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HUBRIS AND THE UNITY OF GREEK LAW*

The question of the unity of Greek law has exercised scholars since the nineteenth century and remains a subject of debate.[1] For the last half-century or so, participants in this debate have tended, consciously or not, to divide themselves along geographical and linguistic lines. Starting with Ludwig Mitteis,[2] those on the European continent have generally championed the concept of the unity of Greek law, while American and British scholars, taking their lead from Moses Finley,[3] have usually rejected it.[4] For the most part, the unity controversy has focused on substantive law, but in 2005, opening a new round in the debate, Michael Gagarin drew attention to the realm of procedural law, adopting a position of compromise between the unitarian and separatist camps in suggesting that the Greek *poleis* demonstrated a significant legal unity in procedure but not in substance.[5] I propose to show here that evidence for unity in the Archaic and (especially) Classical periods exists in at least one specific and important area of substantive law. I will begin by offering explicit criteria by which questions of Greek legal unity (whether substantive or procedural) should be judged; I will then demonstrate that hubris, as a

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1 *Pace* Rupprecht (2005) 329.

2 Mitteis (1891).

3 Finley (1951), (1975).

4 Before Finley disputed it, Mitteis' unity doctrine was the *communis opinio*. For a useful summary of the history of this debate see Gagarin (2005). As Gagarin notes, one prominent exception to this general categorization of scholars is the unitarian Raphael Sealey: see Sealey (1990) 151–60, (1994) 59–89.

5 Gagarin (2005), esp. 40: "The unity I find in Greek law, therefore, is a general procedural unity, grounded in the archaic and classical periods, not the substantive unity, grounded in Hellenistic law, in which Mitteis and his followers believed." Gagarin was critiqued by Thür (2006), who commences by pronouncing that "Greek law exists" ("Griechisches Recht existiert," 23) but concludes that its procedural unity lies in the eye of the (modern) beholder ("Die 'Einheit' des griechischen Prozessrechts liegt in der Art und Weise, wie man es heute—rückblickend—betrachtet," 57).

substantive legal category, meets these criteria and therefore may be meaningfully designated as a concept of "Greek" law.[6]

I. The unity question and the problem of method

Each side of the unity debate cites essential and incontestable facts of the Archaic and Classical Greek world as the basis for its position. Separatists note the autonomy of the hundreds of individual *poleis*, and the instances of observable difference between *poleis* in discrete and fundamental areas of law (see *infra*, n. 17). Unitarians adduce the common heritage of culture and custom—"cultural nationhood," in Finley's phrase[7]—that all Greeks shared, local institutional, dialectal, ethnic, and legal variation notwithstanding. In the famous and oft-cited[8] words of Herodotus (8.144), "Greekness" (τὸ Ἑλληνικόν) is defined by common blood, language, sanctuaries of the gods, and sacrificial rites, and by "similar customs" (ἤθεά τε ὁμότροπα). Although customs (ἤθεα) may of course include laws (νόμοι), this broad summary of Hellenic identity is insufficient evidence for meaningful legal unity.[9] The assertions of Panhellenic legal norms in the Attic orators, such as they are, usually are of little more value, but occasionally they may be significant. In Lysias 1, for example, Euphiletus contends that *moichoi* (seducers) traditionally receive severe penalties not only in Athens but in all Greece (ἐν ἁπάσῃ τῇ Ἑλλάδι, Lys. 1.1–2). This may amount to no more than a statement that the Greeks generally regarded sleeping with another man's wife or other female dependent as a Very Bad Thing.[10] Harsh penalties (allegedly) meted out to such offenders throughout Greece would not necessarily demonstrate Greek legal unity any more than the death penalty available for murder in California, China, and Saudi Arabia indicates a unity among those systems. But if we find specific support for Euphiletus' assertion in the presence of *moicheia* as a distinct legal category elsewhere in Greece, we may hypothesize a degree of unity in this area (see *infra* with nn. 20–24).

The traditional methodological weakness of the unitarian camp has been excessive reliance upon the general statements of cultural commonality expressed by Herodotus, the orators, and others. Inaugurating the debate, Mitteis claimed that "the numerous individual statutory laws of the Greek states rested, in essence, on the same juristic concepts, and the same institutions evolved with only slight

6 Cf. Ruschenbusch (1965) 306–7; Wolff (1975) 21 (*infra*, n. 15).

7 Finley (1975) 134.

8 E.g., Biscardi (1982) 9; Wolff (1975) 21 with n. 40.

9 Finley (1975) 134–35 stresses the importance of distinguishing νόμος 'custom' from νόμος 'law' in the discussion of Greek legal unity; but on the problems posed by such a distinction see Low (2007) 93–102.

10 Note, though, that in this area, as in so many others, Sparta represents an anomaly. Under certain circumstances, Spartan law permitted behavior that fell under the Athenian rubric of *moicheia* (X. *Lac. Pol*. 1.7–9; Plut. *Lyc*. 15.12–13; Polyb. 12.6b.8; MacDowell (1986) 82–88).

nuances."[11] But such evidence as he provides for this position[12] contains little of substance:[13] we find cited the boilerplate contrasts drawn by Greek authors of varying dates between Greek and barbarian customs; Isaeus 2.24 on the alleged unity of Greek (and barbarian!) law on adoption, which ranks with Lysias 1.1–2 on *moicheia* in terms of evidentiary value; and Dio Chrysostom's *obiter dictum* on the *koina dikaia* of Greece (37.17: the Corinthians, along with Thebes and Elis, resisted Sparta ὑπὲρ τῶν κοινῶν δικαίων τῆς Ἑλλάδος), which refers not to a commonality of legal principles or systems but merely to the right of *polis* autonomy (cf. Dem. 2.24: the Athenians resisted Sparta ὑπὲρ τῶν Ἑλληνικῶν δικαίων), a principle that all Greeks professed, however much some violated it in practice. As recently as 1982, Arnaldo Biscardi asserted that "notwithstanding the indisputable diversity of the various city regulations, it is indeed true that among these there existed a common denominator made up of a foundation of juridical principles shared by all the *poleis*," and that the "unitary cultural foundation" attested by Herodotus "could not fail to reflect itself in certain basic principles common to the quite diverse juridical regulations."[14] But basic principles[15] can only take us so far;[16] and the attested variations between the laws of different *poleis* have been shown in some cases to be major discrepancies that appear to result from very different root concepts.[17] In order to discover meaningful unity in Greek law, we must be able to demonstrate instances in which these common basic principles (to the extent that

[11] Mitteis (1891) 62: "die zahlreichen einzelnen Statuarrechte der griechischen Städte im Wesentlichen auf den gleichen juristischen Anschauungen ruhten und die gleichen Institutionen mit nur geringen Nuancen entwickelten."

[12] Mitteis (1891) 62–63 with nn. 1–3.

[13] Cf. Finley (1975) 135.

[14] Biscardi (1982) 8–9: "nonostante la indiscutibile diversità dei vari ordinamenti cittadini, è pur vero che tra di essi esisteva un comune denominatore costituito da un fondo di principî giuridici condivisi di tutte le *poleis*. ... questo fondo culturale unitario...non poteva non riflettersi in alcuni principî di base, comuni ai pur diversi ordinamenti giuridici."

[15] Biscardi, *supra* n. 14; cf. Wolff (1965) 2516, (1975) 21: "Grundvorstellungen," including "dogmatic concepts common to all Greeks such as δίκη, βλάβη, ὕβρις, ὁμολογεῖν, κύριος" ("an allen Griechen geläufige dogmatische Begriffe wie δίκη, βλάβη, ὕβρις, ὁμολογεῖν, κύριος"); Sealey (1994) 67 ("underlying ideas"); Rupprecht (2005) 329 ("basic juridical conceptions").

[16] Finley (1975) 137 is most emphatic with regard to the nature of this limitation: "Is it illuminating or useful to reduce the basic principles of the law of property to three assertions—that private ownership exists, that the next-of-kin other than blood-heirs have no claim, and that the metaphysics of ownership are not Roman—and then to dismiss all else as minor detail, mere nuance? If that is all that is meant by the unity of Greek law, there can be no argument, but there is equally nothing worth discussing. What does such a generalization tell us about the Greeks or their law? Of what use is it conceptually or as an analytical tool?"

[17] See especially Finley (1975) on marriage, family, and property law, and Finley (1951) on sale.

they are common or basic) are specifically manifested in actual law, whether substantive or procedural.[18]

To this end, we should apply three criteria. The first and most frequently employed is the attestation of a significant similarity in the laws of two or more independent *poleis*. At present, such comparisons, and the resulting commonalities asserted or disclaimed, tend prominently to feature Athens and Gortyn.[19] Obviously, the greater the number of *poleis* that exhibit a common legal concept, the stronger the argument for unity; unfortunately, we must rely on very limited source material, since we possess little evidence for the laws of the majority of the Greek world. On the other hand, within these limited sources, we must account for the possibility of anomaly. The absence of a concept from, say, the preserved Gortyn codes, or the demonstration that Gortynian and Athenian law diverge significantly on a given topic, does not prove that Greek legal unity is a fiction. Unity is not, or at least should not be, an all-or-nothing proposition. Just as the anomalous treatment of gambling and prostitution in the state of Nevada does not compromise the unity of American law, so local divergences, even significant ones, on discrete topics do not suffice dispositively to refute the proposition of Greek legal unity.

We should rather expect, owing to the number, autonomy, constitutional variation, and wide geographical distribution of the *poleis*, that such legal commonalities as exist would be reflected to different degrees and in different areas of law in the various *poleis*. So, for example, both Athens and Sparta possessed a substantive category of *moicheia*, which was regulated by law certainly at Athens ([Dem.] 59.64–70, 87; Dem. 23.53; Lys. 1.30–31; Aeschin. 1.91, 183; [Arist.] *Ath. Pol*. 59.3) and possibly at Sparta (Plut. *Lyc*. 16–18 notwithstanding).[20] Although the

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[18] Cf. Finley (1975) 138: "Any discussion of the unity of Greek law, whether unity is deemed to be total or partial, must eventually come down from the stratosphere of juristic mode of thought (*Rechtsdenken*) and juristic sensibility (*Rechtsgefühl*) to mundane operational—and that means historical—questions."

[19] E.g., Sealey (1994) 59–89; Gagarin (2005); to a lesser degree, Finley (1975); Thür (2006).

[20] Plutarch reports the story that one Geradas, a Spartiate of the distant past, when asked by a foreigner about the punishment of *moichoi* at Sparta, responded that they did not exist; when pressed, he stated that the penalty was payment of a bull so large that it could extend its head over Mt. Taygetus and drink from the Eurotas. To the question, "How could there be so large a bull?" Geradas answered, "How could there be a *moichos* in Sparta?" While the foreigner's initial question is perhaps broadly informative (implying that *moichoi* are punished everywhere; cf. Lys. 1.1–2: *supra* with n. 10), this anecdote proves only that by the time of Plutarch this is what the Spartans wanted to believe about their ancestors. It is inconceivable that there did not exist at least a "rule" (MacDowell (1986) 87) and a remedy—in other words, an *agraphos nomos*—governing illicit heterosexual intercourse; unusual sexual license (see the references in n. 10) does not imply total sexual license. MacDowell plausibly hypothesizes (*ibid*.) that "a man might not have sexual intercourse with another man's wife unless the husband gave permission,

two cities conceptualized the term differently (*supra* with n. 10), in both "it covered wrongful intercourse with either an unmarried or a married woman."[21] The same is evidently true in the Great Code of Gortyn (*IC* IV 72 col. 2, lines 20–45).[22] Especially since, from the point of view of comparative law, such a category spanning improper sexual relations with both married and unmarried women is a rarity,[23] the existence of laws regarding *moicheia* in such disparate *poleis* as Athens and Gortyn (and possibly Sparta)—not to mention the humiliating punishments for *moichoi* elsewhere in Greece (sanctioned by custom if not by statute)—qualifies *moicheia* for investigation as a "Greek" legal concept.[24]

Hubris parallels *moicheia* significantly in these respects. Hubris is a concept that is both generally and characteristically Greek, and section II below will document the existence of hubris as a substantive legal category in multiple Greek states. These findings should be neither assumed *a priori* nor dismissed on the grounds that hubris, as the designation of a behavioral phenomenon, was uniquely Greek and apparently universal throughout the Greek world. Behavioral phenomena do not automatically or necessarily translate into legal concepts. *Schadenfreude* and *machismo* are both behavioral terms originally unique to speakers of German and Spanish, respectively—and the Greeks would have labeled some manifestations of each as hubris—but neither, to my knowledge, is the name of a legal offense.

The second criterion for the analysis of Greek legal unity is the presence of a substantive or procedural phenomenon in a community composed of Greeks from different *poleis*. We can hypothesize that the laws of such a community tend to

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nor with an unmarried woman unless, being unmarried himself, he carried her off to keep her in his own house (which would constitute marriage)."

[21] MacDowell (1986) 87. For the Athenian definition of *moicheia* as wrongful 'seduction' of a woman regardless of her marital status—rather than 'adultery', which would require that the woman be married—see [Dem.] 59.65–70, where an allegation of *moicheia* involves Phano, an unmarried woman; MacDowell (1978) 124–25; Harris (2004b); Patterson (1998) 114–25; Omitowoju (2002) 73–95, esp. 76–77. (Dover (1994) 209 and Carey (1995) 407–8 note that marriage is not a necessary condition for *moicheia* but nonetheless translate it 'adultery'.) *Contra* Lipsius (1905–15) 429; Cohen (1991) 98ff.; Todd (1993) 277–78.

[22] Schmitz (1997) 111–14, 124–28; for comparison to Athens see also (e.g.) Cole (1984) 110–11; Harris (2004a) 290.

[23] Cohen (1990) 147 notes that such a category would be "unique among early Western and Near Eastern legal systems" (cf. Cohen (1991) 99); this observation contributes to his argument that *moicheia* must mean 'adultery'. But we should not elide demonstrably well-evidenced anomalies simply because they are anomalous (cf. Omitowoju (2002) 73).

[24] Cf. Cantarella (2005) 243–45, who adds evidence for laws on *moicheia* in Locri Epizephyrii (Aelian, *VH* 13.24; attributed to Zaleucus), Lepreum (Heracleides Ponticus fr. XIV Müller, *FHG* = Arist. fr. 611.42 Rose), and Aeolian Cyme (Plut. *Mor*. 291f (*Quaest. Graec*. 2)). For a comprehensive discussion ranging far beyond Athens (despite its title), see Schmitz (1997); also Forsdyke (2008), esp. 3–26.

reflect Biscardi's "common denominator" of Greek legal principles, owing to (and as a function of) the diversity of origin of the inhabitants. Ideally, we should be able to cite evidence from actual communities, such as colonies established as cooperative ventures by multiple *poleis*, or other newly-founded cities that drew significant numbers of settlers from different parts of the Greek world. A prominent example of the latter is Alexandria in Egypt, founded by Alexander the Great in 332/1[25] and inhabited, by the third century, by Macedonians, Greeks of diverse origins, Egyptians, mercenaries of even more diverse origins, Jews, Persians, Syrians, and others.[26] For this very reason, among others, Alexandria presents a mixed blessing for the study of comparative Greek law. While much Alexandrian legal material is preserved in papyri of the Hellenistic and Roman periods, we must contend with the possibility of Egyptian (and later Roman) influence, and also with the top-down phenomenon of legislation under a monarch (whether a Ptolemaic king or a Roman emperor), which tends to reduce local variation and contrasts with the characteristically autonomous and communitarian law of the Classical *poleis*.[27] But hubris represents a special case: while the possibility of the leveling influence of monarchy remains, we may discount any meaningful Egyptian influence on the substance of the Alexandrian law of hubris, since hubris was a specifically Greek concept. Moreover, while Alexandrian law borrowed significantly from Athenian law, the influence of the latter is uneven: as P. M. Fraser observed, "the Attic element is only one of several in the code, and by no means the predominating. More elements can be shown, both in respect of terminology and of procedure, both to be contrary to the Athenian practice in vital respects and to correspond to the usage of various cities of the Aegean islands and of Asia Minor."[28]

To these permanent communities we may add temporary communities that also comprise Greeks from various cities and regions. For example, we might expect the

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[25] Arr. *Anab.* 3.1.5–3.2.2; Plut. *Alex*. 26, including the (alleged) prophecy that the city "would be the nurse of men from every land" (παντοδαπῶν ἀνθρώπων ἐσομένην τροφόν, 26.6).

[26] Fraser (1972) 1.38–92, esp. 60–75. Strabo 17.1.12 cites Polybius' (= Polyb. 34.14) division of the population into Egyptians, mercenaries, and Alexandrians. Most of the mercenaries will have been Greek or Macedonian; among the rest were Gauls. Note the comment reported from Polybius regarding the "Alexandrian" segment of the population: "for, even granted that they were all mixed together (μιγάδες), they nonetheless were Greeks by descent and preserved the common custom of the Greeks (ἐμέμνηντο τοῦ κοινοῦ τῶν Ἑλλήνων ἔθους)." Some of these Greeks doubtless relocated to Alexandria from residences elsewhere in Egypt (cf. Bosworth (1988) 247).

[27] Pringsheim (1950) 6–8; Finley (1951) 82–85, (1975) 137; Gagarin (2005) 38–39. Much more positive about the value of Egyptian Greek material as evidence for the unity of Greek law is Rupprecht (2005) 328–29.

[28] Fraser (1972) 1.111. Cf. 1.115: "The city-code...did not conform to any single known system, and may have been the fruit of Peripatetic study of comparative Greek law." As will be seen below (number 6), hubris is an area where Alexandrian and Athenian law coincided in terminology but diverged in procedure.

regulations governing Panhellenic festivals, including the stephanitic games, to conform broadly to the legal norms of the Greeks in general, as well as specifically to those of the hosts. I have been unable to discover a law dealing with hubris in these sources,[29] but there is another *ad hoc* Panhellenic community that clearly employed hubris as a concept of law (*infra*, number 5). The fabled "Ten Thousand" Greek mercenaries recruited by Cyrus the Younger for use against Artaxerxes II Mnemon included soldiers from Arcadia, Achaea, Argos, Sparta, Elis, Sicyon, Megara, Boeotia, Locris, Aetolia, Acarnania, Ambracia, Dolopia, Thessaly, Olynthus, Amphipolis, Dardanus, Chios, Samos, Miletus, Rhodes, Crete, Syracuse, Thurii, and, of course, the Athenian Xenophon and some of his countrymen.[30] In most important respects, especially after reaching the Black Sea, the Ten Thousand functioned, and were recognized, as a *polis*: they met in assembly, exercised the right to select and depose their leaders, independently negotiated and concluded treaties with foreign powers, and administered domestic justice.[31] The critical missing element was a defined (and stationary) territory that they could call their own, and this deficiency would have been remedied had the troops accepted Xenophon's proposal to found a colony on the Black Sea (X. *Anab*. 5.6.15–31), whose adult citizen male population in 400/399 would have exceeded that of Sparta and constituted at least half that of Athens.

Less valuable than evidence from actual communities, but still informative, is evidence from virtual or fictional communities. In Plato's *Laws*, Cleinias of Crete, Megillus of Sparta, and an anonymous Athenian draft hypothetical laws for an imaginary city, which Cleinias may apply in practice to a new colony to be founded on Crete by a coalition of Cretan cities led by Knossos (Pl. *Leg*. 702b4–d5). Plato's choice of characters, and the interplay between them, is significant: the Cretan, the Spartan, and the Athenian represent distinct legal systems but are able to reach agreement in composing legislation. Since both the author and the most loquacious of his characters are Athenian, there is naturally some Athenian influence on these laws, but in at least some significant areas Plato's hypothetical laws bear little resemblance to actual Athenian law,[32] and we may reasonably posit that Plato's sources included the laws of cities other than Athens as well as his own idealistic speculations. We must remember, too, that Plato did not write for Athenians alone.

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[29] Herodotus' statement (6.127) that the tyrant Pheidon of Argos "committed the greatest act of hubris of all the Greeks" (ὑβρίσαντος μέγιστα δὴ Ἑλλήνων ἁπάντων) by forcibly deposing the Elean presiding magistrates of the Olympic games (cf. Ephorus, *FGrHist* 70 F 115) and conducting the contests himself gives no firm indication that hubris appeared in the regulations governing the festival.

[30] Lee (2007) 9, 60–66.

[31] On the Ten Thousand as a mobile virtual *polis* see Dillery (1995) 59–98; Hornblower (2004); Perlman (1976–77) 278; Rehdantz (1888) 7; *contra* Lee (2007) 9–11.

[32] E.g., homicide (Pl. *Leg*. 865a–874d), wounding (874e–879b), real property, and commercial law (on wounding see Phillips (2007) 100–3; for the last two see Finley (1975) 136).

Although he could not expect to count many Spartans among his readers, the expectation of dissemination of his work—as well as his own intellect and researches—will have encouraged Plato to represent his Spartan and Cretan with at least plausible accuracy. For our immediate purposes, Plato is of limited utility, as the *Laws* contain no law on hubris *per se*—although hubris-words figure prominently in the Athenian's general statement of legal principle on *biaia*, "acts of violence," at *Leg*. 884–885b, and occasionally elsewhere.[33]

Plato's student Aristotle expected a similarly broad reception; and significantly, unlike his teacher, Aristotle was not an Athenian born and bred but a native of Stageirus in Macedonia. Aristotle also exceeded Plato in his knowledge of the laws of the various Greek states, having supervised the detailed and comparative study of the constitutions of 158 *poleis*.[34] Aristotle's *Rhetoric* contains practical advice for litigants and speechwriters prosecuting and defending against a number of charges, including hubris, and he designed his *topoi* to function and resonate in the Greek world generally, not only in Athens.[35] In a number of passages in the *Rhetoric* and *Nicomachean Ethics* he essays a substantive definition of hubris, which is especially valuable for our purposes, since Athenian law (at least) failed to provide one (*infra*, number 1).

The preceding criteria have been spatial, their purpose being to measure the extent of a legal phenomenon over the various Greek *poleis* and in communities comprising Greeks from multiple *poleis*. The third criterion is temporal. Gagarin cites "Finley's insistence that any work utilizing the concept of Greek law should identify significant features that are common to *all times and places* for which we have evidence."[36] As a practical matter, our ability to make such a demonstration is severely compromised by the nature of our sources. For most of the Greek world outside Athens, Gortyn, Sparta, and Alexandria, the sources for each *polis* are already so scanty that the continuity of legal concepts is extremely difficult, if not impossible, to prove. "All times and places" is simply unrealistic; if we obey this admonition to the letter, the search for unity is over before it begins. But a less absolute and dogmatic approach may still attain meaningful results: an argument for

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[33] See especially Fisher (1992) 480–92, esp. 484: "in delineating five types of serious *hybris* and proposing a general law for them, as well as in many others of his legal formulations, [Plato] shows full awareness of the Athenian law (and, it may be, of laws about *hybris* in other cities)"; Saunders (1991) 270–71, who concludes (271): "In Plato's hands the legal application of the general concept of *hubris* is pervasive: it covers virtually any act of violent aggression against people or property, especially, but not exclusively, those in need of special respect and protection, such as that given in the law of *aikia* to foreigners, parents, other seniors and (in some circumstances) slaves. The general concept is given legal teeth, *in specific contexts*" (emphasis in the original).

[34] D. L. 5.27; Hsch. s.v. Ἀριστοτέλης; Rhodes (1993) 1–2.

[35] Fisher (1976) 179–80, (1992) 9ff.; *contra* MacDowell (1976) 27–28; Cairns (1996) 6 n. 32.

[36] Gagarin (2005) 34 (emphasis mine).

unity in any particular area of Greek law should, ideally, include evidence that spans both a significant sample of communities for which evidence exists and a significant period of time. The catalogue of sources that follows in the next two sections of this paper, arranged according to the first two criteria above, also takes account of the date of each source, and demonstrates that a substantive legal category of hubris was both widespread and lasting.

II. Hubris in the laws of discrete (theoretically) homogeneous[37] *poleis*

1. The Athenian law of hubris and the problems of its interpretation and application are sufficiently familiar as to require only summary treatment here. The law (Dem. 21.47), most likely authored by Solon[38] and still the controlling statute in the fourth century (cf. the paraphrase at Aeschin. 1.15), provided that "if a person commits hubris (ὑβρίζῃ) against another, whether a child or a woman or a man, free or slave, or does anything unlawful (or 'contrary to custom': παράνομόν τι)[39] to any of these," any willing and capable Athenian might bring a *graphē* before the *thesmothetai*. The *graphē hybreōs* was a *dikē timētos* without penal limit: a convicted defendant was sentenced to "whatever he is deemed fit to suffer or pay" (ὅτου ἂν δοκῇ ἄξιος εἶναι παθεῖν ἢ ἀποτεῖσαι).[40]

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[37] By this term, as qualified, I mean *poleis* whose citizens claimed common origin and descent from the remote(r) past. The Athenians famously claimed autochthony (e.g., Isoc. 4.24), the Spartiates descent from the Heracleidae and their Dorian followers (e.g., Tyrtaeus fr. 2 West; Hdt. 5.72 with Phillips (2003) 308–9; Cartledge (2002) 81); Por(d)oselene/Nasos was founded by Aeolians in or before the seventh century (Kirsten (1953) col. 244; Stauber (1996) 1.208).

[38] See Murray (1990); Fisher (1990) 123–24 with references (124 n. 3), (2000) 91–94; van Wees (2011); cf. MacDowell (1976) 26.

[39] This vague and troublesome phrase has occasioned diverse interpretations. The best, in my opinion, is Fisher (1992) 54, who understands the initial clause of the law to mean "if anyone commits (what is usually regarded as serious) *hybris* against anyone or does something *paranomon* (sc. in that general area) against anyone."

[40] Dem. 21.47 (*lex*): Ἐάν τις ὑβρίζῃ εἴς τινα, ἢ παῖδα ἢ γυναῖκα ἢ ἄνδρα, τῶν ἐλευθέρων ἢ τῶν δούλων, ἢ παράνομόν τι ποιήσῃ εἰς τούτων τινά, γραφέσθω πρὸς τοὺς θεσμοθέτας ὁ βουλόμενος Ἀθηναίων οἷς ἔξεστιν, οἱ δὲ θεσμοθέται εἰσαγόντων εἰς τὴν ἡλιαίαν τριάκοντα ἡμερῶν ἀφ' ἧς ἂν ἡ γραφή, ἐὰν μή τι δημόσιον κωλύῃ, εἰ δὲ μή, ὅταν ᾖ πρῶτον οἷόν τε. ὅτου δ' ἂν καταγνῷ ἡ ἡλιαία, τιμάτω περὶ αὐτοῦ παραχρῆμα, ὅτου ἂν δοκῇ ἄξιος εἶναι παθεῖν ἢ ἀποτεῖσαι. ὅσοι δ' ἂν γράφωνται [γραφὰς ἰδίας] κατὰ τὸν νόμον, ἐάν τις μὴ ἐπεξέλθῃ ἢ ἐπεξιὼν μὴ μεταλάβῃ τὸ πέμπτον μέρος τῶν ψήφων, ἀποτεισάτω χιλίας δραχμὰς τῷ δημοσίῳ. ἐὰν δὲ ἀργυρίου τιμηθῇ τῆς ὕβρεως, δεδέσθω, ἐὰν [δὲ] ἐλεύθερον ὑβρίσῃ, μέχρι ἂν ἐκτείσῃ. "If a person commits hubris against another, whether a child or a woman or a man, free or slave, or does anything unlawful (or 'contrary to custom') to any of these, any willing Athenian to whom it is permitted shall file an indictment with the *thesmothetai*. The *thesmothetai* shall bring the case before the *hēliaia* within thirty days after the filing, unless some public business prevents it; otherwise, at the first opportunity. Whomever the *hēliaia* convicts, it shall punish him immediately with whatever he is deemed fit to

Notoriously, the legislator fails to define hubris; the law focuses on procedure. Nonetheless, most commentators[41] concur that the descriptions of hubristic assaults in the Attic orators—the most famous being the near-fatal beating of Ariston that culminated in Conon's rooster dance over his prone body (Dem. 54.1, 8–9)—correspond to the definition of hubris advanced by Aristotle.[42] In brief, for the

suffer or pay. As for those who file an indictment in accordance with this law, if a person does not prosecute, or prosecutes but does not receive one-fifth of the votes, he shall pay 1000 drachmas to the public treasury. If [the defendant] is punished with a fine for his hubris, he shall be imprisoned, if he committed hubris against a free person, until he pays the fine."

41 See above all Fisher (1992) 37 *et passim*; also, e.g., Cope-Sandys (1877) 1.239–40, 2.17; Lipsius (1905–15) 424–26; Harrison (1968–71) 1.172; MacDowell (1976) 27–30, (1978) 129–32; Fisher (1990); Murray (1990); Cohen (1991) 178, (1995), esp. 143–62, (2005) 216; Todd (1993) 107, 270–71 (without explicitly citing Aristotle); Harris (2004b) 63–65; Spatharas (2009) 31–38. Cf. MacDowell (1990) 18–23, 262–68; Cantarella (1983). The most influential dissenting views are those of Gernet (1917) 183–97, esp. 195–96 (the *graphē hybreōs* was aimed at acts perpetrated against the community as a whole, and in particular against its religious principles), Ruschenbusch (1965) (the *graphē hybreōs* was a catch-all procedure intended to redress all wrongs against the person), and Gagarin (1979) (the *graphē hybreōs* "could apply to any attack against a person" (236) but was intended for use against severe and unprovoked physical assaults); on these theories see the critique by Fisher (1992) 53–62.

42 See especially *Rhet*. 1373b38–1374a15: ἐπεὶ δ' ὁμολογοῦντες πολλάκις πεπραχέναι ἢ τὸ ἐπίγραμμα οὐχ ὁμολογοῦσιν ἢ περὶ ὃ τὸ ἐπίγραμμα, οἷον λαβεῖν μὲν ἀλλ' οὐ κλέψαι, καὶ πατάξαι πρότερον ἀλλ' οὐχ ὑβρίσαι..., διὰ ταῦτα δέοι ἂν καὶ περὶ τούτων διωρίσθαι, τί κλοπή, τί ὕβρις, ... ὅπως ἐάν τε ὑπάρχειν ἐάν τε μὴ ὑπάρχειν βουλώμεθα δεικνύναι ἔχωμεν ἐμφανίζειν τὸ δίκαιον. ἔστι δὲ πάντα τὰ τοιαῦτα περὶ τοῦ ἄδικον εἶναι καὶ φαῦλον ἢ μὴ ἄδικον [ἡ] ἀμφισβήτησις· ἐν γὰρ τῇ προαιρέσει ἡ μοχθηρία καὶ τὸ ἀδικεῖν, τὰ δὲ τοιαῦτα τῶν ὀνομάτων προσσημαίνει τὴν προαίρεσιν, οἷον ὕβρις καὶ κλοπή· οὐ γὰρ εἰ ἐπάταξεν πάντως ὕβρισεν, ἀλλ' εἰ ἕνεκά του, οἷον τοῦ ἀτιμάσαι ἐκεῖνον ἢ αὐτὸς ἡσθῆναι. "But seeing that people often admit having committed an act but do not admit either the title [of the act] or what the title concerns—for example, [they admit] 'taking' but not 'stealing', or 'striking first' but not 'committing hubris'..., for these reasons concerning these matters too it must be determined what is theft, what is hubris, ...so that, whether we wish to demonstrate that such is the case or not, we are able to make clear our claim to right. All such cases are a dispute over whether a person is unjust and bad or not unjust: the depravity and the offense lies in the deliberate choice [of the actor], and words such as these indicate the deliberate choice as well [as the act]; for example, hubris and theft. For if a person struck, he did not in all cases commit hubris, but only if he did so for a reason; for example, in order to dishonor his victim or give himself pleasure"; *Rhet*. 1378b14–30: τρία ἐστὶν εἴδη ὀλιγωρίας, καταφρόνησίς τε καὶ ἐπηρεασμὸς καὶ ὕβρις...καὶ ὁ ὑβρίζων δὲ ὀλιγωρεῖ· ἔστι γὰρ ὕβρις τὸ πράττειν καὶ λέγειν ἐφ' οἷς αἰσχύνη ἐστὶ τῷ πάσχοντι, μὴ ἵνα τι γίγνηται αὐτῷ ἄλλο ἢ ὅ τι ἐγένετο, ἀλλ' ὅπως ἡσθῇ· οἱ γὰρ ἀντιποιοῦντες οὐχ ὑβρίζουσιν ἀλλὰ τιμωροῦνται. αἴτιον δὲ τῆς ἡδονῆς τοῖς ὑβρίζουσιν, ὅτι οἴονται κακῶς δρῶντες αὐτοὶ ὑπερέχειν μᾶλλον...ὕβρεως δὲ ἀτιμία, ὁ δ' ἀτιμάζων ὀλιγωρεῖ... "There are three types of contempt: scorn, spite, and hubris. ... A man who commits hubris also exhibits contempt, for hubris is doing and saying things

Athenians, as for Aristotle, what distinguished hubris from *aikeia* (ordinary battery, defined in Athenian law as ἄρχειν χειρῶν ἀδίκων, "beginning unjust hands"; i.e., starting a fight without justification)[43] was the perpetrator's *mens rea*: hubris was battery aggravated by the malicious intent of the perpetrator, typically (but not necessarily) to bring shame upon his victim and/or pleasure to himself—in other words, literally adding insult to injury.[44]

2. A fourth-century inscription from Por(d)oselene/Nasos (*IG* XII 2.646 = Stauber (1996) no. 36), the largest of the Hekatonnesoi located between Lesbos and the Asia Minor coast,[45] lists citizens fined for various offenses by the courts and the

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that involve shame for the victim, not in order that anything accrue to the actor other than what happened, but so that he may feel pleasure; those who act in response do not commit hubris but get vengeance. The cause of pleasure for those who commit hubris is their belief that by doing [others] ill they themselves excel more.... Dishonor is an element of hubris, and he who dishonors exhibits contempt." Other important passages include *Rhet*. 1384a15–18, 1402a1–3; *EN* 1149b20–1150a1. In a forthcoming article (Phillips (forthcoming)) I argue that Aristotle is correct as to the characteristic elements of shame and self-aggrandizement but incorrect in his rejection of anger, retaliation, and ulterior benefit to the perpetrator, and that in defining hubris we must also attend to Xenophon's *ep' agathōi* standard (*infra*, number 5).

[43] Dem. 23.50 (*lex*); [Dem.] 47.40, 47 (cf. §§7, 8, 15, 35, 39; Isoc. 20.1); cf. Arist. *Rhet*. 1402a1–3. The formula dates back at least to Draco (*IG* I^3 104.33–35).

[44] Dem. 54.1, 8–9: Ariston prosecutes Conon by a *dikē aikeias* but asserts that Conon would have been liable to a *graphē hybreōs*; the prime indicator of Conon's hubris is his rooster dance. Likewise, the speaker of Isocrates 20, prosecuting a *dikē aikeias*, accuses his defendant Lochites of hubris (§§1–6); in Demosthenes 21 (e.g., §§25, 28, 31–35) Demosthenes alleges that Meidias' actions qualify both as *aikeia* and as hubris. Lys. fr. 279 Carey *Against Teisis*, described by Dionysius of Halicarnassus as "a narrative dealing with hubris" (διήγησίν τινα...ὑβριστικήν, D. H. *Dem*. 11) and delivered in either a *dikē aikeias* or a *graphē hybreōs*, describes Teisis' luring Archippus into his house, tying him to a column, and whipping him (with Teisis' slaves repeating the assault the next day). At Aeschin. 1.58–64, the similar assault upon Pittalacus by Hegesander, Timarchus, *et al*. is described as hubris (§62); the lawsuits filed (but subsequently dropped) by Pittalacus against Hegesander and Timarchus (*ibid*.) were probably either *dikai aikeias* or *graphai hybreōs*. Isae. 8.41 with Isae. fr. VIII Baiter-Sauppe: Diocles of Phlya was prosecuted by *graphē hybreōs* for imprisoning his brother-in-law in his house and thereby procuring his *atimia* (ἠτίμωσε, 8.41: for an argument that this refers simply to shaming, not—as it is traditionally interpreted (e.g., Wyse (1904) 621)—to disfranchisement, see Avramović (2010)). The only other certain instance of the *graphē hybreōs* is the case initiated (but later dropped) by Apollodorus against the freedman (now metic) Phormion for marrying Apollodorus' mother Archippe (Dem. 45.3–5); the *casus litis* was the impropriety of the marriage and/or Phormion's seduction of Archippe during her first marriage, to Apollodorus' father Pasion (§84). [Dem.] 53.16: Nicostratus and Arethusius sent a citizen boy to pluck roses from Apollodorus' garden "so that, if I caught him and bound or beat him in the belief that he was a slave, they could bring a *graphē hybreōs* against me."

[45] On the problems of identification arising from Strabo 13.2.5–6, 618–19, see Stauber (1996) 1.198–208.

boulē. Lines 23 through 25 (*init*.) of text *a* read: ἐπὶ πρυ[τάν]ιος Ἀπολλωνίδα ἐπίτιμα ἐκ τᾶν δίκαν· [Ἀ]γησίστρατος Ἀγησιστράτειος τᾶς ὕβριος ἐπίτιμον ἐγ δίκας χρύ(σω) [στ]ά(τηρας) δδπ΄ "Fines resulting from the lawsuits while Apollonidas was *prytanis*: Agesistratus son of Agesistratus, fine for hubris resulting from a lawsuit, 25 staters of gold." Ὕβριος, genitive of the charge (cf. the next item, at lines 25–26: the same Agesistratus was fined 6 staters for theft, φώρας), indicates that hubris was the name of the offense, and hence comprised a substantive legal category, as at Athens. While we do not know what Agesistratus did, or, more generally, what actions qualified as hubris under the law of Nasos, the offense was evidently a serious one: with the 25 staters imposed on Agesistratus for hubris compare the standard fine of 10 staters for naval desertion or dereliction of duty (offenders designated λιπόναυται: *a* 7–13, *c* 48–54).

3. We have some evidence that hubris constituted a specific offense at Sparta. Herodotus (6.85) relates that when the Aeginetans learned of the death of Cleomenes I (*ca*. 490), "they sent ambassadors to Sparta to denounce Leotychidas (II) concerning the hostages being held at Athens. The Spartans convened a court and rendered a verdict that the Aeginetans had been treated with extreme hubris by Leotychidas (δικαστήριον συναγαγόντες ἔγνωσαν περιυβρίσθαι Αἰγινήτας ὑπὸ Λευτυχίδεω), and they sentenced him to be extradited and conveyed to Aegina in return for the men being held at Athens."[46] Leotychidas had cooperated with Cleomenes in seizing ten Aeginetan hostages and depositing them for safekeeping with the Athenians, the Aeginetans' blood enemies (Hdt. 6.73); significantly, the Aeginetans' allegation and the Spartan reaction coincide with Athenian sources in categorizing wrongful imprisonment as hubris (Isae. 8.41; [Dem.] 53.16: *supra*, n. 44). It is likely that hubris was among the charges the regent Pausanias confronted upon his recall to Sparta in 478/7. Thucydides (1.95), who accepts the allegations against Pausanias, credits his recent history of violent behavior (ἤδη βιαίου ὄντος αὐτοῦ) with motivating the Ionians to defect to Athenian leadership, asserts that his countrymen recalled him owing to multiple accusations of grave wrongdoing they had received from other Greeks and to the fact that his command was approximating a tyranny (καὶ γὰρ ἀδικία πολλὴ κατηγορεῖτο αὐτοῦ ὑπὸ τῶν Ἑλλήνων τῶν ἀφικνουμένων, καὶ τυραννίδος μᾶλλον ἐφαίνετο μίμησις ἡ στρατηγία), and reports that upon his return he was punished for his private offenses against individuals (τῶν μὲν ἰδίᾳ πρός τινα ἀδικημάτων ηὐθύνθη) and, though acquitted

[46] Τελευτήσαντος δὲ Κλεομένεος ὡς ἐπύθοντο Αἰγινῆται, ἔπεμπον ἐς Σπάρτην ἀγγέλους καταβωσομένους Λευτυχίδεω περὶ τῶν ἐν Ἀθήνῃσι ὁμήρων ἐχομένων. Λακεδαιμόνιοι δὲ δικαστήριον συναγαγόντες ἔγνωσαν περιυβρίσθαι Αἰγινήτας ὑπὸ Λευτυχίδεω, καί μιν κατέκριναν ἔκδοτον ἄγεσθαι ἐς Αἴγιναν ἀντὶ τῶν ἐν Ἀθήνῃσι ἐχομένων ἀνδρῶν. See de Ste. Croix (1972) 351; MacDowell (1986) 133–34, 148–49; Fisher (1992) 138–39, (2000) 105–6. Pritchett (1974) 5 (Table 1) identifies the charge as hubris.

of the most serious charges—in particular, medism—was relieved of command.[47] The more skeptical Herodotus relates that Pausanias' hubris was the stated pretext for divesting the Spartans of their hegemony over the Hellenic League (**πρόφασιν τὴν Παυσανίεω ὕβριν προϊσχόμενοι** ἀπείλοντο τὴν ἡγεμονίην τοὺς Λακεδαιμονίους, 8.3).[48] The testimony of Herodotus, coupled with Thucydides' description of violent, tyrannical, and Persian behavior—all commonly associated with hubris in the Greek mind[49]—makes it all but certain that hubris featured prominently in the rhetoric used against Pausanias at trial, even if it did not constitute a formal charge.[50]

4. Hippodamus of Miletus (b. *ca*. 500), most famous for his urban planning, proposed that all laws and the corresponding lawsuits be divided into three categories: hubris, damage (*blabē*), and homicide (Arist. *Pol*. 1267b37–39).[51] This strongly suggests that hubris already existed as a substantive legal category in at least one, and probably more, of the *poleis* that Hippodamus lived in or visited.[52]

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[47] ἤδη δὲ βιαίου ὄντος αὐτοῦ οἵ τε ἄλλοι Ἕλληνες ἤχθοντο καὶ οὐχ ἥκιστα οἱ Ἴωνες καὶ ὅσοι ἀπὸ βασιλέως νεωστὶ ἠλευθέρωντο· φοιτῶντές τε πρὸς τοὺς Ἀθηναίους ἠξίουν αὐτοὺς ἡγεμόνας σφῶν γίγνεσθαι κατὰ τὸ ξυγγενὲς καὶ Παυσανίᾳ μὴ ἐπιτρέπειν, ἤν που βιάζηται. οἱ δὲ Ἀθηναῖοι ἐδέξαντό τε τοὺς λόγους καὶ προσεῖχον τὴν γνώμην ὡς οὐ περιοψόμενοι τἆλλά τε καταστησόμενοι ᾗ φαίνοιτο ἄριστα αὐτοῖς. ἐν τούτῳ δὲ οἱ Λακεδαιμόνιοι μετεπέμποντο Παυσανίαν ἀνακρινοῦντες ὧν πέρι ἐπυνθάνοντο· καὶ γὰρ ἀδικία πολλὴ κατηγορεῖτο αὐτοῦ ὑπὸ τῶν Ἑλλήνων τῶν ἀφικνουμένων, καὶ τυραννίδος μᾶλλον ἐφαίνετο μίμησις ἢ στρατηγία. ... ἐλθὼν δὲ ἐς Λακεδαίμονα τῶν μὲν ἰδίᾳ πρός τινα ἀδικημάτων ηὐθύνθη, τὰ δὲ μέγιστα ἀπολύεται μὴ ἀδικεῖν· κατηγορεῖτο δὲ αὐτοῦ οὐχ ἥκιστα μηδισμὸς καὶ ἐδόκει σαφέστατον εἶναι. καὶ ἐκεῖνον μὲν οὐκέτι ἐκπέμπουσιν ἄρχοντα...

[48] See Macan (1908) 1.2.361 on the difficulties with the sentence that concludes with the quoted words. The referent of προϊσχόμενοι and subject of ἀπείλοντο may be the Athenians, the other (non-Peloponnesian) allies, or some combination of the two.

[49] E.g., S. *OT* 873 (ὕβρις φυτεύει τύραννον); Hdt. 3.80; Arist. *Pol*. 1310b–1311b, 1314b23–27, 1315a14–31 with Fisher (1992) 27–31.

[50] Cf. Macan (1908) 1.2.362: "the phrase [*scil*. τὴν Παυσανίεω ὕβριν] may be a current one, descriptive of the proceedings recorded more fully by Thuc. 1.94, 95, and touched by Hdt. himself [at] 5.32," which mentions Pausanias' alleged aspiration to tyranny over Greece (ἔρωτα σχὼν τῆς Ἑλλάδος τύραννος γενέσθαι). Plutarch accuses Pausanias of "many acts of hubris" (πολλὰ...ὑβρίζοντος, *Cimon* 6), which will have included his corporal punishment of common soldiers (*Arist*. 23): compare the case of Xenophon and the muleteer (*infra*, number 5). Additional sources include Diod. 11.44.3–6; Nepos, *Paus*. 2.6; on the hubris of Pausanias see Fisher (1992) 132 n. 308, 344, 381.

[51] ᾤετο δ' εἴδη καὶ τῶν νόμων εἶναι τρία μόνον· περὶ ὧν γὰρ αἱ δίκαι γίνονται, τρία ταῦτ' εἶναι τὸν ἀριθμόν, ὕβριν βλάβην θάνατον.

[52] Also according to Aristotle (*Pol*. 1274b18–23), Pittacus (*ca*. 650–570), lawgiver of Mytilene, wrote a law mandating that the penalties for offenses be aggravated if the offender was drunk, "since more people commit hubris (ὑβρίζειν) when drunk than when sober." Since this is virtually the extent of our knowledge on this law (it is also referenced at Arist. *Rhet*. 1402b11–12; Plut. *Mor*. 155f (*Sept. Sap. Conviv*. 13); D. L. 1.76; the last two assert that the penalty was doubled), we cannot conclude with any

III. Hubris in the laws of communities with members from multiple *poleis*

5. In the spring or summer of 400, encamped at Cotyora by the Black Sea, the Ten Thousand (*supra* with nn. 30–31) established a court of law, with a jury consisting of the company commanders (*lochagoi*), and resolved that their generals submit to review (X. *Anab*. 5.7.34–5.8.1). The charge brought against Xenophon was hubris: "several people (τινες) accused Xenophon, claiming to have been struck (παίεσθαι) by him, and they brought the charge that he was guilty of hubris (ὡς ὑβρίζοντος τὴν κατηγορίαν ἐποιοῦντο: 5.8.1)."[53] In the ensuing narrative, the first of the several prosecutors—who are not specified by name or by city of origin—alleges that the relevant events occurred during the previous winter, while he was assigned by his tentmates to drive a mule, "although he was a free man" (ἐλεύθερος ὤν, 5.8.5). Prosecution and defense stipulate that one day, on the march, Xenophon ordered the prosecutor and his mule to unload their cargo—the baggage belonging to the prosecutor and his tentmates—and carry in its stead a grievously ill soldier, but then, having sent them forward, found the prosecutor digging a grave for the man while he was still alive; when the prosecutor refused to carry the man further, Xenophon struck him (5.8.6–10). The prosecutor notes that the man subsequently died anyway; upon Xenophon's retort, "We are all going to die; should we all be buried alive on that account?" the attending crowd "shouted out that he had struck him too few blows" (τοῦτον...ἀνέκραγον ὡς ὀλίγας παίσειεν), thereby acquitting Xenophon by acclamation and cowing his other accusers into silence (5.8.11–12).

Xenophon then offers a lengthy disquisition whose purpose is to distinguish hubris from other instances of and motives for striking people (5.8.13–26). He opens by confessing still other previous uses of violence (5.8.13–16):

> Ἐγώ, ὦ ἄνδρες, ὁμολογῶ παῖσαι δὴ ἄνδρας ἕνεκεν ἀταξίας ὅσοις σῴζεσθαι μὲν ἤρκει δι' ὑμῶν ἐν τάξει τε ἰόντων καὶ μαχομένων ὅπου δέοι, αὐτοὶ δὲ λιπόντες τὰς τάξεις προθέοντες ἁρπάζειν ἤθελον καὶ ὑμῶν πλεονεκτεῖν. εἰ δὲ τοῦτο πάντες ἐποιοῦμεν, ἅπαντες ἂν ἀπωλόμεθα. ἤδη δὲ καὶ μαλακιζόμενόν τινα καὶ οὐκ ἐθέλοντα ἀνίστασθαι ἀλλὰ προϊέμενον αὑτὸν τοῖς πολεμίοις καὶ ἔπαισα καὶ ἐβιασάμην πορεύεσθαι. ... ἄλλον δέ γε ἴσως ἀπολειπόμενόν που διὰ ῥᾳστώνην καὶ κωλύοντα καὶ ὑμᾶς τοὺς πρόσθεν καὶ ἡμᾶς τοὺς ὄπισθεν πορεύεσθαι ἔπαισα πύξ, ὅπως μὴ λόγχῃ ὑπὸ τῶν πολεμίων παίοιτο.
>
> *Gentlemen, I admit that I have indeed struck men on account of their lack of discipline—those who were content to be saved by you while you were marching in order and fighting where required, while they themselves had abandoned their stations and were running ahead, wishing to seize plunder and take more than you.*

confidence that hubris was a named offense under Mytilenean law, although, as Fisher (1992) 208 observes, "it seems far from unlikely."

[53] There is no reason to doubt the identification of the charge, as between this statement of the charge and the end of Xenophon's speech at 5.8.26, the word ὕβρις and its derivatives ὑβρίζειν and ὑβριστός occur six more times. For discussion of Xenophon's trial see Fisher (1992) 125–26; Lendle (1995) 355–59; Couvenhes (2005) 452–53; Lee (2007) 101–3; Flower (2012) 146–47.

If we all did this, we would all be dead. And also, when someone has shown weakness and refused to stand up, instead forsaking himself to the enemy, I have struck him and forced him to go forward. ... And, perhaps, when someone was lagging behind due to laziness and preventing both you in the front and us in the rear from proceeding, I struck him with my fist so that the enemy would not strike him with a spear.

Having thus defended the use of force against individuals when it is applied with the purpose of enforcing military discipline,[54] Xenophon comes to the crux of his argument (5.8.18–19):

ἁπλοῦς μοι...ὁ λόγος. εἰ μὲν ἐπ' ἀγαθῷ ἐκόλασά τινα, ἀξιῶ ὑπέχειν δίκην οἵαν καὶ γονεῖς υἱοῖς καὶ διδάσκαλοι παισί· καὶ γὰρ οἱ ἰατροὶ καίουσι καὶ τέμνουσιν ἐπ' ἀγαθῷ· εἰ δὲ ὕβρει νομίζετέ με ταῦτα πράττειν, ἐνθυμήθητε ὅτι νῦν ἐγὼ θαρρῶ σὺν τοῖς θεοῖς μᾶλλον ἢ τότε καὶ θρασύτερός εἰμι νῦν ἢ τότε καὶ οἶνον πλείω πίνω, ἀλλ' ὅμως οὐδένα παίω....

*My argument...is simple. If I punished someone for his own good, I think I should submit to the same sort of judgment as parents do at the hands of their sons and teachers do at the hands of their students; doctors, too, burn and cut for the good (*scil. *of their patients). But if you believe that I commit these acts out of hubris, bear in mind that now I have more confidence, thanks to the gods, than I did then, and I am bolder now than I was then, and I drink more wine, but all the same I don't hit anybody....*

Here and throughout the trial scene, the concept of hubris applied by the Ten Thousand conforms to the Athenian model.[55] The prosecutors bring hubris charges because Xenophon struck them, and the muleteer—the only prosecutor to speak—claims that he was beaten for no good reason; Xenophon defends himself on the grounds that his actions were not just merited but beneficial. In Athenian law, a blow struck with justification did not constitute *aikeia*—defined as striking the first blow *without* justification (ἄρχειν χειρῶν **ἀδίκων**: *supra*, number 1)—and

[54] Despite the resolution of the army, passed on the proposal of Xenophon, that disobedient soldiers were to be punished by any witnessing troops in concert with the commanding officer (*Anab*. 3.2.31–33), to which Xenophon alludes at 5.8.21 (when Xenophon was beating men for indiscipline, "you neither came to their aid nor joined me in striking the one who was being disorderly"), this was a tendentious argument, as we see by comparison with the case of Pausanias and the Ionians (*supra*, number 3). While the limitations of our evidence do not permit generalization, it appears that Greek soldiers not infrequently expected to enjoy immunity from corporal punishment by their superiors (cf. the next note). References to such punishment or the threat thereof (short of the death penalty for major offenses) frequently involve Spartan officers and non-Spartan subordinates, who respond in hostile fashion: in addition to the Pausanias case, note Thuc. 8.84; X. *Hell*. 6.2.18–19. See Pritchett (1974) 232–45; Couvenhes (2005).

[55] This is not to say that an Athenian general had the right to strike his subordinates; in the fourth century, at least, the sources ([Arist.] *Ath. Pol*. 61.2; Lys. 3.45; Dem. 54.3–5) appear to indicate *e silentio* that he did not.

therefore *a fortiori* could not qualify as hubris. Xenophon's jury (presumably to be counted among those who ἀνέκραγον at 5.8.12) agrees with him that his assault on the muleteer was justified, and so acquits him (cf. 5.8.21, in reference to the conduct of bystanders as Xenophon inflicted punishment: ὅτι δὲ δικαίως ἔπαιον αὐτοὺς καὶ ὑμεῖς κατεδικάσατε, "you yourselves have cast judgment that I was right to hit them [i.e., undisciplined soldiers]"). Earlier, when Xenophon interrogates the muleteer regarding the cause of his beating (5.8.4–5), his questions serve to rule out some typical circumstances and causes of hubristic assault advanced by Athenian litigants: the answers establish that Xenophon was not attempting to seize or recover property (cf. [Dem.] 47.41), the two men were not engaged in erotic rivalry (περὶ παιδικῶν μαχόμενος: cf. Lys. 3.5–7), and Xenophon was not drunk (μεθύων ἐπαρῳ̃νησα: cf. Dem. 54.3, 7–8, 16). Neither prosecution nor defense gives any indication of the degree of physical harm inflicted, and as both agree that Xenophon's motive was to compel the muleteer to transport a comrade, it is unlikely that he used debilitating force.[56] What qualified an assault as hubris, then, was not its severity but other factors, of which we have a hint when the muleteer asserts his free status at 5.8.5:[57] already at least inconvenienced by the task of driving a mule, which was typically slave labor, he ended up submitting to a punishment that was both humiliating for a free man and pointless, since the sick soldier died despite Xenophon's intercession (5.8.11).

6. Among the laws of Alexandria preserved in the mid-third-century *Dikaiomata* (*PHalensis* 1) is a law on hubris (col. IX, lines 210–13), which reads:

> Ὕβρεως. ἐάν τις καθυβρίσηι ἕτερος ἑτέρου τ[ῶ]ν ἀγράφων, ὁ τα[λαιπωρού]μενος τιμησάμενος δικασάσθω, προσγρα[ψά]σθω δὲ ὀνομαστί, τ[ί ἂν φῆι] ὑβρισθ[ῆ]ναι καὶ τὸν χρόνον ἐν ὧι ὑβρίσθη. ὁ δ[ὲ] ὀφλὼν διπλοῦν ἀπ[οτεισάτω,] ὃ ἂν τὸ δικαστήριον τιμήσηι.
>
> *Hubris.*[58] *If a person commits hubris against another of a type not covered by the written law, the aggrieved party shall assess the penalty and bring suit, and he shall*

[56] The same applies to the instances in which Xenophon struck stragglers to prevent them from succumbing to the elements or to the enemy: 5.8.13–16, partially quoted above.

[57] Cf. Isoc. 20.5–6: "Now, Lochites will probably try to belittle the matter, ...claiming that I suffered no harm from the blows (πληγῶν).... For my part, if there had been no hubris involved in what happened, I would never have come before you [the jury]; but as it is, I have come to exact punishment from him not for the physical damage (τῆς ἄλλης βλάβης) that resulted from his blows, but for the indignity (αἰκίας) and the dishonor (ἀτιμίας), things at which free men should feel the greatest anger and for which they should obtain the greatest retribution"; Dem. 21.72, on Euaeon's killing of Boeotus in response to a single blow: "It wasn't the blow (πληγή) that caused his anger, but the dishonor (ἀτιμία); it isn't being hit (τὸ τύπτεσθαι) that is so terrible for free men—terrible though it is—but being hit for the purpose of hubris (τὸ ἐφ' ὕβρει)."

[58] The genitive in the title indicates that hubris is the formal charge to be brought in accordance with this law; cf. the preceding clauses governing "threatening with a weapon" (σιδήρου ἐπαντάσεως, col. VIII, lines 186–92), "offenses committed while

add to his written complaint specifically how he claims to have been treated with hubris and the time when he was treated with hubris. The convicted (defendant) shall pay twice the amount that the court assesses.[59]

In substantive terms, this law is more informative than its Athenian counterpart (*supra*, number 1): while it fails to define hubris as such, it indicates that many (probably most) instances of hubris are justiciable under other sections of the Alexandrian code. These include the laws immediately preceding the hubris law in the *Dikaiomata*, which address threatening with a weapon (col. VIII, lines 186–92); offenses against the person (εἰς τὸ σῶμα) committed while under the influence of alcohol, at night, on sacred ground, or in the agora (col. IX, lines 193–95); battery by a slave upon a free person (col. IX, lines 196–202); and battery by a free person upon a free person (col. IX, lines 203–9).[60] The significant procedural difference between Alexandria and Athens is that in Alexandria the action for hubris is a *dikē*, available only to the wronged party.[61] A papyrus document contemporary with the *Dikaiomata* (*PHibeh* 32, 246 or 245 B.C.)[62] records the distraint (the *verso* bears the label ἐνεχυρασία) of 38 sheep by one Heracleitus son of Heracleitus, who is awaiting enrollment in the Alexandrian deme of the Castoreioi,[63] from a Macedonian soldier named Neoptolemus against a total fine of 220 drachmas (a principal fine of 200 dr. plus an ἐπιδέκατον of 20 dr.) assessed in a lawsuit for hubris that Neoptolemus lost by default (πρὸς καταδίκην ἔρημον ὕβρεως, lines 7–8).[64]

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drunk" (μεθύοντος ἀδικιῶν, col. IX, lines 193–95), "a slave who has struck a free person" (δούλῳ ἐλεύθερον πατάξαντι, col. IX, lines 196–202), and "battery among free persons" (πληγῆς ἐλευθέροις, col. IX, lines 203–9). For the last two compare the apparent reference to a δίκη πληγῶν in the lacunose col. V, line 115 (which in all probability also contained a reference to the δίκη ὕβρεως).

[59] See Bechtel et al. (1913) 22, 107–17; Meyer (1920) no. 70; Partsch (1920) 54–76; Taubenschlag (1955) 435–42; Velissaropoulou (1981) 45–46, 126–29, 160–61; Fisher (1992) 83–85; Hirata (2008).

[60] With the penalty for hubris (double the assessed damages) compare the penalties for battery among free persons: 100 dr. for a single blow by the aggressor (ἄρχων χειρῶν ἀδίκων), double the assessed damages for multiple blows, and triple the assessed damages for battery upon a magistrate in the performance of his duties (compare, for Athens, the stress laid by the speaker at [Dem.] 47.41–42 and by Demosthenes at Dem. 21.31–34 on their official roles as trierarch and *chorēgos* respectively).

[61] Hirata (2008) 680 is rightly cautious as to the conclusion drawn by Partsch (1920) 61 and others (e.g., Fisher (1992) 84) that the court had full discretion in penal assessment.

[62] Grenfell-Hunt (1906) no. 32; Mitteis (1912) no. 37; Bechtel et al. (1913) 117; Partsch (1920) 61; Velissaropoulou (1981) 127; Fisher (1992) 85 n. 12; Hirata (2008) 678 n. 15.

[63] On the identification of the deme and the status of Heracleitus as a "probationary" or "prospective" Alexandrian citizen see Fraser (1972) 1.44, 49–50; 2.119 n. 41, 133–34 nn. 104–6.

[64] For additional examples from the Egyptian *chōra*, of various dates, see Taubenschlag (1955) 436–38.

7. Finally, returning to the fifth and fourth centuries, and casting the widest possible net, we find that the term hubris enjoyed broad and lasting currency in the language of international relations. In particular, hubris could be alleged as a *casus belli*. Our best examples come from Thucydides' analysis of the proximate causes of the Peloponnesian War. In 433, the Corinthian ambassadors attempting to dissuade the Athenians from the alliance proposed by Corcyra assert that they did not found Corcyra in order to be treated with hubris by the Corcyraeans (ἐπὶ τῷ ὑπὸ τούτων ὑβρίζεσθαι), among whose numerous acts of hubris is the forcible and spiteful seizure of Epidamnus in 435 (ὕβρει δὲ καὶ ἐξουσίᾳ πλούτου πολλὰ ἐς ἡμᾶς ἄλλα τε ἡμαρτήκασι καὶ Ἐπίδαμνον ἡμετέραν οὖσαν κακουμένην μὲν οὐ προσεποιοῦντο, ἐλθόντων δὲ ἡμῶν ἐπὶ τιμωρίᾳ ἐλόντες βίᾳ ἔχουσιν, 1.38). Later in their speech, the Corinthians summarize these and other complaints as "justifications...sufficient *according to the laws of the Greeks*" (δικαιώματα μὲν οὖν τάδε πρὸς ὑμᾶς ἔχομεν ἱκανὰ **κατὰ τοὺς Ἑλλήνων νόμους**, 1.41). After the Corinthian mission fails, and Athens and Corinth have clashed over both Corcyra (at the battle of the Sybota islands in August 433)[65] and Poteidaea (immediately thereafter), at the first conference of the Peloponnesian League in 432/1 the Corinthians accuse the Athenians of hubris (μέγιστα ἐγκλήματα ἔχομεν ὑπὸ μὲν Ἀθηναίων ὑβριζόμενοι, 1.68).[66] Half a century later, in 381/0, during the waning years of their own hegemony, the Spartan ephors declared war on Phlius on the grounds that the Phliasians were guilty of hubris (τῷ δ' ὄντι ὑβρίζειν δοκούντων τῶν Φλειασίων φρουρὰν φαίνουσιν ἐπ' αὐτοὺς οἱ ἔφοροι, X. *Hell*. 5.3.13) in their treatment of returned exiles (5.3.10–12).[67] These are only a few episodes among many demonstrating the use of the term hubris—before, during, and

[65] For the date see *IG* I^3 364 = Meiggs-Lewis (1988) no. 61; Hornblower (1991–2008) 1.89.

[66] While the evidentiary problems with reported speech in Thucydides (in light of his famous and disputed programmatic statement at 1.22, among other factors) are well-known (see, e.g., Finley (1942) 36–73; Gomme-Andrewes-Dover (1945–81) 5.393–99; Hornblower (1987) 45–72), there is nothing inherently unlikely in the use of hubris language by Corinthian (or any other) ambassadors; and that the Corinthians actually did use such language is suggested by its relative paucity in Thucydides as a whole: "...Thucydides seems exceptionally reluctant, even more than other historians, to use the strongly condemnatory *hybris*-terms in his own voice, in narrative or judgmental analysis. Of the thirteen cases, six are found in speeches, and five more...in contexts which clearly reflect the rhetorically charged moral condemnation (or defences against such charges) made by individuals in the narratives" (Fisher (2000) 106; see also Murphy (1997) 76–77).

[67] Both Thucydides' Corinthians and Xenophon's Phliasian exiles allege abuses of law by their adversaries. The Corinthians maintain that the Corcyraean offer of third-party arbitration is specious (Thuc. 1.39); the Phliasian exiles contend that their attempts to recover property are frustrated by courts rigged by their erstwhile ejectors, and they are fined by their city for coming to Sparta to complain (X. *Hell*. 5.3.10–12; cf. 5.2.8–10). On accusations of hubris made by Spartans see Fisher (2000) 105–6; on the Phlius episode see Fisher (2000) 110–11.

after the fact, by actors and narrators alike—to condemn the aggression of rival states.[68] We are therefore entitled to speak of hubris as a term of "Greek" law[69] due not only to its manifestation, from the sixth century to the third (and beyond), in the legal systems of various individual *poleis* and in the quasi-*polis* of the Ten Thousand, but also to its role as a vital element in the vocabulary of the fledgling Greek international law.[70]

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[68] For a survey of the phenomenon from the late Archaic period to Philip II and Alexander the Great, see Fisher (1992) 136–42. Note, *inter alia*, (1) the inscribed bases of the Athenian dedications to Athena for their victory in 506 over the Boeotians and Chalcidians, whose "hubris they quenched" (ἔσβεσαν ὕβριν) (*IG* I^3 501 = Meiggs-Lewis (1988) no. 15 = Simonides fr. 100 Diehl ≈ Hdt. 5.77), only to have the latter's Spartan allies two years later urge war on Athens again, resuscitating the charge of the Athenians' "extreme hubris" in expelling Cleomenes and his men in 507 (ἡμέας...καὶ τὸν βασιλέα ἡμέων περιυβρίσας ἐξέβαλε, Hdt. 5.91; cf. 5.72, 74); (2) the hubris imputed to the Persian invaders of 490 (Paus. 1.33.2–3; Stafford (2005) 198–200) and 480–479 (e.g., A. *Pers*. 807–8, 821–22; Hdt. 7.16α; cf. the judgment of Croesus, Πέρσαι φύσιν ἐόντες ὑβρισταί, Hdt. 1.89; see also MacDowell (1976) 20; Michelini (1978) 42 with n. 22; Cairns (1996) 21; Fisher (2002) 220–24; Papadimitropoulos (2008)); (3) the allegations of Thebes' hubris (before and) during its hegemony (e.g., X. *Hell*. 6.5.46, 371/0: Procles of Phlius entreats the Athenians to prevent Theban hubris against Sparta; Isoc. 6.54, 108, composed 366 or later: Isocrates' Archidamus, son of the Spartan king Agesilaus, urges his countrymen to continue and intensify the fight against the Thebans, who have committed hubris against Sparta); and (4) Philip's citation of the fable of War and Hubris to the leaders of the Chalcidic League in or about 351/0 (Theopompus, *FGrHist* 115 F 127) and the Athenian response in kind (e.g., Dem. 9.32–35, delivered in 341: Philip's acts of the utmost hubris (τῆς ἐσχάτης ὕβρεως, §32) include destruction, occupation, invasion, and extortion of Greek states, as well as exercise of Amphictyonic prerogatives).

[69] As it is characterized at *Collatio* 2.5.1 (Paulus [*fl*. late second–early third century A.D.], *de iniuriis* 1) = Justinian, *Inst.* 4.4 pr.: *contumelia...quam Graeci* ὕβριν *appellant*; the *Collatio* continues, *...apparet non esse verum, quod Labeo* [*fl*. late first century B.C.–early first century A.D.] *putabat, apud praetorem iniuriam* ὕβριν *dumtaxat significare* (for discussion see Hitzig (1899) 54–80; Partsch (1920) 62–64; Hirata (2008) 680–81).

[70] On the use and limitations of this term see Low (2007) 77–128.

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