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SOME REMARKS ON EQUALITY IN HOMER AND  
IN THE FIRST WRITTEN LAWS.  
RESPONSE TO ROBERT W. WALLACE

With an original reading of the sources, and relying moreover on the archaeological evidence, Robert Wallace's paper argues interestingly against some traditional and well-established views about archaic Greek politics, society and institutions. To quote just a few examples, he challenges the dominant idea that the Homeric poems describe an aristocratic society, and that the people, both in Homer and more generally in archaic times, do not have any power over the governing aristocracy. Denying that the social and political idea of equality appeared in Greece quite late (namely towards the end of the sixth century), he maintains instead that the first written laws, as well as the appearance of tyrants, mediators or umpires, and the setting of constitutions, were remedies taken to fight the arrogant rise of a self-styled aristocracy, which had provoked civil strife.<sup>1</sup>

There is no doubt, I believe, that the development of the concept of equality in the Greek *poleis* in classical times has Homeric or more generally archaic roots,<sup>2</sup> and

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<sup>1</sup> See also Raaflaub, Wallace 2007; Wallace 2009; Wallace 2014.

<sup>2</sup> Cf. Raaflaub, Wallace 2007, 32: "despite his elite focus and aristocratic bias, Homer already reveals some fundamental institutions, practices, and mentalities that would later form the core of Greek democracy"; in similar terms cf. also, e.g., Ste. Croix 1981, 284: "the extraordinary originality of Greek democracy [...] in the fundamental sense of taking political decisions by majority vote of all citizens, occurred earlier than in any other society we know about".

that equality is both an idea and a practice already in our earliest surviving evidence, as well as a recurring element of archaic laws in different cities. Although I generally agree with Wallace's thesis, I think there are some points on which my views are not as clear-cut as his. In my response I will consider mainly two topics: Homer's world and archaic laws.

First, however, I think it is worth wondering what 'equality' and what 'people' means. As for the former, obviously we cannot compare our absolute (at least theoretically) idea of equality with the idea of equality – *isotēs, homoiotēs* – that the ancient Greeks had, and that, moreover, was likely to be different from *polis* to *polis* and from time to time. Equality existed both in Sparta and in Athens, but the Spartan concept of 'equality' was clearly different from that of the Athenians; many anti-democratic Athenians (first of all, of course, the so called 'Old Oligarch' in his *Athenaion Politeia*) harshly criticized the model of their *polis*, which granted equality to everybody, instead praising the more restricted paradigm of the Spartan equality. As for the archaic notion of 'equality', a quick glance to the *Lexikon des frühgriechischen Epos* shows that already in Homer the adjective *isos* does not cover only the semantic field of the word "equal", but also that of the terms "equitable", "adequate/proportionate", "fair", "just" (cf., e.g., *Od.* 20.293-4).<sup>3</sup> The same ambiguity concerns also the identity of the 'people'; it is not always easy, especially for the archaic age, to understand how wide the notion underlying this term is. In Homer, moreover, the people may be designated by two words: *dēmos* and *laoi*. But what do these terms mean exactly? Supposing – which in my opinion is not correct – that their meaning is always the same in each of their occurrences in the poems, are they synonyms?<sup>4</sup> If they are not, does *dēmos* have a broader ("all the free men who belong to a community") or a narrower meaning ("collective legal entity") than *laoi* ("warriors")?<sup>5</sup> And, in this case, does 'equality' apply only to the *laoi*, or to the *dēmos*, or to both?

Bearing these points in mind, we can turn to Homer and to the society he describes. Many passages undoubtedly confirm Wallace's thesis that it is hard to detect in the Homeric poems – as well as in Hesiod – a real, powerful aristocracy, composed by individuals who boast of belonging to an upper class, and hence of being entitled to be *basileis*.<sup>6</sup> Nobody can deny that mostly the *basileis*, far from being 'aristocrats

<sup>3</sup> *Lexikon des frühgriechischen Epos*, begründet von B. Snell, Göttingen 1991, s.v. *isos*.

<sup>4</sup> See, e.g., Wolff 1946, 41-2; cf. also Bietenhard 2002.

<sup>5</sup> Pugliese Carratelli 1962 [1976], 137, thinks that already in the Mycenaean documents the terms have two clearly distinct meanings, and designate two different social classes: *laos* is "la nobiltà guerriera e fondiaria, la classe più vicina al ἄναξ", whereas *damos* indicates the farmers and the artisans, the Homeric *dēmioergoi*. See also Myres 1927, 198-200. For the alternation *laoi/dēmos* in the trial scene on the shield of Achilles (*Il.* 18.496-504) cf. Westbrook 1992, 74-5, who follows Müllner 1976, 106; Fusai 2006, 40-3.

<sup>6</sup> For similar remarks connected with the "infrequency of birth words in the early archaic age", see Donlan 1978, 102-3; cf. also Calhoun 1934, 192-208.

by birth' or 'aristocrats by right', are instead chosen *ad hoc* because they are strong, or because they possess a special ability that fits particular circumstances. Accordingly, since their position is neither steady nor hereditary, they need to constantly confirm their prestige, their honor (*timē*), and their leadership in order to keep their status.<sup>7</sup> Ithaca offers the most evident example: to reaffirm himself as the absolute leader when he returns on the island, Odysseus must prove to have enough strength and charisma. There is generally a very small difference – we might say quantitative, not qualitative – between the *basileis* that form the elite and their leader, who is nothing more than a *primus inter pares* (cf., e.g., *Il.* 1.287-9), as well as between the *basileis* and the 'people'; the popular approval, the *dēmou phēmis*, is known to be vital for whomever wants to be considered a *basileus*. This explains why, usually at least, the *basileis* have no political power over the people; when the whole community gathers in the assembly, it is not the *basileis* who decide or impose their own decision on the people (cf., e.g., *Od.* 16.380-2). 'Equal participation', as Wallace has so insightfully pointed out, is a recurrent theme in the poems: it applies to the assembly, one of the main features of the Homeric civilized society (it is noteworthy that the Cyclopes, symbol of an uncivilized community, do not have an *agorē*: *Od.* 9.112-114), to the division of the booty after a successful expedition (*Il.* 1.123-9; 11.705; *Od.* 9.42, 549; but there are some exceptions to the rule, as I will show later), and, possibly, to the voting process (*Od.* 24.463-4).

This is the general frame provided by the poems; beside it, however, I think that there are some other mechanisms that operate in the political world of Homer, the occurrence of which is likely to make things more complicated.

It is worth remembering, albeit unnecessarily, that the political system of the *Iliad* and the *Odyssey* has been described by modern scholars in many different ways. For example, according to some, it is "an artificial amalgam of widely separated historical stages".<sup>8</sup> Others differentiate between the Mycenaean kingship of the *Iliad* and the aristocratic kingship of the *Odyssey*.<sup>9</sup> Still others maintain that the poems refer to a specific historical moment – the tenth or the ninth century for some,<sup>10</sup> the eighth century for others.<sup>11</sup> Last but not least, it is worth mentioning the hypothesis, supported especially by Raymond Westbrook, according to which many aspects of the Homeric world can be fully understood only in the light of the legal and political system of the Near Eastern kingdoms.<sup>12</sup>

<sup>7</sup> About the 'instability' of the regal status see Cantarella 2004 [2011] 204.

<sup>8</sup> Snodgrass 1971, 389; the 'historical stages' that, according to the author, can be identified are the Mycenaean one and the eighth century.

<sup>9</sup> See, e.g., Nilsson 1933.

<sup>10</sup> See, e.g., Finley 1962, 173-5; in his review of Finley's work, Catenacci 1993 suggested as a more fitting title *The Possible World of Odysseus*.

<sup>11</sup> See, e.g., Sale 1994, part. 96-102 (whose position is however against the view that the poems reflect only a specific historical moment); Raaflaub 2006.

<sup>12</sup> Westbrook 1992; Westbrook 2005; cf. also Nagy 1997.

I generally follow the theory according to which in the political world of the Homeric poems there is a variety of institutions, habits, and customs from different ages<sup>13</sup>. A variety that cannot be explained in terms of “archaisms” or “heroic exaggeration”,<sup>14</sup> but should be considered instead from a diachronic perspective; “the diachronic approach is needed to supplement the synchronic, as well as vice versa”, wrote Gregory Nagy some years ago.<sup>15</sup> Hence, if it is unarguable that in many (probably most) passages of the poems equality is attested, there are also some other passages that may challenge this idea. I will try to justify my point of view by providing just a few examples.

One of the first occurrences (the second, to be correct)<sup>16</sup> of the adjective *isos* is in the first book of the *Iliad*; interestingly, in the same verse the verb *homoioō* occurs as well. After Agamemnon has changed his mind about the restitution of Chryses’ daughter, he requires another *geras* and eventually decides to seize Achilles’, remarking (*Il.* 1.185-7):

[...] ὄφρ’ ἐὺ εἰδῆς  
ὄσσον φέρτερός εἰμι σέθεν, στυγέη δὲ καὶ ἄλλος  
ἴσον ἐμοὶ φάσθαι καὶ ὁμοιωθήμεναι ἄντην.

[...] so that you will understand how much mightier I am than you, and another may shrink from declaring himself my equal (*ison emoi*) and likening himself (*homoiothēmenai*) to me to my face.<sup>17</sup>

The principles of *isotēs* and *homoiotēs* that inspired Achilles’ reaction (cf. also *Il.* 16.53: Achilles considers himself *homoios* to Agamemnon) are firmly rejected by Agamemnon. He is the *Líder Máximo*, he is more equal than anybody else; the people, the Achaeans, clearly recognize it, since, after a successful battle, they always give Agamemnon a much greater *geras* (*poly meizon*), not equal (*ison*) to the one they bestow to others (for example to Achilles, who is talking in these verses: *Il.* 1.163-8). This happens not because Agamemnon is worthier (he does not even fight: cf. *Il.* 9.332), but because he is mightier. Even though Agamemnon states that the thing he mostly cares about is the safety of his people (“I would rather the people be safe than perish”, *Il.* 1.117), he does not listen to what the Achaeans say and want; all the decisions rest with him alone.

This superiority seems to me to be justified by the fact that, whereas evidently in some passages of the poems power is grounded on a quantitative principle, in some

<sup>13</sup> Cf., e *plurimis*, Cantarella 2001 [2011] 160-1 (similar remarks already in Cantarella 1979, 52-8; 129-40); Pelloso 2012, 76-81.

<sup>14</sup> Raaffaub, Wallace 2007, 24.

<sup>15</sup> Nagy 1996, 17.

<sup>16</sup> The first one is in *Il.* 1.163, discussed below in the text.

<sup>17</sup> The translation of this and other passages of the *Iliad* is by A.T. Murray, Cambridge Mass.-London 1924.

others it has a qualitative characterization; remember what Odysseus – after reminding many members of the *dēmos* that they are worthless in war and in council – says in his praise of kingship (*Il.* 2.204–6):

οὐκ ἀγαθὸν πολυκοιρανίη· εἷς κοίρανος ἔστω,  
εἷς βασιλεύς, ᾧ δῶκε Κρόνου πάϊς ἀγκυλομήτεω  
σκήπτρον τ' ἠδὲ θέμιστας, ἵνα σφισι βουλευήσι.

“no good thing is a multitude of lords; let there be one lord (*koiranos*), one king (*basileus*), to whom the son of crooked-counselling Cronos hath vouchsafed the sceptre and judgments (*themistas*), that he may take counsel for his people.”

This statement, I think, can be compared with other passages where *timē* is not said to derive from a particular ability recognized by the *dēmou phēmis*, but rather from Zeus himself (*timē ek Dios*: cf., e.g., *Il.* 2.197). It can also be compared with the fact that some *basileis* are such because of a divine investiture and a hereditary principle. Agamemnon got his scepter, symbol of power, from his ancestors, who had got it directly from Zeus (cf., e.g., *Il.* 1. 278–9, where Nestor says Agamemnon obtained a *timē* not *homoīē*; 2.100–8; 9.98–9; cf. also *Il.* 1.238–9). Can this fact be assumed as a sign of a later development towards the power of wealthy prestigious families, typical of the seventh and sixth century? Many scholars have convincingly argued that such a characterization is rather a relic of the past, an echo of the Mycenaean idea of ‘king’, *wa-na-ka*.<sup>18</sup> Of course it is not my intention to confront here the much debated problem concerning the relationship between the Mycenaean age and Homer; my guess is simply that in the poems there are clear references to a previous, ‘unequal’ system, and that these references coexist, sometimes with unresolved contradictions, with more recently developed principles.<sup>19</sup>

The same conclusion, regarding both the diachronic development and the attribution of power, can be drawn if the administration of justice is considered.

<sup>18</sup> Cf. recently Pelloso 2012, 78 nt. 194, 81 nt. 197.

<sup>19</sup> Cf., e.g., *plurimis*, Pugliese Carratelli 1962 [1976], part. 142–3, 148–54, who has convincingly outlined the steps that from the fall of the Mycenaean feudal civilization led, through Homer, to the birth of the *polis*. While the absolute ruler, *wa-na-ka* (*anax*), disappeared, the *gwa-si-re-wes* (*basileis*), heads of the family clans and members of the council (*geronsia*), survived; one of them, because of his merits or his authority, became their leader as *basileus skēptouchos*: “si attuava così il necessario presupposto per la nascita di quella che fu la πόλις vera e propria, la cui costituzione come organismo caratterizzato dalla ισότης dei πολῖται di pieno diritto [...] non poté avvenire se non col superamento della fase monarchica o ‘basilica’ e l’insediamento di una aristocrazia” (148–9). This hypothesis is supported, e.g., by Cantarella 2004 [2011], 197, 202–3 (and cf. also Cantarella 1979, 16–21); Pelloso 2012, part. 81 nt. 197. On the Homeric *basileis* and their attributions cf. also Mondì 1980; Yamagata 1997; Carlier 2006.

There are many scenes where the *basileus*, also called *dikaspolos*, is described as the one who keeps in his hands the *themistes* he has received directly from Zeus (*Il.* 1.237-9; 2.205-6; 9.98-9; cf. *Od.* 11.568-71). Invested by god and acting as a *iudex unus*, he embodies a more ancient model (once again, probably Mycenaean)<sup>20</sup> both than the ‘secular’ *andres* who give judgments in the *agora* (*Il.* 16.387-8; *Od.* 12.439), and than the elders (*gerontes*, to be identified with the *basileis skēptouchoi*: cf., e.g., *Il.* 2.53-4, 84-6)<sup>21</sup> who participate as a body in the much debated trial of the shield of Achilles (*Il.* 18.497-508). Some scholars maintain that in this scene it is the people who effectively decide the dispute, so that, also as far as the administration of justice is concerned, “in Homer the origin of democratic judgments can already be seen”,<sup>22</sup> but I doubt it. Even though the people (*laoi*, v. 497) are present, gathered in the *agorē*, they just seem to root for each litigant (*epēpuon*, *arōgoi*, v. 502), so that the heralds have to hold them back (v. 503); only the elders, standing up while holding their scepters, decide (*dikazon*, v. 504).

To sum up, beside a world where the people matter, where there is not much difference between the leaders and the people, where equality rules, Homer also represents a community where the leaders are such because they have got special authority and power from the gods, and where, consequently, the concept of equality is hard to detect. There is definitely a popular participation both in the administration of justice and in the assembly; but, in the first case, it is difficult to say how much this participation is effective, and, in the second, how far it is equal. Thersites’ episode (*Il.* 2.212-77) is significant in this respect.

Something more should also be said about the division of booty. Wallace is absolutely right in stating that in this field equality is well attested; in fact it is true that the booty is a “common treasure” (*xynēioa*: *Il.* 1.124) that belongs to the *laoi*, so that only the *laoi* can replace it in the middle and distribute it again (*Il.* 1.124-6), normally in equal parts,<sup>23</sup> *mē tis hoi atembomenos kioi isēs* is the recurring formula

<sup>20</sup> Cantarella 2001 [2011], 162-5; further bibliography in Pelloso 2012, 82 nt. 198.

<sup>21</sup> For the identification see moreover Cantarella 2001 [2011], 166-7.

<sup>22</sup> MacDowell 1978, 21; cf. Wolff 1946, 40-2.

<sup>23</sup> According to a recent hypothesis (Macé 2014, 661-73), in Homer the booty was only partially distributed, since some of it remained undistributed as common good. Against this idea cf. Maffi 2014, 185-9.

(cf. *Il.* 11.705;<sup>24</sup> *Od.* 9.42 and 549).<sup>25</sup> Moreover, it is common practice for the *laoi* to award a special prize taken from the booty (*geras*) to some worthy warriors. Once again, however, this does not always happen; blaming Agamemnon while talking to Odysseus, Achilles remembers (*Il.* 9.330-4):

τάων ἐκ πασέων κειμήλια πολλὰ καὶ ἐσθλὰ  
 ἐξελόμην, καὶ πάντα φέρων Ἀγαμέμνονι δόσκον  
 Ἄτρεΐδῃ· ὃ δ' ὄπισθε μένων παρὰ νηυσὶ θεῶσι  
 δεξάμενος διὰ παῦρα δασάσκετο, πολλὰ δ' ἔχεσκεν.  
 ἄλλα δ' ἀριστήεσσι δίδου γέρα καὶ βασιλεῦσι.

“from out all these [cities] I took much spoil and goodly, and all would I ever bring and give to Agamemnon, this son of Atreus; but he staying behind, even beside his swiftships, would take and apportion some small part, but keep the most. Some he gave as prizes to chieftains and kings...”

These verses confirm that sometimes it is the leader who, while keeping most of the booty for himself, gives special prizes, *gera*,<sup>26</sup> not only to the best and worthiest warriors but also to the *basileis*, simply because of their status, and then proceeds with the distribution of a small part to the *laoi* (cf. also *Il.* 9.149, where Agamemnon promises to Achilles “seven well-peopled cities”; according to some, this power of distribution proves that he is not simply a political leader, but an ‘absolute monarch’).<sup>27</sup>

<sup>24</sup> In this context, however, the formula is inserted in a situation (*Il.* 11.696-705) that does not imply an absolute equality; in fact the ‘equal distribution’ recurs after the *basileus* (Neleus) has himself taken (*heileto*, 697; *exeileto*, 704) part of the booty as compensation for a debt. Observes Hainsworth 1993, 301-2: “there is a certain confusion (doubtless also in practice) between forcible restitution of debt and simple pillage: Neleus is entitled to his four horses or their value and takes it, the δῆμος then makes assignments in language appropriate to the distribution of booty [...]. Zenodotus (Did/AT) omitted 705, an explanatory expansion on 704, and Aristarchus (Arn/A) condemned the verse. The objection, in addition to the repetition of the verse, was to the unfairness of an equal distribution among varied creditors. If the line is retained, the important principle of ‘fair share of booty’ will have been embodied in a formula.”

<sup>25</sup> Among the examples that prove equality in the division of booty Wallace quotes also *Il.* 9.318, where Achilles says that “an *isē moira* goes to everyone, however well he fights”; but in this context the phrase *isē moira* may designate death, which “cometh alike to the idle man and to him that worketh much” (*Il.* 9.320).

<sup>26</sup> According to Cantarella 2004 [2011], 207, the most common meaning of *geras* is “royal honor and privilege”, as *Od.* 11.174-84 demonstrates.

<sup>27</sup> Sale 1994, 22. For interesting remarks about the ‘distribution pattern’ typical of many ancient societies (among which the Mycenaean world), and about the strong connection between being the central figure in a (re)distributive scheme and possessing political power, see Rundin 1996, 182, who quotes as a clear example of this pattern the scene on the shield of Achilles that describes the harvesting in the *temenos basilēion* of a *basileus skēptouchos* (*Il.* 18.550-60).

Let's now turn to equality and the archaic laws. The reason why the first laws were written is known to be much debated, and many possible solutions have been advanced, each of them with pros and cons. Wallace adheres to the hypothesis, formulated by some eminent scholars many years ago,<sup>28</sup> and which he himself admits "is now not in favor",<sup>29</sup> according to which written laws, as a consequence of popular pressure, were intended to promote justice; in his opinion, seventh- and sixth-century legislation, emerging "shortly after the appearance of an arrogant and abusive aristocracy", was an attempt – not always successful – to counterbalance elite injustice and to provide – *rectius*, to re-establish – social justice. The arguments he uses to reply to the objections moved in the past against this position are quite convincing.

On the one hand, some important literary documents, cited by Wallace, confirm the existence of a strong social *stasis* caused by elite violence and prevarication that the first lawgivers tried to stem. On the other hand, in many of the most ancient laws preserved epigraphically the *dēmos* or the *polis* are mentioned. To quote just a few examples, the very first words of the earliest surviving Greek law, from Dreros (*Nomima* I.81, ca. 650 BC), state "the *polis* has decided", and then indicates the period of time (ten years) that had to elapse before the main magistrate of the city (the *kosmos*) could hold the office again. A law from Chios (*Nomima* I.62, ca. 575 BC)<sup>30</sup> contains so many references to the *dēmos* that the inscription is generally considered one of the milestones of ancient Greek democracy.<sup>31</sup> It indicates the necessity of protecting the *rhētra*i of the *dēmos*, refers several times to a *dēmarchos*, and mentions a *boulē dēmosiē* – composed, as the law itself indicates, of fifty men selected from each tribe, *phylē* –,<sup>32</sup> which administered justice, probably in appeal, with the power to inflict penalties. The *polis*, together with some other more restricted councils, appears again in the slightly later law from (possibly) Naupactus (*Nomima* I.44, end of the sixth century). Furthermore, it is noteworthy that "archaic laws were displayed in easily accessible public spaces, were often written in large clear letters suitable for reading, and almost always contained features like word-division markers that would make the text easier to read and understand".<sup>33</sup> But does all this necessarily mean that laws were first written to help the *dēmos* against the obnoxious aristocrats? Again, I think that the overall frame is less definite and more fluid than Wallace depicts it, as I will try to show by surveying a few points.

a. As far as the laws just quoted are concerned, the meaning of the 'democratic' terms mentioned in them has been questioned.<sup>34</sup> Some scholars, for example, have

<sup>28</sup> Cf. Bonner, Smith 1930, 67; Calhoun 1944, 20-1; Gerner 1950, part. 21.

<sup>29</sup> For the main objections see, e.g., Gagarin 1989, 122-4.

<sup>30</sup> For the possible dating of the inscription see Robinson 1997, 91.

<sup>31</sup> See, e.g., Wilamowitz 1909; further bibliography in Ampolo 1983, 404.

<sup>32</sup> We also know of the existence of *boulai dēmosiai* elsewhere in Ionia: cf. Hipp. 128 West.

<sup>33</sup> Gagarin 2008, 69.

<sup>34</sup> Cf., e.g., Camassa 2011, 77, who strongly rejects the possibility that the word *dēmos* in the seventh century could indicate a community composed of the lower working class.



disputed the identification of the *polis* in the Dreros law with the *dēmos*, arguing instead that the term should refer more likely to a quite restricted group.<sup>35</sup> Moreover, since the law regulated the access to, and the iteration of, an office (the *kosmos*) that could be held only by those who belonged to the elite, its impact on ordinary citizens might have been little.<sup>36</sup> As for the law from Chios, it has been inferred both that the identification of the *dēmarchos* with a magistrate of the *dēmos*, opposed to the aristocratic *basileis*, is dubious,<sup>37</sup> and that the institution of the appeal to the *boulē dēmosiē* might not basically implicate a democratic form of government.<sup>38</sup> In fact, the adjective *dēmosios* does not mean “popular” (hence ‘democratic’), but “public”.<sup>39</sup>

b. The lack of information about the historical context in which the laws were enacted makes it difficult to understand how strong their impact was, or what kind of changes or innovations (if any) they produced.<sup>40</sup> Regarding Chios, “Aristotle (*Pol.* 1306 b 3-5) notes a revolutionary change in the Chian constitution from oligarchy to democracy (inspired because the oligarchs were too authoritarian, *agan despotikas*), but provides no indication of when it occurred. This offers a possible context for the fall of the traditional aristocratic regime and the initiation of the popular government. However, given the known cases of defeated oligarchies in Chios of the fifth and fourth centuries, concluding that Aristotle composed this passage for the late seventh or early-sixth century event remains no more than a possibility”.<sup>41</sup> The causal relation between a historical event and the enactment of the first written law(s) is often hard to detect even for *poleis* about whose history more detailed information is available, like Athens. Draco’s lawcode is understood by many scholars as a consequence of the Cylonian affair, even though the data provided by the available sources (*Hdt.* 5.71; *Thuc.* 1.126.3-12; *Plut. Sol.* 12) never mention the existence of such a connection. When Aristotle (*Pol.* 1274 b 15-6) talks about Draco’s laws, he just says the lawgiver “legislated for an existing constitution”, noting moreover that “there is nothing peculiar in his laws that is worthy of mention” (the same remark [*Pol.* 1274 b 5-6] is made also regarding Charondas, one of the very first Greek lawgivers).

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<sup>35</sup> Cf. Davies 2004, 20 (and see also Camassa 2011, 83-5), according to which *polis* is possibly equivalent to the twenty men mentioned in the last sentence of the law, who are asked to swear an oath together with the *kosmos* and the *damioi*. Undoubtedly, however, this hypothesis clashes with the obvious objection (see Gagarin 2008, 78 and nt. 20) that it is difficult to identify the *polis*, without qualification, with the “twenty of the *polis*”, probably a subsection of the group. Gagarin (*ibid.*) thinks that “most members are likely to have come from the middle segment of the population, neither the very rich, nor the very poor”.

<sup>36</sup> Gagarin 2008, 77.

<sup>37</sup> Mazzarino 1947, 239.

<sup>38</sup> Jeffery 1956, 164-5, 167; Ampolo 1983, part. 408-9.

<sup>39</sup> Ampolo 1983, who quotes Chantraine 1933, 392.

<sup>40</sup> Furthermore, as Gagarin 2008, 90 puts it, the first written laws “are not necessarily responses to a crisis”.

<sup>41</sup> Robinson 1997, 98-9.

c. One of the main sources used as evidence that written laws produced equal justice is the well-known passage in Euripides' *Suppliant Women* (vv. 433-4), where Theseus states that "when the laws are written, the rich and the weak have *dikēn isēn*". I do not think, however, that these verses mean that equal justice is the purpose of written laws; rather, as it has been noted, equal justice may have been the result of the written legislation.<sup>42</sup> Generally speaking, there is no reason to assume that written law is "in itself inherently democratic or egalitarian. [...] And even if the laws are themselves just, the judicial machinery and political administration must correspond in order to transfer the equality of the laws to the society".<sup>43</sup> As I try to demonstrate in a forthcoming essay, Theseus' words cannot be extrapolated either from the context of the tragedy, or more generally from the Athenian political background of the fifth century. At that time, when the association between written laws and social justice became a democratic slogan, the phrase *nomoi gegrammenoi* did not simply indicate the material writing of the laws, but instead had a substantial meaning, that entailed a series of implicit connections.<sup>44</sup> A passage in Aristotle's *Politics* (1265 b 13-6) shows that the combination written laws - social justice was not the rule everywhere; one of the most ancient lawgivers, Pheidon of Corinth, "thought that the house-holds and the citizen population ought to remain at the same numbers, even though at the outset the estates of all were unequal (*anisous*) in size".<sup>45</sup> In this case at least, the writing of a law was useful to fix an existing inequality.<sup>46</sup>

Of course, these remarks are not intended to deny that the enactment of a written law could have been justified by the pressure of the lower class or by the general need to stop a *stasis* within the *polis*, and to promote justice and equality. Both the literary and the epigraphical evidence unambiguously show that non-elites had a great part in the lawmaking process, but their participation does not necessarily imply that written laws were meant to have a democratic effect.<sup>47</sup> "Rather than try to fit all archaic legislation into a single mold, we should recognize the diversity of archaic legislation and accept that it varied from place to place and, at some places, from law to law."<sup>48</sup>

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<sup>42</sup> Thomas 1977, 455 (also quoted by Wallace).

<sup>43</sup> Thomas 1995, 60.

<sup>44</sup> Pepe forth.; see also, more generally, Hölkeskamp 1992, 59-60: "it is not too far-fetched to argue that the general framework of notions and concepts applied to the history of early Greek law is to a great extent extrapolated from the sophisticated classical (and modern) ideas on law, justice and their origins, which are themselves the result of a long historical process."

<sup>45</sup> Translation by H. Rackham, Cambridge Mass.-London, 1944. On the genuineness of the law cf. Hölkeskamp 1992, 89; Camassa 2011, 88-9.

<sup>46</sup> Camassa 2011, 87.

<sup>47</sup> Gagarin 2008, 88.

<sup>48</sup> Gagarin 2008, 75-6.

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