LENE RUBINSTEIN (LONDON)

RESPONSE TO JAMES P. SICKINGER

In the late third or early second century, Epikteta of Thera set up an endowment for the funding of sacrifices to the Muses and Heroes. In the inscription, the text of her will is followed by detailed regulations on how the funds are to be administered and the sacrifices conducted by the cultic association (*koinon*), the rules of which are set out on the stone (*IG* XII, 3 330 lines 109-288). In the context of the paper presented by Sickinger, the very final lines of the enactment are of interest, because they testify to an awareness, on the part of the persons who drafted the regulations, of the need to ensure consistency in the decisions made by the association in future, so that the association would continue to operate in the way envisaged by its founder. The text provides for the appointment of an *episophos* who must ensure that Epikteta's will and the law of the association are inscribed both on stone and on a wooden plaque, and he is also instructed to furnish a document box in which all documents pertaining to the association are to be deposited. A *grammatophylax* is given responsibility for bringing this movable archive to future meetings of the association, undoubtedly to facilitate consultation in connection with the decision-making process (*IG* XII, 3 330 lines 267-288).

The evidence of the regulations of Epikteta's *koinon* thus bears out one of Sickinger's most important points, namely that the desire to avoid internal conflict between individual enactments was not confined to classical Athens, and that the epigraphical evidence testifies to consistency as a priority in democratic and non-democratic communities alike. Especially the evidence for special sessions of law-making (*nomographiai*) and revision (*diorthosis*), attested in several communities in different parts of the Greek world, shows this very clearly, although far fewer details are known about these procedures in other Greek states than about the corresponding processes at Athens in the classical period.[1]

However, the epigraphical evidence also has its limitations when used as a source for legal ideology, not least because investigations of other Greek communities almost invariably have to depend on the reading of individual inscriptions in isolation, without the benefit of any additional information on how the enactments were interpreted by litigants and applied by the courts in practice. In my present response, I shall focus first on some of the evidence for attempts by other Greek communities to fill perceived statutory gaps. Second, I shall discuss

[1] *Nomographia*: *e.g.* *IG*IV 679 (Hermione, C3 or C2), *IG* IX, 1^2 192 (Aitolian *koinon* 203/2 BC, see Rigsby 1996: 292-294 no. 132); *diorthosis*: *IG* IX, 1, 4^2 798, lines 137-139 (Korkyra, C2).

some of the problems presented by the non-Athenian evidence adduced by Sickinger for the measures taken by other Greek communities to prevent conflicts between different enactments. Thirdly and finally, I shall touch briefly on the problems connected with the bridging of the gap between legal ideal and legal realities, both at Athens and elsewhere in the Greek world.

I agree fundamentally with Sickinger's observation that there is good evidence, non-Athenian as well as Athenian, to support the proposition that the Greeks generally not only were aware of the problems presented by gaps in their legislation but also tried to address these problems by passing supplementary legislation that was intended to fill such gaps. Sickinger cites a number of passages which set out legislative procedures serving that end or which authorise the passing of such amendments or supplements in various contexts. His examples include some very early attestations of these types of legislative process from Elis and Naupaktos, and in these two instances it is safe to rule out that the communities in question were basing their procedures on an already existing Athenian model.[2]

In what follows I shall adduce as additional evidence a number of non-Athenian enactments that testify to such supplementary legislative measures having taken place in practice. A Chian enactment (*PEP Chios* 26, *SEG* 35: 923) dating from the fifth or fourth century shows very clearly that the more recent enactment was passed in order to address a question which the original enactment left open, and the text provides for the publication of the supplement on the stele on which the older enactment was inscribed.[3] The question addressed in the more recent enactment is what punitive measures should be taken against a priestess who has received a portion in excess of that to which she is entitled according to the earlier enactment. The answer prescribes that she should face the same punishment as the worshippers who make the sacrifice – a penalty which has not been preserved on the surviving part of the *stele*. What is clear, however, is that the more recent enactment relies on its readers' understanding of the context into which it is placed, and without reference to that context the more recent enactment would have been totally unenforceable.

---

[2] *I. v. Ol.* 7 = Minon (2007) no. 4 (C6), *IG* IX, 1^2 718 (Naupaktos C5). Note, however, that the latter document regulates the relationship between the community of Opous and that of the Naupaktians, and that it contains many of the characteristics of a treaty. As will be argued below, the formulation of amendment procedures as found in numerous treaties from across the Greek world is problematic when used as evidence for legislative procedures as they operated *internally* in each of the communities that was party to the agreement.

[3] ἐπὶ Π[ερ]ικλέος· Λε[υ]καθεῶνος ὀγδό̣[ηι· ἡ] βουλὴ ἔγν[ω] βασιλέων ψῆφον θε̣[μ]έν[ω]ν· [τ]ῆ̣ι ἱερέαι τῆ̣ς Ἐλειθίη⟨ς⟩, [ὅ]ταν ἡ πόλις π[ο]ῆ̣ι, γ[ίν]εσθαι τὰ̣ ἐ̣ν̣ [τ]ῆ̣ι στήληι [γ]ε̣[γ]ρα[μ]μέ̣ν̣α̣ κα[ὶ] ἀ̣π̣ὸ̣ [τ]οῦ ἱερέ̣[ο]υ̣ [ἀ]π̣ο̣δ[ό]σ[θ]αι [κ]εφαλήν· ἢ̣[ν] δὲ ἰ[δ]ιώ̣[τ]ης π̣[ο]ιῆ̣ι, γίνεσθαι αὐτῆ̣ι τὰ̣ [ἐν τ]ῆ̣ι στήληι γεγραμμέ̣ν̣α̣· ἢ̣[ν δέ τ]ι ἄ̣[λλ]ο λάβ̣ηι, [ζ]ημιοῦσθ[α]ι, [ὡ]ς ο̣[ἱ θύον]τες τὰ̣ [ἱε]ρ̣[ε]ῖ̣[α]· ταῦ̣τ̣α̣ [δὲ προσ]γ[ρ]άψαι πρὸς τὴ̣[ν] στήλην̣ [παρὰ τῶι Ἡ]ρ̣αίωι· ἐ̣πιμεληθῆναι [δὲ το]ὺ̣[ς ἱε]ρ̣οποιοὺς κτλ.

As far as the Chian example is concerned, the modern reader has an immense advantage because both texts have survived together. There are in fact a substantial number of parallels to such supplementary legislation from other *poleis*,[4] but only a few of them have survived together with the original enactment to which the supplementary enactment refers. Such an 'orphaned' supplementary enactment from fourth-century Miletos (*SEG* 15: 677 = *LSAM* 45) may be adduced to illustrate the problem. The contents of this piece of legislation are very similar to the Chian supplementary enactment,[5] but the Milesian supplement can no longer be fully understood, because its original statutory context has been lost. Such 'orphans' can sometimes be difficult to recognise as pieces of supplementary legislation, but a systematic survey of the practice of inserting statutory cross references into individual enactments, as in the Milesian example, can in many cases help to identify them.

The practice of passing supplementary legislation in order to fill perceived statutory gaps is thus well documented. As Sickinger demonstrates, the same can be said for the abolition of existing enactments in connection with the passing of new decisions. However, it must be pointed out that there are only very few documented examples of abolition of enactments that are explicitly referred to as *nomoi* or *thesmoi*. I have managed to find only three examples, one of which is not altogether secure.[6] If one is prepared to count the instances where one enactment automatically cancels out any earlier conflicting *psephismata* or *dogmata*, the sample grows

---

[4] See *e.g. SEG* 50: 1101 (Bargylia, C2 or C1), *CID* IV 2 (Delphic Amphiktyony, C4), *I. di Cos* ED 178 (Kos, C3), *SEG* 39: 729 = *SEG* 37: 1670 = Kontorini ἀνεκδοτὲς ἐπιγραφὲς Ῥόδου II no. 1 (Lindos, C3).

[5] ἐπὶ Παρ[θ]ενοπαίο, μηνὸς Ἀρτεμισιῶνος, Κεκροπὶς ἐπρυτάνευεν, Φιλίννης Ἡροδότο ἐπεστάτει, ἔδοξεν τῆι βολῆι καὶ τῶι δήμωι, Ἡράκλειτος εἶπεν· τὰ μὲν ἄλλα καθότι ἐν τῆι στήληι γέγραπται· ἐὰν δέ τις μὴ ἀποδῶι τὰ γέρεα τῆι ἱερῆι τῆς Ἀρτέμιδος τὰ γεγραμμένα ἐκγραφέτω αὐτὸν πρὸς τοὺς πράκτορας ὁ κύριος τῆς ἱερῆς ἐπαγγείλας ὀφείλοντα τὴν ζημίην τὴν γεγραμμένην. ὃς δ' ἂν ἐκγραφῆι, εἰὰμ μὴ ἐξομόσει ἐν τῆι βολῆι μὴ θῦσαι ἢ ἀποδοῦναι τὰ γέρεα τὰ γινόμενα, ὀφειλέτω τὴν ζημίην καὶ ἐκπραξάντων αὐτὸν οἱ πράκτορες κατὰ τὸν νόμον. τὸ δὲ ψήφισμα προσεγκόψαι ἐς τὴν στήλην, ὁ δὲ ταμίας ὑπηρετησάτω.

[6] *SEG* 38: 1245; *cf. SEG* 34: 1238 (Kyme?, C3/2):]ομέναν δὲ τᾶν δικᾶν ταύταν καὶ τᾶν διαλύσιων [ἔμμενα]ι τὰν προθεσμίαν τῶ νόμω τῶ παλάω καὶ χρῆσθαι τῶι [νῦν ὑ]πάρχοντι κτλ.; *IK Kyme* 11 lines 12-16 (C3): αἰ δέ ποι ἐν νόμῳ τινὶ ἄλ[λο τι γράφηται ἐνάντιον τῷ ν]όμῳ τούτῳ ἄκυρον ἔστω· τὸν δὲ νόμ[ον τοῦτον ἀναγραψάντων οἱ ἐσσ]όμενοι δικάσκοποι εἰς στάλαι[ς --------]ρας ὁ νόμος οὗτος κυρωθῆ πα[ρ τῶ δάμω; *IG* XII, 5 647 (Koressia, C3): τὸν δὲ νόμο[ν λῦσαι(?) ὃν εἶπεν περὶ — — — —]πά[λ]ης Πολυπείθης, τοὺς [δὲ προβούλ]ους τ[οὺς ἀεὶ ὄντας ἐγ]διδόναι ἐν τῶι Μαιμακτηρ[ιῶνι μη]νὶ τὴμ μησ[..... ἐνά]τηι ἀπιόντος καὶ διδόναι τῶι ἐγλ[αβόν]τι εἰς ἱερεῖα 150 δραχμάς· τὸν δ' ἐγλαβόντα ἔγγυον καταστ[ῆ]σαι, ὃν ἂν δέχωνται οἱ πρόβουλοι ἑστιάσειν κατὰ τὸν νόμον· (...) end of *nomos* text: ἂν δὲ δόξει ὁ νόμος, ἀναγράψαι εἰς στήλην καὶ στῆσαι εἰς τὸ τέμενος.

considerably larger, but in this area I think that it is necessary to proceed with caution.

To be sure, it must not be assumed that the Greek *poleis* generally in the late classical and Hellenistic period operated with a clear distinction and hierarchical relationship between different types of enactments on the model which is known from fourth-century Athens and, for example, the Aitolian *koinon* in the Hellenistic period. In fact, an inscription from Hellenistic Ioulis suggests that even in *poleis* that distinguished terminologically between *nomoi* and *psephismata*, such a terminological distinction was not necessarily applied with any rigid consistency.[7] Indeed, it is highly likely that there were many communities that did not make any distinction at all along these lines. Even so, it must be taken into account that wholesale annulment of previous conflicting enactments usually concerns only *psephismata*,[8] and that some of the examples cited by Sickinger occur in enactments that concern the relationship between two or more states.

I confess to being uneasy about the use of treaties calling for the annulment of older decrees as evidence for a general desire to achieve internal consistency in the body of legislation in a particular *polis*. The decrees, the annulment of which was called for by the terms of these treaties, would have borne embarrassing testimony to a previously hostile relationship between two or more states that had now found it convenient to enter into alliance or another type of positive relationship with each other. Often the decision by a particular state to enter into a binding agreement with another state would have been internally divisive and politically controversial, and if older enactments with a hostile content were allowed to remain valid and on display, such documents would have been ready for deployment as weapons in any future political attempt to have the agreement annulled – and not necessarily through an orderly court-process. For that reason, clauses of this type would have sent a vital message to the other party to the treaty that the relationship was taken seriously and was intended to be lasting.[9]

Likewise, entrenchment clauses are not unproblematic when considered as a 'technique for guarding against contradictions'. For, again, it must be taken into

---

[7] *IG* XII, 5 595 lines 21-23 (Ioulis, C3 or early C2): ἀναγράψαι δὲ τόδε τὸ ψήφισμα [ἐν στήληι λιθίνηι πρὸ τοῦ Πυθίο]υ καὶ χρῆσθαι νόμωι τούτωι ὑπὲρ τῶν χρη[μάτων τοῦ Ἀπόλλωνος εἰς τὸν ἀεὶ] χρόνον· For further epigraphically-attested examples, see F. Quass *Nomos und Psephisma* (Munich 1971), 26-29.

[8] *I. Priene* 61, *I. Magnesia* 92a, 92b, 94, 102, *RO* 25. The Thasian example cited by Sickinger (*IG* XII, 8 264 Suppl. p. 152 = Koerner (1993) no. 71), which concerns the citizen rights of the children born in mixed marriages, is problematic as evidence in the present context: while it is clear that the *prostatai* and the *grammateus* are physically to remove a text currently on display, it is not clear from the text in its present state of preservation what type of enactment is at issue here.

[9] This is very clearly the case in *RO* 22.31-35 (*cf. IG* II^2 43), while *RO* 44.39-40 (*cf.* II^2 116) explicitly orders the removal of a stele which concerned Athens' relationship with Alexander the Great, against whom the Thessalian *koinon* and Athens were now uniting.

consideration that a substantial number of such clauses may have been meant first and foremost to have been read as a guarantee issued to a particular individual, group of individuals, or to another community rather than as a reflection of a desire to ensure general consistency within the community's body of legislation as a whole. From the archaic period to the middle of the second century BC I have so far traced 80 examples of entrenchment clauses, not counting the Athenian ones, and not counting the treaties in which similar clauses occur. Fifteen of the examples do indeed serve the purpose of guarding an enactment of general and permanent validity against alteration as well as physical destruction,[10] and it is interesting to note that five of these concern the distribution of and entitlement to land.[11] The emphasis is often on the inscribed text as a physical object, rather than on the law in more abstract terms: even as late as the mid-fourth century, an Elean enactment graphically prescribes that the person who destroys the text is to be treated as a 'thief of a sacred image'.[12]

However, it appears from the total of 80 examples that the clauses tend to be predominant in certain types of enactment, which concern decisions that directly affect specific individuals or groups. Nineteen examples occur as a measure to prevent virement of funds donated – by endowment or through *epidosis* – for particular purposes and to prevent alterations to the administration and running of Stiftungen according to the wishes of their founders.[13] Another fourteen entrenchment clauses attempt to provide some guarantee to individuals who have

---

[10] *IG* IV 506 = Koerner no. 29 (Argos, C6); *SEG* 33: 275 (Argos, C5); *FD* III 1 294 col. vii (C5 or C4); Minon (2007) no. 30 = *Buck* 65 (Elis, C4); *SEG* 51: 1105 (Eretria, C4); *IK Erythrai u. Klazomenai* 1 (Erythrai, C5); *ML* 32, *SEG* 33: 862, 37: 856, Koerner no. 84 (Halikarnassos, C5); *SEG* 47: 1427 (Himera, C6 or C5); *Syl.* (3) 141 (Issa, C4); Herzog *Heil. Gesetze v. Kos* 12 (Kos, C4); *IP Ark.* 30 (Megalopolis, C2); *IK Mylasa* 301 (Mylasa, *phyle* of Harbesytai, C2); *IG* IX, 1 (2) 609 cf. Koerner no. 47 (Naupaktos, C6/5); *IG* IX, 1 (2) 718, cf. Koerner no. 49 (Naupaktos, C5); *SEG* 43: 293 (Pharkadonioi in Thessaly, C3?).

[11] *ML* 32, *SEG* 33: 862, 37: 856, *cf.* Koerner no. 84; *SEG* 47: 1427 (Himera, C6 or C5); *Syl.* (3) 141 (Issa, C4); *IG* IX, 1 (2) 609 *cf.* Koerner no. 47 (Naupaktos, C6/5); *SEG* 43: 293 (Pharkadonioi (*koinon*), date?).

[12] Minon (2007) no. 30 = *Buck* 65 (Elis, C4): αἰ δέ τιρ ἀδελτώηαιε τὰ στάλαν, ὠρ ἀγαλματοφώραν ἐόντα πάσχην. *cf. e.g. IG* IV 506 = Koerner no. 29 (Argos, C6), Minon (2007) no. 22 = *I. v. Ol.* 16, Koerner no. 44 (Elis, C5), *SEG* 47: 1427 (Himera, C6 or C5), *PEP Teos* 261 (Teos, C5).

[13] *IG* XII, 7 515 (Aigiale, C2); *IC* II v 35 (Axos, C1?); *PEP Chios* 27 (Chios, C3); *Syl.* (3) 672 (Delphi, C2); *IG* XII, 2 529 (Eresos, C2); *IG* XII, 9 236 (Eretria, C4 – Knoepfler *CRAI* (1988) [1989] 382-421); *I. Scyth. Min.* II 58 (Histria, C2); *PEP Kolophon* 4 (with *SEG* 19: 699) (Kolophon,C4); *IG* IX, 1, 4 (2) 798 (Korkyra, C2); *I. di Cos* ED 149 (Kos, 280 BC); *I. di Cos* ED 146 (Kos, C2); *SEG* 51: 1063 (Kos, C2); *SEG* 50: 1195 (Kyme, C3); *I. Milet* I,3 145 (Miletos, C3/2); *I. Didyma* 488 (Miletos, C2); *IG* XII, 6 172 (Samos, C3); Dubois (1989) no. 187 (Tauromenion, C2); *PEP Teos* 41 (Teos, C2); *IG* XII, 3 Suppl. 330 C 61-67(Thera, C2).

entered into a contractual relationship with the community in question against any changes made to their terms.[14]

This third type corresponds very closely to the entrenchment clauses found in a number of treaties, some of which have been cited by Sickinger, and which impose severe restrictions on the alteration of the treaties in question by addition, subtraction, or rephrasing of the agreement.[15] Arguably, the main purpose of such entrenchment clauses is to guard against unilateral alteration of the treaty's terms by one of the parties, and the same is undoubtedly true of the clauses which explicitly permit alterations to such arrangements on condition that the consent of both parties is obtained.[16] Closely related to this is a fourth category comprising a further sixteen documents in which the entrenchment clauses serve to guarantee individual honorands or groups of honorands against any attempt to revoke the privileges bestowed on them.[17]

Finally, a number of entrenchment clauses issue guarantees of a more sinister kind, namely a guarantee to a hegemonic power that sentences passed against his opponents within a given community will not be reversed if the political tide should turn. It must be emphasised that this fifth category does not aim to entrench general enactments in the shape of laws or decrees: the purpose of these clauses is to protect particular *verdicts* against any future attempt to pardon the individuals convicted or to restore confiscated property to them or their descendants.[18] It is thus not internal consistency in the communities' legislation that is the issue here, and these texts are of only very marginal relevance as evidence for the legal ideology prevailing in the communities in question.

---

[14] *SEG* 33: 1034 (Aigai in Aiolis, C3); Migeotte (1984) no. 49 lines 41-46 (Arkesine, C4/3); Migeotte (1984) no. 50 lines 45-51 (Arkesine, C3); Migeotte (1984) no. 51 line 28 (Arkesine, C4/3); *IG* XII, 9 191 A 29-33 (Eretria, C4); *IK Iasos* 220 (Iasos, C5 or C4); *IK Kalchedon* 10 (Kalchedon, C3/2); *IK Kalchedon* 11 (Kalchedon, C3); *I. di Kos* ED 55 (Kos, C4); *SEG* 50: 764 bis; *I. di Cos* ED 237 (Kos, C2); Migeotte (1984) no. 97 lines 24-35 = *Milet* I, 3 147 (Miletos, C3); *I. Priene* 201 (Priene, ca. 200 BC); *I. Priene* 202 (Priene, C2); *I. Priene* 203 (Priene, C2).

[15] *E.g.* Minon (2007) no. 10 = *I. v. Ol.* 9, *IG* IX,1^2 583, *IPArk.* 17.195-200.

[16] See *e.g. IP Ark.* 28.18-19, *IG* IX, 1 98, *IC* I viii 13.21-24, *IC* I xvi 5.45-48, *IC* II i 2b.25-26, *IC* III iii 3a.86-87, *IC* III iii 3b.6-7, *IC* III iii 4.74-77, *IC* III iii 5.8-11, *IC* III iv 6.4-7, *IC* IV 184b.22-25.

[17] *ID* 1520 (Delos, *koinon* of Beryttioi, C2); *Buck* no. 23 = *Inscr. chypriotes syllabiques* 217 B (Idalion, C5); *IK Ilion* 24 (Ilion, ca. 300 BC); *IK Ilion* 36, cf. *SEG* 41: 1049 (Ilion, C3); *SEG* 33: 1039 (Kyme, C2); *IK Adramyttion* 34 (Nasos/Pordoselene C4); *SEG* 41: 1379 (*koinon* of Pernitai, C4); *SEG* 23: 424 (Pherai, C4); *I. Priene* 12 (Priene, C3); *IG* XII, 1 155 (Rhodes: *koinon* of Haliadai and Haliastai, C2); *TAM* III.i 1 (Termessos, C2); *IG* XII, 8 264 and *IG* XII Suppl. p. 152 (Thasos, C4); *IG* XII, 8 267 (Thasos, C3); *IG* XII, 8 355 (Thasos, C3); *IG* XII Suppl. 358 (Thasos, C3); *IG* XII Suppl. 362 (Thasos, C2).

[18] *Tod* II 150 (Amphipolis, 357/6); *RO* 83 = *IG* XII, 2 236 (Eresos, C4); *IK Mylasa* 1 (Mylasa, C4); *IK Mylasa* 2 (Mylasa, C4); *IK Mylasa* 3 (Mylasa, C4).

For the entrenchment clauses generally it can be argued that most of the attested clauses provide extra reassurance to interested parties that their entitlement would not be jeopardised if the community found itself in serious financial difficulties, or if political conditions, be they internal or external, changed dramatically. Indeed, the perceived need for such extra reassurance in treaties, public contracts and honorary decrees may be interpreted as evidence that the communities in question had but few permanent, *general* legal restrictions that could be invoked to prevent the alteration of decisions of this particular type. Furthermore, although many of the entrenchment clauses provide evidence for an awareness that the decisions in question might be undermined by stealth through the passing of apparently innocuous proposals,[19] I think it is debatable to what extent they, and their counterparts in treaties between states, can be interpreted as testifying *primarily* to a desire for statutory consistency in the communities that had framed and ratified the documents.

However, Sickinger also brings up another type of evidence which offers incontrovertible testimony to a general desire to prevent statutory conflict, namely attestations of procedures akin to the Athenian procedures of *graphe paranomon* and *graphe nomon me epitedeion theinai*. In addition to the texts cited by Sickinger,[20] I should like to draw attention to evidence such as that provided by *PEP Chios* 26 which suspends any penalties against those who have proposed the decree or facilitated its passage through the process of ratification.[21] The perceived need explicitly to suspend such procedures obviously testify to their existence in third-century Chios, and *IG* IV 554 from early fifth-century Argos provides a possible parallel.[22] There can be little doubt that procedures of this type, no matter the type of

---

[19] See *e.g. IG* XII,9 236 with Suppl. 553 *cf. SEG* 38: 875 (Eretria C4) and *ML* 32, *Syl.*[3] 45 *cf.* Koerner no. 84, *SEG* 37: 856 (Halikarnassos, C5).

[20] For further references to non-Athenian attestations of this kind of procedure see also J.Triantaphyllopoulos (1985a: 68-69, n. 37) and (1985b: 219-221).

[21] εἰ δ[έ τινα ἐσ]τὶν ἐπίτιμα τῶι γράφοντι ἢ τοῖς προτιθεῖσιν [τόδε τ]ὸ ψήφισμα ἢ τοῖς ἄρχουσιν περὶ τῶν ἐν τῶιδε [τ]ῶι ψηφίσματι γεγραμμένων ἀφεῖσθαι αὐτοὺς τῶ[ν ἐ]πιτίμων· τὸ δὲ ψήφισμα τόδε ἀφήκειν εἰς φυλακὴν καὶ σωτηρίαν τοῦ δήμου.

[22] *Cf.* Koerner (1993) no. 27. The relevant passage runs as follows: αἴ τιστις [ἒ τὰ]ν βολὰν τ[ὰ]ν ἀνφ' Ἀρίσστονα ἒ τὸν⟨ς⟩ συναρτύοντας [ἒ ἄ]λλον τινὰ ταμίαν εὐθύνοι τέλος ἔχον ἒ δικάσ[ζο]ι ἒ δικάζοιτο τον γρασσμάτον Ηένεκα τᾶς καταθέσιος ἒ τᾶς ἀλιάσσιος τρέτο καὶ δαμευέσσθο ἐνς Ἀθαναίαν. At least Koerner's translation (1993: 78) suggests that he regarded this as a possible parallel to the Athenian *graphe paranomon*: 'Wenn irgendeiner [entweder] den Rat unter Ariston oder das Kollegium der Artynai [oder] einen anderen Schatzmeister einer Überprüfung unterzieht, da er ein Amt bekleidet, oder wenn einer einen Prozeß anstrengt wegen der Einreichung der Vorschläge oder wegen der Abhaltung der Volksversammlung...' although he refrains from elaborating this point in his commentary. Wörrle (1964: 32-33 with n 3) is equally cautious. In addition to the Chian and Argive examples, a formula attested in a series of Thasian enactments may also allow a similar interpretation: μὴ [ἐξεῖ]ναι δὲ ὑπὲρ τούτων μηδενὶ μήτε εἰπεῖν μήτ' ἐπε[λθεῖ]ν ὑπὲρ λύσιος μήτ' ἐπιψηφίσαι ἀκρατέα εἶνα[ι ταῦ]τα τὰ ἐψηφισμένα. ὃς δ' ἂν παρὰ ταῦτα εἴπηι ἢ ἐπέλθ̣ηι ἢ ἐπιψηφίσηι, τά τε

constitution under which they were operating, testify to consistency and coherence in the community's legislation as an important priority.

Still, if there is strong evidence for attempts to create and maintain legislation that was coherent as well as comprehensive in a considerable number of Greek states, it remains to be asked to what extent such coherence and consistency could be achieved in practice, both when statutes were created during a legislative process and, not least, when they were to be applied to real cases by the courts. While Sickinger concentrates on the former, that is on the legislative processes themselves and the legal ideology that underpinned them, I shall attempt in what follows to draw attention to some reasons why potential statutory conflict may have been difficult to avoid in practice.

The foundation document of Epikteta's Stiftung, with which I began my response, shows a clear awareness that consistency between different decisions relating to the administration of the foundation could be achieved only if previous enactments were readily available for consultation; hence the creation of the portable archive that had to be brought along to future meetings of the *koinon*. This may have worked for a small organisation with a limited output of decisions, but it is harder to imagine a similar thorough consultation at state level, where the volume of potentially relevant (and therefore also potentially conflicting) enactments was far larger. To some extent this may have been remedied at Athens by permitting decrees and laws to be challenged for a long period after their ratification: if a citizen should later – perhaps much later – come across an older enactment which clearly conflicted with the one that had recently been passed, it would still be possible to remedy the situation and have the more recent enactment overturned. And the regular scrutiny of the body of laws (but, it must be noted, *not* of decrees) may have been an important complement to the legal procedures that clearly relied on the will, courage and inclination of volunteer prosecutors to bring contradictions to the attention of the community and its courts.

I shall refrain here from entering a scholarly minefield by asking to what extent these formal structures succeeded in practice in eliminating conflicting laws and decrees, except to say that, in so far as the elimination of decrees that conflicted with existing legislation depended entirely on the initiative of private citizens, it is very unlikely that the process of elimination was entirely comprehensive or consistent.

δόξαντα ἄκυρα ἔστω κα[ὶ χι]λίους στατῆρας ὀφειλέτω ἱεροὺς τῶι Ἀπόλλωνι τῶι Πυθίωι, χιλίους δὲ τῆι πόλει. (*IG* XII, 8 267, *cf. IG* XII *Suppl.* 350, 355, and 358). This interpretation depends on the meaning of ἐπελθεῖν ὑπὲρ λύσιος: the verb ἐπελθεῖν is probably not used in the usual way of 'approach' or 'address' a decision-making body, since that is made redundant by εἰπεῖν. If, on the other hand, the verb is used in the sense of 'attack', the formula protects the present enactment not only against future contrary proposals that might invalidate its terms, but also against attacks on it made through a process that may well have involved the courts. However, there is also the possibility that the verb may mean 'discuss' (*cf. IK Iasos* 51 line 2 and Plato *Laws* 772C-D), and, if so, would still relate narrowly to proceedings in council and/or assembly.

But even if we imagine that the system worked optimally at the legislative stage, the way in which statutes were used by litigants in court will, in my opinion, have created some serious problems of potential conflicts that could not readily have been preempted, no matter how thorough the scrutiny of the legislation in connection with its passing and ratification, or how large the number of ambitious citizens who might be ready and able to challenge a new piece of legislation through a legal procedure akin to the *graphe paranomon*.

When we as historians treat a law that has survived on stone, we are dealing with a continuous text, the individual clauses of which are most readily understood and interpreted in relation to each other. I think it is highly likely that a conscientious and cautious drafter of a new enactment, be it at Athens or in another Greek *polis*, would have approached earlier legislation in a similar way. He would have had a clear incentive to ensure as far as possible that his proposal would not be open to attack by checking, for example, that his proposal violated neither the letter nor the spirit of an existing law or a decree that had been sealed with an entrenchment clause. The importance of the overall legislative context for the interpretation of individual parts of a piece of legislation has been mentioned earlier in connection with the orphaned supplementary statutes, which are sometimes extremely difficult to deal with precisely because their original statutory context has been lost. This problem, obviously, is due to accident of survival. It would not have impeded the interpretative process in which the proposer of a new law or decree would have needed to engage in order to minimise the risks that he himself would face in connection with the passing of his enactment.

But if we leave the legislative stage to consider how existing laws and decrees were used in practice by litigants when they addressed the courts in actual cases, it is important to note that it was not only permissible but also a very widespread practice to cite or quote individual clauses of particular statutes in total isolation from their original, wider context. It might be objected that when laws were read out by the court attendant, they would normally have been read out in their entirety, rather than as single, free-standing clauses, and therefore that the dicastic audience would inevitably be able to interpret each individual clause with the restrictions that its original context would have provided. This argument presupposes that the documents in, for example, Dem. 23, many of which are precisely such single clauses, were inserted much later in the Hellenistic period, and that they do not reflect what was actually read out to the judges on the day. However, even if this proposition is accepted, it does not really undermine my general point, for a surprising number of litigants rely on simply citing individual clauses of laws in the course of their argumentation, without calling on the court attendant to read out the actual text.

In the appendix to this article, I have set out the instances where laws are read out by the court attendant in speeches delivered before the normal *dikasteria*, as well as listing the 49 extant speeches in which the speaker does at no point ask for a *nomos* to be read out by the official. This, however, does not mean that all of the speakers in the latter category refrain from citing the laws in support of their cases. In fact, no fewer than 25 of the speeches refer directly to specific, individual *nomoi*, ranging from verbatim quotation of single clauses to

less precise paraphrases of the lawtext in question.[23] Moreover, paraphrasing of individual clauses out of context occurs very frequently also in those speeches which do occasionally adduce laws as documentary evidence.[24]

This practice sometimes gives rise to statutory interpretations which to the modern observer seem perverse, precisely in those cases where we know the context from which a particular clause is derived. There are several such examples, but considerations of space do not permit me to cite more than one.[25] In Dem. 43.78, Sositheos, who is contending on his son's behalf for the estate left by Hagnias, cites one clause of Solon's law on intestate succession. His aim is to demonstrate that his opponent's father had 'been in contempt of the law' by adopting his son Makartatos II into the *oikos* of his maternal uncle, Makartatos I, because Solon's law gives precedence to males and descendants of males.[26] When read in its original context, it is clear that this particular clause has nothing to do with adoption, be it *inter vivos* or posthumous. As far as the posthumous adoption of Makartatos is concerned, there is nothing to suggest that the clause in no way affected Makartatos' standing: Makartatos was the closest surviving relative of his adoptive father and thus the legitimate heir to his estate.[27] While it is highly unlikely that the entire case of Sositheos depended on his audience's accepting this interpretation – and many of the listeners might well be able to recall the wider context of this clause for themselves – it is still important to recognise that the practice of citing single clauses out of context broadened the scope for interpretation considerably, and hence also the scope for statutory conflicts when the laws were adduced during disputes in the courtroom.

At least some of the Athenians were aware of this and recognised it as a problem, as is evident from the mutual accusations of Demosthenes and Aischines in the dispute over

---

[23] I have found direct references to particular *nomoi* in the following speeches of the second category: Ant. 5.9, 10, 11, 16-17, Lys. 6.52, 13.91, 22.6, Isokr. 18.2-3, 20.3, Isaios 4.14 and 16, 9.13, Dem. 19.7 and 131, 22.5, 8, 11, 21, 30, 33, 34, 25.73, 26.24, 39.12 and 39, Dem. 45.44, 49.67, 53.27, Aisch. 2.95, Hyp. 1 *Dem.* fr. 1 col I, fr. 6 col. XXIV, 2 *Lyk.* fr. 1 and fr. 3, 3 *Eux.* 4, 7-8, 29, 4 *Phil.* 3, Lyk. 1.102, Dein. 1.71, 2.14, 3.4.

[24] *E.g.* Dem. 20.9, 21.43, Aisch. 1.138. For a detailed discussion of the practice as evidenced in the speeches of Isaios, see M. Edwards's contribution to the present volume.

[25] For another example, see M. Edwards's interpretation of Isaios 10.9-10 in his contribution to the present volume. See also Hillgruber (1988: 106-109) for other possible instances.

[26] καὶ οὕτως ἐστὶν ὑβριστής, ὥστε γενομένου αὐτῷ υἱέος τοῦ μὲν εἰσαγαγεῖν εἰς τὸν οἶκον τὸν Ἀγνίου υἱὸν τῷ Ἀγνίᾳ ἐπελάθετο, καὶ ταῦτα ἔχων τὸν κλῆρον τὸν Ἀγνίου καὶ φάσκων πρὸς ἀνδρῶν αὐτῷ προσήκειν· τοῦτον δὲ τὸν υἱὸν τὸν γενόμενον τῷ Μακαρτάτῳ εἰσπεποίηκεν τῷ πρὸς μητρὸς εἰς τοὺς Προσπαλτίους, τὸν δὲ Ἀγνίου οἶκον εἴακεν ἔρημον εἶναι τὸ τούτου μέρος· φησὶ δὲ τὸν πατέρα τὸν ἑαυτοῦ Θεόπομπον προσήκειν Ἀγνίᾳ. ὁ δὲ νόμος κελεύει ὁ τοῦ Σόλωνος κρατεῖν τοὺς ἄρρενας καὶ τοὺς ἐκ τῶν ἀρρένων· ο τος δὲ οὑτωσὶ ῥᾳδίως κατεφρόνησεν καὶ τῶν νόμων καὶ τοῦ Ἀγνίου, καὶ εἰσεποίησεν τὸν υἱὸν εἰς τὸν οἶκον τὸν πρὸς μητρός. πῶς ἂν γένοιντο τούτων ἄνθρωποι παρανομώτεροι ἢ βιαιότεροι;

[27] For this adoption, see Rubinstein (1993: 123 cat. no. 23). The claim of Makartatos to the estate in its entirety did not go unchallenged; Lys. frs. 217 and 218 (Carey) testify to an unknown person laying claim to half of the estate, while apparently recognising Makartatos II as the rightful heir to the other half. Carey is probably right in suggesting that this claim related to the inheritance left by the brother of Makartatos I, who had predeceased him.

Ktesiphon's decree.[28] Accusations of 'bending' the laws (sometimes expressed by the verbs *paragein*, *diastrephein* and *klimazein*) are made also by other litigants against their opponents.[29] Since it was an offence to cite a non-existent law, it may be suspected that this lesser accusation was in fact connected with the kind of 'creative' interpretation of single clauses out of context.

However, such expressions of unease in relation to partial citation of *nomoi* are rare in the orators, and there can be no doubt that the citation of single clauses in isolation was an established and generally accepted convention in the Athenian courtroom. The convention may reflect the way in which the Athenians (and perhaps the Greeks generally) related to the letter of their written laws as, in principle, unambiguous,[30] to the extent that the unambiguousness would not be adversely affected even when only a single clause of a law was presented to the court. This last observation is thus not new, but it is necessary to bear it in mind, because it highlights the need to separate the process of legislation from the processes in which the laws were applied in practice when discussing the extent to which the Athenian legislative safeguards were likely to have been successful in eliminating conflicting statutes – or, more accurately, *parts* of statutes.

Equally importantly, it is essential to bear in mind the possibility that this attitude to and use of written laws as attested for fifth and fourth century Athens may have been part of a broader Greek legal tradition that existed also in those communities whose legal systems are known only from inscriptions. When the modern historian comes across a large, beautifully coherent piece of legislation preserved on stone it is necessary to envisage the possibility that its provisions were regularly hacked about and cited out of context by litigants when it came to enforcing its clauses in practice. Alas, the nature of the epigraphical evidence does not allow us to assess to what extent this was really the case.

BIBLIOGRAPHY

Brolio, F. [ed.] (1985): Xenia. Scritti in onore di Piero Treves, Rome.

Dubois, L. (1989): Inscriptions grecques dialectales de Sicile. Rome.

Hillgruber, M. (1988): Der zehnte Rede des Lysias. Einleitung, Text und Kommentar. Berlin.

Migeotte, L. (1984): L'emprunt public dans les cités grecques. Quebec and Paris.

Minon, S. (2007): Les inscriptions éléennes dialectales (Vi^{e}-II^{e} siècle avant J.-C.). Geneva.

Quass, F. (1971): Nomos und Psephisma. Untersuchungen zum griechischen Staatsrecht. Zetemata: Monographien zur klassischen Altertumswissenschaft 55. Munich.

Rubinstein, L. (1993): Adoption in IV. Century Athens. Copenhagen.

Triantaphyllopoulos, J. (1985a): Das Rechtsdenken der Griechen. Munich.

Triantaphyllopoulos, J. (1985b): 'γραφὴ παρανόμων fuori di Atene' in F. Brolio [ed.] (1985), 219-221.

Wörrle, M. (1964): Untersuchungen zur Verfassungsgeschichte von Argos im 5. Jahrhundert vor Christus. Stuttgart.

[28] Compare Aisch. 3.35 and Dem. 18.21.

[29] See *e.g.* Isaios 11.4, 36; Dem. 23.215; Dein. fr. 9.3 (Conomis).

[30] *E.g.* Wolff (1970: 68-69).

Wolff, H.-J. (1970): 'Normenkontrolle' und Gesetzesbegriff in der attischen Demokratie. Sitzungsberichte der Heidelberger akademie der Wissenschaften, philosophisch-historische Klasse 1970 2. Abh. Heidelberg.

APPENDIX

Laws read out by the court attendant in Attic forensic oratory
(S = *synegoria*; laws may have been read out by previous speaker)

• Publ. prosecution speeches in which laws are read out by court-attendant (9)
Lys. 14.3, 5, 8, 47 S; Aisch. 1.12, 16, 21, 35; 3.15, 22, 30, 32, 39, 47 (*graphe paranomon*); Dem. 20.27, 92, 95 (bis), 96, 97, 153 S (*graphe nomon me epitedeion theinai*); 21.8, 10, 46, 94, 113; 23.22, 28, 37, 44, 51, 53, 60, 62, 82, 86, 87 (*graphe paranomon*); 24.32, 41-42, 45, 50, 54, 56 (bis), 59, 104 (several laws read out) (*graphe nomon me epitedeion theinai*); 58.5, 11, 14, 21 (bis), 49, 51; 59.16, 52, 87 S

• Publ. prosecution speeches in which laws are not read out by court-attendant (19)
Lys. 6 (incomplete, S), Lys. 12, Lys. 13 S, Lys. 15 S, Lys. 22 (probably S), Lys. 27 (probably S), Lys. 29 (probably S), Lys. 30 (probably S), Dem. 19, Dem. 22 S, Dem. 25 S, Dem. 26 S, Dem. 53, Dein. 1 S, Dein. 2 S, Dein. 3 S, Hyp. 1 *Dem.* (incomplete, S), Hyp. 4 *Phil.* (incomplete, S), Lyk. 1 (the only law read out is the Lakedaimonian law in 1.129)

• Publ. defence speeches in which laws are read out by court-attendant (4)
And. 1.85, 87 (bis), 96; Lys. 9.8; Isaios 11.1, 4, 9, 22; Dem. 18.120 S

• Publ. defence speeches in which laws are not read out by the court-attendant (10)
Ant. 5, Lys. 5 (incomplete, only prooimion preserved, S), Lys. 18 (incomplete, only *epilogos* preserved), Lys. 19 (incomplete, only *epilogos* preserved), Lys. 20 S, Lys. 21 (incomplete, only *epilogos* preserved), Lys. 25 (incomplete, only *epilogos* preserved), Aisch. 2, Hyp. 2 *Lyk.* (incomplete), Hyp. 3 Eux. S

• Priv. prosecution speeches in which laws are read out by court-attendant (18)
Isaios 3.38, 42, 53; 6.8, 48 S; Lysias 10.14, 16, 17; Dem. 27.58, 32.23, 33.3, 27, 36.24, 25, 62, 37.18, 33, 35, 38.4, 17, 40.19, 41.10, 44.14, 46.8, 10 (bis), 14, 18, 20, 22, 24, 26, 47.24, 73, 77, 48.11, 30, 50.57 (probably), 54.24; Hyp. 5 *Ath.* 33

• Priv. prosecution speeches in which laws are not read out by court-attendant (12)
Lys. 32 (incomplete, S); Isokrates 17, 18, 20 (incomplete, *prooimion* and *diegesis* not preserved), 21 S; Isaios 5; Dem. 28 (rejoinder), 30, 31 (rejoinder), 39, 45 (but note that laws are cited extensively in the rejoinder, Dem. 46), 49

• Private defence speeches in which laws are read out by court-attendant (6)
Isaios 2.16 S; Dem. 29.39 S, 34.37, 42 , 35.51, 52.19, 57.31, 57.32

• Private defence speeches in which laws are not read out by court-attendant (4)
Isokr. 16 (incomplete, only part of *pistis* section and *epilogos* preserved), Lys. 23,
Isaios 12 (incomplete, S), Dem. 55

• *Diadikasia* speeches in which laws are read out by court attendant (5)
Isaios 7.21, 22 (bis), 8.34, 10.10 (several laws read out), Dem. 42.16 (several laws read out), 23, 43.16, 50, 53, 56 (several laws read out), 62, 71, 75 S

• *Diadikasia* speeches in which laws are not read out by court attendant (4)
Lys. 17; Isaios 1, 4 S, 9.