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## DECREES FOR FOREIGN JUDGES: JUDGING CONVENTIONS—OR EPIGRAPHIC HABITS?\*

### Introduction

Foreign judges, invited from one city to sojourn in another (and sometimes invited upon recommendation by a royal ruler), were often asked to reconcile citizens who were in dispute or else to settle their cases by law. They might also be asked by two cities, as arbitrators or judges, to resolve disputes between them. In this essay, I focus upon the first type, the judges who settled or decided cases between the inhabitants of one city. Our knowledge of the institution derives almost exclusively from inscriptions, especially from decrees of one city recording its request for judges from another (and sometimes from multiple cities) and now bestowing honors, both on the responding city for its goodwill and on its judges for their success.<sup>1</sup> The decrees are first attested in the last quarter of the fourth century, e.g., in a decree of Kyme for Magnesians judges sent “in accordance with the *diagramma* of Antigonos” (IKyme 1), in a Chian decree for judges from Naxos and Andros (SEG 12.390), and in a Samian decree for judges from Kos (IG XII 4,1 131). The practice as attested in the decrees appears with some regularity in eastern Greek cities in the Hellenistic period, especially in the third and more vigorously in the second centuries BCE and

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<sup>1</sup> L. Robert 1973; C. Crowther: see ‘Works Cited’; K. Harter-Uibopuu 1998: 140–41; 2002. There is not, as yet (so far as I know), any published list of all attested decrees for foreign judges; A. Cassayre 2010: 131–54 tabulates a great many, setting known instances out in a geographical order, arranged by city who sends judges and city who receives them, and provides dates (where possible), circumstances, number of judges and secretaries, and references. Crowther 2006: 40–48 catalogues foreign courts in Thessaly, by regional and chronological distribution.

on into the first; it spread to mainland Greece, it seems, in the second century.<sup>2</sup> While the latest preserved decrees are dated to the turn of the first centuries BCE and CE, other inscribed texts indicate that foreign courts were used into the second half of the second century CE.<sup>3</sup>

Foreign judges were summoned, often, it seems, in times of crisis, when routines of civic life had been disrupted by warfare; when stasis emerged amidst cities whose inhabitants were beleaguered by debts and breached contracts (e.g., IPriene 8.4; IG XII 6,1 no. 95.3, 6, 10; IG IX.2, no. 1230.1–3 and 10–13); when bribery and corruption were rife (Gonnoi no. 91: 20–26: a citizen even tries to bribe the visiting judges from Skotoussa!); when cases had not been heard in a long time (IPriene 59.2–3 [SEG 43.850]). The number of judges varied: we find now one, now two, or three, or five—the odd number was preferable to break a tie when a decision was voted (e.g., ἔκριναν διὰ ψάφου, TC test. XVI).<sup>4</sup> However large or small, the tribunal (even of one) might be called a *dikasterion*. The Chian decree of the late fourth century that was mentioned earlier honors five judges from Naxos and five from Andros; the panel from each is spoken of as a separate *dikasterion* (SEG12.390.44–5). The court is occasionally designated a “*xenikon dikasterion*” (Syll.<sup>3</sup> 306, IPArk no. 5.24, 27, 32; IPriene 59); it differs from a “*politikon* (sc. *dikasterion*),” a court of a city empanelled by its own citizens, as mentioned in a decree of Erythrai, probably honoring one of its own judges (IErythrae 114; also Syll.<sup>3</sup> 306, IPArk no. 5.28 and pp. 65–7). Visiting judges stayed for extended periods; in regulations provided for Tegea (Syll.<sup>3</sup> 306, IPArk 5) apparently enacted after Alexander’s Exile Decree, a foreign court is to decide cases for sixty days (τὸ δὲ δικαστήριον τὸ ξενικὸν δικάζειν ἐξήκ- ἡ ὄντα ἡμερῶν, 24–25); in other texts, we find that judges have asked to be sent home—the sojourn has apparently turned out longer than expected (SEG 12.390.4–5; 19.569.6–7; IG XII 4,1 no. 135.12–18; cf. Michel Recueil no. 542). On one occasion, the judges fell ill and a Samian doctor was called in to cure them (XII 6,1 no.12); presumably, their stay was protracted, too.<sup>5</sup>

In the decrees, foreign judges are almost always designated *dikastai* (‘judges’), occasionally *diallaktai* (‘mediators’). They are frequently said to have ‘settled’ some

<sup>2</sup> N. Papadopoulou and A. Matthaïou (1992–98) 335–67 (summarized at SEG 48.260) published a decree of Mopsion for judges and a secretary from Atrax which they date to mid-third century; if correct, it is now the earliest such decree from the mainland. Crowther 2006: 37–8 is hesitant about the date for SEG 53.540, a Lamian decree for Opuntian judges that has been dated by its first editor, P. Bouyia, to the mid-third century on paleographical grounds.

<sup>3</sup> Crowther 2006: 35 provides references for texts.

<sup>4</sup> For different configurations of these tribunals, see Hamon 1999. For expanded consideration of circumstances involved in choosing the city or cities who are asked to send judges, and circumstances involved in choosing judges, see Hamon 2012 [2013].

<sup>5</sup> IG XII 6, 1: 12.21–25, honorary decree of Samos for Diodoros, son of Dioskourides. See, generally, Massar 2001.

cases (διαλῦσαι, less frequently συλλῦσαι) and to have ‘judged’ or ‘decided’ others (δικάσαι, διαδικάσαι, κρῖναι, διακρῖναι); only rarely do they appear, strictly speaking, to ‘arbitrate’ (δαιτηῖσαι).<sup>6</sup> In some texts, a judge is requested who will give ‘a reasoned decision’ (δικαστήν τὸν δικῶντα μετὰ ἀποφάσεων, SEG 43.986.4); this has been interpreted as a decision in an arbitration after a failed reconciliation.<sup>7</sup> It is possible that on some occasions the same person will have served as *diallaktes*, *diatetes*, and *dikastes* (see section 3b). In most instances, however, the decrees simply contrast ‘reconciliation’ with ‘judging’; and in some few cases, judging alone is mentioned. Debt and breach of contract seem often to be a concern.<sup>8</sup> Special cases are sometimes noted: a decree of Erythrai honors a Prienian judge (IPri 50 and p. 310; IErythrai 111) who apparently was sent to decide one matter only, ἐπὶ τὴν δίκην τῆς μηνύσεως (“for the trial arising from the denunciation”); a decree of Alexandria Troas (IPriene 44.17–18) honors Prienian judges διότι τὰς δίκας ἴσως ἢ καὶ δικαίως ἀπάσας ἔκριναν τὰς τε τῶμ παρανόμων καὶ τὰς τῶμ βιαιῶν (“because they judged fairly and justly all the trials for lawlessness [?] and violence”); and a decree of Antiocheia (IMagnesia 90) honors a judge from Magnesia who was zealous περὶ τῶν δικῶν καὶ παραγραφῶν κα[ῖ—] (“regarding the private cases and special pleas”).<sup>9</sup> Louis Robert, whose 1973 essay on foreign judges remains of fundamental importance, thought that foreign judges became the regular tribunal for administering justice in many Hellenistic cities—that is, they replaced the standing courts; the view is hegemonic today.<sup>10</sup> Robert also introduced the notion that these visitors were judicial experts, experienced in dealing with laws of foreign legal codes and authoritative by virtue of

<sup>6</sup> SEG 46.1481.10 (Crowther: IPriene 8: 1996: 234–37 with notes and translation); TC Test. XVI 43. Failed reconciliation followed by arbitral decision seems only to appear in the Kalymnian text. Such a procedure resembles official arbitration in Athens: private cases brought to the Forty worth over 10 dr. are handed over to official arbitrators οἱ δὲ παραλαβόντες, [ἐ]ὰν μὴ δύνωνται διαλῦσαι, γιγνώσκουσι (*Ath. Pol.* 53.2: “And these, after they take the cases over, if they are unable to bring about a settlement, give a decision”). Crowther proposes a verb for arbitration for SEG 26.677.36, Peparthos honors judges from Larissa [1997:352]). For the *diatetai* in IEph 4 (Syll.<sup>3</sup> 364), the Ephesian law on war debt relief, see n. 44 *infra*.

<sup>7</sup> Bousquet-Gauthier 1993: 20–23 examines the phrase and interpret the ἀποφάσις in such phrases as “une ‘sentence’ motivée.” Other examples appear in IErythrai 120.5; IMylasa 634.3. Possibly SEG 43.293 is an example of such a decision—but it is extremely fragmentary. Brief mention in Hamon 2012 [2013] 202 and n. 27.

<sup>8</sup> Public and private contracts: e.g., IPriene 8.4; Crowther et alii 1998: 308–9; IG XII 6, 1 95.

<sup>9</sup> Cf. IErythrai 117, another Antiochian decree, honoring judges from Erythrai who were eager περὶ τῶν δικῶν καὶ τῶμ [παρ]α- ἢ [γραφῶν καὶ τ]ῶν ὄρκων ...).

<sup>10</sup> Robert 1973: 776 = *OMS V*. The view has been given vigorous reinforcement recently by Fröhlich 2011: 305; and also by Fournier 2010 who demonstrates the regular employment of foreign judges in Mylasa (esp. pp. 205–226) and persuasively argues that continuity of popular courts in Rhodes is anomalous (pp. 201–204).

their official positions in their own cities as well as by repeat performances as judges there and elsewhere. He pointed out that the visiting judges used the laws of the city they served in: while implicit in statements that “they judged κατὰ τοὺς νόμους,” it is explicit in others: SEG 43.850 (Laodicea): οὐ παραγενόμενοι εἰς τὴν πόλιν ἐδίκασαν τὰς δίκας δικαίω[ς]|| κατὰ τοὺς ὑπάρχοντας ἡμῶν νόμους ... (“[the judges] upon their arrival judged the cases justly in accordance with the laws current for us”); similarly at SEG 26:677.27: Peparethos honors judges from Larissa, part of whose charge apparently was τὴν τῶν ἡμετέρων νόμων τήρησιν (“the guarding of our laws”).

Among the hundreds of published inscribed documents honoring foreign judges, only one so far has appeared that additionally provides the text of the settlement and decisions made by the judges: this is IG XII 4,1 no. 132, published in 2010 and dated ca. 300 BCE.<sup>11</sup> Here, the people of Telos (an island between Kos and Rhodes) had invited Koan judges to reconcile disputing parties; the original offences had been decided by the Telians’ own judges years earlier; and the penalties they had meted out at that time had led to confiscation and disharmony among the citizens. The opisthographic stele records: (1) an incomplete decree of the people of Telos honoring the five men sent from Kos;<sup>12</sup> (2a) a text of the reconciliation (κ[ατὰ τά-] || δε διέλ[υ]σαν, 40), worked out by *diallaktai*<sup>13</sup> and setting out obligations that must be fulfilled by the previously convicted men if they are to recover their property;<sup>14</sup> (2b) a text of the decisions (ἔγνωμες, 69), presumably of the *diallaktai*, setting out practicalities of restitution, including penalties for magistrates for not carrying out provisions as well as penalties for those acting against the agreement;<sup>15</sup> and (3) an oath to be sworn by the citizens, inter alia, to protect the democracy, to forget past wrongs (οὐ μνασικακησεῖν), and to abide by the agreement (125–138).<sup>16</sup> Detailed discussion of this unique document must be reserved for another occasion. Nonetheless, it is essential to point out that the reconciliation (37–65) effected by the

<sup>11</sup> The stele was discovered in two non-contiguous pieces, one in 1903 (the lower part *b*) and the other in 1904 (the upper part *a*) in the Asklepieion of Kos. See IG XII 4,1 132 (ed. K. Hallof) for details and bibliography, to which add Thür 2011.

<sup>12</sup> Ll. 1–16: the decree breaks off and perhaps 20 lines are missing before resumption.

<sup>13</sup> The Koan visitors are called *diallaktai* at [11], 140, 140–41.

<sup>14</sup> Ll. 37–65, broken off at the end. In the motivating clause of the decree, the Telian [δᾶμος], desiring δι[α]λυθῆμεν with their opponents, voted ἐπιτράψαι their disputes with one another to the Koans; the agreement is referred to as διαλύσεις, 7, 119; as [δ]ιαλύσει, 122 and διαλύσει, 139; in the oath at 130: οὐδὲ πράξω παρὰ τὰν διάλυσιν τάνδε; the verbal activity of the judges appears as διέλυσαν, 11; διαλύσαι, 109. Cf. section 2b of the decree *supra*.

<sup>15</sup> Ll. 66–125, with gaps. The *dikastai* mentioned in l. 68 are a different set of men (as Crowther *per ep.* points out) from those who are the subject of the first person plural verb in l. 70; the latter are probably the Koan *diallaktai*; contra Thür 2011: 346. Is it possible that this segment of the document could be viewed as an *apophysis*, ‘a reasoned judgment’ in an arbitration? See n. 7.

<sup>16</sup> Ll. 125–138.

Koans was an equitable one: it provided the means for a release from the penalties and a means for the restitution of property for the sacred offenders in ll. 41–47, and it additionally, in the case of the public offenders in ll. 54–57, modified the original penalties that had been imposed by the Telians themselves.<sup>17</sup> Insofar as the Telians say of the Koans in the first section (the incomplete ‘honorary decree’) that “they reconciled [the people] fairly [and justly]” (διέλυσαν καλῶς ἢ [καὶ δικαίως τὸν δῶμον, *vacat*], 11–12), we might conclude that their activities in the reconciliation have been accurately represented.<sup>18</sup>

The Telian text about the disputes settled and judged by the Koans is exceptional; the great mass of such decrees do not provide us with such rich detail about disputes and their settlements.<sup>19</sup> Nonetheless, what is there is worth looking at closely. As we shall see, decrees honoring foreign judges often provide assessments of the judging activity, recording that “the judges, upon their arrival, judged some cases *on x basis* (criterion: e.g., ‘in accordance with the laws’) by acting thus (modality: e.g., ‘with unrelenting perseverance’) and settled others *on y basis* (criterion: e.g., ‘fairly and justly’) by acting thus (modality: e.g., ‘with all the zeal they could muster’).” In these accompanying formulations of the criteria and modalities of assessment used by judges, we find the way different cities characterized the judging conventions of their visitors. The simple expressions that they ‘judged’ and ‘reconciled’ on the same visit do at least inform us, as mentioned earlier, that two procedures (or one bipartite procedure) were used in bringing cases to a conclusion; this happens in IG XII 4,1 132 and elsewhere as well (section 3a *infra*). Often we find a higher and/or ideological priority for reconciliation, in emotive language that expresses modalities rather than criteria (sections 3b and c *infra*); some decrees even announce that judging is only to be resorted to when reconciliation fails.

On the other hand, we often find, I think, these expressions (of judging according to *x* and settling according to *y*, etc.) slipping away from any substantive meaning, not only because of their repetition, but also because they become messy: that is, the criteria and modalities that one logically associates with judging have somehow been transferred to reconciliation, or vice versa. On the simplest level, it is all very fine that the Bargylietans should praise the three judges from Priene οἵτ[ι]- ἢ νες τῶν δικῶν τὰς μὲν συνέλυσαν προσηκόντως, τὰς δὲ ἐδίκασαν ἢ δικαίως κατὰ

<sup>17</sup> Thür 2011: 343 interprets the agreement similarly (but in more detail); he differs, however, in viewing the previously convicted men as exiles on the basis of l. 136, and in his treatment of the penalties mentioned in ll. 54–57: he thinks these are for unidentified sacred offences. Other matters in the text on which we differ will be taken up elsewhere.

<sup>18</sup> The text is, of course, lacunose; the Telians may have added that the Koans also “judged according to the laws.”

<sup>19</sup> Thür-Taeuber 1994: 268 with n. 7, “Der für das Prozessrecht relevante Inhalt steht oft in keinem Verhältnis zur Länge der Inschriften; erst in ihrer Gesamtheit gewinnen die Texte Aussagekraft.” Also Dössel 2003:260–63. The observations of these authors predate, of course, the publication of IG XII 4,1 132.

τοὺς νόμους (IPriene 147.9–10: “who not only reconciled some of the cases in a fitting manner but also judged others justly in accordance with the laws”), and it is fine, too, that the Kolophonians should praise the three judges from Iasos who τὰς μὲν ἐδίκασαν || [τῶν δ]ικῶν κατὰ τοὺς νόμους ὀρθῶς καὶ δικαίως, τὰς δ[ὲ] || [διέλυ]σαν ἴσως καὶ συνφερόντως (IIasos 80.10–12: “who not only judged some of the cases in accordance with the laws rightly and justly but als[o reconcil]ed others impartially and expeditiously”); and that the people of Lebedos should honor a Samian judge ὃς παραγε[νόμενος τὰς μὲν διέλυ]-|| σεν τῶν δικῶν, τὰς δὲ ἐ[δίκασεν ὀρθῶς καὶ δι]- || καίως καὶ τοῖς νόμοις κα[ὶ τοῖς ψηφίσμασι ἀκολου]- || θως (IG XII 6, 1 146.8–11: “who, upon arrival, not only settled some of the cases but also judged others rightly and justly and in accordance with the laws [and decrees]”); but it is slightly baffling to find that an unidentified Aiolian city should praise a judge from Lampsakos ὃς καὶ παραγενόμενος[ος ταῖς] || δίκαις ἐδίκασε, τα[ὶς] δὲ καὶ διέλυσε ἴσως κ[αὶ δικαί]- || ως καὶ κατὰ τοὺς νόμους (ILampsakos 34.11–13: “who upon his arrival not only judged cases but also additionally settled others fairly a[nd just]ly and in accordance with the laws”);<sup>20</sup> and it is disturbing to find that Wilamowitz (*apud* Hiller) restored the judgment clause in a decree of the Smyrnaeans so that the people praise the three Astypalaian judges οἵτινες [πα]- || ραγενόμενοι ἃς μὲν ἐδ[ίκα]σαν] ἃς δὲ διέλυ]σαν δικαί]- || ως καὶ κατὰ τοὺς νόμους (IG XII 3 172 10–12: “who upon their arrival not only judged some cases but also reconciled others justly and in accordance with the laws”); and satisfying to see that Robert pointed out the error in no uncertain terms in 1924 and offered the following restoration in 1949 (p. 185), in the same essay in which he published the ed. pr. of the Smyranean-Kaunian dossier (see section 2):<sup>21</sup> these were judges:

οἵτινες π[α]- ||

ραγενόμενοι ἃς μὲν ἐδ[ίκα]σαν] δ[ίκα]ς καλῶ]ς κ[αὶ δικαί]- ||  
ὃς καὶ κατὰ τοὺς νόμους καὶ π[ᾶ]σαν κακοπαθίαν καὶ φιλοπονί]- ||  
αν εἰσενεγάμην]οι. [τὰς δὲ καὶ διέλυσαν καθ' ὅσον ἦν ἐν ἑαυ]- ||  
τοῖς. σπεύδοντες [τοὺς διαφορομένους τῶν πολιτῶν εἰς ὁ]- ||  
μόνιαν καταστή]σ[αι] - - - -

*who upon their arrival not only j[udg]e[d] some c[ases fair]ly a[nd just]ly and in accordance with the laws, carrying on with g[reat tolerance for toil and and a love for labor], [but also reconciled others insofar as it was possible for the]m given that they were eager to bring [those of the citizens who were at variance into h]armony.*

<sup>20</sup> Cf. ll. 24–25 of the same decree, which records the prearranged proclamation for the herald: now there is no mention of reconciling, only of the Lampsacene judge δικάσαντα ταῖς δί- || [κ]αῖς ὀρθῶς καὶ δικαίως καὶ κατὰ τοὺς νόμους.

<sup>21</sup> Robert *OMS I*: 7 (= *BCH* 1924: 337), “Mais il est nécessaire que le mot δίκαι soit exprimé; de plus, lorsqu’ils s’appliquent à réconcilier les parties (διάλυσις), les arbitres n’agissent point κατὰ τοὺς νόμους; cette locution n’a d’emploi qu’à propos de la κρίσις. Il ne s’agit donc ici que de celle-ci. La ‘conciliation’ était sans doute mentionnée aux lignes suivantes.”

In the course of this essay, I examine ‘judging clauses’ in decrees for foreign judges; these, with their criteria and modalities of assessment may provide us with a characterization of the judging habits of foreign *dikastai*. A number of methodological issues, however, must first be addressed.

### 1. Methodological Issues

The evidence used thus far and in the following discussion is for the most part drawn from decrees (occasionally, dedications) of cities from Asia Minor, the Aegean islands, and the Black Sea Coast. Since a city from one of these regions may request judges from a city elsewhere in Greece, (e.g., from Sparta or Larissa) or vice versa, the bounds between the two broadly conceived geographical areas (east and west) have not been strictly adhered to; nevertheless, the splitting of the evidence (and it will soon be narrowed further), allows a focus on the ‘eastern’ cities where the institution of foreign judges first manifested itself widely. Questions arise: can formulaic statements have any substantive meaning at all, e.g., regarding the criteria used by a judge when he reconciles disputants or decides a case? The characterization of the reconciliation in the Telian-Koan dossier as having been executed *καλῶς* || [καὶ δικαίως is promising for a positive answer, but we have no other agreements (except perhaps for the fragmentary SEG 43.293) with which to compare the assessments of judicial actions. Questions nevertheless need asking: e.g., how far afield can formulaic expressions be taken? Can expressions that appear in the decrees of a requesting city be written into lacunose decrees of other requesting cities? This last question is not only a matter of proper epigraphical restoration but a question of Greek law: how widely shared in the Greek world, or from city to city, were the conventions surrounding foreign judges?

To take an example: Charles Crowther, who has provided us with many new and revised texts about foreign judges and has also helped us understand the evolution of the institution, has studied the formulae for *homonoia* that appear in many Iasian decrees that honor judges from elsewhere. IPriene 53, for example, is a decree of Iasos that records the city’s request for a judge and secretary from Priene and now honors the people of Priene and the men they sent; the judgment clauses are as follows: τὰς μὲν συνέλυσε τῶν δικῶν οὐθὲν ἐλλείπων προθυμίας, || ἀλλὰ πᾶσαν σπουδὴν ποιούμενος, ἵνα συλλυθέντες οἱ ἀντίδικοι τὰ || πρὸς αὐτοὺς μεθ’ ὁμοιοίας πολιτεύονται, τὰς δὲ διέκρινεν δικαίως (ll. 9–11: “showing no lack of zeal but making every effort to ensure that the disputants, having had their differences with one another resolved, *should live in the city in harmony*, he settled some of the cases through conciliation and gave judgments based on justice in the others,” trans. Crowther, slightly mod.). Almost precisely the same words appear in IPriene 54, another decree of Iasos honoring the Prienians and judicial personnel.<sup>22</sup>

<sup>22</sup> IPriene 54.ll. 8–10: τινὰς [μ]ὲν σ[υνέ]λυσε τῶν δικῶν οὐθὲν ἐλλείπων προθυμί]- || [ας, ἀλλὰ καὶ πᾶ]σ[α][ν] σπουδὴν ποιού[μενος, ἵνα συλλυθέντες οἱ ἀντίδικοι τὰ πρὸς αὐ]- || [τοὺς μεθ’ ὁμόν]οίας [πολιτεύονται, τὰς δὲ διέκρινεν δικαίως.

The Iasian formulation, moreover, may have been derived from an earlier decree of Kalymna that had been prominently displayed in Iasos; it records the Kalymnians' request to Iasos to send judges and then confers honors on the city and the judges that it sent; the latter, upon arrival: [πᾶσ]αν σπουδᾶν ἐποιήσαντο {υ} τοῦ διαλυθέντ<α>ς τοὺς ἢ [πολ]ίτας τὰ ποτ' αὐτοὺς πολιτεύεσθαι μετ' ὁμονοίας, (TC test. XVI.37–8: “made every effort for ensuring that the citizens, having had their differences with one another resolved, *should live in the city in harmony*”).<sup>23</sup> These and other similar instances of the *homonoia* formula in Iasian decrees might suggest a substantive meaning no more reflective of reality than the regular description of judges as καλοὺς κἀγαθοὺς; nonetheless, Crowther took up the gauntlet and examined the chronological (largely as prosopographical detail allowed) and historical context of the Iasian ‘*homonoia*’ decrees and convincingly showed the stressful circumstances of warfare and earthquake that lie behind the common phraseology in Iasian decrees that can be placed in the early part of the third century. In his conclusion, he referred back to his great predecessor, Louis Robert, who had suggested that the courts of foreign judges gradually replaced native courts: “Robert characterised the role taken by foreign courts in maintaining judicial order in the Greek cities in the second century BC, when their use is best documented, as that of a safety-valve. This is a helpful metaphor. But it should not be taken to imply that the use of foreign courts had become a matter of routine. In the case of Iasos, it seems that the judges who came to the city in the early second century, in spite of the formulaic way in which their work was recorded, played a genuinely emergency role in resolving disputes and helping to restore *homonoia*.”<sup>24</sup>

In what follows, I do not intend to offer the kind of rich historical contextualization that Crowther provided. Rather, I take his essay as an instancing of substantive meaning for formulaic expression and also of the spread of formulae from one city to another, as from Kalymna to Iasos, not (necessarily) as empty decoration or filler for commemorative text, but as indicative of common problems. But Crowther had not limited his scrutiny of chronological data to aid only in identifying shifts in phraseology, he also associated changes in judging conventions with chronological phases. Thus, IPriene 53 and 54, each being a decree of Iasos honoring a single judge from Priene and convincingly dated to the early 190s, could be paralleled by two decrees of Antiocheia-Alabanda (Caria) that are nearly contemporaneous with one another: these, too, honor a single judge (IErythrai 116, for an Erythrian judge, IMagnesia 90 for a Magnesian judge); yet another Antiocheian decree, by formulation arguably a little later than the two just mentioned, honors a group of *three* judges from Erythrai (IErythrai 117) and so

<sup>23</sup> The same words appear in another, slightly later, Kalymnian decree for Iasian judges; thus TC 61: οἱ πᾶ- ἢ [σαν σπουδ]ᾶν ἐποιήσαντο τοῦ διαλυθέντα[ς <τοὺς πολίετας>] ἢ [τὰ ποθ' αὐτο]ὺς μετ' ὁμονοίας πολιτεύεσθαι.

<sup>24</sup> Crowther 1995: 123 with n. 168 referring to Robert 1973: 775. The Koan judges seem also to have played a ‘genuinely emergency role’ in restoring *homonoia* on Telos.



suggests that a series of Iasian decrees (IIasos 75, 77, and SEG 41.929), each honoring three judges, may also belong to that slightly later time frame. While caution is due especially to the last argument with its hint of a later habit (viz., a panel of multiple judges of one city) spreading from one city to another, both that argument and the one for the spread of formulae suggest a method for treating the decrees of different cities: by locating specific networks of cities and their decrees, we may be able to isolate formulae and judicial conventions and so trace their development.

The decrees show that important exchanges in the realm of justice took place between Hellenistic cities (as also in agonistic games, dramatic performances, and festival pilgrimages); they show a reciprocity that is evident above all when city A asking for judges from city B has been a provider of judges for that city in the past, or becomes one for the first time, or will be so again, and again, in the future. Our knowledge of even such ‘primary’ reciprocity, however, depends on chance finds.<sup>25</sup> Nonetheless, such reciprocity offers a network of cities that allows the historian to combine pieces of evidence from different places in the Greek world. The type of network I am looking for, however, is not only that between requesting and answering city (i.e., the city supplying the court), but the outreaching tentacles of that primary reciprocating unit that connect the requesting city to all its answering cities, for City A may request judges from Cities B, C, and D on the same occasion—or from the same or different cities over a number of years (‘Set Q Cities’); and secondarily, I am interested in the tentacles that connect all the cities (‘Set R’) to which ‘Set Q Cities’ have individually sent and received judges—and so on and on and on. As of now, for example, we know that Smyrna requested judges from seven cities (Astypalaia, Kaunos, Knidos, Thasos, Miletos, Messene, and probably Oropos), but we know only two cities to which it sent its own judges (Kos and Stratonikeia); it sent judges on another attested occasion, but the requesting city’s name is not preserved (ISmyrna 584). We also know that the Smyrnaeans had arbitrated in a dispute between Miletos and Priene ca. the middle of the second century BCE or a bit later (IPriene 27) and that a Prienian citizen had arbitrated a dispute between Phokaia and Smyrna somewhat earlier (IPriene 65).<sup>26</sup> The cities from which Smyrna received judges (and arbitrators) and to which it sent them (‘Set

<sup>25</sup> While Robert 1955: 298 (ref. *apud ep.* Crowther) had mentioned an undated decree of Temnos for judges from Kolophon found in 1954, it was not until 1999, with the publication of the ed. pr. of three decrees, that we learned that Kolophon not only had asked for judges from other foreign cities (Priene, Iasos, and Methymna), it had also supplied its own judges for Aigai and Mylasa: Gauthier 1999b. See Hamon 2012 [2013] for a consideration of the criteria by which a city might choose a city from which to summon judges, and the criteria by which the chosen city might in turn choose the men to send as judges.

<sup>26</sup> Crowther *per ep.* provides the date for IPriene 27, comparing the lettering to that of IPriene 39, for which, he reports, a new fragment has turned up in the German excavations.

Q Cities') open up a wide network, not only because there are so many occasions for Smyrnaeans (if timeframe permits) to mingle with different sets of foreign judges, but those foreign judges themselves come from cities that have both requested foreign judges and sent their own elsewhere ('Set R cities'). If we track the first five cities listed here as supplying judges to Smyrna and add Kos as a sixth, to which it sent judges, we find that Astypalaian judges have also been sent to Priene (and Priene has sent judges to Parion, Alexandria Troas, Chios, Kolophon, Laodikea, Bargyilia, Iasos); Kaunian judges have been sent to Magnesia Mae. and the latter city has sent judges to Knidos; Thasian judges have been sent to Samos, Miletos, and Parion (and Thasos has used judges from Kos); Milesian judges have been sent to Methymna, Eresos, Iasos, and Byzantion; Koan judges have been sent to numerous cities—Naxos, Samos, Ilios, Erythrae, Mytilene, Thasos, and probably Kyzikos (as well as Smyrna).<sup>27</sup> Prienian and Koan judges (not so much unlike Koan doctors who, however, had a more exclusive allure for the cities that used them) as well as other less often attested dikasteria, are carriers of an important judicial exchange: for even if legislated to use the laws of the requesting city, they may very well bring along their own formulae for equity and their own emotive modalities to say nothing of their own opinions about laws and legal systems, politics, and the rest of their cultural and commercial baggage.

The reciprocity of asking and supplying as occasion or custom demands provides the judicial common currency that is fundamental for this essay. Delphoi, Gonnoi, Iasos, Demetrias (Magnesian *koinon*), Alabanda, and Smyrna are the cities most often attested as requesting judges; Messene, Kos, and Priene are attested as most often asked to supply judges, with Thasos, Miletos, Iasos and Erythrai following next in attested popularity—though of course new discoveries may reorder these lists or introduce new major players, such as Messene has recently become.<sup>28</sup> Some cities may have become renowned for their judges and such judges or their cities may have become popular recipients of requests; a judge may have distinguished himself for his service in his own city, as arbitrator (*diaitetes*) in inter-city disputes, as a repeat judge in the same or different cities (Theodoros Theodorou of Mylasa and, as I suspect, also Ouliades of the same city).<sup>29</sup> But judicial networking may have served or arisen from inspirations other than reputation; some requests will have been ordered by Hellenistic rulers; some cities will have requested their *koinon* to assign judges. Hamon, at the end of his study of ISmyrna

<sup>27</sup> I am grateful to Crowther for alerting me to Habicht's (2007) ascription of Kyzikos as a city (not Chios) for which Kos supplied judges.

<sup>28</sup> SEG 52 383 and 389 report (inter alia) the discovery, in P. Themelis' excavations, of Smyrna's decree in honor of Messenian *dikastai*. See text at n. 63 *infra*.

<sup>29</sup> Theodoros Theodorou: IMylasa 632–35; Ouliades: IMylasa 101. Heliodoros of Sardis is another highly reputed judge: SEG 39.1286 (ed. pr. Gauthier 1989 no 4: 113–14); so too is Akrisios (IG XII 5, 305, with Hamon 2012 [2013] 215–16); for discussion of these judges as *iusis periti*, see Gauthier 1989: 123–4.

582 in 1999 (providing a new text with an additional significant fragment: now SEG 49.1171), made an interesting observation about the Smyrnaean decrees requesting foreign judges: the cities that are asked to supply judges (Thasos, Miletos, Knidos, Astypalaia, and Kaunos) were port cities, most likely familiar to Smyrnaean merchants.<sup>30</sup> Trade connections, then, may have influenced judicial appointments.

After this prolegomenon, it may not be surprising to discover that I use Smyrnaean decrees to identify the matrix of conventions of judging that I discuss in this essay; nor should it be surprising that I have looked for comparative examples from a wide network of cities, indeed, from both ‘Set Q’ and ‘Set R’ cities as defined above, which allows for a larger pool of decrees than those few from Smyrna.<sup>31</sup>

## 2. Judging and Reconciling in the Smyrnaean Dossier: I.Kaunos 17–20

Before examining particular ‘judging clauses’, it will be helpful to consider the components of decrees that request a foreign judge and honor both him and his city. A dossier from Smyrna (I.Kaunos 17–20) will provide a template, not because all cities throughout Greece used the same one, but a good many cities did use variants (from wherever an Ur-text was derived, and if any one text can even thus be conceived). Smyrna herself used the template over and over again. Indeed, Robert on more than one occasion spoke of the ‘calquing’ technique of the Smyrnaean decrees that allowed for almost mechanical restoration of lacunose portions of one decree from another.<sup>32</sup> New finds of course change old statements; and Herrmann with good grounds suggested, when he offered new readings for the Smyrnaean decree for Knidos that had been published only in 1969, that this one was based on a different and earlier redaction than the other Smyrnaean decrees.<sup>33</sup> The dossier discussed here belongs, then, to a ‘later’ redaction of Smyrnaean decrees for foreign

<sup>30</sup> Hamon 1999: 194 with n. 81. Oropos and Messene were added to the list of cities sending judges to Smyrna after he composed his essay; Messene certainly had its own port.

<sup>31</sup> Six Smyrnaean decrees honor foreign judges from other cities; a seventh one is an answering decree; and an eighth decree (of Kos) concerns arrangements for Smyrnaean judges: *ISmyrna* 578: for judges from Knidos; 579: for judges from Kaunos [two decrees about the judges, the second being an ‘answering decree’ = *IKaunos* 17 and 19]; 580: again for judges from Kaunos [*IKaunos* 21]; 581: for judges from Astypalaia; 582: for judges from Thasos, with an additional and important fragment added = *SEG* 49.1171; 583: Miletos. IG XII.4.1 59 is a Koan decree honoring a *dikastagogos* sent from Kos to Smyrna, to bring Smyrnaean judges to Kos.

<sup>32</sup> Robert 1924: 336 and 1929: 441–42 (*OMS* I 6 and 124–25, respectively) on the decrees for the people and judges of Thasos and Astypalaia. It was the decree for the Kaunian people and judges that really took first prize; on the occasion of his *editio princeps* (1949: 178–79), Robert used it as the springboard for his latest restatement, that in many parts of the Greek world, a city would rigorously calque its decrees for foreign judges, one on another, “seuls les noms des personnages honorés et de leur patrie changent.”

<sup>33</sup> Herrmann 1971: 72.

judges, and may possibly be the first of that group, dated to the second century BCE, possibly to its first decade (190s)—but more likely to its fourth (160s).<sup>34</sup> It consists of four decrees inscribed on one stele and found in Kaunos: a decree of Smyrna honoring the people of Kaunos and the three judges it sent (1–45); a decree of Smyrna honoring the secretary of the judges (46–62), a decree of Kaunos answering and accepting the decrees of Smyrna (63–98), and a short decree of Kaunos pertaining to the erection of the stele (99–106). The uppermost portion of the inscribed face shows a row of five laurel wreaths; three lines inscribed in five columns appear above the wreaths, naming the demos of Smyrna and its honorands, viz., the demos of the Kaunians (wreath no. 1), the three *dikastai* (wreaths 2–4) and the secretary (wreath 5). The decree proper begins in line 4 with enactment clause and brief prescript followed by the motivation clause (in two parts, ἐπειδὴ and ὅπως) in lines 4–14; the motion formula follows, then the substance of the decree (lines 14–43); at the end, provision is made for the decree’s implementation (payment for a herald and announcement of his selection; payment for the decree and publication clause, lines 43–45).

The motivation clause (4–14) and substance of the proposal (14–43) are of most relevance; a condensed version of the first runs:

Since, when the people (of Smyrna) sent a *dikastagogos* to the Kaunians to request a court, (6) the people of Kaunos, . . . having made it their purpose (προαιρούμενοι) that the cases be heard in adherence to the highest standards, with a display of great earnestness and distinction in its selection of judges, sent as judges ὁ δεῖνα, ὁ δεῖνα, and ὁ δεῖνα, (9–11, abridged and in ital. :) *who, upon their arrival* (οἵτινες παραγενόμενοι), *not only decided cases* (τάς μὲν διεδίκασαν) *on the basis of x and y criteria by acting thus and thus, but also reconciled others* (τάς δὲ καὶ διέλυσαν) *by acting thus, and they also brought into harmony those* (τοὺς δὲ διαφερομένους) *of the citizens who were at variance*, and in other matters conducted themselves worthily both of their own homeland and our city, and so that our people be manifest as conferring appropriate honor and thanks upon men who earnestly conduct themselves with good will toward us—(14) with good fortune: be it resolved . . .

The substance of the decree follows. Before turning to that, I note that the motivation clause is itself composed of multiple clauses that are found in many such decrees:

<sup>34</sup> Robert 1949: 176 dated it to the second century on the basis of its orthography and lettering; he had earlier assigned the Thasian and Astypalaian decrees to the first century BCE (‘la même époque’, 1924: 336 [OMS I 336]). Marek 2006: 150 suggests a date after 167 BCE for the decrees honoring the Kaunians, when Kaunos was no longer a part of Rhodos; a date between 197 (after the defeat of Philip V and the beginning of the successes of Antiochos III) and 190/89 (after the battle of Magnesia), when Rhodos had not yet actually ‘purchased’ Kaunos (Marek *ibid.* 98), is less likely on the grounds of palaeography, orthography, and formulation: thus Crowther, *per ep.*

(1) A ‘requesting clause’: that someone (sometimes designated a *dikastagogs*, sometimes a herald, sometimes a named individual) be sent elsewhere to request a *dikasterion* or *dikastai* (τοῦ δή[μο]υ πέμψαντος πρὸς Καυνίους δικασταγωγὸν Ἀθηνόδωρον Μενεκράτου τὸν αἰτησόμεν[ον] || [δικαστ]ήριον, ll. 5–6). The ‘requesting clause’ (here as often using a future participle for the verb of asking) abridges the original request made by the envoy or *dikastagogs*; the latter will have been given detailed instructions for the request, including not only the number of judges, but the expected length of the sojourn (and so probably, the number of disputes to be resolved), the type(s) of case to be judged and the method to be used (reconciliation, arbitration, or judging: all three, just two or one, by choice of the disputants or as mandated by the requesting city and its laws).<sup>35</sup>

(2) An ‘arrival clause’ (οὔτινες παραγενόμενοι): announcing the arrival of the judges and serving as harbinger of dikastic achievements (line 9).

(3) One or more ‘judging clauses’: these depict the methods (e.g., ‘deciding’ and ‘reconciling’) used by the judges (lines 9–11, ital.); usually but not nearly always, judging clauses appear in contrasting μέν and δέ sub-clauses, and usually but not always each is accompanied by criteria used in formulating decisions (e.g., ‘by law’) or in reconciling disputants (e.g., ‘advantageously’). In this instance (IKaunos 17.10–11), however, and not infrequently in decrees of other cities as well, we find not so much *criteria* of assessment for the ‘reconciling’ clause as *modalities* of assessment (e.g., ‘with all the perseverance they could muster’); sometimes, too, we find modalities of assessment replacing or in addition to criteria of judgment for decisions *in sensu strictiore* (e.g., ‘acting with unrelenting perseverance’). A subset of modality clauses can be qualified as ‘emotive’: these emphasize the zeal and enthusiasm of the judges in carrying out their tasks, as in the modality clauses instanced here. I have abridged the detail of judging clauses for now and reserved them for discussion in section 3c.

The judging clauses appear again in the ‘substance’ of the decree (14–43). A slightly condensed version runs as follows:

Praise the people of Kaunos for their policy of goodwill and for sending judges worthy of both cities who put the highest value on justice, and crown the city with a gold wreath during the Dionysia ...; and the *agonothetes* is to supervise the

<sup>35</sup> We do not have full texts of the requests carried by the *dikastagogoι*, but the decrees honoring judges and *dikastagogoι* here and there provide instances of the data that can be inferred to have been part of them. Usually the judges are requested to carry out the activities of judging and reconciling; see text at n. 6 *supra*. For regulations regarding procedure in IEph 4 (Syll.<sup>3</sup> 364), see n. 44 *infra*.

proclamation and the herald is to speak along the following lines (18): “The people of Smyrna crown the people of Kaunos for their excellence and distinctive dedication to carrying out the dispatching of the judges; and praise the judges who arrived, ὁ δεινα, ὁ δεινα, and ὁ δεινα, (21) for their course of action (τῆι αἰρέσει), principles of justice (δικαιοσύνη), and distinctive dedication (φιλοτιμία) applied to the cases and for their sojourning abroad worthily of both cities, and crown each with a gold wreath at the Dionysia ... for the excellence and principles of justice constantly manifested in their decisions.” (25) And the *agonothetes* is to supervise the proclamation along the same lines. And so that there may also be a memorial to later generations of the excellence of these men and the thanks of our people, (26) there are to be these rewards [omitted here] for them and also others [*inter alia*, citizenship, lines 26–32]. And choose an envoy, too, who, upon reaching Kaunos, is to deliver the decree to the magistrates and, when he has come before the boule and demos, is to speak about the judges’ (35) earnestness and distinctive dedication in regard to the cases, making it plain that the people (of Smyrna) praise these men both in all other matters as having been worthy of both cities *and because* (36) *on the basis of x and y criteria, by acting thus and thus ...*, (38) *not only did they judge some of the cases* (ἄς μὲν ἔκριναν τῶν δικῶν), *but also they settled others* (ἄς δὲ καὶ συνέλυσαν) *on the basis of z criterion* (38); and ask the Kaunians to ensure that the wreaths that have been decreed both for them and for the judges be proclaimed each year (40) ...; (41) and also ask them to find a visible spot on which a stele of white stone can be set up with this decree inscribed upon it, and make it clear [to them] that, if they do this, they will be obliging our people. [*Details of implementation and publication clause follow* (43–45).]

In this long section of the decree, the judgment clauses together with their criteria or modalities of assessment appear once again (lines 36–38: abridged here), but this time in the speech of the envoy who is to deliver the decree before boule and demos (34–43); the herald who is to make the proclamation at the Dionysia is also given a speech (18–24), but it appears truncated (κατὰ τὰδε ‘along the following lines’ [?], line 18) and the judging clauses are absent.

The next two decrees follow a similar pattern. I skip over the short decree of the Smyrnaeans honoring the secretary except to say that he is praised for some of the same qualities that are ascribed to the judges,<sup>36</sup> and I turn to the answering decree of the Kaunians. It follows the pattern of the first Smyrnaean decree, even quoting, almost verbatim, from that decree. The motivation clause, somewhat condensed, runs (64–86):

(64) Since the Smyrnaeans ... sent an envoy and a decree in which they write that, when they sent (66) us an envoy to request judges and a secretary, we, with concern for these matters, sent as judges ... ὁ δεινα, ὁ δεινα, and ὁ δεινα, who, they tell us plainly, (69) *upon their arrival* (οὐς ... παραγενομένους), *not only have decided some cases* (τὰς μὲν δεδικακέναι τῶν δικῶν) *on the criteria of x and y, by acting*

<sup>36</sup> See IKaunos 18.50–52; 56; the secretary is to be praised and crowned at the same time as the judges; the same envoy to the Kaunians is to mention his praises and request that he be proclaimed on the same occasion as the judges and that the decree be inscribed on the same stele.

thus, but have also reconciled others (τὰς [δὲ] συν<λ>ελυκέναι) by acting thus, and (καὶ) brought into harmony those of the citizens who were at variance, (72) for which reasons they both praise our people and crown them with a gold wreath ... and (74) they also praise the judges ὁ δεῖνα, ὁ δεῖνα, and ὁ δεῖνα ... (75) for their course of action and principles of justice which they applied to the cases ... and (77) they praise also the secretary who was sent along with them ... (79) and the envoy, having arrived from Smyrna, ... delivered the decree and, upon appearing before the boule and demos, spoke in accordance with the provisions written in the decree, (81) excelling in earnestness and distinctive dedication, and requested that we (the Kaunians) implement the decree (by proclaiming the wreaths annually, inscribing and setting up the decree: lines 82–83, abridged) and that we make a plan so that the decree sent by them be inscribed and set up in the most visible place and [sc. he said] that in doing that we would be obliging them. (86) Be it resolved ...

The Kaunians give their answer, quite manifestly by copying the words of the Smyrnaean decree, sometimes abridging them a bit, and combining the decree for the judges with the decree for the secretary. Nevertheless, the requesting clause (66), arrival clause (69), and judgment clauses (69–71) are all clearly visible.

The substance of the Kaunian decree follows (86–98): the Kaunians accept the honors decreed by the Smyrnaeans, agree to implement them, and end with praise for the envoy. (We can be grateful that at least on this occasion they do not iterate in detail the honors they accept and the reasons for which they were given!) A final brief decree of the Kaunians concludes the dossier, with details for implementing the Smyrnaean decree, including designating the temple of Apollo as the site for the honorary stele. The Kaunians' copying of large portions of the Smyrnaean decree can be duplicated in the decrees of other cities who have been asked to send judges; equally interesting, however, is the copying habit of the requesting city, here, Smyrna, and the way that it copies its own clauses from one portion of the decree to another. Naturally such a habit is helpful for epigraphists who need to restore one part or another of such a dossier (see n. 32). Occasionally, however, additions (or differences) in an answering or 'parallel' decree may be significant, as on a stele from Miletos inscribed with three decrees (Milet I 3 152 A–C). Two are decrees of Methymna (A–B) and one is of Eresos (C), concerned with *dikasteria* from Miletos, Aigai, and Samos that had arrived to settle cases between citizens of the two cities (see Robert OMS II 721–35). The second decree of Methymna honors the Milesian people and the two judges it sent, οἱ καὶ παραγερόμενοι ταῖς τε δίκαις ἐδίκασσαν || ὄρθως καὶ δικαίως καὶ κατὰ τὰ συγκεῖμενα τοῖς δάμοις καὶ τὰν ἀναστροφήν || [ἐ]ποίησαντο{ν} ... (32–33),<sup>37</sup> whereas the decree of Eresos honors the people and the same two judges οἱ καὶ παραγερόμενοι εἰς μέσσον ταῖς μὲν ἐδί[ι]- || κασσαν τὰν δίκαν ὄρθως καὶ δικαίως κατὰ τε τὰν συνθήκαν καὶ ἐπισυνθήκαν, τί- || νας

<sup>37</sup> Milet I 3 152 B 32–33: “And these upon arrival both judged cases rightly and justly and in accordance with the agreements made by the people and conducted themselves ...”

δὲ καὶ συνέλυσαν καὶ τὰν λοιπὰν ἀναστροφὰν ἐποίησαντο ... (70–72).<sup>38</sup> The Milesian dossier serves as warning that a single decree may leave out details important to us: without the decree of Eresos, we would not know that the Milesian judges had both judged cases and brought about reconciliations.

### 3. Judging Clauses: Reconciliation and Judgment

Expressions for judging and reconciling in ‘judging clauses’ sometimes provide procedural instructions; occasionally they have a rhetorical emphasis; often they have an ideological message; and, especially as happens when criteria and modalities of assessment have been mixed so that what seems appropriate for ‘judging’ is now ascribed to ‘reconciling’ or vice versa, the mixture is either due to a corruption in the text produced, in the first instance, during its inscription, or else indicative of the achievement of formulaic and empty statement. Once that last stage has been reached, what was once a real judging habit has become a fossilized epigraphic one.

#### a. Procedural Priority of Reconciliation

It is often assumed, when reconciliation and judging are both mentioned in the decrees, that the visitors always tried to reconcile the cases first and only gave judgments if those conciliating efforts failed. In other words, there was a procedural priority for reconciliation in all cases.<sup>39</sup> Although that appears to have been so in the great majority of instances, especially when judges were called in to resolve disputes over contracts and debts, yet such a claim, as we shall see at the end of this section, cannot be maintained across the board.<sup>40</sup> Of first importance are those decrees that give procedural directions to reconcile the disputants first, and then, if that does not work, to give a judgment; this is explicit in two decrees of Kalymna for foreign judges from Iasos. In the requesting clause of the earlier one (Tit. Cal. Test. XVI.34–36, 39–40, 43–46 = IK I Iasos 82), from the second half of the third century BCE (Crowther 1994), the people of Kalymna are said to have sent an envoy and were asking the Iasians to send five men:

<sup>38</sup> Milet I 3 152 C 70–72: “And these upon arrival at the sanctuary of Messon not only judged some of the cases rightly and justly in accordance with both the agreement and the additional terms, but also reconciled some of the others and conducted the remainder of their stay ...;” for the location of εἰς μέσσον and the sanctuary, see Robert 1960: 300–308.

<sup>39</sup> E.g., A. Cassayre, 2010.

<sup>40</sup> A two-part procedure is of course well-known from Athens for those private cases heard by the Forty: *Ath. Pol.* 53.1–3 (see n. 6 *supra*): a litigant who was dissatisfied with the official arbitrator’s decision could ‘appeal’ to the court. Not all Athenian cases, however, came before the Forty and their arbitrators! Elsewhere, a city’s lawcode may have directed that some cases be subjected to arbitration and reconciliation and other cases to trial; that is the implication, for example, in the synoecism of Teos and Lebedos, RC no. 3 = Syll.<sup>3</sup> 344.24ff.



[οὔτι]νες παραγερόμενοι μάλιστα μὲν διαλυσεῦντι τοὺς ἢ [διαφ]ερομένους τῶν πολιτῶν, εἰ δὲ μή, κρινεῦντι διὰ ψάφου, ἢ . . .

*who upon arrival would devote themselves above all to reconciling those of the citizens who were disputing, but if unsuccessful, would give a judgment by vote ...*

The later decree provides for the priority of reconciliation in almost identical language.<sup>41</sup> As mentioned earlier (section 2), the report of instructions in such detail is unusual; but we can assume that such instructions (to judge with or without attempts at reconciliation first) would have been regularly included in the envoy's request (cf. I Eph 4.85–88, quoted in n. 44 *infra*).

Procedural priority of reconciliation can be securely inferred in a decree of an unknown city honoring judges from Tenos (IG XII 5, 870):

(7–9) τοὺς τε ἔχοντας τὰς δίκας τοὺς μὲν πλείστους συνέλυσαν ἀνεγκλήτως, οὐς [δ]ὲ μὴ ἠδυνήθη[σ]αν διακούσαντες ἐδίκασαν ἴσ[ω]ς καὶ δι[κ]αί[α]ς.

*While they reconciled most of the litigants blamelessly, if they were unable to do that after hearing them out to the end, they judged them impartially and justly.*<sup>42</sup>

A Naxian decree for five Koan judges (SEG 49.1106) requests both *dikastai* and *diallaktai* who were to decide between opposing parties in disputed contract cases (τοῖς διακρινούντας περὶ τῶν ἀμφι[σ]- ἢ [βητουμέ]νων συμβολαίων, 3–4). Procedural priority for reconciliation can once again be inferred here—and also, something of its method: upon arrival of the Koan *dikastai* and *diallaktai*:

περὶ τε τῶν ἀπο- ἢ [γεγραμμέν]ων ἀμφισβητήσεων καὶ τῶν ἄλλων ἢ [τῶν ἐπιτρ]α[πέν]των αὐτοῖς ὑπὸ τῆς πόλεως ἢ [τοὺς μὲν π]λείστους τῶν διαφορομένων ἀνα- ἢ [καλεσάμ]ενοι πολλακίς ἐφ' αὐτοὺς διέλυσον συμφ[ε]- ἢ [ρόντως], τοὺς δὲ διέκρινον μετὰ πάσης δικαί- ἢ [οσύνης

*regarding both the registered disputes and other matters that had been entrusted to them by the city for settlement,*<sup>43</sup> *they reconciled advantageously most of the disputants by summoning them before them frequently, and they decided the remainder with all justice.*

<sup>41</sup> Tit. Cal. 61. IK Iasos II T 55, ca. 210 BCE or a bit later: Crowther 1994. Again, the Kalymnians have asked the Iasians to send five men: (8–11) οὔτινες παραγερόμενοι εἰς Κά- ἢ [λυμν]αν μάλιστα μὲν διαλυσοῦντι τοὺς δ[ι]α- ἢ [φερομέ]νους τῶν πολιτῶν, εἰ δὲ μή, διακρινεῦ[ν]- ἢ [τι ... (8–11).

<sup>42</sup> This bears some similarity to a Thessalian decree honoring judges from Teos (SEG 47.745): οὔτινες ἄς μὲν ἂν δ[ύ]- ἢ [ωνται τῶν [δικ]ῶν συλλύσουσιν, τὰς δὲ ἄλλας [δι]- ἢ [κ]ῶσ[ι]ν κ[α]τὰ [τοῦ]ς νόμους ἴσως καὶ δικαίως καὶ ἄξ[ί]- ἢ [ως] ...; “who settle whatever *dikai* they can, and judge the rest according to the laws, fairly and justly and worthily ...” Again, one can infer the procedural priority of reconciliation.

<sup>43</sup> It is not clear what ‘the other matters’ were; it is probably correct to interpret that all the disputes were registered and that all came before the *diallaktai* first (i.e., it is unlikely that disputants registered for reconciliation only); the ‘registered cases’ in TC *test.* XVI.39 were all subjected to reconciliation efforts first.

Here the visiting judges were most likely given instructions to try to settle the disputes first. Probably the same men acted first as *diallaktai* and then, if they failed to bring about settlements, as *dikastai*; it would be uneconomical for *dikastai* to do nothing as they waited for the *diallaktai* to hand over the cases of the few obstinate disputants who could not be reconciled (see n. 6). The manifold meetings (indicated by ἀνα- ἢ [καλεσάμ]ενοι πολλάκις) for pursuing reconciliation may not have been mandated to the *diallaktai*; their own experience may have dictated the method.<sup>44</sup>

In many of the decrees where the judges are depicted as both judging and reconciling, a mandate for the procedural priority of the latter can probably be inferred, but such a mandate cannot be inferred in *all* cases. In some decrees only judging is mentioned (e.g., SEG 12.390, IG XII 6 1 150, IErythrai 111, and 117). In these cases, it may be that the foreign visitors were instructed *only* to judge and not to reconcile (as appears to be the case in the Ephesian law on war debt relief [n. 44] and in the synoecism of Teos and Lebedos [n. 40 *apud fin.*]); possibly, the particular cases that came before the visiting judges did not permit reconciliation under the procedural law of the city that had invited them: this may have been the case in IErythrai 111, where the judge is present ἐπὶ τὴν δίκην τῆς μηνύσεως, and also in IErythrai 117 where specific kinds of case are cited (see n. 9). It should also be recalled, however, that the absence of either ‘judging’ or ‘reconciling’ in more or less entire decrees may be due to the original (ancient) editing of the text, as was apparent in the Milesian dossier (Milet I 3 152 A–C: see the end of section 2).

#### b. Rhetorical and Ideological Priority of Reconciliation

A priority for reconciliation appears in other decrees as well. In some, we might interpret it as a ‘rhetorical priority’ rather than only (?) a procedural one. Consider IPriene 8 (290s–280s), a decree of the Prienians who had requested *dikasteria* “for

<sup>44</sup> Cf. IEph 4 (Syll.<sup>3</sup> 364), the Ephesian law on war debt relief, provides for (internal, not foreign) *diaitetai* to settle matters about disputed loans or valuations of property; it seems that the titles (*diaitetai* and *dikastai*) refer to two sets of men (see esp. ll. 17–19). Some matters are reserved for a foreign court (ll. 85–88: εἰ δὲ τινες μὴ ἐμβάντων τῶν δανειστῶν αὐτοὶ νεμόμενοι τὰ κτήματα ἐκόντες τι ἢ συνωμολόγηται πρὸς τοὺς δανειστὰς μὴ βιασθέντες, εἶναι αὐτοῖς τὰ ὁμολογημένα κύρια: ἢ ἂν δὲ ὁ μὲμ φῆι βεβιάσθαι, ὁ δὲ μὴ, εἶναι αὐτοῖς κρίσιν περὶ τούτων ἐν τῷ ξενικῷ δικαστηρίῳ, προ- ἢ διαιτᾶσθαι δὲ αὐτοὺς ἐπὶ τῶν διαιτητῶν κατὰ τόνδε τὸν νόμον ἢ (“If any have themselves willingly and without coercion come to some agreement with the lenders, although the lenders have not entered upon possession, their agreements are to be valid. If the one says that he was coerced and the other denies it, they are to receive judgment about these matters in the foreign court, but they are first to submit to arbitration before the arbitrators in accordance with this law” (trans. Bagnall and Derow 1981: 20–23). The provision here for a preliminary arbitration refers to arbitrators from Ephesos (as in l. 6) and not to foreign judges serving as arbitrators who will try to reconcile the disputants first. (Similarly, Crowther 1995: 122 and 1996: 227 and nn. 126–27; and Walser, more expansively, 2008: 258–68 esp. 264ff.)

the contracts, both the public and the private ones” (ἐπὶ τὰ συμβόλαια τὰ τε κοινὰ καὶ τὰ ἴδια) from Phokaia, Nisyros, and Astypalaia. The judges, upon their arrival:

(ll. 7–12) πᾶσαν παρέσχοντο φιλοτιμ[ί]- ἢ [αν] πρ[ὸ]ς τὸ διαλύειν τοὺς ἐν τοῖς ἐγκλήμασιν ὄντας, [καὶ] ἢ [τὰ]ς μὲν ἐδίκασαν τῶν δικῶν τῆι ψήφ[ω]ι κατὰ τοὺς νό- ἢ [μου]ς, τὰς δὲ [δ]ιήτησαν ἴσω[ς] καὶ δικαίως, εἰς ὁμόνοιαν ἢ [καίφι]λίαιμ προαιρούμενοι τ[ὸν δ]ῆμον τὸμ Πρινηέων κ[α]- ἢ [θιστάν]αι. .

*aimed all their distinctive dedica[tion] at reconciling those who were involved in the disputes, [and] while they judged [some] of the cases by vote according to the la[w]s, they [ar]bitrated the others fairly and justly, making it their purpose to r[estor]e t[he de]mos of the Prienians to harmony [and frie]ndship. (Greek text and slightly modified trans. of Crowther 1996)*

Here, the expression of the judges’ “distinctive dedication” (φιλοτιμ[ί]- ἢ [αν] to reconciling the disputants, while appearing before any mention of judgment-giving, provides rhetorical emphasis rather than procedural directive to reconcile first and judge later. ‘Rhetorical priority’ here (note especially the προαιρούμενοι clause) and elsewhere easily turns into an ideological one. A near contemporary decree of Samos (SEG 1 363, IG XII 6,1 95, ca. 280 B.C.) confers honors on judges who had arrived from Miletos, Myndos, and Halicarnassos to deal with the “contracts that had been suspended” (τὰ μετέωρα συμβόλαια: l. 4: also ll. 6 and 10: defaulting loans?). The decree focuses on the Myndian judges.<sup>45</sup> Here the request for the judges came first from Philokles, a king of the Sidonians, who wanted the Samian people to be ἐν ὁμονοίαι, for the citizens were now disputing with one another; thus he wrote (a request) “so that the demos of the Myndians should send a *dikasterion* for reconciling the suspended contracts” (δικασ- ἢ τήριον τὸ διαλύσον τὰ μετέωρα συμβόλαια, 8–9). The arrival of the Myndian judges and execution of Philokles’ request is reported as follows:

Μύνδιοι δὲ ἢ πᾶσαν εὖνοιαν καὶ προθυμίαν παρεχόμενοι εἰς τὸ ἢ διαλυθῆναι τοὺς πολίτας ἢ ἀπέδειξαν ἄνδρας καλοὺς ἢ κάγαθοὺς καὶ ἀπέστειλαν εἰς τὴν πόλιν Θεοκλῆν ἢ Θεογένους, Ἡρόφαντον Ἀρτεμιδώρου, οὗτοι δὲ τὰς ἢ εἰσαχθείσας εἰς αὐτοὺς δίκας καλῶς καὶ δικαίως ἢ τὰς μὲν ἐδίκασαν, τὰς δὲ διέλυσαν, προαιρούμενοι ἢ τοὺς διαφορομένους τῶμ πολιτῶν διαλυθέντας ἢ ἐν ὁμονοίαι πολιτεύεσθαι ἀπαλλαγέντας τῶν πρὸς ἢ ἀλλήλους ἐγκλημάτων. ... (9–17)

*And the Myndians, displaying good will and enthusiasm to the fullest extent for achieving the reconciliation of the citizens, appointed good and excellent men, Theokles son of Theogenes and Herophantos son of Artemidoros, and sent them to the city, and these, in regard to the cases that were brought before them, not only judged some fairly and justly, but they also settled others, making it their purpose*

<sup>45</sup> Presumably separate decrees were enacted for the Milesians and Halicarnassians and sent to those cities; this is unlike the Prienian decree just cited: there the three judges from the three cities are honored in the one decree: see Hamon 1999: 190.

*that the quarreling citizens who had been reconciled, rid of the complaints against one another, should conduct themselves in harmony.*

Somewhat unlike the judges from Phokaia, Nisyros, and Astypalia who have absorbed the aim of the city requesting them, the Myndians have absorbed the aim of the king. The input of Hellenistic monarchical politics in institutionalizing the use of foreign judges has been convincingly traced by Crowther in numerous essays. There may be some added reason, then, for the Myndians' enthusiasm; but cities on their own could and did request foreign judges, perhaps only in times of crisis at first, but gradually, as a matter of course; and cities willingly sent judges, whether the directive was royal or not: stability was good, and providing it, honorable.

A problem or two of textual interpretation arises here: the *προαιρούμενοι* clause in both decrees appears to attach itself only to the sub-clause about arbitration or reconciliation (Priene: τὰς δὲ [δ]ιήτησαν ἴσως[ς] καὶ δικαίως; Samos: τὰς δὲ διέλυσαν), so that the foreign judges serving in Priene and Samos have made it their purpose to restore the citizens to harmony—but only when they are arbitrating or reconciling and *not* when they are delivering verdicts ‘according to the laws’ (Priene) or ‘fairly and justly’ (Samos). Is it at all possible, however, that the *προαιρούμενοι* clauses somehow modify the judges serving in both capacities, so that both when judging and bringing about reconciliations, the judges made it their purpose to reconcile the citizens so as to live in harmony henceforth? Strictly speaking, the participle is *not* a floater and modifies only the judge when he *reconciles* (or arbitrates) the disputants;<sup>46</sup> the restrictive attachment of harmony to reconciliation puts a premium on that method—almost as if verdict-giving is bad for society. This rather harsh sounding result could have been avoided had the drafter of the decree begun a new clause with a connecting particle and a finite verb (e.g., “they judged some cases fairly, and settled others, and they made it their purpose to bring [or more simply, ‘and they brought’] the citizens into harmony ...”); indeed, this is how the clauses appear in the Smyrnaean decree for the Kaunians and their judges—to which I shall soon return. The phenomenon that I prefer to focus on here is this: the flip-side of prioritizing reconciliation, of making the conveyers of agreement into the makers of harmony, is to render verdict-giving into a provocative act, or at least one conducive to social unrest.

The potential danger of verdict-giving is also apparent in one of the Kalymnian decrees for the Iasian judges that was discussed in section 3a; there we found almost identical directives for the judges who were “above all to reconcile” (μάλιστα μὲν

<sup>46</sup> In the Prienean decree, the μὲν clause of verdict-giving has both a modality (τῆι ψήφ[ω]ι) and criterion (κατὰ τοὺς νό- || [μου]ς) of assessment that is neatly balanced in the δὲ clause of arbitration with its equitable criteria (ἴσως[ς] καὶ δικαίως) and emotive modality clause; the Samian decree is also balanced but not so neatly. Nonetheless, the *προαιρούμενοι* clause in the latter decree is more intimately attached to the act of reconciliation: προαιρούμενοι || τοὺς διαφορομένους τῶμ πολιτῶν διαλυθέντας || ἐν ὁμοιοίαι πολιτεύεσθαι ἀπαλλαγέντας τῶν πρὸς || ἀλλήλους ἐγκλημάτων.

διαλυσεῦντι, TC test. XVI.34 and similarly TC 61.9). The judges did just that: “upon their arrival, they made every effort for ensuring that the disputants, having had their differences with one another resolved, *should live in the city in harmony*” (TC test. XVI. 37–38; cf. TC 61.9–13). In that same decree (ll. 39–46), however, we are given more detail of the judges’ efforts:

καὶ ἀ]πογραφεισᾶν δικᾶν εἰς τὸ δικαστήριον [πλει]όνων ἢ [ἢ τρι]ακοσιᾶν πενήκοντα, τὰς μὲν πλείσ<τας> διέλυσαν ἢ [πείσ]αντες τοὺς ἀντιδίκους, ὅπως μὴ διὰ ψάφου τῶν πρα- ἢ [γυμ]ᾶτων κρινομένων εἰς πλέω ταραχὴν ὁ δᾶμος ἢ [καθισ]τῶται. τινὰς δὲ καὶ διαίτασαν συμφερόντως ἢ [ἐκα]τέροις τοῖς ἀντιδίκους, δέκα δὲ δικᾶν εἰσαχθεισᾶν ἢ [εἰς τὸ] <δι>καστήριον ἔκριναν διὰ ψάφου κατὰ τε τὸ διάγραμ- ἢ [μα τοῦ] βασιλέως καὶ τοὺς νόμους, ὄντες ἀνερίθευτοι. . .

*Of the more than 350 (?250) cases that had been registered for the court, while they settled most by using persuasion on the litigants, so that the people did not become more disorderly [as they would have] had they been judged with a vote, they also arbitrated some of the cases advantageously to both parties,<sup>47</sup> and ten of the cases that were brought before the court they judged by a vote in accordance with the diagramma of the king and the laws, and all the time remaining impervious to bribery.*

The ὅπως clause is of great interest: it suggests that the compulsion of a verdict would have led to further distress for the city: there is a political push to settle and not to give a verdict. The disadvantages of rendering judgment are iterated in a number of decrees.<sup>48</sup> If we profile our visiting judges, then they are judges who are well prepared to use persuasion. Rhetorical skill may have been more important than a knowledge of the law.<sup>49</sup>

### c. Emotive Clauses of Intention; a Return to the Smyrnaean Dossier

We often find that judges are described as being eager for this or that, or as having some very strong intention—as in the προαιρούμενοι clauses in the Prienian and

<sup>47</sup> The differences among the three activities signaled by the verbs ἔκριναν (‘judged’), διέλυσαν (‘settled’), and διαίτασαν (‘arbitrated’) are not set out; see n. 6. Here we might distinguish: settling is an agreement between the two contending parties that has been suggested or overseen by a judge acting as ‘mediator’; if there is no agreement between the parties, then a decision is given by the same person, now acting as ‘arbitrator’; and if that decision is not accepted a vote is taken by the board of five judges all together. This, of course, is similar to procedure in Athens for private cases that went before the Forty; see n. 40.

<sup>48</sup> Stepping outside our ‘Q’ and ‘R’ cities, we see similar prioritizing in a decree from Malla (IC I xix 3): so highly valued is reconciliation there, that the mention of judgment-giving may have been purposefully avoided (ll. 22–24). There may be similar euphemism in IMagnesia 90.12–15, with the μὲν clause expressing the results of reconciliation and the δέ clause the results of judgment (the text is quoted and translated in the next section of the essay). Cf. IErythrai 122.24–6.

<sup>49</sup> Rubinstein 2013.

Samian decrees discussed in the last section; these emphasize the intention or purpose of the judges, in their reconciling or arbitrating activity, to bring the disputants into harmony. Such clauses appear so often that I have given them their own name: ‘emotive’. These are often introduced by participles of σπουδάζειν or σπεύδειν and cognate forms—so frequently occurring that the emotive meaning may be missed; by the less frequent προαιρούμενοι or by the handier ἵνα or ὅπως; also by πρόνοιαν ἐποιήσαντο and ἐφρόντισαν. Thus, e.g., the Antiocheians in Caria honor a judge from Magnesia Maeander who ἐφρόντισεν ὅπως π[ά]ντες οἱ ἐν ταῖς φιλ[ονι]- ἢ [κίαις] ὄντες οἱ μὲν συλλυθέντες [ἀ]ποκαταστῶσιν εἰς [τὴν] ἢ [πρ]ὸς αὐτοὺς ὁμόνοιαν, οἱ δὲ τ[υ]χόντες τῶν ἴσων ἐν [τοῖς] ἢ [ἀγῶσ]ιν κατὰ μηθένα τρόπον ἐλ[α]σσωθῶσιν (“made it his care, that, regarding all who were in a state of contentiousness, those who had their differences resolved should be brought into harmony among themselves, while those who met impartiality in the hearings would in no way be disadvantaged,” IMagnesia 90.12–15). Once again, an emotive clause that looks to harmony among the citizens characterizes the judge’s conduct in reconciling the disputants, not in judging them. Crowther studied such clauses in Iasian decrees (section 1 above), as in IPriene 53: τὰς μὲν συνέλυσε τῶν δικῶν οὐθὲν ἐλλείπων προθυμίας, ἢ ἀλλὰ πᾶσαν σπουδὴν ποιούμενος, ἵνα συλλυθέντες οἱ ἀντίδικοι τὰ ἢ πρὸς αὐτοὺς μεθ’ ὁμονοίας πολιτεύονται, τὰς δὲ διεκρίνεν δικαίως. Slightly different emotive formulae for ‘bringing the citizens into harmony’ appear in decrees from other cities, some of which we have seen already. These can be divided into two groups: those in which the urge for the harmonious cohabitation of citizens is directly linked to the judge’s efforts at reconciliation<sup>50</sup> and those in which it is linked to the judge’s efforts-at-large, that is, whether he is judging or reconciling.<sup>51</sup>

<sup>50</sup> To the first group belong both the two Kalymnian decrees for judges from Iasos (TC test. XVI.37–38; TC 61.11–13) and the Iasian decrees studied by Crowther (at least 6 decrees: IPriene 53.11 and 43 [answering decree of the Prienians]; IPriene 54.10; Iasos 75.11; Iasos 78.10; SEG 57.1046.18; SEG 41.929.11), also the Prienian decree for judges from Phokaia, Nisyros, and Astypalaia (IPriene 8.7–12, 290s or 280s); the near contemporary decree of Samos for the Myndian judges (IG XII 6.1.95, ca. 280 B.C.); the Antiochean decree for the Magnesian judge (IMagnesia 90); probably another Antiocheian decree for an Erythraian judge (IErythrai 116) as well as a decree of Peparthos for judges from Larissa (SEG 26.677.32–35); and also, at least three Smyranean decrees for foreign judges, discussed above.

<sup>51</sup> To this second group belong a decree of Kimolos for judges from Geraistos (SEG 44.710.24); a Magnesian decree for judges from Priene (IPriene 61.10–11); a decree of Kolophon for judges from Methymna (IG XII 2 509/658a 10–11); a decree of an unknown city for judges from Tenos, IG XII 5 870.9–11); a decree of Adramytteion for a judge from Andros (IG XII 5. 722 , 30–31); a decree of Larbenoi for judges from Magnesia Maeander (IMagnesia 101.13–14); a decree of Syros for a judge from Klazomenai (IG XII 4 1052.29–32); and two decrees of Smyrna, discussed above. See Robert *OMS* I 35, 38.

It is curious to find that Smyrna, alone of the cities from my eastern pool, enacted decrees for foreign judges that sometimes link an emotive clause for *homonoia* with reconciliation and at other times shun the link with reconciliation. That it is the only city preserving both formulations may very well be an accident of preservation (and/or evidence for the limits of my knowledge); moreover, that both types exist for one city might suggest that using one formulation or the other was a matter of indifference. Yet the carefulness of the master draftsman who composed IKaunos 17 (the decree discussed in section 2 of this essay)—or whatever master draftsman it was who first created the template for this Smyrnaean decree—suggests that it was not a matter of indifference at all: court decisions and settlements both had a role to play in promoting social cohesion.

Whether later changes in the template were initiated by textual corruption or impelled by social change, we can track the changes and suggest a sequence. The decrees under consideration are the Smyrnaean decree for Kaunos and the Kaunian answering decree (IKaunos 17 and 19: part of the ‘dossier’) and a second but lacunose Smyrnaean decree for Kaunian judges (IKaunos 21); the Smyrnaean decrees for judges from Thasos (SEG 49.1171, now IThasos 129)<sup>52</sup> and Astypalaia (SEG 49.1093 = ISmyrna 581, with Hamon’s suggested restorations); and also the unpublished decree for judges from Messene.<sup>53</sup> The earliest decrees in this series are the first three (IKaunos 17, 19, and 21), belonging to the first half of the second century BCE (n. 34). Earlier (section 2), I presented the clauses pertaining to judgment in IKaunos 17 and 19 in an abridged fashion; it is time to fill in the blanks. In the motivation clause of IKaunos 17, the Kaunians are praised for having sent judges:

οἵτινες παραγενόμενοι τὰς μὲν διεδίκασαν τῶν δικῶν καλῶς καὶ δικαίως καὶ κατὰ τοῦ[ς] ἢ [ν]όμους, τὴν πᾶσαν κακοπαθίαν τε καὶ φιλοπονίαν προσενεγκάμενοι, τὰς δὲ καὶ διέλυσαν σπουδάσ[αν]- ἢ [τ]ε καθ’ ὅσον ἦν ἐ[φ’] ἑαυτοῖς, τοὺς δὲ διαφερομένους τῶν πολιτῶν εἰς ὁμόνοιαν κατέστησαν [καὶ] ἢ [ἐ]ν τοῖς ἄλλοις ἀνεστράφησαν ἀξίως τῆς τε ἑαυτῶν πατρίδος καὶ τῆς ἡμετέρας πόλεως.<sup>54</sup> (IKaunos 17.9–12)

<sup>52</sup> Hamon 1999 combined two non-joining fragments of a stele: A (upper part, ll. 1–23) found in 1997; and B (lower part, ll. 26–52) found in 1904 and published as IG XII 8 269 and ISmyrna 582. SEG 49.1171 presents fragment A

<sup>53</sup> The decree for the Knidian judge is excluded as belonging to an earlier redaction: see text at n.33. The text of the decrees for Milesian (ISmyrna 583) and Oropian judges are too insecure for establishing precise templates. The possibilities for the decree for Oropos are presented by Crowther at 1999: 269, n 44. I discuss the Milesian fragment in n. 64. *infra*.

<sup>54</sup> Note the double hendiadys. First the criterion καλῶς καὶ δικαίως surely is the equivalent of ‘equitably’ when set next to καὶ κατὰ τοῦ[ς] ἢ [ν]όμους (the judges judged according to both equitable and lawful criteria); this is not ‘messy’ writing—the particles make clear that a distinction is made here, which might be between cases for which there is an assessment (e.g., of a penalty) by statute and cases for which the judge makes his own assessment in the absence of statute. Second, the τε καὶ in τὴν πᾶσαν κακοπαθίαν τε

*who, upon their arrival not only decided cases (τὰς μὲν διεδίκασαν) both fairly and justly ('equitably') and in accordance with the laws, acting with unremitting perseverance and dedication to labor, but also settled others (τὰς δὲ καὶ διέλυσαν) with as much zeal as they could muster, and they brought into harmony those (τοὺς δὲ διαφερομένους) of the citizens who were at variance, and in other matters conducted themselves worthily both of their own homeland and our city.*

The modalities (underlined in the translation above) express distinct emotive qualities for the judges both when they give decisions and when they reconcile disputants. Nevertheless, they depict judges who are just as seriously enthusiastic when they give decisions as when they reconcile; they are virtual workaholics with endless energy for each task. More importantly, it is neither specifically when they decide cases nor when they settle them that they bring the citizens into harmony: willy-nilly, that is what they do—reconciliation is not prioritized for promoting social cohesion. This consequence is not due to an accidental insertion of the particle δέ in the τοὺς δὲ διαφερομένους clause, along with an accidental use of the *finite* verb κατέστησαν: the independence of the τοὺς δὲ διαφερομένους τῶν πολιτῶν εἰς ὁμόνοιαν κατέστησαν clause is the purposeful composition of the master draftsman of the decree who meant to show that the judges, both in deciding cases and settling them, had the wonderful effect of bringing the citizens into harmony. While the ὁμόνοια clause does not appear in the later parts of the decree (neither in the message to be proclaimed by the herald at the festival in ll. 18–24, nor in the words to be delivered by the envoy to the Kaunians, ll. 34–43), criteria and modalities are kept distinct for judging and reconciling; thus, in the passage about the Smyrnaean envoy, directions are given him, that he is to arrive with the decree before the *boule* and demos in Kaunos and is to speak:

περὶ τῶν δικαστῶν ἦν ἐποιήσαντο ἢ [σ]πουδῆν καὶ φιλοτιμίαν περὶ τὰς κρίσεις, ἐμφανίζοντα διότι ἔν τε τοῖς ἄλλοις πᾶσιν ἐπαινε[ῖ] ἢ [α]ὐτοὺς ὁ δῆμος γεγενημένου ἀξίους ἀμφοτέρων τῶν πόλεων, καὶ διότι μισοπονῆρας ἢ τε καὶ δικαίως καὶ κατὰ τοὺς νόμους, φιλοπονίας τε καὶ κακοπαθίας οὐθὲν ἐλλείποντες, ἅς ἢ μὲν ἔκριναν τῶν δικῶν, ἅς δὲ καὶ συνέλυσαν συμφερόντως ... (17.34–43)

*about the judges' earnestness and distinctive dedication in regard to the cases, making it plain that (διότι) the people (of Smyrna) praise these men both in all other matters as having been worthy of both cities and also because (διότι) both with hatred for the feckless and with justice ('equitably') and in accordance with the laws, while displaying the highest degree of endurance both for labor and for work without cessation, not only did they judge some of the cases, but also they settled others advantageously.<sup>55</sup>*

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καὶ φιλοπονίαν προσενεγκάμενοι surely suggests that the two nouns are bedded together.

<sup>55</sup> The draftsman has maintained the double hendiadys (see the preceding note); the highly wrought rhetorical finish is also evident in the *oratio obliqua*: notice the different



The specificity of the draftsman's praise was not lost on the Kaunians: while, as we have just seen, the *homonoiā* clause (17.11) does not appear in the envoy's speech (17.34–43) in the Smyrnaean decree (at least, not as it is copied onto the stele in Kaunos!), nevertheless, the Kaunians copied it into their own decree (19.68–72), either from the written copy of the Smyrnaean decree carried by the envoy or from the speech that he delivered. Thus the motivation clause of the Kaunian decree runs as follows: since the Smyrnaeans have sent a messenger and a decree in which they write that, when they had sent to them an envoy to request judges and a secretary, they (the Kaunians) sent them judges:

οὓς διασαφοῦσιν ἢ παραγενομένους εἰς τὴν πόλιν αὐτῶν τὰς μὲν δεδिकाκέναι τῶν δικῶν καλῶς καὶ δικα[ίως] ἢ καὶ κατὰ τοὺς νόμους, τὴν πᾶσαν κακοπαθίαν τε καὶ φιλοτιμίαν προσενεγκαμένους, τὰς [δὲ] ἢ συν<λ>ελυκέναι <sup>56</sup> σπουδάσαντας, καὶ τοὺς διαφορομένους τῶν πολιτῶν εἰς ὁμόνοιαν κατα- ἢ στήσαι ... (19.68–72)

*who, upon arrival in their city, (sc. the Smyrnaeans say), not only have decided some cases equitably and in accordance with the laws, having acted with both unrelenting perseverance and distinctive dedication, but also have reconciled others with eagerness (τὰς [δὲ] συν<λ>ελυκέναι σπουδάσαντες), and (καὶ) brought into harmony those of the citizens who were at variance ...*

Such precision in copying the template, even within a dossier, is remarkable. We might, however, see the beginning of a corruption (or merely an abridgement?) in another, more lacunose decree of the Smyrnaeans for the Kaunians of roughly the same date or a little later, IKaunos 21. The extant text preserves words in only 15 or so lines, i.e., prescript and motivation clause, motion formula, and the first three or so lines of the substance of the new decree; it has been largely and ‘mechanically’ restored on the basis of IKaunos 17.<sup>57</sup> The motivation clause in IKaunos 21 is the same, word for word, as that in IKaunos 17, except for the personal name, the omission of the ‘good conduct clause’ (IKaunos 17.12), and slight change in the ὅπως clause.<sup>58</sup>

We might perceive a more radical change in SEG 49.1171, the Smyrnaean decree for Thasian judges (Hamon, IThasos no. 129), and its near twin, SEG 49.1093, the Smyrnaean decree for Astypalaian judges. Hamon, who has recently re-edited the text of the decree for Thasian judges, dates it to the last third of the second

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meanings that must be given to διότι in ll. 35 and 36: he is writing a speech that must be listened to carefully.

<sup>56</sup> The comma in the Greek text following συν<λ>ελυκέναι should be removed, as here; if felt necessary, it can be placed after σπουδάσαντας.

<sup>57</sup> Bean, ed. pr. 1953 no. 8.

<sup>58</sup> Crowther informs me *per ep.* that while the τε is omitted in l. 9 of the published texts (Bean's ed. pr. 1953 no. 8: ISmyrna 580, IKaunos 21), it appears in Bean's squeeze; Crowther thinks “it is desperate to read this text” and he “has no confidence in the formula in ll. 11–12.”

century or even to the opening decades of the first on the basis of its orthography and letter forms; the Astypalaian decree belongs to the same period.<sup>59</sup> The texts, then, may have been inscribed as many as 30 or 50 years after the decrees for the Kaunian judges if those are dated ca. 160 BCE (see n. 34). The motivation clause of the first runs: since ... the people of Thasos ... sent judges ... who, upon arrival (οἱ τῖνες πα[ρ]αγενόμενοι):

ἄς μὲν διε- || [δίκ]α[σα]ν δί]κας [δι]καίως κατὰ τοὺς νόμους τὴν πᾶσαν ||  
 [κα]κ[ο]παθίαν κα[ὶ] φίλο]τιμίαν προσεν(ε)γκάμενοι, ἄς δὲ κα[ὶ] σ]υνέ[λυσαν] ||  
 [καθ' ὅ]σον ἦν ἐ[φ' ἑαυ]τοῖς σπε]ύδ[ον]τ[ε]ς τοὺς διαφορομένους τῶν [πο]- ||  
 [λιτῶ]ν εἰς] ὄμ[ΟΜ]όνοιον καταστήσαι, οὐθὲν ἀναγκα[ίω]- || [τερον δὲ οὐ]δὲ  
 μᾶλλον συνφέρ(ο)ν ν νομίσαντες εἶναι τῆι || [πόλει ἐπειράσ]αντο τὰς φιλονικίας  
καὶ διαφορὰς ἀνα(ι)ρεῖν κα[ὶ] || [ἐν τοῖς ἄλλοι]ς ἀνεστράφησαν ἄξίως {τῆς} τε  
 ἑαυτῶν καὶ τῆ[ς] || [ἑαυτῶν καὶ τῆς] ἡμετέρας πόλεως (lines 10–17)

*not only decided some cases justly in accordance with the laws, having acted with unrelenting perseverance and distinctive dedication, but also settled other cases with as much zeal as they could muster to bring into harmony those of the citizens who were at variance, [and] in the belief that nothing is [more] compelling and more beneficial for the city, they [tr]ied to eradicate (their) quarrelsomeness and differences and in other matters they behaved in a manner worthy of themselves and of their city and of ours ...*

The template used by the master Smyrnaean draftsman for the decrees for Kaunos is visible here, but so is corruption: not only has the καλῶς καὶ δικαίως καὶ κατὰ τοῦ[ς] || [ν]όμους of IKaunos 17.9–10 been abridged to [δι]καίως κατὰ τοὺς νόμους (and notice how those particles so easily fly away!), but more importantly, the δέ has dropped out from τοὺς δὲ διαφορομένους and has caused the change in the clause's construction so that κατέστησαν becomes καταστήσαι and now supplements σπε]ύδ[ον]τ[ε]ς. The Smyrnaean decree for the judges from Astypalaia (ISmyrna 581) is even more lacunose, but can be restored so that it is basically the same as the decree for Thasian judges.<sup>60</sup> The meaning in both decrees has shifted away from that in the earlier exemplar: for now it is only when the judges act in their reconciling role that they are eager to establish *homonoia*. The corruption in meaning, however, was quite evidently felt (and eschewed!) by the redactor who created the pattern for these two decrees: for the redactor has *added* an emotive clause, ‘[and] in the belief (νομίσαντες) that nothing is [more] compelling and more beneficial for the city, they [tr]ied to eradicate (their) quarrelsomeness and differences...’<sup>61</sup> The added clause is independent: it is introduced by the restored

<sup>59</sup> P. Hamon, unpublished text, n. 8; Robert *OMS I*: 6 had dated both decrees to the first century.

<sup>60</sup> See Hamon 1999: 184–87, replicated in SEG 49.1093. The decree for the Astypalaians retains the δ[ίκας καλῶς καὶ δικαί]- || ὡς καὶ κατὰ τοὺς νόμους of the exemplar.

<sup>61</sup> Hamon (ibid. 187) nicely points out parallel phraseology in IG IX 2, 1230, a decree of Phalanna for a judge from Gyrtion or Krannon in Thessaly: the judge (Glaukos

particle δέ and is dissociated from the preceding clause; accordingly, the finite (and restored) verb ἐπειράσ]αντο is associated with the judges whether they are giving a decision or reconciling the disputants.<sup>62</sup> This is manifestly messy: for how is “bringing into *homonoia* those of the citizens who were at variance” different from “eradicating their differences and quarrelsomeness”—except that the latter is now the function of judges at all times, both when judging and when reconciling—and something the judges believe to be more compelling and beneficial than anything else?

Not only manifestly messy, the additional clause is manifestly a ‘fix’, for it returns the decree to its ‘Kaunian’ state, when judges were interested in restoring *homonoia* whether they were reconciling the parties or giving decisions. We must posit, then, an intermediary text between the template used for the Kaunian judges and that used for the Thasian, a text in which the δέ has dropped out from the τοὺς δὲ διαφερομένους clause and κατέστησαν has become a supplementary infinitive—but where the ‘fix-it clause’ (οὐθὲν ἀναγκαϊότερον δὲ ... νομίσαντες ...) has not yet intruded. It so happens that we now have such a text, one that can be dated and so provide at least a *terminus ante quem* for the later formulation. The text is new—it was found on a stele that was excavated by Themelis in 2003.<sup>63</sup> The stele carries two Smyrnaean decrees, one for Messenian judges (lines 2–49) and the other for their secretary (50–67). Dr. V. Bardani, who will publish these and other Messenian texts in the near future, has kindly permitted me to speak of the contents and her dating of the decrees. For reasons of orthography, morphology, and similarity of lettering to a decree of the Demetrians for Messenian judges that is securely dated around the middle of the second century BCE (before rather than after), the new decrees can be roughly dated to the same pentad. As for contents, the decree for the Messenian judges uses the same typology and phraseology as IKaunos 17.1–45—except for some slight changes! In the portion of the decree that most directly concerns us, we find that, whereas the judges “decided” (διεδίκασαν) cases with the same criteria and modalities as in IKaunos 17.9–10 (except that φιλοτιμίαν has replaced φιλοπονίαν, as in the decree for the Thasians), they “settled other cases” (using συνέλυσαν as in the decree for the Thasians and not διέλυσαν as in the decree for the Kaunians) “with as much zeal as they could muster to bring into

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Apolloni[ου?], in matters regarding debt and contracts, πῶσαν προ- || θυμίαν [ἐνδείξας] διέλυσεν πάντας || ἀνεγκλήτως κ[αὶ] σ[τάσι]ν ἀνελθὼν εἰς || ὁμόνοια[ν κα]τ[ή]γαγ[εν] (10–13: “[with a display of] absolute enthusiasm, reconciled all the cases irreproachably and upon eradicating discord, restored (them) to harmony”)

<sup>62</sup> See Crowther 1999: 288–89 for restoration of SEG 49. 1115 A ll. 10–15 (decree of Chalkis for judges from Kos,) with [πε]πείρανται (“[of the cases] that were repor[ted] before them), they have tried to [sett]le [most in an advantageous way] etc.”); and now Bosnakis and Hallof in IG XII 4,1 168 also with πεπείρανται (“and of the cases [κρίσεων] that were reported before them, they have tried to bring most into an agreeable solution” etc.).

<sup>63</sup> The find was reported in SEG 52.383 and 389.

harmony those of the citizens who were at variance.” We have here precisely the text that was posited as an intermediary, the Thasian template without the ‘fix-it clause’ (οὐθὲν ἀναγκαϊότερον δὲ ... νομίσαντες). We may translate this section of the Smyrnaean decree (ll. 7–13) as follows: “(the judges) who upon arrival (in Smyrna from Messene) not only decided some of the cases fairly and justly (i.e., ‘equitably’) and in accordance with the laws, having acted with unrelenting perseverance and distinctive dedication, but also settled others with as much zeal as they could muster to bring into harmony those [of the citizens] who were at variance, and in other matters conducted themselves worthily both of their own homeland and our city.”<sup>64</sup>

We do not know when a Smyrnaean draftsman first formulated the intermediary text. It may have arisen by accidental corruption or by thoughtful alteration. If by the latter (as I think), then it may have been occasioned by stressful circumstances in Smyrna, so stressful that it was made incumbent upon judges to restore the citizens to harmony as they settled cases—harmony as a result of decision-making may have become inconceivable. Or, possibly the change was casuistic—e.g., perhaps it was based on the reputation of certain judges who were known to be absolute wizards of reconciliation. Is it possible that the Messenians had garnered such a reputation? It is tantalizing to learn, on the basis of new finds from the Messenian excavations as of now (for they are still underway), that during the period 160–120, twenty-two Messenian *dikasteria* had been sent to foreign cities. Surely the Messenian judges had something distinctively attractive about them!<sup>65</sup> At some later point, however, the template that had been used for the Smyrnaean decree for Messenian judges was

<sup>64</sup> We may have another example as well: ISmyrna 583, the Smyrnaean decree for three judges from Miletos. This is a scrappy fragment; Petzl restored the judging/settling clauses so that the judges settle cases “with all the zeal they can muster to bring into harmony those of the citizens who were at variance” (ll. 9–11). The restoration thus accords with the decree for Thasian judges (IThasos 129), *except* that there is no space for the ‘fix-it clause’ (οὐθὲν ἀναγκαϊότερον): if it had been included (as in the decree for the Thasians and Astypalians), it would have preceded the ὅπως clause (and it clearly does not in the fragmentary text we possess: see ISmyrna II, 2 Tafel 2 for a photo of a squeeze of the fragment). Either the model for the decree is the same as the ‘intermediary’ one used for the Messenian judges, *or* the text should be restored differently, as in IKaunos 17.10–11: τὰς δὲ καὶ διέλυσαν σπουδάσαντες καθ’ ὅσον ἦν ἐφ’ ἑαυτοῖς, τοὺς δὲ διαφορομένους τῶν πολιτῶν εἰς ὁμόνοιαν κατέστησαν κτλ. Only a firm dating of the fragment might offer an initial basis for deciding between the one restoration and the other.

<sup>65</sup> Again I am grateful to Dr. V. Bardani for sharing this new information. Obviously, as these texts are published, we will learn much more about the habits of foreign judges and the widening networks of late Hellenistic cities, and the reasons why cities chose particular cities from which to request judges; see section 1, *apud fin.*, where, for example, trade was suggested as a motive. There may of course be a more pointedly political reason for the Smyrnaean decision to use Messenian judges in the middle of the second century BCE, viz., the relations of both cities to Rome; this, however, is not the place to initiate that discussion.

altered. Whenever it was that the Thasian and Astypalaian redaction was first introduced, the *homonoia* clause had become fossilized, preserved as a matter of tradition and epigraphic habit; it remained in the text despite its redundancy when the new clause that repeated and expanded its meaning was added.

I have posited three redactions in the judgment clauses in the second series of Smyrnaean decrees for foreign judges and their cities (the decree for the Knidians belongs to the first series, see n. 33). In the first, exemplified by the decrees for the Kaunians (IKaunos 17, 19, 21), “the judges decided some cases according to the laws, working non-stop, and they settled other cases with as much zeal as they could muster and they restored the contentious citizens into harmony.” In the second redaction, exemplified by the decree for the Messenians, “the judges decided some cases according to the laws, working non-stop, and they settled other cases with as much zeal as they could muster for restoring the contentious citizens into harmony.” And in the third redaction (SEG 49.1171, for Thasian judges and ISmyrna 581, for Astypalaian judges), “they decided some cases by law, working non-stop, and settled others with as much zeal as they could muster for bringing the contentious into harmony and, in the belief that nothing is more compelling and more beneficial for the city, they tried to eradicate (their) quarrelsomeness and differences ...”

Further investigation and new evidence may make possible more precise dating for these decrees and provide historical events to tie to the alterations in the templates. Juxtaposed study of the decrees from cities that present judges as reconcilers who aim to restore *homonoia* with those presenting judges-at-large who restore *homonoia* (nn. 50 and 51) may also yield new insights. As for concluding this essay with its focus on judging clauses with their criteria and modalities of assessment: I hope to have shown that the clauses can reveal real judging habits of foreign *dikastai*, but I also hope to have shown that judging habits, embedded in inscribed texts that are copied, generation after generation, are prone to transmutation (as in any transmitted text) by error or by purposeful alteration; and yes, judging habit becomes epigraphic habit, even as new judging habits (or new iterations of old judging habits) are formulated, and I daresay, put into practice.

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Standard collections of Greek inscriptions, particularly those in the IGSK series, are referred to as follows: e.g., IPriene, IIsos, ISmyrna

IKaunos = see C. Marek, *infra*.

IPark: see G. Thür – H. Taeuber *infra*.

Gonnoi II: see Helly *infra*.

OMS = L. Robert, *Opera Minora Selecta* (7 vols., Amsterdam 1969–1991)

TC = Tituli Calymnii, ed. M. Segre, *Annuario* 6–7 (1944–45)

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