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A RESPONSE TO ADELE SCAFURO

In this paper Adele Scafuro has examined a term, *hegemonia dikasterion*, ‘the power to preside over a court,’ attached to magistracies, which proves on her analysis to be remarkably interesting, though unclear and problematic in its meaning and application. In the course of her examination she investigates the nature of fourth century B.C. office holding in some detail. Her prime example in the forensic orators, Aeschines 3, is taking advantage of this lack of precision, she argues (and I agree) to mislead the jury about the remit of his opponent Demosthenes’ activities. However in the course of analysing this particular term she has opened up broader issues about the nature and remit of office holding and magistracies in fourth c. Athens which are well worth further exploration.

Aeschines 3 and Demosthenes’ 20 *On the Crown*

After the battle of Chaeronea (338 B.C.) at which Athens was defeated by Philip, the city undertook repairs to the Long Walls as a matter of urgency. The work was democratically divided among the ten tribes, and Demosthenes’ tribe covered section around Piraeus. Demosthenes himself was chosen (*hairetos*) for the responsibility of *teichopoios* (and I agree with Scafuro that this means he was managing wall repairs). Demosthenes’ management of the task eventually became the subject of litigation (the trial took place in 330) between one of his supporters and Demosthenes’ main political opponent Aeschines. It is one of the few cases from fourth century Athens where we have speeches surviving from the opposing sides.

Demosthenes claims he was allocated 10 talents of public money to carry out the work, but supplemented this with a considerable sum of his own. According to Aeschines (3.18), however, Demosthenes only contributed 100 minai. Allegedly because of his generosity in supplementing state funds, and the zeal with which Demosthenes performed his role as *teichopoios*, one of his supporters, Ktesiphon proposed in the *ekklesia* that a crown and an honorific decree should be awarded to Demosthenes, the former to be presented in theatre. After a delay of six years after the proposal, Aeschines attacked it in court as illegal, on what we might call a technicality: that the crown would have been improperly presented before he turned in his accounts and they passed the scrutiny (*euthynai*) expected of magistrates at the end of their term of office (that is someone holding an *arche*).

Scafuro’s paper asks us to consider the ‘law on *archai*’ embedded within Aeschines’ misleading invective. If this is indeed a law (and I wonder) – is this really a ‘law on *archai*,’ or a law more generally about public office specifying those who might either handle public money in substantial amounts for some time or might manage major public affairs – and thus be liable for *dokimasia* (scrutiny) at the start of term of office and *euthyne* (rendering accounts) at the end? Aeschines

attempts to convince his listeners (or readers, in the case of the modern audience) that the law is very precise in its definition of *arche*— is he pulling the wool over our eyes as well as those of the jurors?

As part of his argument Aeschines (3.12) claims that all magistrates in charge of public works have *hegemonia dikasterion* which Scafuro demonstrates is plainly not the case in regard to the specific provisions of IG II² 244. She asks us to consider how *hegemonia dikasterion* was conferred on an office, and suggests the hypothesis that it evolved from the archaic period as a power which developed as temporary offices became permanent. I prefer to ignore the archaic period aspects of the question because I am not sure they are relevant to the most interesting issues raised by our sources. What is clear is that *hegemonia dikasterion* was conferred, in historic times at least, and in the fourth century in particular, by the Thesmothetai, and it was important in the character of fourth century office-holding.

Scafuro also argues, persuasively in my view, that for any type of office, whether *ad hoc* or ‘extraordinary’ magistracies, or for normal, well-established *archai*, that once the office had been granted the privilege of *hegemonia dikasterion* by the state there was no need to grant it again on future occasions when either the office (*arche*) came into existence again after a gap or needed to operate the power after a period of disuse. In other words, the privilege went with the office, not the office-holder, to ask for a court when the occasion arose when it was needed. Scafuro compares the information gleaned from Aeschines 3 with several inscriptions where the term is used or might be applicable, confirming the conclusion that it was not part of all offices or duties and, in the available epigraphical examples, it appears in times of crisis or emergency. Scafuro’s convincing discussion of *hegemonia dikasterion* in this wider context, however, raises two larger issues worth exploring: 1) the degree to which legal terminology is ‘technical’ terminology and 2) the border (or no man’s land) between *archai* and *leitourgiai*, offices or magistracies and liturgies, in fourth century Athens.

Technical language and formal structures.

A term like *hegemonia dikasterion*, sounds like technical language, but is it as technical as it seems? What is legal technical language in such a case, and what weight did it carry? Is Aeschines trying to make semi-technical terminology sound more technical and precise than it actually was? This is surely Demosthenes’ implication in *On the Crown* when he says (Dem. 18.111):

Of the words which this man spoke, jumbling them up and down, concerning the laws which had been summarized, by the gods, I do not think that you were able to understand, nor was I able to make sense of most of it.

Many Greek words have both a ‘technical’ meaning in specific contexts, and a range of broader meanings applicable in other situations. One good example is the word *homologia*. With the broad meaning of ‘agreement’ it can also mean ‘contract,’ but it is difficult to press the case for the word as exclusively technical in

nature. Or, the word *onos*: though the basic meaning is ‘donkey,’ the word can be used in technical contexts to refer to almost any moving part of a machine (e.g. a spindle, millstone or windlass). Rhetors clearly exploited the ambiguities created by the gaps between the technical meanings of words and their more general meanings to muddy the waters and persuade jurors.

From the point of view of this case, the most interesting aspect of Aeschines 3 are sections 14-16 and 29-30: Aeschines’ interpretation of a law supposedly about the accountability of office holders. Aeschines uses it to define what magistracy (*arche*) meant and what posts it covered. Much of the discussion concerns the technicalities and terminology of office holding. At 3.15 he specifically mentions elected office (*tas cheirotonetes archas*), the magistrates in charge of public works (*tous epistatas ton demosion ergon*), ‘those who administer something for the state for more than thirty days,’ and ‘as many as take *hegemonias dikasterion*’ (with the off-hand comment that all epistatai in charge of public works would have *hegemonias dikasterion* – which is probably incorrect as Scafuro convincingly argues). At 3.29 the same argument is compressed and re-arranged into three categories of office holders liable for *dokimasia* (scrutiny before holding office): 1) allotted and elected officials, 2) ‘those who administer something for the state for more than thirty days’ and ‘magistrates in charge of public works’ and 3) if any others received *hegemonia dikasterion*. The sleight of hand here, in section 30 is to lump all tribal and deme officials into the second category, including Demosthenes’ role as *teichopoios*, for which both Aeschines and Demosthenes agree he was neither elected nor selected by sortition, but ‘chosen’ (*hairetos*).

Throughout both discussions Aeschines treats *dokimasia* and *eythyne* as interchangeable. Though the two procedures certainly go together, at either end of office holding, they are not the same. So, for example, *bouleutai* were subject to *dokimasia*, but not *euthyne* since they were not in charge of public monies. This may, of course be more sleight of hand on the part of Aeschines, and may indicate that the law he claims to paraphrase was not as relevant to the case of Demosthenes’ crown as he insists.

With each of these passages, Aeschines has to fend off the argument he expects from the opposition that the post of *teichopoios* does not fit any of these categories but is a duty (*epimeleia*) or a service (*diakonia*) (3.13): ‘What does it [the law] order these men to do? Not to serve (*diakonein*) but to govern (*archein*), having been examined (*dokimasthentas*) in court.’ This is virtually repeated at 3.31. Clearly a whole spectrum of words could be used to describe office-holding in common parlance, which might or might not exactly fit the legal and constitutional parameters of specific magistracies. The way in which this ambiguity is manipulated in Aeschines 3 makes it extremely difficult to ascertain the aim or content of the law which he purports to paraphrase. My guess is that the three groups of magistrates at 3.29 is Aeschines’ own category system, devised to suit his purposes on this occasion, rather than a set of categories extracted from a law.

Office or liturgy?

The impression that Aeschines' discussion of the terminology of office holding makes on a modern audience is that under fourth century Athenian law and constitutional practice the difference between magistracies and liturgies was not entirely clear-cut, thereby leaving room for this kind of politicised legal manoeuvring. But there is more to it than that. David Whitehead,¹ in a perceptive discussion of the language of *philotimia* in honorific decrees, observed that there are clear changes in their formulation from the 360s. Honorific decrees began as *proxenos* decrees, aimed a generous foreigners for the most part, praised as *andres agathoi*. However, from the mid fourth century, distinctions between foreigners and citizens fade, there came to be a clear link to generosity on behalf of the state and the community, and '*philotimia* was held to be the appropriate virtue not only of private individuals but of those holding office.'²

The language of both Aeschines 3 and Demosthenes 18 strongly suggests that Whitehead's observations about *philotimia* and euergetism in the epigraphical record can be applied to forensic oratory as well. When holding office became a subject of *philotimia*, and thus subject to the ambition of office holders and competitive generosity, then the boundaries between magistracies and liturgies, as well as between different kinds of magistracies, must have begun to break down. Demosthenes' one-off job as *teichopoios* must have fallen in the grey area between the two. It is interesting that the term *leitourgia* is avoided in both speeches. However, the very fact that the bone of contention is the presentation of a crown to Demosthenes in the theatre suggests the practice of liturgy, not that of ('traditional') office-holding. Demosthenes himself indeed claims that his role as *teichopoios* is fundamentally euergetistic (Dem. 18. 112):

What law is so unjust and full of misanthropy that it robs of gratitude (charitos) a man giving something and doing things motivated by philanthropy and generosity (philodoron), leads him to the sycophants, and gives them the authority to administer euthyne? There is none. If he says there is, let him show it, and I shall be satisfied and silenced.

As well as implying that Aeschines' paraphrase of the law might have limited relevance, this passage is full of the language of those honorific decrees, the language of *philotimia* and liturgy. Moreover, use of the word *hairetos* ('chosen') throughout both speeches to describe Demosthenes' appointment also has overtones of benefaction, in contrast to magistrates who were generally allotted or elected. In these two speeches perhaps we see the radical democracy of Athens transforming into something else before our very eyes, as financial pressures on the *polis*, the result of military pressures imposed by Macedon, induced the *demos* to redefine good office holding as generosity rather than good management.

¹ Whitehead, D., 'Competitive outlay and community profit: *philotimia* in democratic Athens,' *Classica et Mediaevalia* 34 (1983), pp. 55-74.

² Whitehead, 'Competitive outlay,' p. 65.