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RESPONSE TO RAYMOND WESTBROOK

The paper delivered by Raymond Westbrook offers us the occasion to discuss a very important issue, one that we have never discussed at these meetings as far as I can remember – and my recollection of the *Symposia* goes back to the first one, held in Rheda exactly thirty years ago. My first comment, therefore, is that we must thank Raymond Westbrook for giving us this opportunity.

The issue at stake is the possible presence of Near Eastern borrowings in Greek political and legal institutions: in particular, as far as Westbrook's paper is concerned, in Homeric ones. Westbrook has given us a fascinating discussion of this issue. However, I am not convinced by his hypothesis, as I will explain.

Before going into detail, I would like to make a general statement, in order to avoid any possible misunderstanding. I do believe in the possibility of Near Eastern influences on the Greek world. I do not think that the world started with Homer. *Fuerunt ante Homerum poetae*, as Cicero said (*Brutus*, 18, 71). The Greeks did not invent poetry, and they did not invent the law. *Fuit ante graecos ius*, we could say, paraphrasing Cicero. I am very willing to admit that the Greeks might be indebted to Near Eastern civilisation in this field as well. Let me add that I believe that even the Romans, the creators of a legal system still at the basis of much modern civil law, are indebted to Near Eastern legal systems.

In other words, I do not reject the idea of the Near Eastern origins of Western (in our case Homeric) legal institutions, *per se*. Instead, I am concerned with problems of evidence related to the specific institutions examined in this paper, and with a couple of methodological problems that I will make clear, before going into specifics.

Westbrook maintains that in order to understand the legal context of the story of Odysseus, we need a coherent legal and political background “which the Homeric poems themselves do not provide, with their fragmentary allusions”. He suggests that the best available background is found in the ancient Near East. In my opinion, this raises two problems. First: do we agree with the idea that Homeric political and legal institutions can be reconstructed only if we put them in an exterior historical frame? Second: is the ancient Near Eastern legal system really the best system to use as a frame for the information in the Homeric epics?

Let us start with the first problem: recourse to external sources. Of course, I do not dispute the importance of comparanda (Greek and non-Greek), when available. On the contrary, I believe that they are very important. Nonetheless I am not sure

that Homeric references to political and legal institutions are so fragmentary and incomplete that any attempt to reconstruct Homeric institutions from within is doomed to failure. This is an old and controversial problem, and it has been debated for decades, but I think it still deserves some attention. In particular, I believe that Homer contains sufficient elements to sketch out, albeit in broad strokes and with obvious missing elements, a sufficiently coherent political and legal system. This means that I cannot endorse the assumption that Homer provides only fragmentary and incomplete allusions to Ithaca's legal and political system, the topic of most of Westbrook's paper.

Of course, this depends on the definition of what is legal, and I am certainly not going to discuss that question now. We are all aware of the many related problems: should we identify legal rules through their enforceability, or through procedures? What comes first: procedures or rules? We, the persons sitting around this table, have different ideas on this issue, and this is not the moment for setting out my position, but I wonder: can we avoid this issue in discussing Westbrook's paper?

Let's go to the second problem: is the ancient Near Eastern legal system really the best system to use as a frame for the information in the Homeric epics? Westbrook observes that while ethnographic data have no historical connection with the Homeric world, the ancient Near Eastern world has such connections. He rightly recalls that trade between the Near Eastern and Greek worlds was so strong, in all the periods to which the Homeric epic might be related, that "it is reasonable to suppose that [legal] traditions that were prevalent across the vast reaches of the [ancient Near East] would have found their way into any area within its sphere of cultural influence".

But is this enough to allow us to take for granted the existence of specific legal borrowings? Correspondences between Homeric and Near Eastern legal rules would be evidence for such borrowings, but I must confess that I doubt that the necessary correspondences exist.

Certainly there is no correspondence between the political structure of the two worlds. The Near Eastern kingdoms, roughly speaking, were very strong political units dominated by kings with more or less absolute power. The society was hierarchially organized; laws were enacted by the kings.

Was Homeric political organisation similar to this? The answer is no, it was not. Finley (1977) argued that Ithaca is a Greek community of the Dark Age (11th-10th century). Other modern studies propose alternative datings, within Greek contexts. Ian Morris (1986), for example, maintains that the world described by Homer is contemporary with the moment when the poems were written down, that is to say the seventh century. In his opinion this is the consequence of the oral nature of Homeric poetry, a consideration that might also be very important in discussing Westbrook's paper. Steven Scully (1990) pointed out some aspects of Troy that suggest the eighth-century Ionian *polis*: the city which encloses the entire population; city temples; the wall as an absolute visual boundary. Scully's opinion

is shared by William Merritt Sale (1994), who points out a further aspect of the eighth-century polis in Troy, the seated statue of the goddess in the temple.

I will not go into the specifics of the debate on the date of Homer's world. In any case, Ithaca's political organisation seems to be the organisation of a *polis*. Of course, it is not the classical *polis*. But it has many of the basic features of a *polis*: an assembly, a council of elders, and a *basileus* who administers justice, holding the scepter in his hand. Ithaca was a community on the verge of becoming a *polis*, very different from ancient Near Eastern and Mycenaean states (Cantarella, 2002).

This does not mean that we do not find any reference to Near Eastern or Mycenaean political organisations in Homer. Some references to such organisations, in my opinion, may be found. But not in Ithaca.

Sale might be right when he says that in the *Iliad* we can detect two different types of government: the government of Troy and the government (and the economy) of the Achaeans. While Troy is a *polis*, the Achaean states – the Myrmidons, the Pyliaans, the Mycenaean – are absolute monarchies with a military economy and a warrior class. But Westbrook's article, again, largely concerns Ithaca.

In my opinion, we cannot use Near Eastern parallels in order to understand Ithaca. The differences between the political systems are too strong. If we want to resort to parallels we must look for other and different communities, less structured, less bureaucratic and hierarchical, whose level of political organisation has elements in common with Ithaca. I think this is a further issue that deserves to be discussed.

So much for general problems. Next let us go into the problem of Odysseus' kingship, its source and its nature. Westbrook makes several good points on this issue, including the following:

- 1) Odysseus was not only, as Halverson (1986) maintains, a very powerful and wealthy person, the most powerful and wealthiest of the land. He was a king.
- 2) We must not confuse Odysseus's personal property with his political privileges. They are clearly distinguished (Cantarella, 1979, Cantarella 2002).
- 3) The suitors were not contending for Penelope herself. The struggle was for succession.

However, as for the hypothesis that the source of Odysseus' kingship was Penelope's dowry, I have several doubts. The first and perhaps the biggest problem, in my opinion, is the following: did the dowry exist in Homer? This is a very controversial issue. In Homer, marriage is accompanied by the offer and the delivery from the groom to the bride's father of the *eedna*, the so-called "bride-price". A dowry, instead, is delivered from the father's bride to the husband. The possibility that the bride price and the dowry coexisted is very controversial. Anthropological evidence is uncertain. But certainly the bride price and the dowry did not coexist in Athens or in Rome. Roman law, as often happens, offers a very interesting parallel with what seems to have happened in Athens. In Rome, one of the oldest types of marriage was the *coemptio*, a ritual performed in the presence of a person holding a scale. Originally, this rite included the payment by the groom (or his father) to the

bride's father of an amount of goods or money, that is to say a bride-price. The dowry was introduced only later, when this and other ancient rites were abandoned, and a new form of marriage that did not include the transfer of the bride into the groom's family came into use (Cantarella, 2003, pp. 196-208)

More importantly, there is no evidence for the existence of the dowry in Homer. On several occasions gifts are offered by the bride's father to the groom's family, but in my opinion these gifts are not dowries. They fit very well into the frame described by Morris: "the standard form of *aristos* marriage seems to be that suggested by Lacey – gifts offered in both directions (*dora*) to establish good relations between the bride's kin and potential suitors; bidding of gifts (*eedna*) by the suitors; acceptance of the best offer by the bride's guardian, her *kyrios*" (Lacey, 1966; Morris, 1986, p. 106)

Last but not least, in Homer we do not have a technical term for the dowry, which should raise further doubts. Had the dowry existed, we would expect a technical term for it, as we have for the so-called bride price.

My second doubt is as follows. Let us admit that the dowry existed, and consider Penelope's case. Had her dowry been the legitimate basis of Odysseus' kingship, Icarus, her father, would have been an overlord, and Odysseus a vassal dependent on him. In this case Icarus' inactivity during Odysseus' 20 years of absence would appear incomprehensible. Had Icarus been an overlord, he would not have allowed the suitors to damage not only Odysseus' private property, but also the political system of Ithaca. He would not have allowed a 20 year power vacuum in Ithaca. He would have provided in some way for someone to administer justice and to collect the royal revenues (if revenues were due to the *basileus*).

Furthermore, Westbrook considers the fact that in Ithaca there were several *basileis* and that Odysseus collected royal revenues, as evidence that Ithaca was part of a hierarchical political structure. Both of these ideas require further discussion.

a) The presence of several *basileis* in Ithaca is again a much debated problem (Drews 1983, Donlan 1989, Mondi 1980, Carlier 1984, Carlier 1999). Today, many scholars agree that the word *basileus* has more than one meaning, and indicates the head of different kinds of units. Sometimes this unit was a community. In this case the *basileus* was a political leader, who administered justice, holding a scepter, hence the denomination *basileus skeptouchos*. In Ithaca, the only *basileus skeptouchos* was Odysseus (see *Od.* 2.231). The other *basileis*, such as the suitors, were not *skeptouchoi*. They were chiefs, too, but not political leaders. They were the single dominant males of their family units. This explains why they were so many, as Telemachus says in *Od.* 1.395.

In fact the suitors were 108. It is true that only twelve of them were from Ithaca, but twelve vassals supposedly dependent on Odysseus are too many for a kingdom such as Ithaca. As Westbrook tells us, a dispatch of a diplomat from Mari in the 18th century reports that "ten to fifteen kings follow Hammurabi, the man of Babylon".

Given the difference between Babylon and Ithaca, twelve followers seem an excessive number for Odysseus, indeed.

b) As for tax revenues, the passages that supposedly prove their existence in Ithaca are two: *Od.* 11.174-184 and *Od.* 23.354-358. In *Od.* 11.174-184 Anticlea, Odysseus's mother, tells Odysseus that Telemachus still has his *geras*, the word that Westbrook supposes indicates the revenues. To my knowledge, however, this would be the only case where *geras* has this meaning. Elsewhere *geras* means "honor", or "part of the booty awarded as a prize to a hero in recognition of his behavior in battle". A "prize", therefore, not a tribute. Briseis, for example, was the *geras* awarded to Achilles, as explicitly stated in *Il.* 1.161-162 and *Il.* 16.56 (just as Chriseis was Agamemnon's *geras*). This prize, by the way, was assigned by the assembly, and is considered to be one of the first forms of private property recognized in post-Mycenaean Greece (Asheri, 1966, p. 5ff.).

For this reason I prefer to interpret *geras* in *Od.* 11.174-184 as "royal honor", that is to say kingship. In order to accept the meaning "revenues" we would need to find other passages where *geras* has this meaning. But we do not have them. Indeed, in the second passage quoted by Westbrook (*Od.* 23.354-358) the alleged revenues are indicated by the term *mela*, flocks.

Finally: in the poems one passage speaks of something that could be a tribute. It is *Il.* 9.149-156, where Agamemnon offers Achilles seven cities whose people will honor him with gifts (*dòtinèsi theon os timèsousi*). However, this passage does not deal with Ithaca. It deals with Agamemnon's kingship, which, as I said, is different from Odysseus's. Anyway the word used for revenues is *themistas*, not *geras*.

Last point, last doubt: Laertes' and Telemachus' role in Ithaca. How to explain Laertes' inactivity? Westbrook's answer is that he was never Ithaca's king. He was a military commander, who had transferred his great wealth *inter vivos* to his son, as indicated by *Od.* 24.337-344. I do not feel that *Od.* 24.337-344 supports this thesis. These verses say only that when Odysseus was a child, Laertes gave him an orchard and promised to give him fifty vineyards. This does not look like the transfer of a patrimony, and to my knowledge we do not have any other evidence of such a transfer. Furthermore, in 24.333, a few lines before, Odysseus recalls that once he was sent to fetch some gifts promised to him by his maternal grandfather Autolicus; he says that he was sent by his father Laertes and his *potnia* mother. *Potnia* to me evokes more a queen than the wife of a military commander. In the *Iliad*, the term indicated Hera (*Il.*, 551). When not a king's wife, it indicates a woman having very special powers, such as Kirke, sort of a queen herself in her island (*Od.* 1, 14 and 8, 448). Third *potnia*, in Homer, is Artemis, the Mycenaean *potnia theon* (*Il.* 21, 470).

Finally, and more important, in the eleventh book, during his visit to the Underworld, Odysseus asks his mother if his *geras* is still in the hands of Laertes and Telemachus (line 175: *par keinosin*). Whatever the meaning of *geras* in this line –

kingship or revenues – had Laertes never been Ithaca’s king, the question would make no sense, Laertes would not have been entitled to act on behalf of Odysseus, as a king.

In my opinion Laertes’ condition may be explained in the usual, straightforward way. He relinquished the kingship because, as he got very old, he lost the physical and psychological strength that a king needed to possess (Cantarella, 2002). He still manages the estate (*Od.* 16.138-145), and he would be able to address the assembly (*Od.* 4.739-741), but these activities do not require the strength necessary to rule a community. I would add that in *Od.* 4.555-568 Menelaus speaks of Odysseus as the son of Laertes, who, being a prisoner of Kalipsos, “could not go back to his *patrida gaia*”. Had Odysseus received Ithaca as Penelope’s dowry, had Laertes not been Ithaca’s king, would Menelaus have used this expression?

As for Telemachus, when his father left, he could not take his place because of his youth, and when he grew up he was overwhelmed by the superior strength of the suitors, as he states explicitly in *Od.* 2.58-62: “I would expel the suitors from my house, if I had the *dynamis*”.

In conclusion, I can find no evidence in the *Odyssey* of a hierarchy of kings or of a dowry-based system of royal succession. In my opinion, Odysseus’ kingship cannot be compared with the kingship of a Near Eastern king. He is, rather, the *basileus* of a rising polis.

As for the source of his kingship, in my opinion, the element that gave it legitimacy was popular consensus. I think that when speaking of the Homeric world, we must take very seriously into account the importance and the role of the *demou phemis*, the voice of the people. In Homer the “voice of the people” built the prestige of the *agathoi*, of those who were brave, strong, and capable of defending their honor and the honor of their families. This same voice shamed those who did not live up to these standards (Dodds, 1951, pp. 28-69; discussion in Hooker, 1987, pp. 121ff.; Cairns, 1993, pp. 14-74; Williams, 1993, pp. 21-102; Miller, 1993, pp. 115-116).

The *demou phemis* was basic to a world where it mattered not whether a person was brave, strong, and so on, but whether he was said to be brave, strong and so on – the world of *klea* and *epe*: in short, of epic.

In my opinion, in Ithaca as well as in cities like Ithaca, the *demou phemis*, voiced through the popular assembly, was the element that legitimated the kingship. I am not speaking of an institutional power of the assembly to express its opinion, let alone to elect the king. What I mean is that in a face-to-face society such as Ithaca (I am not speaking of Athens, where this issue is hotly debated), the popular voice in favor of a leader – although his original power was based on his social and physical strength – was the element that allowed him to rule over a country peacefully and gave legitimacy to his position.

Odysseus had been a king beloved by his people and praised for his virtues (even if in his absence they forgot him and were not even willing to help his son get rid of

the suitors). This was the reason why the suitors courted Penelope: not for her beauty or her virtue, but because the suitor who would become king needed to marry her. Marriage with Odysseus' widow would transfer to her new husband some part of the consensus that Odysseus had earned. It would give him a legitimacy that he would not have, had he acquired power only through strength, an element that was necessary but not sufficient to be recognized as king. The element that legitimated strength was popular consensus.

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