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JUSTICE AND GAMES: THE *BRABEUS*

The relation between law and games was emphasized by Johan Huizinga in his book *Homo Ludens. A Study of the Play Element in Culture* (English edition, Routledge and Kegan Paul, 1949). Although not the main subject of his study, Huizinga devoted several pages to the link between justice and games, considering that people taking part in a court case and those participating in a game are imbued with the same feeling: the desire for victory. Thus, it is not surprising to find that the rules and practices of games are also present in the legal field.

Yet despite the recognition of a kinship between games and civic phenomena, studies of the relationship between games and justice are scarce. In 1931, the Belgian Romanist F. de Visscher pointed out a passage from the 5th Book (375-386) of Virgil's *Aeneid*, comparing the rules of games and those regulating the administration of justice¹. In the funeral games in memory of Anchises², Virgil's Dares uses the phrase *ducere dona iube* ("give the order to take the gifts"). *Duci iubere*, wrote de Visscher, is a technical expression characterizing a particular phase of Roman judicial procedure. This is the order given by the praetor to a litigant, authorizing him to keep an object, slave, or animal. In this last case, the praetorian order includes the word *ductio* (*duci iubet*) related to the disputed animal, which is also used in Virgil's passage, where the prize claimed is a young bull.

"Si nous nous trouvions en présence d'une identité fortuite et purement formelle d'expression, le sujet ne vaudrait certes pas de retenir l'attention. Mais il s'agit de bien autre chose. Il y a, en réalité, une analogie profonde et très frappante entre les conditions juridiques très spéciales dans lesquelles intervient la *ductio iussu praetoris* et celles où se trouve Darès au moment où il réclame d'Énée l'ordre d'emmener le prix promis au vainqueur ... C'est une allusion consciente et parfaitement justifiée à une phase de la procédure judiciaire classique".

Visscher's remarks inspired Louis Gernet to analogous considerations concerning the funeral games in memory of Patroclus in the 23th book of the *Iliad*³. Gernet

¹ *Études de droit romain*, Paris 1931, 380sq.

² Virgil, *Aeneid*, V, 380-385: Ergo alacris cunctosque putans excedere palma /Aeneae stetit ante pedes, nec plura moratus /tum laeua taurum cornu tenet atque ita fatur:/ "Nate dea, si nemo audet se credere pugnae, /quae finis standi? Quo me decet usque teneri?/ ducere dona iube".

³ L. Gernet, "Jeux et droit (Remarques sur le XXIII^e Chant de l'*Illiade*)", *Revue historique de droit français et étranger* 26 (1948), 177sq. = *Droit et société dans la Grèce*

suggested that Virgil further developed a point already indicated by Homer in Patroclus's funeral games. In their description of athletic games, Gernet wrote, both Homer and Virgil use legal terms, and this use seems to have been both normal and expected. The appearance of the word ἀγών in the field of athletic games as well as in the domain of justice constitutes a homonymy, which probably has very deep roots. The French historian concluded: "Le droit qui commence d'apparaître dans la scène n'y apparaît pas comme une technique spéciale et professionnelle: il émane lui-même de la vie des jeux; il y a continuité entre la coutume agonistique et la coutume judiciaire"⁴.

My intention is not to make a summary of Gernet's arguments and conclusions, but to present some mutual terminological borrowings between the two fields, games and justice, especially that of the words βραβεύς-βραβευτής and the verb βραβεύειν which have not so far drawn scholarly attention.

The first term which comes to mind in considering the relation between games and justice is the word ἀγών, used, even in modern Greek, in both fields with the same frequency. Among the words deriving from ἀγών is the term συναγωνιστής which appears in a legal context in three Hellenistic inscriptions: the law of Ephesos on mortgaged lands⁵, an honorific decree of Rhodes⁶, and a Delphian decree in honour of an Athenian arbitrator⁷.

For the purpose of our study the use of the verbs διώκω, φεύγω, φέρω, ἄγω and of the substantives νεῖκος and νίκη is particularly relevant. But even more, I think, is the use of the terms βραβεύς and βραβευτής.

I. Meanings, etymology and semantic field

The word βραβεύς does not appear in Homeric poetry, and its etymology and semantics are far from clear. By the 5th century B.C. the term βραβεύς and its later form βραβευτής as well as the verb βραβεύειν are used in a particularly extensive semantic field. Thus, Euripides (*Or.* 1650) mentions the terms δίκης βραβεῖς and φόνου βραβεύς (*ibid.* 1065), λόγου βραβεύς (*Med.* 274), μόχθων βραβεύς (*Helen* 710). Aeschylus mentions a μυρίας ἵππου βραβεύς (*Pers.* 302) and the φιλόμαχοι βραβῆς (*Agam.* 230) and Sophocles uses the words ὅσον γάρ ἐσεκήρυξαν βραβεῖς δρόμον (*El.* 690). From the 4th century onwards, with one exception (*Pl. Leg.* 949a: γυμνικῶν τε καὶ ἵππικῶν ἄθλων ἐπιστάτας καὶ βραβέας), the form βραβεύς

ancienne, Paris, 1955, 9sq. Cf. *id.*, *Droit et société* ("Sur la notion du jugement en droit grec"), 63.

⁴ *Droit et société*, p. 17.

⁵ *I. Eph.* 4. *Syll.*³ 364, lines 28-29: συν[νοπφα]νιστάς. After further inspection of the stone, Ph. Gauthier (*Rev. Phil.* 67 [(1993)], 48-52), proposes to read: συναγωνιστάς. Date: after 297 B.C.

⁶ *Syll.*³ 340, line 37: συναγωνιζασθαι ταῖς δίκαις. Date: 3rd century B.C.

⁷ *Syll.*³ 615, line 4: ἐπέδωκεν ἑαυτὸν ἀπροπασίστως ἐν τῷ συναγωνι[ξ]ασθαι τῇ πόλει τὰν κρίσιν τὰν περὶ τῶν τεμενέων καὶ τὰς ἀμφιλόγου χώρας etc. Date: after 180 B.C.

will be out of use and the noun βραβευτής and the verb βραβεύειν are attested in its place.

As for the meanings of these words, Chantraine translates the word βραβεύς as “arbitre aux jeux” or, more generally “chef”, “juge”⁸. The denominative verb βραβεύω has, according to the French linguist, the meanings of “juger, arbitrer”, sometimes “diriger”. The derivatives βραβεῖα signify “arbitrage, jugement”, βραβεῖον “prix dans les jeux”, βράβευμα “jugement”. The most usual term is the agent βραβευτής, a substitute for βραβεύς “arbitre”. Chantraine concludes: “Il est vraisemblable que βραβεύς signifie originellement “arbitre”, particulièrement pour les jeux”.

The etymology of βραβεύς is particularly controversial. According to Frisk the word appears to be “vorgriechisch und unbekanntem Ursprungs”⁹. Chantraine estimates that “le sens originel fait penser qu’il s’agirait d’un terme d’une langue indigène, emprunté par les envahisseurs grecs”, pointing out that “aucune des étymologies indo-européennes qui ont été tentées n’est vraisemblable”.

VI. Georgief proposed that βραβεύς was a Persian loan word, as was for example the word σατράπης. The Iranian nomen agentis *mrava-* (Skr. *braviti*), “eine persische (oder medische) Beamtenbenennung für Richter”, must have been received by the Greeks of Asia Minor (perhaps the Ionians) during the great Medo-Persian expansion in the West (6th-5th centuries) and the word was introduced in the Attic dialect through them¹⁰.

Almost simultaneously with Georgief, A.J. van Windekens proposed that βραβεύς was a term inherited from Pelasgic times: “Je crois que βραβεύς est un mot pélasgique et qu’il faut le rapprocher de skr. *braviti* ‘parler, déclarer, nommer, désigner, etc.’, av. *mrv-* ‘dire, parler, annoncer, nommer, désigner, etc.’, où le sens de ‘parler (en général)’ est donc certainement primitif”¹¹. Van Windekens rejected Georgief’s assumption of an Iranian linguistic loan via the Persian judges dispersed around the country, for the reason that these persons were real magistrates belonging to the “organisation judiciaire” of the Persian empire and they were not involved in

⁸ P. Chantraine, *Dictionnaire étymologique de la langue grecque*, Paris 1968, s.v.

⁹ H. Frisk, *Griechisches Etymologisches Wörterbuch*, Heidelberg 1960, s.v. βραβεύς, Kampfrichter, Richter, Anführer (Trag., Pl.). Denominatives Verb βραβεύω ‘richten, entscheiden’ (Isokr. usw.) mit βραβεύς-βραβευτής (Is., Pl. usw.), βράβευμα ‘Richterspruch’ (S.), βραβεῖα ‘Entscheidung’ (E., Lyk.), βραβεῖον ‘Kampfpreis’ (Men., *Ep. Kor.*, usw.). Unerklärt. Zu den schon bei BQ gebuchten ganz hypothetischen und anfechtbaren Deutungsversuchen kommen mehrere neue derselben Art hinzu”.

¹⁰ VI. Georgief, “Griech. βραβεύς – Ein persisches Lehnwort”, *IF* 60, (1952), 171-174.

¹¹ A.J. van Windekens, *Le pélasgique. Essai sur une langue indo-européenne préhellénique*, Louvain, 1952, 82 (Université de Louvain, Institut Orientaliste, Bibliothèque du Mouséon, volume 29). This hypothesis was already formulated by the author in his previous studies published in *L’Antiquité Classique* 19 (1950) 400 and *BzN* 2, 65 (non vidi).

the games or competitions. Thus, he estimates, the first meaning of βραβεύς must have been that of “judge at the games, Kampfricher.” Hence the word cannot be considered as a loan from the Persian judicial and administrative terminology.

An alternative non-Greek etymology links βραβεύς with the Illyrian word *bhrbh-eu- (also found in Celtic), signifying “giudicare”. But as M. Morani, the author of this hypothesis, himself recognizes, this assumption does not answer all the questions relating to the semantics and construction of the word βραβεύς¹². Paolo Martino considered the word βραβεύς an ancient “semitismo” emerging from the east Mediterranean lingua franca of early archaic times¹³. Rejecting all previous hypotheses about the origins and significance of the word, Martino placed it in linguistic and social contexts other than those of games or justice, and thus eliminated any notion of “awarding”. The extended variety of senses in which βραβεύς is used excludes any “technical” semantic. There is no question of a βραβεύς *tout court*, writes Martino, but of βραβεύς δρόμων (Soph. *El.* 690), βραβεύς δίκης (Eur. *Or.* 1650), βραβεύς φόνου (Eur. *Or.* 1065), βραβεύς λόγου (Eur. *Med.* 274), βραβεύς μόχθων (Eur. *Hel.* 703), βραβεύς μυρίας ἵππου (Aesch. *Pers.* 302) or βραβεύς ἄθλων (Pl. *Leg.* 949a). Even the later derivatives βραβευτής and βραβεύω were used since the 4th century by Attic authors not in purely legal contexts but in “parajudicial” (“paragiuridiche”) situations, where the use of legal terminology is inappropriate. According to Martino, these examples indicate “l’azione esercitata, a garanzia di equità, al di fuori di qualsiasi processo, da un terzo imparziale o più spesso, metaforicamente, della Fortuna o della sorte” (p. 238). Especially the lexicographers describe a βραβεύς as a person endowed with the functions of intermediation and conflict resolution, functions which, by extension, can be assigned to a games or judicial umpire¹⁴. But, Martino observes, an ἀγών is not only an athletic or judicial competition. The term can also be used in commerce, in a financial dispute or simply an affair involving two or more merchants in which a third person intervenes, acting as a “sensale, banditore, intermediario e garante della pubblicità, eventualmente anche come conciliatore privato, arbitro e notaio” (p. 240). It is precisely this figure which is described as βραβεύς whose tasks should be to control, testify, mediate, conciliate etc., roles which have in common the idea of “terzietà super partes”. Created on the basis of the semitic root ‘rb (like the Latin *arbiter*¹⁵), with the adjunction of the prefix *ma*,¹⁶, the word βραβεύς

¹² M. Morani, “Noterelle etimologiche. 3. Gr. βραβεύς”, *Orbis* 26 (1977), 374-376.

¹³ P. Martino, “Un semitismo antico nel greco: βραβεύς”, *Studi e saggi linguistici* 28 (1988), 231-253 (Supplemento alla Rivista “L’Italia dialettale”, vol. LI [N.S. XXVIII], 1988 diretta da Tristano Bolelli).

¹⁴ Pollux, 3, 145: τοῖς δὲ γυμνικοῖς ἐφεστᾶσι βραβευταί, οὓς καὶ βραβέας ὁ Πλάτων καλεῖ. Hesychius, Βραβέα. ἄρχοντα. Βραβευτής. διαλλακτής. *Etym. M.*, Βραβεία. διαλλαγή. Cf. *Th.L.Gr.* s.v. βραβεύς, *judex certaminis, vel Arbiter et moderator*.

¹⁵ P. Martino, *Arbiter*, Roma 1986 (“Biblioteca di ricerche linguistiche e filologiche”, vol. 17).

(*mr(a)b-eus*) must have been borrowed, initially as a “Fremdwort”, by the Greek merchants travelling in Asia Minor and to the Syro-Palestinian coasts and Egypt during the 8th-6th centuries B.C. Thus, according to Martino, in its original meaning, the βραβεύς must have been an “intermediario nei contratti”, a “sovrintendente al mercato” (p. 243), a “capo del mercato” (p. 250) whose presence was necessitated by the non-institutionalized character of early international exchanges.

The main non-philological objection to Martino’s assumptions seems to come from a 5th-century B.C. coin from Maroneia (Thrace). On one side of the coin is written the word BP-AB-EΩ-Σ¹⁷. Instead of a personal name as most scholars suppose¹⁸, Martino believes that the word simply signifies a “capo del mercato”¹⁹, a hypothesis without any parallel in Greek numismatics.

In this short review of the etymology and semantic field of the βραβεύς, Mycenaology cannot be absent. In the Word Index of her *Studies in Mycenaean Inscriptions and Dialect*, Lydia Baumbach has included the word *pa-ra-we-wo*, related, among others, to *prawwo* (gen. of πρῶος) “mild, diluted” or considered as a genitive of βραβεύς²⁰, a hypothesis undoubtedly very seductive for our purpose, but unfortunately not conclusive.

II. The legal uses of the word

Even in its early uses, the word βραβεύς was sometimes linked with legal purposes. Expressions like δίκης βραβεῖς (Eur. *Or.* 1650) and σὺ δ’ ἡμιν τοῦ φόνου γενοῦ βραβεύς (Eur. *Or.* 1665) certainly do not prove the existence of a specific magistracy bearing the title of Βραβεῖς, as some lexicographers believed²¹. The word indicates, however, that the same persons, qualified as *brabeis*, continued to be considered as playing an important role in the domain of justice as well as in those of races (Soph. *El.* 690) or of military command (Aesch. *Agam.* 230).

¹⁶ Martino, “Un semitismo antico”, p. 243: Nei lavori citati abbiamo fatto cenno all’ipotesi che s’intende ora verificare, e cioè che il derivato con prefisso nasale *m[^]rb* “scampio di merci”, “mercato”, “garanzia”, fosse conosciuto, in quanto termine della lingua internazionale del commercio, anche negli ambienti commerciali della Grecia antica, considerata non solo l’intensa frequentazione dell’Egeo da parte di mercante semiti, fin da epoche preistoriche, ma anche la consistente presenza di elementi greci nei grandi empori interetnici dell’Asia Minore, della costa siro-palestinese e dell’Egitto, specialmente nella prima metà del I millennio a.C.

¹⁷ Published by Fr. Imhoof-Blumer, *Zeitschrift für Numism.* 3 (1876), 285, n. 24.

¹⁸ Fr. Bechtel, *Die historische Personennamen der Griechen bis zur Kaiserzeit*, Göttingen 1917 (Hildesheim 1964), 517.

¹⁹ Loc. cit., p. 253, n. 65.

²⁰ *Studies in Mycenaean Inscriptions and Dialect 1953-1964*, Rome, 1968.

²¹ Hesychios, Βραβέα. ἄρχοντα. *Etym.* 210, 48: vocari βραβευτάς, τοὺς τὰς βασιλικὰς ῥάβδους κατέχοντας.

Enumerating the informal proofs (ἄτεχνοι πίστεις), and among them the contracts (συνθήκαι), Aristotle qualifies the judge as the βραβευτής of justice: τοῦ δικαίου ἐστὶ βραβευτής ὁ δικαστής. *Rhetoric* I, 15, 23-25, 1376b:

ἂν δ' ἐναντία ἦ, καὶ μετὰ τῶν ἀμφισβητούντων, πρῶτον μὲν, ἅπερ ἂν τις πρὸς νόμον ἐναντίον μαχέσαιοτο, ταῦτα ἀρμόττει· ἄτοπον γὰρ εἰ τοῖς μὲν νόμοις, ἂν μὴ ὀρθῶς κείμενοι ὦσιν ἀλλ' ἐξαμάρτωσιν οἱ τιθέμενοι, οὐκ οἰόμεθα δεῖν πείθεσθαι, ταῖς δὲ συνθήκαις ἀναγκαῖον. εἶτα ὅτι τοῦ δικαίου ἐστὶ βραβευτής ὁ δικαστής· οὐκ οὖν τοῦτο σκεπτέον, ἀλλ' ὡς δικαιοτέρον· καὶ τὸ μὲν δίκαιον οὐκ ἔστιν μεταστρέψαι οὔτ' ἀπάτη οὔτ' ἀνάγκη (πεφυκὸς γὰρ ἐστίν), συνθήκαι δὲ γίνονται καὶ ἐξαπατηθέντων καὶ ἀναγκασθέντων. πρὸς δὲ τούτοις σκοπεῖν εἰ ἐναντία ἐστὶ τιτι τῶν γεγραμμένων νόμων ἢ τῶν κοινῶν, καὶ τῶν γεγραμμένων ἢ τοῖς οἰκείοις ἢ τοῖς ἀλλοτρίοις, ἔπειτα εἰ ἢ ἄλλαις συνθήκαις ὑστεραῖς ἢ προτέραῖς· αἱ γὰρ ὑστεραὶ κύριαι, ἢ αἱ πρότεραι ὀρθαί, αἱ δ' ὑστεραὶ ἠπατήκασιν, ὁποτέρως ἂν ἦ χρήσιμον. ἔτι δὲ τὸ συμφέρον ὀρᾶν, εἴ που ἐναντιοῦται τοῖς κριταῖς, καὶ ὅσα ἄλλα τοιαῦτα· καὶ γὰρ ταῦτα εὐθεώρητα ὁμοίως.

“But if the contract is against us and in favor of our opponents, in the first place those arguments are suitable which we should oppose to the law if it were against us; that it would be strange if, while we consider ourselves always entitled to refuse to obey ill-made laws, whose authors have erred, we should be obliged to consider ourselves always bound by contracts. Or, that the judge is the dispenser of justice; so that it is not the contents of the contract that he has to consider, but what is juster. Further, that one cannot alter justice either by fraud or compulsion, for it is based upon nature, whereas contracts may be entered into under both conditions. In addition to this, we must examine whether the contract is contrary to any written law, or to other previous or subsequent contracts. For either the later are valid and the former not, or the former are right and the latter fraudulent; we may put it in whichever way it seems fit. We must also consider the question of expediency – whether the contract is in any way opposed to the interest of the judges. There are a number of other arguments of the same kind, which are equally easy to discern”.

Translated by John Henry Freese as “dispenser of justice”²², Aristotle’s βραβευτής seems to play a particularly important role in trials relating to contract disputes. Beyond the conformity of the agreement to written laws or other previous or later agreements between the same parties, the judge also has to examine the contract from the general view point of justice. From this passage it appears that, when the judge acts as βραβευτής, he has to go further than merely applying those legal provisions related to the specific case. He has to find a judicial solution conforming to justice ἀλλ' ὡς δικαιοτέρον) even if he has to search beyond the

²² Aristotle, *The “Art” of Rhetoric*, Loeb Classical Library, p. 161. In the French edition “Les Belles Lettres” of the *Rhetoric*, the expression τοῦ δικαίου ἐστὶ βραβευτής ὁ δικαστής is translated “le juge est l’arbitre du droit.”

written texts, laws or private agreements. In other words, he has to proceed to a legal interpretation.

This interpretation of Aristotle's expression τοῦ δικαίου ἐστὶ βραβευτῆς ὁ δικαστής is supported by the use of the verb βραβεύειν in a passage of the *Constitution of Athens*. Speaking of Solon's legal reforms, Aristotle says that although Solon offered the Athenians written laws, these laws were neither simple nor clear. Because it was difficult for the parties to understand their legal duties, the Athenian courts had to resolve an extremely large number of disputes of private or public interest: ἔτι δὲ καὶ διὰ τὸ μὴ γεγράφθαι τοὺς νόμους ἀπλῶς μηδὲ σαφῶς, ἀλλ' ὥσπερ περὶ ὁ τῶν κληρῶν καὶ ἐπικληρῶν, ἀνάγκη πολλὰς ἀμφισβητήσεις γίνεσθαι, καὶ πάντα βραβεύειν καὶ τὰ κοινὰ καὶ τὰ ἴδια τὸ δικαστήριον (IX, 2), "and thus the court had to decide on all matters".

The use of the verb βραβεύειν in this passage is not without significance. Whether judges or litigants, the Athenians could not apply legal prescriptions in which it was not clear what exactly the lawgiver had imposed. Therefore, private parties concluded, without knowing it, illegal or equivocal agreements, and judges could not always apply the suitable but obscure legal prescription. In such cases, the judges were not bound by the existing, incomprehensible written law: their decisions were based on social rules. Thus, instead of the expected verbs κρίνειν or δικάζειν, Aristotle uses the verb βραβεύειν, which seems to be the appropriate word when the judges' role is not limited to the mere application of specific legal prescriptions, but also legal interpretation.

One of the most interesting legal uses of the verb βραβεύειν appears in an international arbitration. Sometime between 140 and 111 B.C., Magnesia and Rome were called upon to settle a territorial dispute between the Cretan cities of Hierapytna and Itanos. The epigraphical material pertaining to this arbitration consists of two main documents, one of which contains the extensive report of the Magnesian judges. According to the Roman request (112 B.C.), the entire arbitral procedure, entrusted to thirty-one judges (but as we learn from the Magnesian report, the court consisted of only seventeen men), should not take longer than 360 days. In their effort to satisfy the Romans, however, the Magnesian court carried out its duty within twenty-four hours. As Sheila Ager emphasizes, "the sentence of the judges repeatedly stresses their desire and efforts to bring about a state of peace, harmony, and friendship between Itanos and Hierapytna. In fact, they at first tried to reconcile the two parties and avoid a formal arbitral judgement, only advancing to a vote when it became clear that feelings ran too high for friendly mediation"²³. It is precisely in this passage of their long report that the Magnesian judges use the verb βραβεύειν.

*Syll.*³ 685 (= Ager 158 II), lines 26-37:

²³ *Interstate Arbitrations in the Greek World, 337-90 B.C.*, Berkeley and Los Angeles, 1996, 445.

ἀποδειχθέντες οὖν καὶ αὐτοὶ (Κρηταεῖς) κριταί, παραχρήμα ἀναβάντες ἐπὶ τὸν βωμὸν τῆς Ἀρτέμιδος τῆς Λευκοφρυηνῆς σφραγιαθέντος ἱερείου ὠμόσαμεν καθ' ἱερῶν, παρόντων τῶν τε διαδικαζομένων ἀφ' ἑκατέρας πόλεως καὶ τῶν συναπόντων αὐτοῖς, καὶ καθίσαντες ἐν τῷ ἱερῷ τῆς Ἀρτέμιδος τῆς Λευκοφρυηνῆς διηκούσαμεν τῶν διαφερομένων, οὐ μόνον τὸν τῆς ἡμέρας αὐτοῖς δόντες χρόνον, ἀλλὰ καὶ τὸ πλεῖον τῆς νυκτός, πᾶσαν ἀναδεχόμενοι κακοπαθίαν χάριν τοῦ μηθενὸς ὑστερήσαι δικαίου μηθένα τῶν κρινομένων. τέλος δὲ λαβούσης τῆς δικαιολογίας, ἐγγράφους θέμενοι τὰς γνώμας, τῷ μὲν ἀκριβεῖ τῆς ψήφου βραβευθῆναι τὴν κρίσιν οὐκ ἠβουλόμεθα²⁴, συναγαγεῖν δὲ σπεύδοντες αὐτοὺς καὶ αὐτοὶ καὶ πάλιν εἰς τὴν ἐξ ἀρχῆς ἀποκαταστήσαι φιλίαν, ὡς ἦν ἡμῖν πάτριον καὶ προσῆκον ἡγοῦμεθα ἑκατέρους, τὰ πράγματα ἐφ' ἱκανὸν προσκείμενοι εἰς τὸ συλλύσεως καὶ φιλίας αὐτοῖς παραίτιοι γενηθῆναι. τῆς δὲ προθέσεως ἡμῶν μὴ τελειομένης διὰ τὸ ὑπερβαλλόντως αὐτοὺς τὴν πρὸς ἀλλήλους φιλονικίαν ἐνεστάσθαι, συνέβη τῇ ψήφῳ τὴν κρίσιν βραβευθῆναι, περὶ ἧς καὶ τὴν καθήκουσαν ἔχθεσιν πεποιήμεθα.

Nearly a century after the Magnesian arbitration, in 15 A.D., the participle βραβεύων is used in a second arbitral settlement of a territorial dispute, this time involving two Thessalian communities, the Kierians and the Metropolitans²⁵. After being informed of the case, the Roman legate referred it to the Thessalian *synedrion* which decided under oath and by secret vote in favour of the Kierians. The participle βραβεύοντος is mentioned at the end of line 3. Unfortunately, as the left side of the inscription is destroyed we cannot see the exact context in which the word is used. It seems to be associated with the substantive κρίσις (line 4) and to be opposed to judgment by lot as in the case of the Magnesian arbitration.

Plutarch preserves a passage from Chrysippus' lost *περὶ τοῦ Δικάζειν*:

So, for one, in his [Chrysippus'] work *Concerning Decision* he supposes that two racers have run a dead heat and raises the question what the umpire ought to do. "It is permissible", he says, "that the umpire awardss the palm to whichever he pleases depending upon their comparative intimacy with him, considering it in this case to be one of his own possessions which he would be giving away <or> that in a way rather considering the palm to have become the common property of both, he gives it, as if by casting a lot, according to his chance inclination. By 'chance

²⁴ Cf. Isocr. *Areop.* (VII), 23: ἐν μὲν γὰρ τῇ κληρώσει τὴν τύχην βραβεύσειν.

²⁵ *IG IX, 2, 261*, lines 1-7:

[----- διαφέ]ρωνται πρὸς ἀλλήλας οὐ

[-----] αἰτεῖται, ὅπως μεθ' ὄρκου κρυφα[ί]-

[ως----- Μητ]ροπολιετῶν κρινόντων, βραβεύον-

[τος----- τ]ε παρ' ὑμῖν ὀφίλοντος, καθ' ἣν καὶ τῆς κρίσ[ε]-

[ως-----]ν ἠνέχθησαν μεθ' ὄρκου ψήφοι Κιεριεῦσ[ι]

[διακούσαι ἐνεθήκοντα ὀκτώ, Μητρο]πολιεταῖς τριάκοντα μία, ἄκυροι πέντε.

inclination' I mean the kind that occurs when two drachmas that are for the rest alike have been set before us and we incline to one of them and take it" (trans. Chernis²⁶).

Finally, mention must be made of the verb *καταβραβεύειν* which Demosthenes uses in his speech *Against Meidias* (21), 93: *καταβραβευθέντα καὶ παρὰ πάντα τὰ δίκαια ἀτιμωθέντα*. ("Strato was degraded and was disfranchised contrary to all justice"²⁷). According to the Budé editors of the speech, "ce témoignage trahit en plusieurs points son caractère apocryphe: ainsi l'emploi du verbe *καταβραβεύομαι* qui se comprendrait plutôt pour l'arbitre d'un concours qu'en parlant d'un arbitre public"²⁸. I think, on the contrary, that in Demosthenes' passage the verb *καταβραβεύειν* is in the right place. The victim of deprivation of the honours and distinctions related to the task he has assumed, was an arbitrator named Strato. Demosthenes prosecuted Meidias for slander (*κακηγορίου δίκη*). While the trial was still pending, the two opponents submitted their dispute to public arbitration. When the day fixed by the arbitrator arrived, Meidias did not appear. With only one of the two opponents in front of him, the arbitrator could not take into account the interests of both parties. He had to formulate a judgment by default which undoubtedly was favorable to Meidias' opponent. The term par excellence to describe the functions (reconciliation or judgment) of the arbitrator is the verb *βραβεύειν*. Demosthenes uses or creates its opposite, the verb *καταβραβεύειν* in order to depict the humiliation of an arbitrator whose decision was not respected by one (or both) of the parties.

Over time, the use of the terms *βραβεύς-βραβεύειν* in legal contexts became particularly scarce; in later Roman times the words are only metaphorically used in such contexts. Henceforth, we have only a few reminiscences of these words' legal past²⁹ as for example in a board of officials designated *βραβευταί* in 4th-century A.D. Asia Minor³⁰.

²⁶ Plutarch, *De Stoicorum repugnantiis* 23 p. 1045 (Περὶ Στωικῶν ἐναντιωμάτων), *Moralia* vol. XIII Loeb: ἐν μὲν γὰρ τῷ περὶ τοῦ Δικάζειν ὑποθέμενος δύο δρομεῖς ὁμοῦ συνεκίπτειν ἀλλήλοις διαπορεῖ τί τῷ βραβευτῇ καθήκει ποιῆσαι· ἴσχυρον φησὶν ἕξεισι τὸν βραβευτὴν τὸν φοίνικα, ὁποτέρῳ βούλεται, ἀποδοῦναι, καθ' ὃ ἂν τύχῃσιν αὐτῷ συνηθέστεροι ὄντες, ὡς ἂν ἐνταῦθα τῶν αὐτοῦ τι χαρισάμενον; τρόπον τινὰ ἢ μᾶλλον ὡς κοινοῦ τοῦ φοίνικος γεγονότος ἀμφοτέρων, οἷον εἰ τις κλήρῳ γινομένου ἐναλλάξ κατὰ τὴν ἐπίκλισιν ὡς ἔτυχε δοῦναι αὐτόν; λέγω δὲ ἦν ἔτυχεν ἐπίκλισιν, οἷα γίνεται, ὅταν δυεῖν προκειμένων δραχμῶν ὁμοίων κατὰ τὰ λοιπὰ ἐπὶ τὴν ἑτέραν ἐπικλίναντες λαμβάνωμεν αὐτήν.'

²⁷ D. M. MacDowell, *Demosthenes Against Meidias (Oratio 21)*, Oxford 1990, translates (p. 145): "Strato was condemned by Meidias and disfranchised contrary to all justice".

²⁸ Démosthène, *Plaidoyers politiques*, "Les Belles Lettres", vol. II. (J. Humbert), p. 49, n. 1.

²⁹ As for instance in Dion of Prusa, in his XIIth *Olympic*, 49: εἰ γὰρ τις Φειδίαν πρῶτον ἐν τοῖς Ἑλλησιν εὐθύνοι, τὸν σοφὸν τοῦτον καὶ δαιμόνιον ἐργάτην

III. The semantic complexity

More than any other term common to justice and games, the word βραβεύς and its derivatives allow us to trace the genealogical tree of both social phenomena. For our purpose, it is of small importance if we accept a prehellenic origin of the word, or the Persian word **mrawa* signifying “the person who tells the right”, or a Semitic origin for the word and the sense “garante e capo del mercato”, or even the “mildness” of the Mycenaean *pa-ra-we-wo*. The βραβεύς or βραβευτής originally appears to be the person in front of whom a competition takes place. It does not matter if this is a purely physical or a mental competition, or a fight for the acquisition of goods or honours. The important issue is that the procedure, which takes place in front of him, is a peaceful competition. Rather than by non-ritualized or violent means, the contenders have chosen to measure their forces, physical, legal, or other, by the intervention of a third person, the βραβεύς. Instead of practices like reprisals, plundering, or war, all of them threatening the social peace, the opponents address themselves to the βραβεύς, whose task is not to declare a sole winner, the other being stigmatized as the loser, or to inflict sanctions and penalties. His role is to grant awards to all competitors for having chosen a peaceful alternative. In the early stage of their coexistence, justice and games both imply for the competing parties at the same time losses and gains. The result of the competition is such that no one comes out ruined or dishonoured, regretting his decision to trust a third party for the judgment of his physical capacities or patrimonial interests.

Even if the word βραβεύς is not used by Homer, the task of the “awarder” does appear³¹. The role of Achilles during Patroclus’ funeral games was not only to observe whether the participants have respected the rules of the game and at the end of the course to declare a single winner of the competition, as will be the umpire’s task in the athletic games of the coming centuries. He also awards all racers for having participated in the ἀγών, for having chosen a peaceful way of measuring their capacities and strength. Here I cannot resist referring to another well-known

τοῦ σεμνοῦ καὶ παγκάλου δημιουργήματος, καθίσας δικαστὰς τοὺς βραβεύοντας τῷ θεῷ τὸν ἀγῶνα etc.

³⁰ W. M. Ramsay, *Studies in the History and Art of the Eastern Provinces of the Roman Empire*, Aberdeen 1906, 305sq., considers the βραβευταί officials who managed the business affairs of a *synodos* or a *koinon*.

³¹ According to J. Knobloch (“Griech. βραβεύς, Kampfrichter”, *Glotta. Festschrift für griechische und lateinische Sprache* 54 [1976], 99-100), the word βραβεύς, a synonym of αἰσυμνήτης, designates the “combat’s judge”. In this sense, the word is used by Plato, *Laws* 949a: καὶ κριτὴν αὐτῶν χορῶν καὶ πάσης μουσικῆς καὶ γυμνικῶν τε καὶ ἰππικῶν ἄθλων ἐπιστάτας καὶ βραβέας. In its athletic sense, the word has passed into Latin: Suetonius, *Nero* 53, 1: *brabeutarum more in stadio humi assidens*, cf. *Dig.* 3, 2, 4, 1: *designatores, quos Graeci βραβευτάς appellant, artem ludicram non facere*.

race: the caucus-race in *Alice in Wonderland*. To Alice's question "What is a Caucus-race?," Dodo responds:

"First it marked out a race-course, in a sort of circle, ("the exact shape doesn't matter", it says) and then all the party were placed along the course, here and there. There was no "One, two, three and away!" but they began running when they liked, and left off when they liked, so that it was not easy to know when the race was over. However, when they have been running half an hour or so, and were quite dry again, the Dodo suddenly called out, "The race is over" and they all crowded round it, panting and asking, "But who has won?" And Dodo answered: "Everybody has won, and all must have prizes".

It is precisely, I think, in that same idea of general recompense that the origins of justice, Greek or other, are found.

But let's return to Patroclus' funeral games. At the end of the race, in which Diomedes arrived first at the winning post followed by Antilochos, Menelaos, Merion, and finally Eumelos, Achilles decided to reverse the order of winners (except for the first, Diomedes), justifying his decision by reasons of "justice"³². In making his decision, Achilles applied two different kinds of criteria: natural abilities and athletic capacities, on one hand, and those arising *ex aequo et bono* (ὡς ἐπιεικέες), on the other. To designate the first winner he applied only the first criterion, and so Diomedes received first prize simply because his horse arrived first at the finish line. For that part of the race, Achilles' role was to observe the race in order to see if the participants respected the rules of the games; to judge their capacities; and to declare the winner(s). Like the athletic arbitrator of later times, and like a judge, he acts as an objective observer, and as the person charged with applying the rules of the games. But, at the same time, by changing the order of winners, Achilles goes beyond the application of the specific rules of the race, to satisfy sentiments of justice, equity or whatever is meant by the adjective ἐπιεικέες, which, as he considers, were offended by the issue of the course³³.

The temptation to compare Achilles' double task with Aristotle's famous statement in the *Rhetoric* (1374b), is, I hope, understandable. Aristotle distinguishes between the tasks of the arbitrator and those of the judge by saying that the first "looks after the ἐπιεικέες whereas the judge looks after the νόμος". The umpire is chosen by the parties, the judge is imposed by the state. The first is bound by his mandators' interests, the second by the law. Thus, contrary to the judge or the athletic arbitrator of later centuries, the third person, who is invited by the parties to decide the issue of an ἄγων between them, physical or other, is not compelled to

³² *Iliad* XXIII, 536-538: λοισθος ἀνὴρ ριστος ἐλαύνει μώνυχας ἵππους· ἀλλ' ἄγε δὴ οἱ δῶμεν ἀέθλιον ὡς ἐπιεικέες, δεύτερον· ἀτὰρ τὰ πρῶτα φερέσθω Τυδεΐος υἱός.

³³ For the holding of prizes by the winners, Homer's words are similar to Virgil's phrase *ducere dona iube*, *Iliad*, XXIII, 511-513: ἐσσυμένως λάβ' ἄεθλον, δῶκε δ' ἄγειν ἐτάροισιν ὑπερθύμοισι γυναῖκα καὶ τρίποδ' ὠτόωντα φέρειν.

apply rules of a specific nature. In deciding, he is free to draw rules from different fields of social life rather than exclusively from the domain of the case at hand, seeking the best solution promoting social peace and wealth.

In Patroclus' funeral games, Achilles' behaviour is that of an umpire who rewards not only the first winner – as will be the rule in later Greek games – but all participants in the same ἀγών. In the field of judicial competition, the idea of recompensing all parties involved is described by the words δικάζειν ἐς μέσον, “to judge in the middle”³⁴ as opposed to the “right judgement/judgment”, the ἰθεῖα κρίσις³⁵. In both the Homeric games and archaic justice, the desire to satisfy all participants in order to preserve or obtain social harmony is clearly distinguishable in the field of arbitration even in late Hellenistic times, as shown by the Magnesian inscription mentioned above. It is precisely this pacificatory aim, which is connoted by the use of the word βραβευτής (or the verb βραβεύειν) in the context of an ἀγών, legal or athletic. Even in the 4th-century A.D. Olympic Games, the umpire, considered to be in “the middle” (μέσος) of the combatants and being therefore τῆ γνώμῃ, is called ὁ βραβεύων³⁶.

I would like to finish my remarks on the relation between justice and games occasioned by the word βραβεύς-βραβευτής with some remarks by David Sansone in his book *Greek Athletics and the Genesis of Sport* (Berkeley and Los Angeles 1988). Developing the anthropologists' definition of sport as ritualized behavior, Sansone notes that:

“Throwing the javelin, for example, had a very specific function in the context of hunting and warfare. Now throwing the javelin persists as a sport, not for its original purpose, namely to kill wild animals or human enemies, but in order to show who can throw the javelin the farthest (p. 31) ... In some cases it is quite obvious that a specific sport has arisen out of what were originally aggressive impulses. This is particularly clear in the ritualized forms of combat that are such a conspicuous feature of the sporting life of many societies ... The second

³⁴ *Iliad* XXIII, 574-575: ἐς μέσον ἀμφοτέροισι δικάσσετε, μὴ δ' ἐπ' ἀρωγῆ, μὴ ποτέ τις εἶπῃσιν Ἀχαιῶν χαλκοχιτώνων. The rule ἐς μέσον, insinuated by Hesiod (*Works and Days* 40-41: ὅσφ πλέον ἤμισυ παντὸς οὐδ' ὅσον ἐν μαλάχῃ τε καὶ ἀσφοδέλω μέγ' ὄνειρα), is observed by the arbitrators: Isaios, *Men.* 29: γνῶναι τὰ συμφέροντα πᾶσιν. Demosth. *Ag. Kall.* 9: ἐπιτρέπειν ἐβουλόμην ἐγώ, τοῖς ἴσοις. *Ibid.* ἀμφοτέροις ἀρέσκει τὰ γνωσθέντα. Plato, *Prot.* 337e: ἐγὼ μὲν οὖν καὶ δέομαι καὶ συμβουλεύω, ὃ Πρωταγόρα τε καὶ Σώκρατες, συμβῆναι ὑμᾶς ὡσπερ ὑπὸ δαιτητῶν ἡμῶν συμβιβαζόντων εἰς τὸ μέσον. According to Aristotle, the rule of “the middle” should also be followed by the judges: καὶ ζητοῦσι δικαστὴν μέσον, καὶ καλοῦσιν ἔνιοι μεσιδίους, ὡς ἐὰν τοῦ μέσου τύχωσι (*Eth. Nic.* V 1132a, 22-23).

³⁵ *Iliad* XXIII, 579-580: εἰ δ' ἄγ' ἐγὼν αὐτὸς δικάσω, καὶ μ' οὐ τίνα φημι ἄλλον ἐπιπλήξειν Δαναῶν· ἰθεῖα γὰρ ἔσται. Cf. *ibid.* XVIII, 508: ὅς μετὰ τοῖσι δίκην ἰθύντατα εἶποι.

³⁶ See Johannes Chrysostomus (A. Wenger, *Huit catéchèses baptismales inédites*, 1957, 155).

characteristic of cultural ritualization ... is that (it) encourages, indeed is one of the vehicles of group cohesion... (p. 33). The third characteristic of ritualized behavior... is that such behavior tends toward exaggeration, stylization and repetition” (p. 35).

Thus Sansone formulates his own definition: “Sport is the ritual sacrifice of physical energy” (p. 37).

This definition of sport may also be applied, *mutatis mutandis*, to justice. What else is the recourse to justice if not the risk of being compelled, in the ritual of a trial or an arbitration, to sacrifice a good, patrimonial or not, a risk which could be avoided if instead of recourse to a judge or arbitrator, one chose the less risky way of reprisals. And the final point: the origins of both justice and athletics can be found in the same particularly complex mosaic, shaped by the rules of social life. In the course of time, gradually losing their proportionality, the different motifs of the mosaic have come to form autonomous sections. Even so, they have maintained some of the “chromosomes” bequeathed to them by their common ancestor, games.

