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POLIS AND LEGISLATIVE PROCEDURE IN EARLY CRETE

Ignored by literary sources, the small archaic *polis* of Dreros in east Crete would have remained insignificant for the history of early institutions had it not produced some of the oldest inscriptions in Greek alphabet. Throughout the Hellenic world the rise of the *polis* is linked closely to the creation of written law: resolutions of the community concerning the regulation of common life within this new form of social organization had to be recorded in written form. Dreros provides a typical example of this rule, although neither the quantity nor the quality of the epigraphic material is promising. Excavations brought to light eight archaic inscriptions, coming from the sanctuary of Apollo Delphinios, all of which seem to record statutory texts¹. Despite their fragmentary condition, a persistent researcher is recompensed by the variety of issues addressed by these laws, which attests to a strong feeling of this small community about creating their own laws and recording them on stone.

The first of these, probably the only one which is preserved in its complete form, is a well-known law limiting the iteration of the office of *Kosmos*, dated to the middle of the seventh century, and generally considered as the earliest legal inscription from Greece². It records a resolution made by an organ designated as the πόλις, which sets up a time-limit of ten years within which a person was not permitted to hold the office of the highest magistrate (*Kosmos*)³. Obviously, the aim of the law was to prevent certain persons from monopolizing the highest office, and this would be achieved by establishing a more balanced share in political power

¹ The first was published by Demargne – van Effenterre 1937, 333-348, and six texts appeared in van Effenterre 1946a. The last inscription was published by van Effenterre 1946b, who considered it as bilingual with the first two lines in Eteocretan; but see Faure 1988-89, especially 96-98.

² Demargne – van Effenterre 1937, 333-348 = Koerner no 90 = *Nomima* I no 81: ἄδ' ἔφαδε | πόλι | ἐπεὶ κα κοσμήσει, | δέκα φετίον τον ἄφτον | μὴ κοσμεν | αἱ δὲ κοσμησίε, | ὅ[π]ε δικασίε | ἄφτον ὀπῆλεν | διπλεῖ κάφτον ἄκρηστον | ἦμεν, | ἄς δόοι, | κῶτι κοσμησίε | μηδὲν ἦμην. ὁμόται δὲ | κόσμος | κοὶ δάμιοι | κοὶ | ἴκατι | οἱ τὰς πόλ[ι]ος.

³ Quite ironically, this precious text creates as many problems as it resolves. Apart from two crucial *hapax legomena*, and much confusion about substance, there is an incomprehensible phrase inserted between the first two lines, possibly read as «θιὸς ὄλοιον», which may be an appeal to divinity or to divine punishment. See the account in *Nomima* I, p. 309, cf. Gagarin 2008, 46.

among members of the élite. There can be little doubt that the law was enacted *ad hoc*, as a remedy after an instance or a period when power had been accumulated in the hands of one or a few aristocrats, and that it was intended to distribute (or re-distribute) the share in power on a more equal basis to a wider number of aristocrats. Transgression of the law had severe consequences on the *Kosmos* in question: all his actions during the illegal tenure were annulled and he was obliged to pay double every fine he had imposed as a judge; more significantly, he was to lose his citizen's rights and be degraded from the body of active citizens⁴.

Interestingly, the introductory sentence ἄδ' ἔφαδε πόλι contains the earliest epigraphic mention of the word *polis*, which appears again in the final line, in the designation of the mysterious body called "the Twenty of the *Polis*". The verb ἔφαδε is the Cretan equivalent to Attic ἔδοξε, which commonly introduced Greek legislative texts, and the word πόλις clearly designates the body which made the decision. In what concerns the term πόλι, the original editors took it for granted that it corresponds to the Assembly of the citizens, and asserted that the Drerian Assembly's right to vote laws was well-established in a very early period⁵. The enthusiasm over the discovery of this inscription was shared by other scholars; Ehrenberg pointed out the use of the word πόλι instead of the individual name of the people as an attestation of the "rational consciousness of the Polis as a distinct and complete community, a consciousness which we did not expect in Dorian Crete" (1943: 14). However, in what concerns the editors' interpretation of the word πόλι as the citizens' Assembly, Ehrenberg ingeniously remarks: "or rather, the constitutional representative of the State, whether that be the assembly or something else", and he argues that this type of prescript "may mean just the opposite, namely that council or officials acted for the people or the State—in its name as well as on its behalf—originally perhaps even without being compelled to consult the assembly" (1943: 15). Oddly Ehrenberg's observations had little impact on subsequent bibliography, where *polis* is usually considered as a synonym of the Assembly of the Drerian citizens. One exception was Beattie, whose enquiry led to the conclusion that "the word *polis* in Crete must have been restricted in certain contexts to mean the executive body which normally handled questions of policy and administration, the Council of elders" (1975: 14).

An enactment formula of the type 'the *Polis* has decided' seems to be particular only to archaic Dreros, as it is unattested elsewhere in the Hellenic world, and on Crete itself it is not reported from other cities. Among the Drerian documents it appears once more, in the prescript πόλι ἔφαδε of another seventh-century law⁶. In general,

⁴ On the meaning of the word κρηστός (= χρηστός) and its opposite ἄκρηστος see Ehrenberg 1943, 15-16, and Jacoby 1944, 15. The discussion of ἄκρηστος as an equivalent to ἀπόκοσμος by Papakonstantinou 1996, 93-96 is not convincing.

⁵ Demargne – van Effenterre 1937, 342.

⁶ Van Effenterre 1946a, 590 no 2 = Koerner no 91 = *Nomima* I no 64:

the surviving prescripts of the other Cretan statutes adopt two different forms, according to their date. The first type appears in a few fifth-century texts, which are also introduced by the verb ἔφαδε, but the deciding body is designated by the individual name of the people, in the form ‘The Lyktians (or Gortynians or Eltynians) have decided’. Perhaps the earliest example is provided by two laws inscribed on both faces of a stone slab from Lyttos, dated around 500; the subjects regulated by these laws are the reception of foreigners⁷ and the pasture of animals⁸. The same form of preamble appears in two fifth-century laws, one from Eltynia about injuries⁹, and one from Gortyn about the installation of new inhabitants as metics in the area of Latosion, which in addition provides the information that the law was passed by vote¹⁰. The second type of enactment formula appears in Hellenistic decrees, where the pattern is similar to the one followed by other Greek cities of that period. Here the verb ἔφαδε is substituted by ἔδοξε, a current form of the *Koine*, and the decision is registered as the product of a collaboration of the *Kosmoi* with the *Polis*, e.g. ‘The *Kosmoi* and the *Polis* of the Knossians have decided’¹¹. As opposed to the limited instances of the first form, this type is abundantly attested in decrees of the third and second century from all Cretan cities, and it may be considered as the common way to introduce a decree in Hellenistic Crete¹².

The aim of a prescript is to record the name of the individual or the body which took the decision, but obviously there may be different bodies entitled to enact laws. On the other hand, a word does not necessarily have the same meaning over time,

πόλι ἔφαδε διαλήσασι πυλάσι | ὅστις προ. l---

--- ἐμ | πολέ[μοι] εἶε, μὴ τίν<τ>εσθα(ι) τὸν ἀγρέταν.

⁷ H. and M. van Effenterre 1985, 158-162 = Koerner no 87 = *Nomima* I no 12 Face A, ll. 1-2:

[Θιοί. ἘΦ]αδε | Λυκτίοισι | ἀλ(λ)ο-
πολιάταν | ὅστις κα δέκσ[εται] .

⁸ H. and M. van Effenterre 1985, 158-162 = Koerner no 88 = *Nomima* I no 12 Face B, ll. 1-3:

[Θι]οί. | ἘΦαδε | Λυκτίοισι | τῆς κοι-
ναωνίας | καὶ τᾶ(ς) συνκρίσιος | τ[ῶν π-
ροβ]άτων | καὶ τῶν καρταιπόδων | καὶ.

⁹ *IC* I x 2 = Koerner no 94 = *Nomima* II no 80, l. 2:

[τάδ’ ἔφαδε] τοῖς Ελτυνιοῦσι | αἱ κ’ ἄρκει μάκας | ἀποτεισεῖ | δέκα δαρκνάς | ὅπε κ’
ἄρκει[ι--].

¹⁰ *IC* IV 78 = Koerner no 153 = *Nomima* I no 16 l. 1: Θιοί. Τάδ’ ἔφαδε τοῖς Γορτυνίοις
πασαίδονσ[ι--].

¹¹ *IC* I viii 6: Ἐδοξε Κνωσίων τῶι κόσμωι καὶ τῶι πόλει (Knossos, mid-third century).

¹² See also Δεδόχθαι Λυττίων τοῖς κόσμοις [καὶ τῇ] πόλει (*IC* I xviii 8, Lyttos, third century); Γορτυνίων οἱ κόσμοι καὶ ἡ πόλις (*IC* IV 168, Gortyn, 218); Δεδόχθαι τοῖς κόσμοις καὶ τῶι πόλει τῶν Ἀλαριωτῶν (*IC* II i 1, Allaria, ca 204/3); Ἐδοξε Φαξίων τοῖς κόσμοις καὶ τῶι πόλει τῶν Ἀλαριωτῶν (*IC* II v 17, Axos, ca 204/3); Ἀπετραίων οἱ κόσμοι καὶ ἡ πόλις (*IC* II iii 2, Apera, after 170); Ἐδοξεν Ἀρκάδων τοῖς κόσμοις καὶ τῶι πόλει (*IC* I v 52, Arkades, after 170), to cite only a few examples.

and the term *polis* in the seventh-century formula ἔφαδε πόλι may not denote the same thing as in the Hellenistic formula ἔδοξε τῷ κόσμῳ καὶ τῇ πόλει. What can be safely inferred from the Drerian texts is that the *polis* is a collective body with legislative authority but there is nothing to imply that this is the technical term for the Assembly of the Drerian citizens. There are especially two points that raise scepticism, which so far have not been taken into consideration. The first point which is difficult to explain is the absence of the *Kosmoi* from the prescript of these laws, and the second is the fact that the *Polis* appears as a sovereign body. Both points are in contradiction to our knowledge about Cretan institutions. It is well established from both literary and epigraphic evidence that the regime of Cretan cities had been aristocratic from the archaic through the Hellenistic period. The supreme power was exercised by the officials known as the *Kosmoi*, who are widely attested since the earliest inscriptions from Dreros, Gortyn, Eltynia, Axos, and Eleutherna. They were military leaders and governors of the city, who had judicial authority and took all essential decisions with the assistance of the Council, which consisted of ex-*Kosmoi*. By contrast, the role of the citizens' Assembly in decision making was very weak. Aristotle (*Politics* 2, 1272a 10-11) expressly states that at his time the Assembly had no other substantial competence but to ratify the resolutions of the magistrates, and Ephoros, quoted by Strabo (10.4.18 and 22 = *FGrHist* 70F 149) refers to the *Kosmoi* and the Council in two passages but makes no mention to the Assembly. This is confirmed by the quasi-absence of the Assembly from the epigraphic evidence of the archaic and classical periods. All this is hardly compatible with a seventh-century city where the citizens' Assembly had sovereign legislative authority, more so, as this law appears to be a product of the sole *Polis*, with no initiative or any other intervention of the *Kosmoi*. The assumption that the word *polis* in the Drerian law is the technical term for the Assembly of the citizens, which had a 'well-established right to vote laws', makes this body appear as identical or at least as similar to the Athenian *ekklesia* of the classical period. Should we suppose then, that this small Cretan city of the seventh century had a precocious democratic regime, which later became aristocratic, or would it be more realistic to suggest, following Ehrenberg, that the term *polis* is not to be identified with the Assembly of the Drerian citizens?

For our purposes, it will be helpful to survey the use of the word *polis* in the other Cretan inscriptions from the archaic and classical periods. The preserved instances where this word is legible are few, but it clearly appears with one of the following two meanings: either in the sense of autonomous political community, or in the sense of the urban centre, the geographical territory of a *polis* as opposed to other places. *Polis* in the first sense is predominant; it appears so often and in such subtle nuances that it seems justified to designate it as the fundamental meaning. One of the earliest attestations is provided by a sixth-century passage which was inserted in the Hellenistic oath of the ephebes of Dreros, and narrated an attempt made in the

past by the enemy city of Milatos against the *polis* of the Drerians¹³. Another early example comes from a statute of Axos on public works, which orders some people to work for the *Polis* for five days without salary and states that if they meet some requirements, each one of them will owe nothing to the *Polis*¹⁴. A law of similar content from mid-fifth century Gortyn provides that ‘if they do not want to work, the *Kosmos* in charge of strangers must inflict a fine of ten staters for each infringement payable to the *Polis*’¹⁵. In two laws from early fifth-century Gortyn one reads ‘the *Polis* allotted the land in Keskora and Pala for planting’¹⁶, and ‘if the *titai* do not apply the law, they must pay double the fine, half to the plaintiff and half to the *Polis*’¹⁷. *Polis* meaning political community is also attested in laws from Eltynia, Tylissos, and Knossos, and it is restored in a sixth-century law from Eleutherna¹⁸. A very interesting use of the word *polis* appears in a seventh-century fragment from the sanctuary of Apollo Pythios in Gortyn¹⁹ where πόλι πάνσα, ‘the complete *polis*’, is associated with levying fines; this phrase suggests a distinction between πόλις and πόλις πάνσα, the latter being broader than the former.

Polis in the second sense appears less frequently. An early attestation is the phrase “neither in the borderland nor inside the *polis*” in a law from Eleutherna dated to ca 500²⁰. More examples are found in the rich Gortynian documentation, e.g. in the law about public works mentioned above, which provides that ‘for this salary must work all residents of the *polis*, both free and slaves’²¹, or in the Great Code where ‘houses in the *polis*’ are mentioned in accordance with inheritance regulations²².

¹³ IC I ix 1 = *Nomima* I no 48, ll. 144-151: καὶ οἱ Μιλάτιοι / ἐπεβόλευσαν / ἐν τῇ νέαι νε/μονήϊαι τῇ πόλῃ τῇ τῶν Δηρ/ρίων ἔνεκα τᾶς / χώρας τᾶς ἀ/μᾶς.

¹⁴ IC II v 1 = *Nomima* I no 28, ll. 6-7: πέντ’ ἀμέρας Φερ/γακσα/[μένο]ς τῇ πόλῃ ἀμίστος; ll. 10-11: [ἀ]φτὸς ἢ Φεκάστος μὴ ἰνθέμεν / τῇ πόλ[λ]ι. Last quarter of the 6th century.

¹⁵ IC IV 79 = *Nomima* I no 30, ll. 12-16: [Αἰ δ]ὲ μὲ λείοιεν Φερ[γά/δδε]θαί, δέκα στατέ[ρ]α[ν]ς / τῷ πα[θ]έματος Φεκάστ[ο] / τ[ὸν] κσένον[ν] ἐ]στει[σάμ/ε]νον πόλι θέμεν; cf. *ibid* l. 21.

¹⁶ IC IV 43 B a = *Nomima* I no 47, ll. 1-3: Θιοί. Τὰν ἐ[ν] Κησκόρα καὶ / τὰν ἐμ Πάλαι πυταλιὰν ἔ<ε>/δοκαν ἃ πόλις πυτεῦσαι.

¹⁷ IC IV 78 = *Nomima* I no 16, ll. 7-8: Αἰ δ’ οἱ τίται μὲ Φέρκσιεν ἅι ἔγραται, τὰν διπλεῖαν ἄ[ταν] τούτ[ων] τοῖ μ[ε]μπομένοι ἀποδόμεν καὶ τῇ πόλῃ θέμεν.

¹⁸ Eltynia: IC I x 2 ll. 3 and 8; Tylissos and Knossos: IC I viii 4b l. 12 = *Nomima* I no 54 II B l. 32; Eleutherna: IC II xii 14a l. 5 = *Nomima* I no 46: . [π]όλις α[.].

¹⁹ IC IV 13 = *Nomima* I no 1. The same phrase is tentatively restored in another Gortynian inscription from the end of the 6th century; see *Nomima* I no 3: [πόλ?]ι πά(ν)σα[ι?].

²⁰ IC II xii 16 A b = *Nomima* I no 26, ll. 2-3: μὴ ἰν ἀπαμῖαι μ[η]δ’ ἰν πόλῃ.

²¹ IC IV 79 = *Nomima* I no 30, ll. 7-12: Φερ/[γάδδ]εθαί δὲ ἐπὶ τοῖ μ[ι/σ]τοῖ ἀντὸι πάν[τ]α [τοῖς] / ἐμ πόλῃ Φοικίονσι το<ῖ>ς [τ’ / ἐλ]ευθέροις καὶ τοῖς δόλ[λ]οις. Cf. the similar expression πά[ν]τα τοῖς ἐμ πόλῃ Φοικίονσι from another law dated to the fifth or fourth century (IC IV 144, ll. 9-10).

²² IC IV 72, iv 32 and viii 1-2. Cf. also a fragmentary law of the fifth century (IC IV 45 B l. 1 = *Nomima* II, no 69: ας ἐς πόλιν η...ε...γαν).

The conclusion that the two preponderant meanings of the word πόλις are ‘autonomous political community’ and ‘urban centre’ is also proven to be the rule for texts from other Greek cities, with the Athenian exception of *polis* meaning the *acropolis* of the city in a number of early inscriptions. An exhaustive examination of epigraphic texts from the archaic and classical periods down to the year 300 led by the Copenhagen Polis Centre classified all occurrences of the word *polis* in the senses of ‘political community’, ‘town’, ‘territory’ and ‘acropolis’, and gave an 85% of all attestations for the sense of ‘political community’²³.

An interesting use of the word *polis* occurs in the famous sixth-century ‘Spensithios decree’ by which the citizens of Datala, a city in the area of Lassithi not far from Lyttos, decided to hire Spensithios as a life-long *mnamon* and *poinikastas* for the city²⁴. According to the introductory formula, ‘the Datalais have decided and we, the *polis*, that is five from each tribe, concluded the contract with Spensithios’; in the following lines the terms of the contract are set. In this inscription reference is made to two different bodies involved in legislative and executive authority. The first body, designated as the Datalais, exercised its legislative authority in the resolution to hire Spensithios as the public scribe²⁵. The second, called the *polis*, is a small board consisting of five citizens from each tribe, in other words fifteen or twenty citizens or more, according to the number of tribes in the city of Datala, which is unknown. As it is specified in the text, this board was appointed by the Assembly of the Datalais in order to perform a certain duty, i.e. to sign the contract with Spensithios, so as to execute the decree. The wording of the inscription suggests that this body was not permanent but rather a representative board formed *ad hoc* for the execution of this particular resolution, therefore identification to the Council should be excluded²⁶.

This evidence, which is posterior to the Drerian laws by almost a century, may be more useful for our understanding of the meaning of the word *Polis* in the archaic period than the enactment formulas in Hellenistic decrees. Apparently, in the archaic texts the word *Polis* could be employed to designate any collective body which exercised political authority and thus represented the political community. However, the question on the nature and composition of the Drerian board designated as the *Polis* remains open. More significantly: was the composition of this board fixed by law?

²³ Hansen 2007, especially P. Flensted-Jensen – M. H. Hansen – Th. Heine Nielsen, ‘Inscriptions’, pp. 73-91.

²⁴ Jeffery – Morpurgo-Davies 1970, 118 = *Nomima* I no 22.

²⁵ A long debate about whether the Datalais were a *startos*, a clan or a tribe (Jeffery – Morpurgo-Davies 1970, 118-154; Ruzé 1983, 301-305) or a city (Gschnitzer 1974, 265-275; Beattie 1975, 8-47) has been solved after Viviers 1994 argued convincingly for the location of the city of Datala in Lassithi.

²⁶ Cf. Ruzé 1983, 303.

Perhaps the best way to approach this archaic body called the *polis* would be to consider it less in terms of positive law and more in the context of conflict among the aristocratic families, which is amply illustrated by our sources, including the first Drerian inscription. The *polis* then would be composed of the powerful chieftains of the local élite; these aristocrats would convene whenever a resolution was needed, which plausibly concerned mainly the distribution of power among them. The absence of the *Kosmoi* can be explained if we admit that they were included in this obscure body. This may imply that, at least during that period, those who were elevated to the supreme office were not indeed much more powerful than the rest of the aristocrats. In other words, *Polis* would not correspond to the assembly of the citizens, but to the overall organ which was authorized to make the laws, i.e. the members of the elite as a whole, one or a few of whom held the office of *Kosmos*, together with the rest of those who had citizen rights. To put it in classical-period terms, the Drerian *Polis* was composed of the Assembly plus the Council and the Magistrates. But during this early period the degree to which the political organs of Dreros were each assigned by law with specific and determined competence is subject to speculation.

The content of the first Drerian inscription clearly shows that the official organs of the city, at least the prevailing ones, had already been established, either by law or, more probably, by custom. It is also affirmed that the office of *Kosmos* had become annual, and that the administration of justice was definitely one of their most important authorities, although there is no indication about the number of officials who composed the board at that time, and the possibility that there was only one *Kosmos* in function each year cannot be excluded. The number of twenty composing the board named simply after its number points most likely to the direction of a Council consisting of the most respectable (and powerful) elders, but we are rather far from a proper Boule with a defined role and attributions in what concerns legislative procedure; most probably their authorities were not yet specified by law. As for the mysterious *Damioi*, who have long perplexed scholars, the derivation of the word from *damos* certainly implies a popular element. Would that be the entire body of those with citizen rights? It seems probable, and in that case this early law would include mention of all principal constitutive elements of a city's government. Of course at this point, there can be no serious discussion about the number of citizens composing the Assembly. There can be little doubt that all these organs, the *Kosmoi*, the Twenty and the *Damioi* were the participants to the *Polis*, the body which appears in the preamble of this law with legislative authority. On the other hand, the extent to which the authorities of these organs were defined by law is unclear. The preamble of the law does not imply a refined procedure which would entail the proposal of the law during an earlier meeting of the Assembly, and the subsequent preparation of the proposal by the Council.

One further point concerning legislative procedure in archaic Dreros is the presence of the *phylai* as an active element in decision-making, which is illustrated in the second Drerian law (above, n. 6). This short text records a resolution of the *Polis* (πόλις ἔφαδε) which was reached with the consent of the tribes (διαλήσασσι πυλᾶσι). According to van Effenterre (1946, 590 no 2) the etymology of the *hapax* term διαλήσασσι should be connected with the verb ἵλλω, which denotes ‘to gather, to assemble, to muster’ etc but also ‘to obstruct’ (*LSJ*⁹ s.v.)²⁷. Although it is a problematic term, commentators generally agree that it denotes the consent given by the tribes to the decision of the *Polis*.²⁸ The text gives no hint on how the consent of the tribes was accorded. It may have come from only the elders of each tribe or it may have been the result of convocation of the tribes in full, who discussed the proposition and came to a decision. If the latter was the case, the question arises as to how the gathering of the tribes is connected to the gathering of the *Polis*. One possibility is that the assembly of the tribes preceded the Assembly of the *Polis*, either in different gatherings of each tribe or in a united assembly of all tribes; another possibility, which seems more probable, is that the consent of the tribes was given during the session of the *Polis*. Taking into consideration that the verb εἶλω denotes ‘to gather’, then an extensive gathering of the tribes is suggested, as it is reflected in most modern translations of this passage. The parallel with the Roman *comitia tributa* is easily drawn, where Roman citizens were convoked and voted by tribes, not individually, although the nature of Roman tribes differs essentially from Cretan tribes.

It seems plausible that at Dreros, as in the Roman example, the tribes served as the basic unit of gathering those who had citizen rights into an Assembly, which played a decisive part in the administration of the early *polis*, and therefore the phrase “with the consent of the tribes” would simply mean ‘approval by the Assembly’. This point may lead to some further considerations regarding the procedure of decision making in archaic Cretan cities. The very wording of the formula suggests a blurred role for this ‘phyletic’ assembly. At a very early date, its constitutional function may not have been established by law; on the other hand, a general approval of the decision of the leaders would be necessary for maintaining peace and order in the *polis*. An evolution of this assembly of the citizens would have been the body denoted as ‘the Drerians’ in later texts.

²⁷ ἵλλω or εἶλω, εἰλέω, εἰλέω, εἵλλω, εἵλλω. Cf. the forms καταφλημένων τῶμ πολιατᾶν and κατ’ ἄγορὰν Φηρυμέναν in the Great Code of Gortyn.

²⁸ Translations of the passage usually follow this etymology. Roussel 1976, 257 n. 4: «il a plu à la cité, les phylai ayant approuvé»; Ruzé 1983, 303: «la cité a décidé, les tribus étant réunies au complet»; Jones 1987, 228: “the *phylai* having been consulted” or “The *phylai* having expressed their wills severally”; Koerner 1993, 338: “Die Polis hat beschlossen nach Konsultation der Phylen”; Rhodes – Lewis 1997, 309: “separate meetings of the tribes in addition to the meeting of the assembly”, or “a meeting of the assembly at which the tribes voted separately”. Surprisingly in *Nomima* I, p. 270 two different options appear: «Décision de la cité, après consultation (ou dispersion ?) des tribus».

Organization of the assembly by *phylai* was probably a characteristic of all early Cretan cities. In a fourth-century inscription from Axos, the tribes appear next to the names of the *Kosmoi*²⁹, and at sixth-century Datala, as we saw, each tribe provided five of its members to form the board called the *polis* in order to conclude the contract with Spensithios. Some epigraphic testimonies from other Greek cities show that the tribal organization of the citizens' Assembly was not exclusively Cretan. Three decrees of much later date from Mylasa, which have been paralleled to the Drierian law, are each prefaced by the formula 'The Mylasians decided in a formal assembly and the three *phylai* ratified'³⁰. It has been argued convincingly that the three *phylai* were the same body as the Assembly of the Mylasians³¹, and that the clause 'and the three *phylai* ratified' was used in order to stress the fact that the Assembly which confirmed the proposal was organized by tribes³². Still, Mylasa was a Carian city and the parallel with early Crete can be seen with some scepticism. On the other hand, possibly a law from Selinous on Sicily should be added to the early attestations of the tribes' control over political decision-making. This law, dated roughly to the end of the fifth century, regulates the return of political refugees³³; if the word φ[υλ]α[ι] can be restored, the inscription may record a process identical to the one in the Drierian law, where the resolution of the *Polis* is connected to the consent of the tribes. From this fragmentary inscription we are also informed that the magistrates of Selinous were called αἰσυμνήται, and there is a mention of the technical term for the Assembly, which was [hα]λία. Therefore the πόλις, which in the text appears as the deciding body, was different from the ἁλία, and could denote, as in the Drierian law, the overall 'constitutional' body, including the *aisymnetai*, the *halia*, and eventually a Council.

If the word *polis* in early Cretan laws was used in a broader sense to denote the whole deliberative body including officials and Council, the question remains open as to which was the technical term for the Assembly. Willetts scrutinized the

²⁹ Manganaro 1966, 11-12; Sokolowski 1969 no 145. According to the (less likely) reading by van Effenterre 1985, 299, the tribes were required to give their consent to decisions made by the authorities (καὶ φυλαῖς Φάδων).

³⁰ Rhodes – Osborne 2003 no 54 = Rhodes – Lewis 1997, 341 nos 1, 2 and 3: “ἔδοξε Μυλασεῦσιν, ἐκκλησίης κυρίας γενομένης, καὶ ἐπεκύρωσαν αἱ τρεῖς φυλαί” (367/6, 361/0, and 355/4).

³¹ Le Bas – Waddington 1870, 377-379, as against Boeckh 1843, 2691 c, d, e, and p. 473, who interpreted the Mylasians as the “urban citizens” as opposed to the three “rural *phylai*”.

³² Ruzé 1983, 304 with n. 28. According to Jones 1987, 228, the *phylai* convened in separate assemblies and rendered independent judgments on the acts of the full citizen body; yet a procedure involving the citizens in two different formations deciding twice on the same issue seems redundant.

³³ *IoO* 22: Ἡ πό[λ]ις --σε κα[ι] α[ι]νῶνται φ---α-. Translation in *Nomima* I no 17 d-e-f: “La cité (?) a décidé (?) et les - - l'approuvent (?)”.

evidence from all Cretan cities from the archaic to the Hellenistic era, and came to the right conclusion that no information is preserved about the Assembly in the archaic period, apart from an indication that “the old term *agora*” was used for its meetings³⁴. He assumed however that it was the term *agora* which was used in earlier times for the Assembly, and that it was later replaced by the word *polis*, perhaps by the fourth and certainly by the third century (1955: 116). Willetts appeals to two passages of the Great Code of Gortyn, containing the word *agora*, which he interprets as the citizens’ Assembly, but these passages do not seem to support his view. The regulation on adoption states that adoptions, as well as eventual renouncements, should take place ‘at the market place, in front of the assembled citizens’³⁵. Therefore, there is no indication of a shift in the meaning of the word *agora* in the Code of Gortyn, where this word still designates the place where the people gathered, rather than the Assembly as a constitutional body.

In discussing ancient Greek political organization, it is almost inevitable to refer to the familiar distinction of the constitutional organs into three categories, the Magistrates, the Council, and the Assembly; Aristotle applied this principle to the cities of Crete in his discussion of the *Kosmoi*, the *Boule*, and the Assembly. However, Aristotle’s tripartite distinction may be misleading if it is applied to all Greek cities of all periods, especially in what concerns the obscure period of the rise of the *polis*. Indeed an archaic community struggling to set the fundamental rules for its survival may not have developed all its constitutional bodies at once in such a clear and definite way as these bodies appear in later periods. In other words, if no technical term for the citizens’ Assembly has come down to us from early Cretan inscriptions, although these documents preserve the names of a number of other public offices and boards, this may point to the fact that no technical term for the Assembly had yet been elaborated. It is plausible that mention of the assembled *phylai*, who had given their consent to a specific statute enacted by the active members of the *Polis*, would suffice to indicate the acceptance of this law by the rest of the community. This is not to say that the popular element in archaic Cretan cities played no role, but that its role was not so significant as to make it a deliberative agent equal to the governing élite. In any case, no term for it has survived from the archaic times. Perhaps the exclusion of the ‘rest of the people’ from actively participating in decision-making is echoed in a Hellenistic inscription where reference is made to a ‘situation which occurred for the *Polis* and for the rest of the people (*damos*)’³⁶. Conceivably, then, the only earliest attestations of citizens

³⁴ Willetts 1955, 108. *IC* IV 13 g-i: ἄFτὸς διπλῆι --- [λ]ᾱφοι Fαστίαν δίκαν [ἐν τᾷ ἄγ]ορᾷ.

³⁵ *IC* IV 72 x 34-35: ἀμπαίνεθαι δὲ κατ’ ἀγορὰν καταFελμένον τῷ πολιατᾶν; cf. *IC* IV 72 xi 10-14.

³⁶ *IC* I xix 3 Aa: τᾶς γενομένης περιστάσιος περί τε τὸν πόλιν καὶ τὸ[v] ἄ[λλον] δᾶμον (Malla, third-second century).

gathered in Assembly lie in the sporadic mentions of the tribes gathered to give their approval to the magistrates' decision.

The formula 'the Gortynians (Eltynians or Lyktians) decided' in use in fifth-century statutes reflects the same reluctance to designate the citizens' Assembly as a clear-cut and distinct body: here again, the law appears as a product of the legislative authority of a uniform body, designated by the name of the city's people, with no distinction as to who initiated the law. It is only in the Hellenistic preambles that the *Polis* is distinguished from the officials as the body which gathers the citizens, and the *Kosmoi* are separately mentioned. Epigraphy provides no further information on the composition of this organ, on the possibility to modify a proposal submitted by the magistrates or the Council, or on voting process. Furthermore, evidence about the mere existence of an Assembly in a city tells very little about the distribution of power in public administration, unless some specific information is provided to answer a crucial question, namely how important the role of the Assembly was in political decision making. What was the composition of the Assembly? Were decisions reached by vote or by acclamation? How often did the Assembly meet? Were there fixed meetings and a fixed agenda? Who proposed the laws? Was there a Council with probouleutic authority?

The existence of a Council in the archaic and classical periods is epigraphically attested in some cities, although rarely. Apart from the term *Βολά*, which is the Cretan form for *Βουλῇ*³⁷, there is also the term *πρεῖγυς* (= *πρέσβυς*), which denotes the members of the Council, the Elders³⁸. If the formula 'the Twenty of the *Polis*' in the archaic Drerian law designates the Council, this should be the earliest evidence about this organ from Crete. A *Boule* is first attested in a law from Axos, from the end of the sixth or the beginning of the fifth century, and later in a fifth-century treaty between Knossos and Tylisos, under the auspices of Argos. A *πρεισγήια* (= *πρεσβεία*) appears in sixth-century Rhitten. The term for 'Elders' (*πρεῖγιστοι*) seems to be proper of Gortyn and its dependencies; it is first attested in an unequal treaty between Gortyn and Rhitten from the beginning of the fifth century (*IC IV 80* = *Nomima I, 7*), and a *πρεῖγιστος* appears in a Hellenistic treaty between Gortyn and the inhabitants of Kaudos (*IC IV 184* = Chaniotis 1996 no 69).

The epigraphic evidence provides no further information about the composition or the functions of the Council. It is established from literary sources that Councils in Cretan cities had a strictly aristocratic composition, since only those who had

³⁷ Cf. Aristotle, *Politics* 2, 1272a 8, who states that Cretans called their Council *Boule*.

³⁸ Cf. Ephoros, *FGrHist* 70F 149 = Strabo 10.4.18, who states that Councilors in Crete were called *Gerontes*. The variations of *πρεῖγυς* are *πρεγγευτὰς*-*πρειγευτὰς*, *πρεῖγων*, and *πρεῖγιστος*. These terms appear in Gortynian inscriptions from the fifth century BCE until the first CE. The *πρεῖγων* in *IC IV 145* (mid-fifth or early fourth century) may be either a member of the Council or some other official.

served as *Kosmoi* had the right to be elected members of the *Boule*, and *Kosmoi* in their turn were not chosen from the whole body of citizens but only from among a few families³⁹. Aristotle criticized Cretan Councils and his criticism focuses on two points: first, their privileges to a lifetime office for which they were not subject to any account are disproportional to their merits, and second, it is dangerous for the city to allow the Elders to administer the city's affairs at their will, and not according to written laws⁴⁰. Certainly Aristotle did not ignore the existence of written law on Crete, but his intention was to stress that the Council was not subject to any account, such as the Athenian *εὐθυνα*, and also, apparently, that the administration of the city's affairs by the Council was not regulated by written laws.

Concerning the Council's responsibilities, in all surviving epigraphic attestations it has an active role in financial administration and its main attribution is to supervise the *Kosmoi* in their performance of certain duties prescribed by law, imposing fines on them in cases of contravention. An example of the Council's role in financial administration is provided by the law of Axos, where the Council is instructed to provide a sum of twelve staters for a festival⁴¹. Its authority to exact fines from the *Kosmoi* is illustrated in the treaty between Knossos and Tylisos, where the Council of each city is responsible for exacting a fine of ten staters from their respective *Kosmoi* if the latter did not carry out a clause of the decree concerning hospitality⁴², and also in the treaty between Gortyn and Rhitten, where the *Kosmoi* who fail to exact fines from Gortynians who illegally took securities in the territory of Rhittenia, are themselves liable to the fines imposed by the Rhittenian Elders⁴³.

It is puzzling that, as opposed to the Council's well-attested financial responsibilities, archaic and classical inscriptions are completely silent about its involvement in legislation. Indeed, the participation of the Council in law-making is only attested in a small number of examples from the Hellenistic period. An argument *a silentio* would suggest that, constitutionally speaking, the Council in Cretan cities did not have a probouleutic involvement as the one of the Athenian

³⁹ Aristotle, *Politics* 2, 1272a 34-35; Ephoros, *FGrHist* 70 F 149 = Strabo 10.4.22.

⁴⁰ *Politics* 2, 1272a 35-40. Ephoros, *FGrHist* 70F 149 = Strabo 10.4.18 observes that some of the Cretan public offices are not only administered in the same way as in Sparta, but they also have the same names, as, for instance, the office of the *Gerontes*.

⁴¹ *IC* II v 9 = Koerner no 107, ll. 11-14: κατὰ τὰ αὐτὰ τοῖς Κυδαντείοις διδόμεν τρίτοι Φέτει τὰν βολὰν ἰς τὰ θύματα δυόδεκα στατήρανς.

⁴² *IC* I viii 4 b = *Nomima* I no 54 II B, ll. 40-42: αἱ δὲ μὲ δοῖεν ξένια, βολὰ ἐπαγέτο ρύτιον δέκα στατέρον αὐτίκα ἐπὶ κόσμος.

⁴³ *IC* IV 80 = *Nomima* I no 7, ll. 9-12: Αἱ δὲ κα ν[ικ]αθεῖ τὸν ἐνεκύρον, διπλεῖ καταστᾶσ/αι τὰν ἀπλόον τιμάν ᾧ ἐν τᾷ (ἐ)π' ὅραι ἔ[γρα]τται, πράδδεν δὲ τὸν 'Ριττένιον κόσμ/ον. Αἱ δὲ κα μὲ πράδδοντι, τὸνς πρεῖγ[ις]τονς τούτονς πράδδοντας ἄπατον / ἔμεν. Cf. *IC* IV 184, ll. 11-13: ἀλὼν δὲ δι/δόντων χιλιάδας πέντε κατ' ἐνιαυτόν, παλλαμβανέτω δὲ ὁ / πρεῖγιστος καὶ οἱ ὅροι τὰς πέντε χιλιάδας ἐς τὰν ἀλᾶν.

Boule, and this hypothesis is confirmed by Ephoros' description of the role of Cretan Councils as merely advisory when important political issues were at stake. On the other hand, Aristotle says that only the *Kosmoi* and the Elders had the right to introduce a proposal to the assembly, but he does not say that the Council was expected to prepare the law in any way.

In what concerns the procedure by which the Assembly ratified the statutes passed by the *Kosmoi*, the impression conveyed by the wording in the early documents is that of an archaic Assembly in which the citizens organized by *phylai* expressed their approval, and there can be little doubt that this was done by acclamation. This is consistent with Aristotle's parallel of Cretan Assemblies with the Spartan *apella*, which too decided by acclamation, not by vote. But this rule did not always apply, as we learn from an early fifth-century inscription from Gortyn, which decrees the installation of new inhabitants in the quarter of Latosion, in the vicinity of a sanctuary devoted to Leto⁴⁴. The preamble of the decree (τάδ' ἔφαδε τοῖς Γορτυνίοις πασπίδονσι) demonstrates that the resolution of the Assembly took place by vote, although the emphasis put on the application of voting in this case implies that a different procedure also existed where vote was *not* applied. Could this mark a transition from the archaic Assembly towards a new type where each citizen was entitled to a personal and secret vote? Such a radical transition seems improbable, but it is true that the possibility of a voting procedure, which would have been unthinkable in earlier times, exists as a fact in the beginning of the fifth century. Was this the regular practice for Gortyn from that period on? This hardly seems to be the case. It was probably the precise nature of the specific decree that occasioned a voting procedure. The issue was extraordinary: a massive installation of new residents in the city was certainly not trivial, and its impact on the lives of the old inhabitants would have been significant. Under these special circumstances, it was crucial for the authorities that each citizen expresses his opinion and at the same time binds himself to that opinion. The fact that in this, and possibly in some other important circumstances, the Gortynian Assembly was entitled to vote, should not lead to the conclusion that every time the Assembly met to decide on a decree, this was accomplished by vote. Acclamation continued to be the usual implementation as this is suggested by other decrees, whereby the preamble makes no reference to voting.

This is related to the problem of the composition of the Cretan Assemblies. In the aristocratic regime only a small proportion of the adult male inhabitants had access to citizenship, which was limited to those who had accomplished their training in the *agelai* and had become members in one of the *hetaireiai*. Although there was no property criterion such as the *timema* of oligarchic states, the property factor did

⁴⁴ IC IV 78.

have an importance, because those who were not capable of contributing to the common meals lost their civic rights. Accordingly, it was necessary for all citizens to have an amount of property so as to allow them to perform their duties towards the city. On the other hand, there was the exclusion of the *apetairoi*, i.e. of the free born men who had no access to the *hetaireiai* because of birth or because they had lost their citizen's rights.

Some information about the number of citizens who attended the Assembly appears no earlier than the Hellenistic period in two decrees from Gortyn. A decree ordering the use of bronze money and the non-acceptance of silver obols, dated to the second half of the third century⁴⁵ is prefaced by the formula "Thus decided the *polis* by the vote of three hundred citizens present". The same number of voting citizens is reported by the treaty between Gortyn and Knossos under the auspices of king Ptolemy, dated to *ca* 168⁴⁶. The fact that both decrees mention a round number of three hundred citizens has lead scholars to the justifiable assumption that this number corresponds to the quorum, i.e. to the minimum number of presences fixed by law for a resolution to be valid⁴⁷, not to the actual number of citizens present at these specific meetings of the assembly. A quorum of three hundred seems to be quite small for a city as important as Gortyn, but it is not inconceivable if we consider the aristocratic regime. This number lead Beattie (1975: 15-17) to the conclusion that it is not the normal Assembly but a μικρά ἐκκλησία like the one mentioned by Xenophon in reference to Sparta, which he believes to be identical to the organ called the πόλις. The positive information provided by these two decrees is that the Gortynian Assembly from the middle of the second century until 168 (at least) had a quorum of three hundred; but this is our sole evidence about the size of an Assembly in a Cretan city, as there is no information about the number of participants in the classical period or earlier.

Apart from this weak participation in the legislative procedure, no other authority of the Assembly is mentioned either in inscriptions or in the literary sources. Citizens' assemblies in Greek cities were often involved in the administration of justice; in aristocratic Cretan cities this authority was attributed to the *Kosmoi* and the *dikastai*, and there is no hint about the Assembly as a recipient of appeals against the infliction of penalties by magistrates, as was the case for the Solonian Heliiaia and the Roman *comitia*.

The Hellenistic period marked a profound shift in what concerns the constitutional terminology used in Cretan decrees. From the third century onwards, a new enactment formula was adopted, which is more detailed and recalls identical

⁴⁵ IC IV 162, ll. 1-4: [Τάδ' ἔφαδε τ]ῶι [πόλι] ψαφίδδονσι τρια/[κατίων] παριόντων. Νομίσματι χρῆτ/[θα]ι τῶι καυχῶι τῶι ἔθηκαν ἅ πόλις τόδ / δ' ὀδελὸνς μὴ δέκετθαι τὸνς ἀργυρίος.

⁴⁶ IC IV 181 = Chaniotis 1996 no 43, l. 7: ψαφίζανσι τρι[ακ]ατίων παρ[ιόντων].

⁴⁷ Guarducci IC IV, p. 258; Rhodes – Lewis 1997, 311; Chaniotis 1996, 292.

formulae from other Greek cities, as it may include reference to the *Kosmoi* (or sometimes the *Archontes* instead), to the Assembly, and to the Council in various combinations. Another usual term for the Assembly is *koinon*⁴⁸, and the word *damos* also occurs in a few examples⁴⁹. As we have seen, very often the decrees are labeled as decisions of the *Kosmoi* and the *Polis*⁵⁰, and it is interesting to note that whenever this formula appears, the *Polis* is always connected to the *Kosmoi* and it never appears jointly with the Council. In many other cases there is a more explicit formula containing mention of both the Council and the Assembly⁵¹. This is shown by the preamble to a third-century decree from Praisos: «God. Proposition of the *Kosmos*. The *Boule* and the *koinon* of the Praisians decided during an *ekklesia kyria*»⁵². The formula could originate from any Greek polis of the period: a magistrate or a simple citizen submits the proposal; the Council works out the draft of the law, and the Assembly decides by vote. In the decree from Praisos the proposal does not come from a simple citizen but from the magistrates, who were still the only board with this authority. The participation of the *Boule* in legislation suggests that it was responsible for preparing the draft of the law, and the final decision was made by the Assembly of citizens gathered in an *ekklesia kyria*. However, this was not the regular procedure, as shown from another decree from Praisos, which is introduced as the decision of the *Archontes* and the *Koinon* of the city, with no mention of the Council⁵³. Although this formula recalls the Athenian model of the *ekklesia kyria*, which designated each month's principal assembly of the *demos*, in the Cretan context it is considered to denote merely a regular meeting of the Assembly⁵⁴. Furthermore, as we noticed earlier, it is probably significant for our conclusions about the Cretan political concepts that the *Polis* may be juxtaposed to 'the other *damos*', as in the decree from Malla⁵⁵, where *polis* seems to denote the constitutional organ of the city whereas 'the other *damos*' refers to the rest of the inhabitants.

⁴⁸ E.g. in Praisos, *IC* III vi 9 and 10 (third century); Lato, *IC* I xvi 2 and 15 (ca 204/3); Arkades, *IC* I v 53 (after 170).

⁴⁹ *IC* II v 17: ὁ δᾶμος ὁ Φανξίων (*Axos*, ca 204/3); *IC* II iii 4C: ἔδοξε τῷ βουλῷ καὶ τῷ δάμῳ (*Aptera*, third-second century); cf. 4B.

⁵⁰ See the examples in notes 11 and 12 above. Another variation combines the *Kosmoi* and the *ekklesia*, e.g. *IC* II xii 20: συναγέτωσαν οἱ κόσμοι τὴν ἐκκλησίαν ἐν δέκα ἡμέραις (*Eleutherna*, third century), *IC* I vi 2: οἱ δὲ ἐπελθόντες ἐπὶ τὸς κόσμος καὶ τὰν ἐκκλησίαν (*Viannos*, after 170).

⁵¹ E.g. *IC* III iv 2: Ἔδοξε Ἰτανίων τῷ βουλῷ καὶ τῇ ἐκκλησίᾳ; cf. *IC* III iv 3, 4, 7 (*Itanos*, third century).

⁵² *IC* III vi 10. Cf. a third-century decree from Hierapytna prescribing that the citizens are to vote on an honorary attribution of citizenship in an *ekklesia kyria*: *IC* III iv 1 B: διαψαφίζέσθων ἐν κυρία ἐκκλησίᾳ πότερον δοκεῖ πολιτείαν δεδόσθαι ἢ μή.

⁵³ *IC* III vi 9: Ἔδοξε Πραισίων τοῖς ἄρχουσι καὶ τῷ κοινῷ, ἐκκλησίας κυρίας γενομένης.

⁵⁴ Rhodes – Lewis 1997, 313 n. 22, and 505.

⁵⁵ *IC* I xix 3 Aa, see n. 36 above.

A further assimilation in what concerns constitutional terminology—but not substance—is again attested in inscriptions from the Roman period, where the phrase ἡ βουλὴ καὶ ὁ δῆμος, which is a translation of *senatus populusque*, actually reflects Roman, not Greek patterns, and it cannot be taken to suggest a process of democratisation. An example of this is provided by a first-century inscription from Gortyn (IC IV 298), where the term *Boule* appears for the first time in Gortynian documents, in a typically Roman formula: τῆς κρατίστ]ης Γορτυνίων βουλῆς καὶ τοῦ λαμπροτάτου δήμου.

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