆς Σκιώνης Περδίκκας τοῖς τῶν Ἀθηναίων στρατηγοῖς ἐπικηρυκευσάμενος ὁμολογίαν ποιεῖται πρὸς τοὺς Ἀθηναίους διὰ τὴν τοῦ Βρασίδου ἔχθραν.

[82] Scheibelreiter 2024, esp. 188-193.

[83] For example Polybius 21.5.13: γραφεισῶν δὲ τῶν ὁμολογιῶν, ὁ μὲν Μάνιος, λύσας τὴν πολιορκίαν καὶ παραδοὺς ἅπαν; 15.17.3: καὶ πρῴην παρασπονδήσαιεν, ἀθετήσαντες τοὺς ὅρκους καὶ τὰς ἐγγράπτους ὁμολογίας; 36.9.15: παρασπόνδημα δὲ τὸ παρὰ τὰς ἐνόρκους καὶ τὰς ἐγγράπτους ὁμολογίας πραττόμενον. Cf. Memnon, *FGH* 434 F18.10 (Photios 229b), on the friendship between Rome and Herakleia Pontika, in 190 BCE: καὶ χαλκοῖ πίνακες δύο τὰς ὁμολογίας ἴσους καὶ ὁμοίας ἔφερον, ὁ μὲν παρὰ Ῥωμαίοις ἐν τῷ κατὰ τὸ Καπιτώλιον ἱερῷ τοῦ Διὸς καθηλώθη, ὁ δὲ κατὰ τὴν Ἡράκλειαν καὶ αὐτὸς ἐν τῷ τοῦ Διὸς ἱερῷ.

[84] Nörr 1989, 140-141 overemphasizes the existence of a dominant party when he compares insterstate *homologia* with *deditio*.

[85] Bickermann 1950, 110. Contra Baltrusch 2008, 32.

[86] Polybius 36.9.14-17: τριῶν γὰρ οὐσῶν διαφορῶν, εἰς ἃς τὸ πᾶν ἔγκλημα φύσει καταντᾶν, εἰς οὐδεμίαν ἐμπίπτειν τούτων τὸ γινόμενον ὑπὸ Ῥωμαίων: ἀσέβημα μὲν γὰρ εἶναι τὸ περὶ τοὺς θεοὺς καὶ τοὺς γονεῖς καὶ τοὺς τεθνεῶτας ἁμαρτάνειν, παρασπόνδημα δὲ τὸ παρὰ τὰς ἐνόρκους καὶ τὰς ἐγγράπτους ὁμολογίας πραττόμενον, ἀδίκημα δὲ τὸ παρὰ τοὺς νόμους καὶ τοὺς ἐθισμοὺς ἐπιτελούμενον: ὧν οὐδὲν κατὰ τὸ παρὸν ἐνόχους εἶναι Ῥωμαίους: οὐ γὰρ εἰς τοὺς θεοὺς οὐδ᾽ εἰς τοὺς γονεῖς οὐδ᾽ εἰς τοὺς τεθνεῶτας ἐξαμαρτάνειν, οὐδὲ μὴν ὅρκους οὐδὲ συνθήκας παραβαίνειν, τὸ δ᾽ ἐναντίον αὐτοὺς ἐγκαλεῖν τοῖς Καρχηδονίοις ὅτι παραβεβήκασι. καὶ μὴν οὐδὲ νόμους οὐδ᾽ ἐθισμοὺς οὐδὲ τὴν κατ᾽ ἰδίαν πίστιν ἀθετεῖν.

[87] Cf. Scheibelreiter 2024, 183 on epigraphic and literary sources.

Table of *homologia* terminology in interstate context.Treaties with cities, kings or other entities

N	Title	Date	Passage
1	Athenian decree for Methone	424/3	*IG* I³ 61, l. 23
2	Arbitration between two groups of the Athenian genos of the Salaminioi	363/2	*Agora XIX,* Leases L 4a, ll. 4-5
3	Arbitration of Argos between Kimolos and Melos	after 338	*IG* XII,3 1259, ll. 5-6
4	Decree of Milesian demos ratifying treaty of friendship with Kyzikos	334/323	*Miletos* 32, l. 3
5	Letter of king Antigonos to Skepsis	311	*IMT Skam/NebTäler* 388, ll. 5-6, 31, 47, 53, 63, 71
6	Response of Skepsis to Antigonos, Decree of Skepsis	311	*IMT Skam/NebTäler* 389, ll. 5, 36-37
7	Decree containing treaty among Iasos, Ptolemy I, and leaders of mercenaries	309/304	*Iasos* 83, ll. 18, 37, 45, 46
8	Letters to Teos from Antigonos I ordaining synoikismos of Teos and Lebedos	c. 303	*Teos* 59, ll. 30, 50, 52
9	Constitution of the Hellenic League of Antigonos and Demetrios	302	*IG* IV²,1 68 Face A, frg. I, l. 13; frg. III, l. 92; Face B fr. V ll. 133, 137
10	Military convention between the cavalries of Orchomenos and Chaironeia	c. 287-280	*SEG* 28:461, l. 7
11	Treaty between Athens and Sparta (Chremonides' Decree)	269/8	*IG* II³,1 912, ll. 30-31
12	Arbitration by Kassandreian judges for the borders of Pereia, Phylladon and Peuma	c. 270-260?	*FD* III 4:351, l. 25
13	Alliance between the Aitolian and Acarnanian Leagues	c. 263-2	*IG* IX,1² 1:3 A, l. 3
14	Agreement between Eumenes I and his mercenaries	sh. aft. 263	*IvP* 13, ll. 16, 40, 48, 50
15	Treaty between Miletus and Cretan poleis	after 260	*IC* I viii 6, ll. 6, 11, 29
16	Decree of Smyrna on sympoliteia with Magnesia (Sip.) and relations with King Seleukos II	245/243?	*Smyrna* 9, ll. 22, 23, 25, 26, 27, 28, 29, 30
17	Treaty of *sympoliteia* between Smyrna and Magnesia (Sip.)	245/243?	*Smyrna* 14, ll. 41, 58, 63, 73

18	Treaty of isopoliteia between Messene and Phigalea arranged by the Aitolian League	c. 240	*IG* V,2 419, ll. 15, 21
19	Decree of the Achaian League regulating the entrance of Orchomenos into the League	after 235	*IG* V,2 344, l. 9
20	Arbitration between Argos and Kleonai (by the Achaian League?)	c. 229	*SEG* 23:178, l. 8
21	Decree of the Acarnanian *koino*n for joint administration of the sanctuary of Apollo at Actium with the city of Anactorion	216	*IG* IX,1² 2:583, ll. 37, 62
22	Sympoliteia between Melitaia and Pereia	213/2	*IG* IX,1² 1:188, l. 3
	Arbitration by Eretria between Naxos and another state(?)	3rd c.?	*IG* XII supp., p. 105, ll. 1-2, 8
23	Honorific decree of the demos of Istros-Histria for Agathokles	c. 200	*IScM* I 15, ll. 36, 40
24	Treaty between unknown poleis, arbitration of Sikinos	3rd/2nd c.	*IG* XI,4 1063, ll. 2, 9
25	Mediation of Karpathos between two unknown poleis	3rd or 2nd c.	*IG* XII,1 1031, l. 8
26	Agreement between Troizen and unknown city (with the mediation of Athens?)	early 2nd c.	*IG* IV 752, l. 17
27	Treaty between Boeotians and Phokeis	sh. aft. 196	*IG* IX,1 98, l. 17
28	Treaty between Miletos and Pidasa on sympoliteia	188/7?	*Miletos* 61, l. 2
29	Treaty of isopoliteia between Miletos and Herakleia	180-161	*Miletos* 39, ll. 27-28.
30	Sympoliteia between Stiris and Medeon	shortly bef. 170	*IG* IX,1 32, A ll. 4-5, B ll. 65-6, 70
31	Letter of praetor Marcus Aemilius to boule and demos of Mylasa introducing Senatus Consultum concerning dispute between Magnesia Mai. and Priene	c. 175- 160	*Magnesia* 121, l. 48
32	Arbitration of Thebes between Boumelita and Halai	after 167?	*FD* III 1:362+4:354, A Col. I l.41, A/B col. 2, l. 41
33	Boundary demarcation between Gortyn and Knossos	166/5	*IC* IV 182, l. 17

34	Dispute settlement between Troizen and Arsinoe by officials of Prolemy VI	ca. 163-146	*IG* IV²,1 76, l. 3
35	Treaty between Ambrakia and Charadros concerning their frontiers	c. 160	*SEG* 35:665, block A ll. 2-3, 37
36	Roman ratification of the Knossian judgment for Lato and Olous	113	Chaniotis, *Verträge* 54/56b, l. 4
37	Dispute settlement between Hierapytna and Itanos by Magnesia and Rome	112/1	*IC* III iv 10, l. 25
38	Treaty between Lyttos and Olous	111-110	*IG* II² 1135, C l. 13
39	Boundary settlement between Thronion and Skarphai	c. 110	*FD* III 4:42, 3, 37, 39
40	Treaty between Engaioi and Thronion	100-50	*FD* III 4:159, ll. 1, 7, 9, 10, 11, 13
41	Arrangement of cities of Asia Minor for their debt to the sanctuary of Athena	77	(), *IMT Skam/NebTäler* 170 [A: Ilion], a.1.

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LAURA PEPE (MILANO)

ALLE ORIGINI DELLA ὉΜΟΛΟΓΙΑ. RISPOSTA A MARIA YOUNI

Nel suo saggio Maria Youni è ritornata sulla ὁμολογία, un tema che è stato affrontato a più riprese nel passato e nel presente ma che rimane ancora estremamente dibattuto. Come è ben noto, negli anni gli studiosi si sono concentrati soprattutto sullo studio delle occorrenze e del significato di ὁμολογία/ὁμολογεῖν nei papiri e nelle testimonianze letterarie, e gli ultimi decenni hanno visto una considerevole proliferazione di contributi e studi tesi in particolare a indagare il valore dell'ὁμολογία nell'Atene classica, tra V e IV sec. a.C. In questo frangente, la dottrina continua da tempo a essere divisa tra la tesi "consensualista", che intende la ὁμολογία come accordo tra le parti – bilaterale dunque – in vista di una prestazione futura; e quella "realista", per cui la ὁμολογία è il riconoscimento unilaterale, da parte del debitore, di un avvenuto atto di disposizione da parte del creditore (*Zweckverfügung*): riconoscimento che può avvenire in sede processuale, predibattimentale, ovvero extraprocessuale[1].

Il punto controverso relativo al significato, al contenuto, alla natura (uni- o bi-laterale) dell'ὁμολογία non riguarda peraltro soltanto il diritto privato; al contrario, investe anche l'ambito che potremmo definire del "diritto internazionale", ed è questo in particolare il campo sul quale si è concentrato il contributo di Youni. La quale, nella sua relazione, ha voluto tracciare un quadro di insieme focalizzato soprattutto, anche se non esclusivamente, su testimonianze epigrafiche, meno frequentate rispetto a quelle letterarie o papirologiche; e che presentano il vantaggio, come la studiosa stessa ha giustamente sottolineato, di riferirsi a una realtà multiforme, a un quadro ampio tanto dal punto di vista geografico quanto da quello temporale. La conclusione a cui Youni è giunta a seguito della sua analisi, relativa in particolare a iscrizioni che coprono un arco temporale di sei secoli (dal V a.C. al I d.C.), è di fatto duplice: quel che emerge dalle attestazioni epigrafiche, confermate peraltro da alcune fonti letterarie, è innanzitutto che la ὁμολογία, prima di assurgere a termine tecnico di quello che oggi chiameremmo "diritto delle obbligazioni", era impiegata sin dalle origini nel contesto delle relazioni internazionali; e, inoltre, che ὁμολογία e termini connessi

[1] Per una sintesi dello *status quaestionis* e della relativa bibliografia rimando a Gagliardi 2014 (con la *response* di Wallace 2014) e Gagliardi 2015; l'a., favorevole alla prima delle tesi ricordate, ritiene che ad Atene dovessero esistere leggi – due, per la precisione – che prevedevano l'esistenza di contratti basati sul consenso (da intendere dunque come fonte di obbligazioni), e che riconoscevano la validità degli accordi raggiunti dalle parti purché questi non fossero viziati, ovvero non violassero norme che oggi chiameremmo "imperative". Al riguardo vd. anche, tra i contributi più recenti, Dimopoulou 2014, Avilés 2015. Quanto alla tesi della *Zweckverfügung*, avanzata da Wolff 1957, essa è condivisa, tra gli altri, da Thür 1977, pp. 152 ss.; e cfr. anche Thür 2013.

rimandano, almeno nel loro valore prevalente, a un *mutual agreement*, dunque a un accordo bilaterale tra "stati".

Nella impossibilità di discutere nel dettaglio i molti documenti che Youni ha preso in esame, mi limiterò a svolgere qualche riflessione sulle origini dell'ὁμολογία e dell'ὁμολογεῖν, partendo dalle prime testimonianze in ordine di tempo in cui i due termini sono attestati, in modo da giungere ad alcune conclusioni, naturalmente parziali, che potranno essere poi confrontate con quelle di Youni. Specifico che è mia intenzione limitare le indagini alla tradizione manoscritta, e preannuncio che il quadro che da esse emerge dà conto, a mio avviso, di una realtà più complessa e sfaccettata di quella che risulta dalle testimonianze epigrafiche.

Le fonti più antiche che Youni ha preso in considerazione – e segnatamente: il frammento di Eraclito, tràdito da Diogene Laerzio (D.L. 9.8 = Heracl. fr. 80 D.-K.), in cui a πόλεμος ed ἔρις si oppongono la ὁμολογία e la εἰρήνη (l'armonia/concordanza e la pace); la disposizione del codice di Gortina relativa al caso in cui le parti μὴ ὁμολογίωντι sull'ammontare del riscatto che il prigioniero liberato deve corrispondere a chi lo ha liberato (*IC* IV 72 col. VI 51); le molteplici occorrenze di ὁμολογίη/ὁμολογεῖν in Erodoto –, ebbene tutte queste testimonianze erano già ricordate da Peter Kussmaul in *Synthekai*, la sua *Dissertation* del 1969. Intento di Kussmaul era quello di negare che il significato originario di ὁμολογεῖν fosse quello di "ammettere" o "confessare", come sostenuto *in primis* da Partsch (soprattutto sulla base di documenti papiracei)[2], oltre che da Pringsheim (il quale scriveva che "very probably the Greek ὁμολογία was originally a confession in court and thus created a liability on the defendant")[3]; per Kussmaul, in origine, ὁμολογεῖν implicava piuttosto il "concludere un accordo"[4]. E Youni stessa riconosce che questo è il significato che meglio si adatta al valore primo della parola (ὁμοῦ λέγειν, "dire la stessa cosa").

Ora, una ricerca sul *Thesaurus Linguae Graecae* potrebbe rivelare occorrenze più antiche rispetto a queste, che vale la pena almeno menzionare – il condizionale è d'obbligo perché le incertezze nella tradizione del testo (da tenere presenti, del resto, anche in relazione alla già citata frase di Eraclito) non possono che invitare a considerarle con il beneficio del dubbio; il che vale anche per la loro natura "eccentrica" rispetto a un campo prettamente giuridico.

Mentre non compare in Omero – anche se poi vi è chi postula che precursori della ὁμολογία fossero gli accordi tra eroi per il prezzo di riscatto[5] –, la più antica

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[2] Partsch 1920, pp. 516 ss. desumeva le sue conclusioni dalle ricerche papirologiche di Schwartz 1913 [1961], e assumeva inoltre che il significato di ὁμολογία come "accordo" fosse secondario, derivato dal valore primario di "confessione", "riconoscimento".

[3] Pringsheim 1950, pp. 26 ss. anche se poi non si capisce come questo valore, a sua detta originario, si accordi con quello riscontrato negli "oldest texts which use this term", cioè quelli di Erodoto, dove esso indica i "terms of peace". Per una critica alla posizione di Pringsheim vd. anche Maffi 1986 (il quale, fonti alla mano, nega in radice la possibilità che la ὁμολογία contrattuale possa discendere dall'ὁμολογία giudiziale).

[4] Kussmaul 1969, pp. 30 ss.

[5] Pringsheim 1950, p. 26.

attestazione del termine sembra trovarsi in un apoftegma attribuito a Periandro (VII-VI sec. a.C.), il tiranno di Corinto che fu anche annoverato tra i sette sapienti[6]. Il motto recita così: ὃ ἂν ἑκὼν ὁμολογήσῃς, <διατήρει>· πονηρὸν <γὰρ τὸ> παραβῆναι [παράβαινε]. Ora, ammesso che la frase, tramandata da Stobeo, sia autentica, avremmo qui un'attestazione precedente a quella eraclitea di ὁμολογία in un contesto non già internazionale bensì privato (a dimostrarlo basta l'uso della II persona singolare), in cui parrebbe inoltre (e di nuovo l'incertezza è imposta dalla laconicità del motto) che sia soltanto una parte a manifestare un assenso ἑκών, "volontariamente", o meglio "senza costrizioni", e ad assumere un impegno che è avvertito, almeno sul piano morale, come vincolante (tant'è che trasgredirlo è πονηρόν).

Allo stesso momento storico risale l'uso del termine in alcune favole di Esopo, anche lui precedente a Eraclito dal momento che, a quanto pare, visse nel VI sec. a.C., al tempo di Creso e Pisistrato. Torno a segnalare che pure in questo caso la tradizione del testo è tormentata, anche se poi la testimonianza è importante se si pensa che, come ben noto, le favole, dove gli animali sono tipi umani, rimandano a situazioni verosimili di ingiustizia e sopruso. Particolarmente significativa mi pare essere la favola che ha protagonisti la volpe, caduta in un pozzo da cui non può uscire, e il capro, che viene attirato nello stesso pozzo, e che la volpe sfrutta per mettersi in salvo, inducendolo a ὁμολογίαι che lei per prima παραβαίνει (τοῦ δὲ τράγου μεμφομένου αὐτὴν ὡς τὰς ὁμολογίας παραβαίνουσαν ἡ ἀλώπηξ ἐπιστραφεῖσα εἶπεν). Ora, in questo contesto il capro si limita ad accettare in modo passivo la proposta che la sola volpe formula senza poi rispettarla (dovrà appoggiare gli zoccoli alla parete e piegare le corna per farla balzare fuori, con la promessa non mantenuta che nell'uscire avrebbe portato in salvo anche lui)[7].

Per addentrarci ora su un terreno più sicuro da un punto di vista testuale e più prossimo a un contesto giuridico, veniamo a Erodoto. Youni ha accennato alla prima occorrenza erodotea, la ὁμολογία tra Megacle e Pisistrato. Dopo che quest'ultimo era stato cacciato una prima volta da Atene a seguito degli intrighi orditi dai sostenitori di Megacle e Licurgo, le agitazioni che si sollevano in città inducono Megacle a mandare un messo a Pisistrato, con la proposta – che questi accetta – di dargli in moglie sua figlia e fargli riavere la τυραννίς: ἐνδεξαμένου δὲ τὸν λόγον καὶ ὁμολογήσαντος ἐπὶ τούτοισι Πεισιστράτου (Hdt. 1.60.2-3; e la ὁμολογία è ribadita in 1.61.1). Di nuovo,

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[6] Stob. *Anth*. 3.1.172 = *Septem Sapientes. Apophthegmata (ex collectione Demetrii Phalerei apud Stobaeum)*, Diels-Kranz, *Die Fragmente der Vorsokratiker*, vol. 1, Berlin 1951[6], p. 61, 15.13.

[7] Aesop. *Fab*. 9. Rilevante anche l'ὁμολογεῖν relativo a un μισθός di cui si parla in *Fab*. 57 (di cui esistono per il vero tre versioni che divergono tra loro per alcuni dettagli): il μισθός in questione è il danaro promesso da una donna anziana malata di occhi a un medico in caso di guarigione. Di nuovo l'ὁμολογεῖν si riferisce a un accordo privato, che implica non un accordo paritetico ma l'accettazione di una parte delle richieste avanzate dall'altra. È peraltro interessante che, in questo caso, il rifiuto della donna di corrispondere quanto pattuito porta la questione davanti agli arconti, ove lei giustifica il proprio comportamento ricordando che il medico la aveva guarita, certo, ma aveva tenuto un comportamento doloso, perché aveva approfittato della sua momentanea cecità per trafugare dalla casa tutti i beni.

una ὁμολογία non internazionale ma tra privati che ancora una volta non indica un *mutual agreement* o una convergenza di consensi, ma l'adesione a termini formulati da altri.

Lo stesso, peraltro, è il valore che può essere riscontrato in tutti gli altri casi erodotei di ὁμολογία "internazionale": denominatore comune mi pare essere l'unilateralità della proposta che viene accettata o rifiutata. Mi limito a ricordare un paio esempi, che ritengo tra i più illuminanti. Nel contesto della seconda guerra persiana, lo storico ricorda in un commento personale che, se gli ateniesi avessero abbandonato la loro terra o si fossero consegnati a Serse; se nessuna città greca si fosse opposta al re dei re per terra o per mare; se le città del Peloponneso fossero state conquistate dai nemici; se queste eventualità si fossero verificate, allora era necessario che anche gli spartani ὁμολογίῃ ἂν ἐχρήσαντο πρὸς Ξέρξην, "concludessero una ὁμολογία con Serse", dove la ὁμολογία non è certo un trattato di pace, ma implica invece un "venire a patti" accettando le condizioni imposte dal nemico – notoriamente, in quel caso, la concessione di terra e acqua in segno di riconoscimento, se non del dominio, almeno della superiorità persiana (Hdt. 7.139.4). Lo stesso vale per la ὁμολογία che viene proposta ad Atene dal persiano Mardonio, con il tramite di Alessandro figlio di Aminta (il contesto è quello successivo alla distruzione dell'acropoli e agli scontri delle Termopile e di Salamina, e precedente la battaglia di Platea). Ebbene, Alessandro porta la proposta del re di restituire agli ateniesi la loro terra e di concederne loro altra, e di ricostruire i templi bruciati sull'acropoli, ma solo "se vorranno venire a patti con me", ἢν δὴ βούλωνταί γε ἐμοὶ ὁμολογέειν (Hdt. 8.140a.2; e cfr. anche 8.140a.4, 141.1,2, 143.1,2, 144.1,3).

Di ὁμολογία si parla ancora a proposito dell'occupazione di Siracusa da parte di Gelone e del suo popolamento grazie alla concessione della cittadinanza agli abitanti di Camarina e a molti dei suoi concittadini di Gela. In quel frangente, ad "acconsentire alla ὁμολογία" (ἐς ὁμολογίην προσεχώρησαν, Hdt. 7.156.2) sono gli abitanti di Megara Iblea, dopo che la loro città era stata da Gelone stretta da assedio. E infatti i termini sono quelli decisi unilateralmente dallo stesso Gelone, il quale, in modo del tutto inaspettato per i megaresi, stabilisce che i ricchi – che pure pensavano di essere puniti per aver mosso guerra contro di lui – vengano condotti a Siracusa e lì fatti cittadini, mentre il popolo, che pure non era responsabile della guerra, viene venduto come schiavo al di fuori della Sicilia.

Mi limito qui ad accennare ad alcune attestazioni successive, tucididee, che depongono nello stesso senso. Nel primo libro lo storico parla della ὁμολογία alla quale gli spartani – siamo nel 458/7 a.C. – costringono (ἀναγκάσαντες) i focesi, colpevoli di aver fatto una spedizione contro la Doride e di aver conquistato una delle loro città (Thuc. 1.107.2); e nel terzo libro è sempre una costrizione (ἠνάγκασαν) a indurre gli abitanti della città siciliana di Mile alla ὁμολογία con gli ateniesi (il contesto è quello della prima spedizione ateniese in Sicilia, del 426/5 a.C.: Thuc. 3.90.3). Per ulteriori occorrenze tucididee rimando al recente e fondamentale contributo di Philipp Scheibelreiter in merito ai rapporti in seno alla lega Delio-attica, di cui riporto, in modo

sintetico, le conclusioni. Se la lega fu originariamente concepita come συμμαχία, alleanza tra città di pari rango con obblighi di assistenza reciproca, gli sviluppi politici del V secolo determinarono il venir meno degli equilibri e la ridefinizione dei rapporti di forza: gli alleati che si ribellavano o intendevano abbandonare la lega erano sottomessi da Atene, e tale assoggettamento era di regola accompagnato da un *Kapitulationsvertrag*, un "trattato di capitolazione", o da *Unterwerfungsverträge*, "trattati di sottomissione", che Tucidide chiama ὁμολογία[8].

In definitiva. Quel che si evince dai testi letterari più antichi in cui si parla di ὁμολογία o di ὁμολογεῖν, e che sono relativi tanto a rapporti tra privati quanto a relazioni di tipo "internazionale", depone a favore della possibilità che la ὁμολογία sia un "dire la stessa cosa" che non implica (o almeno non implica necessariamente) un *mutual agreement*, un "accordarsi" di due parti su un piano di parità. Posto che i parametri applicabili al diritto privato non possono essere indiscriminatamente applicati al diritto internazionale, è però significativo che nell'uno e nell'altro caso il ricorso alla ὁμολογία serva per uscire da un'impasse, e preveda che sia una delle parti, di regola quella in posizione di vantaggio, a stabilire i termini che l'altra conferma e accetta, manifestando il suo assenso[9]. Ma questo naturalmente non implica la necessità che il valore della ὁμολογία sia rimasto immutato nel tempo o che sia identico per le molte realtà politiche di Grecia.

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DONATELLA ERDAS (MILANO)

A TUTELA DEL CREDITORE: OSSERVAZIONI SUI PRESTITI DI PRIVATI STRANIERI ALLE *POLEIS* DI AMORGO

Abstract: Between the end of the 4th century and the early decades of the 3rd century BC, the cities of Amorgos took out a number of loans granted by private individuals. What must have been a crisis (perhaps agricultural?) for the three poleis on the island is documented by the existence of six inscriptions recording loan contracts: five of such contacts concern Arkesine, and one concerns the three cities together (Migeotte, *Emprunt* nos. 49-54). The creditors are always individuals acting alone or in very small groups and, in almost all cases, certainly from outside the island. The contracts have similar characteristics and clauses in common, but also significant differences. A critical analysis of their structure, the parties involved, the guarantees, the risk assessment, and the presence of international law provisions will aim to highlight the uniqueness of this set of documents, on which a rich tradition of studies has been established over time.

Keywords: public loans, foreign creditors, real security, Amorgos

Tra l'ultimo quarto del IV e i primissimi decenni del III secolo a.C. nella polis principale dell'isola di Amorgo, Arkesine, vengono pubblicati una serie di documenti che attestano diverse concessioni di prestiti alla città (forse cinque), e in un caso alle tre *poleis* dell'isola insieme[1]. I prestiti sono consistenti, almeno per quel che concerne il testo più articolato e meglio conservato, e cioè il contratto di prestito stipulato con Praxikles di Nasso (3 talenti d'argento attico)[2], e per quello contratto con cinque

[1] *Emprunt* nos. 49-54. Permane il dubbio che il testo estremamente frammentario di *Emprunt* no. 53 sia una copia di *Emprunt* no. 50, prestito di Alexandros ad Arkesine: in questo caso i prestiti erogati alla polis sarebbero quattro, cui si aggiungerebbe il contratto collettivo che coinvolgeva tanto la stessa Arkesine, quanto Aigiale e Minoa. Tuttavia, l'assenza nella clausola di pubblicazione di *Emprunt* no. 50, ll. 51-52 della menzione della pubblicazione di una seconda copia del contratto favorisce l'ipotesi che *Emprunt* no. 53 sia un testo a se stante, come osserva Migeotte, *Emprunt*, 189.

[2] *Emprunt* no. 49, ll. 1-7: [τύχη] ἀ[γαθή]. μη[νὸς Ἑκ]ατομβαιῶνος ἐν Νάξωι αἰσυμνών[των …] | .ένους καὶ Σωστράτου, ἐν Ἀρκεσίνηι δὲ μηνὸς Μιλτοφοριῶνος, [ἄρ|χ]οντος Κτησιφῶντος, Πραξικλῆς Πολυμνήστου ἐδάνεισεν τ[ῆι πό]|λε[ι] τῆι Ἀρκεσινέων ἀργύριο[ν] Ἀττικὸ[ν] τρία τάλαντα ἀκίνδυνομ πα[ν|[5]τ]ὸς κινδύνου Πραξικλεῖ ἐπ[ὶ] τόκωι πέντ' ὀβολοῖς τὴμ μνᾶν ἑκάστην το[ῦ | μην]ὸς ἑκάστου, δανειστῶν ἐλθόντων δημοσίαι Πρωτομάχου καὶ Διο|…ους, κατ[ὰ] τὸ ψήφισμα ὃ εἶπε Στ[ησα]γόρας. «Alla buona sorte. Nel mese di Hekatombaion a Nasso essendo *aisymnetai* [- - -] e Sostratos, ad Arkesine nel mese di Miltophorion essendo arconte Ktesiphon, Praxikles figlio di Polymnestos ha prestato alla città di Arkesine tre ta-

cittadini di Astypalaea (5 talenti e *tot* dracme)[3]. Un importo inferiore ma comunque rilevante doveva essere quello prestato da Alexandros: non è possibile affermarlo con certezza perché la cifra è in lacuna; tuttavia, sulla base calcoli effettuati sulle ammende si dovrebbe arrivare a una somma di circa un talento[4]. Un ammontare a più talenti è probabilmente quello relativo al prestito concesso alle tre *poleis* amorgine insieme, anche se la cifra è parzialmente in rasura, insieme al nome dei creditori[5].

Una rinascita dell'interesse verso questi testi si deve alla 'riscoperta' di *Emprunt* 49 e 51, le cui edizioni erano basate inizialmente su trascrizioni e calchi. I testi sono iscritti sui due lati di una stessa stele, che si riteneva fosse andata perduta dopo il suo spostamento dal santuario di Era in Arkesine ad Atene, e che invece era conservata presso il Museo Epigrafico. Medesima sorte era toccata al fr. D di *Emprunt* no. 50. A L. Migeotte si deve la revisione dei testi 'riscoperti' ad Atene, l'edizione completa dell'intero dossier e uno studio accuratissimo, tutt'ora imprescindibile, degli aspetti economici e giuridici[6].

Tra i numerosi elementi di interesse suscitati da queste iscrizioni, ciò che desta stupore è il numero dei contratti di prestito stipulati da Arkesine, sia in autonomia che, in un caso, insieme alle altre due poleis dell'isola, in un periodo di tempo ristretto, al più, a 50 anni, tra il 325 e 275 a.C.[7]. In tutti i casi, per quello che si può desumere dai testi, Arkesine (lasciamo per ora da parte il prestito collettivo) ricorre a prestiti di privati stranieri. I prestiti di Praxikles di Nasso, di Alexandros e dei cinque cittadini di Astypalaea erano stati preceduti dall'erogazione di un prestito senza interesse da parte dell'attidografo e politico ateniese Androzione, di cui abbiamo notizia grazie a un decreto della città del 357/6 a.C. che gli conferisce onori[8]. Finora, per il

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lenti in argento attico senza alcun rischio per Praxikles al tasso di interesse di cinque oboli per mina al mese, essendo andati come creditori a titolo pubblico Protomachos e Dio[. . .] es, secondo il decreto proposto da Stesagoras».

3 *Emprunt* no. 51, ll. 5-6: ἐδάνεισ[α]ν τᾶι πόλει τᾶι Ἀρκεσινέων ἀργυρίου Ἀλεξανδρείου τάλαντα [[πέν[τε]] …..] | [..]ας δραχμὰς. «hanno prestato alla città di Arkesine cinque talenti e [- - -] dracme d'argento di Alessandro».

4 L'importo era espresso in dracme attiche: *Emprunt* no. 50, ll. 3-4: [- - - - ἐδάνεισεν τῆι πόλει τῆι Ἀρκεσινέων] ἀργ[υρ]ίου Ἀ[ττι|κοῦ - - - - - - - - - - - - - - -] τριάκοντα. Una discussione sui tipi monetari usati per la restituzione del prestito, per gli interessi e per le eventuali ammende vd. Migeotte 1977. L'ipotesi che l'ammenda (in questo caso 2000 dracme: alle ll. 39-40 si legge δισχ[ι]|λίας) corrisponda a un terzo dell'ammontare del prestito, come nel caso di Praxikles, è di Delamarre 1904, 88, seguita anche da Migeotte, *Emprunt*, 182.

5 *Emprunt* no. 54, ll. 3-4.

6 Migeotte, *Emprunt*, 168-194.

7 La datazione è legata alla menzione nei documenti delle monete di Alessandro e di Demetrio, che conoscono un'enorme diffusione nelle Cicladi tra il 325 e il 275 a.C. Non è peraltro escluso che i contratti siano pressoché contemporanei. La cronologia più bassa attribuita al contratto con Alexandros è legata alla possibilità di ricevere il rimborso degli interessi e della somma capitale in dracme di Demetrio Poliorcete e non più solo di Alessandro Magno e attiche (Migeotte, *Emprunt*, 181). Sulla monetazione di Amorgos e la diffusione nell'isola dei tipi menzionati sopra vd. Picard 1999, 244-245 e Liampi 2004, 67-68.

8 *Emprunt* no. 48. Anche questo documento, come quasi tutti i contratti di prestito e diversi altri decreti onorari per stranieri, era esposto nel santuario di Hera ad Arkesine, probabil-

periodo delle *syngraphai* appena menzionate, non possediamo invece testimonianze riguardanti prestiti di cittadini, che costituivano normalmente il modo più immediato in cui le *poleis* cercavano di risolvere le emergenze finanziarie. Così, ad esempio, fu affrontata una fase di crisi forse legata ai conflitti con Priene ad Efeso dove, come attesta l'*Economico* pseudoaristotelico, la polis impose alle donne di prestare il loro oro per la causa pubblica[9]; o il caso, ancor più interessante, dei cittadini e degli stranieri residenti a Teos, che prestarono ingenti quantità di denaro, ma anche oggetti d'oro e d'argento alla città in occasione della guerra contro i pirati all'epoca di Demetrio Poliorcete[10].

La città di Arkesine evita anche di ricorrere a prestiti da parte di altre *poleis*, che hanno sempre carattere eccezionale perché presentano carichi troppo pesanti per la città, che difficilmente disponeva di finanze solide e in eccedenza tali da poterle concedere in prestito[11]. Pochissime le eccezioni: per contiguità cronologica basti ricordare qui i prestiti concessi da Rodi ad Argo (*Emprunt* no. 19, 300-250 a.C.) e, agli inizi del III sec. a.C., da Cnido a Mileto, anche se in questo caso la città di Cnido incarica alcuni suoi cittadini di agire da creditori[12]. Inoltre un sistema di credito/debito tra *poleis* stabilisce dei legami, che possono apparire molto vincolanti, tra la polis che chiede il prestito a quella che lo concede (anche se questo succede anche quando a prestare sono i privati, come vedremo tra poco), scoraggiandone di fatto il ricorso.

1. L'entità del prestito

Un primo aspetto che impressiona quando si guarda ai testi amorgini è, come si è detto, l'entità dei prestiti concessi. Per questo si possono portare ben pochi esempi analoghi, quasi tutti di epoca successiva. Il confronto più vicino cronologicamente è il sopra citato prestito concesso da cittadini di Cnido alla città di Mileto nel 283/2 a.C., prestito per il quale l'intera polis viene onorata presso i Milesii. Qui i creditori, in tutto 16, hanno prestato in totale ben 12 talenti e 10 mine di Rodi. È interessante osservare che il prestito si presenta come effettuato da un gruppo di privati stranieri, ma la tipologia del documento, che non è un contratto di prestito ma un decreto onorario, mostra come tutta la città di Cnido benefici del servizio reso dai suoi cittadini, ricevendo gli onori pubblici per essersi impegnata nel trovare i creditori offrendo una soluzione alle necessità di Mileto.

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mente luogo privilegiato per la conservazione di documenti riguardanti non cittadini: vd. in proposito Inglese 2018, 145-148.

9 [Aristot.] *Oec*. 2.2.19 1349a; *Emprunt* no. 88. Questo prestito contribuì al finanziamento per la costruzione del nuovo Artemision tra la fine del IV egli inizi del III sec. a.C., come riporta anche Strabo 14.1.22 640C.

10 Su questo dossier di testi vd. il contributo recente con nuove letture di Hamon 2018. Per le garanzie offerte dalle città vd. *infra*.

11 Vd. già Andreades 1933, 168-171, con argomentazioni in parte da aggiornare sulla base della documentazione recente.

12 *Milet*, I 3 138 (*Emprunt* no. 96). La delega di funzioni giuridiche della polis a gruppi scelti di cittadini è pratica diffusa nei contratti di prestito: anche ad Arkesine vengono selezionati due cittadini che svolgono la funzione di creditori in *Emprunt* no. 49, l.7.

Occorre arrivare alla piena età romana per trovare prestiti ancora più ingenti, che mai sarebbero stati possibili prima dell'arrivo di Roma. I casi più significativi riguardano: 1) un decreto onorario da Pinara, in Caria, della prima metà del I sec. a.C., in cui l'onorato, il cui nome è in lacuna, ha concesso prestiti a diverse *poleis* di Caria (Sidyma, Balboura, Lydai e Kalynda) per un totale di 300.000 dracme (cioè 50 talenti) senza interessi[13]; 2) il famigerato prestito concesso da Bruto a Salamina di Cipro e testimoniato da Cicerone al tempo del suo proconsolato in Cilicia in una lettera ad Attico (*Att*. 5.21.10-13) per una somma capitale probabilmente superiore ai 200 talenti[14].

Torniamo ai testi amorgini e all'alto ammontare dei prestiti. Va da sé che più alta è la somma capitale, maggiori sono i rischi che si assume il creditore, e maggiori saranno anche le forme di tutela messe in atto nel contratto. Non abbiamo purtroppo alcuna informazione sui cittadini di Astypalaea che stipulano il contratto di prestito con Arkesine (*Emprunt* no. 51, ll. 3-5)[15]. Dall'inscrizione però si evince che originariamente erano sei, ma il primo nome e patronimico sono stati erasi (l. 3). È interessante vedere come, oltre al nome, sia stato eraso e riscritto anche l'intero ammontare del prestito (l. 5). Probabilmente il primo dei cittadini astipalei aveva rescisso il contratto dopo la sua pubblicazione su stele ed era stato necessario rimodulare anche il prestito, che dunque in origine doveva essere stato ancora più consistente dei 5 talenti e *tot* dracme documentati dalla riscrittura.

I contratti di prestito amorgini, soprattutto quelli stipulati da Arkesine da sola, sono piuttosto dettagliati, e niente è lasciato al caso. Tuttavia, in nessuno di essi compare alcuna penale nel caso in cui i creditori non onorino l'impegno che si sono assunti. Anche questo dettaglio contribuisce a rafforzare l'idea che l'intera struttura formale dei contratti fosse concepita a tutto vantaggio del creditore. Se si guarda al contratto di Arkesine con Alexandros, questo aspetto diventa ancora più evidente. Di-

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[13] *Emprunt* no. 110, ll. 19-21: τ[ε]τειμημένον δὲ πρ[ὶ]ν καὶ ὑπὸ Σιδυμέων καὶ Βα[λ]βουρέ[ων καὶ Λυ]|[20]δατῶν καὶ Καλυνδίων καὶ ὑπὸ τῆς Καρίας προεισο[διάσαντα] | μυριάδας ἀτόκους λ, «essendo stato precedentemente onorato anche da Sidyma, Balboura, Lydai (?), Kalynda e dalla Caria per aver prestato 300.000 dracme senza interessi».

[14] *Emprunt* no. 75, 56-50 a.C.

[15] Contratto di prestito di 5 Astypalaioi alla polis di Arkesine, tra il 325 e il 275 a.C. *Emprunt* no. 51, ll. 1-7: [- ἐν Ἀστυπαλαίαι Χαριγέ|νους δαμ]ιο[ργοῦντος], μηνὸς .ευκ…ου, (ἐν) Ἀ[ρκεσίνη]ι δὲ …ΕΗΟΛ……. | ἄρχ[ο]ντος Τιμηράτου· ἀγαθᾶι τύχαι· ἐδάνεισαν [[- - -]] Εὐκλεῦς, Κ…| ..Ευ<?>μναστοφῶντος, Λέπτων Πρ[α]ξιδάμου, Ἀμμώνιος …..ΝΑΙΝ(?)Α, Εὔσφαιρος Εὐκλεῦς Ἀσ[τυπα]|[5]λαιεῖς ἐδάνεισ[α]ν τᾶι πόλει τᾶι Ἀρκεσινέων ἀργυρίου Ἀλεξανδρείου τάλαντα [[πέν[τε]] …..|..]ας δραχμὰς ἐπὶ τόκωι τὴν μνᾶν ἑκάστην ἑκάστου μηνὸς τε[τ]τάρῳ ὀβολῶν [καὶ] δύο χα[λ|κ]ῶν ἕστε μῆνα Ἰοβάχχιον· «[- - -] quando Charigenes era demiurgo ad Astypalaia, nel mese [- - -], e ad Arkesine nel mese [- - -], Timeratos era arconte. Alla buona sorte. [- - -] Leotrephes figlio di Eukles, Κα[- - -] figlio di Eumnastophon, Lepton figlio di Praxidamos, Ammonios figlio di [- - -], Eusphairos figlio di Eukles, Astypalaioi, hanno prestato alla città di Arkesine cinque talenti e [- - -] dracme d'argento di Alessandro, a un interesse di quattro oboli e due *chalkoi* per mina al mese, fino al mese di Iobacchios».

versi elementi concorrono a formare questa idea: innanzitutto l'interesse richiesto da Alexandros, su cui torneremo, che è più alto rispetto a quello di Praxikles (*Emprunt* no. 51, ll. 5-6). Poi i tempi della restituzione della somma capitale, anche in questo caso più stretti rispetto a quanto richiesto da Praxikles (tre mesi in luogo di sei[16]). Ancora, le ammende previste in caso di inadempienza nel pagamento degli interessi e nella restituzione del capitale[17], più severe rispetto al contratto con Praxikles[18].

Inoltre, come giustamente osserva Migeotte, anche per quanto concerne le clausole esecutive, vi sono dei riferimenti giuridici più circostanziati riguardo alle tipologie di debitori insolventi. In base a questi, deve adempiere sia chi è stato dichiarato colpevole dalla polis per essersi opposto alle esecuzioni legittime di Alexandros, sia chi è colpevole per aver ricevuto una diffida formale per aver lasciato scadere i termini del contratto senza pagare[19]. Nel caso di Praxikles, invece, era soggetto a clausola esecutiva chi non aveva pagato, senza specificare le ragioni[20]. È dunque possibile che Alexandros abbia richiesto un maggiore dettaglio nelle clausole esecutive per essere sicuro di raggiungere in maniera diretta tutti gli inadempienti e, di conseguenza, recuperare interamente il credito e gli interessi.

Non conoscendo il patronimico o la città di provenienza di Alexandros non è possibile ricavare ulteriori informazioni sulla sua posizione giuridica. È estremamente improbabile che sia un cittadino di Arkesine per una serie di ragioni, tra le quali vi è il fatto che, se così fosse, le sue stesse proprietà ricadrebbero tra i beni posti a garanzia per il prestito da Arkesine (tutti i beni mobili e immobili, pubblici e privati della città – una garanzia del tutto eccezionale, come vedremo tra poco). Inoltre, nella *syngraphe* è prescritto che il pagamento degli interessi e la restituzione della somma capitale dovranno avere luogo ad Amorgo laddove, nel caso di Praxikles, il luogo prescelto era Nasso, patria del creditore. È dunque probabile che Alexandros sia un amorgino, ma non un cittadino di Arkesine, bensì di Aigiale o di Minoa, cioè di una delle altre due *poleis* dell'isola[21].

Nel caso di Praxikles di Nasso, invece, sappiamo che era figlio di Polymnestos. Un Polymnestos è menzionato tra i dedicatari di offerte a Delo in *ID* 298A (conti della seconda metà del III sec. a.C., nel periodo dell'indipendenza dell'isola da Atene). Qui non è indicato come cittadino di Nasso, ma è probabile che lo fosse se si tratta dello stesso Polymnestos che aveva ricevuto la prossenia e altri onori a Delo (*IG* XI

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[16] *Emprunt* no. 49, ll. 17-18: ἀπαιτήση[ι] | Πρα[ξι]κλῆ[ς] ἢ ὃν ἂν πέμψηι Πραξικλῆς ἀπαιτήσοντα; *Emprunt* no. 50, ll. 18-20: τὸ δὲ ἀρχαῖον] | [ἀργύριον ἀποδώσουσι]ν ἐν τ[ρ]ιμήνωι ἀφ' οὗ ἂν [ἀπαιτήσηι Ἀλέξαν]|[δρος.

[17] *Emprunt* no. 50, ll. 23-34. Qui la somma da pagare è più bassa (10.000 dracme contro i 6 talenti imposti da Praxikles), ma ad essa vanno aggiunti anche gli interessi maturati ogni anno.

[18] *Emprunt* no. 49, ll. 22-31.

[19] Migeotte, *Emprunt*, 181-182.

[20] *Emprunt* no. 49, ll. 33-39; *Emprunt* no. 50, ll. 36-43.

[21] Così Migeotte, *Emprunt*, 182-183; vd. anche Magnetto 1997, 117-118.

4, 701), e che è indicato come nassio e figlio di Thibron[22]. Per ragioni cronologiche è evidente che non può trattarsi del padre di Praxikles, ma di un suo discendente. Se tutto ciò è corretto, Praxikles appartiene dunque a una famiglia facoltosa per la quale, almeno in una fase leggermente successiva rispetto al prestito concesso ad Arkesine, sono attestate relazioni con Delo costruite su un sistema di donazioni e benemerenze. Si tratta senza dubbio di un soggetto ideale per svolgere la funzione di prestatore di somme ingenti in favore della città di Arkesine. Ma anche in questo caso non si possono ricavare dati più solidi sulla posizione del creditore.

Il contratto con Praxikles (*Emprunt* no. 49) presenta le stesse clausole di quello con Alexandros. Anche qui tutto viene stabilito nel dettaglio: dopo la doppia datazione eponimica di Nasso e Arkesine, viene definito subito chi eroga il prestito e il suo ammontare (3 talenti), seguito dall'usuale ἀκίνδυνομ παντὸς κινδύνου (ll. 4-5 «senza alcun rischio per il creditore»), e il tasso di interesse mensile (pari al 10%). Si specificano poi i termini della garanzia reale prestata (su cui torneremo più avanti): come nel caso di Alexandros, tutti i beni pubblici e privati, per terra e per mare da parte sia dei cittadini di Arkesine, sia di coloro che risiedono in città - dunque dei meteci.

A questa sezione generale segue una parte piuttosto dettagliata riguardante: 1) le modalità di riscossione delle rate di interesse, che è calcolato mensilmente ma si paga annualmente (come negli altri contratti). Il denaro che sarà utilizzato per pagare gli interessi sarà ricavato dalle entrate della città, come è prassi diffusa in casi simili; basti citare qui il prestito di Protogenes a Olbia[23]. 2) Seguono poi indicazioni sulle procedure di esecuzione in caso di mancato pagamento degli interessi. 3) Sono illustrate le modalità di restituzione della somma capitale e l'ammenda in caso di mancato rimborso nei tempi previsti e 4) le clausole esecutive nel caso in cui anche l'ammenda non venga corrisposta.

Una importante sezione finale riguarda la validità del contratto. Praxikles, ma anche Alexandros e i cinque Astypalaioi, stabiliscono con Arkesine che la *syngraphe* sia *kyria*, cioè che il contratto prevalga su qualsiasi legge, decreto, decisione di magistrato (*Emprunt* 49, ll. 41-47[24]; *Emprunt* 50, ll. 45-51; *Emprunt* 51, l. 28, parzialmente in

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[22] Constantakopoulou 2017, *Appendix* 5, nota 60; Durrbach in *ID* 298A, l. 12. Vd. anche le considerazioni sul suo statuto economico espresse da Reger 1994, 61; sulla presenza di abitanti delle Cicladi tra coloro che vengono onorati a Delo vd. Michel 2020.

[23] *Emprunt* no. 44, ll. 38-43: αἱρεθείς τε | τῆς τῶν ἐννέα ἀρχῆς οὐκ ἐλαττόνωμ |[40] μὲν ἢ χιλίων καὶ πεντακοσίων χρυσῶν | πρόθεσιν ἐποιήσατο ἐπὶ ταῖς μελλούσαις | προσόδοις, ἐξ ὧμ πολλοὶ μὲν σκηπτοῦχοι | ἐθεραπεύθησαν εὐκαίρως, «Scelto come membro del collegio dei Nove, versò un anticipo di non meno di 1500 stateri d'oro sulle entrate future, grazie a cui molti piccoli dinasti furono opportunamente placati». Su questo noto e discusso documento vd. in particolare Müller 2011, che interpreta il ricorso al prestito da parte di Olbia come segnale di una crisi economica, a differenza di Migeotte 2002, che più in generale vede il ricorso a forme differenziate di prestito come un modo di affrontare bisogni contingenti da parte delle poleis greche.

[24] *Emprunt* no. 49, ll. 41-46: τῆς δὲ συγγραφῆς τῆσδε | [ὡ]μολόγησαν Ἀρκ[εσιν]εῖς μηδὲν εἶναι κυριώτερον μήτε νόμον μήτε ψ[ή|φ]ισμα μήτε δ[όγμ]α [μή]τε στρατηγὸν μήτε ἀρχὴν ἄλλα κρίνου|[σ]αν ἢ τὰ ἐν τ[ῆι συγγ]ραφῆι γεγ[ρ]αμμ[ένα] μήτε ἄλλο μηθὲν μήτε τέχ|[45]νηι μήτε πα[ρε]υρέσει μηδεμιᾶι, ἀλα' εἶναι τὴν συγγραφὴγ κυρίαν | [οὗ ἂ]ν ἐπιφέρει ὁ δανείσας

lacuna). Si tratta di una clausola ampiamente attestata non solo nei contratti di ambito greco, ma anche in quelli dell'Egitto tolemaico[25]. In ogni caso, le parti che stipulano il contratto, ossia la città e i creditori, riconoscono al contratto stesso un valore normativo superiore rispetto a ciò che è stabilito dagli organismi cittadini. Anche questa sezione ha evidentemente lo scopo di garantire che quanto è stato convenuto tra il creditore e la città, a tutela del creditore stesso, non venga modificato o cancellato dalla preesistente legislazione in merito.

Quanto le clausole contrattuali siano fondamentali per proteggere il creditore dal rischio di default della polis debitrice è dimostrato in modo chiaro da una sezione del noto decreto onorario per Boulagoras di Samo del 247/6 a.C.[26]. Qui siamo di fronte a una serie di prestiti erogati da un cittadino per la sua polis, Samo, che si trovava in carenza di cereali. Boulagoras, nell'ambito di tre diverse commissioni nominate dalla città per il grano, aveva contribuito per ben tre volte in massima parte alla costituzione di somme da mettere a profitto per l'acquisto dei cereali, meritando grazie a questo e ad altri atti di generosità l'onore della corona. Egli si colloca dunque in quella categoria di creditori privati dal patriomonio considerevole che operano a mezza via tra la contribuzione volontaria (*epidosis*) e il prestito a tassi di interesse competitivi, una forma che potremmo definire ibrida di evergetismo[27].

Riguardo all'ultima somma capitale messa a prestito, alle ll. 43-49 del decreto viene detto che Boulagoras «si sarebbe presentato all'assemblea e avrebbe promesso, dato che non c'era alcuna fonte da cui il denaro sarebbe stato rimborsato, di pagare il prestito per la città, così come gli interessi e tutte le altre spese, e lo fece rapidamente e rimborsò il prestatore senza stipulare alcun contratto (συγγραφὴν οὐδεμίαν) con la città per questo denaro o richiedere la nomina di garanti per lui, ma considerando più importante il bene comune e che il *demos* vivesse in prosperità»[28]. Il fatto che Boulagoras non abbia richiesto la stipula di un contratto con la città, e soprattutto che que-

ἢ οἱ πράσ[σοντ]ες ὑπὲρ αὐτοῦ. «Gli Arkesinioi hanno convenuto che nulla prevarrà contro questo contratto, né legge, o decreto, o sentenza, o stratego, o magistrato che decidano qualcosa di diverso da ciò che è scritto nel contratto, né altro, con qualsiasi artificio o pretesto, ma che il contratto sia valido ovunque lo porti il creditore o coloro che riscuoteranno per suo conto». Sulle clausole di esecuzione (πράξις), in particolare nei contratti di prestito, vd. Rubinstein 2010 e il contributo di U. Yiftach in risposta al presente saggio.

[25] Sulla formula κυρία ἡ συγγραφή rimando alle considerazioni di Vélissaropoulos-Karakostas 2001; Ead. 2018; vd. anche Dimopoulou 2014. Nell'Egitto tolemaico la formula conosce un'ampia diffusione, tanto nel diritto pubblico quanto in quello privato. Per le attestazioni vd. ora Yiftach cds., 151-163. A titolo di esempio si rimanda a P.Eleph. 2, del 284 a.C., un contratto di *syngraphe* e *homologia* di due coniugi in cui la clausola ricorre in termini quasi analoghi al r. 15 (ἡ δὲ συγγραφὴ ἥδε κυρία ἔστω πάντηι πάντως). Su questo documento nella cornice del testamento congiunto tra coniugi vd. Yiftach 2003, 222-223. Sulle clausola *kyria* e *praxis* nei contratti vd. ancora il contributo di U. Yiftach in risposta al presente saggio.

[26] *IG* XII 6, 11; *Emprunt* no. 67.

[27] Gabrielsen 2008, 122-125; vd. anche Chankowski 2007, 102-104.

[28] *IG* XII 6, 11, ll. 46-49: οὔτε συγγραφὴν οὐδεμίαν θέμενος πρὸς τὴν | πόλιν ὑπὲρ τούτων τῶν χρημάτων οὔτε προεγγύους ἀξιώσας ἑαυτῶι καταστ[α]||θῆναι, ἀλλὰ περὶ πλείστου ποιησάμενος τὸ κοινῆι συμφέρον καὶ ἵνα ὁ δῆμος | ἐν εὐβοσίαι διαγένηται.

sta argomentazione sia fondamentale per la decisione di concedergli gli onori, dimostra come il contratto sia visto come un vincolo per la polis, oltre che una tutela per il creditore, e dunque l'evitare di farvi ricorso andava a beneficio della città debitrice.

È chiaro poi che il privato facoltoso che erogava un prestito riceveva vantaggi ulteriori che esulavano dai termini del contratto, costituiti dalla restituzione della somma capitale e dal pagamento degli interessi e di eventuali ammende. Lo mostra bene, tra i vari esempi possibili, un prestito erogato da privati stranieri a favore di Oropos nel 221 a.C., utile a finanziare la costruzione delle mura[29]. La somma capitale viene prestata al tasso di interesse del 10% da individui non cittadini che ricevono, qualora prestino più di un talento, una serie di onori: si parla tra gli altri di *isoteleia*, di *asphaleia* e di *asylia* per terra e per mare, che potrebbero configurare un trattamento privilegiato nei loro affari personali[30].

2. Il tasso di interesse

Un altro aspetto che merita qualche riflessione è il tasso di interesse applicato sui prestiti amorgini. Nel contratto di Praxikles era richiesto un interesse del 10% sui prestiti da lui erogati. Gli interessi sono fissati mensilmente ma vengono riscossi annualmente[31]. Il tasso al 10% è un tasso medio-alto, ma piuttosto comune nel caso di prestiti a città, come è possibile verificare in molti altri casi. Abbastanza comune è anche la pratica, dettagliatamente descritta nel contratto per Praxikles, dell'anatocismo, ossia dell'interesse applicato sugli interessi non pagati, nel momento in cui gli interessi non pagati diventano somma capitale[32]. Il fatto che sia tutto normato all'interno del contratto potrebbe essere legato ad una previsione di rischio alta che la città non pagasse gli interessi, per la quale si applicava automaticamente l'anatocismo[33].

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[29] *I.Oropos* 303 (*Emprunt* no. 9).

[30] *I.Oropos* 303, ll. 12-21: τοὺς δὲ | δανείσαντας τῆι πόλει εἰς τὸν τειχισμὸν | μέχρι ταλάντου καὶ τοῦ πλέονος τόκων |[15] τῶν ἐπιδεκάτων προξένους εἶναι καὶ εὐ|εργέτας τῆς πόλεος Ὠρωπίων καὶ αὐτοὺς | καὶ ἐκγόνους καὶ εἶναι αὐτοῖς γῆς καὶ οἰκίας | ἔγκτησιν καὶ ἰσοτέλειαν καὶ ἀσφάλειαν καὶ | ἀσυλίαν καὶ πολέμου καὶ εἰρήνης καὶ κατὰ γῆν |[20] καὶ κατὰ θάλατταν καὶ τὰ ἄλλα πάντα καθάπερ | τοῖς πολίταις, «coloro che hanno prestato alla città per la costruzione delle mura fino a un talento e più al tasso di interesse del 10% siano prosseni ed evergeti della città di Oropos, sia loro che i loro figli, e abbiano il diritto di acquistare terra e casa, uguale tassazione, sicurezza e inviolabilità, sia un guerra che in pace, per terra e per mare, e tutte la altre prerogative proprie dei cittadini». L'idea di un possibile vantaggio nell'esercizio della loro professione derivante dalla concessione di onori viene da Chaniotis 2012, 100-101, il quale ipotizza che l'unico nome di creditore che si legge nella stele provenga da Eretria (Nikon, figlio di Charmis). Data la posizione della polis euboica, la possibilità di usufruire di alleggerimenti fiscali nell'antistante porto di Oropos, come la concessione di *isoteleia* presuppone, avrebbe costituito un vantaggio tale da giustificare l'erogazione di un prestito così consistente.

[31] *Emprunt* no. 49, ll. 5-6: ἐπ[ὶ] τόκωι πεντ' ὀβολοῖς τὴμ μνᾶν ἑκάστην τοῦ | μην]ὸς ἑκάστον; ll. 16-17: μετὰ τοῦ ἄρχαίου τοῦ ἴσου τόκου καθ' ἑνιαυτὸν ἕκασ|[το]ν.

[32] Sull'ἀνατοκισμός nella Grecia antica vd. Bogaert 1968, 360-361; aggiornamenti in Millett 2015. La pratica dell'interesse composto è presente nel mondo greco a partire dal IV secolo a.C., ma il termine greco è attestato per la prima volta in Cic. *Att*. 5.21.11.

[33] *Emprunt* no. 49, ll. 14-17: ἀλλ' ἀπο|[15]δότω ἡ πόλις τὸν τόκον. ἐὰν δὲ μὴ ἀποδῶι, ἔστω

Alexandros fissa invece un tasso di interesse più alto, al 12%, confermando quanto dicevamo prima, e cioè che il contratto per Alexandros era ancora più vincolante di quello per Praxikles, e che Alexandros mirava a introitare il più possibile e senza rischi.

Per gli Astypalaioi il tasso di interesse è invece fissato all'8,5%[34], ma è destinato a raggiungere il 10% qualora la somma capitale non venga rimborsata nei tempi previsti dal contratto (*Emprunt* no. 51, ll. 7-10). In questo caso i creditori hanno evidentemente l'urgenza di essere rimborsati, e infatti la restituzione della somma capitale è prevista a una scadenza prefissata, a meno di un anno dall'erogazione del prestito. Il tasso di interesse di partenza dell'8,5%, non molto alto, appare in questo caso più difficilmente legato ad una tutela del creditore, mentre potrebbe essere maggiormente connesso ai legami, formalizzati o meno, che intercorrevano tra la patria dei creditori e la polis debitrice. Amorgo e Astypalaea sono isole vicine, con acque territoriali confinanti e interessi politici e commerciali in comune. Le stesse ragioni erano, ad esempio, presupposte nella decisione dei προδανείσαντες di Cnido di proporre a Mileto un prestito al tasso, assolutamente di favore, del 6%[35].

Rispetto alla modulazione del tasso di interesse, dunque, sembra di poter concludere che ad influire sono due aspetti che vanno in una direzione opposta: la necessità di tutelare il creditore da un lato, e la relazione tra le *poleis* coinvolte nel prestito dall'altro, che poteva invece andare a vantaggio della polis debitrice.

3. La garanzia prestata e alcune norme di diritto internazionale

Come anticipato sopra, il gruppo di prestiti di Amorgo presenta un tipo di garanzia che viene fornita per il prestito assolutamente eccezionale e che trova pochi confronti. Tanto nel contratto con Praxikles quanto in quello con Alexandros, Arkesine offre come garanzia «tutti i beni pubblici della città e i beni privati dei cittadini di Arkesine e di coloro che risiedono ad Arkesine, beni terrestri e marittimi»[36]. I beni posti in ga-

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ὁ τόκος ὃν ἂν μὴ ἀποδῶσιν | ἐνεργὸς Πραξικλεῖ μετὰ τοῦ ἀρχαίου τοῦ ἴσου τόκου καθ' ἐνιαυτὸν ἕκασ|[το]ν. «che la città paghi gli interessi; se non paga, che gli interessi non pagati siano dovuti a Praxikles, insieme alla somma capitale, allo stesso tasso, ogni anno».

[34] *Emprunt* no. 51, ll. 6-7: ἐπὶ τόκωι τὴν μνᾶν ἑκάστην ἑκάστου μηνὸς τε[τ]τάρω ὀβολῶν [καὶ] δύο χα[λ|κ]ῶν ἕστε μῆνα Ἰοβάχχιον· « a un interesse di quattro oboli e due chalkoi per mina al mese, fino al mese di Iobacchios».

[35] *Milet* I 3 138, ll. 81-82: οὗτοι ἐδάνεισαν τρία ἔτη· ἄρχει τοῦ δανείου μεὶς Ἀρτεμισιὼν | *vac.* ἐπ' Ἀλεξίππου· τόκος τῆς μνᾶς ἑκάστης ἑκάστου μηνὸς τρεῖς ὀβολ[ο]ί. «Costoro hanno prestato per tre anni; inizio del prestito: nel mese di Artemision, sotto Alexippos. Interesse: tre oboli per mina al mese». Sotto questo gruppo sono poi elencati i nomi di quattro Cnidii che hanno prestato denaro addirittura senza interesse per un anno (l. 83: [οἵ]δε ἄτοκον ἐδάνεισαν ἐνιαυτόν).

[36] *Emprunt* no. 49, ll. 7-9: ὑπέθετο δὲ Πραξικλῆς τά τ[ε | κ]οινὰ τὰ τ[ῆ]ς πόλεως ἅπαντ[α κ] αὶ [τ]ὰ ἴδια τὰ Ἀρκεσινέων καὶ τῶν οἰκούν|[τ]ων ἐν Ἀρκεσίνηι ὑπάρχ[οντα] ἔγγαια καὶ ὑπερπόντια, «Praxikles ha ricevuto in garanzia tutti i beni pubblici della città e i beni privati dei cittadini di Arkesine e di coloro che risiedono ad Arkesine, beni terrestri e marittimi». Nel contratto per Alexandros la clausola relativa alla garanzia (ll. 8-10) è restituita in larga parte sulla base di quanto stabilito con Praxikles (*Emprunt* no. 50, ll. 4-10: [κοῦ - - - - - - - -

ranzia costituiscono l'intero patrimonio della polis, e il dato è di per sé significativo, ma non bisogna dimenticare che questi beni sono aggredibili solo per il valore del prestito più l'ammenda in caso di mancato rimborso, come è ben specificato alle ll. 24-29 del contratto con Praxikles[37], e che lo stesso vale per il contratto con Alexandros, anche nell'eventualità, che non si può del tutto escludere, che le due *syngraphai* siano coeve e che i due prestiti siano attivi negli stessi anni.

Sulla garanzia il creditore poteva rifarsi nel modo che riteneva, quasi come se i cittadini e i residenti, in quanto proprietari dei beni della città, prestassero garanzia solidale (*Emprunt* no. 49, ll. 25-26: ἐξ ἑνὸς | [ἑ]κάστου ἅπαν τὸ ἀργύριογ [κ]αὶ ἐξ ἁπάντων, τρόπωι ᾧι ἂν ἐπίστηται «reclamando la somma intera a ciascuno in particolare e a tutti, nel modo in cui vorrà»[38]). Se i due prestiti sono stati stipulati insieme, potremmo non essere di fronte a una garanzia reale vera e propria, in quanto ciascuno dei creditori può aggredire gli stessi beni.

Detto questo, l'entità della garanzia rimane comunque straordinaria ed è evidente che la città vi aveva fatto ricorso per ragioni particolari che non sono spiegate nel contratto, ma con la consapevolezza di presentare la massima copertura al debito che si apprestava a contrarre. A questo proposito è possibile portare qualche confronto. Dai conti coevi del santuario di Apollo a Keos emerge che una città dell'isola (forse Carthaia) prendeva a prestito importi di scarsa entità dal santuario, ipotecando i beni dei cittadini[39]. Alla costituzione di ipoteche fa riferimento Appiano a proposito delle *poleis* d'Asia Minore tra l'84 e il 68 a.C., che per far fronte a debiti consistenti e dai tassi di interesse molto alti erano state costrette a ipotecare a profitto dei creditori

- - - - - - -] τριάκοντα ἀ[κίν|[5]δυνον παντὸς κινδύνου Ἀλεξάνδρωι ἐπὶ τ]όκωι δ[ρα]χμ[ῆι τὴν | μνᾶν ἑκάστην τοῦ μηνὸς ἑκάστου, δανε]ιστῶν αἱρεθέν[των | δημοσίαι - - - - - - - - - - - - - -] νος κατὰ τὸ ψή[φισ|μα ὁ εἶπεν - - - -.Ὑπέθετο δὲ Ἀλέξ]ανδρος [τ]ά <τά> τε κο[ινὰ | τὰ τῆς πόλεως ἅπαντα καὶ τὰ ἴδια τὰ Ἀρ]κεσινέων καὶ τῶν οἰκ[ούν]|των ἐν Ἀρκεσίνηι ὑπάρχοντα κτήμ]ατα καὶ ἔγγαια καὶ ὑπερποόντί[ια)] «[- - -] Alexandros [- - -] ha prestato alla città di Arkesine [- - -] argento attico, senza alcun rischio per Alexandros, al tasso di interesse di una dracma per mina al mese, essendo stati scelti come creditori a titolo pubblico [- - -] secondo il decreto proposto da … . Alexandros ha ricevuto in garanzia tutti i beni comuni della città e i beni privati, terrestri e marittimi, degli Arkesinioi e di coloro che risiedono ad Arkesine».

[37] *Emprunt* no. 49, ll. 26-29: καὶ ἐξ ἑνὸς | [ἑ]κάστου ἅπαν τὸ ἀργύριογ [κ]αὶ ἐξ ἁπάντων, τρόπωι ᾧι ἂν ἐπίστηται, | καθάπερ δίκην ὠφληκότων ἐν τῆι ἐκκλήτωι κατὰ τὸ σύμβολον τὸ Ναξ[ί|ω]ν καὶ Ἀρκεσινέων, «… pretendendo l'intero importo da ciascuno in particolare e da tutti, nel modo che riterrà più opportuno, come se fossero incorsi in una condanna nella città arbitro in conformità alla convenzione tra i Naxioi e gli Arkesinioi».

[38] Una clausola analoga è in *Emprunt* no. 50, ll. 29-31.

[39] *IG* XII *Suppl*. 236, ll. 10-11 *et pass.*: ἐπὶ ὑποθήκει τοῖς κτή|μασι τοῖς τῶμ πολιτῶν τόκου τοῦ ἐννόμου «(Il prestito è accordato) sulla garanzia dei beni dei cittadini, al tasso legale di interesse». Si tratta di una formula ricorrente nei conti. Per un'identificazione di *ktemata* come beni agrari vd. Mendoni 1994, 156. Sugli aspetti giuridici relativi all'effettiva acquisizione dei beni ipotecati in caso di mancata restituzione del prestito, anche in casi analoghi, vd. Migeotte 2006, che dimostra con esempi concreti come la clausola di garanzia non abbia puro valore formale, ma faccia riferimento a quei beni che chi riceve il prestito può concretamente mettere a garanzia, col rischio oggettivo di perderne almeno una parte in caso di default.

gli edifici pubblici delle loro città[40]. Ma l'esempio più vicino, anche per cronologia, è senza dubbio costituito dal dossier di testi da Teos menzionato sopra, giuntoci in condizioni materiali difficili e recentemente studiato da P. Hamon[41]. Si tratta di due decreti che mostrano come cittadini e stranieri residenti a Teos a diverso titolo avevano concesso prestiti alla città; i due testi erano seguiti dalla lista dei sottoscrittori. Per questi prestiti la polis di Teos fornisce in garanzia beni terrestri e marittimi (ἔγγαια καὶ ναυτικά), cioè i beni comuni (pubblici e sacri) e, come *extrema ratio* e dopo averli sottoposti a valutazione, anche i beni privati dei cittadini[42], in una situazione di indebitamento legata probabilmente al coinvolgimento di Teos nella guerra contro i pirati e alla necessità di ottenere delle somme congrue per riavere indietro gli ostaggi[43].

La clausola di garanzia dei decreti di Teos ricorda molto da vicino quella dei testi amorgini, che riguarda ἔγγαια καὶ ὑπερπόντια, «beni terrestri e marittimi». È dunque necessaria qualche ulteriore precisazione. Il nesso richiama immediatamente la consueta clausola καὶ κατὰ γῆν καὶ κατὰ θάλασσαν («per terra e per mare»), riferita al diritto di inviolabilità (*asylia*), come era stato notato già da Ph. Gauthier. Si tratta di una clausola ricorrente nell'ambito del diritto internazionale, di cui l'esempio forse più vicino ai nostri contratti è quello della polis cretese di Polyrrhenia, che concede l'*asphaleia* (non è usato il termine *asylia*, ma vi si fa chiaramente riferimento) καὶ κατὰ γᾶν καὶ κατὰ | [θάλασσ]αν, «per terra e per mare» per sempre ai cittadini e ai residenti di Teos[44]. Come conseguenza dell'uso e della diffusione di questa clausola nel diritto internazionale Gauthier[45], seguito da Migeotte, ha proposto di interpretare ὑπερπόντια come le navi e i carichi che esse trasportavano; una interpretazione che avrebbe il vantaggio di includere anche i beni dei residenti non cittadini, che nei contratti di Arkesine contribuiscono con i *politai* in uguale misura a fornire la garanzia prestata dalla città.

Più di recente, C. Constantakopoulou, riprendendo un'interpretazione di Dittenberger in base alla quale gli ὑπερπόντια costituirebbero le proprietà di Arkesine fuori da Amorgo, ha proposto di leggere in questo modo la clausola sulla garanzia, evocando tra i beni d'oltremare l'isola di Gramboussa, di proprietà della polis amorgina e le

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[40] App. *Mithr*. 9.63 (*Emprunt* no. 114). Su questo ed altri generi di impegno di beni pubblici a garanzia di ingenti prestiti vd. Migeotte 1980. Gli aspetti paradossali che sembrano emergere alla lettura delle fonti letterarie sono fortemente ridimensionati dall'esistenza di casi analoghi testimoniati da documentazione epigrafica.

[41] La prima edizione dei testi si deve a Şahin 1994 (SEG 44,949); Hamon 2018 integra con nuove letture questa edizione e lo studio che ne aveva fatto Gauthier nel BE del 1996: si rimanda dunque al suo contributo anche per gli aggiornamenti bibliografici (in particolare Hamon 2018, 334 note 5 e 6). Vd. *supra* a proposito dei casi di prestiti erogati da cittadini.

[42] Hamon 2018, 350-351: sulla clausola di garanzia per il prestito fa riferimento all'interpretazione dell'analoga clausola amorgina fornita da Gauthier 1980, su cui vd. *infra*.

[43] Hamon 2018, 371-374.

[44] Si tratta della lettera di Polyrrhenia con concessione di *asylia* a Teos, ca. 200 a.C. Rigsby 137, ll. 11-13: ἦμεν δὲ | καὶ [πάνσι τ]οῖς ἐν Τέῳ ἀσφάλειαν καὶ κατὰ γᾶν καὶ κατὰ | [θάλασσ]αν ἐ[ς] τὸν ἅπαντα χρόνον, «A tutti coloro che vivono a Teos sia concessa l'*asphaleia* sia per terra che per mare per sempre».

[45] Gauthier 1972 e Id. 1980, 202-203.

cui terre erano adibite al pascolo[46]. L'ipotesi è suggestiva; rimane da capire se i beni terrestri e marittimi facciano riferimento alle proprietà pubbliche di Arkesine o, piuttosto, ai beni privati di cittadini e non cittadini. Se così fosse, si potrebbe prospettare un'ulteriore possibilità, e cioè che i beni ὑπερπόντια siano da riferire alle proprietà dei residenti non *politai* di Arkesine, che non avevano diritto a proprietà agrarie nel territorio della polis[47].

Un ulteriore aspetto di interesse, sollevato da Gauthier, è che la clausola che si riferisce a beni terrestri e marittimi che costituiscono garanzia per il prestito nel contratto di Praxikles è indicata come esecutiva, esattamente come se fosse un verdetto (καθάπερ δίκην) emesso da una polis che assolve al ruolo di arbitro (ἐν τῆι ἐκκλήτωι)[48] nell'ambito di una convenzione giudiziaria (κατὰ τὸ σύμβολον) tra le città di Arkesine e di Nasso (*Emprunt* no. 49, ll. 28-29; ma vd. anche 37-38). Nel normare le condizioni dei beni posti a garanzia del prestito, il contratto sembra dunque utilizzare il lessico formalizzato delle norme del diritto internazionale, che regolano anche le concessioni di *asylia* e che fanno riferimento alla protezione dei beni per terra e per mare[49].

Quanto alle convenzioni giudiziarie che vengono menzionate nel testo, due sono le considerazioni che si impongono. La prima è che, come fa notare giustamente A. Magnetto, la convenzione giudiziaria non è operativa, nel senso che la clausola del contratto è appunto esecutiva e ha valore immediato come se si fosse svolto un arbitrato, ma di fatto l'arbitrato non c'è stato[50]. Rimane in ogni caso evidente che doveva esistere una convenzione giudiziaria in essere tra Nasso e Arkesine, proprio perché è richiamata nel testo. La seconda considerazione riguarda l'oggetto di tale convenzione, che è quasi certamente il ricorso all'arbitrato in casi di controversie relative a contratti tra privati appartenenti a una delle due comunità e una delle due *poleis*[51].

È interessante poi che il ricorso all'arbitrato sia ritenuto la soluzione prioritaria, pur senza avvalersene, anche in assenza di una convenzione giudiziaria[52]. Questo dato è presente nel contratto con Alexandros, dove ricorre la stessa clausola sul mancato pagamento dell'interesse, che deve essere esecutiva come in presenza di una

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46 Constantakopoulou 2007, 212-214.

47 Ringrazio A. Dimopoulou per questa suggestione, che merita di essere affiancata alle altre appena esposte.

48 Per il concetto di ἔκκλητος πόλις vd. Gauthier 1972, 308-323, in part. 312-313 in riferimento al contratto con Praxikles.

49 Per un uso analogo del nesso 'per terra e per mare' vd. Dem. 35.12: καὶ ἐάν τι ἐλλείπῃ τοῦ ἀργυρίου, ὃ δεῖ γενέσθαι τοῖς δανείσασι κατὰ τὴν συγγραφήν, παρὰ Ἀρτέμωνος καὶ Ἀπολλοδώρου ἔστω ἡ πρᾶξις τοῖς δανείσασι καὶ ἐκ τῶν τούτων ἁπάντων, καὶ ἐγγείων καὶ ναυτικῶν, πανταχοῦ ὅπου ἂν ὦσι, καθάπερ δίκην ὠφληκότων καὶ ὑπερημέρων ὄντων, «Sarà lecito ai creditori, sia singolarmente che congiuntamente, riscuotere l'importo precedendo contro Artemon e Apollodoros, nonché contro tutti i loro beni, sia terrestri che marittimi, ovunque essi si trovino, esattamente come se fosse stata emessa una sentenza contro di loro». Vd. Wachsmuth 1885, 288; Gauthier 1980, 212.

50 Magnetto 1997, nos. 17-18, 109-119, in part. 112.

51 Magnetto 1997, 111.

52 Magnetto 1997, 117-118.

risoluzione arbitrale (*Emprunt* 50, ll. 13-15)[53]; non vi è però menzione di una convenzione giudiziaria che regoli tale risoluzione. Probabilmente, come si è detto sopra, Alexandros era cittadino di una delle altre due *poleis* dell'isola di Amorgo (Aigiale e Minoa)[54] ed è dunque probabile che non vi fosse bisogno di un *symbolon* per regolare le controversie giudiziarie tra i cittadini delle rispettive *poleis*.

Tuttavia, il rapporto giuridico tra le tre città dell'isola non è sempre chiaro nelle fonti che vi fanno riferimento, e ancor meno nel dossier dei prestiti. In particolare, nel contratto menzionato in precedenza tra le tre città di Amorgo e un certo numero di privati, probabilmente stranieri (cinque o sei individui), il prestito viene ricevuto congiuntamente dalle tre *poleis*, in quella che sembrerebbe a tutti gli effetti una manifestazione del *koinon* delle città amorgine, di cui sappiamo qualcosa dalla monetazione[55]. Tuttavia, l'iscrizione è coeva al prestito di Alexandros, che ad Arkesine era trattato come creditore straniero, anche se con tutta probabilità proveniva da una delle altre due *poleis* dell'isola. Allo stato attuale delle nostre conoscenze appare dunque come inevitabile accogliere la proposta di Migeotte in base alla quale nel caso del contratto collettivo le città agiscono come un unico soggetto, in una sorta di *sympoliteia*, ma in relazione alle sole questioni finanziarie, e non politiche e giuridiche, e per una precisa e contingente esigenza[56]. Per quanto più sintetica e lacunosa, infatti, la *syngraphe* richiama le stesse condizioni di prestito delle altre tre iscrizioni menzionate fin qui.

Infine, sempre per quanto concerne la relazione tra polis che riceve il prestito e privato straniero che lo concede possono valere alcune delle considerazioni proposte riguardo all'entità del tasso di interesse. Oltre a quanto è già regolato, come nel caso di Praxikles, da accordi giudiziari tra le due *poleis*, è possibile che anche altri legami meno formalizzati in senso giuridico fossero comunque considerati vincolanti per le due città coinvolte in un sistema debito/credito. Nel caso di Nasso e di Arkesine (quindi del prestito di Praxikles) non si può escludere l'esistenza di un legame di prossimità geografica come con Astypalaea, ma potrebbe avere avuto peso nelle relazioni tra le due *poleis* anche la relazione *apoikia*-madrepatria, se è vera l'affermazione di Stefano di Bisanzio che ad Amorgo, e in particolare a Minoa, in origine si stanziò una colonia di Nasso[57]. Questo genere di rapporto poteva presupporre re-

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[53] *Emprunt* no. 50, ll. 13-15: [ἐὰν δὲ τὸν τόκον μὴ] ἀποδῶσιν, πρακτοὶ ἔ[σ]τω[ν Ἀλεξάνδρωι | οἱ μὴ ἀποδόντες διπλ]άσιον τὸ ἀργύρ<ι>ον ἐκ τῶ[ν ἰδίων πράξει |[15] πάσηι καθάπερ δίκην ὠφ]ληκότες ἐξούλη[ς ἐν τῆι ἐκκλήτωι καὶ], «Se non pagano l'interesse, coloro che non hanno pagato siano debitori ad Alexandros del doppio del denaro, sui propri beni, con qualsiasi mezzo di esecuzione, come a seguito di un giudizio di condanna per possesso illegale nella città arbitro e …».

[54] Gauthier 1972, 327; vd. anche Migeotte, *Emprunt*, 182-183, con discussione.

[55] Liampi 2004.

[56] Migeotte, *Emprunt*, 191.

[57] Steph.Byz. α 275 s.v. Ἀμοργός· νῆσος μία τῶν Κυκλάδων, ἔχουσα πόλεις τρεῖς, Ἀρκεσίνην Μίνωαν Αἰγιάλην … ἥν τινα (*scil*. Μίνωα) Καρκήσιος ἀνὴρ Νάξιος ᾤκισε καὶ Καρκησίαν ὠνόμασε, «Amorgos, una delle isole Cicladi, che ha tre città: Arkesine, Minoa, Aigiale … Questa (Minoa) è stata fondata da Karkesios, un Nassio, e chiamata Karkesia». La presenza

lazioni privilegiate tra i cittadini dell'una e dell'altra polis, che dovevano contribuire a snellire le procedure di recupero dei crediti in un modo che, purtroppo, ci sfugge.

4. Una crisi economica alla base dei prestiti di Amorgo?

In conclusione, vorrei proporre qualche ipotesi sulle possibili ragioni che hanno spinto le *poleis* di Amorgo e Arkesine in particolare a contrarre una serie di prestiti in un lasso di tempo limitato. In queste condizioni si può parlare di crisi economica? Il numero dei contratti di prestito che ci sono pervenuti e le somme che vengono stanziate come prestito, piuttosto consistenti per le finanze di una piccola polis, sembrano suggerire una possibilità di questo genere.

L'altro aspetto da considerare sono le garanzie portate da Arkesine nei contratti con Praxikles e Alexandros. Come abbiamo detto, esse sono esigibili solo per il valore del prestito più l'ammenda, ed è chiaro che i beni posti in garanzia hanno un valore molto più alto della somma capitale. Ma se la città mette in garanzia tutti i beni pubblici e i beni privati di cittadini e meteci significa che sta mettendo a disposizione l'intero suo patrimonio (escluse le entrate che occorreva lasciare a disposizione per il pagamento degli interessi e per la restituzione della somma capitale).

Si può valutare questo dato secondo due prospettive diametralmente opposte. Da un lato è indubbio che, se la città si impegna con una serie di debiti di una certa entità e con garanzie rischiose, è perché ritiene di possedere la capacità economica per sostenere tali impegni finanziari; anzi, le proprietà che la città pone in garanzia costituiscono la garanzia più solida possibile, e dunque favoriscono l'erogazione di prestiti anche consistenti da parte dei privati. Inoltre, nell'entrare in un sistema di debito/credito, usufruendo di capitali provenienti da privati stranieri, la polis potrebbe raggiungere l'obiettivo di accumulare capitale pubblico da destinare al benessere della città stessa[58]. D'altro canto, le tutele contrattuali disposte nei minimi dettagli a vantaggio dei creditori, soprattutto da parte di Praxikles e Alexandros, hanno la funzione di proteggerli dai rischi – evidentemente ritenuti alti – di insolvenza da parte della città. Nella stessa direzione va, su un piano più strettamente giuridico, come abbiamo visto, la disposizione che il contratto prevalga sulle leggi e i decreti della città.

Del resto, come nota V. Gabrielsen, quando una polis ricorre a finanziamenti consistenti da parte di facoltosi cittadini e di stranieri, anziché ripiegare su altre forme di 'rimpinguamento' delle risorse pubbliche, come ad esempio prelievi fiscali straordinari, corre un rischio molto più alto. Infatti i prelievi fiscali non sono rimborsabili, sono dunque liquidità che entrano stabilmente nelle risorse cittadine, mentre i prestiti comportano la restituzione della somma capitale più gli interessi[59]. Questo implica che le *poleis* che facevano ricorso ai prestiti subivano comunque una perdita finanziaria. In sostanza, il ricorso al prestito è più facile da ottenere ma meno conveniente per

di Nasso ad Amorgo *ab origine* è documentata anche da *Schol. Dion.Perieg*. 525. Sulla storicità di questi dati vd. Constantakopoulou 2007, 183-184 e nota 36.

[58] Vd. Gabrielsen 2014 (il caso amorgino è menzionato alle pp. 35-36).

[59] Gabrielsen 2008, 124-125.

una città povera di risorse finanziarie, che vi ricorre solo in casi di estrema necessità.

Che tutto ciò prefiguri per l'isola di Amorgo a partire dalla fine del IV e per la prima metà del III sec. a.C. l'affacciarsi di una crisi è solo una delle ipotesi possibili, da valutare nel caso in cui si ritenga che l'alto rischio cui si sottopone Arkesine con questi prestiti sia segno di una certa debolezza economica; ma soprattutto se lo si pone a confronto con quanto emerge da alcune iscrizioni coeve ai contratti di prestito e provenienti prevalentemente dalla città e dalla *chora* di Arkesine. Esse hanno per oggetto prestiti, ipoteche e locazioni relative a terre private e della divinità: si tratta di un gruppo di *horoi* ipotecari, di un prestito concesso in forma di *eranos* ottenuto tramite l'ipoteca di varie tipologie di beni immobili (*IG* XII 7, 58), di una *prasis epi lysei* sotto forma di prestito che prevedeva il pagamento di interessi al 10% (*IG* XII 7, 55). Infine, di un contratto di locazione (*syngraphe*) di terre appartenenti a Zeus Temenites (*IG* XII 7, 62; Pernin, *Baux* 131). Quest'ultimo mostra una gestione condivisa tra città e santuario dei terreni dati in affitto a privati, che aveva l'obiettivo di rendere il più possibile produttive le terre del santuario, non facili da sfruttare anche per le scarse risorse idriche dell'isola e per la morfologia del territorio, come è evidente anche dalle clausole sulle modalità di coltivazione imposte agli affittuari nella stessa *syngraphe*. Si tratta in sostanza di un certo numero di documenti che testimoniano una gestione dinamica delle terre di Arkesine, tanto di quelle dei privati quanto di quelle della divinità[60]. La portata di tali documenti diventa rilevante quando si consideri il numero limitato degli abitanti della polis: si tratta infatti sempre di comunità piuttosto ridotte, con poche centinaia di cittadini[61]. Il bisogno di liquidità che ne deriva si dovette sommare a difficoltà finanziarie legate al tributo imposto alle Cicladi da Demetrio Poliorcete, che probabilmente incidettero sulla decisione di stipulare i contratti di prestito più recenti, ad es. la *syngraphe* per Alexandros, come propone anche Migeotte[62]. Soprattutto per i documenti di prestiti, ipoteche e locazioni a privati rimane invece da dimostrare se, e in che misura, abbia potuto incidere una fase di impoverimento delle risorse agrarie.

È comunque degno di nota il fatto che, a partire dalla fine del III secolo a.C., le *poleis* di Amorgo inizieranno a coniare moneta propria. È forse il segno di una rinnovata prosperità economica, probabilmente legata a un incremento della popolazione dovuta allo stanziamento di una colonia samia nell'isola e alla presenza crescente di mercanti stranieri[63], che richiedevano un mercato interno capace di portare a termine le transazioni commerciali in modo rapido e senza ricorrere, come in passato, alle monete attiche, alessandrine e demetriache che circolavano, come abbiamo visto, non solo ad Amorgo ma anche in tutte le Cicladi.

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60 I documenti sono discussi nel loro insieme in Erdas 2020.

61 Ruschenbusch 1983. Ovviamente sono poleis di non grandi proporzioni, ma il loro popolamento non era scarso in termini assoluti, soprattutto se si considera la poca fertilità del suolo dell'isola.

62 Migeotte, *Emprunt*, 193-194.

63 Liampi 2004; Constantakopoulou 2007, 183-184.

Questo non esclude che anche dopo la crisi del III secolo a.C. le *poleis* amorgine ricorressero a prestiti occasionali per particolari esigenze. Ne è un'interessante testimonianza la fondazione di Kritolaos, istituita ad Aigiale da un privato e facoltoso cittadino[64]. Kritolaos stabilisce per la sua città un prestito di 2000 dracme al tasso di interesse del 10% e chiede in garanzia terreni per il valore del prestito[65]. Il rimborso della somma capitale è vietato. Si tratta da un lato, come è evidente, di un atto di evergetismo nei confronti della propria città, dall'altro di una forma di investimento perpetuo, costituito dall'acquisizione degli interessi, sempre a beneficio della polis. Colpisce molto ancora una volta il livello di istituzionalizzazione nella gestione prestito. Alla *boule* spetta infatti il compito di riscuotere gli interessi una volta all'anno, e si comporta a tutti gli effetti come ente creditore della polis, per la quale gestisce anche le entrate 'sacre'. L'obiettivo di Kritolaos è dunque quello di incardinare la sua fondazione alle istituzioni cittadine (non solo la *boule*, ma anche i *tamiai*, l'*archon* e altre magistrature sono coinvolti) e di inserire il prestito in modo permanente all'interno dell'amministrazione finanziaria della polis.

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[64] *IG* XII 7, 515 (Sokolowski 1962, no. 61). Vd. Helmis 2003; Harter-Uibopuu 2006, 297-298; Ead. 2011, 126-130.

[65] *IG* XII 7, 515, ll. 8-13: τὸ μὲν ἀργύριον ἐγδα|νείζεσθ]αι ἐν τῷ Ἀπατουριῶνι μηνὶ τόν τε ἄρχοντα καὶ τοὺς πρυτάνει[ς |[10] καὶ] μισθωτὰς καὶ Κριτόλαον Ἀλκιμέδοντος, ἐγδανείζεσθαι δὲ αὐτ[ὸ | ἀπὸ δε]κάτου, τοὺς δὲ δανεισομένους διδόναι ὑποθήκην χωρία | [πλείο]νος ἄξια δραχμῶν δισχιλίων ἀνεπιδάνειστα ἰδιωτικοῦ δα|[νείου, «Il denaro deve essere concesso in prestito nel mese di Apatourion dall'*archon*, dai *prytaneis*, dagli incaricati delle rendite (*misthotai*) e da Kritolaos, figlio di Alkimedon. Il prestito deve essere concesso a un interesse del dieci per cento, e coloro che contraggono il prestito devono offrire come garanzia terreni di valore superiore a duemila dracme, non gravati da ipoteche per prestiti privati».

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REPRISAL WITHOUT LIMITS: THE HORRENDEOUS CASE OF IG XII,7 67B. RESPONSE TO DONATELLA ERDAS

The documentary evidence from Ptolemaic Egypt consists of 174 papyri that record loan agreements.[1] The structure of these texts, which remains constant throughout the period, opens with a formal account of the loan's issuance, typically expressed in the aorist indicative tense.[2] The account of the act of lending is followed by a directive specifying the terms of repayment,[3] accompanied by a statement detailing the penalty imposed on the borrower in the event of non-payment.[4] The document then outlines the *praxis*—the method of enforcement applied against the borrower in the event of non-payment.[5] The document concludes with the *kyria* clause, affirming the document's validity and applicability in all courts of law.[6] Finally, in Ptolemaic Egypt the act of loan is attended by sureties, who vouch for the obligor's settlement of the debt.[7] Sureties are especially common in the case of cash loans, attested in roughly every third document from the period prior to the Roman occupation. Real security is, by contrast, very rare, with only six Ptolemaic loans made subject to *hypotheke*.[8]

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1 U. Yiftach, *The Taxonomy of the Legal Document. An Account of the Language and Terminology of Clauses in Greek Legal Documents from Ptolemaic, Roman and Byzantine Egypt* (RIDA, Hors-série), https://doi.org/10.25518/978-2-87562-473-4.

2 *P.Cair.Zen.* I 59001.4-9 = *Sel.Pap.* I 66 (274/3 BCE, Pitos, Memphites): ἐδάνεισεν Διονύσιος Ἀπο|[5]λλωνίου Γαζαῖος τῶν περὶ Δείνωνα Ἰσιδώ|[6]ρωι Θράικι τεσσαρακονταρούρωι τῶν Λυκό|[7]φρονος ἀργυρίου δραχμὰς τριακοντατέσ|[8]σαρας, τοῦτο δ' ἐστὶν ἡ τιμὴ τοῦ βασιλικοῦ | [9] σίτου τόκου ὡς δύο δραχμῶν τῆι μνᾶι ἑκάστηι τὸμ μῆνα ἕκαστον and Yiftach, *Taxonomy*, ch. 2, 18.

3 *P.Cair.Zen.* I 59001.9-11 (274/3 BCE, Pitos, Memphites): ἀποδότω δὲ Ἰσίδωρος Διονυσίωι τὸ | [10] δάνειον ἐμ μηνὶ Ἀρτεμισίωι τῶι ἐν τῶι τρεισ|[11]καιδεκάτωι ἔτει καὶ τὸν τόκον and Yiftach, *Taxonomy*, ch. 3.20.

4 P.Cair.Zen. I 59001.11-13 (274/3 BCE, Pitos, Memphites): ἐὰν δὲ μὴ | [12] ἀποδῶι ἐν τῶι γεγραμμένωι χρόνωι, ἀποτει|[13]σάτω τὸ δάνειον ἡμιόλιον and Yiftach, *Taxonomy*, ch. 3.22.

5 P.Cair.Zen. I 59001.13-16 (274/3 BCE, Pitos, Memphites): καὶ ἡ πρᾶξις ἔστω | [14] Διονυσίωι ἐκ τῶν ὑπαρχόντων τῶν Ἰσιδώρου | [15] καὶ τῶν τοῦ ἐγγύου, πράσσοντι τρόπον ὃν | [16] ἂν βούληται Διονύσιος πρὸς βασιλικά and Yiftach, *Taxonomy*, ch. 1.5.1.

6 P.Cair.Zen. I 59001.19-20 (274/3 BCE, Pitos, Memphites): ἡ δὲ συγγραφὴ ἥδε κυρία ἔστω οὗ ἂν | [20] ἐπιφέρηι Διονύσιος ἢ ὧι ἂν Διονύσιος παραδῶι and Yiftach, *Taxonomy*, ch. 1.7.1.

7 P.Cair.Zen. I 59001.16-19 (274/3 BCE, Pitos, Memphites): ἔγγυος | [17] τοῦ δανείου Ἰσιδώρου καὶ τῶν κατὰ τὴν συγγραφὴν | [18] εἰς ἔκτεισιν ⟦καὶ⟧ Διονυσίωι Δημήτριος Δάμωνος | [19] Θρᾶιξ σύγκληρος and Yiftach, *Taxonomy*, ch. 4.1.

8 *BGU* VI 1279.1-7 (mid III BCE, unknown provenance); *P.David* 3.7 = *SB* X 10282 =

No Greek document from Ptolemaic Egypt records both sureties and real security as two alternative means of security. Seemingly, the same structure is evidenced in *IG* VII 3172 VI from 223 BCE (Orchomenos),[9] which, like its Egyptian counterparts, records the act of loan,[10] a stipulation of repayment,[11] a penalty for non-repayment,[12] as well as the *praxis*[13] and *kyria* clauses.[14] The Boeotian document, too, records the presence of sureties attending the act, even if not in an independent clause, and does not introduce real security.

The remaining nine documents, all dating to the fourth and third century BCE, largely follow the same scheme, using the same recurring terminology throughout.[15] In the case of the maritime loan recorded verbatim in Demosthenes' *Against Lacritus* (10–13), the clause documenting the act of loan discusses not only the act of lending but also its intended purpose.[16] Additional clauses provide further details on the trip,[17] as well as on contingencies that would warrant repayment of the loan at a reduced rate.[18] Finally, the text of the maritime loan records the placement of the cargo as

C.Ptol.Sklav. I 60 (175-170 BCE, Arsinoites) (?); *P.Freib.* III 36.13-15 = *SB* III 6822 (179/8 BCE, Philadelphia); *P.Hamb.* I 28.6-7 = *C.Ptol.Sklav.* I 19 (II BCE, Arsinoites); *P.Stras.* IX 882.8-11 (ca. 180 BCE, Philadelphia?); *P.Tebt.* III.1 817.12-17 = *SB* I 4232 = *C.Pap.Jud.* I (182 BCE, Crocodilopolis); III.2 970.10-14 = *C.Ptol.Sklav.* I 26 (early II BCE, Crocodilopolis).

9 Cf., e.g., Thür 2010.

10 *IG* VII 3172.6.1-22: ἐδάνεισεν Νικαρέτα Θέωνος | [2] Θεσπική, παρόντος αὐτῆι κυ|[3]ρίου τοῦ ἀνδρὸς Δεξίππου Ε[ὐ]|[4]νομίδου, Καφισοδώρωι Δι[ο]|[5]νυσίου, Φιλομήλωι Φίλωνος|, [6] Ἀθανοδώρωι Ἵππωνος, Πο[λυ]|[7]κρίτωι Θάροπος, καὶ ἐγγύοις | [8] εἰς ἔκτεισιν τοῦ δανείου, (names of the sureties) Ὀρχομενίοις, ἀργυ|[18]ρίου δραχμὰς μυρίας ὀκτα|[19]κισχειλίας ὀκτακοσίας τρι|[20]άκοντα τρεῖς ἄτοκον ἐχ Θεσ|[21]πιῶν εἰς τὰ Παμβοιώτια τὰ ἐ |[22]π' Ὀνασίμου ἄρχοντος Βοιωτοῖ[ς].

11 *IG* VII 3172.6.23-27: ἀποδότωσαν δὲ τὸ δάνειον | [24] οἱ δανεισάμενοι ἢ οἱ ἔγγυ|[25]οι Νικαρέται ἐν τοῖς Πανβοι|[26]ωτίοις πρὸ τῆς θυσίας ἐν ἡμέ|[27]ραις τρισίν.

12 *IG* VII 3172.6.27-29: ἐὰν δὲ μὴ ἀποδῶσ[ι], | [28] πραχθήσονται κατὰ τὸν νό|[29]μον·

13 *IG* VII 3172.6.29-34: ἡ δὲ πρᾶξις ἔστω ἔκ τε | [30] αὐτῶν τῶν δανεισαμένων | [31] καὶ ἐκ τῶν ἐγγύων, καὶ ἐξ ἑνὸ[ς] | [32] καὶ ἐκ πλειόνων καὶ ἐκ πάν|[33]των, καὶ ἐκ τῶν ὑπαρχόντων | [34] αὐτοῖς, πραττούσηι ὃν ἂν τρό|[35]πον βούληται.

14 *IG* VII 3172.6.35-37: ἡ δὲ συγγραφὴ | [36] κυρία ἔστω κἂν ἄλλος ἐπι|[37]φέρηι ὑπὲρ Νικαρέτας.

15 *Dem*., 35 (*Lacr.*), 10-13 (before 338 BCE, Athens); *SEG* XXXVIII, 637; 640 = D.M.Robinson, *TAPA* 65 (1934) 130/131 no. 6 (360-350 BCE, Olynthos); *IG* XII, 7 66 = Migeotte, *Emprunt*, #52; *IG* XII, 7 67a = Migeotte, *Emprunt*, #51; *IG* XII, 7 67b = Migeotte, *Emprunt*, #49; *IG* XII, 7 68 = Migeotte, *Emprunt*, #54; *IG* XII, 7 69 = Migeotte, *Emprunt*, #50; *IG* XII, 7 70 = Migeotte, *Emprunt*, #53 (all roughly dating to 325-275 BCE Amorgos). For a useful overview cf., e.g., Faraguna 2019.

16 Ἐδάνεισαν Ἀνδροκλῆς Σφήττιος καὶ Ναυσικράτης Καρύστιος Ἀρτέμωνι καὶ Ἀπολλοδώρῳ Φασηλίταις ἀργυρίου δραχμὰς τρισχιλίας Ἀθήνηθεν εἰς Μένδην ἢ Σκιώνην, καὶ ἐντεῦθεν εἰς Βόσπορον, ἐὰν δὲ βούλωνται, τῆς ἐπ' ἀριστερὰ μέχρι Βορυσθένους, καὶ πάλιν Ἀθήναζε,

17 καὶ ἀπάξουσι τὰ χρήματα τὰ ἐκ τοῦ Πόντου ἀντιφορτισθέντα Ἀθήναζε πάλιν ἐν τῷ αὐτῷ πλοίῳ ἅπαντα, and ἐὰν δὲ μὴ εἰσβάλωσι, μείναντες ἐπὶ κυνὶ ἡμέρας δέκα ἐν Ἑλλησπόντῳ, ἐξελόμενοι ὅπου ἂν μὴ σῦλαι ὦσιν Ἀθηναίοις, καὶ ἐντεῦθεν καταπλεύσαντες Ἀθήναζε τοὺς τόκους ἀποδόντων τοὺς πέρυσι γραφέντας εἰς τὴν συγγραφήν. ἐὰν δέ τι ἡ ναῦς πάθῃ ἀνήκεστον ἐν ᾗ ἂν πλέῃ τὰ χρήματα, σωτηρία δ' ἔσται τῶν ὑποκειμένων, τὰ περιγενόμενα κοινὰ ἔστω τοῖς δανείσασιν.

18 σωθέντων δὲ τῶν χρημάτων Ἀθήναζε, ἀποδώσουσιν οἱ δανεισάμενοι τοῖς δανείσασι τὸ

security for the debt,[19] the mortgage's position during the contract's duration,[20] and its foreclosure by the creditors in the event of default.[21] The Lacritos document does not record sureties.

The 'archive' of five inscriptions from Amorgos, excavated in the temple of Hera near Arkesine, preserves the text of six loan contracts concluded between Arkesine—and, in one case, also the cities of Aigiale and Minoa—and wealthy entrepreneurs, some located in the neighboring islands of Naxos and Astypalaia, sometime between the last quarter of the fourth and the first quarter of the third century BCE.[22] Four in particular—*IG* XII,7 67a, 67b, 68, and 69—exhibit, as far as their preservation allows, the key components of loan contracts, as evident in the previously discussed documentation. These components include attestation of the act of loan, introduced by the indicative aorist form of δανείζω, with an account of the lender, borrower, object of the loan (in every case, cash), and the interest: ἐπὶ τόκῳ etc.,[23] regulation of repayment,[24] penalty for non-repayment with the authorization of *praxis*,[25] and the *kyria* clause.[26]

Another group of clauses common to every Amorgos document concerns interest.[27] While the institution of interest is routine in Egypt, a clause regulating its periodic payment does not appear regularly before the fourth century BCE.[28] Its frequent occurrence in the loan contracts from Arkesine stems from the fact that nearly all loans are open-ended, allowing the lender to prioritize a steady revenue stream.[29] Hence, these contracts include detailed provisions on the periodic payment of interest, penalties, and enforcement methods in case of late payment.[30] Also unique to the Amorgos collection is a specification of the modalities of payment, including the type and quality of money as well as its place of delivery.[31]

γιγνόμενον ἀργύριον κατὰ τὴν συγγραφὴν ἡμερῶν εἴκοσιν, ἀφ' ἧς ἂν ἔλθωσιν Ἀθήναζε, ἐντελὲς πλὴν ἐκβολῆς, ἣν ἂν οἱ σύμπλοι ψηφισάμενοι κοινῇ ἐκβάλωνται, καὶ ἄν τι πολεμίοις ἀποτείσωσιν· τῶν δ' ἄλλων ἁπάντων ἐντελές.

19 ὑποτιθέασι δὲ ταῦτα, οὐκ ὀφείλοντες ἐπὶ τούτοις ἄλλῳ οὐδενὶ οὐδὲν ἀργύριον, οὐδ' ἐπιδανείσονται.

20 καὶ παρέξουσι τοῖς δανείσασι τὴν ὑποθήκην ἀνέπαφον κρατεῖν, ἕως ἂν ἀποδῶσι τὸ γιγνόμενον ἀργύριον κατὰ τὴν συγγραφήν.

21 ἐὰν δὲ μὴ ἀποδῶσιν ἐν τῷ συγκειμένῳ χρόνῳ, τὰ ὑποκείμενα τοῖς δανείσασιν ἐξέστω ὑποθεῖναι καὶ ἀποδόσθαι τῆς ὑπαρχούσης τιμῆς·

22 For a thorough discussion of the economic context see in particular Gabrielsen (2005), 145.

23 *IG* XII,7 67a.2-6; *IG* XII,7 67b.3-6; *IG* XII,7 68.1-7; *IG* XII,7 69.2-8.

24 *IG* XII,7 67b.16-17; *IG* XII,7 68.8-14; *IG* XII,7 69.18-20.

25 *IG* XII,7 67a.6-9; *IG* XII,7 67b.21-28; *IG* XII,7 68.16-20; *IG* XII,7 69.23-32.

26 *IG* XII,7 67a.26-27; *IG* XII,7 67b.40-45; *IG* XII,7 69.45-51. One additional clause — *IG* XII,7 67b.46-47 — anticipates the deposition of the document in the city archive and in the temple of Hera, where the loan inscriptions were ultimately excavated. In IG XII, 7 69.51-52, the deposition is to take place in the temple of Hera alone.

27 *IG* XII,7 67a.9-16; *IG* XII,7 67b.8-16; *IG* XII,7 68.7-8, 14-16; *IG* XII,7 69.11-17.

28 Yiftach, *Taxonomy*, ch. 3.7.

29 Gabrielsen (2005), 141-142; Migeotte (2006), 117-118.

30 On the economic profile of the creditors, cf. Erdas, p. 301 e ss.

31 *IG* XII,7 67b.17-21: ὅταν δὲ ἀποδιδῶσιν | [18] [τ]ὸν τόκον ἢ τὸ ἀρχαῖον, ἀποδώσουσιν ἐν

Following this, the documents diverge. *IG* XII,7 68 records a loan jointly taken by the cities of Arkesine, Aigiale, and Minoa. As is common in other contemporary loans from Amorgos, the inscription mentions three individuals, each acting on behalf of his respective polis, who collectively assume the role of *daneistai*.[32] However, in *IG* XII,7 68 neither these individuals nor any other official is explicitly entrusted with administering the loan.[33] Instead, the three debtor-cities bear full responsibility for repaying the interest and principal and are equally liable for any penalties incurred.[34] At least in the preserved clauses, there is no explicit subjection of the debtor to *praxis*. The loan is also unsecured by a *hypotheke*, which would have been used to satisfy the creditor's claims in the event of default.

IG XII,7 67b and *IG* XII,7 69 open with the same text as *IG* XII,7 68, including an attestation of the act of loan and the interest. Additionally, *IG* XII,7 67b records the names of two men who collected the loan as *daneistai* by virtue of a public decree.[35] However, other features differ significantly. In the clause recording the act of contracting, the loan is explicitly described as ἀκίνδυνον παντὸς κινδύνου ("guaranteed [for the lender] against all risk)." This stipulation ensures that the borrower has no grounds to reduce the principal owed under any circumstances.

In the following, the text unfolds along two interwoven threads: a detailed regulation of the periodical payment of interest and the settlement of the debt. The responsibility for interest payments is assigned to "the treasurers (*tamiai*) who collect the revenues of the Arkesinians."[36] If the interest is not duly paid, the *tamiai* will be subject to execution for its payment, along with the penalty. Should they still fail to meet their obligation, the creditor retains the right to collect the interest directly from the city. Moreover, the city cannot claim any deduction from the principal on account of previously paid or outstanding penalty amounts.[37] If the city itself defaults on the interest payment, the unpaid interest will be compounded, accruing interest in the

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Νάξωι Πραξικλεῖ ἢ ὧι ἂγ [κ]ελεύ|[19][ηι] Πραξικλῆς Ἀττικὸν ἢ Ἀλεξάνδρειον νόμισμα ὧι [ἡ] πόλις χρῆται ..| [20] .ΛΤΤ..ον, ὁλοσχερές, δόκιμον, ἄσ[υ]λον, ἀνέπαφον, ἀτελὲς πάντων, [ὅ]|[21]π[ου] ἂγ κελεύει Πραξικλῆς. Comapre *IG* XII,7 68.10-14; 69.20-23.

[32] *IG* XII,7 68.4-6: δανειστῶν ἐλθόντων ἐξ Ἀρκε[σί]|[5][νης …]άνορος τοῦ Σ[ω]σι[φῶ(?)] ντος, ἐγ δ[ὲ Αἰγιαλοῦ Μ]ε[ν]άνδρου τοῦ Πολυδώρο[υ, ἐγ δὲ] | [6] [Μινώιας] Φανοδήμου τοῦ Φανοκρά[τους, Compare also *IG* XII,7 67b.5-6; *IG* XII,7 69.6-8.

[33] Cf., e.g., ll. 14-16: [ἐὰν δὲ μὴ ἀ]πο[δι]δῶσι τὸν τόκον | [15] [κατὰ τὰ γεγρ]αμμένα, δ[ιπ]λάσιον [αὐτὸν ὀφειλόντων τὸν] τόκον καθά|[16][περ τὸ ἀρχαῖο]ν·

[34] See further Erdas, p. 309-310.

[35] *IG* XII,7 67b.3-6: Πραξικλῆς Πολυμνήστου ἐδάνεισεν τ[ῆι πό]|[4]λε[ι] τῆι Ἀρκεσινέων ἀργύριο[ν] Ἀττικὸ[ν] τρία τάλαντα ἀκίνδυνομ πα[ν]|[5][τ]ὸς κινδύνου Πραξικλεῖ ἐπ[ὶ] τόκωι πέντ' ὀβολοῖς τὴμ μνᾶν ἑκάστην το[ῦ] [μην]ὸς ἑκάστου, δανειστῶν ἐλθόντων δημοσίαι Πρωτομάχου καὶ Διο|[6]…ους, κατ[ὰ] τὸ ψήφισμα ὃ εἶπε Στ[ησα]γόρας., and *IG*, XII,7 69.2-8.

[36] For the involvment of the *tamiai* in the administration of loans see also, e.g., *IG* VII 3172.112-120, and Gabrielsen 2008, 147-148.

[37] *IG* XII,7 67b.13-14: [κ]αὶ μὴ ἔ[σ]τω ὑπόλογος τῆι πόλει τοῦτο τὸ ἀργύριον εἰς τὸ δάνειον, ἀλλ' ἀπο|[14]δότω ἡ πόλις τὸν τόκον and *IG* XII,7 69.16-17.

same manner as the original principal.[38] The *tamiai* are presumably also responsible for returning the principal within six months of the creditor's request for repayment.[39] However, the consequences of non-payment are far more severe and extend beyond persons of the *tamiai*—they affect the entire city.

Earlier in the text, the lender was granted security over all properties of the city, including those of its citizens and residents, both in Arkesine and abroad.[40] In the clause detailing the consequences of failing to settle the debt, the inscription records an "acknowledgment and disposition" (ὡμολόγησαγ καὶ διέθεντο) by the Arkesinians, in which they declare their liability to pay twice the principal amount.[41] By virtue of this acknowledgment, the creditor is authorized, in the case of non-payment, to initiate *praxis* against both public and private properties of the citizens, as well as against the assets of foreign residents—the same properties that were originally pledged as security for the debt.[42] Moreover, once the creditor has seized an asset, the Arkesinians are not permitted to deduct its value from the outstanding debt.[43] Only the creditor has the authority to confirm that the debt has been settled. The creditor and his representatives are also granted full discretion in enforcing repayment and are protected from any penalty or liability. In other words, this is a case of a contractually founded *syla.*[44] If any individual Arkesinian interferes with the enforcement of the debt, he will be personally liable for a penalty of one talent. In this case too, the city cannot deduct the imposed penalty from the total debt owed.[45]

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[38] *IG* XII,7 67b.14-16: ἐὰν δὲ μὴ ἀποδῶι, ἔστω ὁ τόκος ὃν ἂν μὴ ἀποδῶσιν | [15] ἐνεργὸς Πραξικλεῖ μετὰ τοῦ ἀρχαίου τοῦ ἴσου τόκου καθ' ἐνιαυτὸν ἕκασ|[16][το]ν, and Erdas, p. 282.

[39] *IG* XII,7 67b.8-10: ἀποδώσουσιν τὸν | [9] μὲν τόκον καθ' ἐνιαυτὸν ἕκαστον οἱ [τ]αμίαι οἱ τὰς προσόδους ἐγλέγοντες | [10] τὰς Ἀρκεσινέων and *IG* XII,7 69.11-12.

[40] *IG* XII,7 67b.6-8: ὑπέθετο δὲ Πραξικλῆς τά τ[ε] | [7] [κ]οινὰ τὰ τ[ῆ]ς πόλεως ἅπαντ[α κ]αὶ [τ]ὰ ἴδια τὰ Ἀρκεσινέων καὶ τῶν οἰκούν|[8][τ]ων ἐν Ἀρκεσίνηι ὑπάρχ[οντα] ἔγγαια καὶ ὑπερπόντια, and *IG* XII,7 69.8-10. *IG* XII,7 67a features the text ὑπέθηκε δὲ ἁ πόλις, but the text is fragmentary. Compare also the Cean *IG* XII Suppl. 236, e.g., 10: ἐπὶ ὑποθήκει τοῖς κτήμασι τοῖς τῶμ πολιτῶν and Erdas, p. 306, n. 39.

[41] *IG* XII,7 67b.21-23: ἐὰν δὲ μὴ ἀποδῶσιν τὸ ἀργύριον κατὰ τὰ γε|[22]γραμμένα, ὡμολόγησαγ καὶ διέθεντο Ἀρκεσινεῖς ὀφείλειμ Πραξι|[23][κ]λεῖ ἓξ τάλαντα and *IG* XII,7 69.23-26.

[42] *IG* XII,7 67b.23-28: καὶ ἐξέστω πράξασθαι Πραξικλεῖ ταῦτα τὰ χρήματ[α] | [24] πράξει πάσηι ἔ[κ] τε τῶν κοινῶν τ[ῶ]ν Ἀρκ[ε]σινέων πάντωγ καὶ ἐκ τῶν | [25] [ἰ]δίων τῶν Ἀρκεσινέωγ κ[αὶ] ἐ[κ τῶν] οἰκούντων ἐν Ἀρκεσίνηι καὶ ἐξ ἑνὸς | [26] [ἑ]κάστου ἅπαν τὸ ἀργύριογ [κ]αὶ ἐξ ἁπάντων, τρόπωι ὧι ἂν ἐπίστηται, | [27] καθάπερ δίκην ὠφληκότων ἐν τῆι ἐκκλήτωι κατὰ τὸ σύμβολον τὸ Ναξ[ί]|[28][ω]ν καὶ Ἀρκεσινέων, τέλος ἔχουσαν ἀζημίωι οὖντι πάσης ζημίας and *IG* XII,7 69.26-32.

[43] *IG* XII,7 67b.29-30: μὴ εἶναι Ἀρκεσιν[εῦ]|[30][σιν] ὑπόλογον τούτων εἰς τὴν ἀπόδοσιν τῶγ χρημάτων ὧν ὀφείλουσ[ιν] and *IG* XII,7 69.33-34.

[44] *IG* XII,7 67b.31-32: [ἀ]ζημίους δὲ ἀφῆκαγ καὶ ἀνυπο[δίκ]ους Ἀρκεσινεῖς καὶ ἐάν τινες ἄλλοι | [32] πράττωσιν τὰ χρήματα κελεύοντος Πραξικλέους, and *IG* XII,7 69.34-36. Cf., Lintott 2004, 347-351.

[45] *IG* XII,7 67b.32-38: ἐὰν δέ τις Ἀρ[κ]εσι[νέ]|[33][ω]ν ἀφα[ι]ρῆται ἢ τῶν οἰκούντων ἐν Ἀρκεσίνηι τοὺς πράττοντας ἢ ἐνίσ[τη]|[34]ται τῆι πράξει τρόπωι ἢ παρευρέσει ἠτιν[ι]οῦν, ἀποτει[σάτω] Πραξι|[35][κ]λεῖ τ[ά]λ[α]ντον ἀργυρίου [κα]ὶ π[ρακτ]ὸς ἔ[στω] τοῦτο τὸ ἀργύριον κ[αθάπερ] | [36] [ὠ]φληκὼ[ς] δίκημ Πραξικλεῖ ἐν τῆι [ἐκκλ]ήτωι [κ]ατὰ τὸ σύμβολον τέλος | [37] [ἔχ]ουσ[αν], καὶ τῆι πόλει [μὴ ὑ]πόλογος ἔ[στω] ταῦτα τὰ χρήματα εἰς

In the context of this short paper, I focus on the means rather than the ends: the clauses, the bricks that form the distinctive contractual edifice of the Amorgos loan inscriptions. The author of the texts documented in the inscriptions from Amorgos demonstrates a thorough familiarity with the established terminology used since the fifth century BCE to record loans. Into this framework, he has integrated unique elements, specifically tailored to the distinctive circumstances of these contracts. Some of these terms are local peculiarities.

The innovations are particularly evident in two areas. First, the borrower is a *polis*, a corporate public body. Consequently, the actual execution of the loan falls to its appointed officeholders and citizens. In *IG* XII,7 67b, within the clause recording the act of loan, the scribe adds, in the genitive absolute, an account of the activity of two seemingly private individuals who, by virtue of a motion, acted as *daneistai*—traveling to the creditor in Naxos to collect, and negotiate, the terms of the loan: δανειστῶν ἐλθόντων δημοσίαι Πρωτομάχου καὶ Διο|[6] …ους, κατ[ὰ] τὸ ψήφισμα ὃ εἶπε Στ[ησα]γόρας.[46] The terms of the contract as recorded in the 'Amorgos loans archive' may have derived from that negotiation.

The payment of the interest, and probably also the principal, is to be undertaken by the *tamiai*. The clause recording the duty of payment does not, in itself, depart from the standard text of a loan contract. However, the penalty clause differs somewhat from the formulation used in *IG* XII,7 68.[47] The consequence of a defaulted payment is not merely the duty of compensation, but rather the *tamiai*'s direct subjection to *praxis*. This is not the only documentary context in which such subjection is recorded,[48] but the use of the adjective πρακτός to denote this position appears to be peculiar to the island of Amorgos in the early Hellenistic period.[49]

A second peculiarity is the clause μὴ ἔστω ὑπόλογος τῆι πόλει τοῦτο τὸ ἀργύριον εἰς τὸ δάνειον. The word ὑπόλογος, here probably a noun meaning "deduction," is used in papyri to denote a contingency warranting the deduction of a due amount.[50]

τὴν ἀ[πό]|[38][δοσιν τ]οῦ δανείου, and *IG* XII,7 69.36-43.

[46] Cf., further, Gabrielsen (2018), 35 n. 66. An in particular *idem* (2005), 146-147. Gabrielsen asserts (*loc. cit.*) that these publicly appointed *daneistai* were not just negotiating loans but actively managing credit operations on behalf of the city. Their duties began, rather than ended, with the conclusion of a loan agreement. However, the contract itself does not contain any reference to their position. If Gabrielsen's position is to be admitted, such regulation would be documented elsewhere.

[47] *IG* XII,7 68.14-16: [ἐὰν δὲ μὴ ἀ]πο[δι]δῶσι τὸν τόκον | [15] [κατὰ τὰ γεγρ]αμμένα, δ[ιπ]λάσιον [αὐτὸν ὀφειλόντων τὸν] τόκον καθά|[16][περ τὸ ἀρχαῖο]ν·

[48] In the *Taxonomy*, I discuss this format as Type4 of the clause regulating the failure to return the loan. Chapter 3.22. Cf., e.g., BGU IV 1162.5-9 (17/6 BCE, Alexandria): εἰ δὲ ‹μὴ›, εἶναι αὐ[τὰς ἀγω]|[6]γίμας καὶ συνέχ‹εσ›θαι μέχρι τοῦ ἐ‹κ›τῖσα[ι τὸ μὲν δά]|[7]νηον {συ} τὰς τοῦ ἀργυ(ρίου) δραχμὰς χιλίας ὀ[γδοήκον]|[8]τα σὺν ἡμιολίᾳ παραχρῆμα, τοῦ δ' ὑπερ[πεσόντος] | [9] χρόνου τοὺς κατὰ τὸ διάγραμ‹μα› τόκου[ς (διδράχμους).

[49] Cf., e.g., *IG* XII,7 62.5-6, 49-50 (IV BCE, Arkesine), but also *IG* XII,3 330.220-221 (210-195 BCE, Thera).

[50] See in particular Wachsmuth (1885), 288-289, n. 9. For Egypt see now Yiftach, *Taxonomy* 2.34, 38 and BGU VI 1270.22-23 (191 BCE, Takona): τῆς δὲ γενομένης γῆς ἀβ[ρό]χου ἐν

It appears twice more in *IG* XII,7 67b, always in connection with the exaction of indemnities and fines. In this instance, it specifies that the penalty imposed on a delinquent treasurer shall not be deducted from the principal of the debt. However, this usage appears to be a local idiosyncrasy, virtually unique to Amorgos.[51]

The second sphere of innovation lies in the array of clauses establishing and detailing the seizure of security. The security clause, as in all Greek hypothecated loans, is positioned immediately after the clause recording the delivery of the loan.[52] Similarly, the text also records the form of execution in case of defaulted payment.[53] However, several notable departures from the standard format can be observed. First, the security in this case is exceptional, as it encompasses the entire public property and private property of the citizens of Arkesine, as well as that of foreign residents. The formulation τά τ[ε] | [7] [κ]οινὰ τὰ τ[ῆ]ς πόλεως ἅπαντ[α κ]αὶ [τ]ὰ ἴδια τὰ Ἀρκεσινέων καὶ τῶν οἰκούν|[8][τ]ων ἐν Ἀρκεσίνηι ὑπάρχ[οντα] ἔγγαια καὶ ὑπερπόντια is used to denote this totality.[54] Moreover, exactly the same assets become subject to execution in the event of foreclosure.[55]

Second, the process of execution: the creditor had at his disposal a large retinue of assistants and employees, through whom the collection of the debt was to be executed.[56] However, since the execution primarily took place within the debtor city's territory, there was always a risk of legal or administrative measures taken by the *polis* against the collectors. To anticipate such challenges, the regulation: [ἀ]ζημίους δὲ ἀφῆκαγ καὶ ἀνυπο[δίκ]ους Ἀρκεσινεῖς καὶ ἐάν τινες ἄλλοι | [32] πράττωσιν τὰ χρήματα κελεύοντος Πραξικλέους ("And the Arkesineans also release from penalty and from liability to court action any who exact the money at Praxikles' behest") explicitly grants immunity to the exactors, shielding them from any legal repercussions.

Finally, the prospect of private resistance is explicitly addressed in the text: ἐὰν δέ τις Ἀρ[κ]εσι[νέ]|[33][ω]ν ἀφα[ι]ρῆται ἢ τῶν οἰκούντων ἐν Ἀρκεσίνηι τοὺς πράττοντας ἢ ἐνίσ[τη]|[34]ται τῆι πράξει τρόπωι ἢ παρευρέσει ἡιτιν[ι]οῦν ("If any of the Arkesineans or of those dwelling in Arkesine obstructs the exactors or interferes with the exaction in any way or under any pretext whatever"). The circumstances addressed in this clause are far removed from those typically found in routine loan contracts—as are the measures prescribed to confront them. The outstanding peculiarity of this final clause,

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τῆι γῆι ταύτηι ὑπόλ[ο]|[23]γος ἔστω Σώσωι τὸ κατὰ λόγον τῆς γῆς [ε]ἰς τὰ προγεγραμμένα ἐκφόρ[ια]. The context, of course, is entirely different.

51 In *IG* XIV 645 = *SGDI* 4629, e.g., l. 138 (late IV BCE, Heraclea Lucania), the word ὑπόλογος has different rendering: 'liable', 'responsible', just like πρακτός in the present context.

52 Cf., in particular, *against Lacritos* (supra, n. 19) and, for Egypt, Yiftach, *Taxonomy*, ch. 4.4.

53 Compare Migeotte (1977), 138.

54 On ὑπερπόντια cf. Erdas, p. 311, n. 45.

55 καὶ ἐξέστω πράξασθαι Πραξικλεῖ ταῦτα τὰ χρήματ[α] | [24] πράξει πάσηι ἔ[κ] τε τῶν κοινῶν τ[ῶ]ν Ἀρκ[ε]σινέων πάντωγ καὶ ἐκ τῶν | [25] [ι]δίων τῶν Ἀρκεσινέωγ κ[αὶ] ἐ[κ τῶν] οἰκούντων ἐν Ἀρκεσίνηι καὶ ἐξ ἑνὸς | [26] [ἑ]κάστου ἅπαν τὸ ἀργύριογ [κ]αὶ ἐξ ἁπάντων, τρόπωι ᾧι ἂν ἐπίστηται, and Erdas, p. 301.

56 On Praxikles' economic standing see Erdas, p. 305-306.

just as the contents of the Amorgos loan inscriptions in general, raise two pressing questions: what were circumstances that had driven the citizens of Arkesine to accept the extraordinarily harsh terms introduced by these contracts, and why did they allow these terms to be inscribed in stone, making these terms publicly visible?

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KONSENS, VORLEISTUNG, URKUNDE: LANDPACHT IM PTOLEMÄISCHEN ÄGYPTEN*

Abstract: In 1946, H.J. Wolff published an essay on land leases (*misthosis*) in Ptolemaic and Roman Egypt. This study formed the basis of his new theses on the nature of the Greek contract. His main concern was to free the understanding of the "Greek contract" from the constraints of Roman legal dogma and modern pandectism. To this end, he developed the construct of the so called "Zweckverfügung": a mere agreement was not actionable; only an advance performance of one of the parties created an enforceable obligation.
His ideas were generally followed, albeit partially refined, by P. Herrmann, D. Behrend, A. Kränzlein, G. Thür—and recently also by Ph. Scheibelreiter. The theory of Zweckverfügung has become the prevailing doctrine. Nevertheless, his opponents (mainly A. Biscardi and the "Italian School") argued for the existence of a "consensual" obligation (a mutually binding, legally enforceable contract) under Greek law. Also recently, scholarly literature proposed to explain the Greek contract according to the Roman legal (and modern) concept of consensual contract (E. Cohen, L. Gagliardi, D. Phillips, W. Kaiser).
The controversy raises some fundamental questions: To what extent is it justified to expand observations based on a single agreement model and generalize them as a "contract theory"? Are everyday documents at all suitable for serving as the basis for "grand" theories?
My present contribution examines the documents on *misthoseis* in Ptolemaic Egypt in their broader economic and social context: in addition to legal documents, also land registers, reports on the Nile flood, and petitions are considered. On the one hand, it can be stated that geographical and climatic conditions largely affected the course of the contractual relationship (taking possession of the land, beginning with the cultivation etc.)—therefore, *misthoseis* do not seem suitable for the development of a general theory of contract. Wolff's theses also require clarification on this point. On the other hand, a closer examination of the documentary sources provides no evidence for the enforceability of a mere consent—Greek law did not recognize consensual contracts.

Keywords: Land lease in Ptolemaic Egypt (*misthosis*), legal documents in context, plurality of regulative norms, "Zweckverfügung" or consensual contract

* Der Beitrag ist ein Teil des von der Alexander von Humboldt-Stiftung geförderten Forschungsprojekts 8201158.

I. Theoretischer Ansatz

Rechtshistoriker mit juristischer Ausbildung, die sich mit Figuren antiker Rechtsordnungen auseinandersetzen, können sich schwer vom modernen Konzept des Vertrags lösen. Die moderne Begrifflichkeit wird – bewusst oder unbewusst – auch bei der Betrachtung der antiken Quellen angewendet. Das ist in gewissem Maße notwendig, aber es hat seine Grenzen. Bei der Auslegung der Rechtsvorstellungen, die in den antiken Quellen nachweisbar sind, soll man mit gehöriger Vorsicht vorgehen. Es ist nicht immer sinnvoll, scharfe dogmatische Differenzierungen in die Vergangenheit zu zurückprojizieren. Die Auffassung der antiken Akteure über die rechtlich wirksame Abwicklung von Transaktionen wurde durch notarielle Praxis, Kautelarjurisprudenz und prozessuale Gegebenheiten geprägt.

Unsere heutigen europäischen Privatrechtssysteme wurzeln stark in der Pandektenlehre des 19. Jahrhunderts, die aus den Quellen des römischen Rechts entwickelt wurde. Als Erkenntnisquelle dienten dabei die von Kaiser Justinian im 6. Jh. n.Chr. erlassenen Rechtsquellen-Sammlungen.[1] Aus den *responsa* der klassischen und nachklassischen Juristen und den kaiserlichen Konstitutionen wurden einzelne Aussagen ausgewählt, um hieraus ein „System" zu bilden.

Es liegt nahe, dass das auf dieser Weise entstandene Vertragskonzept — als Denkweise — auf Rechtsverhältnisse aus der Antike nicht unbekümmert übertragen werden kann. Nicht einmal die Quellen des römischen Rechtsalltags passen in die straffe Systematik der Pandektisten.[2] Noch weniger dürfen die Vereinbarungen aus der griechischen Welt durch diese Brille betrachtet werden. Dazu kommt, dass das „klassische" Vertragskonzept auch im geltenden Recht von Krisen geschüttelt wird. Grant Gilmore sprach bereits 1974 vom Tod des Vertrags („death of contract"): „We are told that Contract, like God, is dead".[3]

Mehrere Rechtshistoriker haben diese Widersprüche erkannt; es reicht hier auf die Arbeiten von Ludwig Mitteis, Josef Partsch, Fritz Pringsheim, Hans-Julius Wolff und Wolfgang Kunkel hinzuweisen.[4] Trotz dieser wegweisenden Erkenntnisse treten — wie man es vor kurzem erneut feststellen musste — immer wieder „neopandektistische" Bestrebungen auf.[5]

Zweifelsohne, der wechselseitige übereinstimmende Wille der Kontrahenten (der Konsens) ist notwendiger Bestandteil jeder Art des Vertrags, in jeder Rechtsordnung — auch in der Antike. Das durch bloßen Konsens erzielte Abkommen war jedoch im Laufe der Rechtsgeschichte meistens nicht klagbar, auf dem Rechtsweg nicht durchsetzbar.

Es reicht hier auf die Unterscheidung zwischen *pactum* und *contractus* im römi-

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1 Kaser, Knütel, Lohsse 2021: 10.
2 Vgl. dazu etwa Jakab 2025 (im Druck).
3 Gilmore 1974: 33.
4 Mitteis 1891: 463; Partsch 1909: 84ff.; Partsch 1931: 262-268; Pringsheim 1950: 333-348; Wolff 1957: 26ff.; Kunkel 1972: 193ff.
5 S. etwa Kaiser 2022a: 391-409 mit Literaturhinweisen.

schen Recht hinzuweisen.[6] Das römische Vertragsrecht war grundsätzlich durch einen Typenzwang gekennzeichnet: Lange galt die Einhaltung einer vorgeschriebenen Form oder die reale Übergabe einer Sache als *civilis causa*, welche die Obligation und damit die Klage auf Erfüllung erzeugte.[7] Bloß bei vier Arten der Vereinbarungsmodellen gingen die Juristen so weit, dass sie den bloßen Konsens als *civilis causa* anerkannten und daraus Klagen zur Erzwingung der primären Leistungen zusprachen: *emptio venditio, locatio conductio, mandatum, societas*.[8] Es ist seit langem umstritten, ob diese Abstraktion im griechischen Rechtsdenken nachgewiesen werden kann. Mehrere Autoren argumentieren dafür, dass auch die griechischen Quellen Ansatzpunkte für die Existenz einer derartiger Rechtsfigur hergeben würden.[9] Andere lehnen die Übertragung der modernen bzw. römischrechtlicher Begrifflichkeit auf das altgriechische Recht strikt ab. Als immer noch maßgebend soll die These von Hans Julius Wolff hervorgehoben werden.[10] Er begann noch während seines Exils in den Vereinigten Staaten über die Problematik des griechischen Vertrags nachzudenken und ein alternatives Modell aus den dokumentarischen Quellen zu entwickeln. Schließlich legte er in einem 1946 publizierten Beitrag über *misthosis*-Vereinbarungen die von ihm erarbeitete These der „Zweckverfügung" vor, die er bald darauf in seinen „Grundlagen des griechischen Vertragsrechts" weiter präzisierte. Sein primäres Ziel bestand darin, das griechische Recht von den pandektistisch überladenen Kategorien des römischen Rechts loszulösen. Er war bemüht, die Rechtsvorstellungen der Griechen nicht nach dem Vorbild des römischen Vertrags zu erklären, sondern aus den einschlägigen dokumentarischen Quellen zu erfassen. Als wesentlichen Unterschied unterstrich er, dass das griechische Recht keinen Formzwang kannte,[11] und den Parteien die Gestaltung ihres Rechtsverhältnisses im Rahmen der von der Kautelarpraxis ausgearbeiteten Formularen weitgehend überließ.

Unsere Kenntnisse über die Rechtsvorstellungen, von denen die Akteure etwa beim Eingehen einer *misthosis*-Vereinbarung geprägt waren, basieren auf Urkunden, die individuelle Vereinbarungen überliefern. Ob von einem Experten (Agoranomos,

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6 Kaser, Knütel, Lohsse 2021: 285-287.

7 S. etwa das System der Kontraktobligationen bei Gai. 3,89. Vgl. dazu Nelson, Manthe 1999: 59-71.

8 Jakab 2006: 85-91.

9 Waszynski 1905: 11-12; Gentili 1905: 279-280; Taubenschlag 1955: 354; Biscardi 1979: 13-16; Ders. 1982: 144-149; Ders. 1989: 83-87; Ders. 1990: 3-13; Martini 1991: 105-109; Cohen 2006: 79-81; Phillips 2009: 106; Ders. 2013: Contract 376-380; Gagliardi 2015: 1516-1519.

10 H.J. Wolff, Consensual contracts in the Papyri? JJP 1 (1946) 55-79; Ders., Die Grundlagen des griechischen Vertragsrechts, ZRG RA 74 (1957) 26-72; Ders., Zum Prinzip der notwendigen Entgeltlichkeit, in H. Hübner, E. Klingmüller, A. Wacke (Hgs.), Festschrift für Erwin Seidl zum 70. Geburtstag, Köln 1975, 231-241. Ihm folgen Thür 1984: 512-514; Ders. 2000: 271-275; Rupprecht 1967: 57-58; Ders. 1984: 86-94; Ders. 1994: 113; etwas präzisierend Behrend 1970: 16-26; Hermann 1958: 180ff.; Herrmann 1975: 331-332; Jakab 2006: 85-91; Scheibelreiter 2020: 40-41.

11 Wolff 1946: 58: "no particular form was legally required". In diesem Sinne bereits vorher Waszynski 1905: 11; Mitteis 1912: 195; Taubenschlag 1955: 268.

Notar, Schreiber) oder von der Partei entworfen[12] — die Texte orientieren sich stark an vorgefertigte, handelsübliche Formulare (Mustertexte). Weiterhin eröffnen Petitionen und Gerichtsprotokolle Einblicke in das damalige Rechtsverständnis der Akteure.

Was die Pachtverträge Ägyptens betrifft, wurde längst erkannt, dass ihre Struktur und ihr Inhalt über Jahrhunderte eine bemerkenswerte Kontinuität zeigen.[13] Um die rechtliche Natur und die praktische Abwicklung der Pachtverhältnisse annähernd rekonstruieren zu können, reicht es nicht aus, Pachturkunden verschiedener Muster heranzuziehen. Man muss auch weitere, zum Kontext gehörende Dokumente berücksichtigen: etwa Landvermessungen, Landregister, Berichte der Dorfschreiber und Verwaltungsmaßnahmen als staatliche Eingriffe in die Besitzverhältnisse.

Hinter jeder Urkunde steckt eine Geschichte. Das Abkommen war das Produkt einer längeren Vorbereitung zwischen den Parteien. Die Dokumente wurden im Nachhinein, als Bericht über das Ergebnis des Verhandelns verfasst. Die urkundlich festgehaltenen Abreden bestimmten die für das konkrete Geschäft maßgebenden Rechtswirkungen. Die allgemein verwendete *kyria*-Klausel drückt diesen Parteiwillen plastisch aus.[14] Bei der Auslegung des Rechtsverhältnisses sollte auch berücksichtigt werden, dass die Kontrahenten oft Mitglieder derselben (meistens kleinen) Gemeinde waren (eines Dorfs, einer Region), die einander beim Vertragsschluss nicht das erste Mal begegneten. Es liegt nahe, dass ihr Verhältnis durch eine gewisse Multinormativität gekennzeichnet war. Außer den Rechtsnormen dürften auch gesellschaftliche und moralische Erwartungen, religiöse Verbote und Gebote ihr Bestreben um Erfüllung gesteuert haben. Dazu kommt, dass gerade in Ägypten die Landpacht auch Naturereignissen und staatlichen Eingriffen ausgesetzt war. Auch außerrechtliche Komponenten beeinflussten also das Handeln der Akteure.

Bei Beschäftigung mit antiker Rechtsgeschichte kann gelegentlich das Heranziehen der Prinzipien der modernen Rechtsvergleichung guten Dienst leisten, insbesondere die Kontextualisierung der Rechtstexte und die Erläuterung der Rechtsfragen nach dem Prinzip der Funktionalität. Jedes Rechtsgeschäft soll möglichst in seiner Komplexität erfasst und ausgelegt werden. Generalisierungen nach einem neo-pandektistischen Konzept, die auf Stichwort-Recherchen in Datenbanken beruhen, verzerren notgedrungen das Bild der antiken Rechtslandschaft.

Die vorliegende Untersuchung ist überwiegend auf *misthosis*-Urkunden mit Landpacht aus der ptolemäischen Periode beschränkt, um bewusst bei den vor-römischen, griechisch-hellenistischen Rechtsvorstellungen zu bleiben. Urkunden aus dem römischen Ägypten werden kaum herangezogen, um eventuelle römische Einflüsse auf die Gestaltung der Vereinbarungen von vornherein auszublenden.[15]

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[12] Wolff 1978: 83-84 und 106-108.

[13] Zu Struktur und Inhalt der Pachtverträge s. Rowlandson 2002: 208-210.

[14] Zu der *kyria*-Klausel vgl. Wolff 1978: 145-146.

[15] Mehrere Autoren, die sich mit der Landpacht in Ägypten beschäftigen, trennen nicht die Dokumente der ptolemäischen und der römischen Periode. So etwa Kaiser 2022a: 391ff.

II. Einführende Fallstudie

Im Dossier der Zenon-Papyri gibt es ein Dokument, das die typischen Abreden einer Pacht-Vereinbarung und das spätere Schicksal des Rechtsverhältnisses in drei zusammenhängenden Urkunden dokumentiert: P. Col. III 54 (= P.Col. Zen. 54 = SB IV 7450).[16] Kolumne I enthält die Abschrift einer Pachturkunde, die objektiv stilisiert und aus dem Blickwinkel der Pächter formuliert wurde. Es handelt sich um eine *syngraphe,* die Urkundenform wird in Z. 23 und 25 explizit genannt.[17] Am 10. Epeiph (Panemos) des 30. Jahres (15. Juni-13. Juli 250 v.Chr.) übernahmen (ἐξέλαβεν, Z. 4) drei Pächter, Theopompos, Nicodamos und Hegesarchos von Zenon 100 Aruren[18] Getreideland zur Bebauung, das Teil des etwa 10.000 Aruren umfassenden Großgrundbesitzes des Apollonios war. Die Pächter gehörten zum Stand der Makedonen:[19] Theopompos und Nikodamos waren Brüder, Hegesarchos war mit ihnen (vielleicht als ihr Vater) verwandt. [20] Die Ländereien, ein Teil des Großgrundbesitzes des Apollonios, lagen neben Philadelphia.[21] Die Datierung der Urkunde ist am Anfang des Textes erhalten (Z. 1-3), aber ein Datum für den Pachtbeginn ist nicht genannt. In den Zeilen 8-9 liest man ἀκίνδυνον καὶ ἀνυπόλογον παντὸς ὑπολόγου. … Die Abrede regelt die Gefahrtragung zwischen den Parteien: Zenon bestand darauf, dass das Getreideland „ohne Gefahr und Abzug“ vergeben werde. Die Klausel schließt aus, dass die Pächter wegen höherer Gewalt oder ungünstiger Naturereignisse (die den Ertrag minderten) einen Erlass oder eine Reduktion des Pachtzinses verlangen konnten.[22]

Ab Z. 9 werden gewisse Vorleistungen des Verpächters (Zenons) aufgelistet: Er hat Saatgut und Bargeld ausgehändigt (die Geldleistung wird weiter unten im Text *daneion*, Darlehen, genannt).[23] Es liegt nahe, dass die Pächter nicht über das nötige Kapital verfügten, um die Bebauung der großen Fläche zu finanzieren. Außer Saatgut

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Gerade wenn die Natur des griechischen Vertrags untersucht wird, sollte man bei den ptolemäischen Quellen bleiben.

16 Zur Deutung und Lesung s. vor allem die musterhafte Edition von Westermann 1927: 147-167.

17 Zum Urkundentyp s. Wolff 1978: 81-90.

18 Arure war ein „unit of 100 square cubits”, s. Herodot 2,168, vgl. Dazu Crawford 1971: 12. Es handelt sich um ein antikes Flächenmaß, der im Winkel gerechnet wurde — dadurch konnten irreguläre Flächen nicht genau erfasst werden. Oft ergab es einen Unterschied zwischen der tatsächlichen und der gemessenen Fläche.

19 Sie stammten von Soldaten ab, die im ptolemäischen Heer gedient haben; vgl. dazu Rupprecht 1994: 154.

20 Westermann 1927: 151 und 157.

21 P.Lille I 1 enthält einen Kostenvorschlag über den Ausbau des Bewässerungssystems auf seinem Landgut, vgl. Keil 1938: 188-203. Zur Ausdehnung der Ländereien des Apollonios s. P.Lille I 1 und 13; vgl. dazu Westermann 1927: 158.

22 Zur Gefahrtragung in den Papyri s. Alonso 2012: 49-51.

23 Bei königlichem Land wurde üblicherweise eine Artabe pro Arure ausgehändigt; die Menge variierte jedoch nach der Landqualität. In der vorliegenden Pachturkunde werden die Mengen für Weizen und sonstiges Getreide unterschiedlich festgelegt. Vgl. dazu Westermann 1927: 153; und immer noch auch Schnebel 1925: 120-121 und 125. Zum Saatdarlehen s. Rupprecht 1967: 157-160.

brauchten sie auch Lohnarbeiter, um die Aufgabe zu bewältigen.[24] Die gute Qualität des Saatguts war wichtig, deshalb wurde es oft vom Verpächter zur Verfügung gestellt.[25]

Ab Z. 12 ist die Leistungspflicht der Pächter geregelt: Nachdem sie geerntet haben, sollen sie den in Naturalien festgelegten Pachtzins nach Philadelphia transportieren und im Lagerhaus des Apollonios zumessen lassen. Es wurde auch die Umrechnungsrate zwischen Getreide und Geld festgehalten. Es war notwendig, weil sowohl Geld- als auch Naturalleistungen vereinbart waren. Die Umrechnung richtete sich nach dem Erlass des Sitologen (κατὰ τὸ σιτολογικὸν διάγραμμα, Z. 13). Ab Z. 16 (17) wird für die Pächter vorgeschrieben, dass sie zwei Drittel des Landes mit Weizen und ein Drittel mit Gerste bebauen sollen.

Ab Z. 18 folgen die Strafklauseln: Wenn die Pächter ihren vertraglich übernommenen Pflichten nicht nachkommen, steht es Zenon frei, das Land an Andere zu verpachten. Sollten sie den Apollonios schädigen oder den Pachtzins nicht der Vereinbarung gemäß entrichten, haften sie auf das Anderthalbfache, *hemiolion* (Z. 19-21). Anschließend folgen die *praxis*-Klausel (Z. 21), die urkundlich festgehaltene solidarische Haftung der Pächter (ab Z. 23), die *kyria*-Klausel und die Namen der Zeugen (Z. 25). In Z. 29 wird als Urkundenhüter (*syngraphophylax*) ein gewisser Damis bestellt.[26]

Die *syngraphe* zeigt die typischen Klauseln eines Pachtvertrags aus dem frühen 3. Jh. v.Chr.: Es werden die Parteien, das Pachtobjekt, die Leistungspflichten und die Strafklauseln festgehalten, welche die Rechtsfolgen für den Fall eventueller Leistungsstörungen vertraglich festlegten. Der Papyrus verdient besondere Aufmerksamkeit, weil er nach der Abschrift der *syngraphe* noch zwei weitere Dokumente überliefert, die zur Vorbereitung eines bevorstehenden Prozesses angefertigt wurden.

Kolumne II enthält die Abrechnung über die bis dahin erbrachten Leistungen (ἐκφόριον) der Pächter: Naturalleistungen und Rückzahlung des in Münzen ausbezahlten *daneion*, die ebenfalls in Getreide umgerechnet wurde. Bei der Berechnung der ausständigen Schuld wurde das *hemiolion* konsequent dazugeschlagen. Am Schluss belief sich die Gesamtschuld auf etwas über 2.500 Artaben Weizen.

In Kolumne III ist der Entwurf einer Klage erhalten: Zenon diktiert seinem Schreiber Anweisungen für das Abfassen der Klageschrift gegen Theopompos (einen der drei Pächter). In Z. 1 liest man die Datierung, die jedoch nur Jahr und Monat erfasst; der Tag blieb offen, um ihn beim Einreichen eintragen zu können. Anschließend werden Kläger und Beklagte genannt (Z. 2-3). Z. 4 bezeichnet den Streitwert, der aus den ausständigen Pachtzahlungen zusammengerechnet wurde. Zwischen den Zeilen sieht man eine Bemerkung: „wie er gemeinsam mit Hegesarchos und Nikodemos übernahm“. Damit wird auf die Pachturkunde verwiesen, in welcher die solidarische

[24] Westermann 1927: 159-160 und 166.
[25] Schnebel 1925: 120-121. Saatgut-Gewährung durch den Verpächter ist in mehreren Urkunden belegt.
[26] Westermann 1927: 160.

Haftung der Pächter festgelegt wurde. Anschließend weist Zenon seinen Schreiber an, dass er das Hemiolion κατὰ τὴν συγγραφὴν, die in der Pachturkunde festgelegte Vertragsstrafe für jedes Jahr dazurechnen soll (Z. 8-9). Danach folgt die Umrechnung in eine Geldschuld, die gemäß dem *diagramma* geschehen soll (Z. 9-10), wobei der Schreiber angehalten wird, auch den *praktor* zu kontaktieren (Z. 13-14).[27] Zenon besteht auch darauf, dass der Schreiber unbedingt anmerken soll, dass die Vollstreckung (*praxis*) in der Pachturkunde „wie bei königlichen Forderungen" vereinbart wurde (Z. 14-15). Schließlich folgt Zenons Bemerkung, dass für solche Fälle im Arsinoitischen Gau keine Gerichte operierten, weshalb vermutlich der Stratege das Urteil fällen werde (Z. 16-18).[28] Das Schriftstück wird auf dem Verso mit διάλογος πρὸς Θεόπομπον betitelt.

Die zusammenhängenden Dokumente erlauben einen Einblick in die praktische Abwicklung der Pachtverhältnisse. Die *syngraphe* enthält die für das Rechtsverhältnis der Kontrahenten maßgeblichen Rechtsfolgen: die primären Leistungspflichten der Parteien und die daran anknüpfenden Strafklauseln, die eigentlich einen pauschalen Schadensersatz (mit objektiver Haftung) bedeuteten.[29] Das Dokument diente einerseits als Beweisurkunde, um die festgehaltenen Pflichten nachweisbar und durchsetzbar zu machen. Andererseits verkörperte das vor Zeugen protokollierte Schriftstück die Obligation selbst: Zenon klagte aus der Urkunde, sie bedeutete die Grundlage seiner Forderung.[30]

Die Zahlungspflicht der Pächter wurde ursprünglich für die Erntezeit festgelegt. Das „in Pacht nehmen" wird im Text mit dem Verbum ἐξέλαβεν bezeichnet. Die Dokumente, die den Vorgang aus dem Blickwinkel des Verpächters formulieren, verwenden das Verbum ἐμίσθωσεν. Das Schrifttum sieht keinen Unterschied in der juristischen Bedeutung der beiden technischen Wörter.[31]

Die Urkunde wurde am Anfang des Wirtschaftsjahrs ausgestellt. Es liegt nahe, dass die Vereinbarung unter den Partnern ebenfalls um diesen Zeitpunkt erfolgte. Wolff interpretierte die Verben ἐξέλαβεν und ἐμίσθωσεν als Besitzübernahme, als Erwerb der faktischen Gewalt über das Pachtland.[32] Er sah darin das notwendige reale Element, wodurch die Obligation entstand. Darauf ist sogleich zurückzukommen.

III. Wirtschaftlicher Zweck und Vertragsgestaltung

In seinem Beitrag von 2022 griff Wolfgang Kaiser das Vertragskonzept von Wolff harsch an. Er nannte dessen These über die rechtliche Natur des griechischen Vertrags unhaltbar: „Das Konzept der Zweckverfügung … ist für die *misthosis* von

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[27] Zu *sitologikon diagramma* s. Westermann 1927: 161-162. Die königliche Anordnung hat wahrscheinlich die Umrechnungsraten von Geld- und Naturalschuld geregelt.
[28] S. dazu Westermann 1927: 163-164.
[29] Wolff 1978: 142-143.
[30] Vgl. Wolff 1946: 76.
[31] Wolff 1946: 57; Herrmann 1958: 11-15; Rupprecht 1994: 122.
[32] Wolff 1946: 59-60 und 69.

Grundstücken … nicht haltbar“.[33]

Kaiser stützte sich in seiner Kritik auf fünf Pachturkunden. Die von ihm angeführten Papyri sind längst bekannt, man findet sie auch von Oates und Wolff zitiert.[34] Er baut seine These auf die Beobachtung, dass hierin „Vertragsschluss und Vertragsbeginn auseinanderfallen“. Es handelt sich um die Papyri P.Frankf. 1, P.Frankf. 2, BGU VI 1268, BGU VI 1262 und P.Hibeh I 90.

Vor einer Untersuchung der von Kaiser hervorgehobenen „Ausnahmen“ sollte man einen Blick auf den wirtschaftlichen Kontext der ägyptischen Pachtverträge werfen. Im Mittelpunkt steht die Frage, ob das Pachtobjekt exakt zu dem Termin des Vertragsschlusses bzw. der Urkundenerrichtung übergeben wurde. Daran knüpft sich auch die Problematik, ob die Vereinbarung selbst oder die Beurkundung, oder etwa die (gleichzeitig oder später erfolgte) Besitzübergabe das notwendige haftungskonstituierende Element war.

Es soll vorausgeschickt werden, dass der „Vertragsschluss“ im Sinne des erzielten wechselseitigen Konsenses in den Dokumenten nicht nachgewiesen ist. Das erhaltene Datum ist immer der Tag, Monat und Jahr der Beurkundung.

Bereits Westermann betonte, dass die Pachtverträge Ägyptens in Hinblick auf die damit beabsichtigte landwirtschaftliche Tätigkeit auszulegen seien.[35] Dieser Aspekt wurde später von weiteren Papyrologen und Wirtschaftshistorikern vertieft:[36] Es wurde insbesondere nach Zusammenhängen zwischen dem Datum der Urkundenerrichtung, dem des Pachtbeginns und der Pachtzinszahlung gesucht. Aufgrund der damals bekannten 33 Urkunden über Landpacht stellte etwa Oates fest,[37] dass in 21 Urkunden sowohl das Datum der Beurkundung als auch des Pachtbeginns enthalten sind. Davon wurden 7 unmittelbar am Jahresbeginn (nach dem makedonischen Kalender) erstellt, als der Umfang der Nil-Überflutung bereits abschätzbar war. Weitere 7 Urkunden wurden erst später, im Laufe des Jahres aufgesetzt, als das Ergebnis der Überflutung bereits feststand. Nur 5 Dokumente wurden früher ausgestellt, bevor man Kenntnis über die Überflutung haben konnte (im April oder sogar im November des Vorjahres).[38]

Es ist offensichtlich, dass die Praxis der Verpachtung an die landwirtschaftlichen Gegebenheiten angepasst war; die jährliche Überschwemmung der Nil spielte dabei die bestimmende Rolle. Antike literarische Quellen berichten immer wieder von den Eigentümlichkeiten der ägyptischen Landwirtschaft. Strabo, Diodor und Plinius be-

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[33] Kaiser 2022a: 399; S. 398: “… gibt Wolff selbst das ansonsten konstituierende reale Element auf und macht sein Vertragsmodell jedenfalls für die *misthosis* von Grundstücken hinfällig.“

[34] Oates 1963-1964: 49-54.

[35] Westermann 1927: 158-160.

[36] Vgl. etwa Oates 1963-1964: 61-62; Rowlandson 2002: 208ff.

[37] Die hier angeführte Statistik lehnt sich an die Untersuchungen von Oates 1963-1964: 47-62.

[38] Auch diese Erkenntnis ist im Schrifttum bereits lange bekannt; vgl. Oates 1963-1964: 61-62; Rowlandson 2002: 215-226.

tonen, dass die Bebauung der Felder von der Nilflut abhing.[39]

Die Nil stieg ab Juni an, erreichte den Höchststand zwischen Ende August und Anfang September, hielt dann etwa zwei Wochen lang, und ging langsam zurück.[40] Nach dem Abgang des Wassers folgte eine Neuvermessung der Parzellen; mit der Bebauung konnte erst nachher begonnen werden.[41] Die bebaubaren Felder und der Stand ihrer Bebaubarkeit wurden von der örtlichen Verwaltung systematisch registriert und kontrolliert; zahlreiche Landregister sind darüber erhalten.[42]

Die Vermessung war ein behördlicher Akt, der unter der Mitwirkung des *komogrammateus* oder des *basiliko-grammateus* ausgeführt wurde.[43] Dies ist damit zu erklären, dass die Steuer nach dem geschätzten Ertrag des Wirtschaftsjahrs auferlegt wurde; ein starkes staatliches Interesse war also immer mit im Spiel.[44] Die Berichte erfassten nicht nur die Ausdehnung der bebaubaren Flächen, sondern auch die Namen der Besitzer und Bebauer (eventueller Pächter) des Landes.[45]

Mehrere Papyri berichten vom Ablauf der Vermessungen und von der Bedeutung der Erstellung von exakten Registern. In den Urkunden wird das Prozedere mit den technischen Worten *geometria, eutymetria* oder *anametresis* benannt. In PSI VI 5,502 liest man darüber, dass die Neuvermessung nach dem Abgang der Flut bei einem Dorf fünf Tage lang dauerte und die Bewohner fanden das lästig lang.[46] P.Tebt. I 24 überliefert die Beschwerde der empörten Dorfbewohner von Ptolemais Euergetis über Säumnis und Fälschung durch die Vermessungsbeamten, die nicht auf die Felder gingen und keinen *kat' andra* Bericht erstellen wollten.[47] Es wird dabei betont, dass durch die Verspätung die nächste Ernte gefährdet werde. Anderswo liest man einen Bericht über die Landvermessung aus Apollonopolites Heptakomias, worin kenntlich gemacht wird, ob das Land noch überschwemmt ist oder schon gepflügt werden kann: βρεχέντων πεδίων καὶ τῶν [δ]υναμένων (Z. 6-7).[48] Die *kat' andra kata phylon* Listen fassten topographisch präzise die Felder und die Personen zusammen, die

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[39] Strabo 17,1,4 = 789; Diodor 1,36,4; Plin. nat. 18,168; vgl. Schnebel 1925: 137-138.

[40] Crawford 1971: 107; zu den Unterschieden zwischen Ober- und Unterägypten s. Schnebel 1925: 138.

[41] Rupprecht 1994: 176; Crawford 1971: 24-28; Schnebel 1925: 138.

[42] Crawford 1971: 5-6 betont die Kontinuität: Vermessungen und Landregister sind seit der dritten Dynastie erhalten. Es ist ein weiteres Indiz dafür, dass die Landwirtschaft Ägyptens und die darauf bezogenen Administrativ- und Rechtsakte in jeder historischen Periode an den Rhythmus der Nilflut ausgerichtet waren.

[43] Crawford 1971: 20. Kruse 1997: 149-158; zum Weiterleben des Systems im Prinzipat s. Kruse 2002: 281-284.

[44] Strabo 17,1,3 = 787; vgl. Crawford 1971: 7.

[45] P.Tebt. III 2,1000 (Arsinoites, 2.Jh. v.Chr.) enthält den Bericht über die aktuell bebaubaren Länder, die anfallende Steuerlast — und Vermerke darüber, wer das Land pachtet; vgl. Crawford 1971: 18.

[46] PSI VI 502, 17 (Philadelphia, 257-256); vgl. Crawford 1971: 15; Bingen 2007: 229-239.

[47] P.Tebt. I 24 (Ptolemais Euergetis, Dez. 118 – Jan. 117); vgl. Crawford 1971: 36.

[48] P.Flor. III 331 (= W.Chr. 341,6), Apollonopolites Heptakomias, etwa um 113-120; vgl. Schnebel 1925: 101. Der Papyrus stammt zwar aus der römischen Periode Ägyptens, aber die Verwaltung blieb weitgehend unverändert.

für deren Bebauung zuständig waren. Etwa in P.Tebt. III,2 1000 (2. Jh. v.Chr.) sind die verpachteten Länder ausdrücklich als solche eingetragen. P.Petrie III 101 enthält einen Bericht über den Stand der Bebauung zur Zeit der Aussaat; auch hier sind die Namen der Bebauer und die von ihnen kultivierten Flächen sorgfältig aufgelistet.[49] Solche Saat-Berichte sind aus dem Faijum (nach unserem modernen Kalender gerechnet) vom November bis Januar/Februar in reicher Fülle erhalten.[50]

Die Vermessung nach dem Abgang der Nilschwelle war unverzichtbar: Die landwirtschaftlich nutzbaren Flächen mussten registriert und an die staatliche Verwaltung weitergeleitet werden. Diese Register bildeten einerseits die Grundlage für die Festlegung der Steuerpflicht für das laufende Wirtschaftsjahr. Andererseits mussten den Behörden präzise Angaben darüber vorliegen, ob jede nutzbare Fläche auch tatsächlich bebaut werde. Herrenlos gebliebene Parzellen wurden kurzerhand zur Versteigerung ausgeschrieben, um die Effektivität der Landwirtschaft aufrecht zu erhalten.[51]

Abgesehen vom staatlichen Interesse wirkten sich die offiziell ausgeführten jährlichen Neuvermessungen auch auf die privaten Rechtsverhältnisse aus. In jedem Dorf durften die Bauern das Land erst nach vollzogener Vermessung betreten; das Ergebnis der Festlegung der überfluteten Flächen modifizierte manchmal auch den Vertragsinhalt der Verpachtungen. Erst nach der Vermessung wurden die Felder zur Bebauung freigegeben; dann hatten aber die Bauern / Pächter alle Hände voll zu tun: Es musste sogleich gepflügt, Unkraut getilgt und ausgesät werden.[52] Die rechtzeitige Aussaat bedeutete einen kardinalen Punkt, weil davon die Qualität und Quantität der künftigen Ernte abhing.[53] Jede Verspätung konnte die erhoffte Ernte schmälern. Etwa in P.Tebt. I 61b (Z. 351-380) liest man von flüchtigen Pächtern, die der Verpächter nicht sofort ersetzen konnte. Die Aussaat verspätete sich, die Felder blieben in einem maroden Zustand zurück. Erst durch eine in Aussicht gestellte Reduktion des Pachtzinses konnten neue Pächter engagiert und dazu bewegt werden, die Arbeiten aufzunehmen.[54]

Bereits ein flüchtiger Blick in die Quellen ergibt, dass die Pacht-Vereinbarungen an das landwirtschaftliche Jahr anknüpften, an den Zeitpunkt der jährlichen Überflutung der Nil. Die meisten Pachturkunden wurden erst aufgesetzt, als die Parteien über Ausmaß und Ergebnis der Nilflut bereits Gewissheit erlangt hatten.[55] Daraus folgt, dass die Pächter das Pachtobjekt (wenn es um eine Neupachtung ging) faktisch erst nach der Nilflut in Besitz nehmen konnten. Die Feststellung eines Pachtbeginns

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[49] P.Petrie III 102 (Arsinoites, 3.Jh. v.Chr), Bericht über die Bebauung.

[50] Schnebel 1925: 138-140.

[51] Jakab 2014: 313-337. Der staatliche Eingriff war wegen der Knappheit des nutzbaren Landes notwendig.

[52] Crawford 1971: 24; Schnebel 1925: 138-140 mit Tabellen über Saatdaten.

[53] Vgl. Schnebel 1925: 137-138.

[54] P.Tebt. I 61a und 61b (118-117 v.Chr.) ist einer der längsten landwirtschaftlichen Berichte, aus Kerkeosiris. Vgl. dazu Schnebel 1925: 137-138; Crawford 1971: 19. Tabellen über die erhaltenen Saatdaten stellte schon Schnebel 1925: 138-140 zusammen.

[55] Es fragt sich, ob allgemein die davor geschlossenen Urkunden die *abrachos*-Klausel über das Ausbleiben der Flut enthalten.

im Sinne einer Besitzübergabe war obsolet, weil er aus den landwirtschaftlich-klimatischen Gegebenheiten automatisch folgte, wie es auch in Zenons *misthosis*-Vereinbarungen erkennbar ist.

Die dokumentarischen Quellen zeigen, dass die Pachtverträge in der ptolemäischen Zeit überwiegend für ein Jahr abgeschlossen wurden.[56] Die kurze Laufzeit hatte mehrere Vorteile: Einerseits blieb das Verhältnis überschaubar: jeweils eine einzige Überflutung, Aussaat, Ernte. Andererseits folgte mit dem Fristablauf automatisch eine Abrechnung, wobei die Parteien die bis dahin erbrachten gegenseitigen Leistungen zusammenzählten, und die ausständigen Forderungen festlegten.[57] Die Mehrzahl der Dokumente ist auf den Monat der Aussaat datiert, und bestimmt die Laufzeit bis zum Ende des Erntemonats.[58]

Bei Verträgen, die viel früher oder am Anfang der Nilflut abgeschlossen wurden, konnten sich die Parteien täuschen. Etwa P.Enteux. 59[59] zeigt, dass der vor der Flut abgeschlossene Pachtvertrag nach dem Abgang des Wassers einer Präzisierung bedurfte, die von den Kontrahenten gemeinsam durchzuführen war. Es handelt sich um die Beschwerde von drei Pächtern (Theodotos, Gaddaios und Phanias) gegen den Verpächter Demetrios, der die Kooperation verweigerte. Die Petition zitiert aus der Pachturkunde, die vorschrieb, bis zum 10. Koiak in Anwesenheit von drei Zeugen die trocken gebliebenen Flächen zu ermitteln. Mehrere Urkunden enthalten die sog. *abrachos*-Klausel, die den Pächtern die Reduktion des vereinbarten Pachtzinses ermöglichte, wenn die Flut geringer ausfiel als erwartet (siehe dazu unten).

Erst ab dem 2. Jh. n.Chr., also im römischen Ägypten sind Pachtverträge zu beobachten, die für eine längere Laufzeit (etwa auf vier Jahre) abgeschlossen wurden.[60] Die Entlastung des Pächters von Zinszahlungen im Falle der ausbleibenden Flut ist typischer Bestandteil dieser Verpachtungen, weil die Größe der bebaubaren (überfluteten) Flächen für einen Zeitraum von mehreren Jahren nicht vorausgesehen werden konnte. Ein derartiger Vertrag ist etwa in P.Oxy. II 280[61] für vier Jahre und vier Überflutungen vereinbart, deshalb musste das Nachjustieren ausgemacht werden. In diesem Sinne wird auch in P.Oxy. L 3591 (Z. 28-30) und P.Oxy. L 3592 (Z. 22-24) für das Ausbleiben der Flut eine Pachtzinsreduktion vorgesehen.

Es gibt Indizien dafür, dass die jährlich abgeschlossenen Pachtverträge unter denselben Parteien oft erneuert wurden. Rowlandson hat neun Urkunden identifiziert, die auf ein früheres Pachtverhältnis Bezug nehmen.[62] In anderen Urkunden kann re-

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[56] S. dazu Rowlandson 2002: 252-253.

[57] Vgl. dazu die Abrechnungen bei Zenons oben vorgestelltem Pachtvertrag, P.Col. III 54 (oben bei Anm. 16). Die Jahresfrist war auch beim Gesellschaftsvertrag typisch; wahrscheinlich spielte dabei der Aspekt der regelmäßigen Abrechnung ebenfalls eine wichtige Rolle. Vgl. dazu Jakab 2001: 82-85.

[58] Rowlandson 2002: 252.

[59] P.Ent. 59 (= CPJ I 37 =P. Lille II 3), Magdola, Arsinoites, 28. Januar 222 v.Chr.

[60] Rowlandson 2002: 253.

[61] P.Oxy. II 280, 88-89 n.Chr.

[62] P.Oxy. I 101; SB XIV 11428; P.Oxy.Hels. 41; P.Oxy. XXXVI 2795; P.Wisc. I 7; PSI IX

konstruiert werden, dass der Pächter bei der Abfassung der Urkunde das gepachtete Land bereits früher bebaut hatte.[63]

Zusammenfassend kann festgehalten werden, dass die spezifischen klimatischen und geographischen Gegebenheiten der ägyptischen Landwirtschaft auch die Abwicklung der Landpacht dominierten. Die Ungewissheit über das Ausmaß der Überschwemmung bewirkte, dass der Vertragsschluss – besser gesagt die Beurkundung – meistens nach dem Beginn oder sogar gegen das Ende der Flutwelle geschah. Die bebaubare Fläche lag erst nach der Neuvermessung fest; anschließend konnte und musste die Arbeit sofort angefangen werden. Die einzelnen Phasen der Abschließung und Abwicklung des Pachtverhältnisses waren ineinander eng verkeilt; sie lagen zeitlich eng beieinander. Das unproblematische Funktionieren ist allein in einem sozialen Umfeld denkbar, in dem das Verhalten der Parteien durch ein fest gewobenes Netz von diversen sozialen und wirtschaftlichen Normen bestimmt war, im Sinne einer Multinormativität. Dazu kommt die regulierende Rolle des topographischen und klimatischen Umfeldes. Die Abreden des zwischen den Parteien beurkundeten Vertrags spielten dabei gewiss eine wichtige Rolle, obwohl die oben genannten Phänomene die freie Gestaltung im Rahmen der Privatautonomie weitgehend einschränkten. Dazu kommt, dass die typischen Parteiabreden stark von Formularen — seit langem tradierten Erwartungen — bestimmt waren.

IV. Ausnahmen?

Wie sieht nun das Auseinanderfallen von „Vertragsschluss“ und Vertragsbeginn“ aus, wenn man versucht, den Sachverhalt hinter den Urkunden zu rekonstruieren? Was kann man über die „schlagend“ angekündigten Ausnahmen in P.Frankf. 1, P.Frankf. 4, BGU VI 1268, BGU VI 1262 und P.Hibeh I 90 erfahren?[64]

Bevor man die oft zitierten Urkunden näher anschaut, soll vorausgeschickt werden, dass die Dokumente nicht den Tag des erzielten Konsenses (des „Vertragsschlusses“) enthalten. Das vermerkte Datum (wenn überhaupt vorhanden) berichtet davon, wann die Urkunde über das Abkommen ausgestellt wurde. Es sind mir keine Rechtsurkunden bekannt, die auf das Datum des formlosen Übereinkommens abgestellt hätten. Eine Untersuchung, die das Vertragskonzept von Wolff aufgrund der dokumentarischen Quellen kritisieren will, sollte von diesen Quellen ausgehen und beachten, dass hier die Differenzierung allein zwischen dem Beurkundungsdatum und dem Anfang der Bebauung möglich ist.

Vielleicht legte Wolff in seinem ersten Aufsatz zum Thema (1946) allzu großes

1072; P.Oxy. XIV 1688; SB XIV 12025; und vielleicht auch P.Heid.inv. G 921 … Vgl. dazu Rowlandson 2002: 254. Zu bemerken ist, dass diese Pachtverträge alle aus dem Prinzipat, aus dem 2.-3. Jh.n. Chr. stammen.

63 P.Oxy. XVIII 2188 (Ox., 8. Oktober 107); P.Oxy. XXII 2351 (Ox., 7. Oktober 112); P.Oxy. III 501 (= M.Chr. 349, Ox., 11. Oktober 186). Vgl. Dazu Rowlandson 2002: 254. Man soll sich jedoch vor Augen halten, dass auch diese Pachtverträge aus dem Prinzipat, also aus dem römischen Ägypten stammen.

64 Damit beziehe ich mich auf die kritischen Bemerkungen von Kaiser 2022a: 395-401.

Gewicht auf den „Besitzerwerb“ am gepachteten Land (er folgte damit Josef Partsch und Fritz Pringsheim).[65] Zweifelsohne trifft in manchen Urkunden zu, dass die Pachturkunde früher, vor dem Beginn des wirtschaftlichen Jahres erstellt wurde.[66] Es fragt sich aber, ob das Auseinanderfallen des Datums der Beurkundung (nicht des „Vertragsschlusses“!) und des Pachtbeginns zwingend zur „Unhaltbarkeit“ der Vertragstheorie von Wolff führe. Im Folgenden sollen die ominösen fünf Urkunden näher betrachtet werden.

P.Frankf. 1[67] wurde im Monat Panemos des 9. Jahres (22. Januar) ausgestellt; die Aussaat ist für das 10. Jahr vereinbart — das am 13. Oktober 213 begann, wahrscheinlich bereits nach der Nilflut. Die Zahlung des Pachtzinses wurde für das 11. Jahr vorgeschrieben, das am 2. Oktober 212 begann. Der Pachtzins war offenbar erst nach der Vermarktung der Ernte fällig.[68] Urkundenerrichtung und Pachtbeginn fielen in der Tat auseinander,[69] aber das In-Besitz-Nehmen durch den Pächter richtete sich wahrscheinlich auch hier nach dem Abgang der Flut. Der Pächter konnte ja das Land zur Zeit der Beurkundung gar nicht in Besitz nehmen. Ein reales Element kann in der Urkunde dennoch festgestellt werden: Die obligationsbegründende Vorleistung kann man in der *prodoma*-Zahlung des Pächters sehen: ὁμολογε]ῖ δὲ Ἀπολλ̣[ώ]νιος ἔχειν παρὰ Νεοπτολ[έ][μου πρόδομα (Z. 30-31). Der Verpächter quittiert den Empfang von 60 Drachmen in der Pachturkunde, die ihm vom Pächter vorausbezahlt wurden.

P.Frankf. 2[70] wurde im Monat Peritios des 8. Jahres errichtet, am 26. August 214. Die Bebauung des Landes ist für das 9. Jahr vorgesehen, das am 26. September 214 begann; die Urkunde wurde also um einen Monat früher aufgesetzt. Die Zahlungspflicht der Pächter wurde auch hier für das 10. Jahr vereinbart, das — von der Urkundenerrichtung berechnet — am 13. Oktober des übernächsten Jahres begann. Zur Zeit der Beurkundung (im August des 8. Jahres) war die Flut noch im Gange, der Bewässerungsstand konnte bereits geschätzt, aber nicht genau festgestellt werden. Deshalb wurde ausdrücklich vereinbart, dass die Zahlungspflicht von der *geometria*, von der Vermessung der bebaubaren Fläche abhänge (Z. 17).[71] Die faktische Übernahme des Landes war erst möglich, wenn der Wasserstand zurückging. Das reale Element wurde beim Vertragsschluss dadurch bewirkt, dass der Verpächter dem Pächter ein Saat-

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[65] Partsch 1931: 262-267; Pringsheim 1950: 333-429; später zusammengefasst von Jakab 2005, 199-222.

[66] Kaiser zieht dabei fälschlich P.Oxy. L 3558 heran, weil es darin nicht um Landpacht, sondern um Verpachtung der Herde zum Weiden geht.

[67] Ausgestellt in Tholthis, im Jahre 214/213 v.Chr.

[68] Ähnlich wird die Zahlungsfrist in den landwirtschaftlichen Musterformularen von Cato geregelt; s. Cato agr. 142-145.

[69] Herrmann 1958: 181 erklärt das damit, dass dem Pächter aufgrund der Urkunde „gestattet war“, das Land in Besitz zu nehmen. Vgl. dazu auch Wolff 1961: 137; Kränzlein 1975: 190ff. Die Autoren nehmen an, dass der Pächter das Land nach Vertragsschluss sofort in Besitz nehmen konnte. Es werden dabei allerdings die klimatischen und verwaltungstechnischen Bedingungen am Nil außer Acht gelassen.

[70] Der Papyrus stammt aus Tholthis, aus dem Jahre 215/214 v.Chr.

[71] Die Klausel findet man etwa auch in P.Hibeh. I 90.

gutdarlehen gewährte (Z. 14).[72] In der Urkunde liest man, dass Eupolis, der Verpächter den beiden Pächtern (Alexandros und Horos) das nötige Saatgut (nämlich eine Artabe pro Arure[73]) als Darlehen geben werde. Der Empfang des Saatgutes wurde in der Pachturkunde nicht quittiert. Es liegt nahe, dass die Übergabe in einer separaten Darlehensurkunde dokumentiert wurde. Für die Abwicklung des Geschäfts kann man vermuten, dass sowohl die Zumessung des Saatgutes als auch die Besitzübernahme unmittelbar nach der Neuvermessung geschah.[74]

Es ist bemerkenswert, dass diese Pachturkunde in mehrfacher Anfertigung vorliegt: BGU VI 1263 und 1264 dokumentieren dasselbe Rechtsgeschäft. Offenbar wurden mehrere Kopien angefertigt; zwei davon dürften die Außen- und Innenschrift einer Doppelurkunde gewesen sein.[75] Allein die mehrfache Anfertigung gibt jedoch keinen Anlass dafür, den Austausch von wechselseitig verpflichtenden Urkunden und dadurch das Entstehen eines Konsensualvertrags zu unterstellen.[76]

Wie oben bereits bemerkt, ist unter dem Begriff „Konsensualvertrag" eine Vereinbarung zu verstehen, die unmittelbar eine Obligation erzeugte, ohne eine zusätzlich geforderte verpflichtende Form oder Handlung, und dass diese bloße Vereinbarung auch gerichtlich durchsetzbar war. Die Tatsache, dass über das Rechtsgeschäft Kopien angefertigt wurden, kann nicht als Beweis für die Erzeugung der Obligation aus dem bloßen Konsens bewertet werden. Einerseits wurde auch in diesen Dokumenten das Datum der Beurkundung, und nicht der Vereinbarung ausgewiesen.[77] Andererseits gibt es keine Anhaltspunkte dafür, dass bei Leistungsstörungen aus dem formlosen Abkommen geklagt worden wäre.[78] Es ist denkbar, dass die Abschriften bloß zur Hinterlegung und Registrierung des Rechtsgeschäfts angefertigt worden waren.[79]

Es ist bekannt, dass die Pachtverträge, die in Form einer *syngraphe* beurkundet wurden, im dörflichen *grapheion* registriert werden mussten. Die Registrierung bedeutete zwar zusätzliche Kosten für den Pächter, aber sie bot auch die nötige Publizi-

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[72] In den parallelen Überlieferungen in BGU VI 1263 und 1264 findet man diese Klausel in Z. 11 bzw. Z. 9.

[73] Bei *basilike ge* war die Standardmenge des vom Staat gewährten Saatguts eine Artabe pro Arure. Die meisten Pachtverträge unter Privaten richteten sich danach, obwohl die nötige Menge auch von der Qualität des Bodens abhing. Vgl. Schnebel 1925: 125.

[74] Crawford 1971: 37 meint, dass *geometria* insbesondere bei den Vorbereitungen von Verpachtungen und Landübernahmen erwähnt werden.

[75] Vgl. Leewald im Kommentar, S. 16.

[76] So meint aber Kaiser 2022a: 403 hierzu, dass „… eine *misthosis* über Grundstücke jedenfalls in den gräko-ägyptischen Papyri mit einer Einigung der Parteien zustande kam, also ein konsensualer Vertrag war, so lassen sich … alle Verträge … in Form von Hypomnemata … erklären."

[77] Wolff 1946: 76.

[78] Wolff 1946: 76: „the *syngraphe* was recognized as a sufficient basis for the obligations assumed in it (Dispositiveffekt)…"

[79] Für die Beispiele für die Anfertigung von Kopien zur Registrierung s. Yiftach-Firanko 2007: 1056-1057. Für mehrfache Anfertigung können auch P.Frankf. 2, BGU VI 1263, 1264 und P.Gradenwitz 10 (= SB 6283) als Beispiel zitiert werden. S. dazu Wolff 1946: 58; Plaumann 1914: 59.

tät und Beweiskraft, um den Verpächter an den Vertrag zu binden.[80] Für das Prozedere wurden immer mehrere Kopien angefertigt, und aus den Exzerpten ein *tomos synkollesimos* zusammengestellt.

In BGU VI 1262 (216/215 v.Chr.) wurde die Pacht für das 7. Jahr vereinbart, das am 17. September 216 begann; der Name des Monats ist ergänzt. Die Pachtzinszahlung wurde für das 8. Jahr vorgesehen, das am 7. Oktober 215 begann. Es ist bemerkenswert, dass in diesem Rechtsgeschäft Zenon als Pächter des einjährigen Pachtverhältnisses auftrat. Der Pachtzins wurde „ohne Gefahr" vereinbart, mit Ausnahme des Ausbleibens der Flut: ἀκίνδ[υνο]ν π̣[λὴν ἀβρόχου (Z. 7). Ob das Land vom Pächter am 17. September 216 übernommen werden konnte, hing vom Ablauf der Nilflut ab. Es liegt nahe, dass die Besitzübernahme erst nach der Neuvermessung (*geometria*) erfolgen konnte. In Z. 17-18 quittiert der Verpächter, dass er von Zenon eine *prodoma*-Zahlung erhalten habe: ἔχειν παρὰ Ζήν[ω]νος πρόδομα ἄτοκ[ο]ν χαλκοῦ νομίσ[ματος δραχμὰς] ἑκατόν — hundert Drachmen legte der Pächter als Vorleistung aus. Die Verwendung des ἔχειν -Formulars rückt das entstandene Rechtsverhältnis dem Darlehen nahe. Wahrscheinlich deshalb wurde explizit festgehalten, dass der Pächter zu keiner Zinszahlung verpflichtet sei.[81] Mit der *prodoma*-Zahlung ist übrigens die Voraussetzung der realen, obligierenden Vorleistung — im Sinne von Wolff — erfüllt. Es soll hier dahingestellt bleiben, ob die Parteien in diesem Fall eine antichretische Pacht ausgehandelt haben.

P.Hibeh I 90 wurde zwischen dem 8. Februar und dem 8. März 222 v.Chr., im 25. Jahr, angefertigt; die Verpachtung ist für das 26. Jahr festgelegt, das am 14. Juli 222 begann. Die Zahlungspflicht des Pächters ist wiederum für das 27. Jahr vorgeschrieben, das am 14. August 221 begann; die Pächter durften also aus der Ernte des 26. Jahres ihre Schuld begleichen. Der Pachtvertrag enthält die Vermessungs-Klausel; die Dokumentierung einer Vorleistung fehlt. Es lässt sich nicht mehr feststellen, ob eine Vorleistung trotzdem erbracht — aber in einer separaten Urkunde festgehalten wurde. Die großzügige Bestimmung der Leistungsfrist ist ein starkes Indiz dafür, dass der Pächter bereits früher das Land bebaut hatte.

Rowlandson identifizierte mehrere Pachtverträge, in denen sie rekonstruieren konnte, dass der Pächter bereits vor dem Vertragsschluss im Besitz des Landes war.[82] Diese Fälle legen es nahe, dass das Pachtverhältnis manchmal Jahr für Jahr unter denselben Parteien erneuert wurde.

BGU VI 1268 (Ende 3. Jh. v.Chr.) ist fragmentarisch; das Schriftstück lässt keine weitergehenden Schlüsse zu.

Als Zwischenbilanz kann Folgendes festgehalten werden: Die Tatsache, dass in

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[80] Vgl. etwa P.Mich. II (1) 123 Kol. II-IV, 45-46 n. Chr. S. dazu Wolff 1978: 44-45; Yiftach-Firanko 2007: 1056; Rupprecht 1995: 270-275.

[81] Vgl. die griechische Vorstellung, dass die Übergabe vertretbarer Sachen unmittelbar die Pflicht zur Zinszahlung erzeugt.

[82] Rowlandson 2002: 25: „already in arrears"; vgl. P.Oxy. XVII 2188, P.Oxy. XXII 2351, P.Oxy. III 501.

manchen Urkunden Beurkundung (und nicht „Vertragsschluss“) und Besitzübernahme (nicht „Vertragsbeginn“) auseinanderfallen,[83] kann Wolffs These über die „Zweckverfügung“ nicht widerlegen.[84] Stimmt es, dass deshalb das in-Besitz-Nehmen des gepachteten Grundstücks durch den Pächter nicht als ein reales Element der Vorleistung mit Zweckbestimmung gedeutet werden könne? Die von Kaiser als entscheidendes Argument angeführten fünf Urkunden führen nicht zu diesem Schluss. Von den zitierten fünf Urkunden sind nur vier in einem Zustand, der eine Rekonstruktion des Pachtverhältnisses zulässt. Eine von ihnen (P.Frankf. 2) zählt nicht als richtige Ausnahme, weil zur Zeit der Urkundenerrichtung die Nilflut bereits im Gang war. In einem anderen Dokument (BGU VI 1262) ist das Datum nicht genau erhalten. Streng genommen ist P.Frankf. 1 die einzige Urkunde, die Monate vor dem Beginn des Wirtschaftsjahres errichtet wurde. Man fragt sich, ob eine einzige „Ausnahme“ überhaupt ausschlaggebend sein kann.

Dazu kommt, dass Kaiser die Landpacht in Ägypten von unserer modernen Begrifflichkeit angeht. Er verwechselt „Vertragsschluss“ mit Beurkundung; die letzte kann keineswegs als Beleg für den erzielten Konsens als obligierendes Element gedeutet werden. Das Datum des „Vertragsschlusses“ im Sinne des unter den Parteien erzielten Konsenses erscheint nicht in den Urkunden. Das jeweils vermerkte Datum bezieht sich auf den Zeitpunkt der Erstellung der wirksamen Urkunde.

Der wirtschaftliche und soziale Kontext, der im Abschnitt III kurz beleuchtet wurde, verweist darauf, dass die rechtliche Auslegung der Pachtverträge aus dem ptolemäischen Ägypten — und damit die daraus abgeleitete Vertragstheorie — erneut überlegt werden sollte. Es trifft zu, dass die Anfertigung der erhaltenen Pachturkunden mit dem In-Besitz-Nehmen des Pachtobjektes zeitlich oft nicht zusammenfiel. Die Ursache dafür lag vor allem darin, dass der wirtschaftliche Inhalt des Pachtverhältnisses stark von den klimatischen Gegebenheiten — vom Ablauf der Nilflut — abhing. Es fragt sich jedoch, ob die schwebende Besitzübergabe zwingend dazu führt, die Idee der „Zweckverfügung“ gänzlich zu verwerfen.

Es soll vorausgeschickt werden, dass die Zweckverfügung — wie jede „Hauptregel“ — notgedrungen zahlreiche Ausnahmen zulassen muss. Es handelt sich um einen Leitfaden, der das Wesentliche der Rechtsvorstellungen der Griechen aus den Dokumenten des Alltags, der Rechtspraxis herauskristallisieren will. Das zentrale Element dieses Leitfadens ist die Erkenntnis, dass der bloße Konsens keine durchsetzbare Obligation erzeugte. Dazu bedurfte es regelmäßig eines realen Elements, einer Vorleistung. Die Ausarbeitung dieser These begann Wolff gerade bei der Untersuchung der Pachtverträge Ägyptens. Das reale Element sah er dabei in der faktischen Übergabe oder Überlassung des Pachtobjektes in den Besitz des Pächters. Im Spiegel

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[83] So Kaiser 2022a: 395-399.

[84] Zur Zweckverfügung s. Wolff 1946: 55-79; Ders. 1957: 63-66; Ders. 1961: 129-154; Ders. 1975: 232-235: Ders. 1978: 143; Ders. 1983: 13-19; Ders. 2002: 14; ihm folgen Herrmann 1975: 323ff.; v. Soden 1973: 70, 98-99; Kränzlein 1975: 187-191; Rupprecht 1994: 113-114; Rupprecht 1971: 64; Thür 2003: 235-238; Pelloso 2007: 23-44; Scheibelreiter 2015: 181-194; Scheibelreiter 2020: 40ff.

der seitdem edierten Papyri und der Ergebnisse der Wirtschaftsgeschichte kann dies generell nicht stimmen. Es fragt sich jedoch, ob das reale, obligierende Element nicht in anderen Formen einer Vorleistung festgestellt werden könnte.

V. Kautelarpraxis

Die juristisch relevante Handlung des Pachtens und Verpachtens wird in den Urkunden mit verschiedenen Verben bezeichnet. An den Wortgebrauch lassen sich keine rechtlichen Konsequenzen knüpfen. Man sollte auch berücksichtigen, dass es für die antike Kautelarpraxis typisch war, dass relevante Elemente der Vereinbarung nicht nur in einer einzigen Urkunde, sondern in separat aufgesetzten Einzelschriftstücken dokumentiert wurden. Auch bezüglich der *misthosis*-Vereinbarungen trifft man auf ergänzende Urkunden, die auf die Pachturkunde Bezug nehmen: κατ]ὰ τὴν συγγραφὴν τῆς μισθώσε[ως. Etwa SB III 6303[85] überliefert eine Empfangsbestätigung des Verpächters über „pränumerando geleisteten Pachtzins".[86] Die Vorleistung der Pächter wurde nicht in der Pachturkunde, sondern in einer separaten Quittung (Homologie) des Verpächters dokumentiert.

Ein gutes Beispiel ist der vorhin behandelte P.Hamb. II 188[87]: Theophilos verpachtete an Aristolochos 30 Aruren Ackerland, seinen gesamten Kleros, „für ein Jahr und eine Saat und Ernte, von der Saat im fünften Jahr an, deren Früchte im sechsten Jahr (geerntet werden)" (Z. 5-6). Die Landpacht wurde ἄ[σ]περμον ἀκίνδυνον πλὴν ἀβρόχου (Z. 8-9) vereinbart: Der Verpächter gewährte kein Saatgut und wälzte auch jedes Risiko der landwirtschaftlichen Tätigkeit auf den Pächter ab — mit Ausnahme der ausbleibenden Flut. Die Urkunde wurde im Monat Artemision ausgestellt (Febr.-März); die Pacht bezog sich auf das nächste Wirtschaftsjahr. Da zur Zeit der Errichtung noch keine Kenntnis über die Nilflut vorlag, wurde die *abrachos*-Klausel in den Vertrag aufgenommen.[88] Betrachtet man die Urkunde isoliert, ohne die in der Region herrschende Praxis zu berücksichtigen, scheint hier jegliche Vorleistung zu fehlen. Berücksichtigt man jedoch den gesamten Kontext, gelangt man zu einem anderen Ergebnis.

Aristolochos war ein Söldner, der von der Nutzung gepachteter Länder lebte; seine Verträge wurden immer nur für ein Jahr abgeschlossen. Seine Pachtgeschäfte sind in drei weiteren Papyri belegt: BGU VI 1268, P.Hamb. II 189, BGU VI 1265. Nach BGU VI 1268 pachtete er den Kleros eines gewissen Hipponikos für das 6. und 7. Jahr Philopators — die Formulierung ist mit der in P.Hamb. II 188 (= SB XII 11061) nahe verwandt. Die beiden anderen Urkunden sind Pachtzinsquittungen. In P.Hamb. II 189[89] wird bestätigt, dass der Verpächter, Zopyrion, von Beruf Soldat,

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[85] SB III 6303 = P.Grad. Inv. Nr. 171, 216/215 v.Chr.

[86] Leewald 1921: 121.

[87] P.Hamb. II 188 (= SB XII 11061), Ox., 218 v.Chr.

[88] Ein Blick in die Urkunde zeigt, dass Kaiser den Vertragsschluss falsch verstand: Die Pachturkunde wurde im 4. Jahr des Philopators aufgesetzt, die Verpachtung lief ab der Aussaat des 5. Jahres.

[89] P.Hamb. II 189 (= BGU X 1958 = P.Hamb. I 26), Tholthis, 216-215 v.Chr.; es handelt sich

den vorausbezahlten Pachtzins (150 Artaben) für das 8. und 9. Jahr von den Pächtern Aristolochos und Straton (ebenfalls ein Soldat) im Voraus erhielt.[90] Die Quittung, die als Homologie formuliert wurde, bezieht sich ausdrücklich auf eine (separat beurkundete) Pachturkunde (Z. 9). Auch in BGU VI 1265 entrichtete Aristolochos den Pachtzins im Voraus, bevor er mit der Bebauung des Pachtobjekts angefangen hätte. Die Quittung ist mit dem 9. Jahr des Philopators datiert, während die Pacht für das 11. und 12. Jahr verabredet wurde.

Neben den objektiv stilisierten *syngraphai*, die bei einem *syngraphophylax* hinterlegt wurden, kamen später weitere Urkundenformen in Gebrauch. Aus Alexandria sind einige *synchoreseis* über Pachtvereinbarungen aus augusteischer Zeit überliefert.[91] Im Prinzipat verbreiteten sich in einigen Regionen auch subjektiv stilisierte *cheirographa* in Briefform, die Pachtverträge dokumentieren. Ebenfalls im Prinzipat ist (als eine weitere Variante, vor allem im Faijum) die Beurkundung als subjektiv verfasstes Pachtangebot und eine darauffolgende Annahme zu beobachten; diese Art von Urkunde wird im Schrifttum *hypomnema* genannt.[92] Die typische Formulierung ist eine einseitige Willenserklärung des Pächters „ich will in Pacht nehmen", gefolgt vom Annahmevermerk des Verpächters „ich verpachte".[93]

Die eigenartige Beurkundungsform ist auf den üblichen Ablauf und die damit verbundenen Erklärungsformen der Pachtverträge mit der öffentlichen Hand zurückzuführen: Der Staat hat die zur Pacht angebotenen Länder öffentlich ausgeschrieben, und die Vertragswilligen haben ihre Pachtangebote gemacht.[94] Unter Privaten hat sich diese Urkundenform eigentlich erst in der römischen Periode verbreitet; auch dann ursprünglich eher bei Verträgen über abzuerntende Früchte (und nicht über zu bebauendes Land).[95]

P.Ryl. IV 600 aus dem Jahre 8 v.Chr. (Arsinoites) ist ein frühes Beispiel dafür: βολόμ[εθα] | [μισθώ]σεσθαι, das Pachtangebot ist mit dem 17. Oktober datiert, der Annahmevermerk mit dem 29. Oktober.[96] Vielleicht wurden in den dazwischen liegenden zwölf Tagen die Landvermessungen- und Zuweisungen durchgezogen.

Nach herrschender Lehre kennzeichnen die *hypomnema*-Urkunden den Ab-

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um eine Homologie.

90 Es ist bemerkenswert, dass die hier zitierte Pachturkunde bei einem Urkundenhüter im ptolemäischen Heer hinterlegt wurde.

91 Wolff 1946: 59.

92 Herrmann 1958: 28ff.; Kränzlein 1982: 307-324. Ein typisches Beispiel ist P.Amh. II 88. Die Struktur der Urkunde ist wie folgt: Pachtangebot, Abreden, Unterschrift und Datum. Vgl. dazu Yiftach-Firanko 2007: 1051-1061; Yiftach 2014: 50ff.; Kaiser 2022b: 3-4.

93 Kaiser 2022a: 403 sieht darin den Beweis, dass es sich um einen Konsensualvertrag gehandelt habe.

94 Herrmann 1958: 27. Bereits Wolff 1946: 69 erwähnt die Versteigerungsform als Vorstufe des Kontrahierens.

95 Eigentlich kann man diese *misthoseis* als *karpomisthoseis* bezeichnen; s. dazu Yiftach-Firanko 2007: 155-1056, der die Vorteile dieser Beurkundungsform, die insbesondere bei Verträgen mit einer kurzen Laufzeit (etwa einem Monat) eingesetzt wurde, erläutert.

96 Herrmann 1958: 188.

schluss des Vertrags in einer Angebot-Annahme-Form.[97] Es geht aber nie darum, dass der Verpächter von mehreren kompetitiven Angeboten das für ihn günstigste ausgewählt hätte.[98]

Das Phänomen, dass die Pachtverträge immer mehr in privaten Urkunden dokumentiert wurden, ist eher auf die neuen Wege der Kautelarpraxis zurückzuführen. Der Wortlaut der zentralen Abreden kann in unterschiedlichen Formulierungen erscheinen, aber im Kern ändert sich das Formular kaum. Die neuen Varianten verweisen auf keine neue Auffassung bezüglich der Ansichten der Akteure über den rechtlichen Charakter des Vertrags.

P.Oxy. XXII 2351 (112 n.Chr.) stammt bereits aus dem Prinzipat, es fällt also aus dem Zeitraum der vorliegenden Untersuchung. Das Dokument zeigt die Verschmelzung des griechischen Formulars mit römischen Elementen. Phratres, ein Priester aus Tanais verpachtete 24 Aruren Land (das er mit seinem Neffen gemeinsam innehatte) an drei Pächter: Totoes, Pachnoumis und Totoes junior, alle aus derselben Ortschaft, für vier Jahre, vom laufenden 16. Jahr des Trajan an (Monat und Tag sind nicht genannt). Die längere Laufzeit ist seit dem Prinzipat zu beobachten.[99] Die Kultivierungspflichten der Pächter und der Pachtzins werden genau geregelt; diese Abreden sind in beiden Rechtskreisen charakteristisch. Bei der Alternative, den Pachtzins in Naturalien oder in Geld zu entrichten, könnte es sich um römischen Einfluss handeln: Die *locatio conductio rei* wurde in der römischen Praxis traditionell für *pecunia numerata*, für einen fixen Geldbetrag abgeschlossen. Anschließend folgt die Bestätigung der Pächter über den Empfang von zwölf Artaben Saatgut, die ihnen vom Verpächter zugemessen worden waren; das ist in den gräko-ägyptischen Urkunden zu beobachten. Ab Z. 25 wird die Begleichung einer früheren Schuld zwischen den Kontrahenten geregelt. Das ist ein Indiz dafür, dass die vorliegende Urkunde eigentlich die „Verlängerung" eines bereits davor bestehenden Pachtverhältnisses zwischen den Parteien enthält. Eine weitere Besonderheit des Papyrus ist die sorgfältige, auf die wechselseitige Willenserklärungen achtende Beurkundung des Rechtsgeschäfts, die wiederum auf römischen Einfluss zurückgeführt werden kann. Ab Z. 69 liest man die Erklärung der Pächter, gepachtet zu haben — und dazu die Bestätigung des Erhalts des Saatguts (der sonst eher in einer separaten Urkunde festgehalten wurde). Die Entrichtung des Pachtzinses wurde in Z. 45 für den Monat Pauni (Mai-Juni), von der frischen Ernte, vorgesehen. Auf dem Verso liest man jedoch einen Vermerk des

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97 Rupprecht 1994: 122.

98 Die *hypomnema*-Urkunden fallen aus dem Rahmen der hier untersuchten Zeitperiode. Wie bereits in der Einleitung betont wurde, konzentriert der vorliegende Beitrag auf die ptolemäische Zeit Ägyptens. Diese Einschränkung ist notwendig, um in dem einschlägigen wirtschaftlichen, sozialen und rechtlichen Kontext zu bleiben. Es wäre zu prüfen, ob es sich bei den Pachtverträgen, die als *hypomnema* beurkundet wurden, immer um eine Neuverpachtung handelte oder gewisse Daten auf eine Verlängerung eines bereits früher bestehenden Pachtverhältnisses verweisen. Einige Hinweise sind bei Rowlandson 2002: 254 zu finden, die 9 Belege von Neuverpachtung identifiziert hat; s. dazu oben bei Anm. 62.

99 Rowlandson 2002: 254.

Verpächters, dass er für Totoes und Pachnoumis eine Quittung über den Pachtzins des 20. Jahres ausgestellt habe (das letzte Jahr des Pachtverhältnisses), datiert im Monat Sebastos (Nov.-Dez.) desselben Jahres, also Monate nach der Erntezeit. Das spricht dafür, dass die als P.Oxy. XXII 2351 erhaltene Urkunde für den Verpächter angefertigt wurde und in seinem Besitz blieb.

Zum Schluss lässt sich bemerken, dass Wolff die These entwickelte, eine durchsetzbare Obligation aus einer Vereinbarung entstehe erst dann, wenn ein reales Element dazutritt, das heißt, wenn einer der Kontrahenten eine Vorleistung erbringt. Er sah das obligationsbegründende reale Element in der Überlassung des Pachtobjektes, die Besitzübergabe an den Pächter. Der wirtschaftliche Kontext zeigte, dass das nicht restlos zutreffen kann.

Es scheint jedoch nicht zwingend, die notwendige Vorleistung ausschließlich in der Besitzübergabe des Pachtobjektes manifestiert zu sehen. Zur Bindung an den Vertrag — als „reales Element" — war jede Art der Vorleistung geeignet, etwa wenn der Verpächter Saatgut zur Verfügung stellte oder der Pächter seinem Vertragspartner einen geringen Betrag im voraus als *prodoma* zahlte. Weiterhin ist zu berücksichtigen, dass hinter den auf ein Wirtschaftsjahr abgeschlossenen Verträgen oft ein längeres Pachtverhältnis steckte. Es konnte durch die jährlich neu abgeschlossenen Verträge — neu ausgestellte Pachturkunden — mit der Abrechnung der eventuell noch offenen Forderungen aus dem Vorjahr aufrechterhalten werden.

VI. Von Streitigkeiten

Unser Quellenmaterial ist schmal und einseitig. Neben den Geschäftsurkunden vermitteln Petitionen, Klageschriften und behördliche Schreiben einen Eindruck davon, wie die einzelnen Abreden der Pachturkunden von den Akteuren damals verstanden wurden.

P.Polit.Iud. 12 überliefert eine Eingabe an die Archonten des Politeuma, die am 6. Juli 135 v.Chr. aufgesetzt wurde. Ein gewisser Nikanor beschwert sich gegen den Pächter Andromachos, der ihm 11 Artaben Weizen aus Pachtzins schuldete. Zum Sachverhalt gehört, dass die Verpachtung bereits Jahre davor (im 32. Jahr,[100] d.h. 139/138 v.Chr.) durch den Vater des Petenten erfolgte.[101] Vermutlich erbte der Petent die offene Forderung als Rechtsnachfolger nach dem Tod des Vaters. Als Grundlage seiner Forderung nennt Nikanor eine beeidete *epistole*, eine Urkunde in Briefform. Andromachos bestätigte damit wahrscheinlich das Bestehen seiner Pachtzins-Schuld. Bereits der Editor, James Cowey, vermutet, dass die *epistole* keinen Pachtvertrag, sondern eine Schuldurkunde darstellte.[102] Dafür spricht, dass das Schriftstück an den Petenten (und nicht an seinen Vater) adressiert war (Z. 9-10).[103]

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[100] Das 32. Jahr fällt auf 139/138 v.Chr.

[101] Die Eingabe nennt das Pachtobjekt den „Kleros des Andronikos".

[102] Coway, P.Polit. Iud. auf S. 123.

[103] Der dazu festgehaltene Eid wurde in ptolemäischer Zeit selten in Geschäftsurkunden eingesetzt; man findet dafür mehr Belege aus dem römischen Ägypten. Vgl. dazu Rupprecht

Es fällt auf, dass die Landpacht für das 32. Jahr verabredet – aber die Beschwerde erst drei Jahre später eingereicht wurde. Der Pachtzins hätte — wie in anderen Texten üblich — entweder von der Tenne, noch im 32. Jahr, oder spätestens im Herbst des 33. Jahres bezahlt werden sollen. Eine Bemerkung des Petenten lässt darauf schließen, dass er inzwischen den säumigen Pächter gemahnt hatte, dieser aber darauf gar nicht reagierte. Beide Streitparteien waren Juden, die vielleicht derselben Gemeinde angehörten.[104] Die Tatsache, dass Nikanor drei Jahre lang nur sanft (mit Mahnungen) vorging, zeigt die starke soziale Komponente. Diese Vermutung wird dadurch verstärkt, dass der ursprünglich vereinbarte Pachtzins unter dem damaligen Durchschnitt lag.[105] Für eine gewisse „Vertrautheit" zwischen den Parteien spricht weiterhin, dass kein *hemiolion* (Vertragsstrafe des Anderthalbfachen) geltend gemacht wurde.

In einer Eingabe aus dem Jahre 114 v.Chr. wird eine falsche Beurkundung beanstandet.[106] Der Petent, ein Priester aus Tebtynis, klagt wegen Betrug bei der Dokumentierung des Pachtvertrages. Er beschuldigt Harmiusis, den *synallagmatographos* (Vertragsschreiber) des Dorfes, seine Pachturkunde in betrügerischer Absicht, mit dem Pächter konspirierend, falsch ausgestellt zu haben. Der Petent behauptet, dass er für einen Pachtzins von 36 Artaben verpachtet habe, aber in der Urkunde ein Pachtzins von 30 Artaben eingetragen wurde.[107] Auch die vermeintliche Argumentation der Gegenpartei, die aus einer beiläufigen Erwähnung rekonstruiert werden kann, verdient Aufmerksamkeit: Der Petent verteidigt sich gegen die Behauptung, dass ihm 6 Artaben als Vorauszahlung, *prodoma*, ausgehändigt worden seien (ἔχειν με ἐν προδόματι).[108]

Aus der Petition lässt sich feststellen, dass der Verpächter eine von ihm behauptete, aber urkundlich nicht nachweisbare Vereinbarung gegen den beurkundeten Vertragstext durchzusetzen versuchte. Hatte er damit Erfolg vor Gericht? Wir wissen es nicht. Zur Vorsicht mahnt, dass die Information einseitig ist, man kennt nur die Verpächter-Version des Sachverhalts. Vielleicht lag ein Schreiberfehler tatsächlich vor … Die Differenz zwischen den Summen hätte aber auch dadurch entstehen können, dass die Bestätigung über den Erhalt der *prodoma* in der Pachturkunde nicht ausgewiesen war. Die überlieferten Dokumente legen es nahe, dass die Empfangsbestätigung über die Vorleistung meistens in die Pachturkunde aufgenommen wurde. Etwa in P.Frankf. 1 findet man die diesbezügliche Klausel in den Vertragstext integriert.[109]

1994: 106-107; Kunkel 1931: 229f.; Seidl 1929: 34-44.

[104] Cowey, P.Polit. Iud. auf S. 120.

[105] Cowey, P.Polit. Iud. auf S. 125.

[106] P.Tebt. I 42 = W.Chr. 328.

[107] Auch in einer Eingabe an den Strategen Paniskos (Amtszeit 66-55 v.Chr.) beschwert sich ein gewisser Artemon, dass der Verpächter von ihm mehr Pachtzins verlangt als verabredet wurde (BGU VIII 1822).

[108] Der Editor übersetzt als „pledge", hingegen Preisigke 1925: 367-368 beschreibt das Bedeutungsfeld „Vorausgabe, Vorwegzahlung, Vorausbezahlung, Vorschusszahlung". Vgl. Leewald 1921: 121-122 zu P.Frankf. 15; P.Freib. 3,76ff.; Taubenschlag 1934: 140-141.

[109] Z. 30-32: [ὁμολογε]ῖ δὲ Ἀπολλ[ώ]νιος ἔχειν παρὰ Νεοπτολ[έμου πρόδομα ἄτοκον] χαλκοῦ [ν]ομίσματος δραχμὰς ἑ[ξήκοντα …

Es gibt jedoch auch dafür Belege, dass der festgesetzte Pachtzins durch Abzug eines Betrages nachträglich korrigiert wurde. Ein Beispiel liefert dafür P.Frankf. 2.[110] Der Schreiber hat zunächst 146 Artaben eingetragen, die später auf 126 ausgebessert wurden.[111] Es ist denkbar, dass der Text von P.Tebt. I 42 auf ähnliche Weise korrigiert wurde. Es könnte auch sein, dass der Verpächter eine Quittung über den Erhalt der 6 Artaben in einer separaten Urkunde, abstrakt formuliert (ohne die *causa* zu nennen) angefertigt hat. Das Schriftstück zeigt jedenfalls die schwierige Lage, die von der Partei bewältigt werden musste, wenn man eine Forderung gegen eine Urkunde geltend machen wollte.

P.Enteux. 54 berichtet von einer Streitigkeit aus dem Jahr 218 v.Chr.[112] Petoys kam über die Pacht eines Stück Landes mit Lachares und Alexander (zwei Griechen) als Verpächter überein. Der Pächter begann mit der Bebauung, wurde jedoch von den Verpächtern vertrieben.[113] Der Pächter wandte sich mit einer Beschwerde an den Dorfvorsteher und bat darum, das der König in der Angelegenheit ein Gerichtsverfahren ansetzen solle. Man findet keinen Hinweis darauf, dass die ursprüngliche (formlose) Vereinbarung unter den Parteien bestritten worden wäre. Es ist auch von einer Urkunde die Rede, die jedoch von den Verpächtern nicht gesiegelt wurde.[114] Mitteis nimmt ein demotisches Original an — es würde die Unwirksamkeit wegen der mangelnden Siegelung erklären.[115] Es ist aber wahrscheinlicher, dass es sich um eine griechische *syngraphe* handelte: Die hätte bei einem *syngraphophylax* hinterlegt und im dörflichen *grapheion* registriert werden müssen. Zur Registrierung wäre jedoch eine wirksame, von den Parteien und Zeugen gesiegelte Urkunde nötig gewesen.[116] Soweit man den Sachverhalt rekonstruieren kann, liegt es nahe, dass zur Durchsetzbarkeit der Ansprüche eine wirksame Urkunde unerlässlich war. Aus der bloßen Vereinbarung entstanden keine vor Gericht durchsetzbaren Klagen[117] und auch das In-Besitz-Nehmen genügte nicht, wenn keine wirksame Urkunde vorlag.

VII. FAZIT

Eine komplexe Betrachtung der zwischen den Parteien entstandenen rechtlich relevanten Handlungen, die auch den wirtschaftlichen und sozialen Kontext berücksichtigt, führt meistens dazu, dass man die von Wolff postulierte notwendige Vorleistung bestätigt findet.

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[110] Ausgestellt in Oxyrhynchos, im Jahre 215/214 v.Chr.
[111] Leewald im Kommentar, S. 18.
[112] P.Ent. 54 (= P.Lill. 14 = M.Chr. 130) aus Bakhis, Arsinoites. Vgl. Dazu bereits Wolff 1946: 66-67; Taubenschlag 1937: 187; Kaiser 2022a: 406.
[113] Herrmann 1958: 179 stellt darauf ab, dass die Vertreibung vor der Ernte geschah.
[114] Zur Bedeutung der Siegelung s. Vandorpe 2014: 143-145.
[115] Mitteis 1912: 130.
[116] Wolff 1946: 66-67 meint, dass der Pächter durch die angefangene Bebauung bereits den „title" erwarb: „it proves that the actual beginning of the lease relationship entitled the lessee to claim protection for his possession and enjoyment of the property". Dieser Schluss scheint mir nicht zwingend.
[117] Anders Kaiser 2022a: 406.

Bei der Bewertung der Zeugnisse aus der Alltagspraxis sollten jedoch Generalisierungen möglichst vermieden werden. Mit der Definition „*misthosis*-Vereinbarungen“ werden sehr unterschiedliche Tatbestände unter einen Hut gebracht. Meines Erachtens lassen sich die Konturen „des antiken Rechtsgeschäfts“ besser nachzeichnen, wenn man die einzelnen Geschäftsmodelle getrennt voneinander betrachtet: Man soll etwa Landpacht, Ammenvertrag, Frachtvertrag oder Bauvertrag als eigenständige Modelle mit spezifischen vertraglichen Abreden untersuchen. Diese wurden von der Kautelarpraxis in Hinblick auf den jeweils typischen wirtschaftlichen Inhalt, die primären Leistungspflichten und die damit verbundenen Risiken und Haftungslagen ausgearbeitet.

Der erste Schritt im Rekonstruktionsversuch sollten Mikro-Analysen sein, die bei jedem Dokument das Geschehene – soweit möglich – nachzeichnen. Nach dieser Arbeitsphase sollten die Ähnlichkeiten und Unterschiede im Formular topographisch und chronologisch verglichen werden. Erst danach sollte man versuchen, allgemeine Tendenzen herauszufinden — bei denen jedoch, angesichts der Quellenlage, immer mit Ausnahmen zu rechnen ist.

In unseren Quellen geht es um Dokumente der Alltagspraxis. Es ist meistens zu hoch gegriffen, hieraus Schlüsse auf ein sogenanntes „dispositives Recht“, auf eine herrschende und allgemein befolgte „Hauptregel“ zu schließen.

Die antike Vertragslandschaft war stark von Formularen beherrscht. Die handelsüblichen Abreden bedeuteten wirkungskräftige Erwartungen, die das Geschäftsleben, den Abschluss von Vereinbarungen weitgehend bestimmten. Die Kontrahenten ließen sich selten auf die Ausarbeitung von individuellen Vertragsinhalten ein. Die starke Tendenz, sich nach allgemein akzeptierten Formularen zu richten, brachte eine gewisse Rechtssicherheit, es förderte den redlichen Geschäftsverkehr. Diese Einstellung wird auch aus P.Enteux. 55 greifbar, worin der lange abwesende Eigentümer von irgendwelchen „selbsternannten Pächtern“ (die sein Land in seiner Abwesenheit ohne Vertragsgrundlage bebaut haben) selbstverständlich den (fiktiven) Pachtzins verlangt, als ob eine Pachturkunde vorgelegen wäre.

Konsens ist das notwendige Element jedes Vertrags; das wurde weder von Wolff noch von seinen Nachfolgern bestritten. Konsens und Konsensualvertrag sind jedoch unterschiedliche Rechtsfiguren.[118] Der Konsensualvertrag entwickelte sich in der

[118] Eine gewisse Verwirrung der Begriffe kann bei Wolfgang Kaiser beobachtet werden. Kaiser 2022a: 402 spricht vom „Konsens als Grundlage der Verbindlichkeit von *misthoseis* über Grundstücke“. Auf S. 403 legt er als Arbeitshypothese fest, dass die *misthosis* „mit einer Einigung der Parteien zustande kam, also ein konsensualer Vertrag war“. In seiner Schlussbemerkung auf S. 409 betont er, dass die *misthoseis* „sowohl in ihrer äußeren Erscheinung als auch ihrem Inhalt nach“ als Verträge zu erfassen seien, die „auf dem Konsens der Parteien beruhen und als solche die Parteien wechselseitig verpflichten“. Anschließend bemerkt er jedoch — widersprüchlich, dass dieser Konsens „nicht mit dem *consensus* der Konsensualkontrakte des römischen Rechts identisch“ sei. Es stellt sich die Frage, was er nun unter einem Konsensualvertrag versteht? Es scheint weiterhin, dass er die Begriffe Konsens und Konsensualvertrag immer wieder verwechselt. Niemand hat jeweils behauptet, dass Verträge ohne Konsens entstehen werden können.

Antike erst und allein im klassischen römischen Recht. In den theoretischen Überlegungen der römischen Jurisprudenz nahm er — als Denkfigur — eine immer bedeutsamere Rolle ein. Diese Denkfigur kam jedoch auch in der römischen Praxis — wie es mir scheint — bloß als Aushilfe zur Anwendung: Nämlich in Fällen, in denen die Durchsetzbarkeit aus der Urkunde wegen deren Mangelhaftigkeit nicht funktionierte.[119]

In den Quellen der griechischen Welt sind keine Belege zu finden, die eine Durchsetzbarkeit von vertraglichen Ansprüchen aufgrund einer bloßen Vereinbarung nachweisen würden. Aus dem bloßen Konsens entstanden weder Klage noch Vollstreckung.

Als Wolff seine erste Abhandlung über die Natur des griechischen Vertrags verfasste, konzentrierte er darauf, die römischrechtliche Terminologie und Dogmatik möglichst auszublenden.[120] Als Alternative schlug er ein Konzept vor, das er aus den primären Quellen, aus den Papyri Ägyptens zusammengetragen hat. Er baute dabei auf die neuen Ergebnisse seiner Zeitgenossen: Partsch, Pringsheim, Latte und Kunkel hatten bereits erkannt, dass die Natur des griechischen Vertrags mit der des römischen Realkontrakts vergleichbar sei.[121] Wolff folgt diesem Pfad und baut die Idee weiter aus: „If we are to classify the *misthosis* by using Roman categories, it appears to be nearer to the *contractus re* than to the *contractus consensu"*.[122] Er stellte fest, dass zwischen den Parteien regelmäßig eine Sachhingabe erfolgte, in dem das obligierende Element gesehen werden könne.

In seiner ersten Abhandlung zu der Problematik untersuchte Wolff die Pachtverträge der Papyri aus Ägypten und stellte fest, dass die Verben „empfing" und „verpachtete" eigentlich auf das faktische Element, auf die Übergabe bzw. Überlassung des Landes zur Bebauung verweisen. Im Mittelpunkt seiner Untersuchung steht die typische Sechszeugenurkunde (*syngraphe*).[123] Seine These, dass *misthoun* „implied the actual, physical yielding of the object to the lessee", die als Widerlegung der früher herrschenden Konsensualvertragsthese formuliert wurde: „… is, in my opinion, a clear testimony that these involved the principle that the obligations undertaken by the tenant followed, not from the mere agreement of the parties, but from his actual 'taking out' of the property".[124]

Nach dem oben angeführten kurzen Überblick über den determinierend wirkenden geographischen und klimatischen Kontext der ägyptischen Landwirtschaft liegt es nahe, dass der Pächter das Land unmittelbar nach der Beurkundung des Pachtverhältnisses meistens nicht betreten konnte. Richtiger scheint mir darauf abzustellen, dass die wirksam ausgestellte Pachturkunde den Pächter dazu berechtigte, das Feld

[119] Jakab 2021: 376-378.
[120] Wolff 1946: 55.
[121] Fussend auf Latte 1932: 1085-1087; Partsch 1931: 262-267; dann später aufgebaut Pringsheim 1950: 398-401; Jörs, Kunkel, Wenger 1978: 190; vgl. auch Thür 2013: 2-4.
[122] Wolff 1946: 68.
[123] Wolff 1946: 57.
[124] Wolff 1946: 60.

unmittelbar nach der Flut, Neuvermessung und Registrierung in Besitz zu nehmen. Beiläufig erwähnte bereits Wolff diese Idee: „Unlike the Roman *locatio conductio rei*, the *misthosis* did not create merely obligatory relations between the lessor and the lessee but seems to have resulted in the acquisition by the latter of a temporally and qualitatively limited title to the object."[125]

Wolff war fest überzeugt von der Besitzübergabe bei der Urkundenerrichtung, deshalb sah er in den begleitenden Vorleistungen zwischen den Parteien keine signifikante Bedeutung: „Normally, special duties occasionally undertaken, such as the payment to the tenant of a grant in aid for the improvement of the farm (P.Teb. I 105, 106) or the refund of a *prodoma*, are of no interest here …"[126]

Anderswo betont er, dass die Urkunde kein Bericht über das Zustandekommen der Vereinbarung unter den Parteien war, sondern über den Akt berichtete, dass etwas geleistet, ausgeführt worden sei, wodurch der Partner zu seiner Leistung verpflichtet wurde.[127]

All dem ist zuzustimmen. Ich möchte trotzdem vorschlagen, seine Thesen gerade bei den Pachtverträgen in einem Punkt zu präzisieren. Die von ihm vorgeschlagene „Besitzübergabe" scheint mit dem Zeitpunkt der Beurkundung nicht immer zu harmonieren. Das obligierende reale Element bestand in Ägypten meines Erachtens meistens nicht in der Übergabe oder Überlassung des gepachteten Landes in den faktischen Besitz des Pächters. Jede Art der Vorleistung konnte die obligierende Funktion erfüllen, die zur Erzwingbarkeit der sonst rechtlich nicht verpflichtend angesehenen Vereinbarung führte. Auch die oben angeführten Papyri bestätigen, dass das reale Element nicht allein durch die faktische Übergabe oder Überlassung des Landes[128] verwirklicht werden konnte. Zenon gewährte seinen Pächtern das nötige Saatgut und dazu noch etwas Bargeld, um den Anfang der Bebauung zu ermöglichen.[129] In anderen Urkunden liest man, dass der Pächter dem Verpächter bei der Beurkundung einen gewissen Betrag (*prodoma*) zahlte. Diese Vorleistungen fielen meistens mit der Urkundenerrichtung zusammen. Das haftungsbegründende reale Element, die „Verfügung mit Zweckbestimmung", kann man auch in diesen Leistungen sehen. Jede Art von Sachhingabe konnte dazu dienen, die Bindung an den Vertrag herzustellen, die vereinbarte Vertragsstrafe im Falle von Leistungsstörungen auszulösen.

Die Landschaft, die spezifischen Charakteristika der Landwirtschaft Ägyptens prägten stark die rechtliche Erfassung des Pachtverhältnisses. Die öffentlich beurkundete Vereinbarung gewährte dem Pächter das Recht, in dem vereinbarten Zeitraum das Land zu bebauen und die Früchte zu ernten. Der jeweilige Pächter wurde

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[125] Wolff 1946: 62.
[126] Wolff 1946: 63.
[127] Wolff 1946: 76: "Whether private or notarial, it was always drawn up as a report, not about the fact that the contractants had reached an agreement concerning the obligation incurred but that one or both of them had performed some act … in consequence of which certain duties fell upon the one who had performed the act, or upon the other party, or upon both."
[128] Vgl. dazu oben bei Anm. 10.
[129] S. oben bei Anm. 16.

nach der Nilflut, nach der Neuvermessung der Felder als „Bebauender“ registriert. Die Urkunde — im Rahmen der Verwaltungsakten — berechtigte ihn dazu, das Land zu betreten. Vertragsschluss und Urkundenerrichtung konnten mit diesem „In-Besitz-Nehmen“ nicht zusammenfallen, weil die Naturereignisse und die Methoden der Bebauung es nicht zuließen. Der moderne Begriff des Vertrags, wie er in den kontinentalen Rechtsordnungen verstanden wird, ist in seiner Abstraktion für die Erfassung der lebenstatsächlichen Elemente der ägyptischen Pachtverhältnisse nicht geeignet.

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CARLOS Mª SÁNCHEZ-MORENO ELLART (VALENCIA)

ÜBER DAS PROBLEM DER NATUR DES PACHTVERTRAGS IM PAPYRUSRECHT: ZWECKVERFÜGUNG ODER KONSENSVERTRAG? ANTWORT AUF ÉVA JAKAB*

Es ist mir eine Ehre, auf den Vortrag von unserer lieben Kollegin Éva Jakab zu antworten, und in diesem Fall ist es mir nicht schwer, da ich grundsätzlich ihrer These zustimme. Als ich mich selbst zu P.Trier I äußerte, wurde mir klar, dass grundlegenden Aspekte der These von Hans-Julius Wolff (die Zweckverfügung) im Wesentlichen zutreffend sind[1].

Jakab hat dieses Thema bereits mehrfach angesprochen, und sie hat es sogar schon bei einer anderen Ausgabe dieses Symposions getan. Ich beziehe mich insbesondere auf ihre Antwort auf den Vortrag von Edward E. Cohen über die Existenz von Konsensverträgen im antiken griechischen Recht[2]. Auch andere Teilnehmer dieses Symposiums haben sich mit diesem Thema meisterhaft beschäftigt, zum Beispiel Gagliardi[3] und Wallace[4]. Im Folgenden möchte ich eine Antwort auf dieses schwierige Thema versuchen.

Das von Frau Jakab gewählte Subjekt ist ein grundlegendes Thema und deshalb oftmals sowohl in der Fachliteratur als auch in Diskussionen vertreten. Aber dies ist nicht die Gelegenheit, um im Detail auf die verschiedenen Kritikpunkte an Wolffs Theorie einzugehen und die gesamte Literatur zu zitieren. Ich werde mich darauf beschränken, den wichtigsten Punkt zu kommentieren, also Wolffs These über die Zweckverfügung, die unsere Kollegin richtig behandelt hat.

Ich komme zum Kern des Problems, wie es Jakab zusammenfasst: Der Konsens ist ein grundlegendes Element jedes Vertrags, aber das bedeutet nicht, dass sich aus dem bloßen Konsens die Obligationen des Vertrags ergeben. Das ist, laut Wolff, der Unterschied zwischen dem römischen und dem griechischen Pachtvertrag[5].

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* Ich möchte mich bei Daniel Schaaf, Archäologe und guter Freund seit meiner Zeit in Trier, für die Korrektur dieses Beitrags bedanken.

1 Kramer / Sánchez-Moreno Ellart (2017) 66-70.

2 Jakab (2006) 85-61.

3 Gagliardi (2013)

4 Wallace (2013)

5 Ein Überblick über diese Theorie erfordert nicht nur die Konsultation bestimmter Werke

Die Unterscheidung zwischen dem für einen Vertrag notwendigen Konsens und dem Konsens als Quelle von Obligationen ist nicht immer einfach. Zum Beispiel, wenn Kaiser (in dem von Frau Jakab zitierten Artikel) feststellt: „Wenn der Pächter die Gegenleistung schuldig bleibt und der Eigentümer sie einfordert, verlangt er Erfüllung der übernommenen Zahlungspflicht“[6]. Das beweist, meiner Meinung nach, gar nichts. Die Erfüllung eines Pakts hängt natürlich davon ab, dass er vereinbart wurde, aber der Vertrag selbst hängt von dem realen Element ab. Wolff bestritt diesen Punkt im Grunde nicht, sondern präzisiert, dass die Übergabe des Pachtobjekts auf den Pächter die Quelle der vertraglichen Obligation und auch die Grundlage für alle vereinbarten Verpflichtungen ist.

Wolff bezog sich erstmals auf den Pachtvertrag, als es um die Zweckverfügung ging. Er veröffentlichte seine Theorie zuerst in englischer Sprache (Wolff 1946). Die deutsche Version ist später erschienen und verdeutlicht einige Aspekte seiner These. So stellt Wolff selbst fest: „ Im Gegensatz zur römischen *locatio conductio rei* schuf die *misthosis* nicht lediglich obligatorische Beziehungen zwischen dem Verpächter und dem Pächter, sondern scheint dazu geführt zu haben, daß der letztere ein, wenn auch zeitlich und dem Stärkegrade nach begrenztes, dingliches Recht am Pachtgegenstand erwarb“. Das sagt er in den beiden oben zitierten Artikeln, bevor er seine These von der Zweckverfügung, im Jahre 1957 ausarbeitete[7].

Es ist allgemein anerkannt, dass die beste Zusammenfassung dieser Theorie, von Professor Thür stammt: „Nicht die Willenseinigung zwischen den Vertragsparteien habe das Forderungsrecht des Gläubigers (...) sondern indirekt das Delikt der Schädigung (δίκη βλάβης) des Gläubigers (...). Als Grundlage für diese Vorstellung habe es eine Verfügung (...) zu einem bestimmten Zweck bedurft“[8]. Daraus folgt, dass was Wolff das „reale Moment“ nennt, die vertragliche Bindung ist.

Die Terminologie verdient einen Kommentar. Die Terminologie in den Pachtverträge-Formularen ist, meiner Meinung nach, von Kaiser nicht ausreichend behandelt worden. Es ist kein Zufall, dass Jakab ihren Vortrag mit einem Kommentar zu einem Dokument beginnt, das Wolff als wesentlich für die Definition des Pachtvertrags ansah, P.Col. III 54 = P.Col.Zen. 54 = SB IV 7450.

Wolff nutzt die Terminologie, um seine These von der „Zweckverfügung“ zu entwickeln, und zwar genau dann, wenn es um die Pacht geht.

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von Wolff, sondern auch die seiner Vorgänger, wie Partsch und Pringsheim (1950) 13-56. Partsch (1923) 269-274 in einer Rezension zu Weiß (1923) wies bereits darauf hin, dass viele der Texte, auf die sich bestimmte Autoren stützen, um die Existenz des Konsensvertrags zu begründen, philosophische Texte sind, deren Wert überbewertet wird.

6 Kaiser (2022a) 407

7 Wolff (1957)

8 Thür (2002) 850-851.

P.Col. III 54 = SB IV 7450

ἐξέλαβεν Ἡγήσαρχος Θεοπόμπου καὶ Θεόπομπος Ἡγησάρχου καὶ Νικόδημος Ἡγησάρχου

οἱ τρεῖς Μακεδόνες τῆς ἐπιγονῆς παρὰ Ζήνωνος

Darin stellt Wolff fest, dass das Verb „μισθόω“ nicht die Grundlage der Übergabe ist, da die Grundlage in den Verben λαμβάνειν und ἐκλαμβάνειν ausgedrückt wird. Wäre die Übergabe eine Folge der Vereinbarung, wäre es ein Konsensualvertrag; wäre die Bedeutung des Verbs „μισθόω“ ein Synonym zu Übergabe (ἐκδιδόναι, ἐκλαμβάνειν), wäre das reale Element die Grundlage des Vertrags. Es ist sehr bedeutsam, dass die erste Wortbedeutung des griechischen Verbs „μισθόω“ laut Liddell-Scott „let out to hire“ ist, d.h. es beinhaltet die Idee, etwas zu vermieten, und zwar mit dem Ziel, es zu mieten. In Übereinstimmung mit Wolff, behauptet Jakab zu Recht, dass es keinen wirklichen Unterschied zwischen den griechischen Verben „misthoun“ und „eklabein“ gibt. Das nennt man «Übernahme des Besitzes“[9].

Das Verb „ἐκλαμβάνω“ zum Beispiel hat laut dem Preisigke-Lexikon die Hauptbedeutung „fortnehmen; an sich nehmen“. Und auch „entnehmen“[10]. Das ist die Hauptbedeutung. Es gibt auch eine zweite Bedeutung „jemanden bei sich aufnehmen“ (P.Bas. 18), aber im Kontext eines privaten Briefes (τὴν γυναῖκὰ ἐμοῦ ἐγλάμβανω) und es verliert auch nicht seine physische Bedeutung. Es bedeutet auch im übertragenen Sinne „Auszug oder Abschrift fertigen“ (P.Gen. 74). Kaiser argumentiert, dass die Tatsache, dass dieses Verb im Bereich der Besteuerung verwendet wird, zeigt, dass es nicht unbedingt mit der physischen Übertragung der Sache zu tun hat. Aber die Verwendung dieses Verbs im Zusammenhang mit Steuern ist dem grundlegenden Sinn von „nehmen“, im übertragenen Sinn mit „übernehmen“ gleichzusetzen. Das ist der Fall, wenn wir von der Übernahme einer Steuerpacht sprechen, so wie es ein *publicanus* getan hat (P. Hib. I 133 (= SB X 2060) l. 6; P.Ryl. II 95 l. 5).[11].

Unabhängig davon, welche These man vertreten möchte, es ist klar, dass sich die Grundbedeutung der Verben in den Formularen auf den physischen Besitz des Landes bezieht. Es ist eine andere Frage, ob ausgehend von dieser grundlegenden und ursprünglichen Bedeutung in der Praxis eine Auslegung erreicht wurde, bei der das reale Element nicht unbedingt die Besitzübertragung des Grundstücks ist, wie Jakab behauptet.

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[9] Wolff (1961) 146.

[10] Preisigke (1925) s. v. col. 447-448.

[11] Wolff (1961) 134: „Die juristische Tragweite dieser Eingangsfeststellung hängt vom Sinn des Ausdrucks μισθοῦν ab. Besagte er nichts weiter, als daß die Parteien sich auf die dann folgenden Bedingungen geeinigt hätten, dann wäre allerdings das Geschäft ein Konsensualvertrag im vollen Sinn des klassischen römischen Rechts (Gai. 3. 136). Es liegt auf der Hand, daß in dem Ausdruck μισθοῦν der Gedanke der tatsächlichen, physischen Überlassung des Gegenstandes an den Mieter oder Pächter enthalten ist. Für „auf Grund eines Miet- oder Pachtvertrages hingeben“ oder „nehmen“ hatte die griechische Rechtssprache die Worte ἐκδιδόναι oder ἐκλαμβάνειν.“

Es ist interessant zu sehen, wie Kaiser, um die Theorie der Zweckverfügung zu diskutieren, die Bedeutung der Terminologie im Formular abschwächen muss. Auf diese Weise konnte er die Bedeutung der Abrede herunterspielen, während er vergaß, dass das reale Element diese Vereinbarungen verbindlich macht. In diesem Zusammenhang stellt Kaiser fest: „Mehrere Argumente sprechen auch dafür, dass die Parteien das Entgelt nicht als „Wirkung der Überlassung des Gutes, sondern als Gegenleistung für die Überlassung des Grundstücks verstanden haben. Wenn der Pächter die Gegenleistung schuldig bleibt und der Eigentümer sie einfordert, verlangt er Erfüllung der übernommenen Zahlungspflicht[12]“. Jakab hat bereits darauf hingewiesen, und auch m. E. nach ist die Struktur des Formulars, das Wolff als Beispiel wählt, eindeutig, da sich alle spezifischen Vereinbarungen aus der Übergabe der Sache ableiten. Wenn man sich auf die spezifischen Bündnisse konzentriert und außer Acht lässt, dass sie aufgrund des realen Elements verbindlich sind, kann man zu einer solchen Interpretation gelangen, aber alle diese Argumente beruhen auf einer Trivialisierung der verwendeten Terminologie, die den physischen Besitz betont.

Das Problem ist nicht so sehr, ob es sich um einen *contractus re* handelt[13], sondern vielmehr, welchem Element wir Bedeutung beimessen, um den Vertrag auf diese Weise zu definieren. „Das konstitutive Element bei der Errichtung des Pachtverhältnisses war die Überlassung des Eigentums“[14], sagt Wolff. Jakab behauptet hingegen, dass die grundlegende Existenz des realen Elements nicht immer die Übergabe des Grundstücks ist. Sie weist zu Recht darauf hin, dass die Gruppe von Dokumenten, in denen der Beginn des Pachtverhältnisses vor der Inbesitznahme des Grundstücks liegt, weder ein Novum noch ein entscheidendes Argument für die Ablehnung der Wolff-Theorie ist. Der wichtigste Beitrag von Eva Jakab ist meiner Meinung nach, wie sie die Verträge, bei denen die Übergabe des Grundstücks nicht zeitgleich mit dem Datum des Vertrags erfolgt, behandelt hat. Dies kommt in fünf Fällen vor, die mit der Beziehung zwischen der Landwirtschaft und der Überschwemmung des Nils erklärt werden. Dieser Punkt wurde von Kaiser als Neuheit behandelt, der ihn gegen die Theorie der Zweckverfügung einsetzt. In Wirklichkeit war das Problem, wie Jakab betont, schon seit Jahren bekannt. Jakabs Auslegung ist, dass das reale Element nicht unbedingt die Übergabe des gepachteten Landes ist, sondern jede Übergabe: ein *prodoma* durch den Pächter oder Saatgut durch den Verpächter[15]. Dies kann meiner

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[12] Kaiser (2022a) 395.

[13] Wolff (1961) 145: Wolff bezieht sich hier eindeutig auf die römischen Kategorien, um die Natur des Pachtvertrags im griechischen Recht zu unterscheiden: „Wenn wir die μίσθωσις nach römischen Kategorien klassifizieren sollen, so scheint sie dem *contractus re* näher zu stehen als dem *conlractus consensu*. In ptolemäischer Zeit waren Kauf und Pacht durchaus verschieden voneinander, aber die Kontrakte dieser Epoche spiegeln noch sehr deutlich, wie mir scheint, die Idee wider, daß der κύριος, der sein Eigentum verpachtet, eine dingliche Verfügung über dieses trifft, und zwar nach Maßgabe der Bedingungen, die er dem aufzuerlegen vermag, der bereit (oder gezwungen) ist, es unter diesen Bedingungen anzunchmen“.

[14] Wolff (1961) 146.

[15] Die Bewertung der *prodoma* Zahlung durch Jakab ist entscheidend für die Ausweitung des

Meinung nach die Kritik überwinden, die einige Autoren an Wolffs Theorie geäußert haben, auch wenn sie diese grundsätzlich akzeptieren. Die Tatsache, dass ein Verb, das an sich physischen Besitz bezeichnet, in Pachtvertragsdokumenten verwendet wird, in denen der Besitz noch nicht eingenommen wurde, ist kein Argument für eine Relativierung der ursprünglichen und grundlegenden Bedeutung des Wortes. Wie Jakab gezeigt hat, lassen sich diese Dokumente erklären, ohne dass die Theorie der Zweckverfügung aufgegeben werden muss.

Um diese Antwort abzuschließen, werde ich nur ganz kurz auf zwei Punkte eingehen, die mit dem Problem zusammenhängen.

Einerseits, 1) die Verwendung des Begriffs Homologia und des entsprechenden Verbs als Hinweis auf die Existenz des Konsensualvertrags, und andererseits 2) die Natur der Haftung als Delikt, insofern sie ein indirekter Beweis für die Nichtexistenz des Konsensualvertrags ist.

1) Die Quellen, die in Bezug auf das attische Recht angeführt wurden, um das Konzept des Konsensualvertrags zu belegen, sind nicht eindeutig. Ich möchte hier nur die Verwendung des Begriffs Homologie erwähnen, dessen technischer Wert bereits diskutiert wurde. Thür hat unserer Meinung nach gezeigt, dass sich Hyperides mit dem Begriff ὁμολογία oder dem Verb ὁμολογέω auf einen vor- oder außerprozessualen Pakt bezieht und nicht unmittelbar auf einen Vertrag. Zusammengefasst: Mit einem solchen Verb wird die Gültigkeit (κυρία) der Bündnisse in dem Sinne bekräftigt, auf den wir uns (unter Berufung auf Thür[16]) beziehen sollen, der dem römischen *pactum* nahesteht, aber keineswegs die Verbindlichkeit von Verträgen durch bloßen Konsens anerkennt.

Die Gegenseitigkeit, die in dem Begriff ὁμολογία steckt, ist von großer Bedeutung. Laut Gagliardi würde[17], bei einer unmittelbaren Auslegung der Zweckverfügung, das reale Element die Übernahme von Verpflichtungen nur durch eine der Parteien implizieren[18]. Das Argument ist nicht unbegründet, aber ich vertrete die Meinung, dass die Rolle der ὁμολογία im Gesamtvertrag beurteilt werden muss, der von der Zweckverfügung abhängt. Damit wäre die Verknüpfung hergestellt, die dann mit den bestehenden Abmachungen integriert werden muss. Wenn es keinen Vermögensschaden gibt, gibt es auch keine Klage. Die Frage der Gegenseitigkeit würde zu einem späteren Zeitpunkt eine Rolle spielen. Das Element, das die Verbindung herstellen würde, wäre das reale Element.

2) Als ich eines der Dokumente in der Trierer Sammlung kommentierte (P.Trier

Begriffs der verbindlichen Vorleistung im Sinne von Wolff: P.Frank. 1,30-31 (213 v. Chr.): [τὰ ἐκφόρια. ὁμολογε]ῖ δὲ Ἀπολλ[ώ]νιος ἔχειν παρὰ Νεοπτολ[έ-] [μου πρόδομα. Was das Saatgut betrifft, vid. P. Frank 2.14-15 (δότω δ’ αὐτοῖς Ε[ὔπο]λις σπέρμα|ε[ις] ἐκ[άσ]τ[η]ν ἄρουραν πυρῶν ἀρτάβην μίαν ἐπὶ τ[ῆς] χρέας). Wie Jakab (13) betont, „Das reale Element wurde beim Vertragsschluss dadurch bewirkt, dass der Verpächter dem Pächter ein Saatgutdarlehen gewährte“.

16 Thür (1977) 152-158; Thür (2013) 8-9.

17 Gagliardi (2013) 181-185.

18 Phillips (2007) 90-101; Phillips (2013) 376-315.

I 6), wies mich Professor Rupprecht auf die Verwendung des Wortes ἀδίκημα hin[19]. Obwohl das Dokument eine *Syngraphe* eines Darlehens war, scheint die Natur der Haftung (Delikt) von Bedeutung zu sein. Offensichtlich ist das Darlehen ein Realvertrag, aber das Formular schweigt über den Vertragsbruch. Es stimmt, dass die Haftung aufgrund des Delikts nicht unbedingt ausschließt, dass es einen Konsensualvertrag gab, aber sie macht es auch nicht wahrscheinlicher. Im englischen Recht war die sogenannte action of assumpsit, wie wir alle wissen, eine Klage auf Schadensersatz[20].

Wie Kaiser sagt, wurde in der alten Literatur bereits argumentiert, dass die vertragliche Haftung auf dem Delikt der Schädigung (βλάβη) beruht. Wolff aber verbindet diese Tatsache mit dem Fehlen einer Vertragsklage (aufgrund von Vertragsbruch) und auch mit der Tatsache, dass der Konsens für das Zustandekommen eines Vertrags grundlegend ist; das aber bedeutet nicht, dass die Parteien bindet[21]. Mit anderen Worten, die Zweckverfügung und nicht der Konsens ist die Quelle der Verpflichtungen.

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[19] P.Trier I 1,24-25; 3,24-26; 2,23-25; 4,6 19-21. Cf. Z. B. P.Trier I 3,24-26: τὸ ἀδίκημ[α] | ἐγένετ[ο ὅτ]ε ἀπαιτηθεὶς ὑπ᾽ ἐμοῦ τὰς ᾽[Β (δρ.)] | τοῦ καὶ τὸν [τόκ]ον | οὐκ ἀπέδωκάς μοι

[20] Zur Rolle der Klage assumpsit im englischen Recht, einer Klage, die aus dem Deliktsrecht stammt und im Bereich des Vertragsrechts Anwendung findet, vid. e. g.: Simpson (1975). Dieser Vergleich mag gewagt sein, aber es ist bezeichnend, dass ein Vertragssystem wie das englische aus einer Aktion hervorgegangen ist, die in gewisser Weise der δίκη βλάβης entspricht.

[21] Wolff (1957) 63-66; Wolff (1998) 128-130.

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ZUR FUNKTION DER *EPIKATABOLE* BEIM ANFALL DER DARLEHENSHYPOTHEK IM PTOLEMÄISCHEN UND RÖMISCHEN ÄGYPTEN*

Abstract: Im Zusammenhang mit dem Anfall der Hypothek an den Gläubiger ist in einigen Dokumenten aus dem ptolemäischen und römischen Ägypten ein als ἐπικαταβολή bezeichneter persönlicher Rechtsakt des Gläubigers bezeugt, dessen Inhalt bis heute weitgehend unklar geblieben ist. Auf der Grundlage einer erneuten Untersuchung der zur Verfügung stehenden Zeugnisse (einschließlich zweier weiterer in der einschlägigen Literatur bisher nicht berücksichtigter Texte) plädiert der vorliegende Beitrag dafür, daß die ἐπικαταβολή nicht den endgültigen Übergang des Eigentums an der Hypothek bewirkt, sondern einen Zwischentritt auf dem Weg dorthin markiert, der dem Gläubiger eine Verfangenschaft (κατοχή) an der Hypothek des Schuldners verschafft. In zwei Appendizes werden außerdem Neulesungen für zwei Texte (P.Oxy. II 274 u. SB XX 14628) vorgeschlagen, in denen die ἐπικαταβολή erwähnt wird.

Keywords: Hypothek, ἐπικαταβολή, Darlehen, ἐμβαδεία

Unter der Bezeichnung ἐπικαταβολή erscheint in einigen Urkunden aus dem ptolemäischen und römischen Ägypten ein Rechtsakt des Gläubigers in Zusammenhang mit der Realisierung der Darlehenshypothek, dessen Bedeutung, Ablauf und vor allem Rechtswirkungen auch noch etwa 120 Jahre nach dem Bekanntwerden der ersten diesbezüglichen Texte unklar sind. Bereits Ludwig Mitteis hatte in seinen 1912 erschienenen Grundzügen der juristischen Papyruskunde die ἐπικαταβολή als den „dunkelsten Punkt bei der Hypothekenrealisation" bezeichnet.[1] Seitdem scheint es nicht wesentlich heller geworden zu sein, mußte doch Hans-Albert Rupprecht 83 Jahre später in der letzten zusammenfassenden Behandlung der Zwangsvollstreckung im ptolemäischen und römischen Ägypten (anläßlich des Symposions 1995) feststellen: „Worin freilich der Akt der ἐπικαταβολή besteht, ist nicht zu erkennen."[2] Und 20

* Die Verwendung von Siglen für Editionen von Papyri, Ostraka, papyrologischen Reihenwerken und Hilfsmitteln erfolgt gemäß der „Checklist of Editions of Greek, Latin, Demotic and Coptic Papyri, Ostraca and Tablets" zugänglich unter: https://papyri.info/docs/checklist.

1 Mitteis 1912, 162.

2 Rupprecht 1997 (2017), 156.

Jahre später in seinem Beitrag zur *One en pistei* für das Symposion 2015 bemerkte José Luis Alonso lapidar: „A new study would be necessary".[3]

Ich will dennoch den Versuch unternehmen, die für das Problem relevanten Texte einer abermaligen differenzierenden Betrachtung zu unterziehen. Dabei soll es mir insbesondere darauf ankommen, ob es beim Prozedere der Hypothekenrealisation zwischen der ptolemäischen und der römischen Zeit signifikante Unterschiede gab oder ob nicht doch eher von einer weitgehenden Kontinuität zwischen der Ptolemäer- und der Kaiserzeit auszugehen ist. Ich meine außerdem, dass durch die Einbeziehung zweier Zeugnisse, die seit der letzten Behandlung des Themas durch Rupprecht den für das Thema relevanten Quellenbestand vermehrt haben[4], vielleicht doch etwas Licht in das Dunkel gebracht werden kann, welches die ἐπικαταβολή bis heute umgibt.

Die Schwierigkeiten, die Bedeutung der ἐπικαταβολή adäquat zu erfassen, hängen wesentlich mit der unbefriedigenden Quellenlage zusammen, denn in den immerhin rund 450 Jahren, zwischen dem frühesten und dem spätesten bekannten Zeugnis für die ἐπικαταβολή wird sie in lediglich etwa einem Dutzend Texten aus der ptolemäischen Epoche und der römischen Kaiserzeit erwähnt. Betrachten wir also zunächst die Zeugnisse aus der Ptolemäerzeit.

Die ἐπικαταβολή als ein vom Hypothekengläubiger vollzogener Rechtsakt ist zum ersten Mal in einer fragmentarischen Enteuxis – also einer Eingabe an den König – vom 28. Januar 222 v.Chr. bezeugt (P.Enteux. 14). In dieser Eingabe beschwert sich der Thraker Dizaporis (Katökenreiter und Inhaber eines 70-Aruren-Kleros) über den Polizeibeamten (Epistates) Deinias wegen seines Soldatenquartiers (στάθμος) im arsinoitischen Dorf Kerkesucha. Der dem Petenten zugewiesene Stathmos ist Teil eines Hauses, auf dem eine Hypothek liegt. Nachdem, wie es im Text heißt, „die Frist der Hypothek abgelaufen war" (was wohl bedeutet, dass die Darlehensschuld nicht fristgemäß beglichen worden war), hat der Gläubiger, anstatt die Hypothek zu erneuern, die ἐπικαταβολή gemäß dem königlichen Diagramma durchgeführt, obwohl der Petent den besagten Stathmos bewohnt.[5] Dann sei auch noch der Epistates Deinias gekommen und habe das Pferd des Dizaporis aus dem Stathmos vertrieben, wo (bzw. in dem dazugehörigen Stall) jetzt offenbar der Hypothekengläubiger wohnt, weshalb sein Pferd nunmehr unter freiem Himmel stehen müsse. Deshalb solle der König, den Strategen Diophanes anweisen, dem Deinias zu schreiben, damit dieser „den Ägypter ausquartiert" – womit offensichtlich der neue Bewohner des Hauses gemeint ist – und

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3 Alonso 2016, 124 Anm. 16.

4 P.Polit.Iud. 8 u. P.Heid. Inv. G 5017 Verso.

5 κ[αὶ] διελ[θόντος τοῦ κατὰ] τὴν ὑποθήκην χρόνου | [ἀντ]ὶ τοῦ [ταύτην] ἀναν[εώσ]ασθαι | ἐπικαταβολὴν ἐ[ποιήσατο κα]τὰ τὸ διάγραμμα, καὶ ἐνοικοῦν|[τός] μου ἐν [τῶι στ]αθμῶι τ[ο]ύτωι (Z. 3–5); zu Lesung und Ergänzung siehe Grenfell/Hunt im Kommentar zu P.Tebt. III.1 817,19–20.

dem Petenten das Haus zurückgibt.[6] Hintergrund dieser Eingabe ist wohl eine Regelung, dass Soldatenquartiere, als zwar privater Besitz, in den jedoch zwangsweise Soldaten eingewiesen wurden, nicht mit Hypotheken belastet werden durften.

In einer weiteren Enteuxis vom 13. Januar 218 v.Chr. (P.Enteux. 15[7]) ersucht ein minderjähriger Petent, der von seinem verstorbenen Bruder einen Weingarten geerbt hatte, welcher wegen eines dem Erblasser gewährten Darlehens mit einer Hypothek belastet war, um Unterstützung. Denn der Gläubiger hatte zwar eine Erneuerung (ἀνανέωσις) der Hypothek gewährt – also die Verlängerung des Darlehensvertrags und damit das Hinausschieben der Frist des Anfalls der Hypothek[8] – an dieser ἀνανέωσις kann der Petent wegen seiner Minderjährigkeit aber nicht in eigenem Namen mitwirken.[9] Deshalb solle der Stratege angewiesen werden, dem Agoranomos zu schreiben, damit dieser die Erneuerung der Hypothek „vom Namen des Verstorbenenen auf den des Erben" registriert, damit nicht die Epikatabole des Weingartens durchgeführt und der minderjährige Petent seines Besitzes beraubt werde.[10]

Dass ein Darlehensschuldner seinem Gläubiger das Recht zur ἐπικαταβολή der Hypothek einräumt, erfahren wir zum ersten Mal aus P.Tebt. III.1 817[11], einem im Agoranomeion der arsinoitischen Gaumetropole Krokodilopolis errichteten Darlehensvertrag vom 4. November 182 v.Chr. Apollonios, Sohn des Protogenes, gibt dem Sostratos, Sohn des Neoptolemos, ein zinsloses Darlehen in Höhe von 15.000 Bronzedrachmen für ein Jahr.[12] Das Darlehen wird mit einer Hypothek auf ein dem Schuldner gehörendes Haus im Dorf Apias besichert.[13] Wenn Sostratos nicht zurück-

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6 ἐπελ[θ]ὼν Δεινίας ἐ[ξέβαλε τὸν] ἵππον ἀκρίτως καὶ ἐνῴκισεν | [. .]υθην, ὥστε [ὕπα]ιθρον [εἶ]ναί μου τὸν [ἵ]ππ[ο]ν. δέομα[ι ο]ὖν σου, βασιλεῦ, εἴ σοι δοκεῖ, προστάξαι | Διοφάνει τῶι [στρα]τηγῶι γράψαι Δεινίαι τῶι ἐπιστ[ά]τηι ἐξοικίσαι τὸν Αἰγύπτιον καὶ ἀπο|δοῦναί μοι τὴν [οἰ]κίαν (Z. 6–8).

7 = P.Lille II 31.

8 Zur ἀνανέωσις im Einzelnen siehe Rupprecht 1981(2017). – In Teilen der älteren Forschung wurde die ἀνανέωσις als Teil des Zwangsvollstreckungsverfahrens bzw. als eine Art „Mahnung" innerhalb desselben aufgefaßt (siehe den Überblick bei Rupprecht 1981(2017), 119–120). Nicht zuletzt Rupprecht konnte allerdings zeigen, dass vor allem die Zeugnisse aus ptolemäischer Zeit eine solche Deutung nicht zu stützen vermögen und die ἀνανέωσις vielmehr als eine Vertragsverlängerung aufzufassen ist.

9 τοῦ δὲ χρόνου τοῦ κατὰ τὴν ὑπο|[5]θήκην ἐπιγύου ὄντος, ἐπιχωρεῖ ἡμῖν ὁ δανείσας Ἱππόνικος συνανανεώσασθαι, | ἐγὼ δὲ νεώτερός εἰμι (Z. 4–6).

10 προστάξαι Διοφάνει τῶι | στρατηγῶι γράψαι Μόσχωι τῶι ἀγορανόμωι προσδέξασθαι τὴν ἀνανέωσιν παρὰ | τοῦ Ἱππονίκου ἐκ τοῦ Ἑρμίου τοῦ τετελευτηκότος ὀνόματος, ἵνα μὴ συμβῆι, νε|ωτέρου μου ὄντος, ἐπικαταβολὴν γενέσθαι τοῦ ἀμπελῶνος καὶ ἀποστερηθῶ πλείο|[10]νος ἀξίου ὄντος (Z. 6–10).

11 = C.Pap.Jud. I 23.

12 Das Darlehen wird zwar ausdrücklich als ἄτοκος bezeichnet, jedoch könnte der übliche Zins in der Darlehenssumme inkludiert sein; falls ja, dann betrüge die Darlehenssumme, legt man den damals üblichen Zinssatz von 2% pro Monat. zugrunde, 12.500 Dr. Trotz des Zinsverbotes im jüdischen Religionsgesetz, konnte ein Darlehenszins auch zwischen jüdischen Vertragsparteien in der ägyptischen Diaspora durchaus stipuliert werden, siehe etwa P.Polit. Iud. 8,16 (siehe zu diesem Text auch sogleich im Folgenden; siehe allgemein auch Rupprecht 1967, 79–81; Kruse 2023, 333–334).

13 ἐπὶ ὑποθήκηι τῆι | ὑπαρχούσηι αὐτῶι οἰκίαι καὶ αὐλῆι καὶ τοῖς συγκυροῦσι πᾶσι τοῖς | οὖσιν

zahlt, soll es dem Apollonios erlaubt sein, die Epikatabole der Hypothek gemäß dem Diagramma des Königs durchzuführen.[14]

Halten wir als Zwischenergebnis aus der Betrachtung dieser drei Zeugnisse das Folgende fest:

(1) Die ἐπικαταβολή ist ein vom Gläubiger persönlich durchgeführter Rechtsakt in Bezug auf die Hypothek – ausgedrückt durch ἐπικαταβολὴν ποιεῖν τῆς ὑποθήκης (*sc*. des Gläubigers) – der offenbar den Anfall der Hypothek bewirkt, wobei die Rechtsfolgen dieses Aktes allerdings unklar bleiben.[15]

(2) Die ἐπικαταβολή (bzw. das Recht des Gläubigers, diese durchzuführen) ist in einem königlichen Erlaß (διάγραμμα) geregelt.[16]

Zwar wird in den bisher betrachteten Texten explizit keine unmittelbare Rechtswirkung der ἐπικαταβολή genannt, jedoch deuten die Ausführungen des Petenten von

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ἐν Ἀπιάδι τῆς Θεμίστου μερίδος (Z. 12–14).

14 τὸ δὲ | [δ]άνειον τοῦτο ἀποδότω Σώστρατος Ἀπολλωνίωι ἐν τῶι ἐνιαυ[τῶι], | [ἐ]ὰν δὲ μὴ ἀποδῶι καθὰ γέγραπται, ἐξέστω Ἀπολλωνίωι ἐπικα|[20][τ]αβολὴν ποιήσασθαι τῆς ὑποθήκης ἀκολούθως τῶι διαγράμματι (Z. 17–20). – Eine ähnliche Klausel findet sich wohl auch in P.Tebt. III.2 970 (= C.Ptol.Sklav. I 126) (Tebtynis, frühes 2. Jh. v.Chr.). In diesem Fragment eines Vertragsregisters wird ein ebenfalls in Krokodilopolis errichteter Darlehensvertrag verzeichnet. Apollonios gewährt dem Alexandros ein Darlehen in Höhe von 12 Talenten Bronzegeld, für welches Alexandros einen ihm gehörenden Sklaven verpfändet. Wenn Alexandros das Darlehen nicht fristgerecht zurückzahlt, ist es dem Apollonios erlaubt, die Epikatabole der Hypothek (gemäß dem Diagramma?) durchzuführen: ἐὰν δὲ μὴ ἀπ[οδῶι καθὰ γέγραπται, ἐξέστω] | Ἀπολλωνίωι [ἐπικαταβολὴν ποιήσασθαι] | τῆς ὑποθήκ[ης κατὰ τὸ διάγραμμα (?) -ca.?-] | αὐτό̣ (Z. 16–19). In Anbetracht der o.g. Parallelen sind die Ergänzungen als sicher zu betrachten.

15 Siehe auch Rupprecht 1995a (2017), 156.

16 Auf königliche Regelungen zum Hypothekenrecht verweist auch die Anweisung des Strategen an den Agoranomos in dem oben besprochenen P.Enteux. 15, wo es heißt: ἐὰν ποιῆται τὴν \ἀνανέωσιν/ ⟦ἐπίλυσιν⟧ ἐκ τοῦ τετε[λευτ]ηκ[ότο]ς ὀ[νό]ματο̣ς . . . εξαι κατὰ τοὺς νό(μους) καὶ τὰ [δι]αγράμματα | καὶ τὰ πρ(οσ)τάγματα εἰ μὴ τί ἐστιν αλλ̣ ει̣ . [-ca.?-] εις . κ. . . μεν. ς λυθ[. .]ς. . (Z. 12–13). Hier wird also nicht nur (wie im Falle der Durchführung der ἐπικαταβολή durch den Gläubiger) ein einzelnes διάγραμμα erwähnt, sondern mit νόμοι, διαγράμματα und προστάγματα offenbar auf eine Vielzahl von gesetzlichen Regelungen und königlichen Erlassen zum Hypothekenrecht bzw. zur Zwangsvollstreckung Bezug genommen. Leider ist der Sinnzusammenhang dieses Passus durch den schlechten Erhaltungszustand des Textes nicht mehr ersichtlich. – Auf die mitunter in der Forschung geführte Diskussion, ob das κατὰ τὸ διάγραμμα in den oben zitierten Texten vielleicht auch ein Bezug auf das sog. „große Justizdiagramma“ Ptolemaios’ II. Philadelphos sein könnte (die ἐπικαταβολή also in diesem geregelt war), kann hier nicht eingegangen werden. Ich neige indes eher der Auffassung zu, dass hier lediglich auf ein königliches (Spezial) διάγραμμα über die ἐπικαταβολή rekurriert wird, siehe hierzu auch Wolff 2002, 51–53. – In römischer Zeit werden einmal in Zusammenhang mit der ἐπικαταβολή und der Bezahlung der für diese anfallenden Steuern Gesetze über die Hypothek genannt, die vielleicht auf die o.g. ptolemäischen Rechtsvorschriften zurückgehen, siehe P.Bas. II 29 (= P.Bas. I 7 + P.Mich. inv. 3958f = M.Chr. 245 = SB I 4434) (Soknopaiu Nesos [Arsinoites], 25. od. 26. Februar 117–128 n.Chr.): τὴν τῆς ὑποθήκης | [ἐπικαταβολὴν ποιήσασθαι ταξαμένοις τὰ τέλη ἀκολούθως τ]οῖ̣[ς] νόμοις τῶν ὑποθηκῶν (Z. 18–19).

P.Enteux. 15 – wonach er seines Eigentums verlustig gehe, wenn die ἐπικαταβολή der Hypothek durchgeführt werde, zumindest darauf hin, dass dieser Petent der Auffassung ist, dass die ἐπικαταβολή dem Gläubiger das Zugriffsrecht an der hypothekarisch verpfändeten Sache des Schuldners verschafft.

Auf eine Rechtsfolge der ἐπικαταβολή hinzudeuten, scheint nun auch eine Eingabe an die Archonten des Politeuma der Juden von Herakleopolis vom 15. März 133 v.Chr. (P.Polit.Iud. 8[17]). In ihr berichtet Theodotos, ein Jude aus dem Oxyrhynchites, dass er der Jüdin Plusia und ihrem Sohn Zenon im 33. Jahr (= 138/37 v.Chr.) ein Darlehen von 12 Talenten gewährt hatte, das mit einer Hypothek auf einen Weingarten im Dorf Palosis besichert war. Im 34. Jahr (= 137/36 v.Chr.) hat Theodotos dann die Hypothek erneuert, aber keinen Wein erhalten, was vielleicht so zu interpretieren ist, dass die Ananeosis der Hypothek die Pflicht der Schuldner zur Lieferung von Wein an den Gläubiger implizierte.[18] Nachdem auch die verlängerte Frist zu Rückzahlung des Darlehens verstrichen war, hat Theodotos schließlich im Mesore des 35. Jahres (= Aug./Sept. 135 v.Chr.) die Epikatabole durchgeführt und sich in den Besitz der Hypothek gesetzt:

> ἀν[ε]νεωσάμην | ο̣ὐ̣θένα οἷ̣ν[ον] λαβὼν ἐν τῶι λδ (ἔτει) |[20] ἐν δὲ τῶι λ̣ε̣ (ἔτει) Μεσορὴ τὴν ἐπικατα|βολὴν π̣[οιη]σ̣αμ̣ένου [μ]ο̣υ ἐκυρίευσα | τῆς κτήσε̣ω̣ς (Z. 18–22).

Hier wird nun (zumindest prima vista) recht eindeutig als Rechtswirkung der vom Gläubiger persönlich vorgenommenen Epikatabole – ἐπικαταβολὴν ποιησαμένου – das κυριεύειν, also die volle Verfügungsgewalt über den verpfändeten Besitz der Schuldner benannt. Theodotos ist also offenbar der Ansicht, dass er durch die ἐπικαταβολή Eigentümer des hypothekarisch verpfändeten Weingartens der Plusia und ihres Sohnes geworden ist.[19] Anders sehen dies offenbar die Herausgeber von P.Polit.Iud. 8, die in ihrer Einleitung zur Edition bemerken: „Auf dem Weg zur Vollstreckung werden zwei Stationen erwähnt, die ἀνανέωσις und die ἐπικαταβολή. … Wie man sich im Einzelnen die Durchführung von ἀνανέωσις und ἐπικαταβολή vorzustellen hat, ist unbekannt. … Mit der ἐπικαταβολή, dem Anverfall der Hypothek,

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[17] = C.Pap.Jud. IV 564.

[18] So Armoni 2005, 213–214, die P.Polit.Iud. 8 im Lichte ähnlicher Bestimmungen in dem sehr fragmentarischen Darlehensvertrag P.Ryl. IV 584 (Herkunft unbekannt, spätes 3. Jh. v.Chr.) interpretiert, wo von regelmäßigen ἀνανεώσεις des Gläubigers als Gegenleistung für Weinlieferungen des Schuldners die Rede ist

[19] Diese Rechtswirkung der ἐπικαταβολή wird natürlich auch nicht dadurch relativiert, dass Theodotos sich laut P.Polit.Iud. 8,22–32 nach der ἐπικαταβολή – auf Intervention der örtlichen Judengemeinde hin – zu einer nochmaligen Vereinbarung hat bewegen lassen, die eine ratenweise Rückzahlung des Darlehens in zwei Teilzahlungen mit Fälligkeit am Ende des 36. (= Aug./Sept. 135) und des 37. Jahres (= Aug./Sept. 134 v.Chr.) vorsah. Diese Rückzahlung ist jedoch seitens der Schuldner nur zu einem Bruchteil erfolgt, weshalb er nunmehr (am 22. Mecheir des 37. Jahres = 15. März 133 v.Chr.) die vorliegende Eingabe an das Politeuma macht (siehe Cowey/Maresch, P.Polit.Iud. 8 Einleitung sowie den Kommentar zu Z. 22–36).

beginnt die Vollstreckung.“[20] Die ἀνανέωσις kann indes schwerlich als „Station auf dem Weg zur Zwangsvollstreckung“ bezeichnet werden, da sie lediglich eine vom Gläubiger gewährte Verlängerung der Fälligkeit des Darlehens und damit der Hypothek war, die allein in seinem Ermessen lag und die er mithin auch unterlassen konnte.[21] Ich verstehe auch nicht recht, wie man sich die ἐπικαταβολή als lediglich den „Beginn der Vollstreckung“ vorzustellen hat. Denn, wenn die Rechtsfolge der ἐπικαταβολή nach P.Polit.Iud. 8 doch das κυριεύειν und mithin die volle Verfügungsgewalt des Gläubigers über den hypothezierten Besitz des Schuldners ist – welches im Übrigen auch in Darlehensverträgen aus römischer Zeit als Folge der ἐπικαταβολή benannt wird[22] – wäre dann die ἐπικαταβολή nicht eher das Ende der Vollstreckung? Im Kommentar zu Z. 21 fassen die Herausgeber von P.Polit.Iud. 8 das ἐπικαταβολὴν ποιεῖσθαι als „Zugriff des Gläubigers“ auf. Wenn die ἐπικαταβολή aber tatsächlich ein Zugriffsakt des Gläubigers auf die Hypothek gewesen sein sollte[23], würde ein solcher aber nicht auch eher auf das Ende als den Beginn der Vollstreckung hindeuten?

Wie wir gesehen haben, ist Theodotos, der Gläubiger in P.Polit.Iud. 8, der Auffassung, dass er durch die ἐπικαταβολή die volle Verfügungsgewalt über den hypothezierten Besitz seiner Schuldner erlangt hatte – ἐπικαταβολὴν ποιησαμένου μου ἐκυρίευσα τῆς κτήσεως, wie er sagt.[24] Auch die anderen bisher betrachteten Zeugnisse deuten ja ebenfalls in diese Richtung, weshalb bereits Andreas B. Schwarz in seinem 1911 erschienenen grundlegenden Werk zum Pfand- und Vollstreckungsrecht in den Papyri auf der Grundlage der sehr wenigen seinerzeit bekannten Quellenzeugnisse vermutet hat, „dass die ἐπικαταβολή derjenige Akt war, der den Übergang des Eigentums der verpfändeten Sache an den Gläubiger bewirkte.“[25]

Einer solchen Rechtsfolge der ἐπικαταβολή scheint nun indes P.Heid. Inv. G 5017 Verso (Herakleopolis? 156? v.Chr.)[26] zu widersprechen. Bei diesem Text handelt es sich um den leider nur sehr fragmentarisch erhaltenen Entwurf einer Enteuxis

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[20] P.Polit. Iud. S. 94.

[21] Siehe oben zu P.Enteux 15 mit Anm. 8.

[22] Siehe hierzu auch im Folgenden.

[23] Siehe in diesem Sinne auch Mitteis 1912, 164: „Andererseits muß aber die ἐπικαταβολή doch ein ausdrücklicher Zugriffsakt gewesen sein; denn es wird von ἐπικαταβολὴν ποήσασθαι gesprochen, …“.

[24] Zur Interpretation dieses Passus vgl. auch Kugler 2022, 193-194, der in dieser Wortwahl Anklänge an die Tora finden will, was indes m.E. nicht trägt (siehe hierzu Kruse 2025, 702–705).

[25] Schwarz 1911, 120.

[26] Ed. Armoni 2005 (zu Frg. C Z. 5–6 siehe auch die Korrektur von Armoni 2009, 172–173). Dieser Text ist seit seiner Publikation in Beiträgen, die sich mit der ἐπικαταβολή befassen, vermutlich deshalb unerwähnt geblieben, weil er merkwürdigerweise nicht in das „Sammelbuch“ aufgenommen worden und deshalb auch nicht über das „Heidelberger Gesamtverzeichnis“ bzw. eine Wortsuche bei papyri.info auffindbar ist. Man findet ihn lediglich mit Hilfe des Suchbegriffs „Heidelberg G 5017“ bei trismegistos.org in der Abteilung „Texts“, was aber voraussetzt, dass man die Inventarnummer kennt; dort ist P.Heid. Inv. G 5017 Verso die TM-Nummer 128479 zugeordnet.

zweier Pächter der Enkyklion- und Andrapoda-Steuer im Herakleopolites im 26. Jahr Philometors (= 156/155 v.Chr.), die sich in einem Rechtsstreit mit drei Bewohnern des Hafenviertels von Herakleopolis befinden. Der Auslöser dieses Rechtsstreits war ein im 11. Jahr des Philometor (= 171/170 v.Chr.) abgeschlossenes Rechtsgeschäft, über die Gewährung eines Darlehens an eine Frau seitens des Soldaten Herakleides, mit Bestellung einer Hypothek auf einen Weingarten. Ein weiterer Beteiligter ist ein gewisser Demetrios, dem Herakleides die Rechte an der Hypothek abgetreten haben soll. Dabei war der Zeitablauf so, dass Herakleides zunächst im Pachon des 11. Jahres (= Juni/Juli 170 v.Chr.) eine Ananeosis des Darlehensvertrags um ein Jahr gewährte (Frg. C Z. 7). Nach dem Ablauf dieser Frist (also im Juni/Juli 169 v.Chr.) hat Herakleides dann offenbar die Epikatabole der Hypothek durchgeführt:

> Ἡρακλείδου … | κατασχόντος ἐξ ἐπικαταβ[ολῆς χ]ωρίον ἀρουρ(ῶν) ε ἐν [τ]ῶι Ἀμμωνίου | κλήρωι βασιλικῶι [π]ερὶ τὸν κατ[ά + *Ortsbezeichung* (±8)] ἰβιῶνα καὶ τοῦ χωρίου εἰς αὐτὸν | ὄντος (Frg. A+B Z. 8–10).

Dieser Wendung läßt sich also entnehmen, dass die ἐπικαταβολή offensichtlich keinen Eigentumsübergang bzw. eine volle Verfügungsgewalt des Gläubigers über die Hypothek bewirkte, sondern lediglich eine κατοχή, also eine Verfangenschaft bzw. ein Anrecht auf die Aneignung der Hypothek durch den Gläubiger. Zugleich zeigt sich hier, dass (zumindest in der ptolemäischen Zeit) die κατοχή nicht schon bereits im Moment der Verpfändung bzw. der Hypothekenbestellung entsteht, sondern erst durch die ἐπικαταβολή bewirkt wird.[27] Hierzu paßt dann auch, dass Herakleides noch nach der erfolgten ἐπικαταβολή (und möglicherweise noch im Jahr 169 v.Chr.) die Rechte an der Hypothek dem Demetrios abgetreten hat (Frg. C Z. 10)[28], der dann später erneut eine ἐπικαταβολή durchführt: τὸν Δημ[ήτριον | πεποιῆσθαι τὴν ἐπικατ[βολ]ήν (Frg. C Z. 7–8).[29] Dies unterstreicht übrigens sehr deutlich den Charakter der ἐπικαταβολή als eines persönlichen Akts des Gläubigers, der nur für diesen Geltung besaß und deshalb wiederholt werden mußte, wenn die Person des Gläubigers gewechselt hatte. Auf eine Registrierung der κατοχή (im Agoranomeion?) deutet vielleicht der Ausdruck εἰς αὐτὸν ὄντος in Zusammenhang mit der Erwähnung der ersten Epikatabole durch Herakleides.[30] Der Hintergrund der erneuten ἐπικαταβολή

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[27] Siehe Armoni 2005, 214–215 u. 222 (Kommentar zu P.Heid. Inv. G Verso Frg. C Z. 8–10).

[28] Vielleicht in Zusammenhang mit der Mobilisierung seiner Einheit entweder für den Kampf gegen Antiochos IV. Epiphanes oder im Zuge des Aufstandes des Dionysios Petosarapis, siehe Armoni 2005, 209–210.

[29] Seitens des Herakleides wird für diese Abtretung das Verbum μεταδοῦναι gebraucht (Frg. A + B Z. 10), dem auf Seiten des Demetrios ein μεταλαμβάνειν entspricht (Frg. C Z. 10) – wobei im Falle einer tatsächlichen Zession eigentlich παραχωρεῖν zu erwarten wäre. Wie diese μετάδοσις der Hypothek (bzw. der Rechte an ihr) rechtlich zu fassen ist, bleibt einstweilen unklar (siehe auch Armoni 2005, 212–213 sowie 223 [Kommentar zu Frg. A + B Z. 10]) und kann hier nicht näher erörtert werden.

[30] So Armoni 2005, 222 (Kommentar zu Z. 8–10). Eine Registrierung der ἐπικαταβολή bei den Agoranomen hatte auch bereits Schwarz 1911, 123 erwogen.

durch Demetrios ist offenbar, dass es diesem durch die günstige Gelegenheit der „herrschenden Zeitverhältnisse“[31] und auf eine Weise die nicht mehr erkennbar ist, gelungen war den Wert des Pfandes um zwei Talente zu erhöhen (Frg. C Z. 9–10) und die Darlehensnehmerin diesen höheren Betrag nicht zahlen konnte. Da, wie unten noch zu erörtern sein wird, für Errichtung, Erneuerung und Anfall (ἐπικαταβολή) einer Hypothek Verkehrssteuer zu entrichten war, könnten diese Machenschaften des Demetrios die Involvierung der Pächter dieser Steuer in die Angelegenheit erklären, die ja auch die Petenten der Enteuxis sind; zumal diese gegen Demetrios auch den Vorwurf der Unterschlagung erheben.[32]

Dass nach P.Heid. Inv. G 5017 Verso die ἐπικαταβολή also eine κατοχή der Hypothek bzw. ein κατέχειν des Gläubigers bewirkt (der die Hypothek damit gleichsam „festhält“) paßt m.E. recht gut zu der seit der ptolemäischen Zeit bezeugten Verwendung des Verbs ἐπικαταβάλλειν – das seiner Grundbedeutung nach soviel wie „auf etwas werfen“ bzw. (im Medium) „sich auf etwas werfen“ bedeutet[33] – zur Bezeichnung der Beschlagnahme von privatem Landbesitz durch den Staat[34], was den Aspekt des „Zugreifens“ bzw. im Sinne von „seine Hand auf etwas (*sc*. den betreffenden Besitz) fallen lassen“ unterstreicht.

Durch P.Heid. Inv. G 5017 Verso scheint nun also weiterhin klar zu sein, dass ein Hypothekengläubiger – wie etwa Theodotos in P.Polit.Iud. 8 – zwar subjektiv der Auffassung sein mochte, dass er durch die ἐπικαταβολή Eigentümer des hypothezierten Besitzes seiner Schuldner geworden war (ἐπικαταβολὴν ποιησαμένου μου ἐκυρίευσα τῆς κτήσεως)[35], im objektiven Rechtssinne war er dies jedoch (noch) nicht, sondern er hatte durch die ἐπικαταβολή zunächst nur ein Anrecht auf die Aneignung der Hypothek erworben. Es fragt sich daher also, welcher weitere Akt auf die ἐπικαταβολή noch zu folgen hatte, um dem Hypothekengläubiger das Eigentum an dem verpfändeten Besitz des Schuldners zu verschaffen. Etwas klarer sieht man diesbezüglich in der römischen Zeit, wo auf die ἐπικαταβολή das Verfahren der ἐμβαδεία folgte, die be-

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[31] Frg. C Z. 9–10: ἡ τῶν καιρῶν περίστασις, womit wohl auf die turbulente Zeit von 169–168 v.Chr. angespielt wird (siehe oben Anm. 28 sowie Armoni 2005, 226 (Kommentar zu P.Heid. Inv. G Verso Frg. C Z. 9–11).

[32] Siehe Armoni 2005, 215 u. 226 (Kommentar zu Frg. C Z. 9).

[33] Siehe etwa LSJ s.v. ἐπικαταβάλλω.

[34] Siehe in den Landregistern BGU XIV 2436–2450 (Herakleopolites, 2. Jh. v.Chr.) 2441, 29–30.49.65.72; 2444,24–26; 2448,17; 2449,36–38; 2450,36–38; siehe hierzu auch P.Haun. IV 70,391–398 sowie Vandorpe/Thompson 2014. – Für die Verwendung von ἐπικαταβάλλω in diesem Sinne auch noch in römischer Zeit siehe SB XIV 11533 (= SB VI 9086; Neuedition Kol. II–III: P.J. Sijpesteijn, Sammelbuch VI 9086 and ΕΚΧΩΡΗΣΙΣ, ZPE 19, 1975, 87–93 [= SB XIV 11533]) (Arsinoites, nach 29. Okt. 104 n.Chr.). – Unklar bleibt die Bedeutung von ἐπικαταβάλλω in P.Horak 23,2 (Fragment eines Vertragsregisters; Arsinoites, 148–149 n.Chr.).

[35] Man beachte, dass umgekehrt ja auch der Petent von P.Enteux. 15 (siehe oben) den Eindruck erwecken will, dass er durch eine etwaige ἐπικαταβολή der Hypothek sein Eigentum verliert.

hördliche Einweisung des Gläubigers in den Besitz des Schuldners, auf welches ich im Folgenden noch zu sprechen kommen werde, das aber in der ptolemäischen Zeit nicht bezeugt ist.[36] Ein im Ablauf sehr ähnlicher Vorläufer des römischen ἐμβαδεία-Verfahrens ist jedoch durch BGU XIV 2376 und 2377 (Herakleopolis, 36/35 v.Chr.)[37] für das Pfandvollstreckungsverfahren bezeugt, die zwar aus den allerletzten Jahren der Ptolemäerdynastie stammen, in denen sich aber offensichtlich eine schon seit längerer Zeit bestehende Verfahrensroutine manifestiert. Beurkundet wird hier der die ἐνεχυρασία abschließende Zuschlag (προσβολή) für die verpfändete Sache an den Gläubiger durch den πράκτωρ ξενικῶν καὶ νομοφύλαξ auf der Grundlage eines vom Gläubiger in Gang gesetzten Verfahrens des örtlichen Chrematistengerichts und dessen abschließenden Beschlusses.

Angesichts dessen ließe sich also vorstellen, dass auch im Falle der Hypothekenrealisation nach dem durch die ἐπικαταβολή bewirkten Anfall der Hypothek bzw. ihrer damit einhergehenden κατοχή zugunsten des Gläubigers erst eine behördliche προσβολή den endgültigen Übergang der Hypothek in das Eigentum des Gläubigers bewirkte, die (wie beim ἐνεχυρασία-Verfahren) vielleicht ebenfalls durch einen Gerichtsbeschluß zu erwirken war.

Inwieweit in die ἐπικαταβολή staatliche Verwaltungsbehörden involviert waren, ist derzeit mangels aussagekräftiger Zeugnisse nicht zu erkennen. Allerdings könnte die Tatsache, dass für die ἐπικαταβολή – ebenso wie übrigens für die Registrierung und die ἀνανέωσις einer Hypothek – eine Gebühr (das τέλος ἐπικαταβολῆς) zu entrichten war, darauf hindeuten, dass die vom Gläubiger vorgenommene ἐπικαταβολή der Hy-

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[36] Weder das Nomen ἐμβαδεία noch das Verb ἐμβαδεύειν (bzw. ἐμβατεύειν) ist in ptolemäischer Zeit im Sinne eines „Betretens“ oder der Einweisung des Gläubigers in den hypothezierten Besitz des Schuldners bezeugt. Diese Tatsache wurde m.E. von Teilen der älteren Forschung nicht genügend beachtet, die mitunter etwas zu unbekümmert den Eindruck erweckt, dass auch in ptolemäischer Zeit auf die ἐπικαταβολή die ἐμβαδεία gefolgt sei, wofür es aber, wie gesagt, keinen Anhaltspunkt in den Quellen gibt; siehe etwa Rupprecht 1995b (2017), 140, wo es zur Hypothek heißt: „Bei Fälligkeit und Verzug des Schuldners mit der Rückzahlung tritt der Sicherungsfall ein, das bedeutet Verfall und damit Anfall der Hypothek, der allerdings im Vollstreckungsweg durch ἐμβαδεία zu realisieren ist“; wobei in der darauf bezüglichen Anm. 30 die ptolemäerzeitlichen Zeugnisse P.Enteux. 14 u. 15 sowie P.Tebt. III.1 817 u. II.2 970 zitiert werden; vgl. auch op.cit. 157; auch Schönbauer 1924, 93 scheint den Eindruck erwecken zu wollen, dass schon bereits in ptolemäischer Zeit auf die ἐπικαταβολή die ἐμβαδεία folgte. – Der von den Herausgebern von P.Polit.Iud. 8 S. 94 Anm. 4 in Zusammenhang mit dem Schuldvollstreckungsverfahren erwähnte BGU VIII 1773 (Protokoll einer Gerichtsverhandlung, Herakleopolis, 13. Okt. 58 v.Chr.), wo von einem τῶν ἐμβατευόν[των] νόμ[ον (Z. 15) die Rede ist, hat nichts mit der Zwangsvollstreckung verpfändeten Besitzes zu tun, sondern mit der illegalen Inbesitznahme (siehe Z. 9: βιαίως ἐμβεβατευκέναι) von Land, die unter gewissen Voraussetzungen legitimiert werden konnte (im vorliegenden Fall war der eigentliche Besitzer des Landes inhaftiert), wofür in Z. 15 auf das diesbezügliche Gesetz verwiesen wird.

[37] Cf. BL VIII S. 60; IX S. 33; X S. 26; XII S. 26; siehe zu diesen Texten insbesondere Wolff 1983; siehe auch Cowey/Maresch, P.Polit.Iud. 8 Einl. S. 94 mit Anm. 4.

pothek zumindest durch die Bezahlung dieses τέλος irgendwo registriert worden ist.[38] Auf eine Registrierung könnte ferner deuten, dass im Falle der Hypothezierung von Katökenland in römischen Darlehenverträgen an der Stelle, wo sonst dem Gläubiger das Recht zur ἐπικαταβολή eingeräumt wird, diesem dort das Recht zur μετεπιγραφή (also der Umregistrierung des Landes bei der Katökenbehörde) eingeräumt wird.[39] Wie oben bereits bemerkt, deutet P.Heid. Inv. G 5017 Verso vielleicht auf eine Registrierung der ἐπικαταβολή (bzw. wenigstens der aus dieser resultierenden κατοχή) bei der Agoranomenbehörde. Für die römische Zeit wiederum ist bezeugt, dass die Bezahlung des τέλος ἐπικαταβολῆς (und damit ja auch die ἐπικαταβολή selbst) im Besitzarchiv (βιβλιοθήκη ἐγκτήσεων) registriert worden ist, die in ptolemäischer Zeit indes noch nicht bestand.[40]

Im Falle der ἐπικαταβολή könnte der Ablauf vielleicht so gewesen sein, dass der Gläubiger mit dem Darlehensvertrag, der bewies, dass die Zahlungsfrist abgelaufen und er mithin zur ἐπικαταβολή berechtigt war, bei der zuständigen Behörde für die Zahlung des τέλος ἐπικαταβολῆς vorstellig wurde und diesen bezahlte, womit die ἐπικαταβολή als vollzogen galt, wobei die Quittung über die Bezahlung des τέλος ἐπικαταβολῆς als Beweisurkunde (auch gegenüber dem Schuldner) gedient haben könnte.

Eine solche Quittung liegt in SB XVI 12344 vom 17. Mai 236 v.Chr. vor, mit der das λογευτήριον der arsinoitischen Gauhauptstadt Krokodilopolis die Zahlung von 100 Drachmen als τέλος ἐπικαταβολῆς für den dritten Teil eines Hauses bestätigt, welches zu Gunsten der Zahlerin mit einer Hypothek belegt war. Ferner leistet die Hypothekengläubigerin eine zusätzliche Zahlung von 60 Drachmen.[41] Zwei frühere Quittungen bestätigen derselben Zahlerin für dieselbe Forderung außerdem die Zahlung des τέλος ὑποθήκης in Höhe von 40 Drachmen[42] sowie des τέλος ἀνανεώσεως

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[38] Zum τέλος ὑποθήκης und τέλος ἐπικαταβολῆς siehe auch Alonso 2015, 124–125 mit Anm. 18.

[39] Siehe etwa P.Brem. 68 (Hermopolis?, 26. November 99 n.Chr.): ἐὰν δὲ μὴ ἀποδοι (l. ἀποδῷ), εὐθέως ἐξέστωι (l. ἐξέστω) τῶι Ἡρακλήωι ἢ τοῖς | [παρ' αὐτο]ῦ μετεπιγραφὴν ποι[ή]σασθαι εἰς ἑαυτὸν τῶν προκειμένων ἀρουρῶν ἓξ διὰ τῶν τοῦ Ἑρμοπολίτου καταλοχισμῶν καὶ κτᾶσθαι κυρίως καὶ χρᾶσθαι καὶ οἰκονομεῖν περὶ αὐτῶν, ὧι τρόπωι ἐὰν (l. ἂν) | [αἱρῆται] (Z. 7–9); P.Stras. I 52 (Hermopolis, 17.–19. Dezember 151 n.Chr.): ἐὰν δὲ μὴ ἀποδοι (l. ἀποδῷ) τῆς | [προθεσμίας ἐν]στάσης, [εὐθέως ἐξέστω τῇ] δεδανικυίῃ (l. δεδανεικυίῃ) ἢ τοῖς πα[ρ'] αὐτῆς, μὴ προσδεομένοις ἀνανε[ώ]σεως ἢ διαστολικοῦ ἢ ἑτέρου τινὸς [ἁ]πλῶς, μετεπιγραφῆναι δι̣ὰ τῶν καταλοχισμῶν τ[ὰ]ς ὑπ[οτ]εθειμ[έ]νας ἀρούρας, ὡς καθή[κει], καὶ κτᾶσθαι αὐτὴν (Z. 6–7); siehe auch Schwarz 1911, 122; Rupprecht 1995a (2017), 156; Alonso 2008, 23 Anm. 16.

[40] Siehe hierzu auch noch im Folgenden.

[41] = P.Carlsberg 48 (*editio princeps*: Bülow-Jacobsen 1982, 15–16; cf. BL VIII S. 381; IX S. 381; XI S. 218; XII S. 214): (ἔτους) ια Φαμενὼθ κθ. ὁμολογεῖ Πτο|λεμαῖος διαγεγραφέναι ἐπὶ τὸ | ἐν τῆι πό(λει) λο(γευτήριον) βασιλεῖ Ἀῦγχιν | Μαρρέους τέλος ἐπικαταβο|[5]λῆς γ´ μέρους οἰκίας καὶ οἰ|κημάτων τῶν ὄντων ἐν | Αὐήρει, ὧν ὑπέθη(κεν) αὐτῆι | Ἀχομνεῦις Πετενοντήριος (δραχμὰς) ρ ⟦. . . ⟧ προσετιμήσα|[10]το (δραχμὰς) ξ, (γίνονται) (δραχμαὶ) ρξ, χα(λ-) η ἀλλ(αγῆς) (πεντώβολον).

[42] SB XVI 12342 (= P.Carlsberg 46) (9. März 239 v.Chr.) (*editio princeps*: Bülow-Jacobsen 1982, 14).

in Höhe von 60 Drachmen.[43] Diese Quittungen belegen (zusammen mit anderen Zeugnissen) eine Rate von 2% (*sc*. des ἐγκύκλιον auf den Betrag der Forderung) für das τέλος ὑποθήκης, von 3% für das τέλος ἀνανεώσεως und von 5% für das τέλος ἐπικαταβολῆς.[44] Die Zuzahlung von 60 Drachmen bei der Begleichung des τέλος ἐπικαταβολῆς entspricht ebenfalls 3%.[45]

Schon Ludwig Mitteis hatte bemerkt, dass 3% genau der Differenz zwischen der für die Errichtung der Hypothek anfallenden Steuer und dem τέλος ἐπικαταβολῆς (= ἐγκύκλιον) entspricht und vermutete, dass diese Differenz beim Anfall des Pfandes vom Gläubiger zu bezahlen war, da es ja ansonsten ein Leichtes gewesen wäre, durch die Verpfändung einer fingierten Forderung und daran anschließende Verfallserklärung die Verkaufsteuer von 5% zu umgehen und nur das wesentlich geringere τέλος ὑποθήκης von 2% zu entrichten. SB XVI 12344 scheint diese Vermutung nunmehr zu bestätigen. Mitteis ging außerdem davon aus, dass ἐπικαταβάλλειν „wörtlich bedeute …, dass eine Aufzahlung gemacht wird", weil καταβάλλειν in der Bedeutung „zahlen" gut bezeugt ist[46] und hat darauf aufbauend vermutet, dass das ἐπικαταβολὴν ποιήσασθαι die obengenannte „Aufzahlung" der Differenz von 3% zwischen dem τέλος ὑποθήκης und der für den Anfall der Hypothek fälligen Steuer in Höhe von 5% meinen könnte.[47] José-Luis Alonso hat zutreffend festgestellt, dass „Mitteis' conjecture … has not met great echo."[48]

Nun ist Mitteis sicherlich darin recht zu geben, dass καταβάλλειν in der Bedeutung „zahlen" sehr gut bezeugt ist (auch wenn es natürlich nicht die Grundbedeutung dieses Verbs ist), wovon sich jeder schnell überzeugen kann, der eine entsprechende Wortsuche bei papyri.info macht. Für ἐπικαταβάλλειν im Sinne von „aufzahlen" gibt es hingegen keinen einzigen Beleg, vielmehr ist dieses Verbum (wie oben bereits bemerkt) in der Bedeutung „beschlagnahmen" bezeugt, was auf seine Grundbedeutung „darauf werfen" rekurriert und in dieser Bedeutung wohl auch recht gut für die Bezeichnung des Anfalls einer Hypothek paßt. Nun ließe sich einwenden, dass, wenn καταβολὴν ποιεῖν in der Bedeutung „eine Zahlung machen" bezeugt ist, eine entsprechende Analogie für das ἐπικαταβολὴν ποιεῖν in den hier interessierenden Texten ja einigermaßen naheläge. Sucht man nun allerdings nach Belegen für καταβολὴν ποιεῖν, so findet man deren nicht viele, sondern lediglich drei, in denen diese Wendung eindeutig „eine Zahlung machen" bedeutet, wobei – und das ist zu betonen – in

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[43] SB XVI 12343 (= P.Carlsberg 47) (237? v.Chr.) (*editio princeps*: Bülow-Jacobsen 1982, 15); siehe zu allen drei o.g. Quittungen auch Alonso 2016, 129–130 u. 136–137.

[44] Siehe auch Rupprecht 1995a (2017), 155 mit Anm. 22. – Zu verweisen ist in diesem Zusammenhang auch auf P.Oxy. IV 274 aus der römischen Zeit (siehe hierzu auch noch im Folgenden), wonach das τέλος ἀνανεώσεως und das τέλος ἐπικαταβολῆς an die Einnehmer der ἐγκύκλιον-Steuer entrichtet wird.

[45] Siehe Bülow-Jacobsen 1982, 13.

[46] Mitteis 1912, 164; siehe auch Schwarz 1911, 120–121.

[47] Mitteis 1912, 165 Anm. 1; siehe auch 151 Anm. 3; sowie P.M. Meyer, Jur.Pap. S. 206.

[48] Alonso 2008, 23 Anm. 16. – Als „Aufzahlung" deutete die ἐπικαταβολή im Übrigen bereits Wessely 1901, 104 (zu P.Flor. I 1, siehe auch im Folgenden).

diesen Zeugnissen jeweils genau gesagt wird, was bzw. wieviel und wofür gezahlt wird bzw. werden soll[49], was in unseren Zeugnissen über das ἐπικαταβολὴν ποιεῖν des Hypothekengläubigers eindeutig nicht der Fall ist. Als letztes Argument gegen die Vermutung Mitteis' sei angeführt, dass sich in Darlehensverträgen mit Hypothekenbestellung aus römischer Zeit die Klausel findet, dass im Falle der ausbleibenden Rückzahlung des Darlehens dem Gläubiger das Recht der ἐπικαταβολή der Hypothek unter Zahlung der entsprechenden Steuern eingeräumt wird.[50] Folgt man der Vermutung von Mitteis, würde diese Klausel also bedeuten: „eine (Auf)zahlung unter Zahlung von … machen", was mir eine doch sehr merkwürdige Tautologie zu sein schiene. Mir scheint daher, dass Mitteis' Vermutung, das ἐπικαταβολὴν ποιεῖν bedeute „eine Aufzahlung machen" – und zwar im vorliegenden Fall für die Differenz zwischen τέλος ὑποθήκης und τέλος ἐπικαταβολῆς (= ἐγκύκλιον) – nicht tragen kann, sondern dass vielmehr der Akt der ἐπικαταβολή der Hypothek durch den Gläubiger zwar mit einer Zahlung einhergeht, sich darin allein jedoch nicht erschöpft.

Die ἐπικαταβολή der Hypothek durch den Gläubiger ist, wie eingangs bemerkt, auch in römischer Zeit bezeugt. So wird in drei Darlehensverträgen aus dem 2. Jh. n.Chr. dem Gläubiger im Falle der nicht fristgerechten Rückzahlung das Recht zur ἐπικαταβολή eingeräumt, woraus sich dann diverse Verfügungsrechte des Gläubigers ergeben.[51] Als Beispiel zitiere ich die entsprechende Klausel in dem Darlehensvertrag P.Flor. I 81 aus Hermopolis aus dem Jahr 103 n.Chr.:

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[49] P.Sijp. 45 (= C.Ptol.Sklav. I 9 = SB XX 14659; cf. BL XII S. 227) (Verkauf einer Sklavin; Arsinoites oder Herakleopolites, 7. Januar 197 v.Chr.): καὶ τὴν καταβολὴν |[15] πεποίηται Θαυβάστις ἐπὶ τὴν ⟦Σύρρου⟧ | [Φι]λίππου τράπεζαν εἰς τὸν τοῦ | βασιλέω[ς λό]γον (ἔτους) η Ξανδικοῦ ιε | χαλκοῦ (δραχμῶν) φ καὶ καταλλαγὴν | [(δραχμῶν)] νβ (τετρώβολον) κ.τ.λ. (Z. 14–19); P.Lond. III 906 (p. 107) (= W.Chr. 318) (Pachtvertrag; Euhemeria [Arsinoites], 29. August – 27. September 128 n.Chr.): φόρου τοῦ παντὸς κατ' ἔτος | σύνπαντι λόγῳ ἀργυρίου δραχμῶν δια|[κοσίων ἑ]ξήκοντα τεσσάρων, ὧν καὶ τὴν | [καταβολ]ὴν ποιησ[όμ]εθα κατὰ μῆνα | [ἕκαστον] (Z. 10–14); P.Giss. I 105 (Geschäftsbrief; Herkunft unbekannt, 5. Jh. n.Chr.): ἐπιφερόμενος τὸ |[15] ἀργύριον τῶν προει|ρημένων ἀρταβῶν | πεντακοσίων ἀράκου̣,| ἵνα τὴν καταβολὴν πο̣ι|ήσῃς τῶν ἀργυρίων (Z. 14–19).

[50] Siehe P.Bas. II 29 (= P.Bas. I 7 + P.Mich. inv. 3958f = M.Chr. 245 = SB I 4434) (Soknopaiu Nesos [Arsinoites], 25. od. 26. Februar 117–128 n.Chr.): τὴν τῆς ὑποθήκης | [ἐπικαταβολὴν ποιήσασθαι ταξαμένοις τὰ τέλη ἀκολούθως τ]οῖ[ς] ν̣όμοις τῶν ὑποθηκῶν (Z. 18–19); ähnlich P.Flor. I 1 (= M.Chr. 243 = Jur. Pap. 68) (Hermopolis, 24. März 153 n.Chr.): ταξαμένοις τὰ εἰς τὸ ἐνκύκλιον καθήκοντα τέλη ἐπικαταβολὴν ποιήσα[σθ]αι | τοῦ ὑποτεθειμένου (Z. 6–7).

[51] P.Flor. I 81 (= Jur. Pap. 60) (Hermopolis, 26. Jan. – 24. Feb. 103 n.Chr.); P.Flor. I 1 (= M.Chr. 243 = Jur. Pap. 68) (Hermopolis, 24. März 153 n.Chr.); P. Bas. II 29 (= P.Bas. I 7 + P.Mich. inv. 3958f = M.Chr. 245 = SB I 4434) (Soknopaiu Nesos, Arsinoites, 25. od. 26. Feb. 117–128 n.Chr.). – Der Vollständigkeit halber erwähnt sei ferner das Fragment eines Darlehensvertrags BGU VII 1651 (Philadelphia, Arsinoites, 2. Jh. n.Chr.), wo es heißt: ἐὰν συμβῇ̣ ἰς ἐπικαταβ[ολὴν ἐλθεῖν(?)] -ca.?- ,[ἐπιτελεῖν τὰ κατὰ τῆς ὑποθήκης νόμιμα, πρὸς ὅ τι ἂν βαστάζῃ (Z. 4), wobei der Kontext, in dem hier die ἐπικαταβολή erwähnt wird wegen des schlechten Erhaltungszustandes nicht mehr zu erkennen ist.

> ἐὰν δὲ μὴ ἀποδοῖ τῆς προθεσμίας ἐνστάσης εὐθέως | ἐξέστωι [τῶ]ι δεδανεικότι ἢ τοῖς παρ᾽ αὐτοῦ μὴ προσδεη[θεῖσι] ἀνανεώσεως ἢ διαστολικοῦ ἢ ἑτέρου τινὸς ἁπλῶς ταξαμένοις τὰ εἰς τ̣ὸ ἐνκύκλιον καθήκοντα [τέ]ληι | ἐπικα[ταβ]ολὴν π̣[οι]ήσασ[θαι τῶ]ν ὑπο[τεθ]ειμένων ἀ[ρουρῶν] πέ[ντ]ε ἡμίσ[ου]ς κ̣αὶ κτᾶσθαι τὸν δεδανεικότα κ(αὶ) τοὺς παρ᾽ αὐτοῦ ταύτας κυρίως ἀντὶ τῶν ὀφ[ειλο]μένων | κ(αὶ) ἐμβα[δε]ύειν [εἰς αὐτὰς καὶ καρπίζεσθαι καὶ] διαμισθο[ῦν καὶ ἀποφέρεσθαι τὰ ἐξ αὐτῶν] κατ᾽ ἔτος π̣ε[ριεσό]μ̣ε[να . . . . .]εν ἅπαντα κ(αὶ) χρᾶσ[θαι καὶ οἰκο]νομεῖν περ[ὶ αὐτ]ῶν | καθ᾽ ὃν ἐὰ̣ν αἱρῶ̣[νται τρόπον ἐπὶ τὸν ἅπαντα χρό]νον μηδ[ενὸς τῶι δεδανεισμένωι μηδ᾽] ἄλλοις ὑπὲρ αὐτοῦ π̣ε[ρὶ τούτων ἐξ ὑ]στέρου καταλειπο[μένου λόγου] ᾗ παρευρ[έσ]ε[ως] (Z. 10–14).[52]

Im Falle der nicht fristgerechten Bezahlung wird dem Gläubiger hier also das Recht eingeräumt, sofort die ἐπικαταβολή der Hypothek zu vollziehen, und zwar unter Bezahlung der hierfür zu entrichtenden Gebühr. Aus der ἐπικαταβολή resultieren dann die im einzelnen aufgezählten Verfügungsrechte, als deren erstes das Eigentum an der betreffenden Sache anstelle der Schuld genannt wird (κτᾶσθαι τὸν δεδανεικότα κ(αὶ) τοὺς παρ᾽ αὐτοῦ ταύτας κυρίως ἀντὶ τῶν ὀφ[ειλο]μένων).

Es wird ferner festgesetzt, dass es für die Durchführung der ἐπικαταβολή weder einer vorherigen ἀνανέωσις noch eines vorherigen διαστολικόν bedarf. Ἀνανέωσις indes bedeutet „Erneuerung“, und was soll denn im gegebenen Kontext erneuert werden, wenn nicht die Hypothek im Sinne eines Hinausschiebens ihrer Anfallsfrist? Die oben behandelten Texte der ptolemäischen Zeit zeigen die ἀνανέωσις als im alleinigen Ermessen des Gläubigers liegend. Inwiefern könnte dann also der Schuldner dem Gläubiger ausdrücklich einen Verzicht auf eine ἀνανέωσις der Hypothek einräumen? Könnte es vielleicht sein, dass es in römischer Zeit Gewohnheit geworden war, dem Schuldner seitens des Gläubigers eine ἀνανέωσις anzubieten, bevor man zur ἐπικαταβολή schritt? Ich kann diesen Gedanken hier einstweilen nicht weiter ausführen.

Gleichfalls abgesehen wird in P.Flor. I 81 von dem etwaigen Erfordernis eines διαστολικόν vor der ἐπικαταβολή. In der Literatur wird dies als Verzicht einer offiziell zugestellten Mahnung des Schuldners auf Zahlung interpretiert[53], widrigenfalls ihm die ἐμβαδεία angedroht wird.[54] Hierbei handelt es sich um ein unter der Ägide des Archidikastes in Alexandria durchgeführtes Verfahren zur Einweisung des Gläubigers in den hypothezierten Besitz des Schuldners. Es wurde durch einen Antrag des Gläubigers beim Archidikastes in Gang gesetzt, wobei in der Folge in einem vom Büro des Archidikastes ausgefertigten Mahnschreiben, welches dem Schuldner durch den örtlichen Gaustrategen zugestellt wird, diesem die Einweisung des Gläubi-

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[52] Fast gleichlautend oder doch sehr ähnlich formuliert findet sich diese Klausel in den Darlehensverträgen P. Bas. II 29 (= P.Bas. I 7 + P.Mich. inv. 3958f = M.Chr. 245 = SB I 4434) (Soknopaiu Nesos, Arsinoites, 25. oder 26. Feb. 117–128 n.Chr.) und P.Flor. I 1,6–7 (= M.Chr. 243 = Jur.Pap. 68) (Hermopolis, 24. März 153 n.Chr.).

[53] Siehe etwa E. Rabel im Komm. zu P.Bas. I 7; Rupprecht 1995a (2017), 156.

[54] Siehe P.Flor. I 86 (= M.Chr. 247) (Hermopolis, nach 25. Juli 86 n.Chr.); P.Oxy. VIII 1118 (Oxyrhynchos, 1.-2. Jh. n.Chr.); BGU XV 2473 (Arsinoites, nach 102 n.Chr.).

gers in den hypothezierten Besitz angedroht und er aufgefordert wird, diesen binnen 10 Tagen zu räumen. Wobei gegen die angedrohte ἐμβαδεία eine aufschiebende Einrede des Schuldners (ἀντίρρησις) möglich bleibt.[55]

Als Hinweis auf dieses Verfahren wird in der Literatur das auch in dem hier diskutierten Darlehensvertrag P.Flor. I 81 erscheinende Recht des Gläubigers zum ἐμβαδεύειν gedeutet, was bedeuten würde, dass der Gläubiger außer der ἐπικαταβολή der Hypothek auch noch das ἐμβαδεία-Verfahren zur Einweisung in den Besitz durchzuführen hatte. Sollte dies zutreffen, so wäre also die ἐπικαταβολή als eine Voraussetzung für das ἐμβαδεία-Verfahren zu betrachten bzw. würde sie den Gläubiger zur Einleitung des ἐμβαδεία-Verfahrens berechtigen.[56] Auch in der Ptolemäerzeit war ja, wie wir oben anhand von P.Heid. Inv. G 5017 Verso festgestellt haben, die ἐπικαταβολή offenbar nicht (wie andere ptolemäerzeitliche Zeugnisse auf den ersten Blick vermuten lassen könnten) der Endpunkt der Vollstreckung in dem Sinne, dass sie dem Gläubiger das volle Eigentumsrecht am hypothezierten Besitz des Schuldners verschaffte, sondern sie verschaffte jenem zunächst nur eine (staatlich registrierte) Verfangenschaft (κατοχή) zugunsten des Gläubigers. Welcher Rechts- oder Verwaltungsakt in der ptolemäischen Zeit auf die ἐπικαταβολή der Darlehenshypothek noch zu folgen hatte, um dem Schuldner das volle Eigentumsrecht an dieser zu verschaffen, bleibt einstweilen unklar. Die römischen Zeugnisse legen hingegen nahe, dass die ἐπικαταβολή dem ἐμβαδεία-Verfahren vorausging, das in der Ptolemäerzeit, wie oben bereits gesagt wurde, nicht bezeugt ist.

Ein enger Zusammenhang zwischen ἐπικαταβολή und ἐμβαδεία geht vor allem aus P.Oxy. II 274[57] hervor Bei diesem Text handelt es sich um den Teil eines sog. διάστρωμα aus den Akten der βιβλιοθήκη ἐγκτήσεων, also des in den Gauen der ägyptischen Chora in der 2. Hälfte des 1. Jh. n.Chr. eingerichteten Spezialarchivs vornehmlich für Immobilienbesitz. Die von diesem Archiv angefertigten διαστρώματα waren Übersichtsblätter, die unter dem Namen einer Person dessen Besitz verzeichneten und ggfs. mittels Nachträgen Veränderungen an diesem erfaßten.[58] Das vorliegende διάστρωμα aus dem Besitzarchiv des Oxyrhynchites datiert aus dem Jahr 97 n.Chr. und enthält Angaben über den Besitz eines gewissen Sarapion *alias* Diogenes. Ich zitiere diesen Text im Folgenden zunächst mit dem originalen Zeilenfall, damit die Disposition des Inhalts dieses Aktenblattes anschaulich wird.

καὶ [. .] ἔχει ἐπὶ τοῦ α(ὐτοῦ) ἀμφόδο[υ] ἐν ὑποθήκη[ι]
Δίου τοῦ Πτολλίωνος . . [. . .]ου μη(τρὸς) Θερμοῦτο(ς) τῆς
Σαραπίωνος οἰκίαν ἐν ᾗι π. . . . λον καὶ αἴθριον
καὶ αὐλή, ἀκολούθως αἷς ἔγραψε [τ]ῷ αὐτῶι Σαραπίωνι
[αὐτός τε] καὶ ἡ γυνὴ αὐτοῦ Διονυσία [. . . . .]. τοῦ

[55] Zum ἐμβαδεία-Verfahren siehe Hagedorn 1981, 171-190.
[56] In diesem Sinne in jüngerer Zeit auch Alonso 2008, 23 Anm. 16.
[57] = M.Chr. 193 = FIRA III 104 = Jur.Pap. 60.
[58] Zur βιβλιοθήκη ἐγκτήσεων siehe vor allem Wolff 1978, 222–254.

. [. .]α[. .]ωνος μη(τρὸς) \Σαρα/εῦτος τῆς Ἡρ̣α̣κ̣λ̣[είδου]
δανείου συνγραφαῖς τρισὶ διὰ τοῦ ἐν τῆι α(ὐτῇ) π[ό]λει
μνημο(νείου), μιᾶι μὲν τῶι ζ (ἔτει) Δομιτιανοῦ τοῦ κυρίου
μη(νὶ) Καισαρείωι, την δὲ \δ̣ε̣υ/τέρ̣α̣(?) τῶι διελθ(όντι) η (ἔτει) το. . . . μη(νὶ)
Φαῶφι, τη[ν] δὲ τριτ[η]ν τῶ[ι] α(ὐτῷ) διελθ(όντι) (ἔτει) μ[η(νὶ) Μεχ]είρ,
τὰ δὲ προκείμενα αὐτοῦ πατρικ[ὰ δ]ηλωθέν̣[τα]
ὑπάρχοντα κατήντ(ησεν) εἰς α(ὐτὸν) μετὰ τὴν τ[ο]ῦ πατ(ρὸς) τελευ[τὴν].
(3. H.) ιβ (ἔτους), ἐπαγο(μένων) ε, δι’ ἐνκυκλ(ίου) ὁ α(ὐτὸς) γε. . ( ) Σαραπίων τέτακται
τ̣έ̣[λος] ἀνανεώ[σ]εως
τῆς προκειμένης ὑποθήκης.
(4. H.) ιγ (ἔτους(?)), ἐπαγο(μένων) ε, δι’ ἐνκυκλ(ίου) κο(λλήματος) γ ὁ Σαραπίων τέτακτ(αι)
τ[έ]λος ἐπικαταβολ(ῆς) τῆς
ὑποθήκης.
α (ἔτους) Νέρουα τοῦ κυρίου, Τῦβι ιε, ὁ Σαραπίων ὁ καὶ Διογένης ἐπήνεγκ(ε)
ἐμβαδείαν[59] κατὰ τῆς προκ(ειμένης) ὑποθή[κ]ης.

16 l. τῇ – 17 l. τῇ δὲ τρίτῃ

Die Aufzeichnungen beginnen zunächst mit einer Mitteilung über ein dem Sarapion *alias* Diogenes gehörendes Haus in Oxyrhynchos (Z. 2–7), darauf folgen summarische Aufzeichnungen über eine Hypothek zugunsten des Sarapion auf ein Haus mit Hof eines gewissen Ptollion unter Nennung der dieser zugrundeliegenden Darlehensverträge aus dem 7. und 8. Jahr Domitians (Z. 8–17). Alle diese Besitztümer sind dem Sarapion laut einem Nachtrag nach dem Tod seines Vaters zugefallen (Z. 18–19). Auf diesen Nachtrag folgen von anderen Schreiberhänden drei nachträgliche Ergänzungsvermerke. Zunächst einer über die Bezahlung der Gebühr für die ἀνανέωσις der genannten Hypothek am 5. Epagomenentag des 12. Regierungsjahres Domitians (28. Aug. 93 n.Chr.) (Z. 20–21), darauf ein weiterer Vermerk über die Bezahlung des τέλος ἐπικαταβολῆς für die Hypothek am 5. Epagomentag des 13. Regierungsjahres Domitians (28. Aug. 94 n.Chr.) (Z. 22–23) und schließlich ein dritter Vermerk des Inhalts, das Sarapion am 15. Tybi im 1. Jahr Nervas (10. Jan. 97 n.Chr.) dem Besitzarchiv die ἐμβαδεία über die Hypothek vorgelegt hat (Z. 24–25).

Diese ἐμβαδεία κατὰ τῆς ὑποθήκης ist wohl als eine Urkunde zu interpretieren, die das erfolgreich zugunsten des Sarapion absolvierte Verfahren zur Einweisung des Gläubigers in den Besitz des Schuldners bewies. P.Oxy. II 274 legt also offensichtlich einen engen Zusammenhang bzw. ein zeitliches Aufeinanderfolgen von ἐπικαταβολή und ἐμβαδεία nahe.[60] Denn es deutet wohl alles darauf hin, dass auch in römischer Zeit die Vollstreckung mit der ἐπικαταβολή noch nicht abgeschlossen und die ἐμβαδεία mithin noch erforderlich war. Wie für die Ptolemäerzeit oben anhand von P.Heid. Inv. G 5017 Verso gezeigt wurde, blieb der Schuldner offenbar auch in

[59] Zur Begründung dieser Neulesung siehe unten Appendix I.

[60] Ein Problem ist allerdings der große zeitliche Abstand zwischen der Epikatabole und der Vorlage der Embadeia. Vielleicht hatte sich das Verfahren der Besitzeinweisung durch Einspruch des Schuldners verzögert oder der Gläubiger hatte das Dokument über die ἐμβαδεία dem Besitzarchiv nicht unmittelbar nach Erhalt vorgelegt (vgl. Schönbauer 1924, 100).

römischer Zeit auch nach der ἐπικαταβολή der Hypothek immer noch deren rechtlicher Eigentümer, und der Gläubiger mußte deshalb mittels der ἐμβαδεία förmlich in sie eingewiesen werden.[61] Ebenso wir für die ptolemäische Zeit aus P.Heid. Inv. G 5017 ersichtlich ist, scheint mithin auch in römischer Zeit die ἐπικαταβολή dem Gläubiger zunächst lediglich eine κατοχή an der Hypothek des Schuldners verschafft zu haben, zum rechtlichen Eigentümer machte ihn erst das ἐμβαδεία-Verfahren. In dieser Hinsicht besteht also eine deutliche Kontinuität zwischen der ptolemäischen und der römischen Zeit.

Angesichts des Zusammenhangs von ἐπικαταβολή und ἐμβαδεία bleibt allerdings das Problem, dass in den bekannten Zeugnissen zum ἐμβαδεία-Verfahren seltsamerweise niemals die ἐπικαταβολή der Hypothek erwähnt wird, die der dem Schuldner angedrohten ἐμβαδεία doch anscheinend vorauszugehen hatte. Wenn die ἐπικαταβολή augenscheinlich bei der Realisierung der Hypothek eine so wichtige Rolle spielte, warum wird sie dem Gläubiger in den Mahnschreiben dann nicht ebenso angedroht wie die ἐμβαδεία? Bzw., wenn sie bereits stattgefunden haben und Voraussetzung für das ἐμβαδεία-Verfahren gewesen sein sollte, warum wird dies nicht erwähnt? Zumal angesicht der Tatsache, dass in der χρηματισμός genannten Akte eines ἐμβαδεία-Verfahrens im Allgemeinen alle Schritte des Zwangsvollstreckungsverfahrens peinlich genau aufgeführt werden? Dies bleibt also einstweilen ein *non liquet*.[62]

Dabei möchte ich es bewenden lassen und halte als Fazit die folgenden drei Punkte fest:

(1) Die ἐπικαταβολή war ein vom Hypothekengläubiger persönlich durchgeführter Rechtsakt, der zwar den Anfall der Hypothek bewirkte, dem Gläubiger jedoch nicht das Eigentum an dieser verschaffte, sondern lediglich eine κατοχή an der Hypothek, also ein Anrecht auf deren Aneignung.

(2) Die ἐπικαταβολή wurde registriert und für sie war das τέλος ἐπικαταβολῆς als Enkyklion-Steuer zu entrichten.

(3) Welcher Akt in ptolemäischer Zeit auf die ἐπικαταβολή zu folgen hatte, um dem Gläubiger das Eigentum an der Hypothek zu verschaffen, ist noch unklar; möglicherweise handelte es sich dabei um einen amtlichen Zuschlag (προσβολή),

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[61] In diesem Sinne auch Alonso 2016, 147–148.

[62] Siehe Schwarz, 1937, 241–282 ibid. 258 Anm. 2; „Merkwürdig ist, namentlich in Anbetracht der Präzision des Formulars, dass in den … διαστολικά auch bei unzweifelhaften ὑποθήκαι unmittelbar die ἐμβαδεία angedroht, und es nicht für nötig gehalten wird, der dazwischenliegenden ἐπικαταβολή zu gedenken, die sowohl in manchen Verträgen, wie in den alten Ent. 14–15, und im διάστρωμα Fragment Oxy. II 274 als Voraussetzung der Besitzergreifung erscheint.“ Wobei zu beachten ist, dass die von Schwarz hier erwähnten P.Enteux. 14 u. 15 eine ἐμβαδεία nicht erwähnen und diese auch sonst in ptolemäischer Zeit nicht bezeugt ist (siehe oben). Weniger zu bekümmern scheint das Fehlen der ἐπικαταβολή in den διαστολικά Rupprecht 1995a (2017) 154, der zu diesem Problem lediglich lapidar bemerkt: „Auf die zukünftige ἐπικαταβολή wird nicht angespielt.“

wie er für das ἐνεχυρασία-Verfahren bezeugt ist. In römischer Zeit folgte auf die ἐπικαταβολή das Verfahren der ἐμβαδεία zur Einweisung des Gläubigers in den Besitz des Schuldners.

Auch wenn damit das eingangs zitierte Diktum Hans-Albert Rupprechts: „Worin freilich der Akt der ἐπικαταβολή besteht, ist nicht zu erkennen", nicht mehr so ganz uneingeschränkt gelten mag, so bleibt doch noch vieles an der Rolle der ἐπικαταβολή im Prozeß der Hypothekenrealisation im ptolemäischen und römischen Ägypten im Unklaren und wie so oft muß man hier auf neue Zeugnisse hoffen, die hoffentlich mehr Licht in das Dunkel bringen. Eine Hoffnung, die, wie vielleicht auch die obenstehenden Ausführungen illustriert haben, nicht ganz unbegründet ist.

APPENDIX I. ZUR NEULESUNG VON P.OXY. II 274,24–25

Die *editio princeps* hat: α (ἔτους) Νέρουα τοῦ κυρίου, Τῦβι ιε, ὁ Σαραπίων ὁ καὶ Διογένης ἐπήνεγκ(ε) [. . .] |[25] . . ως ἄδειαν κατὰ τῆς προκ(ειμένης) ὑποθή[κ]ης. Als Lesung/Ergänzung für Z. 24/25 hat E. Schönbauer [παραθέ]|σεως ἄδειαν vorgeschlagen.[63] In der Transkription des Textes in der Chrestomathie von L. Mitteis (Chr. 192) findet sich die Lesung ἐμβαδεύ]|σεως ἄδειαν, ebenso bei P.M. Meyer (Jur. Pap. 60).[64] Im Kommentar von V. Arangio-Ruiz (der die Konjektur ebenfalls übernimmt) zu FIRA III^2 104 liest man: „[παραθέ]σεως Schönbauer 'Beitr. z. Gesch. des Liegenschaftsrechtes' 99 s., sed cf. 'ib.' 101. n. 2; supplementum receptum defendit Meyer 'ZSS.' 46, 1926, 337."[65] O. Eger[66] verweist für die Lesungen ἐπικαταβολ(ῆς) in Z. 22 und ἐμβαδεύ|σεως ἄδειαν in Z. 24/25 auf C. Wessely[67] und L. Mitteis[68]. An der zuletzt genannten Stelle schreibt Mitteis, dass beide Lesungen auf einem „geistvollen Vorschlag" Wesselys beruhen. Beide Vorschläge haben seltsamerweise aber keinen Eingang in die „Berichtigungsliste" gefunden, obwohl dort die Neudrucke bei Mitteis (Chr. 192) und Meyer (Jur.Pap. 60) verzeichnet sind.[69]

Im Gegensatz zu der zutreffenden Lesung ἐπικαταβο̣λ(ῆς) in Z. 22[70] reicht indes m.E. der zur Verfügung stehende Platz für die Ergänzung ἐμβαδεύ]|σεως ἄδειαν in Z. 24–25 nicht aus. Auch wenn Grenfell und Hunt in P.Oxy. IV diesen Vorschlag Wesselys als „possible" bezeichnen[71] – für ἐμβαδεύ|σεως ist die Ergänzung am Schluß

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[63] Schönbauer 1924, 99–100 (cf. BL II.2 S. 94).
[64] Siehe auch Jur.Pap. 60 Einleitung S. 206.
[65] = Meyer 1926, 337, wo er auf die (seiner Meinung nach abzulehnende) Ergänzung Schönbauers verweist.
[66] Eger 1909, 58 Anm. 3.
[67] Wessely 1901, 105.
[68] Mitteis 1906, 347.
[69] Siehe BL I S. 320
[70] So nach meiner Überprüfung anhand der digitalen Abb. unter: https://papyri.info/ddbdp/p.oxy;2;274.
[71] P.Oxy. IV p. 263.

von Z. 24 mit 7 Buchstaben deutlich zu lang für den zur Verfügung stehenden Platz, wo nur Raum für 3–4 Buchstaben ist. Es verwundert auch, dass nach ἐπήνεγκ(ε) keinerlei Tintenspuren eines weiteren Wortes zu erkennen sind, was (auch wenn der Papyrus hier beschädigt ist), eigentlich zu erwarten wäre. Zudem ist ἄδεια in der Bedeutung „legitimierende Urkunde“[72], soweit ich sehe, im Sprachgebrauch der Papyri nicht bezeugt, und ἐμβάδευσις (statt ἐμβαδεία) wäre ein bisher nicht bezeugtes *addendum lexicis* (LSJ verzeichnet es nur mit Verweis auf P.Oxy. II 274 und dem Zusatz „probably“).[73]

M.E. ist daher ἐπήνεγκ(ε) | ἐμβαδείαν zu lesen. Wie im Falle des vorangehenden ebenfalls zweizeiligen Vermerks wäre die Z. 25 dann leicht eingerückt und begänne auf derselben Höhe wie Z. 23. Der Beginn von Z. 25 ist (durch Verwischen?) verunklart. Das Epsilon scheint mir aber einigermaßen sicher zu sein. Aus P.Flor. I 56 (= M.Chr. 241 = Jur. Pap. 49) (Hermopolites, 21. Okt. 233 – 3. Juli 234 n.Chr.) geht hervor, dass der vom Büro des Archidikastes ausgefertigte Beschluß zur Besitzeinweisung als ἐμβαδεία bezeichnet werden konnte: Αὐρ]ήλιος Ἰσ̣ί̣δ̣[ω]ρος ὁ κ(αὶ) Θερμουθίων ὁ ἱερεὺς καὶ ἀρχιδικαστὴς |[5] στρα(τηγῷ) Ἑρμοπολ(είτου) χαίρειν. τῆς τ̣ε̣τ̣ε̣λ̣ε̣ι̣[ωμέν]ης ἐμβαδείας ἀντίγρα(φον) μεταδοθήτ̣[ω ὡς] ὑπό[κ(ειται).] (Z. 4–5); ebenso auch SB XVIII 13163,5 (Arsinoites, 169–177); P.Oxy. LI 3610,5 (Oxyrhynchos, vor 30. Aug. 251 n.Chr.).

APPENDIX II. SB XX 14628, EIN ΧΕΙΡΟΓΡΑΦΟΝ ΕΜΒΑΔΕΊΑΣ?

SB XX 14628[74] (Oxyrhynchos?, 214–215 n.Chr.) ist ein kleines Fragment eines Vertrags, dessen Gegenstand unklar bleibt. Der Vertrag ist aus der Perspektive der sich verpflichtenden Partei formuliert. Vollständig erhalten ist die Praxisklausel, die Kyria-Klausel und die Stipulationsklausel; wobei in der Kyria-Klausel das vorliegende Dokument als ἐπικαταβολῆς χειρόγραφον in zweifacher Ausfertigung bezeichnet wird:

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1 χειρὸν . . . . . ο̣ξ̣. τ̣α̣μ̣ε̣ι̣ο̣υ̣. [-ca.?-]
νει(ον(?)) τε οὐδὲ μίαν δόσιν ἣν ἀ̣π̣ο̣τείσω σοι
ἣν ἔ̣α̣μ̣ μοί, λάβῃς δόσιν διπλῆν· γει-
νομένης σοι τῆς πράξεως παρά τε

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[72] Vgl. die Übersetzung von Arangio-Ruiz in FIRA III p. 337: „… Sarapion qui et Diogenes missionis in possessionem decretum obtulit ad suprascriptam hypothecam spectans.“

[73] Siehe auch Schwarz 1911, 133 Anm. 1: „Allerdings ist nicht zu übersehen, dass hierbei das Wort [ἐμβαδεύ]σεως nur vermutungsweise ergänzt ist …, zumal die Papyri meistens das Wort „ἐμβαδεία“ gebrauchen“; siehe auch Schönbauer 1924, 99–100: „Ferner muß darauf hingewiesen werden, dass in Ägypten bisher nur die Verwendung des Ausdruckes ἐμβαδεία bekannt ist, nicht aber ἐμβάδευσις.“ Auch die Herausgeber von P.Polit.Iud. 8 bezeichnen indes die Besitzeinweisung des Gläubigers als ἐμβάδευσις.

[74] *Editio princeps* El-Mosallamy 1988, 119–122 (cf. BL X S. 230; XI S. 231 [zu SB XX 14628]).

ἐμοῦ κ[αὶ] ἐκ τῶν ὑπαρχόντων
μοι πά[ντ]ων. κύριον τὸ ἐπικα[τα-]
βολῆς χε̣ιρόγραφον δισσὸν γρα-
φὲν πανταχῆ ἐπιφερόμενον
καὶ παντὶ τῷ ὑπὲρ σοῦ ἐπιφέρον-
τι, περὶ δὲ τ̣[οῦ] ταῦτα ὀρθῶς καλῶς
[γ]ενέσθαι καὶ ἐπερωτ[η]θεὶς ὑπὸ [σο]ῦ
[ὡ]μο[λόγησ]α. (ἔτους) κγ Αὐτοκρά[τορ]ος
[Καίσαρος -ca.?-]
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3. l. ἐαν μή

Der Ersteditor interpretierte den Text als „agreement of distrainment upon a property" bzw. „pactum de ingrediendo"[75], ohne sich indes näher über die rechtliche Natur eines solchen angeblichen „Vertrags über eine Besitzpfändung" bzw. über den Eintritt des Gläubigers in den verpfändeten Besitz des Schuldners auszulassen. H.-A. Rupprecht hat dazu zutreffend bemerkt: „… ein pactum de ingrediendo (so A.H.S. El-Mosallamy, Proc. XVIII Congr., Athen 1988, II 121) ist ausgeschlossen, da von der ἐπικαταβολή und nicht von der ἐμβαδεία gesprochen wird…" und meint zu dem Text ansonsten nur: „… die Bedeutung bleibt aber unklar."[76] Ansonsten hat der Text, wenn ich recht sehe, keine weitere Erwähnung mehr gefunden.

Leider ist der *editio princeps* kein Foto beigegeben; zu erwägen wäre aber vielleicht in Z. 6–7 die Lesung κύριον τὸ ἐπὶ κα[τα]||βολῆς χε̣ιρόγραφον; also eine „vertragliche Vereinbarung über eine (Raten?)zahlung"; man vgl. P.Mil.Vogl. IV 243 (Darlehensvertrag mit Vereinbarung einer ratenweisen Rückzahlung, 3. Jh.): ἅσπερ ἀποδώσω σοι ἐ|[π]ὶ καταβολῇ ἐν μησὶ δέκα τρισὶ | [ἐ]φεξῆ[ς] ἀπὸ τοῦ ὄντος μηνὸς |[10] [Φ]αῶφι τοῦ ἐνεστῶτος ια (ἔτους) κατὰ | [μ]ῆνα ἕκαστον δραχμὰς | [ἐ]κ[ατόν -ca.?-] (Z 7–12). Dass ἐπὶ einmal mit Genitiv und einmal mit Dativ gebraucht würde, scheint mir dabei nicht allzusehr ins Gewicht zu fallen (wobei freilich in P.Mil.Vogl. IV 263,7–8 zu prüfen wäre, ob nicht vielleicht καταβολῆ(ς) zu lesen sein könnte).

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[75] El-Mosallamy 1988, 121.
[76] Rupprecht 1995a (2017), 156 Anm. 28.

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ANDREAS VICTOR WALSER (ZÜRICH)

DIE ΕΠΙΚΑΤΑΒΟΛΗ ALS EIGENTUMSÜBERTRAGUNG. ANTWORT AUF THOMAS KRUSE

1. Die Zwangsvollstreckung in die dingliche Sicherheit im graeco-römischen Ägypten
Die Zwangsvollstreckung in die dingliche Sicherheit im graeco-römischen Ägypten ist ein mehrstufiges Verfahren von bemerkenswerter Komplexität. Für sein Verständnis dürfte es hilfreich sein, die einzelnen Verfahrensschritte noch einmal in Erinnerung zu rufen:[1]

Der eigentlichen Zwangsvollstreckung voraus geht ein verpflichtendes Mahnverfahren, das durch eine Petition (ὑπόμνημα) des Gläubigers an den ἀρχιδικαστής veranlasst wird, in der das Darlehensverhältnis dargestellt wird. Ausserdem bittet der Gläubiger darum, ihm zu erlauben, die Gaubehörde, in der Regel den Strategen, aufzufordern, dem Schuldner die Petition zuzustellen und ihn damit unter Androhung der Zwangsvollstreckung zur Zahlung aufzufordern. Erst wenn der Schuldner auf dieses als διαστολικόν bezeichnete Mahnschreiben nicht reagiert, kann die eigentliche Vollstreckung eingeleitet werden.

Das Verfahren wird initiiert durch eine Enteuxis, in der um die Zulassung der Zwangsvollstreckung gebeten wird. Daraufhin stellen die χρηματισταί (bzw. der Präfekt) – sofern die Berechtigung der Forderung anerkannt wurde – den χρηματισμὸς ἐνεχυρασίας aus, die Bewilligung zur Vollstreckung. Daraufhin war es am Gläubiger, im Rahmen der παράδειξις jene Sache im Eigentum des Schuldners zu benennen, in die die Vollstreckung erfolgen sollte. Der πράκτωρ ξενικῶν stellte die Rechtmässigkeit des Anspruchs des Gläubigers fest und erteilte im Zuge der προσβολή den Zuschlag an den Gläubiger. Mit der Zuschreibung der Sache an den Gläubiger und der Registrierung erfolgte in der καταγραφή die formelle Übertragung des Eigentums vom Schuldner auf den Gläubiger. Damit waren alle Voraussetzungen geschaffen für die Erteilung des χρηματισμὸς ἐμβαδείας durch die χρηματισταί, mit dem die Gaubehörden aufgefordert wurden, die ἐμβαδεία, die Inbesitznahme der Sache, anzudrohen und die Einweisung des Gläubigers in den Besitz nach Ablauf von 10 Tagen

[1] Eine sorgfältige Übersicht bietet Llewelyn 1994, 202–212 (mit der älteren Literatur). Grundlegend bleibt Schwarz 1911, 76–113; von den späteren Beiträgen mit wichtigen Einzelbeobachtungen seien exemplarisch nur Hagedorn 1981 und v. a. Wolff 1983 (besonders zur προσβολή) genannt. Rupprecht 1997, 152 skizziert das Verfahren knapp, konzentriert sich ansonsten aber auf die Zwangsvollstreckung in die Hypothek.

zu vollziehen. Dem Schuldner stand es frei, auf verschiedenen Stufen des Verfahrens mittels ἀντίρρησις Einspruch zu erheben, was weitere Verfahrensschritte nach sich zog, wodurch das Prozedere weiter verkompliziert wurde.

Es ist verständlich, dass nach Wegen gesucht wurde, das Verfahren zu vereinfachen. Eine Möglichkeit bestand etwa darin, schon im Darlehensvertrag zu vereinbaren, dass auf einzelne Verfahrensschritte – etwa das Mahnverfahren – in beiderseitigem Einvernehmen verzichtet wird.

Vereinfacht wurde das Verfahren aber insbesondere auch dadurch, dass ebenfalls schon im Darlehensvertrag die Sache, in die gegebenenfalls die Vollstreckung erfolgen sollte, als Hypothek – oder später auch in Form des Hypallagma[2] – bezeichnet wurde. Damit konnten beim Hypothekardarlehen bei der Vollstreckung der χρηματισμός ἐνεχυρασίας, die παράδειξις, die προσβολή sowie die καταγραφή entfallen. Stattdessen folgte nun bei der Vollstreckung in die Hypothek auf die Enteuxis des Gläubigers direkt der als ἐπικαταβολή bezeichnete Verfahrensschritt, worauf im Anschluss – jedenfalls nach der bisherigen Auffassung (s. u.) – die Einweisung in den Besitz auf Basis eines χρηματισμὸς ἐμβαδείας vollzogen werden konnte.[3]

Die vorangehende Skizze zeichnet einen Idealtypus, ignoriert Entwicklungen über die Zeit und lässt notwendigerweise in den Hintergrund treten, dass in vielen Einzelheiten Fragen zum Ablauf des Verfahrens offenbleiben, obwohl sich die Forschung seit über hundert Jahren intensiv um ihre Klärung bemüht hat. Um die Aufhellung des von L. Mitteis identifizierten „dunkelsten Punkt" bei der Zwangsvollstreckung in die Hypothek,[4] die ἐπικαταβολή, bemüht sich Thomas Kruse in seinem Beitrag.

2. Die ἐπικαταβολή als Verfahren der Eigentumsübertragung

Kruse hat in seinem Beitrag die leider nicht eben zahlreichen Zeugnisse für die ἐπικαταβολή noch einmal im Einzelnen sorgfältig analysiert. Die Ausarbeitung der schriftlichen Fassung seines Vortrages hat er genutzt, weiteres Material einzuarbeiten und neue Aspekte einzubringen. Seine Ausführungen sind an dieser Stelle selbstverständlich nicht in extenso aufzugreifen, und auch Bemerkungen zum ursprünglichen Vortrag, die Kruse in der schriftlichen Fassung berücksichtigt hat, müssen nicht wiederholt werden, umgekehrt sollen auch Kruses ergänzende Ausführungen diskutiert werden. Meine Ausführungen wollen nicht für sich allein stehen und verdanken Kruse auch dort sehr viel, wo ich ganz im Sinne der *amicitia papyrologorum et stelocoparum* andere Schlussfolgerungen ziehe.

Kruse kommt auf Basis von drei Zeugnissen aus den Jahren 222 (P.Enteux. 14), 218 (P.Enteux. 15) und 182 v. Chr. (P.Tebt. III.1 817) zum vorläufigen Zwischenergebnis, dass die ἐπικαταβολή „offenbar den Anfall der Hypothek bewirkt". In der

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[2] Zum Hypallagma Alonso 2008 sowie 2012b (mit der früheren Literatur).

[3] Die Zwangsvollstreckung in die Hypothek hat zuletzt Rupprecht 1997, 152–157 zusammenfassend behandelt, ohne die früheren Beiträge, insbesondere Schwarz 1911, 113–134, vollständig ersetzen zu können.

[4] Grundz.Mitt. 162.

Eingabe der Juden von Herakleopolis aus dem Jahr 133 v. Chr. (P.Polit.Iud. 8) sieht er „zumindest prima vista“ ein recht eindeutiges Zeugnis dafür, dass als Rechtswirkung der ἐπικαταβολή „die volle Verfügungsgewalt über den verpfändeten Besitz“ aufzufassen ist. Damit wäre eine Sicht bestätigt, die als erster A. B. Schwarz vertrat, der es für am wahrscheinlichsten hielt, „daß die ἐπικαταβολή derjenige Akt war, der den Übergang des Eigentums der verpfändeten Sache an den Gläubiger bewirkte“.[5] Schwarz' Sicht sind, bei allen stets einzugestehenden Unsicherheiten, bislang alle an der präzisen Erfassung der Rechtsvorgänge interessierten Kommentare gefolgt.[6]

Die Höhe des τέλος ἐπικαταβολῆς, der bei der ἐπικαταβολή zu entrichtenden Steuer, bietet für diese Sicht eine, wie mir scheint, gewichtige Stütze. Sie entsprach, worauf Kruse in seinem Beitrag ebenfalls hinweist, der vollen Höhe der Verkehrssteuer (ἐγκύκλιον) – 5% bzw. später 10% –, die bei Kaufgeschäften und einigen weiteren Transaktionen, bei denen eine Eigentumsübertragung erfolgte, zu entrichten war.[7] Im Gegensatz dazu musste bei der Einrichtung einer Hypothek nur das τέλος ὑποθήκης zum Satz von 2% bezahlt werden. Das passt bestens zur Auffassung, dass bei der ἐπικαταβολή eine Übertragung des Eigentums an der Sicherheit erfolgte. Kruse spricht sich hauptsächlich aus sprachlichen Gründen gegen die von L. Mitteis vorsichtig geäusserte Vermutung aus, dass als ἐπικαταβολή schlicht die „Aufzahlung“ der Differenz zwischen den beiden aus unterschiedlichen Steuersätzen berechneten Steuerzahlung bezeichnet werde, ἐπικαταβολὴν ποιήσασθαι „also bloss die Steuernachzahlung“ bedeute.[8] Kruses Argumente sind als solche überzeugend, fallen indes deswegen nur bedingt ins Gewicht, als dass sich Mitteis' Hypothese schon allein sachlich als unhaltbar erweist: Das τέλος ἐπικαταβολῆς besteht nämlich gar nicht in einer Aufzahlung der dreiprozentigen Differenz zwischen dem τέλος ὑποθήκης und dem Enkyklion, sondern in einer Steuer in der vollen Höhe des letzteren von 5%. Dies geht aus den in P.Carlsberg 46–48 (SB XVI 12342–12344) überlieferten Steuerquittungen hervor, auf die auch Kruse verweist. Der Erstherausgeber, dem Kruse folgt, sah darin Quittungen für Darlehensgeschäfte, deren ursprünglicher Gegenstand ein durch ein Drittel eines Hauses gesicherter Kredit war, dessen Höhe in den Quittungen zwar nicht genannt, aber ausgehend von den Steuerzahlungen auf 2000 Drachmen zu berechnen sei.[9] Schon aufgrund des zu erschliessenden Wertes des als Sicherheit dienenden Hauses, der bei über einem Talent liegen müsste, war diese Berechnung nie sehr plausibel, und sie wurde bei der Veröffentlichung weiterer auf dasselbe Darlehensgeschäft zu beziehenden Urkunden als irrig erwiesen. Tatsächlich handelt es sich bei den in den Quittungen genannten Beträgen von 40, 60 und 160 Drachmen nicht um die Steuerabgaben, sondern um die Summen, auf die die Steuern zu entrichten waren. Das τέλος ἀνανεώσεως betrug nach P.Carlsberg 47 für eine Summe

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5 Schwarz 1911, 120.
6 Dazu sind – wie Kruse zeigt – die Herausgeber von P.Polit.Iud. nicht zu zählen.
7 Zum Enkyklion P. W. Pestman, in P.L.Bat. XIX App. C S. 214–222.
8 Grundz.Mitt. 165 Anm. 3.
9 Bülow-Jacobsen 1982, bes. 13.

von 100 Drachmen mithin 2 Drachmen und lag somit erwartungsgemäss wie für die Aufnahme der Hypothek bei 2% (nicht 3%); das τέλος ἐπικαταβολῆς wurde nach P.Carlsberg 48 für eine Summe von 160 Drachmen geleistet und betrug 8 Drachmen, also eben genau jene 5%, die auch als Enkyklion angefallen wären.[10]

Zu den wenigen mit Sicherheit aus den frühen Zeugnissen zu gewinnenden Einsichten gehört, wie Kruse zu Recht betont, dass die ἐπικαταβολή in einem königlichen Erlass geregelt war. Kruse zögert, die wiederkehrende Wendung κατὰ τὸ διάγραμμα als einen Verweis auf jenes Justizdiagramma zu beziehen, mit dem Ptolemaios II. Philadelphos noch vor 271 v. Chr. jedenfalls nach Auffassung von H. J. Wolff eine Gerichts- und Verfahrensordnung schuf.[11] Da wir weder den Aufbau noch den genauen Inhalt dieses Diagrammas kennen, ist Sicherheit in der Tat nicht zu erreichen, doch scheint das Diagramma gerade das Vollstreckungswesen geregelt zu haben.[12] Dass zu diesen Regelungen auch das bei der ἐπικαταβολή anzuwendende Verfahren gehörte und die vielfach belegte Praxisklausel ἡ πρᾶξις ἔστω κατὰ τὸ διάγραμμα auch das Vorbild für die Wendung in P.Enteux. 14 geliefert hatte, scheint mir plausibler als zu vermuten, dass die Wendung auf „ein königliches (Spezial)διάγραμμα über die ἐπικαταβολή rekurriert", von dem wir anderweitig nichts wissen.[13] Der Punkt ist in doppelter Hinsicht nicht völlig belanglos: Zum einen wäre mit der Verankerung der ἐπικαταβολή in der Gerichts- und Verfahrensordnung des Philadelphos für die Spekulation darüber, welche Instanzen in die ἐπικαταβολή involviert sein könnten, zumindest etwas festerer Grund gewonnen. Die Zuständigkeit für die ἐπικαταβολή im Streitfalle dürfte nämlich am ehesten beim ptolemäischen Dikasterion gelegen haben. Dann stellt sich zum anderen aber auch die Frage, welche Änderungen im Verfahren der ἐπικαταβολή die Schliessung der Dikasteria, die nun im Jahr 172 v. Chr. angesetzt wird,[14] mit sich brachte.

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[10] Zur korrekten Interpretation der Quittungen siehe die Hinweise von Jasnow in den Kommentaren zu P.Chic.Haw. 7C Z. 10 und 9 (56 Anm. 77) und darauf aufbauend Alonso 2016, 137 Anm. 77. Es ist bemerkenswert, dass bei der Eigentumsübertragung durch den Verfall als Hypothek insgesamt höhere Steuern zu bezahlen waren als beim Verkauf (nämlich die Hypothekensteuer und die Abgabe für die ἐπικαταβολή, insgesamt 7%), sodass die von Mitteis (a. a. O.) erwogene Möglichkeit, „durch Verpfändung für eine fingierte Forderung und darauffolgende Verfallserklärung die Kaufsteuer [zu] umgehen", gänzlich ausgeschlossen war.

[11] Wolff 2002, 51–53 und jetzt ausführlich C. M. Sánchez-Moreno Ellart in P.Trier I, S. 20–41.

[12] Wolff a. a. O. 51f. mit Anm. 67. Vgl. ders. 1983, 451f.: „Das jahrhundertelange Festhalten an der gleichen wohlbedachten Abfolge der einzuschlagenden Schritte wäre unbegreiflich, hätte ihm nicht eine in alle Einzelheiten gehende gesetzliche Regelung zugrunde gelegen. Dann aber ist es angesichts der durch Teb. III 1, 814 verbürgten Tatsache, daß diese spätestens bald nach der Mitte des 3. Jh. v. Chr. den Gang der Dinge bestimmt haben muß, mehr als wahrscheinlich, daß sie in den Zusammenhang der unter dem Namen τὸ διάγραμμα bekannten umfassenden Prozeßordnung des Ptolemäus II. Philadelphos gehörte."

[13] Auch als Urheber eines solchen „Spezialdiagramma" käme am ehesten Ptolemaios II. Philadelphos in Frage, da Diagrammata schon unter seinem Nachfolger Ptolemaios III. Euergetes selten werden. Fragen könnte man darüber hinaus, ob für Einzelregelungen der ἐπικαταβολή nicht anstelle des offenbar vor allem für allgemein gehaltene königliche Anordnungen verwendeten Diagramma vielmehr das πρόσταγμα die zu erwartende Form wäre.

[14] Sánchez-Moreno Ellart a. a. O. 37–41.

3. Die Katoche als Rechtswirkung der ἐπικαταβολή ?

Es ist das Verdienst von Kruse, mit P.Heid. Inv. G 5017 Verso auf eine leider fragmentarische Urkunde aus dem Jahr 156 v. Chr. (?) aufmerksam gemacht zu haben, die bislang bei der Diskussion der ἐπικαταβολή jenseits der Erstpublikation übersehen wurde.[15] Fragment A+B Z. 8–10 dieser Urkunde ist nach Kruse zu entnehmen, „dass die ἐπικαταβολή offensichtlich keinen Eigentumsübergang bzw. eine volle Verfügungsgewalt des Gläubigers über die Hypothek bewirkte, sondern lediglich eine κατοχή, also eine Verfangenschaft bzw. ein Anrecht auf die Aneignung der Hypothek durch den Gläubiger." Kruse folgt damit der Interpretation der Erstherausgeberin Ch. Armoni, welche die betreffende Passage folgendermassen übersetzte:

> „Nachdem nämlich ein gewisser Herakleides … auf Grund einer Epikatabole im 12. Jahr das Anrecht auf die Aneignung eines fünf Aruren grossen … Weinbergs … erhielt, und nachdem der Weinberg auf seinen Namen (*sc.* des Herakleides) (registriert war), kam es [---], daß er die Rechte (der Hypothek) Demetrios … übertragen hat."[16]

Die entscheidende Frage ist, wie die Partizipialkonstruktion κατασχόντος ἐξ ἐπικαταβ[ολῆς] zu verstehen ist. Sie ist ohne Parallele, was angesichts der insgesamt geringen Zahl von Belegen für die ἐπικαταβολή nicht verwundert. Armoni erklärt die Stelle so: „Nach der Durchführung der Epikatabole erlangt der Gläubiger zwar die κατοχή, aber nicht das Eigentumsrecht am Pfand. Im konkreten Fall zeigt sich dies darin, daß Herakleides auch nach der Epikatabole nicht frei über das χωρίον verfügen (z. B. es veräußern), sondern nur die nach wie vor bestehenden Gläubigerrechte übertragen konnte."[17]

Auch wenn wir darüber hinwegsehen, dass diese Interpretation allen bis hierhin festgehaltenen Beobachtungen zur ἐπικαταβολή entgegensteht, ergeben sich schwerwiegende Probleme. Im Rahmen von Schuldrechtsverhältnissen ist die κατοχή, gewöhnlich übersetzt als „Verfangenschaft", Kernelement des Hypallagma. Beim Hypallagma wird eine als Sicherheit designierte Sache im Eigentum des Schuldners mit einer κατοχή belegt, so dass dem Schuldner die Veräusserung der Sache verunmöglicht wird. Dies verschafft dem Gläubiger zusätzliche Sicherheit, doch ist mit der κατοχή gerade nicht „ein Anrecht auf die Aneignung der Hypothek durch den Gläubiger" (Kruse) verbunden. Dieses erlangt der Gläubiger erst auf dem Wege eines normalen Pfändungsverfahrens, über die ἐνεχυρασία und nicht die ἐπικαταβολή. J.L. Alonso hat die Charakteristiken des Hypallagma in mehreren Beiträgen erhellt und dabei gezeigt, dass die „Verfangenschaft" zunächst durch die Aushändigung der Eigentumstitel durch den Schuldner, später dann durch den Verfangenheitsvermerk, eben die κατοχή, in der Bibliotheke Enkteseon unter dem Namen des Schuldners er-

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15 Armoni 2008.
16 Armoni 2008, 220. Für den Text siehe den Beitrag von Kruse.
17 Armoni 2008, 222 (ohne Anmerkungen und Querverweise).

wirkt wurde.[18] Der Gläubiger erlangte durch die κατοχή keine zusätzlichen Rechte.[19] Das Hypallagma erscheint als privatrechtliches Instrument nicht vor 13 v. Chr., und erst mit der Einrichtung der Bibliotheke Enkteseon, die die zuverlässige Kontrolle der κατοχή ermöglichte, wurde es zum eigentlichen Erfolgsmodell.

Möchte man die Stelle dennoch im technischen Sinne der κατοχή verstehen, dann wohl nur so, dass „Herakleides … auf Grund der ἐπικαταβολή eine Verfangenschaft erwirkte", und in der Tat vermutet Armoni „einen in den Akten des Agoranomeion (?) einverleibten Vermerk, welcher als Resultat der ἐπικαταβολή den Vollzug der κατοχή auf das Grundstück dokumentiert."[20] Was aber sollte Herakleides ein solcher „Sperrvermerk", eben die κατοχή, überhaupt bringen? Dass er die ἐπικαταβολή durchführen konnte, setzt ja voraus, dass er die Zwangsvollstreckung in eine Hypothek vollzog. Mit der Stellung der Sicherheit hatte ihm der Schuldner bereits „das Anrecht auf die Aneignung der Hypothek" im Falle der Zahlungsunfähigkeit eingeräumt, und vermutlich implizierte das Hypothekardarlehen auch automatisch eine Verfangenheit der Sicherheit, sofern diese nicht – wie häufig – sogar explizit im Vertrag festgehalten war.[21] Es ist nicht einzusehen, welchen Sinn die Festlegung einer κατοχή ergeben sollte.

Damit scheint es unumgänglich, nach einem anderen Verständnis der Stelle zu suchen. Dieses ist gegeben, wenn für κατέχω keine im engeren Sinne technische Bedeutung veranschlagt wird und das Verb stattdessen näher bei der Grundbedeutung mit „in Besitz nehmen", „innehaben" oder „besitzen" übersetzt wird. Diese Bedeutung ist auch in den Papyri vielfach bezeugt.[22] Gesagt wäre folglich schlicht, dass Herakleides im Zuge der ἐπικαταβολή zum Inhaber der fünf als Sicherheit gestellten Aruren geworden war. Damit entfällt auch der Widerspruch zu den übrigen bereits diskutierten Zeugnissen zur ἐπικαταβολή. Einwenden könnte man allenfalls, dass man im Anschluss an die ἐπικαταβολή einen Begriff erwarten würde, der weniger allgemein auf den Besitz an der Sache zielt als auf deren Eigentum. Zu bedenken ist aber, dass mit der Enteuxis ein Dokument vorliegt, in der die Schuldner die Rechtmässigkeit der Vollstreckung bestreiten, so dass sie möglicherweise ganz bewusst eine die rechtlichen Verhältnisse zwar nicht falsch, aber unpräzise fassende Formulierung wählten.

Die anschliessenden Vorgänge sind nicht zuletzt aufgrund der Textverluste in der Urkunde schwer nachvollziehbar. Ohne eine umfassende Neubetrachtung der Urkunde vornehmen zu können, die hier nicht zu leisten ist, wäre mit grösster Vorsicht

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[18] Alonso 2008; 2010; 2012b, jeweils mit der Dokumentation der früheren Literatur.

[19] Alonso 2008, 23f.: "The creditor acquires nothing: the security lies not in anything the creditor acquires but in something the debtor renounces: his right to dipose of the pledged property."

[20] Armoni 2008, 222. Es gibt freilich keinerlei Zeugnisse für die Registrierung einer κατοχή, wie sie für die Bibliotheke typisch wird, im Agoranomeion.

[21] Die Frage ist nicht endgültig geklärt; siehe die Hinweise bei Alonso 2010, 13-15, bes. Anm. 10.

[22] Siehe nur Preisigke, WB s. v. 7).

etwa folgende Rekonstruktion vorzuschlagen: Nachdem Herakleides aufgrund der ἐπικαταβολή zum Eigentümer der fünf Aruren geworden ist, hat er – noch bevor er (im Zuge einer ἐμβαδεία, s. u.) darüber auch die Sachherrschaft erlangte – seine Rechte an dem nun auf ihn registrierten Gut (A+B Z. 9f. τοῦ χωρίου εἰς αὐτὸν ὄντος) an Demetrios abgetreten. Um selbst über das Gut verfügen zu können, musste Demetrios später seinerseits eine ἐπικαταβολή vollziehen (C Z. 8), um für sich selbst die Voraussetzung für die Inbesitznahme zu schaffen. Gegen dieses Vorgehen scheinen sich die Petenten mit ihrer Eingabe nun zu wehren. Mehr als eine hypothetische Rekonstruktion kann dies nicht sein, entscheidend ist aber, dass mir die Urkunde keinen Anlass zu geben scheint, von der „prima vista" gewonnenen Erklärung der ἐπικαταβολή als Verfahren zur Eigentumsübertragung abzurücken.

4. ἐπικαταβολή und ἐμβαδεία

Aufgrund seiner von Armonis Deutung ausgehenden Interpretation von P.Heid. Inv. G 5017 Verso gelangt Kruse hingegen zur Auffassung, dass der Gläubiger durch die ἐπικαταβολή (noch) nicht Eigentümer an der hypothezierten Sache wurde. Wenn ein Gläubiger behaupte, er sei Eigentümer geworden (ἐκυριεύσα), oder ein Schuldner, er würde als Folge einer ἐπικαταβολή sein Eigentum verlieren, dann würde dies seine subjektive Auffassung, aber nicht die objektive Rechtslage abbilden. Damit wird aber den jeweiligen Petenten, die sich einer juristisch eindeutigen Terminologie bedienen, unterstellt, die Rechtslage nicht nur unpräzise, sondern schlicht falsch darzustellen. Das müsste auch den Adressaten der jeweiligen Eingaben, die besser als wir wussten, was die Rechtsfolgen der ἐπικαταβολή waren, aufgefallen und der Sache der Petenten kaum dienlich gewesen sein. Auch wenn den Urkunden aus römischer Zeit für die ptolemäischen Verhältnisse keine Beweiskraft zukommt, ist doch auffällig, dass auch sie die „subjektive Auffassung" der Eigentumsübertragung durch die ἐπικαταβολή decken. Der von Kruse zitierte P.Flor. I 81, der als Darlehensvertrag der subjektiv parteischen Darstellung unverdächtig ist, hält unmissverständlich fest, dass aus der ἐπικαταβολή – in Kruses Worten – „Verfügungsrechte [resultieren], als deren erstes das Eigentum an der betreffenden Sache anstelle der Schuld genannt wird." Kruse ist dennoch der Auffassung, dass erst ein auf die ἐπικαταβολή folgender Rechtsakt dem Gläubiger „das volle Eigentumsrecht am hypothezierten Besitz des Schuldners verschaffte." Diese Funktion erfüllte nach seiner Auffassung in römischer Zeit die ἐμβαδεία.

Kruse mahnt zu Recht an, dass weder das Nomen ἐμβαδεία noch entsprechende Verbalformen in vorrömischer Zeit im Kontext von Vollstreckungsverfahren bezeugt sind. Wenn die ältere Forschung dennoch davon ausging, dass ein entsprechendes Verfahren für die Einweisung des Gläubigers in den hypothezierten Besitz des Schuldners schon im ptolemäischen Ägypten unter dieser (oder gegebenenfalls anderer) Bezeichnung existierte, dann dürfte dies m. E. nicht zuletzt daran liegen, dass gerade dieser Vorgang schon seit klassischer Zeit ausserhalb von Ägypten vielfach bezeugt ist (s. u. 5.). Als Vorläufer der römischen ἐμβαδεία in ptolemäischer Zeit identifiziert Kruse auf Basis von BGU XIV 2376f. (36/35 v. Chr.) mit Vorsicht den als

προσβολή bezeichneten Zuschlag des πράκτωρ ξενικῶν καὶ νομοφύλαξ der Sache an den Gläubiger. Allerdings betreffen die genannten Urkunden ein Darlehensgeschäft, das nicht durch eine Hypothek gesichert war. Damit kam das eingangs skizzierte allgemeine und komplexere Vollstreckungsverfahren zur Anwendung, bei dem im Zuge der ἐνεχυρασία ein Pfändungsobjekt erst zu benennen war, das dem Gläubiger dann eben nach einem Versteigerungsverfahren in der προσβολή zugeschlagen wurde. Erst die προσβολή begründete „eine Art dinglichen Anrechts des Gläubigers auf das gepfändete Gut."[23] Die Vermischung der auf unterschiedlichen Voraussetzungen basierenden allgemeinen Vollstreckungsverfahren mit jenem bei der Hypothek ist m. E. für das Verständnis nicht hilfreich.

Wenn nach einem „Vorläufer" der römischen ἐμβαδεία gesucht wird, scheint mir die von Kruse ebenfalls besprochene Urkunde P.Enteux. 14 eine bessere Grundlage zu bieten. Wie dort festgehalten wird, vollzog der Gläubiger zu einem Zeitpunkt, als der Schuldner das Gut noch bewohnte, die ἐπικαταβολή. Danach sei der Epistates gekommen und habe das Pferd des Schuldners aus dem Stathmos vertrieben und der Gläubiger würde nun dort wohnen. Könnte sich nicht hinter dem hier unter Verzicht auf jede rechtliche Terminologie beschriebenen Einschreiten des Epistates jener Vorgang verbergen, den wir (möglicherweise auch anachronistisch) als ἐμβαδεία, nämlich die auch ganz praktisch zu vollziehende behördliche Einweisung des Eigentümers in den Besitz, bezeichnen könnten?

In seiner Diskussion der Belege aus römischer Zeit zeigt Kruse überzeugend auf, wie eng ἐπικαταβολή und ἐμβαδεία auch in ihrer zeitlichen Abfolge aufeinander bezogen sind. Er folgert daraus, dass auch in römischer Zeit der Schuldner der „rechtliche Eigentümer der Hypothek" blieb und der Gläubiger „deshalb mittels der ἐμβαδεία förmlich in sie eingewiesen werden" musste. Dieser Auffassung scheint mir ein Missverständnis zugrunde zu liegen,[24] das in der oben zurückgewiesenen Ansicht begründet ist, dass die ἐπικαταβολή lediglich eine κατοχή an der Hypothek erwirkte. Der Zweck der ἐμβαδεία war die formelle Einweisung in den *Besitz* und die praktische Übernahme der Sachherrschaft. Sie verschaffte nicht das *Eigentum* an der Sache, sondern setzte dieses – wie auch das epigraphische Material im Folgenden noch einmal demonstrieren wird – gerade voraus. Eben das Eigentum hatte noch vor der Inbesitznahme die ἐπικαταβολή, wie auch immer man sich das Verfahren im Einzelnen – als reinen Registrierungsakt, als Zahlung des τέλος ἐπικαταβολῆς? – vorzustellen hat.

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[23] So Wolff 1983, 448, der in Anm. 12 ergänzt: „Die etwas verwaschene Ausdrucksweise ist bewußt gewählt, weil der juristische Effekt der Prosbole, der *als Voraussetzung der das ganze Verfahren abschließenden Embadeia* in älterer Zeit (s. Teb. III 1, 814 col. I Z. 10–28) noch ein den Rechtsübergang vollendendes „Kaufgeschäft" (ὠνή) zwischen Erwerber und Praktor, in der Kaiserzeit eine wohl gleichbedeutende, aber καταγραφή genannte Beurkundung folgen mußte, einer strengen Definition nach romanistischen oder heutigen dogmatischen Begriffen nicht zugänglich ist." (Meine Hervorhebung).

[24] Um ein Missverständnis scheint es sich auch zu handeln, wenn diese Sicht J. L. Alonso (mit Verweis auf Alonso 2016, 147f.) zugewiesen wird.

5. Das Vollstreckungsrecht jenseits des griechisch-römischen Ägypten

Der Blick auf die griechische Welt jenseits Ägyptens erhellt die Dunkelheit, in der die ἐπικαταβολή liegt, kaum. Der Begriff erscheint in den Inschriften nur an einer einzigen Stelle, nämlich in den griechischen Inschriften der Tabulae Heracleenses (IG XIV 645).[25] Der Kontext dort sind Pachtverträge. Für den Fall, dass die Pächter gegen die Pachtvorschriften verstossen, werden die zuständigen Amtsträger, die πολιανόμοι, angewiesen, ἐπικαταβαλ̣̈ίοντι καὶ ζαμιωσόντι, bis die vertraglich vereinbarten Zustände wiederhergestellt wurden. Welche Bedeutung ἐπικαταβάλλω an dieser Stelle hat, lässt sich nur erahnen, wobei – wenn überhaupt – eher das ägyptische Material die Inschrift erhellt als umgekehrt.[26]

Wenn wir auf die Vollstreckungsverfahren insgesamt blicken, zeigt uns der Vergleich mit dem ägyptischen Material zunächst vor allem einmal, wie wenig wir sonst darüber wissen. Die Dunkelheit scheint hier das Verfahren insgesamt zu umfassen. Gegenüber den allenfalls in dogmatischen Grundlagen zu erahnenden Parallelen zu den Verfahren in Ägypten springen vielmehr die Unterschiede ins Auge, jedenfalls wenn wir vom Prinzip der legalisierten Selbsthilfe ausgehen, das die Vollstreckung im klassischen Athen auf der Basis der δίκη ἐξούλης charakterisiert.[27] Die Frage, mit welchem Akt die eigentliche Eigentumsübertragung erfolgte und der der ἐπικαταβολή entsprechen könnte, scheint hier – wenn wir uns an die jüngeren Diskussionen über die Frage des Eigentums an der Sicherheit erinnern – schon falsch gestellt zu sein. Das übrige Material, insbesondere aus hellenistischer Zeit zusammenzustellen, ist eine Aufgabe, die hier nicht einmal im Ansatz erfüllt werden kann.[28]

Lediglich auf einen Punkt möchte ich hinweisen, der für die vorangehende Diskussion zum Zusammenhang von ἐπικαταβολή und ἐμβαδεία von Relevanz ist: Auch ausserhalb von Ägypten findet das Vollstreckungsverfahren in der konkreten Inbesitznahme ihren Abschluss, die in den Inschriften meist durch das Verb ἐμβαίνειν oder die Substantive ἔμβασις oder ἐμβατεία ausgedrückt wird, also ganz entsprechend der ἐμβαδεία in den römischen Papyri. Die formelle Inbesitznahme als ἔμβασις war nicht nur im Rahmen von Vollstreckungsverfahren, sondern auch bei Kauf- oder Pachtgeschäften notwendig. Wir sind in der glücklichen Lage, dass sich unter den zahl-

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[25] Siehe auch die Editionen von Uguzzoni – Ghinatti 1968 (danach der Text); Pernin 2014, 459–481 Nr. 259 und Weiss 2016.

[26] I 133-135: *h*ότι δέ κα τούτων τι ποΐωντι πὰρ τὰν συνθήκαν, τοὶ πολιανόμοι τοὶ ἀὲς ἐπὶ τῶ ϝέτεος ἐπικαταβα<λί>οντι καὶ ζαμιωσόντι ἄχρι *h*ῶ κα ἀφομοιώσωντι κὰτ τὰν συνθήκαν. Pernin übersetzt: „s'ils contreviennent à l'une de ces clauses du contrat, les polianomes en fonction pour l'année leur infligeront et leur feront acquitter une amende jusqu'à ce qu'ils se conforment au contrat." LSJ s. v. ἐπικαταβάλλω gibt als Übersetzung für das Verb an dieser Stelle „impose a fine", kann für diese Bedeutung jedoch keine weiteren Belege anführen.

[27] Zu Athen zusammenfassend noch immer Harrison 1968, 217–222 und 311–314 (Appendix B u. C).

[28] Für Ephesos und wenige darüber hinausgehende Beobachtungen kann ich auf Walser 2008, 132–134 verweisen, wobei die mangelnde Präzision der knappen Bemerkungen zu Ägypten hier nur mit Bedauern anzumahnen ist.

reichen Urkunden, die im Kontext der Verkaufs- und Pachtgeschäfte im Umland des kleinasiatischen Mylasa zwischen etwa 160 und 130 v. Chr. aufgezeichnet wurden, auch solche über die ἔμβασις erhalten haben.[29] Sie zeigen zunächst, wie die Inbesitznahme in der Praxis erfolgte. Der Verkäufer führte den Käufer – im Falle Mylasas vertreten durch die öffentlichen Grundstückskommissare – ganz konkret vor Ort auf die verkaufte Parzelle. Dort fungierten verpflichtend die Anrainer als Zeugen des Aktes, zweifellos um die exakten Grenzen der Grundstücke feststellen zu können, die in den Urkunden eben unter Nennung der Nachbarn beschrieben wurden. Deutlich zeigt sich daran die mindestens ebenso sehr auf die praktischen Bedürfnisse wie auf die rechtlichen Verhältnisse ausgerichtete Funktion der ἔμβασις.

Zentral ist nun, dass die ἔμβασις die Übertragung des Eigentums an den Käufer auch hier bereits voraussetzt.[30] Am deutlichsten wird dies in einer Urkunde, auf deren juristisches Interesse G. Thür aufmerksam gemacht hat (I.Mylasa 204).[31] Sie hält fest, dass ein gewisser Iatrokles die Grundstückskommissare gemäss dem Gesetz in das Land eingewiesen hat, „das diese für Zeus Otorkondes erworben haben und die er (*sc.* Iatrokles) an sie veräussert hat, ohne für sich selbst an diesen Orten etwas zurückzubehalten“. Wie das Perfekt signalisiert, sind der Kauf und Verkauf und die damit verbundene Eigentumsübertragung, abgeschlossene Akte. Dass dies bedeutsam ist, zeigt in der Inschrift eine hinzugefügte Einschränkung. Eine Ausnahme bildet nämlich jenes Land, über dessen Eigentum Iatrokles derzeit noch mit einem Dritten im Streit liegt. Erst wenn dieser Konflikt, der mit der Übertragung des Landes an den Gott nicht direkt zu tun hat, zu Gunsten von Iatrokles entschieden ist, soll auch die Inbesitznahme dieser Parzellen rechtskräftig sein entsprechend der nun durchgeführten ἔμβασις.[32] Die ἔμβασις selbst hatte keine rechtliche Wirkung, sofern die Eigentumsverhältnisse nicht vorher geklärt waren.

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[29] Sie sind nun am besten greifbar in der ausführlich kommentierten Edition von Pernin 2014, 297–445 Nr. 137–254. Die Tab. 66 ebd. 427 schlüsselt die einzelnen Dokumente nach Typen auf. Noch nicht aufgenommen sind die 2018 von Chr. Marek und E. Zingg als I.Mylasa Uzunyuva 13–19 publizierten Urkunden, von denen 14a und 15 die Inbesitznahme dokumentieren. Zur Datierung van Bremen 2018.

[30] Vgl. schon ohne direkte Problematisierung der Eigentumsfrage Pernin 2014, 423: „La vente est manifestement déjà conclue et l’acte sans doute déjà passé. Il me semble donc qu’il vaut mieux placer l’entrée en possession après l’acte d’achat dans le déroulement de la procédure.“

[31] Thür 2008a, 467-469; Thür 2008b, 182f. (von Pernin übersehen).

[32] I. Pernin 2014, 299f. Nr. 140 Z. 2–12: ἐνεβίβα[σεν κατ]ὰ τὸ[ν νόμον Ἰατροκλῆς] Δημητρίου τοῦ Φανίου ἰε[ρεὺ]ς Ἀφροδίτη[ς] Στρατείας Μασσωνεὺς τοὺς [εἰρημένους] κτηματώνας ὑπὸ τῆς Ὀτωρκονδέων φυλῆς … εἰς τὰς γέας τὰς ἐν τῷ Ὀμβιανῷ πεδίῳ τὰς καλου[μένας Δημ]ητριεῖον, εἰς τὰς οὔσας ἱερὰς Διὸς Ὀσογω, ἃς καὶ ἐκτηματώνηκαν τῷ Διῒ Ὀτωρκον[δέων σὺν τ]οῖς ἐνοῦσι δένδρεσι πᾶσι καὶ ἀμπέλοις καὶ εἰς τὰ ἐποίκια καὶ εἰς τὰ οἰκόπεδα καὶ εἰς [τ]ὰ λοιπὰ [ἔ]χοντα ἐν ταῖς προ[γε]γραμμέναις γέαις πάντα· εἰς ἃ καὶ παρακεχώρηκεν αὐτοῖς [ο]ὐθὲν ὑπολειπόμενος ἑαυτῷ ἐν τοῖς τόποις τούτοις πλὴν τῶν διαμφισβητουμένων [π]ρὸς Μελάνθιον Πόλλιος· ἐὰν δὲ κριθῇ καὶ τὰ διαμφισβητούμενα κατὰ Ἰατροκλῆν, ἔσονται [κ]αὶ εἰς ταῦτα ἐμβεβατευμένοι κυρίως κατὰ τήνδε τὴν ἔμβασιν.

Ohne die Problematik der ἐπικαταβολή in Ägypten direkt klären zu können, dienen die Verhältnisse im Rest der griechischen Welt vielleicht doch zumindest als Warnung davor, die Funktionen von ἐπικαταβολή und ἐμβαδεία zu vermischen.

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JOSÉ LUIS ALONSO (ZÜRICH)

THE MULTIPLICITY OF REAL SECURITIES IN THE PAPYRI: A HYPOTHESIS

Abstract: Egypt's papyri have long shaped our understanding of the broader Greek real security practice in Hellenistic and Roman times. This paper argues that their unique diversity and underlying logic are specifically Egyptian, triggered by early Ptolemaic tax legislation.

Keywords: hypothec, *hypallagma*, *menein*-contracts, *epikatabole*, Babatha, Dura-Europos

1. The Diversification of Real Securities in the Papyri.

One of the most bewildering features of real securities in the papyri is their diversity. Thirty years ago, Hans-Albert Rupprecht sketched an overview of the forms known to us.[1] Alongside possessory pledge (*enechyron*) and ordinary hypothecation (hypothec) he included, as had become canonical, (a) *mesiteia* over catoecic land, (b) *hypallagma*, and (c) up to five distinct forms of title-transfer security, that is, of transfer of ownership as guarantee; some of these were clearly native Egyptian, documented in Demotic, like the so-called *Kaufpfandvertrag* and the bilingual double sale-loan deeds from Tebtynis and Soknopaiou Nesos; others, instead he presented as Greek: the interrupted sales from Pathyris, the so-called *one en pistei*, and the so-called *menein*-contract. All in all, a staggering nine forms of real security.

Over the years, I have tried to make sense of this strange proliferation, which, to my knowledge, has few parallels in legal history.[2] As a result, a slightly less chaotic picture has emerged: *mesiteia*, as long understood, is merely a necessary euphemism for hypothecs on catoecic land, since such land was theoretically inalienable.[3] The interrupted sales from Pathyris and the so-called *one en pistei* are one and the same thing: the latter, as I hope to have shown,[4] never existed as the Greek form of real security

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1 Rupprecht 1995.

2 Cf. in particular Alonso 2008, Alonso 2016.

3 The formal distinction *mesiteia* – *hypotheke* obeys to the same scruple that makes *parachoresis* more appropriate than sale for catoecic land. For the fundamental identity between both, cf. the sources collected by Manigk 1909b: 296-302. Particularly clarifying is the tetrad sale/*parachoresis*, hypothec/*mesiteia* in the models of *P. Mich*. II 122 (42 CE Tebtynis).

4 Alonso 2016.

imagined in earlier scholarship [5] – the term being a phantom,[6] the practice an episode, in late Ptolemaic Pathyris, of the native Egyptian securities through suspended sale.[7] But even after this reordering of the material, the Egyptian papyri retain, alongside the obvious *enechyron* and *hypotheke*, and the native Egyptian forms, rather eccentric possibilities not attested elsewhere – namely, *hypallagma*[8] and the so-called *menein*-contracts.[9] The question thus is: why do we find these additional forms in Egypt?

An easy answer is that also they may have native Egyptian roots. This possibility has occasionally been entertained for both *hypallagma*[10] and *menein*-contracts.[11] It cannot be entirely ruled out, even though no real evidence supports it so far and neither form was tied to a specific population group – certainly not to native Egyptians.[12] My question today, in any case, is a different one. Not so much where the inspiration for these forms may have been found, but whether their existence, and the ensuing

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5 Cf. in particular Rabel 1907: 355-364; Mitteis 1912a: 135-141; Mitteis 1912b: 257-262 (nr. 233-236); Rupprecht 1995: 429-435; Herrmann 1989 = Herrmann 1990: 305-314. Skeptical, albeit with unconvincing arguments, only Manigk 1909: 306-328, cf. Mitteis 1912a: 136-139.

6 A *terminus technicus* was hypothesized by Gerhard and Gradenwitz 1904, upon their discovery of *P. Heid. inv*. 1278 = *MChr*. 233 (111 BCE Pathyris). On this document and its true meaning, extensively, Alonso 2016: 158-166. The term is nowhere else attested, and all attempts to identify further examples behind the frequent expressions ἐν πίστει and κατὰ πίστιν have failed (Alonso 2016: 166–181). Under close scrutiny, the expression vanishes even from *MChr.* 233: it merely describes the execution ἐν πίστει, i.e. „in guarantee", of a sale *syngraphe*, or its keeping ἐν πίστει, i.e. „in custody", at the *archeion*, as was customary in Pathyris following the old Egyptian practice of securing debts through suspended sale.

7 It was the merit of Pieter Pestman to decypher as securities these peculiar Pathyrite interrupted sale deeds: Pestman 1985a: 32, and 1985b, with a list on p. 46. For a detailed analysis of this practice, Alonso 2016: 134-139, with sources and lit. For the identification of *MChr*. 233 as a further example, Alonso 2016: 158-166.

8 On *hypallagma*, Alonso 2008, Alonso 2010: 11-26, *passim*; Alonso 2012, with lit. Still fundamental, Schwarz 1911, and, on its basis, the careful contrast with ordinary hypothecation in Mitteis 1912a: 141-151.

9 On these *menein*-contracts, Alonso 2016: 139-146, with lit. As with *hypallagma*, their discovery as a specific form of security is the merit of A.B. Schwarz: Schwarz 1937.

10 For *hypallagma*: Taubenschlag 1955: 275, cf., ironically, Pestman 1983: 281-282. In the earliest examples (Alonso 2008: 27-32), from the time of Augustus, what is given ἐν ὑπαλλάγματι – „in substitution" – are the title deeds. This could suggest an Egyptian origin, since in the Demotic tradition: (a) receiving a document was seen a condition for acquiring a right (Lippert 2008: 145); (b) creditors received security in that they „bought" the asset – even if only with suspended effect –, while through *hypallagma*, instead – i.e. „as replacement" – they receive just its title deeds. On the question, which must remain open, Alonso 2008: 45-46, *passim*.

11 Their forfeit clause, in fact, makes the creditor acquire not through the *epikatabole* that we expect in a hypothec (on this, *infra sub* 3), but through explicit analogy with a sale, as if he had purchased – ὡς ἂν πράσεώς σοι γενομένης –, as we read in *P. Oxy*. XXXIV 2722 (154 CE), ll. 26-27, *P. Oslo* II 40 A (150 CE), ll. 11-14, *P. Oslo* II 40 B (150 CE), ll. 41-44, all from Oxyrhynchos. Cf. Alonso 2016: 145-146. On this peculiarity, which recalls the native Egyptian suspended sales, in detail, *infra sub* 8 and nn. 112-116.

12 This is particularly clear for the Augustan *synchoreseis* where *hypallagma* is first preserved; in the *menein*-contracts, attested exclusively in late 1st and 2nd cent. CE Oxyrhynchos, the onomastic is occasionally more Egyptian, albeit in a time when this is to be taken with caution: for an eloquent reminder of the reasons for such caution, even for the Ptolemaic period, cf. Clarysse 2019.

plurality, follows any kind of logic: an institutional logic, in the sense that this plurality is no mere accumulation, not a chaos but a *cosmos*, in which each piece may find its *raison d'être*; and a historical logic, that may explain how this plurality came about. It is on these questions, I believe, that we can make radical progress.

When faced with a strange reality, it is often best to focus on its strangest feature – it may well hold the key to understanding it. Among the securities that we find in Egypt, the most peculiar is arguably *hypallagma*. And its most baffling feature is how burdensome its enforcement was for the creditor – so burdensome, in fact, that one is left wondering why anyone ever accepted it, or why it was created in the first place, given how much easier the old *hypothec* was to enforce. Let us begin our inquiry with this perplexing aspect of *hypallagma*.

2. *Hypallagma*

First attested under Augustus, *hypallagma* almost certainly did not originate only then:[13] it would be extraordinary luck to possess papyrological evidence from the exact moment an institution emerged, and the late Ptolemaic period is too sparsely documented to allow conclusions *e silentio*. In any case, there is nothing Roman about it.

The Augustan examples all belong to a batch of *synchoreseis* – deeds formalised in Alexandria as fictitious court agreements – from mummy cartonnage, found by Otto Rubensohn in Abusir el-Meleq in the early 20th century,[14] and published for the most part by Wilhelm Schubart in BGU IV.[15] This early model for *hypallagma* is quite consistent. One example will suffice to illustrate its essence. In *BGU* IV 1147 = *MChr*. 103 (13 BCE Busiris), a certain Eirene, upon borrowing 600 drachmas from Dionysios, secures the loan with a house-born female slave, in the following terms:

> [τῆς πράξ]εως γινομένης τῶι Διονυσίωι |$_{21}$ [ἔκ τε αὐτῆς] Εἰρήνης καὶ ἐκ τῶν ὑπαρχόν|$_{22}$[των αὐτῇ πά]ντων καθάπερ ἐγ (l. ἐκ) δίκη(ς), |$_{23}$ [ἔτι] δὲ καὶ ἐκ τῆς ὑπαρχούσης τῇ Ἰρήνῃ |$_{24}$ δούλης Ἐρωτίου, καθ' ἥσπερ κἀ ἀναδέδωκεν |$_{25}$ αὐτῶι Δ[ιο]νυσίωι ἐν ὑπαλλάγματι ἣν ἔχει |$_{26}$ [κατ› αὐτῆς οἰκογε]νειας ἀπογραφὴν καὶ μέ|$_{27}$χρι τοῦ δι[ευλυ]τῆσαι παρέξεσθαι αὐτὴν |$_{28}$ [ἀνεξαλλο]-τρίωτον καὶ ἀκαταχρημάτιστ(ον) [16]

As this example shows, *hypallagma* is quite a minimalist form of security. It boils down to a promise of non-alienation: until payment, the debtor undertakes to „preserve the slave unalienated and unencumbered" – παρέξεσθαι αὐτὴν | [ἀνεξαλλο]-

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[13] On the question and the unconclusive Ptolemaic evidence, Alonso 2008: 38-46.

[14] An overview in Schubart 1913.

[15] The material has been now collected by Peter van Minnen, with careful translations and bibliography, in https://classics.uc.edu/users/vanminnen/ancient_alexandria/index.html.

[16] "Dionysios having right of execution | upon Eirene herself and upon all her | belongings as if by virtue of a lawsuit, | as well as upon the female slave Erotion | belonging to Irene, regarding which she also has given | to the same Dionysios in *hypallagma* | the declaration of house birth that she had, and | (she concedes) that until cancellation she will preserve her | unalienated and unencumbered".

τρίωτον καὶ ἀκαταχρημάτιστ(ον), ll. 27-28. This secures the asset for the creditor in that, in case of default, it will remain in the debtor's estate, available for distraint.

In the Augustan *synchoreseis*, this inalienability is secured through a rather rudimentary expedient. The title deeds – here the declaration of *oikogeneia* of the slave – are handed over to the creditor. Being deprived of them does not make alienation *de iure* impossible, but in a deed-oriented legal culture it certainly makes it *de facto* difficult to find a buyer.[17] In fact, it is the deeds themselves, not the asset, that are given in *hypallagma* (κ̣αὶ ἀναδέδωκεν | α̣ὐτῶι Δ[ιο]νυσίωι ἐν ὑπαλλάγματι ἣν ἔχει | [κατ› αὐτῆς οἰκογε]ν̣ει̣ας ἀπογραφὴν, ll. 24-26), a formulation that could explain why the term *hypallagma*, lit. „substitution", „replacement", was chosen for this practice, in which, instead of a right over the asset (on this, soon), the creditor merely received the title deeds.[18]

The fact itself that the handover of the title deeds was deeemed necessary, and so central to the institution as to give it its name, strongly suggests that *hypallagma* alone was not enough to make a subsequent alienation invalid or even inopposable to the creditor; in other words, that *hypallagma* did not bestow on the creditor any right that he could assert against a third-party acquirer.

This fits with another striking feature of *hypallagma*. In our text, the creditor's right over the security – the slave Erotion – is part of the same *praxis*, of the same right of execution, that he has on the rest of the debtor's belongings. This must be understood literally. It means that if the creditor chooses to execute upon the slave, he must follow the exact same procedure he would need for any other of the debtor's assets – as if no security whatsoever had been granted over the slave.

That this was the case is confirmed by numerous documents that illustrate the execution procedure in Egypt, and has been well known since Andreas B. Schwarz first identified *hypallagma* as a distinct institution, separate from hypothec.[19] For *hypallagma*, distraint is illustrated by *P. Berl. Leihg*. 10 (120 CE Arsinoites), *P. Fam. Tebt*. 29 = *SB* I 5341 = *Jur. Pap*. 48 (133 CE Arsinoites), *BGU* IV 1038 = *MChr*. 240 (after 144 CE Arsinoites), *BGU* III 888 = *MChr*. 239 (160 CE Karanis), *BGU* III 970 = *MChr.* 242 (177 CE Arsinoites), *SB* XVI 13070 (187 CE Arsinoites), *P. Iand*. VII 145 (224-225 CE unknown provenance), and *P. Flor*. I 56 = *MChr*. 241 = *Jur. Pap*. 49 (234 CE Hermopolis).[20]

What these papyri show is that, although – as for any other documented debt – a

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[17] A more detailed discussion of the function of the conveyance of the title deeds, in Alonso 2008: 32-35.

[18] Alonso 2008: 36-37.

[19] Schwarz 1911: 69-113; Mitteis 1912a: 143-144.

[20] The striking absence of Oxyrhynchite materials and their concentration in the Arsinoites is no coincidence: *hypallagma* is only rarely attested in the Oxyrhynchites and then either for public debts (so, probably, *P. Oxy.* II 370 *descr*. = *P. Lond*. III 806 *descr*., late 1st. cent.) or as security for the dowry (*P. Oxy.* VII 1034 r, 2nd cent. CE, *P. Oxy.* VI 907 = *MChr*. 907 = *FIRA* III 41, 276 CE, and probably *P. Erl*. 76, 4th cent. CE; adde the mention in *P. Bour*. 16, 198 CE, where no further information is given), never for loans. This may be related to the fact that, as we will see (*infra sub* 9), the crucial function of *hypallagma* was covered in Oxyrhynchos by what seems to be an institution local to the nome: the *menein*-contract.

notarised document was sufficient for execution,[21] distraint on the asset under *hypallagma* required the exact same cumbersome procedure as distraint on any of the debtor's unsecured assets:[22] a first procedure of *enechyrasia*, leading to the acquisition through *prosbole* of the asset by the creditor; and a second one of *embadeia*, through which he was put in possession. Both involved, in Alexandria, the prefect and the *archidikastes*, and in the nome, the *strategos* and, as distraint officials, the *praktores*.[23] Both required time and money, and entailed a risk of complications for the creditor, since the debtor could raise *antirrheseis* at each stage.

All this amounts to the following: *hypallagma* consists merely in the assurance that, until payment, the asset shall remain among the debtor's belongings, available for ordinary distraint. Otherwise, it leaves the creditor in the same position as before: distraint proceeds as on unsecured items and, since the non-alienation agreement had to be enforced indirectly, by withholding from the debtor the title deeds, it seemingly conferred no right to claim the asset if alienated. In sum: the creditor acquires no right whatsoever on the items the debtor renounces to alienate. *Hypallagma* seems thus less a right of the creditor than a mere restraint.[24]

This remained so throughout Roman times, until *hypallagma* vanishes at the end of the 4th cent. CE.[25] The only important development came, for *hypallagmata* on immovables, in the second half of the 1st cent. CE, with the introduction of the *bibliothekai enkteseon*,[26] where legal transactions on landed property were recorded.

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[21] Wolff 1978: 174-175.

[22] On this distraint procedure, cf. the foundational studies of Jörs 1915, 1918, 1919; later, Rupprecht 1997b = Rupprecht 2017: 150-161, and Rupprecht, in Keenan 2014: 259–265. For the distraint on *hypallagma* in particular, Mitteis 1912a: 159-161.

[23] How hypallagmatic distraint may have functioned in Ptolemaic times – assuming *hypallagma* is not an early Roman innovation – is less well known. *Enechyrasia* is attested as early as 227 BCE in *P. Tebt.* 814, with the traits familiar from Roman practice – the involvement of a *praktor* and the creditor's *paradeixis* –, though in this case not based on a credit deed but on a verdict of the *chrematistai*. Likewise, the first two fragments of the apparent royal ordinances in *P. Hib.* II 197, also from the 3rd century BCE, seem to regulate procedures of *enechyrasia* and *embadeia*. It is thus clear that these distraint procedures were at least in their outline no Roman innovation. In the same sense speaks the involvement of Ptolemaic officials like the *archidikastes* and the *praktores* – offices that the Roman administration seems to have kept mainly due to their role in this procedure.

[24] Our documents seem in fact to avoid the term *dikaion* to describe the position of the hypallagmatic creditor. The only exception is *P. Lips*. I 8 = *MChr*. 210 (220 CE Hermopolis): ἀπογρά(φομαι) (…) δίκαιον ὧν ὑπήλλαξέν μοι κατὰ διαγρα(φὴν) (…) κλήρων κατο[ι]κικῶν [(ἀρουρῶν) τριῶ]ν (ll. 3-9). In *P. Tebt*. II 318 = *MChr*. 218 (166 CE Tebtynis), a non-alienation agreement not explicitly labelled as *hypallagma*, the term *dikaion* does not refer to the immediate effect of *hypallagma*, but to the future right of distraint: [φο]|[βου]μένη δ[ὲ] μὴ λάθω [κατὰ] τὸ εἴς με δίκαι[ον] οἰκονομεί|[ας κα]τὰ τῷ[ν πρ]οκειμέν[ων] ἀρουρῶν (ll. 18-20).

[25] The last clear attestations come from 4th cent. Hermopolis: *CPR* XVII A 5 a-b (316 CE), *P. Charite* 33 (331-332 or 346-347 CE), and *P. Charite* 34 = *CPR* I p.59 = *SB* I 5344 (318 or 348 CE). Other than this, a mention in *P. Erl*. 76 (4th cent. unknown provenance). On the datation of the very fragmentary *SB* XXVI 16729, Alonso 2008: 47-48.

[26] The *terminus ante quem* has long been 72 CE, through *BGU* I 184 = *MChr*. 202 (72 CE Arsinoites), cf. Wolff 1978: 48-49; Maresch 2002: 234-235; Lerrouxel 2016: 164-171; now,

In striking confirmation of what we have just concluded about the nature of our institution, *hypallagmata* seem – unlike ordinary hypothecations – not to have been recorded as rights in the creditor's *folium*, but only as burdens in the debtor's.[27] From the registration, a *katoche* – a „hold" or „lien" – resulted.[28] Until its cancellation upon payment, the debtor would not obtain from the record office the *epistalma* required for notarised alienation or encumbrance of the land.[29]

A good illustration of this mechanism is *P. Kron*. 18 = *SB* VIII 9880 = *Pestman* 37 (144 CE Tebtynis), where the daughter of Kronion, Tephorsais, secures a loan grant-

arguing convincingly for an introduction through Tiberius Iulius Alexander between 67 and 68 CE, Claytor 2020: 35-42. It has long been known that their "introduction" was in fact a decoupling from the *bibliothekai demosion logon*. Far less attention has been paid to how many of their functions on private landed property were already covered by the latter. *P. Mich*. V 353 (48 CE) and 354 (52 CE) suggest indeed that the core mechanism of the later *bibliothekai enkteseon*, the so-called *epistalma*-system requiring authorisation of the *bibliophylakes* for the execution of notarial deeds on private land, was already in place in the mid-first century through the catoecic registers and, for non-catoecic land, through *demosia* that can hardly be anything else than the *bibliothekai demosion logon*.

27 That hypothecs had to be registered as rights by their holders is explicitly ordered in the 89 CE Edict of Mettius Rufus, preserved in *P. Oxy*. II 237 (178 CE Oxyrhynchos), col. VIII, ll. 31-32: κελεύω οὖν πάντας τοὺς κτήτορας ἐντὸς μηνῶν ἓξ ἀπογρά|ψασθαι τὴν ἰδίαν κτῆσιν εἰς τὴν τῶν ἐνκτήσεων βιβλιοθήκην καὶ τοὺς δανειστὰς ἃς ἐὰν ἔχωσι ὑποθήκας. Examples of such registration as a right abound; particularly illustrative is the *diastroma* in *P. Oxy*. II 274 = *MChr*. 193 = *FIRA* III 104 (97 CE Oxyrhynchos), following the hypothec in the different stages of its execution. *Hypallagma*, instead, is conspicuously absent from Rufus' list of rights to be registered; and, in fact, in the extant material it is never registered as a right in the creditor's *folium*, but as a lien in the debtor's. This is particularly clear in *BGU* IV 1072 r I = *MChr*. 195 (after 138 CE unknown provenance), a *diastroma* of a husband, recording a *hypallagma* on his entire estate securing the dowry, and in *P. Oxy. Hels*. I 36 (167 CE Oxyrhynchos), ll. 14-19, authorising a creditor to put through the record office a universal lien – equal to a universal *hypallagma*, even if the term is not used – upon the name of the borrower. The emphasis on the debtor's consent to the creditor's registration request in *P. Lips*. I 8 = *MChr*. 210 (220 CE Hermopolis) and *P. Lips*. I 9 = *MChr*. 211 (233 CE Hermopolis) echoes such clause authorising the creditor to register the *hypallagma* (cf. also *P. Princ*. III 144, 219-220 or 239-240 CE Ptolemais Evergetis) and makes sense only for a registration in the debtor's *folium*. The registration of a *hypallagma* securing a fiscal credit in *P. Turner* 23 (144-145 CE unknown provenance), l. 19, must also refer to the *folium* of the debtor, not only because its aim is securing inalienability, but also all because a fiscal *folium* in the property record office is highly unlikely – indeed, that fiscal liens are to be registered to the name of the debtors is explicitly stated in the Edict of Tiberius Iulius Alexander, *OGIS* II 669 (68 CE), ll. 21-24. In *P. Tebt*. II 318 = *MChr*. 218 (166 CE Tebtynis), two non-alienation agreements, equivalent to *hypallagmata* but not labelled as such, are presented for registration, seemingly in a τάξις κατοχίμων (l. 21), attested also in *P. Gen*. II 101 (2nd cent. CE, Soknopaiou Nesos, Arsinoites): this seems to have been a list of persons or properties burdened by *katoche*; in any case, certainly not a list of *katoche*-holders. Too fragmentary for a secure interpretation is *P. Strasb*. I 56 (2nd-3rd. cent., unknown provenance).

28 That the *katoche* arises from the registration – not from the hypallagmatic deed itself – is explicitly stated in *P. Turner* 23 (144-145 CE Arsinoites), κ̣α̣ὶ | κατασχεῖν διὰ τῶν παρ' ὑμεῖν γραμματοφυλακίω(ν) (ll. 18-19), and *P. Wisc*. I 16 (140 CE unknown provenance), καὶ ἡ γενομένη ὑπὸ τοῦ Ὡρίωνος δ̣ι̣ὰ̣ τοῦ | αὐτοῦ βιβλιοφυλακίου κατοχὴ τῆς οἰκίας | πρὸς τὸ αὐτὸ δ̣ά̣νειον (ll. 8-10). Also the universal lien authorised by the debtor in *P. Oxy. Hels*. I 36 (167 CE Oxyrhynchos), ll. 14-19, is to be established through the record keepers.

29 On this *epistalma*-system, Mitteis 1912a: 97–103; von Woess 1924: 175–201; Wolff 1978: 247–253.

ed to her and her sister[30] with two arouras of catoecic land by presenting a request to the keepers of the record office of the Arsinoites, that no notarial assistance be given to her until she pays the debt:

> καθ' ὧν καὶ μὴ συνχρη|$_{20}$ματίζεσθαί μοι μηδὲν ἁπλῶς οἰκονο|$_{21}$μούσῃ, ἐπ' ἐξαλλοτριώσι ἢ ἐπὶ κα̣τ̣α̣χρη|$_{22}$ματισμῶι, ἄχρι οὗ ἀποδῶ τὰ ὀφειλό|$_{23}$μενα καὶ ἀπενέ\γ/κω τὴν [κ]αθήκουσαν |$_{24}$ ἀποχήν.[31]

Through the property record office, the enforcement of the non-alienation agreement became more refined, if perhaps not more effective: it is uncertain whether documents notarised without *epistalma* would have been deemed void,[32] and, in any case, non-notarised transactions, through *cheirographon*, were possible without *epistalma* and perfectly valid in court – even if notarisation was required for sales to be registered at the record office and for hypothecs to be brought to execution without declarative trial.[33] Whether assets thus alienated could be claimed by a registered *katoche* holder remains an open question.

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[30] The document was glued to the right of *P. Kron*. 17 = *SB* VIII 9879, executed in Tebtynis more than three years earlier, in Sept. 25th, 140 CE. This was the *grapheion* loan deed through which Tephorsais and her sister received from Didyme, for one year, the 362 drachmas that the present *hypallagma*, well beyond the due date, secures.

[31] „so that no notarial assistance | is given to me for any act of administration | whatsoever, through alienation or deed of | disposition, until I do not return the indebted | sum and receive the appropriate | receipt." Unlike the registration requests in *P. Lips*. 8 = *MChr*. 210 (220 CE Hermopolis) and *P. Lips*. 9 = *MChr*. 211 (233 CE Hermopolis), *P. Kron*. 18 is not styled as *apographe*, but directly as *hypallage*: it is in fact not the mere registration of a previously contracted *hypallagma*, but the *hypallagma* itself, formalised through the record office. Parallel examples, where the *hypallagma* is contracted directly through its registration are *P. Wisc*. II 54 (116 CE Arsinoites) and *P. Vars*. 10 (156 CE Arsinoites), col. III. On the phenomenon, Carrara and Flore 1965: 124-127. The expression „contracted through the record office", so frequent in 2nd cent. Arsinoites, is thus to be taken literally: *P. Fam. Tebt*. 29 = *SB* I 5341 = *Jur. Pap*. 48 (133 CE Arsinoites), ll. 42-43; *SB* XII 10786 = *P. Tebt*. II 531 *descr*. (133 CE Tebtynis), ll. 16-17; *P. Tebt.* II 389 = *MChr*. 173 (141 CE Tebtynis), l. 18; *BGU* IV 1038 = *MChr*. 240 (after 144 CE Arsinoites), l. 24; *P. Tebt. Wall*. 7 = *P. Tebt*. II 440 *descr*. = *SB* XVIII 13788 (mid 2nd cent. Tebtynis), l. 13; *SB* XVI 13070 (187 CE Arsinoites), l. 3. The expression is to be integrated also in *P. Berl. Leihg*. 10 (120 CE Arsinoites), l. 18. Cf. also *SPP* XX 13 (254 CE Arsinoites), l. 11, and *P. Erl*. 76 (4th. cent. CE Oxyrhynchos), ll. 9-10.

[32] The Gnomon of the Idios Logos foresees only a 50 dr. fine, cf. *BGU* V 1210 (2nd cent. CE Theadelphia), ll. 227–228. Invalidity was postulated by Grenfell and Hunt on the basis of the Edict of Mettius Rufus, but the relevant part is their own integration, cf. *P. Oxy.* II 237 (186 CE Oxyrhynchos), col. VIII, ll. 36–38: παραγγέλ`λ´ω δὲ καὶ τοῖς συναλλα|γματογράφοις καὶ τοῖς μνήμοσι μηδὲν δίχα ἐπιστάλματος τοῦ βιβλιοφυλακί[ου τελειῶσαι, γνοῦσιν ὡς οὐκ ὄφελος τὸ] τ̣ο̣ιοῦτο ἀλλὰ καὶ |αὐτοὶ ὡς παρὰ τὰ προστεταγμένα ποιήσοντες δίκην ὑπομενοῦσι τὴν προσ̣ή̣κ̣ο̣υσαν. On the question, von Woess 1924: 220–222.

[33] On these and other flaws of the *epistalma* system, cf. in detail Alonso 2010: 18-20. Perhaps due to these shortcomings, the practice of depriving the debtor of the title deeds did not disappear completely: cf., decades after the introduction of the *bibliothekai enkteseon*, *BGU* I 301 (157 CE Arsinoites). An intriguing parallel can be found in a question posed to the late 2nd cent. Roman jurist Cervidius Scaevola, whose attention to provincial cases and to Greek documentary practice is well known (cf. Kübler 1907 and 1908; Taubenschlag 1919-1920a = Taubenschlag 1959 I: 505-517; Talamanca 2000-2001; Häusler 2016): Scaev. 5 *dig*. D. 13.7.43pr.: *Locum purum pignori creditori obligavit eique instrumentum emptionis tradidit* (…): (Someone) pledged a vacant plot to his creditor as security and handed over to him the purchase deed (…).

3. Hypothec

Hypothecations on real property, since they usually contained, like *hypallagmata*, a non-alienation agreement,[34] could also be registered as *katoche* in the debtor's *folium* at the property record office;[35] but it was compulsory for their holders, in any case, to register them to their name as part of their own *ktesis*[36] – unlike *hypallagmata*, in fact, they were always treated as rights.[37]

The reason for this difference lies in the way in which hypothec was realized upon default. Upon default, in fact, the hypothecary creditor needed assistance only to enter into possession, through the same *embadeia* procedure required as second step for *hypallagma* and indeed for any creditor enforcing distraint.[38] In order to acquire

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[34] In detail, Rupprecht 1997b = Rupprecht 2017: 162-172; *adde* Alonso 2012: 14-17, with further lit.

[35] This conjecture of Schwarz 1911: 62, has been confirmed by later documents. *P. Col*. X 252 = *SB* XX 14278 (late 1st cent. CE Alexandria), ll. 9-14, clearly implies that hypothecations show up in the record of the owner. Direct evidence is provided by: the *diastroma* extract in *P. Gen*. II 100 (128 CE Soknopaiou Nesos), ll. 9-11; *P. Oxy*. XVII 2134 (after 170 CE Oxyrhynchos), ll. 24-26, a loan authorising the hypothecary creditor to burden the asset with *katoche* in the debtor's record; *PSI* XII 1238 (244 CE Tamais), ll. 14-16, a receipt explicitly invalidating the *katoche* together with the hypothec; *P. Lond*. II 348 (p. 214) = *MChr*. 197 (202-203 CE Ptolemais Evergetis), a receipt where the creditor undertakes to cancel the *katoche* at the record office; *BGU* III 907 (180-192 CE Arsinoites), l. 10, a creditor's request to the *bibliophylakes* to that purpose. Possibly to a hypothec – the term used in the document is *asphaleia*, l. 11 – refers the registration as *katoche* in *SB* VI 9190 (131 CE Talao), ll. 18-20. Unclear is whether in *P. Hamb*. I 14 (209-210 CE Arsinoites), ll. 9-10, ἐν ὑποθήκῃ [δι' ὑ]|μῶν refers to the registration as *katoche* to the name of the petitioning debtor or just as right to the name of the creditor. Whether the debt registered in *P. Oxy*. XXIV 2411 (after 170 CE Oxyrhynchos), ll. 43-52, was secured by hypothec is uncertain, despite Purpura 1978.

[36] *Supra* n. 27.

[37] The fact that the rights to be recorded in the *bibliotheke enkteseon* were not characterised as such, that recorded ownership was labelled *ktesis* rather than *kyreia*, and the record office itself was labelled *enkteseon* by the Roman administration that established it, simply reflects the fact that on provincial land the eminent ownership of the Roman people or the Emperor reduced private ownership to *possessio vel ususfructus*, as we read in Gaius' Institutions (Gai. 2.7).

[38] Much of the *embadeia* material concerns *hypallagma* (*supra* ad n. 20) and unsecured debts. For hypothecated assets, the best example is the *embadeia* request in *P. Flor*. I 86 = *MChr.* 247 (after 86 CE Hermopolites), ll. 18–24, where the *epikatabole* is strikingly absent. Likely examples of *embadeia* initiated through *diastolikon* request seem the very fragmentary *BGU* XV 2473 (after 102 CE Arsinoites) and *P. Graux* II 27 (212–217 CE Ammoniake). *BGU* VII 1574 (176 CE Philadelphia) is the *antirrhesis* of a Roman debtor against the distraint of a hypothec. *P. Oxy*. XX 2280 (late 3rd cent. CE Oxyrhynchos) very fragmentarily records a trial before the *archidikastes* regarding the execution of a hypothec. The fact that the evidence is richer for *hypallagma* is simply a consequence of its success (*infra sub* 9). Ptolemaic evidence is even scantier: beyond the *epikatabole* (*infra* n. 44), it reveals almost nothing about the actual distraint. Even in *P. Polit. Iud*. 8 (133 BCE Herakleopolis), a petition to the *archontes* of the Jewish *politeuma* by a creditor who had effected *epikatabole* but was persuaded by the community to settle, there is no mention of *embadeia*, nor do we know whether he ever took possession of the vineland. That the *embadeia* procedure was already in place by the 3rd century BCE is clear from the sources (*supra* n. 23), but direct

the asset, instead, he did not need to go through any executive procedure at all. All he needed was to perform the so-called *epikatabole*.[39]

Whatever this act exactly entailed,[40] we know that it was sufficient for the asset to forfeit to the creditor, to become his;[41] and we know that it was an act of the creditor, one that depended exclusively on his will, even if it may have been performed before an official and involved the payment of the *telos epikataboles* – always kept at the exact rate of the general acquisition tax, the *enkyklion*, to which it belonged as a specific case–[42] not just as a consequence but as a requirement. As the documents themselves emphasise, the creditor is entitled to perform the *epikatabole*.

Since forfeiture upon default depended thus solely on the hypothecary creditor, it is unsurprising that – unlike his hypallagmatic counterpart – he was regarded as having acquired a right through the hypothecation itself: the right to effect *epikatabole* upon default and thereby become owner. That is why, unlike hypallagmatic creditors, he was called to register the hypothec as part of his *ktesis*. In fact, such a right to forfeiture makes it natural to view hypothecation as suspended ownership, the creditor akin to a conditional buyer.[43]

For the Ptolemaic period, the best preserved hypothecary deed – and thus our best illustration – is *P. Tebt*. III 1 817 = *C. Pap. Jud*. I 23 = *SB* I 4232 (182 BCE Tebtynis), a secured loan between two Jews of the epigone. The deed's overall structure and the

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evidence of its application to hypothecated assets is lacking.

39 One notable exception, where a hypothec (ἐπὶ ὑποθήκῃ, l. 9), not only goes through *embadeia* but also through *enechyrasia* (ἔτι δὲ καὶ ἣν ἐπόρισα ἐνεχυρασίαν καὶ τὴν ταύ[της] | [δημοσ]ίῳσιν καὶ τὰ ἐξῆς ἐπηκολουθηκότα νόμιμα μέχρις ἐμβαδίας, ll. 16-17) is *PSI* XII 1238 (244 CE unknown provenance); cf. Rupprecht 1995: 297 = Rupprecht 2017: 156. This could be explained if *epikatabole* were no longer in force in the mid-third century: *infra* nn. 45, 47.

40 On *epikatabole*, see in this same volume the contributions of Thomas Kruse and Victor Walser. From the older literature, Schwarz 1911: 119-125; Mitteis 1912a: 163-165; Rupprecht 1997b: 294-298 = 152-157.

41 Two main arguments lead inevitably to this result: (a) before requesting *embadeia* – that is, possession –, unsecured and hypallagmatic creditors acquire ownership through the nominal *prosbole* that takes place upon *enechyrasia*, which enables the transcription of the asset to their name at the property record office (cf. *P. Flor*. I 56 = *MChr*. 241 = *Jur. Pap*. 49, 234 CE Hermopolis, ll. 10-19); if hypothecary creditors, after *epikatabole*, only need *embadeia*, it must be because *epikatabole* sufficed to make them owners; (b) for catoecic land, *epikatabole* is replaced by *metepigraphe*, the transfer of the land in the catoecic register from the debtor to the creditor, through which the title itself is transferred: *BGU* XVI 2643 (8 BCE Herakleopolites); *P. Mich*. V 232 = *SB* V 7568 (36 CE Tebtynis); *P. Brem*. 68 (99 CE Hermopolis); *P. Strasb*. I 52 (151 CE Hermopolis).

42 For the integration of the *telos epikataboles* within the *enkyklion*, cf. explicitly, *P. Flor*. I 1 = *MChr*. 243 = *Jur. Pap*. 68 (153 CE Hermopolis), l. 6: ταξαμένοις τὰ εἰς τὸ ἐνκύκλιον καθήκοντα τέλη ἐπικαταβολὴν ποιήσα[σθ]αι. On the *telos epikataboles*, Alonso 2016: 130 n. 41, and 136-137 with n. 137.

43 Cf. Mitteis 1912a: 146: „Die so verstandene Hypothek ist also nicht eigentliches Pfandrecht, sondern aufschiebend bedingtes Eigentum". In the same sense already Rabel 1907: 358 n. 1, with an overview of the different legal traditions in which hypothecation arises as suspended sale in 364-370. On ownership, sale and hypothec, and the various possible configurations of their interplay, Alonso 2016: 121-126.

signalements annotated at its end correspond to a notarial document, either executed at the *agoranomeion* – in this case of Krokodilopolis in the Arsinoites – or at least deposited with the *agoranomos*. Sostratos borrows from Apollonios two talents and three thousand copper drachmas, nominally with interest only for the overtime, upon hypothec of the house belonging to him in the village of Apias, also in the Arsinoites. The loan is to be repaid within a year. The consequence of default is tersely formulated in ll. 19–20:

> [ἐ]ὰν δὲ μὴ ἀποδῶι καθὰ γέγραπται, ἐξέστω Ἀπολλωνίωι ἐπικα|$_{20}$[τ]αβολὴν ποιήσασθαι τῆς ὑποθήκης ἀκολούθως τῶι διαγράμματι.

That is: „if he does not repay as written, Apollonios shall have the right to effect the *epikatabole* of the hypothec in accordance with the royal ordinance". Crucial for us is that the *epikatabole* appears clearly as depending on the sole will of the creditor, indeed as something he is entitled to. Also, that it was regulated – and most likely introduced – by a Ptolemaic *diagramma*, earlier than 236 BCE, when the *epikatabole* is first attested: either the *Justizdiagramma* postulated by Wolff as omnicomprehensive regulation of the judicial system or a different one, perhaps a specific hypothec-*diagramma*, of Philadelphos – to whom Wolff attributes the *Justizdiagramma* – or, at the latest, given the *terminus ante quem*, Evergetes.[44]

In any case, the institution remained in place well after the Roman conquest, at least until the mid-second century[45] – when it was presented as effected „in accord-

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[44] The Ptolemaic material for *epikatabole* is not scarce. Together with our document: *SB* XVI 12344 = *P. Carlsberg* 48 (236 BCE Krokodilopolis); *P. Enteux*. 14 (222 BCE Magdola); *P. Enteux* 15 = *P. Lille* II 31 (218 BCE Magdola); *P. Tebt*. III 2 970 *descr*. = *C. Ptol. Sklav*. I 26 (early 2nd cent. BCE Krokodilopolis); *P. Polit. Iud*. 8 (133 BCE Herakleopolis). To this list, *P. Heid. Inv*. G 5017, dated by Armoni 2008 to 156 BCE Herakleopolis, has been added by Thomas Kruse in this same volume. The land recorded as ἐπικαταβεβλῆσθαι in *P. Haun*. IV 70 (119-118 BCE Apollonopolis), l. 396, is perhaps best understood, with the editors, as seized by the royal treasury; this is also the likely meaning of the expression in the late 2nd cent. BCE land registers from Herakleopolites published in *BGU* XIV: 2441, ll. 30, 48, 65, 73; 2444, l. 24; 2448, l. 2; 2449, l. 36; and 2450, l. 42.

[45] The occurrences in Roman times are not extraordinarily many, but enough to leave no doubts as to the survival of the *epikatabole*: *P. Oxy*. II 274 = *MChr*. 193 = *FIRA* III 104 = *Jur. Pap*. 60 (97 CE Oxyrhynchos); *P. Flor*. I 81 (103 CE Hermopolis); *P. Bas*. 7 = *MChr*. 245 = *SB* I 4434 (117-138 CE Arsinoites), plausibly reconstructed in l. 19; *P. Horak* 23 (148-149 CE Arsinoites); *P. Flor*. I 1 = *MChr*. 243 = *Jur. Pap*. 68 (153 CE Hermopolis); *BGU* VII 1651 (2nd cent. CE Philadelphia). Dubious is the meaning of γῆ ἐπικαταβεβλημένη ἀπὸ δεκαρουρίας κωμογραμματέως, in *SB* XIV 11533 = *SB* VI 9086 (104 CE Arsinoites). That the *epikatabole* is mentioned less often in Roman than in Ptolemaic times, despite the far greater number of surviving Roman papyri, can come as no surprise. It is the inevitable result of the diversification of security forms in Roman Egypt, which this paper seeks to elucidate: *epikatabole* remained confined to ordinary hypothecation, while other forms were favoured precisely because they avoided it and its tax, and may indeed have been introduced for that very purpose (see *infra sub* 8-9).

ance with the laws of the hypothecs"[46] –, perhaps even into the third.[47] At the latest, the prohibition of forfeit by Constantine in 320 CE would have effectively precluded the survival of the *epikatabole*.[48]

Particularly thorough among the documentary models for hypothecation in Roman times was the one followed for agoranomic deeds in Hermopolis, attested in several well-preserved payri. One of them is *P. Flor*. I 1 = *MChr*. 243 = *Jur. Pap*. 68 (153 CE Hermopolis).[49] A certain Ptolema borrows, through the bank of the *epiteretai*, two hundred drachmas from Hermione at a yearly interest of 12%, under hypothecation of part of a no longer operating oil mill. The loan is to be returned in two years. The consequence of default is articulated in much more detail than in its Ptolemaic counterpart, yet remains strikingly identical in substance:

> ἐὰν δὲ μὴ ἀποδοῖ τῆς προθεσμίας ἐνστάσης εὐθέως ἐξέστω τῇ δεδανικυίῃ (l. δεδανεικυίῃ) ἢ τοῖς παρ' αὐτῆς μὴ προσδεομένοις ἀνανεώσεως ἢ διαστολικοῦ ἢ ἑτέρου τινὸς ἁπλῶς, ταξαμένοις τὰ εἰς τὸ ἐνκύκλιον καθήκοντα τέλη ἐπικαταβολὴν ποιήσα[σθ]αι |$_{7}$ τοῦ ὑποτεθειμένου ὡς προκείται βείκου (l. βίκου) ἑνὸς τετάρτου καὶ κτᾶσθαι αὐτὴν καὶ τοὺς παρ' αὐτῆς τουτο (l. τοῦτον) κυρίως ἀντὶ τῶν [ὀ]φει[λομ]έ[ν]ων καὶ ἐμβαδεύειν (l. ἐμβατεύειν) εἰς αὐτὸν καὶ εἰσοικίζειν καὶ ἐνοικολογεῖν καὶ διαμισθοῦν καὶ ἀποφέρεσθαι τὰ ἐξ αὐτοῦ περιεσόμενα πάντα εἰς τὸ ἴδιον ἔτι δὲ καὶ χρᾶσθαι καὶ οἰκονομεῖν περὶ αὐτοῦ καθ' ὃν |$_{8}$ ἐὰν αἱρῶνται τρόπον ἐπὶ τὸν ἅπαντα χρόνον μηδενὸς τῇ δεδανισμένῃ (l. δεδανεισμένῃ) μηδ' ἄλλῳ ὑπὲρ αὐτῆς ἐξ ὑστέρου ἁπλῶς πε[ρ]ὶ τούτου καταλειπομένου λόγου ἢ παρευρέσεως.[50]

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[46] *P. Bas*. 7 = *MChr*. 245 = *SB* I 4434 (117-138 CE Arsinoites) l. 18-19: [ἐξεῖναι τῷ Πακύσι ἢ τοῖς παρ' αὐτοῦ χω]ρὶς διαστολῆς καὶ ἐπανγελείας τὴν τῆς ὑποθήκης | [ἐπικαταβολὴν ποιήσασθαι ταξαμένοις τὰ τέλη ἀκολούθως τ]οῖ[ς] νόμοις τῶν ὑποθηκῶν. The reconstruction is kept in the new edition as *P. Bas*. II 29. The more generic ἐπι[τ]ελεῖν τὰ κατὰ τῆς ὑ|ποθήκης νόμιμα in *BGU* III 741 = *MChr*. 244 = *FIRA* III 119 (143 CE Arsinoites), l. 28-29, and ἐχρή|σα\το/ ἐπὶ περιόντος αὐτοῦ τοῖς νομίμοις in *MChr*. 88 = *P. Cattaoui verso* (142 CE Arsinoites), ll. 10-11, may be so formulated as to include *ius distrahendi*, cf. Mitteis 1912a: 130.

[47] The question depends on the datation of *SB* XX 14628 and on the interpretation of the expression ἐπικα[τα]||βολῆς χειρόγραφον, as the document is labelled (ll. 6-7). The original datation to the 2nd cent. in El-Mosallamy 1988, unlikely in the presence of καὶ ἐπερωτ[η]θεὶς ὑπὸ [σο]ῦ | [ὡ]μο[λόγησ]α (ll. 11-12), is plausibly corrected in *BL* XI: 231 to the 23rd year (l. 12) of Caracalla, that is, to 214-215 CE, cf. already Gonis: 329.

[48] The imperial constitution is preserved in CTh. 3.2.1 and C. 8.34.3. On forfeit (*lex commissoria*) in Roman law and its Constantinian abolition, Burdese 1949; Peters 1973; Schanbacher 2002: 649-657; Verhagen 2013: 122-124. The absence of *epikatabole* in *P. Panop*. 21 = *SB* XII 11214 *dupl*. (315 CE Panopolis) suggests that it had lapsed already before the Constantinian constitution. Indeed, it may have disappeared a century earlier, if the *enechyrasia* of a hypothec in *PSI* XII 1238 (244 CE unknown provenance), l. 16, is any indication (*supra* n. 39).

[49] Cf. also *P. Flor*. I 81 (103 CE Hermopolis) and *P. Strasb*. I 52 (151 CE Hermopolis).

[50] „If she does not return in the established term at once, it shall be lawful for the lender or those acting for her, without having to accept a postponement and without injunction or anything else, by paying the taxes due to the *enkyklion*, to effect the *epikatabole* | of the hypothecated, as aforementioned, one and a fourth biko (of a no longer operating oil mill), and for her and those acting for her to acquire it as owner in lieu of the indebted sum and

More than three centuries later, the core of the creditor's right upon default remains in place: he is entitled to effect the *epikatabole*. The formulation is, however, much more explicit regarding certain aspects of this right: (a) it arises immediately upon default: the creditor is entitled to it without postponement, injunction or any other prerequisite;[51] (b) it requires payment of the taxes due to the *enkyklion*, as the Ptolemaic evidence also illustrates;[52] (c) no further step is necessary for the creditor to acquire ownership on the hypothecated asset, with the full faculties of any owner to enter in possession, use, enjoy and freely dispose.

Needless to say, the fact that the creditor, after the *epikatabole*, is as owner entitled to possession does not allow him to seize it by his own means: thus, if possession is not freely surrendered by the debtor, *embadeia* will be necessary, as the sources make clear,[53] despite our document's silence in this respect.[54]

Even with this caveat, the advantage of hypothec over *hypallagma* remains evident. So evident, in fact, that it begs the question: if hypothec is so much easier to enforce, why would any creditor prefer *hypallagma*? Why accept a form of security that must be executed as if no security had been given at all? Indeed, why was *hypallagma* introduced in the first place, if it was so much more cumbersome than the already existing alternative?

4. The Debtor's Liability

One plausible answer becomes apparent if we compare how the debtor's liability is articulated in *hypallagma* and hypothec. In *hypallagma*, as we have seen, the creditor's right to distrain the secured asset is part of the same *praxis* clause that also entitles him to distrain, alternatively, any other property of the debtor. So, for instance, the already examined *praxis* clause in *BGU* IV 1147 = *MChr*. 103 = *Jur.Pap*. 45 (13 BCE Busiris):

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to enter in possession of it and dwell in it and receive rent for it and lease it out and take as her own all the produce, as also to use and administer regarding it according to | her own will and desire for all time, and there will not be for the borrower nor for those acting for her concerning this any claim or objection of any sort."

51 Postponement beyond the contracted term (*ananeosis*) is well attested in the sources, as it required payment of a 2% *telos ananoseos*, cf. Rupprecht 1981 = Rupprecht 2017: 119-126. Its exclusion is more rhetorical than effective: a debtor can never demand *ananeosis*, and a creditor may always grant it, even if he had expressly excluded it, as here. More problematic is the exclusion of the injunction (*diastolikon*), since the procedure for entering possession (*embadeia*) began with it. The clause may be intended in the sense that the debtor agrees not to force *embadeia* but to surrender possession voluntarily after *epikatabole*. Yet, it is difficult to imagine any form of enforcing such clause other than initiating *embadeia* with the request that *diastolikon* be served to the debtor.

52 *Supra* n. 42.

53 *Supra* n. 38.

54 *Embadeia* is usually omitted from hypothecary deeds—unsurprisingly, as it was required *ex lege* and credit deeds rarely spell out legal constraints on creditors. Its absence here is notable only due to the exceptionally detailed forfeit clause. It would be easy to understand if the clause excluding the *diastolikon* were meant as an agreement by the debtor to surrender possession voluntarily (*supra* n. 51).

> [τῆς πράξ]εως γινομένης τῶι Διονυσίωι |$_{21}$ [ἔκ τε αὐτῆς] Εἰρήνης καὶ ἐκ τῶν ὑπαρχόν|$_{22}$[των αὐτῇ πά]ντων καθάπερ ἐγ (l. ἐκ) δίκη(ς), |$_{23}$ [ἔτι] δὲ καὶ ἐκ τῆς ὑπαρχούσης τῇ Ἰρήνῃ |$_{24}$ δούλης Ἐρωτίου, καθ' ἥσπερ κ̣αὶ ἀναδέδωκεν |$_{25}$ α̣ὐτῶι Δ[ιο]νυσίωι ἐν ὑπαλλάγματι ἣν ἔχει |$_{26}$ [κατ› αὐτῆς οἰκογε]ν̣ειᾶς ἀπογραφὴν καὶ μέ|$_{27}$χρι τοῦ δ̣ι[ευλυ]τῆσαι παρέξεσθαι αὐτὴν |$_{28}$ [ἀνεξαλλο]-τρίωτον καὶ ἀκαταχρημάτιστ(ον) [55]

The *praxis* clause in *hypallagma* is always formulated along these lines: the creditor is entitled to proceed in execution against the debtor and all her belongings, including the asset under *hypallagma*. He is thus free to choose between the pledged asset and anything else she may own – in fact, he does not even need to choose: he may distrain upon both further assets and security, if the latter were or became insufficient.[56]

This perfectly corresponds to the evidence available for the distraint: in their petitions to the Alexandrian *archidikastes*, through which execution was initiated, the creditors emphasise that their *praxis* comprises, with the assets under *hypallagma*, the entire estate of their debtors.

A well preserved example is *BGU* III 888 = *MChr*. 239 (160 CE Karanis), from the archive of the auxiliary soldier C. Iulius Apollinaris,[57] regarding a loan of 200 drachmas with interest that, before entering the military, he had granted, along with his brother Sabinus, to a certain Thenapynchis. The loan had been given under *hypallagma* of some catoecic land, a share of a palm grove and a house with courtyard. Now, thirty years later, both his brother and the debtor deceased, Apollinaris initiates distraint against the latter's heirs, requesting to the *archidikastes* that his petition be served on them through the *strategos* as notice of default (*diastolikon*) „in order that they pay me the aforementioned capital and the corresponding interest or else be aware that I shall have the right of execution as is proper, by virtue of the document of *enechyrasia* that I shall have executed, from the aforementioned belongings and from everything else of hers that I may find, as is proper":

> ὅπως [ἀ]π[οδ]ῶσί μοι τὸ π[ροκείμενον] κεφάλαιον κα[ὶ τόκ]ους ἴσους ἢ εἰδ[ῶσι] |$_{23}$ ἐ[σο]μένην [μοι] τὴν [π]ρᾶξ[ι]ν ὡς καθήκει ἀφ' ὧ[ν ἐὰν τελ]ειώσω ἐνεχυρ[α]σίας γραμμάτῳ[ν] |$_{24}$ ἔ[κ τε] τῶ̣ν π̣[ροκ]ειμέν[ων ὑπ]αρχόντων καὶ ἐ̣[ξ ὧν ἂ]ν ἄλλων εὑρίσκ[ω] αὐτῆς |$_{25}$ ὡς καθ[ή]κει. [58]

The choice of the specific assets to be seized was made by the creditor through the so-called *paradeixis eis enechyrasian*,[59] with the cooperation of the *praktores* and

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[55] Translation *supra* in n. 16.

[56] A well known example of a creditor who goes beyond the assets under *hypallagma* is Aurelia Aretous proceeding in execution against the minor son and heir of her debtor Aurelius Castor in *P. Flor*. I 56 = *MChr*. 241 = *Jur. Pap*. 49 (234 CE Hermopolis), ll. 10-16.

[57] On the archive of Apollinaris –not to be confused with the the C. Iulius Apollinaris who served as legionary half a century earlier, in the time of Trajan– see Mitthof 2000: 397-399.

[58] Cf. also *P. Fam. Tebt*. 29 = *SB* I 5341 = *Jur. Pap*. 48 (133 CE Arsinoites), ll. 42-48.

[59] Our best examples of *paradeixis eis enechyrasian* of a hypallagmatic creditor are *P. Iand*.

the *strategos* of the nome, who presumably also saw to it that their value remained proportional to the debt.

Hypallagma, in sum, ensured that certain assets remained inalienable in the estate, but by no means confined to them the creditor's right of distraint.

Things look very different in hypothecations. Let us examine once more, in full detail this time, how the consequences of default are laid out in our Ptolemaic example, *P. Tebt*. III 1 817 = *C. Pap. Jud*. I 23 = *SB* I 4232 (182 BCE Tebtynis):

> [ἐ]ὰν δὲ μὴ ἀποδῶι καθὰ γέγραπται, ἐξέστω Ἀπολλωνίωι ἐπικα|$_{20}$[τ]αβολὴν ποιήσασθαι τῆς ὑποθήκης ἀκολούθως τῶι διαγράμματι. |$_{21}$ βεβαιούτω δὲ Σώστρατος Ἀπολλωνίωι τὴν ὑποθήκην ταύτη[ν] |$_{22}$ καὶ παρεχέσθω αὐτὴν ἀνέπαφον καὶ ἀνενεχύραστον καὶ ἀνεπι|$_{23}$δάνειστον ἄλλου δανείου καὶ καθαρὰν ἀπὸ βασιλικῶν. ἐὰν δὲ μὴ |$_{24}$ βεβαιοῖ ἢ μὴ παρέχηται καθὰ γέγραπται ἢ κίνδυνός τις γένη|$_{25}$ται περὶ τὴν ὑποθήκην ταύτην ᾗτῳι περὶ πᾶσαν ἢ μέρος |$_{26}$ αὐτῆς τρόπωι ὠιποτοῦν (l. ᾧποτοῦν), ἀποδότω Σώστρατος Ἀπολλωνίωι |$_{27}$ τὸ δάνειον τοῦτο ἐντὸς τοῦ ἐνιαυτοῦ παραχρῆμα. ἐὰν δὲ μὴ ἀπο|$_{28}$δῶι καθὰ γέγραπται, ἀποτεισάτω Σώστρατος Ἀπολλωνίωι |$_{29}$ παραχρῆμα τὸ δάνειον ἡμιόλιον καὶ τοῦ ὑπερπεσόντος |$_{30}$ χρόνου τόκον ὡς ἐγ (l. ἐκ) δύο δραχμῶν τῆι μνᾶι τὸν μῆνα ἕκαστ[ον]. [60]

What is immediately striking is the following: If the debtor defaults, the creditor has the right to autonomously acquire the security through *epikatabole* – nothing else. His right is confined to the hypothec: he has no further claim against the debtor or the rest of his property. Only if the hypothec failed (l. 23 ss.), due to third-party rights (*bebaiosis*) or because it perishes in whole or in part (*kindynos*), would the debtor become liable. Only in such case would he be obliged to repay the capital, increased by half as penalty, and with interest on arrears.

The structure of this default clause is so peculiar that it deserves a careful reading. The repayment of the loan is mentioned twice. First, simply as a condition for *epikatabole* (ll. 19–20): if the loan is not repaid, the creditor may enforce it and acquire the hypothecated asset – secured from third-party claims (*bebaiosis*), as in a sale, and free from private and public encumbrances. That is the end of the story. Only if there

VII 145 (224-225 CE unknown provenance), and *P. Flor*. I 56 = *MChr*. 241 = *Jur. Pap*. 49 (234 CE Hermopolis), l. 14; see also *SB* XVI 13070 (187 CE Arsinoites), l. 3, and *P. Ryl*. II 176 (200-210 CE Hermopolis), l. 5. The procedure was identical to that for unsecured debts, for which cf. *P. Lips*. I 120 = *MChr*. 230 (89 CE Oxyrhynchos); *P. Lond*. III 908 (p. 132) = *MChr*. 229 (139 CE Hermopolis), l. 23-24; *P. Oxy.* IV 712 = *MChr*. 231 (146-161 CE Athribites), l. 2. On the *paradeixis*, Jörs 1915: 317-327; Schwarz 1911: 97-98.

[60] „If he does not repay as written, Apollonios shall have the right to effect | *epikatabole* of the hypothec in accordance with the royal ordinance (*diagramma*); | Sostratos shall guarantee this hypothec to Apollonios | and shall produce it unencumbered, not liable to distraint and not subject | to another loan, as well as free from royal claims. If he does not | guarantee it or produce it as written or if any risk | occurs with regard to this hypothec, for the whole or for a part | of it, in any way whatsoever, Sostratos | shall repay this debt to Apollonios forthwith within the year. And if he does not | repay as written, Sostratos shall forfeit to Apollonios | forthwith the loan increased by one half and for the overtime | interest at the rate of two drachmas per mina per month (= 2%)"

is no security to be acquired – because it has perished or because a third party holds a better claim – does repayment become an actual obligation, something that the debtor „shall do", to the point that only for that case interest on arrears and the penalty of the *hemiolion* are foreseen. The debtor's liability is so thoroughly eclipsed by the hypothec that the model's drafters do not even remember to include a *praxis* clause against the debtor and the rest of his belongings, should the hypothec fail.

Roman hypothecations remain stubbornly consistent in this respect. Also in our Roman example, *P. Flor*. I 1 = *MChr*. 243 = *Jur. Pap*. 68 (153 CE Hermopolis), the creditor is initially led solely to *epikatabole*, in the elaborate formulation already discussed (*supra sub* 3 and n. 50):

> ἐὰν δὲ μὴ ἀποδοῖ τῆς προθεσμίας ἐνστάσης εὐθέως ἐξέστω τῇ δεδανικυίῃ (l. δεδανεικυίῃ) ἢ τοῖς παρ' αὐτῆς μὴ προσδεομένοις ἀνανεώσεως ἢ διαστολικοῦ ἢ ἑτέρου τινὸς ἁπλῶς, ταξαμένοις τὰ εἰς τὸ ἐνκύκλιον καθήκοντα τέλη ἐπικαταβολὴν ποιήσα[σθ]αι |$_{7}$ τοῦ ὑποτεθειμένου ὡς προκείται βείκου (l. βίκου) ἑνὸς τετάρτου καὶ κτᾶσθαι αὐτὴν καὶ τοὺς παρ' αὐτῆς τουτο (l. τοῦτον) κυρίως ἀντὶ τῶν [ὀ]φει[λομ]έ[ν]ων καὶ ἐμβαδεύειν (l. ἐμβατεύειν) εἰς αὐτὸν καὶ εἰσοικίζειν καὶ ἐνοικολογεῖν καὶ διαμισθοῦν καὶ ἀποφέρεσθαι τὰ ἐξ αὐτοῦ περιεσόμενα πάντα εἰς τὸ ἴδιον ἔτι δὲ καὶ χρᾶσθαι καὶ οἰκονομεῖν περὶ αὐτοῦ καθ' ὃν |$_{8}$ ἐὰν αἱρῶνται τρόπον ἐπὶ τὸν ἅπαντα χρόνον μηδενὸς τῇ δεδανισμένῃ (l. δεδανεισμένῃ) μηδ' ἄλλῳ ὑπὲρ αὐτῆς ἐξ ὑστέρου ἁπλῶς πε[ρ]ὶ τούτου καταλειπομένου λόγου ἢ παρευρέσεως

As in the Ptolemaic model, next comes the *bebaiosis*, formulated as in a sale contract, since through *epikatabole* the creditor acquires the hypothec as a buyer would. It is followed by a prohibition to alienate, intended to have real effect, rendering subsequent alienations unenforceable against the creditor.[61]

Only after all this, as in the Ptolemaic model, does the repayment of the loan appear as an actual obligation – and only for the case that something happens to the security. Only then is the borrower deemed truly bound to return the sum, and only in that case does the creditor gain execution rights, *praxis*, against the debtor and the rest of her belongings:

> ἐὰν δὲ τις κίνδυνος [γ]ένηται περὶ τήνδε τὴν ὑποθήκην πᾶσαν ἢ μέρος τρόπῳ ᾧτινοῦν ἀποδότω ἡ δεδανισμένη (l. δεδανεισμένητῇ) δεδανικυίῃ (l. δεδανεικυίῃ) ἢ τοῖς παρ' αὐτῆς τὰ ὀφειλομένα πάντα καὶ τοῦ ὑπε[ρ]-πε|$_{10}$σόντος μετὰ τὴν προσθεσμίαν χρόνου τόκον δραχμιαῖον ἑκάστης μνᾶς κατὰ μῆνα ἕκαστον καὶ ἃ ἐὰν ἀπαιτηθῇ ἡ δεδανικυία (l. δεδανεικυῖα) ὑπὲρ τῆσδε τῆς υποθήκης τέλη καὶ ἃς ἐὰν ποιήσηται δαπάνας ὁμοίως σὺν τόκοις

[61] ll. 8-9: βεβαιούτω δὲ ἡ δεδανισμένη (l. δεδανεισμένη) τήνδε τὴν ὑποθήκην πάσῃ βεβαίωσει ἀπό τε δημοσίων καὶ ἰδιωτικῶν καὶ ἀπὸ πάντων ἁπλῶς ἣν καὶ μὴ ἐξέστω [α]ὐτῇ | πωλεῖν μηδ' ἑτέροις ὑποτίθεσ[θ]αι μηδ' ἄλλο τι περὶ αὐτῆς κακοτεχνεῖν ὑπεναντίον τούτοις τρόπῳ μηδενὶ, ἢ τὰ παρὰ ταῦτα ἄκυρα εἶναι: „The borrower shall guarantee this hypothec with every guarantee from any public or private or any other claim, and it shall not be lawful for her | to sell nor hypothecate to others nor to in any other way act regarding it fraudulently against these provisions, or else whatever (be done) against these will be ineffective".

> ἕκαστα παρ\α/χρῆμα γεινομένης αὐτῇ ἢ τοῖς παρ᾽ αὐτῆς τῆς πράξεως παρά τε τῆς δεδανισμένης (l. δεδανεισμένης) καὶ ἐκ [τ]ῆσ|$_{11}$δε τῆς ὑποθήκης καὶ ἐκ τῶν ἄλλων ὑπαρχόντων αὐτῇ πάντων καθάπερ ἐκ δίκης. [62]

In terms of legal structure, one may describe this system by saying that the debtor's liability is concentrated in the pledge. But it would not be inaccurate to go a step further and say that it is absorbed by it: that the pledge is liable in place of the debtor, whose liability only reemerges, subsidiarily, if the hypothec fails. In practice, this means that the creditor has no freedom of choice: if the hypothec has neither perished nor been claimed by others, he must be content with it. The rest of the debtor's property lies beyond his reach.[63] This stunned the founders of juristic papyrology, accostumed to a hypothec – the Roman and that of our own time – which adds to the debtor's liability, as an accessory right (collateral), letting the creditor choose whether to pursue the pledge or rather enforce the debtor's ordinary liability. In the German scholarship, our phenomenon was labelled *reine Sachhaftung*, „purely real liability".[64]

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[62] „But if any risk arises concerning this hypothec as a whole or in part in any way, the borrower shall return to the lender or those acting for her the entire indebted sum and for the time | exceeding the agreed date an interest rate of a drachma for each mina for month, and the tax that the lender may have to pay because of this hypothec as well as the expenses that she may still bear, with interests, with no delay, and she or those acting for her shall have right of execution upon the borrower and upon this | hypothec and upon the whole rest of her belongings as if by virtue of a lawsuit".

[63] The only true exception, where *epikatabole*-forfeit appears to coexist with unrestricted liability, is a document that – for this very reason – drew great attention when first published by Ernst Rabel: *P. Bas*. 7 = *MChr*. 245 = *SB* I 4434 (117–138 CE Arsinoites), now republished as *P. Bas*. II 29. Despite the discovery of a fragment in Michigan (*P. Mich. inv*. 3958f), which has helped adjust the length of the lines, the substantive part of the document still lacks nearly half of each line on the left. Despite the gaps, it is indisputable that it concluded with an unrestricted *praxis* that was not stipulated merely for the case that the hypothec failed: μενούσης κυρίας | [τῆς ὑποθήκης, γινομένης τῷ Πακύσι τῆς πράξεως ἔκ τε τ]ῆς ὁμολογούσης καὶ ἐκ τῶν ὑπαρχόντων [α]ὐτῇ πάντων καθά|[περ ἐκ δίκης]. This is not its only oddity: unique and baffling is the duplication, in two different formulations, of the non-alienation clause (ll. 15-17, μὴ ἐξεῖναι αὐτῇ πωλεῖν μηδὲ | [ὑποτίθεσθαι ἑτέροις μηδ᾽ ἄλλως καταχρηματίζειν], and, again, ll. 21-23, παρέξασθαι αὐτὴν τὴν ὑποθήκην ἀνέπαφον καὶ ἀνενε]χύραστον καὶ ἀνεπιδάνιστον); also unparalleled is the fact that the *praxis* comes at the very end of the document, after the *kyria* clause that would typically close it, almost as an afterthought. Extremely unusual is also *SB* I 4370 (229 CE Herakleopolites): the verb παρακατατίθεμαι is used for the hypothecation (ll. 20–21); before the hypothec is even presented (ll. 16–19), we find a *praxis* clause that includes it, as if subject to the rules of distraint on unsecured assets; and, once the hypothec has been contracted, a forfeit clause without *epikatabole*. It could well be that *epikatabole* was no longer in force (*supra* nn. 45 and 47), but the document seems in any case haphazardly constructed, as does *P. Bas*. 7. It may be best to treat them as aberrations, as long as no parallels surface. For a harmonising interpretation, Schwarz 1937: 270 n. 2, with lit. On *BGU* III 741 = *MChr*. 244 = *FIRA* III 119 (143 CE Alexandria), cf. *infra* n. 65.

[64] The expression is somewhat misleading: in practice, as we have seen, liability is often not „purely real", since creditors routinely protect themselves through clauses that reinstate the debtor's liability for cases such as defects in title or the destruction of the asset. Yet (a) such

Against the backdrop of this kind of hypothec, the meaning of *hypallagma* becomes clear. In comparison, *hypallagma* offered a key advantage and a significant downside. The advantage: the debtor remained fully liable, his entire estate available for distraint. The drawback: the creditor had no privileged path to the pledge, no special right over it, other than the assurance – through additional mechanisms, like withholding the title deeds or registration – that it would remain available for distraint (*supra sub* 2). If he wished to foreclose on the pledge, he had to follow the same procedural steps as if no security had been given: applying not only for possession through *embadeia*, but first for ownership, through *enechyrasia* and the ensuing *prosbole*. This initial step, crucially, he could have spared himself had he chosen hypothec instead – which, through *epikatabole*, would have allowed him to become owner at his own discretion.

Whoever conceived this new form of security seems to have deemed it necessary to sacrifice the creditor's right to autonomous acquisition in order to grant him freedom of choice between the pledge and the rest of the debtor's estate. More technically expressed: to preserve the debtor's liability, autonomous forfeit had apparently to be sacrificed. The sacrifice came at a heavy cost for the creditor, as we have seen — a complex and risky procedure, executable only in Alexandria. No documentary model could have succeeded imposing such a burden without a reason. The sacrifice must have been seen as somehow inevitable. That, in my view, is what the very existence of *hypallagma* proves. For those who created it, as well as for the population at large that accepted it, it was „either/or": either autonomous forfeit or full liability – as if the two were mutually exclusive.[65] The question is: why were they seen as incompatible?

Mitteis and many after him believed that this incompatibility was intrinsic to hypothec in the Greek tradition. For them, *reine Sachhaftung*, „purely real liability" is not just a feature of the Ptolemaic and Roman practice but the very essence of the Greek hypothec.[66]

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debtor's liability remains as subsidiary to the pledge; and (b) the structure of the document seems to imply that it would not exist if such clauses were not added, and with them the *praxis* against the debtor. It is in this more nuanced sense that the expression ‚reine Sachhaftung' must be understood.

65 Further confirmation that the incompatibility lies in *epikatabole*-forfeit could be found in *BGU* III 741 = *MChr*. 244 = *FIRA* III 119 (143 CE Arsinoites), a loan between Roman soldiers, where the creditor reserves for himself the *praxis* not just in case of *kindynos*, but also if the hypothec does not cover the debt: τοῦ ἐνλείψοντος γείνεσ[θ]αι αὐτῷ τὴν πρᾶξιν | ἐκ τῶν ἄλλων τοῦ ὑ[πο]χρέου ὑπαρχό[ν]των (ll. 30-31); this may imply a hypothec with *ius vendendi* instead of forfeit (cf. [ἐ]ξῖναι τῷ Λουκίῳ Οὐαλε|ρίῳ Ἀμμωνιανῷ ἐπι[τ]ελεῖν τὰ κατὰ τῆς ὑ|ποθήκης νόμιμα πρ[ὸ]ς οὗ τι ἂν βαστάζ[ῃ], ll. 27-29), and thus explain, through the lack of *epikatabole*-forfeit, the unrestricted liability. Cf. Mitteis 1912b: 276, with lit. In this sense, the document adds to the arguments for the thesis we will present *infra sub* 7 and 8.

66 Mitteis 1912a:146-147; Rabel 1907: 364-368; Meyer 1920: 225, 235; Taubenschlag 1919-1920b: 249-251 = Taubenschlag 1959 I: 137-140; Sethe-Partsch 1920: 644. The consensus in the German scholarship that Greek real securities were instances of *reine Sachhaftung* was fostered by the evidence for early German law, and led also to the widespread as-

The logic that links forfeit to this „purely real liability" can be reconstructed as follows. The forfeit clause seems to be understood as binding both parties, not just the debtor: the creditor is also bound by it; by accepting the hypothec, he accepts the hypothecated asset in lieu of the debt, as we read in some documents.[67] This is what Mitteis means when he describes hypothec as anticipated *datio in solutum* – a substitutory payment accepted in advance by the creditor through the very act of hypothecation.[68] In this sense, Mitteis would say that hypothec is substitutive.[69]

Such would be the logic underlying hypothecation in the Greek tradition. And here beings also the *pars destruens* of this paper: for when we turn to the Greek hypothecations extant outside Egypt, things look very different. No *reine Sachhaftung*, no incompatibility between hypothecation and the debtor's liability, but a hypothec that leaves untouched the right to pursue the rest of the debtor's property. Outside Egypt, it seems, one could have the cake and eat it too. I will limit myself to strictly private law – thus only to the papyrological material – and to two examples: a parchment from Dura Europos and a a papyrus from the Babatha archive.

5. Outside of Egypt: Dura Europos

Our first example belongs to a series of hypothecations from Dura Europos that follow a very consistent Greek model, attested from 87 CE to 180 CE – seven instances spanning almost a century.[70] Our example will be *P. Dura* 20,[71] dated to 121 CE,

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sumption that the same had been true in archaic Roman law, cf. Kaser 1971: 144-145, 146. Paradigmatic in this sense is the characterisation of the Greek hypothec in Kaser 1971: 463, when discussing its influence on Roman law: „Von einem Einfluß der griechischen ὑποθήκη, die zwar auch in der Regel besitzlos ist, aber stets ‚reine Sachhaftung' bleibt, fehlt es an greifbaren Spuren".

67 *P. Flor*. I 1 = *MChr*. 243 = *Jur. Pap*. 68 (153 CE Hermopolis), l. 7: κτᾶσθαι αὐτὴν καὶ τοὺς παρ' αὐτῆς τουτο (l. τοῦτον) κυρίως ἀντὶ τῶν [ὀ]φει[λομ]έ[ν]ων. The same clause, in *P. Strasb*. I 52 (151 CE Hermopolis), ll. 7-8: καὶ κτᾶσθαι αὐτὴν καὶ τοὺς παρ' αὐτῆς ταύτας κυρίως ἀντὶ τῶν ὀφει|[λομένων. A different formulation of the same idea in *P. Oxy*. XVII 2134 (after 170 CE Oxyrhynchos), l. 21: ἐὰν δὲ μὴ [ἀπο]δῶ καθ' ἃ γέ[γρ]απται, κυριεύσεις ἀντὶ τούτων τῶν προκειμένων ἀρουρῶν.

68 Mitteis 1912a: 145.

69 Mitteis 1912a: 146: „Alles was wir über die Hypothek hören, führt zu der Vorstellung, dass sie im damaligen Rechtsleben als eine eventuelle Ersatzleistung empfunden worden ist". Hypothec is, in this sense, „substitutive", because accepted in lieu of payment; not „collateral", because it is not added to the debt but rather replaces it. Of course, when today's historians, following Finley, discuss whether Greek hypothec is substitutive, they are concerned with something completely different: not the effect of the hypothec on the debt, but the possible discrepancy in value between security and debt, and whether in case of discrepancy a claim arises or not. The question, so understood, lies beyond the purpose of this paper.

70 *P. Dura* 17 C and D (ca. 180 CE), *P. Dura* 21 (early 2nd cent. CE), *P. Dura* 22 (133-134 CE), *P. Dura* 23 (134 CE). Cf. also the gift of the hypothecated property back to the hypothecary debtor in *P. Dura* 18 (87 CE). Whether the acknowledgement of debt in *P. Dura* 24 (159-160 CE), since it refers to a renewal (*ananeosis*, ll. 16-18, 41-44, cf. *supra* n. 49 and *infra* n. 72), included hypothec, cannot be ascertained.

71 On the text, together with Rostovtzeff 1930 and Welles' commentary in the edition, cf. Millar 1998; Hackl 2010; Thommen 2010, with further lit. Among the rich juristic literature,

when the city was still under Parthian rule, after the short-lived Trajanic conquest.

Many of Dura's loans are antichretic; so is this one – though what the lender receives in lieu of interest is not habitation or usufruct, but the servile work of the borrower.[72] The loan thus functions as an antichretic *paramone*. The lender, Phraates, a eunuch, was an *arkapates*—either a minor feudal lord of a city or fortress, or a chief tax collector.[73] The borrower, Barlaas, a simple villager, receives from him 400 drachmas and, in place of interest, undertakes to remain with him as *kyrios* and furnish him servile assistance (δουλικὰς χρείας). Any unconsented absence, even sickness beyond seven days, triggers a penalty of one drachma per day.[74] Both such penalties and the capital, stipulated as free from risk,[75] are to be paid in one year.

With the year's completion, both parties are thus theoretically free to revert to the underlying loan arrangement. Of course, for Barlaas to do so and leave, he must repay the sum in full. Until Phraates receives it, he may keep Barlaas indefinitely in his service – but he may also, if he prefers, at any time, claim the sum back. As security, a hypothec is contracted, which, like all preserved Dura hypothecations, is universal,[76] extending to the debtor's entire estate, cf. ll. 6–7:

Koschaker 1931a; Koschaker 1931b; San Nicolò 1931; San Nicolò 1932: 461-464; Schönbauer 1932: 201-210; Taubenschlag 1949: 57-58.

72 The same happens in the very fragmentary *P. Dura*. 17 D (ca. 180 CE) and in *P. Dura* 21 (early 2nd cent. CE), quite similar to ours. On the Greek or Oriental roots of this *paramone*, cf. the discussion in the edition, p. 113 and nn. 24-26, with lit.

73 A detailed discussion of the term *arpakates,* in Gnoli 2007: 95-113, with lit. Phraates identifies himself as one of the men of Manesos, a quite prominent figure, collector of customs and *strategos* of Mesopotamia and Parapotamia, as well as arabarch, that is, chief of an Arab tribe (ll. 4-5).

74 The conditions of the *paramone* are laid out in ll. 7-11: ἀντὶ δὲ τῶν τόκων τοῦ αὐτοῦ ἀργυρίου συνπαρ[α|μένων] ὁ Βαρλάας τῶ[ι Φραάτει μέχρι τοῦ τῆς ἀποδόσεως] χρόνου παρέξεται αὐτῶι δουλικὰς χρείας, ποιῶν τὰ προστασσόμεν[α | αὐτῶι πά]ντα, οὐ γ[ιγνόμενος ἀφήμερος οὔτε ἀπόκοιτος ἄνευ τ]ῆς τοῦ Φραάτου γνώμης· ἐὰν δὲ ἀφημερεύσῃ ἢ ἀποκοιτήσ[ῃ ἀπὸ τοῦ Φραάτου,| ἐκ]τε̣ίσ̣ει ἐκ[άστης ἡμέρας δραχμὴν μίαν - ca.10 - ἐὰ]ν δὲ ἀσθενήσῃ πλεῖον ἡμερῶν ἑπτ[ά , ἐκ]τείσει ὁ Βαρ[λάας ἑκάστης ἡμέρας ἧς | ἂν ἀ]ργήσῃ δραχ[μὴν] μία[ν]· ἐὰν δὲ [εἰς ἱερόν τι κατα]φύ[γ]ῃ, βληθήσεται ἐκ τοῦ ἱεροῦ καὶ χρήσεται αὐ[τῶι] ὁ Φρα[άτη]ς [- ca.14 - | .]. . . οις, χορη[γή]σει μέντοι γε αὐτῶι ὁ Φρ[αάτης τὴν] κ̣α̣θ̣’ ἡμέραν τροφὴν καὶ ἀμφιεσμόν: “in place of the interests of this silver, staying | with [Phraates until the] time [of repayment], Barlaas shall furnish him servile assistance, doing all that is ordered | [to him, absenting himself neither by day nor by night without the] consent of Phraates. If he does so absent himself by day or night [from Phraates], | he shall pay [one drachma for each day ? …] and if he be sick more than seven days, Barlaas shall pay [for each day] | he is idle one drachma. If he take refuge [in a temple,] he shall be expelled from the temple and Phraates shall use him [… | …] but Phraates shall nevertheless furnish him his daily subsistence and clothing”.

75 The lender's right to claim those sums remains thus unaffected by flight, death, injury or any other risk: δρασμοῦ δὲ καὶ θαν̣ά̣[το]υ κ̣αὶ βλ[άβους καὶ] | ἑτέρων κιν[δ]ύνων οὐ μετέ̣σ̣ται τῶι δα[νειστῆι (ll. 12-13).

76 This was probably also the case in *P. Dura* 18 (87 CE), where the property is returned as a donation to the debtor, mother-in-law of the creditor.

(…) ἐπὶ ὑποθήκηι τ̣οῖς | [ὑπάρχο]υσιν αὐτῶι π[ᾶσιν - ca.14 -]ε̣υ̣ . [ἃ καὶ(?)] ἔσται παρὰ τῶι κυρίωι (…) [77]

A universal hypothec covering all present and future property overlaps entirely with the debtor's ordinary liability. It thus serves no purpose beyond ordinary *praxis* unless endowed with simplified enforcement or paired with a mechanism that blocks alienations or renders them inopposable to the creditor. About the former, we lack information for Dura. The latter is not stipulated in the document: unlike what was common in Egypt, Dura hypothecations lack a non-alienation clause, even though the debtor, as we have seen, retains possession of all his assets. Whether such clause was deemed unnecessary because alienations would be *ex lege* inopposable to the creditor, we do not know.

In our document, however, there is no such overlapping of hypothec and liability. In fact, as in all other preserved examples from Dura, the *praxis* clause understands the hypothec as confined to the debtor's property at the time of the agreement. The creditor's right, instead, is not limited to those assets, as we would expect in a system of *reine Sachhaftung*; rather, he is granted full *praxis*, both on the hypothecated property and on anything else which Barlaas may subsequently have acquired, as we read in ll. 17-19:

ἡ [πρ]ᾶξ̣[ι]ς ἔστα[ι] τῶι Φραάτει καὶ παν[τὶ] τῶι τὴν σ̣υ̣ν̣[γρα]φὴν ταύτην ἐπιφέροντι παρά τε |$_{18}$ [τοῦ Βα]ρλάρ̣[υ καὶ τ]ῶν ὑποκειμένων ὑπαρχόντων αὐτῶι καὶ ὧν ἂν ἐπικτή[σ]η̣[τ]α̣ι [ἄ]λ[λ]ω[ν, ἐκπ]ρ[άσ]σοντι κυρίως τὸ πᾶν πλὴν |$_{19}$ [. . . σὺ]ν τῶ[ι . . . . .]ω̣ι. [78]

Thus, the absorption of the debtor's liability by the hypothec – the incompatibility between hypothec and full debtor liability, between hypothec and unrestricted *praxis* – appears to be entirely ignored here. Indeed, since this is just one example among

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[77] „(…) upon hypothec of | all his belongings [? which] shall remain with its owner (…)". Since the loan, and thus the hypothec, is initially contracted for only one year, any extension of services and secured loan beyond that term requires a renewal (*ananeosis*) of the *syngraphe* – as it would in Egypt: *supra* n. 51 – executed through the *chrematisterion*, perhaps involving a tax. The creditor can demand such renewal from the debtor, under severe penalty: double the original loan amount, and the same for the crown (ll. 19-21). Cf. Welles' commentary in the edition, p. 110-111, with lit. in n. 11. The same clause is stipulated in *P. Dura* 21 (early 2nd cent. CE), *P. Dura* 22 (133-134 CE) and *P. Dura* 24 (159-160 CE). The renewal is described as actually effected in *P. Dura* 18 (87 CE), l. 4, although, quite suspiciously, on the very same day in which the hypothec was realized, through cession of the hypothecated assets to the creditor.

[78] „the right of execution shall correspond to the above Phraates and to anyone (else) who presents this written agrement both upon | Barlaas and upon his hypothecated belongings and from anything else which he has subsequently acquired, exacting rightfully except | […]". The clause is identical in *P. Dura* 21 (early 2nd cent. CE), ll. 6-8, and *P. Dura* 22 (133-134 CE), ll. 9-12. On the unfortunately mutilated limitation to the creditor's right at the end of this clause, also present in *P. Dura* 22, and clearly referred to assets exempt (*ex lege*?) from distraint, see Welles in the edition, p. 116.

many, it seems to be ignored in all preserved Dura hypothecations.

In truth, not only the debtor's unrestricted liability, but the general hypothecation itself stands in stark contrast to Egyptian practice. General hypothecations do exist in Egypt, but only as *hypallagma* – and for good reason: as hypothecs proper they would be intolerable for the debtor. Hypothecs in Egypt carry a forfeit clause, allowing the creditor, as we have seen (*supra sub* 3), to acquire ownership autonomously through *epikatabole*. A general hypothec would thus give the creditor unchecked power to strip the debtor of his entire estate. *Hypallagma*, by contrast, requires an official procedure of *enechyrasia* for execution, ensuring objective control over the extent of distraint (*supra sub* 2).[79]

Why was the forfeit clause not a problem in Dura? Because, in yet another striking contrast with Egyptian practice, Dura hypothecations contain none. They limit themselves to a *praxis* clause upon the hypothec and the rest of the property, as quoted above. Thus, the deed allows no autonomous forfeit at the will of the creditor but, like the Egyptian *hypallagma*, only ordinary execution – whatever form that may have taken in Parthian Dura,[80] perhaps simplified for hypothecary creditors. In short: these are not hypothecs in the Egyptian sense. The term remains, but the institution it designates is entirely different.

At this point, two main lessons can be drawn. (a) The sudden compatibility between unrestricted *praxis* and hypothec—so sharply at odds with Egyptian practice—can be easily explained away: unlike the Egyptian *epikatabole*, the Dura hypothecations do not grant the creditor autonomous forfeit. Yet (b) precisely this absence of autonomous forfeit and its consequences deepen the gulf between Egyptian practice and what we find in late 1st and 2nd century Dura, in no fewer than seven instances of a consistent model, kept over nearly a century. Without autonomous forfeit, without *reine Sachhaftung*, covering the entire property of the debtor: the entire logic of the institution is a different one.

Whether Parthian or broader Near Eastern influences are at play cannot be ascertained. What is certain, however, is that in Dura we find a Greek hypothecary model, expressed in clauses fully recognisable across the Greek-speaking world, yet radically different in its core logic from what we find in Ptolemaic and Roman Egypt. The question, then, is whether the idiosyncrasy lies solely with Dura, or also with Egypt. This question will be addressed shortly.

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[79] Cf. already Schwarz 1911: 48-54. No later evidence of general hypothec has come to light for the first three centuries of our Era. Only in Late Antiquity, when forfeit is abandoned after the Constantinian prohibition and universal hypothec *ex lege* proliferates across an increasing range of cases, does universal hypothecation take hold in Egypt, becoming as endemic there as in the rest of the Empire.

[80] In *P. Dura* 18 (87 CE), some decades earlier than our document, the hypothecated property was transferred to the creditor by the debtor through a deed of cession concluded through the local royal court: ἐκστῆναι εἰς αὐτ[ὸ]ν κατὰ χρημαṭι[σ]μὸν γε[ν]όμενον διὰ τοῦ αὐτόθι βασιλικ[οῦ | δικαστηρίου] (ll. 2-3, same formulation in the *scriptura exterior*).

6. Outside of Egypt: Babatha

Our second non-Egyptian example is a very well-known document from a very well-known *corpus*: Babatha's archive,[81] found in the early 1960s by Yigael Yadin in Nahal Hever, in the so-called Cave of Letters. The documents had been hidden there, in a carefully wrapped leather purse, by a Jewish woman, Babatha, daughter of Simeon, during the Bar Kokhba revolt of 132 CE, in which she likely met her end.

Our document, a Greek loan with hypothec, is *P. Yadin* 11,[82] executed in Ein Gedi, near the David Falls, in 124 CE. Less than two decades earlier, the region had been turned into a Roman province, *Arabia Petraea*. Like many other documents in the Babatha archive, the text is written twice, as a double deed with *scriptura interior* and *exterior*, with some interesting peculiarities in the *exterior* that do not alter what matters for our purpose.

The loan, 60 denarii of Tyrian silver at an annual rate of 12%, was taken by Judah, Babatha's deceased second husband,[83] from a Roman centurion, Magonius Valens of the *Cohors I Miliaria Thracum*. The security was a courtyard belonging to Judah's father, Elazar Kthousion, who, according to the document, had authorized the hypothecation, as we read in ll. 3-4:

> ἐπὶ ὑποθήκῃ τῇ ὑπαρχούσῃ ⟦Ελα⟧ αὐλῇ |[4] Ἐλαζάρῳ Χθουσιωνος (l. Χθουσίωνι) πατρί μου ἧς ἔχω ἐπιτροπὴν ὑποτιθέναι κα[ὶ ἐγ]μισθο[ῦν πα]ρὰ τοῦ αὐτοῦ Ἐλαζά[ρο]υ [84]

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[81] For a general overview of the archive, cf. Goodman 1991; Isaac 1992 = Isaac 1998: 159–181; Cotton 1999a; Cotton 1999b; Hamidovic 2008; Esler 2017; Katzoff 2019: 3–17. For a general survey of its rich legal aspects —leaving aside specific studies on central aspects, like procedure, guardianship and inheritance—, cf. Wolff 1980; Cotton 2002; Katzoff–Schaps 2005; Oudshoorn 2007; Czajkowski 2017. See now the studies collected in Cotton 2022.

[82] Extensively on several aspects of the document, together with Lewis in the edition, Esler 2014, and Oudshoorn 2007: 156-168, if occasionally less secure in their legal analysis.

[83] The fact that Judah's subscription appears in the papyrus as ἑρμηνεία, that is, translated into Greek from Aramaic, does not necessarily mean, as sometimes asserted, that he did not know Greek.

[84] „upon hypothec of the courtyard belonging | to Elazar Khthousion, my father, regarding which I have received procuratorship to hypothecate and lease out from the same Eleazar". The *scriptura exterior* diverges only in that it adds the location of the courtyard to Ein Gedi: ἐπὶ ὑπο|θήκῃ τῇ ὑπαρχούσῃ αὐλῇ ἐν Ἐνγαδοῖς Ἐλαζάρῳ Χθουσιῳνος (l. Χθουσίωνι) πατρί μου ἧς ἔχω ἐπιτρο|πὴν ὑποτιθέ[ν]αι καὶ ἐγμισθοιν (l. ἐγμισθοῦν) παρὰ τοῦ αὐτοῦ Ἐλα[ζάρο]υ (ll. 15-17). The paternal authorisation is presented not as mere consent but as procuratorship, ἐπιτροπή, suggesting that Judah did not simply receive approval for a prearranged transaction, but a broad mandate to choose the lender and determine the terms of the loan and hypothec himself. The procuratorship to lease seems related to a clause preserved in the *scriptura exterior*, confirming a lease already concluded with the same Valens: [κυρ]ίας τῆς μισ|θώσεως ἧς ⳟο[ι] . . . [. . .]υ ἐμίσθωσα (ll. 27-28). Such confirmation would make more sense in our document if it refers to the asset now hypothecated: in that case, Judah would have leased to Valens the very courtyard – directly adjacent to σκηναὶ and the πραισίδιον, quite likely the Roman military encampment – that he also hypothecated as security for the loan. It is tempting to imagine that the lease may have been paid through the loan itself, although, in that case, a fair agreement would have compensated it antichretically against the interest or part of it – and yet our loan deed stipulates the maximum legal rate, 12% per

Then, after the neighbours of the courtyard are listed and the borrower undertakes to repay capital and interest within a year, we read:

> καὶ ἐάν σοι [μ]ὴ ἀποδώσω τῇ ὡρισμένῃ |$_{8}$ προ[θ]εσμίᾳ καθὼς προγέγραπται τ[ὸ δίκα]ιον ἔσ[ται] σοι κτᾶσθ[αι χ]ρᾶσθ̣αι π[ωλ]ε̣ῖν διο̣[ικεῖν τὴ]ν αὐτὴν ὑποθήκην χ̣ω̣ρ[ὶς] |$_{9}$.[.].... κ̣[αὶ ἡ] πρᾶξ[ις ἔσται σο]ι κ̣α̣[ὶ τ]ῷ̣ [π]αρά σου καὶ [ἄλλῳ παντί τῷ δι]ά σου ἢ ὑπέρ σου κ̣[υρίως] |$_{10}$ τοῦτο τ[ὸ] γράμμα προφέροντι, ἔκ τε ἐμοῦ καὶ ἐκ τῶν ὑπαρχόντων [μου πάντῃ] πάν[των], ὧν κέκτημαι κ̣α̣ὶ ὧ̣ν ἐὰν |$_{11}$ ἐπικ̣τήσ̣ωμαι, πράσσοντι κυρίως, τρόπῳ ᾧ̣ ἂν αἱρῆ̣ται ὁ π̣ράσσ̣ω̣[ν. - ca.12 -] [85]

Default entitles the lender twofold: (a) he has the right to acquire, use, sell and administer the hypothecated asset; (b) execution (*praxis*) is granted to him (and those acting for him) from the borrower and from his entire property, both present and future, in whatever manner he chooses to enforce it.[86]

Again, strikingly when compared with the Egyptian practice, forfeit of the hypothecated asset is here perfectly compatible with unrestricted *praxis* on the rest of the estate: no ‚*reine Sachhaftung*', no absorption of the debtor's liability by the hypothec. Even if we wished to assume that the creditor is supposed to choose –an unwarranted assumption, given how the clause is fashioned– the right to choose itself would collide with everything we have learned about hypothec in Egypt.

Open remains, in the light of the document, how exactly the creditor is supposed

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year. Misguided are the speculations on the lease in Lewis and Oudshoorn 2007: 166–167. On Lewis' suggestion (p. 41 of the edition) that the correction of the borrowed sum from 40 to 60 denarii in l. 3 may have hidden further, thus illegal, interest, cf. Esler 2014: 3. On the courtyard, cf. Cotton 1996. On the presence of the military in Ein Gedi, Davies–Magness 2013.

[85] „and if I do not repay you on the appointed | date as aforewritten, you shall have the right to acquire, use, sell and administer the said hypothec without | [any opposition? any further formality?], and the right of execution shall correspond to you and to whoever acts for you and to [anyone else through] you or for you [rightfully] | presenting this document, both upon me and upon all [my] belongings [everywhere], those which I have acquired and those which I may | additionally acquire, executing rightfully in whatever manner the one executing chooses [...]". After χωρὶς – cf. Oudshoorn 2007: 166 – we would expect something like ὑπερθέσεως.

[86] It is here that the less well preserved *scriptura exterior* diverges most singularly from the *interior*. In it, the *praxis* is granted [ἔκ τε ἐ]μοῦ καὶ ἐκ τῶν Ἐλαζάρου | πατρός μου ὑ̣παρχ[ό]ντω̣ν [πάντῃ] π̣ά[ν]τ̣ω̣[ν], ᾧ̣[ν κεκτήμεθα] κ̣α̣[ὶ ὧ̣ν ἐ]ὰ̣ν ἐπικτησώ|μ̣εθ̣α̣, [π]ρά[σ]σ̣ο̣υ̣τι κ̣υ̣ρ[ί]ως, τ̣ρόπ̣ῳ ὧ̣ν ἂν [αἱ]ρ̣ῆ̣[ται ὁ πράσσων (ll. 28-30): „upon me and upon all the belongings of Elazar, | my father, everywhere, those which we have acquired and those which we may additionally | acquire, executing rightfully in whatever manner the one executing chooses". Despite Oudshoorn 2006: 161-162, the discrepancy can hardly be related to the change of the sum from 40 to 60, most likely (cf. Esler 2014: 3, and Czajkowski 2017: 32) a simple *lapsus calami* of the scribe; misguided is also the idea that because the hypothecated courtyard belongs to the father, it is more logical to make him respond with his entire property (!); finally, Judah's authorisation to hypothecate and lease is limited to the courtyard (αὐλῇ | Ἐλαζάρῳ … ᾗς ἔχω ἐπιτροπὴν ὑποτιθέναι κα[ὶ ἐγ]μισθο[ῦν], ll. 3-4) and therefore does not give him, *pace* Oudshoorn, the faculty to put the rest of the paternal state at risk.

to acquire –κτᾶσθαι– the asset. But whatever form this acquisition was meant to take, it is nevertheless clear that it is understood as a right – δίκαιον ἔσται σοι κτᾶσθαι: as in Egypt, the hypothecary creditor is entitled to acquire the asset at will.[87]

One could wonder if this departure from the Greek tradition may not be due to the fact that the debtor is Jewish and the creditor is a Roman soldier. A Jewish influence is here quite unlikely – among other reasons because it would be astonishing if the Roman creditor had allowed the background of his debtor to determine the way he secures his own rights.[88]

Quite different is the question of a possible Roman influence – which would go a long way to explain our text, since under Roman law, securities are mere accessories to the debt: they add to it, they do not absorb it. Here, the lender is Roman, as also the first of the seven signatories, Gaius Julius Procles. Much has been made, in general, of the Roman elements in the Babatha archive: the famous triple Greek translation of the Roman formula for the *iudicium tutelae*, and the ubiquity of the stipulatory clause, a century before it becomes common elsewhere. In Egypt, Roman influence in documentary practice becomes more likely the closer we get to a military milieu.[89] The same, I suspect, is true for Babatha, if the *librarii* behind many of her documents were,[90] as Lewis suspected, military scribes.[91] Our document was executed

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87 The assumption in Oudshoorn 2006: 164 that upon default ownership passes automatically, as if it had been transferred under condition to the creditor, is unwarranted: not impossible, but by far not the only possibility nor the most likely in the light of the papyrological parallels and of the very formulation of the document: having a right to acquire – [δίκα]ιον ἔσ[ται] σοι κτᾶσθ[αι] – is the exact opposite of acquiring automatically whether one wants it or not.

88 On the possible *interpretatio iudaica* of the transaction from the point of view of the borrowers, Oudshoorn 2007: 165-166, 168.

89 Alonso 2023a: 266 (§ 7.91), with sources and lit.

90 Most of the documents were drawn up by Theenas, son of Simon, and Germanus, son of Judah, who identify themselves as *librarii*: Θεενας Σίμωνος λιβλάριος (*sic*) ἔγραψα, in *P. Yadin* I 17 (128 CE Ein Gedi), l. 43 and *P. Yadin* I 18 (128 CE Ein Gedi), l. 73; ἐγράφη διὰ Γερμανοῦ λιβλαρίου, in *P. Yadin* I 20 (130 CE Ein Gedi), l. 45, *P. Yadin* I 21 (130 CE Ein Gedi), l. 34, *P. Yadin* I 22 (130 CE Ein Gedi), l. 39.

91 Cf. p. 64 to l. 38, and p. 88 of the edition. Lewis' parallels are instructive. On the verso of *BGU* II 423 = *WChr*. 480 (2nd cent. CE Arsinoites), the famous letter to his father of a soldier freshly enrolled at Misenum, we read λιβλαρίῳ (sic) ἀπὸ Ἀπίωνος ὥστε Ἐπιμάχῳ πατρὶ αὐτοῦ. Also a *librarius* executed a receipt for the items of a deceased soldier in *P. Col*. VIII 221 = *SB* X 10530 (143 CE Ophieion), ll. 11-12. Most impressive is *P. Mich*. VIII 466, from the archive of C. Iulius Apollinarius, who served among the legions that conquered the Kingdom of the Nabataeans in 106 CE; in this letter, he reports from Bostra to his father on a meeting with his commander, Claudius Severus, the first governor of the new province, where he expected to be taken to his service as *librarius legati*, but came out as *librarius legionis*: ἐρω]τήσαντός μου Κλαύδιον | Σε[ουῆ]ρ[ο]ν τὸν ὑπατικὸν εἶνα (l. ἵνα) με | λιβράριον ἑαυτοῦ ποιήσῃ, εἰπόντος | δὲ [α]ὐτοῦ ὅτι τόπος οὐ σχολάζ[ι] (l. σχολάζει), ἐν | τοσούτῳ δὲ λιβράριόν σε λεγεῶνος | ποιήσω ἐφ' ἐλπίδων (ll. 25-30). To these testimonies, yet three can be added, that Lewis omitted probably because of their later date. *Librarii* are mentioned, again in a military context, in *SB* III 6971 = *O. Bodl*. II 2017 = *Rom. Mil. Rec*. 78, No. 67 (210 CE Pselkis), l. 5, part of a series of ostraka given as receipt for provisions. *P. Oxy.* I 43 r = *P. Lond*. III 748 *descr*. (295 CE Oxyrhynchos), col. V, ll. 16-22 is part of the military

by a scribe who does not sign as *librarius*, but bears a Latin name, *Iustinus*.[92] In any case, in this affair with the *centurio* Magonius Valens, we could hardly be closer to the army. Indeed, the document goes so far in its philoromanism as to label Ein Gedi –uniquely– „village of Lord Caesar".

Less easy is it to pinpoint effective evidence of Roman elements in the actual deed. Most promising in this respect are the external diplomatics. The form of the double document, with sealed *scriptura interior*, dominant in the Babatha archive, was of course favoured by the Romans – albeit in wax tablets, not on papyrus – and had instead fallen in disuse in Hellenistic Egypt by the end of the Ptolemaic era; but the idea originated in Near Eastern practice and, as it has been observed, was current in Nabataean Aramaic documents well before the Roman conquest.[93] It is thus perhaps better understood as a remnant of local tradition than as a sign of Romanisation – even though the practice may well have survived the Roman annexation due to its perceived suitability before a Roman court.[94] The number of witnesses, which in our document seems to be seven,[95] as predominantly in the archive,[96] seems to result from a conscious will to adapt to the form of the Roman *testatio*, in order to ensure the recognition of the deed in court.[97]

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accounts of the watchmen at Oxyrhynchos, were the *librarius* Severus confirms the receipt of a provision of chaff. Only for the *librarius* Metolbesymenos, author of the slave sale in *P. Euphr*. 9 = *SB* XXIV 16170 (252 CE Beth Phuraia), l. 33, does the connection with the army remain unknown. As far as our evidence lets us see, thus, *librarii* are linked to the army, and the army is omnipresent in the Babatha archive, as also our document shows. The fact that the *librarii* in the archive –Theenas, son of Simon, and Germanus, son of Judah– are Jews does not weaken Lewis' hypothesis: bilingual scribes presented obvious advantages in an occupation context, and are well attested in similar situations: most notably, serving the Ptolemaic military garrisons in Pathyris and Krokodilopolis, in Upper Egypt, in the late 2nd and early 1st cent. BCE. On these bilingual notaries, cf. Pestman 1978 and 1985; Clarysse 1993; Vierros 2008; Vandorpe and Waebens 2009; Vandorpe 2011.

92 Cf. l. 30, [ἐγράφη διὰ] Ἰουστείνου. On the authorship and the degree of romanisation of the scribe, Oudshoorn 159 n. 194.

93 See the discussion in the edition, pp. 6-10; in detail, Cotton 2003b; Cotton 2003a: 10-11; Oudshoorn 2007: 22-24. The form of the double document is used, in fact, in Nabataean documents in Aramaic like *P. Starcky* = *P. Yadin* 36 = *P. Hever* 1 (58–67 CE), *P. Yadin* 2 (99 CE), and *P. Yadin* 3 (99 CE), as well in later Aramaic documents like *P. Yadin* 7 (120 CE), all from Maoza.

94 Meyer 2004: 187-202.

95 This depends on whether the first signatory, Gaius Iulius Procles (l. 31), is to be considered a witness, despite the fact that unlike the other six he is not identified as such. Cf. Oudshoorn 2007: 159 n. 194.

96 Cf. Lewis in the edition, p. 12.

97 Cf. already Wolff 1978: 78–79. In the same sense, for Babatha, see Cotton 2003b: 52 = Cotton 2022: 153. Some of the pre-Roman Nabataean documents in Aramaic in the archive – *P. Yadin* 1 (92–93 CE Maoza), ll. 53–66; *P. Yadin* 2 (99 CE Maoza), ll. 43–49, fragmentary; and *P. Yadin* 3 (99 CE, Maoza), ll. 49–55 – also include seven signatories, but the last is the scribe, not a witness. The awareness of the Roman model is explicit in *P. Yadin* 15 (125 CE, Maoza), a written deposition prepared for Babatha's potential court case against her son's guardians, self-described as a μαρτυροποίημα (ll. 3, 8, 12), i.e. a *testatio*, stressing that the seven witnesses who sign on the verso were present (καὶ ἐπεβάλοντο μάρτυρες ἑπτά, l. 36).

If instead we turn to the clauses that articulate the document's content, Roman influence is nowhere to be found. Attention has been drawn to the phrase κτᾶσθ̣[αι χ]ρᾶσθ̣αι π[ωλ]ε̣ῖν διο[ικεῖν] in the forfeit clause in l. 8, an asyndetic tetracolon that recalls the Roman characterisation of peregrine ownership as *uti*, *frui*, *habere*, *possidere*. Yet, if the expression had been taken from the Latin, we would expect a proper translation – as the quite accurate Greek rendering of the *formula tutelae* in *P. Yadin* 28-30 – or at least a close approximation. The terms here, instead, are neither in the same order nor do they truly correspond to the Latin verbs. In fact, Aramaic parallels also exist, to which our formula could just as well be compared.[98]

In truth, differences in phrasing aside, the clauses that articulate the document are the same found across the Hellenised East, and the legal structure they build is, in crucial respects, decidedly un-Roman. Deeply un-Roman is the notion that a loan deed bestows on the lender execution rights (*praxis*) – although we do not know whether direct distraint was available in the new province, and the clause *kathaper ek dikes* is avoided. So un-Roman as to be unenforceable under Roman law is the fact that the interest is not stipulated, but merely documented.[99]

In sum: the document's obliviousness to any ‚*reine Sachhaftung*', the unprejudiced compatibility between forfeiture at the will of the creditor and unrestricted liability of the debtor, and the resulting freedom of choice for the creditor, cannot be convincingly explained away through the comfortable expedient of claiming Roman – or Jewish – influence on its clauses. What the document seems to show, instead, is that its authors – the authors of the model followed here – did not share the basic assumptions that led in Egypt to the creation of *hypallagma*.

7. A Hypothesis

And so we return to our question: why was forfeit, in Egypt – unlike, as far as the evidence shows, anywhere else – incompatible with the creditor's freedom of choice? I believe an answer can be proposed, even if at this point it is just a hypothesis.

If we ask ourselves what is specific to Egypt regarding forfeit, the answer is obvious: the Ptolemaic *epikatabole kata to diagramma*, which remained in force for at least four hundred years – from the mid-third century BCE to at least the mid-second century CE. In Egypt, and only in Egypt, forfeit required—by virtue of this *diagramma—epikatabole*.

One of the main goals of the *diagramma* was to ensure the payment of the tax – the five percent of the *telos epikataboles*. Since introducing *epikatabole* and securing the tax were the primary concerns, the *diagramma* probably mentioned no alternative course of action against defaulting debtors beyond *epikatabole* itself. It may even

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98 Cf. Oudshoorn 2007: 162-164. Entirely anachronistic – and equally dissimilar – is the parallel *ut rem habeat teneat possideat utatur fruatur ipse heredesve eius in perpetuum*, from the late 5th century Albertini Tablets.

99 This omission we find also in the so called soldier's *cheirographa*, cf. Arangio-Ruiz 1948 = Arangio-Ruiz 1974: 315–326; Platschek 2013: 249-252; Bernini 2018.

have explicitly ruled out other possibilities – namely ordinary *praxis* – precisely in order to secure the tax. But even if the King stopped short of this, it made sense for the subsequent notarial practice to act under the assumption that only *epikatabole* was possible, if the *diagramma* referred to nothing else. So tightly was hypothec bound to this taxed *epikatabole*, that in Roman times fiscal debts are never secured by hypothec, but by *hypallagma*: a distraint on the pledge without *telos epikataboles* would have been, it seems, unthinkable even for the treasury.

Thus – so goes my conjecture – a model emerged in which *epikatabole* was the only right acquired by the hypothecary creditor. If hypothecation deeds had added nothing, creditors would have been left in an intolerable position, should the security perish or be compromised by third-party claims. A clause was therefore introduced, granting, in such cases, a subsidiary right to unrestricted *praxis* against the debtor. In this way, a balance was struck: the *diagramma* was respected, and the creditor's interest safeguarded.

On this hypothesis, the peculiarity lies not with Dura Europos or Arabia, but with Egypt: it was the Ptolemaic *epikatabole* that made hypothec and unconditional, unrestricted liability incompatible there. *Reine Sachhaftung* as the guiding principle of real securities in the Greek tradition would be a mirage, an overgeneralisation from Egyptian evidence.

A striking coincidence – which I do not believe to be coincidence at all – has convinced me that this theory may hold, that *epikatabole* and its tax may indeed offer the key to understanding the Egyptian system of real securities. It concerns the so-called *menein*-contracts—the last form of security we will briefly consider.

8. *Menein*-contracts

„*Menein*-contract" is the name that, since Schwarz first identified the type,[100] has been used for a series of quite peculiar secured loans from Oxyrhynchos:[101] peculiar because they represent the only security type in Egypt to breach the *reine Sachhaftung* taboo, combining a forfeit clause that lets the creditor acquire the security at will with full, unconditional debtor liability.

These documents follow a quite consistent model. One of the best preserved is *P. Oxy*. XXXIV 2722 (154 CE Oxyrhynchos), drawn up in the typical Oxyrhynchite form of a *cheirographon kai diagraphe*:[102] styled as an ordinary *cheirographon* in

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[100] Schwarz 1937. On this security model, Rupprecht 1995: 434-435 = Rupprecht 2017: 147-148; Rupprecht 1997b: 299-300 = 2017: 158-159; and, in detail, Alonso 2016: 139-146.

[101] Six such agreements were known until recently: *P. Oxy. Hels*. 31 (86 CE), *P. Oxy*. III 506 = *MChr*. 248 (143 CE), *P. Oslo* II 40 A and B (150 CE), *P. Oxy*. XXXIV 2722 (154 CE), *P. Coll. Youtie* I 50 (2nd cent. CE). To these, *P. Oxy*. II 373 *descr*. = *ZPE* 2022 179 (79-80 CE), has now been added, as the earliest exemplar of *menein*-contract to date. Two further papyri illustrate how such guarantees were executed: *P. Oxy.* III 485 = *MChr*. 246 (178 CE), and *PSI* XIII 1328 (201 CE).

[102] Parallels can be found in the archive of Pausiris – all executed, as ours, at the Serapeum of Oxyrhynchos: cf. Gagos – Koenen – McNellen 1992.

epistolary form and self-labelled as such (κυρία ἡ χεὶρ πανταχῆ ἐπιφερομέν(η), l. 50), yet executed at a bank at the Serapeum,[103] through which the sum was also paid out (ll. 7–9) – six hundred silver drachmas, received by a certain Thonis from his nephew of the same name, at the maximum monthly rate of 1%. The borrower undertakes to pay the interest every month and to return the capital in three years. The hypothecation clause we would expect after the loan terms — that the sum is granted ἐπὶ ὑποθήκῃ, with a full description of the pledged asset — is tellingly absent in this and all other *menein*-contracts.[104] Instead, the security is directly introduced in the default clause:

> ἐὰν δὲ μὴ ἀποδῶ καθὰ γέγραπται συν|$_{17}$χωρῶ μένειν περὶ σὲ τὸν Θῶνιν Ἡφαιστᾶτος καὶ ἐκγόνους |$_{18}$ καὶ τοὺς παρὰ σοῦ μεταλημψομένους ἀνθ' οὗ ἐὰν μὴ ἀποδῶ |$_{19}$ μετὰ τὴν προθεσμίαν τὴν κράτησιν καὶ κυρείαν εἰς τὸν |$_{20}$ ἀεὶ χρόνον τῶν ἐπιβαλλόντων μοι μερῶν πάντων κοινῇ |$_{21}$ πρὸς τοὺς ἀδελφούς μου Τασενπώθην καὶ τὸν πατέρα ϙ[ου] |$_{22}$ Ἡφαιστᾶν ἐπ' ἀμφόδου Δεκάτης ἐν τοῖς ἀπὸ λιβὸς μέρεσι ἐν |$_{23}$ ῥύμῃ τυφλῇ οἰκίας καὶ αἰθρίου καὶ χρηστηρίων καὶ εἰσόδων |$_{24}$ καὶ ἐξόδων [105]

This is the form the forfeit clause takes in all these deeds. Its most memorable trait – what gives them their name – is the formulation that possession and ownership of the security shall remain (μένειν) with the creditor for all time. Contrary to what might be assumed, μένειν does not imply that the creditor held possession and ownership already from the outset; rather, that once these are acquired upon default – μετὰ τὴν προθεσμίαν – they shall remain with him εἰς τὸν ἀεὶ χρόνον.[106]

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[103] Cf. on the verso, ll. 68-70: χ(ει)ρ(όγραφον) σενπώθου Χ ἀδελφοῦ \Θῶνιος/ <καὶ> Ἡφαιστᾶτος | διὰ τραπέζης ἐφ' ὑποθ(ήκῃ) μερῶν | οἰκιῶν. For the peculiar set out of these lines and their inherent difficulty, cf. p. 120 in the edition and Rea's commentary on p. 122.

[104] And yet our document (uniquely among the extant *menein* contracts) is labelled as hypothec on the verso: *supra* n. 103.

[105] „If I do not return as written, I consent | that there shall remain with you, Thonis son of Hephaistas, and with your descendants | and your successors, in lieu of what I shall not return, | after the term, the possession and ownership for | all time of all the shares falling to me in common | with my siblings Tasempothe and your father | Hephaistas, in the western part of the tenth quarter, in | a blind alley, of a house and atrium and furniture and entrances | and exits"

[106] Cf. also, explicitly, *P. Oxy*. III 506 = *MChr*. 248 (143 CE), ll. 19–23: ownership and possession will remain with the creditor "from the time payment falls due, for all time" (μένειν … ἀπὸ τοῦ τῆς ἀποδόσεως χρόνου τὴν κράτησιν καὶ κυρείαν εἰς τ[ὸ]ν | αἰεὶ χρόνον). Equally explicit is the subscription to our document, where κυριεύειν is referred to the future: εἰ δὲ μή, κυριεύσει τῶν αἰπιβαλλώντων | μοι μερῶν πάντων ...|... οἰκίας (ll. 61–65). This is therefore no title-transfer security: cf. already Schwarz 1937: 250–255, *passim*. The arguments against such a hypothesis are overwhelming. That the creditor was not in possession is shown by execution through *embadeia* (*P. Oxy*. III 485 = *MChr*. 246, 178 CE); that he was not yet owner, by the prohibition on the debtor to alienate, always included (*P. Oxy. Hels*. 31, 86 CE, ll. 20–22; *P. Oxy*. III 506, 143 CE, ll. 39–42; *P. Oslo* II 40 A, 150 CE, ll. 15–18; *P. Oslo* II 40 B, 150 CE, ll. 47–49; *P. Oxy*. XXXIV 2722, 154 CE, ll. 34–38), and by the fact that all the creditor can register before forfeit is a lien (*P. Oxy*. III 506, 143 CE, ll. 49–51; *P. Oslo* II 40 B, 150 CE, l. 50; *P. Oxy*. XXXIV 2722, 154 CE, ll. 38–41). Cf. Alonso 2016:

The security falls upon the borrower's shares in a family house co-owned with his siblings, among them the lender's father. After the property is described, as usual, by reference to its neighboring lots, the document continues:

> καὶ τάξασθαί σε |$_{26}$ διὰ σεαυτοῦ ἐὰν αἱρῇ τὰ ὑπὲρ τούτων τέλη καὶ δεσπόζιν |$_{27}$ αὐτῶν ὡς ἂν πράσεώς σοι γενομένης καὶ τὰ περιεσόμενα |$_{28}$ ἀποφέρεσθαι καὶ ἑτέροις πωλεῖν καὶ χρᾶσθαι ὡς ἂν αἱρῇ |$_{29}$ μηδεμιᾶς μοι ἐφόδου καταλειπομένης [107]

As the document emphasises – ἐὰν αἱρῇ – forfeit depends solely on the will of the creditor, who secures it simply by undertaking to pay the taxes for the asset – we will return to this shortly. And yet, despite forfeit at the creditor's will, the debtor's liability remains undiminished. This grants the creditor what no other form of security could: the freedom to choose between immediate forfeit of the security or ordinary distraint (*praxis*) on the rest of the debtor's assets. *Hypallagma* sacrificed the former, granting only ordinary *praxis*, even on the security; hypothec the latter, denying *praxis* unless the hypothec itself failed. Tellingly, the *menein* model is designed to emphasise this freedom of choice: clear evidence that its creators understood just how exceptional it was – a further confirmation of the awareness we have already suspected (*supra sub* 4 i.f.) behind the creation of *hypallagma*:

> αἱρέσεως καὶ ἐγλογῆς οὔσης περὶ σὲ τὸν |$_{42}$ Θῶνιν Ἡφαιστᾶτος ἐὰν βούλῃ μετὰ τὸν χρόνον μὴ δι|$_{43}$καιοπραγμουμένου μου τῷ κεφαλαίῳ καὶ τόκοις κυρι|$_{44}$εύειν ἀντὶ τούτων τῶν αὐτῶν μερῶν τῆς οἰκίας |$_{45}$ ἐπὶ τοῖς προκειμένοις ἢ τὴν πρᾶξιν ποιήσασθαι τοῦ τε |$_{46}$ αὐτοῦ κεφαλαίου καὶ τῶν ὠνομασμένων καὶ τοῦ ὑπερ|$_{47}$πεσόντος χρόνου ἴσων δραχμιαίων τόκων ἑκάστης μνᾶς |$_{48}$ κατὰ μῆνα ἕκαστον ἔκ τε ἐμοῦ καὶ ἐκ τῶν μερῶν τῆς |$_{49}$ οἰκίας καὶ ἐκ τῶν ἄλλων τῶν ὑπαρχόντων μοι πάντων |$_{50}$ καθάπερ ἐγ δίκης. [108]

The model's success in Oxyrhynchos was such that *hypallagma* vanishes entirely from the nome's record. Why this practice remained confined to Oxyrhynchos is unclear – but local notarial habits are a familiar feature of written legal culture, and regional documentary models are not uncommon in Egypt. In Oxyrhynchos, in any case, *hypallagma* is never used to secure loans, only public debts and the devolution of dowries.[109]

140–145 for details.

[107] „and (I consent) that you may untertake to pay | by yourself, if you choose, the taxes for these things, and have dominion | over them as if they had been sold to you, and take the produce | and sell it to others and use it as you please | no right of legal process remaining to me".

[108] „while the choice and decision remains to you, | Thonis son of Hephaistas, whether you wish, after the term, if I do not | act lawfully in the matter of the principal and interest, to | own in lieu of them the said shares of the house | on the aforesaid conditions, or else to proceed in execution, both of the | said capital and of the other mentioned sums and of the | interests for the overtime of a drachma | per mina per month, upon me, and upon the shares of the | house, and upon all the rest of my property | as if by virtue of judicial decision".

[109] *Supra* n. 20.

The question, then, is this: If *hypallagma* had to sacrifice forfeit at will in order to preserve the debtor's liability, how could the creators of the *menein* model retain both? The answer lies in plain sight, in the corollary to the *menein* clause that follows the description of the asset. There the requirements for forfeit are laid out – in our document, ll. 25-29, quoted above. All the creditor must do is "undertake to pay the taxes for these things" – τάξασθαί σε διὰ σεαυτοῦ ἐὰν αἱρῇ τὰ ὑπὲρ τούτων τέλη.[110]

If this were meant as a reference to the *telos epikataboles*, we would expect it to be named; but the clause mentions neither this *telos*, nor the *epikatabole* itself, nor the *enkyklion*. In fact, it does not point to any specific tax, but simply to τὰ ὑπὲρ τούτων τέλη – the taxes on the asset, whatever they may be. And forfeit depends not on the creditor actually paying them – as would be the case if the *telos epikataboles* were meant –, but merely on his undertaking to do so.[111]

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[110] The same formulation, in *P. Oxy. Hels*. 31 (86 CE), ll. 15–18; *P. Oslo* II 40 A (150 CE), ll. 11–14; and *P. Oslo* II 40 B (150 CE), ll. 41–44. In the fragmentary *P. Coll. Youtie* I 50 (2nd CE Oxyrhynchos), it likely followed the mention of Ptollarion in l. 9 and extended to l. 14, as suggested by the correspondence with the model from l. 12 onward. In *P. Oxy.* III 506 = *MChr*. 248 (143 CE), the clause is entirely lost, its expected position coinciding with the lacuna that separates fragments A and B. Only the newly published *P. Oxy.* II 373 *descr*. = *ZPE* 2022 179 (79–80 CE) diverges on this point: since the security is catoecic land, forfeit must necessarily be effected, as in ordinary *mesiteia*, through the catoecic register – that is, via *metepigraphe*: καὶ ἐξῖναι (l. ἐξεῖναι) τ[ῇ] Ṣελήνῃ ἀπὸ τῆσδε τῆς ϭυν[γραφῆς] (l. συγ[γραφῆς]) [μετεπιγράφεθαι] | διὰ τῶν καταλοχισμῶν τὰς δέκα ἀρούρας (ll. 21–22).

[111] What form this τάξασθαι may have taken, if any, remains unclear. The impression is that any manifestation of the creditor's choice of the security would simultaneously trigger forfeit and subject the acquirer, as owner, to any taxes levied on the asset. Which specific taxes is left open, so that the clause remains unvaried whether the object is a house share, as in our document and in *P. Oslo* II 40 B (150 CE), ll. 41-44, or a slave, as in *P. Oslo* II 40 A (150 CE), ll. 11-14. A property-tax on houses is uncertain – cf. Wallace 1938: 76, with *P. Flor.* I 104, 3rd cent. CE Arsinoites, as only possible hint. Still, there is ample evidence that the *laographia* of a house's residents was often levied on the owners, cf. *P. Goodspeed Cairo* 10 (189 CE Memphis), Wallace 1938: 147. The clearest proof (Wallace 1938: 417) is the clause, frequent in house sales, that the property is free from poll-tax until the next census, καθαρὸν ἀπὸ λαογραφιῶν μέχρι ἑτέρας ἀπογραφῆς εἰκονισμοῦ: *P. Ryl*. II 161 (81 CE Soknopaiou Nesos), ll. 14-15; *SB* XXVIII 16905 = *P. Ryl*. II 312 (82-86 CE Soknopaiou Nesos), l. 14; *PSI* XIII 1320 = *SB* V 8950 (82-88 CE Soknopaiou Nesos), ll. 11-12; *SB* XXVIII 16906 = *P. Ryl*. II 313 (82-96 CE Soknopaiou Nesos), ll. 15, 29; *BGU* I 350 (103-115 CE Nilopolis), ll. 9-10; *CPR* I 187 (145 CE Ptolemais Evergetis), l. 11; *P. Hamb*. I 15 (209 CE Ptolemais Evergetis); *BGU* II 667 (222 CE Ptolemais Evergetis), ll. 13-14. In *SB* XVI 12288, col. II (175-178 CE Ptolemais Evergetis), ll. 25-26, a building site is purchased, and the deed glued to the last census declaration, in col. I = *SB* XXII 15313 (173-174 CE Ptolemais Evergetis). The phenomenon may also underlie the "sixty drachmas per house" – ἑξηκοντάδραχμος μερισμὸς εἰς τὸ καθ' οἰκίαν – in *CPR* XXXV 22 = *SPP* V 101 (267 CE Hermopolis), ll. 8–9. Further illustration of the range of taxes levied on house-owners comes from *P. Oxy*. III 502 (164 CE Oxyrhynchos), where the lessor undertakes to pay both the police-tax and the brick-making tax on the property, ll. 43–45: τοῦ φυλάκτρου | καὶ πλινθευομένης ὄντων πρὸς | τὴν μεμισθωκυῖαν. Regarding slaves, the main obligation was again the *laographia* (Wallace 1938: 111, *passim*); taxed were also house births (*SB* III 6995, 127 CE Tenis, ll. 19-22; *SB* III 6966, 127 CE Tenis, ll. 15-18, 32-35) and manumissions (*vicesima libertatis* of the Roman manumission aside, cf. for those granted *iure peregrino*: *P. Oxy*. IV 722 = *MChr*. 358 = *Sel. Pap*. I 12, 91 or 107 CE Oxyrhynchos, l. 19;

How, then, does the asset forfeit to the creditor if not through *epikatabole*? Again, the answer lies in plain sight: he takes dominion over the asset „as if it had been sold" to him — δεσπόζιν αὐτῶν ὡς ἂν πράσεώς σοι γενομένης.[112] He does not acquire as a hypothecary creditor, through *epikatabole*, but as an ordinary buyer — for, in choosing the asset over *praxis*, he forfeits his right to the sum he gave, which the debtor may thus retain as its price.

This brings us to the central point: the only type of security in Egypt where forfeit at will coexists with unrestricted *praxis* happens to avoid *epikatabole* in favour of acquisition by purchase. Is this a coincidence?

Certain hints may point to inspiration from native Egyptian practice. Egyptian securities were granted through sale with suspended effect, a tradition that remained stable through many incarnations, Demotic, Greek and bilingual, from the early Ptolemaic to the early Roman period.[113] Against the backdrop of this consistent Egyptian practice, letting the creditor acquire as a buyer is only natural. Although the background of the parties is only occasionally discernible,[114] the link of our document to the banks at the Serapeum, where other native traditions found Greek documentary expression,[115] could be a further hint in this direction.[116]

And yet, even accepting the possibility of an Egyptian inspiration, the very deliberate formulation of the *menein* model makes it clear that this was no mindless historical inertia. The striking emphasis on the creditor's right to choose between forfeit and *praxis* shows that its devisers were fully aware of what their model achieved in contrast to hypothec and *hypallagma*. They must also have understood what made this achievement possible. In this light, the replacement of *epikatabole* with acquisition through sale seems to me no coincidence, no unreflected traditionalism, but deliberate design: the key that allowed them to square the circle.

If this interpretation holds, it confirms that it was not forfeit per se, but *epikatabole* that was seen as incompatible with unrestricted *praxis* — setting Egyptian hypothec apart from the wider Hellenised world, and fostering the creation of both *hypallagma* and these no less inspired *menein*-contracts.

P. Strass. II 122, 161-169 CE Arsinoites, l. 12; *SB* III 6293 = *P. Freib*. II 10 = *Jur. Pap*. 7, 196 CE Ptolemais Evergetis, l.6; *P. Tebt*. II 407, 199? CE Tebtynis, l. 25).

112 The same construction, in *P. Oslo* II 40 A (150 CE), ll. 11-14, *P. Oslo* II 40 B (150 CE), ll. 41-44.

113 Lippert 107, 150-151. A detailed overview in Alonso 2016: 126-139; Lippert 2019.

114 Borrower and lender are in our *P. Oxy*. XXXIV 2722 (154 CE Oxyrhynchos) both fire-kindlers of Athena Thoeris: on the cult, the sanctuaries and their personnel, Mascia 2023.

115 Alonso 2023b: 421-426.

116 One might also consider whether the sudden replacement of the ususal ὁμολόγω – kept in l. 6 for the loan – by συνχωρέω – in the *menein* clause itself, l. 16-17, formulated here, as in all other extrant examples συνχωρῶ μένειν –, could not related to the Egyptian formulation „my heart is satisfied", usually translated avoiding the traditional Greek ὁμολόγω – v.gr. through συμπείθομαι: cf. *CPR* XV 1 = *SB* I 5246 (3 BCE Arsinoites), l. 18, Biscottini 1966: 201 n. 2, and Gagos-Koenen-McNellen 1992: 190.

9. Epilogue: Taxation

There is yet a final twist to our story. Granting the creditor freedom of choice – as much as the *menein* model emphasises this achievement – may have been only one of its advantages. Another, just as significant, quite possibly concerned taxation. If I acquire the asset „as if it had been sold" to me, I need only pay the 5% sale *enkyklion* — and even that, only if the debtor defaults and I choose the security. At the time of contracting, instead, no tax is due — certainly not the *telos hypothekes*: this was the price paid to acquire the *epikatabole*, a right that *menein* deeds deliberately eschew. As a result, instead of an initial 2% *telos hypothekes*, followed upon forfeit by an additional 5% *telos epikataboles* [117] – with a further 2% *telos ananoseos* added for each renewal of the hypothec[118] – the *menein* creditor pays, in total, only 5%, and, if he does not choose forfeit or the debtor does not default, nothing at all. This goes a long way toward explaining the popularity of this model in Oxyrhynchos.

Outside of Oxyrhynchos — in Alexandria, in Hermopolis, in the Arsinoites — *hypallagma* was *the* means of preserving the debtors' unrestricted liability, the *praxis* over their entire estate. Here, too, a fiscal twist seems likely. It is striking that in a *corpu*s of nearly one hundred papyrological references to *hypallagma*, not a single one mentions taxation — whereas for hypothec taxation is omnipresent under both Ptolemaic and Roman rule. Indeed, if *hypallagma* was not, properly speaking, a right of the creditor over the asset, but merely a restriction on the debtor's faculties (*supra sub* 2) – as the form of its registration confirms (*supra* n. 27) –, why would a tax be due? Saving taxes was demonstrably also one of the chief advantages of yet another form of real security, left out of this paper due to its clear native Egyptian origin: the so-called interrupted sales of Pathyris.[119]

This may be the most astonishing aspect of the historical process we have retraced. The plurality of real securities in the Egyptian papyri seems to have resulted from the Ptolemaic *epikatabole* and its tax. Yet not in any way that the Ptolemies could have anticipated or welcomed. Rather, because the anonymous notaries behind Egypt's legal ingenuity spared no effort to restore to creditors what the Ptolemies had stolen from them: freedom of choice and freedom from taxes.

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[117] Crucially for our argumentation: the *telos epikataboles* demonstrably amounted, despite Mitteis 1912a: 151 n. 3, to the same full 5% of the *enkyklion*, i.e. it was not limited to the mere 3% difference between this and the 2% already paid by the creditor as *telos hypothekes*. For a review of the evidence, cf. Alonso 2016: 136-137 with n. 137.

[118] Evidence of payment of the *telos ananoseos*: *CPR* XXVIII 1 (237 BCE Krokodilopolis); *SB* XVI 12343 (237 BCE Krokodilopolis); *P. Tebt*. III 1 814 (227 BCE Tebtynis), ll. 59-71; *P. Oxy*. VIII 1105 (81-96 CE Oxyrhynchos), ll. 20-23; *P. Oxy*. II 274 = *MChr*. 193 = *Jur. Pap*. 60 = *FIRA* III 104 (89-97 CE Oxyrhynchos), ll. 20-22; *adde*, for *enoikesis*: *P. Oslo* III 118 (111-112 CE Euhemeria); *P. Mich*. XI 625 (121 CE Ptolemais Evergetis); *SB* XXVIII 17056 = *SB* XXII 15850 = P. *Mich. inv*. 138 (124 CE Philadelphia). Unclear is whether the tax was due only for postponement beyond the contracted term or each year, as one reads in *P. Oxy*. VIII 1105, ll. 20-23. On *ananeosis*, Rupprecht 1981 = Rupprecht 2017: 119-126.

[119] Alonso 2016: 134-139, cf. 136-137 for the tax advantage.

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PATRICK SÄNGER (MÜNSTER)

JEWISH OATH PRACTICE AND COMMUNITY: THE PETITIONS OF P.POLIT.IUD.*

Abstract: The focus of this paper is the practice of Jewish oath-taking as documented in P.Polit.Iud. After distinguishing the oaths according to temporal aspects, the function and character of the ἐπιστολὴ ὅρκου πατρίου is examined. In the end, the Jewish oath practice is understood as a way of getting closer to the ethnic self-image and identity patterns of the Jewish community attested in P.Polit.Iud.

Keywords: oath, letter, paternal custom, P.Polit.Iud., Jewish community

On June 20, 132 BCE, Berenice, a Jewish woman from Aphroditopolis, addressed a petition – P.Polit.Iud. 9 – to the archons of the Jewish *politeuma* of Herakleopolis. The woman complained about Demetrios, a Jew from the village of Peempasbytis, because he had not fulfilled the agreements set out in an ἐπιστολὴ ὅρκου πατρίου which he had given her: this concerned the payment of the price for a slave-girl whom he had bought together with her child, including the penalties due in the event of non-payment and the provision of a wetnurse.[1]

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* I thank Thomas Ford (Münster) for valuable advice and his help with the English style.

1 τοῖς τὸ λη (ἔτος) ἄρχουσι | παρὰ Βερενίκης τῆς Ἀρχαγάθου | Ἰουδαίας τῶν ἐξ Ἀφ[ρο]δ̣ίτης πόλ̣ε[ω]ς. | τοῦ λζ (ἔτους) Φαμεν[ὼ]θ Δημήτριος | Φιλώτου Ἰουδαῖος τῶν καταγινο|μένων ἐν Πειμπασβύτει | προήκατό μοι ἐπιστολὴν ὅρκου | πατρίου διομολογούμενος ἀποδώ|σειν μοι τὴν συνκεχωρημένην | τιμὴν ἧς ἐώνητο παιδίσκης Ῥώμης | καὶ τοῦ ἐκ ταύτης τέκνου ἐν | μηνὶ Παῦνι τοῦ αὐτοῦ (ἔτους) χα(λκοῦ) (τάλαντα) η, | ἐὰν δὲ μὴ ἀποδῶι, ἀποτείσειν | ἐν τῶι ἐχομένωι μηνὶ Ἐπεὶφ | σὺν ἡμιολίαι καὶ εἰς τὸ βασιλικὸν | ἐπίτιμον ἀργ(υρίου) (δρ.?) ο̣η ἄνευ πάσης | κ[ρ]ίσεως καὶ καταστάσεως, | δώσειν δὲ καὶ μισθὸν κατὰ | μῆνα τροφῶι τοῦ μὲν | ἱματισμοῦ χα(λκοῦ) Βφ ἕως ιε τοῦ | Φαμενὼθ καὶ (πυροῦ) (ἀρτάβας) . μ̣έτρα δύο | μηνῶν δ̄ κατὰ μῆνα ἐλαίου | κοτύ(λας) β τοῦ μηνός, ἀπὸ δὲ τοῦ Παῦν[ι] | κατὰ μῆνα (πυροῦ) (ἀρτάβην) α, ἐλαίου κοτύ(λας) β, | τα[ῦ]τα δὲ καὶ ἄλλα τῆς ἐπιστολῆς | περιεχούσης καὶ τοῦ Φιλώτου | μηθέν μοι ἀποδεδωκότ[ο]ς μέχρι | το[ῦ] νῦν, ἀλλὰ πα[ρα]βεβηκότος τὸν | πάτριον νόμον, διὸ ἠναγκασ̣[μ]ένη | ξενιτείας πεῖραν λαμβάνειν καὶ | παρακεκομικυῖα πρὸς ὑμᾶς ἄ[λ]|λη[ν τῶ]ν ἐν Ἀφροδίτει πόλει Ἰουδαίων | περὶ τούτ[ου] ἐπιστολὴν ἀξιῶ | ἐὰν φαίνηται σ̣[υντ]άξαι τῶι [ὑ]πηρέτει (*l.* ὑπηρέτηι) | παραπέ[μ]ψαι τὸν Δημήτριον καὶ | ἀνα|καλεσαμένους αὐτὸν ἐπαναγκ[ά]σ̣[α]ι | παραχρῆμα ἀποδοῦναι καὶ ἀποτεῖσαι | σὺν ἡμιολίαι (τάλαντα) ιβ καὶ τ̣ [ ]. . . . . Βφ | καὶ τὸν πόρον καὶ τἆλλα ἀκολούθως | τῶι ὅρκωι, περὶ δὲ [τ]οῦ εἰς τὸ βασιλικὸν ἐπιτίμου | κατὰ τοῦ παραβεβηκότος διαλαβεῖν μισοπονήρως. | (Hd. 2) (ἔτους) [λ]η Παχὼν κθ̄. - - - (back) ἔτους λη Παῦνι ς | Βερενίκης πρ(ὸς) Δημή(τριον). "To the archons of year 38 from Berenike, daughter of Archagathos, a Jew of those in Aphroditopolis. In Phamenoth of year 37 Demetrios, son of Philotas, a Jew of those dwelling in Peempasbytis, issued to me a letter of ancestral oath, agreeing to give to me, in Pauni of the same year, the settled price of eight copper talents for the

This petition is an example of everything that makes the archive P.Polit.Iud. so special. Firstly, addressing the archons of the Jewish *politeuma* of Herakleopolis by means of a petition; this is the usual form of addressing Ptolemaic officials with a request in a legal dispute – based on this evidence, I already discussed the character of the jurisdiction of the community in question and the institution of the *politeuma* at the Symposion 2015.[2] Secondly, P.Polit.Iud. 9 contains allusions to Jewish beliefs and legal concepts and, thirdly, documents the involvement of third parties in the case brought forward, namely the Jews of Aphroditopolis, who addressed the archons of the *politeuma* by means of a letter – this can be seen in lines 31–33, and we will return to this, at least briefly, in the final section of this paper.

In the 17 petitions[3] that have come down to us as part of the P.Polit.Iud. archive, allusions to Jewish religious and legal concepts can be made in two ways: On the one hand, it can be observed that Jewish ideas of faith or law can flow into the argumentation and rhetorical design of the petitions in an implicit way; such passages are an organic part of the narrative and only reveal themselves as a Jewish element if the reader is able to recognize the relevant references. However, I will not go into this issue – for which, incidentally, there are better and clearer examples than P.Polit.Iud. 9 – any further in this paper.[4] Rather, in my following remarks I would like to focus on the explicit form of referring to the Jewish faith. It seems to me that this perspective has not been explored enough so far.

The ἐπιστολὴ ὅρκου πατρίου, which is mentioned in lines 7–8 of P.Polit.Iud. 9, is a suitable starting point. Specifically, an ἐπιστολή – i.e. a letter[5] – is concerned, which contains a πάτριος ὅρκος, that is, an oath according to paternal custom, to which the petitioner also refers in line 40; the reference to the law of the Jews, the Torah, is made clear in line 29 by stating that the violation of the ἐπιστολὴ ὅρκου πατρίου

female slave, Rhome, whom he had purchased, and her child. And if he fails to render what is due, he [is] to pay in full in the following month of Epeiph with a 50% penalty and to the royal treasury a fine of 78 silver drachmas, without any legal proceeding and pleading of a case. And he will also give to a wet nurse a monthly wage: a clothing allowance of 2500 bronze drachmas until the 15th of Phamenoth and three (?) artabas of wheat and two measures monthly (?) in the four months, and two kotylai of oil, but from Pauni one artaba of wheat and two kotylai of oil. These and still other things were contained in the letter. And until now Philotas [Demetrios] has paid nothing, but he has transgressed the ancestral law. Therefore, I being forced to endure the trial of being away from home and having conveyed to you another letter of the Jews of Aphroditopolis concerning this matter, I ask, if it seems right to order the official assistant to accompany Demetrios, and having summoned him, to compel him to deliver immediately and pay in full with the 50% penalty 12 talents, [the clothing allowance of?] 2500 bronze drachmas, and the revenue and the other things according to the oath; but concerning the fine to the royal treasury, treat him with hostile sentiment according to what he has done. (Hd. 2) Year [3]8, Pachon 29. . [- - -].” (back) “Year 38, Pauni 6. Berenike against Demetrios” (trans. Kugler 2022, 207–208).

2 Sänger 2016; cf. Sänger 2019, 123–140.

3 This number includes Pap.Graec.Mon, 287 + 293 which was first published in CPJ IV 577; see also Kugler 2022, 241–250; Kruse 2015, 280.

4 This topic is now comprehensively covered by Kugler 2022.

5 See also below, n. 33.

would be equivalent to a violation of the πάτριος νόμος.[6]

A πάτριος ὅρκος or an ἐπιστολὴ ὅρκου πατρίου is mentioned in three other texts within the archive, and we will encounter this evidence in more detail in the following. Before doing so, it may, from a terminological point of view, be worth mentioning that, apart from P.Polit.Iud., there are no parallels for the expression ἐπιστολὴ ὅρκου πατρίου. The expression πάτριος ὅρκος has at least one other occurrence in the papyri so far, namely in an oath document from the 3rd century BCE;[7] due to the fact that there the πάτριος ὅρκος is made ἐπὶ τοῦ ποταμοῦ – thus "by the river/Nile" –, the passage in question probably shows that the expression πάτριος ὅρκος in Greek is not in itself bound to a Jewish context.

1. Oath-taking in P.Polit.Iud.

Oath-taking is a practice that was just as common in Jewish culture as it was in Egyptian or Greek culture.[8] Thus, one might well ask what can be expected from an in-depth study of the evidence from the Jewish *politeuma* of Herakleopolis. Added to this is the fact that scholarship has by no means overlooked the practice of resorting to the oath in everyday Jewish legal life, which is clearly evident in the petitions, and attempts have been made – such as those of Stewart Moore (2015), Joseph Mélèze Modrzejewski (2016) and Robert A. Kugler (2022) – to contextualize the patterns that emerge,[9] above all with a view to Greek parallels.[10] However, more can be said with regard to the linguistic interpretation of the relevant texts and the legal-historical classification of the oath. In the following, therefore, an attempt will be made to examine the forms of documented Jewish oath-taking in the papyri more precisely than before and thus to allow the character of Jewish legal practice in Herakleopolis to emerge more vividly.

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6 Cf. Kugler 2022, 217–218.

7 P.Petr. III 56 (d), 11–12 (Ars., 3rd century BCE); on the text, see also Seidl 1929, 82; Moore 2015, 93; Mélèze Modrzejewski 2016, 173; Kugler 2022, 124, 211.

8 On the Jewish diaspora, see Mélèze Modrzejewski 2016, 174, on ancient Greece recently Fletcher 2012; Sommerstein –Torrance 2014. On the oath practice in Greco-Roman Egypt, see the seminal studies by Seidl 1929; 1933; most recently Thoma 2023 investigated the appearance of oaths in papyrus letters (see also below, n. 42).

9 For the following, the question of whether the Jewish oaths in question were sworn in the name of god is not of interest; for discussion, see Honigman 2002, 261–262; ead. 2003, 100; Moore 2015, 93; Mélèze Modrzejewski 2016, 172–173.

10 In view of the fact that Jews from the environment of the Jewish *politeuma* of Herakleopolis apparently liked to use a πάτριος ὅρκος in their private business affairs, Mélèze Modrzejewski (2016, 172) has pointed out that "[t]he Greeks, on the contrary, only rarely used oaths to strengthen obligations" and brought the royal oath into play for a better understanding of the specific examples, namely the oath documented in P.Polit.Iud. 9 as well as in P.Polit. Iud. 3 and 12. Kugler (2022, 123–124, 214) also referred to the royal oath in this context, but did not forget to mention the Egyptian temple oaths, ultimately favoring the practice of classical Athens as an object of comparison. Moore (2015, 91–94) also reflected on the comparability with Greek or Athenian practice, emphasizing the promissory character of the πάτριος ὅρκος and seeing its purpose as the initiation of a transaction. On these approaches, see below section 2 and 3.

First of all, it should be noted that the way in which the oath is used in the respective situations should by no means be considered undifferentiated.[11] In this regard, the first relevant text to be considered is P.Polit.Iud. 3 (140 BCE [?]), a petition to the archons about a vineyard in connection with a marriage contract.[12] Here, in the context of an *accusativus cum infinitivo*, a perfect infinitive, ὀμωμοκέναι (l. 6), is used to express that the defendant has taken an oath (referred to in ll. 28–29 as a πάτριος ὅρκος); grammatically, with ὀμωμοκέναι the aspect of the completed action should come to the fore: the action of the subject or the defendant which brought about the state of the object or oath is completed. This, in the linguistic design of the petition, brings the oath itself into focus – we will return to this point shortly. In P.Polit.Iud. 3 the oath refers to the defendant's promise to give part of a vineyard in addition to the promised dowry,[13] if the petitioner draws up a συγγραφὴ συνοικισίου, i.e. a marriage contract.[14] On the other hand, we should take a look at P.Polit.Iud. 4 (134 BCE), a

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[11] However, this tends to be the case in the *ed. pr.* and in Mélèze Modrzejewski 2016.

[12] το[ῖ]ς τὸ [ ]. (ἔτος) ἄρχουσιν | π[α]ρὰ Ἰ̣ρ̣ω̣[το]μ̣ά̣χ[ου] τοῦ Δ̣ημητρίου. | ἐπ̣έ̣δ̣ω̣κ̣[α] ὑ̣μ̣ῖν ὑ̣πόμ̣νημα | ἐ̣ν̣ τ̣ῷ̣ι Φαρμοῦθ̣ι̣ τ̣οῦ λ (ἔτους) | κ̣α̣τ̣’ [Εὐ]φ̣ρ̣ά̣ν̣ορος [ ] π̣ερὶ τοῦ | [ὀμω]μοκέναι μ̣οι αὐτὸν εἰς ἣν | πρ[ο]σ̣η̣ν̣έ̣γκατό μ̣ο̣ι φερνὴν | μέρος ἀ̣μ̣π̣ε̣λ̣ῶ̣νος ἐν ἀ̣ρ̣γ̣(υρίου) (δραχμαῖς) Γ | [± 5 , ἡν]ίκ’ ἂν τιθῶμαι α̣ὐ̣τ̣ῆ̣ι | [± 2 τὴν σ]υ̣νοικισίου συγγραφὴν, | [. . .]. ε̣ν̣έ̣γκασθαι αὐτὸ | δι’ ἀρχε[ί]ο̣υ . . ου ὑπομένοντος | τ̣ίθεσθ[α]ι [. . .] vac. ? Ε̣ὐφράνορα | μὴ ὑπε̣[. . . . .] ἀ̣π̣ο̣[- - -] | χωρι[.]. . μοι ἀλ[λ’] ἐφέσθα[ι - - -] | ἀ̣π̣ο̣[. . . .]. εθεσειν[[.]]υφ[- - -] | ὑπεγράψατε το[ῖ]ς ἐν Τ. . . . . [- - -] | . . . . [. . . .]. οις διεξάγειν | [. . . . .]. . . . [. . . . .]. . [- - -] | διακουσάντων [. .]. . [- - -] | κ̣αὶ θεμέ[ν]ων ὑ̣πογρα[φ]ὴν | τ̣ῶν κ̣ρ̣ι̣ν̣ά̣ντω̣ν̣, [τοῦ δὲ] | Εὐφράνορ[ο]ς μὴ ἐ̣μ̣μ̣έ̣ν̣[ο]ντος | ἐν τούτοις παρέδ[ω]καν αὐτόν | τ̣ισιν κ̣α̣τ̣α̣σ̣τ̣ῆσ[α]ι ἐφ’ ὑμᾶς | κατ’ ἐ̣π̣ισ̣τ̣[ολήν, ὑπ]οτάξαντες | αὐτῆι κ̣α̣ὶ̣ τ̣[ὸ ἀ̣ντίγ]ραφον τ̣ῆ̣ς̣ | ὑ̣π̣ο̣γ̣ρ̣α̣(φῆς) κ̣α̣ὶ̣ ο̣ὗ̣ ἔ̣θ̣ε̣τ̣ό̣ μ̣ο̣ι̣ ὅ̣ρ̣κ̣ο̣υ̣ | π̣α̣τ̣ρ̣ί̣ο̣υ̣. ἐπεὶ οὖν ὁ Εὐφράνωρ | οὐκ ἐᾷ̣ (ἐᾶ̣[ι]?) με ἐφάπ̣τ̣ε̣σ̣[θ]αι τοῦ δεδη|λ̣ω̣μένου μέρους [ἀ]μπελῶνος | οὔτε τὰ δ̣ί̣κ̣α̣ι̣ά̣ μο[ι] ποιεῖ, κατε|γνωκὼς τῶι ἐπ. . [ ]. . ιας τετευ|χ̣έ̣ναι, ἀξιῶ ἐ̣ὰ̣ν̣ φα[ίν]ηται μετα|πεμψαμένους α[ὐτὸν ἐπαν]αγ|κάσαι π̣ο̣ι̣ῆ̣[σαί μοι τ]ὸ δίκαιον | ἀκ[ο]λούθ̣ω̣ς *traces* | ὑπογρ(αφ-). τ[ο]ύ̣τ̣ο̣υ̣ [γὰρ γ]ε̣ν̣ο̣μ̣έ̣ν̣ο̣υ̣ | τεύξομαι τῆς παρ’ [ὑμ]ῶ̣ν̣ | ἀντιλήμψε[ω]ς. “To the archons of year 31 from Protomachos son of Demetrios. In Pharmouthi of year 30 I gave you a ὑπόμνημα against Euphranor concerning an oath he swore to me in connection with a dowry he provided me: to give me a portion of a vineyard worth 3000 silver drachmas when I submitted the marriage contract, and to convey it through the public records office. While I abided by the agreement and deposited [the marriage contract], Euphranor did not take it upon himself to separate [the vineyard portion] for me, but rather … you instructed the elders in Tebetnoi to deal with the matters concerning me [my case]. After this, the judges heard my case against him and issued a ὑπογραφή, but as Euphranor does not abide by it [or: “these,” the terms of the ὑπογραφή], they delivered him to some [men] to bring [him] before you according to the letter, attaching to it a copy of the ὑπογραφή and of the ὅρκος πάτριος he made to me. Since, therefore, Euphranor does not permit me to take possession of the aforementioned portion of the vineyard, nor does he do the right thing, having acted contemptuously by swearing falsely, I ask you, if it seems right, having him brought before you, to compel him to do justice according to the ὅρκος and the ὑπογραφή. If this comes to pass, I will receive succor from you” (trans. Kugler 2022, 114).

[13] The addition of δοῦναι in line 9, as justified by Kugler 2022, 115, is questionable; perhaps the future, δώσειν, should be considered instead of the aorist form (cf. P.Polit.Iud. 4, 9).

[14] On the practice of προσφορά, which probably shines through here, see Kugler 2022, 119–123.

petition to the archons regarding the dissolution of a betrothal or marriage;[15] there it is said in a *genitivus absolutus* construction that the defendant has sworn to give his daughter and the agreed dowry to the petitioner. The aorist participle ὀμόσαντος merely expresses the oath was taken in the past.[16] Unlike in P.Polit.Iud. 3, the oath in P.Polit.Iud. 4 is not assigned a specific aspect in linguistic terms; the oath is merely part of the narrative, the necessity of its mention arising from the breach of oath implicitly presupposed by the following text (and understood as a violation of the πάτριος νόμος; ll. 14–15, 30), whereby the petitioner's actual accusation is that the defendant had given his daughter to another man without the petitioner having previously issued a letter of divorce. In P.Polit.Iud. 3 as well as in P.Polit.Iud. 4, one is therefore likely to be faced with agreements – on the one hand concerning an additional service to a contractually fixed dowry, on the other hand concerning the establishment of a marriage relationship – which refer to a future service, the provision of which is to be guaranteed or at least made more binding by the oath.[17]

The situation is somewhat different in the other two examples in which an oath plays a role. In P.Polit.Iud. 9, as we have already seen, there is an ἐπιστολὴ ὅρκου πατρίου, by means of which the defendant assures to pay the συνκεχωρημένην τιμήν, i.e. the contractually agreed purchase price for a slave and her child, including a penalty in the event of default, as well as to pay for the care of a wetnurse. The ἐπιστολὴ ὅρκου πατρίου was issued by the defendant in Phamenoth of year 37; while the verb form in the aorist tense used here, namely προήκατο, again indicates the oath con-

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[15] (Hd. 2) (ἔτους) λς Χο(ιὰκ) ιθ πε̣ρὶ γ̣ά̣μ̣ο̣υ. συ(νετάξαμεν) παρα(γγεῖλαι). | (Hd. 1) τοῖς ἄρχο̣υ̣[σι] | π̣α̣ρ̣ὰ̣ Φ̣ι̣λ̣ώ̣τ̣ο̣υ̣ τ̣ο̣ῦ̣ Φ̣ι̣λ̣ώτου | τῶν ἐκ τοῦ πολιτεύματος. | ἐν τῶι ἐνεστῶτι ἔ[τ]ει ἐμνησ|τευσάμην Ν̣ε̣ί̣κ̣α̣[ι]α̣ν (*l.* Νίκαιαν) Λ̣υ̣σ̣ι̣μ̣ά̣|χου καὶ τοῦ σημα[ι]ν̣ο̣μ̣έ̣νο̣υ̣ | αὐτῆς πατρὸς ὀμ[ό]σαντος | δώ̣σ̣ε̣ι̣ν̣ ἐμοὶ αὐτ[ὴ]ν καὶ τὴν | σταθε̣ῖ̣σ̣αν ἐπ᾽ α[ὐ]τῆι φερνήν, | ἐφ᾽ ἧι κ̣ἀ̣μ̣οῦ̣ ε̣ὐ̣δ̣ο̣κ̣ο̣ῦ̣ν̣τ̣ο̣ς | οὕτως οὐ μ̣ό̣ν̣ο̣[ν] ὁ̣ρ̣ι̣σ̣μ̣ῶ̣ν | γ̣ε̣ν̣ο̣μ̣έ̣ν̣ω̣ν̣ κ̣α̣[τ]ὰ̣ κοινὸν | ἀλλὰ καὶ τῆς κατὰ τὸν νό|μον ἀ̣π̣ο̣κ̣λ̣ύ̣σ̣[ε]ω̣ς (?) (BL XII 160) γενη|θείσης κ̣α̣ὶ̣ `εἰς δεδηλο̣υ̣[. .]. . . ´ ἐ̣π̣ὶ̣ [τ]ούτοις | ἀπαλλαγέ̣ν̣τ̣ω̣ν̣ ἡμῶν | μετ᾽ οὐ π̣[ολὺν χ]ρ̣ό̣νον | ὁ Λυσίμαχος συνήρμοκεν | ἄ̣ν̣ε̣υ̣ λόγου ἑ̣τ̣έ̣ρ̣ω̣ι ἀ̣ν̣δ̣ρὶ | τὴν Νείκαιαν (*l.* Νίκαιαν) πρὶν ἢ λα|βεῖν παρ᾽ ἐμοῦ τ̣ὸ̣ εἰθισμέ|νον τοῦ ἀ̣π̣ο̣σ̣τ̣α̣σίου | ⟦τὸ⟧ βυβλίο̣ν. διὸ ἀ̣ξ̣ι̣ῶ̣, | ἐὰν φάνηται (*l.* φαίνηται (η *ex* ε)), συντάξαι | γ̣ρ̣άψαι τοῖς ἐν τῆι κώμηι | Ἰουδαίοις π̣α̣ρ̣α̣γγεῖλαι τ̣ῶ̣ι | Λυσιμάχωι ἀπαντᾶν | ἐφ᾽ ὑμᾶς ἵν᾽ ἐὰν ᾖ̣ι ⟦. α̣ι⟧ οἷα | [γ]ρ̣ά̣φ̣ῳ̣ δ̣ι̣α̣λ̣η̣(φθῆι) περὶ αὐ(τοῦ) κα(τὰ) τὸν νό(μον) ἐμοὶ δ᾽ ἐπαναγ|[κάσαι ± 4] - - - (back) (ἔτους) λς Χο(ιὰκ) ιθ̄ Φιλώτου | πρ(ὸς) Λυσίμαχον. "(Hd. 2) Year 36, Choiak 19. Concerning marriage. We have decided to rule (on the case). (Hd. 1) To the archons, from Philotas, son of Philotas of the *politeuma*. In the present year I courted (= engaged?) Nikaia, daughter of Lysimachos. Her father, just named, promised to give her to me, along with the dowry determined for her, with which I was pleased. Thus, not only did we make vows in common, but also according to the law an oath became binding and under these circumstances we went our separate ways. After a short time, without cause Lysimachos joined Nikaia to another man before receiving from me the customary writ of separation. Therefore, I ask you, if it seems right, to consent to write to the Judeans in the village that they decree to Lysimachos to come to you, so that, if it is as I write, it will be decided concerning him according to the law, to compel [him] to … me …" (back) "Year 36, Choiak 19. Philotas against Lysimachos" (trans. Kugler 2022, 137).

[16] A translation of the entire subsequent sentence structure with an introductory "nachdem/after" should, contrary to P.Polit.Iud. 4, p. 71 and Kugler 2022, 137, be considered.

[17] Cf. Kugler 2022, 125.

veyed by letter was in the past, the temporal position of ἐώνητο, which refers to the completion of the purchase, is to be understood to mean that the purchase transaction – and probably also the hiring of a wetnurse to care for the slave-child[18] – had already taken place before the ἐπιστολὴ ὅρκου πατρίου was issued, as Kugler has rightly pointed out:[19] the pluperfect tense expresses the fact that the process of buying the slave and her child had already been completed in the past. This means that we are dealing here with an oath that refers to the confirmation of an existing debt that arose in the past through the non-fulfillment of an agreement or contract. And the same is true in P.Polit.Iud. 12 (135 BCE), a petition to the archons regarding payment for a lease of land;[20] there the petitioner uses the present participle ὀφείλοντος to allude to an existing debt of the defendant and the aorist form ἔθετο – in the sense of describing a past event – to refer to the fact that the defendant had issued the petitioner a ἐπιστολὴ ὅρκου πατρίου. The point of reference here is once again a process that was already completed in the past, with the pluperfect ἐμεμίσθωτο, so that the lease transaction referred to is to be set before the execution of the ἐπιστολὴ ὅρκου πατρίου.[21] The existing debt is therefore recorded in an ἐπιστολὴ ὅρκου πατρίου and thus confirmed.

The linguistic analysis of the relevant evidence from the context of the Jewish *politeuma* of Herakleopolis has thus revealed two areas of application of oaths, the essential distinguishing criteria of which are as follows: In the one case (P.Polit.Iud. 3 and 4), the oath serves to confirm agreements that were unencumbered by the past at the time they were made; in the other case (P.Polit.Iud. 9 and 12), it is precisely the reference to the past that makes the difference, because it is a matter of swearing to an existing debt from a past (contractual) agreement.

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[18] Mélèze Modrzejewski 2016, 171; Kugler 2022, 215.

[19] Kugler 2022, 212–213.

[20] τοῖς τὸ λε (ἔτος) ἄρχουσι | παρὰ Νικάνορος τοῦ Τρύφωνος | Ἰουδαίου. Ἀνδρομάχου τοῦ | Νικάνορος Ἰουδαίου ὀφεί|λοντός μοι (πυροῦ) (ἀρτάβας) ια τὰ ἐκφό|ρια ἧς ἐμεμίσθωτο γῆς | παρὰ τοῦ πατρός μου | ἐν τῶι Ἀνδρονίκου κλήρωι (ἀρουρῶν) γ | εἰς τὸ λβ (ἔτος) καθ’ ἣν ἔθετό | μοι ἐπιστολὴν ὅρκου πατρίου | καὶ μέχρι τοῦ νῦν οὐκ ἀπο̣δε|δωκότος μοι, τοῦ χρόνου | τῆς ἀποδόσεως διεληλυ|θότος καὶ ἔτι πλ̣είονος προσ|ε̣πιγεγο̣νότος, ἐμοῦ τε | πεπραγμένου τὰ ἐκφόρια | ἐκ τῶν το̣ ε̣ . . . ν̣ . ν̣ ν | τοῦ τ’ ἐ̣γκαλουμένου μη|δένα λόγον π̣εποιημένου | ἀλλὰ διαπ̣λανῶντος καὶ τὸ | σύνολον εἰς τὰς χεῖρας μὴ ἐρχο|μένου, νυνὶ δὲ ὀπτ̣ανο|μένου ἐ̣π̣ὶ τ̣οῦ παρ’ ὑμῖν | κρι̣τηρίου ἀξιῶ π̣ροσ|[καλεσαμένους αὐτόν] - - - (back) (ἔτους) λε Παῦνι ιδ Νικάνορος | πρ(ὸς) Ἀνδρόμαχον. “To the archons of year 35 from Nikanor, son of Tryphon, a Jew. Andromachos, son of Nikanor, a Jew, owes me eleven artabas of wheat for the land that he had leased from my father in the cleruchic land of Andronikos for year 32, according to a letter of ancestral oath which he gave to me. And until now he has given me nothing. The time for repayment has passed, and still more time has gone by, and the rent has been demanded of me from … and the one being charged does not concern himself [with the matter] but makes excuses and avoids me altogether, and now appears before your tribunal, I ask that …” (back) “Year 35, Pauni 14. Nikanor against Andromachos” (trans. Kugler 2022, 233).

[21] Cf. Kugler 2022, 236.

2. The function of the ἐπιστολὴ ὅρκου πατρίου

Kugler explained the function of the ἐπιστολὴ ὅρκου πατρίου as follows:[22]

> "the oath [meaning here the ἐπιστολὴ ὅρκου πατρίου; author's n.] seems to play the role of reaffirming an existing contractual arrangement that required reworking because the circumstances related to the original agreement changed in some way."

In support of this interpretation, Kugler referred to Edwin Carawan's (2008) analysis of oaths in connection with contracts in classical Athens.[23] However, there is a *caveat* to this approach. On the one hand, it may seem methodologically somewhat absurd to use the Athenian evidence for a better understanding of a legal practice that can be inferred from P.Polit.Iud. for the middle of the 2nd century BCE. On the other hand, there are also interpretative problems; Carawan pointed out, in Kugler's words, that:[24]

> "an oath in association with reworking the terms of a prior agreement signals the oath maker's promise to forego any legal proceedings in case of a failure to honor the new agreement – and perhaps also to let go as moot any terms from the old agreement."

However, there is no mention of this intention behind the oath in the relevant texts from the Jewish archive P.Polit.Iud. In fact, the petitioners' descriptions give no indication that the purpose of an ἐπιστολὴ ὅρκου πατρίου was to settle a dispute;[25] however, as Carawan has noted, in the case of classical Athens this would have to be

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[22] Kugler 2022, 236; cf. Moore's (2015, 92) understanding of Carawan: "… the parties had previously entered into a transaction, that transaction had fallen apart, the parties' dispute had been resolved by arbitration, and they then swore oaths to restart the financial relationship."

[23] Carawan's study was of similar methodological importance for Moore 2015, 91–94, esp. 92, n. 237 (see also the preceding n.).

[24] Kugler 2022, 214; see also Kugler 2022, 211, who already developed this idea on pp. 123–124 with n. 31 and made the mistake of focusing on the practice of classical Athens in the search for connecting factors for the oath in the context of "business transactions" or "business matters" and tending to separate the temple oath from this context, because it "pertained almost always to legal proceedings, and only rarely to business transactions" (p. 124). However, this categorization is too superficial and not tenable in detail (see also below). Rather, in the context of temple oaths, it would be more appropriate to distinguish, with Lippert 2012, 174, between those that had grown out of legal proceedings (including those with a business background) and those that had been laid down in the course of mere business transactions. Incidentally, it should be noted that the Athenian settlement model favored by Kugler is also concerned with the fact that the oath was taken in the context of dispute resolution, so that the distinction from the institution of the temple oath may not make sense at all. This approach is taken *ad absurdum* in n. 31 insofar as, in support of Kugler's view that the Athenian practice would also manifest itself in Egypt, with O.Bodl. I 274 (Coptus, 67 BCE) reference is made to a *Tempeleid* (cf. below, n. 35).

[25] See also Moore 2015, 93–94, who, however, did not consider any connection to a failed agreement or dispute in the past.

regarded as the typical background of contractual agreements that were accompanied by an oath.[26] In contrast, the ἐπιστολὴ ὅρκου πατρίου in our papyri – as far as can be inferred from the texts – serves as evidence that was presented to the Jewish archons in order to attest the existence of a prolonged obligation and the continued validity of the same; although it can be assumed that an impending or existing conflict forms the backdrop, the issue of the conclusive solution to the debt problem at hand is not superficially attached to an ἐπιστολὴ ὅρκου πατρίου. Furthermore, it should be noted that – according to Carawan – the oaths that were taken in classical Athens in connection with contractual agreements should rather be regarded as assertoric due to their function.[27] In view of the formulation of P.Polit.Iud. 9, however, the oath communicated by letter there seems to have a promissory character in view of the reference to future payments (ἀποδώσειν in ll. 9–10 and δώσειν in l. 19). This cannot be decided in P.Polit.Iud. 12 on the basis of the simple reference to an existing debt, but does not alter the general finding that the function of an ἐπιστολὴ ὅρκου πατρίου should be linked not to "reaffirming an existing contractual arrangement that required reworking" but solely to the aspect of "reaffirming an existing contractual arrangement" – if one understands "existing contractual arrangement" in the sense of "existing debt due to contractual arrangement".

It may also be necessary to reconsider the conceptual accentuation inherent in "reaffirming", because – as has not yet been pointed out – a written oath could also have been taken in P.Polit.Iud. 3 at the time the agreement in question was made. It has already been shown that in P.Polit.Iud. 3 the oath is stylized linguistically quite differently by the perfect infinitive ὀμωμοκέναι than in P.Polit.Iud. 4 (ὀμόσαντος in l. 8), where the idea of an oral agreement – possibly in connection with an unwritten or contractually not fixed marriage – seems to suggest itself.[28] In addition to the perfect infinitive ὀμωμοκέναι in P.Polit.Iud. 3, however, it is above all the following passage in lines 27–29[29] that calls for attention: In connection with a letter (ἐπιστολή) from village judges who had already dealt with this matter, there is not only mention of a copy of a decision (ὑπογραφή[30]) of these same village judges, but also of the

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[26] For example, Carawan stated unequivocally on p. 79: "[T]he preponderance of the evidence suggests that ordinarily – by custom and common assumption – contracts are bound by oath only if they involve the settlement of some dispute. The oaths sworn in Greek business tend to be 'assertory' rather than promissory; the oath recognizes certain rights and relationships as a current reality, not as a scenario to be realized in the future. Contracts creating entirely new obligations, where the parties have no prior claims upon one another, invoke no oath but secure the obligation with the initial payment or transfer of assets; the binding 'agreement' recognizes this transaction and covers any contingencies."

[27] See the quote in the preceding n. Moore (2015, 92) concluded from Carawan's study that "promissory oaths are known from classical Greece" which is not comprehensible, so that Moore's approach of establishing some kind of comparability between the oath practice in classical Athens and that documented in P.Polit.Iud. is not convincing either.

[28] In this sense also Kugler 2022, 141. Moore 2015, 92 tended to understand ὀμόσαντος in P.Polit.Iud. 4 as a reference to a written oath which seems to be too hypothetical.

[29] καὶ ⸢τ[ὸ ἀντίγ]ραφον τῆς ὑπογρα(φῆς) καὶ ⸢οὗ ἔθετό μοι ὅρκου πατρίου.

[30] For the meaning of the word, see Preisigke - Kießling, WB II 656 (no. 3).

oath. We are not told from which document the wording of the oath was copied. But given that in other instances in P.Polit.Iud ἐπιστολαὶ ὅρκου πατρίου played a role in everyday Jewish legal life, it is reasonable to assume that also in P.Polit.Iud. 3 the oath had been written down or recorded in a document.[31] This could correspond to the aspect of the completed action inherent in the perfect infinitive ὀμωμοκέναι. A further linguistic detail, which should not go unmentioned in the context of the passage in question (ll. 27–29), could also speak in favor of an oath written down from the beginning, which would have been the logical template for any reproduction in the context of later evidence: The verb form used to express the past performance of the later copied oath by the defendant is the same as that used in P.Polit.Iud. 12 to indicate the past issue of the ἐπιστολὴ ὅρκου πατρίου: namely ἔθετο (l. 28).

If this interpretation of P.Polit.Iud. 3 is correct, despite the fact that the term 'letter' itself is not used, then a written oath would not only be limited to cases in which it was a matter of swearing to an existing debt from a past (contractual) agreement, but would also have to be taken into account for the confirmation of agreements without reference to the past. The function of a ἐπιστολὴ ὅρκου πατρίου could therefore have been to prove and confirm an obligation to be settled – whether it was a completely new one or the result of a longer period of default.[32]

3. The character of the ἐπιστολὴ ὅρκου πατρίου

At this stage, it is time to come to the last key point, which concerns the designation of the oath document as ἐπιστολή and its character. This issue is also central because it prompts us to reflect on comparative examples of such a form of oath-taking. If it has already been noted that there is no parallel to the wording ἐπιστολὴ ὅρκου πατρίου so far, it must also be stated that there is no possibility of an alternative semantic understanding of the term ἐπιστολή: in the Septuagint's usage of the word, too, it is always a reference to a document serving as a means of communication;[33] the ἐπιστολὴ ὅρκου πατρίου should therefore be understood as a letter – introduced and concluded with greeting formulae – from the party obligated to perform to the recipient of the service, in which the respective obligation is recorded and sealed with an oath.[34] If the considerations on the function of such a letter lead us into an

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[31] See also Moore 2015, 92. Kugler 2022, 127 and 131 (based on the *ed. pr.*) admittedly did not miss the fact that a copy of the oath had been made; however, for him this had apparently been made as part of the evidence before the village judge and had not been put in writing beforehand as part of the agreement.

[32] Cf. the situation described in P.Polit.Iud. 8, in which an agreement reached before the Jews of Teei is mentioned, the reference to which was a loan agreement concluded in the past. However, there is no mention of any written evidence of this agreement.

[33] For references in the Septuagint, see Hatch – Redpath 1897, 530 s.v. ἐπιστολή.

[34] In Kugler (2022), the question of the character of the ἐπιστολὴ ὅρκου πατρίου is watered down: in the case of P.Polit.Iud. 9, it is said that "the letter and oath constituted a reworking of an earlier, failed agreement" (p. 212), implying an epistolary character; in P.Polit.Iud. 12, the ἐπιστολὴ ὅρκου πατρίου is seen as a consequence of an "original agreement" and subsequently as a "renewal of the contract" (p. 236), which suggests a document stylized as

area that is by no means untypical for the use of oaths – namely when it is a matter of swearing to pay a debt or to fulfill an obligation[35] – the question inevitably arises as to whether the practice of communicating such content in the form of a letter can be linked to familiar forms of oath-taking or whether we are perhaps even faced with a *sui generis* phenomenon.

In fact, the institutions of the temple oath and the royal oath offer no natural points of reference for an oath formula communicated in the form of a letter, since in their original form they are protocol-like documents – in terms of form, they are not letters. Apart from this, the temple oath and the royal oath do not lend themselves as parallels: the temple oath, titled ὅρκος, which is well documented above all by the Demotic evidence, where it is referred to as a "transcript/wording of the oath"[36], is generally the result of a decision based on judicial authorities in the form of a formulation of a future and, moreover, oral oath, which is imposed on one of the disputing parties and is to be taken before a deity;[37] the royal oath, technically referred to as ὅρκος βασιλικός or χειρογραφία,[38] in turn predominantly occurs in connection with services that have a public background or are owed to the government – private matters, by contrast, do not tend to serve as an occasion for royal oaths; unlike the protocol of the temple oath, that of the royal oath at least documents the actual, presently performed oath.[39]

The written recording or documentation of oaths is not bound to the protocol form of the temple or royal oath. Rather, oaths are also encountered as an instrument that is woven into the text of other documents for the purpose of confirmation, and here one occasionally also encounters private matters in the context of which an obligation to perform – for example in the context of loan agreements[40] – is sworn.[41] However, letters that would have been addressed to the recipients of a performance and in which the letter writers would have sworn the payment of a debt or an obligation to perform have not yet come to light – as far as the evidence can be surveyed – and even their simple mention cannot be traced for the time being.[42] This means that the function of an ἐπιστολὴ ὅρκου πατρίου fits into the usual range of applications of oaths, but

a contract. The latter could be linked to the *ed. pr.* (pp. 103 and 120), in which an ἐπιστολὴ ὅρκου πατρίου was readily equated with a contract. However, this interpretation seems to be terminologically rather absurd, and from a functional point of view it is not compelling either.

35 Examples of the temple oaths: Kaplony-Heckel 1963, nos. 60, 61; O.Bodl. I 274 (Coptos, 67 BCE); 275 (Thebes [?], 2nd–1st century BCE); on the royal oaths see below.

36 Seidl 1929, 4 with n. 3; Kaplony-Heckel 1963, 32 passim.

37 Seidl 1929, 4–12; Kaplony-Heckel 1963; Lippert 2012, 174–176.

38 Lippert 2012, 176; Th. Backhuys, P.Köln XVI 644, S. 48–49.

39 Seidl 1929, 12–18; Lippert 2012, 176; Th. Backhuys, P.Köln XVI 644, S. 41–51.

40 E.g. P.Köln VIII 350 (Ars., 143 BCE).

41 For further examples of royal oaths in this context, see Th. Backhuys, P.Köln XVI 644, p. 46.

42 There are also no references to such letters in the extensive study by Thoma 2023, which, however, generally takes no notice of the ἐπιστολαὶ ὅρκου πατρίου mentioned in P.Polit. Iud.

the epistolary character of the document, in which explanations of the facts and the wording of the oath are then to be expected, emerges as a special form that has so far only been evidenced in P.Polit.Iud. as an instrument of legal practice. Admittedly, there is the possibility in principle that too dogmatic conclusions are drawn here from the word ἐπιστολή as to the character and form of the Jewish oath document, especially since an ἐπιστολὴ ὅρκου πατρίου has not been handed down in material form, so we ultimately lack the final proof that a letter is concealed behind ἐπιστολή. But precisely as long as this is the case, it is advisable to first understand the word ἐπιστολή literally and from its basic meaning.

4. Jewish oath-taking and aspects of ethnic self-image and identity patterns: an outlook

After examining the Jewish oath practice documented in P.Polit.Iud. and contextualizing the ἐπιστολὴ ὅρκου πατρίου it is undoubtedly a big leap to draw conclusions regarding the ethnic self-image of the tangible Jewish individuals and their presumed identity, and here is certainly not the place to overstretch this point. This is also not at all appropriate because questions about the ethnic self-image and identity of Jewish communities are far too complex to reflect on here in brief.[43] And "ethnic self-image" and "identity" are probably also the wrong categories to use in order to move on to what I would like to focus on in conclusion. For what is evident in the Jewish oath practice and ἐπιστολὴ ὅρκου πατρίου examined, but was never made the subject of in-depth consideration, is an apparently absolutely common, even institutionalized practice when it comes to sealing agreements or acknowledging debt relationships. This practice cannot be regarded as obligatory, because P.Polit.Iud. also documents private business relationships in the context of which no oath is reported – on superficial examination, these cases are even in the majority.[44] And yet the (oral and written) use of the oath according to the paternal custom to seal agreements is a noticeable element of the Jewish business world, into which the petitions provide insight.[45] The clearly tangible scope of use of the ἐπιστολὴ ὅρκου πατρίου in P.Polit. Iud. 9 and 12 even makes this instrument appear – in the sense of a deferral – as a kind of mediation in an impending or existing conflict in order to record and prolong

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[43] On this broad topic, see in connection with the institution of the *politeuma* and P.Polit.Iud. Sänger 2019, 141–163.

[44] P.Polit.Iud. 5, 6, 8, 10, 11, Pap.Graec.Mon. 287 + 293.

[45] Against Moore 2015, 94 it should be noted that it seems far-fetched to explain the Jewish oath practice solely by the existence of a Jewish *politeuma* (see also the following n.). The institutions of the *politeuma* was an administrative unit (based on an ethnic community) but it was not an instrument to protect or grant the practice of any kind of faith; see Sänger 2016, 218–226; id. 2019, 127–135. It is certainly appropriate to understand the Jewish oath practice documented in P.Polit.Iud. – and especially the appearance of an *epistole* in this context – first of all as an indication of a local phenomenon; however, this can be easily separated from the institution if we link it with the effort to behave in a tradition-conscious manner and the desire to meet certain expectations of the archons; on these aspects, see Czajkowski – Wackenier 2020, 431–432.

unfulfilled contractual obligations without immediately having to initiate proceedings before a court or public officials in the event of non-fulfilment of contractual payment obligations or deadlines. Together with the village elders or *presbyteroi* of Tebetnoi (P.Polit.Iud. 3) and village judges of Onnes (P.Polit.Iud. 6), who, alongside the archons of the Jewish *politeuma* of Herakleopolis, can be found in P.Polit.Iud. as local Jewish committees or adjudicating bodies[46] we are faced with a high degree of differentiated internal mechanisms that created liabilities and possibilities for conflict prevention or mitigation within the Jewish lifeworld. To speak here of an expression of ethnic self-understanding or the articulation of a specific identity is probably going too far, but it does seem to be a matter of patterns that allow group-specific norms to be determined – norms that are explicitly tangible and deserve more attention than previously seen.

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[46] Cf. also the Jewish committee mentioned in P.Polit.Iud. 8, 23 and the "Jews of Aphroditopolis" in P.Polit.Iud. 9. The fact that the petitioner of P.Polit.Iud. 9, Berenice, is from Aphroditopolis and addresses the archon as someone "being away from home" is no reason to follow Moore 2015, 94 in suggesting that "the *horkos patrios* was only made possible by the power of the *politeuma*" (see the preceding n.).

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IL CONTRATTO GIURATO NEL *POLITEUMA* GIUDAICO DEL HERAKLEOPOLITES. RISPOSTA A PATRICK SÄNGER

La relazione di Patrick Sänger ha affrontato un aspetto di alcune delle petizioni inviate al *politeuma* giudaico competente per la regione del *Herakleopolites*. Questi testi, editi quasi 25 anni fa, hanno suscitato sin dalla loro pubblicazione grande interesse e Sänger stesso ha contribuito più volte alla disamina di questo dossier che testimonia forme e modalità di adattamento e coesistenza, all'interno del regno lagide, delle piccole comunità giudaiche disseminate nella *chora* egiziana. Qui l'attenzione però è rivolta ad un aspetto molto particolare, vale a dire alla definizione di un documento - perché tale deve essere considerato - di cui si parla nelle petizioni, l'ἐπιστολὴ ὅρκου πατρίου, sebbene però non ne esista al momento alcun esemplare, e sebbene si ignori perfino come esattamente il giuramento fosse formulato. Oltre al papiro più dettagliatamente esaminato, P. Polit.Iud. 9, l'ἐπιστολὴ ὅρκου πατρίου compare citata in un solo altro caso, P. Polit.Iud. 12, ma quasi sicuramente ci si riferisce allo stesso tipo di testo anche in P. Polit. Iud. 3, in cui si menziona la copia, tra altre, di un giuramento scritto, relativo ad una dote[1].

Sul giuramento ancestrale che compare in Egitto nei documenti del dossier del *politeuma* giudaico di Heracleopolis, è stato scritto molto, talvolta in modo creativo[2]. Ma, in estrema sintesi, ci sono almeno due problemi che appaiono ancora oggetto di possibile discussione e chiarimenti: in un primo caso se l'ἐπιστολή sia un documento che accompagna il contratto scritto, confermandolo e rafforzandolo, e anche se l'ἐπιστολή possa essere una forma di contratto *per sé* (di fatto una versione giudaica

[1] Ll. 28-30: καὶ τ̣[ὸ ἀντίγ]ρ̣αφον τῆς / ὑπογρα(φῆς) καὶ ο̣ὗ ἔθετό̣ μοι ὅρκου/ πατρίου. Per comodità richiamo anche qui qualche linea dei papiri, avvertendo inoltre che di seguito, sia nel testo sia in nota, essi verranno indicati semplicemente con il loro numero di edizione, senza ripetere P.Polit.Iud.

[2] Penso a interpretazioni poco soddisfacenti di alcuni dei documenti di cui si parla qui, da parte di Moore 2015: per esempio la sua analisi del n. 3 è imprecisa rispetto al testo, come del resto quella dei n. 9 e del n. 12. Inoltre non mi pare condivisibile l'idea che il giuramento potesse implicare che in una transazione ci fosse una parte più forte e una più debole: all'interno di una comunità, non importa se ebraica o pagana, il giuramento poteva servire comunque per rafforzare un impegno, e le petizioni non sono certo il tipo di documento più adatto per valutare un'oggettiva posizione di squilibrio di carattere sociale, se non altro per le frequenti enfatizzazioni di danni, disagi, offese ecc.

della συγγραφὴ βασιλικοῦ ὅρκου[3]), contenendone tutti gli elementi, definiti prima anche solo oralmente tra le parti, oppure, in un secondo caso se il giuramento scritto, espresso con ogni probabilità nelle forme descritte in *Num*. 30, 3[4], documenti in pratica solo un aspetto promissorio, come vorrebbe Moore[5], ovvero riattivi un vincolo legale già precedentemente accettato, rafforzandolo, come invece sembra sostenere Kugler[6] e oggi Sänger, con argomentazione ulteriore.

L'attenzione è stata infatti rivolta soprattutto al giuramento ancestrale a cui si accenna nei testi nn. 3, 9, 12, appena ricordati e anche, in forma indiretta, nel n. 4, giuramento per il quale Sänger[7] ha proposto due ambiti di uso: uno (nn. 3 e 4) contemporaneo alla stipula di contratto, che, in quanto tale, lo comprende, l'altro (nn. 9 e 12) successivo alla redazione di un contratto: da qui presumibilmente la separazione, anche temporale, dal contratto vero e proprio, come epistola di giuramento. L'argomentazione principale per questi 2 ultimi testi, per il n. 9 in particolare, è di ordine grammaticale: l'aoristo con cui si descrive l'invio dell' ἐπιστολή (προήκατο) indicherebbe un passato più recente del piuccheperfetto ἐώνητο con cui si descrive l'acquisto dei due schiavi[8].

Questo è un punto che solleva qualche dubbio: l'atto di inviare l'epistola, proprio nel suo tempo aoristo indefinito per definizione, si scusi il calembour, esprime un'azione puntuale compiuta, e della quale è questo l'aspetto che la scelta dell'aoristo vuole sottolineare, non la sua eventuale valenza temporale[9]. In entrambi i casi dunque

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3 Cf. Mélèze-Modrzejewski 2016, p. 172.

4 Num. 30, 3: Τοῦτο τὸ ῥῆμα, ὃ συνέταξεν κύριος· ἄνθρωπος ἄνθρωπος, ὃς ἂν εὔξηται εὐχὴ ν κυρίῳ ἢ ὀμόσῃ ὅρκον ἢ ὁρίσηται ὁρισμῷ περὶ τῆς ψυχῆς αὐτοῦ, οὐ βεβηλώσει τὸ ῥῆμα αὐτοῦ· πάντα, ὅσα ἐὰν ἐξέλθῃ ἐκ τοῦ στόματος αὐτοῦ, ποιήσει. "Quando uno avrà fatto voto al Signore, o si sarà impegnato con giuramento a un obbligo, non violi la sua parola, ma dia esecuzione a quanto ha promesso".

5 Moore 2015, pp. 92-93, che, prendendo per modello la prassi ateniese, attribuisce al giuramento addirittura la funzione di apertura delle transazioni.

6 Kugler 2022, pp. 210-211. "To be clear, the ἐπιστολὴ ὅρκου πατρίου did not express the original agreement ....rather this was a reworking of an earlier agreemente which Demetrios [*il commento è proprio al n. 9*] had failed to honor". Va considerato però che, a mio avviso, lo studioso, dal momento che non ha applicato, come si dovrebbe fare, il calcolo inclusivo, per la prima scadenza contrattuale, da Phamenoth a Payni, cf. *ibid.*, p. 213, nota 75 e soprattutto p. 215, ha di conseguenza frainteso nell'analisi del testo il calcolo dei primi 4 mesi di inadempienza di Demetrio nell'acquisto della schiava, e fa risalire pertanto l'inizio dell'accordo tra Demetrio e Berenice al mese di Mecheir (un mese prima della data del contratto, dunque) invece che, correttamente, a Phamenoth quando appunto fu inviata l' ἐπιστολή contrattuale.

7 Cf. testi e traduzione inglese nel contributo di Sänger, supra, p. 439, nota 1 (n. 9); p. 442, nota 12 (n. 3); p. 443, nota 15 (n. 4); p. 444, nota 20 (n. 12).

8 Cf. ll. 8-11: προήκατό μοι ἐπιστολὴν ὅρκου/ πατρίου διομολογούμενος ἀποδῴ-/σειν μοι τὴν συνκεχωρημένην/ τ̣ι̣μὴν ἧς ἐώνητο παιδίσκης Ῥώμης.

9 Un esempio piuttosto chiaro, che devo al collega Renzo Tosi, può essere quello del Vangelo di Luca, 1, 46-55, cioè il *Magnificat* in cui le azioni di giustizia di Dio, eternamente presenti, sono tutte descritte con l'indicativo aoristo (come del resto accade nei passi della Settanta, in particolare i Salmi, da cui il *Magnificat* mutua in prevalenza i propri versi) e tradotte con il passato prossimo, dunque in modo non pienamente aderente. Un caso simile, ma con

è solo il piuccheperfetto (rispettivamente nel n. 9 ἐώνητο e nel n. 12 ἐμεμίσθωτο) in cui il valore temporale di anteriorità mi pare debba essere considerato all'interno della narrazione che espone l'antefatto che porta alla redazione scritta del contratto finale. Non credo quindi che possa rivestire altro significato se non l'espressione di una volontà e di un impegno a cui la stesura dell'epistola recapitata dà corpo pienamente vincolante, anche attraverso il giuramento.

In questo mi pare chiara la narrazione di n. 9, in cui la descrizione sia dell'acquisto dei due schiavi, madre e figlio, sia dell'ingaggio accessorio della balia, erano, a mio avviso, contenuti nell'epistola. Secondo la petizione dunque l'epistola conteneva non solo il prezzo concordemente pattuito per l'acquisto degli schiavi e per l'ingaggio della balia, ma soprattutto le scadenze e le penali da versare al contraente e al *basilikon*. Non mi pare che almeno nella petizione ci sia spazio per ricostruire uno o due contratti formali separati, che avrebbero preceduto la redazione della lettera, caso mai si evoca una contrattazione che avrebbe portato alla stipula dell'accordo, ma non un documento legale.

Del resto che ci fossero documenti con un pieno valore contrattuale e quindi vincolante redatti in forma di epistola è attestato anche in altre petizioni[10], P. Ent. 38, ma soprattutto P. Ent. 64 (petizione al re del 27 febbraio 221, da Samaria). L'epistola riportava il prezzo, 100 dracme, dei frutti di un palmeto che una donna, presumibilmente giudea visto il villaggio di appartenenza e il nome Ptolema f. di Theodotos[11], aveva ereditato e di cui richiedeva ad un certo Neilos il pagamento. Anche qui si utilizza il verbo προίημι nell'aoristo (l. 3: τὴν τιμὴν τῶν καρπῶν, περὶ ὧν κα[ὶ] ἐπ[ιστο]λὴν προήκατο). Inoltre la donna si giustificava per la petizione al sovrano perché "non era in grado di adire ad una causa contro di lui" "ἐπεὶ οὖν οὐ δύναμαι δίκην αὐτ[[. .]]\ῶι/ γράψασθαι", probabilmente per ragioni di calendario dei tribunali: erano tra l'altro passati già alcuni mesi dal momento dello scontro con la controparte. Quanto alla mancanza di riferimento ad un'eventuale giuramento ancestrale contenuto in quell'*epistolé*, va considerato che Neilos poteva non essere ebreo o forse si potrebbe pensare, data la cronologia di circa un secolo anteriore, ad una fase in cui ancora la comunità giudaica non aveva raggiunto una forma di maggiore riconoscimento della sua peculiarità.

Vorrei aggiungere che per quanto riguarda l'aspetto potenzialmente identitario dell'uso del giuramento biblico, ovvero di un *patrios horkos* all'interno del *politeuma* ebraico, diventa secondario precisare se si trattasse della prima o della seconda forma

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l'uso del participio, in Gv. 20, 29: μακάριοι οἱ μὴ ἰδόντες καὶ πιστεύσαντες, correttamente tradotto in tedesco con "Selig sind, die nicht sehen und doch glauben", mentre in italiano la traduzione scolastica non dà senso.

[10] Senza contare quelle che riferiscono di χειρογραφίαι invocate per avallare le proprie tesi, dato che di norma il documento che riportava anche un giuramento regio era appunto redatto in questa forma.

[11] Cf. da ultimi, per l'attribuzione giudaica di Theodotos e l'importanza dell'esistenza di un contesto giudaico per avallare un'identificazione onomastica, Clarysse-Broux 2024, partic. p. 151.

del giuramento definito da *Num*. 30.3, se cioè vi comparisse o meno il nome di Dio, anche se ovviamente in questo caso allo spergiuro nei confronti della controparte, si sarebbe aggiunto il crimine di *asebeia* nell'eventualità di un'inadempienza. Il giuramento comunque, sia in ambiente giudaico, sia poi in quello cristiano (e a cominciare dallo stesso Gesù, come notò a suo tempo Mélèze-Modrzejewski[12]), tanto più venne scoraggiato quanto più evidentemente era diventato consueto. Ai passi di autori giudaici, comunemente citati, che ne sostenevano l'importanza aggiungerei, sebbene di epoca posteriore, anche quello della lettera agli Ebrei, 6,16-18: "Gli uomini infatti giurano per qualcuno maggiore di loro e per loro *il giuramento è una garanzia che pone fine ad ogni controversia.*"[13].

Ancora un'osservazione su un dettaglio cronologico: Kugler si meraviglia che nel n. 9 fosse trascorso un anno tra l'invio dell'*epistolé*, dunque l'inizio dei termini per i pagamenti degli schiavi e delle spese per la balia, e quello della petizione agli arconti per le inadempienze di Demetrio e attribuisce il ritardo alla pazienza di Berenice e al suo tentativo di ottenere aiuto dai suoi concittadini giudei di Aphroditopolis (ll. 31-33)[14]. Non è al momento possibile sapere se il ricorso agli arconti del *politeuma*, fosse opzionale rispetto a quello a tribunali greci, a cui comunque gli ebrei avevano accesso, e tanto meno è sicuro o chiaro se, nella ricostruzione che sostengo ora, un' ἐπιστολή potesse essere presentata come unico documento valido per appellarsi ad un *dikasterion,* sebbene sia tutt'altro che impossibile, ed eventualmente per quali tipi di cause o inadempienze. Tuttavia in questo caso la concomitanza con lo scoppio della guerra civile tra Tolemeo Evergete II e Cleopatra II (almeno dal giugno del 132, secondo la recente ricostruzione di Lanciers[15]) potrebbe essere stata determinante per il ritardo e forse anche per la scelta dell'autorità a cui fare riferimento: è probabile che già da qualche mese i giudici greci, a cui in alternativa ci si poteva rivolgere, non fossero disponibili in quella regione. Tra l'altro lo Heracleopolites fu all'inizio proprio uno dei nomi più travagliati, che passarono sotto controllo di Cleopatra II per essere poi riportati, dopo pochi mesi, sotto il controllo di Tolemeo, e sicuramente una buona parte della comunità giudaica, ampiamente rappresentata da militari, fu coinvolta in quegli eventi.

Come sottolinea Sänger[16], l'attività giudiziaria del *politeuma* ebraico documentata dai papiri eracleopolitani, sebbene nutrita da un consapevole, ma spesso implicito, richiamo all'esperienza biblica e alla sua legislazione, come ha dimostrato Kugler, non è però alternativa a quella del sistema regio[17]. E proprio in questo spazio di di-

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[12] Mélèze-Modrzejewski 2016, p. 174.

[13] *Ep. ad Hebraeos,* 6.16*:* ἄνθρωποι γὰρ κατὰ τοῦ μείζονος ὀμνύουσιν, καὶ πάσης αὐτοῖς ἀντιλογίας πέρας εἰς βεβαίωσιν ὁ ὅρκος·

[14] Kugler 2022, p. 211.

[15] Cf. Lanciers 2020, pp. 21-54.

[16] rec. a Kugler 2022 in Bryn Mawr 2024.01.34.

[17] Osservazioni simili, partendo proprio dalla presenza del cosiddetto giuramento ancestrale, anche in Czaijkowski – Wackenier 2020, pp. 431-432; e ora, assai chiaramente in Szántó 2024, pp. 188-191, partic. 191 "All the contracts presented above were concluded accor-

scussione il lavoro su questa documentazione mostra opportunità e spunti di ulteriori approfondimenti.

Per concludere vorrei richiamare ad esempio un caso che per il suo contesto periferico, sebbene cronologicamente posteriore rispetto ai papiri eracleopolitani, essendo del 41 d.C., può forse essere di ulteriore utilità per comprendere le dinamiche e le logiche che in diaspora entravano in gioco quando le comunità giudaiche dovevano garantire il rispetto della propria cultura anche sotto il profilo giuridico. Si tratta di un'iscrizione, *CIRB* 1123, proveniente da Gorgippia nel Bosforo Cimmerio, che riporta un atto di manomissione attuato da un certo Pothos figlio di Strabon in favore della schiava Chrysa attraverso la dedica in voto (κατ' εὐχ[ὴ]ν) al Θεῶι Ὑψίστωι, nella sinagoga (τ[ῆι] προ̣σ̣ευχῆι), allo scopo di renderla libera e *protetta,* nei confronti degli eredi, *da Zeus, Gea e Helios*[18]. L'iscrizione, pur assai diversa nella modalità di redazione e nella tipologia documentale, offre dunque una situazione paragonabile a quelle che ci presentano i papiri eracleopolitani: all'interno di una comunità ebraica l'atto giuridico viene compiuto secondo modalità, evidentemente ammesse da epoca ellenistica, che possono includere, combinare o affiancare forme proprie della tradizione giudaica ma anche procedure, compresi formulari e dichiarazioni, tipici e riconoscibili dalla comunità pagana, vòlti dunque a garantire la validazione degli atti anche al di fuori dell'ambiente squisitamente giudaico, in cui vengono conclusi, come già icasticamente riassunto da Joseph Modrzejewski, a proposito dei nostri papiri: "a Greek contract, a biblical sanction".

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ding to common Greek law, and yet the Jews devised a means of reconciling them with their religious beliefs in a way that was still acceptable to the Ptolemaic state".

[18] Vd. *CIRB* 1123 (ed. ora in Levinskaya 1996, App. 3, n. 7, con foto): Θεῶι Ὑψίστωι παντο̣-/κράτορι εὐλογητῷ, βα-/σιλεύοντος βασιλέ-/ως [Μιθρ]ιδ̣ά̣τ̣ο̣υ φιλο-/γερμα<νί>κου καὶ φιλοπάτ-/ριδος ἔτους ηλτ΄, μη-/νὸς Δείου, Πόθος Στ-/ράβωνος ἀνέθηκεν τῆ̣ προ̣σ̣ευχῆι κατ' εὐχ[ὴ]-/ν θ[ρ]επτὴν ἑαυτοῦ, ᾗ ὄνο̣-/μα Χρύσα, ἐφ' ᾧ ᾗ ἀνέπα-/φος καὶ ἀνεπηρέαστο[ς] ἀπὸ παντὸς κληρον[όμ]-/ου ὑπὸ Δία, Γῆν, Ἥλιο̣[ν]. Il testo si affianca ad altri 15 atti di manomissione riconducibili alla comunità giudaica insediatasi nel regno bosporano per le quali si veda anche Leigh Gibson 1999, pp. 96-123, e partic. 109 e ss. Il testo e altri atti simili erano già stati commentati in questo senso da Belayche 1991.

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LORENZO GAGLIARDI (MILANO)

CONTRIBUTO ALL'INQUADRAMENTO DOGMATICO DELL'*ISOPOLITEIA* DEI TRATTATI BILATERALI ELLENISTICI

Abstract: The article addresses the issue of *isopoliteia* in Hellenistic bilateral treaties, focusing on the dogmatic framing of the institution. It examines mutually granted citizenship between *poleis* such as Miletus and Heraclea, regulated by specific procedures, and distinguishes between actual and potential citizens. The article also analyzes the concept of "*minor* citizenship," denying its existence in relation to the texts discussed.

Keywords: *isopoliteia*, citizenship, *enktesis*, *epigamia*, *metechein formulae*

1. Caratteri generali

Il tema dell'*isopoliteia* greco-ellenistica, dopo alcuni studi fondamentali, ma ormai abbastanza lontani nel tempo (Szántó[1], Gawantka[2], Gauthier[3])[4], ha visto negli ultimi anni un rinovato dibattito al quale hanno incisivamente partecipato, tra gli altri, Sara Saba[5], William Mack[6], Christel Müller[7], Ivana Savalli-Lestrade[8], Alberto Maffi[9].

Io mi occuperò qui di esporre il mio punto di vista sull'inquadramento dogmatico dell'*isopoliteia* che aveva luogo nei rapporti bilaterali fra città[10] sulla base di trattati. Non mi occuperò invece dell'*isopoliteia* propria delle *sympoliteiai* federali[11].

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1 Szántó 1892.
2 Gawantka 1975.
3 Gauthier 1972; 1985, 152 ss.
4 La letteratura meno vicina cronologicamente include, tra altri, anche Lécrivain 1900; Oehler 1916; Kolbe [1929] 1969; Schmitt 1969, 508; Humbert 1978, 123 ss.
5 Saba 2020. Cfr. Saba 2011a; 2011b.
6 Mack 2019.
7 Müller 2014, 2015, 2016a, 2022, 2023a, 2023b.
8 Savalli-Lestrade 2021.
9 Maffi 2023.
10 E non anche a quella fra una città e un singolo (salvo che per un accenno *infra*, in nt. 36): Gawantka 1975, 24 ss.; Müller 2022.
11 Nelle *sympoliteiai* federali vi era una cittadinanza superiore, *politeia* o *isopoliteia* in senso esteso, che, nel momento genetico della *sympoliteia*, era resa comune ai cittadini di tutte le *poleis* incluse nell'organizzazione e in caso di adesioni successive era estesa alle nuove *poleis* coinvolte. Essa prevedeva la partecipazione delle varie *poleis* all'ordinamento nor-

Tra i trattati più ricchi di informazioni sul nostro tema vi è quello tra Mileto ed Eraclea al Latmo, databile probabilmente a qualche anno prima del 180 a.C. (*Milet* I/3, 150)[12]. Da esso possiamo prendere le mosse per alcune considerazioni generali. Vi è innanzitutto ricordato che, in virtù del rapporto di amicizia tra le due comunità, gli Eracleoti avevano inviato un'ambasceria a Mileto, con un decreto della loro città mediante il quale era stato proposto un accordo per la concessione (da intendersi: reciproca) dell'*isopoliteia* e di altri benefici[13]. Il trattato aveva stabilito che i Milesii diventassero cittadini di Eraclea e gli Eracleoti cittadini di Mileto[14].

Esso conteneva specifiche disposizioni in tal senso. Gli abitanti di ciascuna comunità ottenevano la cittadinanza dell'altra, e quindi *in primis* i relativi diritti politici, soltanto dopo esservi immigrati e dopo essere stati iscritti nelle tribù locali secondo precise procedure che prevedevano a tal fine una richiesta da ripetersi ogni anno. Ciascuna comunità aveva ottenuto che nel trattato fossero specificate le proprie pro-

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mativo della confederazione (sia che essa si elevasse a *koinon*, sia che no: Rzepka 2002), con diritti tendenzialmente condivisi dai cittadini delle diverse città unite sotto il nuovo ordinamento della *sympoliteia* (Gagliardi 2023b, 44 ss.; con riferimento peculiare all'*enktesis* Szántó 1892, 139, 149 s.; Francotte 1907, 151; Busolt 1926, 1314; diversa opinione: Guiraud 1893, 155; dubitativamente Sizov 2021). Restava fermo, però, al contempo, per ciascun corpo civico, il mantenimento del sistema politico della madrepatria (Müller 2021). Questo aveva luogo sia che la *sympoliteia* fosse paritaria, sia che fosse egemonica [trattazione sul tema da parte di Nielsen (T.H.) 2000; Hansen 2004, 88; 2015, 871 s.; Fröhlich 2010, 661 s.]. Si può pensare, ad esempio, a proposito di questo tipo di *isopoliteia*, a quanto è attestato per la lega achea, nella quale i membri di tutte le *poleis* aderenti partecipavano a un sistema giuridico e istituzionale comune, che possiamo considerare espressione di *isopoliteia* in senso esteso: Plb. 2.37-38 e 41-42. Larsen 1971; Rizakis 1990; 2010; 2012; 2015; 2021; Löbel 2014, 80 ss. Oppure si può considerare Xen. *Hell*. 5.2.11-19 per la *sympoliteia* tra Olinto e le città della Calcidica, la quale non garantiva diritti di cittadinanza reciproci tra coppie di *poleis*, ma stabiliva istituzioni comuni e un sistema giuridico condiviso tra un numero elevato di comunità. Beck 2001; Pascual 2007, 177; Psoma 2011; 2019; Rizakis 2012; Zahrnt 2015, 356. Sulla condivisione normativa all'interno delle *sympoliteiai* federali, Priol 2023, 36 s. Tra le fonti epigrafiche rileva a questo proposito principalmente *IG* IX/1², 1:3a (262 a.C.), ll. 11-13 (πολίταν εἶμεν… ἴσογ καὶ ὅμοιον tra Etoli e Acarnani; cfr. McInerney 2015, 219) e inoltre *IG* IX/1, 97 (300/250 a.C.), ll. 14-15; *FD* III/3, 214 (ca. 247/246 a.C.), ll. 3-5; *IG* IX/1², 1:173 (ca. 220/200 a.C.), ll. 6-8; *IG* IX/1², 1:136 (ca. 200 a.C.). Sulle *sympoliteiai* federali cfr. Larsen 1968, XI ss.; Giovannini 1971, 87 ss.; Schmitt 1994; Bearzot 1994; Beck 1997, 9 ss.; 2001; Reger 2004; Doukellis 2005; Siewert 2005; Walser 2009; Mackil 2013, 326 ss.; Scholten 2013; Löbel 2014, 24 ss.; Beck - Funke 2015; Hall 2015; Müller 2016b, 16; Rzepka 2017, 52 ss.; Priol 2023, 220 ss. Diverso era il caso delle *sympoliteiai* bilaterali, che realizzavano dei sinecismi: Jones (Chr. P.) 1999; Wörrle 2003; Reger 2004; Mack 2014; Labuff 2010; 2016; Priol 2017.

[12] Errington 1989; Gauthier 2001; Wörrle 2004; Habicht 2005; Laffi 2010, 67 ss., nr. 7.

[13] LL. 10-13: ἐπειδὴ Ἡρακλεῶται φίλοι καὶ ἀσ|τυγείτονες τῆς πόλε<ως> ὑπάρχοντες ψήφισμα καὶ πρεσβευτὰς ἀποστείλαντες ἠξίωσαν | τὸν δῆμον συνθέσθαι πρὸς αὐτοὺς ὑπὲρ τῆς ἰσοπολιτείας καὶ τῶν ἄλλων φιλαν|θρώπων… [Trad.: «Poiché gli Eracleoti, che sono amici e vicini della *polis* e hanno inviato un decreto e degli ambasciatori, hanno ritenuto opportuno chiedere che il popolo raggiunga un accordo con loro sull'*isopoliteia* e sugli altri benefici…»]. Grieb 2008, 199 ss.; Saba 2014.

[14] L. 34: εἶναι πολίτας Μιλησίους Ἡρακλεωτῶν καὶ Ἡρακλεώτας Μιλησίων… [Trad.: «(è stato decretato che) i Milesii siano cittadini degli Eracleoti e gli Eracleoti dei Milesii…»].

cedure locali[15]. La parte milesia precisava che ogni anno i (nuovi) immigrati eracleoti sarebbero stati assegnati (con mogli e figli) dai pritani per sorteggio in egual numero in ciascuna delle tribù locali[16]. Ma era specificato che essi non avrebbero potuto ricoprire magistrature militari per dieci anni dal trasferimento a Mileto[17]. Inoltre un successivo decreto della *bulè* avrebbe precisato le modalità dell'effettivo esercizio dei diritti politici[18]. La parte eracleota disponeva analogamente una distribuzione dei

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[15] Per le procedure milesie, ll. 43-53: τοὺς δὲ βουλομένους Ἡρακλεωτῶν μετέχειν τῆς ἐμ Μιλήτωι πολ[ι]|τείας καὶ ἱερῶν καὶ ἀρχείων καὶ τῶν λοιπῶν, ὧν καὶ τοῖς ἄλλοις μέτεστι Μιλησί{ων}οις {Μιλησίοις}, ἀπο|γράφεσθαι ἀν' ἕκαστον ἔτος πρός τε τοὺς πρυτάνεις καὶ τοὺς ἠρημένους ἐπὶ τῆι φυλα|κῆι τά τε αὑτῶν ὀνόματα καὶ ἧς ἂν ὦσιν φυλῆς καί, εἴ τισιν ὑπάρχουσιν γυναῖκες καὶ τέκνα, | καὶ τὰ τούτων ὁμοίως ὀνόματα, ποιουμένους τὴν ἀπογραφὴν ἐν τῶι μηνὶ τῶι Ἀνθεστη|ριῶνι. γίνεσθαι δὲ αὐτῶν καὶ τὴν ἐπικλήρωσιν ἐν τῶι αὐτῶι μηνὶ ὑπό τε τῶν πρυτάνεω[ν] | καὶ τῶν ἠρημένων ἐπὶ τῆι φυλακῆι, ἐπικληρουμέμων αὐτῶν πρὸς μέρος ἐφ' ἑκάστην | φυλήν· εἶναι δὲ αὐτοῖς τῶν μὲν λοιπῶν πάντων παραχρῆμα τὴν μετουσίαν, φρο[υ]||ραρχίας δὲ καὶ φυλακῆς τῆς κατὰ πόλιν καὶ φρουρικῆς μετεῖναι αὐτοῖς διελθόντων | ἐτῶν δέκα, ἀφ' οὗ ἂν ἕκαστοι ἐπικληρωθῶσιν· τὰ δὲ ἄλλα τὰ περὶ τὸν κλῆρον τὸν ἐν ἀρχαιρεσ[ί]||αις ὑπάρχειν κατὰ τὸν βουλευτικὸν νόμον [Trad.: «Coloro tra gli Eracleoti che vogliono partecipare alla cittadinanza, ai sacri riti, alle magistrature e a tutte le altre cose condivise con gli altri Milesii, registrino ogni anno, presso i pritani e i responsabili della sorveglianza, i propri nomi, la tribù di appartenenza e, se hanno mogli e figli, anche i loro nomi nello stesso modo, effettuando la registrazione nel mese di Antesterione. Inoltre abbia luogo l'assegnazione per sorteggio alla tribù nello stesso mese, a opera dei pritani e dei responsabili della sorveglianza, con una suddivisione equa tra le tribù. Essi ottengano immediatamente la partecipazione a tutte le altre cose, ma partecipino al comando delle guarnigioni e alla sorveglianza sulla città e sulla fortezza solo dopo dieci anni dalla loro assegnazione per sorteggio alle tribù; tutto il resto che riguarda il sorteggio delle magistrature sia regolato secondo la legge del consiglio]. Per la parte eracleota, ll. 53-57: εἶναι δὲ καὶ Μιλησίων τοῖς βουλομένοις ἐν Ἡ|ρακλείαι πολιτεύεσθαι τὴν ἀπογραφὴν ποιησαμένοις πρὸς τοὺς ἐν Ἡρακλείᾳ πρυτάνεις ἐμ μη|νὶ Θεσμοφοριῶνι· ἀπογραφέσθωσαν δὲ καὶ οὗτοι καὶ ἧς ἂν ὦσιν φυλῆς· ὅσοις δ' ἂν ὑπάρχωσιν | γυναῖκες καὶ τέκνα, ἀπογράφειν αὐτοὺς καὶ τὰ τούτων ὀνόματα, τοὺς δὲ πρυτάνεις ποιεῖσ|θαι αὐτῶν τὴν ἐπικλήρωσιν ὁμοίως ἐν τῶι αὐτῶι μηνί [Trad.: «I Milesii che desiderano vivere da cittadini a Eraclea si registrino presso i pritani di Eraclea nel mese di Tesmoforione; e inoltre si registrino nella tribù di appartenenza; coloro che hanno mogli e figli iscrivano questi ultimi e i loro nomi, i pritani li assegnino per sorteggio (alle tribù) allo stesso modo nello stesso mese»]. Savalli 1985, 391; Migeotte 2004. Sui registri in questione Boffo in Boffo-Faraguna 2021, 693 ss.

[16] Piérart 1985, 172 s.; Jones (N.F.) 1991, 96; Günther (W.) 2009, 176.

[17] Jones (N.F.) 1991; Baker 1995.

[18] A titolo di raffronto, in ordine all'esercizio dei diritti, si consideri *Milet* I/3, 141 (228 a.C. circa), trattato preliminare allo stabilimento di un'*isopoliteia* non reciproca tra Mileto e Cio, nel quale era disposto che i cittadini di quest'ultima città, che avrebbero esercitato in futuro l'*isopoliteia* a Mileto, avrebbero goduto dei diritti espressamente concessi dal *demos*. Ll. 37-41: ἵνα δὲ τοῖς προαιρουμένοις Κιανῶν μετέχειν τῆ[ς] | πολιτείας γίνηται τὰ ὑπὸ τοῦ δήμου δεδομένα, ἐπιμελεῖσθ[αι] | τοὺς πρυτάνεις καὶ ἐπικληροῦν αὐτοὺς ἐπὶ τὰς φυλάς, ἐὰν | ἀπομαρτυρῶσιν αὐτοῖς Κιανοὶ μετὰ ψηφίσματος, ὅτι εἰσὶν | αὐτῶμ πολῖται… [Trad.: «I pritani facciano in modo che ai cittadini di Cio che desiderano partecipare alla (nostra) cittadinanza sia garantito tutto ciò che è stato loro concesso dal popolo e li assegnino per sorteggio alle tribù, a condizione che i cittadini di Cio attestino con un decreto che essi sono cittadini loro (*i.e*. di Cio)…»]. Cfr. anche le ll. 34-37. La concessione era correlata in questo caso anche con il rapporto di madrepatria e colonia tra le due città, trattato da Avram 2004, 982 (nr. 745, Kios); Müller 2022; Sato 2023, 95. Le fonti sulla fondazione di Cio da parte di Mileto sono Arist. Fr. 519.1-2; Euseb. *Chron*. 97b, Helm; Plin. *nat*. 5.144. Diversamente

nuovi cittadini e dei loro famigliari nelle tribù per sorteggio, ma non era precisato esplicitamente che essa dovesse attuarsi con un'assegnazione proporzionale tra le varie tribù, né prevedeva limitazioni nell'esercizio dei diritti civici.

Il trattato aggiungeva ancora che gli Eracleoti avrebbero beneficiato dell'*isopoliteia* a Mileto soltanto se avessero precedentemente abitato a Eraclea o, come meteci, nella stessa Mileto per un periodo di cinque anni[19] e valeva l'inverso per i Milesii[20], mentre i cittadini ascitizi di ciascuna *polis*, naturalizzati prima del trattato, potevano esercitare il diritto di *isopoliteia*, che veniva introdotto, soltanto dopo che fossero decorsi dieci anni dacché essi erano stati inclusi in una delle due comunità[21]. Queste ultime due norme miravano fare in modo che l'*isopoliteia* fosse il più possibile destinata ai cittadini per nascita residenti nelle due città, da un lato disponendo restrizioni perché potessero beneficiarne i cittadini per nascita non residenti e, dall'altro, prevedendo che, se una delle due *poleis* avesse concesso la cittadinanza a stranieri, questi ultimi dovessero risiedere per un lungo periodo di tempo nella città ove erano stati naturalizzati. Coloro che avessero contravvenuto alle disposizioni sarebbero stati sottoposti a processo secondo la ξενίας δίκη[22].

La descritta impostazione della materia trova un generale riscontro, sia pur con specifiche differenze, in altri trattati (in cui l'*isopoliteia* è talora chiamata semplicemente *politeia*[23]). Si possono considerare per esempio quelli di Mileto con Se-

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A.R. 1.1321 ss., 1345 ss., 4.1470 ss.

[19] Ll. 57-60: εἰ δέ τινες Ἡρακλεωτῶν μὴ ὠικήκασιν | μήτε ἐν τῆι ἑαυτῶν πατρίδι μήτε ἐμ Μιλήτωι ἕως μηνὸς Ἀρτεμισιῶνος τοῦ ἐπὶ τοῦ θεοῦ τοῦ | μετὰ Φιλίδαν, μὴ εἶναι αὐτοῖς προσγραφῆναι πρὸς τὸ πολίτευμα τὸ Μιλησίων, ἐὰν μὴ πρότε|ρον οἰκήσ<ωσ>ιν Ἡράκλε<ι>αν ἢ μετοικήσωσιν ἐμ Μιλήτῳ ἔτη πέντε [Trad.: «Se alcuni tra gli Eracleoti non hanno risieduto né nella loro patria né a Mileto entro il mese di Artemision dell'anno del dio sotto il magistrato successivo a Filide, non sia loro concesso essere iscritti alla cittadinanza dei Milesii, a meno che prima non risiedano a Eraclea o, come meteci, a Mileto per cinque anni»].

[20] Ll. 60-63: ὁμοίως δὲ καὶ εἴ τινες Μιλησίων̣ | μὴ ὠικήκασιν μήτε ἐν τῆι ἑαυτῶν πατρίδι μήτε ἐν Ἡρακλείαι ἕως τοῦ προειρημένου χρόνου, μὴ | εἶναι προσγραφῆναι τούτοις ἐν Ἡρακλείαι, ἐὰν μὴ πρότερον οἰκήσωσιν ἐν Μιλήτωι ἢ ἐν Ἡρα|κλείαι ἔτη πέντε [Trad.: «Allo stesso modo, se alcuni tra i Milesii non hanno risieduto né nella loro patria né a Eraclea entro il termine sopra menzionato, non sia loro concesso essere iscritti a Eraclea, a meno che prima non risiedano a Mileto o a Eraclea per cinque anni»*]*.

[21] Ll. 63-65: καὶ ἐάν τινες ὕστερον πολιτογραφηθῶσιν ἐμ Μιλήτωι ἢ ἐν Ἡρακλείαι, τούτοι[ς] | μετεῖναι τῆς παρ' ἑκατέροις πολιτείας οἰκήσασιν πρότερον ἐν ἧι ἂν π[όλ]ε̣ι προσγραφῶσιν | ἔτη {ι} δέκα [Trad.: «E se alcuni in seguito siano stati registrati come cittadini a Mileto o a Eraclea, sia concesso loro di partecipare alla cittadinanza presso ciascuna delle due città, purché abbiano prima risieduto per dieci anni nella città in cui sono stati registrati»].

[22] Ll. 65-67: ἐὰν δέ τινες παρὰ τήνδε (τὴν) συνθήκην μετέχωσι τῆς πολιτείας, εἶναι αὐτοὺς ὑπε[υ]||θύνους ἐμ Μιλήτωι μὲν τῆι τῆς ξενίας δίκη(ι) καὶ τῆι ἐν μολποῖς ἐνστάσει, ἐν Ἡρακλείαι δὲ τῆι | τῆς ξενίας δίκηι [Trad.: «Se poi alcuni partecipino alla cittadinanza in violazione di questo accordo, siano essi perseguibili a Mileto mediante l'azione giudiziaria che concerne le materie riguardanti gli stranieri e mediante l'azione condotta dai molpi, e a Eraclea mediante l'azione giudiziaria che concerne le materie riguardanti gli stranieri»]. I molpi erano i sacri cantori di Apollo. Luria 1928; Robertson 1987, 359 ss.; Georgoudi 2001; Gorman 2001; Faraguna 2005, 325 s.

[23] L'osservazione è già in Oehler 1916, 2229.

leucia-Tralles (*Milet* I/3, 143[24], a. 218/217 a.C.[25]) e con Milasa (*Milet* I/3, 146[26], a. 215/214 a.C.[27]) e quello tra Xanto e Mira (*SEG* XLIV, 1218, a. 150-110 a.C.[28])[29].

Da essi si mette a fuoco la caratteristica inclusiva dell'*isopoliteia* bilaterale. Traspare al contempo il carattere volontario del godimento del beneficio.

Si comprende che l'*isopoliteia* consentiva ai *politai* di una città di acquisire la cittadinanza della comunità socia, ma ciò non era un fatto discendente automaticamente dai trattati, bensì veniva realizzato attraverso più o meno complesse procedure che venivano condotte nella città verso la quale avveniva il trasferimento. La nuova cittadinanza diventava effettiva solo dopo l'iscrizione nei demi e nelle tribù locali, con conseguente conferimento dei diritti politici. L'iscrizione degli isopoliti aveva luogo in registri distinti rispetto a quelli dei cittadini indigeni. Questo si ricava dalle limitazioni temporanee alle quali erano sottoposti e dalle disposizioni specifiche (ad esempio in materia di tribunali) che a loro si applicavano[30]. Peculiare rilievo assume a questo proposito *Milet* I/3, 142, trattato di *isopoliteia* tra Mileto e Figela datato tra il 334 e il 317 a.C., che in realtà fu una rinnovazione di uno o più altri precedenti. È interessante rimarcare che in esso, a distanza di tempo dal o dai precedenti trattati, ancora si tenevano distinti gli abitanti di una città che erano immigrati nell'altra e che ne avevano richiesta la cittadinanza[31].

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[24] *Milet* I/3, 143, A, ll. 23 ss.; B, ll. 56 ss.

[25] In esso compare il verbo *sympoliteuesthai*: *Milet* I/3, 143, A, ll. 23-24. Esso tuttavia non fa in questo caso riferimento a una *sympoliteia* bilaterale (come giustamente osservano Pascual 2006, 333; 2007; Priol 2023, 99 ss.; quest'ultima non manca di sottolineare una certa ambiguità lessicale dei trattati), bensì rientra nella *metechein formula* dell'*isopoliteia*. L'espressione ὁπόσοι δ' ἂν αὐτῶν αἱρῶνται μεθ' ἡμῶν συμπολιτεύεσ|θαι καὶ μετέχειν ἱερῶν καὶ ἀρχείων καὶ τῶν λοιπῶν ἁπάντων, ὧγ καὶ τοῖς ἄλλοις | μέτεστι Μιλεσίοις di *Milet* I/3, 143, A, ll. 23-25, corrisponde all'espressione δεδόσθαι δὲ αὐτοῖς καὶ πολιτείαν ἐφ' ἴσηι καὶ ὁμοίαι καὶ | μετέχειν αὐτοὺς ἁπάντων, ὧγ καὶ οἱ ἄλλοι πολῖται μετέχουσιν di *Milet* I/3, 143, B, ll. 56-57, ove si parla semplicemente di *politeia*.

[26] Giovannini 2007, 335 ss. Su aspetti particolari Gschnitzer 1989, 31 ss.; Günther (L.-M.) 1993.

[27] Anche in *Milet* I/3, 146, A, ll. 30-32, nell'espressione ὁπόσοι δ' ἂν αὐτῷ[ν] | αἱρῶνται μεθ' ἡμῶν συμπολιτεύεσθαι καὶ μετέχειν ἱερῶν κ[αὶ] | ἀρχείων καὶ τῶν λοιπῶν ἁπάντων, ὧγ καὶ τοῖς ἄλλοις Μιλη|σίοις μέτεστι, il verbo *sympoliteuesthai* altro non indica che la compartecipazione dei cittadini di Milasa alla cittadinanza di Mileto. Priol 2023, 101.

[28] Bousquet - Gauthier 1994, 321 s.; Schuler 2010, 394.

[29] In *Milet* I/3, 141 e in *SEG* XLIV, 1218 vi era la particolarità che coloro che si trasferivano da una città all'altra, con l'obiettivo di acquistarvi la cittadinanza, dovevano attestare la loro cittadinanza originaria con un documento dei magistrati della città di provenienza. Boffo 2003, 53.

[30] *Milet* I/3, 150.

[31] Ll. 2-11: …ἐπειδὴ πρέσβεις ἥκουσι ἀπὸ τῆ[ς] | [πόλ]εως τῆς Φυγελέων ἀνανεούμενοι τὴν | [φιλί]αν καὶ τὴν πολιτείαν τὴν ὑπάρχουσαν | [Φυγ]ελεῦσιν ἐμ Μιλήτωι καὶ Μιλησίοις | [ἐ]μ Φυγέλοις ἐκ τῶγ χρόνωγ τῶν πρότερογ | [κ]αὶ μέμνηνται τῶν εὐεργετημάτων, ὧν | [ε]ὐεργέτηκεν αὐτοὺς ὁ δῆμος ὁ Μιλησίων· | [ἐ]ψηφίσθαι τῶι δήμωι τὴν πόλιν τὴν | [Φ]υγελέων ἐπαινῆσθαι προθυμίας ἕνεκεν, | [ἧ]ς ἔχει περὶ Μιλησίους [Trad.: «…poiché sono giunti ambasciatori dalla città dei Figelei per rinnovare l'amicizia e la cittadinanza di cui godono i Figelei a Mileto e i Milesii a Figele sin da tempi precedenti e conservano il ricordo dei benefici che il popolo dei Milesii ha concesso loro: è stato decretato dal popolo di lodare

In letteratura si è prospettata l'opinione secondo la quale questa regolamentazione realizzava una doppia cittadinanza[32]. Si possono tuttavia nutrire alcuni dubbi, poiché si ha una reale doppia cittadinanza quando il titolare può indifferentemente esercitare i suoi diritti in due diversi Stati[33]. Le disposizioni richiamate indicano invece che in base ai trattati di *isopoliteia* il cittadino di una comunità poteva chiedere di essere inserito nell'altra, ma, una volta che questo era avvenuto, non poteva più essere attivo come cittadino nella città di provenienza.

Si può aderire quindi alla configurazione della dottrina più lontana, per cui l'*isopoliteia* era una cittadinanza che possiamo chiamare potenziale[34] e che diventava attuale dopo l'iscrizione nelle tribù locali di coloro che si trasferivano da una *polis* all'altra, con conseguente ottenimento dei diritti politici. Christel Müller ha parlato al riguardo di *citoyenneté en sommeil*, con espressione che può essere fatta convergere sulla stessa configurazione[35].

Gli elementi complessivamente ricavabili dai testi dei trattati noti suggeriscono, a mio avviso, di ritenere che, con l'esercizio dell'*isopoliteia*, la cittadinanza della *polis* d'origine del soggetto trasferito non si estinguesse. Sembra probabile che essa restasse viva e riconoscibile, e tuttavia, con ogni probabilità, diventasse a sua volta potenziale nel momento in cui inversamente quella della città di adozione da potenziale diventava effettiva. Si può dire che essa entrava insomma in una fase di latenza.

2. Coesistenza della *metechein formula* con concessioni specifiche: una "cittadinanza *minor*"?

In varie iscrizioni in materia di *isopoliteia* è attestata, prima o dopo la *metechein formula*, la concessione di uno o più altri benefici o diritti o esenzioni o privilegi o condizioni favorevoli quali *enktesis*, *epigamia*, *asylia*, *asphaleia*, *epinomia*, *proedria*, *eisagogé* ed *exagogé*, oltre alla stessa *ateleia*[36].

Posso riportare come esempio particolarmente esplicativo la seguente clausola del trattato tra Ierapitna e Magnesia al Meandro, *IC* III/iii, 3C[37], databile *post* 205

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la città dei Figelei per la sua buona disposizione nei confronti dei Milesii»].

32 Hammond 1951, 153; Talamanca 1991; Savalli-Lestrade 2012, 2021. La questione della cittadinanza potenziale derivante dai trattati di *isopoliteia* va tenuta distinta dalla differente questione generale dell'ammissibilità o meno della doppia cittadinanza nel mondo greco ed ellenistico: Cecchet 2023, 548. Un esame della questione della cittadinanza potenziale nei casi di *isopoliteia* è svolto anche da Mack 2019.

33 Heller 2012.

34 Szántó 1892, 22 s., 71 ss., 87; quindi Gauthier 1978, 375 ss.; Rousset 2013; Saba 2020, 23 s.; Harter-Uibopuu 2021, 150. Nelle *sympoliteiai*, invece, il termine *isopoliteia* non indicava una cittadinanza potenziale: *supra*, nt. 11. Differentemente Pascual 2007, 177; 2024; Lasagni 2017, 86.

35 Müller 2023b.

36 Oltre ai testi di *isopoliteia* interpoleica che esaminerò specificamente nel seguito, si considerino ad esempio i seguenti decreti di concessione a titolo individuale: *IG* V/1, 962, ll. 18-23 (Kotyrta); *IG* V/1, 1312, ll. 2-11 (Thalamai); *IG* V/2, 11 (= *IPArk* 36,c), ll. 8-12 (Tegea); *IG* V/2, 396, ll. 8-12 (Lousoi); *IG* V/2, 419 (= *IPArk* 28), ll. 1-15 (Phigalea); *FD* III/1, 490, ll. 2-15 (Delfi).

37 Gawantka 1975, 30 s.; Capdeville 1994a; 1994b; 1997; Chaniotis 1996, 255 ss.; Guizzi

a.C., ove alle ll. 6-10 si legge che, nel quadro di una rinnovazione di accordi precedenti, i cittadini di Magnesia avrebbero avuto a Ierapitna, come in passato, i seguenti privilegi: *ateleia*, *proedria*, *epigamia*, *enktesis*, partecipazione alle cose sacre e umane e diritto di *import* ed *export* (*scil.* esente da tributi).

> ἀγαθâι τύχαι καὶ ἐπὶ σωτηρίαι Ἰαραπυτνίων καὶ Μαγνήτων, καὶ ἀν[α]||[γράψ]αι τὸς κόσμος ἐς στάλαν λιθίναν Μάγνησιν ἀτέλειαν καὶ προεδρίαν κ[αὶ ἐπι]||[γαμίαν] καὶ ἔνκτησιν καὶ θείων καὶ ἀνθρωπίνων μετοχὰν καὶ ἐσαγωγὰν κ[αὶ ἐξ]||[αγωγὰν] ὑπάρχειν κατὰ τὰ ἀρχαῖα, καὶ θέμεν τὰν στάλαν ἐν τῶι ἰαρῶι [τâς] | [Ἀθαν]αίας τâς Πολιάδος[38].

L'*isopoliteia* non era qui esplicitamente menzionata, ma ci si riferiva a essa con le parole θείων καὶ ἀνθρωπίνων μετοχά.

La coordinazione mediante la congiunzione καί tra l'*isopoliteia* e gli altri diritti o privilegi ha suscitato in letteratura svariati dubbi[39]. Ci sono sul tappeto due ipotesi interpretative principali.

a) Si potrebbe ritenere, con Charles Lécrivain[40], che i benefici/diritti elencati in connessione con l'*isopoliteia* fossero indicati a titolo esemplificativo della totalità di quelli inclusi nella cittadinanza.

b) Una seconda opinione è che la *politeia* degli isopoliti comprendesse già tutti i diritti spettanti ai *politai* originari della comunità cittadina nella quale essi erano immigrati, e quindi per esempio *enktesis* ed *epigamia*. Pertanto si è affermato[41] che le clausole in esame nei casi interessati debbano essere intese nel senso che i diritti in esse specificamente indicati spettassero a coloro che si trasferissero da una comunità all'altra come semplici residenti, senza far valere il diritto di ottenere la cittadinanza e cioè senza "attivare" l'*isopoliteia*: essi avrebbero insomma conseguito una "cittadinanza *minor*", caratterizzata dalla concessione di privilegi soltanto parziali ("fragments de citoyenneté"[42]), secondo quanto stabilito di volta in volta dai trattati[43].

L'integrale rilettura delle fonti che ho compiuto per questa occasione[44] mi permette di avanzare alcune nuove considerazioni e di negare la condivisibilità della seconda linea interpretativa.

2001, 357 ss.; Magnetto 2014.

38 Trad.: «Con buona fortuna e per la salvezza degli Ierapitni e dei Magneti, che i magistrati iscrivano su una stele di pietra che ai Magneti spettano, come stabilito dagli antichi accordi, esenzione dai tributi, proedria, diritto di contrarre matrimonio, diritto di avere la proprietà immobiliare, partecipazione alle cose sacre e a quelle umane, nonché il diritto di importazione ed esportazione, e che collochino la stele nel santuario di Atena Poliade».

39 Catalano 1965, 98 ss.; Capogrossi Colognesi 2000, 73, nt. 5.

40 Lécrivain 1900, 587. Cfr. Gauthier 1972, 372 ss.; 1985, 152 ss.

41 Gawantka 1975, 30 ss., 23, nt. 1; Hennig 1994, 334; Chaniotis 1996, 109 ss.; Müller 2014; 2023b, 176; Mack 2019; Saba 2020, 120.

42 Müller 2014; 2023b, 176.

43 Agli studiosi che si sono espressi in questo senso si è recentemente opposto Maffi 2023, 296 ss.

44 Per quel che può rilevare, in passato ho oscillato tra le due opinioni. Per la prima: Gagliardi 2020, 183. Per la seconda: Gagliardi 2022; 2023b, 35 ss.

3. Per l'inesistenza della "cittadinanza *minor*"

Porterò ora all'attenzione alcuni elementi e testi, sulla base dei quali mi pare che sia possibile dimostrare che le specifiche concessioni aggiuntive rispetto alla *metechein formula* non configuravano una "cittadinanza *minor*".

1) Il primo aspetto, che è necessario porre in rilievo, è che nessun testo di trattato conservato nei documenti più estesi o articolati a noi pervenuti, quali, *inter alia*, l'accordo tra Mileto ed Eraclea al Latmo (*Milet* I/3, 150), o quelli tra Mileto e Seleucia-Tralles (*Milet* I/3, 143), tra Mileto e Milasa (*Milet* I/3, 146), tra Xanto e Mira (*SEG* XLIV, 1218), riconosceva alcun diritto particolare agli immigrati tra le due città, i quali non avessero attivato l'*isopoliteia*, ma solo a quanti l'avessero fatto. Questo suscita dubbi su una presunta "cittadinanza *minor*" della quale godessero gli immigrati che non avessero chiesto l'attivazione dell'*isopoliteia* e induce a propendere per l'opinione secondo la quale questi ultimi immigrati erano semplici meteci, in linea di principio privi di *enktesis*[45] e di *epigamia*.

2) Coloro che venivano, su loro richiesta, inclusi nel corpo civico della *polis* di immigrazione, attivando l'*isopoliteia*, erano assoggettati al fisco di quest'ultima, mentre a favore di coloro che vi si stabilivano come semplici residenti era prevista l'esenzione dai tributi, perché questi erano pagati nella città d'origine. Ciò è documentato dal trattato di *isopoliteia* tra Mileto e Olbia Pontica[46], *Milet* I/3, 136[47], risalente agli anni tra il 350 e il 315 a.C.[48] Ll. 6-11:

> εἶναι δὲ καὶ ἀτελείας Μιλησίοις κα|θάσσα καὶ πρότερον ἦσαν· ἐὰν δὲ θέληι | τιμουχιῶμ μετέχειν, ἐπὶ βουλὴν ἐπίτω | καὶ ἀπογραφεὶς μετεχέτω καὶ ἔστω | ἐντελής, καθότι καὶ οἱ ἄλλοι πολῖταί | εἰσίν[49].

La clausola disponeva espressamente che i Milesii che si fossero trasferiti a Olbia (*i.e.* senza chiedere la cittadinanza locale) avrebbero goduto dell'immunità fiscale (in quanto avrebbero pagato le imposte a Mileto), mentre quei Milesii che avessero chiesto l'attivazione dell'*isopoliteia*, ad esempio perché aspiravano a ricoprire una magistratura *in loco*, sarebbero stati assoggettati a tributo come i cittadini originari del posto[50]. Questo è indicativo della distinzione tra le due categorie di immigrati che

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[45] Sottolinea il legame tra *enktesis* e cittadinanza Faraguna 2020, 189, nt. 1.

[46] Vinogradov 1981; Vinogradov - Kryzickij 1995.

[47] Ehrhardt 1983, 233 ss.; Graham 1983, 99 ss.; Rubinstein 2004, 1088 (nr. 854, Miletos).

[48] Gorman 2002, 187.

[49] Trad.: «I Milesii siano anche esenti da tributi, come lo erano già in precedenza; se però qualcuno desidera partecipare come timuco, si rechi al consiglio e, dopo essere stato registrato, partecipi e sia soggetto a tassazione, come lo sono gli altri cittadini».

[50] Un'ulteriore interessante clausola prevedeva che se i Milesii presenti a Olbia avessero esercitato la cittadinanza in un'altra città (*i.e.* diversa da Olbia), presumibilmente legata a Mileto da altro trattato di *isopoliteia*, allora avrebbero perduto l'*ateleia* a Olbia. Lo dispongono le ll. 17-24: εἶναι δὲ | [ἀ]τελεῖς πάντας Μιλησίους, πλ⟨ὴ⟩ν ὅσοι | ἐν ἄλλη⟨ι⟩ πόλει πολιτεύονται καὶ ἀρχείω⟨μ⟩ | μετέχουσιγ καὶ δικαστηρίων. κατὰ ταὐ|τὰ δὲ καὶ Ὀλβιοπολίτας ἐμ Μιλήτωι ⟨ἀ⟩τε|λεῖς εἶναι, καὶ τὰ ἄλλα κατὰ τὸν αὐτὸν | τρόπον Ὀλβιοπολίταις ἐμ Μιλήτωι ὑπάρ|χειγ καθότι καὶ Μιλησίοις ἐν Ὀλβιηπόλει [Trad.: «Siano esenti da tributi tutti i Milesii, eccetto

è stato possibile discernere. Vi erano gli isopoliti, che possiamo denominare, a titolo convenzionale, "attivi" (nel senso che avessero attivato l'*isopoliteia*), i quali erano equiparati ai cittadini per nascita. Vi erano poi gli isopoliti che semplicemente trasferivano il proprio domicilio, i quali erano considerati meteci: essi erano pur sempre in linea di principio isopoliti, e tuttavia erano "non attivi" come tali.

3) In *I.Magn*. 7b, trattato di *isopoliteia* tra Magnesia al Meandro e Focea (databile al IV secolo a.C.[51]), il riferimento all'*isopoliteia*[52], non espressamente menzionata, era incluso in queste disposizioni:

> [τάδε] ἔδ̣ω̣καν Μάγνητες Φωκαιεῦσι· ἀ[τέ]||[λειαν] εἶναι Φωκαιεῦσιν ἐμ Μαγνησίαι ἀπ|[άντων] ἐξάγοντας ὅσα ἄν ε[ἰς] τὸν ἴδιο[ν] | [οἶκ]ον [ἐ]ξάγωσιν, εἶναι δὲ καὶ εἰσαγωγὴ[ν] | [καὶ ἐ]ξαγωγὴν Φωκαιεῦσιν εἰς Μαγνησί|[αν] καὶ ἐμ πολέμωι καὶ ἐν εἰρήνη ἀ[συ]||[λ]εὶ καὶ ἀσπονδεὶ καὶ ἔφοδον ἐπὶ τὸ κοι[νὸ]ν πρώτοις μετὰ τὰ ἱερὰ, ἐπάγ|[ειν] δ' αὐτοὺς τοὺς προέδρους [εἰ]ς τὴν ἐκκλησίαν, εἰσκηρύσ|[σει]ν δὲ καὶ ἐν τοῖς ἀγῶσιν εἰς | [πρ]οεδρίαν· ἐὰν δέ τις Φωκα[ιέ]||[ων ἐ]νοικῆι ἐμ Μαγνησί[αι, εἶναι] | [αὐ]τῶι γῆς καὶ οἰκίας ἔ[γκτησιν] | [κ]αὶ τῶν ἄλλων αὐ[τῶι μετεῖναι] | [π]άντων ὧν καὶ τ[οῖς Μά]||[γ]νησιν, τέλη τελοῦ[ντι ὅσα ὁ] | [Μ]άγνης τελεῖ[53].

Era innanzitutto[54] riconosciuto a tutti i Focesi stabiliti come isopoliti attivi a Magnesia l'esenzione da tributi per tutto ciò che avessero esportato verso il loro *oikos* di residenza (*scil*. a Magnesia) e anche per tutto ciò che avessero esportato e importato da e verso Magnesia, a scopi commerciali, con immunità e senza necessità di ulteriori trattati[55]. Era loro consentito l'accesso ai riti sacri e all'assemblea. Godevano della

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coloro che esercitano la cittadinanza in un'altra città e partecipano alle magistrature e ai tribunali. In base agli stessi principi, anche gli Olbiopoliti siano esenti da tributi a Mileto, e agli Olbiopoliti a Mileto spetti tutto il resto allo stesso modo in cui spetta ai Milesii a Olbia»]. Ritengo che il riferimento fosse a quei Milesii che avessero attivato l'*isopoliteia* in una terza città e poi si fossero trasferiti a Olbia senza attivare l'*isopoliteia*, ma beneficiando dei servizi previsti dal trattato in esame. Quest'ultimo allora disponeva che essi avrebbero comunque dovuto pagare i tributi a Olbia, dato che non li pagavano neppure a Mileto. Si trattava di una disposizione a tutela sia di Olbia, sia di Mileto. Valeva anche l'inverso. Gauthier 1972, 350; Müller 2023b, 178.

51 Adak 2023, che preannuncia la pubblicazione di un nuovo trattato di *isopoliteia*, nello specifico tra Magnesia e Teo, databile al III secolo a.C., nel quale, in rinnovazione e revisione di accordi anteriori, si prevedeva la concessione, di *isopoliteia*, di *enktesis* e di *epigamia*.

52 Gawantka 1975, 27 s.

53 Ll. 1 ss. Trad.: «[Questi privilegi] concessero i Magneti ai Focesi: i Focesi abbiano l'esenzione dai tributi a Magnesia su tutto ciò che esportano verso la propria casa, i Focesi abbiano (il diritto di) importazione ed esportazione a Magnesia, sia guerra sia in pace, con immunità e senza necessità di un trattato, e (abbiano) il diritto di accesso a ciò che è comune per primi, dopo i sacri riti. I proedri li introducano nell'assemblea, e proclamino anche nei giochi la proedria. Se qualcuno dei Focesi stabilisce il proprio *oikos* a Magnesia, abbia il diritto di avere la proprietà sulla terra e sulla casa e partecipi a tutte le altre cose alle quali partecipano anche i Magneti, pagando i tributi che paga il Magnete».

54 Ll. 1-12.

55 Per l'espressione greca si vedano le numerose epigrafi raccolte in Ferraioli 2012.

proedria. Inoltre[56] spettavano loro tutti i diritti (*scil.* politici), di cui godevano i cittadini di Magnesia (τῶν ἄλλων αὐ[τῶι μετεῖναι] | [π]άντων ὧν καὶ τ[οῖς Μά]|[γ]νησιν); pagavano altresì le tasse come questi ultimi; acquisivano l'*enktesis*[57].

La norma sul pagamento delle tasse indica che i Focesi in questione avevano optato per attivare la *politeia* di Magnesia (si rammenti quanto s'è desunto dal trattato tra Mileto e Olbia[58]). Il rilievo che questa opzione compiuta dai Focesi venisse indicata semplicemente con il riferimento al fatto di avere stabilito il proprio *oikos* Magnesia (ἐ]νοικῆι ἐμ Μαγνησί[αι) permette di istituire, nei trattati di *isopoliteia*, un'equivalenza tra «attivare l'*isopoliteia* in un luogo» e «stabilire il proprio *oikos* ovvero stabilire la propria residenza [(*en*)*oikein*] ovvero risiedere [*oikein*] in un luogo». Questo trova conferma in altri testi, come si vedrà.

4) Nel trattato tra Pergamo e Temno, *AvP* VIII/1, 5 (inizio del III secolo a.C.), all'*isopoliteia* si faceva riferimento col vocabolo alternativo *politeia*:

> (ἔδοξε Ταμ[νίταισι] [κα]ὶ Περγαμήνοισι) ἔμμεναι Ταμνί[ταισι ἐν Περ]|γάμω πολι[τ]είαν καὶ Περγαμήν̣[οισι ἐν Τάμνω] | μετεχόντ[ε]σσι ὧν καὶ οἱ ἄλλο[ι πολῖται μετέχοι]|σι…[59]

Dopo di essa, si menzionava la γᾶς καὶ οἰκ[ία]ς ἔγκτησις, che era riferita a chi avesse attivato l'*isopoliteia*, come dimostra la clausola successiva, relativa al pagamento delle tasse a Pergamo per il cittadino di Temno e a Temno per il cittadino di Pergamo:

> …καὶ γᾶς καὶ οἰκ[ία]ς ἔγκτησιν ἔμ[μεναι τῶ Ταμνί]|τα ἐμ Περγάμω [κ]αὶ τῶ Περγ[αμήνω ἐν Τάμνω. τέλη] | [δ]ὲ φέρην τὸν Τ̣αμνίταν [ἐμ Περγάμω ὅσσα καὶ ὁ Περ]|[γ]άμηνος φέρει κα[ὶ] τὸν Π[εργάμηνον ἐν Τάμνω ὅσσα καὶ] | [ὁ] Ταμνίτας φέρε[ι - -[60].

5) Il trattato tra Temno e Teo, *SEG* XXIX, 1149 (III/II sec. a.C.), mi sembra ancora più indicativo nella direzione che sto indicando. In esso si statuiva che a Temno venivano concessi agli abitanti di Teo nell'ordine: a) la cittadinanza locale con parità di diritti politici coi cittadini di Temno e la μετουσί]|αν πάντων ὧν καὶ τοῖς ἄλλοις πολίταις μέτεστιν; b) l'*enktesis*, l'*epigamia* e vantaggi processuali (δίκαι πρόδικοι)[61]; c) la facoltà di essere inseriti nelle tribù con sorteggio.

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[56] Ll. 12-18.

[57] Diversa interpretazione dell'epigrafe in Saba 2020, 99 ss.

[58] *Milet* I/3, 136.

[59] Ll. 15-18. Trad.: «(Fu deciso dai Temniti e dai Pergameni) che i Temniti abbiano la cittadinanza a Pergamo e i Pergameni a Temno, partecipando a tutte le cose alle quali anche gli altri cittadini partecipano…».

[60] Ll. 18-22. Trad.: «…e che il Temnita a Pergamo e il Pergameno a Temno abbiano il diritto di avere la proprietà sulla terra e sulla casa. Il Temnita paghi i tributi a Pergamo nella misura in cui li paga il Pergameno, e il Pergameno (li paghi) a Temno nella misura in cui li paga il Temnita».

[61] L'attribuzione di *enktesis* ed *epigamia* è peraltro un *unicum* per l'Asia Minore: Saba 2020, 120 ss.

> δεδόχθαι τῆι βο[υλῆι] κα[ὶ δήμωι (a) εἶ]|ναι πολιτείαν Τηΐοις ἐν Τ̣ήμνωι ἐφ ἴση[ι κ]αὶ ὁμοίαι [καὶ μετουσί]|αν πάντων ὧν καὶ τοῖς ἄλλοις πολίταις μέτεστιν, (b) εἶνα[ι] | δὲ καὶ γῆς καὶ οἰκίας ἔγκτησιν καὶ ἐπιγ[α]μίαν πα[ρ᾽] ἡμῖν [Τηί]|οις καὶ δίκας προδίκους (c) καὶ ἐὰν βούληται ὁ Τηΐος ἐπικλ[η]||ροῦσθαι ἐπὶ τὴν φυλὴν ἐπικληρωθῆναι αὐτὸν ὑπὸ τῶν τιμο[ύ]||χων[62].

È evidente che tanto la prima disposizione (*metechein formula*), quanto la terza riguardavano i cittadini di Teo i quali avessero esercitato l'*isopoliteia* a Temno in modo attivo[63]. Questo induce a ritenere che anche la concessione di cui al tratto b), collocata tra le altre due fosse rivolta a loro, e non delineasse invece la condizione giuridica di individui dotati di una cittadinanza *minor*.

6) Il trattato fra Pario e Scepsi dell'inizio del III secolo a.C., di nuovo in Asia Minore (*I.Parion* T62), reca:

> πολί|την δὲ εἶναι τὸν Παριανὸν Σκηψίων ἐὰν θέ|[λ]ῃ, καὶ τὸν Σκήψιον Παριανῶν ἐὰν θέλῃ· καὶ | ἔνκτησιν εἶναι τῶι Παριαν̣ῶι ἐν Σκήψει καὶ | ἐὰν οἰκῆι ἐν **Σκήψει καὶ ἂν μὴ οἰκῆι· κατὰ ταὐ|τὰ δὲ καὶ τῶι Σκηψίοι ἐμ Παρίοι**· ὅσοι δ᾽ ἂν | Σκηψίων οἰκῶσιν ἐμ Παρίοι ἢ γῆι τῆι Παρια|νῶν ἓξ μῆνας ἢ πλέον φέρειν τέλη ὅσ᾽ ἄν Παρι|ανοὶ φέρωσι καὶ ἄν τις Παριανῶν οἰκῆι ἐν | Σκήψει ἢ γῆι τῆι Σκηψίων ἓξ μῆνας ἢ πλέον | φέρειν τέλη ὅσα ἂν καὶ Σκήψιοι φέρωσι· ἢν | δέ τις χρήματα μεταβάλῃ φυγῆς ἕνεκεν, | ἀτελῆ εἶναι ἕνα ἐνιαυτόν· ἐν δὲ τοῖς ἀγῶσι | κηρύσσεσσθαι εἰς προεδρίαν ἐμ Παρίοι Σκη|ψίους καὶ ἐν Σκήψει Παριανούς[64].

In esso si trovava dapprima[65] la clausola relativa all'*isopoliteia*, con la precisazione che questa doveva essere attivata volontariamente dai soggetti interessati. Seguiva quindi una disposizione[66] che ha suscitato incertezze. Era aggiunto che ciascun immigrato avrebbe avuto il diritto di *enktesis* sia se avesse risieduto, sia se non avesse risieduto

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[62] Ll. 13-19: «È stato deciso dal consiglio e dal popolo: **(a)** che i Tei abbiano a Temno la cittadinanza su base di uguaglianza e parità, e la partecipazione a tutto ciò a cui anche gli altri cittadini partecipano; **(b)** che i Tei abbiano il diritto di avere la proprietà sulla terra e sulla casa, il diritto di contrarre matrimonio presso di noi e il diritto che i loro processi siano giudicati prima degli altri; **(c)** e che, se il Teo desidera essere assegnato per sorteggio alla tribù, venga assegnato per sorteggio da parte dei timuchi».

[63] Per il rilievo a tal proposito dell'inserimento nelle tribù cfr. i trattati, già sopra considerati, tra Mileto e Seleucia-Tralles (*Milet* I/3, 143), Mileto e Milasa (*Milet* I/3, 146), Mileto e Cio (*Milet* I/3, 141), Xanto e Mira (*SEG* XLIV, 1218).

[64] Ll. 10-24. Trad.: «…che il Pariano sia cittadino degli Scepsiani se lo desidera e che lo Scepsiano sia cittadino dei Pariani se lo desidera; e che il Pariano abbia il diritto di avere la proprietà immobiliare a Scepsi, **sia che vi risieda sia che non vi risieda**; e allo stesso modo sia per lo Scepsiano a Paro. Quanti tra gli Scepsiani risiedano a Paro o nella terra dei Pariani per sei mesi o più paghino i tributi che pagano i Pariani e se uno dei Pariani risieda a Scepsi o nella terra degli Scepsiani per sei mesi o più paghi i tributi che pagano gli Scepsiani. Ma se qualcuno trasferisca beni a causa di un esilio, sia esente dai tributi per un anno. Nei giochi pubblici siano chiamati alla proedria gli Scepsiani a Paro e i Pariani a Scepsi». Il rapporto tra isopoliteia ed esilio era stretto: Chaniotis 2004, 490.

[65] Ll. 10-12.

[66] Ll. 13-14.

nella città concedente: ἐὰν οἰκῆι, καὶ ἂν μὴ οἰκῆι. L'espressione ha indotto a ritenere[67] che il privilegio potesse spettare sia a coloro che fossero immigrati nella città concedente, sia a coloro che fossero invece rimasti nella città di origine. L'osservazione potrebbe apparire a un primo esame esatta[68], poiché si potrebbe pensare alla dichiarazione di una spettanza astratta dell'*enktesis* in capo al soggetto non emigrato dalla città d'origine (si pensi a titolo di raffronto al *commercium* romano di cui erano titolari i Latini anche se non immigrati a Roma[69]); l'*enktesis* avrebbe poi avuto la sua manifestazione concreta dopo il trasferimento della residenza e il conseguente acquisto immobiliare.

Tuttavia, dobbiamo constatare che anche in questo trattato era successivamente prevista la consueta norma sulle imposte, secondo la quale, nello specifico, il cittadino di Scepsi che trasferiva la propria residenza a Pario dopo sei mesi pagava le imposte in quest'ultima *polis* (e valeva anche il reciproco). Abbiamo già visto che una disposizione di questo tipo poteva riguardare solo gli isopoliti attivi.

Ma v'è di più: se richiamiamo la già asserita equivalenza tra «*oikein*» e «attivare l'*isopoliteia*», appare chiaro che le parole *ἐὰν οἰκῆι* non possono che fare riferimento a immigrati isopoliti attivi. Chi era allora colui che μὴ οἰκῆι? Io credo che su questo passaggio del trattato sia da accogliere la spiegazione proposta da Alberto Maffi: l'*enktesis* spettava sia a coloro che *già risiedessero* nella comunità concedente, sia – veniva precisato – a coloro che *non vi risiedevano ancora*, purché vi stabilissero in futuro il proprio *oikos* e dal momento in cui lo avessero trasferito[70]. Si può accostare la clausola in esame a quella del trattato tra Mileto ed Eraclea al Latmo, sull'obbligo di un periodo di residenza in una delle due città in ordine all'ottenimento dell'*isopoliteia*[71].

7) E vengo a un ultimo punto. Alcuni trattati di *isopoliteia* molto ampi, quali ad esempio i già citati *Milet* I/3, 143, 146, 150 e *SEG* XLIV, 1218, prescrivevano in linea generale l'equiparazione dei nuovi cittadini – *isopolitai* attivi – ai cittadini per nascita. Tuttavia non si menzionavano specificamente i vari benefici o diritti che appaiono in altri trattati[72]. Ma da questi stessi trattati appare altresì che il riconoscimento dell'attivazione dell'*isopoliteia* era collegato esplicitamente alla richiesta e all'ottenimento, da parte degli isopoliti, dell'iscrizione nelle tribù o nei demi a opera dei magistrati delle *poleis* di immigrazione. Sappiamo altresì, sulla scorta dei dati desumibili dai testi finora esaminati in questo paragrafo, che l'attivazione dell'*isopoliteia* non poteva essere disgiunta dall'atto di stabilirsi in un *oikos*.

Queste considerazioni impongono di ritenere che l'acquisto di *oikoi* nei quali stabilirsi fosse sempre possibile da parte degli isopoliti che si stabilivano nelle città

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67 Saba 2020, 120.

68 Così Gagliardi 2023b, 36 s.

69 Sautel 1952; Kaser 1953; Pontoriero 2012; Roselaar 2010, 69 ss.; 2012; Capogrossi Colognesi 2022, 142; Gagliardi 2023a.

70 Maffi 2023, 300 ss.

71 *Milet* I/3, 150, ll. 57 ss. Cfr. analogamente per esempio *Milet* I/3, 143, A, ll. 19-23; *Milet* I/3, 146, A, ll. 24-30.

72 Si veda tuttavia, ad esempio in *Milet* I/3, 150, ll. 12-13, l'espressione ὑπὲρ τῆς ἰσοπολιτείας καὶ τῶν ἄλλων φιλανθρώπων.

legate da trattato di *isopoliteia* con la propria *polis* e, conseguentemente, che anche laddove non fosse espressamente citata, l'*enktesis* fosse comunque sempre prevista[73]. Se ne deduce che quando essa era nominata in aggiunta alla *metechein formula*, ciò veniva compiuto a soli fini esemplificativi.

4. Conclusione sul significato e sulle ragioni dell'indicazione di concessioni specifiche a lato della *metechein formula*

Posso a questo punto ritornare all'interrogativo che avevo posto nel precedente § 2, ovvero quale fosse il significato della menzione di uno o più altri benefici/diritti nei trattati di *isopoliteia* in congiunzione con la *metechein formula*.

Sulla base dei dati qui presentati e discussi, mi pare possibile proporre le seguenti riflessioni.

In primo luogo, occorre ricordare che coloro che si trasferivano in una città legata da un trattato di *isopoliteia* con la propria comunità, ma non chiedevano l'accesso ai diritti politici locali (cioè non attivavano l'*isopoliteia*), restavano come semplici meteci, tanto che pagavano i tributi nella madrepatria, a differenza degli isopoliti attivi (trattati tra Ierapitna e Magnesia al Meandro[74], tra Mileto e Olbia Pontica[75], tra Magnesia al Meandro e Focea[76], tra Pergamo e Temno[77], tra Pario e Scepsi[78]). Al pari di tutti gli altri stranieri immigrati essi non potevano godere né di *enktesis*, né di *epigamia*[79].

Questo prova che quella che la dottrina ha chiamato cittadinanza "*minor*", facendo riferimento agli isopoliti che non attivassero l'*isopoliteia* nella città concedente, ma asseritamente accettassero solo singoli diritti, quali ad esempio l'*enktesis* e l'*epigamia*, non è esistita. *Enktesis* ed *epigamia*, laddove nominate, anche se in aggiunta alla *metechein formula*, spettavano solo agli isopoliti attivi.

Ciò detto, in secondo luogo possiamo provare a verificare se sia fondata l'ipotesi risalente a Ch. Lécrivain, secondo la quale i benefici/diritti, elencati in relazione con le *metechein formulae*, fossero indicati a titolo esemplificativo di quelli inclusi nella cittadinanza attiva ricevuta dagli isopoliti.

Soccorrono a mio avviso quattro considerazioni:

α) come abbiamo potuto osservare[80], la menzione dell'*enktesis* in aggiunta alle *metechein formulae* era certamente compiuta a scopi esemplificativi;

β) la strutturazione dei testi delle *metechein formulae*, che sono molto variamente espresse nei trattati[81], in linea di principio equiparavano totalmente (salvo eccezioni

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[73] Cfr. Paoli 1930, 286 ss.; 1933; 1965, 174; Chaniotis 1999, 202; Guizzi 1999, 238; 2000.
[74] *IC* III/iii, 3C. *Supra*, § 1. In esso l'*ateleia* è riferita ai non residenti.
[75] *Milet* I/3, 136. *Supra*, § 3, nr. 2).
[76] *I.Magn*. 7b. *Supra*, § 3, nr. 3).
[77] *AvP* VIII/1, 5. *Supra*, § 3, nr. 4).
[78] *I.Parion* T62. *Supra*, § 3, nr. 6).
[79] *Arg. ex Milet* I/3, 150. *Supra*, § 1. Cfr. analogamente, ad esempio, *Milet* I/3, 143.
[80] *Supra*, § 3, nr. 7)
[81] Per esempio, limitandoci ai passi sopra riportati o citati, si considerino (l'ordine è cronologico): τῶν ἄλλων αὐτῶι μετεῖναι πάντων ὧν καὶ τοῖς Μάγνησιν [*I.Magn*. 7b, *supra*, § 3, nr. 3)]; τὰ ἄλλα κατὰ τὸν αὐτὸν τρόπον Ὀλβιοπολίταις ἐμ Μιλήτωι ὑπαρχειγ καθότι καὶ

specificate) gli isopoliti attivi ai cittadini per nascita;

γ) sembra perciò presumibile che coloro che si stabilivano come residenti in *oikoi* nelle *poleis* di immigrazione, quali cittadini equiparati ai locali, potessero anche contrarre matrimonio con i cittadini per nascita e che pertanto anche l'*epigamia* fosse implicita nei trattati;

δ) se è lecito generalizzare, il carattere meramente esemplificativo delle menzioni di *enktesis* e di *epigamia* dovrà essere riconosciuto anche a tutti gli altri benefici/diritti elencati in connessione con le *metechein formulae*.

Se ne può concludere che nei trattati di *isopoliteia* le *metechein formulae* includevano, a vantaggio degli isopoliti attivi, i diritti spettanti ai cittadini per nascita. Talvolta alcuni tra tali diritti venivano esplicitati per rendere la formula più pomposa e più roboante.

Vi erano però eccezioni. Erano esclusi i diritti che venivano esplicitamente negati a codesti immigrati: si pensi, a titolo esemplificativo, ai limiti a ricoprire magistrature militari attestati dal trattato tra Mileto ed Eraclea al Latmo[82]. Inoltre essi restavano, almeno in alcuni casi, registrati in registri a parte.

In conseguenza di tutto ciò, mi sembra che a proposito della *politeia* attivabile dagli isopoliti si possa parlare di uno "*status* assimilato a quello dei cittadini per nascita". Si tratta di una definizione che tiene conto delle identità, ma anche delle possibili differenze.

I trattati ellenistici sull'*isopoliteia* sono sufficientemente numerosi per permettere di coglierne i tratti fondamentali. Pertanto, l'inquadramento dogmatico dell'istituto sembra possibile, anche se alcuni dettagli probabilmente restano oscuri.

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Μιλησίοις ἐν Ὀλβιηπόλει [*Milet* I/3, 136, *supra*, nt. 50]; μετεχόντεσσι ὧν καὶ οἱ ἄλλοι πολῖται μετέχοισι [*AvP* VIII/1, 5, *supra*, § 3, nr. 4)]; ὁπόσοι δ' ἂν αὐτῶν αἱρῶνται μεθ' ἡμῶν συμπολιτεύεσθαι καὶ μετέχειν ἱερῶν καὶ ἀρχείων καὶ τῶν λοιπῶν ἁπάντων, ὦγ καὶ τοῖς ἄλλοις μέτεστι Μιλεσίοις - δεδόσθαι δὲ αὐτοῖς καὶ πολιτείαν ἐφ' ἴσηι καὶ ὁμοίαι καὶ μετέχειν αὐτοὺς ἁπάντων, ὦγ καὶ οἱ ἄλλοι πολῖται μετέχουσιν [*Milet* I/3, 143, *supra*, nt. 25]; ὁπόσοι δ' ἂν αὐτῶν αἱρῶνται μεθ' ἡμῶν συμπολιτεύεσθαι καὶ μετέχειν ἱερῶν καὶ ἀρχείων καὶ τῶν λοιπῶν ἁπάντων, ὦγ καὶ τοῖς ἄλλοις Μιλησίοις μέτεστι [*Milet* I/3, 146, *supra*, nt. 27]; ἀνθρωπίνων μετοχά [*IC* III/iii, 3C, *supra*, § 1)]; μετουσίαν πάντων ὧν καὶ τοῖς ἄλλοις πολίταις μέτεστιν [*SEG* XXIX, 1149, *supra*, § 3, nr. 5)]; τοὺς δὲ βουλομένους Ἡρακλεωτῶν μετέχειν τῆς ἐμ Μιλήτωι πολιτείας καὶ ἱερῶν καὶ ἀρχείων καὶ τῶν λοιπῶν, ὧν καὶ τοῖς ἄλλοις μέτεστι Μιλησίοις - εἶναι δὲ αὐτοῖς τῶν μὲν λοιπῶν πάντων παραχρῆμα τὴν μετουσίαν - εἶναι δὲ καὶ Μιλησίων τοῖς βουλομένοις ἐν Ἡρακλείαι πολιτεύεσθαι [*Milet* I/3, 150, *supra*, nt. 15]; μεθέξουσιν πάντων καθότι καὶ οἱ ἄλλοι Μυρεῖς μετέχουσιν [*SEG* XLIV, 1218, *supra* § 1; ll. 18-20]. Ovviamente si riscontrano tante altre diverse espressioni nei trattati.

82 *Milet* I/3, 150. *Supra*, § 1. Cfr. analogamente, ad esempio, *Milet* I/3, 143.

APPENDICE

Vengono in oggetto, a titolo di raffronto, le norme che in alcuni Stati moderni impediscono o limitano gli acquisti immobiliari da parte di stranieri, talora prevedendo eccezioni per coloro che siano residenti di lungo tempo o residenti permanenti. Appaiono rimedi a esigenze che si presentano in modo simile nelle diverse società. La *ratio* è quella di vietare agli investitori esteri di acquistare immobili residenziali e di garantire così che il mercato immobiliare rimanga accessibile ai locali. A mia conoscenza il caso più interessante e meglio confrontabile con il delineato quadro greco-ellenistico (ma la comparazione, con gli opportuni distinguo, si potrebbe svolgere anche tra gli ordinamenti moderni e il diritto romano) attiene alla Danimarca, la cui *Erhvervelsesloven* (Legge sugli Acquisti Immobiliari), approvata nel 1959, più volte riformata (LBK nr. 566 del 28/08/1986; LOV nr. 1102 del 21/12/1994; DSK nr. 11291 del 29/05/1995) e da ultimo rinnovata dal *Lovbekendtgørelse* 2014-03-21 nr. 265 dispone all'art. 1: «Personer, der ikke har bopæl i Danmark, og som ej heller tidligere har haft bopæl her i landet i et tidsrum af i alt 5 år, kan kun med justitsministerens tilladelse erhverve adkomst på fast ejendom her i landet» (Trad.: «Le persone che non sono domiciliate in Danimarca e che non sono state precedentemente domiciliate in questo Paese per un periodo complessivo di 5 anni, possono accedere ai beni immobili in questo Paese solo con il permesso del Ministro della Giustizia»). Werlauff 1989; Holm-Larsen 2009, 123 ss.; Träff 2011; Pagh-Rasmussen - Haugsted 2022. Essendo ora la Danimarca Stato membro dell'UE, si trova soggetta ai relativi principi sulla libera circolazione dei lavoratori e pertanto il Parlamento danese ha adottato alcune norme particolari in un ordine esecutivo, *Bekendtgørelse*, nr. 764 del 18/9/1995, prevedendo che i cittadini UE/SEE non devono ottenere il permesso per acquistare una proprietà, ma è sufficiente che confermino in una dichiarazione allegata all'atto che la stessa verrà utilizzata per la residenza durante tutto l'anno. Altrimenti saranno costretti a venderla. Nielsen (N.) 2011, 147 ss. Risponde alla stessa logica del legislatore danese la normativa che la Nuova Zelanda ha introdotto con l'*Overseas Investment Amendment Act 2018*. Esso ha vietato agli stranieri (eccettuati australiani e singaporiani), e a coloro che non siano residenti permanenti, di acquistare proprietà residenziali, le quali sono state classificate come *Sensitive land* (Section 4). Resta salva la possibilità di specifica autorizzazione governativa in deroga, qualora sia dimostrato che l'investimento porterà benefici al paese e, nel caso di proprietà residenziali, che l'investitore intenda risiedere in Nuova Zelanda o contribuire all'aumento dell'offerta abitativa (Section 16A). Analogamente il Canada ha approvato nel 2023 il *Prohibition on the Purchase of Residential Property by Non-Canadians Act*, con il quale (art. 4, c. 1: «it is prohibited for a non-Canadian to purchase, directly or indirectly, any residential property») ha vietato agli stranieri e a coloro che non siano residenti permanenti di acquistare proprietà residenziali per due anni, con eccezioni per studenti internazionali, lavoratori stranieri che soddisfino criteri specifici, coniugi o partner di diritto comune di cittadini canadesi e rifugiati. La previsione normativa, però, in questo caso è stata prevista *ab origine* a termine, ovvero fino al 1 gennaio 2025 (ma nel febbraio 2024 il Governo federale ha annunciato l'intenzione di prorogarla fino al 1 gennaio 2027). Per la Svizzera, la *Loi fédérale sur l'acquisition d'immeubles par des personnes à l'étranger* (Lex Koller) del 16 dicembre 1983, seguita dall'*Ordonnance sur l'acquisition d'immeubles par des*

personnes à l'étranger (1 ottobre 1984) dispone un regime autorizzatorio per tutti gli stranieri che vogliano acquistare una proprietà immobiliare in territorio svizzero (Albisetti - Rigozzi 2018). Per la Croazia la *Zakon o vlasništvu i drugim stvarnim pravima* (Legge sulla proprietà e sugli altri diritti reali), pubblicata il 28 ottobre 1996, all'art. 356 stabilisce che gli stranieri possono acquisire la proprietà di beni immobili in Croazia previa autorizzazione del Ministero della Giustizia e solo a condizione di reciprocità, secondo un principio che si ritrova nelle epigrafi ellenistiche in materia di *isopoliteia* (in part. al comma 2: «Strane fizičke i pravne osobe mogu, ako zakonom nije drukčije određeno, pod pretpostavkom uzajamnosti, stjecati vlasništvo nekretnina na području Republike Hrvatske, ako suglasnost za to dade ministar vanjskih poslova Republike Hrvatske, po prethodno pribavljenom mišljenju ministra pravosuđa Republike Hrvatske, ako zakonom nije drukčije određeno» [Trad.: «Persone fisiche e giuridiche straniere possono, salvo diversa disposizione di legge, acquisire la proprietà di beni immobili nel territorio della Repubblica di Croazia, a condizione di reciprocità, se il Ministro degli Affari Esteri della Repubblica di Croazia concede il consenso, previa acquisizione del parere del Ministro della Giustizia della Repubblica di Croazia, salvo diversa disposizione di legge»]). Anche questa normativa, come quella danese, ha subito correzioni per il Diritto europeo. Anche in altri Stati gli stranieri non possono acquistare immobili salvo autorizzazione. Nelle Filippine la Costituzione del 1987 stabilisce le restrizioni sulla proprietà terriera da parte di stranieri nel Paese (art. XII, Sezione 7), mentre in Indonesia i limiti sono stabiliti dalla Legge Agraria n. 5 del 1960 (*Undang-Undang No. 5/1960 tentang Peraturan Dasar Pokok-Pokok Agraria*). Entrambe le norme hanno poi avuto successive mitigazioni. Diverso il regime tailandese, il cui พระราชบัญญัติ ประมวล กฎหมาย ทีดิน พ.ศ. 2497 (Codice regio delle leggi sulla proprietà fondiaria dell'anno 2497 dell'Era Buddista) del 1954 (emendato da ultimo nel 2008) prevede agli artt. 86 ss. che gli stranieri possono acquistare terreni se lo fanno per uno scopo riconosciuto valido all'interno di una lista normativamente individuata e tra essi vi è l'acquisto di una residenza (gli altri scopi sono commercio, industria, agricoltura, sepoltura, beneficenza pubblica e religione). Essi devono altresì rispettare determinate procedure prescritte da Regolamenti ministeriali e devono ricevere un permesso del Ministro dell'Interno (così, specificamente, l'art. 86, comma 2: ในกรณีที ไม่มี บทบัญญัติ ใน สนธิสัญญา ดังกล่าว ชาวต่าง ชาติ ไม่สามารถ ถือกรรมสิทธิ ในทีดิน ได้ ยกเว้น ในกรณี ทีได้รับอนุญาต จากรัฐมนตรีว่าการ กระทรวง มหาดไทย โดยคำสั่งนี อาจกำหนดเงือนไข ทีต้องปฏิบัติตาม ไว้ด้วย [Trad.: «Nel caso in cui non vi siano disposizioni previste in un trattato internazionale, i cittadini stranieri non possono avere la proprietà della terra, salvo che ottengano il permesso dal Ministro dell'Interno, il quale può includere condizioni specifiche da rispettare in tale autorizzazione»]). Sono poi previste norme specifiche per i condominii (พระราชบัญญัติอาคารชุด พ.ศ. 2522 [Legge regia sul condominio dell'anno 2522 dell'Era Buddista] e succ. modd.). Le comparazioni e i confronti potrebbero continuare, ma mi sembra che il quadro ora rapidamente delineato sia sufficiente a illustrare come le normative per così dire "protezionistiche" nella materia immobiliare non siano una prerogativa esclusivamente delle società del passato.

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CONTRIBUTION TO THE THEORETICAL FRAMING OF *ISOPOLITEIA* IN HELLENISTIC BILATERAL AGREEMENTS: RESPONSE TO LORENZO GAGLIARDI*

As Lorenzo Gagliardi rightly pointed out in his article, the theme of *isopoliteia* has, so to speak, resurfaced in the most recent scholarship, thanks to a renewed interest in the question of citizenship and, more specifically, in the practical operations of *politeia* in their legal aspects. G. himself contributed to the debate in his book *Romam commigrare* published in 2023, particularly in chapter 2, where he discusses this theme in relation to Niebuhr's construction of the archaic *cosidetto* '*jus migrandi*' found in Dionysios of Halicarnassus' *Roman Antiquities*, a construction later taken up by Mommsen[1]. Here at the Symposion, G. focused more specifically on two points that were very clearly raised by Alberto Maffi in 2023[2] in his lengthy review of Sara Saba's work, Isopoliteia *in Hellenistic Times*[3], and which I will take up in turn: 1. the notion of "potential citizenship", itself linked to the question of "dual or multiple citizenship"; and 2. the difficult problem, in *isopoliteia* agreements, of setting out multiple privileges beyond *politeia*.

I will leave aside here, despite its importance, the fact that the two notions of *isopoliteia* and isopolity only share, so to speak, a partial "semantic overlap". And I go straight to the first point, that of "potential citizenship", itself deeply linked to the question of dual or multiple citizenship. The modern study of this concept goes back to Emil Szánto and his seminal 1892 work, *Das griechische Bürgerrecht*[4]. Since then, it has been taken up again and again, until Saba pushed it to the limit, going so far

* This response benefited from comments made by a well-informed audience in Milan, especially Michele Faraguna, Michael Gagarin, Alberto Maffi, and Andreas Victor Walser. Finally, Graham J. Oliver has generously accepted, as usual, to read and emend the text. I would like to thank them all warmly.

1 Gagliardi 2023, 2 and 6 (Mommsen as heir to Niebuhr).

2 Maffi 2023, 296, who rightly criticises Sara Saba for her lack of interest in the implementation clauses of the agreements and therefore in the real scope of the *politeia* thus granted, going against current historiographical trends.

3 Saba 2020.

4 Szánto 1892, 22–23 and 87.

as to substitute the expression "potential citizenship" for the term *isopoliteia* itself[5].

The notion of potential citizenship is rooted in the idea that the citizen had an exclusive relationship with his homeland, which would render "inconceivable"[6] the idea of multiple belongings. This conception is also nourished by a certain reading of Aristotle's very famous passage in Book III of the *Politics*[7], where the philosopher explains that nothing better defines the *politēs*, the citizen, than *krisis* and *archē*, "the power to judge and to hold office"[8]. Although the passage is complex, it has often been taken to mean that citizenship could be equated with political participation. It would seem indeed difficult, and the point is quite right, to exercise this kind of capacity at the same time in several places. This general conception of city and citizenship is supported, as Mack has observed[9], by the fact that before the Hellenistic period, individuals who enjoyed several *politeiai* generally displayed only one of them through their ethnic. It was not until the Imperial period that practice changed and the use of multiple ethnics became much more frequent[10]. All this would mean that, in the unlikely event that an individual adopted another *politeia*, he renounced the first, and so he "switched" citizenship, to use Saba's verb[11]. The expression "potential citizenship" cannot be dissociated from the idea that double or multiple citizenship did not exist in the world of Classical and Hellenistic *poleis*.

The problem is that, apart from a certain silence in the use of multiple ethnics, this conception comes up against other sources which seem to deliver a different message. We will remember with Mack that the texts are pretty obstinate in the way they state, for instance, that citizens of Miletos are fellow-citizens of the Herakleians and vice versa (*I.Delphinion* 150, l. 34, just before 180 BC) or, again, that a citizen of Miletos is henceforth also a citizen of Kyzikos and vice versa[12]. Mack calls it a "speech-act" by which the citizens of one city are deemed, as soon as the decree is issued, also to be nationals of the partner city[13]. The resulting *politeia* is first and foremost the granting of a name. The "will clause" that we sometimes observe (as in *I.Parion* T62 = Gagliardi n° 6, l. 11-12: ἐὰν θέ|[λ]ῃ; beg. 3rd c. BC) does not contradict the immediate effectiveness of the name granted. Mack thus proposes to consider the *politeia* of the Greeks as "a relational status, (...) constituted by different actors through their interactions with each other"[14]. The great advantage of such a conception is that it explains the use of ethnics, which always depends on the context and the speaker.

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5 Saba 2020, 2.
6 Picard 2012, 342.
7 Aristotle, *Pol*. 3, 1275a 22–23.
8 Transl. Michele Faraguna.
9 Mack 2019, 62–63, following analyses in the volume edited by Heller and Pont 2012.
10 Mack 2019, 61–62.
11 Saba 2020, 2.
12 *I.Delphinion* 137, l. 13–16: εἶναι δὲ τὸν |Κυζικηνὸν ἐμ Μιλήτωι Μι|λήσιον καὶ τὸν Μιλήσιον ἐν |Κυζίκωι Κυζικηνόν.
13 Mack 2019, 68: these formulas are understood by him, as in the individual decrees, as "effecting a change in the status of the recipients".
14 Mack 2019, 63.

Beyond these considerations, one can observe several concrete cases of multiple citizenship. On the one hand, we know of personal collections of *politeiai* as early as the end of the 4th century BC, maybe merely honorary titles[15]. But other texts, recognised as isopolities, show that some people were indeed citizens elsewhere than at home (and named as such), or even exercised their function as citizens (*politeuesthai*) in a partner-city. A Milesian inscription seems to support this view, the decree granting *politeia* to Seleukeia-Tralles in 218/7 BC[16]. It mentions foreigners who had received Seleukeian citizenship "by decree", but were not resident in Seleukia (l. 19-23). These naturalised Seleukeians would then have to prove ten years' residence there ἀπὸ τῆς πρὸς τὸ πολίτευμα προσγραφῆς, "from their registration in the (Seleukeian) civic body", before being admitted into the Milesian *politeia*. The key element here is the use of the perfect tense in the expression πολῖται γεγένηνται, which shows that they had been indeed considered as citizens of Seleukeia, even without being resident in this city.

Moreover, in 2015[17], I studied the case of the Olbia/Miletos agreement (*I.Delphinion* 136 = Gagliardi nº 2, l. 18-20; first half 3rd c. BC), which has since then given rise to academic debate[18]. Here we see Milesians exercising their *politeia* elsewhere than Miletos (Μιλησίους, ὅσοι ἐν ἄλλῃ πόλει πολιτεύονται καὶ ἀρχείω<μ> μετέχουσιγ καὶ δικαστηρίων) and are, therefore, as such deprived of the *ateleia*, and of the *ateleia* only[19]. The people of Olbia have added this clause, because they are worried about their income: if too many Milesians start benefitting from *ateleia*, income will drop. Therefore, in this case, to enjoy *ateleia*, one has to be a Milesian registered in Miletos itself and exercising one's political rights there. The people who ἐν ἄλλῃ πόλει πολιτεύονται must be either native Milesians who have settled elsewhere, or naturalised Milesians who have remained in their city of origin[20], as the example of Seleukeia-Tralles has just proved. So, I still consider them to be real Milesians, despite all the labels that have been applied to them: ex-Milesians fraudsters (Gauthier[21]), Milesians by heart or by work (Savalli-Lestrade[22]), Milesians with

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15 See Savalli-Lestrade 2012, 44–45.

16 *I.Delphinion* 143A, l. 17–23:

δεδόσθαι δὲ καὶ πολιτείαν Σελευκεῦσι
τοῖς νέμουσι πατρίδα καὶ πόλιν Σελεύκειαν ἕως εἰς στεφανηφόρον
Ἐπικράτην καὶ μῆνα Ταυρεῶνα· εἰ δέ τινες κατὰ δόγμα τοῦ δήμου **πολῖται**
γεγένηνται, μὴ ἔνεμον δὲ τὴν Σελευκείων πόλιν, ἢ ἐάν τισιν μετὰ ταῦτα
δοθῆι παρ' αὐτοῖς πολιτεία, ὑπάρχειν τούτοις καὶ τὴμ παρ' ἡμῖν πολιτείαν νεί-
μασι πρότερον πατρίδα καὶ πόλιν Σελεύκειαν ἔτη δέκα ἀπὸ τῆς πρὸς τὸ
πολίτευμα προσγραφῆς·

17 Müller 2015, 363; see also Müller 2022 (date) and Müller 2023, 178–179.

18 Synthesised by Maffi 2023, 305–306.

19 *Pace* Maffi 2023, 306. Gauthier 1972, 360 had already taken the measure of this selective restriction.

20 As Mack rightly points out in 2019, 76. See already Müller 2015, 362–363.

21 Gauthier 1972, 360.

22 I. Savalli-Lestrade in the "Bulletin épigraphique" of the *REG* 134 (2021), 509–510, no 63.

ethical and cultural links to their homeland (Maffi[23]). If we stick to the text, they are indeed Milesians, or else the use of ethnics must be questioned everywhere.

These two texts show therefore that the name of citizen (embodied by the ethnic) is real and not potential, and can be dissociated from residence. But (and it's a big but), the very nature of this "nominal *politeia*" creates problems for the Greeks themselves, who may require more than just a name for the implementation of certain privileges.

Last but not least, in none of these texts, at any time, is there any question of renouncing one *politeia* in order to receive another. The *polis* that offers its citizenship may, of course, lay down conditions that sometimes seem drastic, as we saw with Miletos, certainly because of her attractiveness. But she never demands of her partners that their citizens renounce their own *politeia*: she is in absolutely no position to do so. It may be said that the renunciation should then be imposed by the city of origin, the only one in a position to regulate the status of her own nationals. However, in diplomatic agreements that all historians recognise as founding or renewing specific links, it is hard to see how a city could add such a negative clause![24] We know of only two, perhaps three cases in Crete, where the candidate for departure must submit a request to his city of origin, which is expressed in the form παραιτησάμενος τὰν αὑτῶ πόλιν, "having asked his own city"[25].

That's why, since 2015, I've chosen to say that the original citizenship was, at the time of a change of residence followed by integration in another city, simply "put to sleep"[26], an expression taken up by G. By this I mean that when an individual moves to another *polis*, he never loses his citizenship, which in principle can only be taken away for serious offences, through a legal procedure such as an *atimia* or banishment. If he simply moves, he may be entered in the register of "absentees", the *apodēmoi*, which we find in certain texts[27], even if, in my opinion, the nuance of this term has more to do with short duration stays. But the link between the individual and his

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[23] Maffi 2023, 306.

[24] The only known case of two Cretan cities refusing, at the beginning of the 2nd c. BC, to allow their former citizens to return home on the grounds that they had taken on another citizenship, in this case that of Miletos, instead of remaining *metoikoi* some thirty years earlier, is a different matter. This case is more akin to a procedure of *atimia*, or even exile: *I.Cret.* IV, 176, l. 32-38 = Ager 1996, no.127 (beg. 2nd c. BC), with Müller 2015, 364 and Mack 2019, 77–78.

[25] This expression is found in Chaniotis 1996, nos. 5 B l. 13-16 (Hierapytna/Praisos); 37, l. 11 (Eleutherna/Lato, participle restored) and 42 A1, l. 1-2 (Lyttos/unknown Cretan city, sentence entirely restored by Margherita Guarducci). I absolutely do not see how the verb παραιτέομαι could mean "to abandon" even from the sense of "to decline" (an offer) that it is sometimes known to have (*pace* Chaniotis 1996, 102, n. 612).

[26] Müller 2015, 364 and Müller 2023, 186.

[27] Thus, in Cos, in a decree of the *phylai* of Halasarna establishing a list of participants in the cult of Apollo and Herakles (*IG* XII, 4, 103, l. 26-31), τὸς δὲ ἀ|ποδάμος ἀπογραφόν|τω τοὶ ἐπίτροποι, εἰ δὲ |μή, ἀπογραφέσθων αὐ|τοὶ ἐπεί κα παραγένη|ται ἐν τριμήνοι, "their representatives should have the absentees registered, if not they should register themselves on their return within three months'.

homeland is not, in my eyes, so easy to destroy. Can we still talk about "dual citizenship"? Perhaps not, as G. points out, but "dual nationality" or "dual belonging", undoubtedly yes. This would make it possible to avoid the notion of "potential citizenship", which, as Mack points out, carries a negative connotation, that of "incomplete" citizenship[28]. Here are my proposals for reconciling positions which, in reality, converge. Firstly, I take up Alberto Maffi's suggestion, which compares the *patris* of the Greeks to the Roman notion of *origo*[29]. G., for his part, has rightly replaced the expression "put to sleep" with "fase di latenza". Following on from this, I propose to describe dormant citizenship as "latent" and actualised citizenship as "patent". The adjective "latent" makes it possible to show that, like a dormant agent, this *politeia* is present, but undetectable while retaining the possibility of being put back into service; the adjective "patent" insists on the question of the visibility and manifest character of the citizenship exercised: to push things a little further, we could say that, in the Greek cities, to be seen exercising one's citizenship is to be a citizen. We could almost speak of a "phenomenology of citizenship".

In any case, there remains the thorniest difficulty, that of the very frequent mention of multiple privileges in addition to, alongside or in place of *isopoliteia* or *politeia* in these agreements[30]. The question is how and under what status these privileges were exercised by their beneficiaries.

Before going any further, it is worth noting that the wide variety of epigraphic formulae makes it necessary to be very cautious in drawing general conclusions, and I will be less optimistic than G. on the question of the "inquadramento dogmatico" of *isopoliteia*. We can, however, attempt to make some observations on the possible links between *politeia* and other privileges. If we take the agreement between Miletos and Herakleia Latmos (*I.Delphinion* 150), the Milesian decree refers to "*isopoliteia* and other *philanthrōpa*", i.e. "other privileges", which the agreement is intended to regulate (l. 12-13), and then to "participation in *politeia*, *hiera*, *archeia* and the rest of the privileges in which the other Milesians also participate" (l. 43-44). *Politeia* here is clearly an envelope, the content of which is then set out in the "participation" clause, which remains, despite everything, very general. We can't see what specific content *politeia* could have that isn't given afterward, unless we see *politeia* as a simple name, the name of citizen. The conjunction *kai* means "that is to say" and introduces a hendiadys. The text therefore lacks other capacities that might not automatically belong to the citizen, such as *ateleia* or *proedria*. According to G., this text does not in fact recognize any specific rights for those who do not request enrolment as citizens, which I agree with. In any case, *politeia* appears here in its concrete version, that of the *metechein*, which forms a block including all aspects of participation and not just

[28] Mack 2019, 61.
[29] Maffi 2023, 306.
[30] Comments on the subject can already be found in Szánto 1892, 67–104; Gawantka 1975, 32; Chaniotis 1996, 101–104; Saba 2020, 3; and, lastly, Maffi 2023, 296–297.

the political aspects such as *krisis* or *archē*: the *hiera* are mentioned first, as we often see elsewhere[31]. Judging by the other texts, this *metechein* goes hand in hand, at least in terms of norms if not actual practices, with a triptych of "registration (implying) residence and equal taxation". This is clearly seen in the decree of Magnesia for the Phokaians (*I.Magnesia* 7b = Gagliardi n° 3, 3rd c. BC?), and the agreement between Pergamon and Temnos (*I.Pergamon* 1, 5 = Gagliardi n° 4, beg. 3rd c. BC). In the Magnesian text, I would say that the grant of *enktēsis* and *metousia pantōn* is doubly conditional (l. 12-18): it is offered only to Phokaians residing in Magnesia and will only take place if and only if (this is the value of the present participle), the candidate pays the taxes like a Magnesian: τέλη τελοῦ[ντι ὅσα ὁ] | [M]άγνης τελεῖ. In statutory terms, beneficiaries exercise their *politeia* as naturalized citizens, duly registered, residing and paying the same taxes as a native. The fact remains, however, that despite the notion of equality emphasized by the prefix *iso*-, the citizenship granted in such agreements is never quite the same as the original *politeia*. For instance, in Miletos/Herakleia Latmos (*I.Delphinion* 150), as G. strongly emphasizes, the Milesians, who are the champions of distrust, impose a restriction concerning access to military offices, which can only be obtained after ten years of enrolment into the civic body (l. 50-52), a period deemed necessary to create a sense of attachment and loyalty to the adopted homeland.

The next cases are quite different: *politeia* is either not the only privilege, or is not mentioned at all among them. The Temnos decree for the Teians (*SEG* 29, 1149, end 3rd/beg. 2nd c. BC) clearly lists three blocks of decisions (l. 13-19): A/ the granting of equal *politeia*, to which *metousia pantōn* is closely associated; B/ a second, separate block for *enktēsis*, *epigamia* and *prodikia*, and finally C/ the drawing of lots to be enrolled in the tribes, which G. is entirely right to say can only concern those residing in Temnos to exercise their citizenship. The decree of the Cretans of Hierapytna for Magnesia (*I.Cret.* III, iii, 3C, l. 7-9) sets out a whole series of privileges: *ateleia*, *proedria*, *epigamia* (? restored), *enktēsis*, participation (*metocha*) in divine and human affairs, right to import, right to export. Nowhere does it mention *politeia*, *isopoliteia*, or the status of *politēs*: this is exactly the same case as the Olbia decree for Miletos (*I.Delphinion* 136 = Gagliardi n° 2). These last two texts owe their inclusion in the corpus of "isopolities" to the mention of a single privilege: that of participation, either "in divine and human affairs" in the case of Crete (l. 8), or "in *timouchia*" (l. 8), i.e. in offices, in the case of Olbia. In both cases, this participation is not necessarily the most important privilege, judging by the order in which the *philanthrōpa* appear.

In these two paradigmatic cases (Hierapytna and Olbia), we need to consider the meaning of the privileges as set out in the texts themselves. The *metechein* implies local registration and the effective status of naturalized citizen. But the other *philanthropa* can obviously be exercised individually, otherwise we fail to under-

[31] *E.g.*, *I.Delphinion* 143 (Miletos/Seleukeia-Tralles), l. 24–25: μετέχειν ἱερῶν καὶ ἀρχείων καὶ τῶν λοιπῶν ἁπάντων, ὧγ καὶ τοῖς ἄλλοις |μέτεστι Μιλησίοις.

stand why they are the subject of specific mentions, such as *enktēsis* and *epigamia* when extracted from the *politeia/metousia* package. And here our opinions with G. diverge radically: for example, in the Temnos decree seen above (*SEG* 29, 1149), it is not possible, for syntactic reasons, to simply make block B (*enktēsis*/*epigamia*/*prodikia*) an explanation of block A *politeia/metousia*, which in itself already forms a self-contained unit, even if block B is sandwiched between two clauses concerning the implementation of *politeia*. This is even less the case in the Hierapytna's decree, where *metocha*, drowned out by the rest, only appears in fifth position out of seven privileges. Some of these privileges, such as *enktēsis* and *epigamia*, should be considered as "fragments of citizenship", as I called them in 2014[32]. The beneficiary can thus choose between different levels of participation. Otherwise, it is impossible to understand the cases where *enktēsis* alone is granted and implemented, as can be seen in a very interesting inscription from Xanthos dated in 202/1 BC (*SEG* 36, 1220): five brothers who were Chalcidians themselves, maybe seeking to recover the land inheritance of their Lycian mother, applied for and were granted *enktēsis* "on the same terms as citizens" (l. 27). This privilege is here disconnected from *politeia*, and is indeed exercised by a sibling group that does not itself enjoys citizenship. As Angelos Chaniotis wrote in his 1996 book on Cretan agreements, such privileges, offered within the framework of these agreements, allow for everything from the simple implementation of *ateleia* to inclusion in the *politeuma*[33]. However, these privileges are not always equivalent to the original version, the one enjoyed by the native-born citizen. This is precisely true of *enktēsis*, which can be limited in various respects[34]: the object of acquisition (land and/or property), its size, its beneficiaries. The case is certainly similar for *epigamia*. But the matter is complicated by the fact that other privileges, such as *ateleia* or *proedria* in the Cretan text, are not intrinsically part of the prerogatives of the native citizen. All this is reminiscent of some personal decrees that offer every possible privilege with or without *politeia*: this is the case of an exceptional Delphic decree, dated in the middle of the 2nd c. BC, for a citizen of Naupaktos, that makes him a sort of "super-citizen"[35].

So, in what capacity could people exercise these *timia* in spare parts? Almost every answer has been given to this question since 1892: they have been described as "quasi-citizens"[36] or citizens with a "cittadinanza *minor*"[37]. However, in my opinion,

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32 Müller 2014, 772. See also Maffi 2023, 296–297, on *enktēsis* and *epigamia*.

33 Chaniotis 1996, 103–104 and beforehand Ph. Gauthier, *BullÉp* 1993, 520, no 372.

34 Faguer 2021.

35 *F.Delphes* III, 152, decree for Biaios son of Aristodamos from Naupaktos:
εἶμεν δὲ αὐτὸν καὶ **πρόξενον** καὶ **εὐεργέτα[ν]**
τοῦ ἱεροῦ καὶ τᾶς πόλιος καὶ αὐτὸν καὶ ἐκγόνους· ὑπαρχέτω δὲ αὐτῶι **ἀσφάλεια** καὶ **προμαντεία** καὶ **προδικία** καὶ **ἀτέλεια πάντων** καὶ **ἀσυλία**· εἶμεν δὲ αὐτῶι καὶ **ἰσοπολιτείαν πάντων** ὅσων καὶ Δελφοῖς, καὶ **γᾶς καὶ οἰκίας ἔγκτησιν**, καὶ **προεδρίαν** ἐν τοῖς ἀγώνοις πάντοις οἷς ἁ πόλις τίθητι καὶ **τὰ ἄλλα τίμια** ὅσα καὶ τοῖς ἄλλοις προξένοις καὶ εὐεργέταις τᾶς πόλιος ὑπάρχει.

36 Szánto 1892, *passim*, including for instance 27–28.

37 Maffi 2023, 297.

status should not be confused with privileges[38]. For the host city, the beneficiaries remain foreigners, resident or not. But they are privileged, and the privileges they enjoy result in what I have called "a concatenation of different positions"[39]. They are therefore, on the civic chessboard, at a greater or lesser distance from the native citizen who is the core of the system[40].

To conclude, I would like to emphasise the following point: what the texts are concerned with, at least as much as the legal position of the beneficiaries, is the degree of mobility or residence of the latter and the related taxation. The question of residence is fundamental: in the case of Skepcis/Parion (*I.Parion* T62), there is mention of *enktēsis* "with or without residence"[41]; there is also mention of six months or more of residence in connection with *isoteleia* and of the one-year *ateleia* available to those who transfer their *chrēmata* as refugees. In the case of Olbia/Miletos (*I.Delphinion* 136), we find ourselves in a world of merchants who come and go between the two ports, stay in the partner city for varying lengths of time, and choose whether or not to register. Residence and/or registration are not only a matter of loyalty to the city, but also of *telē*, taxes, and thus of one of the cities' sources of income. An important indicator of status would therefore be taxation and the tax regime attached to this or that group. Perhaps this is one of the keys to renewing the present debate.

NB– I use here the AIEGL system of epigraphic abbreviations.

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[38] Müller 2014, 772.
[39] Müller 2014, 774.
[40] On citizenship in general, see now Müller 2026.
[41] *Pace* L. Gagliardi and Maffi 2023, 300–301, I cannot believe that this is a residence "which has not yet taken place", because that is not what the text says.

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ALBERTO MAFFI (MILANO)

IL CODICE DI GORTINA COME RISPOSTA ALLA TRANSIZIONE VERSO UN'ECONOMIA MONETARIA

Abstract: The author believes that most of the rules contained in the Gortyn Code aim to adapt legal relations to the needs arising from the establishment of the monetary economy. The analysis examines separately the rules that concern economic relations within the family from those that concern relations between citizens.

Keywords: Gortyn code, economic relations, money, family, society

Nel corso dell'ultrasecolare lavoro di interpretazione del CdG gli studiosi hanno adottato prospettive diverse di lettura. Un primo metodo mira a individuare un ordine logico nella successione delle singole norme (servendosi in particolare di segnali grafici, come, ad es., gli spazi bianchi o le *palmulae*, sarebbe possibile riconoscere una scansione logica voluta dallo stesso estensore del testo[1]). Un secondo livello di lettura mira a ricostruire (o a decostruire) la struttura formale delle norme mettendo in luce livelli di maggiore o minore complessità della regolamentazione relativa a temi specifici[2]. Il terzo, più esteso e più approfondito, livello di lettura riguarda naturalmente l'interpretazione letterale del contenuto precettivo delle singole norme, prendendo come punto di riferimento sottoinsiemi che si prestano a una ricostruzione sistematica, come il diritto di famiglia o l'amministrazione della giustizia[3]. Un quarto livello, che potremmo definire di metalettura, si interroga sulla funzione che la pubblicazione di un testo di proporzioni così monumentali (che resta per ora un *unicum* nella documentazione epigrafica greca) potrebbe aver avuto. E qui alla tendenza a vedere nel CdG un testo celebrativo del ceto politico al potere[4] si contrappone la tendenza a considerare invece il CdG come un insieme di norme, effettivamente create da un organo legislativo ordinario o straordinario, allo scopo pratico di regolare le fattispecie cui la lettera del testo si riferisce (in questo senso si giustificherebbe la qualifica,

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1 Si veda Gagarin 1982

2 Si vedano, da prospettive diverse: Kristensen 2004, Hölkeskamp 1999, Van Effenterre 2000 (= 2013), Thür 2005.

3 Cito a titolo esemplificativo Maffi 1997, Gagarin 2010, Thür 2002

4 Si vedano in particolare i numerosi lavori di Whitley citati in LAC 2016.

convenzionalmente accolta benché criticata da parte della dottrina, di codice)[5]. La totale ignoranza della storia politica e sociale di Gortina nel V secolo a.C. ci impedisce purtroppo di avanzare un'ipotesi documentabile sulle motivazioni che indussero le autorità cittadine a pubblicare una simile raccolta di leggi. Tuttavia, mi pare che nel testo si possano reperire indizi che confermano l'ipotesi, già avanzata da alcuni studiosi,[6] secondo cui si voleva tenere sotto controllo una fase di transizione della vita socioeconomica della città potenzialmente pericolosa per gli equilibri economico-sociali consolidati. A un periodo di transizione dell'ordinamento si riferiscono esplicitamente le norme dichiarate non retroattive[7], come pure la distinzione fra il periodo antecedente e il periodo successivo al cosmato di Cillo (col. V 4-6). La tesi che vorrei qui sostenere è che la transizione, a cui il legislatore ritiene necessario far fronte, è dovuta principalmente all'affermarsi di rapporti economici basati sulla circolazione della moneta. Fra gli studiosi di numismatica cretese prevale la tendenza a ritenere che la moneta di Gortina sia stata creata poco prima della redazione del CdG.[8] Secondo Willetts "there is a connection between codification and the needs of trade"[9]. Quest'affermazione è senz'altro plausibile[10]; tuttavia, ritengo che l'impatto dell'economia monetaria abbia interessato un ambito ben più vasto, investendo anche, e direi soprattutto, le relazioni socioeconomiche all'interno della compagine cittadina. Naturalmente le informazioni relative ai dati economici, che si possono ricavare dal CdG, non sono sfuggite agli studiosi che si sono interessati all'economia cretese in età arcaica e classica.[11] Ma tali informazioni sono state analizzate principalmente alla luce delle categorie tradizionali dell'analisi economica: produzione, distribuzione, consumo ecc. Non si è tenuto sufficientemente conto del fatto che i riferimenti allo strumento monetario divengono parte integrante della struttura stessa della maggior parte delle norme contenute nel CdG[12]. Da questo punto di vista può rivelarsi utile un approccio ispirato ai metodi dell'analisi economica del diritto (in inglese EAL, ossia, 'economic analysis of law').[13]

Leggendo il CdG nella chiave che ho indicato, si noteranno immediatamente norme che presuppongono rapporti (presumibilmente di scambio) basati sulla circola-

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5 In questa tendenza si iscrive ovviamente il grosso della produzione scientifica riguardante il CdG, cioè le edizioni con traduzione e commento, da Bücheler-Zitelmann 1885 fino a LAC 2016.

6 Si vedano, a titolo d'esempio, Lombardo 2005, p. 220-222; Bile 2012, p. 14-15 (Finalités des LG), e, più di recente LAC 2016, p. 110.

7 Su cui v. Gagarin 1995 e Maffi 1995

8 V. Polosa 2005 e LAC 2016 107 ss.

9 Willetts 1967, p. 9

10 Potrebbe addirittura trovare una conferma nell'opinione di Aristotele (*Pol*. 1257 a 31-38) sull'uso originario della moneta. Si veda tuttavia lo scetticismo espresso in proposito da Von Reden 1997 n. 26.

11 Mi riferisco in particolare a Davies 2005, a Chaniotis 2005 e a LAC 2016.

12 Qualche indicazione utile si trova nella rassegna terminologica di Martinez Fernandez 2000.

13 Un riferimento specifico recente all'utilità di applicare un'analisi 'law and economics' allo studio del diritto greco si trova in Lanni 2018, 161 ss.

zione del denaro. Mi riferisco ad es. a IX 1-2 (integrato sulla base di XI 31-32): è dato per scontato che il defunto lasci debiti di denaro. Ancora da IX 1 ss. vediamo che il pegno (*katathesis*) è funzionale al pagamento di un debito in denaro da parte dell'ereditiera[14]. L'intero patrimonio ereditario trova una valutazione complessiva in denaro, come mostra il caso in cui la legge prevede che gli eredi, in disaccordo sulla divisione dei beni ereditari, vendano in blocco l'eredità al miglior offerente (col. V 44-51). Questi esempi fanno ritenere che il denaro si sia già ampiamente affermato come mezzo di scambio e come mezzo di calcolo del valore dei beni.

Cercherò quindi di identificare nel CdG i principali segnali di transizione verso un'economia monetaria, distinguendo l'ambito dei rapporti interni al nucleo familiare dai rapporti fra soggetti non legati da vincoli di parentela.

I. Per quanto riguarda i rapporti fra membri della famiglia va ricordato che il CdG si occupa essenzialmente di quella che possiamo definire famiglia nucleare, composta cioè da padre, madre, e figli naturali e/o adottivi (solo le norme successorie, comprendenti quindi la disciplina dell'ereditiera, contemplano figure di collaterali e di affini rispetto alla famiglia nucleare). Ora, quel che occorre subito sottolineare è che i rapporti tra membri della famiglia, che al legislatore interessa regolare, sono prevalentemente i rapporti patrimoniali. Si delinea così una rete di 'diritti e doveri' che trovano la loro definizione, esplicita o implicita, attraverso il riferimento al denaro. Poiché è improbabile che il riferimento a valutazioni monetarie fosse dovuto a una volontà riformatrice del legislatore, ritengo che le norme intendano esprimere in termini quantificabili le regole di circolazione dei beni all'interno della famiglia allo scopo di rispondere alle nuove istanze derivanti dall'affermarsi dell'economia monetaria, che risultavano innovative rispetto ai criteri tradizionali di attribuzione e di ripartizione dei beni. Ciò non significa che la moneta coniata venga a sostituire *in toto* la circolazione dei beni naturali, o ne divenga un mezzo di intermediazione necessario; significa, però, che tende a diventare misura di valore universale[15].

La circolazione di beni che interessa i membri della famiglia nucleare inizia logicamente con il costituirsi del rapporto matrimoniale. Stando a col. IV 48 ss., il padre, se vuole, può disporre un dono nuziale a favore della figlia che si sposa[16]; ma il dono deve essere "conforme a quanto la legge prescrive" (col. IV 50-51), cioè non deve superare il valore della quota ereditaria che spetta alle figlie in presenza di figli. Ciò implica indirettamente un calcolo in denaro delle quote. Tuttavia, il dono nuziale non

[14] Gagarin LAC, p. 108, parla di prestito, ma un debito in denaro potrebbe derivare da altri tipi di rapporti.

[15] Qui lascio da parte la questione della rilevanza di oggetti in funzione premonetale, peraltro attestati in iscrizioni cretesi anteriori, perché nel CdG, a mio parere, non se ne trova più traccia. Sul tema v. la recente sintesi in LAC 2016, 107-110. V. anche Martinez Fernandez 1999, 1143, e von Reden 1997 e 2002.

[16] Si tratta dunque di una dazione o di una promessa di dare (col. IV 52-53) che svolge la stessa funzione della dote attica (*proix*). "Se vuole" sottolinea che non si tratta di un obbligo, ovvero di un requisito per la validità del matrimonio.

è certo un istituto introdotto dal CdG: doveva essere in uso anche prima dell'introduzione della moneta coniata, e anche dopo l'entrata in vigore del CdG continua a consistere in beni in natura, non in denaro[17]. Ce lo conferma il fatto che, in caso di scioglimento del matrimonio per morte del marito, la vedova che abbandona la casa coniugale per risposarsi avrà diritto di recuperare i suoi beni (cioè, i beni che costituivano il dono nuziale) e, qualora non abbia figli, anche la metà dei frutti (*karpos*) dei propri beni[18]. Allo stesso modo, in caso di premorienza della moglie al marito, i parenti di lei avranno diritto ad ottenere non solo i suoi beni, ma anche metà dei frutti di essi (col. III 17-31). È tuttora discusso in dottrina se il diritto della figlia di ereditare una quota dei beni paterni (e materni) sia stato introdotto dal CdG o fosse riconosciuto anche prima.[19] Se lo era, non sappiamo se la quota riservata alle figlie ammontasse già alla metà di quella spettante ai figli, come risulta da col. IV 39-43. Si potrebbe ritenere che, prima dell'introduzione della moneta coniata, il valore delle *moirai* fosse calcolato in base a criteri più qualitativi che quantitativi. Ma che il legislatore pensi ora a una valutazione precisa in termini monetari ce lo indica il fatto che, in mancanza di accordo fra coeredi in sede di divisione ereditaria, il patrimonio del *de cuius* viene venduto al miglior offerente (col. V 44-51). Ciò comporta che la ripartizione in quote della somma ricavata dalla vendita avvenga rispettando un criterio quantitativamente misurabile tramite il calcolo in denaro. Di qui il naturale corollario che i singoli beni facenti parte dell'eredità siano già stati oggetto di una valutazione in denaro all'atto dell'offerta in vendita[20]. Un'ulteriore conferma si ricava da col. XI 31 ss.: per valutare se accettare o meno l'eredità, gli eredi calcoleranno prima di tutto se il suo valore venale supera l'ammontare dei debiti ereditari (a loro volta necessariamente valutati in denaro anche se possono avere per oggetto beni materiali)[21].

Se ora spostiamo la nostra attenzione al periodo successivo alla celebrazione del matrimonio, vediamo che la circolazione dei beni facenti capo ai componenti del nucleo familiare è presa in considerazione dal legislatore da punti di vista diversi

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[17] Coerentemente con quanto sin qui affermato mi pare possibile sostenere che anche i beni eventualmente assegnati alle donne prima del cosmato di Cillo (V 1-9) non fossero stati valutati in termini monetari: la norma esclude dunque una valutazione retrospettiva in denaro.

[18] Non entro qui nella questione, assai dibattuta in dottrina, se dei beni della moglie possa far parte anche la terra. Gli studiosi che lo negano sostengono che si tratti del reddito proveniente dalla locazione di un immobile urbano, di cui la donna, stando a col. IV 46-48, in mancanza di altri *kremata* potrebbe aver diritto a una quota, pur senza abitarvi dal momento che il matrimonio è virilocale; oppure del reddito proveniente dalla locazione degli schiavi di proprietà della donna (v. in particolare Brixhe Bile 1999). La questione è rilevante nella prospettiva in cui qui ci muoviamo: infatti, se dei beni della donna fa parte anche la terra, per *karpos* si devono intendere frutti naturali; se invece si tratta del reddito proveniente da altri tipi di beni, immobili o mobili, per *karpos* si intende reddito in denaro.

[19] V. Gagarin 2012 e Maffi 2012.

[20] Gagarin sostiene che il calcolo delle quote ereditarie veniva fatto in base a valori di mercato (LAC 2016, 110), il che confermerebbe l'affermarsi della nuova mentalità basata sull'economia monetaria.

[21] Per una diversa interpretazione v. Benke 2020/2021

(lasciando qui da parte le norme riguardanti la successione ereditaria, che costituiscono evidentemente una categoria a sé stante). Da un lato vi sono regole in materia di trasferimento anticipato *inter vivos* delle quote ereditarie spettanti ai figli da parte del padre e della madre (col. IV 23-29). Dall'altro vi sono regole che vietano il trasferimento a terzi di beni di cui sono titolari altri membri della famiglia (in base a col. VI il padre non può disporre dei beni dei figli né i figli di quelli del padre; così pure il marito non può disporre dei beni della moglie e il figlio di quelli della madre). Limitazioni e divieti riguardano evidentemente negozi che comportano trasferimenti a titolo oneroso mediati dalla moneta. La necessità di porre tali divieti espliciti induce a supporre che vi fossero tentativi di spezzare i tradizionali rapporti di subordinazione incentrati sulla potestà esclusiva del capofamiglia di disporre dei beni facenti capo alla famiglia nel suo insieme. Indizi in tal senso sono sia la norma che rimette all'esclusiva volontà di padre e madre l'assegnazione anticipata dei loro beni ai figli (col. IV 27-29), sia la norma che consente a un figlio di sottrarsi unilateralmente al rapporto di subordinazione economica verso i genitori ottenendo in via anticipata la propria quota ereditaria.[22]

A fronte di tali limitazioni e divieti vi è però anche un'altra serie di norme che autorizzano trasferimenti di beni all'interno del nucleo familiare: mi riferisco alle donazioni. Prescindendo dal dono nuziale del padre alla figlia, che il CdG considera un'anticipazione della quota ereditaria a lei spettante, le donazioni prese in considerazione dal legislatore sono quelle del marito alla moglie e del figlio alla madre. Il CdG non prevede infatti una disciplina specifica relativa ad altre donazioni fra membri del medesimo nucleo familiare.[23] La normativa relativa alle donazioni, contenuta nel CdG, rappresenta qualcosa di inusuale nella legislazione greca a noi nota: essa riveste quindi un particolare interesse anche nell'ambito della discussione sulla natura dell'economia arcaica[24], perché mostra come 'l'economia del dono' sia ormai subordinata alla nuova economia monetaria.

La facoltà del marito di effettuare un dono alla moglie si desume direttamente dal combinato disposto di col. X 14-20 e col. XII 1-5, e indirettamente dalla precisazione che la vedova avrà diritto di portare con sé, oltre ai suoi beni, anche ciò che il marito le abbia donato dinanzi a tre testimoni rispettando il limite di legge (col. III 20-22).[25]

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[22] Se il termine *ata* si riferisce prevalentemente al debito derivante da una sentenza di condanna, questa poteva sanzionare anche l'inadempimento di un'obbligazione, non solo quello che definiremmo un reato.

[23] Tali non sono, infatti, né la *divisio inter liberos* di cui a col. IV 23-29, né l'anticipazione della quota ereditaria al figlio colpito da condanna giudiziaria, di cui a col. IV 29-31, né il dono nuziale del fratello alla sorella, qualora quest'ultima si sposi dopo la morte del padre. Infatti, in quest'ultimo caso si tratterà ancora una volta della quota ereditaria spettante alla sorella sui beni paterni, ed eventualmente materni (arg. ex col. V 1-3 e col. VIII 20-23 in relazione a col. X 50-52).

[24] Nell'abbondante bibliografia segnalo von Reden 1997 e 2002.

[25] Buona parte della dottrina ritiene che si tratti di una *donatio mortis causa*. In passato ho condiviso anch'io quest'opinione (v. Maffi 2012, 98). Oggi propendo invece per la tesi che si tratti di una *donatio inter vivos*; mi sia permesso rinviare in proposito a Maffi 2025.

In questo caso non si fa riferimento a una quota ereditaria, dato che la moglie non eredita dal marito (così come la madre, almeno stando alla normativa in materia successoria di col. V, non eredita dai figli): il dono è dunque prelevato sul patrimonio del capofamiglia e determina per ciò stesso una riduzione della quota ereditaria spettante ai suoi discendenti. È probabilmente questo il motivo principale per cui, in col. X 14-20, viene stabilito che i beni donati non devono superare il valore di 100 stateri. Che oggetto del dono non sia una somma di denaro ce lo attesta la lettera stessa delle due norme. Se il valore dei beni donati supera il limite di legge, gli eredi del marito potranno conseguire i beni donati (*ta kremata*) versando alla vedova 100 stateri. Nel caso del dono del marito alla moglie abbiamo dunque una valutazione diretta dei beni in termini monetari. In XII 1-5 si aggiunge che le donazioni effettuate prima dell'entrata in vigore del CdG[26] non sono assoggettate a eventuali revoche per adeguarle al limite fissato in X 14-20. Il testo di col. XII 3 ci attesta che il dono del marito alla moglie era previsto dalla legge anche prima del CdG (*ai egratto pro tonde ton grammaton*). Il fatto che non sia consentito rivendicare l'eccedenza rispetto al limite di 100 stateri può dipendere certo dalla volontà del legislatore di non turbare uno stato di fatto consolidato, ma si potrebbe anche spiegare, in conformità alla tesi che sostengo in questo lavoro, con il fatto che, prima del CdG, non fosse in vigore un criterio di valutazione in termini monetari dei beni oggetto di donazioni conformi a tradizioni consolidate nel tempo.

Natura di dono ha anche sicuramente, come ci attesta la precisazione "se vuole" (col. III 37), la consegna dei *komistra* o dal marito alla moglie o dalla moglie al marito (col. III 37-40) senza che sia richiesta la presenza di testimoni. La legge prevede che, in alternativa a un capo di vestiario (*Fema*), la cui funzione è discussa, il dono consista direttamente in una somma di denaro (12 stateri) o in un credito del medesimo ammontare.[27]

La donazione del figlio alla madre è disciplinata congiuntamente a quella del marito alla moglie in col. X 14-20 e col. XII 1-5. La natura e lo scopo di questa particolare donazione sono a loro volta oggetto di discussione in dottrina[28]. A mio parere il legislatore parte dal presupposto (implicito) che la vedova sia rimasta insieme ai figli nella casa coniugale, e che il figlio maggiore, divenuto maggiorenne, assuma la tutela della madre amministrandone il patrimonio[29]. Di ciò vedo una conferma nella norma di col. VI che disciplina congiuntamente atti di disposizione del marito sui beni della moglie e del figlio sui beni della madre (col. VI 9-25). È quindi da supporre che la

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[26] Correggo così l'opinione che avevo espressa in Maffi 1997, p. 45 (v. LAC 2016, p. 369-70).

[27] Il significato di *kreos* è dibattuto in dottrina: mi sia consentito rinviare in proposito a Maffi 1988. Interessante è comunque notare che la moglie possieda una somma di denaro di cui può disporre liberamente (a meno che l'oggetto dell'atto di disposizione da parte della donna non sia soltanto il *Fema*).

[28] Mi sono già occupato di questa tematica in una prospettiva più ampia in Maffi 2012.

[29] Postulare un simile presupposto implica naturalmente che, anche nella Gortina del CdG, le donne siano sottoposte a tutela. La questione è vivacemente discussa in dottrina: qui mi limito a rinviare a Gagarin 2012 e Maffi 2003.

madre non abbia ricevuto un dono dal marito: il dono del figlio alla madre sostituisce quello del padre alla madre in quanto si presume che il figlio abbia ereditato i beni del padre (o una quota di essi, se abbia fratelli e sorelle).

Oltre alle donazioni interne alla famiglia, fin qui esaminate, il CdG contempla anche un dono avente come possibile beneficiario un soggetto indeterminato. In col. X 20-25 leggiamo la seguente norma: "Se qualcuno abbia donato essendo debitore di denaro oppure essendo tenuto a corrispondere una penalità oppure in pendenza di un processo, se il resto (del patrimonio) non sia sufficiente a soddisfare la pretesa, la donazione non sia opponibile". Può quindi trattarsi di un soggetto estraneo alla famiglia, ma potrebbe trattarsi anche di un familiare (in particolare la moglie o la madre di cui a col. X 14-20)[30]. Il dono a favore di un terzo, familiare o estraneo, è dunque oggetto di attenzione specifica da parte del legislatore se rischia di rendere incapiente il patrimonio del donante (a conferma, come vedremo meglio più avanti, che l'esecuzione sulla persona è solo l'*ultima ratio* nell'ordinamento di cui il CdG è espressione). La norma stabilisce che la donazione effettuata dal debitore, dal condannato o da colui che ha in corso un processo (evidentemente in veste di convenuto, ed essendo già noto l'ammontare in denaro della condanna richiesta dall'attore), qualora il patrimonio residuo non risulti capiente, venga revocata (non è detto se in tutto o in parte e nemmeno se la donazione sia precedente o successiva all'entrata in vigore del CdG). Si tratta dunque di una norma che mira a tutelare i creditori del donante, non a garantire la giusta ripartizione in quote della sua successione, come accade per la limitazione a un massimo di 100 stateri della donazione a favore di moglie o madre del donante (col. X 14-20). Il dono, pur potendo consistere anche in questo caso in beni diversi dal denaro, viene comunque valutato in denaro per poterlo mettere a confronto con l'ammontare del debito o con la somma della condanna. Ancora una volta si rende necessaria una monetizzazione non solo della donazione, ma dell'intero patrimonio del donante.

Nell'ambito della circolazione dei beni all'interno del nucleo familiare dobbiamo ancora spendere qualche parola in tema di rapporti fra adottante e adottato, più precisamente a proposito della norma che chiude la trattazione dell'adozione in col.XI 19-23. In Maffi 1997 ho proposto la seguente traduzione: "Si applicheranno queste regole da quando esse sono state scritte. Per quanto riguarda la situazione precedente, in qualunque modo uno abbia (*ekei*), non si potrà più agire in giudizio né contro l'adottato (*ampantui*) né da parte dell'adottato (*par'ampanto*)". Il senso di questa disposizione, estremamente ellittica, non è chiaro (né è questo il luogo per una discussione approfondita delle opinioni espresse dalla dottrina al riguardo). Le difficoltà di interpretazione riguardano prima di tutto il significato del verbo *ekein*, che potrebbe riferirsi sia alla successione ereditaria sia a un acquisto per atto tra vivi, e soprattutto l'identificazione delle due ipotesi di trasferimento di beni previste. Va comunque sottolineato il fatto che a compensare la revoca dell'adozione sia prescritto il versa-

[30] La dottrina è divisa in proposito: si veda per un'approfondita disamina Benke 2020/2021.

mento di una somma di denaro (oltre tutto di ammontare piuttosto modesto, in quanto dieci stateri equivalgono alla penalità che colpisce l'autore di un reato sessuale nei confronti di un *apetairos* in col. II 4-5 e 24-25; il che non significa che l'adottato, la cui adozione viene revocata, perda la qualifica di cittadino). Tuttavia, non è detto che i beni oggetto dei trasferimenti, che vengono convalidati appunto dal CdG per il periodo precedente alla sua entrata in vigore, consistessero in somme di denaro.

Restando nell'ambito dei rapporti che hanno per protagonisti membri della famiglia, un effetto della monetizzazione si può notare anche a proposito di *moicheia*. In diritto attico l'uccisione del *moichos* è lecita se questi viene sorpreso in flagrante in casa del capofamiglia (marito, padre o fratello della donna). Come ha osservato a suo tempo Cantarella,[31] entrambi i requisiti erano necessari affinché l'omicidio fosse considerato legittimo. Anche a Gortina il *moichos* deve essere stato sorpreso in casa perché si possa applicare la normativa dettata in col. II 20 ss., in particolare affinché sia lecito "fare del *moichos* quel che si vuole" (col. II 33-36). Ma la localizzazione dell'illecito dà luogo a una diversa valutazione in denaro della *poine* stabilita dalla legge, a seconda che il luogo in cui l'illecito è stato commesso sia la casa del padre, del fratello o del marito, oppure sia la casa d'altri (col. II 20-24). Nell'ottica in cui stiamo ragionando viene allora naturale formulare l'ipotesi che la compensazione in denaro in misura fissa sia stata resa obbligatoria proprio dal CdG, mentre, in precedenza, così come ad Atene, il *moichos* poteva evitare di essere ucciso solo se il parente della donna accettava l'offerta di concludere l'*aidesis* (come propone, invano, il *moichos* Eratostene in Lys. I). Infatti, il regime della vendetta non viene abrogato dal CdG; la sua attuazione viene soltanto subordinata al mancato versamento di una compensazione in denaro imposta dalla legge. È il legislatore che traduce in termini monetari la graduazione di intensità dell'offesa (immateriale) arrecata in relazione al luogo in cui è stato sorpreso il *moichos*.

Discutendo dell'estensione e della rilevanza del ruolo della moneta con riferimento all'ambito familiare, ritengo che un altro settore significativo della normativa contenuta nel CdG riguardi gli schiavi. Si incomincia con le controversie riguardanti l'appartenenza di uno schiavo conteso fra due pretesi proprietari (col. I), da cui deriva una condanna articolata in una somma fissa e in una variabile con il decorso del tempo. Si continua con i reati sessuali di col. II, che riguardano soltanto schiavi altrui, o come autori o come vittime degli illeciti[32]. Vengono poi le norme che riguardano i rapporti matrimoniali fra schiavi. Come ho sottolineato nella mia risposta a Lewis in

[31] 1976, p. 146 e 154. Non entro qui nella discussione riguardante la tesi esposta da Paoli, *Altri Studi*, p. 269 n. 32, secondo cui *en alo* di col. II 24 si riferisce a un membro della famiglia o, meglio, al "podestatario della donna", nella cui casa avrebbe avuto luogo la *moicheia*.

[32] A proposito delle sanzioni irrogate nella col. II è interessante notare che gli schiavi autori di reati sono puniti non con pene corporali, come è abituale nel resto del mondo greco, bensì con pene pecuniarie così come i liberi. Il motivo potrebbe risiedere nel fatto che gli schiavi a Gortina erano originariamente inseriti in strutture familiari, e vengono quindi considerati in certo qual modo parte del nucleo familiare dei loro padroni.

Symposion 2022[33], una delle caratteristiche più originali del regime della schiavitù, quale risulta dal CdG, sta nel fatto che i rapporti coniugali presi in considerazione dal legislatore sono esclusivamente i rapporti fra schiavi e schiave appartenenti a padroni diversi, o fra una libera e uno schiavo altrui. Troviamo così le norme relative al divorzio della *Foikea* (col. III 40-44) da uno schiavo altrui; alla nascita di un figlio dopo il divorzio (III 52-IV 17);[34] alla nascita di un figlio da una *Foikea* non sposata (IV 18-23), si intende con uno schiavo altrui. Infine, la norma riguardante il matrimonio fra una libera e uno schiavo altrui (col. VI 55-col. VII 10). Benchè nei passi sopra citati si parli sempre di un padrone (*pastas*) degli schiavi menzionati, non emergono qui le caratteristiche che fanno di uno schiavo uno schiavo-merce, alla stregua di tutti gli altri beni di proprietà del padrone. Infatti, la legge instaura un equilibrio fra gli interessi dei padroni rispettivamente dello schiavo e della schiava o dello schiavo e della libera nel caso disciplinato in col. VI 55-col. VII 10. Fanno eccezione: lo schiavo acquistato al mercato (VII 10 ss.) e lo schiavo o la schiava dati in pegno (*katakeimenos*), di cui si occupa IC IV 47: qui non vi è un contemperamento fra gli interessi di padroni diversi che entrano in relazione tramite i loro schiavi.[35] Sembra, dunque, di poter affermare che esistano due modalità di riproduzione della popolazione schiavile: per nascita da un matrimonio esogamico (cioè, fra schiavo e schiava appartenenti a padroni diversi) o per acquisto (al mercato, quindi da un mercante di schiavi; ma anche, presumibilmente, da un altro padrone). Si pone allora il problema estremamente dibattuto e tuttora irrisolto, relativo alla denominazione di queste due categorie di schiavi nel CdG: vengono definiti *woikeis* gli schiavi inseriti in strutture familiari esogamiche e *douloi* quelli che derivano da acquisto monetario e non creano famiglie schiavili? oppure l'uso dei due termini è semplicemente promiscuo? Non è questo il luogo per riprendere la discussione. Mi limito qui a sottolineare come la soluzione influisca, fra le altre, anche su una norma come IV 18-23, che abbiamo poco fa citato. Se riteniamo che la *woikea* in questione appartenga a un nucleo familiare schiavile, occorrerebbe chiedersi come mai i membri della famiglia nucleare schiavile (padre + figli/figlie) siano finiti in proprietà di padroni diversi.[36] Esclusa la vendita, la dispersione potrebbe derivare dalla divisione del patrimonio fra gli eredi dell'originario *pastas*. Si dovrebbe allora concludere che la norma mira a ostacolare lo smembramento della famiglia schiavile e la conseguente riduzione dei suoi componenti alla condizione di schiavo-merce, ossia di schiavo inserito nel sistema dell'economia monetaria.

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[33] Maffi 2023

[34] In LAC p. 359, si legge "The rules [III 52-IV 8] only matter for serf couples belonging to different masters; if both have the same master, he decides the child's fate whether the serfs remarry or not". Ma di un 'matrimonio' fra schiavi dello stesso padrone non v'è traccia nel CdG.

[35] In IC IV 47 si parla di *dolos* e *dola*. Ci si potrebbe chiedere se ad essere consegnato in pegno possa essere anche un *woikeus* o una *woikea*.

[36] A questo proposito occorrerebbe chiedersi se il *woikeus* di col. IV 31 ss. si debba intendere come singolo componente di una famiglia schiavile oppure come capofamiglia.

II. Finora abbiamo prevalentemente preso in considerazione la regolamentazione di rapporti socioeconomici che fanno capo ai componenti della famiglia nucleare. Il legislatore si occupa, però, anche di regolare la circolazione di beni che fanno capo a soggetti non caratterizzati dalla loro qualifica di appartenenti a un nucleo familiare, ma dalla loro autonomia di soggetti titolari di un patrimonio. In questa prospettiva possiamo distinguere due grandi circuiti di beni. Da un lato troviamo nel CdG molti indizi relativi alla regolamentazione giuridica di un'economia di scambio basata sul denaro come mezzo di pagamento ordinario. Dall'altro sussiste un circuito tradizionale di beni di sussistenza dove la moneta non sembra giocare un ruolo rilevante.

Consideriamo prima di tutto il ruolo del denaro nell'ambito dell'economia di scambio. Quando il legislatore si riferisce genericamente a una situazione debitoria, la formula ricorrente è *opelon argyron*: si veda col. IX 1-2, integrato con certezza sulla base di col. X 20-21 e col. XI 31-32. In tutti e tre i casi si fa riferimento a una situazione di insolvenza, presumibilmente in presenza di una pluralità di creditori, come mostra il plurale in col. XI 38-XII 4. Non è escluso che oggetto dei debiti ereditari in col. XI 31- 42 siano beni materiali, ma evidentemente essi non sono in quantità tale da soddisfare tutti i creditori; di conseguenza si avrà una cessione dei beni ai creditori (in forme che non vengono specificate[37]); questi, a loro volta, si divideranno poi proporzionalmente il ricavato della vendita (così come accade per gli eredi, in base a col. V 39-51, qualora non si accordino sulle modalità di divisione).[38] D'altra parte, il CdG ci attesta l'esistenza e il largo impiego di mezzi per garantire l'adempimento di un debito. Il verbo *katatithemi* all'attivo indica la costituzione di un bene in pegno (manuale) e al medio la situazione del creditore garantito. La persona data in pegno viene definita *katakeimenos* (si veda in particolare IC IV 47 per lo schiavo dato in pegno). In parallelo, in iscrizioni gortinie più o meno coeve del CdG, è attestato l'uso di *enekyron* e del verbo *enekyrazo*.[39] È plausibile che la funzione principale del pegno fosse quella di garantire la restituzione di una somma di denaro data a mutuo[40] (ma non sono da escludere altri negozi produttivi di obbligazione

[37] Forse attraverso un intervento del giudice su istanza dei creditori? Si noti l'analogia di formulazione fra col. V 28-34 (ἐπιβάλλοντες οἰ μὲν λείοντι δατεθθαι τὰ κρέματα, οἰ δὲ μέ, δικάκσαι τὸν δικαστὰν ἐπὶ τοῖλ λείονσι δατεθθαι ἔμεν τὰ κρέματα πρίν κα δάττονται) e col. XI 37-40 (αἰ δέ κα μὲ λείοντι, τὰ μὲν κρέματα ἐπὶ τοῖς νικάσανσι ἔμεν ἢ οἷς κ'ὀπέλει τὸ ἀρ<γ>ύριον).

[38] Su col. XI 31-42 la trattazione più approfondita resta quella di Zitelmann in Bücheler-Zitelmann 1885, 147-149. Il commento più recente, quello di LAC 2016, 423-424, è basato su presupposti esegetici non convincenti dal punto di vista giuridico. Si veda anche Benke 2020-2021, 38 ss.

[39] Per una rassegna delle fonti v. Martinez Fernandez 2000, 1147-1148. Per un criterio di distinzione fra le due terminologie v. la proposta di LAC 2016, 310. Si potrebbe avanzare l'ipotesi che *katatithemi* si riferisca al pegno su persone (visto che *katakeimenos* in IC IV 47, ma anche nel CdG col. I 56 – II 1, si riferisce appunto a persone), e *enekyron* a un pegno su cosa materiale; ma contro questa ipotesi sta il fatto che in col. VI e in col. IX si parla di *katathesis* di beni rispettivamente della moglie o della madre e di beni appartenenti al defunto senza che sia possibile restringere tali beni ai soli schiavi.

[40] A un contratto di mutuo in denaro si riferisce certamente col. IX 43-54, come mostra la

di dare). L'accostamento frequente della compravendita, ma anche della promessa (espressa dal verbo *epispendein*: col. VI 12-24; col. X 25-32[41]), alla costituzione di pegno (col. VI 12-24; col. IX 1-7; col. X 25-32) mostra che la pratica del credito è molto diffusa ed è probabilmente da mettere in relazione, da un lato, con l'intento di procurarsi denaro da investire nell'acquisto di beni a scopi commerciali, dall'altro con la necessità di far fronte ai relativi debiti. Il collegamento privilegiato con debiti in denaro è chiaramente riconoscibile, a mio parere, in col. IX 1-7, dove si autorizza l'ereditiera (*patroiokos*) a vendere o a dare in garanzia beni ereditari per ottenere il denaro necessario a pagare i debiti ereditari. Anche il riscatto del sequestrato (col. VI 46-55), forse in origine una pratica da situare nella 'economia del dono', dà luogo con tutta probabilità a un'obbligazione di restituzione in denaro benché nel testo della norma non vi sia un riferimento esplicito al denaro.

Se ora rivolgiamo la nostra attenzione al secondo circuito, a cui ho fatto sopra riferimento, dobbiamo riferirci ai sissizi, cioè ai pasti comuni che a Creta si svolgono negli *andreia*[42]. Si tratta di un'istituzione caratterizzata, come è noto, da una forte valenza politica e sociale, in cui non troviamo alcun riferimento esplicito al denaro. Sia l'iscrizione sui *karpodaistai*[43] sia l'iscrizione di Spensizio[44] ci confermano infatti che i contributi da versare sono in natura, non in denaro. È perciò interessante notare che nel CdG non ve n'è traccia (a meno di non farvi rientrare come incremento della quota ordinaria, dovuta da ogni cittadino, la prestazione in natura a favore dei membri dell'eteria in occasione dell'adozione: X 37-39)[45]. In IC IV 75 (= *Nomima* II n. 46 B 7-9) si vieta di pignorare tutta una serie di oggetti, probabilmente ancora una volta in relazione a una condanna pecuniaria. Fra gli oggetti esclusi dal pignoramento si include qualcosa (difficile da definire) che è destinata al sissizio.[46] I beni esclusi dal pignoramento sono beni che costituiscono la base materiale della vita associata nella comunità: essi sfuggono perciò al dominio dell'economia monetaria, ma, al tempo stesso, la necessità di tutelarli contro atti esecutivi attesta la presenza pervasiva di essa.[47] Possiamo dunque ribadire che, per quanto riguarda l'organizzazione e il rifornimento dei pasti in comune, la moneta non cade sotto l'attenzione del legislatore.

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correlazione fra il numero di testimoni richiesti e l'ammontare della somma di cui l'attore chiede la restituzione (si noti che può trattarsi anche di una somma di modesta entità, corrispondente alla penalità per gli illeciti sessuali riguardanti gli *apetairoi*: col. II 4-5 e 24-25).

41 V. Maffi 2018.

42 V. brevemente Davies 2005, 166-168, Montecchi 2007, e da ultimo Seelentag 2015.

43 IC IV 77 = LAC 2016, 435-436.

44 *Nomima* I n. 22 B 11-16.

45 *Nomima* II p. 144.

46 *Nom*. II p. 164, traduce: "tout le matériel que le chef peut fournir à son *andreion*…"; LAC 2016, 431 : "from the *andreion* whatever the leader provides for the *andreion*". A mio parere potrebbe significare che ogni partecipante all'*andreion* riceve dal suo capo delle apparecchiature necessarie per la propria partecipazione.

47 In *Nomima* II p. 168, si sottolinea giustamente che i patrimoni "étaient relativement fragiles, soumis à tous les aléas d'une économie de type 'monétaire'…".

Un settore molto importante per un'indagine intorno all'impatto dell'economia monetaria sulle regole giuridiche è dato naturalmente dal modo in cui si configura l'attività giudiziaria, in particolare per quanto riguarda il contenuto della condanna. Infatti, la condanna giudiziaria è generalmente espressa in denaro (*tima*: I 50-51; IC IV 41.VI 2-16; IC IV 47) sia per l'inadempimento contrattuale sia per l'illecito (col. I 2-7; anche in col. X 20-25 si prevede che la condanna sia pecuniaria[48]). È vero che la riduzione in schiavitù ('solutorische Knechtschaft' per usare la terminologia introdotta da Swoboda 1905) è ancora ammessa dal CdG (I 56-II 2; IX 42-43). Però il complesso sistema di sanzioni pecuniarie progressive (o 'astreintes'), che colpiscono il condannato inadempiente in col. I 27 ss., mostra che il legislatore, anche quando la condanna non è di per sé pecuniaria, preferisce esercitare una pressione psicologica ad adempiere tramite penalità in denaro[49]. Certo, l'*agoge* nei confronti del *nenikamenos* è ammessa (col. I 56-II 1), ma solo come *ultima ratio*, dopo che l'accumulo delle 'astreintes' si è rivelato inefficace ad ottenere l'adempimento della sentenza.[50]. È dunque possibile supporre per analogia, pur nel silenzio della legge, che, su richiesta della divorziata che si sia appropriata di beni del marito (col. III 1-5), il giudice abbia il potere discrezionale di condannare la donna (e forse anche i suoi aiutanti: col. III 9-15) al pagamento di una somma progressiva di denaro oltre alla penalità fissa di cinque stateri prevista dalla legge in col. III 2-3: mi sembra infatti improbabile che al marito sia consentito procedere a un'esecuzione sulla persona nei confronti della propria ex-moglie condannata in giudizio. Allo stesso modo possiamo supporre che, in col. IX 42-43, in caso di inadempimento della sentenza, il giudice condanni il figlio al pagamento di una somma progressiva di denaro per indurre il vincitore della causa a procrastinare l'esecuzione sulla persona o a rinunciarvi del tutto (d'altronde in XI 42-45 si fa riferimento soltanto a una responsabilità gravante sul patrimonio).[51]

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[48] Però in col. III 5 la donna che sottrae beni del marito in occasione del divorzio è tenuta a restituirli, oltre a dover pagare una sanzione pecuniaria fissa: è possibile, però, che siamo qui in presenza di un regime speciale, come sarà a Roma quello dell'*actio rerum amotarum* (v. Maffi 1997, 33).

[49] I cinque giorni concessi per riscattare il *moichos* pagando la penalità prevista dalla legge (col. II 28-36) sono in fondo un'applicazione dello stesso principio.

[50] Secondo Zitelmann 1885, 99-100, invece, l'esecuzione della condanna da parte del vincitore della causa era sempre consentita sulla persona, a meno che il vincitore vi rinunciasse o essa fosse resa impossibile dalla soverchiante forza del soccombente o dal doloso nascondimento dell'oggetto della pretesa. Ma dalle disposizioni della I colonna non risulta che il vincitore della causa possa liberare il sequestrato riconosciuto libero dal giudice o lo schiavo riconosciuto di sua proprietà. Se consideriamo la fase preliminare, che tende a ottenere la restituzione o la liberazione della persona sequestrata prima di un accertamento di merito (col. I 2-14), sembra da escludere che l'*agon*, nel caso in cui non paghi i dieci o i cinque stateri della condanna per *agoge* illecita (col. I 2-7), possa essere a sua volta assoggettato ad *agoge* in quanto *nenikamenos*. La liberazione del sequestrato presuppone infatti che l'*agon* sia in libertà. Se poi l'*agon* liberava il sequestrato dopo i tre giorni stabiliti in col. I 6-7, è probabile che pagasse contestualmente anche la sanzione pecuniaria per aver compiuto l'*agoge*. Sul tema v. anche Pelloso 2009/10.

[51] Una coazione psicologica, ottenuta imponendo uno svantaggio economico, si incontra sia a proposito dell'*agoge* compiuta da un *kosmos* in col. I 51-55, sia a proposito dell'invito

L'esecuzione sulla persona appare dunque, nelle intenzioni del legislatore, una misura residuale a cui soltanto i ceti meno abbienti, esclusi dal circuito dell'economia monetaria, restano di fatto esposti.

Mi pare, tuttavia, che dalle norme in materia di esecuzione della sentenza emergano delle eccezioni al principio della prevalenza dell'esecuzione sul patrimonio rispetto all'esecuzione sulla persona. Una prima eccezione è rappresentata dall'assoggettamento del riscattato al riscattante secondo quanto stabilito in col. VI 46-55: in questo caso l'assoggettamento è la conseguenza, sancita dalla legge, della liberazione voluta dal riscattato stesso. L'obbligazione di rifondere il riscatto viene sottratta al meccanismo delle 'astreintes' proprio perché si tratta di un istituto tradizionale, d'altronde funzionante in termini analoghi anche ad Atene, come risulta da Dem. 53 (su cui v. Scheibelreiter in questo volume). La seconda eccezione riguarda l'assoggettamento ad *agoge* del *katakeimenos*, espressamente consentita in col. I 56-II 1. Come ho già sostenuto a suo tempo contro la dottrina maggioritaria, ritengo che il *katakeimenos* non sia da identificare con il debitore che si autoassoggetta in via preventiva alla potestà del creditore, bensì con il garante libero[52]. Mentre dal CdG, in particolare dalla complessa costruzione della I colonna, come abbiamo detto, risulta la preferenza del legislatore per l'esecuzione sul patrimonio, il garante assume precisamente, secondo un modello tradizionale risalente addirittura alla testimonianza omerica,[53] l'obbligazione di lasciarsi assoggettare dal creditore insoddisfatto dal momento in cui il debitore principale non paghi il debito giunto a scadenza (col. I 56-II 1). Il pagamento da parte del garante di quanto dovuto dal debitore principale rimane una possibilità aperta, ma solo in presenza di circostanze impellenti (v. IC IV 41.V) e comunque presumibilmente mantenendo il diritto di regresso nei confronti del debitore principale.

Vediamo infine come si configura la condanna pecuniaria in relazione alle due modalità di giudizio previste dal CdG in col. XI 26-31. Nel caso di sottrazione di beni del marito da parte della moglie a seguito del divorzio si specifica che il valore di ciò che è stato sottratto viene stabilito dal giudice con sentenza giurata (il giudizio sarà dunque formulato nella modalità *omnunta krinen* prevista in col. XI 26-31). Nel caso del figlio *andexamenos* (col. IX 42-43) non si specifica la modalità di giudizio. Tuttavia, mi pare probabile che anche in questo caso il giudice stabilisca l'ammontare della condanna pecuniaria mediante giuramento. E lo stesso vale probabilmente per la valutazione in denaro del valore dello schiavo in col. I 48-51 e in IC IV 47 24-31. Certamente il *dikastas* gortinio non pronuncia una doppia decisione come accade invece presso il tribunale popolare ateniese. Di conseguenza, quando emana la sua sentenza nella modalità *omnunta krinen*, il giudice gode probabilmente di una maggiore libertà nel quantificare l'ammontare della condanna rispetto alla modalità denominata *dikadden kata maityrans* (ossia *porti ta apoponiomena*: IX 30-31) o *apomoton*. In quest'ultima modalità il giudice è vincolato dal contenuto della testimonianza (di

all'avente diritto pubere a sposare l'ereditiera pubere in col. VII 35-40.

52 Maffi 1983, p. 84 ss.

53 V. Cantarella 1988 (= 2011)

norma a favore dell'attore), che include probabilmente anche il *quantum* della pretesa fatta valere dall'attore stesso (si veda col. IX 43-54).[54] Viceversa, nella modalità *omnunta krinen* il giudice decide liberamente confrontando i punti di vista fatti valere dalle due parti (*pros ta moliomena*). Quindi, anche se decide di dar ragione all'attore, potrà presumibilmente ridurre l'ammontare della condanna da lui richiesta tenendo conto degli argomenti fatti valere dal convenuto a sua difesa[55]. Fanno eccezione i casi in cui è la legge a stabilire l'ammontare della sanzione. Mi riferisco ad es. al caso in cui una donna espone il neonato nato dopo il divorzio prima di averlo presentato all'ex-marito, o al suo padrone, se si tratta di una schiava (IV 8-14).[56] Qui non si dice quale sia la modalità con cui il giudice si pronuncerà. Se applicassimo il criterio residuale sancito in col. XI 26-31, dovremmo concludere che si tratterà di un *omnunta krinen*. Tuttavia, la relazione logica con quanto previsto in col. III 44 - IV 8 induce a ritenere che anche in questo caso si applicherà la clausola *orkioteron*; di conseguenza il giudice si pronuncerà nella modalità *dikadden apomoton*.

Al termine di questa sommaria rassegna ritengo di poter formulare alcune conclusioni provvisorie. La lettura del CdG che abbiamo proposto mostra un duplice orientamento del legislatore. Da un lato, il diffondersi di un'economia di scambio basata sulla moneta si estende anche ai rapporti reciproci fra i membri della famiglia nucleare (ivi comprese le donne). Ne derivano tensioni che hanno l'effetto di mettere in discussione i rapporti di potere tradizionali incentrati sul predominio del capofamiglia. Di qui la necessità, avvertita dal legislatore, di definire tramite legge diritti e doveri in ambito economico, non solo nei rapporti fra membri della famiglia, ma anche nei rapporti con estranei: si noti, ad esempio, come la natura del debito contratto dal figlio con un estraneo condizioni il suo diritto a ottenere la liquidazione anticipata della sua quota ereditaria (cfr. IV 29-31 con IX 40-43)[57]. Ci troviamo dunque in un

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[54] Per una discussione approfondita di questo punto bisognerebbe però riaprire la discussione sulla duplice natura della testimonianza, formale o accidentale, così come illustrata da Gagarin soprattutto nei suoi contributi ai Symposia 1985 e 2009 (e, in forma molto sintetica, in LAC 2016, 300).

[55] In questo modo l'ordinamento gortinio avrebbe realizzato l'effettiva corrispondenza dell'ammontare della condanna all'intimo convincimento del giudice secondo l'auspicio di Ippodamo (Arist. *Pol*. 1268a1-6 e 1268b4-22).

[56] Da notare che la sanzione per l'esposizione dello schiavo è la metà di quella prevista per l'esposizione del libero, mentre nella col. II la sanzione per un illecito che riguarda schiavi è un ventesimo di quella dell'illecito commesso da un libero nei confronti di un libero o di una libera. In IV 8-14 non si tratta però di un illecito in senso stretto, ma di una lesione dell'interesse alla perpetuazione della famiglia. Ancora una volta il legislatore si fa interprete della traduzione di tali interessi immateriali in termini monetari.

[57] In LAC 2016 il nesso fra le due norme viene inteso in questo modo: *anadechomai* in IX 41 viene interpretato, con la dottrina dominante, nel senso di dare in pegno ("This provision…allows the son to pledge any property he may have as security"), ma la traduzione a fronte suona "has undertaken an obligation" (p. 407). Nel commento (p. 407-408) Gagarin tiene ferma l'interpretazione della norma come divieto di dare in pegno la propria futura quota ereditaria. Non si capisce, però, perché un creditore avrebbe dovuto accettare (quindi come garanzia ipotecaria) un bene futuro. Inoltre, il "current benefit" a vantaggio del figlio non può che essere interpretato come un prestito di denaro. Quindi, se il figlio non avesse

momento storico in cui "la valeur mythique" dei beni, tanto cara a Gernet, è stata tradotta in valori monetari, e, d'altra parte, non si può più sostenere che l'economico è 'embedded' nel sociale e nel politico (secondo la fortunata definizione di Polanyi). Facendo ricorso alle categorie utilizzate da Aristotele nel I libro della *Politica*, si potrebbe dire che il legislatore intende far fronte a situazioni in cui la crematistica tende a pervadere le configurazioni tradizionali dell'*oikonomia*.

D'altro lato il legislatore recepisce le trasformazioni che il diffondersi della moneta introduce nelle pratiche tradizionali e cerca di sfruttarle per la costruzione di un nuovo ordine[58]. Così vediamo che il legislatore si avvale dello strumento monetario per indirizzare situazioni conflittuali potenzialmente dirompenti verso soluzioni depurate dagli aspetti emozionali più accesi (come accade, ad esempio, per la disciplina della *moicheia*, così come per le sanzioni conseguenti all'esposizione arbitraria dei neonati in col. IV 8-14). Siamo dunque di fronte all'affermarsi di un diritto 'penale' che, almeno per quanto riguarda i rapporti fra privati, tende a sostituire self-help e vendetta con sanzioni e risarcimenti di carattere monetario che si commisurano a comportamenti tipizzati dal legislatore: ancora una prova dell'elevato livello di tecnica giuridica di cui dà prova il legislatore gortinio. Per quanto riguarda poi i rapporti di scambio fra i membri della comunità, vediamo che il legislatore tenta di contemperare gli interessi di creditori e debitori in un contesto economico-sociale dove la moneta diventa sempre più un fattore di dinamismo che necessita l'intervento regolatore della legge. Le apparenti discrepanze fra le soluzioni tendenti a regolare fattispecie analoghe non sono necessariamente da ascrivere a differenti fasi nello sviluppo delle strutture istituzionali (come, ad esempio, riteneva Talamanca 1979 per spiegare procedure giudiziarie differenziate) o alle decisioni di singoli magistrati giusdicenti, poi confluite in norme (come affermato da Davies 2005), ma testimoniano della capacità di adattamento alle nuove circostanze socio-economiche che il legislatore si trova a dover affrontare.

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restituito il denaro, sarebbe stato condannato e il creditore avrebbe così potuto richiedere la liquidazione della quota ereditaria del figlio a norma di col. IV 29-31 (infatti *atamenos*, come mostra il confronto fra X 21 e XI 32, deve essere inteso di norma come un sinonimo di *nenikamenos*, cioè di condannato in forza di una condanna pecuniaria; *pace* Gagarin, secondo cui, invece, IV 29-31 si applica solo a "fines for wrongdoing": p. 407, mentre a p. 424 osserva che "almost all penalties at Gortyn are fines").

58 V. von Reden 1995, 171: "There is a perplexing paradox in the history of money in that it is associated both with creating and with upsetting order".

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GERHARD THÜR (WIEN)

GELD IN GORTYN. ANTWORT AUF ALBERTO MAFFI

Alberto Maffi ist der Jurist, der die Große Gesetzesinschrift von Gortyn vielleicht am besten kennt. Über sein — und auch mein — Metier hinausgehend versucht er nun, die Methode der *Economic Analysis of Law* auf die Rechtsordnung dieser archaischen kretischen Polis anzuwenden. Ist das überhaupt möglich? Wie er selbst zugibt: Es herrscht „*totale ignoranza della storia politica e sociale di Gortina nel V secolo a.C.*"; damit fehlen also eigentlich sämtliche Voraussetzungen für eine Ökonomische Analyse: Daten über Wirtschaft, Handel und Bodennutzung sowie Dokumente des privaten Rechtsverkehrs. All das bieten die Papyri Ägyptens. Doch es gelingt ihm, allein aus dem Gesetzeswortlaut Tendenzen der Monetarisierung herauszulesen.

Zunächst ein kurzer Überblick. In sechs Abschnitten und einer Zusammenfassung behandelte Maffi im Vortrag folgende Themen: 1) Im Erbrecht stellt er durchgehend die Bewertung des Nachlasses in Geld fest. Als Übergang von der ‚Schenkungswirtschaft' werden allerdings die Regeln über die Gaben gesehen, die der Vater seiner Tochter anlässlich der Verheiratung darbringt. Das gehe aus dem in col. V 1–9 ausgesprochenen Rückwirkungsverbot hervor. Dazu werde ich Stellung nehmen. 2) Die erstaunlich ausgefeilte Monetarisierung der Sanktionen gegen den ertappten Ehebrecher seien neben die persönliche Rache getreten. 3) Reste der vormonetaren Wirtschaft seien die gemeinsamen Weiden und der Schutz der Teilnahme an den Syssitien (Männermahle) durch ein Verbot, die hierfür nötigen Gegenstände zu pfänden. 4) Nachkommenschaft von Unfreien, die verschiedenen Herren gehören, wird ebenfalls nicht monetarisiert; erklärlich, denn es geht hier nur um die Frage der rechtlichen Zuordnung. 5) Verurteilung in Geld anstelle von Schuldknechtschaft. 6) Der *dikastas* schätzt in Geld zu zahlende Ersatzleistungen durch Eid (*omnynta krinen*). 7) Zusammenfassend stellt er fest, nicht die dogmatische Entwicklung der rechtlichen Institutionen, sondern der Zwang wirtschaftlicher Gegebenheiten hätten den Gesetzgeber geleitet.

In der nun vorliegenden gedruckten Fassung hat Maffi die oben genannten Themen überzeugend in zwei übergreifende Kapitel zusammengefasst: I) Monetarisierung in den Rechtsbeziehungen innerhalb der Kernfamilie und II) im allgemeinen Austauschverkehr innerhalb der Gesellschaft. Er hat damit eine wertvolle Untersuchung über die Funktion des Geldes innerhalb des Gesetzestextes vorgelegt. Die "'*transizione' verso un'economia monetaria*" hat er anhand der ausdrücklichen

Rückwirkungsverbote in einigen Bestimmungen nachgewiesen. Nicht greifbar sind in der Inschrift primitivere, nichtmonetarische Tauschmittel, etwa Vieh oder rohes Metall; darauf wurde in der Diskussion hingewiesen.

In dem knappen mir zugemessenen Raum kann ich natürlich nicht auf alle von Maffi nun in der schriftlichen Fassung zitierten Stellen eingehen. Vielmehr will ich mich dem Thema Monetarisierung — skizzenhaft — auf eine andere Weise als Maffi nähern. Ich greife dabei auf bereits 1992 und 2006 versteckt geäußerte Gedanken zurück, die von den Kennern Gortyns nie beachtet wurden.[1] Meine These: Die Große Gesetzesinschrift ist das Produkt des Übergangs von einer – idealiter (aber nie konsequent verwirklichten) – egalitären dorischen *klaros*-Gesellschaft zu einem sozial nach Vermögen differenzierten archaischen Gemeinwesen. Zweifellos spielt dabei die Monetarisierung eine Rolle. Über Maffi hinausgreifend will ich drei Themen kurz anschneiden: 1) den *klaros* (doppeldeutig: Landlos oder Erbschaft); 2) die Erbtochter (Tochter ohne Brüder, in Gortyn *patroiokos*, in Sparta vielleicht *patroiouchos*, attisch *epikleros*) und 3) die ‚Brautgabe' (Gabe des Vaters an die Tochter anlässlich ihrer Verheiratung, in Gortyn und Sparta ohne Terminus; die Ausdrücke attisch *proix* und modern ‚Mitgift' sind für Gortyn irreführend). Mit der Brautgabe bin ich dann bei Maffi und der Monetarisierung angekommen.

ad 1) Laut dem gewissenhaften Index in den *Laws of Ancient Crete* kommt das Wort *klaros* in der gesamten Sammlung nur ein einziges Mal vor, und zwar in der Großen Inschrift (col. V 27): „Wenn keine Erbberechtigten sind, wer immer der *klaros* des Hauses (*tas Foikias*) sind, diese sollen das Vermögen haben.[2]" *Klaros* ist hier eine Personengruppe und kann keinesfalls „Erbschaft" heißen; sonst müssten diese Personen „sich selbst erben". Auch die Übersetzung „Landlos" scheidet aus, doch könnte sie auf die richtige Spur führen. Nach ausführlicher Diskussion schließt Gagarin (*LAC* S. 375f.), dass es sich um Haussklaven handle, die nach jener Bestimmung faktisch die Freiheit mit dem minderen Status von *apetairoi* erlangten. Dem kann ich nicht zustimmen. Mit „Haussklaven" verkennt er die Situation.

Foikia bedeutet in anderen Inschriften aus Gortyn zwar „Wohnhaus",[3] doch kann im allgemeinen griechischen Sprachgebrauch *oikia* auch die Bedeutung von *oikos* haben, attisch Personen- und Vermögensverband entsprechend der römischen *familia*. Auf Kreta könnte so wie in Sparta ein Landlos zum dorischen Familienverband gehört haben. Die Gesetzesinschrift regelt zwar die Rechtsverhältnisse an den *kremata*, am frei vererbbaren „Privatvermögen" des Bürgers, daneben muss es aber ein durch die alte Wehrverfassung gebundenes Landgut gegeben haben, das mit Hörigen die Familie eines Bürgersoldaten ernähren konnte, den ursprünglichen dorischen *kla-*

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1 Zitiert unten im Literaturhinweis. Textstellen aus der Großen Gesetzesinschrift (IC IV 72; *LAC* G72, S. 334–428) werden im Folgenden nur nach Kolumne und Zeilen zitiert, weitere Texte voll nach IC IV und *LAC*.

2 Col. V 25–28: αἰ δὲ μὲ εἶεν ἐπιβάλλοντε|ς, τᾶς *F*οικίας οἵτινές κ'| ἴοντι ὸ κλᾶρος, τούτονς ἔ|κεν τὰ κρέματα.

3 IC IV 64, 4 = G64; zweifelhaft IC IV 81, 1 = G81; auch IC IV 112, 3–4 = G112; sonst ist Wohnhaus *stega*, s. auch 81, 16–17.

ros.[4] Die strukturelle Ähnlichkeit mit der Wehrverfassung Spartas ergibt sich aus dem nur zweimal (in Fragmenten außerhalb der Gesetzesinschrift) erwähnten *andreion*, wo die gemeinsamen Mahlzeiten der Männer, die *syssitia*, abgehalten wurden;[5] Naturalabgaben, Opfertier und Wein, an die *etaireia* sind belegt in col. X 38–39.[6] Angesichts dieses Befundes wären die *klaros*-Leute diejenigen, welche für die Familie des wehrfähigen Bürgers als *Foiketai* das Landlos bebauen. Diese sollen, wenn kein erbberechtigter Verwandter mehr vorhanden war, gemäß col. V 25–28 an letzter Stelle das freie Vermögen ihres verstorbenen Herrn bekommen — und wahrscheinlich auch für seinen Grabkult verantwortlich sein. Wer in den frei gewordenen *klaros* als neuer Herr eintritt (ein nicht versorgter Sohn aus der *phyle*? ein Neubürger?), ist nicht in der Gesetzesinschrift geregelt, sondern in weiter geltenden althergebrachten mündlich überlieferten Vorschriften. Die *Foiketai*, denen man eine gewisse Vermögensfähigkeit zusprechen muss, erhalten also Vermögensgegenstände — wohl in natura (erarbeitetes Gut, Vieh, Ernte) — ändern aber nicht ihren Status.

ad 2) Die Erbtochter, *patroiokos*. Die athenische *epikleros* kann, da eine Frau nicht Vorstand eines *oikos* sein kann, nicht selbst erben. Wenn sie aber dem Erblasser, also ihrem Vater, aus legitimer Ehe einen Enkel gebiert, vermittelt sie diesem das Recht am *kleros* seines Großvaters. Der nächste Seitenverwandte in männlicher Linie, zum Beispiel ein Onkel (Bruder des Verstorbenen), kann das Mädchen zur Ehe verlangen, um mit ihr diesen Enkel zu zeugen. Das Mädchen kann diesem Zwang nicht entkommen. Der angeheiratete Verwandte ist Nutznießer der Erbschaft, des *kleros*. Damit aber der Onkel diesen Zustand nicht zu seinem Vorteil perpetuiert, muss er dem Mädchen zwei Mal im Monat beiwohnen und der Enkel bekommt zwei Jahre nach Volljährigkeit das Erbe.

In Gortyn erbt die Tochter neben Brüdern einen halben Anteil am hinterlassenen Vermögen; sind also *ein* Bruder und *eine* Schwester vorhanden, wird zwei Drittel zu einem Drittel geteilt: col IV 37–43, soweit nicht die Sondervorschriften für die Brautgabe, col. IV 48 – V 9 (s. sogleich), oder für den Adoptierten, col. X 48–XI 1, gelten. Ohne Brüder ist das Mädchen Erbtochter, *patroiokos*, und erbt Vermögen, unter Umständen das ganze (col. VII 15 – IX 24, *ta kremata*). Der Verwandte, der sie zur Ehe beansprucht hat, nutzt und verwaltet allerdings das Vermögen, bis es an die gemeinsamen Kinder übergeht.[7] Ich frage mich: Aus welchem Rechtsgrund kann der Verwandte das Mädchen zur Ehe verlangen? Oder anders gefragt: Welche Rechtsstellung, die eine Frau nicht bekleiden kann, soll das Mädchen ihren Kindern, den Enkeln ihres Vaters, vermitteln? Erbin des Vermögens (der *kremata*) ist sie ja

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4 Zu Sparta s. Plut. Lyk 8.1.7; Thür 1992, 128–130; 2006, 29–32 mit Lit.

5 IC IV 4, 4 (= G4); IC IV 75 B 7–8 (= G75), Pfändungsverbot von Gegenständen, die für das *andreion* (in natura) zur Verfügung gestellt wurden.

6 Sachleistungen, die der Adoptierende seiner *etaireia* bei Einführung des Adoptierten für eine Opferzeremonie erbringen muss. Auch Maffi deutet dieses Ritual als Überrest aus der Naturalwirtschaft.

7 *LAC* S. 85–86 spricht von freiwilliger Übertragung der Vermögensverwaltung an ein männliches Familienmitglied, gesetzlich vorgeschrieben ist das nicht.

bereits. Man könnte wie beim Athener *oikos* an Sakralrecht, etwa an den Grabkult denken, doch das reicht für die praktisch-politischen Erfordernisse nicht aus. Im Anschluss an das vorhin Gesagte liegt eine Erklärung nahe: die Wehrverfassung. Eine Tochter kann weder in der Truppe noch im *andreion* die rechtliche Stellung eines wehrfähigen Bürgers einnehmen. Diese muss der Ehemann des Mädchens ausfüllen, zumindest bis ein Sohn aus dieser Ehe herangewachsen ist. Das Erbtochterrecht auf Kreta dürfte also, wie auch anderswo, ein Produkt der Wehrverfassung gewesen sein, das Aufrechterhalten einer festen Zahl von *klaroi*.[8] Hierzu passt auch ein aufschlussreiches Detail: In Gortyn kann sich das Mädchen dagegen wehren, die Ehe mit dem am nächsten erbberechtigten Verwandten einzugehen. Als Preis für ihr Wahlrecht muss sie aber dem verschmähten Prätendenten die Hälfte der geerbten *kremata* abtreten.[9] Diese Regel scheint mir nicht die persönlichen Gefühle des Mädchens zu berücksichtigen. Eher wird der Wert des Prätendenten im Kampfe veranschlagt. Ein Schwächling im Wehrverband würde der Familie nicht zur Ehre gereichen. Der Ehekandidat dürfte einer harten sozialen Kontrolle unterworfen gewesen sein. Vielleicht hatte auch die Witwe des Verstorbenen, die Mutter des Mädchens, ein gewichtiges Wort mitzureden.[10] Wieder ist festzuhalten, dass das Gesetz nur vordergründig die *kremata*, nicht aber den dahinterstehenden *klaros* regelt. Die gesellschaftliche Wirkung der Vorschriften geht also, wenn man den hier vorgetragenen Hypothesen folgt, viel tiefer. Maffi ist freilich zuzustimmen, dass die positive Ausgestaltung der Regeln im Gesetz voll den Prinzipien der Geldwirtschaft entspricht.

ad 3) Die Brautgabe. Wie gesagt, gibt es hierfür weder in Sparta noch in Gortyn einen Terminus. In Gortyn spricht das Gesetz schlicht von „geben, schenken" (*didomi*). Für Maffi ist diese Einrichtung ein Beispiel dafür, dass im Erbrecht durch die Aufteilung in Erbquoten indirekt eine Monetarisierung, eine Bewertung des Vermögens in Geld eingetreten ist. Damit hat er sicher recht. Brautgabe und Erbrecht von Frauen hängen eng zusammen (col. IV 48 – V 9), man könnte von „Vorab-Erbe" der Frau sprechen.[11] Interessant für Maffi ist besonders das in col. V 1–9 ausgesprochene Rückwirkungsverbot. Dieses erlaubt ausnahmsweise einen direkten Blick auf die

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[8] Vgl. die Aufteilung der *kleroi* (= *klaroi*) in Sparta, Plut. Lyk 8.1.5–7.

[9] Geregelt in col. VII 52 – VIII 8: „Wenn die Erwachsene den Berechtigten nicht heiraten will oder der Berechtigte minderjährig ist und die | Erbtochter nicht warten will, soll das Haus (*stega*), wenn es (eines) in der *polis* gibt, die Erbtochter haben und alles, was in dem Haus drinnen ist, von dem übrigen (Vermögen, *kremata*, Z. 48) soll sie die Hälfte erhalten und sie soll einen anderen der Bewerber aus der *phyle* heiraten, den sie will."

[10] Dass die Mutter von Mädchen in deren Schicksal besonders wichtig ist, kann man aus dem Fragment der Rede gegen Timandros (ed. L. Horváth, Der Neue Hypereides, Berlin 2014) herauslesen (Z. 20–22): καταλειφθέντων γὰρ του|τωνὶ — δυοῖν ἀδελφοῖν καὶ ἀδελφαῖν δυοῖν ὀρφα|ναῖν καὶ μητρὸς καὶ π(ατ)ρ(ὸ)ς καὶ παιδαρίων | πάντων ὄντων … „Als nämlich diese hier (als Waisen) hinterblieben waren — sie waren zwei Brüder und zwei Schwestern, die Mädchen (sogar) als Waisen ohne Mutter und Vater, und alle (noch) kleine Kinder …" Dieser Gemeinplatz wirft ein Licht auf sonst in griechischen Quellen nicht erwähnte interne Familienverhältnisse.

[11] Diesen Ausdruck hat W. Schmitz in der Diskussion treffend eingeführt.

transizione einer rechtlichen Institution in Gortyn.

Die Vorschrift (col. IV 48–V 1) beginnt damit, dass sie dem Vater erlaubt, zu seinen Lebzeiten der Tochter bei ihrer Verheiratung (etwas) zu geben, allerdings nur bis zur Höhe ihres gesetzlich festgesetzten Erbteils (col. IV 40–43). Der Erbteil steht aber zu Lebzeiten des Vaters noch nicht fest. Zur Vorsicht darf er mit der Brautgabe gewiss den Wert des Erbteils unterschreiten. Damit ist die Tochter nach dem Tod des Vaters vom Empfang weiteren Vermögens (*kremata*, Z. 54) aus der väterlichen Erbschaft ausgeschlossen.[12] Was gelten soll, wenn sich beim Tod des Vaters herausstellt, dass die Gabe den Wert des Erbteils überschritten hat, ist nicht geregelt.

Das Rückwirkungsverbot lautet (col. V 1–9): „Jede Frau, die Vermögen (*kremata*) nicht (erhalten) hat, entweder vom Vater gegeben oder vom Bruder, entweder versprochen oder (als Erbteil) erhalten, gemäß (dem) als die Truppe Aithaleus, (nämlich) die *kosmoi* mit Kyllos, im Amt waren, diese (Frauen) sollen (ihren Anteil) erhalten; denjenigen vorher soll aber keine Klage (möglich) sein."[13] Das Amtsjahr des Kyllos ist das Jahr, in dem das Gesetz erlassen wurde. Die Rückwirkungsklausel bestimmt zum einen positiv, dass ab Inkrafttreten des Gesetzes die Frau bei Eingehen einer Ehe einen Anspruch auf eine Brautgabe hat, zumindest der Vater eine geben darf. Die Höhe ist durch ihren präsumtiven Erbteil als Tochter begrenzt (col. IV 50–51 mit Z. 40–44). Negative Voraussetzung ist, dass sie nicht schon durch Vermögen (*kremata*) vom Vater oder (nach dessen Tod) von einem Bruder ausgestattet ist. Ausdrücklich wird anschließend festgehalten, dass diese Vorschrift nicht rückwirkend angewendet werden darf: Nicht ausgestattete Frauen, welche die Ehe vor Inkrafttreten des Gesetzes eingingen, haben diesen Anspruch nicht. Daraus folgt, dass vor Inkrafttreten des Gesetzes schon geleistete oder gültig versprochene Brautgaben von der Vorschrift nicht betroffen sind. Jene Gaben konnten also noch den Wert des Erbteils überschrei-

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[12] Col. IV 48–V 1: αἰ δέ κα λε͂|ι ὸ πατὲρ δοὸς ἰὸν δόμεν τᾶ|ι ὀπυομέναι, δότο κατὰ τ|ὰ γραμμένα, πλίονα δὲ μέ. *vac*. ὀτείναι δὲ πρόθθ' ἔδοκε ἒ ἐπέσ|πενσε, ταῦτ' ἔκεν, ἄλλα δὲ μὲ | ἔτι τον π[α]τρόι[ο]ν [κ]ρέ[ματ'] || ἀπολαν[κά]νεν. (Wenn der Vater zu Lebzeiten geben will der zu vermählenden (Tochter), soll er geben gemäß dem Geschriebenen, mehr aber nicht. Welcher er vorher [vor seinem Tode] gab oder versprach, die soll das haben, aber nicht mehr aus dem väterlichen Vermögen erhalten.) Diese Vorschrift wird allgemein so verstanden, dass der Vater der Tochter entweder den vollen Erbteil als Brautgabe geben darf oder gar nichts. Πλίονα δὲ μέ ist eine ‚Höchstgrenze', sie darf natürlich unterschritten werden. – Es wird diskutiert, was geschehen soll, wenn sich nach Erlass des Gesetzes, das ja der Frau einen Anspruch auf die Brautgabe gibt, herausstellt, dass der bei Verheiratung korrekt berechnete Höchstwert der Gabe beim Tod des Vaters unter dem Wert liegt, den die Tochter als Erbteil zu bekommen hätte (*LAC* ad locum). Maffi erwägt – in der stets weitergeführten Diskussion – die Lösung, der Erbanspruch der Tochter bestehe weiter, sie müsse sich aber ähnlich der römischen *collatio dotis* den Wert der Gabe mit einrechnen lassen. Gegen alle derartigen Überlegungen spricht der meiner Meinung nach klare Wortlaut der oben zitierten Zeilen IV 53 – V 1: πρόθθ' ἔδοκε bezieht sich auf den Todeszeitpunkt des Vaters; die Vorschrift, dass eine (wie auch immer) ausgestattete Tochter nichts erbt, ist nicht vom Rückwirkungsverbot betroffen.

[13] Col. V 1–9: γυνὰ ὸ[τ]εία κ|ρέματα μὲ ἔκει ἒ [πα]τρὸδ δό|ντος ἒ ἀ[δ]ελπιᾶ ἒ ἐπισπέν|σαντος ἒ ἀπολα[κ]όνσα ἇ|ι ὄκ' ὸ Αἰθ[α]λεὺς 'τρατὸς ἐκόσ|μιον οἰ σὺν Κύ[λ]λᾱι, ταύτ|ας μὲν ἀπολανκάνεν, ταῖ|δ δὲ πρόθθα μὲ ἔ[ν]δικον ἔμ|εν.

ten. Andererseits haben aber vor Inkrafttreten des Gesetzes nicht ausgestattete Töchter keinen Anspruch auf eine Ehegabe; sie müssen den Tod ihres Vaters abwarten und erhalten dann ihren Erbteil.

Für die Höhe der Brautgabe wird im Gesetz kein fixer Betrag oder eine fixe Quote, sondern nur eine Obergrenze festgesetzt: Ihr Wert darf ab Inkrafttreten des Gesetzes den des Erbteils der Frau nicht überschreiten. Aus den Worten „… wenn der Vater geben *will*“ (λε͂|ι, Z. 48–49) und der ausdrücklichen Bestimmung, dass die Tochter mit Empfang der Gabe vom Erbrecht nach ihrem Vater ausgeschlossen ist (Z. 54), schließe ich, dass der Vater nach unten freien Spielraum hat, und das gilt auch nach Inkrafttreten des Gesetzes. Das „Vermögen, das sie nicht hat“ (κ|ρέματα μὲ ἔκει, Z. 1–2) ist in seiner Höhe völlig unbestimmt; allein durch die Höhe des Erbteils der Tochter ist die Gabe nach oben begrenzt. Wenn sie nur irgendetwas als Ehegabe erhalten oder zugesichert bekommen hat, müsste sie ihren Erbteil verlieren. Der Vater könnte durch eine kleine, vielleicht symbolische Gabe zu Lebzeiten den Anspruch der Tochter auf ihren Erbteil vernichten. Insgesamt könnte also der Vater durch Taktieren mit der Höhe der Brautgabe, des „Vorab-Erbes“, das der Tochter zustehende Familienvermögen beträchtlich mindern. Lediglich soziale Kontrolle schützt die Tochter vor untragbarer Härte des Vaters.

An der unter Rückwirkungsverbot neu eingeführten Obergrenze und der nicht unter Rückwirkungsverbot stehenden freien Untergrenze sieht man, dass die Ausgestaltung der Brautgabe in gesellschaftlicher Diskussion stand. Einerseits war sie anerkannt, im Übermaß aber abgelehnt, und dem Vater wurde durch die Brautgabe sogar die Schmälerung des der Tochter zustehenden Erbes in die Hand gegeben. Ein Grund für die wertmäßige Beschränkung der Brautgabe (und bereits für die Halbierung der Erbquote gegenüber den Brüdern) könnte gewesen sein, den Abfluss von Vermögen aus der agnatischen Familie zu begrenzen. Da Töchter in der Regel in einer anderen Familie verheiratet sind, fließt — auch ohne Erhalt einer Brautgabe — ihr Erbteil ohnedies dorthin. Dort kommt es aber als *matroia* (mit spezieller Erbfolge) ihren Kindern zugute. Als „Vorab-Erbe“, freiwillig vorweg ausgezahlter Erbteil, harmoniert die Brautgabe juristisch-technisch mit dem Tochtererbrecht. Als Brautgabe-freundlich kann man die Regelung, obwohl sie der Frau einen Rechtsanspruch einräumt, allerdings nicht bezeichnen.

Da es stets um *kremata* geht, betrifft die Vorschrift über die Brautgabe nur das freie Vermögen, das — wie hier gegen die allgemeine Meinung darzulegen versucht wird — neben dem *klaros*, dem Landlos, vorhanden war. Die militärische *klaros*-Verfassung kommt nämlich überhaupt ohne jede Zuwendung für die Braut aus.[14] Der *klaros* und dessen Hörige können (idealiter) die Bürgerfamilie ernähren. Vermögensverschiebungen, um die in die Familie des Mannes eingeheiratete Braut zu ernähren,[15] waren deshalb unnötig. Konsequenterweise gibt es in den archaischen

[14] Nach Plut. Eth. 227–228 hatte Lykurg die Gabe einer Mitgift sogar durch Gesetz verboten, s. Thür 1992, 128.

[15] S. dazu Thür 1992, 126–128 zur Funktion der *proix* in Athen.

kretischen Inschriften außer einem verstreut und ohne Zusammenhang überlieferten einzelnen Wort ἔδνο[ν] (*hedna;* IC IV 17,1 = G17) keine Bezeichnung für Zuwendungen im Falle der Heirat. Im Gegensatz dazu ist die *proix* in Athen, wie in meinem Beitrag aus 1992 dargelegt, ein wesentliches Element der — ohne Landlos konstituierten — Familienverfassung. In Gortyn kann man Spuren des Übergangs von einer statischen, militärisch-agrarisch bestimmten Wirtschaft zu einer differenzierten Austauschwirtschaft erkennen — doch selbst das ‚fortschrittliche' Gesetz von Gortyn ist dem Fremdkörper Brautgabe gegenüber noch eher negativ eingestellt. Wesentliche Triebkraft der Modernisierung war dabei gewiss die von Maffi ausführlich behandelte Monetarisierung. Gemünztes Geld war aber gewiss nur ein Teil dieser Entwicklung.

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LITERATURHINWEIS

Text: R.F. Willets, *The Law Code of Gortyn*, Berlin 1967

Basisliteratur: M. Gagarin – P. Perlman, *The Laws of Ancient Crete* c. *650–400 BCE*, Oxford 2016 (= *LAC*)

Die hier vorgetragenen Ausführungen beruhen zum größten Teil auf zwei Aufsätzen, abrufbar in meinen *Opera Omnia* im permanenten Repositorium der Österreichischen Akademie der Wissenschaften https://epub.oeaw.ac.at/gerhard-thuer:

G. Thür, Armut. Gedanken zu Ehegüterrecht und Familienvermögen in der griechischen Polis, in: D. Simon (Hg.), *Eherecht und Familiengut in Antike und Mittelalter*, München 1992, 121–132 (128–130) [OpOm101]

G. Thür, Die Einheit des „Griechischen Rechts". Gedanken zum Prozessrecht in den griechischen Poleis, Dike 9, 2006 [2008], 23–62 (29–32) [OpOm247]

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THE LAWS OF POST-CLASSICAL CRETE

Abstract: I examine the post-classical inscriptions from Crete (c. 400-67 BCE) and from them I draw a picture of life on the island in that period. I conclude that Cretan cities were democracies that valued public concerns more highly than individuals. The epigraphic habit at the time was similarly public, impersonal, and egalitarian. Inter-city agreements allowed cities to cooperate for mutual defense.

Keywords: Crete, inscriptions, agreements, democracy, epigraphic habit

Paula Perlman and I published our study of the archaic and classical inscribed laws from Crete in 2016 (Gagarin and Perlman 2016). Since then we have been working on a second volume covering the period c. 400-67 BCE. This paper presents a summary of work to date, including a description of the kinds of legislation we find in Crete in this later period and what it tells us about life on the island at this time. Our findings thus far have proven much more interesting than we expected.

The nature of the inscriptions in this later period differ quite significantly from those of the earlier period. Before 400 almost all public inscriptions in Crete were laws, in the sense of statutes. After 400 the texts continue to be legislation — that is, public decisions affecting the community and enacted by it — but statutes (in the narrow sense) comprise only about 15% of these. Many more of the post-classical texts are agreements between cities. Most modern authors refer to these as "treaties" (e.g., Chaniotis 1996, *Verträge*) but we prefer the broader term "agreements." In addition the texts from this period include a large number of decrees, including honorary decrees and *asylia* or inviolability decrees, and a few letters, oaths, and arbitration decisions. There are also a number of fragmentary texts whose precise nature is unclear.

One obvious question is why there are so few laws from the later period when they were so prevalent earlier? Moreover, the large majority of these laws from the later period come from the same ten cities in central Crete that produced all the laws in the earlier period. We have dozens of post-classical inscriptions from cities other than these ten, such as Lato, Hierapytna, or Itanos, but only one law. We know that these cities had laws because the legislation they produced sometimes mentions their laws. For example, an agreement may specify that something should be done "ac-

cording to the laws in effect in each city" (see e.g. *IC* 3.3.4)[1] So why do we not have these laws? Is it just chance that none have been discovered? This seems unlikely. Did all these other cities write their laws on some perishable medium rather than stone? This too seems unlikely, though not impossible.

I don't have a good answer, so instead I will focus on the inscriptions that we do have from post-classical Crete and what they tell us about life on the island in this period. I refer to the period as "post-classical Crete" rather than "Hellenistic Crete" because neither Alexander nor his successors ever conquered Crete, and so his death in 323 had little direct impact on the island. The more important date for Crete is *c*. 400, when Cretan cities stopped using their local (epichoric) scripts and dialects and began using the familiar ionic script together with a common form of Doric. 400 was thus the end point for the inscriptions we included in our first book and it will be the starting point for our next book. The end of this period can be fixed as 67 BCE, the year in which Rome finally conquered Crete. Thus, 400-67 is the period I refer to as post-classical Crete. But I will also speak of "Crete in the Hellenistic period" because most of the inscriptions in this period come from the third and second centuries.

I begin with the statute laws from this period. Of the 225 texts in our catalogue (and I caution that because most of our texts are incomplete, all the numbers that follow are approximations), we classify about 51 as laws or regulations. Twenty of these are from Gortyn and another nine from Axos. The only cities in which laws survive from the post-classical period but not from the earlier period are Leben with three texts, and Lato and Lissos with one each. The subjects of laws, as far as they can be determined, cover a wide range. Thirteen appear to be sacred laws, most of them with rules for conduct by priests or in a sanctuary. Others address such matters as wounding, theft, wages and public work, and coinage. There is little overlap between these and earlier laws from the same city, but *IC* 4.231 from Gortyn, if line 3 is correctly restored, marks a change from a provision in the Gortyn Code (*IC* 4.72.6.55-7.4). The Code provides that the children of a free woman and a slave are to be free if the slave goes to (live) with the free woman, but they are to be slaves if the free woman goes to (live with) the slave. The later text, however, provides that children born of a free woman are to be free without qualification.

This is the only certain example of a law that modifies an earlier law from the same city, but *IC* 4.150 contains the phrase "daughters being married" and thus may address provisions of the Gortyn Code concerning heiresses (*IC* 4.72.7.15-9.24). Another law from Gortyn concerning the wages paid to public workers (*IC* 4.144) overlaps largely, but not totally, with an earlier law (*IC* 4.79), and may represent a later, modified version of it. Finally, one law from Gortyn (*IC* 4.162) with thirteen complete lines requires the use of bronze coinage and prescribes penalties for violations, indicating that the Gortynian economy was becoming more fully monetized.

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[1] *IC* 3.3.4, an agreement between Hierapytna and Priansos, line 27 reads: κατὰ τὸς νόμος τὸς ἑκατέρη κειμένος ("according to the laws in effect in each city").

Otherwise, we learn very little about life in Crete from the laws.

Other post-classical texts, especially agreements and decrees are more informative. I mentioned earlier that around 400 the Cretan cities began using the ionic alphabet. It seems reasonable to see this development as an indication of a greater sense of unity among the cities on the island, as well as a sense of being more connected to the larger Greek world. Nevertheless, the Cretan cities remained independent throughout the Hellenistic period. There was some outside influence on the island, from Philip V for instance, and later from the Romans, who helped settle some disputes between Cretan cities. And Itanos on the east coast asked for help from Ptolemy II, who sent a garrison that stayed there for several decades, but the cities remained not only independent but democratic.

The traditional picture of Crete going back to Aristotle is that the government of Cretan cities was aristocratic. But Aristotle derives his picture of Crete not from direct knowledge but from an assumption that politically Crete was similar to Sparta. As he says at the very beginning of his discussion of the "Cretan constitution"[2] (*Politics* 2.10, 1271b20-24),

> The Cretan constitution approximates to that of Sparta, but though in a few points it is not worse framed, for the larger part it has a less perfect finish. For the Spartan constitution appears and indeed is actually stated to have been copied in most of its provisions from the Cretan; and as a rule old things have been less fully elaborated than newer ones.

Polybius disputes this, arguing that Crete and Sparta are very different (he much prefers Sparta). For one thing, he says, Crete elects its officials democratically (Polybius 6.45-47).[3] Van Effenterre 1948 also argues that Crete became democratic in the Hellenistic period but most scholars have rejected this and Aristotle's view still holds. For example, Moorey 2019: 69-70 gives a typical description of Cretan cities as governed by a board of aristocratic officials, the *kosmoi*, aided by a council composed of former *kosmoi*, with an assembly whose only function was to ratify decisions of the *kosmoi* when the *kosmoi* wanted them to, but it was not necessary.

The inscriptions, however, are clear. They are public documents and so, as in Athens, many of them begin with an enactment clause using the verb *dokeō* ("it seems best") with various dative objects, indicating the person or group that decided to enact the provision. Sixty-three of the texts in our collection preserve an enactment

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[2] Just as in the archaic and classical texts, there is abundant evidence in the post-classical texts that there were substantial differences among the different poleis in such things as the number and kinds of officials (excepting perhaps the *kosmoi*), and thus that there was no such thing as a "Cretan constitution." The one (now lost) contemporary Cretan historian, Dosiadas, tellingly writes only about life in the city of Lyttos.

[3] Muttelsee (1925: 10) concludes that in the course of the third century [i.e. between the reports of Aristotle and Polybius] "Crete" followed the example of almost all the other Greek states and "changed its constitution toward democracy" ("ändert seine Verfassung in demokratischem Sinne um").

clause, and every one of these states that the legislation was enacted by a large popular body, acting either alone or together with some other group.[4] In some cases this popular body is called the *ekklēsia*, but it is also referred to by a city ethnic (such as "the Gortynians"), or as the *polis*, or *koinon*, or *damos*, or *aliaia*. The popular body acts alone in 22 cases. In 33 cases, it acts together with the highest officials in the city, usually the *kosmoi*, and 7 times it acts with a council. The council, however, is only involved as a partner in the enactment of relatively minor matters, such as honorary decrees. It was clearly of little significance in the governance of these cities.

This indicates that, after the assembly, the *kosmoi* were the most important part of the government of Cretan cities. The eponymous *kosmos* is very often mentioned in order to date a text. Otherwise the *kosmoi* are mostly charged with enforcing penalties for violations of laws or agreements, and they are often heavily fined if they do not act as directed. For example, an agreement between Malla and Lyttos (*IC* 1.19.1, lines 8-26) prohibits plundering members of the other city and sets a fine for violations. The *kosmos* must exact (the fine) within [ten] days "and if [he] should not exact (the fine), each of the *kosmoi* shall be fined five hundred staters." Five hundred staters is an enormous fine; it occurs in only one other inscription (*IC* 1.9.1.112), where it also designates a fine for the *kosmoi*.[5] More common is a fine of one hundred staters as in the second part of this agreement. We may conclude that the assembly was the main force enacting legislation in Crete, with the *kosmoi* in a subordinate role, for if the *kosmoi* were the main force, they surely would not have subjected themselves to such heavy fines.

Further evidence for democracy in this period is the word itself. *Damokratia* is found in several texts, such as a fragmentary Gortynian decree (*IC* 4.176.13-14), which speaks of managing their affairs in their democracy, and a similar decree from Knossos (*IC* 1.8.9.5-7).[6] Also an agreement between Hierapytna and Rhodes (*IC* 3.3.3A69-70), provides for aid "if anyone should destroy the established democracy of the Hierapytnians."[7] And a decree from Priansos (*IC* 1.24.2.18-19) praises an en-

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[4] Of the 63 enactment clauses, 31 are enacted by the *kosmoi* and the polis, 10 by a city ethnic alone (e.g. the Gortynians), 6 by the *polis* alone, 4 by the *damos* and the council, 3 by the *damos* alone, 2 by the *ekklēsia* and the council, 2 by the *koinon* alone, 1 by the *kosmoi* and the *damos*, 1 by the *aliaia* (assembly) alone, 1 by the *synedroi* and the *koinon*, 1 by the archons and the *koinon*, and 1 by the *koinon* and the council.

[5] I should also note the fragmentary *IC* 3.3.1A, line 7 has a fine of a thousand drachmas (500 staters) but it is unclear who is so fined, and a fine of ten thousand drachmas for the *kosmoi* (line 24).

[6] *IC* 4.176.13-14:
ἐλευθέρους ὄντας καὶ [— ἐν δα]-
μοκρατίαι πολιτεύεσθαι [—].
IC 1.8.9.5-7:
[— ἐλ]ευθέρους ὄντας
[—] δαμοκρατίαι πολιτεύ-
[εσθαι.

[7] *IC* 3.3.3A69-70:
τὰν καθεστακυῖαν δαμοκρατίαν

voy from Samos for asking the Cretan assembly to continue to provide benefits for the Samians in accordance with what is appropriate "for our [the Cretans'] existing ancestral democratic constitution."[8]

One other practice, voting, confirms the democratic nature of post-classical Cretan governments; voting is mentioned in several texts, often in connection with an enactment clause. In a decree from Axos, for example (*IC* 2.5.17.2-3), "the *kosmoi* and the polis of the Axians decided, having voted according to the law."[9] Similarly, in a decree from Malla, "the *kosmoi* and the polis decided by voting." (*IC* 1.19.3A4-5).[10] And three texts from Gortyn (*IC* 4.162.1-2, *IC* 4.181.7, *SEG* 58.985) mention voting "with three hundred present," presumably referring to a quorum.[11]

Besides the political equality implicit in a democracy, there is also evidence of social equality. For example, there is no evidence for an *andrōn* or men's quarters in private houses in this period, which indicates that the small, aristocratic symposiums that are common in the rest of the Greek world did not exist in Crete. Instead, we find large communal dining spaces in which broad segments of the male population ate together.[12] One may also note the near total absence of artists, writers, scientists, and other creative persons in Crete. In the Hellenistic period such figures gathered in places where they received patronage from monarchs or other wealthy patrons, but, as Angelos Chaniotis, the leading expert on Hellenistic Crete, has observed in a discussion of the Cretan epigraphic habit, "honorary decrees for benefactors, so abundant in mainland Greece, on the islands, and in Asia Minor, are entirely absent from Hellenistic Crete; the few honorary inscriptions which were set up for benefactors [in Crete] are always dedicated to foreigners."[13] A recent book on benefactors in ancient Greece confirms this: it mentions Crete only once, noting a decree from Aptera inviting King Attalus of Pergamon to decide what kind of statue he wants.[14] Private associations, which were widespread in the ancient Greek world and were generally elitist, also do not seem to have existed in Crete. At least, there is no mention of any in Crete in the latest volume on private associations in the ancient Greek world.[15]

Furthermore, we never hear about any individual or oligarchic group of individ-

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παρὰ Ἱεραπυτνίοις.

8 *IC* 1.24.2.18-19:
[τ]ὰν ὑπάρχονσαν αὐτοῖς πάτριον δαμοκρατ[ία]-
[ν πο]λιτείαν.

9 *IC* 2.5.17.2-3:
ἔδοξεν Fαξίων τοῖς κόσμοις καὶ τᾶι πόλει ψαφιξαμέ̣νο̣ι[ς]
κατὰ τὸν νόμον.

10 *IC* 1.19.3A4-5
ἔδοξε τοῖς κόσμοις καὶ τᾶι πόλι ψαφι-
ξαμένοις.

11 For voting see also *IC* 2.3.1.12-13, *IC* 2.12.20.7-8, *IC* 3.4.1.20-24.

12 See Nevitt 2023:169

13 Chaniotis 2004: 80.

14 Gygax and Zuiderhoek 2020: 206, n.16.

15 Gabrielsen and Paganini 2023.

uals ruling or attempting to rule a Cretan city, like the tyrants or oligarchs who are found in most other Greek cities at some point in their history. In fact we do not even know the names of any individuals who might have posed a threat to take control of a city. To quote Chaniotis again (Chaniotis 2004: 80), "in a period which elsewhere is generally characterized by individuality and by the self-representation of strong personalities, the political and military leaders of Hellenistic Crete escape our knowledge because they have left no inscriptions which honor them for their public role." We do know the names of a few Cretan political or military leaders but only because they are mentioned in inscriptions from places outside of Crete.

Despite their anonymity, Cretan military leaders must have been fairly effective, since until the Roman conquest, which no Greek city was able to resist, they preserved the independence of Cretan cities. To understand how they did this we need to consider the many Cretan intercity agreements. We have about 46 agreements between two or more Cretan cities. Most are fragmentary with only a few provisions remaining, but they must originally have had more provisions, perhaps many more. To give you an idea of what they covered, consider *IC* 1.16.5, a probably complete agreement between Lato and its neighbor Olous with about 27 separate provisions. All these provisions are also found in at least some of the other agreements.

After naming the eponymous *kosmoi* in each city in order to provide a date for the agreement, the two cities agree to the following:

– to remain friends and allies for all time (*eis to panta chronon*),
– to have the same friend and enemy,
– to send aid according to their ability to the other city if anyone attacks its territory,
– to allow those from one city to participate in civic affairs (*politeuesthai*) in the other city,
– to allow those from one city to own land and a house in the other city,
– to allow those from one city to participate in all the sacred and secular activities in the other city,
– to allow those from one city to export from the other city by land tax-free and by sea paying the taxes set by the existing laws in that city, when they swear that the export is for their own personal use,
– to share any booty seized from an enemy while they are campaigning together according to the number of men participating from each city,
– not to conclude a peace treaty or make peace unless both cities agree,
– that the *kosmoi* in each city will administer an oath to the young men finishing the *agela* (the Cretan version of the *ephēbeia*),
– that a delegation from the other city will be present when they administer the oath,
– that the *kosmoi* will be fined if they do not administer it or do not invite a delegation from the other city,
– that a *kosmos* who goes to the other city shall have his cloak open (shall be

unarmed?),

– that a visiting *kosmos* shall go to the prytaneion with the local *kosmoi*,

– that anyone who steals something from a Latian or an Olountian shall be punished,

– that a wrong committed on the inter-city roads, which are sacred, shall be punished with a fine that is six times greater,

– that the people of each city may marry one another,

– that the people of each city may do business (buying, selling borrowing, lending) in the other city,

– that the people of each city shall go to each other's festivals,

– and that they will sacrifice,

– that they can jointly decide to add something to or remove something from this agreement and the revised agreement shall be valid,

– that they are each to inscribe the agreement on a stele and display it in a sanctuary,

– that they are also to inscribe and display copies in Knossos and Lyttos,

– and that they agree on a detailed description of the boundary between the two cities;

– finally the precise wording of an oath is given, which is to be sworn by each city, to abide by the agreement.

After the oath there appears to be a postscript added at a later date

As you can see, this agreement would have brought the people of these two cities together in most aspects of their lives while still remaining citizens of their own, original city. At least one such agreement survives from just about every city on the island, and all the larger cities (Gortyn, Knossos, Hierapytna, Lato) have agreements with several other cities. Moreover, there must have been other agreements that no longer survive, and so we can imagine a solid network of agreements binding cities together across the island. This concentration of inter-city agreements is unique to Crete. We have agreements between cities in the rest of the Hellenistic world, but the majority of them are made at the end of a conflict; they are peace agreements, not all-purpose agreements like those in Crete. Most of the Cretan agreements, moreover, are fully reciprocal, also like the one just examined, in which each clause applies equally for both cities. And an important consequence of having this network of reciprocal agreements is that when the island was threatened, the cities could band together and fight together effectively, as they clearly did on at least two occasions against major outside forces.

Historians refer to two so-called "Cretan wars," both fought against Rhodes, the possessor of one of the largest and most powerful fleets in the Hellenistic world. We have few details about the First Cretan War (*c.*206-201) in which Rhodes apparently tried to suppress the piracy that threatened its Mediterranean trade and was thought to be based in Crete. They were unsuccessful, and this war ended in 201 or 200 with agreements between Rhodes and several Greek cities.

The Second Cretan War against Rhodes, was probably also intended to eliminate piracy. It began *c.*155 and Diodorus Siculus (31.38) describes what happened in the initial battle with a colorful simile drawn from hunting bears:

> What happened to the Rhodians was rather like a bear hunt. For indeed these beasts, who in size and strength appear so fearsome, are very easily routed when hunters unleash against them little dogs that, though small, are active and brave. For since bears have tender and fleshy feet, the snapping at their heels from beneath compels them to sit still until one of the hunters gets in a blow that strikes home, their slow and cumbersome movements making it impossible for them to [escape] the nimbleness of the dogs. So the Rhodians, though world-renowned for their superiority in naval warfare, when unexpectedly surrounded on all sides by a fleet of midget ships, "mice" and "goats," were plunged into the greatest distress.[16]

The war stalled at this point while the Rhodians apparently sought outside help, but little was forthcoming. Rhodes became discouraged and inactive, and a peace agreement soon followed, probably encouraged by Roman mediation.

Somewhat later the Romans also tried to rid the Mediterranean of pirates, although they did not succeed until Pompey was appointed in 66. Eight years earlier, in 74, Marcus Antonius (father of the triumvir) was given a special command to clear the Mediterranean of pirates, but when he attacked Crete, he suffered the same fate as the Rhodians. His fleet was destroyed, and he had to negotiate a peace with the Cretans. The Romans returned in 69 with a larger force, but it still took them two years to fully conquer the island.

It seems hard to deny that the many reciprocal agreements that the Cretan cities made with one another taught them, among other things, how to join together militarily and defeat these more powerful opponents. Although Diodorus's picture is rather humorous, such fighting would have required a great deal of coordination. It would also require skilled leadership on the part of some uncelebrated commander.

In sum, the post-classical public inscriptions of Crete provide a picture of the island in the Hellenistic period as a democratic, egalitarian, publicly-focused society, quite unlike what we find in the rest of the Hellenistic world. And the Cretan epigraphic habit, as described by Chaniotis, is fully consistent with this picture. Interestingly, Chaniotis has provided this description of the Cretan epigraphic habit as something that contrasts with what he (following Aristotle) accepts as the reality of Cretan so-

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[16] Diodorus Siculus 31.38: Ὅτι οἱ Ῥόδιοι ἐδόκουν παραπλήσιόν τι πεπονθέναι ταῖς τῶν ἄρκτων κυνηγίαις. καὶ γὰρ ἐκεῖνα τὰ θηρία κατὰ τὸ μέγεθος καὶ τὴν ἀλκὴν δοκοῦντα εἶναι φοβερά, ἐπειδὰν αὐτοῖς προσβάλωσιν οἱ κυνηγοῦντες κυνίδια μικρά, ἐνεργὰ δὲ ταῖς ἀλκαῖς, ὑπὸ τούτων εὐχερέστατα τρέπονται. ἐχόντων γὰρ αὐτῶν τοὺς πόδας ἁπαλοὺς καὶ σαρκώδεις, ἐκ τῶν ὑποκάτω μερῶν δάκνοντα τὰς πτέρνας ἀναγκάζει καθίζειν, ἕως ἄν τις τῶν κυνηγετῶν βαλὼν ἐπιτύχῃ· διὰ γὰρ τὴν βραδυτῆτα καὶ δυσκινησίαν ἀδυνατεῖ †ψαῖραι τῆς τῶν κυνιδίων ἐλαφρότητος. καὶ οἱ Ῥόδιοι διαβεβοημένην ἔχοντες τὴν ἐν τοῖς ναυτικοῖς ἀγῶσιν ὑπεροχὴν ὑπὸ μυδίων καὶ τραγωδίων παντελῶς μικρῶν παραδόξως συγκυκλούμενοι πανταχόθεν εἰς δυσχρηστίαν ἐνέπιπτον τὴν μεγίστην.

ciety as an aristocracy. Thus, he concludes, "in Hellenistic Crete the epigraphic habit is predominantly public, anonymous, impersonal, masculine, local, and limited with regard to the representation of social groups – and all this despite the fact that Crete was neither isolated nor egalitarian."[17] I would agree fully with Chaniotis' description of the Cretan epigraphic habit, but would strongly dispute the assertion that Crete was not egalitarian. In my view, the picture provided by the Cretan epigraphic habit in the Hellenistic period of an egalitarian society more concerned with public matters than individuals, is in fact fully consistent with all the information provided by the content of their laws in this period.

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[17] Chaniotis 2004: 81.

ANNA MAGNETTO (PISA)

THE LAWS OF POST-CLASSICAL CRETE. RISPOSTA A MICHAEL GAGARIN

Il contributo di Michael Gagarin, a cui sono particolarmente lieta di rispondere, presenta il nuovo libro, curato da Paula Perlman e da Gagarin stesso e dedicato alle leggi della Creta post-classica. Si tratta di un lavoro che rappresenterà sicuramente un punto di riferimento per gli studi sul mondo greco antico esattamente come lo fu il primo.

Il nuovo libro rappresenterà anche una risorsa essenziale per un progetto che stiamo portando avanti alla Scuola Normale Superiore in collaborazione e convenzione con l'Università di Napoli l'Orientale e con la Scuola Archeologica Italiana di Atene, che ci offre tutto il necessario supporto a Creta e ad Atene[1]. L'obiettivo di questo progetto è mappare tutte le iscrizioni gortinie, fornendo per ciascun documento tutte le informazioni disponibili (collocazione attuale, stato di conservazione, descrizione dettagliata della pietra, note di archivio reperibili), oltre a una traduzione italiana e a un commento essenziale. Sebbene il progetto si riferisca alla sola città di Gortina, tuttavia esso risponde a una necessità già sottolineata da Perlman e Gagarin nella prefazione del loro primo lavoro: «a systematic inventory of all inscriptions on the island would be very helpful»[2].

In questa risposta mi concentrerò su alcuni aspetti fra quelli posti in luce da Gagarin, con il principale obiettivo di offrire, ove possibile, qualche osservazione complementare.

Il primo problema che si pone agli autori osservando le fonti disponibili, riguarda il numero limitato di leggi in relazione all'età ellenistica rispetto a quelle note per l'età arcaica e classica. Se la risposta rimane necessariamente aperta, si potrebbe forse aggiungere un ulteriore elemento di riflessione a quelli già proposti, basato proprio sull'esperienza del progetto gortinio. Si tratta della pratica moderna di riutilizzare il materiale lapideo. Già nel 1897 Federico Halbherr osservava come le ricerca di materiale da costruzione fra le rovine delle antiche città greche fosse una pratica molto diffusa e consolidata nell'isola di Creta, al punto che si poteva quasi affermare che i moderni villaggi fossero costruiti con materiale di 'seconda mano'. Era sufficiente uno scavo di pochi metri per individuare i filari di pietra delle antiche costruzioni.

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[1] L'avvio del progetto è stato reso possibile dal supporto del Direttore della SAIA, Emanuele Papi; il progetto è coordinato a Pisa da Fabrizio Oppedisano e a Napoli da Ignazio Tantillo.

[2] Gagarin, Perlman 2016, XI.

Questi blocchi solidi e già lavorati erano molto più comodi da recuperare di quanto non lo fosse il lavoro di cava e la loro vendita assicurava profitti ben maggiori che anni di attività agricole nei campi. Gortina, in particolare, era già diventata un centro di raccolta e di esportazione di questo materiale presso gli altri villaggi della piana della Messarà e presso le province vicine[3].

Naturalmente non possiamo affermare che questo fenomeno offra una risposta alla questione ben più ampia posta da Gagarin, ma il suo impatto sulla nostra conoscenza della documentazione epigrafica gortinia in particolare e cretese in generale, deve essere tenuto in considerazione.

Un secondo spunto di grande interesse è offerto dall'idea che le leggi di età ellenistica a Gortina 'mark a change from a provision in the Gortyn Code'. Il documento che viene evocato, *IC* IV 231, è stato collocato da M. Guarducci all'inizio del III secolo a.C. ed è iscritto su un grande blocco di pietra che apparteneva in origine alla parete di un edificio antico. Secondo il suo scopritore, Halbherr, si trattava di un tempio, i cui blocchi furono in seguito riutilizzati per la costruzione di una basilica paleocristiana nell'area detta di Mavropapa. Oggi la pietra, insieme ad altre provenienti dalla stessa area, è conservata presso i magazzini della Scuola archeologica italiana ad Hagioi Deka e ho avuto la possibilità di riesaminarla nel corso della campagna epigrafica condotta dalla missione pisana e partenopea nel giugno 2023. Come si vede già in parte dalle belle fotografie pubblicate da Margherita Guarducci[4], la pietra testimonia un altro fenomeno che è comune a Gortina e in particolare proprio fra i documenti provenienti da Mavropapa. Il lato destro del blocco fu rilavorato in antico, scalpellato e abbassato nel corso del I sec. a.C., in modo da potervi incidere altre iscrizioni. Si tratta di decreti abbreviati di cittadinanza, uno per un cireneo (*IC* IV 214) e uno per un centurione romano (IC IV 220). Questa operazione ha obliterato la parte finale delle linee del testo più antico rendendo impossibile precisare l'ampiezza della lacuna e lasciando l'incertezza circa le proposte di integrazione suggerite da Guarducci stessa. Non c'è comunque dubbio sul fatto che quell'antico documento affrontasse un tema già presente nel testo del Grande Codice.

Dalla stessa area di Mavropapa proviene anche un'altra legge, quella sulla monetazione (*IC* IV 162) che si data alla seconda metà del III sec. a.C., e anche in quel caso la pietra che la conserva reca più di un documento epigrafico. Si tratta di un grande blocco che è oggi conservato al Museo della Messara, sul quale sono incisi tre testi su due lati: il lato destro e quello frontale. Si trattava dunque di un blocco d'angolo dell'antico edificio.

La legge si trova sul lato destro, che occupa interamente. Il lato frontale presenta inoltre una particolarità. La sua parte destra appare rialzata rispetto alla superficie centrale, formando un lieve scalino, quella che M. Guarducci chiama una *parastas*. In

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[3] Halbherr 1897, 159-160.

[4] *IC* IV p. 297 e ancor più p. 291 dove è riprodotta la pietra nella sua interezza.

questo modo la superficie è predisposta a fornire due aree di scrittura, materialmente distinte. Sulla porzione di destra, quella rialzata, furono iscritti, nella prima metà del I sec. a.C., due brevi decreti di prossenia. Sulla porzione di sinistra, ribassata, si legge la parte destra delle linee del documento più antico: il trattato concluso fra Gortina e Rizenia nella prima metà del V secolo a.C. come indicano le caratteristiche epigrafiche (*IC* IV 80).

La metà sinistra delle linee era conservata su un altro blocco contiguo, posto alla sinistra del nostro. Il blocco, come quello oggi al Museo, era stato visto e disegnato da Halbherr, che lo aveva individuato nel villaggio di Agioi Deka, murato nella parete di una casa moderna. Nel giugno 2023 siamo stati in grado di ritrovarlo, murato probabilmente in quella stessa casa in cui lo aveva visto Halbherr in occasione del suo secondo viaggio nell'isola. Nel villaggio sono in corso ampi lavori di ristrutturazione delle abitazioni, ma l'attuale proprietario, con grande lungimiranza e forse apprezzandone il carattere decorativo, ha risparmiato il blocco dalla patina di intonaco e di colore. Anche se non è più possibile esaminarlo nella sua interezza, si può ancora apprezzare la presenza di un'analoga *parastas* nella sua parte sinistra, questa volta non iscritta. Questo conferma la ricostruzione che Halbherr aveva fornito del muro dell'edificio antico, in cui le *parastades* presenti sui blocchi dovevano creare un effetto 'mosso' della parete, che risultava percorsa, nel senso dell'altezza, da quelli che dovevano apparire come dei semi-pilastri[5].

Nei prossimi mesi, una volta ottenuti i necessari permessi – dall'Eforia e dal proprietario della casa moderna – sarà nuovamente possibile studiare i due blocchi nel loro insieme e verificare il testo del trattato fra Gortina e Rizenia, cosa che non era stata possibile a Margherita Guarducci.

Dall'area di Mavropapa provengono anche altri tre blocchi iscritti. Uno di essi conserva un solo testo, *IC* IV 81, una legge (o un decreto) collocabile, su base epigrafica, nella prima metà del V secolo a.C., che fa riferimento a questioni di debiti e ipoteche. Il documento non è completo, ma appare ben conservato e in ogni caso indenne da interventi successivi. Diversa la condizione di altre due pietre provenienti dalla stessa area.

Una di esse conserva ugualmente le tracce di un testo legislativo riconducibile al V secolo a.C. (*IC* IV 90) successivamente obliterato da tre successivi decreti di prossenia (*IC* IV 209 a-c) attribuibili alla prima metà del II secolo a.C. Stessa condizione per il secondo blocco, che conserva qualche linea (parziale) di una legge di V secolo a.C. (*IC* IV 91) che fu poi scalpellata per lasciare posto a 4 decreti di prossenia riconducibili anch'essi alla prima metà del II secolo a.C. (*IC* IV 208 a-d).

Ho dedicato un po' di spazio a questo contesto archeologico-epigrafico in ragione del suo interesse particolare. Molto deve essere ancora fatto per provare a verificare l'ipotesi di Halbherr, che attribuiva tutte queste pietre di Mavropapa a un unico edi-

[5] Per uno schema della struttura della parete dell'antico edificio cfr. Halbherr 1897, 218.

ficio[6]. Tuttavia, l'aspetto più interessante è che tale edificio fu visto come un luogo appropriato per l'esposizione pubblica di documenti di natura giuridica e politico amministrativa, Laws, per impiegare il termine comprensivo scelto da Perlman e Gagarin. Nel corso dell'età classica vi furono iscritte leggi e un trattato internazionale e, in seguito, alcuni di questi testi furono parzialmente o quasi totalmente scalpellati per far spazio ad altri documenti pubblici, decreti di cittadinanza e prossenia. Questo caso affascinante, che sarà oggetto di una ricerca specifica nell'ambito del nostro progetto, getta luce sulla continuità di funzione che alcuni luoghi mantennero nel tempo oltre che sull'epigraphic habit dell'antica città di Gortina nel tempo.

Un terzo aspetto messo in luce da Gagarin e su cui vorrei soffermarmi è il complesso sistema di trattati – conservati per via epigrafica – che fa di Creta un caso molto particolare all'interno delle diverse regioni del mondo greco. Possiamo chiederci se questo suo carattere unico, per quanto riguarda l'età ellenistica, non possa essere correlato a un'altra caratteristica distintiva delle relazioni internazionali a Creta: l'esistenza del cosiddetto *koinon* dei Cretesi.

Come ha mostrato Chaniotis[7], il *koinon* dei Cretesi, istituito agli inizi del III secolo a.C., presenta caratteristiche distintive molto particolari. Non sviluppò mai una cittadinanza comune, ma stabilì un codice procedurale, chiamato *diagramma*, a cui si faceva riferimento per la risoluzione di dispute fra le diverse comunità e i loro cittadini e creò anche un tribunale comune che le fonti chiamano *koinodikion*. L'esistenza del *koinon*, sia pure protratta nel tempo, è documentata a fasi alterne, che sono assai complesse da ricostruire. Ma ciò che appare ancora più interessante è quanto accadde nei periodi in cui il *koinon* non risulta attivo. Una testimonianza importante in questo senso è offerta del trattato fra Hierapytna e Priansos. Il testo dichiara l'intenzione delle due comunità di replicare alcune istituzioni del *koinon* – di cui si precisa che non è attivo in quel momento – che vengono utilizzate al fine di garantire la pacifica soluzione di eventuali contrasti fra le parti e i loro cittadini. Si tratta della costituzione di un tribunale comune oltre che dell'uso delle procedure previste dal *diagramma*[8].

È possibile che le strutture legali del *koinon* avessero continuato a rappresentare un modello di stabilità, cooperazione e protezione fra le comunità cretesi attraverso l'intera età ellenistica. Questa esperienza, evidentemente così importante, potrebbe aver contribuito alla tendenza, da parte delle città cretesi, di emulare tali strutture stipulando accordi separati nel corso del III e II secolo a.C.

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[6] La diversità delle forme delle pietre è attualmente oggetto di un'indagine mirata all'interno del nostro gruppo di ricerca, al fine di stabilire se si trattasse effettivamente di un singolo edificio a carattere templare – come sembra indicare la presenza di rocchi di colonna fra il materiale di reimpiego utilizzato per la basilica paleocristiana –, o se si trattasse invece di un edificio a carattere pubblico, come suggerisce la tipologia di documenti iscritti. Sulle pareti del pritaneo era iscritto, ad esempio, il trattato con Lato del 219-216 a.C., di cui si conserva la copia di Lato (cfr. *IC* I XVI 1).

[7] Nel suo fondamentale studio del 1996 e, più tardi nell'articolo di sintesi del 2015.

[8] Cf. *IC* III IV 4. Per un'analisi delle clausole del documento cfr. Magnetto 2014.

Come ultimo punto di riflessione ho riservato il tema a mio giudizio più rilevante ma sicuramente più complesso e più discusso: la natura democratica dei regimi politici delle comunità cretesi[9].

Gagarin ha messo in luce tre aspetti che militerebbero a favore di un tipo di governo democratico: il ricorrere nei documenti del termine δημοκρατία; la pratica del voto e infine la presenza di una clausola di sanzione che ricorre al verbo δοκέω, tipico dei decreti emessi da un'assemblea democratica.

In merito al primo punto, un valore forte del termine δημοκρατία potrebbe risultare in qualche modo indebolito dal fatto che, in tutti questi casi, ci troviamo di fronte a documenti di carattere internazionale[10]. Come ben sottolinea Patrice Hamon, in contesti come questi una sorta di retorica diplomatica prevale, rendendo il senso di queste parole meno pregnante[11].

Il secondo punto solleva alcune domande importanti: chi poteva votare in queste assemblee? si tratta realmente di un voto popolare aperto a tutti i cittadini? Come Gagarin stesso sottolinea, la documentazione di Gortina, ad esempio, fa riferimento a un numero, 300, che indica con ogni probabilità un quorum. Anche in questo caso tuttavia rimangono aperte alcune questioni: come dobbiamo valutare un tale quorum in relazione al possibile numero totale dei votanti? In altri termini, possiamo considerarlo un quorum adatto a un'ampia assemblea di tipo democratico? Queste questioni si legano ad altre relative all'ampiezza della popolazione locale, un aspetto per il quale la documentazione disponibile non consente di formulare una risposta definitiva[12].

Riguardo infine il terzo aspetto, la formula di decretazione e l'impiego del verbo δοκέω, la situazione appare particolarmente complessa. I documenti mettono in luce casi diversi nell'isola.

Ad Aptera ad esempio, nel corso del secondo secolo compare in maniera consistente l'espressione ἔδοξε τᾷ[ι βω]|λᾶι καὶ τῶι δ[άμωι][13] e la stessa formulazione (ἔδοξε Δρηρίων τᾶι βου|λᾶι καὶ τῶι δάμωι) si ritrova in un documento da Drero[14]. Formulazioni di questo genere sono le stesse che troviamo impiegate da governi di

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9 Per una discussione su questo punto cfr. in particolare Harris 2018; Thür 2018; Lewis 2018.

10 *IC* IV 176, trovata a Magnesia al Meandro, si riferisce a un tentativo di mediazione di quest'ultima fra Gortina e Cnosso e registra alle ll. 14-16 l'esortazione degli ambasciatori: διελέγ[ησαν ἐᾶν αὐτοὺς] | ἐλευθέρους ὄντας καὶ [ἀζαμίους ἐν τᾶι δα]|μοκρατίαι πολιτεύεσθαι; allo stesso contesto si riferisce il decreto di Cnosso (I VIII 9) che contiene traccia di una analoga esortazione da parte dei mediatori di Magnesia (ll. 5-7 [ἐᾶν αὐτοὺς ἐλ]ευθέρους ὄντας | [καὶ ἀζαμίους ἐν τᾶι] δαμοκρατίαι πολιτεύ|[εσθαι κατὰ τὰ πάτ]ρια). *IC* III III 3 è il trattato concluso fra Rodi e Hierapytna e il termine è impiegato tanto in riferimento a Rodi (l. 15) che a Hierapytna (l. 69) nelle clausole in cui le parti si impegnano al mutuo soccorso in caso di tentativo di rovesciamento del regime in atto. Infine *IC* I XXIV 2 è un decreto dei Cretesi in onore di un ambasciatore dei Sami, che esorta il *koinon* παραιτί|ους αἰεί τινανς ἀγαθῶν Σαμίοις γίνεσθα[ι | σ]υνεπαύξοντας καθότι ἀμῖν καθῆκόν ἐστι | [τ]ὰν ὑπάρχονσαν αὐτοῖς πάτριον δαμοκρατ[ίαν | πο]λιτείαν.

11 Hamon 2009, 369-370.

12 Per un tentativo di calcolo relativo a Dreros cfr. Marinatos 1936, 283-285.

13 *IC* II III 3; 4; 5; 6; 8; 9; 10; 12; 17.

14 Marinatos 1936, 280-283.

tipo democratico.

In altri casi, come sottolineato da Gagarin, abbiamo formule di tipo diverso, che menzionano i cosmi e la *polis*. Se osserviamo l'impiego di queste formule, è particolarmente interessante quanto accade in un gruppo di testi che si riferiscono a contesti internazionali. In questi documenti le città cretesi, come ci si attende, continuano a ricorrere alle formule loro proprie in riferimento a se stesse, ma quando si rivolgono a comunità democratiche impiegano il termine δᾶμος. Uno degli esempi più chiari e meglio documentato è quello di Teo. Nel decreto con cui Cydonia accorda a Teo l'*asylia* (*IC* II x 2, ll. 2-3) leggiamo: Κυδωνιατᾶν ἀ πόλις καὶ οἱ ἄρχοντες Τηίων τᾶι βωλ[ᾶι] | καὶ τῶι δάμωι χαίρειν. E il termine *damos* è coerentemente utilizzato nella documentazione cretese in riferimento a Teo[15].

Una formulazione analoga è presente nel decreto di Gortina in onore di Hermias f. di Emmenidas, medico di Cos, che si apre con queste parole: Γορτυνίων οἱ κόσμοι καὶ ἀ πόλις Κώιων τᾶι βωλᾶι κα[ὶ τ]ῶι δάμωι χαίρειν (*IC* IV 168, 1-2)[16]. E allo stesso modo leggiamo in un decreto di Allaria per Paros: Ἀλλαριωτᾶν οἱ κόσμοι καὶ ἀ πόλις Παρίων τᾶι βουλᾶι | καὶ τῶι δάμωι χαίρεμ (*IC* II ι 2b, ll. 1-2).

Nel caso del trattato fra Rodi e Olunte (*SEG* 23 547, l. 16) le clausole della *symmachia* sono indicate come τὰ δόξαντα τῶι δάμωι τῶι Ῥοδίων καὶ τᾶι πόλει τᾶι Ὀλουντίων e Rodi è coerentemente indicata come δᾶμος nel testo dell'accordo mentre per la città cretese si utilizza l'etnico. Lo stesso tipo di formulazioni distinte compare nell'accordo fra Rodi e Hierapytna (*IC* III ιιι 3).

Di fronte a questi casi la domanda che si pone è se si tratti semplicemente di un modo di rispettare le formulazioni locali o se invece, proprio nel quadro di un confronto diplomatico fra le diverse comunità, ci sia da parte dei due attori la volontà di sottolineare anche una distinzione fra i diversi tipi di regimi politici al governo.

L'ipotesi può apparire seducente, ma un decreto di Asso induce alla prudenza. Si tratta anche in questo caso di un documento votato per accordare a Teo l'*asylia* e che si apre con la formula tradizionale che menziona i cosmi e la città e che include anche un riferimento alla procedura di votazione: ἔδοξεν Ϝαξίων τοῖς κόσμοις καὶ τᾶι πόλει ψαφιξαμένοις | κατὰ τὸν νόμον (*IC* II ιι 17, ll. 2-3). Tuttavia, alla l. 18 e seguenti, la risposta indirizzata ai *theoroi* di Teo si apre con queste indicazioni: ἀποκρίνασθαι δ<ὲ> ὅτι ὁ δᾶμος ὁ Ϝαυξίων δια|φυλάδων τὰν πορτὶ τὸ θεῖον εὐσέβειαν καὶ τᾶι πόλει

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[15] Cfr. *IC* I v 53, ll. 22-23 (decreto con cui gli Arcadi concedono a Teo l'*asylia*, che si apre con la formula ἔδοξεν Ἀρκάδων τοῖς κόσμοις καὶ τᾶι πόλει); *IC* I xiv 1, ll. 19-20 (decreto con cui Istros concede l'asylia a Teo, in cui si stabilisce di ἀποκρίνασθαι τῶι | δάμωι τῶι Τηίων; il decreto inizia con la formula ἔδοξεν Ἰστρωνίων τοῖς κόσμοις καὶ τᾶι πόλει a l. 2); *IC* I xvi 15, ll. 1 e 19-20 (decreto di Lato: ἔδοξεν Λατίων τοῖς κόσμοις καὶ τᾶι πόλει e ἀποκρίνασθαι τῶι δά|μοι τῶι Τηίων); *IC* II xxiii 3, ll. 2-3 (decreto di Polyrrhenia: Πολυρρηνίων οἱ κόσμοι καὶ ἀ πόλις Τηίων τῶι δάμωι | καὶ τᾶι βωλᾶι χαίρειν); *IC* II xxvi 1, ll. 1-2 (decreto di Sybrita: Συβριτίων ἀ πόλις καὶ οἱ κόσμοι Τηίων τᾶι βωλᾶι καὶ τῶι | δάμωι χαίρειν).

[16] Anche la città di Cnosso votò un decreto per lo stesso personaggio e anche in questo caso ritroviamo la formulazione Κνωσίων οἱ κόσμοι καὶ ἀ πόλις Κώιων τᾶι βωλᾶι καὶ τῶι δάμωι χαίρειν (*IC* I viii 7, l. 1).

τῶν | Τηίων εὐχαριστεῖν βουλόμενος κτλ. Queste parole evocano un contesto in cui è il popolo, riunito in assemblea, che si sta esprimendo.

Questi pochi esempi, senza alcuna pretesa di esaustività, sono sufficienti a indicare come la situazione politica fosse diversa nelle singole comunità dell'isola durante l'età ellenistica e suggeriscono che alcune comunità possano realmente aver vissuto l'esperienza di regimi democratici, almeno in certi momenti della loro storia.

Il problema rimane aperto e ci sarà sicuramente un ampio e proficuo dibattito su diversi punti del volume una volta che sarà pubblicato – così come accade per tutte le ricerche destinate a esercitare un influsso importante sulla storia degli studi –, ma la comunità scientifica non potrà che essere profondamente grata a Paula Perlman e Michael Gagarin per questo lavoro completo e sistematico di raccolta, edizione, traduzione e commento di un impressionante corpus di testimonianze che sarà così pienamente accessibile. Questo libro è destinato a gettare nuova luce sulla storia di Creta ellenistica e a incoraggiare e agevolare ogni ricerca successiva.

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ISBN 978-3-7001-5072-5



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