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“DECREES FOR FOREIGN JUDGES: JUDGING  
CONVENTIONS—OR EPIGRAPHIC HABITS?”  
A RESPONSE TO ADELE SCAFURO

We must thank Adele Scafuro for her paper on the decrees of foreign judges. Her analysis of the *dikasteria* composed by these judges in the Hellenistic world, beside the specific interest in the reconstruction of their judging procedures, has a more general interest for the study of Greek law, related to the solution of the old and still controversial problem of unity of Greek Law. Widely discussed with reference to the poleis of the classical age, this issue has only marginally attracted the attention of scholars of the Hellenistic world, except as concerns Ptolemaic law. The existence of a trend to legal *koine* determined by territorially-extended kingdoms has been recognized by many, but it is very difficult to find out whether and to what extent this *koine* existed outside of the Ptolemaic Kingdom, and if it involved areas of law other than private law and family law, to which research was mainly dedicated. In particular, can we think of a *koine* in the fields of public law and of procedural law, the latter of which works as a sort of link between private and public law? In these areas, can we or can we not find factors of unification?

Re-considering these problems, there is no need to insist on the emphasis Scafuro's paper dedicated to foreign judges in Hellenistic Greek cities, mainly in the eastern ones: namely (among the many occasions in which those judges were appointed) to decrees in honor of foreign *dikasteria* invited from a city to spend a period of time in its territory, in order to settle disputes and/or decide cases between local inhabitants. Reasoning from the suggestions offered by Louis Robert's still fundamental study,<sup>1</sup> Scafuro maintains that visiting judges, when they decided, had to do it *kata tous nomous* of the requesting city. But a problem arises when they were called not only to “judge,” but also to “reconcile”: must we believe, as is often said, that they only gave judgments if their conciliation efforts had failed? In other words, that there was a procedural priority for reconciliation? Scafuro excludes the existence of a general rule of that kind. However, there are some problems that in my opinion deserve further attention: when both reconciliation and judging were [possible], was the attempt to reconcile considered as the equivalent of a preliminary investigation (sort of *anakrasis*)? Did the *dikasterion* collect and assume proofs? In

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<sup>1</sup> Robert, L. 1973. ‘Les juges étrangers dans la cité grecque,’ pp. 765–82 in Xenion, Festschrift für Pan. J. Zepos. Athens, Freiburg i.B., Köln, Repr. OMS 5, 137–54.

this case, if reconciliation failed, could the visiting judges take into account, in order to decide, the proofs collected and assumed during their own reconciliation attempt? The ambiguity of epigraphical terminology that tends to overlap reconciliation and arbitral activity complicates the problem. For modern scholars arbitration finds a model in the activity of public arbitrators in Athens after 403, who are, according to Aristot. *AP* 53.2 bound to try reconciliation. But in the case of foreign judges reconciliation was the first (chronologically) task of the appointed judges, a task that did not exist for Athenian judges. My first thought is that when judges tried to reconcile the disputants they did not collect proofs: if disputants reconciled, proofs were not necessary; if they did not reconcile, proofs were collected during the first part of the decision-making procedure. But these are only my first thoughts: as I said, in my opinion, the relation between the parts of procedure permitted for foreign judges deserves further deeper attention.

Let's now go to a very interesting and important part of the paper: "I take this essay," writes Scafuro, "as an instancing of substantive meaning for formulaic expression and also of the spread of formulae from one city to another." How to achieve such a goal? Scafuro follows suggestions offered by Crowther (who identified shifts in phraseology of the decrees and associated changes in judging conventions with chronological phases) and observes that "by locating specific networks of cities and their decrees we may be able to isolate formulae and judicial conventions and so trace their development." This method allows Scafuro to combine pieces of information coming from different places in the Greek world and to ascertain that the decrees show a reciprocity between requesting and receiving cities, and "the outreaching tentacles of that primary reciprocating unit" that connect the requesting cities not only to all its answering cities, but the cities to which these cities have sent and received judges. This chain of connections shows the existence of important exchanges in the realm of justice between Hellenistic cities and poses several problems. Particularly interesting in my opinion is the following question: how, that is, on the basis of which considerations or personal qualities, were foreign judges appointed? Were they judicial experts, experienced in dealing with foreign legal codes, as first assumed by Louis Robert? Were they famous for their rhetorical skill, whose importance in judicial procedures does not need to be underlined? Scafuro points out that some cities received more requests than others to send judges to other cities: Messene, during the period 160–120, sent to foreign cities twenty two *dikasteria*. Why were Messenian judges especially attractive for the requesting cities? Does that mean that in Messene there really existed specialists in legal problems? The growth of a class of "legal experts" in the Hellenistic world would be a further fascinating topic to discuss, as well as the consequences on the legislation of different cities of exchanges of judges, especially if they were legal experts. As I said, these consequences could be enlightening in discussing the existence of a *koine* in Hellenistic legal procedures. In addition, the fact that during the exchanges of judges between Smyrne and Messene at some point the template used for the decrees

was altered, is connected with one of the topics at the center of Scafuro's research, that is to say judging habits of foreign judges. These habits, as she writes, "embedded in inscribed texts that are copied, generation after generation, are prone to transmutation (as in any transmitted texts) by error or by purposeful alteration."

The suggestions coming from Scafuro's paper open the way to so many further points of important discussions, that, as I said, we must really thank her for her difficult work.

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