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UND HELLENISTISCHE RECHTSGESCHICHTE

begründet von HANS JULIUS WOLFF

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in Verbindung mit
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IN MEMORIAM
FRITZ GSCHNITZER
MARIO TALAMANCA
RAYMOND WESTBROOK
DOUGLAS M. MACDOWELL

INHALTSVERZEICHNIS

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VORWORT

Schloss Seggau, der liebenswerte Tagungsort in der südlichen Steiermark, beherbergte vom 25.–30. August 2009 das 18. Symposion der Gesellschaft für griechische und hellenistische Rechtsgeschichte. Es fand 16 Jahre nach dem Grazer „Symposion 1993“ zum zweiten Mal in Österreich statt. 30 Teilnehmer kamen aus elf Ländern (Deutschland, England, Frankreich, Griechenland, Israel, Italien, Japan, Kanada, Österreich, Portugal, USA), elf Juristen und 19 Vertreter der Altertumswissenschaften.

Nach dem noch vom Gründer der Symposien, Hans Julius Wolff, geprägten Arbeitsstil stand das Treffen nicht unter einem Generalthema, sondern jeder der vom Präsidium — den Herausgebern der Reihe — zu einem Vortrag eingeladenen Teilnehmer hatte Gelegenheit, aus seiner aktuellen Forschung in der juristischen Gräzistik zu berichten. Nach Sachnähe ausgewählte Respondenten eröffneten die allgemeine Diskussion, deren Zeit reichlich bemessen war. Die „Antworten“ sind in diesem Band mit abgedruckt. Manchmal ist hierin geäußerte Kritik in den publizierten Vorträgen bereits berücksichtigt, manchmal ergänzen die Antworten auch Aspekte der Vorträge. Wie das von J. Mélèze Modrzejewski in Symposion 2005 (S. 421–437) erstellte Generalregister der bis dahin erschienen Bände zeigt, entwickelt sich die Reihe zu einer zweijährlich erscheinenden kritischen Zeitschrift auf dem Gebiet der „Antiken Rechtsgeschichte“, die ihre Wurzeln im Alten Orient hat und auch die Berührungspunkte von griechischem und römischem Recht aufdeckt.

Auf der Tagung und konsequenterweise auch in diesem Band wurde die sonst eingehaltene Trennung in Altgriechisches und Hellenistisch-römisches Recht verlassen. Über die Grenzen der literarischen, epigraphischen und papyrologischen Quellen hinweg wurde versucht, die Beiträge in eine lose chronologisch-thematische Ordnung zu stellen, die sich aus den eingereichten Themen, den *Graeca*, einigermaßen zwanglos ergab.

Zu beklagen sind diesmal Todesfälle von vier Kollegen, die teilweise noch zum Symposion eingeladen waren und auch zugesagt hatten: Mario Talamanca und Raymond Westbrook; Donald M. MacDowell hatte bereits die Einladung aus gesundheitlichen Gründen abgelehnt; Fritz Gschnitzer hatte sich schon früher zurückgezogen. Ihrer wird am Ende des Bandes in Nachrufen gedacht.

Westbrook hatte zugesagt, als Respondent den altorientalischen Beitrag zu Philipp Scheibelreiters Vortrag über die *parakatatheke* zu leisten; an seiner Stelle ist kurzfristig Guido Pfeifer eingesprungen, der letztlich aber an der Teilnahme verhindert war und nun nur schriftlich zu Wort kommt. Ebenfalls verhindert war Angelos Chaniotis, doch hat Kostas Buraselis den Vortrag verlesen. Robert B. Wallace hielt statt einer geplanten Antwort, zu der ihm ein säumiger Referent keine Zeit mehr gelassen hatte, einen Kurzvortrag, ebenso Yasunori Kasai, der als Respondent den

rechtsphilosophischen Aspekt des ursprünglich von Edward M. Harris angekündigten Themas behandeln sollte. Dieser hatte schließlich sein Thema gewechselt. All die unvorhersehbaren Umstände, die jedem Veranstalter von Tagungen drohen, trübten weder die freundschaftliche Atmosphäre noch die fruchtbare Arbeit in Seggau.

Die Liste der Danksagungen ist lang. Großzügig unterstützte die Karl-Franzens-Universität Graz, der ich von November 1992 bis September 2009 aktiv angehörte, diese meine Abschiedsveranstaltung. Dem schlossen sich dankenswerterweise das Land Steiermark, die Österreichische Humanistische Gesellschaft für die Steiermark und das Bundesministerium für Wissenschaft und Kunst in Wien an. Einen namhaften Beitrag leistete auch die Österreichische Akademie der Wissenschaften, der neue Schwerpunkt meines Wirkens. Sie hat auch die Lasten der Drucklegung getragen. Dem Verlag der Akademie sei für die rasche und effektive Arbeit gedankt.

Zum Gelingen der Tagung haben meine beiden Mitarbeiter an der Wiener Akademiekommission für Antike Rechtsgeschichte, Frau Kaja Harter-Uibopuu und Herr Thomas Kruse, tatkräftig beigetragen. Dankbar erwähnen möchte ich auch Frau Mag. Theresia Pantzer, die aus den eingegangenen Manuskripten mit Geduld und Sachkunde die endgültige Druckfassung und das Quellenregister erstellte. Nicht zuletzt sei allen Teilnehmern am Symposion, Damen und Herren, für die pünktliche Ablieferung der Manuskripte und Korrekturen gedankt, wodurch der für die Bände bereits übliche Erscheinungstermin in dem auf die Tagung folgenden Jahr eingehalten werden konnte.

Wien, im August 2010 Gerhard Thür

EVA CANTARELLA (MILAN)

FATHERS AND SONS IN ATHENIAN LAW AND SOCIETY

I. The State of the Art

There are not many studies specifically centered on fathers and sons in Athenian law and society. Although in recent years studies on family have multiplied, hardly any have done so by focusing on the family's internal relations. Greek law scholars, in particular, have given limited attention to these issues, in contrast to Roman scholars who have discussed for more than thirty years the characters, contents and duration of paternal powers and the consequences of these powers on intergenerational relations. The reasons for Roman lawyers' greater interest are linked to the peculiar structure of Roman *patria potestas*. As Gaius states in his *Institutes of Roman law*, "*fere nulli alii sunt homines qui talem in filios suos potestatem habent qualem nos habemus.*"[1]

By claiming this, Gaius was not thinking specifically of the contents of *patria potestas*. Although the powers of the Roman *paterfamilias* extended to include even the *ius vitae ac necis* (whose existence in other systems, and particularly in the Athenian one is debatable) it was not this trait that made *patria potestas* unique. What made it unique was its duration: in Rome the authority of fathers over their descendants did not end when they reached the age of majority but continued as long as the *paterfamilias* lived, whatever might be the age of his descendants.[2] The only exception to this rule was when a father decided to emancipate them.

On the death of a *paterfamilias* only his immediate descendants (sons and daughters) were released from *patria potestas,* and the descendants of these (grand children and granddaughters) if the intermediate descendants had already died. All the others passed under the authority of the new *paterfamilias*, the surviving ascendant, who was the only one who had complete power over the household and

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[1] Gai., 1, 55.

[2] Cfr. M. Kaser, *Der Inhalt der patria potestas*, in *ZSS* 58 (1938) 63 ff.; J. Crook, *Patria potestas*, in *Class. Quarterly* n.s. 17, 1 (1967) 113 ff.; D. Daube, *Roman Law. Linguistic, social and philosophical Aspects*, 1969, pp. 75 ff.; B. Albanese, *Le persone nel diritto privato romano*, Pubbl. Semin. Giurid. Univ. Palermo, Palermo, 1979; A. Mordekai Rabello, *Effetti personali della patria potestas. Dalle origini al periodo degli Antonini*, Milano, 1979; L. Capogrossi Colognesi, *Patria Potestas* in *Enciclopedia del Diritto*, XII, 1982, pp. 242 ff.; P.M. De Robertis, *I limiti spaziali al potere del paterfamilias*, in *Labeo* 29 (1983) 164 ff.; G. Lobrano, *Pater et filius eadem persona. Per lo studio della patria potestas*, Milano, 1984.

was the only owner of family property. No matter how old, a *filiusfamilias* could not be financially independent while his father lived. To put it more bluntly, an adult *filiusfamilias,* as David Daube wrote many years ago, did not possess one single penny that was his own. All he had was a certain amount of money, the *peculium*, given to him by his father, which he could administer freely and that was socially considered his own. But this fund legally belonged to the father, who could take it back if he wanted. And the situation was made even worse by the fact that while Roman law did not allow a *filiusfamilias* to hold private rights, it did allow him to have a public capacity once he reached the age of majority.

At majority a *filiusfamilias* not only possessed the right to vote but he could also hold public office and nevertheless be subject to his *paterfamilias*' power and be financially dependent on him. Finally, a son couldn't even count on any inheritance, because his father could disinherit him in his will.[3]

In light of these considerations, one can understand why in the last thirty years the relations among generations, and especially between fathers and adult sons (the ones I will deal with in this paper), have received great attention. The result has been two strongly divergent schools of thought. Scholars of the Anglo-Saxon school, as Richard Saller, argue that the strictness of legal rules was mitigated by the feeling that Romans called *pietas:* sons would naturally obey fathers and fathers would in turn exert their authority over their sons with sensitivity.[4] In this line of thought some arrived to deny the existence of the *ius vitae ac necis*.[5]

By contrast scholars of the French school (as Paul Veyne and Yan Thomas) believed that the legal construct of *patria potestas* produced tensions and problems so strong that not only the crime of parricide was frequent, but the thought of parricide (as an often not confessed desire on the side of sons, and a feeling of uncertainty and fear on the side of fathers) was so diffused to be almost a national obsession.[6]

The recollection of the basic characters of Roman *paternal power* in Rome helps to explain why Greek lawyers have given less attention than Roman lawyers to this issue. The assumption is that in Athens paternal power did not produce father-son conflict so widespread and strong to become a social problem, as in Rome,

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3 Gai., 2, 123-132.

4 R. Saller, *Patria potestas and the Stereoptype of the Roman family*, in *Continuity and Change* 1 (1986) 15-20 and *Pietas, Obligation, Authority in the Roman Family*, in P. Kneissl and V. Losemann (eds.), *Alte Geschichte und Wissenschaftsgeschichte. Festschrift für Karl Christ zum 65. Geburtstag*, Darmstadt, 1988.

5 B.D. Shaw, *Raising and Killing Children: two Roman Myths*, in *Mnemosyne* sr. 4ª, 54 (2001) 31 ff.

6 See among others *L'Empire romain*, in Ph. Aries and G. Duby (eds.), *Histoire de la vie privèe* I, ital. transl. *La vita privata nell'Impero romano*, Bari, 2000, pp. 22 ff. and Y. Thomas, *A Rome, Pères citoyens et citè des péres (II siecle avant J.C.-II siecle après J.C.)*, in C. Levy Strauss and G. Duby (eds.), *Histoire de la famille*, I, Paris, 1986, pp. 195 ff.

because it was less pervasive than the Roman, both in its scope and duration. What I intend to do, today, is discuss if these assumptions correspond to reality.

To tackle the first question we need to examine the nature and the length of the Athenian paternal power. At the time in which Greek law was not yet an autonomous science and all reconstructions of Greek institutions were modeled on Roman ones, Athenian paternal power was considered perennial.[7] Only at a later age (not specified) would it become temporary for financial reasons. Beauchet's textbook states that an agricultural economy such as the Roman necessarily required children to be subject to paternal authority, while the Athenian economy later based on trade had the opposite exigency of granting legal capacity and freeing adult children from paternal authority in order to allow them to initiate commercial activities.

This hypothesis has its logic: perennial *patria potestas* is certainly a problem in a trade oriented economy. When Rome's economy developed in that direction, the praetor introduced a specific group of actions, the *actiones adiecticiae qualitatis*, through which a father could be sued for obligations contracted by his son.[8] As a result a father could be condemned to pay the debts of his son even if for *ius civile* he was not liable. But in Athens there is no trace of such evolution and the hypothesis of a perennial paternal authority has long since been superseded. The only controversial aspect is the age at which sons were released from paternal power: if 17 or 18.

Aristotle (*Ath. Pol.* 42.1) claims that a son was freed *oktokaideka gegonotos*. But Demosthenes in the first oration *against Aphobus*, paragraph 4, relates that his father died when he was seven years old (*ept'eton onta*). According to the same oration he was a minor for the following ten years until he turned 18.

Even if it started a long debate, with different solutions,[9] the contradiction does not exist: Demosthenes is speaking of the age of individuals, while Aristotle is considering an age-class, precisely the group of youths born between the registration

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[7] L. Beauchet, *Histoire du droit privé de la république athénienne* (1896), Amsterdam, 1969, II, pp. 74 ff.; J. Lipsius, *Das attische Recht und Rechtsverfahren* (vols.3, 1905-15), Hildesheim, 1966, pp. 499 ff.; W. Erdmann, *Die Ehe im alten Griechenland*, München, 1934, pp. 342 ff.

[8] Gai., 4, 69-74.

[9] Some scholars maintain that Aristotle made a mistake: paternal power ceased when a son reached 17 (R. Sealey*, On Coming of Age in Athens*, in *CR* 7, 1957, 195-197). Others maintain that the two sources are not contradictory: Aristotle and Demosthenes meant the same age: *oktokaideia gegonotos* would mean "in the eighteenth year", thus when one turns seventeen (J.M. Carter, *Eighteen Years Old?*, in *BICS* 14, 1977, 51-57). According to others between the moment in which Demosthenes was registered in 366 b.c.e. and when Aristotle wrote the *Athenaion Politeia* the age limit was changed from 17 to 18, following the reform of *ephebeia* soon after the Chaeronea battle, to increase the quality of the military (D.E. Welsh, *The Age of Majority in Athens*, in *CNV* 21, 1977, 77-85).

in the *deme* and the *dokimasia* before the *boule*. Since the ephebs were registered under the name of the archon and eponymous hero under whose year they were enrolled, military call-ups were made not by actual age, but by age-class. As M. Golden writes "all the boys born in the same archon-year would come of age on inscription into the deme register 18 archon-years later. Boys whose birthdays fell before the date of the inscription would be 18; a few others, like Demosthenes, would still be 17."[10] Be the coming of age 17 or 18, anyhow, what matters is that paternal power was temporary. If this was an advantage for Athenian fathers and sons, as it is often assumed, or if created personal and social problem on the two sides, is one of the issues that we will discuss.

II. Law

As far as the extent of paternal power, as we have already stated, there are diverging opinions on the existence of *ius vitae ac necis*. The father's right to expose the newborn at his entire discretion does not mean that automatically he also had the right of life and death over him.[11] Many scholars argue that paternal authority started only after a father introduced his son into the domestic cult during the ceremony of *amphidromia*,[12] about five days after the child's birth. If this ceremony was not held the son did not become a member of the family. Therefore if a father abandoned him it was not as if he were exercising a personal power over him. Others believe that this power existed in archaic times, and would have disappeared when the paternal powers would have become temporary. As evidence for their hypothesis they quote a passage from the oration *against Timarchus,* where Aeschines, in order to blame Timarchus for his sexual misconduct, recalls an episode from ancient times when a father—to punish his daughter who had lost her virginity—closed her in an isolated house with a horse, who would of course kill her;[13] but there is no evidence of cases in which *ius vitae ac necis* was exerted. Furthermore the so called *nomos moicheias,*[14] referred to in pseudo-Demosthenes' *Against Neaira* 87, says that the

[10] M. Golden, *Demosthenes and the Age of Majority at Athens*, in *Phoenix* 33 (1979) 25-38.

[11] Cfr. Plat., *Theaet*. 160; Hesych., s.v. *enchutrizein*.

[12] In may be interesting to recall that this discussion find a parallel in the discussion among Roman lawyers concerning the role of the rite *tollere liberos* considered by some as the moment when *patria potestas* started to exist. Discussion and bibliography in L. Capogrossi Colognesi, s.v. *Patria potestà* (diritto romano), in *Enciclopedia del diritto* cit. and *Tollere liberos*, in *Mélanges de l'Ecole française de Rome. Antiquité*, vol. 102, pp. 107-127.

[13] Aesch. 1, *c. Tim*. 182.

[14] Usually translated as "adultery", *moicheia* has been traditionally considered as including any sexual relation of a woman (married or unmarried) with a man who was not her husband. In 1984, however, David Cohen maintained that it took place only in the case of intercourse of a married woman with a man different from her husband (*The Athenian Law of Adultery*, in *RIDA* 31, 1984, 147-165; but see also his *Law, sexuality and Society, the Enforcement of Morals in Classical Athens*, Cambridge, 1991) and the topic has been

condemned so called adulteress was not permitted to appear at public cult ceremonies, and if she appeared she would suffer "whatever may befall her, *apart from death.*"[15] It is also worth to specify that those who could inflict the penalty of their choice were not the father or the husband, but *ho boulomenos* (as explicitly stated in par. 86). Finally, Plutarch, in Solon's life, writes that if an unmarried woman had sexual intercourse, her father and her brother could sell her into slavery,[16] but not even this minor power (if compared to the right of life and death) is ever documented in the sources. So much for the disciplinary powers. Let us address the father's powers on family property.

Athenians could make a will only if they did not have male children.[17] In time the rule's strictness was mitigated and the old principle was strongly eroded. Logography attests it very well, I do not need to quote the many examples, suffice it to recall that a law stated that a man could make a valid will even if he had children, as long as he made dispositions in the case of his children dying before they reached majority.[18] However a principle never changed: a father could not disinherit his children. The only possibility he had to exclude a son from inheritance was *apokeruxis*, but the references to this institution are scarce and uncertain. Demosthenes gives evidence of the existence of a law which allows parents not only the power to name their children but also to disown them and to *apokeruttein*.[19] But beyond this reference we find such legal institution mentioned only in some stories concerning Themistocles and Alcibiades.

Themistocles, according to Plutarch, had such a violent temper that his father exercised his right to *apokeruttein* him, and his mother committed suicide out of despair.[20] "But I think—he adds—that this is not true."[21] As for Alcibiades, Plutarch

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since very controversial. The great majority of scholars, however, accept today the traditional view, that I have myself endorsed in *Moicheia, reconsidering a Problem*, in M. Gagarin (ed.), *Symposion 1990, Papers on Greek and Hellenistic Legal History*, Köln, Weimar, Wien, 1991, pp. 289-296, and in *I reati sessuali nel diritto ateniese. Alcune considerazioni su moicheia e violenza sessuale*, in *Studi in onore di M. Talamanca*, Napoli, 2002, pp. 376-390. Same opinion, among others, in R. Omitowoju, *Regulating Rape: Soap operas and self-interest in the athenian Courts*, in S. Deacy and K. Pierce (eds.), *Rape in Antiquity: Sexual Violence in the Greek and Roman World*, London, 1997, pp. 1 ff.

15 The law states also that the husband who surprised his wife with a *moichos* was not permitted to keep her as a wife, and if did it, he would be *atimos*.

16 Plut., *Sol.* 23, 2.

17 Dem., *c. Steph*. II, 14; Plut., *Sol.* 21, 3. Cfr. L. Gagliardi, *Per un'interpretazione della legge di Solone in materia successoria*, in *Dike* 5 (2005) 1-5. I do not enter the debate concerning the relation between testament and adoption. Albeit very interesting, it is not relevant in the context of this discussion. Cfr. anyhow L. Rubinstein, *Adoption in IV. Century Athens*, Copenhagen, 1993.

18 Dem., *c. Steph.* II, 4 and 24.

19 Dem., *c. Beot*. I, 39.

20 Plut., *Them*. 2, 6.

relates that when he was young he fled from home to go to one of his lovers. Alcibiades' father wanted to *auton apokeruttein* but Pericles dissuaded him. However Plutarch adds that these were calumnies.[22]

The reading of Greek sources suggests that *apokeruxis* existed on paper, and even admitting fathers resorted to it, this must have happened very rarely. Should we take into account also Roman rhetoric sources (Seneca the Old, Quintilian, Calpurnius Flaccus), some doubt could arise, given the frequency of references to *abdication*, the word that indicates the act of chasing a son from the *domu*s and the family. But the debate on the greekness or *romanitas* of the examples used by Roman rethors is still open, and some of the works specifically dedicated to the topic denies their greekness.[23]

Finally, we must recall that a son could seek to protect his interests against his father through public and private actions such as a *graphe paranoias,* asserting that the father, for mental illness, was no longer competent to manage his affairs.[24] Even if scarcely documented, there were also a *dike manias*[25] and a *graphe argias.*[26] The rules that we have so far mentioned, then, seem to confirm the assumption that paternal powers were not such as to create strong conflicts between generations, as did the extreme power of the Roman father. But others sources attest the existence of rules that seem to consider the existence of difficult and conflictual family relations.

In Athens, a law (related by Aristophanes, *Birds,* vv.1355-57) imposed on the sons the duty to *gerotrophein*, that is to say to feed and harbour the fathers who had reached an old age. The correspondent right of the fathers to be fed and sheltered was guaranteed with the *graphe goneon kakoseos*, whose procedure was privileged in two ways. First: the accuser did not suffer the penalty fixed for those who submitted an indictment and did not proceed, or who failed to obtain one fifth of the votes.[27] Second: he was not subject to the usual time limits.[28] Sons condemned with a *graphe goneon kakoseos* suffered *atimia*. Further transgression of the prohibitions

[21] Plut., *Mor.* 849. Referring to Themistocles, Val. Max. (6, 9 ex) speaks of *abdicatio*.

[22] Plut., *Alc.* 3.

[23] F. Lanfranchi, *Il diritto nei retori romani*, Milano, 1938.

[24] There is a story that his son or sons brought such action against Sophocles, who defended himself successfully by reading passages of his last tragedy *Oedipus at Colonus.* See Plut., *Mor.* 785 A; Cic*., Sen*. 7, 22.

[25] Cfr. A. Maffi, *Padri e figli tra diritto positivo e diritto immaginario*, in E. Pellizzer and N. Zorzetti (eds.), *La paura dei padri nella società antica e medievale*, Bari, 1983, pp. 5-27.

[26] D. Leao, *Nomos argias*, in *Logo. Revista de retórica y teoría de la comunicación* 1 (2001) 103-108.

[27] Aristot., *Ath. Pol.* 56, 6. Listing the cases in which the archon conducted *anakrisis,* Aristotle says that these actions were *afemioi to boulomeno*.

[28] Isaeus, *Kir.* 32.

connected to *atimia* were punished with penalties reserved to the worst crimes, such as military shirkers: abusing one's own father was considered a serious threat to the polis.[29] Finally, an interesting rule related to the duty to *gerotrophein* was set by Solon who, according to Plutarch, considering that the city was getting full of people who were constantly streaming into Attica and that great part of the country was poor and unfruitful, and that seafaring persons did not want to import goods in places where people had nothing to give in exchange, encouraged citizens to the *technai*, and enacted a law that a son who had not been taught a *techne* should not be bound to support his father.[30] Athenian law on one side gave fathers a power that in length and extent should not have generated pathological tension; on the other side it previewed rules, institutes and legal actions in defense of the fathers that induce to think that conflicts between fathers and sons were far from being rare and were more serious than the normal, physiological conflicts between generations. Which were the reasons of such a situation, is a complicate question.

III. Ideology and Society

In the Athenian ideology of relationships, the one between father and son was a knot of contradictions. Sons had to be legally subordinated to their father till majority (as well as daughters till marriage, after which they were subordinated to their husband), and were morally and socially bound to respect and obey them whatever their age.

Aristotle explains the type of this subordination when he exposes his model of family relations. After the famous definition of man as "political animal" (*politikon zoon*), he writes that every *polis* is composed of *oikiai*, and explains that *oikiai*, in their turn, are built around three associations between individuals: owner and slave, husband and wife, father and son[31]. The latter, according to him, was similar to the relation of a king with the persons governed. The father, he writes, rules his children like a king. He has on them an authority that, as that of the king, is not despotic. The king is not a tyrant, tyranny is a degeneration of reign: the tyrant is concerned with his personal welfare, while the king takes care of the welfare of his subjects, exactly as the father does for his children.[32] According to Aristotle, therefore, father/son relationship, albeit certainly very affectionate, is characterized by a form of subordination that the philosopher compares with a political form of dependence.

This was the fact that created potential conflicts. Women's (daughters and wives) subordination was not in contrast with Athenian public ideology (as well, of course, the subordination of a slave to their master). But things were different for male children. A son had not only to love and respect, but also to obey his father for

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[29] See A. Scafuro, *Parents abusers, military shirkers, and accused killers: the authenticity of the second law inserted at Dem., 24, 105*, in R. Wallace and M. Gagarin (eds.), *Symposion 2001*, Wien, 2005, pp. 51-69.

[30] Plut., *Sol.* 22 .

[31] Aristot., *Pol*. I, 1253 b 2-8.

[32] Aristot., *Eth. Nic*. VIII, 1160 b-1161 a.

his entire life. But a son who was too obedient run the risk to appear too subordinate, and subordination of a free man to another men was exactly the opposite of the egalitarian democratic principle.

The relation father/son was potentially problematic from the ideological point of view, and many sources show that conflicts were not only potential, among them anecdotes, a literary genre whose interest is independent from the truth of the facts that it tells. Although they probably do not describe facts that really took place, anecdotes describe situations that are inherently plausible, and some of them describe situations of strong intergenerational conflict.

Plutarch, for example, tells that Xanthippus, Pericles' eldest legitimate *gnesios*, was naturally prodigal and extravagant, lived beyond his means and was much displeased at his father's exactitude in making him but a meager allowance, paid little by little.

Accordingly, he got money from one of his father's friends, pretending that Pericles ordered him to do so. When the friend afterwards demanded repayment of the loan, Pericles not only refused to pay back the money, but *diken auto proselache*. Xanthippus, very irritated, fell to abusing his father, and in order to make fun of him publicized the discourses which he held with the sophists.[33] Also the above quoted anecdotes relating Themistocles' and Alcibiades' relations with their respective fathers are particularly significant. These relations were so tense that their fathers were compelled to expel them (or to think of expelling them) from the *oikos*. True or false, such stories are surely plausible.

The most interesting author on this matter, anyhow, is certainly Aristophanes. *Clouds*, performed in 423 b.c.e., presents the misadventures of a father worried for the debts he had to undertake to satisfy his son's passion for horses.[34] The story is very well known: to make fun of the sophists (who teach how to make a bad argument look good even when it is wrong) Strepsiades convinces his son to join Socrates' school (the philosopher is ludicrously considered a sophist). Son Pheidippides is so well prepared by his teacher that when the creditors demand payment he confuses them, making them return defeated to their houses. Strepsiades' happiness does not last long. During the banquet organized by his father to celebrate his victorious son, Pheidippides beats him brutally. Pheidippides calmly explains to Strepsiades that he beat him for his own good: as his father had a right to beat him when he was a child to correct him, today Strepsiades is old and since *dis paides gerontes*, Pheidippides has the right to beat him to correct him.

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[33] He squandered one entire day, Xanthippus said, discussing with Protagoras the case of an athlete who had hit a man with a javelin accidentally and killed him: was it the javelin, or rather the one who hurled it, or the judges of the contests that "in the strictest sense" ought to be held responsible? See Plut., *Per.* 36, 2-3.

[34] Clouds vv. 838-839: "you squander my stuff as if I were already dead".

Obviously satire by definition presents an emphasized reality, sometimes a caricature, but Aristophanes represents certainly a tension that was felt as a serious social problem, as is confirmed by the return of the same theme in *Wasps* and *Birds*.

In *Wasps* (422) son Bdelykleon has sequestered his old father (Philocleon) in a house covered by a net and guarded by two slaves. All considered the seclusion was conducted for a good reason: the old man derives from jury service his pay, spends all his day giving verdicts, is very happy and proud of his role and of the advantages that it gives him. Bdelykleon tries to convince him that jurors get paid only a little share of the city's revenues, while the greater part of the revenues goes into the private treasuries of corrupt politicians, and shuts him home. Once again a problematic and very interesting relationship, on which we will come back later.

In *Birds* (414) Pisthetaerus and Euelpides, disgusted with life in Athens, create in the sky, helped by birds, a new city, named "Cloud-cuckoo-land" (*nephelokokkokygia*). One day some men arrive to join the new city with the aim of making it similar to a city on earth. Among the unwelcome visitors there is a parricide (*patraloias*), who declares he intends to strangle his father to get his property and since the birds' law allows a son to strangle his father, he wants to live there (vv. 1347-1352). The rebellious youth is very irritated when Pisthetaerus tells him that even among clouds *gerotrophia* exists (vv. 1352-1359). What makes these verses particularly interesting is the set of visitors in whose company the parricide arrived to *nephelokokkokygia*: a poet, a sycophant, and a ditirambographus, three characters chosen not randomly by Aristophanes. They were clearly those who, in the eye of the comedian, contributed to render Athens unlivable. If a parricide is conceivable in this group it seems inevitable to deduce a rather tense father-son relation. The desire to kill one's father was a ghost that although confined to the world of thought, must have produced friction and conflict also in Athenian society.

Probably this thought was not so diffused to generate a national obsession, as it was in Rome according to Paul Veyne's hypothesis, but it existed. Tensions father/son, far from remaining potential, became very real with a frequency that made of them a serious social problem. Which were the occasions for their conversion from potential to real?

The main and more frequent was the fact that sons continued to depend economically from their fathers for a certain number of years after they had reached majority. To that we could add the possibility of sexual competition between fathers and sons (we do not now how frequent, but certainly existing), due to the presence in the house of a young step mother: on second marriages, Athenian men married often women younger than their first wife, deceased or divorced.[35] It would be very interesting to know how frequent these conflicts were, and I intend to analyze this problem in a future part of my research. This paper is part of a work in progress, and

[35] Interesting considerations on the topic in B.S. Strauss, *Fathers and sons in Athens. Ideology and society in the age of Peloponnesian War*, Princeton, 1993.

this specific aspect deserves to be elaborated. However, even assuming that sentimental and sexual competition were not rare, they were certainly not as generalised as the economic ones.[36] Even if a father had taught his children a *techne*, as it was his duty to do, several years had to pass by before the children would be economically independent. For a father it was no little problem. Maintaining children was expensive.[37] For this reason, when children reached majority the fathers who could afford it tried to limit the time in which they still had to entertain them, by helping them to start an activity, giving them the necessary financial means.

A famous case is related by Isocrates' Trapeziticus: Sopeus (Athenian citizen resident in Pontus) had started his son, a client of Isocrates, to the familial activity—sea trade of grain—furnishing him with ships full of wheat and with money to enable him to have financial relations with the Greek cities, especially Athens, where he settled as metic. A similar case is presented in Hyperides, *Athenog.,* 26. Epikrates mentions the field given to him by his father to initiate an activity that would make him financially independent.[38]

Some fathers took more drastic and generous measures. To avoid children from having to wait until their death to be completely independent, these fathers divided their assets among their sons when still alive and remained living with them. Lysias, speaking of the dispositions taken by Conon and Nichophemus on their property, observes: "You have to consider that, even if a man had distributed among his sons a patrimony that he has inherited from his father, not acquired personally, he does not keep for himself only the smaller part, because everybody would rather be courted by his children as a man of means, than beg of them as a needy person." [39]

The passage demonstrates that even the situations just described were not ideal, as confirmed by the (fictional) story of Philokleon, who in *Wasps* had the bad idea of transferring his property (or just its management) to his son Bdelykleon, with the afore mentioned consequences. Not to speak of Pheidippides' behavior against his father Strepsiades in *Clouds*. Albeit the existence of the duty of *gerotrophein,* to deprive oneself of all property had its risks. Even a father who had economically helped his son to start an economic activity, or who had been so generous to transfer to him his patrimony or its management, even this father had a complex and tense relationship with his sons.

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[36] See M. Golden, *Children and Childhood*, *cit.*, pp. 105-106.

[37] We read in Plut., *Sol.* 2, 6 that Solon, visiting Miletus, asked Thales why he had no children. Thales answered telling him a story concerning a young man, who had died while his father was traveling. Solon thought that he was the father of the deceased, and started acting in desperation. And then Thales said: "These things keep me from marriage and having children, they are too important for even your constancy to support; however, do not worry, the story is a fiction."

[38] Epiktrates, however, chose an activity (a perfume shop) different from the one desired by his father (agriculture): clearly, the paternal desire was not binding.

[39] Lys., *Aristoph.* 36-37.

According to Mark Golden, however, we should keep in mind that only a small percentage of Athenians would have had their father living when they reached majority.[40] At the basis of this statement he quotes the results of the demographic calculations made by Richard Saller, according to which only one or two out of ten adult sons were still under paternal power. As a consequence, according to Saller, conflicts depending on filial dependence were not widespread to the point to be a serious generalized social problem.[41]

Leaving aside any other consideration and the fact that these calculations have been contested, the problem is that they are based on documents (namely funerary inscriptions) coming from the Roman Empire in second century c.e. The extension of Saller's results to fifth century Athens, therefore, is at least very debatable. The problem of how many Athenians had still a living father when they reached majority is an open problem, and to solve it, in the absence of demographical specific calculations, of course we must turn to Athenian sources.

IV. The Age Gap between generations

Aristotle, in *Politics*, discussing the problems related to inheritance, writes that the difference in age between fathers and sons should not be too large: parents excessively aged when they beget children do not have the chance to profit of their sons gratitude and can not help them. Age difference, however, should not be too short. In that case fathers and sons have a relation too similar to the relation between persons of the same age, sons do not respect parents as they should, and this creates conflicts in the governance of family matters. In his opinion women had to marry at about 18 and men at about 37, so that they could have their first child at 38. In this way children would reach majority when fathers were around 60.[42] But according to the majority of scholars Athenians married younger, about 30 (as assumed recently, for example, by Golden and Davidson).[43] In that case when they reached majority their fathers were about 55. Probably the number of fathers still alive at that age was sufficient to make of their conflicts with their sons a reason for serious troubles not only personal but, and to be connected with political life.

The possibility of these connections is suggested by a very interesting passage from Plato's seventh autobiographical letter: "When I was a *neos,* I thought that if I

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[40] M. Golden, *Childhood in classical Athens*, *cit*., p. 111.

[41] R. Saller, *Men's Age at Marriage and its Consequences for the Roman Family*, in *Class. Phil.* 82 (1987) 21-34. Earlier, on the structure of the family, see his *Familia, domus and the roman Conception of the family*, in *Phoenix* 38 (1984) 336-355. On women's age at first marriage see B. Shaw, *The Age of Roman Girls at Marriage: some Reconsiderations*, in *JRS* 77 (1987) 30 ff.

[42] Aristot., *Pol*. 1334 b-1335 a.

[43] M. Golden, *Children and Childhood in classical Athens*, Baltimore, 1990; J. Davidson, *Revolutions in human time: age-class in Athens and the Greekness of Greek Revolutions*, in S. Goldhill and R. Osborne (eds.), *Rethinking Revolutions through ancient Greece*, Cambridge Mass, 2006, pp. 29-67.

were to take control of my property soon, I would straightway play a part in community affairs" (Plat., *Ep.* 7, 324 B). Plato is very explicit. Exiting from the number of *neoi* is not only a chronological milestone, for him. He connects his political ambition, when he was a *neos*, with coming into his inheritance. This suggests two further problems. The first is the meaning of *neos* and more in general the relevance in Athenian society of age classes. The second is the connection between age classes, political life and economical independence.

The first problem has been recently discussed by James Davidson.[44] In his opinion the Athenian sequence of age classes—wrongly underestimated by classicists—was the following: *paides* were boys under 18; *meirakia* were those who had been assigned to the class of 18 (that is to say, not sent back to *paides*). After the *ephebeia,* at 20, *meirakia* (and/or *neaniskoi*)[45] became *andres,* started to be part and protagonists of political life, and as such they were divided into *neoi* (till 30) and *presbutai*, two groups—as Davidson rightly recalls—whose tension is one of the main feature of Aristophanes' comedies, to which it is worth go briefly back for some new considerations.[46]

The central scene of *Wasps* is the *agon* between Philokleon and Bdelykleon, who tries to convince his father that he and his fellow judges do not have any power; on the contrary are exploited by the men who govern the polis (vv. 526-735). Clearly, the *agon* does not oppose two persons, but two age classes. Philokleon acts as a representative of the *presbutai,* Bdelykleon is a *neanias*, and in order to prove his thesis reminds his father that when he goes to court, is bossed around by a *synegoros*, who threatens him, saying that he will not get his pay if he will be late; but the *synegoros*—who in the case (a comic exaggeration) is not even a *neos,* but a *meirakion*—will anyway get paid, and more than Philokleon will be (vv. 686-691). The victory that *Wasp*s ironically concede to the *neaniai* prospects a reversal of age classes roles, that in Aristophanes opinion is the consequence of the sophistic teaching, as clearly demonstrated by *Clouds*.

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[44] J. Davidson, *Revolutions in human time cit*., pp. 31 ff.

[45] According to Davidson, *neaniskoi* is frequently a synonym for *meirakia*, almost always referred to elite youth, often in the Gymnasium. Many years ago, discussing this problem, I reached a different conclusion, and I still think that *neaniskoi* (at least in a paederastic context) were older that *meirakia*; but I will not enter this specific problem, discussed in E. Cantarella, *Neaniskoi, Classi di età e passaggi di status nel diritto ateniese*, in *MEFR*A 102 (1990) 37-51.

[46] As well known, the Athenian age class terminology is very detailed and very complicated, especially because more than one term is used for people of the same class. *Neos*, for example, is at times used as synonym of *meirakion. Meirakion*, is "from thirteen to fourteen" for B. Strauss (*Fathers and sons cit.*, p. 94); for S. Todd "in his late teens" (s. *Lysias*, *The Oratory of classical Greece*, II, Austin, Texas, 2000, p. 42 note 2); others maintain that Cimon, described by Plutarch as *meirakion*, is "someone about or just under 20 years old" (A.J. Podlecki, *The Political background to Aeschylean Tragedy*, Ann Arbor, 1966, p. 35).

The effects of sophistic discourse are central in *Clouds,* where, again, the *agon* between Righteous and Unrighteous Discourse is an *agon* between personifications of age grade speeches, and of course Unrighteous Discourse wins over Righteous. Sophistic discourse had reversed the traditional idea that *neoi* are stronger in physical force and *presbutiai* in counsel and speech, as proved by Pheidippides, who uses the new education that Socrates has taught him to discuss Solon's law on repayment of debts.[47] It has endangered also the old principle that *neoi* should wait for their turn to enter the political arena. Given the importance of age-classes in Athens, a change in education of the youth has produced political implications: "The talk about "new education" as a revolutionary inversion—concludes Davidson—is not just a trope of Aristophanes...By creating a new type of New Man, sophists like Protagoras and Socrates had indeed upset the social and political order."[48]

Fathers/sons relationships were at the crossing of the boundaries between public and private, they were a problem that did not concern only *oikoi*, it concerned the polis. Paternal power, albeit not perennial as the Roman one, generated nonetheless problems that created equally strong social problems. Of course, the reasons of these problems was different from the Roman ones. In Athens they were generated by the lack of coincidence between law and society. As Barry Strauss points out, "by recognising a boy's manhood and politico-juridical independence at age eighteen, instead of putting off that turning point until the boy was in charge of his patrimony, Athenian culture created an opening for potential father-son conflict. Both property and appearance, both interest and emotion were ground for conflict between Athenian father and son."[49] In addition to that, the democratic ideology that a man could not be subordinated to another exacerbated the relations father/son and transformed the potential into real, sometimes even physical conflicts. Moreover, the effects of sophistic teaching made of these problems a politically relevant issue.

Of course, this overview of fathers/adult sons relationship is incomplete. As I said this paper is part of a work in progress, other sources are still to be examined, in the first place tragedy. The above sketched considerations are not final conclusions, they are rather the basis for further future reflections.

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[47] Strepsiades is afraid of the *Ene kai nea,* the day when *tokoi* matured, and his creditors would deposit the surety against him (v. 1178). As the Greeks called "the old and the new day" the last day of the lunar month, Strepsiades immediately reassures him: one day can not be two days, he says (vv. 1181-1182), exactly as a woman can not be on the same day old and young (v. 1184). However, this is Solon's law, objects Strepsiades. And Pheidippides: "Then Solon stated that that *kleseis* had to take place in two days, the old and the new, so that writ on summons would be deposited with the new moon" (vv. 1189-1191).

[48] J. Davidson, *Revolutions cit*., p. 62.

[49] B. Strauss, *Fathers and Sons cit*., p. 101.

JOSEPH MÉLÈZE MODRZEJEWSKI (PARIS)

PÈRES ET FILS DANS L'ÉGYPTE HÉLLENISTIQUE RÉPONSE À EVA CANTARELLA

Une fois de plus, notre amie Eva Cantarella vient de nous combler par l'ampleur de son savoir et par l'élégance de son discours. S'il pouvait assister à notre réunion, le juriste Gaius, qui du droit athénien d'époque classique avait probablement une idée très vague, aurait été ravi : sa conviction concernant le caractère unique de la *patria potestas* romaine (1, 55) se vérifie pour l'Athènes des orateurs à la lumière des sources dont nous venons d'entendre l'analyse. Le pouvoir que le père athénien exerce sur son fils n'est pas comparable à la puissance du *paterfamilias* romain ; l'organisation des rapports entre pères et fils, dans la famille comme dans la société, s'en ressent. Des conflits surgissent et appellent un débat.

Avant d'entendre les réactions que cette belle leçon ne manquera pas susciter, je voudrais, à titre de « réponse », vous en proposer un prolongement à la lumière des sources papyrologiques qui, vous allez le voir, apportent de l'eau au moulin de notre chère conférencière. Prenant comme point de départ les remarques concernant le déclin du pouvoir exercé par le père athénien sur ses fils, nous allons esquisser à grands traits l'organisation de la relation père et fils dans la société hellénistique, telle que nous la restituent les papyrus d'Égypte. Suivant l'exemple de la regrettée Claire Préaux, qui avait entrepris une grande enquête sur le thème « de la Grèce classique à l'Égypte hellénistique », restée malheureusement inachevée,[1] notre démarche tendra à retracer les lignes d'une continuité et les points de rupture dans l'évolution qu'a subie la famille grecque au passage de la cité classique à la monarchie hellénistique. Laissant de côté les particularités caractérisant les trois cités grecques d'Égypte, nous porterons toute notre attention sur les immigrants hellénophones installés dans la *chōra*.

[1] C. Préaux, « De la Grèce classique à l'Égypte hellénistique » : « Note sur les contrats à clause exécutoire », Chron. d'Ég. 33, 1958, p. 102-112 ; « La banque-témoin », ibid., p. 243-255 ; « Les formes de la vente d'immeuble », Chron. d'Ég. 36, 1961, p. 187-195 ; « Les troupeaux "immortels" et les esclaves de Nicias », Chron. d'Ég. 41, 1966, p. 161-164 ; « Le cautionnement mutuel », ibid. p. 354-360 ; « "Eperotetheis homologesa" et l'Alceste d'Euripide, vers 1119 », Chron. d'Ég. 42, 1967, p. 140-144 ; « Traduire ou ne pas traduire », ibid., p. 369-383 ; « Eudoxe et le khamsin », Annuaire de l'Institut de Philologie et d'Histoire orientales et slaves de l'Université de Bruxelles 20 (1968-1972), 1973, p. 347-361.

Le sujet n'est pas inédit. Il me suffira de rappeler ici la thèse de Bernard Legras sur les jeunes Grecs dans l'Égypte ptolémaïque et romaine[2] et l'étude des effets juridiques de la filiation d'après la documentation papyrologique proposée par Barbara Anagnostou-Canas au Symposion de Marbourg ;[3] j'ai abordé moi-même ces questions dans une esquisse consacrée au droit familial grec en milieu hellénistique[4] et j'y reviens dans un ouvrage sur « Le droit grec après Alexandre », en voie d'élaboration, qui relate l'expérience d'une quarantaine d'années d'enseignement et de recherche sur le droit hellénistique dans les établissements parisiens. Je renvoie à ces travaux pour des détails qu'il n'est pas possible d'aborder ici.

Dans la famille grecque d'époque hellénistique les carences du pouvoir paternel s'accentuent. Sans doute le père exerce-t-il toujours quelques prérogatives qui assurent sa position dominante par rapport à sa femme et à ses enfants. Le statut du père détermine celui de l'enfant : les filles d'un Cyrénéen qui a épousé une Égyptienne sont Cyrénéennes, comme leur père.[5] C'est lui qui décide si ses enfants seront élevés dans la famille ou abandonnés sur une décharge publique où ils pourront être recueillis comme esclaves « trouvés sur les déchets » (*kopriaíretoi*) : « si c'est un garçon, laisse-le vivre », écrit un époux aimable à sa femme qui attend un bébé — « si c'est une fille, expose-la ! ».[6] C'est aussi le père qui donne sa fille en mariage (*ékdosis*) et qui peut la reprendre à son mari (*aphaíresis*), même contre son gré, conformément à une tradition attestée par la Comédie Nouvelle qui ressuscite au début de l'époque impériale jusqu'à ce que la jurisprudence provinciale mette une fin à cette pratique, rejetée comme « inhumaine » par le juge romain.[7]

Ces prérogatives ont leur contrepartie dans les devoirs alimentaires des enfants envers des géniteurs âgés et malades. Des plaintes émanant de parents négligés les illustrent abondamment. À la différence du Code civil français, qui règle séparément les obligations des parents et des enfants (art. 203 et 205) et ne prévoit pour les bénéficiaires d'autre condition que d'être « dans le besoin » (art. 205), la tradition

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[2] B. Legras, *Néotês. Recherches sur les jeunes Grecs dans l'Égypte ptolémaïque et romaine*, Genève 1999 (École pratique des Hautes Études, IV[e] Section, III. Hautes études du monde gréco-romain 26).

[3] B. Anagnostou-Canas, « Effets juridiques de la filiation dans l'Egypte grecque et romaine », *Symposion 2003*, p. 323-339

[4] J. Mélèze Modrzejewski, « Le droit hellénistique et la famille grecque », dans Cl. Bontems, éd., *Nonagesimo anno. Mélanges en hommage à Jean Gaudemet*, Paris 1999, p. 261-280, et en anglais, « Greek Law in the Hellenistic Period: Family and Marriage », dans M. Gagarin & D. Cohen, éds., *The Cambridge Companion to Ancient Greek Law*, Cambridge-New York 2005, p. 343-354.

[5] I.Fay. I 2 (entre 244 et 221 av. n.è.). Toutefois, l'enfant d'une esclave et d'un homme libre est esclave comme sa mère, la naissance servile étant patente alors que la filiation paternelle ne l'est pas en pareil cas. Voir p.ex. P.Petrie[2] 3, col. I, lignes 9-37 (238/237 av. n.è.), affranchissement testamentaire d'une esclave et du fils que le testateur a eu de celle-ci.

[6] P.Oxy. IV 744 (1 av. n.è.).

[7] P.Oxy. II 237 col. VII, 34-35.

grecque conçoit le devoir alimentaire des enfants comme une conséquence de l'éducation qui leur fut donnée par leurs parents. Selon Plutarque, une loi de Solon, mentionnée par Eva Cantarella, aurait exempté de cette obligation les enfants auxquels leur père n'avait pas fait apprendre un métier (*téchnē*).[8] La plainte d'un père grec, négligé et maltraité par le fils auquel il avait donné une bonne éducation, comportant notamment l'apprentissage de la grammaire, signale la présence de cette tradition dans l'Egypte du III^e^ siècle av. n.è.[9]

Plus modeste que celui du chef d'un *oĩkos* celle traditionnel, le pouvoir du père ne survit pas à la majorité du fils – seize ans d'après les calculs de Bernard Legras.[10] Un adolescent mineur (*oudépō ốn tỗn etỗn*) ayant eu la faiblesse de signer une reconnaissance de dette en faveur d'une courtisane ne pouvait pas échapper aux conséquences de son imprudence juvénile sans une énergique intervention de son père.[11] À dix-sept ou à dix-huit ans, il aurait dû défendre ses intérêts lui-même. Désormais, il n'a besoin d'aucune aide légale pour conclure les actes juridiques de toute sorte, agir en justice, se marier et fonder une famille.

Comparée au fils majeur, la femme mariée se trouve dans une situation moins avantageuse. Il est vrai que la condition féminine a beaucoup évolué dans la société hellénistique.[12] Aucune loi n'autorise plus le mari à tuer impunément l'intrus surpris dans son foyer en flagrant délit de *moicheía*, comme ce fut le cas à Athènes.[13] Tout au plus, l'infidélité de l'épouse peut-elle constituer une cause de divorce à ses torts, prévue par le contrat de mariage. La femme peut être associée à son époux pour donner leur fille en mariage (*ékdosis*) : il en est ainsi à Eléphantine à la fin du IV^e^ siècle av. n.è.[14] comme à Alexandrie à l'époque d'Auguste.[15] Veuve ou divorcée, elle peut accomplir cet acte elle-même, d'abord en exécution de la volonté de son mari défunt exprimée dans son testament[16], et plus tard, en agissant de son propre

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[8] Plutarque, *Solon* 22. E. Ruschenbusch, *Solōnos nómoi*, Wiesbaden 1966 (réimpr. 1983), F 56 (32), p. 90-91.

[9] P.Ent. 25 (222 av. n.è.).

[10] Op. cit. supra, note 2.

[11] P.Ent. 49 (221 av. n.è.).

[12] Cf. S.B. Pomeroy, *Women in Hellenistic Egypt from Alexander to Cleopatra,* New York, 1984 ; 2^e^ éd., Detroit 1990 ; I. Bieżuńska-Małowist, « Les recherches sur la condition de la femme grecque en Égypte grecque et romaine, hier et aujourd'hui », *Acta Universitatis Wratislaviensis,* 1435 (*Antiquitas* XVIII), Wroclaw 1993, p. 15-22 ; H. Melaerts et L. Mooren, éd., *Le rôle et le statut de la femme en Égypte hellénistique, romaine et byzantine* (actes du colloque international, Bruxelles-Leuven, 27-29 novembre 1997), Louvain 2002.

[13] Démosthène, 23 (*C. Aristocrate*), 53, 55. Cf. D. Cohen, «The Athenian Law of Adultery », *RIDA*, 3^e^ sér., 31, 1984, p. 147-165.

[14] P.Eleph. 1 (310 av. n.è.). Peut-être n'est-ce là qu'une réminiscence de traditions doriennes qui accordaient à la femme une autonomie accrue au sein de la famille.

[15] BGU IV 1100 (vers 10 av. n.è.).

[16] P.Petrie III 19c = P.Petrie^2^ 25 (226/225 av. n.è.) lignes 25-27.

chef comme « donneuse » (*ekdótis*)[17]. Elle peut aussi louer les services de son fils, éventuellement à titre de remboursement d'un prêt (antichrèse).[18] Dans un accord passé avec sa belle-mère après le décès du mari, une veuve se réserve le droit d'exposer son enfant à naître, privilège paternel par excellence.[19] Les femmes qui se donnent elles-mêmes en mariage vont au bout de cette tendance éminemment « féministe ».[20]

La différence entre le fils majeur et la femme mariée, c'est que celle-ci a besoin de l'assistance d'un *kúrios*, normalement son mari, pour accomplir valablement divers actes juridiques dans lesquels elle s'engage. Formellement, cette exigence est une marque de son infériorité, même si le *kúrios* hellénistique n'est plus le « maître et seigneur » de son épouse comme le fut le chef de l'*oïkos* classique. Son autorité n'est plus qu'une sorte de tutelle qui n'entrave pas la liberté des décisions prises par la femme qu'il assiste.[21] Simple formalité donc. Il n'en reste pas moins que cette formalité est entourée d'une réglementation minutieuse, renforcée par des sanctions sévères.[22]

On est frappé par cette disparité entre le rôle, purement formel, du *kúrios* et la rigueur des moyens mis en œuvre pour assurer l'exercice de sa charge. La même sévérité caractérise la législation royale concernant les éléments de l'identité personnelle des immigrants hellénophones. La loi prescrit comment ils doivent être indiqués à l'occasion d'actes qui engagent la responsabilité d'un individu : nom, patronyme, patrie ancestrale, situation militaire.[23] Elle interdit, sous la menace de peine capitale, leur changement arbitraire par les fonctionnaires locaux, avec la

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[17] P.Oxy. X 1273 (260 de n.è.).

[18] P.Col. Zen. I 6 (257 av.n.è.) ; P.Oxy. X 1295 (IIe-IIIe s. de n.è.). Voir mon art. « Le droit de la famille dans les lettres privées grecques d'Égypte », JJP IX-X, 1956, p. 339-363, partic. 335-336.

[19] BGU IV 1104 (8 av. n.è.) lignes 23-24.

[20] Sources et commentaire dans mon art. « La structure juridique du mariage grec », *Symposion 1979*, Athènes 1981 et Cologne-Vienne 1983, p. 39-71 = *Statut personnel et liens de famille,* Aldershot 1993, n° V, partic. p. 57-60.

[21] Cf. R. Taubenschlag, « La compétence du *kurios* dans le droit gréco-égyptien », *AHDO* 2, 1938, p. 293-314 = *Opera minora* II, Varsovie, 1959, p. 353-377 ; C. Préaux, « Le statut de la femme à l'époque hellénistique, principalement en Égypte », *Rec. Soc. J. Bodin,* XI : *La femme*, Bruxelles, 1959, p. 127-175, partic. p. 139 sq. Cet usage se maintiendra à l'époque romaine : H.-A. Rupprecht, « Zur Frage der Frauentutel im römischen Ägypten », *Festschr. A. Kränzlein, Graz* 1986, p. 95-102.

[22] Dans le P.Eleph. Wagner 1 (IIIe s. av. n.è.), un jury de chrématistes condamne aux travaux forcés un individu qui s'était déclaré par écrit être le tuteur d'une femme du vivant du père de celle-ci, sans en avoir reçu l'autorisation du roi ou de ses chrématistes. Cf. A. Łukaszewicz, « Quelques observations sur les chrématistes de Syène (P.Eleph. DAIK 1) », *Symposion 1999,* Cologne 2003, p. 433-442.

[23] Introduction d'une instance judiciaire (P.Hamb. II 168a, IIIe s. av. n.è.), conclusion d'un contrat (BGU XIV 2367, IIIe s. av. n.è), affermage des impôts (P.Rev. Laws, 259 av. n.è., col. 1 et 14).

complicité réelle ou présumée de l'intéressé.[24] Dans son effort excessif de préserver l'intégrité de la collectivité à laquelle elle étend sa protection, cette législation n'est pas sans nous rappeler les lois athéniennes du IV^e^ siècle av. n.è. connues par le *Contre Nééra* qui répriment le mariage avec un étranger ou une étrangère introduits dans la cité sous une fausse identité.[25] Mais l'objectif visé par le législateur a changé.

Dans l'Athènes du IV^e^ siècle, ce qui inspire le législateur, c'est son souci pour la pérennité de l'*oĩkos*, cellule de base de la cité. La seule filiation paternelle n'ouvre pas l'accès à l'*oĩkos*. Il est conditionné par la légitimité de la naissance et les formalités imposées au père qui doit présenter son fils à la phratrie et demander son inscription sur la liste des démotes. Des institutions comme le testament-adoption et l'épiclérat procèdent du même souci : en l'absence de fils légitimes, elles servent à empêcher que la « maison du citoyen ne reste pas déserte ».

Tout cela disparaît dans la société d'immigrants hellénophones, point de mire de la loi ptolémaïque**.** La famille-maisonnée, *oĩkos*, ayant cédé la place à la famille individuelle, fondée sur l'union d'un homme et d'une femme, les institutions qui protégeaient la pérennité de l'*oĩkos* ont été abandonnées ou ont subi une profonde transformation : l'épiclérat ne subsiste qu'à l'état de vocable,[26] les filles héritent comme les fils,[27] l'adoption, dissociée du testament, est accomplie par une convention privée non seulement au profit d'enfants mâles, mais aussi de filles.[28] En même temps s'effacent les obstacles que la cité classique érigeait entre la naissance et l'intégration au groupe civique. Dans l'Égypte ptolémaïque, le fils d'un *Athēnaĩos* est lui aussi *Athēnaĩos* en vertu de sa seule filiation, quelle que soit l'origine de sa mère. Les Athéniens dans leur cité ne l'auraient probablement pas reconnu comme leur concitoyen. Peu lui importe. En Égypte, sa qualité d'*Athēnaĩos* n'a rien à voir avec une problématique citoyenneté athénienne. Sa seule fonction est de garantir l'appartenance de l'individu à la communauté des « Hellènes », collectivité qui regroupe tous les immigrants de langue et de culture grecques, capables de se réclamer d'une origine extérieure au pays conquis, réputée « civique ».[29]

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[24] BGU VI 1213 (III^e^ s. av. n.è.) et 1250 (II^e^ s. av. n.è.). Cf. mon art. « Le statut des Hellènes dans l'Égypte lagide », *Rev. ét. gr.* 96, 1983, p. 241-268 = *Statut personnel et liens de famille,* Aldershot 1993, n° III, partic., p.244-245.

[25] Démosthène 59 (*C. Nééra*) 16 et 52.

[26] E. Karabélias, *Recherches sur la condition juridique et sociale de la fille unique dans le monde grec ancien excepté Athènes*, Athènes 2004, p. 95 sq.

[27] Ibid., p.87 sq.

[28] P.Col. Zen. I, 58 (248 ? av. n.è.), ligne 9. Cf. P.Oxy. XLVI, 3271 (47-54 de n.è.) et mes remarques dans *RHD* 57, 1979, p. 132 et 480. Cf. B. Legras, « L'adoption en droit hellénistique, d'après les papyrus grecs d'Égypte », dans A. Bresson, M.-P. Masson, S. Perentidis et J. Wilgaux, éd., *Parenté et société dans le monde grec, de l'Antiquité à l'Âge moderne* (Volos, 18-21 juin 2003), Bordeaux 2006, p. 175-188.

[29] Pour tous les détails voir mon art. « Le statut des Hellènes dans l'Égypte lagide », cité *supra*, note 24.

On le voit : le pouvoir du père sur les membres de sa famille ayant été vidé dans sa substance, l'enquête sur le thème « pères et fils » change de direction. La communauté des Hellènes ayant pris la place de l'*oĩkos* classique dans les préoccupations du législateur, les conflits d'intérêt et les tensions économiques s'effacent devant la problématique de la filiation comme condition d'accès au groupe d'immigrants appelés à perpétuer l'identité grecque en terre barbare.

Le caractère institutionnel du pluriel collectif *Héllēnes* est certifié par nos sources dans le domaine judiciaire et dans le domaine fiscal. En 118 av. n.è., une célèbre ordonnance de Ptolémée VIII Évergète II oppose *Héllēnes* aux *Aigyptíoi* comme composantes de l'ensemble des justiciables ; elle prévoit une exception concernant les personnes « impliquées dans les revenus du roi » qui échappent à ces dispositions.[30] Ce procédé qui combine des critères de caractère ethnique avec des critères professionnels est déjà utilisé par l'administration fiscale vers le milieu du III^e^ siècle à propos de la taxe d'une obole complétant la taxe sur le sel : les « Hellènes » en sont exemptés à la différence de diverses catégories socioprofessionnelles.[31] Comme les mesures pénales qui protégent l'identité personnelle des immigrants, cette discrimination fiscale sert visiblement à favoriser l'élément grec.[32] Elle annonce l'organisation de la société provinciale dans l'Égypte romaine qui utilisera un jeu de privilèges fiscaux pour sauvegarder la postérité des Hellènes. Mais nous sommes loin des lois xénophobes connues par le *Contre Nééra*. La monarchie hellénistique a élargi l'horizon grec : elle accueille comme « Hellènes » non seulement des immigrants venus d'authentiques cités mais aussi des ressortissants d'États-*ethnē* du Nord et Nord-Ouest balkaniques ainsi que des régions fraîchement hellénisées d'Asie Mineure et du Proche-Orient que la Grèce classique rejetait comme barbares.

La conquête romaine de l'Égypte sonnera les glas de la communauté des Hellènes. Leurs descendants seront regroupés dans des ordres de notables locaux

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[30] P.Tebt. I 5 = C.Ord. Ptol. 53 (118 av. n.è.), lignes 207-220. Pour l'interprétation de ce décret, voir mon article « Chrématistes et Laocrites », *Hommages à Claire Préaux*, Bruxelles 1975, p. 699-708, et *Symposion 1974,* Athènes 1978 (et Cologne 1979), p. 375-388 (et discussion, p. 388-391). Il est possible qu'il s'agisse d'une mesure concernant les procès en cours (*sic* P. Pestman, « The Competence of Greek and Egyptian Tribunals according to the Decree of 118 B.C. », *BASP* 22, 1985, p. 265-269) qui par la suite s'est appliquée à d'autres cas.

[31] W. Clarysse, D.J. Thompson. *Counting the People in Ptolemaic Egypt*, 1: *Population Registers* (*P.Count*); 2: *Historical Studies*, Cambridge 2006. Cf. A.-E. Veïsse, « Statut et identité dans l'Égypte des Ptolémées : les désignations d'"Hellènes" et d'"Égyptiens" », *Ktema* 32, 2007, p. 279-291, qui complète sur ce point mon essai de synthèse « Le statut des Hellènes », cité supra note 24.

[32] C'est ce que souligne à juste titre A.-E. Veïsse, art. précité, p. 287.

payant l'impôt personnel (*capitatio, laographia*) à taux réduit.[33] On vient de signaler l'antécédent ptolémaïque de ce mode de différentiation sociale. D'autres ressorts du système pourraient avoir une origine plus lointaine. La seule filiation paternelle ne suffit plus à transmettre le statut de père en fils. Pour bénéficier de la qualité de notable fiscalement privilégié il faut justifier de la double ascendance, paternelle et maternelle, comme dans les cités où l'exigence *ex amphoīn astoīn* conditionnait l'accès à la citoyenneté. De plus, à chaque génération des procédures de vérification (*epíkrisis*) sont opérées quand le candidat commence sa quatorzième année, seuil de la majorité fiscale. De ce point de vue, la société des notables grecs dans la province romaine d'Égypte est plus proche de la cité classique que ne l'était la communauté des Hellènes dont elle est issue. En revanche, comme cette dernière, elle reste accueillante pour des notables qui ne sont pas d'origine grecque ; des descendants d'Égyptiens hellénisés peuvent également faire partie de ces élites.[34] Seuls les Juifs, qui à l'époque ptolémaïque bénéficiaient de la qualité d'Hellènes, en ont été écartés.

La boucle est bouclée : de l'Athènes classique aux notables grecs de l'Égypte romaine en passant par la communauté des Hellènes dans la monarchie ptolémaïque, l'enquête sur le thème « pères et fils » nous fournit l'occasion de suivre les étapes d'« une histoire de longue durée » réfléchissant les mutations sociales et politiques dans le miroir du droit familial. Eva Cantarella nous a donné l'occasion de la retracer.

[33] Pour tous les détails voir mon étude « Entre la cité et le fisc. Le statut grec dans l'Égypte romaine », *Symposion 1982*, Valence 1985 et Cologne-Vienne 1989, p. 241-280 = *Droit impérial et traditions locales*, Aldershot 1990, n° I.

[34] Sur les élites provinciales, voir à présent Silvia Bussi**,** *Les* élites *locali nella provincia d'Egitto di prima età imperiale*, Milan 2008.

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CONSERVATIVE TRENDS IN ATHENIAN LAW: *IE* 138, A LAW CONCERNING THE MYSTERIES

An inscribed fourth century text known as 'a law in the City Eleusinion concerning the Mysteries' is the starting and end point for this discussion of 'conservative trends in Athenian law.' The largest part of my discussion is devoted to the topic of codification: can this particular 'law' or a comprehensive predecessor a century earlier be viewed as a 'code of laws' about the Mysteries and what, if anything, can that tell us about law-making or codification more broadly in Athens and about the reporting of laws in the literary tradition? A smaller component of discussion focuses on possible archaisms of text presentation and legal procedure.

Eighteen fragmentary bits and larger pieces of the opisthographic stele that carried the fourth century law were excavated in the Athenian Agora, in or near the Eleusinion, from 1936 to 1963. Kevin Clinton published the *editio princeps* in *Hesperia* 1980 (*SEG* 30.61) and dated its enactment to some point between 380 and 350 (1980: 272; 2008: 138), with a preference for the period between 367 and 350 (2003: 81). In 2005, Clinton republished the text in his corpus of inscriptions from Eleusis where he now designates it as *IEleusis* no. 138 or, more simply, *IE* 138.[1] Three of the fragments of the stele provide a continuous, mostly stoichedon text of 54 lines for Side A, and a non-stoichedon text of 24 lines for Side B. The remaining fragments, by Clinton's calculations, add 5 lines to Side A and ca. 90 lines to Side B, thereby giving a total of perhaps 173 lines.[2] Indeed, the size of the text led

[1] While the text of the *editio princeps* and that in the new edition are the same, in his 2008 commentary he changes his interpretation on a number of points and acknowledges a preference for Stumpf's restoration in one passage (Side A, l. 28) but rejects a second of his restorations in another (Side A, ll 37); both restorations have to do with legal processes. I think he is right to reject; no palmary restoration has been suggested.

[2] The first line of Aa is the first line inscribed on the stele and continues to line 42 and gives part of the left margin; frag. Ab is placed to the right of frag. Aa and extends from mid-line 18 to line 54; another fragment of five lines is thought to follow, after a lacuna of unknown length, and it is not known how many lines of text the stele carried. Side B is mostly non-stoichedon and consists of thirteen fragments. The back of frag. Ab is designated frag. Ba; so what appears in Clinton's text as Side Ba actually begins on Side B at line 18 of Side A; Ba is *not* the beginning of the text on Side B; Ba has 24 lines and ends where Face A has line 47. The surface underneath Ba 24 is smooth and has no lettering; it may be the end of the text on Side B, unless another text, possibly even a different one, began after a lacuna of unknown length. Clinton (1980: 266) suggested that

Clinton to liken the document to the famous Law on the Mysteries of Andania. The likeness did not stop there; 'both documents,' Clinton proclaimed, 'contain the same wide variety of regulations, including details of the public cult and festival and legal procedures for dealing with infractions' (1980: 258). Both in 1980 and again in his 2008 commentary, Clinton briefly compared *IE* 138 with earlier and later regulations of the Mysteries; *IE* 138 may have been, he concluded, 'the most comprehensive law on the Mysteries that had been issued since the time of Solon' (1980: 273).[3] The original document, he conjectured, 'may have covered every aspect of the Mysteries on which it was appropriate at this time for the Athenian state to legislate.' And finally, he offered an hypothesis for the motivation for the 'new code': it was related to 'the increased popularity of the cult in the early part of the fourth century' (1980: 274-75 and 2008: 117). Codification served, then, sociological ends: 'Most of the preserved statutes on this stele,' Clinton writes, 'can be seen as reflecting a need for legal remedies to cope with difficulties created by very large numbers of initiates; i.e., they reflect a desire to attract them and they reflect a concern for their well-being after their arrival. If the initiates were treated properly, they would be more likely to encourage others to attend this Panhellenic festival.'[4] And by 'this Panhellenic festival', Clinton does not mean the particular festival celebrated in the year in which the 'new code' was enacted, but every year henceforth in which the Mysteries, the greater and the lesser, were to be celebrated.

'New code': is *IE* 138 a *code*—that is, to apply Stephen Todd's formulation in a recent study of Lysias' speech against Nikomachos, is *IE* 138 'a single and coherent text which should supersede all other sources of law' regarding the Mysteries?[5] Or to apply Raymond Westbrook's similar but more extended formulation in a recent survey of early lawcodes, is it 'an exclusive source of the law, at least in the area

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fragment Bb (with 14 lines) preceded Ba because of its stoichedon arrangement; possibly it continued the text of Side A. (Note that Bb is labelled erroneously as 'Side B fragment c [I 6877 b]' in Plate 72 [1980]; that photo should be labeled 'Side B fragment b [I 6877 a]'; cf. ed. pr., *Hesperia* 32 [1963]: 2 and Plate 1.) Clinton also deduced that the remaining eleven fragments of Side B 'belong above or to the right or left of a.' This means, so I think, that Side B may not have had more than 38 lines and so the text of our 'code' may actually be shorter than Clinton's estimation—although it is true we do not know whether more text appeared after Ba 24, nor do we know how extensive the gap was between Aa 54 and the small fragment Ac.

3 Clinton's language differs in 2008 where he calls the text 'the most extensive set of regulations we possess from antiquity concerning this cult' (117).

4 Clinton 2008: 117 continues: 'The announcement of the Mysteries, selection of the spondophoroi, extension of the Sacred truce by several weeks over its former length, the report of the spondophoroi on how they were treated during their mission, the regulations concerning false *myesis*, the appointment of additional officials called epimeletai to help the basileus in managing the public part of the festival and in maintaining order, the statute making exegesis available at specific times to Athenians and foreigners, are among the best preserved statutes that support this hypothesis.'

5 Todd 1996: 126.

which it purports to regulate…'? Is it 'deemed to be a comprehensive statement of the relevant law, so that anything omitted from the text is omitted from the law—a sort of legal *horror vacui*'?[6] In my view, it isn't quite that; nevertheless, it is a code of some sort and in order to explore what sort, I would like to borrow a heuristic question from John Davies' study of Gortynian legislation: 'when is a code a code?'[7] I would also like to borrow the two 'propositions' he used when he described the method by which he 'deconstructed' the notion of codification at Gortyn: first, 'the [Gortynian] Code has to be seen as part of a corpus of documentation'; and second, 'its format has to be seen within a framework of revision of law which moves both towards and away from codification.'[8] There are major differences, of course, between law production in Gortyn and in Athens, between the code for a city and that for a cultic festival, but I am not comparing the Gortynian code with a festival code; I am simply using Davies' method: to contextualize *IE* 138 within a corpus of like documents—a task made all the easier by Clinton's magisterial work—and to examine the 'format' of *IE* 138 (and other members of the 'corpus') within a framework of revision, asking, are there signs of success, or signs of unraveling and remaking?

Before I begin, I want to address one doubtful objection to my enterprise and one methodological issue. As for the objection, a skeptic might urge that this project is fundamentally vitiated because *IE* 138 is not a 'law', that it cannot be demonstrably proven to be a law—there is, after all, no prescript and no room for one above the first line of Side A and the top of the stone provides no indication that another stone had been set on top of it with the prescript (Clinton 1980: 259); at most, the text offers a series of regulations for a cult enacted by *decree* of the boule and demos. To this doubtful objection, I answer: the Mysteries was the most important public cult at Athens; while indeed the *gene* of the Eumolpidai and Kerykes were in charge of the religious administration of the sanctuary, our earliest document about its finances, *IE* 19 (= *IG* I^3 6 ca. 470-60), shows that the polis exercised final control (Clinton 1974: 8; 2008: 3). The text in question here, *IE* 138, establishes dates for an international Sacred Truce and regulations for the treatment of those announcing the truce in foreign cities; it establishes rules regarding the selection of polis officials; its concern with administrative details is consonant with other fourth century laws such as those on the building of walls, the grain tax, silver coinage, and the funding of sacrifices for the little Panathenaia through the leasing of the Nea (*SEG* 18.13); its rules are not set down to serve the occasion of one celebration, but for all celebrations of the Mysteries to come; that we do not have a prescript to prove it emanated from the nomothetai may be an accident of

[6] Westbrook 2000: 34.

[7] Davies 1996: 33. Essentially, Davies has set out a method for studying the formal articulation of law revision; this is quite different from studying the institutional mechanisms of lawmaking.

[8] Davies 1996: 33.

preservation. So a strong, circumstantial case can be made for the text being a law and Hansen in 1979 indeed argued that it was on the basis of its content.[9] A similar case can be made for the earlier *IE* 19 (*IG* I^3 6), although it belongs to a period when there is no perceptible difference between law-making and decree-making. On the other hand, if there are well-meaning agnostics who will maintain, as is true to the fact of lacunose preservation, that we cannot be one hundred per cent certain that either *IE* 19 or 138 is a law, then let them consider what follows to be a discussion of the 'codification' of earlier decrees or laws into a more comprehensive decree *or* law.[10]

The methodological issue is more troubling: *IE* 138 is missing, on a conservative estimate, more than half its original text. *IE* 19 (*IG* I^3 6), the earlier comprehensive decree, carries ca. 141 lines of text on three sides, of which a quarter is illegible or too fragmentary to be useful; moreover, it has a fourth side about which nothing can be said for certain, not even whether it belongs to the same document as Faces A-C.[11] How can one use such incomplete texts as these as the basis for thinking about codification? Clearly my conclusions can only be tentative; but the detail of what is preserved of the texts, in conjunction with details of earlier and later regulations for the festival, does allow for some concrete comparison and conclusions, even if of limited circumference. I might add, for comparative consideration, that the fact that we have only a fraction of the remains belonging to the revised Athenian lawcode of 410-403 has not stopped scholars from speculating about its entirety, and often with little acknowledgment of the physical constraints imposed by the material remains.[12]

i. Corporate documentation and the format of disiecta membra

Six extant epigraphical documents and four laws or parts of laws mentioned in literary sources can arguably form a series with *IE* 138.

1. *IE* 7 (*IG* I^3 231), ca. 510-500.
2. *IE* 13 (*IG* I^3 5), ca. 500-470.
3. *IE* 19 (*IG* I^3 6), ca. 470-60.
4. *IE* 21 (*IG* I^3 33), mid-fifth century.
5. *IE* 22 (*IG* I^3 251), mid-fifth century.
6. *IE* 250 (*SEG* 21.494), ca. second or first century B.C.

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[9] Hansen 1979: 32-35; he did not have the *editio princeps* of *IE* 138 but he did have some of the early fragments.

[10] For discussion of 'sacred laws,' see Parker 2004.

[11] Meritt 1945: 69-70 regarded the round letters of Face D as having been drawn 'free-hand' as opposed to the round letters on Faces A, B, and C, which 'are perfect circles, made with a tubular drill'—except for the 'postscript to Face C (lines 47-50), also drawn free-hand.

[12] Dow 1961 and Clinton 1982: 32-33 are examples of scholars who do heed the physical constraints; even so, there is much that remains uncertain.

An additional three epigraphical documents add information that allows us to infer changes in the regulations of the festival.

7. *IE* 28a and b (*IG* I^3 78a and b), the Eleusis copy (a complete stele) and the Athens copy (a fragment) of the 'first fruits decree,' dated variously from the 440's to 422/1.

8. *IE* 30 (*IG* I^3 32, *SEG* 10.24), dated variously from ca. 450 to 432/1, the establishment of the epistatai to oversee the property of the two goddesses.

9. *IE* 237 (*IG* II^2 1013 with addenda p. 670), ca. 120 B.C., a decree concerning weights and measures, photograph of new fragment and text in *Hesperia* 7, 1938, no. 27.

None of the documents can be precisely dated; the first five epigraphical documents are dated to the mid-fifth century or to earlier dates purely by letter form. Nos. 6 and 9 are dated to the second or first centuries B.C., also by letter form. Nos. 7 and 8 are more variously dated, sometimes by letter form (e.g., the absence of the aspirate in no. 7 and the appearance of three-bar sigmas in no. 8) and sometimes, more compellingly, by inferential arguments. I accept a date in the mid-430's for no. 7 (the 'first fruits decree') and a slightly later date, 432/31, for no. 8 (the establishment of the epistatai to oversee the property of the two goddesses).

To these documents, four literary references to laws or regulations can be added—if they are different from the above documents:

10. And. 1.111: Andokides, speaking in his own persona at his trial by *endeixis*, says: 'the boule was about to have its meeting there [in the Eleusinion] in accordance with the law of Solon that provides for a sitting of the boule on the day after the Mysteries.'[13] The 'Solonian' law must have a *terminus ante quem* of at least some (considerable?) number of years before autumn 400, which MacDowell has plausibly argued is the date of trial.[14]

11. And. 1.115: Andokides reports that Kallias said: 'There is an ancestral law (*nomos patrios*): if anyone sets a suppliant's branch in the Eleusinion <during the Mysteries> he is to be put to death.'[15]

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[13] And. 1.111: Ἐπειδὴ γὰρ ἤλθομεν Ἐλευσινόθεν καὶ ἡ ἔνδειξις ἐγεγένητο, προσῄει ὁ βασιλεὺς περὶ τῶν γεγενημένων Ἐλευσῖνι κατὰ τὴν τελετήν, ὥσπερ ἔθος ἐστίν, <τοῖς πρυτάνεσιν>, οἱ δὲ [πρυτάνεις] προσάξειν ἔφασαν αὐτὸν πρὸς τὴν βουλήν, ἐπαγγεῖλαί τ' ἐκέλευον ἐμοί τε καὶ Κηφισίῳ παρεῖναι εἰς τὸ Ἐλευσίνιον· *ἡ γὰρ βουλὴ ἐκεῖ καθεδεῖσθαι ἔμελλε κατὰ τὸν Σόλωνος νόμον, ὃς κελεύει τῇ ὑστεραίᾳ τῶν μυστηρίων ἕδραν ποιεῖν ἐν τῷ Ἐλευσινίῳ.*

[14] MacDowell 1962: 204-5.

[15] And. 1.115: πάλιν ὁ Καλλίας <ἀνα>στὰς ἔλεγεν ὅτι εἴη νόμος πάτριος, εἴ τις ἱκετηρίαν θείη <μυστηρίοις> ἐν τῷ Ἐλευσινίῳ, ἄκριτον ἀποθανεῖν, καὶ ὁ πατήρ ποτ' αὐτοῦ Ἱππόνικος ἐξηγήσαιτο ταῦτα Ἀθηναίοις, ἀκούσειε δὲ ὅτι ἐγὼ θείην τὴν ἱκετηρίαν. The addition of the temporal indication in Kallias' charge—that the branch was set there during the Mysteries—is essential to the offence; while it does not appear in the mss. at §115, it was present in Andokides' paraphrase or citation of the putative ancient law in §110. The timing indication is important: for Kallias is not claiming that

12. And. 1.116: Andokides reports that Kephalos responded to Kallias: 'Oh, Kallias, you most impious man of all, … you say there is an ancestral law—yet the stele next to which you stand says, "if someone sets a suppliant's branch in the Eleusinion, he is to incur a fine of 1,000 dr."'[16]

13. Dem. 21.175: Demosthenes, speaking in his own persona in a speech of 347/6, says: 'The law (*nomos*) about the Mysteries is the same as this one about the Dionysia, and was enacted later than it.'[17]

Among the first six inscribed texts listed above, only the preserved content of three (nos. 1, 3, and 6) are manifestly and exclusively regulations for the Mysteries: the fragmentary *IE* 7 (*IG* I^3 231) and the more extensively preserved *IE* 19 (*IG* I^3 6) and *IE* 250 (*SEG* 21.494). Findspot and analysis of *IE* 13 (text no. 2) suggest that the regulations recorded there were enacted for the celebration of the Mysteries.[18] Two texts (nos. 4 and 5) found at Eleusis and containing language suggestive of regulations are too scrappy to be useful.

I should like to begin with a brief discussion of *IE* 13 (*IG* I^3 5), dated by different scholars between 508 and the 470's, which is more or less a complete text, with only five lines and bearing mostly obvious restorations.[19] It presents an 'abbreviated decree': it begins with a prescript ('it was resolved by the boule and demos when Paraibates [was secretary]') and is followed by instructions for the 'hieropoioi Eleusinion'—probably hieropoioi from the deme Eleusis rather than 'of the festival Eleusinia'; the hieropoioi are to sacrifice specified victims for specific gods and goddesses in the courtyrard at Eleusis during the festival.[20] Abbreviation is indicated by the absence of regularly inscribed details: the proposer's name, the source of funds both for the sacrifices and for the publication of the decree, and the place of publication.[21] Prott had argued in 1899 that the gods and details of sacrifice indicated that the celebration was the Eleusinia;[22] Clinton plausibly argued eighty years later that the celebration was the Mysteries on the basis of the findspot of the large central fragment (between the Telesterion and the Lesser Propylaea at Eleusis) and the simple reference to the 'the festival' in line 5 (cf. *IG* I^3 386. III 157); the

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the branch was put on the altar on that very day, which is the day after the Mysteries; no, it was put there *during* the Mysteries.

16 And. 1.116: Ὦ Καλλία, πάντων ἀνθρώπων ἀνοσιώτατε, πρῶτον μὲν ἐξηγῇ Κηρύκων ὤν, οὐχ ὅσιον <ὄν> σοι ἐξηγεῖσθαι· ἔπειτα δὲ νόμον πάτριον λέγεις, *ἡ δὲ στήλη παρ' ᾗ ἕστηκας χιλίας δραχμὰς κελεύει ὀφείλειν, ἐάν τις ἱκετηρίαν θῇ ἐν τῷ Ἐλευσινίῳ.*

17 Trans. MacDowell 1990. Dem. 21.175: ἔστι δ' ὁ αὐτὸς νόμος τ ᾧδε τ ᾧ περὶ τῶν Διονυσίων ὁ περὶ τῶν μυστηρίων, κἀκεῖνος ὕστερος τοῦδε ἐτέθη.

18 Clinton 1979.

19 Dates are based on lettering: Jeffery 1948: 102: after the reforms of Cleisthenes (adding the form of the 'preamble' as suggestive of the early date); Clinton thinks the lettering could be as late as the 470's.

20 Clinton 1979: 4 n. 11.

21 Clinton 2008: 12.

22 Prott 1899: 249-56.

sacrifices envisioned in the decree, however, were not the main ones at the Mysteries, but the [προτέ]λεια or 'preliminary sacrifices'.[23] The inscribed polis regulations, then, pertain to one segment of the Mysteries. The 'abbreviated decree' may be noteworthy for its skilful streamlining, an expert act of excerpting, not a word wasted.

The monument, however, may have been more noteworthy than the document. The text is inscribed on one of the narrow sides of a rectangular slab which has a roughly finished bottom (suggesting it lay on the ground); the top surface, on its left and right sides, has two circular cavities and, at its center, a rectangular cutting. Jeffery thought it was an altar top and that the cuttings were connected with ritual offerings;[24] Prott had thought it was the lower slab of a sacrificial table supported by columns that were inserted into the circular cavities;[25] Clinton thought the cavities were too large for table supports but suitable for dedicatory columns topped with statues of Demeter and Kore. He also thought that the rectangular cutting in the center of the slab would support a hollow, vertical object, made of metal (because of the thinness of the channel), and probably of bronze.[26] Finally, he hypothesized what that bronze object might be: 'The cutting would be just right for a four-sided bronze stele of the sort published by Stroud, *Hesperia* 34, 1963, pp. 138-43 (ca. 450 B.C.) … If this is correct, we may suppose that an earlier (perhaps Solonian) sacred law was inscribed on this bronze stele, front and back, with lengthy regulations, and the regulations on the base should therefore represent a new modification or addition.'[27] The fact that Stroud had identified the fragmentary bronze stele as a *lex sacra* must certainly have abetted Clinton's imagination.

Imaginative speculation, yes, but it is based on physical findings and brings to our attention that the laws and decrees of Athens were not always written on marble stelai; the 'abbreviated decree,' after all, is inscribed on an object that is definitely not a stele and may have been an altar or—just maybe—an inscribed base carrying a non-extant law. Even if we cannot know more tangibly the object that was wedged into the rectangular channel of its surface, surely the text of the decree that we do possess represents an addition to or modification of already existing regulations: why else was it decreed and then published in the sanctuary? In fact, almost any piece of legislation that provided regulations for the cult must be an 'addition' or 'modification'.

I turn now to our earliest extant document, *IE* 7 (*IG* I^3 231), ca. 510-500. It consists of four fragments inscribed in boustrophedon style, with letters that Jeffery thought agreed 'with those on certain public monuments usually dated in the late

[23] Clinton 1979; 2005: 16; 2008: 32-3.
[24] Jeffery 1948: 91 and n. 20.
[25] Prott 1899: 242-44.
[26] Clinton 2008: 12; Prott 1899: 243 suggested metal or wood.
[27] Clinton 2008: 32. Ibid., p. 37: 'The original law [the one on the bronze stele] and the full form of the decree no doubt mentioned the name of the festival.'

sixth or early fifth century'; the thickness of the fragments suggested that the inscribed object was originally an altar that carried instructions on its vertical face.[28] The text contains word-fragments safely suggesting that its contents concerned sacrifices (barley) and activities of the priestess and the *phaidyntes* of the Two Goddesses at the Mysteries.[29] Perhaps more noteworthy than the word-fragments themselves is their boustrophedon lettering. Jeffery has pointed out that Attic evidence shows that by ca. 530 the practice of writing consistently from the left margin to the right was prevailing.[30] I quote Jeffery's reflective explanation for the use of boustrophedon writing both here and in a similar document dated ca. 500-480, both inscribed long after boustrophedon had gone out of fashion:

> 'They are religious documents, and so may provide an example of religious conservatism such as would not prevail under the same circumstances for secular matters. They deal with the ritual of one of the oldest sanctuaries of the State, and probably replace earlier documents, dealing with the same matters, which were themselves inscribed boustrophedon. It is even possible that our inscriptions—particularly Block I [*IE* 7], which has the air of a homogenous document—may be literal copies, transcribed from earlier texts on wood or poros.'[31]

Religious conservatism, then, easily explains the format, the boustrophedon style, and the probably compilatory contents. While Jefferey's description of the contents (as opposed to the style and form) of *IE* 7 and the other document (now *IG* I^3 232) depend on far too much restoration or imagination to stand scrutiny ('the air of a homogenous document'!), another Attic example, exemplifies the trends she noted. For this, however, we must skip five decades to the mid-fifth century to an opisthographic stele inscribed by the deme Paiania (*IG* I^3 250).[32] Its upper part is broken off; its partially extant (?) first fourteen lines preserve a decree of the deme;[33] what follows is some sort of sacrificial calendar, providing apparently similar regulations about sacrifices, many in the Eleusinion (probably the City Eleusinion,

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[28] Jeffery 1948: 88 (lettering); 91 with n. 18 (argument for altar rather than stele). Clinton 2005 no. 7 reports three fragments, but see Plate 29, no. 66 in *Hesperia* 1948 (Jeffery).

[29] This is the earliest mention of the *phaidynte*s ('Brightener'), the official who maintained the brilliance of cult statues in the Telesterion: see Clinton 2008: 12-13.

[30] Jeffery 1948: 103.

[31] Jeffery 1948: 103. She continues with description of Block II (now *IG* I^3 232) which does not for certain pertain to the Mysteries, or at least not exclusively: 'But the continual repetition of similar detail on most of the fragments of Block II, and the division into paragraphs and clauses, suggest that it may rather have formed a compilation of various shorter boustrophedon inscriptions dealing with the different sacrifices to be performed in the temenos; that it is, in fact, an early attempt to synthesize various sacrificial instructions into a sort of code, written boustrophedon from religious conservatism because the inscriptions from which it was made up were written in this way.'

[32] *Editio princeps*: Peek 1941: 171-81, photo, Plate 66; *SEG* 10.38.

[33] *IG* I^3 editors have reversed Peek's Side A and B (see Peek's discussion: 179) so that the 'decree' portion of the text is now Side A.

and apparently not for the Mysteries).[34] The text shows no sign of editing nor any rationale. Peek, the first editor of the text, suggested that at one time each of the individual provisions had stood on its own; a need was subsequently perceived for collecting them together into a 'code of sacred law'; the redaction was not, however, systematic, and individual regulations were collected together however they were found.[35]

ii. IE *19: a first codification of regulations for the Mysteries?*

The comparandum from the deme Paiania sets us in the mid-fifth century or possibly a bit later but outside the polis center and outside our small dossier of decrees about the Mysteries. I now would like to return to this dossier, to *IE* 19 (*IG* I^3 6), a polis decree dated ca. 470-60, and the most comprehensive extant forerunner of *IE* 138. Four sides of the rectangular stele were inscribed; on the 'fourth side', Face D, only a few letters can be read; Meritt's observations about the different method used here for inscribing its round letters might suggest that Face D is a later text, but nothing firm can be said—Clinton reads but fifteen letters securely.[36] The rather fragmentary Face A appears to regulate access to the sanctuary—e.g., access seems to be denied to cities that have refused to hand over an inhabitant who owes money to Athens (A 30-32).[37] Although there is nothing preserved on Face A that explicitly associates these exclusions to the time of the Mysteries, it seems that only the occasion of the Mysteries could anticipate their need. Face B is largely taken up with the sacred truces or spondai; Clinton summarizes: 'First it is specified *to whom* the spondai are applicable (lines 10-19); second, the *time* of the spondai for the Greater Mysteries; third, *where* the spondai are to be in effect; and finally the time of the spondai for the Lesser Mysteries.'[38] Clinton further summarizes the preserved stoichedon section of Face C: it 'regulates various aspects of access to the sanctuary for the initiates, including the cost of admission; and it states who is to administer the admission fees and the *aparche*.'[39] Observed thus, the document is a rational presentation of regulations, beginning with presumptive exclusions, proceeding to the preparations for the Mysteries via the spondai, and finally more localized regulations for the administration of the rites. My characterization of the law's presentation of provisions as 'rational' pertains not merely to what can be perceived as a temporal but overlapping progression (preliminary exclusions anticipating the festival, the duration of spondai before the Mysteries begin in Boedromion and

[34] Whether the Eleusinion is local or the city's is debated: see Parker 2007: 332-3 and Whitehead 1986: 196-7, both with earlier bibliography.

[35] Peek 1941: 180.

[36] See n. 11 above.

[37] For different interpretations and texts of A 36-43, see Meritt 1946: 250; Gauthier 1972: 158; Cataldi 1981: 109-10.

[38] Clinton 2008: 40.

[39] Clinton 2008: 41.

continuing into the following month of Pyanopsion, and the period of the rites during Boedromion), but also a spatial progression, from the international plane of activity to the local grounds of the sacred gene. The law is administrative in character and looks to orderly conduct and accounting; the motivational force driving the law may well be economical—with its exclusion of debtors and attention to the fees of initiates that produces the sacred fund of the Two Goddesses and that will be at the disposal of Athenians.

This is a generalized survey of the law's provisions and a closer look may raise problems for the progression that I have just posited. One area of focus is the claim that localized regulations for the administration of the rites is reserved for Face C. Observe that at the end of Side A, offences of an international nature are under discussion; plausible but uncertain restoration of A 36-40 suggests that seizure of Athenians during the truce is prohibited, unless the individual has been convicted in a local court or has been discovered among the enemy.[40] There follows, perhaps, as Gauthier thought, a prescription that covered all previously specified international arrangements, 'if any city disagrees, then that city is to have recourse to justice at Athens ἀπὸ χσυ<μ>βολῶν' (40-43).[41] Face B then begins. Nothing can be made of the first three lines (fragment d) that precede the lacuna; after it, there follows, in ll. 5-7, mention of a simple [penalty?] for an unintentional [offence?] and then a double [penalty?] for an intended one. If indeed penalties and offences are under discussion here, it is possible, as Hicks in 1874 and Böckh in 1828 thought,[42] that the offence is *blabe*.[43] But where are the offences committed? Are they committed at and during the festival and are we suddenly thrust into a list of festival infractions—or are they committed in an international arena before the festival begins, between foreigners or between foreigners and Athenians abroad (?) and are they to be treated in Athens—after the festival? I think we can only conjecture on the basis of the way the text proceeds. In lines B 8ff., the truces are defined for the mystai and epoptai, for followers, Athenians and foreigners, and this topic continues to the very end of Side B. It seems unlikely that in the gap between the international arrangements at the end of Side A and the arrangements for simple and double penalties in B 5-7, a new section appeared, devoted, e.g., to infractions committed by initiates during the Mysteries. It is simply out of order. I propose that the penalties mentioned in B 5-7 are for offences from last year's festival, possibly arising from damages incurred during the journey to and from Eleusis, e.g., damages due to faulty repairs to bridges and roads and other permanent or temporary construction. For comparison, I call attention to *IG* II^2 1126, an Amphiktyonic law of 380/79 in which the hiaro-

[40] Clinton 2008 ad loc.
[41] Gauthier 1972: 158.
[42] Hicks 1874: 6, col. 2 and Böckh *CIG* (1828) I no. 71.
[43] Cf. Dem. 21.43.

mnamones are 'to repair the bridges a[nd ensure in the future that] no injuries are caused and oversee the public walkways' (41-42).[44]

We have moved a great distance away from the deme Paiania and earlier conservative boustrophedon instructions and compendia. Do we have a 'codification of law' here in *IE* 19 (*IG* I^3 6)? Certainly we have more or less comprehensive regulations, so far as the extant text allows us to conjecture;[45] I would also argue that its 'rationality' is a seal of its codifying character. But three points demonstrate that the document is not autonomous; if a code must stand on its own, this one does not. First, the provision regarding the aparchy (if properly restored) requires prior information to be fully comprehensible: 'And of the sacred fund <from> the [apar]che / it is permissible for the Athen[ians to / borrow] whatever they want [just] / as <they do> from [the fund] of Athena / on the Acropolis. (C 32-36). Second, personnel are taken for granted (e.g. the 'hearth initiate' in C 25 and the hieropoioi in C 37). Third, the final non-stoichedon last four lines of Face C with its (probably) different hand are an addendum: three more individuals (priests and a herald?) are added who are to collect fees from initiates. It is impossible to tell when the addendum was inscribed: soon after what preceded—was it later the same day, a week later, a year? At some point, earlier or later, the new 'code' was thought incomplete and subsequently revised.

We are, of course, missing at least a quarter of the document,[46] but no additional text could change our characterization of C 47-50 as an 'addendum'. And nothing on Face A or B suggests that the personnel would have been given an introduction there; the 'code' of 460 (*IE* 19) may have relied upon a tradition of shared knowledge; as the rites were celebrated year after year, there was no need to define the 'hearth initiate' and to relay the mechanism of the appointment of the hieropoioi (i.e., whether they were drawn from the Eleusinians as they appear to be in the earlier decree, *IE* 13, or were appointed by the polis as seems likely here).

The aparche, the annual tithe from the grain harvest to the sanctuary of Demeter and Kore, in *IE* 19 Face C 32-38 is more problematic:

τô δὲ hιερô̂ ἀργυρί[ο τῆς ἀπαρ]-
χῆς ἐχ[σ]ε̣ῖναι Ἀθεν[αίοισι χρ]-
[ῆ]σθαι hó̱[τι] ἂν βόλο[νται καθά]-
35 περ τô τῆ̣ς Ἀθεναία[ς ἀργυρίο]
τô ἐμ πόλει· τὸ δὲ ἀρ[γυρίον τὸ]-
ς hιεροποιὸς τ̣[ὸ] το[ῖν Θεοῖν ἐ]-
[μ] πόλ̣ει ταμιεύεσθ[αι ·6…]

[44] Cf. the bridges in *IE* 41 (*IG* I^3 79, 422/1); *IE* 137.47 (*IG* II^2 1540), 370-60?); and *IE* 95 (*IG* II^2 1191, 322/1).

[45] Clinton 2008: 21 and 41 surely is right to hypothesize that after the time limits for the spondai are presented in *IE* 19B 8-47, provision was made for their announcement; he conjectures that the matter was taken up at the beginning of Face C.

[46] See n. 11.

> 'And of the sacred fund <from> the apar]che / it is permissible for the Athen[ians to / borrow] whatever they want [just] / as <they do> from the fund of Athena / on the Acropolis. And <as for> the fu[nd / of the] T[wo Goddesses o]/n the Acropolis, [th]e hieropoioi / are to be the treasurers.' (C 32-38, text of Clinton 2005)

The 'sacred fund' (*hieron argurion*) of line 32 is surely the same 'fund' that is administered by the hieropoioi and that belongs to the Two Goddess in lines 36-38; the sacred fund specifically includes the fees collected from the initiates (minus the 1,600 drachmas reserved for the expenses paid out by the priestess, Face C 14-20). If '[*apar*]*ches*' is properly restored in l. 32 (and if the dotted *chi* in the word is secure), then Athenians were here granted permission to borrow sacred money from the aparche (or from its surplus?), but apparently *not* from the rest of the sacred fund belonging to the Two Goddesses. This is odd and irrational.[47] Syntax is odd; we miss the preposition ἀπό to govern aparche as in the similar expression that occurs three times (once heavily restored) in *IE* 45 (*IG* I^3 391): ἀργύριον ἀπὸ τô σίτο τῆς ἀπαρχῆς τοῖν θεοῖν.[48] And by 'irrational', I mean that the provision steps outside the parameters of the preserved text's otherwise rational explication of regulations for the Mysteries: for while the aparche is connected with the sanctuary, it does not appear to be connected specifically to the Mysteries; on the other hand, the sacred fund of the Two Goddesses *is* explicitly connected with the Mysteries, insofar as the fees collected from initiates are said to belong to the Two Goddesses in Face C 14-20. Aparche is out of place.

For a connection of the aparche with the Mysteries *per se*, we might look to another inscription for assistance, as indeed Clinton did to defend Meritt's restoration of [aparch]es in line 32.[49] This is *IE* 28a and b, the two copies of the 'first fruits decree', one from Eleusis and the other from the Acropolis; the date is disputable, but I accept (with Clinton) the mid-430's as the most plausible. By this decree, 'all Athenians and their allies are to offer first-fruits and all Hellenic cities that wish are urged to join in this offering, in recognition of Demeter's—and Athens'—beneficence in sharing the gift of grain.'[50] The first fruits are to be offered to the Two Goddesses according to ancestral custom (κατὰ τὰ πάτρια) and the Delphic oracle (4-5); heralds selected by the boule are to be sent to the cities to make the announcement of the decree, on this occasion as soon as possible but in the future at a time of its choosing (22-24); the hierophantes and daidouchos are [to summon] the Hellenes *during the Mysteries* to sacrifice the first fruits according to ancestral custom and the Delphic oracle (24-26). *IE* 28, l. 21 (apud fin.)-26 are as follows:

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[47] And slightly perilous since this is the first occurrence of aparche in a fifth century document.

[48] Cf. *IE* 138.A48.

[49] Meritt 1945: 74 and 77 restored [*aparch*]*es*; apparently at this time he saw no comprehensible letter strokes where the letter *chi* stood (cf. Meritt 1946).

[50] Cavanaugh 1996: 29.

[κ]έρυ-
[κα]ς δὲ hελομένε hε βολὲ πεμφσάτο ἐς τὰς πόλες ἀγγέλλοντας ᵛ[ᵛ]
τ̣[άδ'] hεφσεφισμένα τôι δέμοι, τὸ μὲν νῦν ἒναι hος τάχιστα, τὸ δὲ λ̣-
οιπὸν hόταν δοκε͂ι αὐτε͂ι. κελευέτο δὲ καὶ ho hιεροφάντες καὶ [ὁ]
25 δαιδ̣ὸχος μυστερίοις ἀπάρχεσθαι τὸς hέλλενας τô καρπô κατὰ̣
τὰ πάτρια καὶ τὲν μαντεί̣αν τὲν ἐγ Δελφộν…

The offering of the first fruits to the Two Goddesses was an 'ancestral custom'—at least from the perspective of the year in which the 'first-fruits decree' was enacted; it is conceivable that it was also 'ancestral' or 'traditional' in 460, the presumed date for *IE* 19. But even if that is so, there is still no connection between the Mysteries and the aparche that rationally can connect it with the decree in 460[51]—for the first-fruits were neither collected nor sacrificed during the Mysteries.[52] Clinton hypothesizes, however, that the hierophantes and daidouchos had traditionally made the announcement, a summons to fellow Athenians, *during the Mysteries*, to offer first-fruits at the coming harvest;[53] nevertheless, a link between a 'traditional announcement' during the Mysteries for the collection of the aparche at a later date and the announcement that the Athenians may now use the sacred fund from the aparche is very loose. If 'aparche' did appear in Face C 32-3 of *IE* 19, then the provision may have *implicitly* articulated a change: whereas *before* this time (i.e., before 460) the Athenians could use the sacred fund accruing from the initiates' fees, *now* they are to use the sacred fund from the aparche. Such implication, however, is exceedingly opaque and the restoration is most likely wrong; the Athenians are being granted the privilege of using the sacred fund of the Two Goddesses, and that fund accrues from the fees of the initiates.

Before I turn to the fourth century law, I would like to discuss one of the literary sources for a law about the Mysteries and its possible fit with *IE* 19. Indeed Jameson, who edited the law under discussion as *IG* I^3 6 (Clinton's *IE* 19), reported that he and Lewis agreed with Sauppe's observation that the regulation cited by Andokides at 1.116 belonged to this law.[54] Kephalos, according to Andokides, had reproached Kallias: Ὦ Καλλία, πάντων ἀνθρώπων ἀνοσιώτατε, … νόμον πάτριον λέγεις, ἡ δὲ στήλη παρ' ἣ ἕστηκας χιλίας δραχμὰς κελεύει ὀφείλειν, ἐάν τις ἱκετηρίαν θῇ ἐν τῷ Ἐλευσινίῳ ('Oh, Kallias, you most impious man of all, … you say there is an ancestral law—yet the stele next to which you stand says, "if someone sets a suppliant's branch in the Eleusinion, he is to incur a fine of 1,000 dr." '). The fine is very high and yet, as cited, is not assigned to any overseeing magistrate or judicial procedure; probably this is an 'abbreviated citation' by

[51] Note that the sacrifice of first fruits is not bid to be held 'during the Mysteries'; it is the announcement of the sacrifice by the two officials that is to be executed at that time; see Parker 2005: 331 n. 19.

[52] Clinton 2008: 6.

[53] Clinton 1974: 15, col. ii.

[54] Sauppe 1861-2, Index Schol. Göttingen; non vidi.

Kephalos/Andokides. In severity, the penalty resembles the 1,000 dr. fine for negligent magistrates or cult personnel (cf. Face C line 29 of *IE* 19, where offending priestly gene are to be penalized [εὐθύνεσθαι] perhaps 1,000 dr.) and may suggest its 'antiquity' (= an early fifth century date). There is good reason, then, to think that the regulation could have originated in the early fifth century, and so, in theory, could have appeared in the text of *IE* 19 (*IG* I^3 6), but it is difficult to see where it would have appeared on Faces A-C if the law is as 'rational' in its presentation as it seems to be and as I've argued. It could not have stood on Face A, as the regulations there seem to have to do with access to the sanctuary at festival time for foreigners; adjudicable matters treated on Face A are international in character or evolve from disputes between Athenians and foreigners before the Mysteries take place—they are not local infractions, committed *during* the Mysteries. Nor is the regulation likely to have stood on Face C, which is somewhat promising at first, since it deals, in part, with the fees paid by initiates, and so might have included a segment regarding their conduct—but there is not enough space for an additional rule. Face B may also seem promising, especially because after the first three lines (*fragment d*), there is a lacuna of unknown length; but the consistently rational presentation of topics suggests, as I have argued, that offences mentioned in this portion of the law are likely to have continued the international character of Face A, and to have been committed before the festival began. If the prohibition against the suppliant branch appeared in this law, then it may have appeared on Face D; this is, however, pure speculation.

We might note other 'absences' as well: no sanctions against disorderly conduct during the procession and celebration appear in this law—no penalties, e.g., against the akosmountes (cf. *IG* I^3 82.26-30, the celebration of the Hephaestia, 421/0; *IE* 138 A 32-33) or against those 'who do not obey orders' in the procession (cf. *IG* II^2 334.31-35, Panathenaia, 335/4?); there are no rules and directions regarding the procession from Eleusis to Athens and back. Such rules may also have been included together on Face D (as they seem to be included together on the heavily restored *IE* 250, a decree of the second or first century B.C., but of course we cannot know for certain.

This 'exercise' in speculation regarding the possible fit of Kephalos' law with *IE* 19 leads to some final speculation about Kephalos' stele. Even if the law about the suppliant's branch did appear, *exempli gratia*,, on Face D of the stele now designated *IE* 19 (fragments of which were found near the city Eleusinion), it would not necessarily follow that the *stele* pointed out by Kephalos was the same as that on which *IE* 19 was inscribed—perhaps *IE* 19 had been revised and a new 'codification' of rules for the Mysteries came into being that is no longer extant; Kephalos' stele, then, could be the 'new' codification at a later point in the fifth century. If, however, *IE* 19 and Kephalos' stele are one and the same and if Kephalos points out a stele with a law that was operative in 400 before Andokides was put on trial, it means that the law survived the scrutiny of the revision of the

Athenian lawcode at the end of the fifth century. But whether a part of the same law as *IE* 19 or part of a new codification after the revision, Kephalos' law was inscribed on a stele and not on a wall in the stoa basileus (unless it had double or triple publication: publication in the Eleusinion in Athens and at Eleusis, and in the stoa basileus).

To conclude this section: the questions posed by the literary source (were offences committed by initiates during the Mysteries covered by this law?) opens up the question of *IE* 19's comprehensiveness; without regulations for conduct, the extant document is not a full code; possibly such regulations were inscribed on Face D; possibly they were appended later; or published elsewhere; we cannot tell. On the other hand, though we remain uncertain about the comprehensiveness of the document, we can conclude, I think, that *IE* 19 is a coherent and rational set of regulations for the festival with both an international and local perspective, relying on a tradition of shared memory regarding well-known religious personnel and officials, and showing but one sign of 'second thoughts' by the appending of the addendum. Whether it is a compendium of earlier regulations or a first-time statement of many of them, it is a sophisticated polis document, showing the hand of expert lawmakers skilful in compiling provisions rationally and driven by a concern for the financing of the festival. In this regard, it resembles fourth century 'administrative laws' mentioned earlier.

iii. A late fifth century codification of regulations for the Mysteries?

It is difficult to believe there was no new codification of regulations for the Mysteries at the end of the fifth century. And. 1.111 mentions a 'Solonian law': there was to be a sitting of the boule on the day after the Mysteries (ἡ γὰρ βουλὴ ἐκεῖ καθεδεῖσθαι ἔμελλε κατὰ τὸν Σόλωνος νόμον, ὃς κελεύει τῇ ὑστεραίᾳ τῶν μυστηρίων ἕδραν ποιεῖν ἐν τῷ Ἐλευσινίῳ). The law, however, is not 'certainly' Solonian. If it were 'Solonian', we would have to treat it as another regulation 'absent' from *IE* 19, in which case the 'Solonian law' as a singleton may have been revised or allowed to stand (by itself?) at the end of the fifth century; if we assigned it to (the now notorious) Face D of *IE* 19, then we would have to speculate how the term 'Solonian' became attached to it. I shall return to the law cited at And. 1.111 in due course. A partially published fragment from the Agora (Ag. I. 7471) mentions (on its Face B) the Epidauria, a festival celebrated on the third day of the Mysteries, starting in the year 420; Clinton suggests, on the basis of its physical disposition, contents, and lettering, that the fragment was part of a sacred calendar that belonged to the laws edited by Nikomachos; it was a part of the Code that 'surely included all the sacrifices at the Mysteries which at that time were regulated by the State.'[55]

[55] Clinton 1980: 274 and n. 24; the fragment is discussed by Gawlinski 2007: 46, n. 35; part of it is published by Clinton in Hägg 1984: 17-34. An interesting comparandum is *IE* 175 (*IG* II^2 1363): see Clinton's analysis (2008: 171): he argues it is an 'an "Eleusinian"

Now, if, as seems was the case, the sacrifices from the calendars of various public sanctuaries had been compiled into a polis sacrificial calendar, and if, as is demonstrable from Ag. I. 7471 (if such a thing needed physical demonstration at all), the sacrifices from the Mysteries were included in that calendar, it would be reasonable to think that the time was apt for codifying other regulations about the Mysteries as well. It may have been apt, but there is no evidence and it may have been too great an undertaking at that time.[56]

iv. IE 138: a codification?

At the beginning of this essay, I gave a brief physical description of the stele inscribed with the fourth century law on the Mysteries, and I quoted Clinton's claims for it as possibly 'the most comprehensive law on the Mysteries that had been issued since the time of Solon' (1980: 273); I also quoted his speculation for its motivation, sociological at root. Clinton has made a good case for the law's rational presentation of topics:

> 'the announcement of the Mysteries and the selection and sending of spondophoroi to the other Greek cities (A.1-13), the limits and nature of the Sacred Truce surrounding the festival (lines 14-17), the behavior of the cities toward the spondophoroi and the report of the latter on their mission (lines 20-26), regulations concerning *myesis* (lines 27-29), the appointment of the epimeletai, their duties and those of the basileus in managing the festival (lines 29-38), the duties of the exegetes before the festival (lines 38-40), an unclear selection by lot (lines 41-42), and (after a long lacuna) regulations pertaining to the initiates (B.d, f) and procession (B.g), legal procedures and penalties for various infractions (B.h, a), and the general responsibilities of the epistatai.'[57]

Indeed, although some of these topics are poorly preserved, the scope of the law is grand; the only topic not represented, so it seems, concerns the festival coinage that was produced at this time—and of course that may have been addressed in the lacunose sections.[58] If, as I have suggested in my discussion of *IE* 19, a 'rationality' both of presentation and motivating principle are characteristic of legal codification, then Clinton's description here and earlier depicts precisely that kind of presentation and motive.

In this final section, I want to point out, first, some specific details of codification, and then, a problem with the more general portrayal of the 'code'. In

excerpt from a list of expenses for all Polis festivals', that is, an excerpt of 'the general state calendar.'

[56] There is evidence for change in the financial administration of the sanctuary: *IE* 30 (*IG* I^3 32, *SEG* 10.24), dated to 449-47 by Lewis but with greater plausibility to 432/31 by Mattingly 1961 and Cavanaugh 1996: 19-27, is a rider to a proposal of the boule; it creates a board of epistatai to oversee the property of the Two Goddesses; the hieropoioi no longer control the sacred fund.

[57] Clinton 2008: 117.

[58] Clinton 2003; Kroll 1993.

looking at the details, I am completing the first of the methodological tasks (mutatis mutandis) proposed by Davies, seeing *IE* 138 as part of a (small) corpus of documentation; and by raising an objection to typifying *IE* 138 as a codification, I am taking up the second task: seeing the law 'within a framework of the revision of law which moves both towards and away from codification.'[59]

Clinton makes the first task easy, since he has pointed out ways in which the law reflects and absorbs earlier legislation on a detailed level (beyond the broad similarity of contents, namely the spondai and regulations for initiates):

(a) In *IE* 19 B 9-16, the truces are said to be for the mystai, the epoptai, their followers, the property of foreigners, and all Athenians; on the basis of letters at the beginning of *IE* 138 A 15, it may be possible to restore some portion of that same list; indeed, the archaic spelling of epoptai in *IE* A 15 'looks like part of an excerpt from an old law.'[60]

(b) In *IE* 138 B 13-22, it is difficult to identify the context; some of the language (esp. ll. 18-19) recalls the preliminary exclusions of *IE* 19 A, and the mention of a simple [penalty] and a twofold one for intentional [offences] in 138 B 22 recalls *IE* 19 B 6-7.

(c) Some of the penalty language seems to hearken back more broadly to the fifth century: e.g., in 138 A 39, the basileus and his assistants are to be penalized if they fail to exact lawful penalties from the *akosmountes*; the securely restored εὐθύνεσθαι with a set number of drachmas without naming a magistrate to exact the penalty recalls numerous fifth century inscriptions and may be an archaism.[61]

These are vague instances where the two laws seem to brush against each other, where the later law may be repeating the earlier law or revising it in ways that are mostly opaque to us. Novelties, too, appear; for instance, in *IE* 138 A 29-31, new officials for the Mysteries, the epimeletai, seem to be authorized for the first time. Officials called the epistatai also appear (A 45, restored and Ba 8). In an earlier inscribed text, *IE* 30 (*IG* I^3 32, *SEG* 10.24), probably to be dated to 432/1, the board of epistatai had been created to oversee the property of the Two Goddesses and thus perform the tasks formerly carried out by the hieropoioi as in *IE* 19; if there were no late fifth century codification of regulations for the Mysteries, then they may appear here for the first time in a 'code' for the Mysteries. There may be other novelties as

[59] See nn. 7 and 8 above.

[60] Clinton 1980: 277, acknowledging Meritt 1945: 78 and Schweigert *AJA* (50) 1946: 287-88.

[61] Piérart 1971: 558 thought that the use of εὐθύνεσθαι had become obsolete in fourth century inscriptions and so would classify its appearance as archaizing; while that is plausible in the case of *IE* 138, it is not so in the law on silver coinage, *SEG* 72.28; on the other hand, the use of εὐθύνεσθαι appears much less frequently in the fourth century. Other 'archaisms' of procedure: reference to separate jurisdictions of the nine archons in 138 A 38 (? cf. Dem. 23.28 and [Dem.] 43.71); φαίνειν in A 28 (cf. *IG* I^3 4 B 24 and 27; *IG* I^3 46 A 5).

well, and I should like to suggest one before I begin to unravel this portrait of a 'code.'

To return to *IE* 138 Ba 14-22, Clinton thinks that the date mentioned in 138 Ba 21 should be preceded, in painted letters, by the words Βοηδρομιῶνος μετά, so that we have the twenty-fourth day of the month, thereby providing the day after the festival when our literary source, mentioned earlier, says there was a meeting of the boule for presenting offences committed during the Mysteries (And. 1.111).[62] If this is correct, then the provision for the boule's sitting, whenever it entered the regulations for the festival (certainly before 400 B.C.) was still in effect in the mid-fourth century. Notice also that in the course of these same few lines (138 Ba 14-22), we are informed that during this period (presumably during the sacred truces), there are to be no dikai (Ba 15); notice, too that there are provisions about private debtors and another about a city—presumably not Athens—and another about a person who may have incurred a debt while abroad (Ba 19-20); unfortunately, the text breaks off, but it does seem that the context is international and the concern is with foreigners and cities who owe money. A speculative reading of this part of *IE* 138 Ba may suggest that we have a reference to the law cited by Demosthenes at 21.175. Demosthenes, speaking in his own persona in a speech of 347/6, says: 'The law (*nomos*) about the Mysteries is the same as this one about the Dionysia, and was enacted later than it.'[63] Demosthenes had cited two laws about the Dionysia in §§8 and 10 of the same speech. He paraphrases the first one in §9: 'That is the law, men of Athens, authorizing *probolai*. As you heard, it specifies the convening of the Ekklesia in the precinct of Dionysos after the Pandia, and at this meeting the *proedroi*, after dealing with the arrangements made by the archon, are to deal with any offence or illegal act concerning the festival.'[64] He paraphrases the second law in §11, 'Notice, men of the jury, that, whereas the previous law specified *probole* against those committing offences concerning the festival, *in this one you created* probolai *also against those exacting overdue payments or taking anything else from a person or using violence*.'[65] It is difficult, on the basis of Demosthenes' speech, to

[62] Clinton 2008: 123.

[63] Trans. MacDowell 1990. Dem. 21.175: ἔστι δ' ὁ αὐτὸς νόμος τῷδε τῷ περὶ τῶν Διονυσίων ὁ περὶ τῶν μυστηρίων, κἀκεῖνος ὕστερος τοῦδε ἐτέθη.

[64] Trans. MacDowell 1990. The law cited at Dem. 21.8: Τοὺς πρυτάνεις ποιεῖν ἐκκλησίαν ἐν Διονύσου τῇ ὑστεραίᾳ τῶν Πανδίων. ἐν δὲ ταύτῃ χρηματίζειν πρῶτον μὲν περὶ ἱερῶν, ἔπειτα τὰς προβολὰς παραδιδότωσαν τὰς γεγενημένας ἕνεκα τῆς πομπῆς ἢ τῶν ἀγώνων τῶν ἐν τοῖς Διονυσίοις, ὅσαι ἂν μὴ ἐκτετισμέναι ὦσιν. For discussion of the law's authenticity, see Scafuro 2005.

[65] Trans. MacDowell 1990. The relevant portion of the law cited at 21.10 is: μὴ ἐξεῖναι μήτε ἐνεχυράσαι μήτε λαμβάνειν ἕτερον ἑτέρου, μηδὲ τῶν ὑπερημέρων, *ἐν ταύταις ταῖς ἡμέραις*. ἐὰν δέ τις τούτων τι παραβαίνῃ, ὑπόδικος ἔστω τῷ παθόντι, καὶ προβολαὶ αὐτοῦ ἔστωσαν ἐν τῇ ἐκκλησίᾳ τῇ ἐν Διονύσου ὡς ἀδικοῦντος, καθὰ περὶ τῶν ἄλλων τῶν ἀδικούντων γέγραπται. For discussion of the law's authenticity, see Scafuro 2005. MacDowell 1990: 393 plausibly suggests that 'the provisions for *probole*

envison the legal process; was the procedure that followed offences committed at the Dionysia *exactly the same* as that to be followed after the Mysteries—or was it the same, *mutatis mutandis*? Did the proedroi after the Mysteries summon the basileus for a report of offences—and not the archon as happened after the Dionysia? And did the proedroi call a meeting of the boule—and not the ekklesia (see *AP* 44.2-3)? And did the boule then vote on the *probole*? There is no demonstrable evidence. Demosthenes at 21.175-77 records an apparently recent case where a *probole* was brought after the Mysteries against Euandros the Thespian for distraining upon Menippos the Karian during the festival days. Since the case was a recent one, the law about *probole* was still in effect a few years before 347/6; but we do not know when it was instituted. Perhaps the procedure for the offence of distraining upon debtors was mentioned on Face B of *IE* 138. Note, however, that there is no mention in the extant portions of this document that the basileus or the epimeletai are to bring the *akosmountes* who deserve a greater penalty to the boule; they are brought, it seems, straight to the Heliaia (*IE* 138 A32). The only mention of the boule appears in A 29, where, if we accept Stumpf's proposal, an eisangeltic (?) procedure before the boule is prescribed against the derelect basileus; thus:[66]

27 . . . . . ἐὰν δέ τις μυῆ[ι Ε]ὐμολ[πιδῶν ἢ Κηρύκων οὐκ ὢν ε]ἰδώς, ἢ ἐὰν προσάγηι τις μυησόμε[νον … [23] … τοῖ]-
28 [ν] Θεοῖν, φαίνεν δὲ τὸμ βολόμενο[ν Ἀθηναίων, καὶ ὁ βασι]λεὺς εἰσαγέτω εἰς τὴν Ἡλιαίαν κα[*τὰ τὸν νόμον. ἐὰν δὲ μὴ εἰσάγηι περὶ* αὐ]-
29 [τ]ῶ βολευέτω ἡ βολὴ ὡς ἀδικοῦντος·

Perhaps there had been a modification in the boule's oversight: there may still have been a meeting of the boule after the festival, but perhaps it was reserved for the announcement of probolai and extraordinary procedures such as eisangelia against derelict magistrates; other cases could be brought straight to the Heliaia.[67]

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at the Dionysia were made in two stages, some years apart, and then later, because they seemed to work well, similar provisions for *probole* were made in a single enactment about the Mysteries. It is also possible, however, that the 'single enactment' about *probole* for offences committed during the Mysteries could have been from the start, or subsequently to have become, part of a series of regulations about the Mysteries.'

66 Stumpf 1988.

67 A different restoration, by which the basileus is to bring the offender into the Heliaia 'after the boule has first condemned (καταχειροτονῆσαι) him as guilty' would be attractive, but I have not been able to produce one in good Greek. If the original text did suggest something along these lines, the boule's vote would be a preliminary condemnation in a probole. If this were the procedure to be followed for bringing offences after the Mysteries in the mid-fourth century, then perhaps it is taken for granted in the depiction of offences that follow in A 32ff.; in each case, the offense is to be denounced to the basileus and brought to the boule for a preliminary vote before it is brought to court.

I now turn to some final thoughts about *IE* 138. The major piece of speculation that I have just engaged in surely underscores just how lacunose Side B of our inscription is. It also underscores the range of possibilities about its contents, e.g., that it may have concerned matters *preliminary* to the festival just as in *IE* 19 Face A, or alternatively, that the text is so fragmentary that we cannot know its contents. To orient us either closer to or further from despair, we must now consider the physical remains of the stele and, once again, the problem of the missing prescript, for which there is no space on Side A.

Clinton offered several possibilities regarding the missing prescript and promptly dismissed the first two: [68]

Option A: The prescript may have appeared on Side B, the opening lines of which are missing; if so, then Side B is prior. Objection: This seems hardly likely for the reason that the substance of the opening of Side A has a 'commencing sound'—namely, the announcement of the Sacred Truce.

Option B: The law may have been written on more than one stele, and the prescript appeared on the missing stele. Objection: It seems hardly likely that the law was written on more than one stele as all the fragments seem to belong to only one.

Option C: Sides A and B represent two different laws. Side B's prescript is not preserved and Side A's was never prescribed.

Clinton provided no argument against Option C and instead suggested, in the belief in the priority of Side A, that neither side had a prescript and that:

> 'Side B, at a slightly later date (the writing is very similar to that of Side A), simply received new regulations, as additions to those already inscribed on Side A (and perhaps, to some already on the upper part of Side B). The original authorization must then be sought in a document that is now lost; this document would have ordained that a new set of laws concerning the Eleusinian festival be inscribed on a stele and set up in the Eleusinion. (The regulations that we have from Side B were included either in this authorization or a later one.)'[69]

If this represents the reality, then it is very difficult to say that we have a coherent code in *IE* 138. While we may have a coherent one in Side A, its inadequacy was noted rather soon after it had been inscribed. Moreover, Side B is baffling, especially if, as I've argued, some considerable portion of Ba deals with preliminary arrangements in the way that *IE* 19 Face A did. If Clinton's explanation is accepted, then Side A was planned as a code but failed rather soon and so Side B was added.

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At this point, I return to the questions I posed at the outset: what, if anything, can this study of codifying laws about the Mysteries tell us about law-making or

[68] Clinton 1980: 259 presents the options.
[69] Clinton 1980: 259.

codification more broadly in Athens and about the reporting of laws in the literary tradition?

(1) I think it suggests, above all, how skilful the Athenians were, that is, the men who carried out the work of codification for the Mysteries, even early in the fifth century. The skill goes beyond the act of compiling or excerpting regulations, it extends to the capacity to conceive a festival in its entirety with all its economic and sociological implications. Comparisons with deme compendia, though few offered here, suggest that the polis officials were of a different caliber altogether. Excerpting is a skill different from codification but is a prerequisite for it. The skill in excerpting so evident in our polis inscriptions (although I have hardly touched the surface here) is also evident in the speechwriters who paraphrase laws and cite them, even though we rightly question every law passed on to us through manuscript traditions that are often terribly corrupt. The inscribed decree that was first discussed, *IE* 13 (*IG* I^3 5), provides an example of a polis decree that has an abbreviated prescript without proposer's name; it is not corrupt; but if it appeared in a literary document, there would be hordes of skeptics, wagging their fingers, 'forgery!'.

(2) My study has shown, I hope, the importance of taking into consideration the modern reconstructions of artifacts that have laws inscribed on them, and asking: is the reconstruction correct? The same sort of attention needs to be lavished on the physical remains of the revised lawcode and sacrificial calendar at the end of the fifth century; such a re-examination is now underway. An explanation for the appearance of the sacrificial calendar on the 'later side' in an erasure of what has been thought to be an earlier calendar and the prevalence of inscribed sacrifices on the 'older sides' must be sought anew.

(3) I have tried out a method here for examining codification on a micro-level. It may be that applying such a method might find useful results elsewhere, by looking at the principles and motives underlying the codification of regulations that became, e.g., the Athenian decree on standards and measures (*IG* I^3 1453) in the mid-fifth century and the later one from the second or first century B.C. (*IG* II^2 1013)—or even the codification of the law of eisangelia: why are such legislative units codified? Often sociological or economic motives seem uppermost: consider, e.g., the relationship between building programs at Eleusis and the codification of regulations in *IE* 138.[70] Are there legal principles involved in 'micro-codification' in Athens?

I should like, at this final moment, to take up this question in regard to eisangelia in a succinct way. Scholars have generally viewed the fourth century law as a revised version of a consolidated fifth century *nomos eisangeltikos* that was enacted at some point between 411 and 403. The criteria for dating the 'consolidated' fifth century law have been: (1) general considerations of the historical

[70] Clinton 2003: 81.

circumstances that would encourage the enactment of such a law in this period and (2) late fifth century examples of phrases that appear in Hypereides' quotations of the law. The latter reason is insufficient: citing 'paraphrases of the law' in fifth century authors begs the question by assuming the pre-existence of a 'consolidated' law; the specific treasonable offences mentioned, e.g., by Lysias, may have been cited by custom using the same phraseology over and over again without any statutory basis. And as for the historical circumstances—the so-called revision of the lawcode at the end of the fifth century—well, this is circular reasoning: we speculate what 'revision' is and then we further speculate that *eisangelia* was consolidated at this time. Now is not the occasion to give the problem a full exegesis, but I suggest: consolidation of the law of eisangelia may not have occurred until after a decision was made to transfer the hearings of eisangeltic offences from the Assembly to the dikasteria; that such a decision was indeed made is suggested by the fact that no eisangeltic hearings are attested in the Assembly after 362. Whenever this decision was made, it would have been an appropriate time for consolidation of the law. Hansen has related the financial situation in Athens in the mid-350's and two other institutional reforms to a revision of eisangelia at this time: the limit upon the number of extraordinary assemblies and the initiation of the procedure of apophasis.[71] Revision, then, may have been predominantly motivated by economic factors. It may indeed prove to be a true phenomenon that economic or social or political pressures consistently motivate legal consolidations and codifications; it remains to discover whether legal principles provide the sinews. That, of course, is the subject of a much larger study.

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[71] Hansen 1975: 53-54.

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ALBERTO MAFFI (MILANO)

INTERVENTO SULLA RELAZIONE DI ADELE SCAFURO

1. La mia risposta non sarà congruente con il taglio che Adele Scafuro ha dato alla sua relazione, pur avendo molto apprezzato nel metodo e nei contenuti le sue considerazioni. Credo infatti che dobbiamo essere grati alla relatrice per aver attirato la nostra attenzione sull'importanza che alcune epigrafi eleusinie rivestono per la conoscenza di aspetti fondamentali della struttura giuridica della polis, in particolare per quanto riguarda i rapporti tra sfera sacrale e sfera profana e specialmente con riferimento all'esercizio della giurisdizione durante le grandi feste panelleniche. Ma non mi sento in grado di prendere posizione riguardo alla qualifica da dare ai provvedimenti ateniesi riguardanti i Misteri eleusini, documentati dal V secolo in avanti dai numerosi testi epigrafici raccolti in *IE*. E tanto meno mi sento in grado di trarre da quella documentazione conclusioni riguardanti la tecnica legislativa nell'Atene classica. Questa mia rinuncia è dovuta anche allo stato frammentario di molti documenti epigrafici, che rende ancora assai incerta l'interpretazione letterale dei testi stessi. Mi limiterò quindi a formulare alcune congetture in particolare riguardo a due fra i principali testi contenuti in *IE*, che sono anche al centro della relazione della relatrice: *IE* 19 e *IE* 138.

2. In occasione delle grandi feste panelleniche era uso che la città organizzatrice inviasse per tutta la Grecia e il mondo coloniale degli inviati speciali incaricati di proporre la stipula di *spondai*, cioè di un accordo giurato in seguito al quale si dava luogo a una tregua dello stato di guerra che poteva intercorrere fra i due stati e nello stesso tempo si garantiva l'immunità da attacchi privati (*asfaleia*) ai singoli che avessero partecipato alla festa per tutto il tempo stabilito dalla città organizzatrice: c.d. *hieromenia* (è quanto vediamo nella facciata B di *IE* 19). Questione diversa era invece quella concernente l'organizzazione e la polizia della festa, che era rimessa alle decisioni unilaterali della città organizzatrice (ne abbiamo un magnifico esempio, molto più tardo, nel regolamento dei Misteri di Andania, studiato da Harter Uibopuu 2002). Esiste quindi un piano internazionale, che va tenuto distinto dal piano della disciplina interna, anche se, come si vede dai documenti ateniesi che ho citato, i due piani si intrecciano all'interno di un medesimo regolamento.

Si possono probabilmente mettere in luce degli elementi comuni alla disciplina delle varie festività panelleniche. E' quanto ha tentato di fare 35 anni fa Georges Rougemont (1973) in un articolo che resta un punto di riferimento in materia. Tuttavia, mentre all'interno della singola città, come ci attesta Demostene

per le Dionisie e i Misteri Eleusini ad Atene, si tende ad applicare una disciplina uniforme, fra una città e l'altra si constata l'esistenza di strumenti e meccanismi diversi, che, tuttavia, puntano ad analoghi risultati.

I. 3. Incomincerò quindi da *IE* 19, iscrizione anteriore alla metà del V sec. a.C.[1] Della facciata A sono particolarmente interessanti dal punto di vista storico-giuridico le ll. 28 ss. A quanto sembra di capire, siamo qui nell'ambito degli accordi internazionali sanzionati mediante *spondai*: si tratta in realtà di regole che Atene intende imporre alle città che desiderano inviare delegazioni ufficiali o i cui cittadini sono interessati a partecipare alle festività eleusine (Piccoli e Grandi Misteri). Io credo cioè che Atene qui minacci di escludere dalle festività eleusine città e cittadini che abbiano tenuto in precedenza i comportamenti (negativi) descritti in queste righe. Non credo perciò che si tratti di clausole riferite a ciò che potrebbe verificarsi durante le festività: *toi hieroi me chrestho* (che ricorre in A 26 e 27, in A 32 e, secondo me, anche alla fine di A) non va inteso come un'espulsione (quale troviamo per es. nel regolamento dei Misteri di Andania, ll. 40-41: Harter Uibopuu 2002 p. 143), ma come un'esclusione preventiva, una non ammissione. In particolare l'esclusione dai Misteri sembra funzionare come strumento di pressione contro le città che pongono ostacoli al funzionamento della giustizia internazionale. Sul fatto che si tratti di illeciti commessi prima che le festività abbiano inizio mi trovo quindi d'accordo con la relatrice e mi limito soltanto a puntualizzare quello che mi pare il significato più probabile, in questa chiave interpretativa, di alcuni passaggi del testo.

4. *Ean me egdoi* a l. 30 non si riferisce all'estradizione di chi si è macchiato di un crimine durante la celebrazione dei Misteri (così Cataldi 1981), ma è il cittadino, debitore verso Atene o un Ateniese, della città che vorrebbe partecipare ai Misteri. Alla l. 32 *ean amphisbetosi me klethenai* va considerato un'unica proposizione (probabilmente da mettere in relazione con la richiesta di estradizione precedente). Quanto alla parte finale di A, a partire da l. 44, essa è stata oggetto di una breve e penetrante disamina da parte di Ph. Gauthier (1972), che così traduce: « l'Athénien ne fera d'aucune manière l'objet d'une saisie violente sur le territoire d'aucune des cités, à moins qu'il n'ait été condamné dans un procès (s'étant tenu) dans le pays ou à moins qu'il ne soit tombé aux mains d'ennemis. Si l'une des cités ne consent pas aux règles susdites), elle donne aux Athéniens et reçoit d'eux justice conformément aux conventions » (p. 152). Secondo Gauthier le due proposizioni non sono collegate. Lo scopo della prima disposizione è quello di vietare alle città di impadronirsi ovvero di arrestare individui che si siano macchiati di sacrilegio, cioè, se ben capisco, di Ateniesi che abbiano tenuto comportamenti ritenuti sacrileghi durante la celebrazione dei Misteri. Per questo viene specificato che sono ammesse

[1] Lo studio più ampio in argomento è Cataldi 1981, a cui, come si vede dalla bibliografia *ad locum* di Clinton *IE* 2005, ben poco si è aggiunto; e peccato che Clinton, contravvenendo alle reiterate raccomandazioni di van Effenterre, non traduca le epigrafi.

solo le "saisies exécutoires" e le "saisies liberatoires". Ora, se così fosse, questa clausola si riferirebbe a comportamenti successivi alla celebrazione dei Misteri, il che non avrebbe senso. Penso invece che la *dika epichoria* sia una *dike apo symbolon*, di cui Atene riconosce ovviamente la validità. Quanto alla "saisie liberatoire" (cioè tendente a sottrarre un Ateniese alla prigionia mediante riscatto), apparirebbe un'ovvietà consentirla. Io credo invece che qui si alluda all'Ateniese che sia stato sorpreso a collaborare col nemico (i Persiani?): ovviamente è lecito arrestarlo anche se forse la sua esecuzione deve essere rimessa alle autorità ateniesi. Mi pare che questa, se capisco bene, sia anche l'opinione di Clinton (2008 *ad loc.*), secondo cui si tratta di un Ateniese che "has been discovered among the enemy".

5. L'ultima proposizione di A sarebbe da considerare, secondo Gauthier, un emendamento finale: « au cas où une cité n'accepterait pas les règles posées plus haut…on plaidera conformément aux *symbolai* ». Questa interpretazione mi pare sollevi parecchi dubbi. Le regole riguardanti la celebrazione dei Misteri non possono rientrare negli accordi di reciprocità che stanno a fondamento delle *symbolai* (*dikas didonai kai dechesthai*). Interpretata in questo modo, una simile clausola non avrebbe senso. Non lo avrebbe dal punto di vista della tecnica processuale, ma nemmeno dal punto di vista politico: le clausole che precedono sono formulate, come abbiamo visto, in modo cogente; non ammettono alternative. Io credo, quindi, che *me ethelei* sia il verbo che regge *dikas didonai kai dechesthai*. Se una città che ha stipulato una *symbola* non vi si attiene, sarà probabilmente esclusa dalla partecipazione alla festività, così come è previsto nelle clausole precedenti. L'apodosi *me chresthai toi hieroi* si trovava o alla fine di A o all'inizio di B[2].

6. Passando a considerare la facciata B, tra le molte questioni che si potrebbero sollevare vorrei far notare la contraddizione tra l'applicazione rigorosa dell'immunità a favore degli Ateniesi in forza delle *spondai* nelle città che vi abbiano aderito (B 27 ss.) e la liceità del ricorso alle "saisies", sia pure nei limitati casi previsti in A. Si potrebbe risolvere la contraddizione ritenendo che le clausole di A si riferiscano al passato, mentre B si riferisce agli Ateniesi che, durante i 55 giorni della *hieromenia* dei Misteri, vengano a trovarsi in quelle città (questo in particolare per quanto riguarda l'esecuzione conseguente a una *dike epichoria*, che sarebbe dunque vietata durante la *hieromenia*).

II. 7. Passiamo a *IE* 138, datata intorno alla metà del IV sec. a.C. La relatrice ha messo bene in rilievo una singolarità di questo testo, e cioè che in gran parte sembra riprendere il contenuto di *IE* 19. Mi soffermerò rapidamente su alcuni passaggi lacunosi a partire dalle ll. 27 ss. Viene introdotto qui il tema dell'iniziazione (*myesis*): sono previste due fattispecie criminose: colui che consapevolmente si

[2] Questo è intuito anche da Cataldi, pp. 110-111, il quale osserva come, contro norme che stabiliscono la competenza giudiziaria di magistrati e soprattutto della Boule, il ricorso alla *symbola* poteva avvenire solo tramite *ephesis*.

spaccia per un membro degli Eumolpidi o dei Cerici (unici ad avere la facoltà di compiere il rito iniziatico) e colui che conduce l'iniziando presso l'impostore (di cui risulta così complice, anche se ci si sarebbe aspettato che venisse ripetuto anche per il complice il requisito di essere *eidos*). Contro l'uno e l'altro di questi delinquenti *ho boulomenos ton Athenaion* può intentare una *phasis* (l. 28): il *basileus* la presenterà all'Eliea e ci sarà anche un intervento (non meglio specificato a causa della lacuna) della Boule nei confronti del delinquente (l. 29). Si parla poi del potere di *basileus* ed *epimeletai* di irrogare multe a coloro che violino l'ordinato svolgimento delle cerimonie; se non lo fanno, sono passibili a loro volta di multe. Viene poi una disposizione relativa a procedure giudiziarie, in cui ricorrono due lacune brevi ma ardue da integrare. A queste ultime lacune dedicherò il resto delle mie osservazioni.

8. Per entrambe le lacune (sia quella delle ll. 28-29, sia quella delle ll. 37-38) Clinton 1980 aveva proposto integrazioni, che sono state però criticate e sostituite da una diversa proposta da parte di Gerd Stumpf in un articolo di vent'anni fa (Stumpf 1988). Consideriamo la prima delle due lacune. Secondo Clinton "we may expect to read that the Heliaia is to impose a fine if the man is found guilty"; quanto all'intervento ulteriore della Boule, "it seems best…to regard the imposition of a fine as the work of the dikasterion…and to understand that the Boule has the right to impose some further penalty if it is so wished" (1980 p. 279). Stumpf respinge l'integrazione di Clinton sostenendo che qui avremmo l'unico caso nell'iscrizione in cui non è prevista una sanzione per un comportamento scorretto di un magistrato. Propone quindi di intendere le ll. 28-29 in questo modo: "…und der Basileus soll (die Phasis) entsprechend dem Gesetz in die Heliaia einführen. Wenn er nicht einführt, soll die Bule über ihn zu Rat sitzen als über einen, der unrecht handelt" (p. 226). L'integrazione proposta da Stumpf ha il pregio di riempire esattamente lo spazio della lacuna, ma non mi convince dal punto di vista giuridico. Prima di tutto perché la conseguenza a carico del magistrato che non adempie i suoi doveri d'ufficio è normalmente o una sanzione pecuniaria (come è previsto qui, alla l. 37, proprio a carico del *basileus*), oppure la previsione di un particolare tipo di ricorso (come la *phasis* di l. 28 e soprattutto come l'*eisangelia*, prevista in un caso ricavato dal "Münzgesetz" addotto dallo stesso Stumpf), e non una attribuzione di competenza a punire, come nella integrazione di Stumpf. Vorrei inoltre far osservare che l'espressione *hos adikountos* (l. 29) appare nella legge inserita in Dem. 21.10 con riferimento appunto a chi ha commesso un illecito durante le festività, non a un magistrato che non adempie i suoi doveri. A me sembra dunque più probabile che il caso venga presentato dal *basileus* in occasione del suo resoconto alla Boule che si riunisce il giorno successivo alla fine della festività, mentre il vero e proprio processo inizierà solo successivamente.

9. Vorrei infine aggiungere qualche osservazione anche a proposito della seconda proposta di integrazione avanzata da Stumpf (anche se di questa Scafuro non si occupa *ex professo* nella sua relazione). Secondo Clinton le *dikai*, di cui si

parla a l. 37, sono azioni in sede di rendiconto contro i magistrati responsabili del buon andamento della festa: dato che essi sono nove, ogni arconte sarebbe investito della competenza relativa a uno di quelli. Stumpf oppone che il termine *dikai* si riferisce anche ad azioni private fra privati. Inoltre fa rilevare che, durante la *hieromenia* l'Eliea non funziona[3]. Queste obiezioni non mi sembrano dirimenti. Dall'uso del termine *dike* non si può desumere a quali azioni si faccia riferimento qui: il termine è generico. Quanto al *dikazein* dell'Eliea, mi pare che si possa riferire anche al periodo successivo alla sospensione dell'attività giurisdizionale. Secondo Stumpf la lacuna va integrata tenendo presente la questione della competenza giurisdizionale. Durante la festa il *Basileus* sarebbe investito di una competenza generale a giudicare ogni sorta di cause (purché entro il limite di valore al potere di irrogare multe, anche se tale limite non viene qui specificato per la competenza relativa alle *dikai* private)[4]. Dopo la fine della festa si ritorna alla competenza ordinaria: i nove arconti riacquistano la competenza che la legge attribuisce loro e, per di più, introdurranno in tribunale anche le cause che il *basileus* non aveva potuto giudicare perché eccedevano il valore fissato alla sua competenza durante lo svolgimento dei Misteri. Questa tesi non mi convince. Il parallelo con altri regolamenti festivi non è calzante perché la competenza degli organi appositamente investiti è limitata alla repressione degli illeciti relativi alla festa (tipico il caso del regolamento dei Misteri di Andania). Né appare pertinente il riferimento al *dikazein* del *basileus* in AP 57.4 (Stumpf, p. 227 n. 22), perché in questo passo il riferimento è esclusivamente alle cause di omicidio, che certamente il *basileus* non poteva giudicare se qualcuno veniva ucciso durante la festa. Infine, se è vero che durante la festa si ha la sospensione dell'attività giurisdizionale ordinaria, non si capisce perché si dovrebbe fare un'eccezione per le cause di valore inferiore a una certa cifra e per di più stravolgendo il sistema delle competenze. Dunque io credo che in questo brano si ribadisca semplicemente la ripresa dell'attività giurisdizionale e il ripristino della competenza ordinaria dei nove arconti a partire dalla fine della festa.

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[3] Questo dato ci pone il problema di capire se la sospensione dell'attività dei tribunali fosse circoscritta al periodo di svolgimento effettivo della festività o coprisse l'intera *hieromenia* (per i Grandi Misteri 55 giorni). Sembra difficile accettare che a Delfi potesse durare un anno intero: si veda in proposito Rougemont.

[4] „Es ist anzunehmen, dass auch bei den privaten Dikai während des Festes, der Basileus bis zu einem gewissen Streitwert selbst Recht sprechen konnte" (pp. 227-28).

K. Clinton, *A Law in the City Eleusinion concerning the Mysteries*, Hesperia 49, 1980, p. 258-288

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LÉOPOLD MIGEOTTE (QUÉBEC)

PRATIQUES FINANCIÈRES DANS UN DÈME ATTIQUE À LA PÉRIODE CLASSIQUE: L'INSCRIPTION DE PLÔTHEIA *IG* I^3, 258

Dès le V^e siècle, plusieurs dèmes et sanctuaires locaux de l'Attique ont fait graver dans la pierre des documents administratifs d'un grand intérêt. L'inscription dont je reprends l'étude ici est connue depuis longtemps[1]. Son contenu est original et pique d'autant plus la curiosité qu'elle vient du petit dème de Plôtheia[2] et que sa date est relativement haute: on s'accorde aujourd'hui pour la situer entre les années 425-413 plutôt qu'aux environs de 400[3]. Les nombreuses analyses faites depuis bientôt deux siècles ont permis d'en bien comprendre l'essentiel, mais le texte est souvent elliptique et présente des difficultés dont plusieurs me semblent avoir été esquivées

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1 Cf. A. Boeckh, *CIG*, 82 (H. Sauppe, *Rhein. Mus.* 4 [1896], p. 289-293); W. Froehner, *Musée impérial du Louvre. Les inscriptions grecques*, Paris, 1865, p. 54-58, n° 36, avec traduction et bref commentaire; U. Koehler, *IG* II, 570 (Ch. Michel, *Recueil d'inscriptions grecques*, 140); J. Kirchner, *IG* II^2, 1172 (M. Guarducci, *Historia. Studi storici per l'Antichità classica* 9 [1935], p. 205-222, avec commentaire); D. Lewis, *IG* I^3, 258 (D. Whitehead, *The Demes of Attica 508/7-ca. 250 B.C.*, Princeton, 1986, p. 165-169, avec une très bonne mise au point et le commentaire le plus complet dont on dispose aujourd'hui; R. Koerner et Kl. Hallof, *Inschriftliche Gesetzestexte der frühen griechischen Polis*, Köln-Weimar-Wien, 1993, 21, les lignes 11-40 avec traduction et bref commentaire). – Cf. aussi les analyses d'E. Szanto, *Untersuchungen über das attische Bürgerrecht*, Vienne, 1881, p. 38-42, et de B. Haussoullier, *La vie municipale en Attique. Essai sur l'organisation des dèmes au quatrième siècle*, Paris, 1884, p. 63-64, 75-76 et 145, ainsi que les traductions et les brefs commentaires de J.K. Davies *in* A. Meadows et K. Shipton (éd.), *Money and its Uses in the Ancient Greek World*, Oxford, 2001, p. 124, et de P. Brun, *Impérialisme et démocratie à Athènes. Inscriptions de l'époque classique*, Paris, 2005, 138.

2 Plôtheia n'avait qu'un seul représentant au Conseil de la cité: cf. J.S. Traill, *The Political Organization of* Attica, Princeton, 1975 (Hesperia: Supplement XIV), p. 69, et *Demos and Trittys*, Toronto, 1986, p. 127 ; D. Whitehead, *op. cit.* (note 1), p. 370.

3 Datation proposée par D. Lewis et adoptée par la suite (R. Koerner et Kl. Hallof ont indiqué les environs de 420). Voir les références à la note 1. Il s'agissait donc des premières années de la guerre du Péloponnèse, avant l'occupation permanente de Décélie par les Lacédémoniens (Thucydide VII, 27). Comme A.P. Matthaiou l'a noté, en acceptant cette datation, dans L. Mitchell et L. Rubinstein (éd.), *Greek History and Epigraphy. Essays in Honour of P.J. Rhodes*, Classical Press of Wales, 2009, p. 205, on ignore l'ampleur et la durée de l'évacuation de l'Attique au début de la guerre, mais la paix de Nicias en 421 a sans doute apporté quelque répit.

ou mal résolues. Je tente ici de les élucider et de mieux apprécier la portée du document à la lumière de textes analogues.

Cette analyse exige au préalable une brève description de la pierre (voir les planches 1 et 2)[4]. Celle-ci était sans doute en assez bon état quand elle fut exposée au Louvre au début du XIX^{e} siècle. Mais elle a subi alors quelques retouches pour être encastrée dans un panneau de stuc, puis pour en être extraite quelques décennies plus tard. Il est impossible de savoir si les dommages de son arête droite et de sa partie inférieure, qui sont les plus importants, datent de cette époque. Mais elle est heureusement préservée dans toute sa largeur et les lignes 1-37 ont pu être lues ou restituées de façon complète. En revanche, les trois dernières lignes posent davantage de problèmes et il se peut qu'il manque ensuite une ligne, voire plusieurs, comme on le pense généralement[5]. Quant à la tranche supérieure, elle n'est pas régulière et présente des traces grossières de ciseau du côté gauche. Il se pourrait donc qu'elle ait été retaillée et qu'il manque au début, par exemple, un intitulé général et un élément de datation. Pourtant, même s'il commence abruptement, le texte présente ainsi un sens cohérent, comme on va le voir.

L'ensemble se compose de deux parties dont la première, qui s'étend sur dix lignes, occupe une surface entièrement ravalée où les lettres, légèrement plus grandes que celles de la suite, ont été gravées par une autre main[6]. Ce martelage et cette regravure peuvent s'expliquer de deux manières : ou bien les Plôthéiens se sont ravisés peu après avoir fait graver le texte au complet, ou bien ils ont réutilisé une pierre déjà inscrite dont ils ont modifié le début sans toucher à la suite. Aucun indice probant ne permet, me semble-t-il, de trancher la question. Dans les deux cas, de toutes façons, nous ignorons la teneur du texte disparu et la cause de son effacement. Nous n'avons donc d'autre choix que de tenter d'interpréter l'ensemble tel que nous le lisons. Les deux parties se suivent sans interruption et s'éclairent mutuellement, comme les commentateurs précédents l'ont bien compris. Voici d'abord le texte

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4 À ma connaissance, aucune photographie de la pierre n'a jamais été publiée. Je remercie chaleureusement Patrice Hamon, qui a bien voulu la revoir pour moi dans les réserves du Louvre et en prendre des photographies. Je lui dois les indications qui suivent. Je remercie également Jean-Luc Martinez, Brigitte Tailliez et Christophe Piccinelli, qui ont rendu ce travail possible et ont permis la publication des photographies, ainsi que Kl. Hallof, qui m'a envoyé de Berlin deux photographies d'estampages. Il m'était difficile, en effet, de me fier aux indications des éditeurs, car elles ne concordent pas entièrement (voir les références à la note 1): «lapis quum in murum Musei insereretur, in marginibus damnum fecit (...): igitur Köhlerus Petropolitanus, qui de eo pro sua humanitate ad me litteras dedit, antequam in Museum delatum marmor esset aliquot litteras invenit, quae nunc desunt» (Boeckh); «a parte superiore haud dubie mutilus est» (Koehler); «tabula undique ut videtur mutila» (Kirchner); «stela infra mutila, a tergo recisa» (Lewis). W. Froehner est resté muet sur ce point.

5 Voir la note 7.

6 Elles mesurent en effet 1 cm, alors que les suivantes mesurent 0,8-0,9 cm environ, d'après les observations de D. Lewis et de P. Hamon.

grec, tel que je l'établis d'après la première photographie[7], puis la traduction, aussi littérale que possible, que j'en propose.

[κεφ]άλαια
[δη]μάρχωι X
[τα]μίαιν ἐς τὰ δι' ἔτος ἱερὰ 𐅄
4 [ἐ]ς τὸ Ἡρακλεῖον 𐅄XX
[ἐ]ς Ἀφροδίσια XHH
[ἐ]ς Ἀνάκια XHH
[ἐ]ς τὴν ἀτέλειαν 𐅄
8 [ἐ]ς Ἀπολλώνια XH
[ἐ]ς Πάνδια 𐅄H
[μι]σθώσεων HΔΔΔ⊢⊢⊢IIC
[ἔδ]οξεν Πλωθειεῦσι· Ἀριστότιμος [ε]-
12 [ἶπ]ε· τὸς μὲν ἄρχοντας τῶ ἀργυρίο ἀ[ξ]-
[ιό]χρεως κυαμεύεν ὅσο ἑκάστη ἡ ἀρ[χ]-
[ὴ ἄ]ρχει, τούτος δὲ τὸ ἀργύριον σῶν [π]-
[αρ]έχεν Πλωθεῦσι· περὶ μὲν ὅτο ἐστ[ὶ]
16 [ψ]ήφισμα δανεισμῶ ἢ τόκος τεταγ[μέ]-
νος, κατὰ τὸ ψήφισμα δανείζοντα[ς κ]-
[α]ὶ ἐσπράττοντας· ὅσον δὲ κατ' ἐν[ιαυ]-
[τ]ὸν δανείζεται, δανείζ[ον]τας ὅ[στι]-
20 [ς] ἂν πλεῖστον τόκον διδῶι, ὃς ἂ[ν πεί]-
[θ]ηι τὸς δανείζοντας [ἄ]ρχοντα[ς τιμ]-
[ή]ματι ἢ ἐγγυητῆι· ἀπὸ δὲ τῶ τόκ[ο τε κ]-
[α]ὶ τῶμ μισθώσεων, ἀντὶ ὅτο ἂν τ[ῶν κε]-
24 φαλαίων ὠνήματα ἦι μί[σ]θωσιν φ[έρο]-
ντα, θύεν τὰ ἱερὰ τά τε ἐς Πλωθει[ᾶς κ]-
οινὰ καὶ τὰ ἐς Ἀθηναίος ὑπὲρ Πλ[ωθέ]-
[ω]ν τῶ κοινῶ καὶ τὰ ἐς τὰς πεντετ[ηρί]-
28 [δ]ας· καὶ ἐς τἄλλα ἱερά, ὅποι ἂν δέ[ηι Π]-
[λ]ωθέας ἅπαντας τελῆν ἀργύριο[ν ἐς]
[ἱ]ερά ἢ ἐς Πλωθέας ἢ ἐς Ἐπακρέα[ς ἢ ἐς]

[7] Le texte fut progressivement mis au point par A. Boeckh, W. Froehner et U. Koehler (voir les références à la note 1). C'est à ce dernier qu'on doit, en particulier, la restitution de κεφάλαια à la ligne 1 et de κεφαλαίων aux lignes 23-24. Par la suite, U. von Wilamowitz, *Aristoteles und Athen*, Berlin, 1893, p. 154, n. 3, a restitué le dernier mot de la ligne 38, et A. Wilhelm, *GGA* 160 (1898), p. 222, le premier de la ligne 37. Avec raison, les éditeurs ultérieurs n'ont pas retenu les restitutions peu convaincantes de W. Froehner aux lignes 38-40 ([τῶι δὲ τῶ χορῶ] διδασκάλωι καλ[ὸν στέφανον, τῶι δὲ] ἀποκαίοντι κ[αλὸν στέμμα κεφαλῆς κ]αὶ δημιοργ[οῖς ἑκάστωι δραχμὰς - - -) ni, au début de la ligne 38, celles d'U. von Wilamowitz, *ibid*. ([ἐς Διονύσια δὲ] διδασκάλωι) et de M. Guarducci, *loc. cit*. (note 1), p. 214 ([ἐς Ἡράκλεια δὲ] διδασκάλωι).

[Ἀ]θηναίος, ἐκ τῶ κοινῶ τὸς ἄρχο[ντας]
[ο]ἳ ἂν ἄρχωσι τῶ ἀργυρίο τῶ ἐς τὴ[ν ἀτ]-
[έ]λειαν τελῆν ὑπὲρ τῶν δημοτῶν· [καὶ]
[ἐ]ς τὰ ἱερὰ τὰ κοινὰ ἐν ὅσοισιν ἐ[στι]-
[ῶν]ται Πλωθῆς οἶνον παρέχεν ἡδὺ[ν ἐ]-
[κ τῶ] κοινῶ, ἐς μὲν τὰ ἄλλα ἱερὰ μέχρ[ι]
[ἡμίχο ἑ]κάστωι τοῖς παρῶσι Πλωθέ[ω]-
[ν, . . .[7]. . . δὲ τῶ]ι διδασκάλωι κά[δον]
[. . . . .[13]. . . . . ἀ]ποκαίοντι κ[. . . .]
[. . . . . .[16]. . . . . .] δημιοργ[. .[5]. .]
— — — — — — — — — — — — — — — — —

«Totaux: au démarque 1 000 drachmes
aux deux trésoriers pour les sacrifices de l'année 5 000 drachmes
pour l'Hérakleion 7 000 drachmes
pour les Aphrodisia 1 200 drachmes
pour les Anakia 1 200 drachmes
pour l'exemption des taxes 5 000 drachmes
pour les Apollonia 1 100 drachmes
pour les Pandia 600 drachmes
des loyers 134 drachmes 2½ oboles.
Il a plu aux Plôthéiens; Aristotimos a proposé: qu'on désigne par le sort les gestionnaires de l'argent, solvables pour la somme gérée par chaque commission, et que ces hommes remettent l'argent aux Plôthéiens dans son intégrité; concernant tout prêt pour lequel il existe un décret ou un intérêt déjà fixé, qu'on prête et recouvre conformément au décret; mais, pour tout prêt consenti annuellement, qu'on prête (à) qui paiera l'intérêt le plus élevé et qui convaincra les responsables des prêts par une évaluation (de ses biens) ou par un garant; à partir de l'intérêt et des loyers, au lieu d'achats rapportant un loyer grâce aux capitaux, qu'on effectue les sacrifices communs pour les Plôthéiens, les sacrifices pour les Athéniens au nom de la communauté des Plôthéiens et ceux pour les Pentétérides; quant aux autres sacrifices, pour lesquels on pourrait exiger de tous les Plôthéiens de payer l'argent pour les sacrifices à la fois pour les Plôthéiens, pour les Épakreis ou pour les Athéniens, que les gestionnaires de l'argent destiné à l'exemption des taxes les paient avec l'argent commun au nom des démotes; et pour les sacrifices communs lors desquels les Plôthéiens participent au repas, qu'on fournisse du vin doux à partir des fonds communs, pour l'ensemble des sacrifices jusqu'à un demi-conge pour chacun des Plôthéiens présents et (...) une jarre pour le maître (...).»

Première partie

Comme on le voit, le texte présente d'abord un titre, puis une liste de neuf sommes d'argent (évidemment en drachmes) alignées les unes sous les autres et accompagnées d'indications sur leur destination ou leur provenance. La restitution du titre s'impose dans un tel contexte, car κεφάλαιον apparaît dans de nombreux documents financiers du monde grec avec le sens de «total». Il convient donc à l'ensemble des sommes, dont chacune représentait probablement un total annuel. On constate cependant une énorme différence entre les huit premières, toutes

parfaitement rondes et la plupart très élevées, et la dernière, qui est beaucoup plus modique et comprend de la menue monnaie. Celle-ci, précédée du génitif [μ]ισθώσεων, terme courant pour désigner des locations, représentait manifestement le revenu – ou du moins une partie du revenu – tiré de biens appartenant au dème (ou gérés par lui si ces biens étaient sacrés). En effet, bien qu'il n'en existe pas de preuve explicite, il y avait sans doute à Plôtheia, comme dans d'autres dèmes attiques, des terres et des immeubles publics et sacrés qui étaient loués à des particuliers[8].

Les huit autres sommes, en revanche, n'étaient certainement ni des revenus ni des dépenses du dème, car les comptes publics et sacrés qui nous sont parvenus de nombreuses cités – et de leurs composantes – montrent que ces montants comportaient habituellement de la menue monnaie. Leur interprétation fait maintenant l'unanimité, sans doute avec raison[9]. En effet, comme on le verra aux lignes 15-22 de la deuxième partie, les Plôthéiens ont alors revu les modalités des prêts consentis par le dème. On en a conclu que les huit sommes étaient précisément les capitaux prêtés à des particuliers, dont le dème tirait des revenus sous forme d'intérêts. On a aussi calculé qu'au taux de 12 %, qui était courant à l'époque, ces revenus devaient atteindre au total 2 652 drachmes par année[10]. En fait, le taux pouvait varier d'une année à l'autre et d'un cas à l'autre, comme on va le voir également[11], et le rendement de chaque capital dépendait en outre de la ponctualité des débiteurs dans leurs paiements. C'est donc probablement parce que les montants des capitaux étaient stables et bien connus que l'Assemblée les a inscrits dans le texte plutôt que ceux des intérêts utilisables.

Le produit annuel du premier capital (120 drachmes à 12 %) était mis à la disposition du démarque, sans autre précision: il devait évidemment couvrir des frais liés à sa charge, peut-être ceux de ses devoirs religieux[12]. Celui du deuxième, cinq fois plus élevé (600 drachmes à 12 %), fut alloué aux deux trésoriers pour les sacrifices de l'année. Celui du capital le plus considérable (840 drachmes à 12 %) fut affecté à l'Hérakleion, sanctuaire qui était sans doute en construction ou qui devait être restauré. Les intérêts de quatre autres fonds, nettement plus modiques, ont été réservés à la célébration de quatre fêtes: les Aphrodisia (144 drachmes à 12 %), les Anakia (même somme), les Apollonia (132 drachmes à 12 %) et les

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8 Cf. D. Whitehead, *op. cit.* (note 1), p. 152-158, avec de nombreux exemples.

9 La bonne interprétation avait déjà été indiquée par A. Boeckh, E. Szanto et B. Haussoullier, p. 63-64 (cf. les références à la note 1). Voir un bon état de la question chez M.I. Finley, *Studies in Land and Credit in Ancient Athens, 500-200 B.C. The* Horos-*Inscriptions*, New Brunswick, 1952, p. 284, n. 39, et surtout chez D. Whitehead, *op. cit.* (note 1), p. 166-168.

10 Cf. E. Szanto, *op. cit.* (note 1), p. 38-41, et B. Haussoullier, *op. cit.* (note 1), p. 64.

11 Et comme l'a noté aussi D. Whitehead, *op. cit.* (note 1), p. 168, n. 125.

12 Cf. *ibid.*, p. 169 et, sur les fonctions des démarques en général, p. 121-139.

Pandia (72 drachmes à 12 %)[13]. Reste le capital, élevé lui aussi, dont les intérêts (600 drachmes à 12 %) étaient destinés à l'exemption de taxes (*atéleia*), allusion mystérieuse sur laquelle je reviens ci-dessous.

Ces capitaux étaient donc utilisés comme sources de crédit, procédé connu dès le V^e^ siècle dans des dèmes et des sanctuaires de l'Attique. Dans ce domaine, le parallèle le plus éclairant vient du sanctuaire de Némésis à Rhamnonte, d'où nous sont parvenus des comptes des hiéropes relatifs à cinq années comprises entre 450 et 440[14]. On y trouve en effet des sommes importantes, appelées là aussi κεφάλαια, dont la plus grande partie était avancée à des particuliers: d'une part 37 000 drachmes qui sont restées prêtées durant toute la période en parts égales de 200 drachmes, d'autre part 13 500 drachmes qui, distribuées en parts de 300 drachmes, se sont ajoutées durant la quatrième année et ont été portées à 14 400 drachmes durant la cinquième.

Comme A. Boeckh l'avait déjà noté, on constate que, de la ligne 3 à la ligne 9, chaque complément était introduit par la préposition ἐς. Il s'agissait donc d'une suite homogène, ce qui veut dire que les intérêts des sept sommes étaient tous confiés aux trésoriers. Cette responsabilité n'a certes rien de surprenant, puisque ces magistrats étaient les argentiers du dème. Mais on verra ci-dessous, grâce au décret, que l'Assemblée des démotes a instauré des ἄρχοντες pour chaque poste de dépenses[15]. En pratique, les trésoriers devaient donc distribuer à ces derniers les sommes nécessaires, soit en une seule fois au début de leur mandat en utilisant les intérêts accumulés au cours de l'année précédente, soit périodiquement en cours d'exercice à mesure qu'ils les percevaient (par exemple tous les mois).

Le fonds destiné à l'atélie était évidemment lié, comme son nom l'indique, aux exemptions de taxes. Probablement parce qu'il apparaît parmi d'autres fonds destinés à des célébrations religieuses, plusieurs savants l'ont interprété comme une ἀτέλεια ἱερῶν, c'est-à-dire comme une dispense des obligations normalement imposées aux Plôthéiens pour le financement des fêtes et des sacrifices, que le trésor

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[13] Sur ces fêtes, peu connues par ailleurs, cf. L. Deubner, *Attische Feste*, Berlin, 1932, p. 176-177, 202 et 216.

[14] Cf. J. Pouilloux, *La forteresse de Rhamnonte*, Paris, 1954, 35, p. 147-150 (Institut F.-Courby, *Nouveau Choix d'inscriptions grecques*, Paris, 1971, 20; R. Meiggs-D. Lewis, *A Selection of Greek Historical Inscriptions*, Oxford, 2^e^ éd., 1989, 53); *IG* I^3^, 248; V. Pétrakos, *Ὁ δῆμος τοῦ Ῥαμνοῦντος*, II. *Οἱ ἐπιγραφές*, Athènes, 1999, 182. Voir les commentaires de R. Bogaert, *Banques et banquiers dans les cités grecques*, Leyde, 1968, p. 93-94, et de D. Whitehead, *op. cit.* (note 1), p. 158-160, avec d'autres exemples de fondations locales. On peut mentionner en particulier un décret du dème de Myrrhinonte, voté après 340, qui ordonnait aux prêtres de prêter de l'argent (sacré) à ceux qui en auraient besoin: *IG* II^2^, 1183, lignes 27-30.

[15] Comme A. Boeckh l'avait également noté.

du dème prenait alors en charge[16]. D'autres lui ont donné une portée plus générale, sans apporter d'arguments mais sans doute avec raison[17]. On sait en effet que, dans les cités grecques, les exemptions fiscales étaient relativement fréquentes. Or, elles s'appliquaient à toutes sortes de taxes et non seulement à des obligations de nature religieuse comme les liturgies[18]. Elles avaient généralement pour but d'honorer ou de récompenser des citoyens, des métèques ou des étrangers qui avaient rendu service à la cité. Mais elles avaient aussi des conséquences concrètes. Quand elles portaient sur des taxes frappant les transactions commerciales ou les productions agricoles, par exemple, elles entraînaient un manque à gagner pour la communauté, de même que pour les fermiers des taxes (*télônai*). Il en allait autrement pour les liturgies et les *eisphorai*, car chaque liturgie devait nécessairement être accomplie et le montant global de chaque *eisphora* devait toujours être réuni: les obligations des personnes exemptées retombaient alors sur leurs concitoyens ou leurs compagnons.

Athènes ne faisait pas exception, mais des lois anciennes encore en vigueur au temps de Démosthène lui interdisaient de dispenser quiconque de l'*eisphora*, de la triérarchie et des liturgies liées aux cultes[19]. En revanche, des subdivisions de la cité comme les dèmes, les tribus ou les phratries pouvaient exempter certaines personnes non seulement de leurs propres taxes et liturgies, mais même des *eisphorai* levées par la cité, dont le montant était réparti au niveau local[20]. Les témoignages qui nous

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16 Ainsi A. Boeckh, W. Froehner, B. Haussoullier, J. Kirchner, M. Guarducci et D. Lewis citant J. Kirchner (voir les références à la note 1), de même que R. Parker, *Polytheism and Society at Athens*, Oxford, 2005, p. 62.

17 L'interprétation que je développe ici a été brièvement indiquée, de manière indépendante, par J.K. Davies, *loc. cit.* (note 1), qui suggérait que ce fonds «was also seen as usable to pay the taxes due on behalf of the demesmen», et par S.C. Humphreys, *The Strangeness of Gods. Historical perspectives on the interpretation of Athenian religion*, Oxford, 2004, p. 152-153, qui écrivait: «its purpose seems to have been to protect the demesmen from irregular (i.e. non-annual?) demands on their ressources», et ajoutait en note 57: «the fund will also perhaps have paid eisphora on land managed by the deme».

18 Il n'existe pas de synthèse récente sur le sujet. Cf. E. Caillemer, «Ateleia», *DA* I (1877), p. 511-513; Ch. Lécrivain, «Isoteleia», *DA* III (1890), p. 587-588; J. Oehler, «Ἀτέλεια», *RE* II, 2 (1896), col. 1911-1913; D.M. MacDowell, «Epikerdes of Kyrene and the Athenian Privilege of *Ateleia*», *ZPE* 150 (2004), p. 127-133; L. Rubinstein, «Ateleia Grants and their Enforcement in the Classical and Early Hellenistic Periods» *in* L. Mitchell et L. Rubinstein (éd.), *Greek History and Epigraphy. Essays in Honour of P.J. Rhodes*, Classical Press of Wales, p. 115-143.

19 Cf. Démosthène, 20 (*Contre Leptine*), 18, 26 et 129.

20 Dispense des liturgies dans trois tribus, au IV^{e} siècle: *IG* II^{2}, 1140, lignes 13-15 (Pandionis) et 1147, lignes 9-11 (Érechteis); M.Th. Mitsos, *Arch. Eph.* 1965, p. 132, lignes 2-3 (Akamantis). – Exemption de l'ἐγκτητικόν dans le dème du Pirée, entre 300 et 250 (*IG* II^{2}, 1214, lignes 26-28); sur cette taxe, cf. D. Whitehead, *op. cit.* (note 1), p. 76, n. 38; M. Faraguna, *Athenaeum* 85 (1997), p. 21-22, et *Dike* 2 (1999), p. 89. – Dispense de toutes les taxes et obligations du dème à Éleusis, vers le milieu du IV^{e} siècle: ἀτέλεια ὧν εἰσιν κύριοι Ἐλευσίνιοι, ce qui excluait l'*eisphora* (*IG* II^{2}, 1185, lignes 4-5, et 1186, lignes 26-27). – Exemption générale, incluant explicitement l'*eisphora*, dans le dème de Prasiai,

sont parvenus datent du IV^e^ siècle et du début de la période hellénistique, mais il est probable que des exemptions analogues existaient déjà au V^e^ siècle.

En pratique, les contribuables devaient chaque fois s'adapter à la situation et, lors du débat en Assemblée, répartir les obligations entre eux. Cette prise en charge est explicitement évoquée par deux baux de dèmes attiques de la seconde moitié du IV^e^ siècle: chacun stipulait en effet que, si une *eisphora* était levée par la cité, les démotes paieraient la part des personnes exemptées[21]. Or, dès le V^e^ siècle, les Plôthéiens avaient imaginé un autre système en créant un fonds commun – effectivement qualifié de *koinon* à la ligne 31 – dans lequel ils puisaient pour combler les vides laissés par les exemptions. Il se peut qu'ils aient été motivés par leur petit nombre, qui les empêchait de trouver facilement des substituts. Si notre texte date bien des années 425-413, ils ont peut-être tiré leçon de l'*eisphora* de 200 talents levée en 428/7 pour le siège de Mytilène[22]. C'est en effet aux *eisphorai* que

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dans la seconde moitié du IV^e^ siècle: ἀτ[ελὲς κ]αὶ ἀνεπιτίμητον εἰσφορ[ᾶς καὶ] τῶν ἄλλων ἀπάντων κτλ. (*IG* II^2, 2497, lignes 4-9). – Dispense de toutes les obligations, notamment des taxes (*télè*) et de l'*eisphora*, dans la phratrie des Dyaleis, en 300/299: ἀτ[ε]λὲς καὶ ἀνεπιτίμητον [τ]ῶν τε ἐγ Διὸ̣[ς π]άντων καὶ πολεμίων ε(ἰσ)βολῆ̣ς καὶ φιλί̣[ου] στρατοπέδ[ο]υ καὶ τελῶ̣ν̣ καὶ [ε]ἰ̣σφορᾶ̣ς καὶ τῶν ἄλλων ἀπάντων, cf. *IG* II^2, 1241 (H.W. Pleket, *Epigraphica* I. *Texts on the Economic History of the Greek World*, Leiden, 1964, 44), S.D. Lambert, *The Phratries of Attica*, Ann Arbor, 1993, T5, p. 299-307, avec traduction et commentaire, lignes 13-17. – Les textes d'Éleusis ont été repris par K. Clinton, *Eleusis. The Inscriptions on Stone. Documents of the Sanctuary of the two Goddesses and Public Documents of the Deme*, Athènes, 2005, nº 70, 71, 72 et 99. – Je laisse de côté les exemptions évoquées par le seul mot *atéleia*, car leur contenu est impossible à définir, par exemple dans trois décrets de dèmes du IV^e^ siècle: *IG* II^2, 1187, lignes 16-18 (Éleusis), 1188, lignes 29-30 (Éleusis) et 1204, lignes 11-12 (Lamptrai). – Sur la répartition de l'*eisphora* au niveau local, cf. D. Whitehead, *op. cit.* (note 1), p. 132-133. Sur son exemption ou l'obligation de la payer, cf. *ibid.*, p. 155-156.

21 Dans le dème d'Aixonè, en 346/5: καὶ ἐάν τις εἰσφορὰ ὑπὲρ τοῦ χωρίου γίγνηται εἰς τὴν πόλιν, Αἰξωνέας εἰσφέρειν· ἐὰν δὲ οἱ μισθωταὶ ε ἰσενέγκωσι, ὑπολογίζεσθαι εἰς τὴν μίσθωσιν (*Sylloge*^{3}, 966; *IG* II^2, 2492; D. Rousset, *Histoire et sociétés rurales* 9 [1er semestre 1998], p. 231-237, lignes 24-27). – Dans le dème du Pirée, en 321/0, d'après un contrat-type fixant les règles de location de plusieurs *téménè*: ἐπὶ τοῖσδε μ[ι]σθοῦσιν ἀνεπιτίμητα καὶ ἀτελῆ· ἐὰν δέ τις εἰσφορὰ γ[ί]γνηται, ἀπὸ τῶν χωρίων τοῦ τιμήματος τοὺς δημότας ε[ἰ]φέρειν (*Sylloge*^{3}, 965; *IG* II^2, 2498, lignes 7-9). On peut y ajouter un bail venant d'un groupe d'Orgéons, en 306/5: ἐὰν δέ τις εἰσφορὰ γίγνηται, ἀπὸ τοῦ τιμήματος τοῖς ὀργεῶσιν εἶναι (*IG* II^2, 2499, lignes 37-39). On voit que, dans le premier cas, il s'agissait explicitement d'une *eisphora* décrétée par la cité, mais on peut supposer qu'il en était de même dans les deux suivants. La tournure εἰσφορὰ εἰς τὴν πόλιν apparaît aussi, au milieu du IV^e^ siècle, dans un bail du dème de Teithras qui en imposait le paiement aux locataires: τ̣[οὺς δὲ μισθωσαμένο]υ̣ς ἀποδιδόναι Τειθρασίο[ις τὰ τέλη ἑκάστο ἔ]τους ΕΛ..Γ.ΕΙ καὶ τὰς εἰσ[φορὰς εἰσφέρειν ὑ]πὲρ τ[ού]των εἰς τὴν πόλιν (*SEG* 24, 151, texte amélioré par N. Papazarkadas, *ZPE* 159 [2007], p. 155-160, lignes 30-34).

22 Cf. Thucydide, III, 19, 1. Sur l'évolution de l'*eisphora* athénienne et notamment de l'évaluation des biens des contribuables, voir en dernier lieu M.R. Christ, *CQ* 57 (2007), p. 53-69, avec la bibliographie antérieure.

le système convenait le mieux, mais il pouvait également s'appliquer aux liturgies. Avec un taux d'intérêt de 12 %, les Plôthéiens disposaient ainsi, chaque année, d'une réserve de 600 drachmes. Nous ignorons comment ils ont réuni le capital initial, mais il serait logique d'imaginer une souscription générale à laquelle ont contribué tous les démotes volontaires, ou du moins ceux à qui étaient imposées les liturgies locales et les *eisphorai* de la cité[23]. La méthode frappe à la fois par son originalité et sa précocité. On n'en trouve aucun équivalent ailleurs, à ma connaissance, ni en Attique ni dans d'autres cités, ni à la période classique ni à la période hellénistique.

Si l'idée d'une souscription est vraisemblable pour le fonds de l'atélie, nous ne savons rien de l'origine des autres capitaux, qui remontait sans doute à plusieurs années ou décennies. Au fil du temps, en gérant les fonds du dème de manière prudente, les Plôthéiens ont peut-être réussi à accumuler des surplus. Mais l'importance des sommes invite à imaginer la combinaison de moyens divers comme des souscriptions organisées localement et des dons venant de généreux démotes ou de bienfaiteurs étrangers au dème. Selon toute vraisemblance, à mesure qu'elles étaient recueillies, les sommes étaient placées en fondation, comme à Rhamnonte. Or, six ou même sept d'entre elles avaient une destination religieuse: les sacrifices confiés aux trésoriers, les quatre fêtes, les travaux de l'Hérakleion et peut-être les obligations du démarque. Il est donc possible que ces capitaux aient été, à l'origine, consacrés au sens propre du terme, c'est-à-dire considérés comme propriétés divines. Quant au fonds de l'atélie, par sa nature même, il appartenait sans doute à la caisse publique. En effet, même si nous n'en avons pas de preuve formelle, il y avait sans doute à Plôtheia à la fois une caisse publique et une caisse sacrée (ou même plusieurs, selon les sanctuaires). Le meilleur parallèle vient du dème d'Ikarion, où une inscription des années 450-425 énumérait les sommes totales – κεφάλαια, la plupart avec de la menue monnaie – que les démarques ont transmises à leurs successeurs durant six années peut-être consécutives: on y reconnaît trois caisses différentes, celle de Dionysos, celle du héros Ikarios et celle de l'argent *hosion*, c'est-à-dire la caisse publique du dème[24]. En pratique, cependant, la gestion de

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[23] Suggestion avancée aussi par S.C. Humphreys, *op. cit.* (note 17), p. 153-154: «The tax-exemption fund had perhaps been built up from contributions by wealthy demesmen, who prefered not to have sudden and irregular demands made on their ressources».

[24] *IG* I^3, 253; A.K. Makres, *Ἀττικαὶ ἐπιγραφαὶ. Πρακτικά συμποσίου εἰς μνήμην Adolf Wilhelm*, Athènes, 2004, p. 123-140. À Athènes, à partir du V^e siècle, la distinction entre fonds sacrés et fonds publics était marquée par l'opposition entre *hiéros* et *hosios*: dans le domaine financier, *hosios* désignait les fonds dont la cité pouvait disposer à des fins diverses, en conformité avec les rites et la volonté divine. Cf. entre autres W.R. Connor, *Ancient Society* 19 (1988), p. 164-170, et L.J. Samons II, *Empire of the Owl. Athenian Imperial Finance*, Suttgart, 2000, p. 28-29 et 325-329. Parmi les textes anciens, voir par exemple Démosthène, 24 (*Contre Timocratès*), 9, 11, 82, 111, 120 et 137 (de même, au paragraphe 96, l'orateur a distingué l'administration sacrée, *hiéra dioikèsis*, de l'administration publique, *hosia dioikèsis*) et la *Constitution d'Athènes* d'Aristote, 30, 2.

toutes les caisses relevait du démarque. À Plôtheia, on l'a vu, elle était confiée à la fois au démarque et aux trésoriers[25].

Nous ignorons si les loyers évoqués à la dixième ligne de notre texte provenaient de biens publics ou de biens sacrés. Mais nous savons que, dans plusieurs dèmes attiques et dans d'autres subdivisions civiques comme les phratries, les tribus et les villages, il y avait à la fois des *téménè* appartenant aux dieux et des biens-fonds appartenant aux communautés à titre public[26]. Nous savons également, de manière plus générale, qu'il y avait dans la plupart des cités grecques des terres et des immeubles publics aussi bien que sacrés[27]. Or, en Attique, la cité gérait effectivement un certain nombre de biens-fonds appartenant à différentes divinités[28]. Mais elle n'y possédait elle-même ni terres ni maisons et remettait sans tarder au domaine privé celles qu'elle confisquait aux particuliers, en les vendant aux enchères après en avoir consacré la dîme aux dieux[29]. C'est seulement en dehors de l'Attique qu'elle conservait la propriété des terres et des immeubles qu'elle avait acquis, dans la plupart des cas, par des confiscations massives dans des cités soumises par la force. Elle les intégrait à son patrimoine foncier et en tirait des

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Au contraire, D. Whitehead, *op. cit.* (note 1), p. 124, 166, n. 77, et 382, considérait tous les fonds d'Ikarion comme sacrés.

25 Sur les pouvoirs financiers des démarques et des trésoriers, cf. D. Whitehead, *ibid.*, p. 124-127 et 143-144.

26 Cf. D. Whitehead, *ibid.*, p. 152-154, M.B. Walbank, *The Athenian Agora* XIX, Princeton, 1991, p. 152-162, et S.D. Lambert, *Rationes centesimarum. Sales of Public Land in Lykourgan Athens*, Amsterdam, 1997 (*SEG* 48, 152). Le dernier volume traite des ventes de centaines de terrains, dont aucun n'était désigné comme sacré, en 343-340 puis en 330-325, par des dèmes, des villages (*kômai*), des phratries, des *genè*, ainsi que par des associations cultuelles comme des orgéons.

27 Parmi de nombreuses publications, cf. P. Guiraud, *La propriété foncière en Grèce jusqu'à la conquête romaine*, Paris, 1893, p. 344-381 et 421-445; G. Busolt, *Griechische Staatskunde* I, Munich, 1920, p. 604-607.

28 Voir notamment D. Behrend, *Attische Pachturkunden*, Munich, 1970; V.N. Andreyev, *Eirene* 12 (1974), p. 25-46; M.B. Walbank, *Hesperia* 52 (1983), p. 100-135 et 177-231, 53 (1984), p. 361-368, et 54 (1985), p. 140 (*SEG* 33, 167-171, et 34, 124), puis *op. cit.* (note 26), p. 145-207; M. Horster, *Landbesitz griechischer Heiligtümer in archaischer und klassischer Zeit*, Berlin-New York, 2004, p. 147-164.

29 Cf. M.B. Walbank, *op. cit.* (note 26), p. 150-151, et D.M. Lewis dans O. Murray-S. Price (éd.), *La cité grecque d'Homère à Alexandre*, Paris, 1992, p. 287-300. Effectivement, dans sa description des fonctions des *pôlètai* (47, 2-3), l'auteur aristotélicien de la *Constitution d'Athènes* a d'abord rappelé que ces magistrats procédaient à toutes les adjudications publiques, mais il n'a fait aucune allusion à la location de terres publiques, alors qu'il mentionnait en terminant (47, 4) le rôle de l'Archonte Basileus dans la location des terres sacrées. La seule exception, à ma connaissance, était celle des maisons du Laurion que la cité louait sans doute aux concessionnaires des mines, pour le logement de leur main-d'oeuvre, ou à des commerçants: cf Xénophon, *Poroi*, IV, 49, et Ph. Gauthier, *Un commentaire historique des* Poroi *de Xénophon*, Genève-Paris, 1976, p. 187. En revanche, les *oikiai* mentionnées par Xénophon dans le même opuscule (IV, 19) étaient probablement des maisons sacrées : cf. Ph. Gauthier, *ibid.*, p. 147-148.

revenus en partageant les terres en lots où elle installait des Athéniens comme tenanciers ou locataires[30]. Ces clérouquies, établies notamment dans plusieurs îles égéennes comme l'Eubée, Mélos, Lemnos, Imbros, Skyros et Samos, étaient le fruit de l'impérialisme. En Attique, en revanche, on ne trouve des terres proprement publiques que dans les dèmes et dans d'autres subdivisions civiques. De manière analogue, à ma connaissance, la cité n'a jamais créé de fondations, publiques ou sacrées, et n'a jamais non plus utilisé de l'argent public ou sacré pour le prêter aux particuliers. Elle avait donc pour principe ou pour habitude, semble-t-il, de laisser ce type de biens et d'initiatives à ses composantes. Ce partage original venait sans doute de traditions anciennes et remontait peut-être au synoecisme de la cité ou à des réformes de la période archaïque[31].

Deuxième partie

Après la liste des dix premières lignes, la pierre présente un décret du dème, qui est brièvement introduit par la formule de sanction et la mention du *rogator* (lignes 11-12). Le texte est incomplet à la fin, mais nous en avons probablement l'essentiel, comme on l'a vu.

Les Plôthéiens ont d'abord décidé d'instituer, par tirage au sort, des magistrats ou des gestionnaires (ἄρχοντες) pour chacun des huit fonds énumérés aux lignes 2 à 9 et leur ont imposé de restituer intégralement, à la fin de leur mandat, les sommes qui leur étaient confiées (lignes 12-15)[32]. À première vue, on pourrait croire qu'il

[30] La situation n'est connue, de façon relativement claire, qu'à la période classique, mais la plupart des sources, épigraphiques et littéraires, sont laconiques et ambiguës et les nombreuses études qui leur ont été consacrées ont abouti à des interprétations divergentes. Voir notamment Ph. Gauthier, *REG* 79 (1966), p. 64-88, et dans M.I. Finley (éd.), *Problèmes de la terre en Grèce ancienne*, Paris-La Haye, 1973, p. 163-178; J. Cargill, *Athenian Settlements of the Fouth Century B.C.*, Leiden-New York-Cologne, 1995; N. Salomon, *Le cleruchie di Atene. Caratteri e funzione*, Pise, 1997; M. Faraguna, *Dike* 2 (1999), p. 67-89; Chr. Pébarthe dans Cl. Moatti, W. Kaiser et Chr. Pébarthe (éd.), *Le monde de l'itinérance en Méditerranée de l'Antiquité à l'époque moderne. Procédures de contrôle et d'identification*, Paris-Bordeaux, 2009, p. 367-390. Sur les clérouques de Lemnos, cf. aussi D. Marchiandi, *ASAA* 80, Ser. III, 2, T. 1 (2002), p. 547-554. Sur les indigènes maintenus sur place pour travailler les terres, cf. R. Zelnick-Abramovitz, *Mnemosyne* 57 (2004), p. 325-345. A. Moreno a plusieurs fois défendu la thèse, excessive à mon avis, selon laquelle les clérouques étaient partout de riches rentiers qui continuaient à résider à Athènes: *ZPE* 145 (2003), p. 97-106, *Feeding the Democracy. The Athenian Grain Supply in the Fifth and Fourth Centuries BC* (2007), spécialement le chapitre 3, et dans J. Ma-N. Papazarkadas-R. Parker (éd.), *Interpreting the Athenian Empire* (2009), p. 211-221.

[31] Voir des réflexions analogues chez V.N. Andreyev, *loc. cit.* (note 28), p. 45, et M. Faraguna, *Dike* 1 (1998), p. 176.

[32] Le sens des lignes 12-14 n'est pas évident. À première vue, ἄρχοντας paraît être le sujet de κυαμεύεν, qui signifie «tirer au sort au moyen de fèves». On peut alors traduire, comme l'a fait B. Haussoullier, *op. cit.* (note 1), p. 75: «que les magistrats désignent des

s'agissait d'une commission unique, préposée à l'ensemble des fonds. Mais le décret évoque plus loin les gestionnaires des prêts (ligne 21) et ceux du fonds de l'atélie (lignes 31-33): chaque fonds avait donc son ἄρχων ou ses ἄρχοντες. Quant au tirage au sort, il devait respecter certaines conditions, car ces hommes devaient être solvables, au sens propre du terme ἀξιόχρεως, pour la somme qui leur était confiée. La charge était donc réservée aux riches ou du moins aux citoyens aisés.

Cette clause ne concernait pas le revenu des loyers, qui n'était pas constitué en fondation et n'était pas non plus visé par les deux clauses suivantes. En effet, celles-ci fixaient les conditions des prêts en les partageant en deux catégories: les prêts déjà consentis devaient respecter les conditions établies (lignes 15-18), mais les Plôthéiens entendaient tirer le meilleur parti possible de ceux qui devaient être renouvelés chaque année, en les réservant à ceux qui offriraient l'intérêt le plus élevé et de solides garanties, à la fois réelles et personnelles (lignes 18-22); en d'autres termes, ils les mettaient aux enchères.

Toute la suite, partagée en trois clauses (lignes 22-28, 28-33 et 33-40), concernait l'emploi des sommes disponibles pour célébrer divers sacrifices. L'Assemblée a partagé ces derniers en deux groupes, chacun composé de trois cérémonies distinctes: d'une part les sacrifices célébrés en commun pour les Plôthéiens, ceux que les Plôthéiens offraient en leur nom pour les Athéniens et les sacrifices des Pentétérides, d'autre part «les autres sacrifices», à savoir ceux pour les Plôthéiens, ceux pour les Épakreis et ceux pour les Athéniens. L'Assemblée a affecté les intérêts des fondations et le revenu des loyers au premier groupe et les intérêts du fonds de l'atélie au deuxième. Avec la troisième clause, les Plôthéiens sont revenus aux «sacrifices communs», c'est-à-dire, selon toute apparence, à ceux du premier groupe où la même expression était employée, dans la mesure où ils étaient suivis d'un banquet: un demi-conge de vin doux devait être distribué aux Plôthéiens présents et une jarre (de vin probablement) devait être offerte, semble-t-il, au maître (des choeurs selon toute vraisemblance). Le sens de la suite nous échappe à cause des lacunes.

L'Assemblée réglait donc ainsi l'usage des sources de financement énumérées dans la première partie du texte. Nous voyons qu'il s'agissait à la fois de fêtes locales et de fêtes auxquelles les démotes participaient à d'autres niveaux, notamment à celui de la cité tout entière[33]. Mais les Plôthiens ne sont évidemment

personnages capables d'administrer l'argent qui revient à chacun d'eux». Mais, comme l'a noté justement A. Damsgaard-Madsen, *Classica et Mediaevalia F. Blatt septuagenario oblata*, 1973, p. 106, n. 16, si l'on traduit «les chefs des finances tireront au sort des hommes capables de ce que comprend chaque magistrature», on se demande qui étaient ces ἄρχοντες τῶ ἀργυρίο. Par ailleurs, le bon sens exclut que les sommes d'argent aient elles-mêmes été l'objet du tirage au sort. Il reste donc à prendre ἄρχοντας comme complément de κυαμεύεν, comme l'ont fait A. Damsgaard-Madsen, *ibid*., p. 105-106, D. Whitehead, R. Koerner-Kl. Hallof et P. Brun (références à la note 1).

[33] Cf. B. Haussoullier, *op. cit*. (note 1), p. 162-164, J.D. Mikalson, *AJPh* 98 (1977), p. 424-435, et D. Whitehead, *op. cit*. (note 1), p. 178-180, qui a justement insisté sur l'évolution

pas entrés dans des détails qui étaient clairs pour eux, ce qui nous empêche d'établir des liens entre les différentes célébrations, de définir le rôle exact des fondations et du fonds alloué aux trésoriers et de savoir pourquoi l'Assemblée a organisé leur financement de cette manière.

Nous constatons cependant que, dans le deuxième cas (lignes 28-33), elle a décidé de puiser dans le fonds de l'atélie plutôt que de recourir aux contributions individuelles des démotes. Elle a donc substitué une source de financement à une autre en détournant un fonds spécial de son usage habituel et en suspendant par conséquent l'application des atélies ou du moins de certaines d'entre elles. Le sens du premier cas (lignes 22-28) est plus obscur, mais je pense que l'Assemblée a, là aussi, remplacé un mode de financement par un autre, car l'un des sens fondamentaux de la préposition ἀντί est «à la place de»: les Plôthéiens ont donc décidé de renoncer à des achats éventuels rapportant un loyer, c'est-à-dire probablement à des achats de terres ou d'immeubles, et de puiser plutôt dans les intérêts et les loyers déjà disponibles[34].

Conclusion

Dans le monde grec, les objectifs des fondations et l'usage de leurs intérêts étaient toujours définis à long terme. De même, s'ils provenaient de terres sacrées, les fermages étaient habituellement affectés, de manière stable, au financement des cultes. Or, nous constatons que les Plôthéiens ont procédé à une révision des uns et des autres, manifestement parce qu'ils étaient préoccupés par le maintien des célébrations religieuses. Il me paraît clair qu'ils éprouvaient alors des difficultés financières, sans doute attribuables à la guerre. En effet, s'ils ont décidé de confier chacun des fonds à des ἄρχοντες différents et solvables, c'est probablement parce qu'ils voulaient remettre de l'ordre dans la gestion des fondations et des revenus de location. Ensuite, s'ils ont tenu à rentabiliser au maximum les nouveaux prêts, c'est peut-être parce qu'ils n'arrivaient plus à en tirer les 12 % habituels. En outre, en remplaçant les achats de biens-fonds par les intérêts des fondations et les loyers, ils semblent avoir voulu protéger les capitaux déjà en place et ne pas amoindrir leur rendement. De même, s'ils ont substitué les intérêts du fonds de l'atélie aux

qui a sans doute marqué ces célébrations. Sur les Épakreis, dont l'identification est discutée, voir en dernier lieu R. Parker, *op. cit.* (note 16), p. 73, et N. Papazarkadas, *CQ* 57 (2007), p. 22–32.

[34] L'interprétation des lignes 23-25 a souvent été esquivée. Mais le sens a été bien indiqué, à mon avis, par D. Behrend, *op. cit.* (note 28), p. 74 («für das, was etwa mit den Kapitalien als pachtzinsbringendes Objekt gekauft wird») et note 107 («ἀντί zur Bezeichnung eines Gegen- oder Austauschwerts ist oft belegt») et par J.K. Davies, *loc. cit.* (note 1): «in place of whatever of the totals there may be purchases bearing rent». R. Koerner et Kl. Hallof, *op. cit.* (note 1), ont paraphrasé D. Behrend: «für das, was eventuell mit den Geldern als pachtzinsbringendes Objekt gekauft wird». W. Froehner, *op. cit.* (note 1), partant d'un texte mal assuré, n'a pas compris le passage. P. Brun, *op. cit.* (note 1), ne l'a pas traduit.

contributions individuelles, c'est probablement parce que celles-ci leur paraissaient trop lourdes dans les circonstances. Enfin, ils ont peut-être revu à la baisse les distributions de vin lors des banquets.

Le martelage de la première partie est plus mystérieux, mais on constate que les Plôthéiens n'ont pas simplement corrigé les sommes d'une liste qui s'y trouvait déjà: ils ont remplacé le tout. Or, le texte effacé devait avoir lui aussi un lien avec le décret. Il est donc logique de supposer qu'il présentait déjà une liste de sommes, notamment de capitaux de fondations, avec leur destination ou leur origine, et que les Plôthéiens ont été amenés à les modifier. La portée du changement nous échappe, mais il est probable qu'il était dû aux mêmes difficultés financières, peut-être à quelque temps d'intervalle. Ces décisions étaient sans doute temporaires et, dans un avenir meilleur, les Plôthéiens pouvaient espérer revenir aux pratiques antérieures. Comme elles concernaient les affaires sacrées, ils ont cependant tenu à les perpétuer en les faisant graver dans la pierre.

Mais cette révision prouve aussi qu'il y avait dans le dème, depuis un certain temps déjà, des règles bien établies concernant la gestion des finances communes. Nous ne connaissons ni leur nombre ni leur portée, mais nous voyons qu'elles concernaient au moins la planification de plusieurs dépenses cultuelles et s'étendaient à d'autres domaines, comme les exemptions de taxes. L'Assemblée les avait sans doute mises au point graduellement en pensant au long terme, donc par des décisions qu'on peut qualifier de législatives. On sait cependant que, dans la cité athénienne, la distinction entre loi (*nomos*) et décret (*psèphisma*) ne s'est dégagée qu'à partir de la fin du V^e^ siècle[35]. C'est pourquoi l'Assemblée conservait le droit de revenir sur certaines règles par simple décret. La vitalité des institutions locales de l'Attique est bien connue, surtout grâce aux études de B. Haussoullier et de D. Whitehead[36]. Des recherches plus récentes ont souligné en outre que plusieurs dèmes et sanctuaires locaux ont montré, dès le V^e^ siècle, une inventivité et une rationalité remarquables dans la gestion de leurs finances[37]. On constate effectivement que, dans ce domaine, ils jouissaient d'une autonomie assez large et conservaient des pratiques originales, sans doute grâce à des traditions anciennes.

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[35] Cf. M.H. Hansen, *GRBS* 19 (1978), p. 316-317, et 20 (1979), p. 28-31, articles repris dans *The Athenian Ecclesia. A Collection of Articles 1976-83*, Copenhagen, 1983, p. 162-163 et 180-183. Du même auteur, cf. *La démocratie athénienne à l'époque de Démosthène* (trad. française, Paris, 1993), p. 195-196.

[36] Voir les références à la note 1. Pour la tenue des cadastres au niveau local, cf. M. Faraguna, *Athenaeum* 85 (1997), p. 7-33.

[37] Cf. V. Chankowski, *Topoi* 12-13/1 (2005), p. 77-78, qui a qualifié les dèmes de «laboratoires d'expériences financières», J.K. Davies, *loc. cit.* (note 1), p. 117-128, avec aussi des exemples d'autres cités, M. Faraguna *in* K. Verboven-K. Vandorpe-V. Chankowski (éd.), *Pistoi dia tèn technèn. Bankers, Loans and Archives in the Ancient World. Studies in honour of Raymond Bogaert*, Leuven, 2008, p. 42-46, et A.K. Makres, *loc. cit.* (note 24), p. 140.

DAVID WHITEHEAD (BELFAST)

RESPONSE TO LÉOPOLD MIGEOTTE

The methodological issues posed by documents from (or data relating to) the *polis*-communities of classical and hellenistic Greece are well-known. As context for the evidence itself, and for any inherent problems it raises, stand broader conceptual questions: the 'unity of Greek law'; the balance between the general and the particular. And just as it is (and was) between states, so it is (and was) within them – at any rate, those states large enough to embrace, as the vast majority did, subdivision into constituent parts.

Few poleis were larger than Athens; and after Kleisthenes the sub-state units of prime importance were its demes: 139 of them (by John Traill's defining criteria), of all shapes and sizes.[1] How far were the demes told what to do – and how to do it – by central government, and how far did they enjoy autonomy? Sometimes the unifying, controlling hand of the centre is plain to see. Each and every deme, for instance, had to appoint a *demarchos*, to perform some functions on the city's behalf as well as those his own deme might choose to give him.[2] And as regards those *polis*-wide functions, each and every deme had to maintain lists of its members, its own *demota*i; lists which, in aggregate, became rosters of the citizen-body as a whole.[3] In other areas, though, what the evidence suggests (and indeed sometimes what it demonstrates) is diversity, to a degree which prohibits, or at least inhibits, across-the-board generalisation. Instead, what is called for is a methodology designed to showcase the particularity of the document in question and to enhance and enrich the exegesis of it with comparative material deployed just as much for contrast as for analogy.

IG I³ 258 (formerly II² 1172) is such an item, *par excellence*; and Professor Migeotte, with his lifetime of experience in work of this kind, handles it superbly. Of course, despite his title ('Pratiques financières dans *un dème* attique…' – my emphasis) more demes than little Plotheia are invoked: Aixone, Eleusis, Ikarion, Myrrhinous, Peiraieus, Prasiai, Rhamnous, Teithras. So too are Athenian institutions other than demes (tribes, phratries, orgeones); and so too is extra-Athenian material,

[1] See Traill (1975) 73-103; Whitehead (1986) 16-21. Traill (1986) 133-134 with 142-144 presents Acharnai as a bipartite deme, which if true would have the effect of raising the total to the mathematically less awkward 140 (cf. Traill, 1986, 123), but for doubts about this see Whitehead (1987) 442-443.

[2] Whitehead (1986) 58-59, expanded 121-139.

[3] Whitehead (1986) 97-109, 258-260.

especially from colonies and cleruchies. But everything serves the end of shedding light on this Plotheia document, unique as it is in so many ways.

When I was invited, and agreed, to be the Respondent to this paper, I naturally had no idea what Professor Migeotte would say about IG I³ 258, and no expectation (accordingly) of how far, and if so how strongly, I would need to express dissent from him. Once I had received his paper and read it, the answer became clear: hardly at all.[4] It turned out, first, that his basic avenue of approach was one that I myself had found good reason to endorse, when studying the document some years ago.[5] It was therefore a relief, if I may so put it, not to have to revisit the broad prefatory questions: the fundamental relationship between the two parts of the document, and the sense in which its opening 'totals' are to be understood. But secondly and especially, Professor Migeotte's opinions and suggestions on matters of detail and background, throughout, nearly all strike me as eminently reasonable. I have tried to find fault with them. Save for a few details, presented below, I cannot. That is bad news, perhaps, for anyone who would have relished gladiatorial combat over these issues. But the good news is more important: at least two people with some claim to expertise in the area are at one in the story that IG I³ 258 has to tell.

In the role, then, of seconding Professor Migeotte's motions rather than opposing them, I would draw attention to his emphasis – more pronounced than in previous treatments[6] – on the sense one gets, from this document, of the Plotheians *changing their ways, at a time of financial difficulty*. When the stone used to be dated c.400, that 'time' was shortly after the end of the Peloponnesian War, and in circumstances when plenty of other evidence illustrates what, nowadays, one would call a recession engulfing Athens and Attica. But latterly the David Lewis dating is followed by everyone, up to and including Professor Migeotte himself: 425-413. Of course, those termini are not purely epigraphical ones; they reflect epigraphical criteria (letter-forms, in the main) shaped by historical ones. With the pre-war years not in question, apparently, the period 431-425 is deemed to be ruled out because of the "Periklean" evacuation of Attica, operative (in theory at least) until the annual Spartan invasions stopped.[7] Later, 413 marks the full-time enemy occupation of Dekeleia – which, we should note, was within close striking distance of Plotheia. (The site of Plotheia was near present-day Stamata, on the far side – from an Athenian starting-point – of Mount Pentelikon.)[8] So here are the Plotheians, as a

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4 His bibliographical coverage is as up-to-date and as comprehensive, in respect of earlier work, as one would expect; but under the latter heading add, perhaps, Millett (1991) 171-176.

5 Whitehead (1986) 165-169.

6 The remarks of Whitehead (1986) 151 n.9 were suggestive but undeveloped.

7 Suspicions that the evacuation was less complete and/or less long-lasting than readers of Thucydides are invited to believe have been voiced by e.g. Hornblower (2002) 153 and Rhodes (2006) 102. The issue is important but cannot appropriately be pursued here.

8 Traill (1975) 41.

functioning body of demesmen, making decisions about their financial problems, and committing those decisions to stone. They are doing this either during the closing years (as events were to prove) of the Archidamian War, with peace unforeseeably ahead, or else with the Peace of Nikias already signed – and with nobody wishing to heed pessimists like Thucydides who were anticipating an imminent resumption of hostilities. Either way, deme life, even in a tiny (one-councillor-sized) community like this, no larger than a village, was manifestly resilient. The Plotheians did want to sustain their cults and festivals, as Professor Migeotte comments, and the key to that was revenue, and the appropriate officials, institutions and mechanisms needed for raising, managing and spending it.

Apart from the demarch (singular) and the treasurers (plural) mentioned *obiter* in the opening list of 'totals', these officials are the first item of business in the decree itself (lines 11ff). I have three brief points to make about this:

(i) In a recent study of the Epakreis (and related matters) which cites this document, Nikolaos Papazarkadas presumes in passing that that the '*archontes*' here are the successive holders of the office of demarch.[9] Neither Professor Migeotte nor I would share that presumption.

(ii) Professor Migeotte understands (and translates) the accusative plural adjective *axiochreos* in lines 12-13 as 'solvables'. I agree that it can, often, mean that, as when (e.g.) guarantors or sureties are being characterised;[10] nevertheless I would want to give the word in the present context a broader connotation like 'trustworthy' (the sense applied to witnesses in Demosthenes 40.61 and elsewhere).[11] Note incidentally – either way – that *sortition* to produce officials who meet this requirement necessarily presupposes a short-list of *prokritoi* who already do.[12]

(iii) Whereas both Professor Migeotte and I follow the line of interpretation, going back to the nineteenth century, which takes 'the archons' in line 12 as the *object* of its verb, I am (nowadays) troubled – in a way that he, apparently, is not – by the definite article in the phrase. Were it not there, it would be crystal clear that the decree is *creating new officials* ('instituer', as he has it). But since the article *to(u)s* is, unavoidably, there, I think we are driven to a scenario not considered by Professor Migeotte: that this decree is following up an earlier decision in principle to create these officials, without, as is now addressed here, determining in detail how they are to proceed.

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[9] Papazarkadas (2007) 25 n.15.

[10] For this see e.g. Aristoph. *Ekkles*. 1065; Plat. *Ap*. 38C, *Leg*. 871E, 914E; and frequently in juridical inscriptions from outside Athens.

[11] See also *IPArk* 17 B102-3. For this adjective in another Athenian deme decree (and with a somewhat different sense) see IG II² 1183.28-29 (Myrrhinous).

[12] Compare (*mutatis mutandis*) ?Aristot. *Ath.Pol*. 8.1 and 22.5 on procedures for choosing the nine city archons.

Professor Migeotte's discussion of the *ateleia* provisions in the document (building, to be sure, on foundations laid by John Davies and Sally Humphreys) is especially noteworthy. This is, surely, *ateleia* of a general kind (not restricted to the sphere of cult and religion); and the idea that the standing fund designed to pay for it was built up by subscriptions from the wealthier demotai,[13] even if it has no precise parallel, is fully congruent with the general body of evidence of how demes managed their communal lives and tapped the resources represented by their richer members. In the second part of the paper he makes a good case for thinking that the Plotheians' decision to plunder (as one might say) the *ateleia* fund for their financial needs was both novel in itself and sustainable only in the short term. In the concluding summary this seems to have become an all-embracing assessment of what the Plotheians are doing in IG I³ 258: '[c]es décisions étaient sans doute temporaires et, dans un avenir meilleur, ils pouvaient espérer revenir aux pratiques antérieures'. When drafting this response I began with some doubts about this analytical inflation, so to speak, but on the whole I think it justifiable – even if what the Plotheians hoped for in, say, 420, may not be what the future actually brought them in the longer run.

So: is anything known of (or from) fourth-century Plotheia? In 1986 I raised the possibility that we do have just one other document from that deme in that period;[14] and since it is just about the only relevant datum that Professor Migeotte does not deploy, it deserves a mention here. Here is the text:

ΟΙ ΔΗΜΟΤΑΙ *vacat* ΕΠΑΚΡΕΕΣ
ΕΣ ΑΠΟΛΛΩΝΙΑ
ΑΡΞΑΝΤΑ

The original editor, the archaeologist and Byzantine expert Mrs Eleni Tsophopoulou-Gkini,[15] characterised this as part of a 'decree' of a deme, and this terminology was taken over without comment in SEG 32.144. It would be more accurate, though, to call it a summary (or outcome) of such a decree, one honouring or commemorating an individual who had 'held office'. Compare the even more telegraphic IG II² 3214 (from the third century, and from an unidentifiable deme): ΜΝΗΣΙΘΕΟΝ ΟΙ ΔΗΜΟΤΑΙ (*in corona*), i.e. 'the demesmen (*sc.* crowned) Mnesitheos'. There we have the name of the honorand but not the reason for the crowning. Here, in Tsophopoulou-Gkini's document, we have no name – most oddly – but we do have the background. The individual concerned has held office in respect of the Apollonia (the prepositional phrase seems bound to belong with the participle); and both 'the demesmen' – his fellow-demesmen, presumably – and the

[13] Davies (1971) 470-471 (Prokles) and 490 (Speusandros) registers two Plotheians affluent enough to be trierarchs in the third quarter of the fourth century.

[14] Whitehead (1986) 386-387, no.97; noted in SEG 36.189.

[15] Tsophopoulou-Gkini (1980) 94-95, with photograph.

Epakreis have seen fit to mark that fact. And one can go further, I think. While (the) Epakreis are named, the demesmen concerned are simply 'the *demotai*', just as in IG II² 3214. This suggests that the document was theirs, with (the) Epakreis in a merely associative role.

So what deme was it? The *editio princeps* assigned the document to the deme Hekale. At that time, thirty years ago, Hekale was identified (by Traill, amongst others) with the present-day town Mygdaleza (where this stone was found built in to the wall of the excavated Byzantine church).[16] Traill subsequently changed his mind and held that Mygdaleza was the site of the deme Anakaia (with Hekale moving to present-day Koukounar(t)i).[17] However, as Papazarkadas points out, the risk of circular argument is clearly high here.[18] Rather than contributing to the already complicated discussion of the topography of this mini-region, I prefer simply to take this opportunity to repeat my suggestion that Tsophopoulou-Gkini's stone migrated the short distance – some 2-3 km. – from Plotheia/Stamata.[19]

More than the mention of (the) Epakreis, which raises its own problems (explored by Papazarkadas), what principally supports the idea of a link is the phrase ΕΣ ΑΠΟΛΛΩΝΙΑ – precisely the one that 258 uses,[20] and unparalleled elsewhere in Attica. Let it at least be conceded that connection between these two documents is a very strong probability. Unfortunately, the date assigned to the later one (second half of the fourth century), as well as the possibility that it is incompletely preserved,[21] seriously impede the chances of relating it in substantive and historical terms to 258. Robert Parker's summary discussion in his *Athenian Religion* claims that, from SEG 32.144, 'we now know that the Epakrians appointed an *archon* to organise specific festivals, an apparently archaic practice also found in the League of Athena Pallenis'.[22] I wonder. I have argued already that that 'the demesman' are in charge of this *document*, as such; it may therefore be that the deme, rather than the Epakreis, had appointed this *official*. True, even if that is correct, he is not self-evidently the same kind of archon as the financial ones created by 258; but in all honesty, who can say?

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16 Traill (1975) 46.

17 Traill (1986) 131, 137.

18 Papazarkadas (2007) 30 n.49.

19 In SEG 32.144 the location is given as 'Mygdaleza, near Stamata'.

20 Notwithstanding the fact that J. and L. Robert read *eis* (rather than *es*) from the photograph: *BE* 1983, 105 no.187.

21 In SEG 32.144 it is noted, presumably by Pleket and Stroud, that Tsophopoulou-Gkini 'does not print a text but gives *this much* in majuscules' (my emphasis). From the photograph (pl.23β) in the ed.pr. one could not reasonably conclude that she omitted anything, given the large spaces both above and below the six words published; however, that still leaves the possibility that the complete, original stone said more.

22 Parker (1996) 330 (including a text of SEG 32.144 with tacit adoption of the Roberts' *eis*: n.20 above), with 330-331 on Athena Pallenis. See also Parker (2005) 461.

From our perspective, then, the Plotheians relapsed into the frustrating obscurity out of which 258 had temporarily emancipated them, and which it was the fate of so many other demes never – even this once – to escape.

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STEPHEN C. TODD (MANCHESTER)

THE ATHENIAN PROCEDURE(S) OF *DOKIMASIA*

[a] *Dokimasia* in the Attic Orators, esp. Lysias

This paper arises out of a long-term interest in the speeches attributed to Lysias, where cognates of the verb *dokimazō* ("scrutinise" or "examine"), including the related noun *dokimasia* ("scrutiny"), are found more frequently than in any of the other Athenian orators.[1] Such language is used, in Lysias as in other orators, to denote a variety of procedures whereby those appointed to hold public responsibility, or to exercise some form of public benefit or entitlement, were typically required to undergo scrutiny of their credentials, normally as a precondition before entering into their new status.[2]

Dokimasia, particularly as it relates to public officials, is discussed in passing or systematically in most standard works on Athenian administration of justice, or the democratic constitution, or political accountability;[3] there are also specialist studies focusing typically on particular problems, such as the relationship between the Amnesty of 403 and the peculiar prevalence of contested *dokimasia* cases in the corpus of Lysias,[4] or more generally the relationship between the various *dokimasia* procedures.[5] Among the most interesting specialist studies is Feyel's book on *Dokimasia*, which was published just as I began work on this paper, and follows a number of preliminary studies.[6] The chief virtue of this book is perhaps its

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1 A TLG search for the letter-combination -δοκιμα- reveals 61 occurrences in the corpus of Lysias, with the next most common being Demosthenes (54 occurrences), Isokrates (31) and Aiskhines (14).

2 The *dokimasia* of orators, however, was retroactive: see text at n.27 below.

3 Examples can only be selective. For administration of justice, see Lipsius (1905-15: 269-285), Bonner & Smith (1930-38.ii: e.g. 243-245), Harrison (1968-71.ii: 200-207). Constitution: Hignett (1952: 205-208), Hansen (1991: e.g. 218-220). Political accountability: Roberts (1982: 14-15).

4 E.g. Adeleye (1983), Hashiba (1997-98).

5 E.g. Caillemer (1892), Koch (1903), Borowski (1976). Specialist studies of particular forms of *dokimasia* include MacDowell (2005, on the *dokimasia* of orators, with response by Gagliardi), and various of the preliminary studies by Feyel (listed in following note).

6 The book is Feyel (2009). The preliminary studies known to me are all primarily epigraphic in their focus: Feyel (2003) on the Athenian silver coinage law, Feyel (2006) on animals to be sacrificed, primarily in the Entella inscription, and Feyel (2007) on newly enfranchised citizens, primarily at Athens.

comprehensiveness, in that Feyel assembles and discusses pretty well every conceivable text, epigraphic as well as literary or lexicographical; and indeed his longest chapter, albeit narrowly, is the one on *dokimasia* outside Athens, for which his evidence derives entirely from inscriptions.[7] The significance of Feyel's book is precisely that his epigraphic and non-Athenian material presents a picture which is in some ways very different, at least in its highlights, from the ways in which Athenian legal procedure was depicted by earlier scholars. As such, it invites reconsideration of the Athenian material, and this paper therefore takes the opportunity to focus on two sets of issues: first, the historiography of the problem of classification (the question of how scholars have interpreted the relationships between the various types of *dokimasia* procedure attested at Athens), and secondly the juridical consequences of such classificatory decisions (particularly as they affect our understanding of the contested *dokimasia* cases in Lysias).

The frequent appearance of *dokimazō* and cognates in the speeches of Lysias has already been mentioned. Such usage reflects, albeit with some distortion,[8] the high visibility of various *dokimasia* procedures within the Lysianic corpus.[9] Since these will be referred to with some frequency in the paper, it may be helpful to start by summarising them. For reasons that will emerge,[10] they are presented here in the order of prominence and frequency with which they manifest themselves to a reader of Lysias, with brief discussion where appropriate of the evidence provided by the *Ath.Pol.*:

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[7] This is perhaps a slightly false statistic given that it covers types of *dokimasia* which for Athens fill several chapters, but it still amounts to nearly one-third of the book: ch.1 origins (13pp); ch.2 *dokimasia* in Athenian institutions after 403 (13pp); ch.3 "technical and financial" at Athens (65pp), ch.4 "political" at Athens (106pp), ch.5 Hellenistic Athens (primarily foreign benefactors receiving e.g. honorific enfranchisement, 39pp); ch.6 outside Athens (118pp); conclusions (6pp).

[8] It is much more frequent in speeches which attack a *dokimasia* candidate (most notably Lys. 26 and Lys. 31, which account for 26 and 11 instances respectively of *dokimazō* and cognates), as if such speakers are much more keen to draw attention to the seriousness of the occasion. By contrast, such language is used in *dokimasia* defence speeches far less often: only five times in Lys. 16 (one of these is in the speech-title, while §13 refers to illicit cavalry service by other people rather than to the present case), only once in Lys. 25, and not at all in Lys. 24.

[9] Lysias uses primarily the verbs *dokimazō* (29 instances in all: the same term is used in Greek, as Lipsius [1905-15: 276] notes, to denote both the process of scrutiny and the act of approving the candidate) or *apodokimazō* (to denote the rejection of a candidate, 12 instances), the procedure-noun *dokimasia* (11 instances), and the adjective *adokimastos* ("unscrutinised", 7 instances, particularly common when discussing illicit cavalry-service, for which see n.26 below). For the rarity in the orators of the agent-noun *dokimastēs* ("scrutineer", once in Lysias, twice in Demosthenes, once in Aiskhines), see text at n.41 below.

[10] See §2 of this paper.

[1] Most prominent is the type of *dokimasia* undergone by all public officials at Athens before entering office.[11] Jurisdiction in such cases was shared in rather complex ways between the *boulē* and the dikastic lawcourts: the Nine Arkhōns evidently underwent a double *dokimasia* before both bodies;[12] *bouleutai* were scrutinised by the outgoing *boulē* (apparently with the right of appeal to the lawcourt);[13] but the *boulē* was not involved in the *dokimasiai* of any other official, and such cases instead went straight to the lawcourt. The *Ath.Pol.* discusses this procedure in two separate places, once briefly summarised when considering the responsibilities of the *boulē* (*Ath.Pol.* 45.3) and again in more detail when discussing the appointment and scrutiny of the Nine Arkhōns (*Ath.Pol.* 55.2-4). Four of the extant speeches of Lysias are generally thought to derive from cases of this type, plus two of the speeches from which only fragments survive.[14] As often with lawcourt speeches, we have no direct evidence for the result of any of these cases, but there are passing allusions in the corpus to a couple of other occasions where

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[11] Aiskhin. 3.15 indeed regards the requirement to undergo *dokimasia* as one of the characteristics that serve to define whether a particular public responsibility should or should not be regarded as an *arkhē*.

[12] I.e. *boulē* then lawcourt in all cases: *Ath.Pol.* 55.2.

[13] "The Athenians could never quite make up their minds whether the *boulē* was to be regarded as a magistracy and therefore needing the curb of the courts, or as a representative random selection of ordinary citizens and therefore exactly on all fours with a dikastery of five hundred": thus Harrison (1968-71.ii: 200 n.2), using the latter to explain why the *boulē*'s decision in *dokimasiai* of invalids and cavalry (types [2] and [4] below) seems to have been final, without appeal to the lawcourt. However, *bouleutai* themselves needed to undergo *dokimasia*: Bonner & Smith (1930-38.i: 233) rightly draw the contrast with dikastic jurors, to which Adeleye (1983: 295) adds assembly members, since for neither of these bodies was *dokimasia* required (though there were procedures for dealing retroactively with those who had attempted to serve while disqualified: Pyrrhos is said to have been prosecuted by *endeixis* and executed for having sat as *dikastēs* while a state-debtor, cf. Dem. 21.182 with Hansen 1976: cat. 21).

[14] In three speeches the *dokimasia* setting is explicit: Lys. 16 *For Mantitheos* (defence speech addressed to *boulē*, probably for a *bouleutēs*-designate, cf. primacy of βουλεύοντας at §8); Lys. 26 *Against Euandros* (attack on Arkhōn-designate, addressed to *boulē*, i.e. at the first stage of proceedings); Lys. 31 *Against Philon* (attack on *bouleutēs*-designate, addressed to *boulē*). The fourth speech, Lys. 25, carries the dubious MS title "Defence on a charge of overthrowing the democracy", but the absence of any indication of specific charge or penalty faced by the speaker has led most scholars to read it as a *dokimasia*-defence for an unspecified other public office (addressed to lawcourt). Of the fragments, the same interpretation is generally suggested for frag. sp. L (Carey) *For Eryximakhos who remained in the city* (addressed to lawcourt), on the grounds that remaining in the city (sc. in 404/3, as a supporter of the Thirty) was not an offence, though it was often alleged against *dokimasia* candidates; see also frag. sp. CXLV (Carey) *Against [lost name] at his dokimasia* (audience not known), evidently delivered against a candidate, in a speech where the one surviving fragment precludes identification with any of the others listed here.

candidates were rejected.[15] There is incidentally no reason to believe that the MS tradition of Lysias has selectively preserved these four *dokimasia* speeches, in the way that it does on occasions selectively preserve groups of speeches relating to other procedures;[16] the fact that this type of *dokimasia* appears far more often in Lysias than in other orators[17] is therefore a genuine research question, i.e. a phenomenon that needs explaining.[18]

[2] The Lysianic corpus also provides the sole surviving example of what is evidently a speech from the *dokimasia* of a man who claims to be disabled (*adunatos*) and as such is defending the continuance of his invalidity pension.[19] It is evident that this form of *dokimasia* was a recurrent requirement: i.e., the recipient had to appear periodically before the *boulē* to prove his continuing entitlement.[20]

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[15] Lys. 13.10 claims that Theramenes was rejected at his *dokimasia* for the Generalship in either 405 or possibly 406 (unique among known *dokimasia* cases in being an elective office, whereas all the other contested cases relate to offices appointed by lot: on this case, see further n.86 below); Lys. 26 is evidently the second *dokimasia* for the Arkhōnship of 382/1 BC, following the *dokimasia*-rejection of the original candidate Leodamas.

[16] There is evidence for at least some of the speeches in our manuscript being grouped on the basis that they share the same legal procedure (Todd 2007: 19-25), and in such cases it is obviously dangerous to argue from frequency. The speeches under consideration, however, are scattered throughout the manuscript: including Lys. 25 and Lys. 26, which appear together in modern editions but were originally separated by the now-lost speech *Against Nikides* (evidently not a *dokimasia*, cf. Todd 2007: 24 n.1).

[17] The only *dokimasia* speech attributed to an orator other than Lysias is Deinarkhos' lost speech *Against Polyeuktos, appointed by lot as Basileus*. There are two allusions in orators other than Lysias to contested or potentially contested *dokimasiai*, only one of which came to a hearing: Dein. 2.10 (Aristogeiton rejected at *dokimasia* as *epimelētēs* of the *emporion*), and Dem. 21.111 (Meidias' unfulfilled threat to oppose Demosthenes at his *dokimasia* as *bouleutēs*). For the constitutional significance of such cases, see n.84 below.

[18] For further discussion of this research question, see the final section of this paper. My other research question concerns the difference between oratorical and epigraphic evidence for *dokimasia*, and is discussed in the second section of the paper.

[19] Lys. 24 (described in the manuscript title as an *eisangelia*, but evidently reflecting the procedure for the *dokimasia* of *adunatoi* set out at *Ath.Pol*. 49.4): for the absence of *dokimazō* and cognates from the speech, see n.8 above. Scholars have occasionally doubted whether this is a genuine speech, though it is hard to pick on non-Lysianic features apart from an unusual reliance on humour: it is tempting to suggest that the orator may to some extent be parodying the conventions of public office *dokimasia* cases, with the aim of disguising the weaknesses of the speaker's case by making his opponent look ridiculous.

[20] Probably once a year, in view of the reference at Lys. 24.26 to the decisions of previous *boulai* (thus Borowski 1976: 223-24, though the passage is not incompatible with greater frequency). It may have been thought necessary to check that the disability was a long-term condition, and it is worth noting that one of the requirements specified by *Ath.Pol.* (and ignored by Lysias) was inability to work, which presumably could in some cases change over time.

These two are the only types of *dokimasia* from which Lysianic speeches survive,[21] but there are allusions in the corpus to at least two and possibly three other *dokimasia* procedures:

[3] We hear of a process of scrutiny undergone by young Athenian males as a precondition for becoming adult citizens: the *Ath.Pol*. says that they had first to be registered and voted on by their deme,[22] but that it was the *boulē* which then scrutinised the candidates (*dokimazō*), and Lysias like other orators uses this verb without comment as a synonym for "become an adult citizen".[23]

[4] We are told again by the *Ath.Pol*. that the cavalry – this meant the men and the horses, and included also various other mounted units as well as the regular *hippeis*[24] – were required to undergo *dokimasia* at the hands of the *boulē*,[25] in a way that seems not to have been required for any other form of military service, whether as hoplites, as trierarkhs, or as rowers (where issues of expertise might seem important) or light-armed troops. This procedure is alluded to in the pair of speeches against Alkibiades the younger (Lys. 14 and Lys. 15), where the charge of failure to undertake military service is based on the fact that he had served in the cavalry (albeit evidently at the request of the Generals) without having fulfilled this requirement.[26]

[5] One further though less certain Lysianic allusion relates to the *dokimasia rhētorōn* ("of orators"). The leading case here is Aiskhin. 1, which shows that it was

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[21] Indeed, the only non-Lysianic speech to use any of the *dokimasia* procedures is Aiskhin. 1, brought against Timarkhos using the procedure of *dokimasia* of orators, for which see text at n.27 below.

[22] *Ath.Pol*. 42.1-2 (the verbs used are *engraphomai*, *diapsēphizomai*), with at least some right of appeal to a dikastic court if rejected at this stage. Scholars sometimes use *dokimasia* to denote the whole process, before deme as well as before *boulē* (thus e.g. Rhodes 1981: 502 and Feyel 2009: 143), but the *Ath.Pol*. seems careful to maintain a linguistic distinction.

[23] *Dokimazomai* ("I am scrutinised"), as at Lys. 10.31; 21.1; 32.9, 24. For convenience, scholars often refer to the process as the "*dokimasia eis andras*" (i.e. to join the ranks of adult men) or "*dokimasia* of ephebes" (i.e. as a preliminary to the two-year period of military service which was required at least by the late fourth century during the first two years of adulthood).

[24] *Ath.Pol*. 49.1-3, including also *prodromoi* ("a special force of light-armed cavalry", Rhodes 1981: 566) and *hamippoi* ("light infantry who fought with cavalry", Rhodes 1981: 566).

[25] It is generally assumed that there will have been a preliminary process in front of a much smaller group, primarily on iconographic grounds (the name-vase of the so-called *dokimasia* painter, c.480-470 BC, with other later vases suggested by Cahn 1973). Rhodes (1972: 175) regards preliminary scrutiny by smaller group as *prima facie* plausible, though there is nothing in the *Ath.Pol.*'s text to suggest it, noting that "the *dokimasia*-painter could hardly be expected to depict the whole *boulē*".

[26] Hence the particular frequency of *adokimastos* ("unscrutinised") in these two speeches, which together account for four of the seven uses of the term in the Lysianic corpus (and cf. similarly 16.13).

available for use against those who spoke or attempted to speak in the assembly in defiance of some form of disqualification which they had incurred as a result of previous behaviour.[27] This is in several ways very different from the types of *dokimasia* so far discussed. In particular, whereas other types of *dokimasia* seem to have taken place automatically and as a precondition for exercising a right or privilege, the *dokimasia* of orators did not occur automatically, but only if the speaker was challenged to undergo it: the procedure was therefore in a sense retroactive as well as responsive. The verb used to denote the challenge was *epangellō*, implying a formal undertaking,[28] and some scholars have suggested that this should be read as a textual emendation (for *eisangellō*) at Lys. 10.1, which would fit the context (where an opponent is alleged to have spoken in public when disqualified), though there are linguistic problems.[29]

[6] There is incidentally no reference in Lysias, as there is in Dem. 59.105-106, to the use of *dokimasia* in the case of non-Athenians being granted citizenship: this is a process for which the evidence belongs mainly in the period after 320 BC, and comes mainly from the epigraphic record, in the shape of naturalisation decrees.[30]

[b] *Dokimasia* and the historiography of law

Part of the reason for setting out these various types of *dokimasia* in the order of prominence as they manifest themselves in Lysias, with supporting evidence from other orators and from the *Ath.Pol.*, has been to enable the highlighting of some patterns in the distribution of literary vis-à-vis non-literary evidence, which may help us to understand the historiography of *dokimasia* in ways that have perhaps continued to affect modern interpretations of the topic more than we may be aware.[31]

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[27] Aiskhin. 1.28, quoting (probably with authorial glosses) a law which lists maltreatment of parents, failure to fulfil military service, having been a (male) prostitute, and squandering of patrimony. Some of these behaviours could form the basis of prosecution, but it is by no means clear that prostitution could form the basis of a charge against a man who chose not to speak in public.

[28] MacDowell (2005: 82) plausibly suggests that the existence of such a challenge implies the likelihood of penalties for a challenger who failed to proceed with the case, or who challenged frivolously, on the model of the rule imposing penalties on a prosecutor who failed to proceed with a public case or failed to get 20% of the votes; this is one of the features that tends to make the *dokimasia* of orators much more like a regular prosecution than other types of *dokimasia* (see further n.77 below).

[29] See Todd (2007: 662-663).

[30] *Dokimasia* of individuals is mentioned in Apollodoros' discussion of the collective Plataian enfranchisement decree of 427 BC (Dem. 59.105), but not in the decree as quoted (59.104): there is debate over whether the detail is unusual at this early date but genuine (as M. J. Osborne 1981-83.ii: 14-15), or an anachronism on Apollodoros' part (thus Feyel 2007: 25-27).

[31] It is the particular merit of Feyel's book (2009) that by concentrating on epigraphic as well as literary evidence, he gives a much broader picture, but the difference of

One of the biggest problems when analysing *dokimasia* is the question of how to count the number of such procedures. This applies at various levels. On the simplest level, there is the difficulty of providing a comprehensive list, which is particularly important for nineteenth-century scholars, whose numbers vary quite widely. There is also the question of classification within such a list, because it is by no means obvious what should be regarded as primary similarities or significant differences. And finally, there is perhaps the underlying question of whether we should be thinking (and whether Athenians would have thought) in terms of *dokimasia* as juridically a single tree with different branches, or as a much looser grouping, or indeed not.

Numbers of *dokimasiai* tend to vary considerably in the works of scholars writing before the discovery of the *Ath.Pol.* (published in 1891).[32] A more systematic picture, by contrast, begins to emerge at the start of the twentieth century, as can be seen for instance in Koch's influential Pauly-Wissowa article of 1903, which divides *dokimasiai* into two types, beginning briefly with those which in his view the *boulē* was competent to resolve on its own authority without appeal (cavalry and invalids), and then dealing in numbered detail with four others, in the order ephebes, newly enfranchised citizens, public officials, orators. A similar classificatory scheme, albeit with some variation of internal order, is found in the two most detailed systematic handbooks of Athenian law produced during the twentieth century, viz. Lipsius (1905-15: 269-282) and Harrison (1968-71.ii: 200-204), with the latter indeed offering pride of place in his opening footnote to Koch's treatment: both scholars agree with Koch in giving only passing and initial attention to cavalry and invalids (Harrison indeed relegates them to a footnote), while focusing on the other four for detailed treatment, albeit both of them sharing an order which is slightly different from that of Koch.[33]

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perspective in the two types of source is to my mind a problem which deserves more attention.

[32] Of those earlier scholars whose work includes systematic treatment of the *dokimasia*, Perrot (1867: 79-88 at p.79) mentions only types [1] public officials and [5] orators in my list. The first edition of Meier & Schömann (1824: 200-214, at p.200) focuses similarly on [1] and [5], but alludes also to the existence of *dokimasia paidōn* and *dokimasia eis andras* (probably both type [3], albeit worded as if separate procedures, unless the former alludes to orphans, for which cf. below), [4] cavalry, and [2] invalids. By contrast, their second edition (Meier, Schömann & Lipsius 1883-87.i: 235-257, at p.235) mentions [3] ephebes and [2] invalids only in passing, but devotes attention to [1] officials, [5] orators, then orphans (not listed above, but alluded to in other literary and lexicographical texts, cf. n.45 and n.46 below), then [6] newly-enfranchised citizens.

[33] Officials, orators, ephebes, enfranchised citizens (Lipsius and Harrison) in place of Koch's ephebes, enfranchised citizens, officials, orators: I have no clear explanation for the change of order, unless it is to prioritise those that are seen as politically important; Koch's order, by contrast, allows what is procedurally the most exceptional form to be placed last.

Such a principle of classification by jurisdiction is not unproblematic, in part because there is room for debate over who had the primary jurisdiction in several cases. In the *dokimasia* of ephebes, for instance, the *Ath.Pol.*'s account would seem to suggest that there is provision for appeal to the lawcourt from the refusal of the deme to accept the initial registration, but gives no indication that the *boulē*'s decision is subject to appeal.[34] And although the lawcourt may have had the power to override the decision of the *boulē* in cases of double jurisdiction and/or appeal, it is nevertheless worth emphasising that Lys. 26 (*dokimasia* of the Arkhōn) as well as Lys. 16 (probably that of a *bouleutēs*) and Lys. 31 (certainly that of a *bouleutēs*) are all delivered in front of the *boulē* – as if even in the case of the Nine Arkhōns (where double jurisdiction certainly applied) it was at this first stage that it was worth commissioning a logographer.[35]

Until the recent publication of Feyel (2009),[36] there has been little by way of systematic challenge to the six-fold classification that we find in Koch, Lipsius and Harrison, though it is worth noting that Rhodes' article in *Neue Pauly* (2004 [1997]) offers seven types of *dokimasia*, the first six of them being the ones we have been dealing with (this time without any marginalisation of those under bouleutic

[34] Rhodes (1981: 500) questions the completeness of some aspects of *Ath.Pol.*'s account here, but accepts that the *boulē*'s verdict is not subject to appeal. It is presumably on basis of such a reading that Borowski's dissertation, which opens (1976: iii) by crediting Koch's summary of types of *dokimasia*, nevertheless regards ephebes as well as invalids and cavalry (in that order) as coming under the jurisdiction of the *boulē*, with officials, cavalry and new citizens (again in that order) coming under that of the court.

[35] On the commissioning of a logographer, see text at n.79 below. Feyel (2009: 167) suggests an alternative explanation for why Lys. 16 and Lys. 31 were written for hearings before the *boulē*, viz. that the right of appeal for prospective *bouleutai* to a lawcourt (*Ath.Pol.* 45.3) had not yet been introduced, but that explanation would not work for Lys. 26, which deals with the *dokimasia* of a prospective Arkhōn, and where a (compulsory) second hearing in court is clearly envisaged at 26.6.

[36] Feyel covers an even wider range, including (Feyel 2009: 35-40) the *dokimasia* of laws in the decree of Teisamenos of 403/2 (Andok. 1.85 [passive verb, ἐδοκιμάσθησαν sc. οἱ νόμοι], with text of law at Andok. 1.84 [active verb, δοκιμασάτω sc. ἡ βουλὴ καὶ οἱ νομοθέται]), and (Feyel 2009: 42) the Eleusinian Mysteries law (δοκιμασ<θ>ῶσιν θύεν, noting Clinton's suggestion that this refers to the *spondophoroi* undergoing *dokimasia* and sacrificing before being sent out). His division of material is first "technical and financial" (ch.3: warships, cavalry, orphans, invalids, money and precious metals, architecture), then "political" (ch.4: primarily public officials and orators, but also e.g. ambassadors), then Hellenistic innovations (ch.5, honours for foreign benefactors). Even here, however, his desire for a classificatory system sometimes seems over-schematic: e.g. he claims (Feyel 2009: 49) that the types of *dokimasia* in ch.3 have in common not simply that they are primarily technical and normally based on precise criteria, but also that they are normally under the competence of the council but could be delegated to subordinate persons; it is not clear to me how coinage fits into this pattern.

jurisdiction),[37] plus the addition of silver coinage, the latter on the basis of the inscription recording Nikophon's law of 375/4 BC, as published by Stroud (1974). But in fact the epigraphic attestations of *dokimazō* and cognates at Athens are now much more wide-ranging than this, and in this section of the paper I want to suggest that the picture presented by the epigraphic record differs in some quite interesting ways from what would be suggested by an oratory-based reading of the literary sources. (Hence, of course, the approach taken in the first section of this paper.)

Even in Nikophon's law, for instance, we should note that what is to be tested on each occasion is not the rights of a person but the commercial standing of an item of coinage.[38] But perhaps more striking is the fact that this inscription (which is very substantially legible, to the extent that variant readings do not affect to the point being made here) contains no instances of the procedure-noun *dokimasia*, but is instead dominated by repeated reference to the duties of the agent-noun *dokimastēs* (the public slave who is to do the testing, and who is referred to seven times in a text of under 500 words),[39] plus three uses of the verb *dokimazō* to indicate his activity (used consistently in the active, even in one context where a passive might have been more convenient).[40] In the corpus of the orators, by contrast, the agent-noun *dokimastēs* is used on only four occasions and always metaphorically,[41] as if suggesting that for the types of *dokimasia* they are interested in, what matters is the

[37] Indeed, Rhodes' order is ephebes, officials, cavalry, invalids, orators, newly-enfranchised citizens, with the addition of silver coinage.

[38] The closest parallels at Athens for the testing of an object rather than a person would be the use of *dokimasia*-vocabulary in connection with naval equipment (on which see following note), and the occasional appearance of inscriptions in which an *arkhitektōn* is to give some sort of certificate for a building (e.g. *IG* ii^2 1678 line 2, δο[κιμάσει ὁ ἀρχι]τέκτων, again with verb rather than procedure-noun), presumably prior to its use. For these architectural texts, see Feyel (2009: 111-113).

[39] The other context in which the term *dokimastēs* appears in Athenian texts (leaving aside the metaphorical usages at n.41 below) is the naval inventories, where we repeatedly have ship-hulls and their equipment being described as *dokimos*/*dokima* or *adokimos*/*adokima* (adjectives, evidently used to describe their state of repair). The verb *dokimazō* does not seem to appear in the naval inventories, but we twice find references to a *dokimastēs* (*IG* ii^2 1612 line 220, *IG* ii^2 1604 line 56) who assists the *epimelētai* in verifying their condition: presumably this is some form of specialist, but details of appointment are not given. See Gabrielsen (1994: 137), and Feyel (2009: 49-53).

[40] Lines 16-17 τὸ ἀ̣[ρ]γ[ύρ]ιον ὅ τ[ι ἂν ὁ δοκι]μαστὴς δοκιμάσηι "whatever coin the *dokimastēs* approves", rather than e.g. τὸ ὑπὸ τοῦ δοκιμαστοῦ δοκιμασθέν.

[41] In the sense that the reference is never to those who actually are hearing a *dokimasia*, but either to those whom the opponent would like to have as *dokimasia* judges (Lys. 26.16), or to those hearing other types of case (Aiskhin. 2.146; Dem. 21.127; 48.3). We do find one literary (though not oratorical) reference to a *dokimastēs* for coinage, in Menander, frag. 581 K, line 8, but the context is not terribly informative.

collective jurisdiction of the *boulē* or the lawcourt as representing the *dēmos* as a whole.[42]

Another example is Theozotides' law of c.400 BC, again published by Stroud (1971), in which the sons of those Athenians killed fighting for the democracy during the civil war of 404/3 are granted financial support from the state, subject to a requirement to undergo *dokimasia*.[43] Feyel (2009: 81) suggests that the use of *dokimasia* in regard to orphans could have been a post-403 innovation, but the existence of a support-system for war-orphans is attested as a fifth-century phenomenon in the Periklean funeral speech (Thuc. 2.46.1), so presumably the point of Theozotides' decree is to insist that deaths in civil war do qualify for similar treatment, provided they died on the correct side.[44] Thucydides makes no mention of any procedural requirements, but *prima facie* any such support-system would require at least a one-off initial *dokimasia* "to determine that an orphan's father had died in war and that he had been an Athenian citizen" (Stroud 1971: 291). Such a process had indeed already been suggested as the basis for a rather cryptic reference in the Old Oligarch to the pressure of business created by a range of annual tasks including the *dokimasia* of orphans,[45] although this passage does not refer specifically to war-orphans and had occasionally been read in support of a puzzling comment in one of the lexicographers that orphans underwent *dokimasia* at the end of their minority to check that they were capable of taking over their inheritance from their guardians.[46]

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[42] It is striking that Athens seem to have no board of *dokimastai* to prepare material for the *dokimasiai* of public officials, in the way that they do have boards of *euthunoi* and *logistai* to prepare for their *euthunai*.

[43] Unfortunately, the incompleteness of the text means that we do not know who is to conduct this: the verb in line 15 is an imperative singular (δ[οκι]μασάτω αὐ[τ]ὸ[ς "is to scrutinise them"), but the missing subject could easily be a collective noun such as "the *boulē*" or "the *dikastērion*".

[44] The opening words of Theozotides' decree are emphatic in this regard (lines 4-6): ὁπόσοι Ἀθηναίω[ν] ἀ[πέθαν]ον [β]ιαίωι θανάτωι ἐν τῆι ὀλιγ[αρχίαι β]ο[ηθ]ῆντες τῆι δημοκρατίαι ("those of the Athenians who died a violent death under the oligarchy, coming to the assistance of the democracy").

[45] [Xen.], *Ath.Pol*. 3.4: πρὸς δὲ τούτοις ἀρχὰς δοκιμάσαι καὶ διαδικάσαι καὶ ὀρφανοὺς δοκιμάσαι καὶ φύλακας δεσμωτῶν καταστῆσαι. ταῦτα μὲν οὖν ὅσα ἔτη. ("Moreover, they [sc. the Athenians] must scrutinise magistrates and resolve their disputes, and scrutinise orphans, and appoint guardians for prisoners; all of these happen every year.") For discussion of whether this means that each orphan was examined annually, or that there was a one-off initial examination for a new cohort of orphans each year, see Forrest (1970: 113-114): in support of the latter, he argues "unlike the *adunatos* [cf. n.20 above], an orphan could not cease to be an orphan". But those missing believed killed might sometimes return (e.g. from Sicily), and the *boulē* might also have been charged with checking that the recipients themselves were still alive.

[46] Bekker, *Lexica Segueriana*, *Lexeis Rhētorikai*, 235.11-15: δοκιμασία· ἡ κατὰ τῶν στρατηγῶν καὶ τῶν ἀρχόντων καὶ τῶν ῥητόρων ἐξέτασις, εἰ ἐπιτήδειοί προΐστασθαι τῶν πολιτικῶν πραγμάτων. δοκιμάζονται δὲ καὶ οἱ ἐφ' ἡλικίας ὀρφανοί, εἰ δύνανται τὰ πατρῷα παρὰ τῶν ἐπιτρόπων ἀπολαμβάνειν. ("*Dokimasia*: the examination used

What is significant for present purposes, however, is that although orphans do occasionally get mentioned in nineteenth-century handbooks (e.g. Meier, Schömann & Lipsius 1883-87, cited at n.32 above), they nevertheless fail – perhaps because of their absence from the orators – to make it into the systematic body of twentieth-century discussions of *dokimasia* such as Koch, Lipsius or Harrison (cf. text at n.33 above).[47]

More briefly and without detailed analysis, I append a couple of further epigraphic points. The first of these is another recently published text, viz. the grain-tax law of 374/3 BC (Stroud 1998) which includes the clause that "the purchaser must nominate two creditworthy guarantors, whom the Council has scrutinized, for each share".[48] The other is a range of previously-known post-classical texts, which use the term *dokimazō* to denote a process of membership-vetting undertaken not by the *boulē* or a lawcourt, but by religious groups regulating their own affairs.[49]

Harrison (1968-71.ii: 201) describes the lexicographers' discussions of *dokimasia* as "tend[ing] rather to confuse the picture". This is certainly true. In addition to the Bekker passage quoted at n.46 above, there are a couple of relevant but muddled passages in Pollux, the first of them dealing with the *dokimasia* of officials and of orators but containing at least one significant error,[50] while the

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against Generals and Arkhōns [or 'officials'] and orators, to see if they were worthy to be placed in charge of political matters. Orphans reaching their majority were also scrutinised, to see if they were capable of taking over their inheritance from their guardians.") There is no sense here, incidentally, that the *dokimasia* of orators was unique in operating retroactively and in requiring a formal challenge, for which see text at n.29 above.

47 Both Koch (1903: 1269) and Lipsius (1905-15: 284 with n.62) mention the *dokimasia* of orphans in passing, but in both cases as part of their discussion of *dokimasia* of ephebes, rather as a distinct type.

48 ἐγγυητ<ὰ>ς καταστήσ[ε]ι ὁ πριάμενος δύο κατὰ τὴμ μερίδα ἀξι[ο]|χρεως, οὓς ἂν ἡ βουλὴ δοκιμάσηι (lines 29-31, trans. Rhodes & Osborne). I am not aware of any discussion of timing in regard to this text, but would imagine that what is envisaged comes after the contracts are auctioned and as a condition of having them confirmed.

49 καὶ | δοκιμασθῆ ὑπὸ τῶν ἰοβάκχων ψήι|φῳ, εἰ ἄξιος φαίνοιτο καὶ ἐπιτήδειος | τῷ Βακχείῳ (*IG* ii^2.1638 = *LSCG* 51, lines 35-37). [μη]δενὶ ἐξέστω ἰσι[έν]αι ἰς τὴν σεμνοτά[τη]ν | σύνοδον τῶν ἐρανιστῶν πρὶν ἂν δοκιμα|σθῆ εἴ ἐστι ἁ[γν]ὸς καὶ εὐσεβὴς καὶ ἀγ|α[θ]ός. δοκιμα[ζέ]τω δὲ ὁ προστάτης [καὶ | ὁ] ἀρχιερανιστὴς καὶ ὁ γ[ρ]αμματεὺς καὶ | [οἱ] ταμίαι καὶ σύνδικοι. (*IG* ii^2.1639 = *LSCG* 53, lines 31-36, decree of *eranistai*), both second century AD. (For these two decrees, see Feyel 2009: 373-374.) It is perhaps worth noting that such language is not used in the Demotionidai decree (390s BC), which uses words cognate with *diadikazō* (not *dokimazō*) to describe the process of membership-vetting for some sort of phratric group, and *apopsēphizomai* (not *apodokimazō*) to denote the rejection of an unsuccessful candidate.

50 Pollux 8.44-45: δοκιμασία δὲ τοῖς ἄρχουσιν ἐπηγγέλλετο, καὶ τοῖς κληρωτοῖς καὶ τοῖς αἱρετοῖς [8.45] εἴτ' ἐπιτήδειοί εἰσιν ἄρχειν εἴτε καὶ μή, καὶ τοῖς δημαγωγοῖς, εἰ ἡταιρηκότες εἶεν ἢ τὰ πατρῷα κατεδηδοκότες ἢ τοὺς γονέας κεκακωκότες ἢ ἄλλως κακῶς βεβιωκότες· ἀτίμους γὰρ αὐτοὺς ἐχρῆν εἶναι καὶ μὴ λέγειν. ("A *dokimasia* is

second is evidently a summary of *Ath.Pol.*'s list of questions asked at the *dokimasia* of the Nine Arkhōns.[51] Even Harpokration, who is normally the clearest and most accurate of the lexicographers when dealing with legal matters, despite using *dokimazō* or *dokimasia* in ten separate entries, nevertheless typically discusses only one type of *dokimasia* procedure at a time.[52] The nearest he gets to a systematic discussion is in his entry s.v. *dokimastheis*, which is perhaps worth quoting in full:

> *Dokimastheis* ('one who has been scrutinised'): in place of 'has been inscribed among the men', Demosthenes in the *Prosecution against Onetor* (Dem. 30). The word *dokimasthēnai* is also used in the case of the Arkhōns, as the same orator says in the *Ephesis in response to Euboulides* (Dem. 57). It is also said about politicians, even if they were not holding any office: for the lifestyle of such men used on occasions to be examined, as Aiskhines says in the *Prosecution against Timarkhos* (Aiskhin. 1). And Lykourgos says in the speech *On his Administration*, 'there exist three types of *dokimasia* according to the law: one in respect of which the Nine Arkhons are scrutinised, another in respect of which orators [ditto], and a third in respect of which the Generals [ditto].' However, he mentions in the same speech the *dokimasia* of cavalry.[53]

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challenged [i.e. brought on the basis of challenge] in the case of officials ['the Arkhōns' seems less likely, in view of the reference to election], both those who are appointed by lot and those who are elected, to see if they are worthy to hold office or not; also in the case of demagogues, in case they have been prostitutes or have squandered their patrimony or have maltreated their parents or have in any other way lived a bad life: for such people must be *atimoi*, and not be allowed to speak.") *Epangellō* should be used only for the *dokimasia* for orators, which was the only *dokimasia* procedure requiring formal notice of a challenge, cf. text at n.29 above. (The use of "demagogues" for "orators" is also perhaps tendentious.)

51 Pollux 8.85-86, discussed at n.69 below.

52 Harpok. s.vv. ἀδοκίμαστος (ephebes, though NB the extant speeches of Lysias typically use this word in contexts of cavalry, cf. n.9 above), ἀδύνατοι (invalids), βάσανος (metaphorical use), βασανίσας (ditto), διεκωδώνισε (ditto), δοκιμασθείς (discussed in text), ἐπακτροκέλης (title of lost Deinarkhos speech, cf. n.17 above), ἐπιλαχών (officials), πάρεδρος (ditto), παλιναίρετος (quotation from Arkhippos with interesting use of *apodokimazō*, but Lipsius 1905-15: 276 n.33 argues on the basis of Harpokration's surrounding remarks this must be loose usage for e.g. *apokheirotoneō*).

53 Harpok. s.v. δοκιμασθείς· ἀντὶ τοῦ εἰς ἄνδρας ἐγγραφείς Δημοσθένης ἐν τῷ κατὰ Ὀνήτορος. λέγεται δὲ καὶ ἐπὶ τῶν ἀρχόντων τὸ δοκιμασθῆναι, ὡς ὁ αὐτὸς ῥήτωρ ἐν τῇ πρὸς Εὐβουλίδην ἐφέσει δηλοῖ. ἐλέγετο δὲ καὶ ἐπὶ τῶν πολιτευομένων, εἰ καὶ μηδ' ἡντιναοῦν ἦρχον ἀρχήν· ἐξητάζετο γὰρ αὐτῶν ὁ βίος ἐνίοτε, ὡς Αἰσχίνης ἐν τῷ κατὰ Τιμάρχου φησίν. Λυκοῦργος δ' ἐν τῷ περὶ τῆς διοικήσεως "γ′ δοκιμασίαι κατὰ τὸν νόμον" φησὶ "γίνονται, μία μὲν ἣν οἱ θ′ ἄρχοντες δοκιμάζονται, ἑτέρα δὲ ἣν οἱ ῥήτορες, τρίτη δὲ ἣν οἱ στρατηγοί." λέγει μέντοι ἐν τῷ αὐτῷ λόγῳ καὶ ἱππέων δοκιμασίαν. (I have used "examine" here to translate *exetazō*, keeping "scrutinise" for *dokimazō*; it is perhaps worth noting that Harpokration uses *politeuomenoi* rather than *rhētores*.)

It is notable here that despite the range of procedures covered, Harpokration mentions only four of the six types of oratorically-attested *dokimasiai* set out in the first section of this paper (the omission of newly-enfranchised citizens is perhaps less surprising than that of invalids, of which he is undoubtedly aware, cf. his entry s.v. *adunatoi*). But more striking is the passage that he quotes from a lost speech by Lykourgos, together with his somewhat puzzled response. *Prima facie*, Lykourgos is describing *dokimasia* as a tripartite procedure, but one which includes only two of our six oratorically-attested types, since his first and third items are both categories of public official (to the exclusion, incidentally, of *bouleutai* and other office-holders). We do not of course have the Lykourgan context, and Harpokration's final sentence shows an awareness on his part that what Lykourgos is attempting cannot be a systematic classification. But the fact that he quotes the passage suggests that this was the nearest he could find to a systematic classification in the lawcourt speeches: it is perhaps worth noting here that even though the *Ath.Pol*., as we saw in the first section of this paper, gives a lot of scattered information about different types of *dokimasia*, this is not gathered together into one systematic analysis.

Against this background, it is tempting to suggest that attempts by modern scholars systematically to count and classify types of *dokimasia* may be analytically a flawed project, despite the value of such an exercise as a way of collecting information. In other words, rather than thinking about *dokimasia* procedures as a single body of law,[54] perhaps we should instead be thinking of it as a semantic field available for would-be legislators, which might for instance make better sense of the way that Nikophon uses such terminology in ways that focus on the duties of the *dokimastēs* (see text at n.39 above), or the way that religious groups use it in contexts of vetting their own membership lists, rather than having this done by a body representing the community as a whole (see text at n.49 above). This might indeed help to explain some of the otherwise puzzling doctrinal differences between the *dokimasia* of orators and what we know of all other types of *dokimasia*.[55] A parallel would be the procedure of *phasis*, at least as reconstructed by Wallace (2003), which raises many similar issues about the nature of Athenian legislation and juridical thinking.

[c] *Dokimasia* of officials: the frequency and basis of contestation

The issue of how the different types of *dokimasia* relate to each other is of course partly a question of juristic thinking, and the extent to which Athenian law rests on a

[54] It is perhaps worth noting here that the language of Aiskhin. 1.27-30 seems to imply that there is a single statute governing the *dokimasia* of orators (thus MacDowell 2005: 80), but there is no clear evidence for an integrated statute incorporating all types of *dokimasia*. [Unlike Gagliardi, this vol. §3.2, I would read the plural *dokimasiai* at Lys. 26.9 as referring to "cases of *dokimasia*" rather than "types of *dokimasia*".]

[55] E.g. that the *dokimasia* of orators is retroactive and requires a process of challenge, making it much closer to a conventional prosecution (cf. n.28 above).

basis of underlying doctrinal principles. But it also has interpretative implications for the procedure(s) of *dokimasia*. To the extent that we conceptualise the *dokimasia* as a single process with variants, it is natural and indeed legitimate to interpret one type of *dokimasia* in the light of others; but to the extent that we see them as a collection of procedures which happen to share a piece of terminology, then such assumptions become more dangerous. To illustrate the implications of this, the final section of this paper will shift its focus, looking specifically at the *dokimasia* of public officials and the way that our evidence for contested cases is dominated by the corpus of Lysias, thereby allowing us to return to the research question set out in the text at n.18 above.

A striking example of the single-procedure approach to the *dokimasia* is Borowski's dissertation, which argues for the existence of one criterion spread across all six of the oratorically-attested types of *dokimasia*, viz. "testing for fitness (*epitēdeia*)" (Borowski 1976: iv); and indeed seeks to establish a chronological relationship between what he sees as the earliest *dokimasia* procedures heard by the *boulē* (including ephebes, in his view, as well as invalids and cavalry), where he suggests that this was simply a test of physical suitability, with those procedures heard by the lawcourt being putatively later innovations, designed to focus on "fitness of character" (Borowski 1976: e.g. 165). Borowski claims that previous scholars have not paid sufficient attention to this criterion (Borowski 1976: iv), but although I am not aware of anybody before or since who has sought to apply it so systematically, there has undoubtedly been a long tradition of interpreting the *dokimasia* of public officials in terms of moral worthiness or at least political suitability. This indeed was the basis of the much earlier dispute between Headlam[56] and Busolt,[57] and it is notable that Adeleye, even without mentioning Borowski's dissertation, nevertheless summarises this dispute in terms of Busolt and his supporters "maintaining that the institution aimed at eliminating unsuitable candidates".[58]

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[56] Headlam (1891: 95-102), arguing that *dokimasia* was meant to deal simply with cases of legal incapacity (he cites the modern parallel of having to produce a birth certificate, p.98), and that the use of the *dokimasia* to raise esp. political objections to the candidate was "an abuse which had grown up at the end of the Peloponnesian war, and was a direct result of the shock given to the whole state by the two oligarchic revolutions" (p.97).

[57] Headlam was reacting to the view set out in the first edition of Busolt's *Griechische Geschichte* (1888: 469), which presents *dokimasia* as a mechanism designed to remedy the putative disadvantages of election by lot. For subsequent re-statements, taking account of *Ath.Pol.*'s list of *dokimasia* questions but reiterating the claim that a candidate would nevertheless have to give account of his whole life (cf. Lys. 16.9), see Busolt (1897: 274-275), Busolt-Swoboda (1920-26.ii: 1071-1073).

[58] Adeleye (1983: 295); the language of suitability, though not the Greek term *epitēdeia*, is certainly used in Busolt-Swoboda (1920-26.ii: 1072): "ungeeignet oder unwürdig oder nicht gesinnungstüchtige Demokraten" ("those unsuitable or unworthy or those who were not convinced democrats").

Now, it is certainly true that the language of *epitēdeia* is used by the lexicographers as a straightforward statement of criteria in contexts that include the *dokimasia* of public officials,[59] but this does not seem to be the pattern in fourth-century texts. For instance, *Ath.Pol*. uses such language only and repeatedly when discussing the *dokimasia* of cavalry (*prodromoi* at 49.1, *hippeis* at 49.2);[60] and although Theophrastos argues that *epitēdeia* ought to be an important criterion in the *dokimasia* of officials, nevertheless in context this is not a statement of Athenian practice, but instead asserts his authorial view of what well-governed *poleis* should do.[61] On this basis, it is perhaps not surprising that the language of *epitēdeia* is virtually absent from speeches written for *dokimasia* of public officials.[62] The one exception comes at the start of Lys. 31 *Against Philon*, and forms part of what seems to be a highly-charged piece of persuasive definition. The speaker in this case has not simply presented himself at the hearing in order to accuse a particular candidate, but is himself a member of the outgoing *boulē*, addressing his colleagues who are to judge the case. As such, he seeks to justify his intervention by claiming that the bouleutic oath, sworn by council-members before entering their year of office, requires him to offer the best advice and to denounce anybody he knows to be an unsatisfactory candidate for next year's membership.[63] In conjunction with this, he seeks also to redefine the criteria for bouleutic membership, presumably so as to counter what appears to most readers as a significant weakness in his case.[64] This

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[59] Bekker, *Lexica Segueriana*, *Lexeis Rhētorikai*, 235.11-15 (quoted at n.46 above) and Pollux 8.44-45, quoted at n.50 above): I have translated *epitēdeios* as "worthy" in both passages.

[60] An example of the tendency to over-interpret can be found in Bonner (1933: 41), who offers a translation of *Ath.Pol*. 55.2 (NB, not a gloss) which appears to render *apodokimazō* as "reject as unsuitable".

[61] Theophrastos (*de eligendis magistratibus*, lines 101-105): αὐτοὺς δὲ δοκιμάζοντας αἱρεῖσθαι χρὴ τοὺς ἐπιτηδ<ε>ιοτάτους ("it is necessary that those who scrutinise candidates choose the most suitable", trans. Keaney & Szegedy-Maszak). The immediate context from line 36 onwards concerns the rôle of wealth vis-à-vis virtue in the selection of different types of official, and Theophrastos' method throughout this palimpsest is to discuss a range of approaches adopted in different cities, as background to his own view of what ought to be done.

[62] It does appear at Lys. 16.14, but to mean "supplies" or "necessities of life".

[63] Lys. 31.1-2: ἐγὼ δὲ ὀμόσας εἰσῆλθον εἰς τὸ βουλευτήριον τὰ βέλτιστα βουλεύσειν τῇ πόλει, [31.2] ἔνεστί τε ἐν τῷ ὅρκῳ ἀποφαίνειν εἴ τίς τινα οἶδε τῶν λαχόντων ἀνεπιτήδειον ὄντα βουλεύειν ("I took an oath when I became a member of the *boulē* that I would offer the best advice for the *polis*, [31.2] and it is a part of that oath to make known if one is aware that any of those who have been selected by lot is not suitable to serve on the *boulē*.") The oath to offer best advice is well-attested, but Carey (1989: 184) notes that there is no other evidence for the clause at the start of §2, and it may be best to read it as an authorial claim that *dokimasia*-denunciation is an implicit subset of best advice.

[64] Lys. 31.5-7 (Philon is being accused not of staying in the city and/or supporting the oligarchs, but of failure to support either side).

background may help explain why the passage contains two examples of the extremely rare negative form *anepitēdeios*/*ōs* (§2, §5), which is found only seven times in the corpus of the orators.

Much of the debate over the criteria for the *dokimasia* of public officials focuses on the *Ath.Pol.*'s account of the procedure as it applies to the Nine Arkhōns, which locates the process in the context of a set of statutory questions:

> [55.3] When the Archons are scrutinised, they are asked first, "Who is your father, and from which deme? Who is your father's father? Who is your mother? Who is your mother's father, and from which deme?"[65] Then the Archons are asked whether they have a cult of Apollo of Ancestry and Zeus of the Courtyard, and where the sanctuaries of these are; whether they have family tombs, and where these are; whether they treat their parents well; whether they pay their taxes; whether they have performed their military service. After asking these questions, the presiding magistrate says, "Call witnesses to these things." [55.4] When witnesses have been produced, he asks, "Does anyone wish to accuse this man?" If there is an accuser, the magistrate allows accusation and reply, and then puts the question to the vote, by show of hands in the council, by ballot in the court. If there is no accuser, he puts it to the vote immediately; in these cases, previously, one man would cast a token vote, but now it is obligatory for all the jurors to vote on the candidates, so that, if a crooked man has disposed of his accusers, it will be possible for the jurors to reject him.[66] (trans. Rhodes)

This is the fullest account that we possess, though it has been suggested that it represents only a list of core questions asked of all officials, and that there may have been additional questions asked of candidates for particular offices.[67] There are

[65] The reason that the question about the deme was asked only of these two relatives is that deme membership was reserved to males (so it was only the mother's father that had a deme), and was hereditary in the male line (so the father's father would share the deme of his son).

[66] *Ath.Pol.* [55.3] ἐπερωτῶσιν δ', ὅταν δοκιμάζωσιν, πρῶτον μὲν 'τίς σοι πατὴρ καὶ πόθεν τῶν δήμων, καὶ τίς πατρὸς πατήρ, καὶ τίς μήτηρ, καὶ τίς μητρὸς πατὴρ καὶ πόθεν τῶν δήμων;' μετὰ δὲ ταῦτα εἰ ἔστιν αὐτῷ Ἀπόλλων Πατρῷος καὶ Ζεὺς Ἑρκεῖος, καὶ ποῦ ταῦτα τὰ ἱερά ἐστιν, εἶτα ἠρία εἰ ἔστιν καὶ ποῦ ταῦτα, ἔπειτα γονέας εἰ εὖ ποιεῖ, [καὶ] τὰ τέλη <εἰ> τελεῖ, καὶ τὰς στρατείας εἰ ἐστράτευται. ταῦτα δ' ἀνερωτήσας, 'κάλει' φησὶν 'τούτων τοὺς μάρτυρας'. [55.4] ἐπειδὰν δὲ παράσχηται τοὺς μάρτυρας, ἐπερωτᾷ 'τούτου βούλεταί τις κατηγορεῖν;' κἂν μὲν ᾖ τις κατήγορος, δοὺς κατηγορίαν καὶ ἀπολογίαν, οὕτω δίδωσιν ἐν μὲν τῇ βουλῇ τὴν ἐπιχειροτονίαν, ἐν δὲ τῷ δικαστηρίῳ τὴν ψῆφον· ἐὰν δὲ μηδεὶς βούληται κατηγορεῖν, εὐθὺς δίδωσι τὴν ψῆφον· καὶ πρότερον μὲν εἷς ἐνέβαλλε τὴν ψῆφον, νῦν δ' ἀνάγκη πάντας ἐστὶ διαψηφίζεσθαι περὶ αὐτῶν, ἵνα ἄν τις πονηρὸς ὢν ἀπαλλάξῃ τοὺς κατηγόρους, ἐπὶ τοῖς δικασταῖς γένηται τοῦτον ἀποδοκιμάσαι.

[67] Lipsius (1905-15: 273-274), noting in particular the legal requirement for the *Basileus* to have a wife in her first marriage (implying that the *Ath.Pol.*'s list was incomplete even in

some other texts which allude to one or more of *Ath.Pol.*'s questions,[68] perhaps the most interesting of which are Pollux 8.85-86 and Dein. 2.17-18. The first of these is broadly similar to *Ath.Pol.*, but omits the family tombs, and replaces the question about taxes (τὰ τέλη <εἰ> τελεῖ) with one that is apparently about Solonian property classes, which is certainly something we might have expected to find if the list of questions goes back to an early date.[69] Deinarkhos, on the other hand, who is the only author to set the *dokimasia* questions in a context that is explicitly wider than that of the Nine Arkhōns, omits the questions relating to parentage and household cult, includes *Ath.Pol.*'s clause about taxes, but introduces his version with an otherwise unattested question about the candidate's character:

> [2.17] Moreover, when examining those who are about to administer some aspect of public affairs, [they ask] what his personal character is, whether he treats his parents well, whether he has undertaken his campaigns on behalf of the *polis*, whether he has ancestral tombs, and if he pays his taxes; [2.18] Aristogeiton cannot show that any of these qualifications are attributable to him.[70]

Scholars have sometimes sought to read these questions as evidence that moral or civic virtue, alongside legitimate citizen birth, had a formal status as criteria to be tested at the *dokimasia* of public officials.[71] But Athenian law classified

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the case of one of the Nine Arkhōns), and similarly for Generals to have land in Attica, for *bouleutai* to be aged at least thirty, etc.

[68] E.g. Xen., *Mem*., 2.2.13 (upkeep of parents and care for their grave, in a context of *dokimasia* probably of Nine Arkhōns, cf. the prospect of the candidate sacrificing on behalf of the *polis*); Dem. 57.66-70 (framed as hypothetical *dokimasia* of Thesmothetai, and phrased as a sequence of questions and answers, emphasising the range of witnesses to the speaker's parentage, especially those who are relatives or who share in specified cults or family tombs); and Dein. 2.17-18 and Pollux 8.85-86, both discussed in the text.

[69] Pollux 8.86 (*dokimasia* of Thesmothetai, or possibly of Nine Arkhōns more generally): εἰ τὸ τίμημα ἔστιν αὐτοῖς, "if they have the *timēma*"). The absence of Solonian property classes in *Ath.Pol.*'s list led Hignett (1952: 207) to argue that the procedure could not antedate Kleisthenes, but others have disagreed ("das hohe Alter ihrer Fassung", Lipsius 1905-15: 272; "an ancient institution", Rhodes 1981: 617).

[70] Dein. 2.17-18: πρὸς δὲ τούτοις ἀνακρίνοντες τοὺς τῶν κοινῶν τι μέλλοντας διοικεῖν, τίς ἐστι τὸν ἴδιον τρόπον (an internal accusative, presumably), εἰ γονέας εὖ ποιεῖ, εἰ τὰς στρατείας ὑπὲρ τῆς πόλεως ἐστράτευται, εἰ ἠρία πατρῷ' ἔστιν, εἰ τὰ τέλη τελεῖ· [2.18] ὧν οὐδὲν ἂν ἔχοι δεῖξαι συμβεβηκὸς Ἀριστογείτων αὑτῷ.

[71] Thus for instance Busolt-Swoboda (1920-26.ii: 1072) "personenrechtlichen Befähigung und bürgerlichen Würdigkeit"; cf. Borowski (1976: 81) "was the man just elected a solid citizen who paid his taxes, performed his military service, and respected his parents?" Feyel (2009: 158-159) suggests that *dokimasia* of public officials ceases to have political significance from 380 as the generation of those involved in the civil war dies out, at which point it ceases to be a test of politics and becomes a test of morals, but his examples (e.g. p.162, p.168) for moral criteria are Lys. 16 and Lys. 31, which in my view mis-reads the case (cf. n.73 and n.75 below), and which certainly belong well before 380.

maltreatment of parents, alongside what we would regard as public matters such as failure to undertake military service or unpaid debt to the state, among offences punishable by *atimia* or deprivation of citizen rights (Hansen 1976: 72-73). On this basis, it seems reasonable to read the totality of *Ath.Pol.*'s formal questions as representing an ideological construction of what it was to be a citizen, not least in a world where citizenship was something to be inherited from your parents and ideally transmitted to your descendants (hence the constitutional significance of filial respect), and where the primary contribution of the citizen to his city was as soldier.[72]

The only one of these texts that might suggest a contrary reading is the Deinarkhos passage quoted above, where the reference to individual character (*tropos*) is used for this purpose by Adeleye (1983: 298). However, Hashiba (1997-98: 3) has rightly objected that it is methodogically unsound to give precedence to a text where it is so obviously in Deinarkhos' interests to attack Aristogeiton on character grounds – to which we may add that one of the reasons why Deinarkhos has phrased his passage as a series of indirect rather than direct questions may be precisely to blur the distinction between official questions and authorial comment.

It is of course true that Mantitheos in Lys. 16 claims that it is appropriate for a *dokimasia*-defence to pay attention to the whole of the candidate's life, but this again needs to be read in terms of the speaker's forensic strategy rather than as a statement of law,[73] since it allows him to pass fairly quickly over the events of 404/3, where he seems to have a pretty shaky record, in favour of an extended presentation of his own *curriculum vitae*.

Having said this, however, it is important not to concentrate solely on the formal questions. This is to my mind the weakness of Headlam's analysis,[74] which narrowly preceded the publication of the *Ath.Pol.*, and which understandably therefore takes no account of the latter's statement that the formal questions were succeeded by the invitation, "Does anyone wish to accuse this man?" (*Ath.Pol.* 55.4, quoted at n.66 above). To phrase the invitation in this way is to offer something of an open goal, and it is notable that the Lysianic *dokimasia* speeches, which are of course the only ones where we can analyse the arguments of at least one side of the dispute, say very

[72] I am therefore not persuaded by Adeleye's attempts to distinguish between citizenship and civic responsibility (Adeleye 1983: 296), or to classify behaviour towards parents as a private matter ("It goes without saying that [treatment of parents] applies more to a candidate's private life than his legal qualifications as a citizen", Adeleye 1983: 299).

[73] Thus rightly Hashiba (1997-98: 2-3), against Adeleye (1983: 298). For the weaknesses of Mantitheos' claim not to have returned in time to serve in the cavalry under the Thirty, see briefly Todd (2000: 179).

[74] "The proceedings were as a rule almost formal: they consisted in putting to the newly elected magistrate certain questions; if they were satisfactorily answered the matter was at an end: if it appeared that the man did not possess some of the qualifications he was excluded" (Headlam 1891: 98).

little about anything relating to the *Ath.Pol.*'s formal questions,[75] but instead focus almost entirely on the political record of the candidate during the civil war of 404/3, typically with the allegation that he supported the oligarchs, or at least that he failed to support the democrats.[76]

The choice of the language used to describe this invitation deserves attention. It is certainly true that the automatic nature of the process, together with the absence of evidence for any further penalty being imposed on a rejected candidate (who seems simply to have been disqualified from the office under consideration), together serve to distinguish the *dokimasia* of public officials from an ordinary trial.[77] This makes it all the more notable that *Ath.Pol*. gives formal status within the proceedings to the verb *katēgoreō*, which is typically used of a prosecutor, and such usage is matched by the fairly consistent deployment of such language across the *dokimasia* speeches.[78]

One of the most striking features of *Ath.Pol.*'s account is the impression that each case is heard in turn at a single hearing, with no indication of any possibility for adjournment.[79] Such a process would of course allow the accuser to come prepared, since it would presumably be obvious which officials were going to have their cases heard on which day, but would require the defendant to improvise – thereby implying that those who do commission a logographer must have either long pockets or good cause to fear the prospect of challenge, which would cast an interesting light particularly on Mantitheos' case. Michael Gagarin has indeed suggested to me *prima facie* that there must have been some process to sort out contested cases and reserve them for later discussion, but on reflection I am not sure that we should expect Athenian legal procedure to be constructed in the interests of those candidates who

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[75] The only real exception is the allegation that Philon treated his mother badly, to the extent that she entrusted her burial to a non-relative (Lys. 31.20-21: it is of course possible that this happened while Philon was living in Oropos). The care taken by Mantitheos to emphasise his campaign record may well represent an attempt to play the formal questions as a strength (Lys. 16.12-18), and the emphasis on Philon's failure to support either side in the civil war either militarily or financially (Lys. 31.9 and 31.15, cf. following note) may perhaps be an attempt rhetorically to suggest that this is the equivalent of failure to undergo campaigns or pay taxes to the *polis*.

[76] Lys. 31.8-13 formally alleges a failure to support either side, but makes clear in passing that it is the Peiraieus democrats that Philon ought to have joined (e.g. οὐ γὰρ ἦλθεν εἰς τὸν Πειραιᾶ at §9, εὐτυχοῦντας ὁρῶν ἡμᾶς ἐτόλμα προδιδόναι at §10; cf. also βοηθῆσαι εἰς τὸν Πειραιᾶ and χρήματ' εἰσενεγκεῖν εἰς τὸ πλῆθος τὸ ὑμέτερον at §15).

[77] Thus MacDowell (1978: 168); cf. for contrast MacDowell's comments on the *dokimasia* of orators, at n.28 above.

[78] *Katēgoreō* with its cognates is used three times in Lys. 16, six in Lys. 25, five in Lys. 26, four in Lys. 31, twice in the extant portions of Lys. frag. *Eryximakhos*. (Cf. also eight times in Lys. 24.)

[79] Thus e.g. Busolt-Swoboda (1920-26.ii: 1073 with n.2), MacDowell (1978: 168), Rihll (1995: 95).

wish to commission logographers, and am again struck by the absence of a board of *dokimastai* (cf. n.42 above) to prepare the cases in advance.

We return finally to the issue of politicisation, where the interpretative problem is to determine how far such politicisation of the *dokimasia* procedure is a special feature of the generation after 403, and whether that is therefore, in Headlam's terms, an abuse of process and a mechanism for evading the terms of the Amnesty of 403/2, which prohibited the "remembering of wrongs" (*mnēsikakein*).[80] Several arguments have been put forward to suggest that political charges at the *dokimasia* were not a breach of the Amnesty.[81] Many scholars, for instance, have read Lys. 26.9 as evidence that there was a statutory change in the *dokimasia* procedure at some stage after 403, since the passage claims that the intention of the legislator had been to weed out those who had held office under the oligarchy.[82] But it looks more like an example of a standard topos in the orators, whereby statements about the legislator's intention are an attempt to lend greater authority to what is simply an inference about present and (in the speaker's view) desirable practice[83] – not least because legislative change of the type envisaged could be argued simply to transfer the problem from one of individual into one of collective *mnēsikakia*.

The other type of argument that has been put forward in this context is that what is going on in the Lysianic *dokimasia* speeches does not represent a peculiar and temporary process of politicisation, but rather that contestation of the *dokimasia* on political grounds was at all times more frequent than we might imagine.[84] For

[80] In a series of studies, Carawan (2001, 2002, 2006) has sought to read this clause as a repudiation of out-of-court reprisals rather than in the traditional sense of an amnesty as a cancellation of claims, but this view has not generally won favour.

[81] E.g. the argument of Dorjahn (1946: 32) that *dokimasia* attacks must have been a "recognised exception" to the Amnesty because they happened, and that of Cloché (1915: 395) that cases like that of Mantitheos should not be counted as breaches of the Amnesty because we do not know that he was rejected (though this seems to be contradicted by 1915: 397, which claims that rejection would not have breached the Amnesty anyway).

[82] Lys. 26.9: ὁ θεὶς τὸν περὶ τῶν δοκιμασιῶν νόμον οὐχ ἥκιστα τῶν ἐν ὀλιγαρχίᾳ ἀρξάντων ἕνεκα ἔθηκεν ("the man who made the law about *dokimasiai* did so not least because of those who had held office under an oligarchy": for the plural *dokimasiai*, see n.54 above). The fullest statement of the case for post-403 legislation is Hansen (1978: 319) and (1979: 36-37), who is followed by Roberts (1982: 21 n.33) and with slight difference over date by Adeleye (1983: 303-304); a similar reading was put forward previously but very briefly by Bonner (1933: 13), and now again by Feyel (2009: 155).

[83] Thus e.g. Weissenberger (1987: 225), Wolpert (2002: 70). Lübbert (1881: 63) had previously suggested that Lysias is simply imputing his own view here to the legislator. There is also the problem of combining the passage with Lys. 16.8, where Mantitheos claims that if he had served in the cavalry he could still expect to pass his *dokimasia* (though the two texts are not entirely exclusive, since there could be a distinction between former cavalry and former office-holders).

[84] The other known fourth-century cases are listed at n.17 above: it is hard to see the nature of the charge without a surviving speech (and we certainly cannot tell anything about charge against Polyeuktos, which is just a title), but we hear hints of allegations against

instance, Lipsius (1905-15: 274-275 with n.22) argued rather cautiously that a passage in Aristophanes' *Knights* showed that anti-democratic sentiments could be used against candidates as far back as the 420s,[85] and Bonner (1933: 13 with n.35) sees this as proving that politicisation of the *dokimasia* was nothing new, but although the *Knights* passage is undoubtedly evidence for the threat, there is in fact nothing in the text to suggest *dokimasia* as a context.[86] Rihll (1995: 95) has similarly argued that Theogenes' need for Stephanos' support at his *dokimasia* as *Basileus* indicates that this was much more than a formality;[87] and that the introduction of plenary and secret voting, even in cases where there was no accuser, indicates an intention to make it a serious procedure (*Ath.Pol*. 55.4, quoted in text at n.66 above).[88] But we are not told precisely what help Stephanos offered, which might for instance have been no more than organising sufficient witnesses to demonstrate the citizen paternity of the evidently inexperienced Theogenes; while the shift to plenary and secret voting need indicate no more than moral panic or possibly one scandalous case.

When I discussed the Lysianic *dokimasia* speeches in my PhD thesis (Todd 1985: 117-128), and again more briefly in my first book (Todd 1993: 287-289), I came down heavily in favour of Headlam's opinion that the political use of the *dokimasia* in the generation after the civil war was not only a temporary

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both the remaining candidates that if proven could form a good legal basis for rejection: Aristogeiton as an alleged state-debtor, and Demosthenes as an alleged homicide.

[85] Aristophanes, *Knights*, 447: τὸν πάππον εἶναί φημί σου τῶν δορυφόρων ("I will claim that your ancestor was a member of [the tyrants'] bodyguard").

[86] The only firmly-attested pre-403 case of contested *dokimasia* is Theramenes' rejection as General probably in 405 (Lys. 13.10), which is unique in being an elected office (cf. n.15 above). There is dispute over the reasons for his rejection: Lysias claims it was because he was thought not well-disposed to the democracy (οὐ νομίζοντες εὔνουν εἶναι τῷ πλήθει τῷ ὑμετέρῳ), but this could reflect perceptions at the date of the speech in c.399. Other possible motives for rejection suggested by modern scholars include the part which he had played at the Arginousai trial (e.g. Lehmann 1972: 205 with n.10, Ostwald 1986: 443), his relations with Alkibiades (Buck 1995: 20 n.36), or even the suggestion that he may have been subject to partial *atimia* (Adeleye 1983: 300-301, on the basis of Andok. 1.75). Of hypothetical cases prior to 403, Plato Comicus frags. 166-167 K (discussed by Traill 1981) envisages rejection of Hyperbolos at a *dokimasia* for some category of public office at a date before the end of his political career in c.416, but this may be on the technical grounds that he is putatively not a citizen (reading πονηρῷ καὶ ξένῳ as hendiadys).

[87] Dem. 59.72, presenting it as part of a plot laid by Stephanos to gain influence over the unsuspecting Theogenes, who is described as ἄνθρωπον εὐγενῆ μέν, πένητα δὲ καὶ ἄπειρον πραγμάτων ("a man who was well-born, but poor and inexperienced in public affairs").

[88] Rihll's other arguments relate to Lysias' failure to make more of Theramenes' rejection (on which see last-but-one note) and to the way in which Lys. 31.33-34 presents the expectation that there will be candidates who fail (but this relates to a period when rates of contestation and presumably therefore of failure seem to have been unusually high).

phenomenon but also an abuse of process. Since then I have modified my view, at least at the margins, primarily as a result of further thinking about the similarities in function between the *dokimasia* of public officials at Athens and the constitutional rule requiring the US Senate to hold confirmation hearings for a range of presidential nominees, including most notably Supreme Court Justices.[89]

Two points emerge from the US literature on confirmation hearings. The first is the way in which the frequency and seriousness of contested cases particularly for Supreme Court Justices has varied across time,[90] with a much greater frequency of such cases in the nineteenth century, relatively few in the first half of the twentieth, and a much heavier degree of contestation (as illustrated by the greater length of confirmation hearings even in cases where the candidate is eventually confirmed) [91] in the period since 1969 and especially since 1987. It would be unwise to suggest any direct parallel here, but it does not seem unreasonable to suggest that contestation and/or politicisation of this sort of confirmation process is the sort of thing for which fashions can change over time, and that the success or near-success even of a single case can encourage copy-cat tactics on the part of allies or opponents.[92]

The second point which emerges from the US material, and for our purposes perhaps the more interesting one, is the continuing debate over whether the ideological scrutiny of Supreme Court justices, which has become so much the

[89] I should perhaps note that there is no UK equivalent for this process, so I am speaking here as an outsider, on the basis of secondary works of US political science and constitutional law. I am grateful to the University of Texas at Austin for hospitality as Visiting Scholar in March-April 2009, and the opportunity to discuss these matters in detail.

[90] Gerhardt (2003: lxxix-lxxxii) tabulates cases of Supreme Court nominations that were rejected or withdrawn: of these, 21 cases fall within the period 1793-1894, including eight rejections, seven of which occurred when the Senate majority was from the President's own party (for voting figures, see the table in Tribe 1985: 142-151). By contrast, Gerhardt records only one subsequent rejection (in 1930) and two withdrawals (both in 1968), before the rejections of Haynsworth and Carswell in 1969-70 and of Bork in 1987 (both nominated by Republican presidents and rejected by Senate under a Democrat majority): it is the last of these in particular which has set the tone for the examinations of judicial ideology which have dominated the majority of subsequent confirmation hearings.

[91] For speedy confirmation as the norm in the period 1897-1967, see Cominskey (2004: 14).

[92] In recent US cases it seems mainly to have been Republican nominees who have run into most difficulty: Cominskey (2004: esp. 66) suggests that Clinton's nominations were more pragmatic, but notes that nominees from Presidents of both parties can now expect much greater scrutiny especially of their judicial ideology. In the Lysianic corpus, the objections are in each instance based on support for the oligarchs in the specific past context of the civil war (or in Philon's case a failure to support the democrats, cf. n.76 above), though the rôle played by Thrasyboulos of Kollytos in the cases of Leodamas (Arist., *Rhet*., 2.23.25 = 1400a32-36) and of Euandros (Lys. 26.21-24) suggests that patterns of support may also have been affected by personal considerations.

pattern since 1987, is or is not a legitimate reading of the "advice and consent" clause of the US constitution.[93] Liberal scholarship, perhaps predictably, tends to argue that some at least of the founding fathers did envisage ideological scrutiny,[94] against legalist critiques which attack the post-1987 process as trivialising. Once again, it would be unwise to suggest any direct parallel with Athens;[95] but I am inclining towards the view that rather than seeing the temporary politicisation of the *dokimasia* as a clear abuse of process, we should instead consider the hypothesis that nobody actually knew whether such politicisation was or was not a threat to the Amnesty, perhaps because nobody had thought to work out this sort of detail in the summer of 403.[96] Quite where such flexibility would leave the political significance of the Amnesty is another matter.

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[93] Article II section 2 paragraph 2: "[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law."

[94] E.g. Cominskey (2004: 39-84).

[95] In particular, I am not suggesting that Athenian oligarchs should be seen as strict constitutionalists: my sense is that all sides at Athens would subscribe to the Lys. 26.9 perspective (for which see n.82 above) in which the legislator's intention is simply inferred from or equated with what the speaker sees as the current or the desirable working of the law, primarily because the speeches generally display a very limited sense of historical change (Lys. 10 is exceptional here for its historical/juridical sophistication, as in so many other ways).

[96] If so, then this would lend weight to Bearzot's reading of arguments such as Lys. 26.16-20 as an attempt to construct "alternative criteria" for the interpretation of the Amnesty (Bearzot 1998: 119). I am not persuaded by the view of Hashiba (1997-98: 6-7) that the failure of *dokimasia* candidates to plead the Amnesty in their defence indicates an acknowledgement of its irrelevance: it is always dangerous for a defendant to insist too much on things that the audience might regard as technical grounds for a favourable verdict, because of the risk of sounding as if you are not sure of your case on the facts, and I see no difficulty in reading Mantitheos' failure to mention the Amnesty as an aspect of his construction of a persona of confidence; there are, as Hashiba himself notes, some (albeit rather generalising) references to the Amnesty in Lys. 25.28, 34.

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LORENZO GAGLIARDI (MILAN)

ATHENIAN *DOKIMASIAI* A RESPONSE TO STEPHEN TODD

Stephen Todd has carried out a clear analysis of some of the main questions concerning the *dokimasia* in Athens in the classical age. In my response, I am going to concentrate on three main issues which I believe deserve major focus.

1. Todd has pointed out, among other things, that we should talk about various types of *dokimasiai* instead of one single *dokimasia* and has tried to identify the best way to classify them.

It is worth noting that, in classical Athens, all the magistrates appointed by lot (including the 500 *bouleutai*), all the elective magistrates (including the *strategoi*), as well as ambassadors, heralds, orators, ephebes, newly enfranchised citizens, priests, orphans, invalids, cavalry, horses, mounted skirmishers, foot-soldiers that fought in the ranks of the cavalry, public buildings, ships, coinage and peplums underwent or were likely to undergo *dokimasia*. It is particularly difficult to identify one main *dokimasia* procedure because of the heterogeneous nature of its subjects and because of the fact that some of them came under the exclusive jurisdiction of the *boule*[1], some of the *boule* first and then of the law court[2], some others only of the

[1] Cavalry, horses, mounted skirmishers, foot-soldiers that fought in the ranks of the cavalry, orphans, invalids and, according to [Arist.] *Ath. Pol.* 46.2, public buildings, which were probably scrutinised by technical experts, as pointed out by Feyel in his recent work (p. 111).

[2] Archons and, possibly, *bouleutai*. The latter are said to have undergone a double *dokimasia* ([Arist.] *Ath. Pol.* 45.3), although Rhodes, 543, had already pointed out that they did not have to undergo any *dokimasia* before the law court; these remarks are confirmed by the recent and convincing thesis of Feyel, 167 f., who noted that Lysias' orations no. 16 and 31, delivered before the *boule*, do not seem to be followed by another debate before the *dikasterion*. Hence, given also that these orations date back to the beginning of the fourth century B.C. (Lys. 16: 392-389; Lys. 31: 394), Feyel has come to the conclusion that the *dokimasia* of *bouleutai* before the law court is likely to have been introduced between 394 *circa* and 330, the approximate date of the Aristotelian *Ath. Pol.*. However, in my opinion, it has not yet been proved whether *bouleutai* had ever undergone any scrutiny before the *dikasterion*. Another related issue debated among modern scholars is whether the examination for archons and *bouleutai* (assuming that the *bouleutai* should be involved in this debate) before the *dikasterion* was mandatory or only took place if the candidates in question had not passed scrutiny before the *boule*. It is worth noting, incidentally, that although one could be inclined to favour the first

law court[3]. We know[4] that the *dokimasia* of ephebes was first conducted before the deme, subject to appeal to the law court, and before the *boule* if they passed the first scrutiny. Some technical *dokimasiai*, for example for ships and coinage, were entrusted with an expert *dokimasthes*[5]. We have no information about the carrying out of other specific *dokimasiai*[6]. In some cases, the *dokimasiai* started *ex officio* (for example that of archons, on whose *dokimasia* we are particularly well documented thanks to [Arist.] *Ath. Pol.* 55) but this was not the case with others (such as orators[7]).

This is why I agree with Todd on the need to talk about various *dokimasia* procedures[8] and I believe that the best way to classify them is the one recently suggested by Feyel[9], who has distinguished between technical-financial *dokimasiai* and political *dokimasiai*[10]. The latter should be further subdivided into those which were carried out *ex officio* and those which started on the application of one party.

Lys. 26.9 supports this opinion by referring explicitly to a "law on *dokimasiai*" (in its plural form), which, according to him, did not allow all those who had held an office during the years of the oligarchic government to become magistrates[11]. Therefore, a law that provided for various *dokimasiai* at the same time existed after 404. As we will see below, more laws on one single *dokimasia* were probably enacted over time too.

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possibility after reading [Arist.] *Ath. Pol.* 45.3, *Ath. Pol.* 55.2-4 and Dem. 20.90 are likely to convince us to favour the second, as appropriately maintained by Lepri Sorge, 427 ff.

3 The other magistrates, orators, newly enfranchised citizens (Dem. 59.105-106) and peplums, assuming that they underwent *dokimasia*, as apparently confirmed by [Arist.] *Ath. Pol.* 49.3 (who specifies that the jurisdiction of the law court had replaced that of the *boule* in the case of peplums). Feyel does not consider the scrutiny of peplums as a *dokimasia*.

4 [Arist.] *Ath. Pol.* 42.

5 The *dokimasthai* for coinage were two public slaves, one working in the agora and the other in Piraeus. See Feyel, 86.

6 Ambassadors, heralds, priests.

7 On this point, see the debate between D.M. MacDowell and me, published in *Symposion 2001*, Wien 2005, 79-97, which Feyel has unfortunately ignored in his recent work.

8 I also agree with Todd's opinion that the Athenian *dokimasia* procedure should not be interpreted as an abuse of process, but rather as an essential tool – particularly with respect to political *dokimasiai* – to judge all those who are going to become magistrates in a direct democracy mainly based on election by lot (on this point, also see Feyel, 218 f.).

9 Cf. the index for the volume Feyel, 407 f.

10 It is not an unmistakable distinctive criterion because it does not account for the difference between technical and political *dokimasiai*. For example, according to Feyel (73 ff.), *dokimasiai* of orphans and invalids should be considered as technical but could also be counted among the political ones.

11 *Dokimasia* in its plural form is also quoted in Lys. 16.9.

2. I would also like to focus on the second point analysed by Todd, i.e. whether the political *dokimasiai* only judged the civic virtue of the candidates or also their moral virtue *per se*. The latter opinion has been borne out by Adeleye[12] but opposed by Hashiba[13] and, now, by Todd[14].

I would support Todd's argument on this point, because the sources available to us apparently show that a citizen's lifestyle was only important, for the purposes of a *dokimasia*, to infer whether he was sufficiently virtuous, in his capacity as public official, to prevent him from having any negative influence on his fellow-citizens[15].

The opposite thesis has been mainly supported by two sources: Lys. 16.9 and Dinarc. 2.17. The former maintains that *dokimasia* candidates should account for their whole life, whereas the latter has been interpreted as indicating that the *dokimasiai* of magistrates were supposed to judge, besides a series of specific questions, the candidates' *idios tropos*, i.e. their character.

In fact, I believe that the former of the above arguments is highly rhetorical and cannot be interpreted in strictly technical terms. As for the latter, it seems to me that the scrutiny concerning the *idios tropos* should not be deemed as additional to but rather as encompassing the others successively listed by the orator. In other words, the following short list is only a sort of analytical explanation of how candidates' *idios tropos* was scrutinized during the *dokimasiai*.

3. Finally, I would like to make some further remarks about Todd's observations on the matters tested during the *dokimasiai* of magistrates and orators. The list of matters for the former is found in [Arist.] *Ath. Pol.* 55.3, whereas those regarding the latter are listed in Aeschin. 1.28-30. Todd has properly suggested that the first of these lists is incomplete, in that it would only include some of the main questions discussed during the *dokimasia* of magistrates. Since the latest works of scholars have shown different views on this matter, I would like to take it a bit further.

According to [Arist.] *Ath. Pol.* 55.3, when the archons were scrutinised, they were asked: 1) whether they had a cult of Apollo and Zeus; 2) whether they had family tombs; 3) whether they treated their parents well; 4) whether they paid their taxes; 5) whether they had performed their military service. (These first questions are included in the first column of the table at the end of this paper.) After replying to the questions, the archons had to produce witnesses to their statements. The *dokimasia* did not finish like that, however, because at this point anybody could stand up and accuse the candidate.

Aeschin. 1.28-30 has allegedly reported the contents of the law on the *dokimasia* of orators (which is specified in the second column of the table). We

[12] Adeleye, 298 f.
[13] Hashiba, 1 ff.
[14] See also Todd, 288 f.
[15] This is even more evident if we take account of the questions dealt with during a *dokimasia*. See [Arist.] *Ath. Pol.* 55.3-4 and Aeschin. 1.28-30 in particular.

learn that reasons for not passing the *dokimasia* included 1) maltreatment of parents; 2) failure to fulfil military service; 3) prostitution; 4) squandering one's ancestral patrimony[16].

Some questions regarding the *dokimasia* of orators coincide with those analysed in [Arist.] *Ath. Pol.* 55.3 but only some of them. Starting from this preliminary remark, Feyel has compared the *dokimasia* of archons with that of orators and has come to the conclusion that they were different because emphasis was given to prostitution and squandering one's ancestral patrimony only by the latter, and to the cult of Apollo and Zeus, the family tombs and payment of taxes only by the former[17].

We could obviously agree with Feyel's conclusion only if we were sure that the two lists are complete but I have reasonable doubts about that. We should also consider that Aeschines' first oration dates back to 346, the Aristotelian *Athenaion Politeia* is probably datable to the 20s of the fourth century B.C., whereas the institution of the *dokimasia* definitely goes back to an earlier date. We know for sure that the *dokimasia* of magistrates dates back at least to 430[18] (or even before), since *circa* 430 may be the date of the pseudo-Xenophontic *Athenaion Politeia* which refers to it[19]. Great caution should be therefore exercised in outlining the features of both *dokimasiai* and in contextualising the source of our information. As we shall see below, a diachronic approach to the study of the main political *dokimasiai* is advisable in that their development covered a historical period of at least one century.

First of all, it is worth noting that there are three other sources dealing with the questions that were put to the candidates who were to hold a magistracy or, more specifically, were to be archons, i.e. Xen. *Mem.* 2.2.13 and Dinarc. 2.17 (for magistrates) and Poll. 8.85-86 (explicitly referred to thesmotetai but manifestly applicable to all the archons). Each of these sources accounts for some of the questions listed in [Arist.] *Ath. Pol.* 55.3, which proves that the questions which the Aristotelian *Ath. Pol.* only referred to archons were in fact applicable to all the magistrates. It should be noted, however, that none of the three sources accounts for *all* the *Ath. Pol.*'s questions (as synoptically shown in the table below[20]). This

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[16] The Greek text gives an articulate description of the four cases, but the synthesis I have provided is enough for the purposes of this paper.

[17] Feyel, 206. The works of other eminent scholars confirm this opinion (cf. Lipsius, 269 ff.).

[18] As shown in Feyel, 22 ff.

[19] [Xen.] *Ath. Pol.* 3.4. Cf. Feyel himself (32 f.) as the latest account of the date of this work.

[20] Columns 3-4-5. As shown in the table, it is uncertain whether Poll. 8.85-86 mentions the question of tax payment. I am inclined to think so because, to my mind, the mention of the *timema* contained in that passage should be referred to this issue. Otherwise, we should deduce that the question concerning the *timema* was another question of the

confirms the allegation that each of them includes an incomplete list and should lead us to doubt that [Arist.] *Ath. Pol.* 55.3 and Aeschin. 1.28-30 contain complete lists. In fact, there is evidence that points to the following conclusion: both lists should be supplemented with other items depending on the type of *dokimasia* and periods of the Athenian history, as I am going to argue[21].

1) It is certainly true that [Arist.] *Ath. Pol.* 55.3 does not mention prostitution with regard to the *dokimasia* of magistrates but it is likewise true that Aeschin. 1.21[22] accounts for the existence of a law which provided that those who had prostituted were not allowed to hold any *archè*[23]. This source does not make any explicit reference to any *dokimasia*. Nevertheless, the question of prostitution could probably be raised during the *dokimasia* of magistrates as it certainly could during that of orators: anyway, why would a prostitute-orator be rejected at his *dokimasia* and a prostitute who was magistrate designate pass it?

2) Lys. 26.9 quotes the "law on *dokimasiai*", which prevented those who had held a magistracy under the oligarchy from passing the *dokimasia*[24], although there is no explicit mention of the kind of *dokimasia* which could not be passed. It should be observed that Lys. 26 was delivered during the *dokimasia* against an archon designate. Therefore, the provision at issue certainly concerned the *dokimasia* of archons. However, use of the plural form in the phrase "law on *dokimasiai*" leads us to deduce that the question was also relevant to other *dokimasiai*, and we actually know that the question was also addressed during two *dokimasiai* of *bouleutai* and one *dokimasia* of a magistrate designate who has not been clearly identified[25]. There is no account of this, however, in the Aristotelian *Ath. Pol.*, nor in any other sources[26]. I believe that this law was passed in Athens between 403 and 382[27], the

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dokimasia of archons not listed in [Arist.] *Ath. Pol.* 55.3, nor in any other source available to us.

[21] The information that I am going to classify is summarised in columns 6-10 of the table below.

[22] Column 6 of the table.

[23] On this point, cf. Cantarella, 73 ff.

[24] As is well known, Lys. 16.8 maintains the opposite, i.e. that many *bouleutai* had a magistracy under the oligarchy. This divergence is due to the fact that Lys. 16 is an oration written in defence of a candidate scrutinised during a *dokimasia*, whereas Lys. 26 is an oration having the opposite purpose. To my mind, in Lys. 16 the logographer had decreased the scope of the law to favour his client, whereas Lys. 26 makes a faithful account of it. For the opposite view, see Medda, 86 f., nt. 8. On this point, see also Feyel, 168. Irrespective of the scholars' opinions, it cannot be denied that in all four of Lysias' orations delivered at a *dokimasia* (Lys. 16, 25, 26, 31), the question at issue is always whether the candidate had held an office under the oligarchy.

[25] The question that I address here is dealt with in Lys. 16 and 31, concerning the *dokimasia* of a prospective *bouleutes*, as well as in Lys. 25, for an individual who was going to hold an unknown office.

[26] However, see Lys. 25.14.

probable year of Lys. 26, which mentions the oligarchy of the Thirty of 404[28]. This proves that at least one new item was added over time to the list of questions put during the *dokimasia* of magistrates, or, in other words, that the *dokimasia* of magistrates was revised, if one thinks that the other requirements listed in [Arist.] *Ath. Pol.* 55 go back to an earlier date.

3) We learn from Dem. 59.72 that the archon-*basileus* was asked at his *dokimasia* whether he had married a virgin citizen. If he had not, he had to undertake to do it[29]. However, there is no account of this requirement in [Arist.] *Ath. Pol.*[30].

4) Xen. *Mem.* 1.2.35 mentions the obligation for *bouleutai* to be aged at least thirty. Although it is not specified in this source, this precondition was very likely to be tested during the *dokimasia*.

5) According to Dinarc. 1.71, *strategoi* and orators were supposed to have procreated in compliance with the law (i.e. have legitimate children[31]) and to have land (in Attica)[32]. Here, too, the mention of the *dokimasia* seems to be only implicit[33]. Scholars have different views of the above-mentioned allegation by Dinarchus. Some of them think it is valid with respect to the *strategoi*, sharing the idea that they were supposed to have land in Attica to ensure their actual involvement in the defence of the territory[34]. Others maintain that it cannot apply to orators[35] for two major reasons: this prerequisite is not mentioned in Aeschin. 1.28-30 and at least one orator is known to have spoken in public without having had any children[36]. The first of these objections cannot be sustained because, as we said before, there is no evidence that the list drawn up by Aeschines is complete. As to the second, Timarchos himself was attacked by Aeschines during a *dokimasia* of orators after he had spoken many times in public and prostituted, and I believe that he would have continued to be a rhetor had he not been attacked by Aeschines on

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[27] Todd has expressed a different view on this point in the article to which this paper responds.

[28] Lys. 26.10.

[29] Dem. 59.75.

[30] Cf. Feyel, 180, with his bibliography (the author, of course, knows very well that the *dokimasiai* of individual types of archons had their special features).

[31] As evidenced by [Arist.] *Ath. Pol.* 4.2, which I quote immediately below.

[32] Cf. Caillemer, 325.35.

[33] This has not been confirmed by Fröhlich, 125. Dinarc. 1.71, besides orators, only mentions the *strategoi*, but it seems that the rules governing the *dokimasia* of the latter also applied to all the other magistrates having military duties. Cf. [Dem.] 40.34, as well as Feyel, 187, as concerns taxiarches and also [Arist.] *Ath. Pol.* 4.2 with respect to hipparches. A general reference to the *dokimasia* of *strategoi* can be found in Lys. 15.6.

[34] Feyel, 190.

[35] Cf. Harrison, I.19.1 and II.205.4; Ober, 119; Worthington, 235; Fisher, 159; MacDowell, 81.

[36] I.e. Andocide, when the orations *On the Mysteries* and *On his Return* (Andoc. 1 and 2) were delivered. See par. 148 of the former. Cf. MacDowell, 81.

that occasion[37]. Actually, as concerns the *dokimasia* of orators, if nobody had troubled to attack an orator initiating an *epanghelia dokimasias* against him, the scrutiny procedure would not have even started.

To my mind, the opinion expressed in Dinarc. 1.71 may be deemed reliable in light of [Arist.] *Ath. Pol.* 4.2, which informs us that, in Drakon's time, only those who were able to declare a non-mortgaged capital of at least a hundred mines and had legitimate children aged at least ten could be elected *strategoi* and hipparches. As is well known, this passage is not fully reliable because it dates the existence of the *strategoi* back to the seventh century B.C. whereas they were introduced towards the end of the sixth century B.C. It is possible, however, that the requirements specified in [Arist.] *Ath. Pol.* 4.2 have not been totally made up. They might also not reflect the political situation of the fourth century B.C. but rather a situation dating back earlier, for example to the fifth century B.C., which, in turn, had its roots in an earlier period[38]. Likewise, Dinarchus may have not invented his reference to the laws but only have quoted rules that applied at least to the *dokimasia* of *strategoi* and orators in the past. In his time, those rules were archaic and perhaps no longer applicable, although they had never been formally repealed. Therefore, to my mind, the law quoted by Aeschin. 1.28-30 was exclusively supplemented with previous provisions governing the *dokimasia* of orators[39].

This comprehensive review leads us to conclude that there existed many different *dokimasia* procedures, as set out at the beginning of my analysis and also maintained by Todd, each governed by a multitude of laws enacted over time. These laws, as subsequently amended, had given rise to a "stratified" legislation which overall may seem more complex than what we would be inclined to think if we took separately [Arist.] *Ath. Pol.* 55.3 for the *dokimasia* of magistrates and Aeschin. 1.28 for that of orators. Actually, neither one of these sources provides a comprehensive list of the questions put during the *dokimasia* at issue, at the time each of the sources was written. Furthermore, the rules governing the various *dokimasiai* are very likely to have changed over time.

In Aristotle's time, prospective magistrates were not only asked the five questions mentioned in *Ath. Pol.* 55.3: these questions were put *ex officio* to the candidates but the procedure actually started after they had replied, when any citizen could take the floor and attack them. At this point, the scrutiny was carried on with respect to other questions, including at least prostitution[40], squandering one's

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[37] Gagliardi, 95 f.

[38] Thus, Piccirilli, 176. My statement suggests that political *dokimasiai* are older than what is inferable from the sources currently available to us (see Feyel, 22 ff.). These remarks, however, are mainly speculative and cannot be further developed in this paper.

[39] Moreover, incidentally, the law governing the *dokimasia* orators mentioned by Aeschines was probably not recent at that time too, as specified in Aeschin. 1.33.

[40] Aeschin. 1.21.

ancestral patrimony[41] and support of the oligarchy[42]. Also note that, depending on the magistracy office and/or in some periods of Athenian history, the *dokimasia* concerned other different topics, such as matrimony, age, the existence of legitimate children and land property. When orators underwent their *dokimasia*, they were not asked *ex officio* questions and I believe that their *dokimasia* too was very likely to be about some further questions, apart from those listed by Aeschines in his oration against Timarchos.

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[41] This argument is only speculative.
[42] Lys. 26.9.

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Table see next page:

X: uncertain information; n.d.: *dokimasia* not explicitly mentioned

	1 [Arist.] *Ath.Pol.* 55.3 (archons)	2 Aeschin. 1.28-30 (orators)	3 Xen. Mem. 2.2.13 (magistr.)	4 Dinarc. 2.17 (magistr.)	5 Poll. 8.85-86 (archons)	6 Aeschin. 1.21 (magistr.)	7 Lys. 26.9 (archons, magistr.?)	8 Dem. 59.72 (basileus)	9 Xen. Mem. 1.2.35 (*bouleutai*)	10 Dinarc. 1.71 (*strategoi* and orators)
Cult of Apollo and Zeus	X				X					
Family tombs	X		X	X						
Maltreatment of parents	X	X	X	X	X					
Payment of taxes	X			X	X					
Military service	X	X		X	X					
Prostitution		X				X (n.d.)				
Squandering one's ancestral patrimony		X								
Support of the oligarchy							X			
Matrimony								X		
Thirty years of age									X (n.d.)	
Legitimate children										X (n.d.)
Land										X (n.d.)

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SOKRATES AND DEMOCRATIC LAW: PLATO'S *CRITO* AND *APOLOGY*

Notwithstanding the widespread support for written law in ancient Greece, conservative Athenians advanced eight different arguments against law over one hundred years starting in 458.[1] I shall summarize these arguments, as I shall soon need them. First, old laws are good but new laws are bad, an argument first in Athena's foundation speech for the Areopagos in Aeschylus' *Eumenides*: "may the citizens not pervert the laws by evil influxes; for by polluting clear water with mud you will never find good drinking" (lines 690-95). Although probably not by Aeschylus, *Prometheus Bound* also disparages Zeus's new laws (lines 150-51, 404). Second, the unwritten laws of the gods are superior to the written laws of the city, first attested in Sophokles' *Antigone* in 442 (lines 453-57). Third, law conflicts with *physis*, nature, first attested in the 420s in the sophist Antiphon (DK fr. 44a) whom the democracy executed in 411 for treason (Thuc. 8.68.1). Fourth, laws are too weak to be effective, as Thucydides' Diodotos says in his debate with the democratic leader and champion of law Kleon (3.45). Fifth, laws are no good since the men who pass them often change them. Thucydides delights to have his enemy Kleon say that bad laws that remain fixed are superior to good laws that lack authority (3.37). Sixth, the democracy often ignores its own laws, most famously in the Arginousai trial of 406 when the Athenians illegally tried eight generals as a group (Xen. *Hell*. 1.7.12). Seventh, virtue is advanced not by laws but by the habits of daily life, attested for example in Isokrates' *Areopagitikos* (7.39-41). Eighth, wise rulers need no laws, which are blunt instruments, a key theme in Plato's *Republic*.

The reason for conservative opposition to Athens' laws is that, as Ps.-Xenophon (1.8-9), Xenophon (*Hell*. 1.7.12), Plato (*Rep*. 563d, 557e), and Aristotle (*Pol*. IV 4.25-31) all say, conservatives thought the democracy was passing laws in its own interest. In a debate in the *Memorabilia*, the anti-democratic Xenophon has Perikles tell Alkibiades that law is simply the decisions of the Assembly majority, even when it acts with force against the rich (I 2 40-46). All these enemies of democratic law also opposed democracy. As Isokrates said in reference to the oligarchic revolutions of 411 and 404, "we have twice been deprived of our liberty by men who scorn the

[1] See my "Law's enemies in ancient Athens," in *Symposion* 2005, *Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, ed. E. Cantarella and G. Thür (Vienna 2007) 183-196.

law" (20.10). The democracy responded to some of these criticisms. Orators come to acknowledge the gods' unwritten laws.[2] Athens instituted the *graphê paranomôn* to eliminate confusion between laws and between laws and decrees. It instituted *nomothetai* to draft new laws. From 410 it codified its laws.

There is, however, famous evidence from Plato's *Apology* and *Crito* that Sokrates wholeheartedly accepted the Athenian democracy's laws, but all of our sources including his students Plato and Xenophon say that he was anti-democratic.[3] For the latter point, in particular in the *Crito* Sokrates asks Crito, "Why should we consider what most people think," as opposed to "intelligent people"? Crito answers that "the capacity of ordinary people to cause trouble … has hardly any limits." Sokrates notes that the masses act at random, "the power of the people conjures up fresh hoards of bogeymen to terrify us, by chains and executions and confiscations." Taking any of their opinions seriously is "irresponsible nonsense." We must listen to "the expert in right and wrong, the one authority who represents the actual truth" and not "the general public," "the many" (47a-48a). Later in the *Crito*, the Laws say that Sokrates' favorite models of good government are Sparta, Crete, Thebes (52e, 53b), and Megara, all of them oligarchies and Megara an extreme oligarchy (Thuc. 4.74.3-4). In Plato's *Apology* Sokrates also condemns democratic courts and democratic government. This composition by Plato is a parody of a democratic court speech. Sokrates apologizes for not weeping or bringing into court his family to sway the dikasts; he says he lacks the necessary boldness and shamelessness to prevail (38d). His dialogue with Meletos confirms the importance for him of expert leaders and teachers. He also declares that he is removed from politics and doesn't take part in the Assembly, otherwise he would have been killed long ago: "no man will survive who opposes you or any other crowd and prevents the occurrence of many unjust and illegal happenings in the city" (31c-e). Plato has him say that when the Thirty tried to involve him in their crimes, he just went home, saying nothing (32d). Even according to Plato, he did not vociferously oppose his students' actions. There is evidence that those who remained in the city during the tyranny were considered complicit with it.

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[2] At the same time, however, the city legislated that officials could not use unwritten laws and that any litigant who cited a non-existing law would be executed.

[3] For Sokrates as anti-democratic, see for example R. Kraut, *Socrates and the State* (Princeton 1984) 194-99. On Gregory Vlastos's argument that Sokrates' philosophy was at any rate "demophilic," embracing all humanity and therefore he cannot have been partisan or sympathetic to oligarchy, see Ellen Meiksins Wood and Neal Wood, "Sokrates and democracy: a reply to Gregory Vlastos" (*Political theory* 14 [1986] 55-82). In "Was Socrates against democracy?," in *Plato's Euthyphro, Apology, and Crito. Critical Essays*. ed. R. Kamtekar (Lanham MD 2005) 127-49, Terence Irwin, another distinguished philosopher, also doubts that Sokrates was antidemocratic. To argue this Irwin must tackle a series of historical questions which he argues like a philosopher, requiring absolute proof. Unlike philosophers, historians must settle for judicious assessments.

As for Sokrates supporting Athens' democratic laws, in the *Crito* Sokrates refuses Crito's suggestion to disobey the law by escaping from jail, and in an imaginary conversation with the "Laws and the Constitution of Athens" the Laws point out to him, "Do you think that a city can subsist and not be overthrown, in which the decisions of law have no power, but are set aside and overthrown by individuals?" What will be our answer, Crito, to these and similar words? … We might reply, "Yes; but the city has injured us and given an unjust sentence." "And was that our agreement with you?" the laws would say; "or were you to abide by the sentence of the city? … Are you too wise to realize that your fatherland is more to be honored … than your mother, father, and other ancestors? … You must persuade your fatherland or do what it commands, and endure in silence what it orders you to endure, whether you are beaten or bound, whether you are led into war to be wounded or killed … for there justice lies." (*Crito* 50c-51c)

Second, in *Apology* 32a-c Sokrates mentions that the only city office he ever held was *bouleutes* and his tribe was serving as *prytaneis* when the Athenians debated the fate of the Arginousai generals. "I was the only *prytanis* to oppose your acting against the laws, and voted in opposition; and while the orators were ready to inform against me and arrest me, with you ordering and clamoring for them to do so, I thought I ought to run the risk on the side of law and justice rather than support you in your unjust decision through fear of prison or death." In *Hell.* 1.7.6 Xenophon tells a similar tale but without mentioning any public attacks on Sokrates. At a first Assembly meeting the generals seemed to be winning the argument, but it was too late to vote. At a second Assembly, "the *prytaneis* were afraid and agreed to put the measure to a vote, all of them except Sokrates son of Sophroniskos: this man said he would do nothing contrary to the law. After this Euryptolemos … spoke as follows in defense of the generals…"

Finally, a third argument for Sokrates' lawfulness is that he did not escape from jail.

Did Plato's Sokrates or the historical Sokrates, both anti-democratic, believe that he and all Athenians must obey democratic Athens' laws, even if unjust? In the *Crito* Plato's Sokrates repeats the Laws' claim that unless one can convince the city otherwise, one must do what it orders even if unjust, a profoundly authoritarian position and inconsistent with Sokrates' defiant statements in the *Apology*, for example that if the court orders him to stop philosophizing, he will not obey but will follow god's command (29c-d), "this is my course of action, even if I am to face death many time. Do not create a disturbance, gentlemen!" (30c) Here please contrast what the Laws say in the *Crito*, "Did you undertake to abide by whatever judgments the city pronounces?" Following unjust orders is also inconsistent with Sokrates' repeated claim that one must never do what is unjust. Many scholars have tried to resolve this crux. For example, in *Socrates and the State* (see n. 3) Kraut argues that Sokrates means that we must obey the city only if it is just, and that we

must persuade—or even try to persuade—the city that disobedience is justified. His reviewers are sympathetic but unconvinced.[4]

Why does Plato's Sokrates quote Athens' Laws at the end of the *Crito* that he must obey them even if unjust? To answer this question, we must first consider why Plato's *Apology* only defends Sokrates against the charge of disbelieving the city's gods, not against his involvement with the Thirty tyrants, some of them his students, who had brutalized Athens in 404, killing 1500 persons for their money. Xenophon often addresses this issue (e.g., *Mem.* 1.2.9-12), Aeschines said the Athenians executed "Sokrates the sophist" because he taught Kritias (1.173), and Polykrates' attack on Sokrates in 393 also took this line. Plato's silence has led a few scholars to suppose that the criminal violence of the Thirty was not a factor in Sokrates' trial.[5] However, most scholars agree that it was a principal factor. Why does Plato's *Apology* not address it? In fact, Plato's defense speech offers Sokrates the best defense of all: silence. Had Plato addressed this issue, it would stand as an issue. Silence helps it go away. It's a standard lawyer's trick. The phrase "There is no truth to the rumor that my opponent is sleeping with his sister" will make people start thinking about incest. For the same reason, the *Apology* presents the legal charge of corrupting the young purely as religious or intellectual corruption, not moral or political. Plato's Sokrates says, "Surely the terms of your indictment make clear that you accuse me of teaching [the young] to believe in new deities" (26b), and he goes on to discuss religion. Xenophon and Aeschines state directly that it was political corruption.

But secondly, again without directly mentioning the horrors of 404, the *Crito* does address this issue. It argues that, so far from complicity in right-wing death squads, Sokrates swears that he is an absolutely law-abiding citizen, so much so that he will obey even the democracy's unjust laws and refuse to escape from jail. The *Crito* is thus a second apology, addressing the issue of lawlessness which many think was the driving charge against Sokrates but on which the first *Apology* was silent. In the *Crito*, the Laws point out to Sokrates, "Do you think that a city can subsist and not be overthrown, in which the decisions of law have no power, but are set aside and overthrown by individuals?" That happened in Athens in 404, and Plato's Sokrates here seems to disavow responsibility. The Laws say to him, "a destroyer of laws might well be supposed to have a destructive influence on young and foolish human beings," and so Plato defends him right here against that charge: as a supporter of laws, he therefore did not corrupt the lawless young. However, at the same time, with masterful irony undercutting his apparent message, Plato has Sokrates utter the same absurdist argument that Thucydides put in the mouth of

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[4] See, e.g., G. Klosko, *The Review of Politics* 46 (1984) 619-22, H. Sarf, *The American Political Science Review* 78 (1984) 1190-91, J. Dybikowski, *The Philosophical Review* 95 (1986) 292-94.

[5] See T. Brickhouse and N. Smith, *Socrates on Trial* (Princeton 1989).

Kleon: that even bad laws should be obeyed. Thus we see that Plato's Sokrates condemned Athens' laws as bad. Furthermore, at 52d5 the Laws pick up their statement at 51e3-4 that everyone who remains in Athens has *ergôi*, "in practice" agreed to do what we command, but at 52d Plato has the Laws *ask the question* whether by remaining in Athens Sokrates agreed to obey Athens' laws "in practice but not in word," ergôi all' ou logôi*:* ἀληθῆ λέγομεν φάσκοντές σε ὡμολογηκέναι πολιτεύσεσθαι καθ' ἡμᾶς ἔργῳ ἀλλ' οὐ λόγῳ, ἢ οὐκ ἀληθῆ: "do we not say the truth, *phaskontes*, asserting [but to quote LSJ, 'often with a notion of alleging or pretending'] that you have agreed to be governed by us in practice but not in word, or is this not the truth?" (52d). *Ergôi all' ou logôi*, "in practice but not in word," has been mistranslated by most Plato scholars. Jowett has "in deed and not in word only," Grube the same, "you agreed, not only in words but by your deeds." Better but still dodgy is Hugh Tredennick: "in deed if not in word" and Reginald Allen basically the same, "if" seeming to imply that maybe he said it, maybe he didn't, an ambiguity which is not in the Greek. John Burnet comments: "some would bracket *all'ou logôi*, but the phrase *ergôi all' ou logôi* is a standing formula, and must not be too closely analysed."[6] In fact the point of *all'ou logôi* is straightforward: Plato states that Sokrates never *said* he must obey Athens' laws. And precisely so, again with masterful subtlety, in the *Crito* only Athens' Laws say he must obey them, only Crito concludes that Sokrates must obey them. Sokrates himself never says this, but only asks Crito what conclusions they must draw. There is therefore no contradiction between Plato's Sokrates' quoting the Laws of Athens and other passages where he asserts that one must always act justly.

Finally, at the end of the dialogue, one last time Plato undercuts the whole, when Sokrates claims that he heard the Laws "just as a mystic Corybant seems to hear the strains of music." In other words, all is fantasy. Sokrates adds that his ears are ringing so loudly that he cannot hear the other side, and then Plato adds one final ambiguity (ἀλλὰ ἴσθι, ὅσα γε τὰ νῦν ἐμοὶ δοκοῦντα, ἐὰν λέγῃς παρὰ ταῦτα, μάτην ἐρεῖς): "but know," Sokrates says to Crito, "however many are the things that seem to me now, if you speak against these, you will speak in vain," concluding that they should follow the god. What are these things that "seem" to Sokrates? They may not be what the Laws have said, because Crito agreed with them. They seem more likely his original intention, not to escape from jail.

The question is raised: if Plato's Sokrates does not believe what the Laws say, why does Plato have him quote them? In the *Crito* Plato wants simultaneously to defend Sokrates against the charge of illegal conduct, *and* to impugn Athens' laws as unjust, *and* not actually to have Sokrates state that one must obey the laws of democratic Athens, something Sokrates did not believe. Plato hoped that readers not attentive to his masterful irony and undercutting might think that Sokrates believed that the state and its law, even if unjust, must take precedence over any individual, in

[6] J. Burnet, *Plato's Euthyphro, Apology of Socrates and Crito* (Oxford 1924) ad loc.

fact a widespread Greek belief. Unfortunately, even his most sophisticated readers have missed his more complex point.

Although many have assumed that Plato's early representations of Sokrates reflect the historical Sokrates, Plato's dialogues are fictional. Sokrates says what Plato wants him to say, Plato writes Sokrates' defense speech, he is not a historian but Sokrates' lawyer defending his master. When Plato has Sokrates claim that virtue cannot be taught, of course it can be. In *Apology* 38a Sokrates says the greatest good is to discuss virtue every day," again and again Sokrates says that virtue is philosophical knowledge. Plato's statement that virtue can't be taught is his defense of Sokrates against the charge that he taught the evil Kritias, which he did. In *Apology* 33a, in the context of the Thirty, Sokrates states, "I have never been anyone's teacher… If anyone says he has learned anything from me… he is not telling the truth." Nonsense. Just a few lines later he says he seeks to teach the dikasts (35c), and a few lines after that, he says his method was to approach individuals privately, trying to persuade them to be good and wise (36c).

As for the Arginousai trial, according to Plato's *Apology* and Xenophon, Sokrates also remonstrated with his fellow democratic *bouleutai* not to break the law. Even if we assume that this episode is historical, the main point is that Sokrates here uses a standard anti-democratic argument against the democracy's laws, that the demos itself does not obey them. If the episode happened, it offered Sokrates a delicious moment to convict the democracy of hypocrisy. Anti-democrats like Plato and Xenophon certainly told the story for that reason. Sokrates' objection to the demos' behavior is consistent with conservatives' disdain for democratic law. It need not mean that Sokrates supported that law.

Finally, why Sokrates refused to escape is a big question. There is I think much to be said for Xenophon's view that Sokrates did not seek to avoid execution. The obscene terror of 404 was a disaster for him, after having "been saying your whole life that you cared for virtue" as Plato's Crito says to him (45d), and for so long professing to teach virtue. Why does Plato's Sokrates not offer a better defense speech? Even Plato's Crito calls his speech a farce. Why does Plato's Sokrates say that his *daimonion* did not oppose his conduct in court, from which Sokrates concludes that death may be a good thing (40a-c)? He says, "It is better for me to die now and escape from trouble" (41d). That's right. Why does Plato's Sokrates say that if acquitted, he will go on doing what he has always done? And why did the historical Sokrates not propose a serious alternative penalty to death which the prosecution demanded? In the *Crito* Plato's Sokrates says he does not object to dying. Xenophon's thesis (*Mem*. 4.8.6-10, *Ap*. 1-9, 22, 33) is that Sokrates sought to provoke execution to avoid the pains of old age. I would say, the pains of conscience. Sokrates was not free of guilt for his student's conduct and he knew it: there was no miscarriage of justice, and he knew it. But Plato turned Sokrates' refusal to escape to his advantage, as offering him a golden opportunity to claim that Sokrates was a law-abiding citizen. After a day-long court trial to which we are not

privy, a small majority of the dikasts concluded that Sokrates had in fact broken the law.

What was Sokrates' attitude to the democracy's laws? Plato says he thought they were unjust and that "in word," *logôi*, he did not support them. Sokrates was anti-democratic and philolaconic, attitudes inconsistent with supporting Athens' laws. According to Xenophon, "his accuser said he taught his companions to scorn the established law" (*Mem.* 1.2.9), and Xenophon nowhere refutes this charge.

Finally, on a more general level, it is useful to consider how Plato's protean master was in many ways a typical—albeit extraordinary—intellectual of the post-Periklean years. Even Plato's Sokrates fits most of the qualities of Plato's sophists. He primarily discusses ethics and politics. He is quintessentially identified with debate and argument. His cross-questioning reflects his constant challenge to received opinion, eliciting contradictions and absurdities which he replaces not with positive doctrine but "uncertainty," *aporia*. He expounds no coherent set of beliefs. He held unconventional views about the gods. His entourage was a crowd of rich young Athenians, most of them hostile to democracy like Plato. Like other wartime sophists, he hated democracy and stayed out of politics. Contemporary Athenians, like Aristophanes and his public, considered him the worst of the sophists. In his middle period Plato drew decisively away from the historical Sokrates into a transcendent world of Forms, claiming that he knew the truth and bringing his ideal Sokrates along with him. Plato pulled off two coups. First, he discredited two generations of some of the world's most brilliant and innovative thinkers, largely because—like most modern philosophers—they declined to accept a transcendent reality and were aware of potential disjunctions between words and things. Secondly, he managed to steal his teacher out from amidst that group. None of the later sophists supported the democratic city's law. Neither did Sokrates.

YASUNORI KASAI (TOKYO)

A SPACE FOR EPIEIKEIA IN GREEK LAW[1]

κεῖτο δ' ἄρ' ἐν μέσσοισι δύω χρυσοῖο τάλαντα,
τῷ δόμεν ὃς μετὰ τοῖσι δίκην ἰθύντατα εἴποι.
(Homer, *Iliad*, Book 18,507-8)

I. The notion of ἐπιείκεια is widely known both in the civil and common law countries and rendered, for instance, as "equity" or "fairness" in English[2], as "équité" in French, and as "Billigkeit" in German. In Japan[3], the closest notion with which *epieikeia* can be compared is *Jori*, on which I shall discuss at the end of this essay.

In the study of law, except for the technical meaning and function of equity in common law, the notion of *epieikeia* is usually discussed in the context of sources of law, by which I mean the criteria of (primarily) judgments handed down by courts[4]. It is generally agreed, at least these days, that in both civil law and common law, the space which is allocated to *epieikeia* is extremely limited. The dominant sources of law are statutes, customs and precedents. From a historical perspective, in the western tradition, it is not likely that *epieikeia* played a major role as one of the sources of law, either.

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[1] The original paper, which was conceived as an (imaginary) response paper, was read at the Symposion 2009 at Graz on 27th August 2009. This is a significantly modified version of that paper. I should like to thank, firstly, Professor Gerhard Thür who invited me to the conference, and also all the other participants whose discussions both inside and outside the conference stimulated me greatly. Special thanks, especially for the improvement of my discussion on *Jori* and French law, are due to Professor E. Matsumoto, and also for the improvement of my English, to Dr. N. Henck.

[2] This word is traditionally translated 'equity'. See Cope (1870), 190-193; Cope and Sandys (1877), 255-259; Grimaldi (1990), 299-306. Kennedy (2007) recently chooses the term 'fairness' because '*epieikes* is a broader concept and applies to both public and private law' (p.99 at footnote 237). Kennedy seems to associate *epieikes* with the notion of equity in common law countries, which is, however, very unique in the western legal tradition. And the distinction between public and private law does not suit to Greek law. It is, I think, not appropriate to replace equity with fairness for this particular reason.

[3] Zweigert and Kötz (1996); English translation by Weir (1998), 63-73, 295-302; Oda (2009), 1-9; Kasai (2009).

[4] Thür (2007) has recently discussed the notion of fairness in Greek law from the procedural point of view.

What is the case with ancient Greek law, and Athenian law in particular? This question is a very important one in my opinion, because in Greek law, we cannot examine the sources of law in the same way as in the other western legal systems. As is well known, Aristotle in his *Rhetoric* (Book 1, Chapter 2) divides the means of persuasion into artistic techniques – the use of paradigms and enthymemes – and non-artistic ones that the orator uses but does not invent. The latter are five in number: laws, witnesses, contracts, tortures, and oaths (Book 1, Chapter 15).

Here it should be noted that there is a difference in the framework between the sources of law on the one hand, and Aristotle's πίστεις ("means of persuasion") and his division of persuasion into two categories on the other. I do not suggest that we should follow Aristotle's formulation, but no one can deny that Greek rhetoric, both in theory and practice, is one of the essentials which constitute Greek law.

The aim of this paper is to find a space for *epieikeia* in Greek law – Athenian in particular – by placing it within a wider context than that in which the former studies on *epieikeia* have tended to do, and to suggest a way in which Greek law can be compared with Japanese law.

II. Meyer-Laurin's work on *epieikeia* (1965), which is a classic text and offers us a starting point on this subject, can be summarised as follows.

In chapter I (Problemstellung und Ausgangssituation), Meyer-Laurin sets out the main purpose of his thesis as follows, whether or not, in the positive law of Athens, Billigkeit (*epieikeia*) was taken into account. There is a split between the positive and negative view, with the positive view (by Vinogradoff, Gernet, Jones, Paoli) being based, principally, on Plato and Aristotle (*Rhetoric* and *Nicomachean Ethics*), while the negative view, on the other hand, seen from the point of view of positive law, emphasizes a wide gap between Greek law and Greek philosophy. Recently, Wolff has commented: "Auch Aristoteles' Bestreben, eine Doktrin der *epieikeia* als Korrektiv des *ius strictum* aufzustellen, scheint im positiven Recht Athens ohne Widerhall geblieben zu sein."

Under these circumstances of conflicting views, Meyer-Laurin examines exclusively the forensic speeches to ascertain whether or not, the speakers justify themselves by employing "Billigkeitsargumente" and courts pay attention to the "Billigkeitsgründe".

In the following three chapters, based on the main sources for Meyer-Laurin's argument, which seem to me to comprise, among others, Hypereides' *Against Athenogenes* and Demosthenes 56 *Against Dionysodorus for Damages*, he draws a general conclusion that the notion of Billigkeit does not play a substantial role at court.

In chapter V (Gesetzesprinzip und Billigkeit in der Rechtsprechung), the following concepts such as δικαιότατη γνώμη ("most just understanding" according to the judges' oath) and interpretation of testament and contract are focused on and analyzed. As regards δικαιότατη γνώμη, Wolff states as follows: "ein subsidiäres

Mittel der Rechtsfindung, auf das man zurückgreifen durfte, wenn gesetzliche Bestimmungen fehlten" (Meyer-Laurin 29).

In this way, although the judges were bound to the law by the oath, nonetheless it has been testified that they exercised arbitrarily and unpredictably their power of jurisdiction. Also, some interpretation of the law was, as Aristotle suggests, necessary. This is also true of testaments and contracts. However, there can be found no example of an argument using Billigkeit in the interpretation exercises.

Meyer-Laurin does not neglect to make inquiries concerning Billigkeit occurring in the private arbitration. This is a very important topic but one which merits treatment in its own right and so must be left for another occasion[5].

In conclusion, Billigkeit played almost no part in Greek law and legal system. It was only in 237 BC that the Aristotelian theory of ἐπιεικές was introduced into the courts of the Ptolemaic period (Chapter VII).

Seen in this way, Meyer-Laurin's argument seems to be firmly based on the evidence and sources, both legal and oratorical. Here I should like to question his framework from which he is looking at Billigkeit. As he explicitly says in the Problemstellung, he is exclusively interested in the role of Billigkeit in the 'positive' law. What does he mean by the positive Greek law? Is it the same as the written law? If so, his framework does not work because, in order to testify the existence of *epieikeia*, he needs to find a positive, that is to say, written law, which explicitly mentions *epieikeia* and the judgment is given explicitly according to *epieikeia*. But of course, there is no such a case in ancient Greece. And it is, I suspect, extremely difficult to find such a case in any legal system.

Then, if the positive law is not the same as the written law, what does it mean? It will also lead to a difficult question. It is very likely that Meyer-Laurin means the sources of law by it. In other words, his Problemstellung can be formulated in such a way as, whether or not Billigkeit is one of the sources of law.

As stated at the beginning of this essay, legal historians in the western tradition tend to understand the notion of equity within the framework of legal sources. However, in Greek law or Greek legal system, this framework does not work in the same way as in the other western legal traditions. Now I suggest that if we make sense of Billigkeit in its original Greek context, it will be useful to start with the close examination of the context of Aristotle's accounts of *epieikeia*.

III. The notion of ἐπιείκεια is fully discussed by Aristotle in his *Rhetoric* and *Nicomachean Ethics*. I shall start with the former, which is, in its forensic part in particular, not only closely connected with Greek law, but also gives us more detailed accounts of *epieikeia* than the latter.

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[5] Scafuro (1997); Scafuro's splendid work will serve to guide those interested in this theme as well as many other topics on law and rhetoric in the ancient world.

Although it is well known that in the Book I, all the chapters from number 10 onwards are devoted to the forensic oratory, the fact that the theme on which Aristotle exclusively focuses is 'wrong-doing' (τὸ ἀδικεῖν) or 'wrongs' (τὰ ἄδικα, ἀδικία)[6] has not received much attention. Aristotle argues as follows:

> ἔστω δὴ τὸ ἀδικεῖν τὸ βλάπτειν ἑκόντα παρὰ τὸν νόμον. νόμος δ' ἐστὶν ὁ μὲν ἴδιος ὁ δὲ κοινός· λέγω δὲ ἴδιον μὲν καθ' ὃν γεγραμμένον πολιτεύονται, κοινὸν δὲ ὅσα ἄγραφα παρὰ πᾶσιν ὁμολογεῖσθαι δοκεῖ. (1368b6-9)

The famous passage of the division of law, namely, specific (ἴδιος) and common (κοινός), written (γεγραμμένος) and unwritten (ἄγραφος) is introduced here in the very context of defining 'wrong-doing' with reference to law. 'Wrong-doing is doing harm deliberately against the law'[7], Kennedy translates as follows: "Let wrongdoing [τὸ ἀδικεῖν] be [defined as] doing harm (βλάπτειν, βλάβη) willingly (ἑκόντα) in contravention of the law (παρὰ τὸν νόμον)."[8]

It seems to be extremely important that the definition of 'wrongs' is made with special reference to the law, namely 'wrongs' or 'wrong-doing' is a counter concept of the law, though it is accompanied by one also important qualification of intention or deliberation (ἑκών). Therefore the law in a general sense needs to cover all sorts of 'wrongs'. Then the division of the law is introduced. Is this possible? Can the law oversee all the cases of wrong-doing?

It is in this very context that the division of the law is introduced:

> λέγω δὲ νόμον τὸν μὲν ἴδιον, τὸν δὲ κοινόν, ἴδιον μὲν τὸν ἑκάστοις ὡρισμένον πρὸς ἑαυτούς, καὶ τοῦτον τὸν μὲν ἄγραφον τὸν δὲ γεγραμμένον, κοινὸν δὲ τὸν κατὰ φύσιν. (1373b4-6)

Unlike the passage of 1368b6-9, here the specific law is further divided into the two categories, written and unwritten. What is the specific unwritten law?

Grimaldi makes the following comment on ἄγραφον (1373b5)[9]:

(1) particular, written law (i.e., positive law), 1373b18-1374a17;
(2) universal, unwritten law (i.e., natural law), 1373b6-18, 1374a21-25;
(3) particular, unwritten law which is either (i) customary law, 1373b5, or (ii) equity (or *epieikeia*), 1374a-1374b23.

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[6] A recent work is Descheemaeker (2009). The pioneering work in this field is Zimmermann (1996).

[7] Weir (2004), "deliberately, carelessly".

[8] Kennedy (2007 tr.), 84. Note that there is a difference in the definition of law here and below 1373b4-6. In the latter the specific law is sometimes written and sometimes unwritten, whereas in the former the specific law is always written.

[9] Grimaldi (1990), 287.

From 1374a18 onwards Aristotle focuses on the wrongs in unwritten laws, further dividing them into two sub-categories: the one being τὰ μὲν καθ' ὑπερβολὴν ἀρετῆς καὶ κακίας, (1374a21-22; Kennedy 2007: 'abundance of virtue and vice'); and the other being τὰ δὲ τοῦ ἰδίου νόμου καὶ γεγραμμένου ἔλλειμμα (1374a25-26; Kennedy 2007: 'things omitted by the specific and written law'), with the latter being labeled τὸ ἐπιεικές (1374a26)[10]:

> τὸ γὰρ ἐπιεικὲς δοκεῖ δίκαιον εἶναι, ἔστι δὲ ἐπιεικὲς τὸ παρὰ τὸν γεγραμμένον νόμον δίκαιον. συμβαίνει δὲ τοῦτο τὰ μὲν ἑκόντων τὰ δὲ ἀκόντων τῶν νομοθετῶν, ἀκόντων μὲν ὅταν λάθῃ, ἑκόντων δ' ὅταν μὴ δύνωνται διορίσαι, ἀλλ' ἀναγκαῖον μὲν ᾖ καθόλου εἰπεῖν, μὴ ᾖ δέ, ἀλλ' ὡς ἐπὶ τὸ πολύ. (1374a26-31)

Aristotle defines τὸ ἐπιεικές (=ἐπιείκεια) as follows; ἔστι δὲ ἐπιεικὲς τὸ παρὰ τὸν γεγραμμένον νόμον δίκαιον[11]. Then, he explains why τὸ ἐπιεικές (hereafter I use the word of ἐπιείκεια rather than τὸ ἐπιεικές for convenience) comes to play a role in law. *Epieikeia* comes from either lawgivers' intention (or deliberation, ἑκόν) or without their intention (or carelessly, ἄκων). Putting aside the case of ἄκων, why does *epieikeia* happen deliberately or intentionally? It is because lawgivers are quite aware that they are not able to define all the possible cases beforehand and so feel it is necessary to declare in general terms, while also adding the proviso ὡς ἐπὶ τὸ πολύ. The meaning of ὡς ἐπὶ τὸ πολύ is, 'in most cases', 'not necessarily' and the idea behind it is 'with allowance for exceptions'. This concept is, I think, the key to gaining an insight into Aristotle's understanding of written law, and put briefly, shows an awareness of the incompleteness of written law or rather an allowance for exceptions.

This phrase also forms a crucial concept in the logical foundations of rhetoric which are discussed in the early chapters of rhetoric, especially in 1357a34: τὸ μὲν γὰρ εἰκός ἐστι ⟨τὸ⟩ ὡς ἐπὶ τὸ πολὺ γινόμενον.

Εἰκός is usually translated as 'probability' and it is not difficult to find a close connection between *eikos* and *epieikeia* both in the form (ἐπιείκεια is ἐπί plus εἰκός) and in the meaning which is represented by the very same phrase of ὡς ἐπὶ τὸ πολύ. This idea can be further traced back to Aristotle's understanding of human action (πρᾶγμα) at which his rhetoric is targeted. He analyzes πρᾶγμα as follows:

> (τὰ γὰρ πολλὰ περὶ ὧν αἱ κρίσεις καὶ αἱ σκέψεις, ἐνδέχεται καὶ ἄλλως ἔχειν·

[10] On τὸ ἐπιεικές (1374a26), see Grimaldi (1990), 299-300. Grimaldi contrasts the *sense* of the law with the *letter* of the law when he explains equity in contradiction to legality. But what he means by the sense of the law does not seem clear to me.

[11] Kennedy (2007), 99: fairness is justice beyond the written law; Rapp (2002), 486-493, esp. 490-492; Cope (1867), 190-193; Cope and Sandys (1877), 245-247.

> περὶ ὧν μὲν γὰρ πράττουσι βουλεύονται καὶ σκοποῦσι, τὰ δὲ πραττόμενα πάντα τοιούτου γένους ἐστί, καὶ οὐδὲν ὡς ἔπος εἰπεῖν ἐξ ἀνάγκης τούτων), τὰ δ' ὡς ἐπὶ τὸ πολὺ συμβαίνοντα καὶ ἐνδεχόμενα ἐκ τοιούτων ἀνάγκη ἑτέρων συλλογίζεσθαι, τὰ δ' ἀναγκαῖα ἐξ ἀναγκαίων (1357a23-29)[12]

The *pragma* (human action) concerning which we make a decision at court or assembly are those which could have been other than they are and that is why we can deliberate or judge on it. Therefore, the key word of the reasoning of justification of the deliberation or judgment is 'ὡς ἐπὶ τὸ πολύ' (for the most part). No deliberation or judgment by human beings can be completely right, but it can be in most cases.

The notion of *epieikeia* can only be justified using Aristotle's understanding of human actions (*pragma*) which itself can be justified by the notion of ὡς ἐπὶ τὸ πολύ.

Now it becomes, I think, clear why *epieikeia* is introduced in the *Rhetoric* and plays an important role there. Firstly, it originates from Aristotle's understanding of the essential condition of human action (*pragma*), which can be other way than the way it is. Then, the human action, needless to say, includes law as long as law is a product of human action (specific law). Therefore, it becomes apparent that *epieikeia* is common both in the human action and in law. We must think of *epieikeia* in a much wider aspect than it has been discussed before in the framework of the sources of law.

Then, it is also important that Aristotle introduces the discussion of law in order to define and face with 'wrong-doing' (ἀδικεῖν) or 'wrongs' (τὰ ἄδικα, ἀδικία) in the forensic oratory (*Rhetoric* Book 1, Chapter 10 onwards). The latter is, needless to say, a counter concept of justice or right (δίκη, τὸ δίκαιον). The range of these concepts appears to be much wider than law. Therefore if 'wrongs' and the negative form of law (παρὰ νόμον) are to be equalized with each other, other remaining 'wrongs' will come into being. The range of 'wrongs' must be narrowed. That is why he further introduces the notion of ἐκών in order to set a limit of 'wrongs'. That is to say, ἐκών is a sort of the qualificatory category.

Now it will become intelligible that it is difficult to equalize the range of 'wrongs' (or its counter concepts such as 'justice' or 'rights') and that of law. There always occur a various kinds of gap, where *epieikeia* is expected to exercise its function. The remaining wrongs which cannot be encompassed by law are those without ἐκών. And it is one of the spaces where *epieikeia* can play a part.

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[12] "Most of the matters with which judgment and examination are concerned can be other than they are; for people deliberate and examine what they are doing, and [human] actions are all of this kind, and none of them [are], so to speak, necessary. And since things that happen for the most part and are possible can only be reasoned on the basis of other such things." (Translation Kennedy, 2007, 42).

Aristotle lists the examples of *epieikeia* (1374b4-22), of which the followings should be remarked upon; συγγνώμη (excuse), divisions of ἁμαρτήματα (negligence), ἀδικήματα (wrongs, delicts), ἀτυχήματα (misfortune), δίαιτα (arbitration) or διαιτητής (arbitrator). From what I am discussing, it is not difficult to see why those are introduced here.

Before we move on to discuss forensic oratory, we should look at the passage in the *Nicomachean Ethics* where we can find *epieikeia*:

> ποιεῖ δὲ τὴν ἀπορίαν ὅτι τὸ ἐπιεικὲς δίκαιον μέν ἐστιν, οὐ τὸ κατὰ νόμον δέ, ἀλλ' ἐπανόρθωμα νομίμου δικαίου. αἴτιον δ' ὅτι ὁ μὲν νόμος καθόλου πᾶς, περὶ ἐνίων δ' οὐχ οἷόν τε ὀρθῶς εἰπεῖν καθόλου. ἐν οἷς οὖν ἀνάγκη μὲν εἰπεῖν καθόλου, μὴ οἷόν τε δὲ ὀρθῶς, τὸ ὡς ἐπὶ τὸ πλέον λαμβάνει ὁ νόμος, οὐκ ἀγνοῶν τὸ ἁμαρτανόμενον. καὶ ἔστιν οὐδὲν ἧττον ὀρθός· τὸ γὰρ ἁμάρτημα οὐκ ἐν τῷ νόμῳ οὐδ' ἐν τῷ νομοθέτῃ ἀλλ' ἐν τῇ φύσει τοῦ πράγματός ἐστιν· εὐθὺς γὰρ τοιαύτη ἡ τῶν πρακτῶν ὕλη ἐστίν. (1137b11-19)[13]

Here we find the notion of *epieikeia*, which appears again in the discussion of law which is accompanied with τὸ ὡς ἐπὶ τὸ πλέον (for the most part, in most cases). This qualification of law (τὸ ὡς ἐπὶ τὸ πλέον) comes not from any failure of law or lawgivers, but from the nature of human action (πράγματος)[14].

It is not difficult to find common features of *epieikeia* both in *Rhetoric* and *Nicomachean Ethics.*

IV. I shall look at the two forensic speeches which have been most frequently discussed in the previous studies on *epieikeia* including Meyer-Laurin's work. The question here is whether or not the notion of *epieikeia* is called for to reach the court decision. The one is Demosthenes 56 (*Against Dionysodorus*) and the other Hypereides *Against Athenogenes*. The reason why both speeches are most important amongst others is that the law concerning the validity of the contracts or wills is being discussed there.

Firstly, at Dem. 56,2: "We have you, gentlemen of the jury, and your laws, which require that whatever agreements one man voluntarily (ἑκών) makes with another be binding. But I think that there is no value in the laws or any contract if the man who takes the money is not very honest and does not either fear you or feel ashamed before the man who lent him the money."[15] Also, at Dem. 56,42-43: "And many things make it clear that they did this of their own free will (ἑκόντες), not

[13] Broadie and Rowe (2002), 174.

[14] However, it is, I think, more important that 'law chooses what holds for the most part, in full knowledge of the error it is making. Nor is it for that reason any less correct; for the sphere of action consists of this sort of material from the start.' (Broadie and Rowe, 2002, 174).

[15] Bers (2003), 95; also see Gernet (1951), clxxx. Aristotle *Athenaion Politeia* 35.

because they are forced (ἐξ ἀνάγκης) to do. (43) After all, if this was truly an unintended (ἀκούσιον) misfortune …"[16]

It should be remarked that the distinction in the notions between *hekon* and not *hekon* such as *ex anankes* and *akousion* can also be seen in the discussion of wrongs and wrongdoing (*adika*, *adikein*). And it is only the behavior with intention, *hekon*, that the concept of wrongs encompasses. It does not include the behavior without intention. Indeed, throughout the speech of Dem. 56, the references to the wrongs and related words appear quite frequently: ἀδικεῖσθαι (56,4; 56,37); συνηδικημένους (56,44); ἠδικηκότων (56,47; 56,50).

Secondly, at *Against Athenogenes* (17): "Then again there is the law concerning wills, closely comparable with these. It prescribes that men may dispose of their own possessions as they please unless too old or sick or mad or influenced by a woman or imprisoned or otherwise constrained."[17] Also (13): "Yet Athenogenes will soon be telling you that, in law, whatever one man agrees with another is binding. Yes, my friend – *fair agreements* (τά τε δίκαια), that is. With unfair ones it is just the opposite: they shall not, the law says, be binding."[18]

It should be also noted that in Hypereides 17 there can be found a considerable number of references, though in the fragments, to the wrongs: τὰ ἄ[δικήμ]ατα (22), ἀ]δικημάτων (25), ἀ]δικήσαντα (28).

It should be noted that both cases are suits for damages (δίκη βλάβης) and we can see a strong connection between the ἀδικία and ἑκόν / ἄκον distinction. All these notions and their close relationships are, as already mentioned, found in Aristotle's accounts of *epieikeia*.

Therefore, in this respect it is not unreasonable to say that there is a connection between the theory and the practice of rhetoric.

V. Conclusion: *Jori* and *epieikeia*. Japan's modern judicial system was, albeit preliminarily, established in 1875 when the discussion over the codification of major parts such as civil, commercial and criminal law just started to grow. This meant that the modern Japanese legal history from the Meiji Restoration in 1868 began without the codification. Indeed, the codification was completed around 1900. This suggested that during approximately quarter a century Japan was a sort of non-codified countries. It does not mean that Japan was a common law country. However, one of the long-neglected facts was that the modern Japanese courts made decisions without the codified laws[19].

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[16] Bers (2003), 104.
[17] Whitehead (2000), 275.
[18] Whitehead (2000), 274.
[19] Studies on Civil Judgment Files, which contain civil cases during this non-codified era, have been recently developed, e.g. by Aoyama, Ishii and Hayashiya (2003). Please visit the website, http://www.nichibun.ac.jp/graphicversion/dbase/minji_e.html

The government ordinance on the administration of justice was issued in 1875 stating: "The judge should decide the case, firstly according to the written law, secondly to the customary law, if neither of them can be found, thirdly and lastly, to *Jori*." The word of *Jori*, which comes from Chinese penal codes, originated even before the modern period.

But the concept of *Jori* mentioned in this ordinance seems to be the one taught and explained by a French Professor, Gustave Emile Boissonade (1825-1910), who was invited from Paris and stayed in Japan for over twenty years (1873-1895) and contributed much to the codifications of modern Japanese law. He was an illegitimate son of Jean Francois Boissonade de Fontarabie (1774-1857), Professor of Greek at the Collège de France[20].

In the Japanese civil code, there cannot be found any reference to it. However, similar concepts to *epieikeia* can be detected in articles 1 and 90 of the Japanese civil code; the former contains the notions of *bona fides* and public welfare, the latter the notion of public order and good morals.

Another example for *Jori* is drawn from the area of criminal law. This is the one of the articles of *Shinritu-Koryo*, which was enacted in 1870 soon after the Meiji Restoration. The article states that even if no relevant article exists, but if the act of the criminal can nonetheless be seen as wrong according to *Jori*, the culprit must be punished with 30 lashes of the whip, and if he is seriously wrong, with 70 lashes. Since the 8th century AD, the Japanese penal codes had always been modelled on the Chinese ones. But Japan's modernization stopped this tradition and replaced it with European codes. This resulted in the modern Japanese penal code which came into force in 1880. This modern penal code was made under the strong influence of French law through Boissonade's draft. The above mentioned code, *Shinristu-Koryo*, was transitional and did not respond to the modern principle of criminal law, *nulla poena sine lege*.

Both examples for *Jori* which range over civil and criminal law appeared in the time of transition from traditional to modern. Also, there was not a clear distinction between civil and criminal justice. A gap between law and 'wrongs' was, I think, extremely wide when Japan, being faced with the modernization of legal system, decided to take a step towards the codification in the late 19th century.

As we have seen above, in Greek law the idea of *epieikeia* is deeply rooted in the understanding of human action which includes the law. The relationship between *epieikeia* and law is analyzed and discussed in the context of wrongs, both in the theory of Aristotle and the practice of forensic oratory. And the discussion over *epieikeia* reaches beyond the framework of the sources of law.

[20] French civil code articles referring to l'équité are now as follows, 565, 1135 (original articles) as well as 270, 815-13, 1579 (modified articles). The classic work on French influence upon *Jori* was done by Professor Noda (1983).

In Japanese law the ideas of *Jori* come from a variety of backgrounds both traditional and modern. The discussion over *Jori* is also found in the context of wrongs.

I only hope that a comparative study between Japanese law and Greek law, both of which are seen 'unique' from the western legal tradition, will help in finding a way in which both might look less 'unique' than before[21].

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[21] Kasai (2009).

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LEGAL PROCEDURE IN GORTYN

Because we lack such evidence as historical accounts, trial records (such as we have from Ptolemaic Egypt), or forensic pleadings (such as we have from Athens), all our information about legal procedure at Gortyn in the archaic and classical periods comes from the many laws which were written down at Gortyn beginning in the early sixth century BCE. These make clear that litigants[1] presented their case, sometimes with the support of one or more witnesses (*maityres*), to a judge (*dikastas*), who may have the assistance of a rememberer (*mnamon*). In some cases the law prescribes a specific procedure for deciding an issue (by means of a witness's testimony or an oath), but in other cases the judge swears an oath and then decides (*omnunta krinen*). This brief, very general description accords with the view of most (though not all) scholars, but a number of details are unclear or in dispute. My aim in this paper is to defend this view of Gortynian procedure and to clarify its details as far as possible. I will begin with the issue of judging and then consider other aspects of legal procedure, including witnesses and oaths.

But first, a methodological point. Although Gortyn is a Greek city whose customs and traditions presumably bear some resemblance to those of other Greek cities, nevertheless we cannot assume *a priori* that any features of its legal system were identical or similar to those of the legal system of Athens or Sparta or any other city. We must begin, therefore, by examining the evidence from Gortyn in its own terms and drawing our conclusions as much as possible from this evidence; only then is it legitimate to consider, if one wishes, to what degree Gortynian law may have resembled or differed from other Greek legal systems.

An example of the method I am objecting to is the following argument (Thür 2009: 493; see also Thür 2006: 44-48) against the common view that the *dikastas* at Gortyn was a judge who decided the substantive issue in a case (*Sachurteil*):

> Doch im gesamten griechischen Bereich gibt es solche Amtsträger nicht. Meiner Meinung nach ist der Prozess — so wie in ganz Griechenland — zweigeteilt: Der *dikastas* ist der Jurisdiktionsmagistrat, der jeweils für die Sache zuständige *kosmos*, der so wie der jeweils zuständige Archon in Athen den Prozess instruiert. Er legt das Prozessprogramm fest, das ähnlich wie die *diomosia* in Athen als Eid formuliert ist. Doch wer entscheidet? Ein Spruchgremium so wie die Athener Geschworenen ist nicht überliefert. Ich meine, das Prozessrecht Gortyn ist im Stadium der homerischen prozessentscheidenden Eide stecken geblieben. Die Sachentscheidung

[1] Lit. "pleader" (*molion*) or "counter-pleader" (*antimolos*).

> fällt, indem die Partei, oft mit ihren Zeugen als Helfer, den auferlegten Eid schwört — oder nicht. Das ist die zweite Phase im zweistufigen Verfahren, das weiterhin den im Irrationalen wurzelnden sozialen Mechanismus der Eidesleistung verwendet.[2]

Leaving aside the question whether Thür's view of Homeric or Athenian procedure is correct (and there are many good reasons to question it), his conclusions about Gortyn are based less on the abundant evidence from that city's own laws than on the preconception that Gortynian procedure must be the same as Homeric or Athenian procedure. I do not object to comparing material from different cities and looking for similarities (and differences), but such comparison must begin with the best possible understanding of procedure in each city based on evidence from that city alone.

I. Judgment

The most important of the inscriptions for legal procedure at Gortyn is, of course, the famous Gortyn Code (CG), which in addition to many specific rules, contain an addendum summarizing the general rule that judges must follow in deciding cases (CG 11.26-31). This addendum posits a fundamental distinction between two kinds of judicial decision, corresponding to the verbs *dikadden* and *krinen*, which I will translate "rule" and "decide."

τὸν δικαστάν, ὅτι μὲν κατὰ μαίτυρανς ἔγρατται δικάδδεν ἢ ἀπόμοτον, δικάδδεν ἃι ἔγρατται, τὸν δ' ἀλλὸν ὀμνύντα κρίνεν πορτὶ τὰ μολιόμενα.	30	Whenever it is written that the judge (*dikastas*) is to rule (*dikadden*) according to witnesses or an oath of denial, he is to rule as is written; but in other matters he is to swear an oath and decide (*omnunta krinen*) with reference to the pleadings.

The legislator here posits a clear distinction: in some cases the judge is required by the law as written to rule according to a witness or an oath; in other cases, he is to decide the case without these constraints after swearing an oath and with reference

[2] "In the entire Greek world, however, there is no such magistrate. In my view the procedure—just as in all of Greece—has two parts: the *dikastas* is the judicial magistrate, the *kosmos* who respectively has jurisdiction in the matter, who prepares the case just like the archon in Athens who has jurisdiction in his responsibility. He determines the agenda for the case, which is formulated as an oath like the *diomosia* in Athens. But who decides? A body that judges like the Athenian jury is not attested. I think that judicial procedure at Gortyn remains stuck at the Homeric stage of decisive oaths. The decision about the substantive issue depends on whether the parties, often with their witnesses as helpers, do or do not swear the oath imposed on them. This is the second stage of a two-stage procedure which, furthermore, makes use of the social mechanism of oath-swearing, which is rooted in the irrational."

to the pleading of the two parties.[3] The two methods are distinctly different. In the first, the judge is required to follow a specific procedure that will automatically determine the verdict. In the second, he decides without constraint once he has sworn his oath; thus, he must determine the relative merits of the two cases without any specific direction from the law.

Furthermore, it seems quite clear that the second method—"swear and decide"—is the default method (as it were), since it must be followed whenever the law does not explicitly, in writing, direct the judge to rule ("whenever *it is written* that the judge is to rule"). And since there are many examples both in CG and in the many other contemporary inscribed laws at Gortyn, where nothing is said about the method of judging, the "swear and decide" method must have been the more common procedure.[4]

If the meaning of this provision is clear, however, its application in practice raises many questions. Most importantly, Maffi (2002-3, 2007: 216-21) has recently argued that the situation was more complex: in many cases where the law prescribes a decisive proof, if the party concerned does not swear the oath or present the witness as required, then the judge must decide on his own (*krinen*). On the other hand, when the law directs the judge to decide the case on his own, one party may propose a decisive proof and the judge may accept it, thereby changing the judge's free decision (*krinen*) to a ruling (*dikadden*). Maffi concludes that either procedure may in fact change into the other.

As often, Maffi's observations call attention to problems posed by traditional views and force us to reexamine the whole issue of procedure at Gortyn. I will begin with the judicial decision, and will argue that although Maffi makes some good points, his conclusions cannot be accepted as the general rule. First, only once is a litigant allowed to propose a decisive oath to settle the case, and there is no reason to think that litigants could do this in other cases where a judge is supposed to swear and decide. Second, in most cases involving oaths and in at least some involving witnesses, if a litigant did not swear the stipulated oath or present the necessary witness, the judge would automatically rule in the opposite way.

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[3] "With reference to" the pleadings imposes an obligation to listen to both sides but does not impose any specific ruling; see further below. The oath sworn by the judge (*dikastas*) may have been similar in content and even wording to the dikastic oath at Athens, where the jurors (*dikastai*) swore to judge according to the law and in the absence of a law "according to the most just opinion." Thür (2006: 45) argues that this oath means that the Gortynian judge's decision is rooted in the irrational, though he apparently does not think this is true of the jurors' oath at Athens.

[4] Thür's claim (2006: 46), that a ruling that imposes an oath is the rule not the exception, contradicts the clear sense of the amendment (see Maffi 2007: 215-6).

II. Ruling by Oaths

I begin with cases where the law directs the judge to rule according to an oath. The clearest example is *IC* 4.47.16-26:

αἰ δέ κ' ἀ-
πόληται ὁ κατακείμενος, δικ-
ακσάτο ὀμόσαι τὸν καταθέμε-
νον μήτ' αὐτὸν αἴτιον ἔμην μήτ-
ε σὺν ἄλλοι, μήτ' ἐπ' ἄλλοι ϝισάμ
ν. αἰ δέ κ' ἀποθάνηι, δεικσάτο
ἀντὶ μαιτύρον δυôν.
αἰ δέ κα μὴ ὀμόσει ἃι ἔ-
γραται ἢ μὴ δείκσει, τ-
ὰν ἀπλόον τιμὰν κατα-
στασεῖ.

And if the indentured slave disappears, let the judge rule that the current master is to swear that he is not to blame, neither himself nor with another, nor does he know that the slave is with someone else. And if the slave dies, let (the current master) show him (to the former master) before two witnesses. And if he does not swear as is written or does not show him, he shall pay the simple value (of the slave).

This is part of a set of regulations concerning indentured slaves, who have a temporary master to whom they are indentured and a permanent master who indentured them. If an indentured slave disappears, the law first allows the temporary master to swear an oath denying knowledge of it. The law then adds that if he does not swear, he must pay the value of the slave. Thus, if he swears the oath, it automatically decides the case in his favor (he pays nothing); if he does not swear, the opposite ruling is automatic.

In two cases in the Code the same result is implied, though not explicitly stated. A man accused of entrapping an adulterer can swear that he did not entrap; if he does not swear, he almost certainly will have to release the accused (2.36-45). And a divorced wife can swear that property she has taken is hers; if she does not, she will have to return it and pay a fine (3.5-9). In three other cases a similar result is also very likely: in *IC* 4.76.*B*.5-7, if a judge has to pay for purification after a death because the heirs do not pay, he can swear an oath and collect double from them; in *IC* 4.77.*B*.11 someone can collect whatever value they swear to; and in CG 9.38-40 the judge is to rule that "when the plaintiff and the witnesses have sworn, he is to win the suit for the simple amount." In all three cases, the law implies that if the person does not swear, he cannot collect the stated amount.[5]

These are all the certain examples from Gortyn where the law explicitly directs a litigant to swear an oath;[6] in six other cases, however, a person is said to be *orkioteros* or "preferred in the oath." This must mean that if the person swears an oath, his side will win the case, or at least will prevail on the point at issue. Only in two of these six cases does the law appear to say that if the person does not swear the oath, his side will lose. First, *IC* 4.45.*B* reads:

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[5] Cf. *IC* 4.41.5.1-3, which after a gap of unknown length reads: "and if he does not swear, he shall pay the simple fine" (α[ἰ δέ] κα μὴ ὀμόσει, τὸ ἀπλὸν καταστασεῖ).

[6] In the fragmentary *IC* 4.51.1, where we read that someone, presumably a judge, "is to rule that he swear" (ὀμνύμην δὲ δικάκ[σαι) by certain gods, it is likely, but not certain, that the person directed to swear is a litigant.

3 - - ᾶι] ἔγραται ϝεκάστο, ὀρκιότε-
4 ρον ἤμην τὸν ἐνεκυράκσαντ[α - -

5 - -]α. *vac.* αἰ δὲ μὴ ὀμόσαιεν πὰρ τῶ-
6 ι δικαστᾶι, νικήθαι τὸν
τ' ἐνε[κυράκσαντα - -

3-4 as is written for each case, the one who accepted a pledge shall have preference in the oath …

5-6 *vac*. If they do not swear in front of the judge, both the one who accepted a pledge (?) [and …?] will lose the case …

Because of the fragmentary state of the text, we do not know the content of this oath or the issue in the case, but clearly not swearing the oath will result in losing the case.[7] Similarly, in *IC* 4.42.*B*.3-9, if someone sues the judge and the rememberer for not ruling within fifteen days, they can swear an oath that fifteen days have not passed, "and if they do not swear after a summons, the same penalty is to be imposed on the one who does not swear as if he were unwilling to judge." Here too the judgment is automatic if the oath is not sworn.

In two other cases (CG 3.49-50, 4.6-7), a woman must display a baby born after a divorce to its father or father's master; if she does not, she can be sued, but she can avoid a suit by swearing that she carried out a stipulated procedural act. In a fifth case the oath confirms that the swearer displayed an injured animal, thereby allowing him to proceed with his suit (*IC* 4.41.2.12). In these three cases it is clearly implied, though not explicitly stated, that failure to swear would allow the non-swearer to be sued (in the first two cases) or prevent him from proceeding with his suit (in the third case).

In the sixth case, a household slave woman has preference in the oath in a rape case (CG 2.11-16):

ἐνδοθιδίαν δόλαν αἰ κάρτει δαμ-
άσαιτο, δύο στατῆρανς κατασ-
τασεῖ· αἰ δέ κα δεδαμν[α]μέναν, πε-
δ' ἀμέραν, [ὀ]δελόν, αἰ δέ κ' ἐν νυτ-
τί, δύ' ὀδελόνς· ὀρκιοτέραν δ' ἔ- 15
μεν τὰν δόλαν.

If someone should forcibly overcome a household slave woman, he will pay two staters; but if she has already had intercourse, (he will pay) one obol during the day, but if at night, two obols. And the slave woman will be preferred in the oath.

The slave woman's oath might concern any one of three issues: whether she was raped, whether it was night or day, or whether she was a virgin. Normally there would be no question whether it was night or day, and since no other victim of rape in this section (2.2-10) is allowed to swear whether the rape took place, it seems unlikely that a slave woman would be allowed to swear decisively that she was raped. The question of virginity, however, only occurs in this case, and because often only the slave woman would know for certain whether she was a virgin, this

[7] The switch from singular in lines 3-4 to plural in 5 is puzzling, but both clauses very likely refer to the same oath, since there is only room for perhaps 5-10 letters in the gap between lines 4 and 5.

was probably the subject of her oath. If, then, she swears the oath, the case will proceed on the basis of her being a virgin. Her oath does not decide the main issue (whether she was raped), but if the accused is convicted, the fine will be higher (two staters). If she does not swear, presumably the case will also proceed, but with the lower fine (one or two obols) in case of conviction.

These are all the certain cases involving a decisive oath,[8] and in each case it is either stated or clearly implied that if the prescribed oath is not sworn, or the person with preference in the oath does not swear, the opposite result will occur.

III. Ruling According to a Witness

The other kind of required ruling is "according to witnesses" (*kata maityrans*). Besides CG 11.26-31, this precise wording occurs only in CG 1.18-24:

αἰ δέ κ' ἀνπὶ δόλοι μολίοντι
πονίοντες ϝὸν ϝεκάτερος ἔμ-
εν, αἰ μέν κα μαῖτυς ἀποπονêι, κ-
ατὰ τὸν μαίτυρα δικάδδεν, αἰ
δέ κ' ἒ ἀνποτέροις ἀποπονίοντι
ἒ μεδατέροι, τὸν δικαστὰν ὀ-
μνύντα κρίνεν

And if they contend about a slave, each affirming that he is his, if a witness testifies, (the judge) is to rule according to the witness; but if they testify either for both sides or for neither, the judge is to swear an oath and decide.

In this case, if there is a witness for one side only, the judge must rule for that side, but if there are no witnesses or witnesses on both sides, then he must decide the case on his own.[9] The same procedure, expressed differently, is prescribed in CG 1.12-14 and *IC* 4.41.5.7-11, where the judge is to decide freely "unless a witness should testify," in which case, it is clearly implied, the judge must rule according to his testimony. In these three examples, then, the judge must rule according to a witness if there is one but must decide on his own if there is not.[10]

Maffi argues (2002-3, 2007: 204-5) that this same pattern holds in all cases where the judge is required to rule according to a witness: if there is no witness, the judge must decide on his own. In one passage (9.43-54), however, where the law requires a judge to rule "with regard to the witness testimonies" (*porti ta*

[8] In CG 9.53-54, the text says "whichever the plaintiff requests, [the judge should rule] either that he deny on oath or … " The first lines of column 10 are lost so we know nothing more about this oath or whatever other method the plaintiff might request. Note also *IC* 4.22, where editors read ἀπομ[όσαι]; even if this restoration is correct, the meaning of this word and of the whole fragment is very much in doubt.

[9] Cf. *IC* 4.21.6, which reads "if there are witnesses on both sides" (αἴ κ' ἀνποτέρος ἴοντι οἰ μαίτυρε[ς), but the text then breaks off.

[10] In CG 1.15-18, where the issue is whether a person is free or slave, "whichever ones testify that he is a free man will be stronger (*kartonans emen*)." I do not take this to mean that the testimony of these witnesses will automatically be decisive (the view of most scholars), but that their testimony should carry more weight; see Gagarin 1989: 39-40. Cf. the fragmentary *IC* 4.63.4 -- καρτερὸς μαῖτ[υς ("the witness is stronger"?).

apoponiomena),[11] the law adds, "if witnesses do not testify, when the person who made the agreement returns, whichever the plaintiff requests, [the judge should rule] either that he deny on oath or …" Here the judge probably does not decide on his own if there are no witnesses. Admittedly, this is a unique situation, but in several other cases where the law requires that there be a witness, it seems to imply that without the witness, the case will automatically be decided in the opposite way. The law prescribes, for example, that if someone attempts to have intercourse (CG 2.16-20), or if someone breaks through a roof (*IC* 4.46.*B*.1-5?), "he will pay ten staters if a witness should testify." This certainly implies that a witness is required for a conviction and that if there is no witness, the judge cannot convict. Similarly, in CG 10.25-32 various transactions are invalid "if two witnesses testify," the clear implication being that the transaction would be valid if two witnesses do not testify.

These cases suggest that there is no general rule for witnesses, as there is for oaths. In cases where a ruling according to a witness is required, when there is no witness, the judge must sometimes decide on his own but at other times he seems to be constrained to rule in the opposite way. The determining factor seems to be whether the witness is a formal witness (who testifies to something he was formally summoned to witness), as in 9.30 and 9.50, in which case the absence of a witness would mean that the transaction probably did not take place, or is an accidental witness (who testifies to facts he happens to know), as in 1.21.[12] Whether or not an accidental witness testifies is usually a matter of chance: someone happens to know that the slave belongs to X and not Y because (for example) he himself sold the slave to X. The absence of such a witness would not automatically deny the true owner a chance to argue his case. On the other hand, the rule, that someone wishing to prevent an owner from selling a slave who was still indentured must have two witnesses (probably to the indenture agreement), quite reasonably assumes that anyone who indentures a slave has two witnesses present during the transaction.

IV. Other Rulings

These are all the cases where a judge is required to impose an oath or rule according to a witness. One passage, CG 9.24-40 (quoted in VIII below), is notable in that the witnesses are required to swear an oath together with the litigant. The passage gives rules for cases involving a debt owed to or by a deceased person: the case is to be brought within a year and the judge is to rule "with reference to the pleadings" (*porti ta moliomena*). The law then specifies "the appropriate witnesses" (which depends on how the debt was incurred), and adds, "when they (the witnesses) have spoken, let (the judge) rule that when he (the plaintiff) and the witnesses have sworn, he is to win the simple amount" (ἦ δέ κ' ἀποϝείποντι, δικαδδέτο ὀμόσα‹ν›τα αὐτὸν καὶ

[11] *Apoponen* occurs eleven times in the Code and several times in other Gortyn laws, always with regard to witnesses testifying; see further Section VIII below.

[12] For the distinction, see Gagarin 1989; for witnesses in CG 1.21 see ibid 37-41.

τὸνς μαίτυρανς νικῆν τὸ ἀπλόον). There are many uncertainties in this passage,[13] but it seems to require that witnesses testify and that they (and the plaintiff) then swear an oath in order to win the suit.

This unique double requirement—the witnesses testify and swear—may have been included because in this case one of the original parties has died and the legislator wished to impose an extra degree of certainty on the ruling. More likely, all witnesses swore an oath when testifying: in three of the occurrences of *orkioteros* (CG 3.49-50, 4.6-7, *IC* 4.41.2.12; see above II) witnesses together with others are given preference in the oath, which suggests that their testimony was regularly given under oath.[14] But even if all witnesses swore oaths before testifying, this would not mean that when a judge ruled "according to a witness," this procedure was essentially the same as ruling according to an oath, as Thür has argued (2006: 47). Ruling according to an oath and ruling according to witnesses are separate procedures in CG 11.26-31 (κατὰ μαίτυρανς … ἦ ἀπόμοτον), and as we have seen, they are also fundamentally different in practice; we cannot make them one and the same (see Maffi 2007: 202-5).

We should also include among rulings required by law, three provisions where *dikadden* specifies the substance of the judge's ruling but does not require an oath or a witness. In the Code if some of the heirs wish to divide the property while others do not, the judge must rule that those who wish to divide will have the property until they divide it (5.28-34); if a claimant does not wish to marry an heiress, the relatives must bring suit, and the judge must rule that he is to marry her within two months (7.40-7); and in *IC* 4.76.*B*.2-3 the judge must rule that something be purified.[15] In these cases, the judge's ruling is automatic, but does not involve an oath or a witness.

Finally, in four provisions in the first column of the Code (1.4, 1.6, 1.8, 1.28-9), the verbs *dikadden* and *katadikadden*[16] state the required penalty, usually a specific fine, for defendants who lose their case. In these cases, however, the judge must first find the accused guilty. This is shown by, e.g., 1.3-14, where after prohibiting seizure the law states, "if he does seize him, let (the judge) rule that he pay ten staters for a free man and five for a slave because he seized him," and then a few lines later states, "if he should deny he seized him, the judge is to swear an oath and

[13] I understand ἀποϝείποντι as a variant on ἀποπονιόντι, "testify" (as do Koerner 1993: no. 175, and van Effenterre and Ruzé 1994-5: no. II.45); others (e.g., Maffi 1983: 157-61) translate "refuse to testify," but if the witnesses refuse to testify, surely they would also refuse to swear an oath.

[14] CG 2.36-45 (cited by Thür 2006: 44, n.62) requires a litigant to swear an oath together with others, but these others are not called witnesses.

[15] Cf. *IC* 4.106.5-6, where all that remains is δι]κάκσαι τὸ[ν δικαστάν (?).

[16] The only difference between the simple verb and its compound (both of which I translate "rule") is that *katadikadden* (only in 1.4, 1.8, 1.35-6) always states the punishment specified by law; *dikadden* may do this (e.g. in 1.28-29), but more often it specifies the required ruling concerning the verdict in the case.

decide, unless a witness should testify." Clearly, the accused might dispute the charge that he seized someone illegally, in which case the judge would have to decide that he was guilty before he could then rule that he pay five or ten staters.

After column 1, *dikadden* and *katadikadden* are not used in this sense, but this may just be a matter of legislative style. In CG 2.2-4, for example, the law states that one who rapes a free person will pay (*katastasei*) a hundred staters; here *katastasei* must have the same force as *katadikadden*.[17] The judge will first have to decide the accused's guilt or innocence, and since the law does not say how he is to decide this, he must (according to 11.26-31) swear and decide on his own. Then if he finds the accused guilty, he is obliged to impose a fixed penalty. These cases should, therefore, not be considered forms of automatic judgment, since the method of judgment in them is "swear and decide"; only the penalty is fixed by law. The specification of a penalty for an offense, which is a common practice in most legal systems, does not affect the method of judgment.

V. The Judge Swears and Decides

I turn now to the second category mentioned in 11.26-31: "in other matters he is to swear an oath and decide with reference to the pleadings" (*omnunta krinen porti ta moliomena*). This method is specified eight times in the Code (1.12, 1.14, 1.24, 1.39, 3.1, 5.43-4, 6.54, 9.21) and probably twice in *IC* 4.41 (4.18,[18] 5.9-10). In two cases (CG 1.12-14, *IC* 4.41.5.7-11) *omnunta krinen* is qualified by "unless a witness testifies." As we noted above, if there is a witness in these two cases, the judge must rule according to that witness, but if there is no witness, the judge must decide on his own. As I argue below, the implicit requirement in these two cases, that the judge rule according to the witness if there is one, applies only to these cases, not to others where there might be a witness but the law says nothing about one.

Maffi has argued (2002-3, 2007: 216-21) that in all cases where a judge is supposed to decide on his own, either litigant can propose an automatic proof, and the judge can then impose that proof, thus deciding the case automatically. For example, in CG 9.53-54, as we saw (above III), a litigant may request a decisive oath. But the provision allowing a litigant to request an oath is unique to this case; we cannot generalize from it to cases where this procedure is not mentioned.

Maffi (1997: 33-4, 2007: 207-11) also cites an addendum to CG 3.5-9 in support of his theory, CG 11.46-55, which reads:

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[17] The use of *katistami* to specify the penalty, almost always in terms of a fine, is also common in the early laws from Gortyn (e.g., *IC* 4.8.*a-f*, *IC* 4.10.*z*).

[18] The restoration of 4.16-18—ἀμπὶ δὲ τὸν κρόνον ὀμνύ[ντα κρίνεν τὸν δικαστάν]—is widely accepted (cf. CG 1.11-12). See also *IC* 4.101.2 where all that remains is ὀμν]ὺς κριν[έτο.

γυνὰ ἀνδρὸς ἄ κα κρίνεται,
ὸ δικαστὰς ὄρκον αἴ κα δικάκ-
σει, ἐν ταῖς ϝίκατι ἀμέραις ἀ-
πομοσάτο παριόντος τῶ δικα-
στᾶ ὅτι κ' ἐπικαλῆι. προϝειπάτ-
ο δὲ ὸ ἄρκον τᾶ‹δ› δίκας τᾶι γυνα-
ικὶ καὶ τôι δικα‹σ›τᾶι καὶ [τ]ôι
μνάμονι προτέταρτον ἀντὶ μ-
αίτυρος πεντεκαιδεκαδρόμο
ἒ πρείγονος. *vac.*

When a woman is divorced from her husband, if the judge rules that an oath (should be sworn), within twenty days let her swear the oath of denial concerning the charge, with the judge present. And let the initiator of the suit declare (*proweipato*) to the woman and the judge and the *mnamon* on the fourth day before this in front of a witness who has been adult for fifteen years or more. *vac*.

Maffi suggests that the verb *proweipato* here may designate an "atto formale," similar to the *proklēsis eis horkon* in Athenian law; in his view, after the judge has imposed an oath on the wife but before she swears it, the husband then formally declares the wording of the oath. But the husband presumably specified in his initial complaint which property his ex-wife (allegedly) took illegally, and the woman would then have to swear either that she did not take the property in dispute or that it is her property not her husband's. This amendment apparently requires him to restate this complaint so that everyone involved will know exactly what the woman will be denying in her oath. But he does not determine the wording of the oath and the judge imposes the oath because the law requires it (3.5-9), not because the husband asks him to.

In addition to these two passages, Maffi notes (2002-3: 77-78) that in CG 1.18-24 (see above) a judge's free decision is changed into an automatic ruling when only one party presents a witness, since the judge must rule in accordance with this witness. It is certainly possible to understand the procedure here in this way, but there is no reason to assume a similar process in other cases where nothing is said of a witness, for example, in CG 1.11-12: "About the matter of time, the judge is to swear an oath and decide." Unless the law explicitly requires the judge to rule, his judgment will be a decision (*omnunta krinen*) not a ruling. Only when the law explicitly states an exception to the "swear and decide" method can the procedure change from a decision to a ruling.

Maffi's view must thus be rejected. It may be that nothing in the law prohibits a litigant from suggesting an automatic proof or a judge from considering such a suggestion, but the judge's decision would still be his own, and the clear distinction between two types of judgment still holds: either the law requires, in writing, that the judge is to rule, or it lets him decide on his own.

Another feature of a judge's decision is that he decides "with reference to the pleadings"[19] (*porti ta moliomena*, 11.30-31). Maffi argues (2002-3: 79 n. 4, 2007:

[19] The English words "plea" and "pleading" are sometimes used in a strict sense to designate only a person's initial response to an accusation ("Not Guilty"), but both words are often used more loosely to designate a litigant's entire case. Willetts, for example, translates *ta moliomena* "plea," but his discussion of Gortynian procedure (1967: 33-334)

204) that this expression—which also occurs at CG 5.44 and 6.54-5[20] and should probably be understood in all cases where the judge decides—means only "with reference to the initial claim and counter-claim," and that in such cases a litigant does not actually present witness testimony. But there are several reasons why *porti ta moliomena* must refer to both parties' entire presentation of their cases. First, if *porti ta moliomena* referred only to the initial accusation and response, the expression would be utterly superfluous: no judge can decide a case without knowing the initial claims of the two parties. Thus, if *porti ta moliomena* means anything, it must be directing the judge to decide with reference to more than the initial claims, and this would mean that he should consider the evidence on both sides, including witnesses, and any arguments that either side might present.

Second, although in some passages *molen* might be understood to refer only to the initial accusation and response, there is no passage in which it cannot refer to the entire trial; and in the two other places where the participle occurs—both times in the genitive absolute expression *moliomenas dikas*—it must refer to the whole trial ("while the case is being tried") not just the moment when the initial claims are stated. In CG 1.49-50, "if (a slave) dies *while the case is being tried* (*moliomenas tad dikas*), he will pay the single penalty"; and in 10.21-22, "if anyone owing money or subject to a fine or *engaged in a suit* (*moliomenas dikas*) gives a gift, if the remainder of the property is not equal to the fine, the gift will be invalid." In both cases it would make no sense to understand *moliomenas dikas* as designating only the moment when the claim and counter-claim are made.[21]

Third, in CG 1.18-24 the judge is directed to swear and decide in cases where each litigant claims to own the slave and there are witnesses for both parties or neither party. The case is straightforward: A claims that he owns a slave who is currently in the possession of B; B responds that the slave is his, not A's; and either A and B both have a witness or neither has one. Now the judge must decide. How can he do this if all he knows is that each party claims ownership of the slave and each has (or does not have) a witness? Surely he must hear what the litigants and their witnesses (if any) have to say; otherwise, his decision is purely arbitrary. In short, when the judge decides (*krinen*) a case *porti ta moliomena*, he does so after hearing both parties present their entire case. In other words, there is an actual trial (as in classical Athens) where litigants argue their case and witnesses may give their testimony (probably orally).

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makes clear that he assumes that the judge decides after hearing the litigants' entire arguments.

[20] Also in *IC* 4.42.*B*.2-3, but without any context.

[21] See also *IC* 4.82.9-10, which is commonly restored αἰ] δέ κ' ἀμπότε[ροι μολι]όμενοι ἐ[πιτρ]άποντι ("if both refer the case to arbitration while they are engaged in litigation"). If this restoration is correct (Guarducci calls it *fortasse probandum*), here too the verb cannot designate only the initial claims.

VI. The Judge

One question that has troubled scholars is just who the *dikastas* was, and in particular, whether he was identical to the *kosmos* (the highest official in most Cretan cities) or was a differently, specifically judicial, official. On the surface, Gortynian laws speak of two separate officials: *dikastas* is consistently used when the law speaks of judging a case or testifying about the verdict in an earlier case; the *kosmos*, on the other hand, is never spoken of as judging. Some scholars,[22] however, find evidence of the *kosmos* judging in CG 8.55, where after a long series of rules concerning the marriage of an "heiress," the law adds "and if anyone marries the heiress otherwise than is written, the claimants are to inform (*peuthen*) the *kosmos*." It is not at all clear what action, if any, the *kosmos* is to take after being informed, but nothing in the language suggests legal action, and elsewhere (7.45-47) legal action regarding the marriage of an heiress is in the hands of the *dikastas*.

The laws several times speak of different *dikastai* for different types of cases. For example, the rule in CG 6.29-31 (and the quite similar rule in 9.23-24) states, "the matter is to be tried where it belongs, before the *dikastas* where it is written in each case" (μολὲν ὄπε κ' ἐπιβάλλει, πὰρ τôι δικαστâι ἓ ϝεκάστο ἔγρατται). Apparently there are different judges (and courts) for the sale of property and for other types of security transactions. In addition, CG 12.6-19 speaks of "orphan-judges" (*orpanodikastai*), and *IC* 4.42.*B*.11-14 mentions "the *dikastas* of the *hetairiai* and whoever judges in cases of sureties." Since it is unlikely that there was enough litigation in fifth-century Gortyn to warrant a judge who handled nothing but (e.g.) the sale of property or matters concerning orphans, it may be that these different *dikastai* only judged specialized cases from time to time and spent the rest of their time judging other sorts of cases which were not assigned to a specialized judge.

One other official, who seems to be connected with judging and who some have thought was a *kosmos* who judged, is the *xenios* in CG 11.14-17: someone who wishes to renounce an adoption must deposit ten staters with the court (*dikasterion*), "and the *mnamon* of the *xenios* is to give it to the person renounced."[23] Willetts (1967: 31) and others assume that this *xenios* is the *xenios kosmos* mentioned in *IC* 4.30.4 (without context) and *IC* 4.78.4. In the latter passage the *xenios kosmos* protects a group of exiles (or perhaps of freed slaves), but nothing suggests that his protection involves judging. The *xenios*, on the other hand, is distinguished from the

[22] E.g. Thür (2006: 45-46), who refers (n. 69) to Willetts 1967: 32; but Willetts argues that in the passages at issue (CG 8.55, 11.14-17) the *kosmos* makes only administrative decisions. Thür also cites the law from Dreros (*SEG* 27.620), where the *kosmos* judges (*dikazen*) and an early law from Athens (Dem. 23.28) which speaks of the archons as *dikastai*, though neither of these is evidence for Gortynian practice.

[23] The *xenios* is also mentioned in *IC* 4.79.15 (= *IC* 4.144), where he exacts full payment from those who are unwilling to work, and in fragments that yield no information (*IC* 4.53.*A*.2-3, *IC* 4.89.7, *IC* 4.98).

kosmos in *IC* 4.14.*p*-*g*.2, in that he must wait five years before serving another term, whereas the *kosmos* must wait three years. It seems more likely, then, that the *xenios* in CG 11.14-17, who is apparently connected with a *dikasterion* (the only occurrence of this word in Crete) is a *dikastas*, whose jurisdiction would include adoptions.[24]

Thus, the Gortynian texts strongly suggest that the *dikastas* and the *kosmos* are two different officials.[25] Perhaps we cannot rule out the identity of *dikastas* and *kosmos* with complete certainty, but in view of the frequent and consistent use of these two different nouns with respect to different roles, it seems very unlikely that they were the same official. Even if the two were identical, moreover, this would not in itself change the function of the *dikastas* as prescribed by the laws.

VII. The Use of Oaths

We have already noted several different uses of oaths at Gortyn: judges routinely swear an oath before deciding a case (*omnunta krinen*), a litigant may be required to swear an oath of denial or an oath confirming some point required in order to bring a case or to win it, or he may be given preference in swearing to some point. Another fragmentary inscription, *IC* 4.51, specifies certain gods one must swear by, requires that some of the person's sons must also swear, and specifies certain details of the oath ("are all to swear, each invoking a curse on himself to die the worst (?) death [if he perjures himself]"), but the fragment breaks off without informing us of the context for these oaths.

In addition, in two early texts we find references to oath-swearers (*orkomotai*, *IC* 4.8.*i*)[26] or co-swearers (*omomotai*, *IC* 4.4.3), though in neither case is there enough context to know what oath these people are swearing. One other text, *IC* 4.81, also refers to multiple swearers. There are many difficulties in the interpretation of this text, but it apparently concerns a piece of property pledged as

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[24] See also the expression *xenia dika* ("foreigner's trial") mentioned in *IC* 4.80.7-8, where the Gortynian and Rhittenian *kosmoi* are to levy a fine of one drachma, "and if he should fine him more or should not use it (correctly), he is to be tried in a foreigners' trial" (αἰ δὲ πλίον δαμιόσαι ἢ μὲ κατακρέσαιτο, κσενείαι δίκαι δικάδδεθαι); this last clause may apply only to the Rhittenian *kosmos*. Cf. the expression *wastia dika*, a "citizen's trial" or "citizen's justice," in *IC* 4.13.*g*-*h*2, and *IC* 4.64.4.

[25] Thür has questioned this conclusion on the ground that nowhere in Greece does a single *dikastas* decide cases (2009: 493 quoted at the beginning of this paper). Even if this is true—and it would be more accurate to say that we do not know of such officials elsewhere—this would not mean that there could not be such an official at Gortyn.

[26] Blass (*SGDI* 4969, followed by van Effenterre and Ruzé 1995: no. 11; *contra* Guarducci, Koerner 1993: no. 113) joined φομότας | ἐ on block *i* with κατὸν | ποι on block *a*, resulting in [ὀρ]φομότας | ἑκατὸν, "one hundred oath-swearers." This is apparently followed by a reference to a blood-money payment (*poina*) of a tripod worth ten cauldrons.

security.[27] We are first told (lines 1-3) that the nine closest property owners swear, though it is not clear what they affirm in their oaths. After one party has summoned the other, the property is then measured (4-11). Then oaths are sworn (11-15), probably by both parties and their supporters, and "whichever the majority swear, (that side) is to win" (15-16). This method of decision by the majority of oath-swearers is unique in Gortynian laws, and may be explained by the fact that the matter in dispute is the size and ownership of a piece of property, and on this issue the nine closest neighbors are most likely to know the facts. Thus, they are not "oath-helpers," who in some legal systems swear in support of a person without necessarily having any knowledge of the facts,[28] but accidental witnesses who because of their location happen to have knowledge of the relevant facts.

VIII. The Use of Witnesses[29]

References to witnesses at Gortyn usually add certain qualifications concerning the number, age, or status of the witnesses in question. Only when the witness is an accidental witness, who just happens to have some relevant knowledge, is there no further specification, just the simple expression "a witness" or "witnesses."[30] In the case of formal witnesses, on the other hand, who testify to some event or transaction at which they were asked to be present, the law always adds some qualification, requiring that there be one, two, three, or "three or more," or that they be "of age" (*ebiontes*), or adult (*dromeus*), or "adult for fifteen years or more" or that they be free; in many cases more than one qualification is present (e.g., CG 1.41-42: "two free adult witnesses").[31] Finally, the addendum in CG 11.26-31, with which I began this paper, refers to "witnesses" without specification, but this clearly includes both formal and accidental witnesses.

Another general difference between formal and accidental witnesses is that the law usually mentions the former in connection with procedures that occur outside of

[27] My understanding of this text is that the passage sets out a procedure for use when a person offers property as security for a debt or loan. Two issues arise, is the property as large as the person claims, and does it belong to him. The first is settled by measurement before witnesses, the second by the majority of neighbors swearing an oath. For a full discussion see my forthcoming edition (with Paula Perlman) of the laws of Crete.

[28] See Gagarin 1989, esp. 51-52; *contra* Meister 1908: 571-72. Thür (2009: 493) takes the method of counting oath-swearers as characteristic of judicial procedure at Gortyn, though he also acknowledges the exceptional nature of this text (which he mistakenly cites as *IC* 4.48).

[29] Several of the issues in this section are discussed in Gagarin 1989.

[30] Accidental witnesses are mentioned in CG 1.14, 1.20-21, 2.20, *IC* 4.21.5-6, *IC* 4.41.5.11, *IC* 4.46.*B*.1-5; cf. CG1.15-18.

[31] Formal witnesses are mentioned in CG 1.41-42, 2.28-29, 2.33, 3.21, 3.47-51, 3.55, 4.8, 5.52-53, 11.53-54, and in *IC* 4.41.2.9-14, 47.22, 75.*A*.1 (= 81.4-5), 75.*A*.7 (= 81.10), 85.4-5. Other mentions of witnesses in fragments from *IC* 4 where it is unclear whether they are formal or accidental are in 46.*A*.9-10, 51.11, 63.4, 75.*C*.9, 75.*D*.2-3, 90.*A*.4-5, 93.6, 102.3.

court; for example, they are present when a summons is issued or a baby is presented to its father. And when a witness is said to be *orkioteros* ("preferred in his oath," see above II), if he actually testifies, it is probably in extra-judicial proceedings. Accidental witnesses, on the other hand, are always spoken of as testifying (*apoponen*); moreover, they almost certainly gave their testimony in court and did not just state their readiness to support a litigant. For example, as we have seen (above V), in cases where two parties claim to own a slave and each has a witness (CG 1.18-24) the judge must listen to the entire case on each side, and it is hard to see how he could decide without hearing what the witnesses have to say. Formal witnesses, on the other hand, whose evidence was usually relevant to procedural matters apart from the main issue of the dispute, may have simply stated their readiness to testify. For example, someone whose animal has been killed must show the dead animal to the man responsible for his death in the presence of two witnesses, who will be *orkioteroi* (*IC* 4.41.2.6-16). If he then sues the accused for damages and the accused claims that he was never shown the dead animal, the accuser would present his two witnesses, but since their testimony was predetermined (they were present when the dead animal was shown), they may or may not have actually given a deposition.

There are, however, a few passages in the Code where formal witnesses may testify in court. Take, for example, 9.24-40:

αἰ ἀν[δ]εκσ-
άμ[ε]νος ἦ νενικαμένο[ς ἦ ἐν]κ-
οιοτὰνς ὀπέλον ἦ διαβαλόμε-
νος ἦ διαϝειπάμενος ἀποθά-
νοι ἦ τούτοι ἄλλος, ἐπιμολ-
ὲνν ἰῶ πρὸ τῶ ἐνιαυτῶ· ὸ δὲ δικα-
στὰς δικαδδέτο πορτὶ τὰ ἀποπ-
ονιόμενα. αἰ μέν κα νίκας ἐπι-
μολῆι, ὸ δικαστὰς κὸ μνάμον,
αἳ κα δόει καὶ πολιατεύει, οἵδε μ-
αίτυρες οἰ ἐπιβάλλοντες, ἀνδοκ-
ᾶδ ‹δ›ὲ κἐνκοιοτᾶν καὶ διαβολᾶς κ-
αὶ διρέσιος μαίτυρες οἰ ἐπιβ-
άλλοντες ἀποποννιόντον. ἦ δέ κ' ἀ-
ποϝείποντι, δικαδδέτο ὸμόσ-
α‹ν›τα αὐτὸν καὶ τὸνς μαίτυρ-
ανς νικῆν τὸ ἀπλόον. *vac.*

If someone dies who has given surety (for a debt), or has lost a law suit, or owes money that he pledged, or has initiated litigation, or has agreed (to pay), or if another has a similar obligation to the deceased, litigation must be brought against him within a year; and let the judge rule with regard to the testimonies. If someone who has won a case brings suit, the judge and the rememberer, if he is alive and fulfilling civic duties, and the appropriate witnesses [should testify]; but for surety or money owed or litigation initiated or an agreement, let the appropriate witnesses testify. And when they have spoken, let (the judge) rule that when he (the plaintiff) and the witnesses have sworn, he is to win (the suit) for the simple amount. *vac.*

Here, the judge must rule "with regard to the testimonies" (*porti ta apoponiomena*), where *ta apoponiomena* (lit. "the things that are being testified") must designate the content of the testimony. These witnesses must, therefore, actually testify in court before the judge who is to rule. On the other hand, in many cases, the witnesses are likely to be formal witnesses, who were present when a debt was incurred, a sale

was concluded, etc. We may even wish to call the judge and the *mnamon* formal witnesses, because they testify concerning the outcome of a trial at which they were the officials in charge. But they do not fit neatly into this category, and in other cases it is possible that witnesses who had not formally been present at an event might testify. Witnesses in two other passages—9.43-54 (where the judge also must rule *porti ta apoponiomena*) and 10.25-32—similarly seem to share characteristics of both types of witnesses.

IX. Beyond the Gortyn Code

Interestingly, the distinction in CG 11.26-31, between *dikadden* and *krinen*, which seems very important in the Code and in some of the other contemporary laws from Gortyn, is not found in the sixth-century laws from Gortyn (*IC* 4.1-40, 62-64). *Krinen* never appears in these texts, and as Talamanca long ago recognized (1979: 124-5), *dikadden* designates the general act of judging but says nothing about the method of judgment. An early example is *IC* 4.9.*a-m*—"either he is to judge the case or he himself [is to pay?]" (ἢ δίκ[αν] δ[ι]κάζε[ν] | ἢ ἀϝτὸ[ς] κατα[…)—where it seems very unlikely that in the absence of specification *dikan dikazen* could designate the same kind of automatic ruling as it does in the Code.[32]

One might argue, perhaps, that in the sixth century judges at Gortyn only knew one method of judging, ruling by imposing a decisive oath, but the same less rigid use of *dikazein* is also found in some texts other than the Code in the fifth century, when judges must have known about both methods, ruling and deciding. Take, for example, *IC* 4.42.*B*.6-14:

αἰ δέ κα μὲ ὀμόσ-
οντι κελομένο, κατὰ τὰ αὐτὰ πράδε-
θαι τôι μὲ ὀμόσαντος ἦιπερ αἴ κα μὴ λ-
ῆι δικάκσαι. *vac.* αἰ δαμόσιόν τι κολύσ-
αι ἢ θάνατος οἷος διακολυσεῖ, μηδατ- 10
έρ‹ο›νς ταύταις καταβλάπεθαι. *v.* τôι δ-
ὲ τᾶν ἑταιρηιᾶν δικασστᾶι κ' ὅς κα τ-
ôν ἐνεκύρον δικάδηι, αἰ αὐταμέριν δι-
κάκσαι ἢ ἐς τὰν αὔριον ἄπατον ἤμην.

And if they do not swear after a summons, the same penalty is to be imposed on the one who does not swear as if he were unwilling to judge. *vac.* If a public matter should prevent it or a death of some sort prevents it, neither of them is to be hurt by these. *vac.* But for the judge of the *hetairiai* and whoever judges in cases of sureties, if they judge on the same day or the next, there is to be immunity.

Here, all three occurrences of *dikadden* have the general sense "judge." This is especially clear in 11-14, where both "the judge (*dikasstas*) of the *hetairiai*" and "whoever judges (*dikadei*) in cases of sureties" are given immunity if they judge on the same day or the next. The point of the law is clearly to protect the judge who is doing his duty in a timely fashion, and it would make no sense for this protection to apply only to cases where judges were required to rule (*dikadden* in the sense it has in CG 11.26-31) and not in cases where they decided on their own (*omnunta krinen*).

[32] In fifth-century laws *dikadden* is never followed by a direct object (like *dikan* here).

Dikadden in this general sense is also found in laws from other Cretan cities, for example in the seventh-century law from Dreros (*SEG* 27.620), which states that if a *kosmos* violates the prohibition against holding office again within ten years, "whatever he judges (*dikadden*), he himself is to owe double." This provision is surely aimed primarily at cases where the *kosmos* decided, when he would be able to follow his personal inclination, rather than cases (if any) where he might have ruled, where the ruling would be fixed by law. On the other hand, the method of swearing and deciding is specified once in a fragmentary early law from Eltynia (*IC* 1.10.2.8), where the *kosmoi* (presumably acting as judges) are to "swear and decide" (γιγνôσκεν ὄμνυντας), but here the verb is not *krinen* but *gignosken*.[33]

These laws from Dreros and Eltynia are the only instances in Cretan laws of the period where the *kosmos* is spoken of as judging. At Dreros the clause about judging cited above is followed by "and whatever he does as *kosmos* shall be void." This clearly implies that judging is only one of the duties of the *kosmos*, but it may be the most important one, since it is the only duty specifically named and it comes first in the list of penalties for the *kosmos* who violates the iteration prohibition.

Besides these two laws, the act of judging is nowhere else mentioned in archaic and classical Cretan laws outside of Gortyn. We cannot, of course, draw firm conclusions from two examples, but we may wish to speculate that in this period the *kosmos* did the judging everywhere except in Gortyn, where the office of *dikastas* existed in addition to the *kosmos*, and later different *dikastai* were assigned to different areas of the law. If the number of legal inscriptions discovered from Gortyn—more than the total from all other Cretan cities combined—accurately represents the amount of legislation in these cities, it may be that Gortynians engaged in judicial activity to a much greater extent than other Cretans at the time, and that the special office of judge (*dikastas*) was therefore created in that city but was not needed elsewhere.

As for other features of legal procedure, witnesses are not mentioned at all outside Gortyn, but there are several instances of oaths being sworn. We have already noted the early law from Eltynia (*IC* 1.10.2.8), where the *kosmoi* "swear and decide"; this is presumably the same sort of oath as that sworn by the *dikastas* at Gortyn. In addition, the same law from Dreros (*SEG* 27.620, line 4) specifies that "the oath-swearers (*omotai*) are the *kosmos* and the *damioi* and the twenty of the *polis*." It is not clear what this oath is or when it is sworn, but the most likely view may be that the oath was sworn at the time of (and perhaps as part of) the enactment of the law. In any case, neither of these is the sort of decisive oath that judges are sometimes required to impose at Gortyn.

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[33] Note also two fragments from Eleutherna: *IC* 2.12.11.4 (= van Effenterre and Ruzé 1994: no. 14)—τ]ὸινυ μὴ δικάζοντας τὸς ζ[—where the sense is not at all clear; and *IC* 2.12.13.6—αἰ νικαθείη καταδ[—where some form of *katadikadden* should very likely be restored.

The other mentions of oaths outside Gortyn provide little information. Another short fragment from Dreros (*SEG* 15.564 = van Effenterre and Ruzé 1995: no. 10, lines 1-2) states "they swear, just as in the oaths" (ὀμῶνται δ' ἄπερ ἐν ὀρκίοισι). A law from Eleutherna (*IC* 2.12.3 = van Effenterre and Ruzé 1994: no. 10) mentions an oath twice: in line 2: "and an oath to make the … " (κὄρκον τιθέμεν τὸν …), and in line 3: "the curse is to be in the oath (?)" (τôι δὲ ὄρκ]οι τὰν ἀρὰν ἰνήμε[ν). And another law from Eleutherna (*SEG* 23.571 = van Effenterre and Ruzé 1995: no. 15, line 1) contains the verb "swear an oath of denial" (ἐκσομνύηι).[34] The best we can say is that nothing in these meager fragments is clearly inconsistent with what we know of oaths at Gortyn.

The evidence for legal procedure outside of Gortyn thus indicates that it differed from procedure at Gortyn, only in that the office of judge (*dikastas*) is only known at Gortyn, and that the special sense of *dikadden* for a ruling required by law (as opposed to *krinen*, which indicates a free judicial decision) is found only in fifth-century Gortyn (and perhaps at Eltynia). *Dikadden* always has the more general sense of "judge" outside Gortyn, and sometimes at Gortyn too, but within the Code *dikadden* (13 times) and *katadikadden* (3 times) are only used for an automatic ruling. This consistency suggests that the author (or authors) of the Code thought systematically about judicial procedure—when to allow judges to decide cases freely and when to impose automatic procedures. The amendment in 11.26-31 was added in order to clarify the fact that despite the inclusion of these automatic procedures in the Code, free decision-making was the normal method of judicial decision at Gortyn, as it apparently was elsewhere in Crete.

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[34] A fragment from Axos (*IC* 2.5.3, line 3) reads …μὴ ἀπομ[… This could be some form of ἀπόμνυμι or ἀπόμοτος, but other restorations are perhaps more likely (ἀπομολῆν).

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LEGAL PROCEDURE IN THE GORTYN CODE
RESPONSE TO MICHAEL GAGARIN

At present Michael Gagarin is the greatest authority on Cretan legal sources. Since his books on *Drakon* (1981) and *Early Greek Law* (1986) we have discussed together the meaning of *dikazein* in archaic Greek sources from Homer to Draco and Gortyn. The following few remarks will carry on our arguments. *Dikazein* is the key word in understanding ancient Greek legal procedure. Our late friend Mario Talamanca (1979) took part in the discussion as Eva Cantarella and Alberto Maffi still do. While friendship has always survived we all had and still have completely different points of view. Disregarding my view on Homer I will concentrate on Gortyn. Nevertheless, also on this topic I hold the idea of a unity of Greek law, a unity not of uniform legal institutions, but rather of different developments derived from consistent basic ideas, to speak with Hans Julius Wolff, the founder of our Symposion: "verschiedene Ausformungen einheitlicher Grundgedanken."

Our modern understanding of judge and judgment doesn't go back further than to Late Antiquity. Today judges are civil servants, who decide the facts at their own discretion, legally bound by law codes or precedents and embedded in a hierarchy of public jurisdiction. This legal culture comes from the Roman *cognitio extra ordinem* and is called "Beamtenjustiz." The *ordo iudiciorum* of the Roman republic and principate was different. In a first stage one of the supreme magistrates, the *praetor*, appointed the trial by admitting a *legis actio* or a *formula*, and then a board of laymen, *centumviri* or *recuperatores*, or a single layman, the *iudex privatus*. Only in the second stage the laymen gave decisions, strictly bound by the wordings proposed by the plaintiff and decreed by the magistrate. This system was also used in ancient Athens, except for the *iudex privatus*. Nowhere in Greece do we find an authority like a civil servant especially engaged in jurisdiction.

My first objection to Gagarin is that until now he never did answer my question, who the Gortynian *dikastas* was. Wolff thought of a *iudex privatus*, but was universally and rightly rejected. Gagarin seems to follow the general opinion the *dikastas* was a special authority like a modern judge [now closer explained in the written version of his paper]. But there are no parallels in any Greek source. Beyond Gortyn we have some inscriptions which tell us the *kosmoi*, the Cretan magistrates, also acted as *dikastai* (see *Nomima* 1.74, 81, 2.80). The magistrates' *dikazein* and *gignōskein*, everywhere else equal to *krinein*, is exactly what the Gortynian *dikastas* did. My conclusion is when the Law Code is speaking of a *dikastas* it means the

single *kosmos* responsible for the kind of cases in issue, the *ksenios kosmos* for example (XI 14-17) and the *dikastas* for *hetairiai* (see Gagarin, above p. 138f.). In the highly technical language of the Code *dikastas* seems to mean the "competent magistrate;" likewise in archaic Athens the competent *archon* is called *dikastēs* (Dem. 23.28, 41.71), which term later is reserved for the men sitting in the jury. Anyway, for Athens and Gortyn the translation "judge" in our technical sense is misleading. With the Code I prefer to stick to *dikastas* having in my mind the *kosmos* responsible for the case.

After these, I think, necessary preliminaries I come to Gagarin's main subject: the fundamental distinction between *dikadden* and *krinen*, rule and decide respectively. First, what was the normal method and what the exception, and second, could either procedure change into the other, as Maffi has argued.

First, before looking at default and exception we must clarify both methods. *Omnynta krinen porti ta moliomena* in XI 26-31 seems to be very simple: the *dikastas*, the magistrate, is allowed to decide the case at his own discretion. Normally the verb *omnynta* is overlooked. Aristotle mentions in his *Politics* (128b 9-12) that, formerly, some kings (comparable to magistrates) gave judgments under oath. In historical times only private arbitrators seem to have given their awards under oath (Dem. 52.30f.). In a society where oath swearing was taken seriously, as the Law Code presupposes, with his own free decision the *dikastas* took a great personal risk. To the parties, who had no appeal to a higher court, it was a sacral guarantee for correct decision. This method demonstrates on the one hand the progressive and on the other the archaic character of Gortynian litigation.

The oath of the Gortynian *dikastas* was not like the heliastic oath sworn by the Athenian jurymen at the beginning of each year. Later, they sat in the large law courts and cast their votes anonymously. In Gortyn it was a more serious matter: the oath was sworn by a magistrate every time when he passed a free decision in a lawsuit. So he took personal responsibility and, besides sacral punishment, with every biased judgment risked his social reputation.

Problematic is the meaning of *porti ta moliomena* in XI 30-31. I prefer Willet's translation "according to the pleas" to Gagarin's "with reference to the pleadings." Normally in Greek trials the court decision is on the claim and counterclaim. Here I follow Maffi. Even when the *dikastas* was allowed to decide at his own discretion he was restricted to the pleas, to a simple "yes" or "no". In a general rule on trial decision this is in no way superfluous to mention. The phrase has nothing to do with evidence, as Gagarin holds (above, p. 137): "…this would mean that he should consider the evidence on both sides, including witnesses, and any arguments that either side might present." Since both the pleas and the pleadings were oral it is difficult to distinguish the meanings of *molen*. However, explaining the phrase as a provision on free assessment of proofs seems to me thinking in a too modern way.

Still dealing with my first point to clarify both methods of rendering a decision I come to the most controversial topic, the meaning of *dikadden*. It obviously does not

mean *dikazein* in the sense of what the Athenian jurymen did, rendering decisions by secretly voting. We all agree that in 5th century Gortyn no law courts existed. However, one can compare the *dikadden* of the Gortynian *kosmos* with the *dikazein* of the Athenian *basileis* in Draco's law on homicide. In my—not uncontested—opinion the *basileis* formulated the *diōmosiai*, the oaths to be sworn initially by either litigant before the 51 *ephetai* voted on the case (*diagnōnai*). Also a board of *ephetai* did not exist in Gortyn. But I think we can, how controversial the issue might be, compare the Gortynian *dikadden* with the *dikazein* decree of the Athenian *basileis*. Cautiously Gagarin now translates *dikadden* simply with "rule" and I agree with him. Inconsistently and without sufficient explanation in his new book *Writing* (2008, 96) he still translates the *dikazein* of the Athenian *basileis* with "judge" in contrast to "decide" for *diagnonai*. I think "rule" is correct for *dikazein* in either case.

A Greek magistrate usually did not render verdicts, he was competent in ruling. Also in the Gortynian Code there are several examples of ruling, *dikadden*, beyond trial decisions: in V 31 the *dikastas* is not yet deciding an action for partition; he just provisionally assigns the estate to one of the claimants until the property will be divided. Also the heiress (VIII 40-7) is assigned to the relative who refuses to marry her not by verdict, but by a simple order. These cases are parallel to the *epidikasia* decrees of the Athenian *archon* in inheritance and family issues. Also the *dikaksato lagasai* in I 6 is a simple order, and everywhere in Greece the word for a magistrate's imposing a fine is *katadikazein*. All these passages are additional arguments that the Gortynian *dikastas* belongs among the magistrates. He is the *kosmos* competent for the matter in issue.

But what did the *dikadden* of the *kosmos/dikastas* in a lawsuit look like? The general provision, XI 26-31, directs him—I quote Gagarin's translation (above, p. 128): "to rule (*dikadden*) according to witnesses or an oath of denial." The meaning of *kata* (according) is problematic. Did the *dikastas* rule or decide before or after the swearing ceremony? Gagarin correctly holds the oath follows the ruling and whether sworn or not, the defendant automatically won or lost his case. By *dikadden* the *dikastas* imposed the oath upon a litigant. The case of the divorced woman charged with having taken away her ex-husband's property (II 36-45) shows that the swearing ceremony took place after the ruling. After swearing, no further *dikadden* was necessary. And if the woman refused to swear within a certain time (XI 46-55) she lost the case and, pace Maffi, no *krinen* decision followed. Fortunately the provisions on the divorced women are detailed enough. Other provisions on decisive oaths can be explained only by conjecture, as Gagarin correctly did.

But I completely disagree with Gagarin on the meaning of the first phrase in XI 26-28, *kata maityrans…dikadden*. Here we have the same methodological problem. In the code there are a many short references in technical language, but only one provision goes into details, IX 24-40. I concentrate on lines 34-40: first, the witnesses had to "speak" (*apoponnionton*), and after they had "spoken" (*profeiponti*)

the *dikastas* had to rule that the plaintiff and the witnesses swear. The crucial word is *apoponen*, in the Code it is only used for witnesses. Gagarin translates it with "testify." He holds (above, p. 134): "This unique double requirement—the witnesses testify and swear—may have been included because in this case one of the original parties has died and so the legislator wished to impose an extra degree of certainty on the ruling."

I think the requirement is neither double nor unique. Fortunately, again we have some details not mentioned in other provisions, which allow us to conjecture. In my opinion *apoponen* doesn't mean to testify. Rather the witness declared before the *dikastas* that he is ready to testify. Then the *dikastas* had to rule that the witness should swear the decisive oath. This is the procedure behind the concise technical phrase *dikadden kata maityrans*. IX 24-40 provides neither a double requirement nor an extra degree of certainty. It sheds light on the normal procedure of witness testimony of Gortyn. In X 34-40 not the method of evidence is unique, but rather the liability of the heirs of a deceased debtor reduced to the simple amount (line 40).

With these conjectures the general provision in XI 26-31 shows a completely consistent structure: when the Code provides decisions by ruling, the magistrates were bound to impose decisive oaths upon witnesses and/or litigants, in all other cases the magistrates were allowed or sometimes—when explicitly provided—obliged, to take the oaths themselves. In any case oaths were necessary, but an oath sworn by different persons: by the witness (to be conjectured), by a litigant (*apomoton*), or by the magistrate (*omnynta*). The sources from the 6th century are too fragmentary to allow even conjectures on how *dikazein* exactly looked like. Gagarin's question whether automatic procedures or free decision making was the normal method of judicial decision in the Gortyn Law Code seems to be a more or less apparent one.

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For my full arguments and references see my contribution "Die Einheit des 'Griechischen Rechts.' Gedanken zum Prozessrecht in den griechischen Poleis", *Dike* 9, 2006, 23-62 and my Review of Michael Gagarin, *Writing Greek Law* (Cambridge 2008), *Zeitschrift der Savigny Stiftung, Rom. Abt.* 126, 2009, 482-94.

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POLIS AND LEGISLATIVE PROCEDURE IN EARLY CRETE

Ignored by literary sources, the small archaic *polis* of Dreros in east Crete would have remained insignificant for the history of early institutions had it not produced some of the oldest inscriptions in Greek alphabet. Throughout the Hellenic world the rise of the *polis* is linked closely to the creation of written law: resolutions of the community concerning the regulation of common life within this new form of social organization had to be recorded in written form. Dreros provides a typical example of this rule, although neither the quantity nor the quality of the epigraphic material is promising. Excavations brought to light eight archaic inscriptions, coming from the sanctuary of Apollo Delphinios, all of which seem to record statutory texts[1]. Despite their fragmentary condition, a persistent researcher is recompensed by the variety of issues addressed by these laws, which attests to a strong feeling of this small community about creating their own laws and recording them on stone.

The first of these, probably the only one which is preserved in its complete form, is a well-known law limiting the iteration of the office of *Kosmos*, dated to the middle of the seventh century, and generally considered as the earliest legal inscription from Greece[2]. It records a resolution made by an organ designated as the πόλις, which sets up a time-limit of ten years within which a person was not permitted to hold the office of the highest magistrate (*Kosmos*)[3]. Obviously, the aim of the law was to prevent certain persons from monopolizing the highest office, and this would be achieved by establishing a more balanced share in political power

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

[2] Demargne – van Effenterre 1937, 333-348 = Koerner no 90 = *Nomima* I no 81: ἆδ’ ἔFαδε | πόλι· | ἐπεί κα κοσμήσει, | δέκα Fετίον τον ἀFτὸν | μὴ κοσμῆν· | αἰ δὲ κοσμησίε, | ὀ[π]ε δικακσίε | ἀFτὸν ὀπῆλεν | διπλεῖ κἀFτὸν ἄκρηστον | ἦμεν, | ἆς δόοι, | κὄτι κοσμησίε | μηδὲν ἤμην. ὀμόται δὲ | κόσμος | κοὶ δάμιοι | κοὶ | ἴκατι | οἰ τᾶς πόλ[ιο]ς.

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

among members of the élite. There can be little doubt that the law was enacted *ad hoc*, as a remedy after an instance or a period when power had been accumulated in the hands of one or a few aristocrats, and that it was intended to distribute (or re-distribute) the share in power on a more equal basis to a wider number of aristocrats. Transgression of the law had severe consequences on the *Kosmos* in question: all his actions during the illegal tenure were annulled and he was obliged to pay double every fine he had imposed as a judge; more significantly, he was to lose his citizen's rights and be degraded from the body of active citizens[4].

Interestingly, the introductory sentence ἄδ' ἔFαδε πόλι contains the earliest epigraphic mention of the word *polis*, which appears again in the final line, in the designation of the mysterious body called "the Twenty of the *Polis*". The verb ἔFαδε is the Cretan equivalent to Attic ἔδοξε, which commonly introduced Greek legislative texts, and the word πόλις clearly designates the body which made the decision. In what concerns the term πόλι, the original editors took it for granted that it corresponds to the Assembly of the citizens, and asserted that the Drerian Assembly's right to vote laws was well-established in a very early period[5]. The enthusiasm over the discovery of this inscription was shared by other scholars; Ehrenberg pointed out the use of the word πόλι instead of the individual name of the people as an attestation of the "rational consciousness of the Polis as a distinct and complete community, a consciousness which we did not expect in Dorian Crete" (1943: 14). However, in what concerns the editors' interpretation of the word πόλι as the citizens' Assembly, Ehrenberg ingeniously remarks: "or rather, the constitutional representative of the State, whether that be the assembly or something else", and he argues that this type of prescript "may mean just the opposite, namely that council or officials acted for the people or the State—in its name as well as on its behalf—originally perhaps even without being compelled to consult the assembly" (1943: 15). Oddly Ehrenberg's observations had little impact on subsequent bibliography, where *polis* is usually considered as a synonym of the Assembly of the Drerian citizens. One exception was Beattie, whose enquiry lead to the conclusion that "the word *polis* in Crete must have been restricted in certain contexts to mean the executive body which normally handled questions of policy and administration, the Council of elders" (1975: 14).

An enactment formula of the type 'the *Polis* has decided' seems to be particular only to archaic Dreros, as it is unattested elsewhere in the Hellenic world, and on Crete itself it is not reported from other cities. Among the Drerian documents it appears once more, in the prescript πόλι ἔFαδε of another seventh-century law[6]. In general,

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

[5] Demargne – van Effenterre 1937, 342.

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

the surviving prescripts of the other Cretan statutes adopt two different forms, according to their date. The first type appears in a few fifth-century texts, which are also introduced by the verb ἔFαδε, but the deciding body is designated by the individual name of the people, in the form 'The Lyktians (or Gortynians or Eltynians) have decided'. Perhaps the earliest example is provided by two laws inscribed on both faces of a stone slab from Lyttos, dated around 500; the subjects regulated by these laws are the reception of foreigners[7] and the pasture of animals[8]. The same form of preamble appears in two fifth-century laws, one from Eltynia about injuries[9], and one from Gortyn about the installation of new inhabitants as metics in the area of Latosion, which in addition provides the information that the law was passed by vote[10]. The second type of enactment formula appears in Hellenistic decrees, where the pattern is similar to the one followed by other Greek cities of that period. Here the verb ἔFαδε is substituted by ἔδοξε, a current form of the *Koine*, and the decision is registered as the product of a collaboration of the *Kosmoi* with the *Polis*, e.g. 'The *Kosmoi* and the *Polis* of the Knossians have decided'[11]. As opposed to the limited instances of the first form, this type is abundantly attested in decrees of the third and second century from all Cretan cities, and it may be considered as the common way to introduce a decree in Hellenistic Crete[12].

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

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πόλι ἔFαδε διαλήσασι πυλᾶσι | ὅστις προ. |---
--- ἐμ] πολέ[μοι] εἴε, μὴ τίν<τ>εσθα(ι) τὸν ἀγρέταν.

7 H. and M. van Effenterre 1985, 158-162 = Koerner no 87 = *Nomima* I no 12 Face A, ll. 1-2:
[Θιοί. Ϝ]Ε[Fα]δε | Λυκτίοισι | ἀλ(λ)ο-
πολιάταν | ὅστις κα δέκσ[εται .

8 H. and M. van Effenterre 1985, 158-162 = Koerner no 88 = *Nomima* I no 12 Face B, ll. 1-3:
[Θι]οί. | Ϝ[Fα]δε | Λυκτίοισι | τᾶς κοι-
ναωνίας | καὶ τᾶ(ς) συνκρίσιος | τ[ῶν π-
ροβ]άτων | καὶ τῶν καρταιπόδων | καὶ.

9 *IC* I x 2 = Koerner no 94 = *Nomima* II no 80, l. 2:
[τάδ' ἔFαδε] τοῖς Ελτυνιοῦσι | αἵ κ' ἄρκσει μάκας | ἀποτεισεῖ | δέκα δαρκνὰς | ὅπε κ' ἄρκσε[ι--.

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

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

12 See also Δεδόχθαι Λυττίων τοῖς κόσμοις [καὶ τῆ]ι πόλει (*IC* I xviii 8, Lyttos, third century); Γορτυνίων οἱ κόσμοι καὶ ἁ πόλις (*IC* IV 168, Gortyn, 218); Δεδόχθαι τοῖς κόσμοις καὶ τᾶι πόλει τῶν Ἀλαριωτῶν (*IC* II i 1, Allaria, ca 204/3); Ἔδοξε Fαξίων τοῖς κόσμοις καὶ τᾶι πόλει (*IC* II v 17, Axos, ca 204/3); Ἀπτεραίων οἱ κόσμοι καὶ ἁ πόλις (*IC* II iii 2, Aptera, after 170); Ἔδοξεν Ἀρκάδων τοῖς κόσμοις καὶ τᾶι πόλει (*IC* I v 52, Arkades, after 170), to cite only a few examples.

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

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

past by the enemy city of Milatos against the *polis* of the Drerians[13]. Another early example comes from a statute of Axos on public works, which orders some people to work for the *Polis* for five days without salary and states that if they meet some requirements, each one of them will owe nothing to the *Polis*[14]. A law of similar content from mid-fifth century Gortyn provides that 'if they do not want to work, the *Kosmos* in charge of strangers must inflict a fine of ten staters for each infringement payable to the *Polis*'[15]. In two laws from early fifth-century Gortyn one reads 'the *Polis* allotted the land in Keskora and Pala for planting'[16], and 'if the *titai* do not apply the law, they must pay double the fine, half to the plaintiff and half to the *Polis*'[17]. *Polis* meaning political community is also attested in laws from Eltynia, Tylissos, and Knossos, and it is restored in a sixth-century law from Eleutherna[18]. A very interesting use of the word *polis* appears in a seventh-century fragment from the sanctuary of Apollo Pythios in Gortyn[19] where *πόλι πάνσα*, 'the complete *polis*', is associated with levying fines; this phrase suggests a distinction between *πόλις* and *πόλις πάνσα*, the latter being broader than the former.

Polis in the second sense appears less frequently. An early attestation is the phrase "neither in the borderland nor inside the *polis*" in a law from Eleutherna dated to *ca* 500[20]. More examples are found in the rich Gortynian documentation, e.g. in the law about public works mentioned above, which provides that 'for this salary must work all residents of the *polis*, both free and slaves'[21], or in the Great Code where 'houses in the *polis'* are mentioned in accordance with inheritance regulations[22].

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[13] *IC* I ix 1 = *Nomima* I no 48, ll. 144-151: καὶ οἱ Μιλάτιοι / ἐπεβώλευσαν / ἐν τᾶι νέαι νε/μονήιαι τᾶι πό/λει τᾶι τῶν Δρη/ρίων ἕνεκα τᾶς / χώρας τᾶς ἀ/μᾶς.

[14] *IC* II v 1 = *Nomima* I no 28, ll. 6-7: πέντ' ἀμέρας Ferγακσα/[μένο]ς τᾶι πόλι ἀμίστος; ll. 10-11: [ἀ]Fτὸς | Fεκάστος μὴ ἰνθέμεν / τᾶι πό[λ]ι. Last quarter of the 6th century.

[15] *IC* IV 79 = *Nomima* I no 30, ll. 12-16: [Αἰ δ]ὲ μὲ λείοιεν Fερ[γά/δδε]θαι, δέκα στατέ[ρ]α[νς / τô πα]θέματος Fεκάστ[ο / τ]ὸν κσένιο[ν ἐ]στει[σάμ/ενον] πόλι θέμεν; cf. ibid l. 21.

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

[17] *IC* IV 78 = *Nomima* I no 16, ll. 7-8: Αἰ δ' οἱ τίται μὲ Fέρκσιεν ἆι ἔγραται, τὰν διπλείαν ἄ[ταν τούτ/ονς τôι μ] εμπομένοι ἀποδόμεν καὶ τᾶι πόλι θέμεν.

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

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

[20] *IC* II xii 16 A b = *Nomima* I no 26, ll. 2-3: μὴ ἰν ἀπαμίαι μ/[η]δ' ἰν πόλι.

[21] *IC* IV 79 = *Nomima* I no 30, ll. 7-12: Fερ/[γάδδ]εθαι δὲ ἐπὶ τôι μ[ι/σ]τôι αὐτôι πάν[τ]α [τοῖς] / ἐμ πόλι Foικίονσι το<ῖ>ς [τ' / ἐλ]ευθέροις καὶ το[ῖς δόλ]/οις. Cf. the similar expression πά]ντα τοῖς ἐμ πόλι Foικίονσι from another law dated to the fifth or fourth century (*IC* IV 144, ll. 9-10).

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

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

An interesting use of the word *polis* occurs in the famous sixth-century 'Spensithios decree' by which the citizens of Datala, a city in the area of Lassithi not far from Lyttos, decided to hire Spensithios as a life-long *mnamon* and *poinikastas* for the city[24]. According to the introductory formula, 'the Dataleis have decided and we, the *polis*, that is five from each tribe, concluded the contract with Spensithios'; in the following lines the terms of the contract are set. In this inscription reference is made to two different bodies involved in legislative and executive authority. The first body, designated as the Dataleis, exercised its legislative authority in the resolution to hire Spensithios as the public scribe[25]. The second, called the *polis*, is a small board consisting of five citizens from each tribe, in other words fifteen or twenty citizens or more, according to the number of tribes in the city of Datala, which is unknown. As it is specified in the text, this board was appointed by the Assembly of the Dataleis in order to perform a certain duty, i.e. to sign the contract with Spensithios, so as to execute the decree. The wording of the inscription suggests that this body was not permanent but rather a representative board formed *ad hoc* for the execution of this particular resolution, therefore identification to the Council should be excluded[26].

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

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

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

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

[26] Cf. Ruzé 1983, 303.

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

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

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

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

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[27] ϝΙλλω or εἴλω, εἰλέω, εἰλέω, εἴλλω, εἴλλω. Cf. the forms καταFηλμένων τῶμ πολιατᾶν and κατ' ἀγορὰν Fηυμέναν in the Great Code of Gortyn.

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

Organization of the assembly by *phylai* was probably a characteristic of all early Cretan cities. In a fourth-century inscription from Axos, the tribes appear next to the names of the *Kosmoi*[29], and at sixth-century Datala, as we saw, each tribe provided five of its members to form the board called the *polis* in order to conclude the contract with Spensithios. Some epigraphic testimonies from other Greek cities show that the tribal organization of the citizens' Assembly was not exclusively Cretan. Three decrees of much later date from Mylasa, which have been paralleled to the Drerian law, are each prefaced by the formula 'The Mylasians decided in a formal assembly and the three *phylai* ratified'[30]. It has been argued convincingly that the three *phylai* were the same body as the Assembly of the Mylasians[31], and that the clause 'and the three *phylai* ratified' was used in order to stress the fact that the Assembly which confirmed the proposal was organized by tribes[32]. Still, Mylasa was a Carian city and the parallel with early Crete can be seen with some scepticism. On the other hand, possibly a law from Selinous on Sicily should be added to the early attestations of the tribes' control over political decision-making. This law, dated roughly to the end of the fifth century, regulates the return of political refugees[33]; if the word φ[υλ]α[ὶ] can be restored, the inscription may record a process identical to the one in the Drerian law, where the resolution of the *Polis* is connected to the consent of the tribes. From this fragmentary inscription we are also informed that the magistrates of Selinous were called αἰσυμνῆται, and there is a mention of the technical term for the Assembly, which was [hα]λία. Therefore the πόλις, which in the text appears as the deciding body, was different from the ἀλία, and could denote, as in the Drerian law, the overall 'constitutional' body, including the *aisymnetai*, the *halia*, and eventually a Council.

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

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

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

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

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

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

evidence from all Cretan cities from the archaic to the Hellenistic era, and came to the right conclusion that no information is preserved about the Assembly in the archaic period, apart from an indication that "the old term a*gora*" was used for its meetings[34]. He assumed however that it was the term *agora* which was used in earlier times for the Assembly, and that it was later replaced by the word *polis*, perhaps by the fourth and certainly by the third century (1955: 116). Willetts appeals to two passages of the Great Code of Gortyn, containing the word *agora*, which he interprets as the citizens' Assembly, but these passages do not seem to support his view. The regulation on adoption states that adoptions, as well as eventual renouncements, should take place 'at the market place, in front of the assembled citizens'[35]. Therefore, there is no indication of a shift in the meaning of the word *agora* in the Code of Gortyn, where this word still designates the place where the people gathered, rather than the Assembly as a constitutional body.

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

[34] Willetts 1955, 108. *IC* IV 13 g-i: ἀFτὸς διπλῆι --- [λ]άφοι Faστίαν δίκαν [ἐν τᾶι ἀγ]ορᾶι.

[35] *IC* IV 72 x 34-35: ἀμπαίνεθαι δὲ κατ' ἀγορὰν καταFελμένον τôμ πολιατᾶν; cf. *IC* IV 72 xi 10-14.

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

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

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

The existence of a Council in the archaic and classical periods is epigraphically attested in some cities, although rarely. Apart from the term Βολὰ, which is the Cretan form for Βουλὴ[37], there is also the term πρεῖγυς (= πρέσβυς), which denotes the members of the Council, the Elders[38]. If the formula 'the Twenty of the *Polis*' in the archaic Drerian law designates the Council, this should be the earliest evidence about this organ from Crete. A *Boule* is first attested in a law from Axos, from the end of the sixth or the beginning of the fifth century, and later in a fifth-century treaty between Knossos and Tylisos, under the auspices of Argos. A πρεισγήια (= πρεσβεία) appears in sixth-century Rhitten. The term for 'Elders' (πρείγιστοι) seems to be proper of Gortyn and its dependencies; it is first attested in an unequal treaty between Gortyn and Rhitten from the beginning of the fifth century (*IC* IV 80 = *Nomima* I, 7), and a *πρείγιστος* appears in a Hellenistic treaty between Gortyn and the inhabitants of Kaudos (*IC* IV 184 = Chaniotis 1996 no 69).

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

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

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

served as *Kosmoi* had the right to be elected members of the *Boule*, and *Kosmoi* in their turn were not chosen from the whole body of citizens but only from among a few families[39]. Aristotle criticized Cretan Councils and his criticism focuses on two points: first, their privileges to a lifetime office for which they were not subject to any account are disproportional to their merits, and second, it is dangerous for the city to allow the Elders to administer the city's affairs at their will, and not according to written laws[40]. Certainly Aristotle did not ignore the existence of written law on Crete, but his intention was to stress that the Council was not subject to any account, such as the Athenian εὔθυνα, and also, apparently, that the administration of the city's affairs by the Council was not regulated by written laws.

Concerning the Council's responsibilities, in all surviving epigraphic attestations it has an active role in financial administration and its main attribution is to supervise the *Kosmoi* in their performance of certain duties prescribed by law, imposing fines on them in cases of contravention. An example of the Council's role in financial administration is provided by the law of Axos, where the Council is instructed to provide a sum of twelve staters for a festival[41]. Its authority to exact fines from the *Kosmoi* is illustrated in the treaty between Knossos and Tylisos, where the Council of each city is responsible for exacting a fine of ten staters from their respective *Kosmoi* if the latter did not carry out a clause of the decree concerning hospitality[42], and also in the treaty between Gortyn and Rhitten, where the *Kosmoi* who fail to exact fines from Gortynians who illegally took securities in the territory of Rhittenia, are themselves liable to the fines imposed by the Rhittenian Elders[43].

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

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

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

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

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

[43] *IC* IV 80 = *Nomima* I no 7, ll. 9-12: Αἰ δέ κα ν[ικ]αθῆι τῶν ἐνεκύρον, διπλεῖ καταστᾶσ/αι τάν ἀπλόον τιμάν ᾖαι ἐν τᾶι (ἐ)π' ὅραι ἔ[γρα]τται, πράδδεν δὲ τὸν Ῥιττένιον κόσμ/ον. Αἰ δέ κα μὲ πράδδοντι, τὸνς πρειγ[ίσ]τονς τούτονς πράδδοντας ἄπατον / ἔμεν. Cf. *IC* IV 184, ll. 11-13: ἀλῶν δὲ δι/δόντων χιλιάδας πέντε κατ' ἐνιαυτόν, παλλαμβανέτω δὲ ὁ / πρείγιστος καὶ οἱ ὦροι τὰς πέντε χιλιάδανς ἐς τᾶν ἀλᾶν.

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

In what concerns the procedure by which the Assembly ratified the statutes passed by the *Kosmoi*, the impression conveyed by the wording in the early documents is that of an archaic Assembly in which the citizens organized by *phylai* expressed their approval, and there can be little doubt that this was done by acclamation. This is consistent with Aristotle's parallel of Cretan Assemblies with the Spartan *apella*, which too decided by acclamation, not by vote. But this rule did not always apply, as we learn from an early fifth-century inscription from Gortyn, which decrees the installation of new inhabitants in the quarter of Latosion, in the vicinity of a sanctuary devoted to Leto[44]. The preamble of the decree (τάδ' ἔϜαδε τοῖς Γορτυνίοις πσαπίδονσι) demonstrates that the resolution of the Assembly took place by vote, although the emphasis put on the application of voting in this case implies that a different procedure also existed where vote was *not* applied. Could this mark a transition from the archaic Assembly towards a new type where each citizen was entitled to a personal and secret vote? Such a radical transition seems improbable, but it is true that the possibility of a voting procedure, which would have been unthinkable in earlier times, exists as a fact in the beginning of the fifth century. Was this the regular practice for Gortyn from that period on? This hardly seems to be the case. It was probably the precise nature of the specific decree that occasioned a voting procedure. The issue was extraordinary: a massive installation of new residents in the city was certainly not trivial, and its impact on the lives of the old inhabitants would have been significant. Under these special circumstances, it was crucial for the authorities that each citizen expresses his opinion and at the same time binds himself to that opinion. The fact that in this, and possibly in some other important circumstances, the Gortynian Assembly was entitled to vote, should not lead to the conclusion that every time the Assembly met to decide on a decree, this was accomplished by vote. Acclamation continued to be the usual implementation as this is suggested by other decrees, whereby the preamble makes no reference to voting.

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

[44] *IC* IV 78.

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

Some information about the number of citizens who attended the Assembly appears no earlier than the Hellenistic period in two decrees from Gortyn. A decree ordering the use of bronze money and the non-acceptance of silver obols, dated to the second half of the third century[45] is prefaced by the formula "Thus decided the *polis* by the vote of three hundred citizens present". The same number of voting citizens is reported by the treaty between Gortyn and Knossos under the auspices of king Ptolemy, dated to *ca* 168[46]. The fact that both decrees mention a round number of three hundred citizens has lead scholars to the justifiable assumption that this number corresponds to the quorum, i.e. to the minimum number of presences fixed by law for a resolution to be valid[47], not to the actual number of citizens present at these specific meetings of the assembly. A quorum of three hundred seems to be quite small for a city as important as Gortyn, but it is not inconceivable if we consider the aristocratic regime. This number lead Beattie (1975: 15-17) to the conclusion that it is not the normal Assembly but a μικρά ἐκκλησία like the one mentioned by Xenophon in reference to Sparta, which he believes to be identical to the organ called the πόλις. The positive information provided by these two decrees is that the Gortynian Assembly from the middle of the second century until 168 (at least) had a quorum of three hundred; but this is our sole evidence about the size of an Assembly in a Cretan city, as there is no information about the number of participants in the classical period or earlier.

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

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

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

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

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

formulae from other Greek cities, as it may include reference to the *Kosmoi* (or sometimes the *Archontes* instead), to the Assembly, and to the Council in various combinations. Another usual term for the Assembly is *koinon*[48], and the word *damos* also occurs in a few examples[49]. As we have seen, very often the decrees are labeled as decisions of the *Kosmoi* and the *Polis*[50], and it is interesting to note that whenever this formula appears, the *Polis* is always connected to the *Kosmoi* and it never appears jointly with the Council. In many other cases there is a more explicit formula containing mention of both the Council and the Assembly[51]. This is shown by the preamble to a third-century decree from Praisos: «God. Proposition of the *Kosmos*. The *Boule* and the *koinon* of the Praisians decided during an *ekklesia kyria*»[52]. The formula could originate from any Greek polis of the period: a magistrate or a simple citizen submits the proposal; the Council works out the draft of the law, and the Assembly decides by vote. In the decree from Praisos the proposal does not come from a simple citizen but from the magistrates, who were still the only board with this authority. The participation of the *Boule* in legislation suggests that it was responsible for preparing the draft of the law, and the final decision was made by the Assembly of citizens gathered in an *ekklesia kyria*. However, this was not the regular procedure, as shown from another decree from Praisos, which is introduced as the decision of the *Archontes* and the *Koinon* of the city, with no mention of the Council[53]. Although this formula recalls the Athenian model of the *ekklesia kyria*, which designated each month's principal assembly of the *demos*, in the Cretan context it is considered to denote merely a regular meeting of the Assembly[54]. Furthermore, as we noticed earlier, it is probably significant for our conclusions about the Cretan political concepts that the *Polis* may be juxtaposed to 'the other *damos*', as in the decree from Malla[55], where *polis* seems to denote the constitutional organ of the city whereas 'the other *damos*' refers to the rest of the inhabitants.

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

[49] *IC* II v 17: ὁ δᾶμος ὁ Ϝαυξίων *(*Axos, ca 204/3); *IC* II iii 4C: ἔδοξε τᾶι βωλᾶι καὶ τῶι δάμωι (Aptera, third-second century); cf. 4B.

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

[51] E.g. *IC* III iv 2: Ἔδοξε Ἰτανίων τᾶι βουλᾶι καὶ τᾶι ἐκκλησίαι; cf. *IC* III iv 3, 4, 7 (Itanos, third century).

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

[53] *IC* III vi 9: Ἔδοξε Ιπραισίων τοῖς ἄρχουσι καὶ τῶι κοινῶι, ἐκκλησίας κυρίας γενομένης.

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

[55] *IC* I xix 3 Aa, see n. 36 above.

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

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PROZESSRECHTLICHES AUS DEM HELLENISTISCHEN KRETA

Das meiste, was wir über das Prozeßrecht im hellenistischen Kreta wissen, hängt mit Rechtshilfe in Auseinandersetzungen zwischen Bürgern verschiedener Poleis und mit dem Kretischen Koinon und seinem Diagramma zusammen.[1] Aus den Zeugnissen über das Diagramma geht hervor, daß es eine Liste von Delikten, die für diese vorgesehenen Geldstrafen (τιμαί) sowie die Prinzipien für die Führung von Prozessen enthielt.[2] Unter Berücksichtigung dieser Zeugnisse erkannte Philippe Gauthier[3] zwei Kategorien von Prozeßverfahren, die während der Existenz des Kretischen Koinon angewandt wurden:

1) Prozesse zwischen Privatpersonen wurden nach den Bestimmungen des vom Koinon ausgearbeiteten Strafkodex (Diagramma) geführt. Weitere Details waren Gegenstand zwischenstaatlicher Abkommen.
2) Bei Prozessen zwischen Poleis (bzw. einer Privatperson und einer Polis) wurde die Sache erst einem Schlichter (Prodikos) vorgelegt. War seine Vermittlung ergebnislos, so befaßte sich dann ein Bundesgericht (Koinodikion) mit der Sache. Das Koinodikion bestand aus Richtern aus verschiedenen Poleis.

Die einzige aussagkräftige Quelle hierfür war bisher der Vertrag zwischen Hierapytna und Priansos (Chaniotis, Verträge [1996] Nr. 28 Z. 58-71):[4] Ὑπὲρ δὲ τῶν προγεγονότων παρ᾽ ἑκατέροις | ἀδικημάτων ἀφ᾽ ὧ̃ τὸ κοινοδίκιον ἀπέλιπε χρόνω, ποιη||[60]σάσθων τὰν διεξαγωγὰν οἱ σὺν Ἐνίπαντι καὶ Νέωνι κό[σ]|μοι ἐν ὧ̃ι κα κοινᾶι δόξηι δικαστηρίῳ ἀμφοτέραις ταῖς πόλεσι ἐπ᾽ αὐτῶν κοσμόντων καὶ τὸς ἐγγύος καταστασάν|των ὑπὲρ τούτων ἀφ᾽ ἃ̃ς κα ἀμέρας ἀ στάλα τεθῆι ἐμ

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1 Chaniotis 1996, 134-152 (mit der älteren Literatur).

2 Chaniotis 1996, 225-231 Nr. 18 Z. 36-38 (*I.Cret*. I.xvi.1; *Staatsverträge* III 569): τιμαῖς δὲ χρησιόμεθα ταῖς ἐς τô διαγράμματος τô τῶν Κρηταιέων ἃι ἑκάστων ἔγραπται; 245-255 Nr. 27 Z. 53f. (*I.Cret*. IV 174): κατὰ τὸ διάγραμμα τῶν Κ [ρηταιέων] ... [δι]αγράμματος ἐξ ἡμίνας; 255-264 Nr. 28 Z. 64f. (*I.Cret*. III.iii.4): ὑπὲρ δὲ τῶν ὕστερον ἐγγινομένων ἀδικημάτων προδίκωι μὲν χρήσθων καθὼς τὸ διάγραμμα ἔχει; 407-420 Nr. 69 B 19 (*SEG* XXIII 589): τιμα[ῖ]ς δὲ χρησι[όμεθα ταῖς ἐς τῶ διαγράμματος?].

3 Gauthier 1972, 316-325, insbes. 323-325.

4 Chaniotis 1996, 255-264 Nr. 28 Z. 58-71 (*I.Cret*. III.iii.4).

μη|νί. Ὑπὲρ δὲ τῶν ὕστερον ἐγγινομένων ἀδικημάτων προ||[65]δίκωι μὲν χρήσθων καθὼς τὸ διάγραμμα ἔχει· περὶ δὲ τῶ δικαστηρίω οἱ ἐπιστάμενοι κατ᾽ ἐνιαυτὸν παρ᾽ ἑκατέροις | κόσμοι πόλιν στανυέσθων ἅγ κα ἀμφοτέραις ταῖς πόλεσ[ι | δό]ξηι ἐξ ἧς τὸ ἐπικριτήριον τέλεται, καὶ ἐγγύος καθιστάν|των ἀφ᾽ ἧς κα ἀμέρας ἐπιστᾶντι ἐπὶ τὸ ἀρχεῖον ἐν διμήνωι, ||[70] καὶ διεξαγόντων ταῦτα ἐπ᾽ αὐτῶν κοσμόντων κατὰ τὸ | δοχθὲν κοινᾶι σύμβολον (“und was die Vergehen betrifft, die früher in den beiden Städten geschahen, seit der Zeit, in der das Koinodikion aufhörte, sollen die Kosmoi, die zusammen mit Enipas und Neon amtieren, diese Prozesse vor einem Gericht führen, welches beide Städte gemeinsam bestimmen, und zwar noch während ihrer Amtszeit; und sie sollen innerhalb eines Monats nach der Aufstellung der Stele die Bürgen für diese Prozesse benennen. Was aber die Vergehen betrifft, die später geschehen werden, sollen sie einen Prodikos einsetzen, wie das Diagramma bestimmt. Und was das Gericht betrifft, sollen die jedes Jahr in den beiden Städten geschäftsführenden Kosmoi eine Stadt bestimmen, die die beiden Städte gemeinsam wählen, von welcher das schiedsrichterliche Urteil gefällt wird, und sie sollen Bürgen innerhalb von zwei Monaten nach dem Tag benennen, an dem sie ihr Amt antreten; und sie sollen das (diese Prozesse) noch während ihrer Amtszeit nach den Bestimmungen des gemeinsam vereinbarten Abkommens führen. Und wenn die Kosmoi nicht so tun, wie es hier geschrieben steht, dann soll jeder von ihnen 50 Statere zahlen, und zwar die Kosmoi der Hierapytnier an die Stadt der Priansier bzw. die Kosmoi der Priansier an die Stadt der Hierapytnier”).

Da die maßgebliche Rolle bei der Führung der Prozesse bei den Kosmoi lag, vermutete Gauthier, daß es sich um Konflikte zwischen den beiden Gemeinden oder zwischen einem Bürger einer Polis und der fremden Gemeinde handelt. Wenn die Kosmoi ihrer Pflicht in bezug auf die Prozesse nicht nachkamen (Z. 71-74), zahlten sie eine Geldstrafe an die andere Stadt und nicht an den durch ihr Verhalten benachteiligten Bürger der fremden Stadt. Die Kosmoi setzten jedes Jahr Bürgen für die Prozesse ein (Z. 68f.); dies sei nur bei Auseinandersetzungen zwischen zwei Gemeinden sinnvoll. Hätte es sich um Delikte von Privatpersonen gehandelt, wäre eher das Wort ἐγκλήματα und nicht ἀδικήματα (Z. 59, 64) gebraucht worden. Der Ausdruck τὰ παρ᾽ ἑκατέροις ἀδικήματα (Z. 58f.) weise, so Gauthier, auf Vergehen der einen Stadt gegen die andere hin. Alles in allem gehe es hier um die Beilegung von Konflikten, die aus dem Isopolitieverhältnis hervorgegangen waren oder noch hervorgehen würden, z.B. Konflikte bei der Verteilung der Kriegsbeute.

Einige Argumente sind gegen eine derart strenge Trennung zwischen privaten Streitigkeiten und solchen zwischen Gemeinden (bzw. zwischen Bürger und fremder Gemeinde) vorgebracht worden.[5] Die Kosmoi waren in allen Bereichen des Rechts aktiv, auch bei Prozessen zwischen Privatpersonen. Die Worte ἀδίκημα/ἀδικεῖν

[5] Ausführlicher: Chaniotis 1996, 136-144.

kommen auch bei Konflikten zwischen Privatpersonen vor.[6] Παρὰ mit Dativ verweist auf den Ort, an dem das Vergehen stattfand, und nicht auf seinen Urheber; es ist also von Unrechtstaten in der jeweiligen Stadt (παρ' ἑκατέροις) die Rede, deren Urheber ja auch Privatpersonen sein können. Die Zahlung einer Geldstrafe an die Partnerstadt und nicht an eine Privatperson steht in keinem Zusammenhang mit dem Charakter der Delikte. In analoger Weise wird im Vertrag zwischen Lyttos und Malla angeordnet, daß, wenn die Kosmoi es versäumen, gepfändete Güter und Menschen zurückzuerstatten bzw. zu befreien, sie eine Geldstrafe an die Partnerstadt und nicht an das Opfer entrichten müssen.[7] Derartige Versäumnisse der Kosmoi wurden als Verletzungen des Vertrags verstanden, die der Partnerstadt (und nicht einem Individuum) schadeten. Ob die Vergehen – im modernen Sinn – privatrechtlicher Art waren oder nicht, spielte dabei keine Rolle. Ähnlich läßt sich auch die Einsetzung von Bürgen durch die Kosmoi verstehen. Sie vertraten nicht die Kontrahenten, sondern garantierten die Vertragspflichten ihrer Stadt und deren Beamten.[8]

Blieb die Beurteilung des Koinodikion umstritten, so war es zumindest klar, daß das Diagramma zwei Verfahren vorsah. Einen wichtigen Hinweis hierauf gibt der Beschluß des Kretischen Koinon über die Asylie von Anaphe.[9] Dort ist von einer δίκα ἀπρόδικος καὶ ἀπάρβολος (= ἀπαράβολος) ἐν κοινοδικίῳ die Rede, die vom Diagramma vorgesehen wurde (καὶ κ[υρία ἁ] πρᾶξις ἔστω κὰτ [τὸ διάγρ]αμμα). Es wird also zwischen Verfahren unterschieden: mit und ohne Einschaltung des Prodikos (ἀπρόδικος) – dementsprechend, mit und ohne Zahlung einer Prozeßkaution (παράβολον), die bei Verlust des Prozesses verfiel. Bei dem zweiten Verfahren (ohne Prodikos) wurde die Sache gleich vor einem Koinodikion entschieden. Dieses Verfahren eignete sich offenbar für eine rasche Abwicklung von Prozessen.

Was war aber das Koinodikion? Dieser Begriff kam bisher nur in zwei Inschriften vor:

1) Im vorhin zitierten Vertrag zwischen Hierapytna und Priansos (um 200) ist von einem Koinodikion die Rede, welches früher für Prozesse zwischen Bürgern der beiden Städte zuständig war und zu einem nicht bekannten Zeitpunkt aufgelöst wurde.

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[6] Z.B. Chaniotis 1996, 358-376 Nr. 61 Kopie A Z. 37f. (*I.Cret*. I.xvi.5): αἰ δέ τίς κά τινα ἀδικήσηι ἐν τα[ύταις ταῖς ὁδοῖς]; *I.Cret*. III.iii.3 C 10: αἰ δέ τίς κα ἀδικηθῆι Μάγνης ἐν Ἰαραπύτν[αι].

[7] Chaniotis 1996, 208-213 Nr. 11 Z. 14-16 (*I.Cret*. I.xvi.1; *Staatsverträge* III 569). Zu diesem Text s. den sehr überzeugenden Beitrag von Maffi 1999, 16f. (*SEG* XLVIII 1228).

[8] Chaniotis 1996, 139: "Die Kontrahenten konnten sehr wohl Privatpersonen sein. Es ist allerdings denkbar, daß beide Städte nicht so streng zwischen einem Verfahren auf die Klage von Privatpersonen gegen Bürger der Partnerstadt hin bzw. der einen Stadt gegen die andere oder einer Privatperson gegen die andere Stadt unterschieden".

[9] *I.Cret*. IV 197; Rigsby 1996, 359-361 Nr. 175.

2) Der soeben erwähnte Beschluß des Kretischen Koinon über die Asylie von Anaphe (Anm. 9) sieht für die Kreter, die dagegen verstießen, einen Prozeß vor dem Koinodikion gemäß den Anordnungen des Diagramma vor. Auch dieses Verfahren betrifft Klagen von Privatpersonen, den Opfern kretischer Seeräuber.

Mit dem Koinodikion wird auch eine Stelle bei Polybios in Verbindung gebracht, in der er im Zusammenhang mit der römischen Vermittlung des Jahres 184 von einem κοινοδίκαιον (mss.) oder κοινοδίκιον (edd.) auf Kreta spricht:[10] περὶ δὲ τῶν κατὰ κοινοδίκ<α>ιον συνεχώρησαν (sc. die römischen Vermittler) αὐτοῖς (sc. den Kydoniaten) βουλομένοις μὲν [αὐτοῖς] ἐξεῖναι μετέχειν, μὴ βουλομένοις δὲ καὶ τοῦτ' ἐξεῖναι, πάσης ἀπεχόμενοι τῆς ἄλλης Κρήτης.

Die meisten Forscher (u.a. auch Gauthier) sehen im Koinodikion ein Bundesgericht des Kretischen Koinon.[11] Sheila Ager deutete das Koinodikion als ein "gemeinsames Gericht", das Rechtsangelegenheiten zwischen Personen unterschiedlichen Bürgerrechts regelte,[12] bestehend aus Richtern von zwei (oder mehr) Städten. Möglicherweise spielt ein Beschluß der Knossier (spätes 3. oder frühes 2. Jh. v. Chr.) auf ein derartiges Gericht an.[13] Anlass des Beschlusses war die Vermittlung Magne-sias am Mäander in einer Auseinandersetzung zwischen den Bündnissen der Knossier und der Gortynier (s. unten). Die Knossier schlugen vor, daß "die Bundesgenossen der Gortynier und die Bundesgenossen der Knossier gemeinsam als Richter (κο[ινᾶι διαδι]κα[ζό]ντων) über diese Angelegenheit ein Urteil fällen". Sie wollten die Angelegenheit einem aus den Verbündeten der beiden führenden Städte zusam-mengesetzten Gericht überlassen, also eben einem κοινοδίκιον.

Eine neue Inschrift, die hier kurz präsentiert wird, bringt mehr Licht in diese Frage, wirft aber auch neue Probleme auf. Als neuen Fund kann man diese Inschrift wahrlich nicht bezeichnen. Sie ist bereits 1955 in Chersonesos auf Kreta gefunden worden, aber sie blieb unveröffentlicht aus Gründen, auf die hier nicht eingegangen werden kann.[14] Ein kurzer Bericht über ihren Inhalt wurde auf dem Epigraphik-Kongress in Rom 1997 präsentiert.[15]

Der Text ist auf beiden Seiten einer Marmor-Stele aufgezeichnet; der obere Teil der Stele ist abgebrochen; erhalten sind 31 Zeilen auf der Vorder- und 35 Zeilen auf

[10] Polyb. 22,15,4f.

[11] Gauthier 1972, 317, 323f. mit weiterer Literatur. Zusammenfassung der Forschung in Chaniotis 1996, 136-142.

[12] Ager 1994, 9-11; cf. Chaniotis 1996, 141-144.

[13] Chaniotis 1996, 143. S. auch unten.

[14] Chaniotis bat 1988 Prof. N. Platon um Genehmigung, diese Inschrift zu veröffentlichen; 1992 erwarb Kritzas die Publikationsrechte von Prof. S. Alexiou und bot anschließend Chaniotis an, die Inschrift gemeinsam zu veröffentlichen. Der Text mit ausführlichem Kommentar wird in einer gemeinsam verfaßten Monographie publiziert. Was hier präsentiert wird, ist Ergebnis gemeinsamer Arbeit von Kritzas und Chaniotis.

[15] Chaniotis 1999.

der Rückseite. Wieviel Text verloren gegangen ist, kann man nicht abschätzen.[16] Seite B setzt Seite A fort und enthält den Schluß des Vertrags. Der Text läßt sich als Vertrag zwischen Knossos, Gortyn und ihren jeweiligen Verbündeten erkennen und bestätigt die Vermutung, daß das Kretische Koinon (Κοινὸν τῶν Κρηταιέων) ein Bündnis war, und zwar ein Bündnis zwischen Knossos und seinen Verbündeten und Gortyn und seinen Verbündeten.[17] Es ist während eines Krieges abgeschlossen worden, den man mit absoluter Sicherheit mit dem Lyttischen Krieg (c. 221-219) identifizieren kann. Um 221 v. Chr. vereinten Knossos und Gortyn ihre Bündnisse zu einem großes Bündnis unter gemeinsamer Führung, das man *Koinon ton Kretaieon* nannte. Als sich Lyttos, die dritte große Stadt auf Kreta, weigerte, sich dem Bündnis anzuschließen, kam es zu Kriegshandlungen. Obwohl die Stadt Lyttos von den Knossiern während der Abwesenheit der Krieger erobert und zerstört wurde, gelang es den Lyttiern, das Bündnis der *Kretaieis* zu spalten. Es kam zum Abfall einiger Verbündeter, ein Bürgerkrieg brach in Gortyn aus, und der 'Eid von Dreros'[18] läßt die Angst vor einem Bürgerkrieg auch in dieser Stadt erkennen.

Der Vertrag befaßt sich mit dem Problem der αὐτόμολοι. Offenbar handelte es sich um ein Phänomen solcher Dimensionen, daß das Bündnis Maßnahmen ergreifen mußte. Die Identität der Automoloi läßt sich nicht bestimmen, denn dieser Begriff kann Überläufer, Deserteure und entlaufene Unfreie bezeichnen. Sklaven waren diese Automoloi wahrscheinlich nicht, aber es ist nicht eindeutig zu bestimmen, ob es sich um Bürger oder eine zu Militärdienst verpflichtete abhängige Bevölkerung handelt. Hier werden nur die prozeßrechtlichen Aspekte dieses wichtigen Dokumentes zusammengefaßt.

Den ersten sehr fragmentarischen Zeilen kann man sehr wenig entnehmen. Erwähnt werden Geldstrafen (A 1: ἀποτίνυμι), Kläger (A 4: δικαττέσθω; "er soll das Recht haben, zu klagen"),[19] Angeklagter (A 5: αἰτιαττομένω[ι]).[20] Möglicherweise gab diese Klausel jedem Bürger das Recht anzuklagen, auch wenn er selbst nicht betroffen war – von der Popularklage ist auch sonst in diesem Vertrag die Rede. Anschließend ist vielleicht von der An- oder Abwesenheit entweder der Richter oder der Kläger die Rede (A 3: z.B. [εἴ κα μὴ...] ἐνίωντι οἱ δι[κάζοντες] oder οἱ δι[καττόμενοι]; "wenn aber die Richter/die Kläger nicht anwesend

[16] Die erhaltene Höhe der Stele beträgt 64 cm, und die Höhe der bekannten zeitgenössischen Stelen mit kretischen Staatsverträgen schwankt beträchtlich (ca. 65-150 cm).

[17] Darauf können wir hier nicht eingehen; s. Chaniotis 1999, 287-300.

[18] *I.Cret*. I.ix.1; Chaniotis 1996, 198-201.

[19] Während δικάζω die Aufgabe von Richtern bezeichnet, bringt δικάζομαι das Recht, in der Regel eines Bürgers, zum Ausdruck, Anklage einzureichen (z.B. Chaniotis 1996, 255-264 Nr. 28 Z. 47-52: ἐξέστω τῶι βωλομένωι δικάξασθαι; 381-383 Nr. 63 Z. 11: [δι]κάδδεθθαι δὲ τὸν [βωλόμενον;]).

[20] Hier passiv gedacht, nicht Medium, wie in *Staatsverträge* II 216 Z. 15, wo αἰτιάομαι 'anklagen' bedeutet.

sind/kommen")[21] und von Männern, die etwas verstecken (A 6: κ[αὶ] τῶι κρύποντι = κρύπτοντι). Wahrscheinlich wurden Automoloi versteckt und jene angeklagt, die ihnen Versteck gewährten. Man kann aber nicht ausschließen, daß Beutegut oder die Verheimlichung einer rechtswidrigen Tat gemeint ist.[22]

Die nächsten Zeilen sprechen eindeutig von der Verurteilung eines Angeklagten durch die Mehrheit, wohl von Richtern, also von einem Prozeß (A 6-7: [εἴ κα oder ὅς κα κ]ατακριθῆι ὑπὸ τῶν π λιόν̣[ων]; "wenn er/wer aber von der Mehrheit verurteilt wird"). Aber um welches Gericht handelt es sich? Der Vertrag erwähnt verschiedene Gerichte (B 28: städtische Gerichte; B 31: das Koinodikion, A 18: das Gericht der Ereutai), und so kann diese Frage nicht mit Sicherheit beantwortet werden. Die Geldstrafe wird nicht nach der rechtswidrigen Tat bestimmt, sondern nach der Zahl von Gegenständen oder Personen: "Der Verurteilte soll für jeden --- eine Geldstrafe zahlen" (A 8: ἀποτεισάτω ὑπὲρ ἑκά[στ-]). Es sind wohl die Gegenstände oder Personen, die vorher als versteckt erwähnt waren. Da sich der gesamte Vertrag mit Automoloi befaßt, wäre vielleicht zu ergänzen: ἀποτεισάτω ὑπὲρ ἑκά[στου τῶν αὐτομόλων]: "Er soll für jeden Automolos so viel an Strafgeld zahlen".

Das Verständnis der nächsten Klausel wird dadurch erschwert, daß das Verb nicht erhalten ist (A 9-12: [--- ca. 18 ---]ρηι ἀνφὶ τᾶς τριπλείας τῶι Δ̣Ι[--- ca. 17 --- σ]τατῆρας πεντήκοντα ὃς καὶ ΠΡΑ[--- ca. 19 ---]ΟΝ κα προσστάσεται, τρόπωι ᾧι κα λΙ[---]). Angesichts des Kontexts könnte man an die Verben οὑρίσκω = εὑρίσκω (also [οὗ]ρηι) oder ἀφαιρῶ (also [ἀφαι]ρῆι) denken. Beide Verben kommen im Vertrag vor, aber eine Ergänzung ist nicht möglich. Das Wort τριπλεία ('das Dreifache') begegnet hier zum ersten Mal in einem kretischen Vertrag, aber ἁπλόος und διπλόος werden in Staatsverträgen häufig verwendet, im Zusammenhang mit der Zahlung einer Geldstrafe oder eines sonst geschuldeten Betrags in einfacher oder doppelter Höhe.[23] Hier ist also die Rede von der Zahlung einer Summe in dreifacher Höhe.[24] Diese Summe ist von einem fixen Betrag von 50 Stateren zu trennen, der an einen anderen Empfänger zu zahlen war. Man muß also ergänzen: τῶι δι[κατ-τομένωι σ]τατῆρας πεντήκοντα, ὃς καὶ πρά̣[ξει] ... τρόπωι ᾧι κα λῆ̣[ι]: "Er soll dies in dreifacher Höhe entrichten, an den Kläger (?) aber 50 Statere, die er eintrei-

[21] Für die Bestrafung von Richtern, falls sie ihrer Pflicht nicht nachgingen, s. z.B. *I.Cret*. IV 42 = Koerner, *Gesetzestexte*, Nr. 129 B 8-9: αἴ κα μὴ λῆι δικάκσαι· vgl. *SEG* XXIX 1130 bis B 10-24.

[22] Κρύπτω wird in diesem Sinne im Eid von Chersonesos in Tauris gebraucht (*IOSPE* I² 401 Z. 33-35: οὐδὲ τῶι ἐπιβουλεύο[ντι] | ἐπιτρεψῶ οὐδὲ συγκρυψῶ οὐθὲν [οὐθε]ινί, ἀλλ' εἰσαγγελ[ῶ]).

[23] Chaniotis 1996, 135 mit Anm. 835.

[24] Vgl. *Staatsverträge* II 216 Z. 9-10: διπλεῖ καταστᾶσαι τὰν ἁπλόον τιμάν; Welles 1934, Nr. 3: ἂν δὲ εἰς δίκην ἐλθόντες ὀφείλωσι, τριπλάσιον; Edgar 1931, Nr. 71.7: εἰσπράξαντα τριπλῆν τὴν πρᾶξιν; Grenfell 1896, Nr. 19.14: τριπλοῦν ἀποτινέτω; *I.Cret*. IV 41 col. IV 2: τετραπλεῖ; *I.Cret*. I.xvi.5 Z. 38: ἀ̣ποτεισάτω ἑξαπ[λόα τὰ π]ρόστ̣ιμα δίκαι νικαθές.

ben kann, in welcher Art auch immer er es will". Das Verb προσστάσεται bereitet Probleme. Die Buchstaben -ON gehören wohl zur Endung eines Substantivs, das von einem Relativpronomen abhängt (ὅν --ον κα προσστάσεται = ὅς κα προσστάσεται, z.B. [ὃν χρόν]ον κα προσστάσεται). Das Verb προστάσσεσθαι bedeutet auf jeden Fall, daß irgendeine Behörde oder ein Rechtstext die Modalitäten der Eintreibung dieser Geldstrafe regelte.

Mit der nächsten Klausel erreichen wir endlich den Teil des Textes, in dem die Sache etwas deutlicher wird: A 12-14: [εἰ/ὃς/ὅ,τι δέ κα οὐ]ρίσκηται oder [μὴ οὐ]ρίσκηται κατὰ μὲν τὸν πόλεμον ΕΓΔ̣[---]λα αὐτομολικά, καθ' ἰρήναν δὲ ἐπὶ τῶι Π/[---] ("wer/was gefunden oder nicht gefunden wird, wenn dies während dieses Krieges geschieht, dann ---; wenn es aber im Frieden geschieht, dann ---").[25] Was man findet oder nicht findet, ist nicht klar. Klar ist auf jeden Fall, daß der Text eine Unterscheidung macht, nicht generell zwischen Kriegszustand und Frieden, sondern zwischen diesem konkreten Krieg (κατὰ μὲν τὸν πόλεμον) und dem Friedenszustand. Während dieses Krieges wurde ein anderes Verfahren angewandt als im Frieden. Leider ist keins von beiden Verfahren erhalten. Es ist verlockend, im ersten Fall an Repressalien zu denken, aber eine Formulierung wie ἐγδ[ιδόντων σῦ]λα αὐτομολικά ist nicht belegt. Was im Frieden geschah, wird mit den Worten καθ' ἰρήναν δὲ ἐπὶ τῶι Π/[---] eingeleitet. Ἐπὶ mit Dativ ist in kretischen Verträgen im Zusammenhang mit dem Einreichen einer Klage an eine Behörde gut belegt.[26] So ist die Ergänzung καθ' ἰρήναν δὲ ἐπὶ τῶι πλ̣[ήθει] sehr plausibel. Für ein nicht näher zu bestimmendes Vergehen (vielleicht Raub) wird im Krieg vielleicht Selbstjustiz ausgeübt, im Frieden dagegen wird die Sache vor das πλῆθος, d.h. vor die Versammlung der Bundesgenossen gebracht. Πλῆθος kommt im Sinne von Bundesversammlung im Vertrag zwischen Argos, Knossos und Tylisos (um 450 v. Chr.) vor.[27] Wenn in dieser Versammlung die Tylisier den dritten Teil der Stimmen haben sollten (B 4-6), so heißt dies, daß die Bundesversammlung aus Repräsentanten und nicht aus allen Bürgern der drei Bundesgenossen bestand.[28] Ob das gleiche Prinzip auch in der Versammlung des Kretischen Koinon galt, ist nicht bekannt, aber plausibel. Daß die Bundesversammlung des Kretischen Koinon als Gericht fungierte, geht indirekt aus dem vorhin bereits erwähnten Beschluß von Knossos über eine Vermittlung von Magnesia am Mäander hervor:[29] Κνώσιοι δὲ οὐχ ἑκόντες | ἀλ[λ' ὑπὲρ ἀσφα]λε[ία]ς (?) πολεμοῦντι Γορτυνίοις καὶ | νῦ<ν>

[25] Zu erwägen ist die Ergänzung eines anderen Verbs (z.B. eine Form von ἐγδέχομαι).

[26] Chaniotis 1996, 394-399 Nr. 66 Z. 14-16: εἴ τίς κ' ἀδικῆται ὑ[πό] Τ[--- κό]ρμων, ἐπὶ τοῖς κόρμοι[ς --- ἐπὶ τοῖς κόρμοις τ]οῖς ἐφισταμένοις εἰσεί̣[τω]; 407-420 Nr. 69 C: [α]ἰ δέ κα μὴ ἐσκαλέσωνται Ι[---- ἐν] δὲ Γόρτυνι ἐπὶ τοῖς ἑκατὸν Χ[---].

[27] *Staatsverträge* II 147 A 6-B 6.

[28] *Staatsverträge* II 147 A 6-B 6.

[29] *I.Cret*. I.viii.9; Ager 1996, 350-355 Nr. 127 II; Chaniotis 1996, 281-285 Nr. 40 Testimonium b Z. 16-21; Magnetto 1997, 262-271 no. 43. Die sehr komplizierte Frage der Datierung um 218 (Magnetto 1997, 267-269), 184 (Chaniotis 1996, 283-285) oder 167 v. Chr. (Ager 1996, 354f.) kann nicht hier besprochen werden.

[βωλ]όμεν[οι κ]ạὶ εἰρήναν ἄγειν ποτ' αὐτούς. | Διὰ [ταῦτα? Γορτυνίων οἱ] σύμμαχοι καὶ Κνωσίων̣ ||[20] κο[ινᾶι διαδι]κα[ζό]ντων ὧν ἕνεκα ἀναγκαζόμε||[νοι πολεμέομεν Γορτ]υνίοις. Οὕτω γὰρ ὑπολαμβάνο||[μεν ἁμῖν τάχιστ'] ἂν γενέσθαι τὰν διάλυσιν ("die Knossier aber führen einen Krieg gegen die Gortynier wider ihren Willen, sondern [um ihrer Sicherheit willen?]; und jetzt wollen sie Frieden mit ihnen haben. Aus diesem Grund (?) sollen die Bundesgenossen [der Gortynier] und der Knossier gemeinsam als Richter über die Angelegenheit entscheiden, für die wir gezwungen waren, [gegen die Gortynier einen Krieg zu führen]. Denn wir glauben, daß auf diese Art und Weise [am schnellsten] die Befriedung zustande kommen wird"). Der Vorschlag der Knossier, die Bundesgenossen (d.h. wohl die Versammlung der Delegierten des Koinon) mit der Beurteilung der Sache zu beauftragen, zeigt, daß die Versammlung des Koinon zumindest gelegentlich gerichtliche Funktionen ausübte. Das Koinodikion war möglicherweise nichts anderes (s.u.).

Die nächste Klausel (A 14-17) läßt sich fast vollständig verstehen: [... ὅ]ς (oder [οὗ]ς) κα ἀφέληται, νικέσθω τὰς ἠγραμμένας .[-- ca. 8 -- δι]αγράνματι τᾶς ἀφαιλέσιος διπλόος ΕΠΙΔ [-- ca. 8 --]ΔΑΔΡΟΜΑΙΩΙ κατὰ τὸ διάγρανμα . Die Rede ist von der Straftat der ἀφαίλεσις (= ἀφαίρεσις), von der Verurteilung (νικέσθω) in einem Prozeß,[30] von Zahlung des Duplum (διπλόος) und von einem Diagramma, das das Rechtsverfahren regelte. Nach dem Partizip τὰς ἠγραμμένας kann man mit ziemlicher Sicherheit τιμάς ergänzen, von dem auch der Genitiv τᾶς ἀφαιρέσεως abhängt. Da die Partikel δέ zu Beginn aller Klauseln dieses Vertrags steht (als zweites Wort), muß man annehmem, daß die Klausel im verlorenen Teil der Inschrift begann, etwa [Substantiv mit δέ ὅ]ς/οὗ]ς) κα ἀφέληται, νικέσθω τὰς ἠγραμμένας τ̣[ιμὰς ἐν τῶι δι]αγράνματι τᾶς ἀφαιλέσιος, διπλόος. Ἀφαίλεσις (Wegnahme) kann entweder die Wegnahme eines Gegenstandes (Raub) oder aber die Befreiung eines Gefangenen bedeuten.[31] Die Höhe der Geldstrafe wurde vom bereits erwähnten Diagramma des Kretischen Koinon bestimmt. Den Zeugnissen über das Diagramma (s.o.) entnimmt man, daß es unter anderem eine Liste von Delikten und die dafür vorgesehene Strafe enthielt. Wenn das Delikt der ἀφαίλεσις unter bestimmten Bedingungen oder von einer bestimmten Kategorie von Personen begangen wurde, verdoppelte sich die vom Diagramma vorgesehe Strafe. Etwa: "Wenn aber NN etwas ergreift (oder für das, was NN ergreift), dann soll er verurteilt werden zur Zahlung der im Diagramma aufgeschriebenen Geldstrafe für das Delikt der ἀφαίλεσις in doppelter Höhe". Wer der Straftäter war, läßt sich nicht sagen, aber eine Parallele für härtere Strafen unter besonderen Bedingungen bieten etwa die Verträge der Olountier mit Lyttos und Lato ("wenn jemand auf diesen Wegen

[30] Vgl. den Ausdruck δίκαι νικαθε[ίς] z.B. in Chaniotis 1996, 352-358 Nr. 60 B 8.

[31] Z.B. *I.Cret*. II.iii.1 Z. 8-10: [ἐ]ὰν δέ τινες ⟨κ⟩' ἄγωντι Τηΐ̣ως ἢ τὸς κατ[ο]ικόντας π[αρ'] αὐτοῖς οἱ κόσμοι καὶ ἄ⟨λ⟩λος ὁ βουλόμενος Ἀπτεραίων [ἢ Τη]ΐ̣ων ἀφελόμενοι καὶ ἀποδιδόντες [τοῖς ἀδικημέν]οις κύριοι ⟨ἔ⟩στων; *I.Cret*. II.x.2 Z. 24-26: εἴ̣ καί τινες ἄγωντι Τηΐ̣ος ἢ τὸς κατοικόντας παρ' αὐτοῖς, οἱ κόσμοι καὶ ἄλλος ὁ λῶν Κυδωνιατᾶν ἢ Τηΐ̣ων ἀφελόμενοι καὶ διδόντες τοῖς ἀδικημένοις κύριοι ἔστωσαν.

jemandem Unrecht tut, soll er die vorgesehene Geldstrafe in sechsfacher Höhe zahlen, wenn er den Prozeß verliert").[32]

Es ist nicht klar, ob die mit ΕΠΙΔ--- beginnende Phrase zur gleichen Klausel gehört. Dann erkennt man das Adjektiv δρομαῖος im Dativ, wahrscheinlich Teil eines Kompositums.[33] Das Verb μεταθέω ist in der Bedeutung 'verfolgen' belegt. Das Verwandte μεταπορεύομαι (Übersetzung des lateinischen *petere*) ist im neuen Vertrag zwischen Lykien und Rom belegt.[34] Von μεταθέω leiten sich verschiedene Worte mit analoger Bedeutung ab: μεταδρομή ('Verfolgung'), μεταδρομάδην ('verfolgend'), μετάδρομος ('Verfolger, Bestrafer'). Im kretischen Dialekt hat die Präposition μετά die Form πεδά. So kann man an das unbelegte Wort πεδαδρομαῖος = μεταδρομαῖος denken (gebildet von πεδαδρομή = μεταδρομή, ähnlich wie ἀγοραῖος von ἀγορά, κηπαῖος von κῆπος usw.). Wir erwägen die Möglichkeit, daß hier von der Prämie des Verfolgers, einer Art Delatorenprämie, die Rede ist (z.B. ἐπιδ[έκατον δὲ τῶι πε]δαδρομαίωι).

Erst die nächste Klausel ist endlich vollständig zu ergänzen (A 17-20): ὧν δέ κα κα[τακρίνωντι] | οἱ ἐρευταὶ καὶ πρατόντων τούτος αὐτοὶ κατὰ τὸ [διάγρανμα] | καὶ ἐξαποσστελλόντων τὸ ἀργύριον ἐν ἀμέραις ἐ[ξήκοντα] ||[20] ἐς τὰν πόλιν ἐξ ἃς κ' ἦι ὁ αὐτόμολος, περὶ ὧ κα ἀ δίκα ᾖ[ι] ("wenn die Ereutai jemanden zu einer Geldstrafe verurteilen, sollen sie selbst die Geldstrafe von den Verurteilten eintreiben gemäß dem Diagramma und sie sollen das Geld an die Stadt schicken, von der der Automolos kommt, über welchen der Prozeß stattgefunden hat, innerhalb von 60 (?) Tagen").

Die Ergänzung von κα[τακρίνωντι] ist sicher. Der Genitiv ὧν bezeichnet nicht den Verurteilten (κατακρίνω verlangt ein Akkusativ-Objekt), sondern die Strafe.[35] Die Ereutai ('jene, die untersuchen')[36] sind als Beamte in mehreren Städten (Dreros, Knossos, Hierapytna) bekannt, und zwar im Zusammenhang mit der Eintreibung

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[32] Chaniotis 1996, 352-358 Nr. 60 B 7-8 (*I.Cret*. I.xviii.9): αἰ δέ τίς κά τ[ινα ἀδικήσηι ἐν ταύταις ταῖς ὁδοῖς, ἀποτεισάτω ἐξαπλόα τὰ πρόσ]τιμα δίκαι νικαθε[ίς]; 358-376 Nr. 61 Kopie A 37f. (*I.Cret*. I.xvi.5): αἰ δέ τίς κά τινα ἀδικήσηι ἐν τα[ύταις ταῖς ὁδοῖς], ἀποτεισάτω ἐξαπ[λόα τὰ π]ρόστιμα δίκαι νικαθές.

[33] Die Begriffe δρομεὺς und ἀπόδρομος bezeichnen in Kreta die jungen Männer bzw. die Epheben (Tzifopoulos 1998), aber diese Begriffe können hier nicht gemeint sein. Auch der Monat Δρομήιος (*I.Cret*. III.iii.4 Z. 5) ist unwahrscheinlich, denn auf Kreta werden Monatsnamen immer mit dem Zusatz μής angegeben (μηνὶ Δρομηίωι oder Δρομηίωι μηνί). Auch ein Personenname oder der Name eines Gottes kann ausgeschlossen werden. Aus diesem Grund denken wir an ein Kompositum.

[34] *SEG* LV 1452 Z. 38-41 (Mitchell 2005): ἐὰν δὲ Λύκ⟨ι⟩ος παρὰ Ῥωμ⟨α⟩ίου μεταπορεύηται, ὃς ⟨ἂ⟩ν ἄρχων ἢ ⟨ἀ⟩ντάρχων τυγχάνῃ δικαιοδοτῶν πρὸς ὃν ⟨ἂ⟩ν αὐτῶν προσέλθωσιν οἱ ἀμφισβητοῦντες, οὗτος αὐτοῖς δικαιοδοτείτωι κ⟨ρ⟩ιτήριον συνιστανέτω.

[35] Vgl. *IPArk* 8: κατακριθήη τῶν χρημάτων.

[36] Von ἐρεύω/ἐρέϝω = ἐρευνάω/ἐρευνίω; Singular: ὁ ἐρευτάς. Z.B. Chaniotis 1996, 358-376 Nr. 61 Kopie A 35 (*I.Cret*. I.xvi.5): οἱ ἑκατερῆ ἐρευνίοντες; vgl. Hesychios, s.v. ἔρευε· ἐρεύνα und s.v. ἐρεύσομεν· ζητήσομεν.

von Geldstrafen, vor allem von Beamten, die ihren Pflichten nicht nachgehen.[37] Im neuen Text sind sie das Subjekt von κα[τακρίνωντι]. Sie hatten demnach auch richterliche Funktionen, die offenbar im Diagramma definiert wurden.

Aus dieser Klausel geht hervor, daß die Polis, in welcher der Prozeß über einen Automolos stattfand – also wo er sich befand –, und die Polis, aus der er stammte, zum gleichen Bündnis gehörten. Das Strafgeld wurde von der Stadt, wo der Prozeß stattgefunden hatte, an die Stadt des Automolos geschickt; da man während des Krieges kein Geld an eine feindliche Polis schicken würde, waren die Automoloi keine Überläufer aus einem feindlichen Lager, sondern Überläufer von einer Stadt des Bündnisses in eine andere. Wären sie Überläufer zum feindlichen Lager – also Verräter aus der Perspektive ihrer Polis –, dann würde der Vertrag vom Prozeß *gegen* sie in *ihrer* Stadt reden, nicht vom Prozeß *über* sie in einer anderen Stadt des Bündnisses.

Die Formulierung ὁ αὐτόμολος, περὶ ὦ κα ἁ δίκα ᾖ̣[ι] ("der Automolos, über welchen der Prozeß stattfand") impliziert, daß der Automolos nicht der verurteilte Angeklagte, sondern der Anlaß des Prozesses war. Wäre der Automolos der Verurteilte, dann hätte der Vertrag statt dieser komplizierten Formulierung einfach den Satz verwendet ἐξαποσστελλόντων τὸ ἀργύριον ἐς τὰν πόλιν ἐξ ἅς κ' ἦι ὁ κατακριθείς ("sie sollen das (Straf)geld an die Stadt des Verurteilten schicken"). Der Vertrag scheint aber eine Unterscheidung zwischen dem Automolos und dem Verurteilten (κατακριθείς) zu machen, wie aus der nächsten Klausel deutlich wird. Wer wurde also wegen eines Automolos angeklagt? An einer fragmentarischen Stelle (s.o.) erkennt man das Verb κρύπτω ('verstecken'), möglicherweise eben im Zusammenhang mit dem Verstecken von Automoloi. Das scheint nun der Gegenstand des Prozesses zu sein, ohne daß letztlich absolute Sicherheit in dieser Sache möglich ist.

Die Identität der Automoloi ist das größte historische Problem der Inschrift. Da dieses Problem für die hier zu besprechenden prozeßrechtlichen Bestimmungen von geringer Relevanz ist, wird es nur kurz angesprochen. Unsere Behandlung dieser Sache ist noch nicht abgeschlossen und folgende kurze Überlegungen haben provisorischen Charakter. In den literarischen und dokumentarischen Quellen bezeichnet der Begriff αὐτόμολος Personen jeden Status (Bürger, abhängige Bevölkerung, Sklaven), die während eines Krieges ins Lager des Feindes überliefen.[38] Wir haben bereits gesehen, daß in diesem Vertrag das Wort αὐτόμολος zwar Überläufer, aber nicht Überläufer ins feindliche Lager bedeuten kann. Die Polis, in der sich Überläufer befanden, verpflichtete sich, Prozesse über sie zu führen – vermutlich gegen jene, die sie versteckten – und dann die Geldstrafe an die Polis, aus der die Automoloi entflohen waren, zu übergeben. Wie bereits ausgeführt, kann der Empfänger des

[37] *I.Cret.* I.ix.1 C 132, D 128; *I.Cret.* I.viii.13 = Chaniotis 1996, 310-315 Nr. 50 Z. 18.

[38] Z.B. Bürger: *Staatsverträge* II 134; Söldner: Polyb. 10.46.4-5. Sklaven: Garlan 1974, 36 und 38 Anm. 4.

Strafgeldes nicht der Feind gewesen sein. Dies wäre vielleicht in einem Friedensvertrag denkbar, dieser Vertrag ist dagegen während eines Krieges abgeschlossen worden. Warum verwendet man dann das Wort αὐτόμολος für Überläufer von einer Stadt des Bündnisses in eine andere? Es gibt nur einer Erklärung: weil das Bündnis selbst gespalten war und sich in einem bürgerkriegsähnlichen Zustand befand. Dies ist in der Tat, was während des Lyttischen Krieges geschah.[39]

Diese Automoloi waren entweder flüchtige Angehörige der abhängigen Bevölkerung,[40] die in Kreta unter bestimmten Bedingungen militärische Verpflichtungen wahrnahm,[41] oder Bürger, die während der internen Auseinandersetzungen Zuflucht bei Freunden oder Gleichgesinnten in anderen Städten suchten. Wenn die Automoloi Mitglieder der abhängigen Gemeinden waren, also flüchtige Personen minderen Rechtes, würde man besser verstehen, warum die Stadt, aus der sie entflohen waren, als beschädigt betrachtet wurde und die Geldstrafe erhielt. Dies würde auch erklären, warum die Automoloi selbst weder angeklagt noch verurteilt wurden; *über* sie fand ein Prozeß statt, nicht *gegen* sie. Gegen diese Deutung spricht aber das Fehlen von Bestimmungen über die Rückgabe dieser flüchtigen Personen an die Stadt, aus der sie entflohen waren, sowie der Umstand, daß der Vertrag von αὐτόμολοι spricht, nicht von φυγάδες oder φυγαδικά. Die Sache bedarf noch einer eingehenden Untersuchung.

Wenn die Ereutai keine Möglichkeit hatten, vom Verurteilten das Strafgeld einzutreiben, dann haben sie das Recht, ihn zu verhaften und an die andere Stadt auszuliefern (A 21-22: Εἰ δέ κα μὴ οὑρίσκωντι χρήματα ὅπω πράξοντι αὐτὸ̣ν [ἑλό]ντες ἐσδόντων τὸν κατακριθέντα).

Die folgenden Bestimmungen verraten die Sorge um den Vollzug der Strafe. Das war offenbar das größte Problem dieser Zeit: In den chaotischen Zuständen des Krieges und der internen Auseinandersetzungen griffen einige Magistrate in den Städten des Bündnisses nicht entscheidend genug ein, und das Phänomen der Automoloi wurde toleriert: "Wenn sie aber nicht in der Lage sind, ihn zu verhaften, dann soll die Polis das Strafgeld entrichten und die Kosmoi sollen das Geld aus den öffentlichen Einnahmen bezahlen, indem sie (für diese Handlung) frei von Strafe und Schuld sind und nach keinem städtischen Gesetz belangt werden können. Wenn auch die Kosmoi (das Geld) nicht entrichten, dann sollen sie das Doppelte schulden, und jeder der Ereutai oder der Privatpersonen, die es wollen, dürfen von jedem Kosmos seinen Anteil (am Strafgeld) eintreiben und die Geldstrafe an das Opfer der rechtswidrigen Tat geben, den zusätzlichen Betrag (das Duplum) aber selbst behalten" (A 22-30: εἰ δέ κα μηδ' αὐτὸν δ̣[ύν]ανται ἐλῆν, ἁ πόλις ἀποττινυόντων τὰν κατάδικον, οἱ δὲ̣ κόσμοι ἀποδιδόντων ἐς τᾶν πολιτικᾶν προσόδων ἀττάμιοι ἰόντεν καὶ ἀνυπόδικοι καὶ μηδενὶ ἔνοχοι πολιτικῶι νόμωι. εἰ δὲ οἱ κόσμοι μὴ

[39] Polyb. 4.54.6; *I.Cret*. I.ix.1; Chaniotis 1996, 14f. und 37.

[40] Dies ist von Prof. Andrew Lintott (Oxford) erwogen worden, mit dem Chaniotis den Inhalt des Textes besprochen hat.

[41] Chaniotis 1996, 167f.

ἐσαποδοῖεν, αὐτοὶ ὀφηλόντων τὸ διπλόον καὶ ὁ βωλόμενος τῶν ἐρευτᾶν καὶ τῶν ἰδιωτᾶν πρατέσσθω ἕκαστον τὸ κατὰ μέρος καὶ τὰν μὲν κατάδικον ἐξαποδιδότω τοῖς ἀδικιομένοις, τὸ δὲ ἐπίτιμον αὐτὸς ἐχέτω).

Wichtig ist hier vor allem die Bestimmung, daß diese Klausel des Vertrags über städtischen Gesetzen stand, ein weiteres Beispiel einer Normenhierarchie im griechischen Recht, von der Fritz Gschnitzer im Symposion vor 30 Jahren referiert hatte.[42] Die Delatorenprämie, die zum Schluß genannt wird, ist auf Kreta und auch sonst gut belegt.[43]

Nach einer Lücke unbekannter Länge setzt sich der Text auf der zweiten Seite fort. Auch hier sind die ersten Zeilen sehr fragmentarisch erhalten. Man erkennt Verweise auf das kretische Koinon (B 3: [δόγμ?]ασι τῶν Κρηταιέων), die Ereutai, das Wort [κατ]άδικος (hier feminin: ἁ κατάδικος = die durch den Prozeß bestimmte Geldstrafe) und einen weiteren Hinweis auf Handlungen oder Entscheidungen oder Urteile bezüglich der Automoloi (B 6: [ὑ]πὲρ τῶν αὐτομόλων; ὑπὲρ = περί im kretischen Dialekt).

Etwas deutlicher wird es ab der siebten Zeile. Der Vertrag wollte die Kläger zum Einreichen einer Klage in einer anderen Stadt des Kretischen Koinon ermutigen, indem er sie mit anderen Kategorien von beschützten Personen (Gesandten oder Festgesandten) gleichsetzte (B 8: ἀσφάλεια). Aus den Buchstabenresten kann man den Sinn ungefähr verstehen: “Für die Kläger soll unter den gleichen Bedingungen Sicherheit gelten, wie --” (B 7-9: etwa [ἔστ]ω δὲ καὶ τοῖς δικαττο[μένοις ἐν ἑκάσταν τᾶι πόλι ἁ αὐ]τὰ ἀσφάλεια καθ[άπερ καὶ πρειγευταῖς τοῖς παραγ]ινομένοις oder καθ[άπερ τοῖς ἐπὶ θεωρίαι παραγ]ινομένοις oder ähnliches).

Nach den Klauseln über die Leistung des Vertragseides in Knossos, Gortyn und in den Städten ihrer Verbündeten, die Verfluchung jener, die den Vertrag nicht einhalten sollten, und das jährliche Verlesen des Vertrags[44] finden wir die wichtigsten prozeßrechtlichen Bestimmungen des neuen Dokuments: “Wenn sie (die Kosmoi) aber den Vertrag nicht verlesen oder die Verfluchung nicht leisten, dann sollen sie selbst für die Götter (?) vom Fluch erfaßt werden (εἰ δὲ μὴ ἀναγνοῖεν τὰν συνθήκαν ἢ τὰν ἐπαρὰν μ[ὴ] θε[ῖεν] αὐτοὶ ἔνοχοι ἔντων τᾶι ἐπαρᾶι ὑπὲρ θιῶν). Und es soll Klage erhoben werden gegen jedes einzelne Mitglied des Kosmos (des Kosmenkollegiums) für den Betrag von 1000 kretischen Stateren[45] (δικαττέσθων δὲ ἐνὶ ἑκάστωι τῶ κόρμω κρητικῶ στατήρων χιλίων), und zwar während des Krieges (d.h. während dieses Krieges) von einem Bürger gegen einen Kosmos (oder gegen das Kosmenkollegium) (κατὰ μὲν τὸν πόλεμον πολίτας τῷ κόρμῳ) vor dem gleichen Gericht, in dem auch die anderen Bürger die rechtlichen Auseinandersetzungen bezüglich ihrer Verträge austragen (ἐπὶ δικαστηρίω ὧ κα κοὶ ἄλλοι πολῖται περὶ τῶν πορτ’ αὐσαυτὸς συνβολαίων διεξάγων[τι] τὸ δίκαιον); im Frieden aber soll

[42] Gschnitzer 1981.
[43] Chaniotis 1996, 147.
[44] Chaniotis 1999, 291-295 (*SEG* XLIX 1218).
[45] Statere nach dem kretischen Gewichtssystem.

jeder von den Kretaieis – von den Bürgern der Mitglieder des kretischen Koinon – Klage erheben, der es will (καθ' ἰρήναν δὲ ὁ ληίων τῶν Κρηταιέων), und zwar ein Bürger gegen einen Bürger und ein Fremder gegen einen Fremden (κ[αὶ] πο̣λίτα̣ς πολίτα̣ι καὶ ξῆνος ξήνωι) entweder vor dem Koinodikion (ἢ ἐν τῶι κοινοδικίῳ) oder gemäß den Rechtshilfeverträgen, welche die Poleis miteinander für die Rechtsprechung im einzelnen vereinbaren sollen (ἢ κατ' ἃ ἑ̣κ̣ά̣σ̣τ̣ωι αἱ πόλεες πορτ' ἀλλάλας περὶ τᾶς δικαιοδοσίας συνθίωνται σύνβολα)".

Diese Klausel betrifft Prozesse gegen die Beamten für Versäumnisse bezüglich der Leistung des Vertragseides und des Verlesens des Vertrags. Die enorme Geldstrafe (1000 Statere)[46] zeigt die Dimensionen des Problems und verrät die Angst, daß die interne Spaltung im Bündnis und in jeder Stadt des Bündnisses dazu führen könne, daß der Vertrag nicht ernst genommen würde. Wir können auch sicher sein, daß der Vertrag nicht befolgt wurde. Obwohl er in jeder Stadt aufgezeichnet werden sollte, ist nur eine einzige Kopie erhalten.

Während des Krieges und wohl aus praktischen Gründen hatten nur die Bürger einer Polis die Möglichkeit, Beamte ihrer eigenen Polis anzuklagen – und zwar (und das ist besonders wichtig) anscheinend noch amtierende Beamte. Zuständig waren die städtischen Gerichte.[47] Im Frieden erstreckte sich dieses Recht auf alle. Jeder Bürger eines Mitgliedes des Koinon konnte Kosmoi sowohl der eigenen Polis als auch einer fremden Polis anklagen. Im Frieden war für diese gewissermaßen "internationalen" Delikte das Koinodikion zuständig. Der neue Vertrag beantwortet also die Frage nach dem Charakter des Koinodikion. Es war mit Sicherheit ein Organ des Kretischen Koinon, eine Art von Bundesgericht, wie Philippe Gauthier angenommen hat. Wie es zusammengesetzt war, läßt sich nicht sagen. Die von Gauthier vermutete Unterscheidung zwischen Verfahren für private Auseinandersetzungen zwischen Bürgern verschiedener Poleis und Verfahren für Rechtsstreitigkeiten zwischen Poleis (oder einem Bürger und einer fremden Polis) existiert nicht. Für die gleiche Angelegenheit (hier ein Versäumnis der Kosmoi und Verletzung des Vertrags) waren sowohl das Koinodikion als auch die von Symbola vorgesehenen Gerichte zuständig, also Gerichte, die sich mit den Rechtsstreitigkeiten zwischen Privatpersonen aus unterschiedlichen Poleis befaßten. Das Koinodikion befaßte sich allgemein mit Delikten "internationalen" Charakters, gleichgültig, ob die Beteiligten Poleis oder Privatpersonen waren.

Leider wissen wir immer noch nichts über die Zusammensetzung des Koinodikion. Sicher war es ein gemischtes Gericht, vielleicht bestehend aus Beamten der verschiedenen Poleis. Der vorhin zitierte Beschluß von Knossos und die Erwähnung des πλῆθος als Gericht zu Friedenszeiten in diesem Vertrag (s.o.) legen aber nahe,

[46] Die Geldstrafen in den hellenistischen Verträgen Kretas schwanken zwischen 100 und 500 Stateren (Chaniotis 1996, 149), mit Ausnahme von Chaniotis 1996, 422-428 Nr. 71 = *I.Cret.* IV 165 (2000 Statere).

[47] Der Ausdruck διεξάγω τὸ δίκαιον ist für Kreta nur hier belegt. Vgl. aber διεξάγω δίκην (*I.Cret.* III.iii.4).

daß das Koinodikion nichts anderes war als die Versammlung der Delegierten des Kretischen Koinon in ihrer Funktion als Gericht.

Die knappe Übersicht über den Inhalt dieses Dokuments zeigt sowohl seine Bedeutung als auch die Interpretationsprobleme. Der neue Text beantwortet alte Fragen, bestätigt einige alte Vermutungen, erwähnt Altbekanntes (Duplum, Popularklage, Delatorenprämie), belegt neue Phänomene und wirft neue Fragen auf. Das *Koinon ton Kretaieon* war der Zusammenschluß des gortynischen und des knossischen Bündnisses. Solange es existierte, galt auf Kreta ein vom Bündnis erarbeitetes Prozeßverfahren, das im Diagramma festgehalten war, aber mit Verträgen und bilateralen Symbola zwischen den Poleis ergänzt wurde. Zum Diagramma des Koinon fügt der neue Text wenig hinzu, aber die Erwähnung des Deliktes der ἀφαίρεσις und der vorgesehenen Geldstrafe (A 14-17) bestätigt, daß das Diagramma eine Liste von Delikten und Geldstrafen enthielt. Wir wissen nun mit Sicherheit, daß das Koinon ein Bundesgericht hatte: das Koinodikion. Es funktionierte vor allen (oder nur) zu Friedenszeiten. Ob es mit der Versammlung der Delegierten des Koinon identisch war, ist eine attraktive Vermutung – mehr nicht.

Der neue Text beeindruckt vor allem durch die Vielfalt der prozeßrechtlichen Bestimmungen und das ausgearbeitete juristische Vokabular. Es werden verschiedene Gerichte erwähnt: ein Gericht, das nach dem Mehrheitsprinzip Urteile fällte (A 6-7: [εἴ κα oder ὅς κα κ]ατακριθῆι ὑπὸ τῶν πλιόν̣[ων]); städtische Gerichte für Auseinandersetzungen zwischen Bürgern (B 28-29: ἐπὶ δικαστηρίω ᾧ κα κοὶ ἄλλοι πολῖται περὶ τῶν πορτ' αὐσαυτὸς συνβολαίων διεξάγω̣ν̣[τι] τὸ δίκαιον); das Koinodikion (identisch mit dem Plethos?); das Gericht der Ereutai, zum ersten Mal hier belegt (A 17-18: ὧν δέ κα κα[τακρίνωντι] οἱ ἐρευταὶ); andere Gerichte, die aufgrund von bilateralen Symbola vereinbart wurden (B 31-32: κατ' ἃ ἑ̣κ̣ά̣σ̣τ̣ω̣ι̣ α̣ἱ̣ πόλεες πορτ' ἀλλάλας περὶ τᾶς δικαιοδοσίας συνθίωνται σύ̣ν̣β̣ο̣λ̣α̣).[48] Es wird (wohl aus praktischen Gründen) wiederholt zwischen dem während des Krieges und zu Friedenszeiten geltenden Verfahren unterschieden (A 12-14, B 27). Zum ersten Mal werden für Kreta Bestimmungen über die Sicherheit des Klägers bezeugt (B 7-9). Mit πεδαδρομαῖος (μεταδρομαῖος), falls diese Ergänzung korrekt ist, hätten wir einen neuen terminus technicus für den Verfolger im Kontext des kretischen Diagramma. Die Bestimmung, daß die Kosmoi Geldstrafen von Privatpersonen aus der öffentlichen Kasse bezahlen durften (A 22-26), ohne daß sie dafür aufgrund von städtischen Gesetzen belangt werden könnten, liefert ein weiteres Beispiel einer Normenhierarchie im griechischen Recht. Das archaische und klassische Kreta galt den Griechen als das Vorbild rechtlicher Ordnung; das hellenistische Kreta als der Ort der ständigen Kriege. Wiederholt versuchten die Kreter, mit bilateralen und multilateralen Abkommen Wege zur gerichtlichen Lösung der Konflikte zu finden. Sie versagten.

[48] Vgl. Chaniotis 1996, 255-264 Nr. 28 Z. 70-71: κατὰ τὸ δοχθὲν κοινᾶι σύμβολον.

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LEGAL PROCEDURE IN HELLENISTIC CRETE RESPONSE TO ANGELOS CHANIOTIS

International relations among Cretan *poleis* in the Hellenistic age are illuminated by a remarkably high number of epigraphical texts, mostly recording treaties but also decrees, which have been systematically studied and commented on in a fundamental book by Professor Chaniotis[1]. Together they reveal two parallel and, apparently, opposite phenomena, namely a striving for autonomy sometimes coupled with hegemonial ambitions on the part of the individual cities and, as a result, constant potential hostility among them, on the one hand, and, in a new historical context dominated by territorial monarchies and federal states, a tendency towards unity or, at least, towards the creation of large alliances, thus transcending political division, on the other. In respect to the latter phenomenon, treaties were obviously of capital importance as their aim was, among other things, to develop a set of commonly accepted legal instruments and procedures with a view to solving conflicts peacefully without resorting to war.

Both aforementioned phenomena feature prominently in the history of the Cretan *koinon*, the κοινὸν τῶν Κρηταιέων, probably founded before the mid-III century B.C.[2]. It was not, strictly speaking, a federal state but a looser confederation bringing together Knossos and Gortyn, the two leading Cretan powers, and their allies. Although there were no advanced federal institutions, the *koinon* had a *synedrion* and a general assembly (*IC* IV 197 = Rigsby 1996, nr. 175, ll. 1-2: [ἔδοξ]ε τοῖς συνεδρίοις καὶ τῶ[ι κοινῶ]ι τῶν Κρηταίεων) and had developed judicial procedures to solve «international» disputes legally by means of a κοινοδίκιον and a set of common rules, defined both in a number of treaties and in a *diagramma*, integrated by *symbola* concluded between individual communities.

In his enlightening paper, Professor Chaniotis has provided the first complete commentary on the contents of a still unpublished inscription, recording the fragmentary text of a treaty, found in Cretan Chersonesos[3] in 1955, which, as shown by the clauses concerning the ὅρκος to be sworn by the contracting parties upon ratification of the treaty itself and the ἀραί to be pronounced on the same occasion and thereafter annually[4] (B 11-24), clearly belongs to this context and significantly

[1] Chaniotis 1996; see also Capdeville 1997.
[2] Chaniotis 1996, pp. 29-38, 99-100; 1999, pp. 289-295.
[3] Perlman 2004, p. 1155.
[4] On ἀραί in the Hellenistic period see most recently Rubinstein 2007.

enriches our information on the character of the *koinon*. The stele is broken and its upper part, bearing probably a substantial section of the document, is now lost. In the preserved provisions, judicial procedure stands out as the area where the new document can to a larger extent contribute to enhancing our knowledge. Mention of ἀφαίρεσις in connection with fines and with the διάγραμμα (A 14-17)—the text is, however, partly restored—confirms that the latter consisted of a list of offences and corresponding fines (τιμαί), together with provisions concerning procedure for trials (δίκαι) and the exaction of fines, as indicated by the decree of the Cretan *koinon* granting ἀσυλία to Anaphe (*IC* IV 197 = Rigsby 1996, nr. 175, ll. 21-27: ὑπόδικος ἔστω [δίκαν].....[κ'ἐν κ]οινοδικίωι ἀπρ[όδικον κ' ἀπ]άρβαλον καὶ κ[υρία ά] πρᾶξις ἔστω κὰτ [τὸ διάγραμμα][5]. As the text refers to *the* κοινοδίκιον as opposed to *a* local *polis* δικαστήριον, the new inscription moreover conclusively demonstrates that, following Ph. Gauthier, the *koinodikion* was *the* federal court of the Cretan *koinon*[6], constituted either by representatives of the member states or, perhaps, as suggested by Professor Chaniotis, to be identified with the general assembly of the *koinon*, and not a mixed, joint tribunal formed by representatives of the disputing communities, as proposed by Sheila Ager[7]. Concerning the competence of the *koinodikion*, Professor Chaniotis argues, against Ph. Gauthier, that no clear-cut distinction between public and private charges can be made and that the federal court dealt with «international» disputes, no matter whether they were of a public or private character[8]. I shall return to this point later.

In the brief observations that follow I would like to focus on the substance of the treaty and the concrete problems the document was meant to address. Owing to the fragmentary character of the inscription, this aspect remains rather obscure, although some guesswork can be attempted on the basis of a number of technical and legal terms that need to be more closely examined. The first is αὐτόμολος, «deserter», «somebody who goes his own way» and changes sides, which perfectly suits the war conditions in response to which the treaty was drafted. *The* war that is several times mentioned in the text is almost certainly the «Lyttian War» (*c.* 222/1-219 B.C.) described by Polybius 4,53,4-8 and it is interesting to note that the historian not only refers to a state of war among *poleis* belonging to the κοινὸν τῶν Κρηταιέων (see also *I.Magnesia* 46, ll. 10-12: καὶ τὰν εὐε[ργ]εσίαν, ἃν [συ]νετελέσαντο εἰς τὸ κοινὸ[ν] τῶν Κρηταιέ[ων] δι[α]λύσαντες τὸν ἐμφύλιον πόλεμον) but also to *stasis* in Gortyn (cf. also *IC* I, 9, 1, ll. 49-70, suggesting similar conditions at Dreros). The term αὐτόμολοι does not occur frequently in the classical sources, although it can be inferred from Herodotus (1,127,3; 3,154,2 and 160,2; 6,38,2; 7,219,1; 8,26,1),

[5] On the question of the *diagramma* and the δίκη ἀπρόδικος see Vélissaropoulos 1975; Chaniotis 1996, pp. 137-141; Maffi 2006, pp. 304-314.

[6] Gauthier 1972, pp. 316-325.

[7] Ager 1994.

[8] Cf. also Chaniotis 1999, pp. 292-295.

Thucydides (1,142,4; 2,57,1; 3,77,2; 4,41,3 and 118,7; 5,2,3 and 14,3; 7,13,2, etc.)[9], Xenophon (*Anab*. 1,7,2 and 13; 2,1,5; *Hell*. 6,2,15; *Cyr*. 3,3,48; 6,1,25; 7,5,2), Polybius (1,19,7, 67,7 and 88,8; 4,57,8; 8,37,2; 18,1,13 and 44,6, etc.) and, e.g., Aeneas Tacticus (22,14; 23,1 and 5; 24,16; 28,2) that «deserters», whether freemen or slaves, were a typical feature of ancient conflicts. It mainly had a descriptive value and it seems doubtful that it was, technically speaking, a legal term. In the inscriptions it is attested even more rarely. In fifth-century Athenian epigraphy it appears in the decree concerning the Colophonians, where, in the oath of allegiance, the Colophonians had to commit themselves not to revolt from Athens as a community nor to desert as individuals (*IG* I^3 37, ll. 46-49: οὐκ ἀποστ[έσομαι τῶ δέμο τῶ Ἀθεναίον οὔτε λ]όγοι οὔτ ' ἔργ[οι…καὶ οὐκ αὐτομολ]έσο)[10]. An unpublished inscription from Argos contains a series of «official» lists of *automoloi* who had apparently joined the Macedonians at the end of the fourth century B.C. (*SEG* 37,280; 54,433)[11]. In the *senatus consultum de Thisbensibus* (170 B.C.) οἱ αὐτόμολοι who had joined and actively supported the Roman cause were granted permission to fortify the acropolis (but not the *polis*) and reside there (*SIG*^{3} 646 = Sherk 1969, nr. 2, ll. 27-30: ὡσαύτως περὶ ὧν οἱ αὐτοὶ λόγους ἐποιήσαντο, ὅπω[ς] οἱ αὐτόμολοι οἱ ἴδιοι ἐκεῖ φυγάδες ὄντες, τὴν ἄκραν αὐτοῖς ὅπως τειχίσαι ἐξῆι καὶ ἐκεῖ κατοικῶσιν οὗτοι, καθότι ἐνεφάνισαν, οὕτως ἔδοξεν· ὅπως ἐκεῖ κατοικῶσιν καὶ τοῦτο τειχίσωσιν. ἔδοξεν. τὴν πόλιν τειχίσαι οὐκ ἔδοξεν)[12]. Aeschines, to conclude this brief survey, praised written records as, metaphorically, they did not shift sides together with those who were αὐτόμολοι ἐν τῇ πολιτείᾳ (3,75: ἀκίνητον γάρ ἐστι, καὶ οὐ συμμεταπίπτει τοῖς αὐτομολοῦσι ἐν τῇ πολιτείᾳ).

Although, from the point of view of those they changed sides to, deserters were useful and, to a certain extent, welcome, among other things because of the information they might convey (an aspect several times underlined by the ancient sources)[13], from the point of view of those they deserted *automoloi* could only be regarded as traitors. One need only think of Lycurgus' speech *Against Leocrates* and the offences of λιποτάξιον, ἀστρατεία and, possibly, λιποστράτιον in Athenian law[14]. It must therefore be surmised that the treaty, which seems to have dealt

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[9] On Thuc. 7,13,2 see now Hornblower 2008, p. 564.

[10] For the date of the decree contrast now Rhodes 2008 (*c*. 447/6) and Papazarkadas 2009, esp. p. 70 (after 427). Cf. also *IG* I^3 58 (= Clinton 2005, nr. 31), l. 24.

[11] Piérart 1987, pp. 176-177 with n. 20; Piérart-Touchais 1996, pp. 63-64; Chaniotis 2004, p. 489. On the historical context cf. Landucci Gattinoni 2006, pp. 318-325, esp. 324 with n. 57.

[12] Gehrke 1993.

[13] Russell 1999, pp. 49-54.

[14] On γραφὴ ἀστρατείας and γραφὴ λιποταξίου in Athenian law see Harrison 1971, pp. 31-34; Hamel 1998; Hansen 2003; Christ 2006, pp. 59-65, 118-121; cf. also Whitehead 2008, with the *Response* by P.J. Rhodes, pp. 37-40. In case of conviction, the penalty in both legal actions was total atimia (And. 1,74; Aesch. 3,175-176; [Dem.] 59,27). On

specifically with the problem of *automoloi* (A 12-13, 20; B 6) and must have been part of a cooperative effort among the members of the κοινὸν τῶν Κρηταιέων, was first of all meant to enforce severe penalties (exile, atimia? and, as we shall see, in all likelihood confiscation of property) against those who deserted (this part of the document is, however, lost) and then, secondarily, *also* inflicted heavy fines to those who absconded them (*καὶ* τῶι κρύποντι) in other member states of the *koinon*. Whether the *automoloi* were citizens or individuals of dependent status with military obligations remains a moot-point. Professor Chaniotis is inclined to prefer the second option but I wonder whether, in this case, it would have been necessary to grant ἀσφάλεια, «personal security»[15], to prosecutors (B 2-10): all Cretan cities must have shared an interest to keep the dependent population subdued. It is therefore more likely that they were citizens involved in internal strife.

If my interpretation so far is correct, the subject of the following clauses (A 12-13: [οὐ]ρίσκηται; A 15-17: ἀφέληται) should be identified with the αὐτόμολος (and not with ὁ κρύπτων). The adjective αὐτομολικά is, as far as I can see, an *hapax*. I have consulted the *Reverse Index of Greek Nouns and Adjectives* (1945) and the most likely restoration of the preceding substantive is, as proposed by Professor Chaniotis, [σῦ]λα[16]. In the Attic orators σῦλα or σῦλαι is attested three times and is used in a legal sense with reference to the right of seizure exercised by members of a foreign community[17]. In Dem. 35,26: «In our own city, without ourselves having committed any wrong or having had a judgement rendered against us in their favour, we have been robbed of our own possessions by these men who are Phaselites, just as if rights of reprisal had been given to Phaselites against Athenians» (σεσυλήμεθα τὰ ἡμέτερ᾽αὐτῶν ὑπὸ τούτων Φασηλιτῶν ὄντων, ὥσπερ δεδομένων συλῶν Φασηλίταις κατ᾽ Ἀθηναίων), it is significantly associated with the verb δίδωμι (cf. also *Lex. Seg.*, p. 303 Bekker, s.v. σῦλα δοῦναι κατὰ τῆς Χαλκηδονέων πόλεως)[18], thus confirming Professor Chaniotis' restoration (ἐγδ[ιδόντων σῦ]λα αὐτομολικά). It can therefore be inferred that, in case the *automolos* absconded and could not be found, during the war the citizens of his own *polis* were given the legal right to seize his property (σῦλα αὐτομολικά) in the member state of the *koinon* where he had sought refuge, whereas in peace time it was first necessary to obtain a conviction in front of the πλῆθος (whatever this term alluded to). In the following provision the opposite situation seems to be envisaged:

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deserters as *anti-citizens* see Velho 2002. According to Chaniotis 1996, p. 18, citizenship in Cretan *poleis* was defined by «die kriegerische Ausbildung und die Teilnahme an den Syssitien…und die Herrschaft über eine abhängige Bevölkerung von verschiedenen rechtliche Stellungen (Kaufsklaven, Hörige, freie Nichtbürger)».

[15] On ἀσφάλεια, «la sécurité à la fois de la personne et des ses biens», Bravo 1980, pp. 749-750.

[16] [ὅπ]λα is admittedly another possibile restoration but it does not seem to fit into the context equally well.

[17] Bravo 1980, pp. 735-750; Pritchett 1991, pp. 121-122.

[18] Bravo 1980, p. 744, «accorder à quelqu'un le droit de saisie contre quelqu'un».

if the *automolos* could be found but «carried away for himself» (ὃς κα ἀφέληται) and hid his property, thus hindering confiscation, he was to be tried and sentenced to pay a fine double the amount set out in the *diagramma*. He was to be tried by the local ἐρευταί and the money of the fine, after exaction by the same magistrates, was to be sent to the wronged city. In case he was unable to pay the fine, the *ereutai* had to seize him and hand him over to the *polis* he had betrayed.

If these suggestions are correct, it appears that, most probably during the Lyttian War, the problem of deserters had become acute and threatened to undermine civic order in the *poleis* of the Cretan *koinon*. In this treaty the member states agreed on some common rules to solve such problem without damaging the interests of the communities deserted by the *automoloi*. They were to be treated as exiles and their property confiscated. Through a multi-tiered system of federal and local courts, special procedures were designed in case this proved to be impossible. The recipient of the confiscated property was in all cases the wronged *polis* and some forms of compensation and redress were envisaged if the magistrates of the *polis* where the deserters had fled did not fulfil their duties. In the light of this, because of the clearly public nature of the offences involved, the inscription Professor Chaniotis has presented cannot be used to support the assumption that the *koinodikion*, the federal court of the κοινὸν τῶν Κρηταιέων, had competence over *both* public and private charges. Although he has brought forward strong arguments to this effect, they must be based on other documents, namely the famous συνθήκα between Hierapytna and Priansos (*IC* III, 4, 4 = Chaniotis 1996, nr. 28 = Magnetto 1997, nr. 72, ll. 47-53 and 58-74) and the decree granting *asylia* to Anaphe (*IC* IV 197 = Rigsby 1996, nr. 175, ll. 17-27). My impression, considering that in the former treaty a σύμβολον clearly preceded the new agreement (ll. 70-71: κατὰ τὸ δοχθὲν κοινᾶι σύμβολον), is that, as maintained by Professor Chaniotis, in so far as they concerned the interests of the community as a whole these actions were always in principle regarded as public, no matter who the disputing parties were[19].

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[19] See also Magnetto 1997, p. 429-430.

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PRAXIS: THE ENFORCEMENT OF PENALTIES IN THE LATE CLASSICAL AND EARLY HELLENISTIC PERIODS

Recent scholarship especially on classical Athenian law has tended to focus predominantly on the trial itself and, to a lesser extent, on the pre-trial proceedings. The proceedings *after* the court-hearings, that is, the methods by which the courts' decisions were executed, have received less attention by comparison, not least when it comes to the aftermath of public legal actions that had resulted in the imposition of a financial penalty on the defendant. Here the focus has been far less on the process of *praxis* itself than on the other methods and procedures by which the Athenians attempted to make a convicted defendant pay his fine. As is well known, these included the imposition of *atimia* on the defendant until the debt had been paid and the doubling of the fine if he missed his deadline for payment. Likewise, considerable attention has been paid to the procedure of *apographe* as well as to the procedures through which *atimia* could be enforced against the debtor. Both the process of *apographe* and the actual enforcement of *atimia* depended to a large extent on the involvement of volunteers. It has often been emphasised that the volunteer prosecutor who had been successful in bringing about the conviction of the defendant might subsequently have played an active role also in the process of executing the verdict.

Unfortunately, the sources offer far less information on the active steps that may have been taken by Athens' *polis* officials in order to exact the fines. There is evidence for an Athenian board of *praktores*, and for the registration with them of the names of individuals who had incurred fines payable to the *polis*.[1] However, little is known about their other tasks, including any active, physical involvement that they may have had in the process of *praxis* itself. If indeed they were authorised to distrain upon the property of individual debtors, it is still not at all clear if and how responsibility for the exacting of fines was shared between them and the demarchs,[2] who also appear to have played an active part in this aspect of law-enforcement. As for sacred fines, [Dem.] 43.71 may suggest that, in some cases, the personnel responsible for *praxis* were the treasurers of the sanctuary for which the

[1] *e.g.* Dem. 25.28, [58].48.
[2] See Whitehead (1986: 125-127, 131-132).

fine was destined, and that they had some responsibility for exacting the fine.[3] But, again, it is not known to what extent or by what means they were permitted (let alone required) to compel the debtor to pay the money or to surrender part of his property for sale at a public auction.

The obscurity that surrounds the *active* involvement of Athens' officials in the execution of monetary penalties destined for the *polis*' treasuries, sacred as well as profane, has contributed to a widespread impression of Athenian law-enforcement as a rather haphazard, unpredictable process, which depended almost entirely on the initiative taken by volunteers rather than on the initiative of the *polis*' officials. This impression is to some extent supported by a considerable amount of evidence for individuals who had remained on the registers of public debtors for years (and some families allegedly for generations).[4] It is also, I think, one of several factors that have given rise to the labelling of not only Athens but of the Greek *poleis* generally as 'stateless societies'.[5] I do not intend to become involved in that debate at present, except for making two observations. The first is that the Athenian evidence for the role of its officials specifically in the process of *praxis* deserves to be reassessed in a separate study. The second is that, even if the outcome of such a study confirms that their role in the process of *praxis* was indeed a mostly passive one, it is hardly safe to use the Athenian example as a basis for general conclusions on the nature of law-enforcement in other *poleis* across the Greek world.

In what follows I shall discuss some of the very copious epigraphical evidence for the role of officials in the process of *praxis* in other Greek states in the late classical and early Hellenistic period. I shall limit the discussion primarily to their role in exacting fines payable to the public treasuries and to the sanctuaries, with only passing references to their involvement in assisting private individuals in the process of *praxis*. This means that I shall for the present purposes leave out the documentation for the involvement of officials in the enforcement of *asylia* grants. On the other hand, some evidence pertaining to the enforcement of penalty clauses in contracts drawn up between communities and individual contractors will be included in the discussion.

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[3] The law prescribes a penalty of 100 dr. per olive tree unlawfully uprooted, of which one tenth is payable to Athena: πρυτανεῖα δὲ τιθέτω ὁ διώκων τοῦ αὐτοῦ μέρους. ὅτου δ' ἂν καταγνωσθῇ, ἐγγραφόντων οἱ ἄρχοντες, πρὸς οὓς ἂν ᾖ ἡ δίκη, τοῖς πράκτορσιν, ὃ τῷ δημοσίῳ γίγνεται· <ὃ δὲ τῇ θεῷ γίγνεται>, τοῖς ταμίαις τῶν τῆς θεοῦ. ἐὰν δὲ μὴ ἐγγράφωσιν, αὐτοὶ ὀφειλόντων. If Reiske's addition to the text is accepted, it may be inferred that the sanctuary's ten per cent share of the fine imposed on the offender is to be registered with the *tamiai* of Athena and the other 90 per cent, which is destined for the public treasury, must be registered with the board of *praktores*. Contrast *Agora* 16: 56 (*SEG* 30: 61) A fr. a-b 34-36, which suggests that the *praktores* could sometimes be involved in the registration of sacred fines.

[4] See *e.g.* Hunter (2000).

[5] For two succinct overviews see Faraguna (2000), Gianguilio (2004). See also Harris (2007: 159-160).

When an enactment authorises an official, including the personnel associated with sanctuaries, to seize *enechyra* in connection with the imposition of a penalty, there can be no doubt at all that he had the power – and often also a legal obligation – to participate actively in the process of *praxis*, and that his action in this respect did not depend on any initiative taken by a private individual. Such clauses are found frequently in enactments passed by civic subdivisions[6] and by associations of various kinds.[7] In addition, this power was vested in an unidentifiable board at Miletos,[8] in the *amphodarchoi* at Pergamon,[9] and in the *hiereus* at the Amphiareion at Oropos.[10]

Unfortunately, the evidence for *enechyrasis* carried out by *polis* officials is limited. In the vast majority of instances, all the legal historian has to work from are instructions to specific boards of officials expressed through the verbs *prassein*/*prassesthai* or various compounds (*eis-*, *ana-*, *ek-*) as well as the variants *praxin poiein*/*poieisthai*[11] and *praxis esto*/*gignestho*. As will be seen, the use of this vocabulary is not all that transparent. Consequently, it is often difficult, if not impossible, to assess the extent to which the officials in question were authorised to exercise a measure of force against the debtor in order to recover the fine destined for the *polis*' treasury or its sanctuaries.

Several accounts submitted by officials contain a declaration by them to the effect that they had been unable to exact money from contractors or their guarantors, who are now being registered as debtors. One example is *IK Ilion* 5 from the third century, which contains a list of fines imposed by the *agonothetai*. Some are listed under the heading καὶ οὓς ζημιώσαντες *καὶ οὐ δυνάμενοι πρᾶξαι* καὶ ὀμόσαντες κατὰ τὸν νόμον ἀνεγράψαμεν ὀφείλοντας τῆι πανηγύρει. The *agonothetai* had evidently been responsible for exacting the fines that they themselves had imposed. When they turned out to be unable to do so, they were obliged by law to confirm by

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[6] *IG* XII, 9 90, *LSCG* 91 (Eretria, deme of Tamynai?, C4): ὁ δὲ δήμ[αρχος εἰ]ὰμ μὴ ὀρκώρει ἢ μὴ ἐ[νεχ]υράρει τοὺς [μ]ὴ ὀμόρα[ντα]ς, πεντα[κο]ρ[ί]ας δ[ρ]αχμὰς [ἀ]ποτινέτω· ἐκπρηττόντων δὲ οἱ ἱ εροπ[ο]οὶ ἢ αὐτο[ὶ] ὀφελόντων διπλεῖ. On the *demarchos* here as operating on the level of the civic subdivision rather than as an official 'operating at *polis* level', see Knoepfler (1997: 375).

[7] For a recent example, see Harris (2008: 81-83).

[8] *Milet* I, 3 147, Migeotte *L'emprunt public* no. 97 lines 37-43, on which Migeotte comments (1984: 310) 'Cette saisie devait sans doute être exercée par les autorités publiques, puisque son benefice allait au trésor.' He notes, however, that the *enechyrasis* here may have been intended primarily as a means of putting pressure on the *tamiai* to pay over the money owed to individual subscribers, rather than as a method of exacting a penalty imposed upon them: if they subsequently complied with the regulations, the *enechyra* were to be returned to them.

[9] *SEG* 13: 521, *OGIS* 483 Col. II 90-101*, cf.* also Col. I 29-35.

[10] *SEG* 31: 415-416, *SEG* 22: 370, *LSCG Suppl.* no. 35, *IG* VII 235, *I. Oropos* 277.

[11] *e.g. CID* IV 51, *SEG* 18: 243.

oath that they had tried but failed, whereupon they proceeded to perform a registration of the debtors.

Similar declarations are found in, for example, *IG* XI, 2 153 from third-century Delos. It relates to the exacting of debts owed by contractors, both arrears and fines imposed for breach of the terms of the contracts.[12] In such cases, the contracts themselves may have contained explicit stipulations to the effect that the officials were authorised directly to distrain upon the property of the contractor and his guarantors without any further procedural requirements.[13] In other instances, the contracts themselves may have contained cross references to existing, general legislation where such regulations were set out.[14] When carrying out *praxis* on the basis of a contractual agreement, the officials may have been seen in effect to be taking action against persons who, at the point when they signed the contract, had consented to such measures being taken in the event of their failing to fulfil their contractual obligations. Thus, it is not entirely safe to use these examples as evidence for the authority bestowed on officials actively to exact fines in general.

However, *IG* XII, 5 610 from third-century Keos documents an instance where the *boule* collectively declares itself to have been unable to exact the debt incurred by no fewer than forty-six individuals as a result of a series of court decisions.[15] The *boule* subsequently imposed the *hemiolion* upon them and entered this additional

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[12] *IG* XI, 2 153 lines 18-19: τάδε ἄλλα ἐπρίατο Ξενομήδης Ἀπατουρίου 135· ἐγγυηταὶ Κάλ[λι]μος Πατροκλέους, Διονυσόδωρος Λυσίλεω· τούτους οὐκ ἐδυνάμεθα εἰσπρᾶξαι, ἀλλ' ὀφείλουσι.

[13] See *e.g. SEG* 42: 472 (Delphi C2, loan from the sanctuary to private individual): εἰ δέ κα μὴ ποιῇ ---ος] καθὼς γέγραπτ[αι, πρ]άκτιμος ἔστω καὶ α]ὐτὸς καὶ τοὶ ἔγγυοι αὐ[τοῦ οὗ κα μὴ ἀπο[δ]ῶντι αὐτοῦ καὶ τοῦ ἡμι[ολίου καὶ ἁ πρᾶξις ἔστω ἕκ] τε αὐ[το]ῦ καὶ τῶν ἐγγύων αὐτοῦ κτλ. Compare also the stipulations in *e.g. ID* IV, 503 lines 33-38: εἰὰν δέ τι ἐλλείπει τοῦ μισθώματος, πραθέ<ν>των τῶγ καρπῶν, [ἀπ]οδόσθων πρὸς τὸ ἐλλεῖπον τοὺς βοῦς [κα]ὶ πρόβατα καὶ τὰ ἀνδράπ[οδα]· εἰὰν {εἰὰν} δέ, κ[αὶ] τούτων πραθέντων, ἔτι ἐλλείπει τι τοῦ μισθώματος, εἰσπρασσόντων τὸ ἐλλεῖπον *ἐκ τῶν ὑπαρχόντων τοῖς μεμισθωμένοις καὶ τοῖς ἐγγυηταῖς*· εἰὰν δὲ μὴ δύνωνται πρᾶ<ξα>ι, ἐξομόσαντες ἐπ[ὶ] Δι[ὶ] ἀγοραίωι [μ]ὴ δυνατοὶ εἶναι πρᾶ[ξ]αι, ἀναγραφόντων αὐτοὺς εἰς τὴν στήλην πατρόθεν ὀφείλοντας τῶι θεῶι καὶ αὐτοὺς καὶ τοὺς ἐγγυητάς, καὶ ἀναμισθούντων τὸ τέμενος· εἰὰν δέ τις ἔγδεια γίνηται τοῦ μισθώματ[ο]ς, ἐγγραφόντων αὐτοὺς καὶ τοῦτο ἡμιόλιον· That the verb εἰσπράσσειν in the present text includes an element of compulsion is suggested also by the clause in lines 42-43 where it is juxtaposed with ἀποδίδωμι· ὅ τι δ' ἄν τις τῶν ἐγγυητῶν *εἰσπραχθεῖ* τοῦ μισθώματος ὑπὸ τῶν ἱερο[ποι]ῶν *ἢ αὐτὸς ἀποδῶ<ι>* ὑπὲρ τοῦ καταστήσαντος αὐτὸν ἐγγυητήν, ἐγγραφέτω ἡ βουλὴ κυρία οὖσα τῶι ἐγγυητῆι τὸν καταστήσαντα τὸ ἀποτεισθὲν ἀργύριον ἡμιόλιον καθά[π]ερ τοὺς ὠφληκότας·

[14] See *e.g. IK Mylasa* 208 and 801.

[15] ἐπὶ Διοκύδους ἄρχοντος τούσδε [ὀφλ]όντας δίκας ὑπὸ τοῦ Πετρησιάρχου κ[αὶ] οὐ[κ ἐκ]τείσαντας ἡ βουλή, οὐ δυναμένη πρᾶξαι, ἀνέγραψεν τὸ ἡμι[όλ]ιον κατα[-------]. The editor has restored κατα[δικάσασα], but this is not the only possible option; another possible restoration might be κατ' αὐτῶν, *cf. e.g. IG* II^2 244, *SEG* 35: 62 line 33 εἶναι κατ' αὐτῶν τὰς αὐτὰς τιμωρίας κτλ.

fine on the register. What is not entirely clear from entries such as this is how far the officials, in this instance the members of the *boule*, were expected to go in their attempt to recover the debt, before they could legitimately declare that they had complied with their obligation to carry out *praxis*. Did they have the authority, and perhaps also a legal duty, to take active measures against the debtors on their own initiative, which may have included distraining upon the debtors' property? Or were their powers limited to passive receipt of the money, while any further action depended on the initiative of private citizens, for example through procedures akin to the Athenian *apographe*?

In principle, either is possible. The collective declaration by the *boule* of their inability to carry out *praxis* may reflect a situation where the officials had been unable to lay their hands on property of sufficient value to meet the debt. Since (to use a Danish expression) it is impossible to shave the hair off a bald man's head, the officials would have had no option but to register the debtors formally, along with the *hemiolion*. Alternatively, the *boule* may have had to resort to this measure, because this official body did not have the legal authority to compel the debtors to pay their fines, let alone seize some or all of their property in satisfaction of the debt. Considering the relatively large number of debtors registered as owing the fines,[16] the latter seems the more probable. But without further information, this must remain a matter for conjecture. For on its own, the verb πράσσειν does not reveal the extent of the officials' authority – or their duty – to apply coercion against a debtor who did not consent to paying what he owed.

One text, from third-century Thasos, that may serve as an illustration is *IG* XII *Suppl*. 348.[17] The inscription is a law that regulates the beaching of ships, and its penalty clause stipulates that if anyone draws up a ship in contravention of the regulation, he incurs a fine of five *stateres*.[18] The *epistatai* are responsible for exacting the fine, πρηξάντων. However, their authority in the first instance is confined simply to that of receiving the fine from an offender who has chosen to comply with their decision. If he objects, the *epistatai* cannot proceed to force payment. Instead they have to refer the case to the *apologoi* who in turn are obliged to submit the case to a court on behalf of the *epistatai*. Only if this results in a

[16] In the fourth century, the adult male citizens of Ioulis (territory ca. 47 sq. km) were counted in their hundreds, and Reger has assessed the total population after the incorporation of the even smaller *polis* of Koresia to have been around 3,500. He makes no assessment of the population size of Karthaia, but with its territory of only ca. 67 sq. km its population is unlikely to have been very much larger.

[17] For a recent discussion of this law, see Fröhlich (2004: 196-198).

[18] ὃς δ' ἂν παρὰ ταῦτα ἀνειρύσηι, ἀποτεισάτω πέντε [στατῆρας] τῆι πόλει· *πρηξάντων δὲ <οἱ> ἐπιστάται. ἂν δέ τι ἀμ[φ]ι[σβ]ητῆτ[αι]*, [δικασάσθων or perhaps εἰσαγόντων? (LR) οἱ] ἀπόλογοι παρὰ δικασταῖς αὐτοῖς· τὴν δὲ καταδίκ[η]ν [παραδόντων τ]ο[ῖ]ς ἐπιστάταις· *οἱ δὲ ἐκπρηξάντων. ἂν δὲ μὴ ἐκπρήξωσι*[ν, αὐτοὶ ὀφειλόντω]ν. ἂν δὲ οἱ ἀπόλογοι μὴ δικάσωνται ἢ μὴ παραδῶσιν τοῖς [ἐπιστάταις, ὑπ]όδικοι ἔστωσαν τοῖς εἰσι[οῦ]σιν ἀπολόγοις.

conviction are the *epistatai* authorised to force the offender to pay. What is more, at this second stage, the *epistatai* are not only authorised but also legally obliged to act. If they fail to exact the money, they themselves will incur a penalty.

It must be noted that, at the second stage, the verb used is the compound ἐκπρηξάντων, rather than the simple πρηξάντων which referred merely to the act of receiving the fine. This might at first glance suggest that the Thasians made a terminological distinction between, on the one hand, the simple verb πράσσειν referring to the receipt of money from individuals who had consented to pay, and, on the other hand, the compound ἐκπράσσειν denoting a more active involvement by the officials in the process of exacting the fine.[19] But although there are many examples from other Greek communities of the verb πράσσειν being employed simply to denote the act of receiving money from a consenting individual, as in the Thasian text,[20] it cannot be assumed that its terminological distinction between πράσσειν and ἐκπράσσειν was applied consistently in legislation, contracts or other documents drawn up in other *poleis* (or, for that matter, in Thasos in the classical period or in the later Hellenistic and Roman periods).

This problem can be illustrated by *CID* IV 1, which contains a prohibition against the cultivation of sacred land.[21] It stipulates that the *hieromnamones*, in

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[19] J. G. F. Powell has made the tentative suggestion that the difference between the simple verb and the compound in both this text and *CID* IV 1 discussed below may have been primarily one of 'Aktionsart' similar to that described for Latin by Haverling (2000, esp. 327-340 on the actional *ex*), and that the compound ἐκπράττειν indicates that the officials in question are to bring 'the process' of *praxis* 'to its conclusion'. The topic needs further investigation.

[20] The examples of leasing contracts employing the verb in this sense, to denote the receipt of rent *et sim*., are legion. For a possible parallel to the Thasian use of the verb πράσσειν in connection with the exacting of fines from individuals who have chosen not to object formally, see *CID* I, 9 D 17-22 (*cf*. RO 1): αἰ δέ τι τούτων παρβάλλοιτο τῶν γεγραμμένων, θ̣ωεόντων τοί τε δαμιοργοὶ καὶ τοὶ ἄλλοι πάντες Λαβυάδαι, *πρασσόντων* δὲ τοὶ Πεντεκαίδεκα· *α[i] δέ κα ἀμφιλλέγηι τᾶς θωιάσιος*, ἐξομόσας τὸν νό[μιμ]ον Ηόρκον λελύσθω. What is not clear from this text, however, is at what stage of the process the person who had incurred a fine had the option of swearing the oath of *exomosia* in order to be released from his obligation. In a very similar Milesian procedure, attested in *SEG* 15: 677; Sokolowski *LSAM* no. 45, the *exomosia* takes place *after* the person fined has been registered with the Milesian *praktores*, but *before* these had proceeded actively (ἐκπράσσειν) against him: ἐὰν δέ τις μὴ ἀποδῶι τὰ γέρεα τῆι ἱερῆι τῆς Ἀρτέμιδος τὰ γεγραμμένα ἐκγραφέτω αὐτὸν πρὸς τοὺς πράκτορας ὁ κύριος τῆς ἱερῆς ἐπαγγείλας ὀφείλοντα τὴν ζημίην τὴν γεγραμμένην. *ὃς δ' ἂν ἐκγραφῆι*, εἰὰμ μὴ ἐξομόσει ἐν τῆι βολῆι μὴ θῦσαι ἢ ἀποδοῦναι τὰ γέρεα τὰ γινόμενα, ὀφειλέτω τὴν ζημίην καὶ *ἐκπραξάντων αὐτὸν οἱ πράκτορες κατὰ τὸν νόμον*.

[21] *CID* IV 1, *cf*. *CID* I 10: αἴ τις τὰν γᾶν ἐπιερ]γάζ[ο]ιτο ἃν Ἀμφικτίονες ἰάρωσαν, ἐπεί κ[α] ἀ πέ[ρο]δος γίν[η]ται, ἀποτ[εισάτω - - - - - - - - - - - - -] στατῆρας Αἰγιναίος κὰτ τ[ὸ] πέλεθρον ἔ[κασ]τον. τοὶ δὲ ἱ[ερομνάμονες περιιόντων ἀεὶ τὰν ἱερὰν γᾶν] καὶ *πρ[ασ]σόντων* τὸν ἐπιεργαζόμενον· αἰ δὲ μὴ περιιεῖεν ἢ μ[ὴ πράσσοιεν, ἀποτεισάτω ὁ μὴ περιιὼν] μηδ' *ἐ[κπ]ράσσων* τριάκοντα στατῆρας· αἰ δέ κα μὴ ἀποτίνηι, Θ[- - - - ἀ

connection with their regular tour of inspection, are to carry out *praxis* against offenders, expressed with the simple verb πράσσειν. However, in the following clause, in which a fine of thirty *stateres* is imposed on the *hieromnamon* who fails to comply with his instructions, the verb used is ἐκπράσσειν. There can be little doubt that the two verbs, πράσσειν and ἐκπράσσειν, refer to the same process of *praxis*. Thus, the Thasian distinction clearly does not apply in the text from Delphi.

On the other hand, there is one clear and important point of correspondence with the Thasian text. Like the Thasian *epistatai*, the *hieromnamones* were obliged, under the threat of a penalty, to (*ek*)*prassein*. This suggests that their remit went further than merely receiving the fine from the offender, and that they did not depend on others taking the initiative if the offender refused to pay. If their remit had been narrowly defined as that of just waiting for the money to be paid or for a volunteer to denounce some or all of the debtor's property, the fine threatened against them for failure to carry out *praxis* hardly makes sense. For it seems by far the most likely that the threat of a fine was meant as an incentive for the officials to take positive action to ensure that the fine was exacted from the debtor, just as a financial reward was frequently used in several *poleis* as an incentive for volunteers to involve themselves actively in the process. I shall return to this point below.

As far as the *praxis* terminology used in different Greek *poleis* is concerned, the combination of a *praxis* clause with a penalty clause directed against the officials responsible for *praxis* allows some certainty that their role in the process was an active one, although it is in many cases difficult to determine what methods and what level of physical force the officials were permitted to apply in order to exact the debt.[22] However, such penalty clauses are not the only type of clue that will permit inferences as to the officials' active involvement in the process of *praxis* itself.

I have identified a further four criteria that, alone or in combination, point to the conclusion that the officials instructed to carry out *praxis* were authorised, and sometimes legally obliged, actively to enforce the financial penalty. One of these is a syntactical one. The verb *prassein* and its compounds can take as their direct object not only the money or items that are exacted but also the person against whom the process is directed. When the latter is the case, it is most likely that active forms of the verb refer to a procedure that presupposes the direct involvement of the subject.

πόλις ἐξ ἅς κ' εἶ ὁ ἱαρομνάμων? - -] εἰλέσ[θω] τοῦ ἱαροῦ καὶ στρατευόντων ἐπ' αὐτὸς Ἀμφικτύονες.

[22] A. Lanni has suggested to me that the obligation of the officials may in some instances simply have been limited to their approaching the debtor in person with a demand that he pay the money owed. In principle, this cannot be ruled out in those cases where the *praxis* clause stipulates simply that the officials were liable to a fine if they failed to exact the money, even if it may seem grossly unfair to a modern observer that such officials risked being penalised personally without at the same time being permitted to take more active steps to deal with recalcitrant debtors.

Space does not permit a full discussion of this criterion here, nor of the possible differences expressed by the verb (ἐκ-/εἰσ-/ἀνα-)πράσσειν or its cognate noun πρᾶξις in combination with the prepositional phrases ἐκ, κατά, or παρά + the person who is subjected to the process. Here I shall confine my discussion to just three, in addition to the penalty clauses just mentioned. They are: *a*. clauses that grant the agent in the process of *praxis* immunity from prosecution arising from his action, *b*. cross references in the *praxis* clauses to already existing legislation or established legal procedures, and *c*. clauses that grant permission to officials to apply 'any method they can' when exacting the penalty from the offender.

a. Immunity from prosecution.

In a number of instances, the *praxis* clause is combined with a clause that grants the officials immunity from any type of prosecution arising from their action. Such clauses are well known from the documents that pertain to the 'sale' of slaves into the protection of a sanctuary. Here they normally serve to offer protection to those who intervene actively in order to reverse an act of unlawful re-enslavement, and who might otherwise be exposed to risk because of their intervention.[23] Likewise, the clause is attested in documents granting protection to individual creditors against legal action taken by the persons whom they have subjected to the process of *praxis*.[24]

The immunity granted to *polis* officials in connection with *praxis* is likely to have been motivated by similar concerns. *SEG* 23: 498 from late third-century Delos provides an example.[25] The text concerns the maintenance of a sacred precinct. In the penalty clause it is made clear that the council collectively is to exact the fine payable to the sanctuary, as well as the reward payable to the volunteer who had been responsible for denouncing the offender. When carrying out this duty, the councillors cannot be taken to task for their actions.[26] Similar immunity grants

[23] On these clauses see Darmezin (1999: 190-191).

[24] *cf.* also *IK Ephesos* I, 4 lines 39-41: εἰ δέ τινες [ὑποθέ]ντες ἄλλοις κτήματα δεδανεισμένοι εἰσὶμ παρ' ἑτέρων ὡς ἐπ' ἐλευθέροις [τοῖς κ]τήμασιν ἐξαπατήσαντες τοὺς ὑστέρους δανειστάς, ἐξεῖναι τοῖς ὑστέροις [δανεισ]ταῖς ἐξαλλάξασι τοὺς πρότερον δανειστὰς κατὰ τὸν συλλογισμὸν τοῦ κοινοῦ πο[λέμου] ἔχειν τὰ κτήματα· ἐὰν δὲ ἐνοφείληταί τι αὐτοῖς ἔτι, *εἶναι τὴγ κομιδὴν τοῖς [δανειστ]αῖς ἐκ τῆς ἄλλης οὐσίας τοῦ χρείστου πασῆς τρόπωι ὧι ἂν δύνωνται ἀζημίοις [ἀπάση]ς ζημίας*·

[25] ἐάν τις ἀλί[σ]κηται τούτ[ων τι] ποιῶν, ἐξουσία εἶναι τῶι λαβόντ[ι] καὶ ἀπάγειν καὶ εἰσαγγέλλειν πρὸ[ς] τὴν βουλήν· *τὴν δὲ βουλὴν* τὸμ μὲν δοῦλον μαστιγοῦν ἐν τῶι κύφων[ι] πλ[ηγα]ῖς πεντήκοντα, τὸν δὲ ἐλεύθ[ε]ρον ζημιοῦν δραχμαῖς [δ]έκα *καὶ πράτ[τειν ἀ]νεύθυνον οὖσαν* καὶ διδόνα[ι τοῦ ἀρ]γυρίου τὸ μὲν ἥμυσυ τοῖς ἱεροποιοῖς, τὸ δὲ ἥμυσυ τῶι εἰσαγγείλα[ντι· (*cf.* Sokolowski *LSCG Suppl.* 53).

[26] For a discussion of the term see e.g. Fröhlich (2004: 66-68). In n. 89 he endorses Vial's translation of the present passage 'sans qu'aucune action puisse lui être intentée'.

appended to *praxis* clauses are known not only from other Delian inscriptions,[27] but also from, for example, Delphi,[28] fifth-century Gortyn,[29] Amyzon,[30] Tomoi,[31] and Herakleia in South Italy.[32]

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[27] *e.g. ID* IV 509 (230-220 BC): ἐὰν δέ τις παρὰ τὰ γεγραμμένα πωλεῖ, πεντήκοντα δραχμὰς ὀφειλέτω, καὶ ἐξέστω εἰσαγγέλλειν τῶι βουλομένωι τῶμ πολιτῶν πρός τοὺς ἀγορανόμους· οἱ δὲ ἀγορανόμοι εἰσαγόντων τὰς εἰσαγγελίας ταύτα[-]ς εἰς τοὺς τριάκοντα καὶ ἕνα ἐν τῶι μηνὶ ἐν ὧι ἂν εἰσαγγελθεῖ· τὸν δὲ μισθὸν τῶι δικαστηρίωι παραβαλλέσθω ὁ εἰσαγγείλας· ἐὰν δὲ ὄφλει, τόν τε μισθὸν ἀποτεισάτω τῶι παραβαλομένωι καὶ τοῦ γεγραμμένου ἐπιτιμίου τὰ δύο μέρη, τὸ δὲ τρίτον μέρος τῶι <δ>ημοσίωι, *καὶ οἱ ἀγ[ο]ρανόμοι πραξάτωσαν αὐτὸν δέκα ἡμερῶν ἀφ' ἧ[ς] ἂν ὄφλει, ἀνεύθυνοι ὄντες*·, *ID* IV 502 (297 BC): φοιτῶσι ἢ ἀν ..... εὕρει ἀναπωλούμενον, ἐξέστω τοῖς ἐπιστάταις *εἰσπρᾶξαι* τὸν ἐργώνην καὶ τὸν ἐν[γυητὴν - - - - - - - - - ἐὰν πρ]ογινώσκωσιν, *ἀζημίοις οὖσιν καὶ ἀνυποδίκοις*, *SEG* 48: 1037: [.]ΑΣ ἢ ὗς ἢ βοσκήματα ἐντὸς τῶν [περιρ]ραντηρίων ὅσα μὴ εἵνεκεν θυσίας εἰσῆκται, ἐνόχους μὲν εἶναι καὶ ταῖς ἀραῖς, ζημιοῦσθαι δὲ αὐτοὺς καὶ ὑπὸ τῶν ἱεροποιῶν καὶ ὑπὸ τῆς βουλῆς καὶ ὑπὸ τῶν λοιπῶν ἀρχόντων τῆι ζημίαι ἣι ἑκάστη κυρία ἐστὶν ἡ ἀρχὴ ζημιοῦν καὶ *εἰσπράσσειν ἀνευθύνοις οὖσιν κτλ.*

[28] *SEG* 42: 472 (C2), granting immunity to the *hosioi*: εἰ δέ κα μὴ ποιῆ -- ος] καθὼς γέγραπτ[αι], [πρ]άκτ[ι]μος ἔστω καὶ α[ὐτὸς καὶ τοὶ ἔγγυοι αὐ]τοῦ οὗ καὶ μὴ ἀπό[δ]ωντι αὐτοῦ καὶ τοῦ ἡμι[ολίου καὶ ἁ πρᾶξις ἔστω ἕκ] τε αὐ[το]ῦ κα[ὶ] ἐκ τῶν ἐγγύων αὐτοῦ καὶ [(very fragmentary down to lines 15-16) *ἀζάμιοι ἐόντων καὶ ἀνυπόδικοι πάσας δίκας καὶ ζαμίας καθώς κα πράξωντι.*

[29] *IC* IV 80 = *Nomima* I 7 (C5): ἐνεκυραστὰν δὲ μὲ παρέρπεν Γορτύνιον ἐς τὸ Ῥιττενίο. αἰ δέ κα ν[ικ]αθῆι τὸν ἐνεκύρον, διπλεῖ καταστᾶσαι τὰν ἁπλόον τιμὰν ἃι ἐν τᾶι 'πόραι ἔ[γρα]τται, πράδδεν δὲ τὸν Ῥιττένιον κόσμον. αἰ δέ κα μὲ πράδδοντι, τὸνς πρειγ[ίσ]τονς *τούτονς πράδδοντας ἄπατον ἔμεν* vac. τὰ ἐγραμμέν', ἄλλα δὲ μέ. *IC* IV 87 = Koerner no. 161* = *Nomima* I 97: [- - *ἄν]ραιτον δ' ἔμεν τοῖς ἐσπράτ[ταις ἐσπρ]άδονσι* ὀπυῖ κα μέτε ἀποδο[- -]

[30] *Fouilles d'Amyzon* no 28: ὅσοι δὲ ἂν μὴ εἰσενέγκωσιν καθότι γέγραπται ἀποτεισάτωσαν πεν[τήκοντα δραχμὰς καὶ μὴ ἔστ]ω αὐτοῖς μετουσία μήτε τῶγ Χρυσαορικῶν μήτε τῶν ἄλλων ἱερῶν μέχρι το[ῦ βίου τοῦ ἑαυτῶν·] *τὴν δὲ πρᾶξιν εἶναι κατὰ τῶν μὴ εἰσενεγκάντων καθότι γέγραπται τοῖς αἱρεθεῖσιν ἀ[νδράσι τρ]όπωι ὧι ἂν βούλωνται ἀζημίοις οὖσιν καὶ ἀνυποδίκοις καὶ αὐτοῖς καὶ τοῖς συνεισ[πράξασι]ν μεθ' αὑτῶν·*

[31] *I. Scythiae Minoris* II, 2, *Syll.*[3] 731, *SEG* 29: 695 (ca. 100 B.C.): τοὺς δὲ αἱρεθέντας ἡγεμόνας ἐξουσίαν ἔχειν ἀναγκάζειν καὶ ζημιοῦν ἑκάστης τῆς ἡ μέρας ἀργυροῖς δέκ[α κ]αὶ πράσειν τοὺς ἀτακτούντας τρόπον ὃν ἂν δύνωντα[ι ἀ]ζημίους ὄντας καὶ ἀνυποδίκους.

[32] *IG* XIV 645 lines 154-168, *SEG* 48: 1232 (C4): τὼς δὲ πρωγγύως τὼς ἀεὶ γενομένως πεπρωγγυευκῆμεν τῶν τε μισθωμάτων καὶ τῶν ἐπιζαμιωμάτων καὶ τῶν ἀμπωλημάτων καὶ τᾶν καταδικᾶν καὶ αὐτὼς καὶ τὰ χρήματα ἁ κα ἐπιμαρτυρήσωντι, καὶ μὴ ἦμεν μήτε hάρνησιν μήτε παλινδικίαν μηδὲ κατ' ἄλλον *μηδὲ hένα τρόπον τᾶι πόλι πράγματα παρέχεν μηδὲ τοῖς hυπὲρ τᾶς πόλιος πρασσόντασσι·* αἰ δὲ μή, ἀτελὲς ἦμεν. Here the participle πρασσόντασσι is probably to be understood in the broad sense as 'acting as the representatives of the *polis*'. However, their duties included the exacting of rent and penalties (*epizamiomata* and *katadikai*) from the guarantors of defaulting contractors, and the immunity clause would have offered them protection against lawsuits launched against them personally by an aggrieved guarantor.

If the role of the officials to whom immunity was granted was merely that of receiving the money exacted through the agency of others, whether volunteers or special boards akin to the *praktores* attested for Athens, it would be difficult to explain why this protection was felt to be needed. It is far more likely that the clause aimed to protect the officials as individuals against litigation arising from direct action taken by them *ex officio*, for example by seizure of *enechyra* or, in some cases, the physical eviction of the debtor from real estate in connection with a process of confiscation.[33] The aim of such immunity clauses may thus have been to remove as far as possible any disincentive from the officials who were responsible for taking such action against their fellow citizens and other residents in their community.

It must be added, however, that such grants of immunity to officials are quite rare, except in manumission documents and in *asylia* grants where the immunity clause is found relating to officials as well as to volunteers. Normally, the main method by which the relevant officials were incentivised to engage actively in the process of *praxis* seems to have been through the threat of a fine, as mentioned above. In other words, the normal incentive applied to them was the stick rather than the carrot, in stark contrast to the 'carrot incentive', *i.e.* the promise of a personal reward, that was applied to encourage volunteers to assist in recovering the fine. With a few notable exceptions where the officials themselves appear to be entitled to a share of the fine exacted by them,[34] it seems that the 'stick incentive' on its own represented the preferred method of making an official or board of officials overcome any personal fear of retaliation by the debtor or his associates, be it in the form of physical violence or litigation.

It is in itself not surprising if many, if not most, communities made only sparing use of the immunity clause, let alone of the possible option of promising the official a financial reward. In the hands of an unscrupulous and corrupt official, the authorisation to carry out *praxis* was a potentially very dangerous weapon, and the legal reckoning to which the official had to submit when stepping down from office was probably the most important check on his activities in this area. That having been said, the immunity clauses themselves still provide important evidence for the

[33] The narrative of the unfortunate trierarch who delivered Dem. 47 provides a graphic illustration of the possible aftermath of a process of *praxis*, which in this instance had resulted in the speaker's conviction in a *dike aikeias* (47.45-51). This was despite the fact that the trierarch was (according to his own story) taking action at the behest of the Athenian *boule*, and thus in a sense was carrying out the *praxis* as a representative of the *polis*.

[34] In *SEG* 42: 785 (Thasos 470-460) lines 19-30, 30-36, 36-41, and 41-48 it would seem that the officials responsible for carrying out *praxis* are entitled to half of the fine as a reward, and Duchêne (1992: 62 n. 22) cites a number of parallel examples to which one may add *Syll.*[3] 671, Laum no. 29 lines 11-15. Duchêne leaves open the possibility that the share allocated to the officials would eventually end up in the public sanctuary.

active involvement and authority of the *polis*' representatives in the process of exacting financial penalties.

b. Cross references to existing legislation or established legal procedures.
Another indication that a *praxis* clause permitted the officials in question to take action against the debtor on their own initiative is the addition in the text of a cross reference, sometimes to a specific law, sometimes to a named legal procedure. In *SEG* 50: 1195 from third-century Kyme, the context of the *praxis* clause is a prohibition against sale, purchase or hypothecation of arms donated by Philetairos to the city. Volunteers are invited to denounce anyone who violates this to the *phylarchoi*. These are authorised to impose a summary fine of five *stateres* for each item unlawfully purchased, sold or hypothecated, unless the person apprehended denies his guilt:

> αἰ δέ κε ἀντι]λέγωσ[ι] κρινέτ[ω]σαν οἰ φύλαρχοι καὶ τὰν ζαμίαν πραξάσωσθαμ παρὰ τῶ ἐνόχω ὄντος πρ[άξεος ἐοίσας ἐκ τῶν ὑ]παρχόντων καὶ τῶ σώματος κὰτ τὸν νόμον τὸν ὑβριστ[ή]ριον· αἰ δέ κε μὴ πράξοισι αὐτοὶ [.....] ΑΠΙΛ ἰδιώτᾳ· αἰ δὲ μὴ αὐτοὶ ὑπεύθυνοι ἔ[στω]σαν ἐλ λογιστηρίῳ.

Although not all of the *praxis* clause has survived on the stone, it seems clear that the *phylarchoi* themselves, if they decided to convict, were legally obliged to distrain upon the property and person of the offender 'in accordance with the *nomos hybristerios*'. What this law prescribed and why its *praxis* clauses were used as a model for the process of *praxis* in the regulations on Philetairos' donation cannot be determined. One possibility is that the *phylarchoi* were in general authorised to carry out *praxis* within the area of their official remit, but that the *nomos hybristerios* contained clauses that provided more detailed information on the methods to be employed in connection with the process of *praxis* itself, perhaps in particular in relation to (*praxis ek?*) *tou somatos*. This may well have referred to the physical seizure of the person of the debtor, which, as pointed out in Professor Mitthof's response, is well attested in the papyri.[35] Some laws did contain quite elaborate specifications of the method by which *praxis* was to be undertaken, as for example

[35] The earliest epigraphical parallel that I have found so far is the entrenchment clause in *Syll.*[3] 45, Koerner no. 84 which prescribes that if the property of a convicted offender amounts to less than ten *stateres*, the offender is to be sold for export and is prohibited from returning to Halikarnassos in future: ἢν δὲ μὴ ἦι αὐτῶι ἄξια δέκα στατήρων, *αὐτὸν [π]επρῆσθαι ἐπ' ἐξαγωγῆι* καὶ μη[δ]αμὰ κάθοδον εἶναι ἐς Ἁλικαρνησσόν. The parallel is not exact, however: the provision relating to the sale of the offender is clearly aimed at providing an alternative method of enforcing the combined penalty of permanent exile and confiscation of property in the previous clause: τὰ ἔοντα αὐτῶ πεπρήσθω καὶ τὠπόλλωνος εἶναι ἱερὰ καὶ αὐτὸν φεύγεν αἰεί·

the famous Pergamene *astynomos* inscription, *OGIS* 483.[36] It is possible that the Kymaian *nomos hybristerios* contained similar stipulations.

Another possibility is that the cross reference was perceived to be necessary because the *phylarchoi* themselves would not normally have had the authority to carry out *praxis*. In that case, the main purpose of the reference to the *nomos hybristerios* may have been that of conferring this authority on them, an authorisation that would have applied *only* in the context of this particular enactment. Such a measure would make sense, if the Kymaians operated with a system where the authority to exact fines by compulsion was normally vested in a single or a limited number of (boards of) officials, such as the *politikos praktor* at Beroia.[37] If so, the cross reference to the *nomos hybristerios* may be interpreted as an *ad hoc* measure by which power was in effect delegated to a different board of officials, perhaps in order to increase the deterrent effect of the penalty clause in its entirety. The delegation of power arguably would have facilitated the process of enforcement. It would have reduced the risk of delays, clerical errors or deliberate obstruction that could otherwise have hampered the process, if the *phylarchoi* had not been authorised themselves to take active steps against the offender but, instead, had been obliged to pass on a record of the penalty to a different executive board.[38] On this interpretation, the cross reference would have served a purpose comparable to the purpose served by the formula *kathaper ek dikes* according to Meyer-Laurin's interpretation of some of the epigraphical evidence. In the Kymaian text it authorised the *phylarchoi* themselves to proceed directly against the debtor, bypassing any board of officials that was otherwise solely responsible for *praxis* of fines, while in the inscriptions discussed by Meyer-Laurin (1975: 197-201) the formula apparently permitted one private individual directly to proceed against a debtor without first having obtained formal authorisation in the form of a verdict passed by a court.

It must be noted, however, that these two interpretations of the cross reference and its function, that is as specification of *method* and as *authorisation* respectively, are by no means mutually exclusive. This may be illustrated by *IK Lampsakos* 9. The statute invites volunteer denunciation of an offence which most likely concerned the responsibility of the *epimenioi* in connection with sacrificial rituals. The volunteer is entitled to half of the penalty as a reward, while the other half is

[36] πράξεως. vvvv ἐάν τινες μὴ ἀποδιδῶσιν τῶν κοινῇ ἀνακαθαρθ<έ>ντων ἀμφόδων τὸ γεινόμενον μέρος τῆς ἐκδόσεως τῶν κοπρίων ἢ τῶν ἐπιτίμων, λαμβανέτωσαν αὐτῶν οἱ ἀμφοδάρχαι ἐνέχυρα καὶ τιθέσθωσαν ἐνεχυρασίαν πρὸς τοὺς ἀστυνόμους αὐθήμερον ἢ τῆι ὑστεραίαι καὶ, ἐὰν μηθεὶς ἐξομόσηται τὰ ἐνεχυραθέντα ἐν ἡμέραις πέντε, πωλείτωσαν αὐτὰ ἢ ἐν φράτρηι ἢ ἐν τῆι ἀγορᾶι πληθυούσῃ συνπαρόντων τῶν ἀστυνόμων καὶ τὸ μὲν γεινόμενον κομιζέσθωσαν --- (*cf. SEG* 13: 521).

[37] *SEG* 43: 381, Gauthier and Hatzopoulos (1993): B lines 101-104 (fines imposed by *gymnasiarchos* to be exacted by the *politikos praktor*); A lines 46-48, B 29-37, 94-97 (written notice given to the *politikos praktor* by the *exetastai*).

[38] For an Athenian illustration of what might go wrong, see, *mutatis mutandis*, Lys. 9.

payable to the sanctuary of Asklepios. The subsequent *praxis* clause appears to permit the volunteer to exact his share of the fine, and *only* that, according to the regulations that pertained to the *dike hybreos*.[39]

In this enactment, the cross reference to the *dike hybreos* clearly does not serve the purpose of replacing a genuine legal process that might otherwise have been required before one private individual could legitimately take such an active step against another:[40] the denunciator's entitlement to his reward has already been established as a result of the legal process heard by a *dikasterion* following his *katangelia*. However, it is still entirely likely that the cross reference to the *dike hybreos* functioned as an authorisation clause. Since the denunciator had been involved in a *public* procedure, a *katangelia*, it could not be taken for granted that he would have been permitted personally to carry out *praxis* against the defendant, as the victorious party in a *dike* would normally be entitled to do. The cross reference to the *dike hybreos* made it clear that, as far as the denunciator's own reward was concerned, he was indeed authorised to proceed as if the action had been a *dike*.

However, it is important to note that the cross reference does not just refer to the entitlement enjoyed by a successful claimant in a *dike*, but that it refers explicitly to the specific procedure of the *dike hybreos*. This precision suggests that the cross reference at the same time served as a way of indicating more specifically the method that denunciator was permitted to apply and under what conditions.[41] A further function of the cross reference may also have been that of specifying the division of labour between the volunteer and the *tamiai*, for the latter appear to have been responsible for dealing in some way with the fine payable to the sanctuary.[42]

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[39] *IK Lampsakos* 9, Laum no. 66, *LSAM* 8 lines 30-35: ἐὰν δέ τις τ̣ησ[ ]παδγ[ ]υσε[ ]ο[ ]τ̣ηρας ἀποτεισ̣άτω στατῆρας πεντήκοντα καὶ δραχ[μὰς - ἃς ἂν τὸ δι]καστήριον π̣[ρ]οσ̣τιμήσηι· καταγγελλέτω δὲ ὁ βουλόμενος πρὸς τὸν ἱερὸν [σύλλογον· τοῦ δὲ κ]α<τ>[αδικασ]θέ<ν>τος εἶναι τὸ μὲν ἥμισυ ἱερὸν τοῦ Ἀσκληπιοῦ τὸ δὲ λοιπὸν τοῦ [καταγγείλα]ν̣τος· *τρ[ ]ῳ δὲ [ὁ] μὲν ἰδιώτης τὸ ἑαυτὸ γενόμενον ὡς δίκην ὕβρεως* χ[ ]τ̣οῦ θεοῦ οιτ[ποησ]άτ̣ωσαν ἃ̣ οἱ νόμοι κελεύουσιν·

[40] This is one of the bones of contention in the long dispute over the meaning and significance of the term καθάπερ ἐκ δίκης in the papyri, for which see Wolff (1970), Meyer-Laurin (1975) and Kränzlein (1976).

[41] Although I know of no direct parallel to the laws regulating *enechyrasis* known from Crete, it is clear that similar legislation existed in other *poleis*, too. For example, in *IK Lampsakos* 9 lines 24-26 there is a cross reference to a statute concerning 'those who carry out *enechyrasis* contrary to the law' (μὴ εἶναι δὲ μηθεν[ὶ μηθὲν ἐ]νεχυράσαι ἐν [τ]αῖς ἡμέραις τῶν Ἀσκληπιείων, εἰ δὲ μή, ὁ ἐνεχυράσας ἔν̣[οχος ἔ]στω *τῷ νόμῳ τῷ περὶ τῶν παρανόμως ἐνεχυρασάντων*), while face B of a list of fines, *IK Byzantion* (S)elymbria 3, records a penalty of ten *drachmai* imposed on an individual for an offence connected with his seizure of *enechyra*. It is probable that he was penalised for having appropriated an item which could not legally be seized by a creditor: [----- ζαμίοντι τὸν δεῖνα δραχμαῖς] δέκα ὅτι ἐνέχυρα λαζόμενο[ς ἱματισ]μὸν ἀφείλατο·

[42] Several different models are attested for different communities. One was that exactment of the entire amount, including the prosecutor's reward, was to be undertaken by the

The fact that cross references of this type could serve several different purposes (and sometimes more than one purpose at the same time) means that each individual case must be assessed on its own merits. Fortunately, the context of an individual cross reference will often permit a reasonably safe conclusion as to its function. Sometimes when a statutory or procedural cross reference is included in a *praxis* clause that specifies *polis* officials as the agents, one of its purposes is clearly to extend the authority already conferred on a specific board to carry out *praxis*, rather than to specify the methods that they are to employ. Thus, *Syll.*[3] 672 from second-century Delphi permits the board of *epimeletai* to carry out *praxis* of arrears 'by whatever method they wish, in the same way as they exact other public or sacred funds'.[43] The reference to the procedure by which the *epimeletai* normally carry out *praxis* is hardly intended to provide a reference point for further information on the

polis' officials: *SEG* 23: 498 (Delos C3), *ID* IV 509 (Delos 230-220 BC; but note that if the *agoranomoi* prove unable to carry out *praxis* within ten days, they are to make over to the volunteer denunciator the entire property belonging to the offender), *IC* IV 162 (Gortyn C3), *PEP Teos* 41 (cf. also *CID* I 9 face C for this operating at the level of a civic subdivision). Another model, the one just discussed in connection with Lampsakos, was that the prosecutor personally was responsible for collecting his share, while *polis* officials were responsible for collecting the part of the penalty that was destined for the public or a sacred sanctuary. It is probable that a similar model was used in classical Eltynia (*IC* I x 2, *Nomima* II 80, Koerner no. 94, *SEG* 2: 509). A third was that *praxis* of the entire amount was delegated to the volunteer prosecutor, who in turn was responsible for handing over the share payable to the relevant treasury, sacred or secular. An example of this is found in *IG* IX, 1, 4^2 798 (Laum no. 1) lines 113-122. Here the penalty clause authorises not only prosecutions *ex officio* but also prosecutions initiated by volunteers (ἐξέστω δὲ καὶ ἄλλωι τῶι λῶντι κρίνεσθαι κατὰ ταὐτά), and in either case, the individual responsible for bringing the prosecution is instructed to carry out *praxis* and to hand over the money exacted to the elected financial administrators of the *koinon* (τὸν δὲ κατακριθέντα οἱ τὰς κρίσιας γραψάμενοι εἰσπράξαντες ὅσα μὲν ποτὶ τὸ κοινὸν συν<ε>ίκει τοῖς ἀρημένοις ἐπὶ τὰν χείριξιν τοῦ ἀργυρίου παραδόντω, κτλ.). Compare also *SEG* 51: 1499 (*koinon* of the Leukoeideis, 107-80 B.C.) as well as the stipulation in the new Cretan text presented by Professors Chaniotis and Kritzas in this volume (A21-31). There, both *ereutai* and volunteer private citizens (*idiotai*) are authorised to exact penalties from the *kosmoi*. In this case, however, half of the money exacted is payable to the injured party while the other half may be kept by the person carrying out the *praxis* (cf. the examples in n. 34 above).

[43] ἀποδιδόντω δὲ οἱ δανεισάμενοι τὸ ἀργύριον πᾶν τᾶι πόλει ἐν τῶι πέμπτωι ἐνιαυτῶι. εἰ δέ κα μὴ ἀποδιδῶντι καθὼς γέγραπται, τὰ ἐνέχυρα αὐτῶν τᾶς πόλιος ἔστω, καὶ οἱ ἐπιμεληταὶ ἀεὶ οἱ ἐγδανείζοντες κύρ[ι]οι ἔστωσαν πωλέοντες· εἰ δὲ πωλείμενα τὰ ἐνέχυρα μὴ εὑρίσκοι τὸ ἀργύριον ποθ' ὃ ὑπέκειτο τᾶι πόλει, πράκτιμοι ἔστωσαν τοῖς ἐπιμεληταῖς ἀεὶ τοῖς ἐνάρχοις τοῦ ἐλλείποντος ἀργυρίου αὐτός τε ὁ δανεισάμενος καὶ οἱ γενόμενοι ἔγγυοι, *τρόπωι ὦι θέλοιεν πράσσειν, καθὼς καὶ τἆλ[λ]α δαμόσια καὶ ποθίερα πράσσονται.*

method of *praxis*. For this is made redundant by the wording τρόπωι ὧι θέλοιεν πράσσειν, which appears to give them very wide, if not full, discretion.[44]

Another example of a cross reference which appears to have extended the remit of the relevant board of officials is *PEP Teos* 41 (*Syll.*[3] 578). The text pertains to the educational endowment of Polythrous. In the entrenchment clause drawn up on fragment B, lines 56-60 specify that the *euthynoi* are to carry out *praxis* of the fine destined for the sanctuary of Hermes, Herakles and the Muses καθάπερ καὶ τῶν ἄλλων τῶν δημοσίων δικῶν.[45] As Fröhlich observes (2004: 111-112), the text suggests that the *euthynoi* in second-century Teos had an official remit that corresponded to that of the *praktores* as attested in a number of other *poleis*. He suggests that the reason for the cross reference was that they were required to carry out *praxis* also in case a prosecutor chose to proceed under the heading of a private action, since this was not part of their normal remit. But it is equally plausible that the clause reference was required because the *euthynoi*'s normal remit extended only to the exacting of fines payable to the *polis*' treasury, but not to the exacting of sacred fines. Since the fines in the present enactment are defined, on the one hand, as 'belonging to the *polis*', yet, on the other, as the sacred property of the deities mentioned, there may well have been a perceived need for precisely this kind of clarification in regard to the *euthynoi*'s remit and responsibilities.

In other instances, however, it seems most probable that the primary function of the cross references was to point the reader to another enactment in which the *method* of *praxis* permitted was set out in full. *Milet* I, 3 140C, a treaty between Miletos and Phaistos, contains a clause providing mutual protection against the unlawful enslavement of individuals belonging to each of the two communities. In lines 59-65 it is specified that *praxis* at Miletos is to be carried out in accordance with the *nomos ton tou emporiou epimeleton*, whereas in Phaistos, where the disputes are to be heard by the *politikon dikasterion*, the *kosmoi* are to carry out

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[44] A similar combination of an authorisation clause which confers the authority to πράσσειν *on a private individual* and a clause permitting the agent in the process of *praxis* to apply any method he or she wishes is found in *IG* VII, 3172 lines 23-35 = Migeotte, *L'emprunt public* no. 13 from third-century Orchomenos: ἀποδότωσαν δὲ τὸ δάνειον οἱ δανεισάμενοι ἢ οἱ ἔγγυοι Νικαρέται ἐν τοῖς Πανβοιωτίοις πρὸ τῆς θυσίας ἐν ἡμέραις τρισίν. ἐὰν δὲ μὴ ἀποδῶσ[ι], πραχθήσονται *κατὰ τὸν νόμον·* ἡ δὲ πρᾶξις ἔστω ἔκ τε αὐτῶν τῶν δ ανεισαμένων καὶ ἐκ τῶν ἐγγύων, καὶ ἐξ ἑνὸ[ς] καὶ ἐκ πλειόνων καὶ ἐκ πάντων, καὶ ἐκ τῶν ὑπαρχόντων αὐτοῖς, *πραττούσηι ὃν ἂν τρόπον βούληται.* See also *IG* XII, 7 67 B, Migeotte, *L'emprunt public* no. 49 lines 24-29, where the formula τρόπωι ὧι ἂν ἐπίστηται is combined with the expression πράξει πάσηι. *cf. IG* XII, 7 69, Migeotte, *L'emprunt public* no. 50 lines 26-32.

[45] δικασάσθω δὲ αὐτῶι ὁ βουλόμενος καὶ ἐν ἰδίαις δίκαις καὶ ἐν δημοσίαις (...), ὁ δὲ ἁλισκόμενος ἐκτινέτω διπλάσιον καὶ τὸ μὲν ἥμισυ ἔστω τῆς πόλεως, ἱερὸν Ἑρμοῦ καὶ Ἡρακλέους καὶ Μουσῶν, καὶ καταχωριζέσθω εἰς τὸν λόγον τὸν προγεγραμμένον, τὸ δὲ ἥμισυ τοῦ καταλαβόντος ἔστω, *τὰς δὲ πράξεις τῶν δικῶν τούτων ἐπιτελείτωσαν οἱ εὔθυνοι καθάπερ καὶ τῶν ἄλλων τῶν δημοσίων δικῶν.*

praxis and hand over the purchase sum 'in whatever way they wish' within ten days after the verdict has been passed.[46] However, a very similar clause in the agreements between Miletos and a number of other cities in Crete stipulates that, while *praxis* is to be carried out according to the *nomos emporikos* in Miletos, the *nomos proxenikos* is to be applied in the Kretan cities.[47] In these documents, then, the cross references almost certainly served to specify not only the personnel authorised to carry out *praxis* but also the method, *tropos*, that was to be applied.

To sum up. Some statutory and procedural cross references served primarily to confer authority on a board to carry out *praxis*, in some cases perhaps because the board would not normally have been authorised to take such action at all, while in other cases because the existing authorisation of a board was extended to apply to an area that was not part of the normal definition of their official remit. In these instances, the cross references appear to have had much the same function as the clause καθάπερ ἐκ δίκης in the Arkesinian inscriptions according to the interpretation of Meyer-Laurin (1975: 197-201), where the community can in effect be seen to have delegated to a private individual the authority to carry out *praxis* without first having had his entitlement confirmed through a court action. In other cases, the main purpose of such a cross reference appears to have been to refer to another piece of legislation that specified the methods and conditions under which the *praxis* could lawfully be carried out. Some cross references to specific laws may have served to limit the officials' discretion in a number of respects, for example by specifying deadlines or the debtor's entitlement to redeem any *enechyra* seized from him.[48] And in some instances, such as *IK Lampsakos* 9, the cross references appear to have fulfilled both functions simultaneously.

Most importantly, however: the cross references themselves provide a strong indication that the officials instructed to carry out *praxis* were authorised to take positive action in order to ensure that the monetary penalties imposed found their way into the treasuries of the *polis* or its sanctuaries.

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[46] τὰς δὲ πράξεις εἶναι ἐμ Μιλήτωι μὲν *κατὰ τὸν νόμον τῶν τοῦ ἐμπορίου ἐπιμελητῶν*, ἐμ Φαιστῶι δὲ τοὺς κόσμους πράξαντας ἀποδοῦναι *τρόπωι, ὥι ἂμ βούλωνται*, ἐν ἀμέραις δέκα, ἀφ' ἃς κα καταδικασθῆι.

[47] *Milet* I, 3 140B: τῶν δὲ δικασθέντων τὰς πράξεις εἶναι ἐμ Μιλήτωι μὲν κατὰ τὸν νόμον τὸν ἐμπορικόν, ἐγ Γόρτυνι δ[ὲ] κατὰ τὸν νόμον τὸν προξενικόν, κατὰ τὰ αὐτὰ Λύκτιοι, Ἀρκάδες, Ἀριαῖοι, Ὑρταῖοι. See also *Milet* I, 3 140A.

[48] For an example of a cross-reference serving this purpose, see *Milet* I, 3 147, Migeotte *L'emprunt public* no. 97 lines 37-43: ἐὰν δὲ οἱ ταμίαι μὴ διδῶσιν τὸ τεταγμένον ἐν τῆι ὡρισμένηι ἡμέραι, τά τε ἄλλα κατ' αὐτῶν ὑπάρχειν κατὰ ταὐτὰ καὶ ἐνεχυρασίαν εἶναι κατὰ τῶμ μὴ δόντων πρὸς διπλάσιον ἐπὶ τοῦ ταμιείου. τὰς δὲ ἐνεχυρασίας ἀναγραφέτω ὁ γραμματεὺς τῶν ταμιῶν ἐπάναγκες. *τὰς δὲ λύσεις τῶν ἐνεχύρων γίνεσθαι ἐν ταῖς ἴσαις ἡμέραις, ἐν αἷς καὶ τοῖς τελώναις τοῖς ἐνεχυρασθεῖσιν ὑπὸ τῶν ταμιῶν ἐν τῶι νόμωι συντέτακται.*

c. Permission granted to the official(s) to apply any method they can.

In some inscriptions, the clause that gives a board of officials authority to carry out *praxis* by whatever method they can or wish, ᾧ ἂν δύνωνται τρόπῳ, is found on its own without any procedural or statutory cross reference. This licence is granted to, for example, the boards of *hieronomoi* and *agoranomoi* in second-century Kyme,[49] in which both boards are permitted to impose penalties of up to five *stateres* on bill-posters and other offenders in Archippe's stoas and to exact them ᾧ ἂν δύνωνται τρόπῳ. Similar permission is granted to the elected *hegemones* at Tomoi who are authorised to impose fines of up to ten *argyroi* per day and exact them τρόπον ὃν ἂν δύνωνται.[50] At Amyzon, the men elected by the *demos* in connection with the levying of an *eisphora* are allowed to exact a fine of – probably – fifty drachmai from *eisphora* dodgers τρόπῳ ὧι ἂν βούλωνται.[51] Significantly, the latter two texts combine the 'licence to *prassein*' with an immunity clause. This strongly suggests that the officials concerned, in their capacity as the *polis*' representatives, were permitted to apply a very considerable degree of force against the debtors. This almost certainly would have included the seizure of personal property belonging to the debtor, and they thus contribute to the impression that *polis* officials were, in some circumstances, granted quite significant authorisation *ex officio* to cross the boundaries between the public sphere and the *oikos* sphere of each individual resident in their community.

The four criteria applied

When the four criteria of penalty clause, immunity clause, statutory or procedural cross reference and the 'in whatever way they can/wish' are applied to the material, the picture that emerges is a complex one. The range of different officials known to have had the authority to engage actively in the process of *praxis* in different *poleis* is quite wide and diverse, as illustrated by the appendix to this paper. Some *poleis* that may normally have limited the authority to carry out *praxis* to a single designated board sometimes chose to confer, on an *ad hoc* basis, similar authority on other boards within a particular area of jurisdiction. In other *poleis*, it may simply have been standard practice to distribute this power routinely between a plurality of boards.[52]

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[49] *SEG* 33: 1039: εἰ δὲ μὴ, κωλυέτωσαν τὸν τούτων τι ποιοῦντα ο[ἱ ἱ]ερονόμοι καὶ οἱ ἀγορανόμοι, [ᾧ] ἄν δύνωνται [τρ]όπῳ, καὶ ζημιούτωσαν ἕως στα[τ]ήρων πέντε ὄντες ἀνυπόδικ[οι], *καὶ πραξάτωσαν τὴν ζημίαν ᾧ ἄν δύνωνται [τρ]όπῳ,* καὶ τὰ διαφορὰ ταῦτα ὑπάρχειν εἰς τὴν ἐπισκευὴν τοῦ ἱεροῦ· *ἐὰν δὲ μὴ δύνωνται πρᾶξαι ἀναγραψάτωσαν* καὶ μηδὲν ἧσσον ὁ βουλόμενος τὸν τούτων τ[ι] ποιοῦντα κωλυέτω ἀζήμιος·

[50] *I. Scythiae Minoris* II, 2 (*Syl.*[3] 731, *SEG* 29: 695), n. 31 above.

[51] *Fouilles d'Amyzon* no 28, n. 30 above.

[52] Fifth-century Chios had conferred this power on at least two boards, the *horophylakes* and the *pentekaideka*. Delos bestowed it on its *boule*, *agoranomoi*, *hieropoioi* and *epistatai*, and, in one extreme instance, on all other *archai*. At Gortyn, the *titai*, and the

It may also be significant that the active role performed by *private* individuals in the process of *praxis* of penalties that were destined for public or sacred treasuries generally seems to have been quite limited, at least until the middle of the second century BC. In the non-Athenian material, there is substantial evidence for volunteer participation, in return for a reward, in processes resembling the Athenian *apographe*. But in texts earlier than the middle of the second century B.C., it is rare to come across a volunteer being allowed to be actively involved in the physical process of exacting in its entirety a penalty payable to the *polis* or to one of its sanctuaries. In those cases where a volunteer prosecutor was authorised to exact *only* the share of the penalty to which he was personally entitled, there was little substantial difference between his position and that of a private creditor, whose authority to carry out *praxis* against fellow members of his community was restricted to very specific circumstances: those where the authority had been conferred on him by the successful conclusion of a *dike* or by the terms of a contractual agreement.

But most importantly, a very significant difference between the volunteer private individual and the *polis* official as agent in the process of *praxis* was that the latter often was legally obliged to engage actively in the process of *praxis*. While three of my four criteria are found in *praxis* clauses that pertain to private individuals as well as those pertaining to *polis* officials, that is the immunity clause, the cross references and the *tropos* clause,[53] I have so far found the penalty clause only in *praxis* clauses that assign the task explicitly to *polis* officials. The sole exception is an instance that concerns *syle* rather than *praxis*.[54] By contrast, the examples where the officials were being compelled to carry out *praxis* are many, and they are distributed widely across the Greek world.

The attempt to compel *polis* officials to act by applying the incentive of a penalty may have been motivated by several practical concerns. First, if the official who failed to carry out *praxis* was liable to pay the entire fine himself or, in some

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esprattai appear to have had a similarly active part to play (perhaps along with yet other officials). Kyme allowed both its *hieronomoi* and *agoranomoi* wide discretion when exacting summary fines, while in the third century equally serious licence was given to their *phylarchoi*. Pergamon, which had a designated *praktor*, also entrusted the process of *praxis* to its *astynomoi* and its *amphodarchai*. The latter were authorised to seize *enechyra*. Thasos in C5 obliged both its *archoi* and its *epistatai* to carry out *praxis*, with the latter board being incentivised by a combination of penalty and reward.

53 Immunity and *tropos* clause: *e.g*. *IG* XII, 7 67 B (Arkesine C4/3), *IK Ephesos* I, 4 (Ephesos 297/6 BC); cross reference: *SEG* 48: 1404 (Kolophon C3), *I. di Cos* ED 178 (Kos C3).

54 *IG* IX, 1² 573 (Akarnanian *koinon*, end of C4 or C3): Ἀ]ντίμαχον ἐκ τᾶς [Ἀκ]αρνανίᾶ[ς, τὸν ἐπιτ]υγχάνοντα συλᾶ[ν] καὶ τὰν π[όλιν, ἐ]ξ ἃς [κ]α ἄγηται· εἰ δὲ μὴ συλῶι, ἀ μὲ[ν πό]λις ἀποτεισάτω ἑκατὸν μνᾶς ἱερὰς τῶι Ἀπόλλωνι τῶι Μετθαπίωι *καὶ ὁ [ἔ]τας ὁ ἐπιτυχών, εἰ μὴ συλῶι, δέκα μν[ᾶς ἱερὰς κ]ὰτ ταὐτά·* τὸν δὲ συλάσαντα κα[ὶ ἔ]ταν καὶ π]όλιμ *μὴ ὑπέχειν δίκαν* κτλ.

instances, double the amount, it would have been pointless for the public debtor to try to bribe him to desist. The offender would not save any money by doing so, for the price of compensating the official for his personal financial loss would have been at least as high as the fine that the offender owed anyway.

Secondly, and more importantly, the threat of a financial penalty offered some protection to the debtor who *had* paid up, if the official was tempted to divert the fine into his own pocket instead of the relevant treasury. This was the case not least in those communities that required the officials to declare under oath that they had tried but failed to exact the penalty. If an official who had successfully carried out *praxis* embezzled the sum instead of handing it over and entering it on his records as having been paid, he himself would face a fine of a corresponding or even larger amount, unless he was prepared to perjure himself when swearing his *exomosia*. The fact that boards of officials were often held collectively liable for failure to carry out *praxis* would also have meant that his colleagues would have had a clear incentive to blow the whistle, if they suspected him of that type of embezzlement.[55]

And thirdly, fines constituted income for the individual communities. The deployment of *polis* officials, rather than volunteers, as agents in the process was the option that made most sense from a purely financial point of view. Even at Athens, the assistance rendered by volunteers in connection with *apographai* cost the community money because of the reward payable to the *apographon*. The same pattern of financial incentivisation is replicated in several other classical and Hellenistic *poleis*. This is not surprising, given the potential personal risks that such a denunciation might involved for the volunteer who offered that kind of assistance. By contrast, when *praxis* was assigned to the *polis*' officials, such a reward seems, by and large, to have been perceived as unnecessary. The reason for this was very likely that it was far more realistic to fine an official for evident crimes of omission than to penalise individual private citizens for not engaging actively in the process. The bottom line is that when the task of *praxis* was assigned to officials, the entire sum exacted would end up in the treasury – with a few exceptions, the officials were not themselves entitled to a share of the money that they had brought in.

But the sanctions threatened against officials, if they opted for a purely passive role in the process of *praxis*, are also important in connection with the controversy over the characterisation of 'the Greek *polis*' as a 'stateless society'. I have argued elsewhere (Rubinstein 1998: 131-132) that at least one important characteristic distinguished the role of a citizen when acting in a capacity of official from his role as an *idiotes* in for example the Assembly and the courts. As an official, he was in some contexts legally compelled to act, in principle regardless of any personal obligations and sentiments that he might have had towards his friends or his

[55] For collective liability if the officials responsible for *praxis* failed to carry it out, see *e.g.* *PEP Chios* 76 (Chios, C5), *IC* I ix 1 D 128-131 (Dreros, C3), *IK Erythrai und Klazomenai* 1 (Erythrai C5 or C4), *IC* III iv 7 (Itanos, C3), *IG* XII *Suppl.* 348 (Thasos, C3).

enemies. When it comes to an official's involvement in the process of *praxis*, especially in those communities that were very small indeed, this was probably a task that was more likely than most to produce a conflict between the official's private interests and attachments and his official duties. The legal obligation placed upon various boards of officials actively to carry out *praxis* could, as we have seen, involve the application of various methods of force against the debtors and their property, including measures that implied the officials' physically entering into the *oikos* sphere of their fellow citizens. This type of activity obviously had the potential to create and exacerbate enmity to the personal detriment of the official. Yet, for some of the boards discussed in this paper, it was not an option simply to wait patiently for the debtor to pay up or for one of the debtor's personal enemies to take the initiative. This in turn suggests that the characterisation of the Greek *polis* generally as 'stateless' is in need of modification, at least as far as the Greek world outside Athens is concerned.[56]

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APPENDIX

Praxis of fines incurred in connection with contracts are indicated in **bold**.

Polis	*reference*	board of officials	penalty for not *prassein*	immunity	cross reference	τρόπωι ὧι ἂν ἐπίστηται
Amyzon (C2)	*F. Amyzon* 28	committee elected by *demos* and their assistants		√ (ἀζήμιοι καὶ ἀνυπόδικοι)		√
Arkesine (C4)	*IG* XII, 7 62 40-45	*neopoiai*	√ (double)			
Beroia (C2)	*SEG* 43: 381 and 27: 261 B lines 29-37	*politikos praktor*	√ (simple)			
Chios (C5)	*PEP Chios* 76	*hoi pentekaideka* *horophylakes*	√ (curse) √ (simple)			
Delos (C2)	*SEG* 48: 1037	*boule* *hieropoioi* *οἱ λοιποὶ ἄρχοντες*		√ (ἀνεύθυνοι)		
Delos (C3)	*ID* 502	*epistatai*		√ (ἀζήμιοι καὶ ἀνυπόδικοι)		√
Delos (C3)	*ID* 509	*agoranomoi*		√ (ἀνεύθυνοι)		
Delos (C3)	*SEG* 23: 498	*boule*		√ (ἀνεύθυνος)		
Delphi (C2 late)	*SEG* 42: 472	*hoi hosioi*		√ (ἀζήμιοι καὶ ἀνυπόδικοι)		
Delphi (C2)	*Syl.* (3) 672	*epimeletai*	√ (amount of debt not recovered + *hemiolion* + *atimia*)		√	√
Delphi, Amphiktyony (C4)	*CID* IV, 1, *cf.* I, 10	*hieromnamones*	√ (fine of thirty stateres)			
Dreros (C3)	*IC* I ix 1	*boule* *ereutai (?)*	√ (double) √ (?) (double?)			

Eretria (deme of Tamynai?)	*IG* XII, 9 90, *LSCG* 91	*demarchos* *hieropoioi*	√fine (of 50 dr. ?) √ (double)			
Erythrai (C5 / C4)	*IK Erythrai u. Klaz.* 1	*exetastai*	√ (simple)			
Gortyna (C5)	*IC* IV 75D, *Nomima* II 46, Koerner no. 149*	*esprattai?*		√ (ἀμολεὶ πράδεθαι, M. Bile: 'sans contestation juridique')		
Gortyna (C5)	*IC* IV 80, *Nomima* I 7	*hoi preigistoi*		√ (ἄπατον ἔμεν)		
Gortyna (C5)	*IC* IV 87, *Nomima* I 97, Koerner no. 161*	*esprattai*		√ (ἄν]αιτον ἔμεν)		
Herakleia (C4)	*IG* XIV 645, *SEG* 48: 1232 I lines 122-128 and 154-168	*polianomoi*		√		
Itanos (C3)	*IC* III iv 7	*praktores*	√ (double)			
Kyme (C3)	*SEG* 50: 1195	*phylarchoi*	√ (text very lacunose)		√	
Kyme (C2)	*SEG* 33: 1039	*hieronomoi* *agoranomoi*				√
Lebena (C2)	*IC* I xvii 2	*hiarorgos*	√ (αὐτῶι ἔντιτον ἔστω)		√ (?) (κατὰ τὸ δι[άγραμμα)	
Miletos (C3)	*Milet* I, 3 147, Migeotte *L'emprunt* no. 97	*uncertain*			√	
Miletos (C4)	*SEG* 15: 677, *LSAM* 45	*praktores*			√ (κατὰ τὸν νόμον)	
Pergamon (C2)	*SEG* 13: 521, *OGIS* 483	*astynomoi*	√ (fines of fixed amounts)			
Teos (C2)	*PEP Teos* 41, *SEG* 14: 751	*euthynoi*			√	
Thasos (C3)	*IG* XII *Suppl.* 348	*epistatai*	√ (simple)			
Thasos (C5)	*SEG* 42: 785	*archoi* *epistatai*	√ (double) √ (double)			
Tomoi (C2 or C1)	*I. Scythiae Minoris* II, 2, *Syl.* (3) 731, *SEG* 29: 695	*hegemones*		√		√

FRITZ MITTHOF (WIEN)

ANTWORT AUF LENE RUBINSTEIN

Lene Rubinsteins Beitrag macht zweierlei deutlich: Erstens, daß das Verfahren der Zwangsvollstreckung von Zahlungsforderungen infolge eines Gerichtsurteils oder der Entscheidung eines öffentlichen Organs in der griechischen Polis bislang nur ungenügend erforscht ist, und zweitens, daß die wesentlichen Impulse für diese Thematik von der epigraphischen Evidenz zu erwarten sind.

Rubinstein greift einen Teilaspekt der Thematik heraus, nämlich die Zwangsvollstreckung von öffentlichen Strafgeldern durch städtische Beamte. Es gelingt ihr, anhand ausgewählter inschriftlicher Bestimmungen aus ganz verschiedenen Teilen der Poliswelt eine Reihe von wichtigen Beobachtungen herauszuarbeiten. Sie stellt klar, daß von den Beamten und Institutionen, die in solchen Fällen mit der Zwangsvollstreckung betraut waren, ein aktives Vorgehen gegen den Schuldner erwartet wurde, und zwar durch die Eintreibung der ausständigen Gelder (πρᾶττειν) bzw. durch die Pfändung des Schuldners (ἐνεχυράζειν). Leider geben uns die Inschriften keine Auskunft darüber, welche Zwangsmittel bei der Eintreibung bzw. Pfändung zulässig oder üblich waren, wie überhaupt im Detail viele Unklarheiten bestehen, weil aussagekräftige Texte fehlen. Vor diesem Hintergrund scheint es ratsam, das Blickfeld zu weiten und die Evidenz aus dem griechisch-römischen Ägypten in die Betrachtung miteinzubeziehen.

In der Papyrologie hat die Zwangsvollstreckung schon immer viel Beachtung gefunden[1]. Dies ist damit zu erklären, daß Vertragsurkunden aus dem Land am Nil oftmals eine Praxis-Klausel aufweisen und darüber hinaus zahlreiche amtliche Schriftstücke das Verfahren der Exekution beleuchten. Auch wenn Rubinsteins Augenmerk der Poliswelt der klassischen und hellenistischen Zeit bis ca. 150 v.Chr. gilt, kann der Umweg über die Papyri für die Thematik also nur förderlich sein.

Um das Erkenntnispotential der Papyri aufzuzeigen, seien Rubinsteins Ausführungen anhand ausgewählter Zeugnisse in zweierlei Richtung vertieft: Zum einen soll geprüft werden, ob die Zwangsvollstreckung grundsätzlich auch von Amtsträgern betrieben werden konnte, die nicht der öffentlichen Sphäre zuzurechnen sind, beispielsweise Vereinsvorstehern; zum anderen sei der Frage nachgegangen, welche Rolle der Personalexekution zukam.

[1] Einen knappen Überblick über die einschlägigen Forschungsarbeiten gibt H.-A. Rupprecht, Kleine Einführung in die Papyruskunde, Darmstadt 1994, 143–151.

Auf den ersten Blick scheint die Sachlage klar:

1.) Gemäß einer in der Forschung allgemein akzeptierten Auffassung wurde die Zwangsvollstreckung im Ptolemäerreich ausschließlich von Behörden vollzogen, und zwar nicht nur bei der Eintreibung amtlich verhängter Strafen oder Fiskalschulden, sondern auch bei der Umsetzung von Gerichtsurteilen in privaten Streitsachen. Es habe also in diesem Bereich ein staatliches Gewaltmonopol existiert.

2.) Hinsichtlich der Personalexekution wird ein Abweichen der Rechtspraxis von der Theorie angenommen: Zwar habe man grundsätzlich in Ägypten bis zur Spätantike an der Idee, daß die Vollstreckung sowohl in die Person als auch in das Vermögen zu vollziehen sei, festgehalten. Als Grundlage für diese Annahme wird vor allem auf den Wortlaut der Praxis-Klausel verwiesen: πρᾶξις ἔκ τε τοῦ δεῖνος καὶ τῶν ὑπαρχόντων αὐτῷ. In Wirklichkeit sei jedoch seit der frühen Ptolemäerzeit nur noch die mildeste Form der Personalexekution, also die Erzwingungshaft, zulässig gewesen; befristete Schuldknechtschaft oder gar Versklavung des Schuldners seien nicht mehr praktiziert worden[2].

Bei genauerer Betrachtung der papyrologischen Evidenz ergeben sich allerdings in beiden Punkten Probleme. Beginnen wir mit dem erst unlängst publizierten Dokument SB XXIV 16296 aus dem Jahre 182 oder 158 v.Chr.[3] Dieser Papyrus enthält mehrere Schuldscheine, in denen Privatpersonen dem Vorsteher eines Vereins bestätigen, aus der Vereinskasse (κοινὰ χρήματα) Geld erhalten zu haben und dieses nach sechs Monaten zurückzahlen zu wollen. In der Schlußklausel wird der Vorsteher ermächtigt, den Schuldner im Falle der Nichtrückzahlung zu pfänden, und zwar auf jede Weise, die er für richtig hält, ohne hierfür belangt werden zu können (Z. 5–7 und 12–13): ἐὰν δὲ μὴ ἀποδῶ, ἐξέσται σοι ἐνεχυράζειν με παντὶ τρόπωι ᾧ ἐὰν αἱρεῖ ἀνυπευθύνῳ ὄντι.

Zunächst sei darauf hingewiesen, daß dieses Dokument fast wörtlich mit den von Rubinstein behandelten Klauseln im epigraphischen Material übereinstimmt. Zwei der vier von ihr erarbeiteten Kriterien, die in den Inschriften eine Autorisierung oder gar Verpflichtung von öffentlichen Amtsträgern zur aktiven Betreibung der Praxis anzeigen, nämlich die Freiheit in der Wahl der Zwangsmittel und die Immunität, werden auch in diesem Text angeführt. Dies ist in meinen Augen der Beweis dafür, daß die Poliswelt und Ägypten eine Art von Rechtskoine bildeten.

Für unsere Fragestellung ist bedeutsam, daß im vorliegenden Fall nicht etwa ein staatlicher Beamter, sondern der Vorsteher eines privaten Vereins mit dem Recht zur Pfändung unter Anwendung aller denkbaren Mittel ausgestattet wird. Leider können

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[2] So etwa der Tenor des jüngsten Beitrages zu dieser Thematik von Hans-Albert Rupprecht in: Stephan Buchholz / Heiner Lück (Hg.), Worte des Rechts – Wörter zur Rechtsgeschichte. Festschrift für Dieter Werkmüller zum 70. Geburtstag, Berlin 2007, 283-296.

[3] Ed. D. Martinez / M. Williams, Records of Loan Receipts from a Guild Association, ZPE 118, 1997, 259–263.

wir nicht genau sagen, um was für einen Verein es sich handelt, da der Titel des Obmannes nicht sicher zu identifizieren ist[4].

Daß diese Pfändungs-Ermächtigung eines Vereinsvorstehers nicht als Einzelfall einzustufen ist, sondern im Gegenteil sogar die Regel dargestellt haben dürfte, läßt sich anhand dreier Vergleichsurkunden aus der frührömischen Zeit wahrscheinlich machen, die in Tebtynis gefunden wurden (P.Mich. V 243–245). Die Angehörigen verschiedener Berufsgruppen — im ersten Fall ist die Bezeichnung verloren, im zweiten sind es die ἀπολύσμοι einer kaiserlichen Domäne, im letzten Salzhändler — schließen sich zu einem privaten Verein zusammen und geben diesem eine Satzung. In allen drei Fällen wird ein Vorsteher gewählt, der unter anderem ein Pfändungsrecht gegenüber den Vereinsmitgliedern erhält. Im ersten Fall, P.Mich. V 243 = FIRA III 46 bis (14–37 n.Chr.), ist dieses Recht ganz allgemein formuliert: Gegen ein Mitglied, das seinen Zahlungspflichten nicht nachkommt, darf der Vorsteher zur Pfändung schreiten: κατὰ δὲ τοῦ ἀδωσιδικοῦντος ἐπὶ τούτων καὶ τῶν ἄλλων ἐξέστω τῷ προστάτῃ ἐνεχυράζειν.

Die beiden folgenden Urkunden, P.Mich. V 244–245 (43 bzw. 47 n.Chr.), enthalten dagegen präzisere Pfändungs-Klauseln: Kommt ein Vereinsmitglied seiner Zahlungsverpflichtung nicht nach, so darf der Vorsteher diese Person „auf der Straße, in den Häusern und auf dem Feld pfänden und ausliefern“: ἐνεχυράζειν αὐτοὺς ἔν τε τῇ πλατείᾳ καὶ ἐν ταῖς οἰκίαις καὶ ἐν τῷ ἀγρῷ καὶ παραδιδόναι αὐτούς.

Es gibt gute Gründe für die Vermutung, daß die Notare von Tebtynis diese Klausel nicht eigens für die betreffende Textserie konzipiert haben, und es ist auch wenig wahrscheinlich, daß sie den Wortlaut überhaupt selbst entworfen haben; vielmehr darf man annehmen, daß sie die Formulierung aus einem Mustertext übernommen und dabei eventuell auch umgestaltet haben. Der genuine Kontext der Klausel war also möglicherweise ein ganz anderer, und vielleicht ist sie nicht einmal in P.Mich. V 245 = FIRA III 46, der die ausführlichste Version bietet, in der vollständigen Urfassung zitiert. Dies könnte auch den merkwürdigen Umstand erklären, daß nirgends mitgeteilt wird, wem die Schuldner denn eigentlich ausgeliefert werden sollten.

Derartige Klauseln stellen die oben erwähnte Auffassung vom staatlichen Gewaltmonopol bei Zwangsvollstreckungen in Frage. Es schließen sich Fragen an, denen an vorliegender Stelle nicht weiter nachgegangen werden kann: War das gewaltsame Vorgehen von nicht-staatlichen Amtsträgern gegen Schuldner im griechisch-römischen Ägypten unter bestimmten Umständen zulässig? Sollen wir annehmen, daß im vorliegenden Fall der Vereinsobmann direkt gegen die Mitglieder vorging und nicht, wie sonst üblich und hundertfach bezeugt, die Behörden um die Anwendung von Zwangsmaßnahmen bat? Falls ja, so müßte das Bild von der

[4] Als mögliche Lesungen kommen laut Angaben der Herausgeber Symposiarch, Posiarch oder Demosiarch in Frage; die beiden letztgenannten Titel sind aber anderweitig nicht bezeugt, und überdies ist der Titel Demosiarch sprachlich wie inhaltlich höchst suspekt.

Zwangsvollstreckung im griechisch-römischen Ägypten erheblich modifiziert werden.

Der zweite Punkt betrifft die Frage nach der Personalexekution. Die soeben angeführten Urkunden bezeugen fast alle ein und dasselbe sprachliche Phänomen: Der Schuldner erscheint grammatikalisch als direktes Objekt zum Verb ἐνεχυράζειν, eine syntaktische Position, die normalerweise dem Pfandgut vorbehalten ist; es heißt also ἐνεχυράζειν τινά im Sinne von „jmd. pfänden". Welche Art von Vollstreckung hier gemeint ist — in die Person des Schuldners, in sein Vermögen oder aber in beides — läßt sich dabei kaum auszumachen.

Daß diese Ausdrucksweise interpretatorische Probleme bereitet, wird deutlich, wenn man die Übersetzungen heranzieht, die in der Forschungsliteratur mitgeteilt werden. So fassen im Falle von P.Mich. V 245 alle Bearbeiter das Verb ἐνεχυράζειν im Sinne von „verhaften" auf[5]. Dieselbe Deutung wird auch im Falle von SB XXIV 16296 seitens der Herausgeber vorgeschlagen: *ἐνεχυράζειν usually "take something as surety from someone"; here "seize (persons)", "take into custody"*[6]. Man versucht sich also zu behelfen, indem man dem Verb ἐνεχυράζειν einen Sinn unterstellt, der nichts mit seiner eigentlichen Bedeutung „pfänden" zu tun hat.

Weitere Parallelen für diese Konstruktion des Verbs liefern die beiden Urkunden P.Ent. 87 = C.Pap. Hengstl 28 (222 v.Chr.) und SB XXIV 16295 (199 v.Chr.). Im erstgenannten Text beschwert sich ein Katöke über einen lokalen Steuerbeamten. Obwohl er dem König nichts schulde und auch keine Steuern hinterzogen habe, würde dieser Beamte ihn selbst pfänden und seinen Gänsehirten belästigen: ἐνεχυράζει με καὶ περισπᾷ μου τὸν χηνοβοσκόν. Das andere Dokument ist die Eingabe einer Frau an den Strategen. Die Petentin hat Geld verliehen, dieses aber nicht fristgerecht vom Schuldner zurückerhalten. Stattdessen hat dieser ihr ein Pfand gestellt, das aber den Wert des Darlehens nicht abdeckt. Nun bittet sie den Strategen, er möge den örtlichen Polizeivorsteher anweisen, den Schuldner „mit größerem Nachdruck zu pfänden und zu ihm zu schicken": ἐπιστρεφέστερον ἐνεχυράσαντα αὐτὸν ἀποστεῖλαι ἐπὶ σέ[7].

Aus den angeführten Textstellen ergibt sich also ein recht einheitlicher Sprachgebrauch: Der Akt der Pfändung wird vorwiegend mit der Wendung ἐνεχυράζειν τινά bezeichnet; einzig in P.Mich. V 243 heißt es abweichend ἐνεχυράζειν κατά τινος. Hinzu kommt, daß die Wendung ἐνεχυράζειν τινά in unseren Texten oft

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[5] Boak *et al*. (P.Mich. V 245) und F. Meijer / O. van Nijf, Trade, Transport and Society in the Ancient World, London 1992, 76: „*to arrest*", Arangio-Ruiz (FIRA III 46): „*manum in eum inicere*"; H.-J. Drexhage / H. Konen / K. Ruffing, Die Wirtschaft des Römischen Reiches, Berlin 2002, 389: „*festsetzen*".

[6] Wie Anm. 3, S. 262.

[7] Die Herausgeber (J.D. Sosin und J.F. Oates, P.Duk.inv. 314: Agathis, Strategos and Hipparches of the Arsinoite Nome, ZPE 118, 1997, 251–258) beziehen das Adverb ἐπιστρεφέστερον auf den Infinitiv γράψαι; mir scheint aufgrund der Wortstellung eher eine Verbindung mit dem Partizip ἐνεχυράσαντα gegeben zu sein.

parallel zu Verbindungen wie ἀποστέλλειν τινά oder παραδιδόναι τινά steht. Zugleich wird ἐνεχυράζειν von περισπᾶν unterschieden, einem Verb, das die ungerechtfertigte Anwendung physischer Gewalt meint. All dies erweckt den Eindruck, daß mit ἐνεχυράζειν τινά in der Tat der physische Zugriff auf den Schuldner gemeint ist, und zwar genauer: die Personalexekution in Form der Erzwingungshaft.

Die hier behandelten Papyri werfen Fragen auf, die zwar das Verfahren der Zwangsvollstreckung im ptolemäischen und frührömischen Ägypten betreffen, meines Erachtens aber auch für das Verständnis der Pfändungspraxis in der Poliswelt von Relevanz sind und daher am inschriftlichen Material geprüft werden sollten: War die Personalexekution ein regelmäßiger Bestandteil und vielleicht sogar der erste übliche Schritt bei einer Zwangsvollstreckung? Gab es neben den staatlichen Behörden auch quasi-öffentliche Instanzen, die eine solche Exekution betreiben durften?

Unser Kenntnisstand zum Ablauf der Zwangsvollstreckung in der griechischen Welt ist noch immer höchst unbefriedigend. Lene Rubinstein ist zu danken, daß sie mit ihrem Beitrag einen ersten wichtigen Schritt zur Erhellung der Thematik gesetzt hat. Der von ihr eingeschlagene Weg, die Sammlung und Auswertung der epigraphischen Evidenz, sollte in größerem Rahmen fortgesetzt werden; dabei sollten auch die Papyri in die Betrachtung miteinbezogen werden.

ATHINA DIMOPOULOU-PILIOUNI (ATHENS)

ΑΠΟΞΕΝΟΥΣΘΑΙ: ATIMIA IN ROMAN TIMES?

In A.D. 38 the *Boule* and the *Demos* of the Cyzicenes, in tribute to Antonia Tryphaena,[1] the benefactress who was financing public works in the city,[2] instituted severe penalties for any citizen, foreigner or metic, who, by selling goods at higher prices in the city market, would put in danger the provisioning of the city, in a period of unusual affluence of workers.[3] For citizens the penalty is loss of citizenship, ἀποξενοῦσθαι, a penalty strongly reminding that of ἀτιμία.

Cyzicus, strategically located on the southern shore of the Propontis, on the trade route between Pergamum, Propontis and the Euxine, was the leading city of northern Mysia, a commercial port lying in a fertile and prosperous land.[4] The city had supported the Romans against king Mithridates VI of Pontus, who besieged it with 300,000 men in 74 B.C., a siege finally lifted by Lucullus.[5] The Romans in recognition of the city's loyalty awarded it the status of *civitas libera*[6] and extended its territory.[7] This incident linked the city to Rome and Cyzicus became one of its strong naval allies, lending ships to Rome for several expeditions.[8] But, the city fell in disgrace under Augustus, after being accused of killing Roman citizens and therefore lost its status of *civitas libera*[9] in 20 B.C.[10] Through the assistance of

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1 On Antonia Tryphaena see Macurdy 1937: 41ff., Sullivan 1979: 200 ff.

2 Three inscriptions from Cyzicus refer to her benefactions: *IGR* IV 144 (= *SEG* IV 707, see Reinach 1882: 612-616), *IGR* IV 145 (= *Syll.*[3] 798), *IGR* IV 146 (= *Syll.*[3] 799 I, commented in this paper).

3 *IGR* IV 146 (= *Syll.*[2] 366 = *Syll.*[3] 799 I). Joubin 1893: 8-22 and 1894: 45-47.

4 W. Ruge, *RE,* s.v. Kyzikos, cols. 228-234. On the commercial activity of Cyzicus see Rostovtzeff 1941 (I): 587-589.

5 Lucullus therefore gained the status of city hero, Plutarch, *Luc.* 12.1.1-3. Citizens even founded a festival in his honour, by the name of Lucullea, Appian, *Mith.* 330.1-331.1.

6 Strabo, 12.8.11.33: Ρωμαῖοι δ' ἐτίμησαν τὴν πόλιν, καὶ ἔστιν ἐλευθέρα μέχρι νῦν καὶ χώραν ἔχει πολλὴν τὴν μὲν ἐκ παλαιοῦ τὴν δὲ τῶν Ρωμαίων προσθέντων.

7 On the extended territory of Cyzicus see Magie 1950: 901-903 (n.116-117) and Jones 1971: 86-87.

8 Hasluck 1910: 181-184.

9 On the loss of the status of Cyzicus see Colin 1965: 64.

10 Dio Cassius, 54.7.6.1-2: τούς τε Κυζικηνούς, ὅτι Ρωμαίους τινὰς ἐν στάσει μαστιγώσαντες ἀπέκτειναν, ἐδουλώσατο; Suetonius, *Aug.* 47: Urbium quasdam, foederatas sed ad exitium licentia praecipites, libertate privavit, alias aut aere alieno laborantis levavit aut terrae motu subversas denuo condidit aut merita erga populum R. adlegantes Latinitate vel civitate donavit.

Marcus Vipsanius Agrippa, Augustus' son-in-law and Caligula's grandfather, Cyzicus managed to regain its free status is 15 B.C.[11] The city lost again briefly its privileges under Tiberius, in A.D. 25, on account, once more, of an alleged maltreatment and imprisonment of Romans[12] and for neglecting the imperial cult,[13] more specifically for failing to finish a temple dedicated to Augustus.[14] The Cyzicenes promptly remedied offense, showing in the future due respect to the imperial family.[15] The restoration of the city's privileges must be attributed to Caligula,[16] while his favor towards Cyzicus may be due to the influence of Antonia Tryphaena, who was related to him through their common ancestor, Mark Antony.[17]

Ἀντωνία Τρύφαινα or Τρυφαίνη (10 B.C. – A.D. 55),[18] was a remarkable lady of early imperial times, whose favor for Cyzicus was the result of international politics as well as personal misfortunes. An offspring of two of the most distinguished families of Asia Minor, she was the daughter of the king of Pontus, Polemon Pythodoros and of Pythodoris of Pontus.[19] As her name reflects, she also had Roman lineage: through her mother, she was probably the granddaughter of the triumvir Mark Antony[20] and of his second wife (and first cousin) Antonia Hybrida Minor.[21] Already related to an array of client kings of the eastern Roman Empire,[22]

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[11] Cf. Dio Cassius 54.23.7.2-3: καὶ Κυζικηνοῖς τὴν ἐλευθερίαν ἀπέδωκε. Agrippa probably visited Cyzicus during his trip in the East in 15 B.C.

[12] Dmitriev 2005: 305, speculates these were probably Greek natives of Cyzicus who had received Roman citizenship as a grant and Cyzicus obviously enforced its own laws to all residents, exercising its right as a free city.

[13] Tac. *Ann.* IV.36.2: obiecta publice Cyzicenis incuria caerimoniarum divi Augusti, additis violentiae criminibus adversum civis Romanos et amisere libertatem, quam bello Mithridatis meruerant, circumsessi nec minus sua constantia quam praesidio Luculli pulso rege. Suetonius, *Tib.* 37.7: Cyzicenis in ciues R. uiolentius quaedam ausis publice libertatem ademit, quam Mithridatico bello meruerant. Dio Cassius 57.24.6.1-7.1: τὸν μὲν οὖν χρόνον ἐκεῖνον ταῦτά τε ἐς ἱστορίας ἀπόδειξιν ἐγένετο, καὶ Κυζικηνῶν ἡ ἐλευθερία αὖθις, ὅτι τε Ρωμαίους τινὰς ἔδησαν καὶ ὅτι καὶ τὸ ἡρῷον ὃ τῷ Αὐγούστῳ ποιεῖν ἤρξαντο οὐκ ἐξετέλεσαν, ἀφῃρέθη.

[14] See Price 1984: 83.

[15] Later, they would refer to Tiberius, in a decree of the city honoring Antonia Tryphaena (*IGR* IV 144 = *SEG* 4.707), as the «greatest of Gods». See Magie 1950: 502.

[16] Cyzicus in the second century was still using a particular calendar, which according to Mommsen 1952: 707, n.2, was a sign of restitution of the autonomy of the city after Tiberius.

[17] By different wives, Antonia Tryphaena through Antonia, Caligula through Octavia.

[18] See Magie 1950: 486.

[19] On Pythodoris, see Kearsley 2005: 101-103.

[20] *The Cambridge Ancient History*, X, 1996: 112-113. Mark Antony had his daughter, Antonia, married to the extremely wealthy Greek, Pythodoros of Tralleis, in the hope of obtaining a part of his fortune to finance his ambitious expeditions.

[21] And thus Antonia Tryphaena was a distant cousin to the Emperor Caligula. Through Mark Antony, she was also related to other client kings of the Roman Empire, such as to

she married the gentle and cultivated Cotys VIII,[23] king of Thrace, becoming queen of Thrace[24] and bearing him three sons, Rhoemetalces, Polemon and Cotys. When, in A.D. 18, her husband was murdered[25] by his uncle Rhescuporis II who invaded his part of the kingdom, Antonia Tryphaena took refuge for the first time to Cyzicus. Tiberius managed to have Rhescuporis captivated and brought to Rome[26] to be put on trial before the Senate, where Tryphaena was invited to present a formal accusation against him[27] and obtain his condemnation.[28] Antonia's three sons were brought to Rome to be educated at Tiberius' court, where they became close friends of their distant cousin Gaius, the future emperor Caligula, a relationship their

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the daughter of Queen Cleopatra of Egypt, Cleopatra Selene II of Mauretania, to her son, King Ptolemy of Mauretania, and his sister, Drusilla of Mauretania.

22 Her elder brother, Zenon, was proclaimed by Germanicus king of Armenia Maior in 18 B.C., ruling under the name of Artaxias III, while her other brother, Polemon II of Pontus, would succeed their mother Pythodoris and become the last ruler of Pontus, on which see Barrett 1978: 437-448.

23 Cotys is described by Tacitus as a man of «gentle disposition, good nature and manners». Supposedly he was also a poet at whose court famous Greek and Roman poets of the time were frequenting. Ovid, during his exile in Tomis, in the Black Sea, addressed to him a long letter in verse, included in his *Epistulae ex Ponto* where he appeals to his 'brother' poet (II, 9, 65), begging to let him spend the rest of his life in Thrace. See Leschhorn 1993: 99-105.

24 Her coins were inscribed *Βασιλίσσης Τρυφαίνης* and dated ιζ' and ιη'. See Waddington W., Babelon E., Reinach Th., *Recueil général des monnaies grecques d'Asie Mineure,* Paris 1912-1925, I^2: 22f., no. 22f.

25 According to Tacitus (*Annal.,* II.64.3-67) after the death of Coty's father, Rhoemetalces I, who was an ally of Rome, Augustus, for political reasons divided the kingdom of Thrace between Cotys and his uncle, Rhescuporis II. In his share, Cotys got the best part of Thrace, the cultivated lands and most towns, including the Greek cities of Thrace, from the river Strymon to the estuary of Istros, whereas to Rhescuporis II were left the savage and unfriendly parts of Thrace. Soon after Augustus' death in A.D. 14, Rhescuporis II invaded Coty's lands (see Velleius Paterculus II, 129, 1). Upon Tiberius' intervention in this conflict, and advise to both kings to make peace with each other, Cotys released his army and was invited to a banquet by Rhescuporis, under the pretext of signing a peace treaty. There, he was taken prisoner by his uncle who invaded the rest of the kingdom of Thrace and claimed his nephew had been conspiring against the Emperor. When he was confronted by Tiberius and asked to come to Rome to defend his accusations against his nephew, Rhescuporis assassinated Cotys and spread the rumor that he had committed suicide.

26 Tiberius sent Pomponius Flaccus to Thrace, who managed to lure Rhescuporis into coming to the Roman outpost, offering him a guard as a sign of royal honor. When Rhescuporis tried to leave, he realized he was a captive of the Emperor.

27 Tacitus, *Annal.,* II.67: accusatus in senatu ab uxore Cotyis damnatur, ut procul regno teneretur. For the role of Antonia Tryphaena in the prosecution of her husbands' murder and the subsequent history of her three sons, see Magie 1950: 513-515.

28 He was found guilty and sent to live in exile in Alexandria, only to be killed on his way to Egypt, in an attempt to escape, «genuine or not». *The Cambridge Ancient History*, X, 1996: 645.

protégés, the Cyzikenes, would not fail to underline, by mentioning them, in one of the several inscription honoring Antonia Tryphaena's family, as Caligula's "foster-brothers and comrades".[29] Tiberius returned the whole Thracian kingdom to Tryphaena and appointed her and her elder son, Rhoemetalces II,[30] as rulers of Thrace.[31] When her son died childless in 38, he was succeeded by his cousin Rhoemetalces III[32] who married, by Antonia Tryphaena's arrangement, her daughter, Pythodoris.[33] She then retired to live in Cyzicus, where she repaid the hospitality of the Cyzicenes at the time of her husband's murder by becoming the protector of the city, being welcomed by the whole population (l. 12-15) "οὐχ ὡς εἰς φίλην μόνον, ἀλλὰ καὶ ὡς *εἰς γνησίαν πατρίδα*, ὅτι καὶ ἡ βασιλέων μὲν θυγάτηρ, βασιλέων δὲ μήτηρ, ἡ μήτηρ αὐτῶν Τρύφαινα, ταύτην ἡγημένη πατρίδα, οἴκου τε τὸ ἐφέστιον καὶ βίου τὸ εὐτυχὲς ἀνεμεσήτοις ἐνευδαιμονήσουσα τέκνων βασιλείαις ἐνταῦθα ἵδρυται."

A few years earlier, an accusation of neglecting the imperial cults, had cost Cyzicus its status as a free city within the Roman Empire. Antonia Tryphaena undertook the imperial cult herself in Cyzicus, being appointed by Caligula as a priestess in the cult of his favorite sister Julia Drusilla,[34] worshiped as New Aphrodite[35] and by Claudius in 42, as a priestess in the cult of late Empress Livia.[36] She would also follow the euergetistic model of Livia herself, becoming one of the leading female εὐεργέτιδαι of the Roman East.[37] Tryphaena, upon her return to the city in A.D. 37-38, commissioned and financed at her own expense the restoration of Cyzicus, as a thanks offering to the memory of Augustus.

Cyzicus was reputed, according to Strabo,[38] to be a beautiful and well ordered

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[29] *IGR* IV 145 (= *Syll.*[3] 798), l. 6-7: τοὺς Κότυος δὲ παῖδας Ῥοιμητάλκην καὶ Πολέμονα καὶ Κότυν συντρόφους καὶ ἑταίρους ἑαυτῶι γεγονότας εἰς τὰς ἐκ πα<τέρ>ων καὶ προγόνων αὐτοῖς ὀφειλομένας ἀποκαθέστακεν βασιλείας·

[30] See Sullivan 1980: 913-930.

[31] They served Tiberius and Rome as loyal client rulers, even at the malcontent of their Thracian subjects, who were resenting the growing submission of their rulers to the Romans. For the disorder in Thrace after Coty's death, see Tacitus, *Ann.* III.38.4f.; IV.5.5 and 47f.

[32] He was the son of the murderer of the king Cotys, who was spared by Tiberius and allowed to return to Thrace.

[33] Antonia Tryphaena was hoping by this matrimony to restore the dynastic conflict. A few years latter, in A.D. 46, Rhoemetalces III, last king of Thrace, is murdered and Thrace finally becomes a Roman province.

[34] *IGR* IV 145 = *Syll.*[3] 798, l. 12.

[35] On imperial cult associated to a demand of Roman favor, see Price 1984: 65ff.

[36] *IGR* IV 144 (= *SEG* 4.707).

[37] On the tradition of benefactions see Gauthier 1985: passim. For city benefactors in Asia see Dmitriev 2005: 38-45.

[38] Strabo, 12.8.11.10-19: ἔστι δ΄ ἐνάμιλλος ταῖς πρώταις τῶν κατὰ τὴν Ἀσίαν ἡ πόλις μεγέθει τε καὶ κάλλει καὶ εὐνομίᾳ πρός τε εἰρήνην καὶ πόλεμον· ἔοικέ τε τῷ παραπλησίῳ τύ πῳ κοσμεῖσθαι ὥσπερ ἡ τῶν Ροδίων καὶ Μασσαλιωτῶν καὶ

city which benefited from its peculiar landscape. Built on an island or promontory,[39] the city had two ports, situated on the east and west side of an isthmus separating the city from the mainland, originally connected between them by two channels, which formed in the middle a lake.[40] Antonia Tryphaena undertook a thorough dredging and reconstruction of the city harbors, proceeding to the reopening of the canals through the bridges which had been purposely blocked in the past, in order to secure communication with the mainland during warfare.[41] This blockading of the city isthmus and ports, which must have lasted a decade, certainly had repercussions on the reputed trade of the city and therefore to its prosperity. So, the works for the restitution of the former aspect of the city were a project of major importance, attracting a great number of foreign workers. The city felt bound, in a decision of the most elaborate style,[42] to express its gratitude to its benefactress by taking concrete and extremely severe measures in order to secure the adequate supply of reasonably priced goods to the market, so that nothing could undermine the successful completion of the project.

IGR IV 146 (= *Syll.*[2] 366; *Syll.*[3] 799 I)

[ἐπ]ὶ Ἑστιαίου τοῦ Θεμιστώνακτος ἱππάρχεω, Ληναιῶνος ι′,
ἔδοξεν τῇ βουλῇ καὶ τῷ δήμῳ· στρατηγὸς κατὰ πόλιν Ἀπολλώνιος Δημη-
τρίου Ἀργαδεὺς μέσης ἐπὶ Θεμιστώνακτος εἶπεν· ἐπειδὴ ἡ κρατίστη καὶ φιλοσέ-
βαστος Ἀντωνία Τρύφαινα πᾶσαν ἀεὶ ὁσίαν τῆς εἰς τὸν Σεβαστὸν
5 εὐσεβείας ἐφευρίσκουσα ἐπίνοιαν καὶ τὴν τῆς πόλεως ἡμῶν ἐπισκευὴν
χαριστήριον τοῦ Σεβαστοῦ καθωσίωκεν οὐχ ἱστορήσασα ἡμᾶς ὡς παλαιὸν
Κυζίκου κτίσμα, [ἀ]λλὰ ἐπιγνοῦσα νέαν Ἀγρίππα χάριν, τά τε συνχωσθέντα τῶν εὐ-
ρείπων πρότερον φόβοις πολέμου τῇ τοῦ Σεβαστοῦ συνανοίγνουσ[α] εἰρήνῃ μεγί-
στῳ καὶ [ἐ]{π}πιφανεσ(τά)τῳ θεῷ [Γαΐῳ] Καίσαρι ἀρχαίαν καὶ προγονικὴν τοῦ
γένους αὐτοῦ νεω-
10 κόρον ἐπανακτωμένη πόλιν· ὁ δὲ δῆμος αὐτῆς τὴν πρὸς τὸν Σεβαστὸν οἶκον θαυμά-
σας εὐσέβειαν καὶ τῆς ἀδιαψεύστου ἐπὶ τῷ παιδὶ τῶν ἐντολῶν μνήμῃ Ῥοιμητάλκᾳ
βασιλεῖ Κότυος υἱῷ ἀποδεξάμενος ἀ<λ>είπτοις ἐκείνου τῆς ἐπιθυμίας βουλήμασιν
καὶ τεθν<ε>ῶτος ἐνέζηκεν ἡ τῶν σπουδασθέντων μνήμη πολλὴν εἰση-

Καρχηδονίων τῶν πάλαι. τὰ μὲν οὖν πολλὰ ἐῶ, τρεῖς δ′ ἀρχιτέκτονας τοὺς ἐπιμελουμένους οἰκοδομημάτων τε δημοσίων καὶ ὀργάνων, τρεῖς δὲ καὶ θησαυροὺς κέκτηται, τὸν μὲν ὅπλων τὸν δ′ ὀργάνων τὸν δὲ σίτου.

39 Strabo, 12.8.11.1-6: Ἔστι δὲ νῆσος ἐν τῇ Προποντίδι ἡ Κύζικος συναπτομένη γεφύραις δυσὶ πρὸς τὴν ἤπειρον, ἀρετῇ μὲν κρατίστη μεγέθει δὲ ὅσον πεντακοσίων σταδίων τὴν περίμετρον· ἔχει δὲ ὁμώνυμον πόλιν πρὸς αὐταῖς ταῖς γεφύραις καὶ λιμένας δύο κλειστοὺς καὶ νεωσοίκους πλείους τῶν διακοσίων.

40 See A. E. Henderson 1904: 135-153. On the ports see M. Sève 1979: 349 sqq.

41 See note 32. Perhaps also Cyzicus took precautions in order to avoid a siege similar to that of Mithridates in the past.

42 A. Joubin, in his edition of the inscription, rightfully spoke of a «chef d'œuvre de complication, poussée jusqu' à l'obscurité et le barbarisme» and of «élégances criardes qui consistent dans l'abus des termes abstraits». Dittenberger also commented «Structuram et conexum orationis turbatum esse manifestum est».

νένκατο σπουδὴν, ὅπως μὴ τὸ πολυδάπανον αὐτῆς τῶν κατασκευαζομέ-
νων ἔργων [αἱ] περὶ τὴν ἀγορὰν ἐνποδίσωσι δυσφημίαι, ἐκ παντὸς αὐτῆς βουλομένης
τῇ τῶν ἰδίων ἀναλωμάτων δαψειλίᾳ ἀνεπιβάρητον περὶ τὴν ἀγορὰν μεῖναι τὴν εὐε-
τηρίαν, καὶ ταῦτα παρεσκευασμένης ἐκ τῶν ἰδίων τοῖς ὑπηρετοῦσιν ἀνενλιπῆ
παρασ-
χεῖν τὴν ἀγοράν· δι' ἃ δὴ δεδόχθαι τῇ βουλῇ καὶ τῷ δήμῳ, τούς τε ἄρχοντας καὶ στε-
φανηφόρους πάντας συνεπισχύειν τοῖς ἀγορανόμοις, ὅπως ἐν ταῖς αὐταῖς πᾶσα ἡ
ἀγο-
ρὰ πάντων μένῃ τειμαῖς, καὶ μηδὲ εἷς τῶν πιπρασκόντων τι κατὰ μηδένα τρόπον
πλείονος ἐπιβάλληται πιπράσκειν τῆς ἐνεστώσης τειμῆς· τὸν δὲ κακουργοῦντ[α πε]-
ρ<ὶ τ>ὴν κοινὴν τῆς πόλεως εὐετηρίαν καὶ παραφθίραντά τι τὴν ἀγορὰν τῶν ὠ[νί]-
ων [ὡ]ς κοινὸν τῆς π\όλεως λυμεῶνα ἐπάρατον εἶναι ζημιοῦσθαί τε ὑπὸ τῶν [ἀρχόν]-
των, καὶ ἀναχθέντα εἰς τὸν δῆμον ἐὰν μὲν πολείτης ᾖ, ἀποξενοῦσθαι, ἐ[ὰν δὲ ξέ]-
νος ἢ μέτοικος, καὶ τῆς πόλεως εἴργεσθαι, τό τε ἐργαστήριον αὐτοῦ σανιδίοι[ς]
προσηλοῦσθαι, ἄχρι οὗ συντελεσθῇ τὸ ἔργον, ἔχον καὶ τὴν τῆς ζημίας ἐπιγραφή[ν]·
τοὺς δὲ ἐκ σπουδῆς τε καὶ εὐνοίας ταῖς τῶν ἔργων ἑαυτοὺς ἐνπαρασχόντας
ὑπηρεσία[ις τε]-
χνείτας τε καὶ ἐπιστ<άτ>ας καὶ ἀρχιτέκτονας μαρτυρηθέντας ὑπὸ τῆς σεμνοτάτης
Τρυφαίν[ης με]-
τὰ τὴν τελεί<ω>σιν τοῦ ἔργου καὶ τῆς παρὰ τῷ δήμῳ τυχεῖν ἀπο<δο>χῆς·
προσκαταστῆσαι δὲ κα[ὶ]

When Hestiaios, son of Themistonax, was hipparch, on the tenth day of the month Lenaion, the boule and the demos decided. The strategos of the city Apollonios son of Demetrios, of the middle (trittys?) of the Argadis tribe, when Themistonax (held the presidency of the assembly), said. Because the very mighty and devout to the Emperor Antonia Tryphaena always shows every inventiveness possible in designs worthy of her piety towards Augustus and has dedicated our city's restoration as a thank-offering in memory of Augustus, considering us not an ancient foundation of (the hero) Cyzicus, but pointing to the recent favor by Agrippa, (because she) is opening up—with the help of Augustus' peace—the canals that had been filled up in the past for fear of war, restoring for the great and most eminent god (Gaius) Caesar the ancient city (which is) neokoros of his family for many generations. The demos admiring her piety to the imperial family and (knowing?) the unquestionable respect over the orders concerning her child, the king Roemetalces, son of Cotys, (the demos) having accepted repeatedly that his wish should remain undisturbed, so that after his death the memory of his achievements survives, (the demos) showed a great zeal in order to prevent slanders circulating in the market from obstructing the expensive constructions undertaken by her, herself being determined to maintain undisturbed, thanks to the liberality of her own expense, the proper provision of the market and being prepared to fully supply the market at her own expenses for the workers in these (constructions). And for these reasons the boule and the demos decided: all the archons and the stephanephoroi should join efforts with the agoranomoi, in order to maintain the same prices in all goods in the whole market and for not even one of the vendors to try to sell anything, in any way, for more than the actual price. And anyone who will harm the plentiful provision of goods in the city and will alter in any way the provision of the market, to the common detriment of the city, (he is) to be damned and be fined by the archons, and, brought before the demos, if he is a citizen, to lose his citizen rights, whereas if he is a foreigner or a metic, to be also excluded from entering the city

and his workshop to be boarded up with planks, until the works are finished, bearing also an inscription of the fine. Those on the other hand who, with effort and goodwill have offered their services to the works, craftsmen and superintendents and architects, as the most dignified Tryphaena will testify, after the completion of the works, to be acknowledged by the demos. To arrange besides also…"

The Cyzicenes, motivated by a need to erase previous accusations of disrespect to imperial cult, underline the connection of Antonia Tryphaena to the Emperor, valuing her capacity to befriend the Roman authorities.[43] It is noteworthy that this inscription provides the first known attestation of a city called "νεωκόρος" of the imperial family, although this term is not yet an official city title.[44] Other than flattery to the Emperor, the main preoccupation of the city's decree is to support Tryphaena in her wish for a constant and plentiful supply of affordable goods in the city market.

Cyzicus, as early as the sixth century B.C., was a commercial port of importance. Although the famous staters, the "Cyzicenes", once the currency of choice for the Euxine trade, were no longer minted, the city had not lost its importance as a trading center. The city possessed a large area of fertile land, making it almost self-sufficient. Strabo mentions that Cyzicus possessed three treasuries, one for the storage of weapons, one for tools and one for grain, and speaks about the ample provisions stored in its granaries.[45] The local products provided for the requirements of a large population and of temporary residents, while a part of the produce was exported.[46] The city possessed at least three agoras[47] (the sacred, the squared and the men's agora), whereas the fair of the city (πανήγυρις) was famous, attracting temporary residents from all parts of the world. Cyzicus was, in the words of Rostovzeff, «the great *entrepôt* of the Pontic trade», «a place of call for ships and a clearing-house for goods of the same trade».[48] But, recently, the city had suffered several vicissitudes: the siege by Mithridates, the loss of the status as a *civitas libera*, imperial disgrace, the closing of its harbors due to warfare. So, when Tryphaena proposed, not only to finance the restoration of the city's canals and dedicate the works to the memory of Augustus, but also to provide for the nourishment of workers,[49] the Cyzicenes felt bound to take care that these noble offerings would not be tainted by the merchants' speculation, often characteristic of times of increased demand. Such speculation had obviously already

[43] On this attitude see Mourgues 1995: 112, n. 19.

[44] It underlines the variety of ties between the city to the emperor. See Dmitriev 2005: 267.

[45] Strabo 12.8.11.19: ποιεῖ δὲ τὸν σῖτον ἄσηπτον ἡ Χαλκιδικὴ γῆ μιγνυμένη.

[46] The city also exported wine, fish, perfumes and unguents. See Hasluck 1910: 171.

[47] On the agoras of Cyzicus, see Sève 1979: 346ff.

[48] Rostovtzeff, 1941: 1264. On the coinage in use see 588.

[49] According to Jones 1940: 215, this must be viewed as linked to «the influx of labour in the context of an emergency». Jones also thinks this measure though could only have applied to home-grown produce and not to importers.

been noticed in the city markets and may have affected the offer and availability of manpower. For this reason, the city attempted to control inflationary pressures in its markets, by the menace of heavy penalties.

The supervision of the market prices is entrusted to the ἀγορανόμοι, whom, due to the extent of the work, all other officials—including the στεφανηφόροι—must assist. In Cyzicus, the ἀγορανόμοι had their office, the ἀγορανόμιον, in the portico of the squared market place, in close vicinity to those of the other archons of the city, the κοσμοφύλαξ and the τιμητής.[50] As in most cities, the duties of the ἀγορανόμοι[51] included the general supervision of the market[52] and of equitable exchanges.[53] Their right to fix prices is mentioned in several inscriptions of Greek cities as well as in other sources.[54] We do not know if, in order for the ἐνεστώσα τιμή to be known to all in Cyzicus, such prices were recorded or set by the ἀγορανόμοι at the time of this decision, as in the agoranomic inscription from Pireaus dating from the first half of the first century B.C., recording the prices set by the ἀγορανόμος for different cuts of pork, goat, lamb and beef.[55] No trace of such a record survives in Cyzicus, where the ἀγορανόμοι are not instructed to actually *fix* the maximum prices, but to supervise the selling of goods at the ἐνεστώσα τιμή.[56] This expression reminds the καθεστηκυῖα τιμή mentioned in sources in Athens,[57] the meaning of which as "normal price", "current price", or "official price set by the city" in relation to import of grain has made the object of an animated debate among

[50] Sève 1979: 346, 351ff.

[51] On the duties of the ἀγορανόμοι see Jones 1940: 215-216 (on inscriptions mentioning different functions, see 345-350, n. 10-11); Stanley 1979: 72-79; Jakab 1997: 70-80, 82-85; Harris 2005: 159-176.

[52] *Syll.*[3] 946, *SEG* 4.518, *Forsch. Eph.,* III. 10-16. On the establishment, conservation and reproduction of official weights and measures, see *IG* II[2] 1013.

[53] Among other duties, the *agoranomoi* were responsible for collecting the rents on the shops leased by the city in the agora, inspecting the quality of the goods exposed for sale, using the correct weights and measures according to the standards kept in their office, stamping the weights and measures used by traders and enforcing currency laws and rates of exchange. It was their duty to also regulate the hiring of casual labour and to see that an adequate supply of provisions was put on the market at a fair price. Cf. Arist., *Ath.Pol.,* 51.1. On these duties, cf. Stanley 1976.

[54] Plautus, in his *Miles gloriosus,* has one of the figures of the play regret that gods have not regulated better human life, as an *agoranomos* does (727-729): Sicuit merci pretium statuit qui est probus agoranomus: | quae probast <mers pretium ei statuit>, provirtute ut veneat | quae inprobast, pro mercis uitio dominum pretio pauperet.

[55] Steinhower 1994: 51-68. See Bresson 2000: 151-182, esp. 171-182.

[56] Migeotte 1997: 42, thinks on the contrary that «ici les prix étaient probablement fixés par les agoranomes selon les indications de la bienfaitrice et, pour l'application de la mesure, étant donné l'affluence, ces magistrats devaient être secondés par les archontes et les stéphanéphores.»

[57] Demosthenes, XXXVI.39; LVI.8 and 10.

modern scholars.[58] The word ἐνεστώσα of the decree of Cyzicus is rather implying prices in effect "at the current moment" and the measure is explicitly applying to all sorts of merchandise sold in the market and not only to grain, fish or meat, the prices of which have been recorded in a handful of inscriptions from other cities.[59] Regardless of whether prices were fixed by the ἀγορανόμοι or not, the penalties imposed for the crime of "speculation" in Cyzicus remain exceptional. In no other case are the ἀγορανόμοι instructed to superintend the stability of market prices, where the offense of selling at higher prices is punished by disfranchising the tradesman or deporting him, boarding up his shop and placarding his offense upon it.

The severity of the penalties threatened for transgressors indicates the importance attached by the city to the control of prices. Transgressors are, in the first place, to receive damnation (ἐπάρατον εἶναι) by the city, a most appalling punishment.[60] They are also to be fined (ζημιοῦσθαί τε), although the amount of the fine is not specified.[61] Then, the traders guilty of selling at higher prices are threatened with rejection from the citizen body itself. Ἀποξενοῦσθαι implies that any citizen of Cyzicus found by the ἀγορανόμοι or other archons to sell goods for more than their current price, would be brought before the assembly to be punished with loss of citizenship. Even in these times of attenuated city independence, losing one's status as citizen was an extreme punishment, all the more since recently Cyzicus had probably regained its status as a *civitas libera* within the Roman Empire.

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[58] The different propositions are commented by Migeotte 1997: 47, n. 24 and Bresson 2000: 183ff., who also comments on the relevant litterary, epigraphic and papyrological sources mentioning καθεστυκῖα τιμή.

[59] Migeotte 1997: 40-42, comments on seven inscriptions, dating from the 3rd century B.C. to the 2nd century A.D., where different cities are fixing prices for goods sold in the markets.

[60] I thank Professor Angelos Chaniotis, for the following comments: «The combination of cursing and fining is very well attested in excerpts of testaments concerning the use of graves in the Imperial period (a famous example is the so-called *Testament des Epikrates*, published by Peter Herrmann [1969], more examples are included in Strubbe, [1997]). Exactly as the decree from Kyzikos, such texts threaten the violator of the grave and of the testator's wishes both with the consequences of a curse (ἐπάρατον εἶναι) and with the payment of a fine. The cursing, which is referred to in these texts is *preventive*. Cursed are potential violators; the texts usually contain the funerary imprecations, i.e. they quote the formulae used during the cursing ceremony; in a few cases, it is explicitly mentioned that the cursing has already taken place. So, I wonder whether we have a similar case in Kyzikos: cursing in advance (and anonymously) potential violators (as in the case of the *arae Teiorum*), who might have remained unknown (they could sell goods at higher prices secretly), rather than cursing post eventum of a known violator of the decree. Preventive cursing is well attested in Roman Asia Minor, e.g. in the 'confession inscriptions'».

[61] On fines imposed by the ἀγορανόμοι and other city officials see Dmitriev 2005: 34-35.

Ἀποξενοῦσθαι is an *hapax* in city decrees, and remains without immediate parallel in the juridical meaning of "penalty". The closest meaning in literary sources[62] is that of being estranged, alienated, driven into exile or to be obliged to live away from home. In the context of the above decree, the term seems close in meaning to ἀτιμία. The penalty of ἀτιμία, as a partial or total loss of the rights attached to citizenship, often mentioned in the context of the classical or early Hellenistic cities, is a rarity in Roman times. Ἀτιμία,[63] better known in fourth century Athens, was covering various crimes such as theft, bribery, military crimes, false testimony and disrespect towards parents. It extended to a range of offenses, climaxing into several levels of exclusion of civic rights. Under certain circumstances, ἀτιμία was limiting specific rights, according to particular sanctions (κατά προστάξεις).[64] In the most complete form, it was a punishment for debtors to the state, persons guilty of treason or attempt to overthrow the democratic constitution, persons convicted of bribery or theft and those who had proposed the abolition of certain laws. The citizen was then deprived of all civic rights: the right to seat in the *Boule* or as a juror, to speak before the *Ecclesia* or take part in it, to move decrees, to hold a magistracy, to prosecute in public as well as in private actions, to serve as juror at court or to give evidence, to participate to religious festivals. Total ἀτιμία also deprived a citizen from the right to enter the *agora* (εἰσιέναι εἰς τὴν ἀγορὰν) and the sanctuaries.[65]

Whether ἀτιμία was in fact similar to the loss of citizenship, is debated.[66] Deprived of all rights connected to the possession of citizenship, the condition of the ἄτιμος καθάπαξ[67] was similar to that of a foreigner, but did not explicitly imply the loss of citizenship. In Athens the consequences of ἀτιμία as disfranchisement were progressively attenuated: in the 4th century, according to MacDowell "*a disfranchised citizen was not equivalent to an alien*."[68] On the other hand, it has been supposed that the condition of the ἄτιμοι *was* similar to this of the

[62] Liddell and Scott, s.v. ἀποξενόω.

[63] On ἀτιμία see Paoli 1930: 304ff.; Harrison 1971: 169-176; Todd 1993: 116-119, 181-182; Hansen 1973 (non vidi); idem 1976: 55-98; idem 1977: 113-120; Rainer 1986: 163-172; Youni 1998: passim.

[64] Andocides, *Myst.* 75.

[65] Lysias, VI.24; Demosthenes, XXII.77; XXIV.60.103.126; Aischines I.164; II.148; III.176.

[66] For ἄτιμος in the sense of «non citizen», see Hdt. 1.173.5: καὶ ἢν μέν γε γυνὴ ἀστὴ δούλῳ συνοικήσῃ, γενναῖα τὰ τέκνα νενόμισται: ἢν δὲ ἀνὴρ ἀστὸς καὶ ὁ πρῶτος αὐτῶν γυναῖκα ξείνην ἢ παλλακὴν ἔχῃ, ἄτιμα τὰ τέκνα γίνεται.

[67] Demosthenes, XXI.31. Swoboda 1905: 154.

[68] In some respects he was better off than an alien and in some worse, since an alien could not marry an Athenian woman, but he could trade in the Agora and speak in a law-court. Also, in 4th century ἀτιμία, although a serious handicap, seems to be much less serious than in the 6th century sense of outlawry, when the ἄτιμος could be killed by anyone without becoming liable to prosecution. On these see MacDowell 1978: 74-75.

ἀπελαυνόμενοι τῆς πολιτείας. Bordes, considering that the legal status of a citizen was the essential basis of the *politeia,* underlined that the effects of the exclusion of the penalty of ἀτιμία, pronounced by a court in a democratic regime, can be assimilated to the effects resulting from the political exclusion of citizens of Athens, as during the oligarchic revolution of 411 and 404 B.C.[69] Hansen, in his treatment of the subject,[70] has claimed that ἀτιμία was both more and less than disfranchisement, that it did not deprive the ἄτιμος of his citizenship, nor was he formally exiled.

Plato, a long time ago, maintained that ἄτιμον δὲ παντάπασιν μηδένα εἶναι μηδέποτε μηδ' *ἐφ'ἑνὶ τῶν ἁμαρτημάτων*, μηδ' ὑπερορίαν φυγάδα.[71] The penalty of Cyzicus, imposing for a first time offense *expressis verbis* the loss of citizenship and the interdiction to trade within the city,[72] seems to regress to a severity long lost in Greek cities. Still, overall, the intended penalization in Cyzicus, bears many similarities with several aspects of ἀτιμία. The loss of citizenship and other sanctions threatened against metics and foreigners, are not an automatic penalty, but are to be the object of a sentence: a rudimentary procedure is sketched in the decree, according to which the persons who had committed the offense of selling at higher prices are to be fined by the archonts (ζημιοῦσθαί τε ὑπὸ τῶν [ἀρχόν]των) and brought before the assembly (ἀναχθέντα εἰς τὸν δῆμον), a procedure reminding of the ἀπαγωγὴ, or the ἐφήγησις of classical Athens (since the arrest is probably made by the ἀγορανόμοι or other city officials),[73] although this juridical terminology is lacking. The assembly is obviously acting as a jury court for the hearing of the case. Ἀτιμία was of course applicable only to citizens. Nevertheless, the penalties imposed upon greedy merchants in Cyzicus seem to have a strong "political" scope, regardless of the merchant's status. It is as if the aim is to extend "ἀτιμία" in a broad sense, applicable only to citizens, to metics and foreigners as well, who of course could not be deprived of citizen rights. For foreigners and metics, it is noteworthy that the penalty included the exclusion from entering the city itself (τῆς πόλεως εἴργεσθαι), a much broader prohibition than the exclusion from ἀγορᾶς. This exclusion from any area of the city is clearly an analogy to the effects of ἀτιμία imposed upon citizens: εἴργεσθαι τῆς ἀγορᾶς καὶ τῶν ἱερῶν[74] or τῶν νόμων,[75] was, in earlier centuries, an exclusion imposed upon citizens found to be ἄτιμοι, although such exclusion and ἀτιμία did not coincide completely. Are we to believe that this exclusion from the city meant that foreigners and metics were *ipso facto* exiled from

[69] Bordes 1982: 79-90.
[70] Hansen 1976: 55-56.
[71] Plato, *Laws,* 855c: «nobody will ever, for a single crime, be deprived from his citizen rights, even if he is banished out of the borders».
[72] On the limitation of the *ius commercii* as a practical effect of the penalty of ἀτιμία, see Poddighe 1993: 274.
[73] Todd 1993: 117; Youni 1998: 103-106.
[74] Isocrates, IV.157, Antiphon VI.36, Lysias VI.24.
[75] Demosthenes, XXIV.105.

its soil? Excluded from the *ius commercii* by radical measures—the placarding of the shop remains a very powerful image—any citizen, metic of foreigner could not go about his business in Cyzicus, would be deprived from any source of revenue within the city and therefore living in it would become difficult.[76] Concerning foreigners, the application of the decree would of course be extremely difficult for Roman *negotiatores* or merchants visiting the busy city ports. The first were not to be offended by any means, the second, how were they supposed to know the actual prices in Cyzicus at the time?

No means of rehabilitation or for recovery of their rights are given to the guilty parties.[77] It is though specified that (l.25) τό τε ἐργαστήριον αὐτοῦ σανιδίοι[ς] προσηλοῦσθαι, *ἄχρι οὗ συντελεσθῇ τὸ ἔργον*. What is paradoxical is that the effects of ἀποξενοῦσθαι seem not to be limited in time, although the measure was obviously intended to last only for the duration of the works. The city had reasons to be stricter with its own citizens, the ones who should have been most grateful to Tryphaena, but probably the effects of this suspension of citizen rights also did not extend beyond the completion of the works. Considering whether ἀποξενοῦσθαι could imply that citizens guilty of speculation were not threatened with a loss of status, but threatened to be driven into exile, several objections can be raised. The term ἀποξενοῦσθαι has indeed been used in the sense of "being driven into exile" in literary sources. The meaning of the word as "estranged" and "alienated" is also attested, showing the semantinc variety, which permits both explanations.[78] On the other hand, in city decrees, when the penalty threatened is to be driven into exile, the expression consistently used is φεύγειν and not ἀποξενοῦσθαι. Such is the case of the decree of Concord from Mytilene,[79] or the law against tyranny from Troas (around 281 B.C.),[80] while it is also in fact considered as a consequence of the penalty of ἀτιμία. In other cases, the penalty of exile is accompanied by a confiscation of all property, as in the decree on the agreement between Athens and

[76] But, he was not technically condemned to exile from the state (ἀειφυγία), the condition of φυγὰς implying several other elements such as the exile from the fatherland, the confiscation of property and, if also ἀγώγιμος, personal servitude, on which see Poddighe 1993: 278-279.

[77] Similar to the *ἄδεια* given by the assembly and six thousand votes in favor for the rehabilitation of the *ἄτιμος*. See McElwee 1975.

[78] See above note 62.

[79] *SEG* 36.750, around 340-330 BC, l. 14-21: αἰ μέγ κέ τις δίκας γενομένας |[15] κατ τὸν νόμον φύγηι ἐκ τᾶς πόλιος ἢ ἀπυθάνη, | [χ]ρῆσθαι τῶι νόμωι· αἰ δέ κε ἄλλον τινα τρόπο|[ν Μυτ]ιληνάων ἢ τῶγ κατοικέντων ἐμ Μυτιλήν|[αι ἐπὶ προ]τάνιος Δίτα Σαωνυμείω σύμβαι *ἀτ[ιμασθέντα φυγ]αδεύθην ἐκ τᾶς πόλιος* ἢ ἀπυθ|[20]άνην ....]ντας χρήματα τ[ού]των τινὶ | [.....] ΤΑΣ.

[80] *IMT* Skam/NebTaeler 182, (around 281 BC), l. 101-104: καὶ ἐὰν τὴν | δίκ[ην μὴ νικήσηι, ψῆφον πρ]οσθέμενος ὥστε ἀ|ποκτεῖναι, *ἄτ[ιμον εἶναι] καὶ φεύγειν αὐτὸγ | καὶ ἐκγόνους οἵ ἂν [ἐξ αὐτοῦ γ]ένωνται·*

Ioulis on the payment of a debt,[81] or also by the clause "καὶ ὃς ἂν ἀποκτείνηι αὐτὸν μ[ὴ] μιαρὸς ἔστω·" attested in the treaty between Teos and Kyrbissos concerning sympoliteia.[82] As the word *καὶ* implies in the syntax of the phrase of the decree concerning the penalties for transgressors of different status (ἐὰν μὲν πολείτης ᾖ, ἀποξενοῦσθαι, ἐ[ὰν δὲ ξέ]νος ἢ μέτοικος, *καὶ* τῆς πόλεως εἴργεσθαι), the interdiction to enter the city is specifically destined to foreigners and metics, a fact that strongly argues against the interpretation of ἀποξενοῦσθαι simply as a penalty of exile. If ἀποξενοῦσθαι was only intended to mean "to be driven to live on a foreign land" and if it had nothing to do with the status of citizen, this does not explain why the decree is using different expressions and penalties for the different categories of merchants, according to their status as citizens on the one hand, or metics and foreigners on the other.

The offense is also characterized by a very strong moral reprobation: those who commit the "crime" are to be "ἐπάρατοι", [ὡ]ς κοινὸν τῆς πόλεως λυμεῶνα, an indication that transgressors were considered to be enemies of the state. The penalty of ἀτιμία was indeed characteristic of a strong moral reprobation, being literarily synonymous with the loss of all honour.[83] In classical times, it is reserved for crimes that, in one way or another, represent an omission to fundamental civic duties:[84] the integrity of the State and its officials, the respect due to the constitution, the fairness of justice and propriety of judicial duties, the necessity of military service and of proper defense of the city, the respect due to one's parents, the payment of debts to the state or to the gods, or a person's moral integrity.[85] Whenever the city considered an offense to constitute a threat to these milestones of civic duty, ἀτιμία was instituted as a sanction aiming to exclude from the citizen body a member unworthy of this honor.

But the further we move away from the 5th and 4th century, the less ἀτιμία seems to be of importance. New instances where ἀτιμία is threatened in subsequent centuries are limited and very few such examples survive in later inscriptions.[86] In

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[81] *IG* II² 111, l. 40-41: φεύγειν αὐτὸς Κέω καὶ Ἀθήνας καὶ τὴν οὐσίαν αὐτῶιν δημοσίαν εἶναι τοῦ δή[μο] τοῦ Ἰουλιητῶν·

[82] *SEG* 26.1306; 30.1376 (l. 21-26): τρέφειν [δὲ] τοὺς κυνὰς τὸμ [φ]ρούραρχον· ὃς δ' ἂν παραλαβὼν | τὸ χωρίον μὴ παραδῶ[ι τ]ῶι φρουράρχω[ι] τῶ[ι] ὑπὸ τῆς πόλεως ἀποσ[τελ]λομένωι ἀεὶ καθ' ἑκάστην τετράμη[νο]ν, φ[ε]ύγειν τε αὐτὸν ἀραιὸν | ἐκ Τέω καὶ ἐξ Ἀβδήρων καὶ ἐκ τῆς χώρας καὶ τῆς Τηΐων καὶ τῆς Ἀβδηρ[ι]|[25]τῶν καὶ τὰ ὄντα αὐτοῦ δη[μό]σια ε[ἶ]ναι, καὶ ὃς ἂν ἀποκτείνηι αὐτὸν μ[ὴ] | μιαρὸς ἔστω·

[83] On ἀτιμία as «dishonor» and the relevant citations, see Hansen 1976: 60-61.

[84] According to Hansen 1976: 74, «*atimia* was the penalty *par excellence* which an Athenian might incur in his capacity of a citizen, but not for offences he had committed as a private individual».

[85] Since ἀτιμία sanctioned even idleness, failure to divorce an adulteress, or male prostitution.

[86] *SEG* 9.1: a series of activities when exercised by citizens bring them the penalty of ἀτιμία. Cf. Velissaropoulos 1977: 66.

an inscription from Delphi[87], dated around 160-159 B.C., regarding a donation by king Attalus to the city for educational purposes and the regulation of loans accorded by the city officials, ἀτιμία is threatened against the ἐπιμεληταί who do not return the public funds entrusted to them (l. 81-85): εἰ δὲ μὴ ἀποδιδοί|ησαν οἱ ἐπιμεληταὶ ἐν τῶι γεγραμμένωι χρόνωι | τὸ ἀργύριον, *ἄτιμοι* ἀπογραφέντω {ἀ} <ὑ>πὸ τῶν ἐπικα|τασταθέντων ἐπιμελητᾶν ποτ' αὐτὸ καὶ τὸ ἡμι|[85]όλιον.

In a famous inscription from Pergamum, dated around 133 B.C.[88], the city in view of the ratification of the will of Attalus legating the city to Rome, decides to attribute the right of citizenship to several foreigners living in the city and the surrounding χώρα and ἀτιμία is threatened for those who, because of their absence, do not merit to be counted among the citizens (l. 26-30): ὅσοι δὲ τῶν κατοικούν | των ἢ ὅσαι ἐγλελοίπασιν ὑπὸ τὸν καιρὸν τῆς <τελευτῆς> τοῦ βασιλέως | ἢ ἐγλίπωσιν τὴμ πόλιν ἢ τὴγ χώραν, εἶναι αὐτοὺς κα[ὶ] | αὐτὰς *ἀτίμους* τε καὶ τὰ ἑκατέρων ὑπάρχοντα τῆς |[30] πόλεως.

In the long inscription from Aegiale in Amorgos,[89] dated at the end of the second century B.C., regulating Kritolaos' foundation, ἀτιμία is threatened for anyone who would suggest a different usage for the funds (l. 128-129): ὁ τούτων τι ποιήσας *ἄτιμος* | [ἔσ]τω καὶ ἡ οὐσία αὐτοῦ δημοσία·

In an inscription from Athens, dated at the first century B.C.,[90] the restored ἀτιμία is a penalty for those trying to abolish public offices elected by ballot (l. 21-23): εἶναι δὲ τὸν ἐπιχειροῦντα | ὃν δή] ποτε οὖν τρό[π]ον καταλ̣[ύειν τινὰ τῶν κληρωτῶν ἀρχῶν | *ἄτιμο*]ν̣ καὶ ἐπάρατον.

Finally, the last occurrence of ἀτιμία identified comes from Thasos of early imperial times,[91] where, in connection to a measure of protection of property, destined also as a sign of respect to the imperial cult, ἀτιμία is threatened for those who would propose the abolition of the decree (l. 14-20): τὸν δὲ ἢ] |[15] γράψαντα ἢ ἐπιψηφίσαντα ἢ ἀναγ[ράψαντα τὴν γνώ]|μην εἰς τὸ τῆς πόλεως γραμματοφ[υλακεῖον ὀφεί]|λειν τοῖς τῶν Σεβαστῶν ναοῖς στατῆ[ρας τετρα(?)|κ]ισμυρίους καὶ *ἄτιμον* εἶναι καὶ αὐτὸν κ[αὶ γένος· | ἐνέχ]εσθαι δὲ αὐτοὺς καὶ τῆι εἰς τοὺς Σε[βαστοὺς ἀσε|[20]βείαι·

These instances of ἀτιμία, although very few compared to the period covered, show that the penalty did not cease to exist until early imperial times and that, although rarely, it continued to be threatened for offenses broadly similar to these known for Athens up to the 4th century B.C.: for crimes related to the management of public funds, or for proposing amendments contrary to the city's decisions or constitution. But, it remains a fact that the more the cities' autonomy and

[87] *Syll.*[3] 672, cf. Dimopoulou 2007: 437-453.
[88] *OGIS* 338.
[89] *IG* XII 7. 515.
[90] *Ag*. 16.333.
[91] *IG* XII, Suppl. 364.

independence receded, the less ἀτιμία was evoked as a sanction against citizens.[92] Ἀτιμία was a penalty imposed upon those who failed to carry out their citizen obligations. In a broad sense, in Cyzicus, ἀποξενοῦσθαι and a series of penalties similar to the effects of ἀτιμία, sanctioned all those who failed to carry out their obligation to the purpose of the city's common prosperity. The penalty being disproportionate to the «crime», we may assume that it was intended to eliminate from the city market, for the duration of the works, all those who, by speculating on market prices, were jeopardizing their completion. Ἀποξενοῦσθαι, may thus imply a form of ἀτιμία limited in time, or a suspension of citizen rights for the duration of the works. For a city struggling to reassess its status within the eastern provinces of the Roman Empire and committed to overcome past difficulties, this measure of outdated severity was nothing but an effective way of underlying the city's priorities. Excluding from the marketplace and the city itself all those guilty of profiteering was the strongest statement of respect to Antonia Tryphaena as well as to the Romans.

Whether the penalty of disfranchisement was ever applied in Cyzicus, remains to be known. A few years later, in another decree of Cyzicus honoring Antonia Tryphaena and her φιλανθρωπία πρός τε τοὺς ἐνχωρίους καὶ τοὺς ξένους, a vivid picture is given of the merchants "from the whole of the civilized world" (ἀπό τῆς οἰκουμένης) and of the "foreigners" (ξένοι), who gather at Cyzicus at the time of the fair.[93] As for the last disposition of the decree, regarding those who would offer proper services for the completion of the works, one such testimony did survive in an inscription from Cyzicus. Praise is given by the *Boule* and *Demos* of the Cyzicenes to Bacchus Artemonos, probably the ἐπιστάτης[94] of the works, for his work in digging and consolidating the port, the lake and the channels. Even if ἀποξενοῦσθαι and the rest of the sanctions against metics and foreigners were never applied,[95] their threat was obviously effective in securing the completion of the

[92] Rainer 1986: 163-172: «Die Atimie als Einrichtung des öffentlichen Rechtes verlor umso mehr an Bedeutung, je stärker die Autonomie der einzelnen Stadtstaaten in Frage gestellt wurde. Die eigentlichen politischen Machthaber saßen anderswo und waren bestrebt, den inneren Frieden ihrer Reiche nicht durch unnütze Stadtquerelen beeinträchtigt zu sehen». He is not right thought when he comments on the inscription from Amorgos (*IG* XII 7. 515) «Diese Inschrift ist die letzte, in welcher der Begriff der Atimie aufscheint».

[93] *SEG* 4.707, l. 7-11: τῆι δὲ ἐνφύτωι φιλανθρωπίᾳ πρός τε τοὺς ἐνχωρίους καὶ τοὺς ξένους ἐχρήσατο ὡς <θαυμάζεσθαι> ὑπὸ τ[ῶν ἐπιδη]μού<ν>των ξένων μετὰ πάσης ἀποδοχῆς ἐπί τε εὐσεβείαι καὶ ὁσιότητι καὶ φιλοδοξίᾳ, ἐν δὲ τῶι κατ' ἔτος [ἐνιαυτῶ]ι ἀπούσης μὲν αὐτῆς, πάντων δὲ συντετελεσμένων ἐκπλέως κατὰ τὴν ἐκείνης εὐσέβειαν καὶ τῶν ἀπὸ τῆς οἰ[κουμέν]ης ἐνπόρων καὶ ξένων τῶν ἐληλυθότων εἰς τὴν πανήγυριν βουλομένων ἀναθεῖναι αὐτῆς ὅπλον εἰκονικὸν ἐπ[ίχρυσ]ον.

[94] On the word ἐπιστάτης implied by γενόμενος, cf. *IvP* ii 359 (partly restored).

[95] See Joubin 1894: 45-47 (who comments that «*Bacchus ne fut pas le Lesseps de l'isthme de Cyzique; il n'y fit que des travaux de réparation*»): Βάκχος Ἀρτέμωνος τοῦ Βακχίου, | γενόμενος ἐπὶ τῆς ὀρυχῆς τῶν | λιμένων καὶ τῆς λίμνης καὶ τῶν | διορύγων καὶ τῆς ἐποικοδομίας |[5] τῶν προκειμένων χωμάτων καὶ | ἐπαινεθεὶς καὶ στεφανωθεὶς ὑπὸ τῆς

works and the welfare of the city, for locals and foreigners alike.

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RESPONSE TO ATHINA DIMOPOULOU-PILIOUNI "ΑΠΟΞΕΝΟΥΣΘΑΙ: ATIMIA IN ROMAN TIMES?"

1. In tribute to Antonia Tryphaena, who was financing an important dredging and reconstruction program of the city harbours, the *boule* and the *demos* of Cyzicus passed a decree imposing severe penalties on anyone who might put at risk the ambitious naval project of the benefactress. The penalties, recorded in an inscription dating from A.D. 38, embraced any citizen, foreigner or metic, and were enacted in order to avert the danger of speculation that might affect the goods sold in the city market, in a period of unusual affluence of workers, attracted by that huge building program. The decision taken and recorded by the Cyzicenes had a twofold motivation: first, it was a way of expressing their gratitude to Antonia Tryphaena, in a decree written in an elaborate and grandiloquent style; second, it also aimed at the preventive goal of avoiding any difficulty that might compromise the successful completion of the works.

Athina Dimopoulou-Piliouni (henceforth D.-P.) rightly stresses the exceptionality of the measures taken in order to ensure the stability of market prices, a task commended to the ἀγορανόμοι, who could count on the assistance of all other officials (including the στεφανηφόροι), which is a clear sign not only of the big effort necessary to put into practice this market control, but also of the importance attached to its correct execution. D.-P. convincingly adduces several arguments to explain this special commitment, ranging from political and historical reasons to economic pragmatism and even to a moral expression of 'national' gratitude. In the past, Cyzicus had supported the Romans against king Mithridates VI of Pontus, who besieged the city in 74 B.C., and in recognition of this act of loyalty the Romans awarded it the status of *civitas libera* along with other benefits. However, during the time of Augustus (in 20 B.C.), Cyzicus lost its free status, and even if it was recovered a few years later (in 15 B.C.), the privileges were lost again under Tiberius (in A.D. 25) and restored a second time by Caligula, perhaps due to the direct influence of Antonia Tryphaena, to whom the emperor was related through a common ancestor (Mark Antony). Thus, the Cyzicenes had strong reasons not only to respect and honour their benefactress, but also to prove beyond any doubt that they were devoted to Rome and to the imperial sovereignty. On the other hand, the reconstruction program was a golden opportunity to put an end to the blockading of the city isthmus and ports, which must have affected severely the prosperity of the markets and of the entire population.

Taken as a whole, these factors help to understand the reason why the *boule* and *demos* of Cyzicus passed a decree in order to avoid inflationary pressures. The penalties were particularly heavy: transgressors were to receive a damnation by the city (ἐπάρατον εἶναι), a fine (ζημιοῦσθαι), and, as a corollary to all that, they were threatened with expulsion from the citizen body (ἀποξενοῦσθαι), in case the wrongdoer was a *polites*. D.-P. sustains that this last term should be translated as 'to lose the citizen rights', i.e. in a sense very close to the meaning of ἀτιμία. And even tough D.-P. is cautious in her argumentation, I think that this somehow central question of the paper deserves some further analysis before being accepted as certain.

2. *Atimia* is recognizably one of the most difficult topics of Greek law and D.-P. is well aware of that. In legal terms, the concept of *atimia* seems not to have had always the same implications. During the sixth and the first part of the fifth century, *atimia* corresponded probably to a state of outlawry, according to which the *atimos* could suffer mistreatment, lose his properties or even be killed with impunity. The person who suffered such a condemnation would face many worries, because in practical terms this sanction was somehow equivalent to an expulsion from Attica.[1] Perhaps during the second half of the fifth century, *atimia* started to imply a somehow lighter punishment, basically consisting in a loss of civic rights (with different levels of magnitude), i.e. in disfranchisement, applicable only to citizens, because only these had full *epitimia* (complete civic rights).

Atimia understood in this more specific sense could be applied permanently or could have only a temporary character, in the case of being motivated for example by a debt to the state, because the effects of *atimia* would be removed as soon as the debt was paid. Full *atimia* would exclude the malefactor from the right of participating in the main areas of public life (e.g. to speak in the assembly or in court, to enter sanctuaries or the Agora).[2] Nevertheless, it seems probable that the *atimos* (depending on the kind of *atimia* a person may have suffered) would keep some rights as citizen, like marrying an Athenian woman, paying taxes and serving in the army; to kill an *atimos* would still be a crime and nothing prevented the family of the deceased of bringing an homicide charge against the killer (MacDowell 1978: 74). But because the person punished with full *atimia* was not allowed to bring charges directly against anyone in order to defend himself and his property, it represented a harsh penalty according to Athenian standards, and even if an *atimos* was not formally condemned to banishment, the decision to go into voluntary exile

[1] It is not improbable that, during this earlier period, this sort of *atimia* could be applied both to citizens and to foreigners. See MacDowell 1978: 73-74.

[2] See the conspectus of sources in Hansen 1976: 61-62. *Atimia* could also be partial and prevent the convicted merely from some specific activities. Usually, *atimia* would fall only upon the wrongdoer, but in some cases it could extend to other members of the *oikos* and even have a hereditary character (as happened with the already mentioned cases involving debts to the state).

could sometimes be preferable to the prospect of remaining in Attica under such severe circumstances.

To conclude: in practical terms, there seems to be a connection between banishment and the heavier forms of *atimia*, but it should also be taken into account that exile was not in itself an immediate legal consequence of a conviction by *atimia*.[3]

3. *Atimia* is a penalty that, in essence, depends strongly on the juridical capacity of a *polites* (Hansen 1976: 74). It is therefore no surprise that, the further we move away from classical times and the less independent the *poleis* are, the less frequent the penalty of *atimia* becomes. There are, nevertheless, a few examples of *atimia* that survive in later inscriptions, and D.-P. quotes very pertinently (pp. 235-237) five instances dating from the middle of the second century B.C. down to the early years of the Empire. It is quite significant that the words *atimos/atimoi* appear in all these examples and that the last occurrence (coming from Thasos and dated from early imperial times) is similar in its wording to other examples of classical times (p. 236: 1.18): καὶ ἄτιμον εἶναι καὶ αὐτὸν κ[αὶ γένος].[4]

By contrast, this is not the case with the decree passed in Cyzicus, where the word ἀτιμία or one of its cognates does not make a single appearance[5]. Admittedly, Cyzicus is not Athens and a decree promulgated in A.D. 38 does not have to mirror the practice of democracy in the age of the orators, but the absence of an expected technical term, and the presence of a different one, suggests that further inquiry is necessary before interpreting ἀποξενοῦσθαι as ἀτιμία and translating the verb as 'to lose the citizen rights'.

4. On p. 232, D.-P. makes a few remarks that are central to her analysis of the problem under consideration: «Ἀποξενοῦσθαι is an *hapax* in city decrees, and remains without immediate parallel in the juridical meaning of "penalty". The closest meaning in literary sources is that of being estranged, alienated, driven into exile or to be obliged to live away from home. In the context of the above decree, the term seems close in meaning to ἀτιμία.»

As stated in the first sentence, the term ἀποξενοῦσθαι is an *hapax* in city decrees and the fact that it has no direct parallel in the juridical meaning of 'penalty' obviously demands deeper scrutiny of the literary sources, especially if – as D.-P. recognizes – these sources support an interpretation closer to 'being driven into exile' or 'being obliged to live away from home'. I think that it is not enough to assume that in the context of the Cyzicus decree «the term seems close in meaning

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[3] It is fair to recognize that D.-P. is aware of that limitation (p. 232) «Hansen, in his treatment of the subject [1976: 55-56], has claimed that ἀτιμία was both more and less than disfranchisement, that it did not deprive the ἄτιμος of his citizenship, nor was he formally exiled.»

[4] See an example from classical Athens in Hansen 1976: 61.

[5] We must of course discard τειμή (lines 20-21) in the sense of 'price' of the goods sold in the market.

to ἀτιμία». On p. 232, D.-P. quotes Plato (*Lg*. 855c: ἄτιμον δὲ παντάπασιν μηδένα εἶναι μηδέποτε μηδ' ἐφ' ἑνὶ τῶν ἁμαρτημάτων, μηδ' ὑπερορίαν φυγάδα) in order to support the equivalence of ἀποξενοῦσθαι with *atimia* and with the 'loss of citizenship', but I think that the expression μηδ' ὑπερορίαν φυγάδα rather points precisely in the opposite direction: ἀποξενοῦσθαι is 'to be banished' or 'to be sent into exile', but not necessarily as a consequence of having suffered the penalty of *atimia*.[6]

5. In order to reach a better understanding of ἀποξενοῦσθαι I would like to dedicate some more attention to the literary sources, by discussing a few passages that are not listed in Liddell-Scott, s.v. ἀποξενόω. Although the term is relatively rare, it is beyond the scope of these short comments to discuss all the occurrences of the word and its cognates. Accordingly, I will only evoke here the context in which the term ἀπόξενος is used throughout Aeschylus' *Oresteia* – significantly, once in each of the three plays.

The first occurrence is in the *Agamemnon*, when Cassandra announces that Orestes is going to revenge his father and punish Clytemnestra's crime (*A*. vv. 1279-83): Οὐ μὴν *ἄτιμοί* γ' ἐκ θεῶν τεθνήξομεν. | ἥξει γὰρ ἡμῶν ἄλλος αὖ τιμάορος, | μητροκτόνον φίτυμα, ποινάτωρ πατρός· | φυγὰς δ' ἀλήτης τῆσδε γῆς *ἀπόξενος* | κάτεισιν, ἄτας τάσδε θριγκώσων φίλοις·

It is interesting to note that the notion of *atimia* is somehow implicit in Cassandra's words, not in the sense of disfranchisement but with a generic and wider connotation of a public, social and religious lack of consideration, which demands compensation comparable in magnitude to the humiliation that she has suffered. The avenger will be Orestes, characterized as φυγὰς δ' ἀλήτης τῆσδε γῆς ἀπόξενος, i.e. someone who is living an existence of exile and wandering, as a result of (voluntary) desertion from his own land. Apart from that, in this passage it is Cassandra's τιμή (and indirectly that of Agamemnon) that demands reparation and not the one of Orestes, whose absence from Argos constitutes a preventive manoeuvre destined to protect him from political intrigue and to safeguard his own life.

The same word is used again in a context of great dramatic and personal tension, in the final scene of the *Choephori*, when Orestes admits having killed Clytemnestra, though alleging that he has done it within the realm of legality: as a direct mandate of Apollo, who is, for his part, an interpreter of Zeus.[7] He feels with growing intensity the menacing presence of the Erinyes and he knows that he has to

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[6] The city decrees quoted by D.-P. in notes 79 and 80 simply confirm, as stated at the end of section 2, that there could be a connection between banishment and the heavier forms of *atimia*. Besides that, *atimos*, *pheugein* and *apoxenos* can in fact occur in the same context, as shown by a passage of Aeschylus (*A*. vv. 1279-83), discussed later in section 5.

[7] I discuss in detail the legal implications of homicide in the *Oresteia* in Leão 2010.

flee from Argos (*Ch*. vv. 1042-43): Ἐγὼ δ' ἀλήτης τῆσδε γῆς *ἀπόξενος*, | ζῶν καὶ τεθνηκὼς τάσδε κληδόνας λιπών.

The inevitability of exile and banishment is expressed in terms that represent almost a perfect replica of the language used by Cassandra to define Orestes' situation, with the single variation that now ἐγώ significantly substitutes the word φυγάς, used by the prophetess in *Agamemnon* (v. 1282). Although forced by the circumstances, it is Orestes who chooses to go into exile; besides that, his expectation is to free himself of the pollution of homicide and not actually to remain exiled from Argos and from the governing of his palace. Here again the status of ἀπόξενος is not a consequence of a process of *atimia* and the return of the exiled is expected in the near future.

The third passage occurs in the *Eumenides*, after the acquittal of Orestes, at the moment when Athena is making a big effort in order to integrate the Erinyes into the budding order. Winning in court against these divinities of the past was only the first step; it was now necessary to convince them (not by force, but with the help of *Peitho*) to become integrated in the new reality as charitable deities. In Athena's argumentation, the terms under analysis make a final appearance (*Eu*. 881-84): Οὔτοι καμοῦμαί σοι λέγουσα τἀγαθά, | ὡς μήποτ' εἴπῃς πρὸς νεωτέρας ἐμοῦ | θεὸς παλαιὰ καὶ πολισσούχων βροτῶν | *ἄτιμος* ἔρρειν τοῦδ' *ἀπόξενος* πέδου.

Athena desires to avoid that an honourable old goddess ends up being driven into a situation that simultaneously combines the sorrows of Cassandra and Orestes: to face a discredit (ἄτιμος) which is somehow unbearable to a mighty θεὸς παλαιά like the Erinyes and to be forced to wonder (ἔρρειν), banished from the soil of Athens (τοῦδ' ἀπόξενος πέδου). Of the three examples taken from the *Oresteia*, this is the one where the clearest link is established between the status of an *atimos* and that of an *apoxenos*. By losing the dispute against Orestes and Apollo, the Erinyes are affected by a kind of degradation of their former status as goddesses, a situation which in a certain way is comparable to the effects of a conviction by *atimia*. Consequently, Athena fears that exile and animosity towards the Athenians might be an inevitable reaction on the part of the Erinyes. But even now, this does not affect the main problem under discussion: *atimos* and *apoxenos* may be found together to underline a situation of statutory vulnerability, but these terms have different motivations and are not equivalent in their legal implications.

To conclude: ἀποξενοῦσθαι is not identical to *atimia* and should not be understood as 'losing civic rights'; on the other hand, the more concrete interpretation of 'being banished' not only is more in accord with the literary sources but also remains preferable even in the context of the Cyzicus decree, as will be argued in the final section.

6. When discussing the similarities between *atimia* and ἀποξενοῦσθαι, D.-P. states (p. 232) that the penalties threatening citizens, metics and foreigners were not automatically applied, but had to be sanctioned by the assembly, acting as a jury court for the hearing of the case. D.-P. rightly suggests that this disposition in the

decree (line 24: ἀναχθέντα εἰς τὸν δῆμον) is «a procedure reminding of the ἀπαγωγή, or the ἐφήγησις of classical Athens (since the arrest is probably made by the ἀγορανόμοι or other city officials)». She does not, however, consider the fact that the person responsible for the infraction is referred to by the expression τὸν δὲ κακουργοῦντ[α (line 21). If the word κακουργοῦντα is to be interpreted in a technical legal sense, it would also undermine the possibility of equating ἀποξενοῦσθαι and *atimia*, because in the sources the *atimoi* are not described as *kakourgoi*. Although convenient to my analysis of the problem, this argument should not be pushed too far, as the term *kakourgoi* is also often used simply in the general sense of 'wrongdoer' (Hansen 1976: 38; Todd 1995: 117).

As a final statement, I would like to argue that the literal interpretation of ἀποξενοῦσθαι as 'to be banished' not only suits better the tradition represented in the literary sources, but also works perfectly well in the context of the Cyzicus decree. Intended to be applied to a citizen, this penalty is heavier than the one instituted for a foreigner or a metic, which contemplated only the exclusion from entering the city (lines 24-25: ἐ[ὰν δὲ ξέ]νος ἢ μέτοικος, καὶ τῆς πόλεως εἴργεσθαι). This severity of the law against the *kakourgoi* that were also *politai* is easily understandable if one takes into consideration the deep 'national' interest of the polis in supporting the building program financed by Antonia Tryphaena (supra section 1). They should be the first ones to show a genuine commitment and, if they failed to act in the proper way, they should be punished accordingly. On the other hand, in excluding *kakourgoi* that were foreigners and metics from entering the city, the decree would make their living in Cyzicus extremely difficult, because it prevented them from any source of revenue, and so the decision to move to a different polis would become an attractive option. To put it in a different way: the *kakourgoi* were all forced or strongly invited to leave Cyzicus at least until the completion of the building program. And although the decree omits or at least remains ambiguous[8] in what concerns the duration of the interdiction, it is not improbable that the convicted were free to return to Cyzicus after the works were finished.

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[8] Cf. the disposition in line 26: ἄχρι οὗ συντελεσθῇ τὸ ἔργον. See the comments of D.-P. on pp. 234-235.

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ERWERB UND VERÄUSSERUNG VON GRABSTÄTTEN IM GRIECHISCH-RÖMISCHEN KLEINASIEN AM BEISPIEL DER GRABINSCHRIFTEN AUS SMYRNA*

I. Vorbemerkungen

Klar und deutlich fallen nach Gaius die Gräber als *res religiosae* grundsätzlich nicht unter den herkömmlichen Rechtsverkehr, sie sind *res extra nostrum patrimonium*.[1] Die Religiosität der Grabstätte beginnt mit der Einbringung eines Toten auf einem Grundstück, das dem Grableger gehört, durch eine Person, die dazu berechtigt ist, das Begräbnis auf diesem Grundstück durchzuführen.[2] Dennoch belegen zahlreiche Inschriften, vor allem aus Rom selbst, dass Grabplätze durchaus gekauft und verkauft werden konnten und dass dieser Erwerb – manchmal unter Angabe des Preises, der Größe oder des Verkäufers – auch auf den Grabinschriften selbst vermerkt wurde.[3] Als Beispiel sei hier ein Teil der Inschrift AE 1980, 150 angeführt, die in julisch-claudische Zeit datiert wird.[4]

> *Arphocras C(ai) Sulpici Galbae unctor se vivo locum emit sibi et Corintho denaris XXC et ossuarium denaris CLXXV*

An diesem Text wird deutlich, dass der Käufer nicht nur für 80 Denare einen Grabplatz erworben hatte, sondern auch noch für 175 Denare eine Urne. Wenn man nicht annimmt, dass damit die Kosten für die Errichtung des *ossuarium* gemeint waren, wird man von einem Verkauf eines fertigen Grabes ausgehen müssen. Um nun den offensichtlichen Widerspruch zwischen der Theorie und der Praxis erklären zu kön-

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1 Gai. Inst. 2,2-9; Pomp. D 18,1,6 pr.

2 Grundsätzlich dazu Kaser 1978, 22-37 in einer Auseinandersetzung mit Düll 1951; De Visscher, Le droit des tombeaux romains, Mailand 1963, 52-63.

3 U.a. CIL 10, 1746; 4811; CIL 11, 690; 1464; AE 1998, 435; CIL 14, 644 und aus Rom CIL 6, 2310; 2716; 3636; 4530; 4553 und viele mehr.

4 Zu diesem Inschriftenkomplex P. Pensabene, Stele funeraria a doppia edicola dalla via Latina, in: Bullettino della Commissione Archeologica Communale di Roma 86 (1978), 17-38 und Taf. 5; HD 004237 (Epigraphische Datenbank Heidelberg, http://www.uni-heidelberg.de/institute/sonst/adw/edh/index.html).

nen, hat die moderne Forschung verschiedene Denkansätze formuliert.[5] Zunächst könnte man mit R. Düll davon ausgehen, dass die inschriftlichen Belege lediglich Grundstücke betreffen, die zum Zeitpunkt des Erwerbs nicht religios sind, dann aber zu Gräbern geweiht werden, also als *locus purus* erworben wurden.[6] Ebenso wird an nicht belegte Teile des Grabmonuments gedacht, die – aufgrund des Fehlens einer Bestattung – auch nicht als religios zu gelten hatten.[7] Beide Überlegungen sind durch die antike juristische Literatur gestützt, allerdings bereiten unter diesen Voraussetzungen die Veräußerungs- und Erwerbsverbote Schwierigkeiten, wenn man nicht annehmen will, dass sie ohnehin nur „einschärfenden" Charakter gehabt hatten.[8] Daher geht eine zweite Theorie (Kaser) davon aus, dass lediglich das *ius sepulchri*, also das Recht auf Grablege, Gegenstand des freien Rechtsverkehrs sei, während die Grabstätten selbst diesem entzogen waren.[9] Schließlich muss an dieser Stelle auch De Visschers Theorie von der relativen Unveräußerlichkeit der Grabstätten angeführt werden: Rechtsgeschäfte über Grabstätten seien unter Berücksichtigung der sepulkralen Funktion sehr wohl gestattet gewesen, die Veräußerungsverbote bezögen sich fast ausschließlich auf Familiengräber, bei denen die *religio familiae* geschützt werden müsse, damit keine außenstehenden Personen Anteil an dem Grab nehmen konnten.[10]

Ein Beispiel für eine typische römische Grabinschrift mit einem Veräußerungsverbot, das ebenfalls vor allem in den stadtrömischen Inschriften zu finden ist, ist AE 1920, 107 (Z.1 und 3-8):[11]

1 *D(is) [M(anibus)]*
3 *... [--- f]ecerun[t]*
matri dulcissim(ae) et libertis libert[abusqu]e privatis Um-
5 *briciae Matronic(a)e in quo sepulc[ro ---]lio Apolausto*
marito itus, actus, aditus, ambit[us si qui]s autem hoc
monumentum vendere au[t don]at[ionis ca]usa abal(i)enare
voluerit infer(r)et virgin[ib]us Vest[alibus] HS XX m(ilia) n(ummum)[12]

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5 Einen knappen Überblick bietet etwa Klingenberg 1983, 607-610 mit weiterführender Literatur.
6 So Düll 1951, 200-202.
7 Z.B. Kaser 1977, 29.
8 Von dieser Theorie geht z.B. Mommsen 1895, 203 aus; s.auch: C. Ferrini, De iure sepulchrorum apud Romanos, Opere IV, Mailand 1930, 12.
9 Kaser 1978 68-82.
10 De Visscher 1947-48, 278-288. Auf die Details der einzelnen Theorien sowie die Kritik, die daran in der modernen Forschung geübt wurde, kann ich an dieser Stelle nicht näher eingehen, lediglich der römisch-rechtliche Hintergrund für die folgenden Ausführungen zu den Inschriften Kleinasiens sollte einleitend klar gestellt werden.
11 Neue Lesungen durch M.C. Capanna - S. Evangelisti, in: Panciera 2004, 257, Nr. 89.

Die kaiserzeitlichen griechischen Grabinschriften aus den Städten Kleinasiens weisen zu diesen römischen Inschriften große Ähnlichkeiten, in einigen Punkten aber auch Unterschiede auf, auf die im Folgenden eingegangen werden soll.[13] Zuvor seien aber noch zwei kurze einleitende Bemerkungen zum Grabwesen der hellenistischen Städte gestattet. So interessant die hellenistischen Grabinschriften aus griechischen Poleis für Fragen der Familienstruktur sein können, für das vorliegende sachen- und obligationenrechtliche Thema bieten sie kaum Auskünfte. Sie sind – abgesehen von den Epigrammen – kurz gefasst und bewirken meistens nur eine Identifizierung des Grabes. Verwertbare Informationen über Veräußerung oder Erwerb oder entsprechende Verbote lassen sich nicht entnehmen. Interessanter sind jedoch die Grabinschriften aus Lykien. Die moderne Forschung konnte überzeugend nachweisen, dass der Ursprung der Grabstrafen, die auf den kaiserzeitlichen Grabsteinen so charakteristisch an vielen Orten des Reiches vertreten sind, wohl dort zu finden ist. Darüber hinaus weisen bereits späthellenistische Grabinschriften vielfach auf Gemeinschaftseigentum an Sarkophagen hin, das von Kolb mit materiellen Überlegungen begründet wird. Auskünfte über den Grund, auf dem diese Sarkophage gestanden sind, werden allerdings nicht gemacht. Herauszustreichen ist auch in Lykien die Rolle der Archive, die bei den Verkäufen und Vergaben der Grabrechte mitwirkten. Auf diese Praxis werden wir im Laufe der Besprechung der Eigentumsübertragung bei den Inschriften der griechischen Städte noch zu sprechen kommen.[14]

Eine erste noch recht oberflächliche Untersuchung und Aufnahme der Grabinschriften im Rahmen der Vorbereitung eines Forschungsantrages hat gezeigt, dass in den einzelnen Städten Kleinasiens jeweils sehr starke lokale Traditionen auszumachen sind, die man besonders gut an den verschiedenen Strafklauseln und deren Zusammenstellung zeigen kann. Dafür wurde zunächst ein Katalog der verschiedenen Verbote erstellt. Im Rahmen dieser Aufnahme wurden auch Angaben zum Erwerb der Grabstätte eigens festgehalten, die die bereits erwarteten lokalen Unterschiede aufzeigten.[15] Für den vorliegenden Beitrag wurde Smyrna als Beispiel ausgewählt, da die Grabtexte aus dieser Stadt eine große Vielfalt von Klauseln aufwei-

[12] „Den Totengöttern. ... errichteten (dieses Grabmal) für die geliebte Mutter und die persönlichen freigelassenen Männer und Frauen der Umbricia Matronica, zu welchem dem Ehemann ... Apolaustus Zugang gewährt wird. Wenn aber jemand dieses Grabmal verkaufen oder unter dem Titel einer Schenkung veräußern will, soll er den Vestalinnen 20.000 Sesterzen zahlen." Zu den grammatikalisch schwierigen Zeilen 2-3, deren genaue Erläuterung für die Interpretation des Veräußerungsverbotes nicht relevant ist, siehe M.C. Capanna - S. Evangelisti, in: Panciera 2004, 257.

[13] Einführend: Hirschfeld 1887; Keil 1908; Stemler 1909. Am Beispiel der Grabinschriften von Hierapolis erläutert Ritti 2004 die Praxis des Grabschutzes in Kleinasien.

[14] Kolb 2008, 367-373 (Grabinschriften und Gesellschaftsstruktur); Zimmermann 1992, 142-167 (Grabbußen); Schuler 2002, 261-276; Schweyer 2002.

[15] Ich habe bewusst in die Untersuchung diejenigen Texte nicht aufgenommen, in denen die Auskunft über das Eigentum an der Grabstätte lediglich mit ἔστι und dem Genitiv eines Namens angegeben ist, da sie über den Erwerb der Grabstätte keine Auskunft geben.

sen. Im folgenden werden aber immer wieder auch Texte aus anderen Städten hinzugezogen, um Besonderheiten erläutern zu können.

II. Quellenlage

In Smyrna sind Bestätigungen des Kaufes sehr häufig auf Inschriften erhalten. Entweder im Aorist Partizip in der Form ἀγοράσας oder als Prädikat ἠγόρασε und ἠγόρασα finden sich aus einer Menge von ungefähr 340 edierten kaiserzeitlichen Grabinschriften insgesamt ungefähr 30 Belege dieser Art für den Kauf einer Grabstätte.[16] Dazu kommt in vielen Fällen die – wohl auch für das eigene Ansehen wichtige – Angabe über die Errichtung oder Reparatur der einzelnen Teile des Grabes und der Widmung dieser Teile. Die folgende Inschrift I.Smyrna 220 stammt aus einem Weingarten in Smyrna und ist heute verschollen, der Text ist aber in den Skizzenbüchern von J. Keil erhalten (IV 219).

1 Λ. Σκρειβώνιος Μενέ[[λα]]-
λαος ἀγοράσας {ας} παρὰ
Γ vvvvv Καπίτωνος τό-
πον κατεσκεύασα ἐνσό-
5 ριον καὶ καμάραν καὶ κλεί-
μακα καὶ σορὸν μυλίνην καὶ
θωρακεῖον ἑαυτῷ καὶ γυναι-
κὶ καὶ τέκνοις καὶ θρέμμα-
σιν.[17]

L. Scribonius Menelaos bestätigt, von C. Capito den Grabplatz gekauft und darauf eine Grabnische, eine *kamara*[18], eine Treppe, eine Sarkophag und eine Sockelmauer errichtet zu haben. Abgesehen von den Schwierigkeiten, den Aufbau des Grabes zu rekonstruieren, interessiert hier besonders der Vermerk, den Grabplatz gekauft zu haben. Bereits dieser Text ist aber in einem Detail nicht nur für Smyrna untypisch: Es ist auch der Verkäufer des Grabes angegeben. Dies passiert in griechischen Grabinschriften nur selten.[19] Hier zeigt sich deutlich, dass auf den Grabinschriften bewusst nur ein Auszug aus dem eigentlichen Kaufvertrag publiziert wurde. Auch der

[16] I.Smyrna 190; 191; 196; 198; 220; 229; 234; 245; 250; 255; 257; 258; 260; 300; 332; 337 (ἀγοράσας); 202; 241 (ἀγοράσασα); 195; 214; 235; 243; 244; 252; 322; 325 (ἠγόρασε).

[17] „Ich, L. Scribonius Menelaos, der den Grund von C. Capito kaufte, habe eine Grabnische, eine *kamara*, eine Stiege, einen Sarkophag aus Mühlstein und eine Sockelmauer für mich, meine Frau, meine Kinder und meine Zöglinge errichtet."

[18] Zu diesem Grabtypus vgl. Kubinska 1968, 94-99.

[19] Eine Ausnahme bilden die Grabinschriften aus Aphrodisias, wo der ursprüngliche Grabinhaber bei der *parachoresis* und der *synchoresis* häufig angegeben ist, u.a. IAph2007 11.512; 12.411; 12.805; 11.32; 11.103; 12.211; 12.508. Zum Rechtsvorgang siehe unten bei Anm.64.

für den Kaufvertrag notwendige Kaufpreis wird auf den kleinasiatischen Grabinschriften nur in einem einzigen Fall in einer Inschrift aus Halikarnassos erwähnt.[20]

An dieser Stelle muss eine wichtige Unterscheidung getroffen werden. Die hier zur Diskussion gestellten Grabinschriften bestätigen zwei Rechtsvorgänge: Einerseits gibt es in den Texten häufig Hinweise auf einen Kauf, in manchen Fällen dezidiert einen Kaufvertrag. Andererseits ist in der Grabinschrift selbst auch eine Rechtsurkunde zu sehen. Die Vorschriften, die der Errichter des Grabes selbst über die Belegung des Grabes und verschiedene Verbote macht, sind jedenfalls bindend. Über den Geltungsgrund dieser Anordnungen gibt es verschiedene Theorien in der modernen Forschung, mit Kaser wird man weitgehend von einem einseitigen, rechtsschöpferischen Akt im Rahmen der Privatautonomie ausgehen können, zu dem meines Erachtens noch die Bestätigung verschiedener Anordnungen durch die Stadt kommen muss.[21] Über beide Vorgänge, den Kauf und die Graberrichtung, wurden Urkunden ausgestellt, die – wie am Schluss meiner Ausführungen zu zeigen sein wird – in die städtischen Archive aufgenommen wurden.

Bestätigungen des rechtmäßigen Kaufs eines Grabes oder eines Teils eines Grabes finden sich auch in anderen Städten: Für die Verwendung des Verbs ὠνέομαι haben wir zahlreiche Belege aus dem kaiserzeitlichen Lykien (v.a. Xanthos) oder aus Aphrodisias, aber auch vereinzelt aus Halikarnassos, Herakleia Salbake oder Tralles.[22] Das Verb πρίαμαι, das sowohl für Freilassungen in Mittelgriechenland häufig verwendet wird, als auch für den Verkauf von Immobilien in Makedonien oder in dem Register aus Tenos, findet sich im Zusammenhang mit dem Kauf von Grabstätten selten. Eine Ausnahme bilden zwei Inschriften aus Ägina, IG IV 40 und 41, von denen die letztere von Rangabè auf das 4. Jh. v. Chr. datiert wird und somit den einzigen klassischen epigraphischen Beleg für den Erwerb einer Grabstätte darstellt.[23] Eine lokale Besonderheit ist in Herakleia Salbake festzustellen, wo der Kauf der Grabstätte regelmäßig im Passiv bestätigt wird: ἡ θήκη ἠγοράσθη ὑπὸ ...[24]

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[20] SEG 4, 193; McCabe, Halikarnassos 144: τὸ μνῆμα Δημη[τρίας] | τῆς Φιλοκάλου κ[αὶ τῶν] | τέκνων αὐτῆς Ἀπ[ολλωνίδου καὶ Ποπλίου […] |[5] ὠνησάμην παρὰ Διο|[σκ]ουρίδου τοῦ Ἀνε|[νκλ]ήτου δηναρίω|[ν πεντα]κοσίων. „Das Grab der Demetria, Tochter des Philokalos und ihrer Kinder, Apollonides und Publius ... erwarb ich von Dioskourides, Sohn des Anenkletos um 500 Denare." Interessant ist, dass die Grabinschrift aus Halikarnass zwar den Verkäufer und den Kaufpreis nennt, nicht aber den Käufer. Dieser mag der Ehemann der bestatteten Demetria, oder ein anderer Angehöriger gewesen sein, dessen eigene Bestattung auf einer zweiten Inschrift am Grabmal gerühmt wurde.

[21] Kaser 1978, 22-26.

[22] CIG 3113 (Teos); I.Assos 74; I.Sinope 160; I.Laodikeia am Lykos 111; Robert, Et.Anat. 363,1; TAM II 50; 330-333; 351; 619; 733; 752; 954; TAM III 671 (Termessos); Robert, La Carie II 109 (Herakleia Salbake). Der Terminus wird aber auch in Smyrna verwendet: I.Smyrna 232; 298.

[23] Der Terminus πρίαμαι taucht auch in Milet auf (McCabe, Milet 511, Z.1); dazu in einem Verkaufsverbot in Phrygien, MAMA 6, 325 und in Sizilien, JIWE 2, 360.

[24] Robert, La Carie II 92b; 107-111 und 164 aus Apollonia Salbake.

I.Smyrna 235 enthält einen Hinweis auf den Kaufvertrag und den Umfang des Kaufgegenstandes:

1 Οὐλπεία Ἀγριππεῖνα <ἡ>-
γόρασα τὸ ἡρῷον π-
ᾶν σὺν ταῖς σοροῖς, ὡς
καὶ ἡ ὠνὴ περιέχει, ἐα-
5 υτῇ καὶ τῷ ἀνδρὶ καὶ
τέκνοις καὶ ἐκγόνοις. [μη]-
δενὸς ἔχοντος ἀπαλλ<ο>τρι-
ῶσαι αὐτὸ. ἰ δὲ μή, δώσει
Μητρὶ θεῶν
10 Σιπυληνῇ <∗> φ′.[25]

Ulpia Agrippina bestätigt, das Heroon zusammen mit den Sarkophagen gekauft zu haben, „so, wie es der Kaufvertrag enthält". Üblicherweise wird die Formulierung ὡς ... περιέχει, die sowohl epigraphisch als auch in den Papyri belegt ist, verwendet, um auf einen Vertrag, ein Testament, oder eine andere relevante Vereinbarung zu verweisen, deren Bedingungen damit klar geltend gemacht, aber nicht direkt wiederholt werden. So wird hier auf den Inhalt des Kaufvertrages verwiesen, der natürlich den Umfang des Kaufgegenstandes enthielt. Dies ist auch bei anderen derartigen Verweisen in Grabverkäufen der Fall. In den mittelgriechischen Freilassungsinschriften des 1. Jh. v. Chr. wird in dieser Art und Weise auch auf die Bedingungen der Freilassung verwiesen. Die gleiche Technik der „Querverweise" (cross-references) ist aus dem Bereich des öffentlichen Rechts hellenistischer und kaiserzeitlicher Poleis gut bekannt.[26] Für uns oft nicht nachvollziehbar, da die Quellen fehlen, werden Dekrete, Gesetze oder andere Vorschriften ebenso angesprochen wie Ausschreibungsbedingungen und vieles mehr, und damit zu einem unabdingbaren Bestandteil des vorliegenden Beschlusses oder Vertrags gemacht, ohne sie im Detail noch einmal wiederholen zu müssen. Wer Näheres wissen wollte, war wohl auf die Archive verwiesen, wie dies auch in einer vergleichbaren Grabinschrift aus Kandyba

[25] „Ich, Ulpia Agrippina, kaufte das *heroon* zusammen mit den Sarkophagen, so wie es im Kaufvertrag enthalten ist, für mich, meinen Mann, Kinder und Nachfahren. Niemand hat (das Recht) es zu veräußern. Wenn (er es) aber doch (tut), soll er der *meter theon* in Sipylos 500 Denare geben."

[26] Zu den Grabinschriften vgl. TAM V 2, 1106 (Thyateira); TAM IV 1, 276 (Nikomedia). Zu den Freilassungsinschriften siehe z.B. FD III 6, 133 (Delphi, ca 75 v. Chr.); SGDI II 2208 (Delphi, ca. 50 v. Chr.). Verweis auf einen Kaufvertrag eines Grundstücks in einem Ephebenkatalog aus Halai (SEG 3, 421, 2. Jh. n. Chr.). Verweis auf ein Testament: IAph2007 12.803 (Aphrodisias, 1. Jh. n. Chr.). Siehe auch die Verweise auf die Bedingungen der Stiftung des C. Vibius Salutaris (I.Ephesos 27, 2. Jh. n. Chr.) auf den Basen der gestifteten Statuen (I.Ephesos 28-35).

ausgedrückt ist. In der letzten Zeile des Texts findet sich dort der Hinweis darauf, dass der Verkauf „eingetragen", also archiviert, ist.[27]

III. Käufer und Verkäufer

Wer waren die am Kauf beteiligten Parteien? Zu den Verkäufern kann man keine zusammenfassenden Angaben machen, da sie – wie bereits eingangs erwähnt – in den meisten Fällen nicht genannt werden. In Smyrna ist es lediglich die hier vorgelegte Inschrift I.Smyrna 220, der wir entnehmen können, wer der Verkäufer des Grabplatzes war: C. Capito verkaufte an den römischen Bürger L. Scribonius Menelaos. Wenige Beispiele sind aus anderen kleinasiatischen Städten erhalten, darunter ein interessanter Text aus Aphrodisias: Eine Sarkophaginschrift (IAph2007, 13.112) berichtet vom Kauf eines Weinbergs, der bislang keine Grabstätte enthielt, auf dem aber jetzt ein Sarkophag aufgestellt werden sollte, und nennt den Verkäufer.[28] Zwei lykische Inschriften belegen den *demos* als Verkäufer der Grabstätte. Die Inschrift TAM II 752 ist einer der frühesten Belege für die Bestätigung des Kaufes einer Grabstätte.[29] In diesem Fall wurde wohl öffentliches Land an die Grablegerin Lais, Tochter des Apollonios, die eine Bürgerin der Stadt war, verkauft.[30] Auch andere Möglichkeiten der Veräußerung durch Städte sind möglicherweise nachzuweisen: An manchen Stellen bestätigen Grableger, ein verfallenes Grab gekauft und wieder hergerichtet zu haben. Fraglich ist, ob sie dieses von den ursprünglichen Eigentümern direkt erwarben – wäre in diesem Fall ein Verfall des Grabes wirklich zu erwarten? – oder ob derartige Grabstätten irgendwann in öffentlichen Besitz übergingen und dann von der Stadt unter Mitwirkung der Archive wieder veräußert wurden. Eine bislang unpublizierte Urkunde aus Kyaneai zeigt, dass der Anspruch auf ein Grab mittels einer Urkunde auch nach Generationen noch geltend gemacht werden konnte. Zu Recht weist Kolb aber darauf hin, dass der Wechsel des Besitzers bei Gräbern eigentlich selten belegt ist, da gerade in diesem Bereich die Tradition hoch

[27] Unter anderem TAM II 752, siehe unten Anm. 29. Zur Technik der „Cross-References": M. Gagarin, Writing Greek Law, Cambridge 2008, 142-143.

[28] IAph2007 13.112, Z.1 : Grabinschrift des M. Aurelius Polychronios Charmides (Aphrodisias, kurz nach 212 n. Chr.): [οἰν]οπέδην ὠνήσατο καινὰ κενὰ ἀνένταφα Μᾶρ(κος) Αὐρ(ήλιος) Πολυχρόνιος Χαρμίδης, ... „Einen Weingarten erwarb neu, leer und ohne frühere Bestattungen Marcus Aurelius Polychronios Charmides, ...". Dazu Robert 1965, 196 und BE 1966, 411, der den Text in dieser Rekonstruktion für zweifelhaft hält.

[29] TAM II 752 (Kandyba, 1. Jh. v. Chr.): τὸν τάφον ἐωνήσατο Λαὶς Ἀπολλωνίου Κανδύβισα | παρὰ Κανδυβέων το[ῦ] δήμου ἑαυτῇ καὶ ἀνδρὶ καὶ γανβρῷ | καὶ τέκνοις καὶ οἷς ἂν συ[ν]χωρήσῃ. | ἡ ὠνὴ ἀναγέγραπται. „Das Grab erwarb Lais, Tochter des Apollonios, Bürgerin von Kandyba, vom *demos* der Kandybeer für sich, ihren Mann, den Schwiegersohn, die Kinder und diejenigen, denen es zugestanden wird. Der Kauf wurde aufgezeichnet."

[30] So auch TAM II 41c, Termessos, 149 n. Chr.; Robert, La Carie II 109 aus Herakleia Salbake, wohl 3. Jh. n. Chr. In den stadtrömischen Grabinschriften ist die Angabe des Verkäufers durchaus üblich, wie unter anderem CIL 6, 4881; 4975; 4983; 4996; 5001; 5014 belegen.

gehalten wurde.[31] Allerdings ist diesem Befund das häufig anzutreffende Veräußerungsverbot entgegenzusetzen, das doch deutlich die Furcht vor der Unterbrechung des geregelten Totenkultes durch die eigene Familie oder die Erben zeigt.

Betrachtet man die Liste der Käufer in Smyrna, kann man vorsichtig festhalten, dass mehr römische Bürger den Kauf der Grabstätte auf der Grabinschrift selbst festgehalten wissen wollten, als Smyrnäer ohne das römische Bürgerrecht (etwa im Verhältnis 3:1).[32] Interessant ist dabei, dass sich unter 23 Römern zumindest fünf finden, die wohl beide Bürgerrechte – das römische und das der Stadt Smyrna – hatten und diese Tatsache auch betonen wollten.[33] Natürlich können auch unter den anderen namentlich genannten Römern Bürger von Smyrna gewesen sein, die allerdings keinen besonderen Wert darauf legten, ihr griechisches Bürgerrecht eigens hervorzuheben. Unter den eingangs geschilderten Voraussetzungen, dass nämlich die Fragen des rechtlich korrekten Erwerbs einer Grabstätte eher ein Problem des römischen Rechts als des griechischen Rechts gewesen zu sein scheinen, mag dieser Befund ein erster vorsichtiger Hinweis darauf sein, dass wir es hier mit römischem Einfluss zu tun haben.

IV. Gegenstand des Kaufes

Im Mittelpunkt der nächsten Überlegungen stehen Art und Ausstattung der Kaufobjekte. Zunächst gab es natürlich die Möglichkeit, ein Grundstück zu erwerben, auf dem dann in weiterer Folge ein oder mehrere Gräber errichtet werden sollten. Das Grundstück konnte in seinen Ausmaßen beschrieben sein. Manchmal ist auch davon die Rede, dass es umgrenzt war, normalerweise aber wird es einfach als τόπος angeführt, wie dies auch I.Smyrna 220 der Fall ist.[34] Selten findet sich eine genaue Lagebeschreibung des Platzes, die ja bei normalen Grundstückstransaktionen notwendig im Kaufvertrag enthalten war.[35] Der Grund dafür wird aber auch in der Art der Inschrift gelegen sein: Die Grabinschrift vor Ort musste nicht notwendigerweise den Platz definieren, der Kaufvertrag wird das aber selbstverständlich getan haben. Ver-

[31] Kolb 2008, 369-370.

[32] I.Smyrna 190; 191; 202; 214; 220; 228; 232; 234; 235; 250; 252; 258; 260; 298; 322; 332; 356 (römische Bürger); I.Smyrna 195; 196; 255; 257; 284; 300; 325; 337; 241 (Smyrnäer ohne das römische Bürgerrecht).

[33] I.Smyrna 243; 244; 246; 251; 258. Zur Begrenzung von Grabstätten Kubinska 1968, 135-138.

[34] Vgl. Keil 1908, 537-542 und 544-548 zur Umgrenzung eines Grabes. Die Angabe der Ausdehnung der Grabstätte, die für römische Grabinschriften so typisch ist, findet sich in den kaiserzeitlichen Inschriften Kleinasiens selten. Ich danke A. Chaniotis für den Hinweis auf SEG 52.1227; I.Sinope 136; I.Pessinous 153. Vgl. Kubinska 1968, 139-141. Verwiesen sei hier allerdings auch auf die Horoi aus Athen, IG II^2 2566; Kerameikos III A 13 und 14, allesamt aus dem 4. Jh. v. Chr., die Größenangaben enthalten.

[35] Eine derartige Lagebeschreibung zeigt z.B. I.Smyrna 198, die Grabinschrift eines Numerius, der einen τόπος ψειλὸς erstanden hat. Kurz und bündig wird angegeben, dass der Platz hinter dem Polyandrion lag (Z.2).

schiedene Eigenschaften des Grabplatzes werden aber auch in den Grabinschriften genauer beschrieben, wie I.Smyrna 234 zeigt:

1 Νουμέριος Πρώσιος Στέφα-
νος ἀγοράσας τόπον περιοι-
κοδομημένον τοίχοις τέσ-
σαρσι, ψιλόν, καθαρόν, τὴν κα-
5 μάραν καὶ τὰ ἐν αὐτῆι ἐνσόρι-
α κατεσκεύασεν ἑαυτῶι
καὶ Πρωσίαι Κνιδίαι τῆι γυναι-
κὶ καὶ τοῖς ἰδίοις.[36]

Numerius Prosius errichtete für sich und seine Frau Prosia Knidia, sowie weitere Familienangehörige eine Grabanlage, nachdem er zuvor einen Grabplatz erstanden hatte. Der Platz selbst war mit Mauern umgeben und unbebaut, wie zahlreiche Vergleichsbeispiele des terminus ψιλός vor allem auch aus papyrologischen Quellen zeigen.[37] Der Kauf eines Grundstückes zur Errichtung eines Grabes ist in Smyrna zwölf Mal belegt, davon sieben Mal mit der näheren Bezeichnung ψιλός (in dieser Häufigkeit ist der Terminus in Smyrna einzigartig und scheint auch zu den eingangs erwähnten lokalen Traditionen zu gehören).[38] Interessant ist das zweite Adjektiv, καθαρός, das in Verbindung mit τόπος mehrfach verwendet wird. Während die hellenistischen Belege aus zwei Heiligtümern in Delos und Thasos[39] von einem „sauberen Platz" im eigentlichen Sinn des Wortes ausgehen – ἐμβάλλειν ist verboten –, ist dies wohl nicht die Bedeutung des Terminus in Grabinschriften. Der Begriff findet sich noch ein zweites Mal in den Grabinschriften von Smyrna, Kubinska interpretiert ihn als „sans aucune plantation, sans constructions", eben wie ψιλός.[40] Möglicherweise findet sich hier aber ein Hinweis auf die römische Terminologie des „*locus purus*". Es wurde also ein Grundstück verkauft, auf dem bislang noch kein Grab errichtet worden war und das damit dem Rechtsverkehr noch nicht entzogen war.[41] Die Tatsache, dass nur das Grundstück gekauft wurde, die Aufbauten aber

[36] „Numerius Prosius Stephanus, der den von vier Mauern umfriedeten Platz unbebaut und rein gekauft hat, errichtete die *kamara* und die Grabnischen darin für sich, Prosia Knidia, seine Frau, und (seine) Angehörigen."

[37] Kubinska 1968, 95,102 und 132; Preisigke, Wörterbuch II, s.v. ψιλός. Siehe unter anderem: CPR 28, 22; P.Oxy 72 A, 15; 984, 60; 4586, 32.

[38] Unter anderem I.Smyrna 194; 198; 241; 255; 257; 300; 337; 496.

[39] Delos: SEG 23, 498, Z.4: 3. Jh. v. Chr.; Thasos: IG XII 8, 265, Z.3: 4. Jh. v. Chr.

[40] Kubinska 1968, 132 mit weiteren Beispielen aus Ephesos, wo das Grundstück als ἄνετος definiert wird. I.Ephesos 1655 und die weiteren Texte, die ihr nicht zugänglich waren, I.Ephesos 2217 D; 2218 B; 2222 A; 2446 beziehen sich ohne Zweifel auf Grundstücke ohne weitere Bauten.

[41] So auch Keil 1908, 565 und Hirschfeld 1887, 134. Vgl. dazu IAph2007 13.112, oben in Anm.28.

dann auf Kosten des Grablegers errichtet wurden, scheint in diese Richtung zu weisen.[42] Die Bezeichnung einer καμάρα als „rein" (I.Smyrna 245) konnte ebenso auf die Rechtmäßigkeit des Erwerbs hinweisen, wie die Erklärung, dass ein Grabmal, das fertig erworben wurde, frei von Leichnamen war (I.Smyrna 214). In beiden Fällen wird – obwohl es möglicherweise nicht zwingend notwendig war – betont, dass die Käufer und Graberrichter nicht etwa gegen ein Gesetz oder die bestehenden Veräußerungsverbote verstoßen hatten. Nachdem der leere Grund gekauft worden war, musste das Grabmal darauf errichtet werden. Meines Erachtens dienen aber die Angaben zu dieser Errichtung auch der Selbstdarstellung der Grableger, die oft auf die umfangreiche Ausstattung hinweisen.[43]

Ebenso wie den Grund konnte man auch ausschließlich die Gebäude oder die Sarkophage, die sich darauf befanden, kaufen, wenn auch in vielen Fällen Gebäude und Grund gemeinsam erstanden wurden, wie dies in dem oben angeführten Grabtext der Ulpia Agrippina (I.Smyrna 235) erläutert wird. Nicht immer wird also der Grund, auf dem das Grab errichtet wurde, derselben Person gehört haben, wie die einzelnen Elemente des Grabes.[44] Wo in einer Grabinschrift vom Erwerb oder Besitz eines ganzen Grabmals gesprochen wird, wird wahrscheinlich auch der Grund eingeschlossen gewesen sein. Dort, wo nur ein einzelner Sarkophag oder noch kleinere Teile gekauft wurden, wird dies nicht automatisch anzunehmen sein. Deutlich wird dies meines Erachtens unter anderem an der Inschrift I.Smyrna 196, in der Aktiakos, Sohn des Hermogenes aus der Phyle Ammonis ein ἐνσόριον kauft, also eine einzelne Grabnische. Damit es nicht zu Verwechslungen kommt, definiert er sie als diejenige Nische unter der Inschrift.[45] Auch in I.Smyrna 219 scheint diese Situation vorzuliegen: P. Didius Polybios, der die Grabanlage für sich, seine Frau und seine Nachfahren errichtet, gestattet Nike und ihren Angehörigen jederzeit den Zugang zu deren eigener Grabnische.[46]

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[42] Eine Inschrift aus Thyateira, datiert in trajanische Zeit, verwendet ebenfalls den Terminus τόπος καθαρός und ist gleichzeitig eines der wenigen Beispiele für eine genaue Angabe der Lage des Grabs. (CIJud 2,752): Die Frage, ob diese Inschrift eigentlich zu den jüdischen Inschriften zu zählen sei, wurde nicht immer positiv beantwortet. Im Corpus wird – neben der Nennung des Sabbateion – auch die Betonung der Reinheit des Ortes als Argument dafür verwendet. Auch hier könnte aber meines Erachtens der oben angeführte römischrechtliche Hintergrund vorliegen.

[43] In gleicher Weise unter anderem: I.Smyrna 220; 250; 255; 257; 258; 337.

[44] Gerade in den römischen Rechtsquellen finden sich umfangreiche Überlegungen zu dieser Ausgangslage, da das Recht auf Zugang zu den Grabstätten gewährleistet sein musste. Auch die Grabinschriften bieten Beispiele für die Regelung des *aditus*: AE 1920, 107 (AE 2004, 280; Rom). Siehe den Text oben bei Anm.12.

[45] Auch wenn es dabei – vergleichsweise – um eine kleine Einheit geht, wird der Kauf auch als διὰ τῶν ἀρχείων beschrieben, also unter Mitwirkung der Archive in Smyrna, vgl. dazu unten ab Anm. 76.

[46] I.Smyrna 219, Z.7-9: ... ἔχούσης Νείκης καὶ τῶν Νίκης ἰδίων | [εἴσ]οδον καὶ ἔξοδον πρὸς τὸ ἴδιον ἐνσόριον | ἀνεπικωλύτως. „..., wobei Nike und die Angehörigen der Nike Zugang und Ausgang zu ihrer eigenen Grabnische ungehindert haben."

Interessant sind nicht zuletzt drei Texte aus Smyrna, in denen ausdrücklich bestätigt wird, dass ein verfallenes Grabmal, ein ἠρῶον διαπεφορημένον, gekauft wurde (I.Smyrna 259-261). Dieses wurde in weiterer Folge wieder hergerichtet und neu belegt. Petzl vermutet, dass der Stein 260, der zunächst als Inschrift aus Magnesia am Sipylos ediert worden war, in Z.1-9 eine frühere Inschrift trug, die ausradiert wurde, um dem neuen Text Platz zu machen.[47] Ob dies allerdings die Grabinschrift des Vorbesitzers des Heroons war, bleibt ungeklärt. Was mit den Leichnamen der Vorbesitzer geschehen war, entzieht sich ebenfalls unserer Kenntnis, allerdings nimmt Kolb zumindest für Patara an, dass die Gebeine der Vorbesitzer in einer Ecke des Sarkophags weiter bestattet blieben.[48] Ein Entfernen der Leichname oder Knochen wäre jedenfalls nicht nur als unmoralisch betrachtet worden, sondern – zumindest nach römischem Recht – auch strafbar gewesen. Das Verbot, dieses zu tun, findet sich dezidiert ausgesprochen auch in einigen Grabinschriften.[49] Grundsätzlich beweisen Texte wie die bereits angesprochene Inschrift I.Smyrna 214, dass auch in Smyrna Überlegungen zu dieser Frage angestellt wurden. In Z.2-3 wird ausgeführt, dass das Grab frei von Leichnamen gekauft wurde.

V. Veräußerungsverbote

Während der rechtmäßige Erwerb der Grabstätte nur in wenigen Inschriften betont wird, finden sich andererseits wesentlich häufiger Verbote, die diejenigen mit Strafen bedrohen, die eine Grabstätte verkaufen oder kaufen. Derartige Verbote sind typischerweise so formuliert wie in I.Smyrna 214:

Σάλβ̣ιος Σεμνὸς τὸ μνημεῖον
ἠγόρασεν καθαρὸν ἀπὸ πτω-
μάτων ἑαυτῷ καὶ τῇ συμβίῳ
Σοφῇ καὶ τέκνοις καὶ ἐγγόνοις
καὶ θρέμμασι· μηδενὸς ἔ[χ]ο̣ντος
ἐτέ[ρο]υ ἐξουσίαν πτῶμα ἀλλό-
τριον εἰσενεν̣κεῖν εἰς τὸ μνημεῖ-
ον ἢ ἀπαλλοτριῶσαι. ἐὰν δέ τις
τολμήσει πωλῆσαι τὸ μνημεῖον

[47] I.Smyrna 260 und S.116.

[48] Kolb 2008, 370 und Anm. 1670.

[49] D 11,7,8 pr. (Ulpianus, Ad Edictum 25) hält fest, dass es dem Eigentümer des Grundstückes nicht frei stand, bestattete Personen wieder aus dem Grab zu entfernen. D 11,7,39: In einem Edikt der Divi Fratres wird deutlich gemacht, dass es zwar verboten war, die Gebeine eines Toten aus demjenigen Sarkophag zu entfernen, der sein Grab bildete, dass man aber durchaus den Sarkophag als Ganzes versetzen dürfe. Das Verbot, Tote aus dem Grab wieder zu entfernen, tritt gehäuft in Aphrodisias auf, siehe den Index IAph2007 s.v. ἐκθάπτω, findet sich aber auch in Ephesos (I.Ephesos 3276 und 2299, 2468), Athen (IG II^2 13211, 13217-13219, 13221, 13222, 13227), oder Kyzikos (I.Kyzikos 248) und Mylasa (I.Mylasa 476).

ἢ ἕτερον πτῶμα θεῖναι, ἀποδώσει
[—]? Ὁμηρείῳ [γε]ρ̣ο̣υ̣σ̣ί̣ᾳ̣ ⁎ ̣ ,β̣φ̣′.[50]

Hier ist das Veräußerungsverbot in Verbindung mit dem für Grabinschriften so charakteristischen Verbot der Fremdbestattung gesetzt. Dabei ist für Smyrna festzuhalten, dass das Veräußerungsverbot bei weitem häufiger zu finden ist, als das Verbot der Fremdbestattung.[51] Auch die Inschriften von Ephesos zeigen das Veräußerungsverbot sehr oft, daneben finden sich vereinzelte Belege vor allem in Ionien, während die karischen Städte, auch wenn sie zahlreiche Inschriften mit Verbotsklauseln bieten können, kaum Belege für diese Art des Verbotes zeigen. Als Vergleich dazu sei festgehalten, dass sowohl die stadtrömischen Inschriften dieses Verbot häufig aufweisen, als auch andere Grabinschriften aus Italien, v.a. in Campanien und Latium und in Venetien (Aquileia), dazu kommen verstreute Nachrichten aus den Provinzen.[52]

Am detailliertesten wird das Veräußerungsverbot in I.Smyrna 210, der berühmten „Origanion“ Inschrift ausgeführt.[53] Der Grabinhaber, dessen Name nicht erhalten ist, errichtet ein *mnemeion* für sich, seine Frau und seine Angehörigen.

Θαλήαι καὶ τοῖς ἰδίοις πᾶσι· ὃ καὶ τοῦτο τὸ
μνημῆον κληρονόμωι οὐκ ἀκολουθήσει·
μηδενὶ δὲ ἐξέστω τοῦτο τὸ μνημῆ-
ον ἢ μέρος τι αὐτοῦ μήτε πωλῆσαι μήτε
μεταθεῖναι μήτε ἐξαλλοτριῶσαι μήτε δό-
λωι πονηρῶι τι πο[ι]ῆσαι· ὁμοίως δὲ μηδενὶ ἐξ-
έστω ἀγοράσαι αὐτὸ ἢ δόλωι πονηρῶι τι ποιῆσαι.
τῷ δὲ ὑπεναντίον τούτοις τι ποιήσαντι ἢ πω-
λήσαντι ἢ μεταθέντι ἢ δόλωι πονηρῶι τι ποιήσαν-
τι μήτε γῆ εἴη βατὴ μήτε καρποὺς ἐκ γῆς ἢ ἐκ θα-
λάσσης ἱλαροὺς εἴη δέξασθαι, οἵ τε θεοὶ οἱ οὐρά-

[50] „Salvius Semnos erwarb das Grabmal frei von Leichnamen für sich und seine Gattin, sowie die Kinder, Nachkommen und Zöglinge. Niemand anderer hat das Recht, einen weiteren Leichnam in das Grabmal einzubringen oder es zu veräußern. Wenn aber jemand es wagt, das Grabmal zu verkaufen oder einen anderen Leichnam zu bestatten, soll er der Gerousia im Homerion 2500 Denare zahlen.“ Zum Homerion vgl. Strab. 14,37 und Cic. Pro Arch. 8,19.

[51] In Aphrodisias zum Beispiel ist der Befund genau umgekehrt.

[52] CIL 6, 13104 (Rom), Z.10-13: *Si quis autem | hanc memoriam vendere voluerit | vel donare sive de nomine a[b]ali|enare inferet arce pontificum HS [C] m(ilia)*. „Wenn aber jemand dieses Grabmal verkaufen will, oder verschenken, oder unter einem Titel veräußern, soll er der Kasse der *pontifices* 100.000 Sesterzen zahlen.“

[53] I.Smyrna 210, dazu v.a. Robert 1977, 43-54, wobei die Bemerkungen zum wilden Majoran in Smyrna und zum möglichen Zweitnamen des Grablegers hervorzuheben sind (53-54).

νιοι καὶ οἱ κατὰ γῆς δαίμονες κεχολωμένοι αὐτῶ-
ι καὶ γένει αὐτοῦ εἴησαν· ϙαὶ ὁ παρὰ ταῦτα ποιήσας ἢ πω-
λήσας ἢ μεταθεὶς ἢ ἀγοράσας ἀποτεισάτω τῆι Ζμυρ-
15 ναίων γερουσίᾳ ἀργυρίου δηνάρια δισχείλια καὶ τῶ- Ὁριγ[α]-
ι ἐπεξελευσομ[ένωι —]γμα ἀργυρίου νίων.
δηνάρια χείλια, καὶ οὐδὲ[ν ἧσσον —]..NT.NK[—].[54]

Weder interessieren den Grabinhaber die Möglichkeit der Bestattung nicht berechtigter Personen, noch – um einige weitere „Gefahren" zu zitieren, die von antiken Grablegern erkannt werden – die Beseitigung oder Zerstörung des Grabmales, das Ausschlagen der Inschrift oder allgemein die Öffnung des Grabes. Er kümmert sich ausschließlich um eine mögliche Veräußerung und verbietet wortreich, das ganze Grab oder auch Teile davon (wie bereits vorhin bei den Kaufobjekten aufgezeigt) zu verkaufen (dem Verbot des Verkaufens Z.4 πωλῆσαι entspricht in Z.7 das umgekehrte Verbot des Erwerbens, ἀγοράσαι). Weiters untersagt er μεταθεῖναι (Z.5) und ἐξαλλοτριῶσαι (Z.5), wobei diese beiden Begriffe schwerer zu deuten sind. Während μεταθεῖναι als "versetzen" oder auch "tauschen" interpretiert wurde, übersetzt es Robert als „transferer", womit er wohl eher „übertragen" im rechtlichen Sinne meint, als das tatsächliche „Versetzen" des Grabes.[55] Ein Verbot einer derartigen Verbringung an einen anderen Ort macht auch nur bei Sarkophagen Sinn, in dieser Art und Weise ist μεταθεῖναι unter anderem in Ephesos verwendet (I.Ephesos 2299B).[56] Die Herkunft als Teil eines Sarkophags kann für die Kalksteinplatte aus Smyrna aber nicht bestätigt werden, daher wird man der Interpretation Roberts den Vorzug geben müssen. Ἐξαλλοτριῶσαι wird mit dem lateinischen *abalienare* gleichzusetzen sein, also der Abtretung oder Veräußerung des Grabrechts. Betrachtet man die stadtrömischen Veräußerungsverbote, so findet sich in Kombination mit *vendere* oft *abalienare*, um jegliche Form der Veräußerung auszuschließen. Explizit

[54] Der Anfang der Inschrift fehlt, wird aber von den Herausgebern sinngemäß ergänzt. „[... hat dieses Grabmal errichtet (oder gekauft) für sich, seine Frau] Thaleia und alle seine Angehörigen. Dieses Grabmal geht nicht auf den Erben über. Niemandem steht es zu, dieses Grabmal oder einen Teil davon zu verkaufen, zu übertragen, zu veräußern, oder sonst etwas in in arglistiger Absicht zu tun. In gleicher Weise steht es niemandem zu, es zu erwerben oder etwas in arglistiger Absicht zu tun. Wer diesen (Vorschriften) zuwiderhandelt, verkauft, überträgt oder etwas in arglistiger Absicht tut, dem soll die Erde nicht mehr betretbar sein und er soll keine erfreulichen Früchte mehr aus dem Land oder dem Meer ziehen können, die himmlischen Götter und die Dämonen unter der Erde sollen ihm und seinem Geschlecht zürnen. Wer entgegen diese (Vorschriften) handelt, verkauft, überträgt oder kauft, soll der Gerousia der Smyrnaeer 2000 Silberdenare bezahlen, wobei demjenigen, der die Tat verfolgt, ... 1000 Silberdenare (zustehen), und nichts desto weniger ... (wohl: soll der Kauf etc. ungültig sein)."

[55] „Versetzen": G. Petzl, I.Smyrna 210, Übersetzung. „Tauschen": G. Thür, ZSStRom 104 (1987), 708 in einer Rezension des IK-Bandes. Robert, BCH 1977, 45. Zum Fluch: Strubbe 1997, 25-26 Nr. 27.

[56] Zu diesem Problem vgl. Ritti 2004, 524-525.

erwähnt ist in manchen Inschriften auch noch die Schenkung, die ebenfalls verboten wird.[57] Gerade in der vorliegenden Inschrift sind die lateinischen Vorbilder so deutlich, dass meines Erachtens hier deutlich die Intention zu erkennen ist, jegliche Art der Übertragung auszuschließen, auch wenn sich die genaue juristische Konstruktion der einzelnen Rechtsakte unserer Kenntnis entzieht.[58] Zum Vergleich sei hier ein Ausschnitt aus einem Text aus Aphrodisias angeschlossen: IAph2007 12.1205 ist die Grabinschrift des Hermogenes, Sohn des Menodoros, die in das erste bis zweite nachchristliche Jahrhundert datiert wird[59] (Z.6-13):

μηδενὸς ἔχοντος ἐξουσίαν μηδ[εμίαν τῶν]
κληρονόμων ἢ διαδόχων αὐτῶν ἐξαλλοτριῶσαι μήτε τὸ πύργιον μήτε τὸ ὑπ᾽ αὐτὸ μνημεῖον μήτε πράσεως ὀνόματι μήτε συνχωρήσεως· ἐπεὶ ὁ ποιήσας τι ἐπὶ ἀπαλλοτριώσει ᾧ δή ποτε τρόπῳ καὶ ὁ ἀναδεξάμενος
10 ἔνοχος ἔσται ἀσεβείᾳ καὶ εἰσοίσει ἕκαστος αὐτῶν εἰς τὸν κυριακὸν φίσκον ἀνὰ ∗ μυρία, ὡς ἐκ καταδίκης, ὧν τὸ τρίτον ἔσται τοῦ ἐκδικήσαντος καὶ τὸ ὑπεναντίως γενόμενον ἔσται ἄκυρον καὶ οὐδὲν ἧττον μενεῖ τὰ προδηλούμενα εἰς τὰ καθωσιωμένα.[60]

Ἐξαλλοτριῶσαι (Z.7) oder ἀπαλλοτριώσαι (Z.9) wird wohl als Oberbegriff „veräußern“ verstanden, diese Veräußerung darf weder unter dem „Namen“ eines Verkaufs (πράσις, Z.8) noch einer Synchoresis geschehen. Mit „ὄνομα” wird in diesem

[57] Auch Flavius Antiochianus, der Inhaber eines großen Sarkophags in Milet (I.Milet VI 2, 565) will jede Art von Veräußerung des Sarkophags ausschließen und hält – nach dem für Milet üblichen Bestattungsverbot – zum Abschluss der Vorschriften fest (Z.8-11): Οὐκ ἐξέστι δὲ οὐδενὶ τῶν τέκνῶν μου οὐδὲ τῶν ἐκγόνων αὐτῶν οὐδεμιᾷ παρευρέσει ἢ μεθοδείᾳ τινὶ πωλήση | οὔτε τὴν σορὸν οὔτε τὸ ὑποσόριον, ἐπὶ ἀποτείσει | [[. . . εἰς]] τὸν φίσκον δην(άρια) ,βφ’. „Niemandem von meinen Kindern, noch deren Nachfahren, steht es zu, auf irgendeine Art und Weise jemandem den Sarkophag oder das *hyposorion* zu verkaufen, unter Androhung einer Strafzahlung ... in den *fiscus* 2500 Denare.“

[58] Als Überbegriff für Veräußerung wird *abalienare* in CIL 3, 191 verwendet: Z.5-6 *ne liceret ulli eorum abalienare ullo modo id monu|mentum.* „Es steht keinem von ihnen zu, auf irgendeine Weise das Grabmal zu veräußern“.

[59] LeBas-Waddington 1639. Vgl. dazu Robert 1965, 114.

[60] „Niemand von den Erben oder ihren Nachkommen hat das Recht, den Turm, das unter ihm befindliche Grabmal unter den Titel eines Kaufes noch einer Synchoresis zu veräußern. Da nun sowohl derjenige, der irgendetwas auf irgendeine Art zur Veräußerung unternimmt, als auch derjenige, der (das Angebot) annimmt, schuldig sind der *asebeia*, soll jeder von beiden dem kaiserlichen *fiscus* 10.000 Denare zahlen, wie aus einer Verurteilung, von denen der dritte Teil dem Anzeigenden zusteht. Was entgegen (die Vorschriften) entstand, soll ungültig sein und nichts desto weniger bleibt das vorher zu den Weihungen Dargelegte (rechtsgültig).“

Fall die *causa* der Veräußerung angegeben.[61] Was aber ist unter der Synchoresis, die hier in Gegensatz zum Kauf gesetzt wird, zu verstehen?

VI. Synchoresis, Parachoresis und Erbfall

Die Grabinhaber befürchten, dass die von ihnen ausschließlich für sie selbst, ihre Familie und einen engen Kreis von weiteren Berechtigten erworbene Grabstätte, auch durch andere Rechtsgeschäfte als den Verkauf veräußert werden könnte. Sowohl allgemeine Verbote der Veräußerung (vgl. oben) als auch dezidierte Untersagungen bestimmter Rechtsgeschäfte wie der Synchoresis oder der Parachoresis sind inschriftlich erhalten.

Prinzipiell ist das Verb συγχωρέω mehrdeutig, bei Preisigke finden sich dazu „einverstanden sein; ein rechtsverbindliches Zugeständnis erteilen; Zuerkennung, aber auch Abtretung eines Besitzes“.[62] Jedenfalls scheint es in den Grabinschriften in den meisten Fällen dabei um die Erlaubnis zu gehen, eine Bestattung in einem bestimmten Grab vornehmen zu können, ohne damit gegen eventuelle Einschränkungen zu verstoßen. Ob diese Erlaubnis auch mit der Übertragung des Eigentums an dem Grab selbst in jedem Fall verbunden war, ist im Einzelnen zu prüfen. In Smyrna selbst finden sich wenige Inschriften, die über diese Art des Rechtsgeschäftes informieren. Der Befund aus Aphrodisias oder auch Ephesos ist ausführlicher, dennoch soll am Anfang ein Text aus Smyrna stehen, I.Smyrna 190:

Τι(βέριος) Κλ(αύδιος) Ἄγνος ἀγοράσας τὴν καμάραν
καὶ τὸ ἐνσόριον προσκατεσκεύασεν
αὐτῷ καὶ τέκνοις καὶ ἀπελευθέροις
καὶ θρέμμασιν· συνεχώρησεν δέ Σκη-
νῇ Λουκίου ταφῆναι εἰς τὸ ἐνσόρι-
ον διὰ τὸ εὐεργετῆσθαι ὑπ’ αὐτῆς·
μηδενὸς ἔχοντος ἐξουσίαν
ἀπαλλοτριῶσαι· εἰ δὲ μή, ἔσται
ὑπεύθυνος εἰ (*sic*) φίσκον ✳ ,α. τῆς ἐπι-

[61] Vgl. AE 1928, 135: *L(ucius) Cocceius Sp(uri) f(ilius)* | *Adiutor* | *fecit ... ita ut ne ea pars* | *monimenti(!) de n*|*omine eius exiat(!)* | *aut alium titulum* | *posuisse vellit(!) aut* | *ali vendere aut* | *donationis* | *causa mancipare* | *quod si quis fecerit* | *rei publicae* | *Ostiensium* | *HS L M(quinquaginta milia) dare debeat* | ... . „L. Cocceius Adiutor, S.d. Spurius, errichtete ... sodass dieser Teil des Grabes nicht durch seinen Namen vergeht noch ein anderer Grabstein gesetzt wird, noch jemandem anderen verkauft noch aufgrund eines Geschenks übereignet wird. Wer dies tut, schuldet der Gemeinde Ostia 50.000 Sesterzen.“ In dieser Art auch CIL 14, 790; 1020; 1106; 3031; AE 1977, 85. In Hierapolis bedeutet die Wendung προστείμου ὀνόματι wohl die Strafsumme (I.Hierapolis 69; 204; 209; viell. I.Ephesos 3829).

[62] Preisigke, Wörterbuch II, s.v. συγχωρέω.

10 γραφῆς ἐξφράγισμα ἀπόκειται εἰς
τὸ ἀρχεῖον.[63]

Ti. Claudius Hagnos hatte eine *kamara* gekauft, in der er eine Grabnische, also den Platz für einen Sarkophag, für sich selbst, seine Kinder, sowie seine Freigelassenen und Zöglinge errichtete. Zusätzlich räumt er der Tochter des Lucius, Skene, das Recht ein, dort ebenfalls bestattet zu werden. Sie scheint nicht zu den automatisch Berechtigten gehört zu haben, ebenso wie Calpurnia Secunda, die Schwiegermutter des Dionysios, Sohn des Ploution, der in der Grabinschrift I.Smyrna 201 mit den gleichen Worten das Recht auf Bestattung (dort δίκεον) zugestanden wird. Auch hier ist deutlich zu erkennen, dass von einem vom Kauf zu unterscheidenden Recht gesprochen wird. In gleicher Art und Weise bezeugt der Grableger in I.Smyrna 212, dass ihm vom Eigentümer Artemidoros das Recht eingeräumt wurde, einen bestimmten Teil des Grabes zu verwenden. Interessant ist, dass in diesem Text ausdrücklich verboten wird, dieses Recht weiter zu veräußern. An einen Verkauf kann natürlich nicht zu denken sein, da nur die Verwendung (χρήσις) eingeräumt wurde, aber auch eine Weitergabe dieses Rechts wird wohl verboten. Es handelt sich bei der Synchoresis in Smyrna also wohl um eine Übertragung von Rechten, die zumeist ohne Entgelt vorgenommen wurde.

Die häufigsten Erwähnungen der Synchoresis[64] und der mit ihr verwandten Parachoresis[65] in den Grabinschriften stammen aus Aphrodisias. Aphrodisias nimmt unter den kleinasiatischen Städten zunächst durch die Fülle der erhaltenen ausführlichen Grabinschriften mit Strafklauseln eine besondere Stellung ein. Der Kauf ist – wie bereits angedeutet – selten erwähnt,[66] dafür finden sich umso mehr Belege für eine Übertragung der Rechte in den beiden erwähnten Formen. Sie werden vom Kauf unterschieden – wie die oben bei Anm.59 angeführte Grabinschrift des Hermogenes (IAph2007 12.1205) belegt – und umfassen wohl Transaktionen, die unentgeltlich das Recht am Grab übertrugen. Derartige Rechtsgeschäfte interpretiert Wörrle – beruhend vor allem auf der lykischen Evidenz – als Schenkungen.[67] Während in den lateinischen Grabinschriften die Übertragung der Rechte durch Schen-

[63] „Ti. Claudius Hagnos, der die Grabkammer erworben hatte, ließ auch eine Grabnische zusätzlich errichten für sich, die Kinder, die Freigelassenen und Zöglinge. Er gestattete der Skene, Tochter des Lucius, in der Grabnische bestattet zu werden wegen der Wohltaten, die er von ihr erfahren hatte, wobei niemand das Recht habe, (die Grabkammer) zu veräußern. Wenn (jemand es) aber doch (unternimmt), soll er dem *fiscus* auf 1000 Denare verantwortlich sein. Eine versiegelte Abschrift der Inschrift ist im Archiv hinterlegt."

[64] Typischerweise wird die Synchoresis auf Grabinschriften in Aphrodisias in folgender Art und Weise vermerkt: κατὰ τὴν δοθεῖσαν αὐτῷ συνχώρησιν ὑπὸ τῶν περὶ Ἱεροκλέα Κάρπου Διογένην διὰ τοῦ χρεοφυλακίου (IAph2007, 12.211) siehe auch IAph2007 12,32; 12,321; 12,508; 12,527; 12,1106; 12, 1113; 13,2; 15,246.

[65] Zur Parachoresis: IAph2007, 11,512; 12,107; 12,411; 12,805; 13,604.

[66] IAph2007 12.631; 13.112; 13.681; 15,208.

[67] Wörrle 1975, 270-272. So auch Wenger 1929, 331-332.

kung (*donationis causa*) häufig erwähnt wird, ist in der Tat in den griechischen Texten das Fehlen einer derartigen Übertragung etwa durch δόσις oder δωρεά auffällig. Wenn man nun aber nicht davon ausgeht, dass die Bürger von Aphrodisias wesentlich generöser waren, als Bewohner anderer kleinasiatischer Städte, kann man die Parachoresis und Synchoresis wohl kaum mit einer Schenkung identifizieren. Meines Erachtens handelt es sich eher um die Bestätigung der korrekten Übertragung der notwendigen Rechte zur Grablege, die vielfach durch das Archiv geschah und jedenfalls in einem eigenen Akt registriert wurde. Die *causa* dieser Übertragung erschließt sich uns aber nicht.[68]

Zuletzt muss darauf hingewiesen werden, dass die Termini Synchoresis und Parachoresis in Aphrodisias unterschiedlich verwendet werden. Während παραχωρέω zumeist im Passiv in Verbindung mit dem Grab oder Grabteil erscheint (IAph2007 12.411) und damit auch das Übergeben der Grabstätte durch den Vorbesitzer in den Mittelpunkt stellt, bezeichnet συγχωρέω regelmäßig die Ausnahme vom Bestattungsverbot (IAph2007 12.1108). Συγχώρησις wiederum findet sich als Substantiv beinahe ausnahmslos in der Form κατὰ τὴν δοθεῖσαν αὐτῷ συνχώρησιν oder ähnlich und drückt also die Übereignung aus. Bei der Synchoresis stehen also die Vertragspartner im Mittelpunkt, sie scheint die „Berechtigung" einer Partei durch die andere zu bezeichnen. Die Parachoresis bezieht sich auf das Objekt und benennt wohl die Übergabe. So können die beiden Vorgänge einander auch durchaus ergänzen.[69]

Eine Unterscheidung in Rechtsgeschäft (*parachoresis*) und Urkundenform (*synchoresis*), die dem Befund der Papyri entsprechen würde, lässt sich in den Grabinschriften nicht belegen. Allerdings ist darauf hinzuweisen, dass die *parachoresis*,

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[68] So auch Reynolds – Roueché 2007, 147-149.

[69] Eine Parachoresis in typischer Form belegt z.B. IAph2007 12.411, die Grabinschrift des T. Aelius Epaphroditus: τὸ μνημεῖον καὶ ἡ ἐπικειμένη αὐτῷ | σορὸς καὶ αἱ εἰσῶσταί εἰσιν Τίτου Αἰλίου | Ἐπαφροδείτου καὶ τέκνων αὐτοῦ παραl|χωρηθέντα αὐτῷ ὑπὸ τῶν περὶ Μητρόδωl[5]ρον Μητροδώρου τοῦ Παπύλου διὰ τοῦ | χρεοφυλακίου [ἐ]πὶ Αἰλίας Ζήνωνος θυγα<τ>lρὸς Τατίας [μηνὸς Τ]ραϊανοῦ Σεβαστοῦ | ἐν ᾗ σορῷ [ταφήσεται] Αἴλιος Ἐπαφρόδειlτο[ς μόνος ὁ προδ]ηλούμενος *vac.* Synchoresis: IAph2007 12.1108, Grabinschrift des Claudius Tatianos (2.-3. Jh. n. Chr.): ὁ βωμὸς καὶ αἱ ἐν αὐτῷ ἰσῶσται καὶ ἡ ἐπικειμέν̣[η σορός εἰσὶν Κλ(αυδίου) Τατιανοῦ εἰς ἣν σορὸν] | κηδευθήσονται Κλ(αύδιος) Τατιανὸς καὶ Κλαυδία Ζωσίμο[υ [ἡ μήτηρ καὶ Ἰουλιανὴ ἡ γυνὴ αὐτοῦ] | μετὰ δὲ τὴν τούτων ἀποθέωσιν οὐδεὶς ἔξει ἐ[ξουσίαν ἐνθάψαι] [ἐν δὲ ταῖς ἰσώσταις κηδευ]lθήσονται τέκνα Τατιανοῦ καὶ Ἰουλιανῆς καὶ ἔγγον[α αὐτοῦ ἕτερον δὲ οὐκ ἐξέσται ἐνθάψαι] | οὐδένα οὐχ ἕξει οὐδεὶς ἐξουσίαν ἐνθάψαι οὔτε ἐ[κθάψαι τινὰ ἐὰν μὴ Τατιανὸς ἤ τις τῶν τέκνων] | ἢ ἐγγόνων τῶν Τατιανοῦ ἐξουσίαν συνχωρή[σῃ] und IAph2007 12.211, Grabinschrift für Naikos (2.-3. Jh. n. Chr.): ὁ πλάτας ἐστὶν Ναΐκου τοῦ Ἀπολλωνίου ἱεροῦ καὶ | κληρονόμων καὶ διαδόχων αὐτοῦ καὶ ὧν ἂν αὐτὸς | βουληθῇ κατὰ τὴν δοθεῖσαν αὐτῷ συνχώρησιν ὑπὸ | τῶν περὶ Ἱεροκλέα Κάρπου Διογένην διὰ τοῦ χρεοlφυλακίου μηδενὸς ἔχοντος ἐξουσίαν ἐνθάψαι | ἕτερόν τινα ἢ ἐξαλλοτριῶσαι τὸν πλάταν ἐπ[ὶ] ἀποlτείσει ὁ παρὰ ταῦτά τι ποιήσας τῷ κυριακῷ φίσκῳ ⁑ γ.

wie sie in den Papyri zu finden ist, zunächst auch als Rechtsgeschäft konzipiert war, das die Übertragung von unveräußerlichem Katökenland unentgeltlich ermöglichen sollte. In römischer Zeit wurde dieses Rechtsgeschäft auch auf anderes Land übertragen und nur noch gegen Entgelt durchgeführt.[70]

Eine weitere Art, ein Grab zu erwerben, war natürlich der Erbfall. Ebenso wie die lateinischen Grabinschriften erlauben die griechischen Grabinschriften die Unterscheidung in Familiengräber und Erbgräber. Während erstere ausschließlich den Familienmitgliedern vorbehalten sein sollten, und aus der Erbmasse ausgenommen werden konnten, waren letztere für den Grableger und seine Erben gedacht, auch wenn diese nicht Mitglieder seiner Familie waren. Vielfach findet sich in Grabinschriften daher neben dem allgemeinen Verbot der Bestattung fremder oder nicht berechtigter Personen auch eine Aufzählung derjenigen Familienangehörigen oder dem Grableger nahe stehenden Personen, denen eine Bestattung ausdrücklich erlaubt wird. Ebenso konnten bestimmte Personen ausgeschlossen werden, oder ihr Grabrecht, wie in Milet VI 2, 570 an eine Bedingung geknüpft werden. Gerade diese Teile der Grabinschriften geben immer wieder einen interessanten Einblick in das Familienleben der Verstorbenen. Ein Beispiel dafür ist I.Smyrna 211, die kaiserzeitliche Grabinschrift der Hamilla:

Ἁμιλλα Ματρέου ζῶσα κατεσκεύασε ἑαυτῇ καὶ τῷ συνβίῳ Ἀσκληπιάδῃ τὸ μνημεῖον καὶ τοῖς θρέμμασι καὶ ἐγγόνοις αὐτῶν καὶ θρέμμασι. εἰς τὴν σορὸν δέ μου μηδένα ἕτερον βληθῆναι, εἰς ἣν ἔνεστι ὁ σύνβιός μου, πλὴν ἐμοῦ. ἐὰν δέ τις βάλῃ, δότω τῇ Ζμυρναίων γερουσίᾳ <⁎> ,α. Τάτιον δὲ Ἀσκληπιάδου, ἐὰν βούληται τεθῆναι εἰς τὸ μνημεῖον, θεῖσα σορὸν ἑαυτῇ βληθήσεται μόνη· καὶ οὐκ ἐξέστ-
αι αὐτῇ ἄλλ<ο>ν θεῖναι οὐδένα οὔτε κληρονόμοις αὐτῆς εἰς τὸ μνημεῖον. ἐὰν δὲ ἕτερόν τις θῇ εἰς τὴν σορὸν αὐτῆς, ὁμοίως δώσει τῇ γερουσίᾳ ⁎ ,α. ἐπιτρέπω δὲ τοῖς θρέμμασί μου, ἐὰν βούλωνται, σοροὺς ἐπιθεῖναι διὰ τὸ καὶ συνεισενην<ο>χέναι εἰς τὴν κατασκευὴν τοῦ μνημείου. ἔξει δὲ καὶ Ὕμν<ο>ς ὁ γέρων δωρεὰν ἠργασμένος τὸ μέσον ἐσσόριν. τοῖς δὲ κληρο-

[70] Rupprecht 1994, 83 und 117.

νόμοις μου οὐκ ἐπακ̣λουθήσει τοῦτο τὸ
μνημεῖον. [[*Rasur*]]
[[*Rasur*]][71]

Hamilla hatte ein Grabmal zu Lebzeiten für sich und ihren Mann Asklepiades, sowie für einige Zöglinge und deren Nachfahren und Zöglinge errichtet. Darin befand sich ein Sarkophag, in dem Asklepiades beigesetzt war, und der im Weiteren ausschließlich Hamilla vorbehalten war. Die Tochter des Asklepiades, Tation, (wohl aus einer früheren Ehe) erhielt die Erlaubnis, für sich selbst einen Sarkophag aufzustellen, durfte aber keine weitere Berechtigung erteilen oder Grabrechte vererben. Hamillas eigenen Zöglingen wurde dagegen die Berechtigung für weitere Sarkophage erteilt, da sie zur Errichtung des Grabes beigetragen hatten. Zuletzt wurden andere Erben von der Grabstätte ausgeschlossen. Interessant ist dabei, dass die lateinische Formel zur Kennzeichnung von Familiengräbern *hoc monumentum heredem non sequetur* hier wortwörtlich ins Griechische übersetzt ist. Sie ist auch sonst öfter auf Grabinschriften in Kleinasien zu finden.[72] Einer der Texte, die diese Klausel enthalten, ist eine bilingue Grabinschrift aus Ephesos (I.Ephesos 2266). Während ein Großteil der Informationen lediglich in Griechisch wiedergegeben ist, ist diese Klausel auch auf Latein in der typischen Abkürzung HMHNS dem Text unten angefügt und zeigt damit, dass gerade dieser Punkt sowohl für Römer als auch Griechen außer Frage stehen sollte.[73]

Auch Wendungen wie μήτε δόλωι πονηρῶι τι πο[ι]ῆσαι in I.Smyrna 210 verraten natürlich deutlich ihren Ursprung aus den lateinischen Formeln. Allerdings betont Keil zu Recht, dass diese Einzelfälle römischer Termini oder Formeln in der griechischen Graburkundensprache der großen Masse von Grabinschriften gegen-

[71] „Hamilla, Tochter des Matreas, hat das Grabmal zu ihren Lebzeiten für sich und ihren Mann Asklepiades und für die Zöglinge, deren Nachfahren und Zöglinge errichtet. In meinem Sarkophag, in dem mein Mann beigesetzt ist, soll niemand bestattet werden, außer mir. Wenn aber jemand eine Bestattung vornimmt, soll er der Gerousia von Smyrna 1000 Denare zahlen. Tation, die Tochter des Asklepiades, wird – wenn sie in diesem Grab beigesetzt werden will – für sich selbst einen Sarkophag aufstellen und alleine begraben werden. Weder steht es ihr zu, irgendeinen anderen beizusetzen in diesem Grab, noch ihren Erben. Wenn aber jemand einen Fremden in ihren Sarkophag legt, soll er auf die gleiche Weise der Gerousia 1000 Denare zahlen. Ich erlaube meinen Zöglingen, wenn sie es wollen, Sarkophage aufzustellen, da sie zur Errichtung des Grabes beigetragen haben. Hymnos, der Greis, soll die mittlere Grabnische haben, da er unentgeltlich gearbeitet hat. Dieses Grab wird nicht an meine Erben übergehen."

[72] TAM V 2, 1143, Z.18-19: τοῦτο τ ὸ μνημ εῖον κληρονόμοις [οὐχ ἕψε]ιται.; I.Ephesos 2266A, Z.8-10: ὃ μνημεῖον καὶ ἡ ἐπ' αὐτῷ σορὸς κληρονόμοις | εἰς ἔκπρασιν οὐκ ἀκολουθήσει.; I.Ephesos 4117, Z.6-8: [τοῦτο τὸ μ]νη|μεῖον κλη[ρονόμοι]ς [οὐ]κ [ἀ]|κολουθήσε[ι]; I.Ephesos 2266 Z.11-14: τοῦτο τὸ μνημεῖον | κληρονόμοις οὐκ ἀκολουθήσει· τούτου τοῦ | μνημείου ἡ γερουσία κήδεται·| h(oc) m(onumentum) h(eredem) n(on) s(equetur).

[73] Kearsley 2001, Nr. 36; Kaser, 1978, 42; Keil 1908, 562.

über stehen, die frei von derartiger „westlicher Zutat oder Färbung“ sind. Man könne also allgemein nicht „von einer wirklichen, geschweige denn tiefer gehenden Beeinflussung dieser griechischen Urkunden durch die entsprechenden römischen“ ausgehen.[74] Umgekehrt kann auch festgehalten werden, dass zwar das System der Grabstrafen wohl aus dem hellenistischen Osten nach Italien und in den Westen des Reiches gelangt war[75], aber einige Spezifika, die sich in den griechischen Grabinschriften finden, keinen Eingang in die Traditionen gefunden haben. Dazu zählen zunächst vor allem Details der prozessualen Durchsetzung der Verbote, die natürlich an die Verhältnisse der jeweiligen Stadt, in der der Graberrichter wohnte, angepasst waren.

VII. Archivierung

Ein weiteres Charakteristikum griechischer Grabinschriften, das im Westen des Römischen Reiches keine Entsprechung hat, ist die Erwähnung der Archivierung der einzelnen Anordnungen auf der Grabinschrift. Ein Blick auf die Karte zeigt, dass in vielen Orten Ioniens und Kariens die Archivierung der Grabtexte belegt ist, wiederum muss aber in besonderer Weise auf die lykischen Grabinschriften hingewiesen werden, die uns das System als erste in Kleinasien näher bringen.[76] Dabei finden wir die Archive in zwei verschiedenen Aufgaben: einerseits scheinen sie beim Verkauf und der Synchoresis eine wichtige Rolle gespielt zu haben, andererseits wird oft detailliert die Archivierung der eigentlichen Graburkunde beschrieben. Deutlich werden diese beiden Stufen vor allem in den Grabinschriften der Stadt Milet, in denen für jeden der beiden Akte die Datierung gegeben wird. Als Beispiel sei hierfür I.Milet VI 2, 613, aus den Jahren 210-230 n. Chr. angeführt:

τὸ ἡρῷον ἐπρίατο διὰ τῶν ἀρ[χεί]ων Τ̣(ίτος) Νώ(νιος) Καρ̣π̣οφόρος
ἐπὶ στεφα(νηφόρου) Φαβιανοῦ Ἀγχαρηνοῦ, μη(νὸς) η′. ἔσται τῶν ἐκγόνων
αὐτοῦ· εἰ δέ τις ἀφ’ ἑαυ̣τοῦ θάψει, δώσ[ε]ι τῷ Διδυμεῖ ∗(δηνάρια) α′. τῆς
ἐπιγραφῆς ἁπλοῦν ἀπετέθη εἰς τὸ ἀρχεῖον ἐπὶ στεφανηφ(όρου)
5 *vacat* Αἰλ(ιανοῦ) Ποπλᾶ, μη(νὸς) ι′.

T. Nonius Karpophonos berichtet, das Heroon διὰ τῶν ἀρχείων gekauft zu haben und gibt die Datierung des Kaufes an. Es folgen die Bestimmung, dass das Grab seiner Familie gehören solle, sowie das Verbot, Fremde darin zu bestatten, mit einer entsprechenden Strafklausel. Dann wird festgehalten, dass das Original dieser Inschrift, also die Urkunde zur Graberrichtung, im Archiv hinterlegt wurde, wiederum mit einer Datierung versehen. Dabei handelt es sich jedenfalls nicht um das Jahr, in

[74] Keil 1908, 564-565; zu den lateinischen Entsprechungen griechischer Termini siehe v.a. Hirschfeld 1887, in einem umfangreichen Anhang 131-136.

[75] So Stylow – López-Melero, 377 und Anm. 95; sie gehen von einer Übernahme des griechischen Rechtsmittels der Grabbußen in Rom und im lateinischen Westen um die Wende vom 1. zum 2. Jh. n. Chr. aus.

[76] Vgl. unter anderem Keil 1908, 570-572.

dem das Grab gekauft wurde.[77] Interessant ist zunächst die Formulierung ἐπρίατο διὰ τῶν ἀρχείων, die sich in dieser Art häufig findet.[78] Sie bezeichnet einen Kauf „unter Mitwirkung der Archive".[79] Die Aufgabe des Archivs respektive der dort tätigen Personen war neben der Archivierung möglicherweise auch Hilfe bei der Erstellung des entsprechenden Vertrages und sogar die Überprüfung verschiedener Angaben.

M. Wörrle publizierte 1975 eine interessante Urkunde mit umfangreichem Kommentar, die Licht auf die Vorgänge in einem städtischen Archiv werfen kann. Der römische *legatus pro praetore* der Provinz Lycia, Q. Veranius, reformierte das Urkundenwesen der lykischen Stadt Tlos und befahl gleichzeitig, die Anordnungen in der ganzen Provinz zu veröffentlichen, womit deutlich gemacht wurde, dass sie nicht nur für diese eine Stadt gelten sollten. Der Sklave der Stadt, Tryphon, hatte sich allerdings nicht darüber belehren lassen, dass Urkunden, die Interpolationen oder Rasuren aufwiesen, nicht in das Archiv aufgenommen werden durften und wurde daher ausgepeitscht, um mit einem drastischen Beispiel weiteren Verfehlungen der *demosioi* vorzubeugen. Der anzeigende Apollonios aus Patara erhielt 300 Drachmen, auch dieses Vorgehen wird in der Inschrift publiziert, wohl um die Wachsamkeit der Bevölkerung zu erhöhen. Im Anschluss finden sich dann die Anweisungen für die Archivare: Urkunden, an denen in irgendeiner Art und Weise manipuliert wurde, dürfen nicht in das Archiv aufgenommen werden, „denn wie soll sich das, was schon bei der Übergabe Anlass zu Verdacht geben kann, kommt das Vergessen auf Grund langer Zeit hinzu, nicht als vertrauensunwürdig darstellen, wo doch die Ursache, durch die die Interpolationen und Rasuren zustande kamen, denen, die einst die Dokumente einsehen werden, nicht bekannt sein wird."[80] Wörrle nimmt an, dass Eigentumsübertragungen an Immobilien, Sklaven und wahrscheinlich auch Schiffen notwendigerweise unter Mitwirkung des Urkundenamtes vorgenommen wurden. Eine ἀναγραφή (die auch für die Grabinschriften bezeugt ist)[81] erfolgte wohl nur nach einer formalen Prüfung der Urkunden und einer Kontrolle

[77] Vgl. P. Herrmann, Ist.Mitt.30, 1980, 92 Nr.1 mit Taf. 39,1.

[78] Vgl. zum Kauf: I.Smyrna 196; 502 (?); TAM V 2, 1106 (Thyateira, Statthalterarchiv); Alt.v.Hierapolis 278; TAM II 63; 260; 330; 331; Testament: I.Smyrna 226; Synchoresis: TAM II 247; 259; 353 und zahlreiche Beispiele aus Aphrodisias, siehe oben unter Anm. 33.

[79] Reynolds übersetzt „a transaction recorded in the Property-archive" (IAph2007 12.805; dort wird das *chreophylakion* genannt, das in Aphrodisias für diese Transaktionen zuständig war).

[80] Z.37-42: Ἃ γὰρ καὶ ἐν τῶι ἐπιδίδοσ[θαι] | δι' ὑποψίας ἐστίν, τα[ῦτα προσ]λαβόντα τὴν ἐκ τοῦ μα[κρο]|τέρου χρόνου λή[θην πῶς οὐκ ἄ]πιστα φαν{ι}εῖται τῆς α[ἰ]τ[ί]|ας, δι' ἣν α ἱ παρενγραφ[αὶ καὶ] α ἱ [ἀπαλ]οιφαὶ ἐγένοντο, | τοῖς ἐπισκέπτεσθαι τ ὰ πιτ[τά]κια μέλλουσιν ἐσομέν|ης ἀδήλου.

[81] Vgl. TAM II 752 (oben Anm.29) und TAM II 601.

der Rechtmäßigkeit des Rechtsgeschäftes.[82] Dies würde – vor allem auf die Graburkunden bezogen – die Formelhaftigkeit der Verbote und die spezifischen Charakteristika einzelner Städte erklären, da im Archiv natürlich vorwiegend auf vorhandenes Material zurückgegriffen wurde, das dem jeweiligen Rechtsakt angepasst werden konnte. Außerdem würde eine derartige Kontrolle und Prüfung auch die teilweise umfangreichen prozessualen Bestimmungen in den Grabinschriften erläutern. Bislang stellte sich die Frage, auf welcher Rechtsgrundlage eine Privatperson Vorschriften über die notwendige Eintreibung von Strafgeldern oder die Belohnung von Anzeigenden machen konnte.[83] Besonders der an manchen Stellen ausdrücklich ausgeschlossene Rechtsweg vor der Eintreibung der Bußgelder ist schwerlich aus der reinen Privatautonomie der Grableger zu erklären, da die Vorschrift eindeutig zu Lasten Dritter geht. Wenn man aber von einer städtischen Kontrolle der Rechtsgeschäfte im Rahmen der Archivierung ausgeht, verleiht dieser Akt möglicherweise den beschriebenen Vorgängen Geltung.[84]

Mit wenigen Ausnahmen enthalten die Grabinschriften Auszüge aus den vom Grableger erlassenen Vorschriften, die nicht in personalisierter Form verfasst waren. Einen Sonderfall stellt eine Grabinschrift aus Smyrna dar, die 1995 publiziert wurde.[85]

3 [- - - - - ἀπετ]έθη εἰς ἀρχεῖον τὸ λεγόμενον [Μουσεῖ]-
[ον τὸ] ἐν Σμύρνῃ· πρὸ ἓξ εἰδῶν Ἰουνίων Οὐεν. [Ἄπρω]-
5 νιανῷ τὸ β΄ καὶ Σεργίῳ Παύλῳ τὸ β΄ ὑπάτοις· · ἐπὶ [στε]-
[φανη]φόρου Τουκκίας Ἰουλίας ἡρωΐδος τὸ γ΄, μη(νὸς) Στρατον[ι]-
[κ]εῶνος ἑκκαιδεκάτῃ · Γ. · Κοσκώνιος Καπίτων Ἰουλιανὸς π[ε]-

[82] Der Text nennt verschiedene Urkundstypen, bei denen Zusätze im Text oder Rasuren nicht geduldet werden, die Aufzählung ermöglicht einen tieferen Einblick in die Arbeit des städtischen Archivs und das Urkundenwesen der kleinasiatischen Städte. Der umfangreiche Kommentar von Wörrle 1975 nimmt an vielen Stellen auf das Urkundenwesen rund um den Erwerb und die Errichtung eines Grabes Bezug (263-279).

[83] Zur Rechtsgrundlage der Grabmulten nach griechischem Recht Latte 1920, 90-95, der von sakralrechtlichen Grundlagen ausgeht. Zur Rechtsgrundlage nach römischem Recht: Ziebarth 1885, 55-70, der jede rechtliche Bindung der Multen verneint; Mommsen 1899, 814-815, geht von einer *lex publica*, einem *senatusconsultum* oder einem entsprechenden Kaisererlass aus; Kaser 1978, 24 und 87 sieht eine einseitige Anordnung des autonomen Grabstifters. Eine Zusammenfassung der Theorien mit weiterführender Literatur findet sich bei Klingenberg 1983, Sp. 623-624.

[84] Die Bedeutung der Archive in ihrer Rolle als Notariate unterstreicht bereits Mitteis 1891, 95-96; zur Wichtigkeit der Registrierung privater Verträge und Urkunden Dio Chrys. 31, 51. Zum Problem der Eintreibung der Geldstrafen siehe K. Harter-Uibopuu, Verbote und Strafen. Studien zur Rechtspflege in den kaiserzeitlichen Poleis Griechenlands und Kleinasiens, in Vorbereitung. Beispiele sind u.a. I.Milet I 3,134, Z.22-28; IAph2007 12.1205; TAM II 526.

[85] C. Icten – H. Engelmann, ZPE 108 (1995), 92-93, Nr.7 (pn.), SEG 95, 1598.

ποίημαι τὴν διαγραφὴν κ[α]θὼς προγέγραπται, Ἀβιην(ὸς) Ἠτρε[ῖος]
παρήμην. Στρατόνεικος ἱερὸς Σμυρναίων ἐπὶ τοῦ Μο[υ]-
10 σείου ἔλαβον vacat[86]

Hierbei handelt es sich um die wohl wörtliche Wiedergabe einer Urkunde, die im Archiv des Museions von Smyrna hinterlegt war. Wahrscheinlich enthielt sie die üblichen Verfügungen für das Heroon des C. Cosconius Capito Julianus. Die Urkunde datiert vom 8. Juni 168 n. Chr., das Datum ist sowohl in römischer als auch in smyrnäischer Zeitrechnung angegeben. Die Niederschrift (*diagraphe,* Z.8) wurde für Cosconius verfasst, sowie es vorgeschrieben war. Auch die Unterschriften eines Zeugen und des *hieros* Stratonikos, wohl eines Sklaven des Mouseions, der die Urkunde zur Archivierung übernahm, sind auf dem Text mit eingemeißelt. Diese Inschrift belegt ohne Zweifel die Hinzuziehung eines Zeugen zur Beurkundung, die ansonsten für die Grabinschriften nur zu erschließen ist, wenn auch an vielen Stellen die Archivierung einen wichtigen Platz einnimmt. Es sei abschließend noch einmal darauf hingewiesen, dass derartige Bestimmungen über die Archivierung der Graburkunden oder aber auch der Kaufurkunden auf den Grabinschriften ein griechisches Charakteristikum der Grabinschriften sind, das sich in Rom oder im Westen des Reiches in dieser Art nicht nachweisen lässt.

Zusammenfassend lässt sich festhalten: Während die Grabbußen ihre Wurzeln in den Bräuchen und Vorschriften der lykischen Städte haben und von dort über die kleinasiatischen Städte nach Rom gelangten, ist die Betonung des Kaufes einer Grabstätte in den kleinasiatischen kaiserzeitlichen Grabtexten meines Erachtens auf römischen Einfluss zurückzuführen. Die Archivierung sowie die prozessualen Vorschriften zur Eintreibung der Grabbußen sind andererseits griechischen Ursprungs und zeigen deutlich lokale Eigenheiten. So sind gerade die Grabinschriften ein deutlicher Spiegel für die Vermengung verschiedener Rechtsvorstellungen und das Entstehen einer griechisch-römischen Kultur in den Städten Kleinasiens.

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[86] „Hinterlegt im Archiv, das Mouseion genannt wird, in Smyrna. – *Datierung* – Ich, C. Cosconius Capito Julianus, habe mir die vorstehende *diagraphe* anfertigen lassen. Ich Avienus Aetreius, war Zeuge. Ich, Stratonikos, *hieros* der Smyrnaeier am Mouseion habe (die *diagraphe*) übernommen."

G. Hirschfeld, Ueber die griechischen Grabschriften, welche Geldstrafen anordnen, Königsberger Studien I (1887), 84-144.

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PANTELIS NIGDELIS (THESSALONIKI)

COMMENTS ON „ERWERB UND VERÄUßERUNG VON GRABSTÄTTEN IM GRIECHISCH-RÖMISCHEN KLEINASIEN AM BEISPIEL DER GRABINSCHRIFTEN AUS SMYRNA“ BY KAJA HARTER-UIBOPUU

Despite occasional studies on specific issues or areas, the study of the influence exerted by Roman law on the public or private legal institutions of the Greek cities of the Roman Empire still remains an object of research. Any variations, as well as the general trends, can be identified through case studies, such as the work of Kaja Harter-Uibopuu (henceforth K. H.), which constitutes the first systematic attempt to study the subject of “acquisition and expropriation of tombs” in several cities of Asia Minor.

The methodology followed is the comparative one in the sense that it seeks to identify similarities and/or differences shown in the wording of various Greek and Latin tomb inscriptions. The study is based on four axes concerning: a) purchasers and sellers, b) the actual objects of any given purchase and sale transaction, c) the method of acquisition of the monuments or burial sites, and d) the process by which the imposition of punishment is established through protective prohibitions, stipulated by the very owners. Whereas the relevant available inscriptive material is comprehensive, Smyrna is chosen as a representative example due to the wide variety of information provided by the inscriptions there, although, where appropriate, the inscriptions from other cities are also examined.

The following observations relate only to aspects of the issue, which, in my opinion, require further explanation or elaboration.

1. The cities are also included among the tomb sellers, as shown for example by the inscription TAM II 752 (1st century BC) of the city of Kandyva, Lycia. Regarding this evidence K. H. is wondering whether the tomb that a certain lady named Lais purchased was a ruined monument that was sold by the original owner directly to the purchaser or it came to the possession of the city as such (i.e. ruined and apparently abandoned), thus resulting in being sold on the basis of the public records kept regarding its ownership status. In my opinion, between the two alternative options, the wording of the inscription renders possible only the second one. However, in our case it is not obvious how the city eventually became the owner of the tomb. The scenario that this occurred due to the abandonment thereof

(in this case, demographic or other factors may always play a role) is possible, yet it is not the only one. For example, an inscription from Aphrodisias shows that, under certain conditions, private burial property may have been bequeathed to a temple, such as Aphrodite's[1]. I do believe that it is not impossible that something similar was taking place with the cities themselves. After all, inscriptions from Pisidia and Lycia seem to suggest that in certain legal transactions the city would allow the use of the tomb for a limited time period. On two inscriptions, one from Termessos and the other possibly from Kalavatia, the city and the council of the city respectively grant in the first case obviously *honoris causa* the right of use of public land exclusively to a *Archiereus* of Augustus cult[2], and in the second case to the members of a family for the next three generations[3]. The two transactions are indicated by the synonymous verbs of συγχωρεῖν and ἐπιτρέπειν, while in the second, the expression *during the term of Archiereus Licinnius Longus* seems to imply that the legal act followed an elsewhere-known procedure through the records held by the city. In a similar way, the usage of a monument, and consequently of the land which it is constructed upon, and which lies within the grounds of a *common burial place* (πολυανδρεῖον) in the city of Thyateira is also time-limited[4]. A certain Metrodoros had this monument erected while he was still alive, only for himself, his wife and their dead child. As a general debating point the question could be raised as to what extent the cities were involved in property purchase and sale transactions regarding burial sites. A remaining aspect to be searched in the work is the ownership status of

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[1] I.Aphrodisias 15. 214: ὁ πλάτας ἐστιν Ἀδράστου τοῦ Γλύκωνος τοῦ Γλύκωνος τοῦ Λέοντος τοῦ | Ἑκατόμνονος Πολυχρονίου ὄντινα πλάταν συνεχώρησεν αὐτῷ Πολυχρονία Καλλικράτου | εἰς ὃν πλάταν κατεσκεύασεν μνημεῖον τὸ ἐπικείμενον τῷ πλάτᾳ σορόν τε καὶ ἰσώστας τὰς ἐν αὐτῷ | καὶ τὰ λυπὰ τὰ ἐν αὐτῷ εἰς ἣν σορὸν ἔθαψα Βαρίλλα<ν> τὴν ἐμαυτοῦ γυναῖκα βούλομαι δὲ καὶ αὐτὸς || ἐν τῇ σορῷ τεθῆναι ἕτερον δὲ μηδένα ἐν δὲ τῇ ἰσώστῃ τῇ πρώτῃ ὑποκειμένῃ σορῷ ἐνταφῆναι | βούλομαι τὴν γυναῖκά μου καὶ Πολυχρόνιον τὸν υἱόν μου ἐν δὲ τῇ ἑτέρᾳ ἰσώστῃ τεθῆναι βούλομαι | Τατιανὸν καὶ Ἄδραστον τὰ τέκνα μου ἕτερον δὲ μήδε ἐν τῷ σορῷ μήδε ἐν ταῖς ἰσώσταις | τεθῆναι εἰ δὲ τὸν ὕσπληγα οἱ κληρονόμοι μου μετὰ τὸ ἐντεθῆναί με ἐν τῇ σορῷ μὴ ἀσφαλίσωνται | *ἔστω μου κληρονόμος ἡ θεὰ Ἀφροδείτη* τοῦτο δὲ ἐκδικήσουσιν οἱ κατὰ καιρὸν νεωπυοὶ …

[2] TAM III 684: Ἀρχιερεὺς Θεοῦ | Αὐγούστου Οπλης τρὶς | Πιλλακοου Μανησου | τὴν θήκην κατεσκεύ||ασεν ἑαυτῷ *συνχωρήματι δήμου.*

[3] TAM II 250: τὸ μνημεῖον κατεσκεύασεν | Εὐτύχης Ἑρμαόρτου, *καθὼς* | *ἡ βουλὴ ἐπέτρεψεν* ἐπὶ ἀρχιερέος | Λικιννίου Λόνγου Ἀρτεμεισίου β′, | ἑαυτῷ καὶ γυναικὶ αὐτοῦ καὶ τοῖς ἐξ αὐτῶν καὶ γυναιξὶν αὐτῶν καὶ τέ|κνοις· ἑτέρῳ δὲ μηδενὶ ἐξεῖναι ταφῆναι· εἰ|δὲ μή, ὁ θάψας | ἐκτείσι Σιδυ|μέων τῷ δήμῳ (δηνάρια) φ′ | ἐξ ὧν ὁ κατηγορῶν | λήνψεται τὸ πέν|πτον τοῦ προστί|μου.

[4] TAM V 2, 1113: Μητρόδωρος Στρατο|νείκης *κατεσκεύασεν* | *τὸ μνημεῖον ἐν τῷ πολυ|ανδρίῳ* ζῶν αὐτῷ καὶ | Νοτίδι καὶ Μητροδώρῳ | τῷ τέκνῳ τῷ κατοιχο|μένῳ. εἰ δέ τις τοῦτο τὸ | μνημεῖον ἢ πωλήσῃ | ἢ ἀγοράσῃ ἢ ἐκόψῃ | τι τῶν ἐπιγεγραμέ|νων ἢ τῶν ἔσω τε|θέντων ἔξω τις | βάλῃ, δώσει τὴν (!) | πόλιν (δηνάρια) ,βφ′.

the tombs belonging to members of private clubs / associations and the legal issues arising there from.

2. Moving on to the actual objects of the said legal transactions, I would like to dwell on the inscription from Smyrna I.Smyrna 234, where the purchaser, Noumerios Prosios, buys a piece of land (place) surrounded by four walls (περιοικοδομημένος τοίχοις τέσσαρσιν), which is *bare* and *clean* (ψιλός and καθαρός). Within this land, he has an arch (καμάρα) erected with niches (ἐνσόρια) for laying down the corpses or the ossuaries. Regarding the adjectives that are used to describe the land, the following interpretations are suggested: for the first one "uncultivated, bereft of any vegetation" and for the second "a piece of land used for the first time as a burial ground", corresponding to the Latin phrase "*locus purus*". K. H. ends up to this interpretation basically because the purchaser erected the *arch* after purchasing the land. Nonetheless, it is equally feasible that the piece of land could have hosted the remains of the previous owner / owners who were buried there either in simple graves or sarcophagi. Furthermore, the reference to a surrounding wall seems to indicate that this place was designated for a specific use. As a reminder, I would like to point out that common findings of ancient necropolises are burial enclosures. These are also epigraphically attested as e.g. in an inscription from Nicomedeia in Bithynia[5], where we come across the term "a place surrounded by fence around" (περιτετρινχισμένος τόπος). Therefore, for the inscription in Smyrna, I would suggest that the most likely interpretation is that of "an old burial ground which does not contain any previous remains" (see corpse-free, καθαρὸς πτωμάτων).

3. Possible ways of acquisition of graves or burial monuments are often stated in Greek inscriptions, usually through the prohibitive provisions, which, as a rule, constitute an integral part thereof. Quite often, such provisions include general concepts such "expropriation" (ἐξαλλοτριῶσαι or ἀπαλλοτριῶσαι) that make it difficult to understand the specific way by which these assets might have changed hands. One such case is the famous inscription of "Origanion" from Smyrna I. Smyrna 210. In the relevant prohibitive clause we can read the expression *"neither is it allowed to sell, transfer or expropriate or act mischievously upon this monument nor any part of it"* («μηδενὶ ἐξέστω τοῦτο τὸ μνημῆον ἢ μέρος τι αὐτοῦ μήτε πωλῆσαι μήτε μεταθεῖναι μήτε ἐξαλλοτριῶσαι μήτε δόλωι πονηρῶι τι ποιῆσαι»). I do agree with K. H., that the verb *"transfer"* (μεταθεῖναι) should be taken here in a metaphorical-legal sense rather than literally, i.e. the transfer of the monument to another location, as it occurs in cases involving sarcophagi, for the very reason that the monument is not a sarcophagus. In support of this, and in order to gain a better understanding of the factors involved, one could cite as evidence the

[5] TAM IV 1, 239: Ἀριστόδημος Ταυρέου | καὶ Λύκος Ἀριστοδήμου | Βοσπορανοὶ ζῶντες ἑαυτοῖς *σὺν τῷ περιτετρινχισμένῳ,* | *τόπῳ* τὴν πύελον ἐθήκαμεν καὶ τοῖς ἀδελφοῖς ἡμῶν | Σαμβίωνι Ἀριστοδήμου | καὶ Σαμβίωνι Ταυρ[έ]ου …

expression *"if sold or transferred any of the dispositions of the inscription"* («εἰ δὲ τις πωλήσῃ ἢ μεταθῇ τῶν κατὰ τὴν ἐπιγραφὴν διατεταγμένων») that is found in a funerary inscription of Magnesia near Sipylon[6]. In other words, *"transfer"* (μεταθεῖναι) concerns changes in the terms of a will regarding the use or the ownership of the monument or the land upon which it was erected. An insight as to the ways these terms could have been changed is provided by the 2nd/3rd century AD funerary inscription from Aphrodisias, where the owner prohibits any change in the terms of his will, by, among others, *a city's decree* or *a petition to a provincial governor* (διὰ ψηφίσματος or διὰ ἡγεμονικῆς ἐντεύξεως)[7].

4. The filing of documents with public archives pertaining to burial properties constitutes, is according to K. H. a Greek characteristic of the whole issue since it is attested by inscriptions from various regions of Asia Minor such as Ionia, Karia and Lycia yet not from the West. It is correctly observed that the procedure can also be connected, *inter alia*, with the enforcement of various penalties provided for in these documents regarding the protection of the monuments: copies of the wills, certified by witnesses and kept in their archives, were the legal basis that allowed cities to monitor through their competent bodies any burial property violation and impose such sanctions, as stipulated by their owners. In support of this interpretation, such expressions may be brought as evidence as "*the safety is cited in the public records*" («ἡ ἀσφάλεια ἀναγέγραπται διὰ τῶν δημοσίων γραμματοφυλακίων») that accompanied various funerary inscriptions. One very interesting aspect of this process that is missing from the treatise of K. H. is the submission and filing of copies of such documents in the archives of provincial governors. This conclusion is derived, for example, by two inscriptions from Lycia and Pisidia respectively. In the first one that comes probably from Karmylessos the owner, a certain Aurelius, son of Ermolykos, submits a written application to the provincial governor requesting

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[6] TAM V 2, 1410: Τίτος Φλάβιος Σπόρος τὴν καλ|μάραν ζῶν κατεσκεύασεν ἑαυ|τῷ καὶ τῇ γυναικὶ αὐτοῦ Τατίῳ | καὶ τοῖς ἐκγόνοις αὐτοῦ. εἰ δέ τις | πωλήσῃ ἢ *μεταθῇ τῶν κατὰ τὴν* | *ἐπιγραφὴν διατεταγμένων*, ἀπο|τείσει τῷ φίσκῳ ἀργυρίου (δηνάρια) χείλι[α].

[7] I.Aphrodisias 12. 1107: ἡ σορὸς καὶ ὁ βωμὸς καὶ α[ἱ εἰσῶσται] καὶ τὰ περὶ αὐτὰ πάντα | κατεσκευάσθησαν καὶ εἰσὶν Τ[ι]β(ερίου) Ἰουλ[ίου] Γλύκωνος καθὼς καὶ διὰ | τῆς γενομένης ἐκδόσεως διὰ το[ῦ χρε]οφυλακίου δηλοῦται ἐν ᾗ σο|ρῷ κηδευθήσεται αὐτός τε ὁ Γλύκων ἢ οὓς ἂν αὐτὸς βουληθῇ ἢ διατά||ξηται ἐν δὲ ταῖς εἰσώσταις κηδευθήσονται οὓς ἂν ἐνθάψαι βουλη|θῇ ὁ Γλύκων ἢ ἐνγράφως τινὶ συνχωρήσῃ ἢ διατάξηται ἕτερος δὲ | οὐδεὶς ἐξουσίαν ἔξει ἐνθάψαι τινὰ οὔτε εἰς τὴν σορὸν οὔτε εἰς τὰς | εἰσώστας ἢ οὓς ἂν Γλύκων αὐτὸς ζῶν βουληθῇ ἐνθάψαι οὐδεὶς δὲ || ἔξει ἐξουσίαν ἐνθάψαι τινὰ ἕτερος ἢ ἐκθάψαι σωμάτειον τῶν ἐν | ταφέντων τῇ τοῦ Γλύκωνος βουλήσε[ι] *οὔτε διὰ ψηφίσματος οὔτε* | *δι΄ ἐντεύξεως ἡγεμονικῆς* οὔτε ἄλλῳ τρόπῳ οὐδενὶ οὐδὲ ἀπαλ|λοτριῶσαι οὐδὲ μετακεινῆσαι τὴν σορὸν ἐπεὶ ὁ τούτων τι τολμή||σας ἢ συνχωρήσας ἀποτείσει τῷ ἱερωτάτῳ ταμείῳ (δηνάρια) πεντακις | χείλια ὧν τὸ τρίτον γενήσεται τοῦ ἐκδικήσαντος ταύτης | τῆς ἐπιγραφῆς ἀπετέθη ἀντίγραφον καὶ εἰς τὸ χρεοφυλάκιον ἐπὶ | στεφανηφόρου τὸ τρὶς καὶ δέκατο[ν] Ἀτταλίδος τῆς Μενεκράτους || μηνὸς Ξανδ[ι]κοῦ.

permission to repair, along with his brother, the base of a sarcophagus, which was the burial monument of his ancestors[8]. The second one, from Termessos, Aurelius Nikephoros and his wife erect a sarcophagus for themselves and their children on condition that a fine of 2,500 dinars would be payable to the imperial treasure in case any other corpse was placed in it. At the end of the inscription, it is stated that a copy of the document was filed in the *"proconsular archives"* («ἐν τοῖς σκρινείοις ἀνθυπατικοῦ»)[9]. The reasons that led to this option, instead of being filed in the city archives, were not of course declared in the document, however, it cannot be excluded that they were personal in the sense of having more confidence in the effectiveness of the institutions and bodies of the empire in comparison with the institutions of the city, especially after the *Constitutio Antoniana*. Since the filing in the archives implies a procedure invented and applied by Greeks, one could deduce from these examples that gradually the Greek and Roman legal perceptions are intermingled into a indistinct new structure, as shown convincingly, I believe, by the work of K. H. concerning on the issue "acquisition and expropriation of tombs" in Asia Minor.

[8] TAM II 122: ἡ σωματοθήκη ἥδε προγονικὴ Αὐρηλ[ί]ου Ἑρμολύ|κου τοῦ Εὐτυχέους Τελμησσέ[ο]ς· ἧς ὑπὲ[ρ τῆς ἀσ]|φα[λ]είας [τ]οῦ θεμε[λίο]υ [ἐ]π[ὶ τῇ] ἐπ[ισκευ]ῇ π[ρο]|ν[ο]ή[σ]ασθαι ὁ Ἑρμόλυκος κα[ὶ ὁ ἀ]δελ[φὸ]ς α [ὐ]||το[ῦ Αὐρ]ήλ[ιο]ς Σ[τ]έ[φανος *πα]ρὰ ἀνθ[υπ]άτο[υ*] | *Μ(άρκου) · Ἰουλιανοῦ Σούρα Μ[άγ]ν[ο]υ ἠτήσαν[τ]ο δ[ιὰ βι]||βλίου*(?) *καὶ συνεχώ[ρη]σε[ν αὐτοῖς* ...

[9] TAM III 657: Αὐρ(ήλιος) Νεικαφόρος Αρ(τειμου) καὶ Αὐρ(ηλία) Νουμηνὶς | κατέστησεν τὴν σωματοθήκην ἑαυτοῖς | καὶ τοῖς τέκνοις αὐτῶν Αὐρ(ηλίῳ) Νεικαφόρῳ | καὶ Αὐρ(ηλίῳ) Ἀρτέμωνι· ἑτέρῳ δὲ οὐδενὶ ἐξέσ||τε μετὰ τὴν ἀπόθεσιν αὐτῶν· ἄλ<λ>ῳ δὲ | οὐδενὶ ἐξέστε ἀνῦξε ἢ ἐπιθάψαι τινά, | ἐπεὶ ὁ πειράσας τι τούτων ἐνεχεθήσετε | τυνβωρυχίᾳ κὲ ἐκτείσει τῷ ἱερωτάτῳ ται||μείῳ (δηνάρια), βφ′ | *τὸ δὲ ἀντίγραφον ἀνατέτακτε ἐν τοῖς* | *σκρινείοις ἀνθυπατικοῦ.*

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NOCHMALS ZUR BIBLIOTHEKE ENKTESEON

Die um das Jahr 70 n. Chr. auf Gauebene eingerichtete sog. βιβλιοθήκη ἐγκτήσεων gehört zu den eigenwilligsten Schöpfungen der römischen Administration in der Provinz *Aegyptus*. Die detailliertesten Kenntnisse darüber verdanken wir dem großen Edikt des Präfekten M. Mettius Rufus, das er am 1. oder 31. Oktober des Jahres 89 n. Chr. auf Veranlassung des oxyrhynchitischen Strategen erließ.[1] Mit seiner noch gegen Ende des XIX. Jhdts. erfolgten Publikation entstand sogleich eine lebhafte Diskussion, was der eigentliche Zweck dieser bemerkenswerten Einrichtung sei. Zumal schon vom Namen her – wörtlich 'Archiv der Besitzungen' – daraus Auskunft über die Vermögensverhältnisse an privatem Grundbesitz und vielleicht auch Sklaven zu erwarten war, wurde längere Zeit sogar eine Art Grundbuch des römischen Ägypten darunter vermutet. Zwar wurde diese These spätestens in den 1920er Jahren aufgegeben, doch war es eher der Publikation neuer Texte und damit einer Verlagerung der Forschungsinteressen, nicht aber einer wirklich schlüssigen Deutung zu danken, wenn diese Auseinandersetzung für fast 80 Jahre mehr oder weniger zum Erliegen kam. Zu Beginn dieses Jahrhunderts suchte Klaus Maresch sie mit seinen "Überlegungen zur Funktion zentraler Besitzarchive"[2] denn auch wieder aufleben zu lassen, und zuletzt war es vor allem François Lerouxel, der mit seinen Untersuchungen zum Kreditmarkt einige bedeutsame neue Aspekte in die Debatte brachte.

Dennoch steht eine überzeugende Antwort nach wie vor aus. Mir geht es im folgenden daher um zweierlei: Zum einen will ich die bisherigen Deutungen einer erneuten Überprüfung unterziehen und sie zum anderen um eine rechtspolitische Komponente ergänzen. Denn eine stärkere Einordnung in den allgemeinen Kontext römischer Rechtspolitik vermag, wie ich meine, durchaus eine neue Perspektive zu eröffnen.

Dreh- und Angelpunkt jeder Argumentation muß dabei notwendigerweise das bereits erwähnte Edikt des Mettius Rufus sein, das die Grundzüge des Systems recht gut erkennen läßt, weswegen ich es hier kurz noch einmal durchgehen will.[3] Danach waren innerhalb einer bestimmten Frist – genauer sechs Monaten – sämtliche priva-

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[1] P. Oxy. II 237 col. VIII, 27-43 = M. Chr. 192 = Jur. Pap. 59 = Sel. Pap. II 219 = FIRA I 60; hieraus auch die in Anm. 4 ff. gegebenen Zitate. Der genaue Zeitpunkt ihrer Einrichtung ist nach wie vor unklar; hierzu zuletzt Jördens (2010) 160 f.

[2] So der Untertitel von Maresch (2002).

[3] Zu den im folgenden erwähnten Details grundlegend weiterhin Wolff (1978a) 222-255 sowie bereits 48 ff.

ten Eigentums- und Pfandrechte sowie sonstigen Besitztitel unter Angabe ihrer Herkunft bei der βιβλιοθήκη ἐγκτήσεων zu deklarieren.[4] Dort wurden auf dieser Basis für jede Privatperson unter ihrem ὄνομα Übersichtsblätter, sog. διαστρώματα, angelegt, auf denen diese Titel nach Ort und Sache zu verzeichnen waren.[5] Wie dabei mit dem Eigentum von Frauen und Kindern zu verfahren war, dessen Verfügungsgewalt zeitweilig an den Mann bzw. die Eltern übergegangen war, ist ebenfalls geregelt.[6] Bei allfälligen Veränderungen der Besitzverhältnisse hatten die ausfertigenden Notare vorher bei der Bibliothek ein entsprechendes ἐπίσταλμα einzuholen, das über die Berechtigung der Verfügung Aufschluß gab; im Falle der Nichtbeachtung drohten Strafen.[7] Zur Sicherstellung des Rechtsverkehrs waren nicht nur alle früheren Akten – Deklarationen wie διαστρώματα – sorgfältig aufzubewahren,[8] sondern auch die

[4] Z. 31 ff. Κελεύω οὖν πάντας τοὺς κτήτορας ἐντὸς μηνῶν ἓξ ἀπογρά|[32]ψασθαι τὴν ἰδίαν κτῆσιν εἰς τὴν τῶν ἐνκτήσεων (l. ἐγκτήσεων) βιβλιοθήκην καὶ τοὺς δανειστὰς ἃς ἐὰν ἔχωσι ὑποθήκας καὶ τοὺς ἄλλους |[33] ὅσα ἐὰν ἔχωσι δίκαια, τὴν δὲ ἀπογραφὴν ποιείσθωσαν δηλοῦντες πόθεν ἕκαστος τῶν ὑπαρχόντων καταβέβηκεν εἰς αὐτοὺς |[34] ἡ κτῆσεις (l. κτῆσις) 'Daher verfüge ich, daß alle Eigentümer innerhalb von sechs Monaten ihren privaten Besitz bei der *bibliotheke enkteseon* deklarieren sollen sowie die Gläubiger alle Hypotheken und alle anderen Rechtstitel, welche sie haben. Im Rahmen dieser Deklaration sollen sie darlegen, woher jeweils das Eigentum an ihrem Besitz zu ihnen übergegangen ist'.

[5] Wolff (1978a) 226 ff.; vgl. auch Z. 40 ff. (zit. unten Anm. 9).

[6] Z. 34 ff. Παρατιθέτωσαν δὲ καὶ αἱ γυναῖκες ταῖς ὑποστάσεσι τῶν ἀνδρῶν, ἐὰν κατά τινα ἐπιχώριον νόμον κρατεῖται (l. κρατῆται) τὰ ὑπάρ|[35]χοντα, ὁμοίως δὲ καὶ τὰ τέκνα ταῖς τῶν γονέων οἷς ἡ μὲν χρῆσεις (l. χρῆσις) διὰ δημοσίων τετήρηται χρηματισμῶν, ἡ δὲ κτῆ|[36]σις μετὰ θάνατον τοῖς τέκνοις κεκράτηται, ἵνα οἱ συναλλάσσοντες μὴ κατ' ἄγνοιαν ἐνεδρεύονται (l. ἐνεδρεύωνται) 'Dabei sollen die Frauen bei dem Vermögen ihrer Männer verzeichnet werden, wenn nach irgendeinem einheimischen Recht der Besitz verfangen ist; ebenso auch die Kinder bei dem der Eltern, denen der Nießbrauch zusteht aufgrund öffentlicher Beurkundung, während der Besitz nach dem Tod den Kindern gehört, damit die Vertragschließenden nicht aus Unwissenheit hereingelegt werden'. In diesen eherechtlichen Bezügen scheint der Hauptanlaß für die späteren Zitate des Ediktes gelegen zu haben, und zwar sowohl im Fall des Ediktes des Ser. Sulpicius Similis vom 8. 11. 109 (P. Oxy. II 237 col. VIII, 21-27 sowie P. Mert. III 101), dem es als Anhang beigegeben war, wie auch in der berühmten Petition der Dionysia, die sich mit Berufung auf beide Edikte fast 100 Jahre später dem gegen ihren Willen von ihrem Vater in die Wege geleiteten Scheidungsverfahren widersetzte.

[7] Z. 36 ff. Παραγγέλλω δὲ καὶ τοῖς συναλλα|[37]γματογράφοις καὶ τοῖς μνήμοσι μηδὲν δίχα ἐπιστάλματος τοῦ βιβλιοφυλακ[ίου τελειῶσαι, γνοῦσιν ὡς οὐκ ὄφελος τὸ] τοιοῦτο, ἀλλὰ καὶ |[38] αὐτοὶ ὡς παρὰ τὰ προστεταγμένα ποιήσοντες δίκην ὑπομενοῦσι τὴν προσήκουσαν 'Ich trage auch den Synallagmatographen und den μνήμονες auf, nichts ohne ein ἐπίσταλμα des Bibliophylakion aufzusetzen, im Wissen, daß solches nicht von Nutzen ist, aber auch in der Erwartung der gebührenden Strafe für solche, die selbst den Vorschriften zuwiderhandeln'; hierzu wie auch zu den verschiedenen Bezeichnungen der Notare und den möglichen Bezügen zu § 101 im sog. Gnomon des Idios logos mit BGU V 1210, 227 f. (nach 149) zuletzt Jördens (2010), bes. Anm. 27.

[8] Z. 38 ff. Ἐὰν δ' εἰσὶν ἐν τῇ βιβλιοθήκῃ τῶν ἐπά|[39]νω χρόνων ἀπογραφαί, μετὰ πάσης ἀκρειβείας (l. ἀκριβείας) φυλασσέσθωσαν, ὁμοίως δὲ καὶ τὰ διαστρώματα, ἵν', εἴ τις

laufend geführten in gewissen Zeitabständen zu erneuern, damit die Aktualität der Institution stets gewährleistet blieb.[9] Da all diese Verfahrensschritte eine reiche Dokumentation hervorrufen mußten, ist uns auch die Umsetzung dieser Vorschriften im ägyptischen Alltagsleben bestens vertraut.

Welche Besitztitel dies konkret betraf, wird bemerkenswerterweise nirgends gesagt. Da das Deklarationsgebot für πάντας τοὺς κτήτορας, 'alle Privateigentümer', galt,[10] wird man hierunter privaten Grundbesitz an Klerosland und Immobilien, vermutlich auch an sonstigen Ländereien verstehen dürfen;[11] unklar stellt sich die Lage nach wie vor hinsichtlich des Eigentums an Sklaven dar.[12] Alles weitere Vermögen blieb dagegen von der Erfassung ausgenommen,[13] erst recht natürlich sämtliches öffentliches Land, ob nun Domänialland oder andere δημοσία γῆ.[14] Auslöser der hier angeordneten Generalrevision waren Mißstände im Archiv des Oxyrhynchites gewesen, die nun sog. Generalapographai, also Deklarationen aller κτήτορες über ihren gesamten Besitz, erforderlich machten.[15] Üblicherweise sollten die Verzeichnisse jedoch mit Hilfe sog. regulärer oder Spezialapographai, die nach jedem Besitzwechsel einzureichen waren, auf dem laufenden gehalten werden. Daß sich mit der hierdurch gewährleisteten Aktualität zugleich ein grundsätzlicher Anspruch auf Vollständigkeit verband, hätten die Präfekten, wie das Edikt betont, immer wieder eingeschärft.

Demnach haben wir es bei diesem Besitzarchiv mit einem Instrument zu tun, mit dem der gesamte Rechtsverkehr an Immobilien in der Provinz *Aegyptus* zu überwachen war. Mit Hilfe der regulären Deklarationen wurde alles private Eigentum

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γένοιτο ζήτησις, εἰς l[40] ὕστερον περὶ τῶν μὴ δεόντως ἀπογραψαμένων ἐξ ἐκείνων ἐλεγχθῶσι 'Wenn aber in der Bibliotheke Deklarationen aus früheren Zeiten vorhanden sind, sollen sie mit aller Sorgfalt aufbewahrt werden, ebenso auch die *diastromata*, damit man, wenn irgendeine Untersuchung stattfindet, in späterer Zeit bezüglich der nicht ordnungsgemäß deklarierten Besitztitel aus ihnen heraus den Nachweis führen kann'.

[9] Z. 40 ff. [Ἵνα] δ' [ο]ὖν β[εβ]αία τε καὶ εἰς ἅπαν διαμένῃ τῶν διασl[41]τρωμάτων ἡ χρῆσεις (l. χρῆσις) πρὸς τὸ μὴ πάλιν ἀπογραφῆς δεηθῆναι, παραγγέλλω τοῖς β[ι]βλιοφύλαξι διὰ πενταετίας ἐπανανεοῦσθαι l[42] τὰ διαστρώματα μεταφερομένης εἰς τὰ καινοποιούμενα τῆς τελευταίας ἑκάστου ὀνόματος ὑποστάσεως κατὰ κώμην καὶ καl[43]τ' εἶδος 'Damit aber die Benutzung der διαστρώματα sicher und in jeder Hinsicht bewahrt bleibt, so daß es nicht noch einmal einer Abschrift bedarf, trage ich den Bibliophylakes auf, nach je fünf Jahren die διαστρώματα zu erneuern, indem das zuletzt festgestellte Vermögen einer jeden Person nach Ort und Sache in die neu angelegten (*sc.* διαστρώματα) übertragen wird'; zu der – zeitweilig umstrittenen, vgl. nur Kießling (1965) 78 – Frage der Fünfjahresfrist bes. Wolff (1978a) 233 Anm. 47.

[10] P. Oxy. II 237 col. VIII, 33.

[11] Vgl. Wolff (1978a) 224, bes. Anm. 13.

[12] Vgl. Wolff (1978a) 225, bes. Anm. 14 f.; auch 259. Ein weiterer Beleg scheint jetzt mit dem – allerdings fragmentarischen – Register P. Dub. 12 (II. Jhdt.) zu greifen.

[13] Wolff (1978a) 225; vgl. auch bereits Eger (1909) 37 f.; von Woeß (1924) 185 ff.

[14] Vgl. Wolff (1978a) 225, bes. Anm. 16.

[15] Vgl. nur P. Oxy. II 237 col. VIII, 28 ff.

erfaßt, mögliche Lücken durch die in bestimmten Abständen eingeforderten Generalapographai geschlossen. Nach Überzeugung der älteren Literatur war damit folglich ein Landkataster, ja gar ein Grundbuch geschaffen.

Freilich hatte die relative Häufigkeit von Generalapographai schon relativ bald die Vermutung genährt, daß die angestrebte Aktualität und Vollständigkeit wohl nur selten erreicht worden war. Doch wie schon Hans Julius Wolff leicht irritiert vermerkte, scheint ein rechter Wille zur Durchsetzung der Vorschriften gar nicht vorhanden gewesen zu sein. Denn es fehle nicht nur jeder positive Hinweis auf einen Zwang zur Erstattung, vielmehr blieben auch Verstöße jeglicher Art – ob bei Einzel- oder Generalapographai – offenbar ungeahndet und also folgenlos.[16] Auch wurde zwar Notaren, die bei Vertragsschluß die Einholung eines ἐπίσταλμα versäumten, eine Strafzahlung angedroht, von einer Haftung der Archivbeamten für fehlerhafte Besitzauskünfte ist jedoch nirgends die Rede.[17] Zuverlässigkeit ließ dieses Instrument folglich auch dann nicht erwarten, wenn die Akten verhältnismäßig sorgfältig geführt waren, die Notwendigkeit einer Generalrevision also noch in weiter Ferne lag.[18]

Stellt man nun die Frage, welche politischen Absichten die Römer bei der Einrichtung dieses Besitzarchivs verfolgten, drängt sich als erstes eine fiskalische Zielsetzung auf. Dies ist in diesem Fall freilich schon angesichts der großzügigen Handhabung auszuscheiden, wie neben dem fehlenden Deklarationszwang gerade der Vergleich mit den sog. κατ' οἰκίαν ἀπογραφαί erweist. So wurden die Zensusdokumente, die als Grundlage für die Berechnung der Kopfsteuer dienten, sehr viel systematischer, nämlich alle 14 Jahre von der gesamten Bevölkerung eingefordert; Fälle, in denen ausnahmsweise eine Erfassung unterblieben war, konnten sogar vor den Präfekten gelangen.[19] Demgegenüber sind die hier interessierenden Besitzdeklarationen nicht nur wesentlich seltener überliefert, sondern auch von weniger einheitlicher Gestalt. Vor allem aber sind beide Deklarationstypen, wie schon Ludwig Mitteis vermerkte,[20] an völlig verschiedene Instanzen adressiert: Während solche Deklarationen, die als Basis für die Steuerveranlagung dienten, stets an Strategen und βασιλικὸς γραμματεύς und also die obersten Finanzbehörden des Gaues zu richten

[16] Vgl. nur Wolff (1978a) 232: "Von unmittelbarem Zwang zur Erstattung scheint allerdings die Regierung, wenn man dem Fehlen einer darauf bezüglichen Klausel im Edikt des Mettius Rufus und mehrmaligen Erwähnungen offensichtlich unschädlich gebliebener Nichtbefolgung des Gebots oder frei zugegebener Fristversäumung trauen darf, wie bei den Einzelapographai so auch bei den Generalapographai abgesehen zu haben." Die Details bereits bei Harmon (1934) 198; vgl. auch Kießling (1965) 80 ("nur eine sanktionslose Norm"); Burkhalter (1990) 200.

[17] Zu ersterem vgl. Z. 36 ff. und oben Anm. 7; zu der Frage der Haftung der βιβλιοφύλακες Wolff (1978a) 250; bes. ders. (1978b) 190.

[18] Vgl. auch grundsätzlich Flore (1927) 85 f.

[19] Vgl. nur das Verhandlungsprotokoll vor D. Veturius Macrinus PSI XIII 1326 (181-183).

[20] Mitteis (1912) 99 Anm. 4; zu den unterschiedlichen Adressaten auch Flore (1979) 120 ff.

waren,[21] wurden Spezial- wie auch Generalapographai regelmäßig bei den nichtstaatlichen Bibliophylakes eingereicht. Ihre relativ späte Einführung bietet ein weiteres starkes Gegenargument.[22]

Letzteres hatte wiederum Klaus Maresch als das entscheidende Indiz angesehen, weswegen diese Einrichtung vielmehr mit dem ebenfalls erst im Verlauf des I. Jhdts. ausgebildeten Liturgiewesen, also erneut einem – wenn hier auch nur in weiterem Sinne – fiskalischen Zwecken dienenden Instrument zu verbinden sei.[23] In dieselbe Richtung hatte auch schon Michael Rostovtzeff gedacht, ja seiner Meinung nach gaben die von den Römern beförderten Liturgien sogar "den ersten Anstoß dazu, staatliche βιβλιοθῆκαι τῶν ἐγκτήσεων zu schaffen … Für die Regierung, welche ihr Finanz- und Administrationssystem auf der Liturgie aufbaute, war es unentbehrlich, genau zu wissen, welcher Grundbesitz frei, welcher dagegen belastet war, in wessen Händen sich die eine oder andere Privatparzelle befand, kurz und gut die Regierung mußte wissen, was in Wirklichkeit das liegende Vermögen des einen oder anderen Liturgiepflichtigen war."[24] Eine eindrucksvolle Bestätigung dessen könnte man etwa in zwei Schreiben des bekannten κωμογραμματεύς Petaus sehen, von dem der Stratege Auskunft über das Vermögen zweier Dorfbewohner erbat, da Dritte mit dem – wie sich zeigt, unzutreffenden – Vorwurf mangelnden Vermögens Einspruch gegen die Nominierung eingelegt hatten. In der detaillierten Aufstellung, die der für ihren Heimatort zuständige Petaus über Person und Besitz zu liefern vermag, verweist er ausdrücklich auf entsprechende Auskünfte des τῶν ἐγκτήσεων βιβλιοφυλάκιον, denen sogar das Datum des Besitzeintrags zu entnehmen ist.[25]

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[21] Hierzu zuletzt eingehend Kruse (2002) 63 ff.

[22] So zuletzt auch Maresch (2002) 235, wobei die Relativierung ("insofern auffällig, als die Römer auf anderen Gebieten der Finanzverwaltung bald nach Errichtung ihrer Herrschaft im Sinne einer Zentralisierung und verstärkten Kontrolle tätig wurden") für Mareschs Ansatz bezeichnend, jedoch unbegründet ist, da die Besitzarchive entgegen seiner Darstellung eben nicht dem Finanzressort unterstanden. Abwegig daher etwa auch Drecoll (1997) 194, der die in das Zensusverfahren eingebundenen liturgischen Beamten auf Stadt- und Dorfebene "unterhalb der *bibliophylakes* … beschäftigt" sieht.

[23] Maresch (2002), bes. 242. 244, bemerkenswerterweise allerdings ohne jeden Bezug auf Rostovtzeff oder Mitteis, deren Überlegungen ebenfalls schon in diese Richtung gegangen waren; dazu sogleich.

[24] Rostowzew (1910) 118 Anm. 3; zustimmend etwa auch Mitteis (1912) 92 f. 99, bes. Anm. 5.

[25] P. Petaus 10 (2. 5. 184); 11 (2. 5. 184), bes. Z. 11 ff. ᾧ ὑπάρχι (l. ὑπάρχει) ἃ ἀπεγρά(ψατο) τῷ ἐνεστῶτι κδ (ἔτει) μη(νὶ) Φαμενὼ(θ) κδ διὰ τοῦ τῶν ἐνκτή(σεων) (l. ἐγκτή(σεων)) βιβλ(ιοφυλακίου) κτλ. 'welchem gehört, was er im laufenden 24. Jahr im Monat Phamenoth, am 24., bei dem Archiv der Besitzungen registrieren ließ …'; vgl. auch allgem. Cockle (1984) 114. Für die Konsultation der βιβλιοθήκη ἐγκτήσεων war wohl die erst kurze Zeit zurückliegende Meldung der – ererbten – Grundstücke maßgeblich, denn das Vermögen aus bereits länger bestehendem Grundbesitz hätte der κωμογραμματεύς ebenso den von ihm selbst geführten Steuerlisten entnehmen können; vgl. dazu zuletzt Jördens (2009) 102 m.w.L.

Daß darüber hinaus zugleich mit der Nominierung zum Liturgen dessen Besitz in den διαστρώματα als verfangen gekennzeichnet wurde, wurde ebenfalls schon früh erkannt.[26] Diese vorsorglich getroffene Maßnahme zielte offenbar darauf, allfällige Forderungen des Staates zu sichern, die besonders bei kostenintensiveren Liturgien infolge einer mißlungenen Amtsführung entstehen mochten; mit einem solchen Eintrag war im Zweifelsfall, ähnlich wie bei Steuerschulden, die staatliche πρωτοπραξία gegenüber Dritten gewahrt.[27] Dies schloß selbst munizipale Ehrenämter ein, wie eine entsprechende Anweisung an die Bibliophylakes anläßlich der Neubesetzung der ἀρχιερωσύνη noch zu Zeiten Diokletians unterstreicht.[28] Sofern berechtigte Gründe für eine Liturgiebefreiung bestanden wie etwa eine ausreichende Kinderzahl, konnte man freilich auch dies bei seinem ὄνομα eintragen lassen.[29] Entsprechendes galt auch für Steuerprivilegien, beispielsweise die ἀτέλεια eines Mitglieds der kaiserlichen Technitensynode, ohne daß daraus Kompetenzen des Besitzarchivs im Bereich der Finanzverwaltung abzuleiten sind.[30]

Nun wird gewiß nicht zu bezweifeln sein, daß die Dienste dieser Einrichtung gern auch staatlicherseits abgefragt wurden. Die Einwände, die schon gegen mögliche fiskalische Zwecke im engeren Sinne sprachen, behalten jedoch auch hier ihr Gewicht – der nicht-staatliche Charakter der Institution, vor allem aber der Umstand, daß es keine Pflicht zur Darlegung des Immobilienvermögens gab. Ein wesentlich mit dem Steuer- und Liturgiewesen verbundenes Interesse des Staates, wie es zuletzt noch einmal Klaus Maresch verfocht,[31] kann also kaum der leitende Gedanke gewesen sein.

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[26] Vgl. bes. Eger (1909) 72 ff.; von Woeß (1924) 191; zusammenfassend jetzt Lewis (1997) 73 f.

[27] Regelungen gegen eine mißbräuchliche Anwendung vgl. jedoch in § 5 des berühmten Edikts des Ti. Iulius Alexander, Z. 18-24 mit Chalon (1964) 123 ff., bes. 129 ff.; hierzu auch unten Anm. 43 f. Leitendes Prinzip war demnach auch dort letztlich der angestrebte Schutz vor Verfügungen Nichtberechtigter, wie ihn von Woeß (1924) 29 ff. u.ö. bei der βιβλιοθήκη ἐγκτήσεων gegeben sah; vgl. unten Anm. 32 ff. mit Text. Zu "Eintragungen auf Ersuchen einer Behörde" allgem. auch Lewald (1909) 67 ff.

[28] P. Oxy. XLIV 3188 (11. 9. 300); vgl. auch Lewis (1997) 79.

[29] So etwa in SB XVI 12994 = P. Mich. XIV 675 (19./20. 7. 241), bes. 27 ff. ὑποτάξας οὖν τῶν [τέκ]νων τὰ (*sc.* 5) ὀνόματα τῶν κα[ὶ] δ[ι]ὰ [βιβλίων δημοσίων λ]όγων φαινομένων ἀξιῶ ἐπιστεῖλαί σε ... καὶ τοῖς τῶν ἐνκτήσεων (l. ἐγκτήσεων) βιβλ(ιοφύλαξι) τὴν δέουσαν πα[ράθεσιν ποιεῖσθαι τῷ ὀ]νόματί μου; vgl. auch Wolff (1978a) 236 f. Anm. 64. 67.

[30] Vgl. nur P. Agon. 2 = M. Chr. 198 = BGU IV 1073 (1./2. 274) mit dem vorausgehenden Antrag P. Agon. 1 = SB XVI 13034 = BGU IV 1074 (12. 273 / 1. 274); hierzu auch Eger (1909) 197 f.; Maresch (2002) 245.

[31] Vgl. bes. Maresch (2002) 245: "Für den Staat aber waren die Vorteile, die sich für ihn aus der Aufsicht über die Liegenschaften ergaben, viel wichtiger (*sc.* als der Schutz des privaten Rechtsverkehrs). Sie müssen von Anfang an in Rechnung gestellt worden sein." Der ebda. in Anm. 39 erhobene Vorwurf gegen Wolff, die "Bedeutung der βιβλιοθήκη ἐγκτήσεων für die Liturgie" nicht erwähnt zu haben, trifft allerdings insofern ins Leere,

Aus diesem Grund hatte denn auch Friedrich von Woeß den Grundgedanken schon 1924 vielmehr im "Prinzip der administrativen Verfügungskontrolle" zum Schutze des Rechtsverkehrs vermutet.[32] Obgleich römischem Rechtsdenken "im wesentlichen fremd", erwecke die ägyptische Evidenz doch den "Eindruck, daß die Verhinderung der Verfügung des Nichtberechtigten eine der obersten Sorgen der römischen Verwaltung war."[33] Nichts zeige dies besser als die Auseinandersetzung um ein gleich zweimal veräußertes Grundstück, das in beiden Fällen mit nicht registrierungspflichtiger Privaturkunde erworben worden war.[34] Während der Erstkäufer auf eine Eintragung seines Besitztitels verzichtet hatte, hatte der zweite den Kaufvertrag nachträglich der δημοσίωσις unterzogen[35] und bei der βιβλιοθήκη ἐγκτήσεων gemeldet. Aufgrund des fehlenden Eintragungsprinzips hatte dies allein noch keine Entscheidung zugunsten des Zweiterwerbers gebracht. Erst in dem Moment, als dieser mit notariellem und also mit Epistalma der βιβλιοθήκη abgesichertem Vertrag das strittige Grundstück weiterveräußern will, wird es brisant. So legt der Erstkäufer nun mit der Bitte um Eintragung eines Sperrvermerks beim Strategen hiergegen Einspruch ein, um den geplanten Weiterverkauf im letzten Moment zu verhindern.

Der hier vorgetragenen Deutung, die sich in den folgenden Jahrzehnten durchsetzen sollte, schloß sich mit wenigen Modifikationen auch noch Hans Julius Wolff im Jahr 1978 an, als er im Rahmen seines Handbuchs das gesamte Material zur βιβλιοθήκη ἐγκτήσεων noch einmal eingehend erörterte.[36] Ihm zufolge sei der eigentliche Zweck des Besitzarchivs in der "Errichtung einer *administrativ-»polizeilichen«* – möglicherweise auch, mit Bezug auf die Amtsführung der staatlichen Notare, einer *disziplinarischen* – Aufsicht über den Liegenschaften und vielleicht auch den Sklaven betreffenden Rechtsverkehr" sowie der "Gewinnung eines ständigen Überblicks über den Besitzstand an diesen Gütern in jedem Gau" zu sehen.[37] Ziel sei eine möglichst umfassende Kenntnis des provinzialen Wirtschaftslebens gewesen, zumal fiskalischen Interessen, wie Wolff nochmals betont, andere Instrumentarien zur Ver-

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als dies unter dem – durchaus weiter gefaßten – Aspekt der Verfangenschaften wiederholt gewürdigt erscheint.

[32] von Woeß (1924) 351; zustimmend zuletzt Wolff (1978a) 223, bes. Anm. 9. 246 bzw. (1978b) 186, bes. Anm. 9 mit Verweis auf frühere Stellungnahmen; vgl. auch bes. Flore (1927) 86 ff.

[33] von Woeß (1924) 29, vgl. auch 3. 104 f.

[34] P. Giss. I 8 = M. Chr. 206 (30. 3. 119); vgl. dazu Eger (1909) 68 ff. 87 f. mit der Ed. pr.; von Woeß (1924) 130. 203. 344 ff.

[35] Die mit diesem Verfahren erreichte Gleichstellung der privaten mit den öffentlichen Urkunden gilt allgemein als Voraussetzung für die Registrierung in der βιβλιοθήκη ἐγκτήσεων, vgl. bereits Mitteis, Einl. zu M. Chr. 206; von Woeß (1924) 203, bes. Anm. 1; 269 f. Anm. 3; Wolff (1978a) 174 Anm. 22; zum Verfahren allgem. ebda. 129 ff.; Primavesi (1986).

[36] Vgl. oben Anm. 3.

[37] Wolff (1978b) 191 bzw. (1978a) 253.

fügung standen.[38] Demgegenüber seien die "Vorteile, die das System sowohl vom Standpunkt des Privatrechts wie auch als Mittel der Sicherung öffentlich-rechtlicher Verfangenschaften mit sich brachte", lediglich "als willkommene Nebenprodukte" zu betrachten.[39]

Auch diese These vermag freilich nicht restlos zu überzeugen, da die bekannten Gegenargumente auch hier wieder zutreffen – so der Verzicht auf die Deklarierungspflicht, weswegen etwaiger Informationsbedarf stets nur durch die Konsultation einer ganzen Reihe von Verzeichnissen, die unterschiedliche Institutionen zu den verschiedensten Zwecken führten, zu decken war; der nicht-staatliche Charakter der Einrichtung; nicht zuletzt die auch von Wolff selbst als problematisch erkannte Beschränkung der Besitzarchive auf den jeweiligen Gau.[40] Auch bezogen auf eine 'administrativ-»polizeiliche« Aufsicht über den Liegenschaften betreffenden Rechtsverkehr' und einen 'ständigen Überblick über den Besitzstand' ist demnach allenfalls ein mittelbares Interesse des Staates zu erkennen.

Einen ganz neuen Ansatz hat nun zuletzt François Lerouxel verfolgt, indem er die eminenten ökonomischen Implikationen des neugeschaffenen Besitzarchivs in den Vordergrund stellte. So habe nach seinen Beobachtungen der Kreditmarkt in diesen Jahren erhebliche Veränderungen erfahren, wie insbesondere an den Aktivitäten von Frauen ablesbar sei.[41] Denn typischerweise verliehen sie im Gegensatz zu Männern fast ausschließlich Geld, und zwar tendenziell sogar höhere Summen, weswegen sie nicht nur häufiger Banken einschalteten, sondern überdurchschnittlich oft auch auf Sicherheiten bestanden. Das Besitzarchiv kam hier beiden Seiten entgegen: Dem einen vermochte es Einblick in die Vermögensverhältnisse des potentiellen Schuldners zu verschaffen, dem anderen gelang ungleich leichter der Nachweis seiner Kreditwürdigkeit. Beides trug dazu bei, den Anteil der Frauen sowohl unter Gläubigern wie auch Darlehensnehmern zu erhöhen, so daß es hier seit Beginn der Flavierzeit zu einem signifikanten Anstieg kam.

Diese wirtschaftspolitische Deutung hat Lerouxel auf einer Tagung über Transaktionskosten in der Antike, wie ich durch Uri Yiftachs freundliche Vermittlung erfahren habe, inzwischen noch weiter ausgebaut.[42] Handlungsbedarf sei demnach vor allem durch das komplexe Beziehungsgeflecht entstanden, das unter den Römern öffentliche Aufgaben mit privaten Belangen verquickte und durch hohe wechselseitige Sicherungsbedürfnisse gekennzeichnet war. Das konkurrierende

[38] Zu den auch noch in römischer Zeit von den Komogrammateis geführten katasterartigen Landregistern, die als Grundlage für die Berechnung des *tributum soli* dienten, jetzt bes. Jördens (2009) 103 ff. Die Darstellung von Maresch (2002) 236, daß "durch die traditionellen Notariate bereits eine Kontrolle des Grundbesitzes gewährleistet war, so daß eine verbesserte, zentrale Erfassung – zumindest vorerst – nicht dringlich erschien", ist insoweit ungenau.

[39] Wolff (1978b) 191 bzw. (1978a) 253 f., bes. 254.

[40] Vgl. auch Burkhalter (1990) 214.

[41] Vgl. nur Lerouxel (2006), bes. zusammenfassend 56 ff.

[42] Lerouxel (2009).

Interesse, das daher Staat wie Privatpersonen gleichermaßen an der Sicherung ihrer Ansprüche gegen potentielle Schuldner besaßen, habe die Kosten im Kreditwesen immer weiter verteuert, bis schließlich die Wirtschaft als ganze in Schieflage geriet. Das Besitzarchiv habe nun in wünschenswerter Weise diese Kosten minimieren und damit weiteren Belastungen entgegenwirken können – erfolgreich, wie der wirtschaftliche Aufschwung des Landes in den Folgejahren erweise. Erste Schritte gegen die negativen Auswirkungen auf private Rechtsgeschäfte seien zwar schon Ti. Iulius Alexander zu verdanken, der in seinem Edikt vom 6. Juli 68 die Namen der Staatsschuldner zu publizieren gebot,[43] doch sei eine wirkliche Entspannung erst mit dem bald darauf geschaffenen Besitzarchiv eingetreten.

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[43] So Lerouxel (2009) 11 f. mit Bezug auf Chalon (1964) § 5 (I. Hibis 4 = I. Prose 57 = OGIS II 669 = IGRR I 1263 = SB V 8444 = FIRA III 58, 18 ff.) Ἵνα δὲ μηιδαμόθεν βαρύνηι τὰς πρὸς ἀλλήλους συναλλαγὰς τὸ τῶν δημοσίων ὄνομα μηδὲ συνέχωσι τὴν κοινὴν πίστιν l[19] οἱ τῆι πρωτοπραξίᾳ πρὸς ἃ μὴ δεῖ καταχρώμενοι, καὶ περὶ ταύτης ἀναγκαίως προέγραψα· ἐδηλώθηι γάρ μοι πολλάκις ὅτι ἤδηι τινὲς καὶ ὑποθήκας ἐπείρασαν ἀφελέσθαι νομίμως l[20] γεγονυίας καὶ ἀποδεδομένα δάνεια παρὰ τῶν ἀπολαβόντων ἀναπράσσειν πρὸς βίαν καὶ ἀγορασμοὺς ἀναδάστους ποιεῖν ἀποσπῶντες τὰ κτήματα τῶν ὠνησαμένων ὡς l[21] συμβεβληκότων τισὶν ἀναβολικὰ εἰληφόσ[ι] ἐκ τοῦ φίσκου ἢι στρατηγοῖς ἢι πραγματικοῖς ἢι ἄλλοις τῶν προσοφειληκότων τῶι δημοσίωι λόγωι. Κελεύωι οὖν, ὅστις{ς} ἂν ἐνθάδε l[22] ἐπίτροπος τοῦ κυρίου ἢι οἰκονόμος ὑποπτόν τινα ἔχηι τῶν ἐν τοῖς δημοσίοις πράγμασιν ὄντων, κατέχεσθαι αὐτοῦ τὸ ὄνο[μ]α ἢι προγράφειν, ἵν[α μηδ]εὶς τῶι τοιούτωι συνβάλληι, l[23] ἢι μέρηι τῶν ὑπαρχόντων αὐτοῦ κατέχειν ἐν τοῖς δημοσίοις γραμματοφυλακίοις πρὸς ὀφείλημα. Ἐὰν δέ τις μήτε ὀνόματος κατεσχημένου μήτε τῶν ὑπαρχόντων κρατουl[24]μένων δανίσηι νομίμως λαβὼν ὑποθήκην ἢι φθάσηι ἃ ἐδάνισεν κομίσασθαι ἢι καὶ ὠνήσηταί τι, μὴι κατεχομένου τοῦ ὀνόματος μηδὲ τοῦ ὑπάρχοντος, οὐδὲν πρᾶγμα ἕξει ‘Damit aber die privaten Rechtsgeschäfte von keiner Seite her im Namen des Staates belastet werden und man nicht die allgemeine Kreditwürdigkeit einschränkt dadurch, daß man das Vorpfandrecht (des Fiskus) mißbräuchlich in Angelegenheiten einsetzt, für die es nicht gilt, habe ich notwendigerweise auch hierzu eine Verfügung getroffen. Denn mir ist häufig dargelegt worden, daß einige bereits versucht haben, formgerecht bestellte Hypotheken aufzulösen, zurückgezahlte Darlehen mit Gewalt wieder von den Empfängern beizutreiben und Kaufverträge rückgängig zu machen, indem sie den Käufern die Besitztümer wieder entzogen, da sie Verträge geschlossen hätten mit Personen, die vom Fiskus Stundungen in Anspruch genommen haben, oder mit Strategen oder (niedrigeren) Amtsträgern oder anderen Arten von Schuldnern gegenüber der öffentlichen Kasse. Ich verfüge also, daß von jetzt an jeder Prokurator des Kaisers oder *dispensator*, der einen von den in öffentlichen Diensten Stehenden für verdächtig hält, auf dessen Namen eine Verfangenschaft eintragen lassen bzw. eine Verfügung treffen soll, damit niemand mit einer solchen Person Verträge schließt, oder auf Teile seines Vermögens eine Verfangenschaft eintragen soll in den öffentlichen Archiven bezüglich dieser Schuld. Wenn aber ein Dritter einem, bei dem weder eine Verfangenschaft auf den Namen eingetragen noch der Besitz beschlagnahmt ist, ein Darlehen gibt und dafür eine formgerecht (bestellte) Hypothek erhält oder das Darlehen schon vorher zurückbekommen hat oder etwas erworben hat, wobei weder auf den Namen noch auf das Vermögen eine Verfangenschaft eingetragen ist, dann wird (dieser Dritte) keinen Zugriff erleben’.

Daß Fiskalschuldner durch das Vorpfandrecht des Staates in jedem Fall erheblichen Nachteilen ausgesetzt und dadurch grundsätzlich in ihrer Geschäftstätigkeit beeinträchtigt waren, wird sicher kaum zu bestreiten sein. Gleichwohl ging es Alexander nach allem, was wir sehen, nicht etwa um das Verhältnis zwischen privaten und öffentlichen Schulden allgemein, sondern um den mißbräuchlichen Einsatz der Protopraxie durch übereifrige Finanzorgane, die staatliche Ansprüche wider alles Recht notfalls auch gegen bestehende Verträge durchzusetzen versuchten.[44] Entgegen Lerouxel betreffen die beiden Verlautbarungen damit freilich ganz verschiedene Sachverhalte, zumal die durchaus häufiger thematisierte Behördenwillkür[45] bei Mettius Rufus keinerlei Rolle spielt.

Seinem eigenen Bekunden nach bewegen sich die von ihm verordneten Maßnahmen vielmehr ganz im privatrechtlichen Bereich, wie denn auch ihr alleiniger Zweck darin liege, daß "die Vertragschließenden nicht aus Unwissenheit hereingelegt werden".[46] Die Forschung neigte freilich gern dazu, diese Darstellung zu relativieren, obwohl rechtspolitische Zielsetzungen in statthalterlichen Verlautbarungen keine ganz unbedeutende Rolle spielen. So unterstreicht auch der Präfekt T. Flavius Titianus in seinem Edikt aus dem Jahr 127, mit dem er die Gründung der Ἀδριανὴ βιβλιοθήκη bekanntgibt, vor allem den Aspekt der Rechtssicherheit.[47] Derselbe Gedanke ist auch schon im Jahr 43 im Dekret des *legatus Augusti pro praetore* der Doppelprovinz *Lycia Pamphylia* Q. Veranius zu fassen, wenn er seine Reform des städtischen Archivs von Tlos damit verknüpft, daß "auch die, die einen Rechtsakt vornehmen – ihretwegen hat meine Fürsorge in dieser Sache Untersuchungen (?) angeordnet – aufhören, ihrer eigenen Sicherheit entgegenzuarbeiten".[48] Zu diesem Appell an das Eigeninteresse und vor allem die Eigenverantwortung der Vertragschließenden hatte bereits der Herausgeber Michael Wörrle eine Reihe von Paral-

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[44] Hierzu zuletzt Jördens (2009) 273 f. mit Anm. 42.

[45] So besonders in den wiederholten Edikten zum Requisitionswesen; vgl. hierzu zuletzt eingehend Jördens (2009) 165 ff.

[46] Vgl. nur P. Oxy. II 237 col. VIII, 36 ἵνα οἱ συναλλάσσοντες μὴ κατ' ἄγνοιαν ἐνεδρεύονται (l. ἐνεδρεύωνται), zitiert bereits oben in Anm. 6; dazu bes. Wolff (1978a) 249 Anm. 125. Zu dem Rang dieser Aussage auch Eger (1909) 200 f.; von Woeß (1924) 104 f.; Flore (1927) 84 ff.; Cockle (1984) 114; vgl. auch Purpura (1992) 596, der dies allerdings als "giustificazione fondamentale delle disposizioni dell'intero editto" von dem "scopo della disposizione" zu scheiden sucht; zuletzt bes. Lerouxel (2006) 58, wenngleich mit Blick auf Maresch (2002) eher skeptisch, ob hierin tatsächlich "le but premier de l'administration romaine dans la mise en place de la bibliothèque des acquets" zu erkennen sei.

[47] Vgl. P. Oxy. I 34 = M. Chr. 188, 6 f. [o]ὐ μόνον ἵνα ἡ πρόσοδος φανερὰ γένηται, ἀλ<λ>' ἵνα καὶ αὕτη ἡ ἀσφάλεια ταῖς ἄλλαις προσῆν (l. προσῇ) 'nicht allein, damit die Einkünfte offengelegt werden, sondern auch, damit dieselbe Sicherheit auch allen anderen zuteil werde'; hierzu auch Jördens (2006) 98.

[48] Vgl. nur SEG XXXIII (1983) 1177, 24 ff. Ἵνα δὲ καὶ οἱ χρηματ[ίζ]οντες, δι' οὓς ἡ ἐμὴ ἐπιμέλεια περὶ τούτων ἐξ[ετά]σαι (?) διέταξε, παύσωνται τῆι ἑαυτῶν ἀ[ντ]ιπ[ρ]άσσον[τες ἀ]σφαλείαι, in der Übersetzung von Wörrle (1975) 257.

lelen anführen können, so etwa auch ein – wenngleich nur fragmentarisch erhaltenes – kaiserliches Edikt aus dem pisidischen Sibidunda.[49] Daher hatte ich auch schon andernorts dafür plädiert, die Fürsorge für die Rechtssicherheit als Teil des statthalterlichen Selbstverständnisses anzuerkennen.[50]

Im Fall des Besitzarchivs spricht dies um so eher an, als damit gerade diejenigen Details der Konstruktion, die sonst stets Anlaß zu Bedenken gaben, einsichtig werden. Dies gilt etwa für den geringen Einzugsbereich – geradezu essentiell bei einem Instrument, das in erster Linie Informationen über die Kreditwürdigkeit möglicher Vertragspartner bereithalten sollte, da in der Gauhauptstadt gelagerte Akten für jeden Interessenten optimal zugänglich waren, während eine zentrale Erfassung hierfür nicht nur entbehrlich, sondern sogar hinderlich war. Auch das fehlende Eintragungsprinzip ordnet sich hier mühelos ein. Denn bezeichnenderweise wurde Zwang nur im Fall der Zensusdeklarationen ausgeübt, die den Staat aus fiskalischen Gründen unmittelbar interessierten, während Besitzdeklarationen, zumal Spezialapographai, hier neben Geburts- oder Todesanzeigen und vor allem den sog. ἀβροχία-Deklarationen rangieren. Für all diese Deklarationstypen ließ sich ein primäres Interesse der Deklaranten erschließen,[51] am deutlichsten sicherlich bei den letztgenannten, wo es um Abgabenreduzierungen bei ungünstigen Nilschwellen ging. Hier wird wohl niemand in Abrede stellen, daß dies vor allem den Bedürfnissen der Betroffenen und allenfalls auf lange Sicht auch denen des Staates entsprach. Dasselbe wird man nach alldem auch bei den Besitzdeklarationen annehmen müssen und das eigentliche Anliegen auf seiten der Bevölkerung sehen.

Wichtiges und Richtiges wurde sicherlich auch bei den früheren Deutungsversuchen erkannt. Allerdings gab es in allen Fällen ein Moment, das sich nicht recht zu den unterstellten Absichten fügen wollte. So wußte der Staat die im Besitzarchiv geführten Akten in der Tat für steuerliche wie liturgische Belange zu nutzen; die Frage bleibt jedoch, warum es nie zu einem direkten Zugriff der staatlichen Organe kam. Daß die dadurch erlangten Vorteile "viel wichtiger" waren als der von Rufus benannte Zweck und sie daher, wie zuletzt noch einmal von Klaus Maresch gemutmaßt, "von Anfang an in Rechnung gestellt worden sein (müssen)",[52] verliert zudem schon wegen des fehlenden Deklarationszwanges sehr an Plausibilität. Auch die von Wolff erwogene administrativ-»polizeiliche« Aufsicht über den einschlägigen Rechtsverkehr besitzt angesichts der Beschränkung der Besitzarchive auf den einzelnen Gau nur geringe Überzeugungskraft. Dasselbe gilt für das neuerdings von François Lerouxel vorgetragene Konzept, es habe sich um eine Maßnahme zur Begrenzung der Kostenentwicklungen im Wirtschaftsleben gehandelt, zumal, wie auch er

[49] SEG XIX (1963) 854 = Oliver (1989) 390 f. Nr. 186 (II. Jhdt.) mit Wörrle (1975) 284 f.

[50] Hierzu jetzt eingehend Jördens (2010), bes. 176 f.

[51] Der herrschenden Meinung nach versprachen sich die Einreichenden jeweils bestimmte Vorteile: Die Geburtsanzeigen stellten auf eine Anerkennung des Status ab, die Todesanzeigen auf die Reduzierung der Steuerleistungen.

[52] Maresch (2002) 245, das gesamte Zitat oben in Anm. 31.

selbst einräumt, positive Hinweise auf ein entsprechendes Denken in antiken Quellen nicht auszumachen sind.[53]

Da all diese Interpretationen in der Regel aus den beobachteten Effekten heraus entwickelt waren, überrascht hingegen nicht, daß sich solche stets auch nachweisen lassen. Die von Mettius Rufus erwarteten Erfolge traten freilich ebenfalls ein. So vermerkte schon Hans Julius Wolff: "Daß die βιβλιοθήκη ἐγκτήσεων auch mit ihrer gegenüber der älteren Auffassung eingeschränkten Wirksamkeit dem *zivilen Rechtsverkehr* diente und dessen Sicherheit in hohem Maße förderte, unterliegt natürlich keinem Zweifel."[54] Die hieraus zu folgernde "vision assez altruiste et philanthropique de l'administration romaine"[55] rief gleichwohl stets ein gewisses Unbehagen hervor, nicht zuletzt bei Wolff selbst, müsse seiner Meinung nach doch "die Frage aufgeworfen werden, ob der Schutz des privaten Rechtsverkehrs um seiner selbst willen wirklich das *ausschlaggebende rechtspolitische Motiv* ihrer Schaffung gewesen" sei.[56]

In der Tat paßt es nur wenig zu den landläufigen Vorstellungen vom Imperium Romanum, daß eines der zentralen Anliegen der römischen Administration ausgerechnet in der Sicherung der Interessen der Einwohnerschaft bestanden haben soll. Doch ist auch hierin, wenn man es recht betrachtet, keineswegs ein reiner Selbstzweck zu sehen. Vielmehr brachte auch dies nicht unerheblichen Gewinn für den Staat, insofern nämlich strittige Besitztitel an Immobilienvermögen stets zu den beliebtesten Streitgegenständen vor Gericht gehören. So läßt bereits die oben erwähnte Auseinandersetzung um das zweimal veräußerte Grundstück erahnen, welche Risiken eine unterbliebene Konsultation des Archivs nicht nur für die Betroffenen, sondern auch die staatlichen Organe barg, da sie prompt vor den bekannten Strategen Apollonios gelangte. Wie leicht allfällige Unklarheiten über den Rechtsstatus von Land den ganzen Apparat bis hin zu einem römischen Prokurator über Jahre hinweg beschäftigen konnten, tritt indes nirgends so eindrucksvoll vor Augen wie in der

[53] Vgl. nur Lerouxel (2009) 13: "Il ne s'agit bien sûr pas de dire que l'administration romaine en Égypte avait lu Douglass North et connaissait la notion de coûts de transaction."

[54] Wolff (1978a) 253, pointiert zu Beginn des als Zusammenfassung gedachten Abschnitts 4 "Der rechtspolitische Zweck der Bibliotheke".

[55] Lerouxel (2009) 10.

[56] So Wolff (1978a) 253 zu Ende des in Anm. 54 genannten einleitenden Absatzes, wobei ihn die daran anschließenden Überlegungen zu dem oben in Anm. 37, bes. auch 39 mit Text referierten Ergebnis führen. Im folgenden Kleindruck listet er weitere Indizien auf, die seiner Meinung nach diese Deutung zu stützen vermögen. An seinem an den Beginn dieser Indizienkette gestellten Satz "Ein strikter Beweis der These läßt sich allerdings beim gegenwärtigen Quellenstand nicht führen" (254) hat sich freilich bis heute, soweit ich sehe, nichts Grundlegendes geändert.

bekannten Kontroverse zwischen den Soknopaiospriestern Satabus und Nestnephis um vermeintliche oder tatsächliche Adespota.[57]

Schon diese beiden Fälle geben hinlänglich zu erkennen, wie vorteilhaft eine angemessene Berücksichtigung der Interessen der Provinzialen mitunter auch für die Behörden war. Denn das römische Prinzip einer auf wenige remunerierte Kräfte in Schlüsselpositionen gestützten, schlanken Verwaltung funktionierte nur dann, wenn Reibungsflächen sich so weit wie möglich eliminieren ließen. Das auf Gauebene geschaffene Kontrollsystem der βιβλιοθῆκαι ἐγκτήσεων, in denen die Vereinbarungen vor Vertragsschluß auf gegebenenfalls konkurrierende Ansprüche zu überprüfen waren, fügte sich hier nahtlos ein, war es doch wie wenig anderes geeignet, nicht nur potentielle Käufer oder Darlehensgeber vor unangenehmen Überraschungen, sondern auch die Gerichte vor einer Flut möglicher Folgeprozesse zu bewahren.

Da die Besitzarchive eine Vielfalt von Bedürfnissen von staatlicher wie von privater Seite erfüllten, sollte andererseits kaum verwundern, daß man die dabei verfolgten politischen Absichten immer wieder auch andernorts suchte; kein Zufall auch, daß man sie oft genug auf dem eigenen Forschungsgebiet fand. Dennoch bleibt befremdlich, daß dem klaren Bekenntnis des Mettius Rufus zum Schutz des privaten Rechtsverkehrs derart große Zurückhaltung entgegengebracht und es trotz aller Parallelen allenfalls als ‘willkommenes Nebenprodukt’ eingestuft wurde. Eine derartige Skepsis erscheint jedoch offenbar unbegründet, zumal es nirgends handfeste Gegenbeweise gibt. Insofern haben wir darin eher ein wissenschaftsgeschichtliches Phänomen zu sehen, das wohl vor allem einem tiefwurzelnden Mißtrauen des modernen Gelehrten gegen alle allzu hehren – zumal wenn von Politikerseite verkündeten! – Ideale geschuldet ist.

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[57] Hierzu, insbesondere zur Bedeutung der Archive in diesem Zusammenhang, zuletzt Jördens (2010), bes. 162 ff.

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COMMENTS ON ANDREA JÖRDENS "NOCHMALS ZUR BIBLIOTHEKE ENKTESEON"

In memoriam
Raymond Westbrook

The *bibliothêkê enktêseôn*, an archive recording the acquisition of property rights on landed property, was one of the outstanding accomplishments of the Roman administration in Egypt in the sphere of private law.[1] Anyone who buys a house, a piece of land, or gives a loan secured by a lien on land faces the same dilemma: what if the vendor/borrower does not tell the truth? What if the land is not his? What if he already sold it, or gave it as a security to a third person who will later turn up and contest our right?[2] Our worries would naturally be eased if we could retrieve, cheaply and expeditiously, information on the existence of such conflicting rights. In Roman Egypt, this purpose was served by the *bibliothêkê enktêseôn*.

If you wished to sell real property, you would frequently (regularly until around 150 CE)[3] turn to a public scribe (i.e. a one located at a *grapheion* or *agoranomeion*) for the composition of the document. But the scribe would document the sale in writing only if he knew that no conflicting rights stood in the way. This type of

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1 F. Burkhalter, "Archives locales et archives centrales en Égypte romaine", *Chiron* 20 (1990) 191-216 at 199-202, 209-211; W.E.H. Cockle, "State Archives in Greco-Roman Egypt from 30 BC to the Reign of Septimius Severus", *JEA* 69 (1983) 113-115; F. Lerouxel, "Les Femmes sur le Marché du Crédit en Égypte Romaine (30 Avant J.-C.-284 Après J.-C.)", *CCRH* 37 (2006) 47-63; id., "Le rôle de la bibliothèque des acquêts (*bibliothêkê enktêseôn*) dans la diminution des coûts de transaction sur le marché du crédit en Égypte romaine", *Transaction Costs in the Ancient World* (Center for Hellenic Studies, Washington DC, 27.-29.7.2009, forthcoming); K. Maresch, "Die Bibliotheke Enkteseon im römischen Ägypten. Überlegungen zur Funktion zentraler Besitzarchive", *ArchPF* 48 (2002) 233-246; H.J. Wolff, *Das Recht der griechischen Papyri Ägyptens in der Zeit der Ptolemäer und des Prinzipats. 2. Band. Organisation und Kontrolle des privaten Rechtsverkehrs* (Munich 1978) 222-255; F. v. Woeß, *Untersuchungen über das Urkundenwesen und den Publizitätsschutz im römischen Ägypten* (Munich 1924) esp. 98-124, 175-224.

2 The same challenge is less successfully encountered in Rome itself: cf. M. Kaser, *Das römische Privatrecht: Erster Abschnitt: Das altrömische, das vorklassische und klassische Recht* (HAW 3.3.1) (Munich 1971) 458, and *Zweiter Abschnitt: Die nachklassischen Entwicklungen* (HAW 3.3.2) (Munich 1975) 313.

3 Cf. p. 297.

information was stored in the *bibliothêkê enktêseôn* and the *bibliophylakes* had to confirm in writing, by means of an *epistalma*, that no conflicting rights were recorded in the vendor's *diastrôma*, a list of landed property in the vendor's possession and its proprietary status.[4] Only after the *bibliophylakes* confirmed that no conflicting rights were present, could the scribe draw up the sale contract. Naturally, the *bibliophylakes* could provide a reliable picture only if their files were kept up-to-date. This goal could only be attained if every purchaser, every new owner, reported (*apographestai*) to the *bibliophylakes* his newly acquired title after the purchase.[5] In terms of the paperwork, only then, after the *apographê*, was the sale really complete.

The mechanism described above could only function effectively if everyone did his job, i.e. if the scribes did not draw up the document before an *epistalma* was issued, if land owners always reported to the *bibliophylakes* by means of an *apographê* their newly acquired titles, and finally if the *bibliophylakes* kept a careful record of these rights. And indeed, the Roman state seems to have made a sincere and continuous effort (at least in the first 100 years of the existence of the *bibliothêkê*, ca. 50-150 CE) to keep the system in good working order. Public scribes who issued a land sale document without an *epistalma* were subject to a heavy fine of 50 drachms.[6] The state also did not do with just regular *apographai*. Every once in a while it initiated a general survey, ordering everyone to file reports of all rights, liens and encumbrances held on landed property. One such a survey was set in motion by the edict of M. Mettius Rufus, but it was not the only one.[7]

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[4] On the *epistalma*, cf. infra n. 6. The *epistalma* is issued by the *bibliophylakes* upon an appeal (frequently labeled by scholars *prosangeleia*) served them by the prospective vendor. Cf. v. Woeß (supra n. 1) 178-179; Wolff (supra n. 1) 248-249. Cf., e.g., *Stud.Pal.* XXII 85.8-23 (128 CE—Alabanthis): ὃ ἀπ[εγρά]ψα[μη]ν [δι' ὑμῶν τῇ] ἐ[νε]στώση ἡ[μ]έρᾳ | τρίτον μέρος κοινὸν καὶ | ἀδι[αίρε]τον καὶ περιτετει[χ]ισ|μέν[ον] ἐμβαδοῦ βείκω[ν] | τεσσ[άρων] ἐν τῇ προκιμ|ένῃ [κώμῃ Ἀλ]αβαν[θ]ίδι | βούλομ[αι ἐξό]ικονομῆσαι | Διδύμῳ Ὡ[ρί]ωνος τοῦ Χαιρήμονο[ς Σ]ωστρατείῳ τῷ | καὶ Ἀλθαιεῖ [ἀπο]γεγραμμένο(ν) | δι' ὑμῶν καθ[αρὸ]ν ἀπὸ ὀφειλῆς | ὑποθήκης [παν]τὸς δ[ιεγγ]υήματος τιμῆ[ς ἀργυρίου δραχ]μῶ[ν] | διακωσίον. δι[ὸ ἐπιδ]ίδωμι ὅπως [ἐ]πισταλῇ ὡς [καθή]κει. The *epistalmata* themselves are rarely preserved: cf. Wolff (supra n. 1) 248 n. 118. On the *diastrôma* cf., in particular, *P.Oxy.* II 237.8.28-31,38-43, and Wolff's discussion of *P.Oxy.* II 274 = *FIRA* III 104 = *Jur.Pap.* 60 = *MChr* 193 (97 CE—Oxyrhynchos) (supra. n. 291, p. 234-245). Other well preserved documents are: *P.Gen.* II 100 (II CE—Soknopaiou Nêsos); *P.Heid.* VII 397 (158 CE—Hermopolis); *PSI* V 450.48-68 (II CE—Oxyrhynchos). Of special interest is *P.Wash.Univ.* I 2 (II CE—Oxyrhynchos) reporting the substitution of an old *diastrôma* by a new one.

[5] Wolff (supra n. 1) 227 n. 23.

[6] *BGU* V 1210.227-228 (II CE—Alexandria) art. 101: [ἐάν τινες] χρηματι[μ]οῦ ὑποθηκῶν ἢ ὠνῶ[ν] συνάλλ[αγμα|γράψων|τ]αι χωρ[ὶς ἐ]πιστάλματος, κατακρίνονται (δραχμὰς) ν. Cf. also *P.Oxy.* II 237.8.36-38 and Wolff (supra n. 1) 247.

[7] Wolff (supra n. 1) 230-232 and n. 36.

No one could deny, I reckon, that the existence of the *bibliothêkê enktêseôn* made land-related transactions safer and more transparent than before.[8] The question is, however, if this was the cause for the creation of the archive in the mid first century CE. Andrea Jördens' paper was called forth by another paper, authored by Klaus Maresch in 2003, in which a different explanation was proposed. In the first century, the Roman administration introduced into Egypt the liturgical system: official duties (e.g., the collection of taxes) were assigned to private persons, who became accountable with their own personal assets for the successful execution of their assigned tasks. The new system could only function if the assignee had enough assets to make up for any possible deficit in the revenues he managed to collect. The *bibliothêkê enktêseôn*, created around the same period, was meant to provide the state with updated information on those whose property was large enough for the assumption of the different liturgies. The *bibliothêkê enktêseôn* was created, in other words, in order to serve the state in spheres of activity in which it was particularly interested: taxation and self preservation.[9]

Jördens does not rule out that the above consideration did play some part in the creation of the archive. She discusses in her paper cases in which information stored in the archive assisted the Roman administration in keeping the liturgical system well-functioning.[10] But she credits the assertion made by Mettius Rufus (*P.Oxy.* II 237.8.27-43 = *MChr* 192 = *Sel.Pap.* II 219 = *FIRA* I 60 [1 or 31.10.89 CE]), the governor whose edict is by far the most important source on the motivations for the creation and maintenance of the archive: property rights and liens (he refers in particular to encumbrances laid by women and children on the property of the husbands and fathers) have to be recorded in the archive, he asserts: ἵνα οἱ συναλλάσοντες μὴ κατ᾽ἄγνοιαν ἐνεδρεύονται (read ἐνεδρεύωνται), *in order that persons entering into agreements may not be defrauded through ignorance.*[11] Some scholars tend to view with suspicion the attribution of altruistic motivations to the Roman administration of Egypt, or, for that matter, to any antique state,[12] but Jördens seems, and I fully concur, to oppose such skepticism. To limit 'state-interest' to taxation and self-preservation would be to oversimplify what is,

[8] Cf. Wolff (supra n. 1) 254. F. Lerouxel has shown (supra n. 1) how the creation of the new archive provided prospective creditors with reliable information on the solvency of their intended debtors and the clean title of the objects they were to admit as security. Lerouxel's discussion focuses on the positive impact that the new archive had on the position of women, who would in general face difficulties in receiving loans without mortgage (supra n. 1, 'femmes') 58-59, and on that of prospective debtors who have already mortgaged some of their assets to the state for a public services (e.g. liturgies) undertaken by them. Cf. *ibid.* 'diminution des coûts'.

[9] K. Maresch (supra n. 1) 242, 245.

[10] Jördens, p. 283.

[11] *P.Oxy.* II 237.8.36. Cf., Lerouxel, (supra n. 1, 'femmes') 58; Wolff (supra n. 1) 248-249.

[12] Cf. Maresch (supra n. 1) 245, following Rostowzew, *Studien zur Geschichte des römischen Kolonates* (Leipzig-Berlin 1910) 118 n. 3 discussed by Jördens in p. 283.

essentially, a much more complex picture: Jördens recalls, for example, that Roman officials were preoccupied throughout their term in office with the administration of justice. Increasing the certainty of the law—an object aimed at if not achieved by means of the new institution—would reduce the number of disputes, the cases they had to judge and their workload in general.[13]

But I seek no justification for the *bibliothêkê enktêseôn* solely in the direct interests of the state. To my mind, the rulers of Egypt, Ptolemaic and Roman alike, were keenly interested in furthering economic stability, if not growth, and legal certainty; and created from the very beginning a variety of institutions whose purpose was to allow the state to pursue these goals. The establishment and regulation of different apparatus of professional scribes, the courts of laws, procedures governing how, and what types of documents could be brought before these courts, as well as the contents of these documents, archives recording legal documents and foreclosure procedures—these are just some of the spheres of state activity that come to mind.[14] I argue that the same interest played a key role in the creation of the *bibliothêkê enktêseôn*. As I believe that Jördens shares this view, I wish to add a few arguments that may reinforce it, offering first an alternative (yet admittedly not necessarily conflicting) explanation to what seems a fundamental

[13] Jördens, here, 288-289, 291.

[14] The most important regulatory Greek texts of the Ptolemaic period are *BGU* XIV 2367 (late III BCE—Alexandria (?)); *P.Gur.* 2 = *P.Petr.* III 21 g = *Sel.Pap.* II 256 (226 BCE—Crocodilopolis, Arsinoitês) 40-45; *P.Hamb.* II 168 (mid III BCE (?)—Unknown Provenance); *P.Ryl.* IV 572 (II BCE—Arsinoitês); *P.Par.* 65 = *UPZ* I p. 596 = *Sel.Pap.* II 415 (145 BCE—Memphis); *P.Tebt.* I 5.207-220 = *MChr* 1 (after 28.4.118 BCE—Kerkeosiris (?)). For a recent discussion of some of these measures cf. D. Kaltsas, *P.Heid.* VIII, pp. 34-35, 54-57, 91-92, 170-171, 185, 204-208 and U. Yiftach-Firanko, "Law in Greco-Roman Egypt: Hellenization, Fusion, Romanization", in R.S. Bagnall (ed.), *Oxford Handbook of Papyrology* (Oxford 2009) 541-560 at 543-550. In some cases we do not possess the regulation but drastic changes in patterns within the documents themselves may allow us to assume its existence. I aimed at showing this in the case of the double document: U. Yiftach-Firanko, "Who Killed the Double Document", *ArchPF* 54/2 (2008) 203-218. In the Roman period we refer, in particular, to lines 18-24 of the edict of Ti. Julius Alexander [*I.Hibis* 4 = *I.Prose* 57 = *OGIS* II 669 = *IGRR* I 1263 = *SB* V 8444 = *FIRA* III 58, 18 ff., 6.7.68 CE], the edict of M. Mettius Rufus and its follow-up by Ser. Sulpicius Similis relating to the *bibliothêkê enktêseôn* (*P.Oxy.* II 237.8.21-27 and *P.Mert.* III 101, 89 CE), some paragraphs of the *gnomôn* of the *idios logos* (in particular art. 7, 100, 101), as well as *P.Oxy.* I 34 = *MChr* 188 (127 CE—Alexandria). Cf. an overview by Th. Kruse, "Archives and Registration in Roman Egypt", in J.G. Keenan, J.G. Manning, U. Yiftach-Firanko (eds.), *Law and society in Egypt from Alexander to the Arab Conquest (330 BC-640 AD)* (forthcoming). In this period too we frequently infer reforms from abrupt changes in documentary practices: this is the case with the appearance of the *hypographeus* in *grapheion* documents from the Arsinoitês around 14 CE, the closure of the village *grapheia* in the same nome in the late second century CE, and the contemporaneous removal of land sale contracts from the *agoranomeia* to private scribes in the Oxyrhynchitês. Cf. Yiftach-Firanko (infra n. 29) 335-339.

element in Maresch's thesis, namely the date of introduction of the archive. The *bibliothêkê enktêseôn*, we recall, came into being in the mid first century CE, approximately the period in which the liturgical system started to take root in Egypt. Yet I think that this chronological coincidence is accidental. It was rather developments within the contractual, scribal system that called forth the creation of the *bibliothêkê* in the mid first century CE.

In early Ptolemaic Alexandria, sales of real estate were acknowledged as valid only after they were reported (*katagrapsasthai*) to the board of the *tamiai*. Any other form of acquisition is declared by the law that introduced the procedure to be invalid.[15] A similar procedure is attested in the *chora* as well: parties to acts of sale attended the office of the *agoranomos* where they received a *katagraphê*, a special certificate recording the act.[16] Differently from the case of Alexandria, the law that introduced *katagraphê* into the *chora* did not come down to us. Still, among the more than 60 extant Ptolemaic land sales there is not a single document that was *not* issued by and before an *agoranomos*,[17] an overwhelming data set that elicits the conclusion that in the *chora* too immovable sales that were not recorded and registered by a state official (in the case of the *chora* the *agoranomos*) were held invalid. Through the *agoranomeia* the state was able to control land conveyances. For private persons its records could, perhaps, make extant conflicting rights evident.[18]

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[15] *P.Hal.* 1 242-259 (III BCE—Alexandria) at 255-256: τοῖς δὲ [παρὰ τοὺς νόμους ὠνου]ιμένοις μὴ κυρία ἔστω ἡ ὠνὴ μηδὲ ἡ προθεσμ[ία. Cf., primarily, M. Faraguna, "A proposito degli archivi nel mondo greco: terra e registrazioni fondiarie", *Chiron* 30 (2000) 65-115 at 75-82; F. Pringsheim, *The Greek Law of Sale* (Weimar 1950) 142-157; E. Schönbauer, *Beiträge zur Geschichte des Liegenschaftsrechtes im Altertum* (Leipzig 1924) 7-23; H.J. Wolff, "Registration of Conveyances in Ptolemaic Egypt", *Aegyptus* 28 (1948) 17-96 at 19-20; U. Yiftach-Firanko, "Katagraphê", in J.G. Keenan, J.G. Manning, U. Yiftach-Firanko (eds.) (forthcoming, supra n. 14).

[16] Cf., e.g., *P.Adler* 13 (100 BCE—Crocodilopolis, Pathyritês). Still pivotal to any discussion of the *katagraphê* is Wolff (supra n. 1) 192-193 and (supra n. 15) at 51-54. Cf. also P.W. Pestman, "Ventes provisoires de biens pour sûreté de dettes: "onai en pistei" à Pathyris et à Krokodilopolis", in P.W. Pestman (ed.), *Textes et études de papyrologie grecque, démotique et copte = Papyrologica Lugduno-Batava. XXIII* (Leiden 1985) 45-59 esp. at 56-59; Yiftach-Firanko (supra n. 15).

[17] The only exceptions among Greek contracts recording land sales are *BGU* XIV 2398 (213/2 BCE); 2399 (212/1 BCE); *SB* XIV 11375 (212/1 BCE); 11376 (239 BCE— all from Thôlthis), and *CPR* XVIII 25, 28 (both of 232 or 206 BCE Theogonis). However, these documents are not real sale contracts: they do not document the act of sale *per se*, but a consideration paid in anticipation of the future composition of a deed of sale at an *agoranomeion*. Cf. Wolff (supra n. 1) 195; Yiftach-Firanko (supra n. 15).

[18] The question of the accessibility of the *agoranomos*' files requires a further study. Cf. Pestman (supra n. 16) 57-58.

The most significant change in the *Greek* sphere[19] came after the Roman occupation. The newly reformed *grapheia* started to draw up their own land sale contracts.[20] But in order not to contravene the Ptolemaic rule confining the composition of deeds of land sale to the *agoranomoi*, the *grapheion* scribes, did so in a roundabout way. The document of sale itself (consisting of a deed of land sale and a deed of cession) was recorded in Demotic, followed by a detailed Greek *hypographê*.[21] Unlike their Ptolemaic predecessors, the Romans did not forbid the new practice. Instead, in order to maintain control of land sales they enforced the registration of these Demotic documents in Alexandria.[22] Yet this arrangement, which was presumably highly costly to the parties, could not be maintained for long.

The foundation of the *bibliothêkê enktêseôn* in the *metropoleis* later in the same century should be viewed, I suggest, in this context. It was meant to efficiently cope with the need to render the composition of sale contracts affordable, but also controllable. It allowed the *grapheia* to keep drawing up land sale contracts, but through the abovementioned subjection of the *grapheia* to the *bibliothêkê enktêseôn* (that is the fact that *grapheion* scribes needed an *epistalma* before they could draw up the sale contract) put at the parties' disposal a cheaper and more practicable means of discovering conflicting rights. A beta version of the new institution was introduced in the early 50s, a final version in 72 CE.[23] Only after the new institution

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[19] The use of the Demotic for the documentation of the sale of landed property is attested throughout the Ptolemaic period, in the case of the *Geldbezahlungsurkunde* always with the signature of a notary. Cf. S. Lippert, *Einführung in die altägyptische Rechtsgeschichte* (Berlin 2008) 149.

[20] The earliest sale document issued at an Arsinoite *grapheion* is *P.Harrauer* 32 (8 BCE—Soknopaiou Nêsos).

[21] Cf. M. Depauw, "Autograph Confirmation in Demotic Private Contracts", *CdÉ* 78 (2003) 66-111 at 89-105; Lippert (supra n. 19) 149-151, and, e.g., *P.Mich.* V 249 (18 CE—Arsinoitês); 308 (I CE—provenance within the Arsinoitês uncertain); *P.Ryl.* II 160 (28/9 CE—Tebtynis); *P.Vind.Tand.* 24 = *CPR* I 217 (45 CE—Soknopaiou Nêsos). Cf. also Greek translations of the Demotic documents, as in the case of *CPR* XV 2 (21/11/11), with further copies of the same document in *CPR* XV 3, 4; *P.Lond.* II 262; *SB* I 5231, 5275. Comp. also *CPR* XV 1 = *SB* I 5246 (3 BCE); *SB* I 5247 (47 CE, both cf. Soknopaiou-Nêsos). Cf. H.-A. Rupprecht, "Die Streitigkeit zwischen Satabous und Nestnephis", in G. Thür, F.J. Fernández Nieto (eds.), *Symposion 1999. Vorträge zur griechischen und hellenistischen Rechtsgeschichte (Pazo de Mariñán, La Coruña, 6.-9. September 1999)* (Cologne-Weimar-Vienna 2003) 481-492 at 482, 491. Another type of *hypographê*, well attested in early first century Arsinoitês, is that of a *parachôrêsis*: cf., e.g., *P.Mich.* V 252 (dupl. *PSI* VIII 905) (25/26—provenance within the Arsinoitês uncertain). The only cases of a real Greek sale contract (i.e. a contract opened by a date clause, formulated objectively and followed by the *hypographai* of the parties) dating to the Roman period before 49 CE are *P.Kron.* 48 = *P.Mich.* V 260 (35 CE) and *P.Mich.* V 263 (35/6 CE), both from Tebtynis, both recording the sale of sacred land.

[22] Cf., in particular, *SB* I 5323 (15 CE—Soknopaiou Nêsos) and Wolff (supra n. 1) 51-52; Rupprecht (supra n. 21) 485, 488.

[23] Wolff (supra n. 1) 48-51.

is created does the Greek land sale contract become a routine type of instrument. The change takes place in or around 68, the date of composition of *P.Lond.* II 154 p. 178 = *MChr* 255 (68 CE—Karanis).[24] Accordingly, instead of connecting the creation of the *bibliothêkê enktêseôn* in the mid first century with the rise of the liturgical system, I claim that it is yet another manifestation of state interest in monitoring land-related economic activity. It simply took the Romans three generations of trial and error to reach the optimal solution.

We now address the legal import of the registration of titles in the *bibliothêkê*. It is undeniable that title to landed property could be lawfully conveyed without being registered in the archive. This is the case, in particular, when the title is conveyed by means of a *cheirographon*. As no less than fifty out of a total of four-hundred land sale contracts of the first three centuries CE assume this format, some scholars questioned the effectiveness of the *bibliothêkê* as an effective means of rendering a reliable account of landed property rights, and even doubted that rendering such an account was ever perceived as a *raison d'être* of the archive.[25] Yet a diachronic survey of our sources can partially dispel these doubts.

Among the 199 sale contracts whose object is land recorded in the databank *Greek Law in Roman Times* (http://hudd.huji.ac.il/glrt_guest.aspx), 170 were drawn up by a public scribe, i.e. at a *grapheion* or an *agoranomeion*. The number of *cheirographa* is just six, and even among these six, two or three—*P.Mich.* V 276 (47 CE—Tebtynis), *P.Ryl.* II 163 (140 CE—Hermopolis) and perhaps also *P.Yale* I 66 (late I CE—Oxyrhynchos)—show the parties as treating the current *cheirographon* as a preliminary contract to be replaced later by a 'public' instrument.[26] With just three to four documents left, it seems that even if recording land conveyances in *cheirographa* was always legal and certainly practiced, it was not a widespread phenomenon before 150 CE.[27]

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[24] With the possible exception of *CPR* I 4 = *MChr* 159 (51/3 CE—Soknopaiou Nêsos), sale contracts of the 50s still assume the format of a *hypographê* to a Demotic document (regardless of the fact that the Demotic document itself is now rarely drafted). This is the case in *P.Vind.Tand.* 25 (51 CE—Soknopaiou Nêsos); *PSI* VIII 911 col. I (dupl. *P.Mich.* V 335) (ca. 56 CE—Tebtynis); *SB* I 5117 (55/6 CE—Soknopaiou Nêsos). After 68, contracts recording land sales take the routine structure of a Greek *grapheion* document.

[25] Wolff (supra n. 1) 253-254, following v. Woeß.

[26] *P.Mich.* V 276 (47 CE—Arsinoitês) 8-11: ἔτι δὲ παρεξόμεθα ἑαυτοὺς ἀναφέρονlτάς ⟨σ⟩οι τῇ Ταμάρωνι πρᾶσιν τοῦ προκειμένου ἑβδόμου μέρους τῆς προκειμένης οἰκείας καὶ αὐλῆς τοῦ προγεγραμμένου Λυσιμάχου διὰ τοῦ | ἐν τῇ μητροπόλει μνημονείου ἐξαμαρτύρου ὁπότε ἐὰν ἡμεῖν συντάσσῃ, ἁπλῶς μηδὲν | λαμβάνοντος διὰ τὸ προαπεσχηκέναι ἡμᾶς παρὰ σοῦ καθῶς πρόκειται τὴν τειμήν. *P.Ryl.* II 163.13-16: καὶ ὁπηνίκα ἐὰν αἱρῇ ἀνοίσω δημοσίῳ | [χρηματσιμῷ διὰ] τῶν ἐν Ἑρμοῦ πόλει ἀρχείων καὶ ἐποίσω τὸ τῆς ἐνκτήσεως ἐπίσταλμα [προσλαμβάνοντός] μου ὑπὲρ τελῶν τῆς ἀπὸ τοῦ Ἑρμοφίλου εἰς ἐμὲ καταγραφῆς δραχμὰς τεσ[σαράκοντα. Cf. also *P.Yale* I 66.5 (second half of I CE—Oxyrhynchos)(?).

[27] I.e., *BGU* II 455 (before 133 CE—unknown provenance); *CPR* I 198 (138 CE—Arsinoitês); *P.Hamb.* I 97 (104/5 CE—Philadelphia).

If in the remaining 170 cases the public scribe drew up the document only after he was authorized by an *epistalma* of the *bibliophylakes* to do so,[28] we could establish an almost complete adherence to the control system revolving around the *bibliothêkê enktêseôn* in the first three generations after the archive came into being. After 150 CE, things change in some nomes, in particular in the Hermopolitês and the Oxyrhynchitês, but the pattern of change does not indicate a decay of the old system. In Oxyrhynchos we note a sudden change after 160 CE from the agoranomic instrument to the *cheirographon* and in the Hermopolitês we observe a shift to the *diagraphê*. It seems that in these nomes a new system was introduced and was as obediently followed as the old one.[29]

How can we explain this adherence? Every legal system prescribes special rules, special prerequisites for the acquisition of landed property. Most people would abide by these rules, but some will not, especially if they are not capable of doing so for some reason. How should the state react? The Alexandrian law-giver of *P.Hal.* 1.242-259 would grant no concession: 'For those who purchase land in contravention of the law let neither the act of purchase nor even an acquisition of title by prescription have validity'.[30] But what if a person bought land *bona fide*, paid the full price and held it, say, for 20 years? Would he still be cast off the land just because he did not turn to the *tamiai*?

The conceivers of the *bibliothêkê enktêseôn* knew better. Their system was much more flexible: the vendor needed to be ἀπογεγραμμένος, i.e. registered in the *bibliothêkê* as owner, for the purchaser to acquire the same position. Yet even if the vendor was not, the buyer was still able to register his new title.[31] If the buyer registered his title under these terms, he would later give way only to a third party with a preceding conflicting right, provided, however, (at least according to the Arsinoite formulation) that the older right was "registered through the same *bibliothêkê* (διὰ τοῦ αὐτοῦ βιβλιοφυλακίου) as well."[32] In other words, if someone

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[28] Cf. Wolff (supra n. 1) 248.

[29] I discussed this phenomenon with regard to Oxyrhynchos in "The Cheirographon and the Privatization of Scribal Activity in Early Roman Oxyrhynchos", in E. Harris, G. Thür (eds.), *Symposion 2007, Vorträge zur griechischen und hellenistischen Rechtsgeschichte (Durham, September 2-6 2007)* (Vienna 2008) 325-340. Wolff (supra n. 1, 104-105) noted the unique position of the bank *diagraphê* in late second and third-century CE Hermopolis.

[30] Supra n. 15 and Pringsheim, *ibid*., 137, 156.

[31] Cf., e.g., *P.Hamb.* I 16 = *Jur.Pap.* 65 = *Sel.Pap.* II 325 (209 CE—Ptolemais Euergetis), and Wolff (supra n. 1) 238-245.

[32] Cf., e.g., *P.Graux* II 18.13-14 (307 CE—Philadelphia): εἰ δὲ φανείη ἑτέρῳ π]ροσῆκον [ἢ προκατεσχημένον τὸ οἰκίδιον] | διὰ τοῦ βι[βλιοφυλακίου μὴ ἔσεσθαι ἐμπόδιον ἐκ τῆσδε τῆς παραθέσεως]. Cf. also *MChr* 217.7-11 (early II CE—Aphroditopolis, Arsinoitês); *P.Gen.* I 44.22-24 = *MChr* 215 (260 CE—Arsinoitês); *P.Hamb.* I 16.21-23 = *Jur.Pap.* 65 = *Sel.Pap.* II 325 (209 CE—Ptolemais Euergetis); *P.Mich.* XII 627.15-17 = *P.Graux* II 17 = *P.Wisc.* II 58 (298 CE—Philadelphia); *PSI* X 1126.22-24 (III CE—Arsinoitês); *SB* VI 9625.21-24 (177-192 CE—Tebtynis). Wolff (supra n. 1) was naturally

bought a piece of land but failed to register his title in the *bibliothêkê* he would not possess a remedy against a claim by a third party even if the latter acquired his title after he did. As only a public instrument would make an immediate[33] registration possible, it becomes fully understandable why it was so overwhelmingly popular down to the mid second century CE.

My final note relates to the *apographê*. Once a piece of landed property was purchased, the new owner was given a set interval (προθεσμία) to report his title to the *bibliophylakes*. Yet, as Jördens and others perceive, there is not a single piece of evidence that a purchaser was ever penalized for not reporting his title on time. This lack of sanction was viewed with some bewilderment, especially since this was not the case with other types of declarations, mainly those submitted in connection with the general census.[34] But the aforesaid discussion yields a rather plain answer. In the eyes of the *bibliophylakes,* only after a purchaser registered his title his right would stand up to the contest of a conflicting claim. Consequently, if the purchaser failed to register his title, he was the one to bear the consequences. The state could rely on this carrot, rather than on a penalizing stick, in promoting the use of the *bibliothêkê enktêseôn* and the public notary offices revolving around it. The last consideration only makes sense, of course, if we maintain that the main incentive for the creation of the *bibliothêkê enktêseôn* was not the state's own direct interest (i.e. that relating to taxation and the maintenance of the liturgical system), but that the *bibliothêkê enktêseôn* was really meant to serve the interests of purchasers and creditors in procuring accurate information on the legal position of the land they were about to acquire, and in safeguarding their own right once it has been acquired. As the foregoing discussion has shown, I share this view.

familiar with the διὰ τοῦ αὐτοῦ βυβλιοφυλακίου addition, but although it is omitted in only one document [i.e., *BGU* XI 2031.24-26 (180-192 CE—Karanis)], he does not discuss its implications.

[33] Registration in the *bibliothêkê enktêseôn* of rights acquired through a *cheirographon* was possible after the document underwent *demosiôsis* at the *katalogeion* in Alexandria, and much later, towards the end of the third century CE, through the act of *ekmartyrêsis* in the nomes' *metropoleis*. Cf. O. Primavesi, "P. Cair. Inv. 10554 r: Mahnverfahren mit Demosiosis", *ZPE* 64 (1986) 99-114 at 101-102; Wolff (supra n. 1) 129-135; Yiftach-Firanko (supra n. 29) 337 n. 58.

[34] Wolff (supra n. 1) 228, 232; Jördens, here, pp. 282, 285.

MARTIN DREHER (MAGDEBURG)

GERICHTSVERFAHREN VOR DEN GÖTTERN? – „JUDICIAL PRAYERS“ UND DIE KATEGORISIERUNG DER *DEFIXIONUM TABELLAE*

I. Die antiken Fluchtafeln (curse tablets), in der Forschung häufig als *defixionum tabellae*[1] oder kurz als *defixiones* (griechisch: κατάδεσμοι) bezeichnet,[2] sind traditionell nach den gesellschaftlichen Bereichen eingeteilt worden, in denen sich die Vorkommnisse, die zur Verfluchung einer oder mehrerer Personen führten, ereignet haben. Dabei ist allerdings festzuhalten, daß ein Bezug auf diese Bereiche und damit auch ein Hinweis auf den Grund oder den Anlaß eines Fluches nur bei einer Minderheit der Täfelchen überhaupt erkennbar ist, und zwar aus mehreren Gründen, die hier nicht erörtert werden können.

Unterschieden werden im allgemeinen mindestens folgende vier Kategorien, die auf das große Corpus von Audollent vom Anfang des 20. Jahrhunderts zurückgehen, ohne daß sich für die Reihenfolge der Kategorien eine feste Ordnung etabliert hätte:[3]

1. *Defixiones iudiciariae*, litigation curses (or judicial curses), Prozeßflüche.

2. *Defixiones agonisticae*, competition curses, Wettkampfflüche.

3. *Defixiones amatoriae*, erotic curses (or amatory curses or love spells), Liebesflüche.

4. *Defixiones in fures*, Flüche gegen Diebe und Verleumder,[4] pleas for justice and revenge,[5] Bitten um Gerechtigkeit.

In jüngerer Zeit wird manchmal noch eine weitere Kategorie unterschieden:[6]

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1 Vgl. die Titel der ersten großen Textsammlungen von Wünsch 1897 und Audollent 1904.

2 Auf die Ableitung dieser Begriffe aus den antiken Texten wird hier nicht eingegangen.

3 Vgl. Audollent 1904, LXXXVIII: *quattuor defigendi causae: tabellae iudiciariae et in inimicos conscriptae; in fures calumniatores et maledicos conversae; amatoriae; in agitatores et venatores immissae*. Bei vielen Texten bleibt natürlich die *causa defixionis obscura*. Vgl. zu den Kategorien auch Faraone 1991, 10; Gager 1992, 42-199; Graf 1996, 110; Ogden 1999, 31. Abweichungen von diesem Schema bzw. Variationen davon z.B. bei Kropp 2004, 84f.; Lambert 2004, 78f.

4 Offenbar Vollständigkeit anstrebend hat Kagarow 1929, 50, die Kategorie benannt als „Verfluchungen, die gegen Diebe, Verleumder, Tadler und Beleidiger gerichtet sind“.

5 Das ist die Formulierung von Gager 1992, 175, der für die anderen Kategorien zusammenfassende Begriffe vermeidet, zumindest in seinen Kapitelüberschriften.

6 Faraone 1991, 10; Ogden 1999, 31. Vom allgemeinen Usus abweichend hat Kagarow 1929 eine fünfte Kategorie erstellt, die er folgendermaßen bezeichnet: „Verfluchungen der Fluchenden oder der sich durch Gegenzauber gegen die Verfluchung Schützenden“

5. Trade (oder commercial) curses, im Deutschen schlage ich ‚Wirtschaftsflüche' vor.[7]

Uns soll im folgenden die vierte Kategorie näher beschäftigen, die Bitten um Gerechtigkeit. Die Texte dieser Kategorie setzen relativ spät ein, nämlich im 4. Jh. v. Chr., dann steigt ihre Zahl im Hellenismus und erreicht den Gipfel in der Kaiserzeit.[8] Sie waren im ganzen *imperium Romanum* verbreitet. Bedeutend ist die Gruppe der griechischen Täfelchen aus Knidos,[9] aber die größte Anzahl stellen die in Britannien, in Bath und Uley, gefundenen Täfelchen, die dazu angeregt haben, die Kategorie – im Vergleich mit entsprechenden griechischen Formulierungen – genauer zu charakterisieren und von den anderen abzusetzen.

E. Turner hat in seiner Veröffentlichung eines Täfelchens aus Nottinghamshire wohl zum ersten Mal den Terminus ‚prayer for justice' verwendet.[10] In diesem Text wird ein unbekannter Dieb dem Iupiter Optimus Maximus „übergeben" (*donatur* lautet das erste Wort des Textes).[11] Der Gott soll den Schuldigen, bzw. dessen aufgezählte geistigen und körperlichen Bestandteile, bearbeiten, so daß dieser das Geld zurückbringt. Dem Gott wird davon der zehnte Teil versprochen. Da Turner an diesen Formulierungen im Vergleich zu den bis dahin bekannten Fluchtafel-Texten einige Besonderheiten auffielen (ich komme weiter unten darauf zurück), schloß er: „the curse is therefore in a sense a ‚prayer for justice' adressed to a deity whose task is to punish the offender and to restore his property to the petitioner".[12]

R. Tomlin ist in seiner Publikation der Bath-Tafeln von 1988 in eine ähnliche Richtung gegangen und spricht von „petitions for justice, not magical spells",[13] aber

(S. 50). Dafür kann er allerdings (S. 55) nur ganz wenige Beispiele nennen. Diese Kategorie wird hier nicht übernommen, weil sie, zumindest indirekt durch den ursprünglichen Fluch, in die anderen Kategorien eingeordnet werden kann und daher nicht gleichgeordnet neben diesen stehen sollte.

7 „Business, Shops, and Taverns" verwendet Gager 1992, 151, als Überschrift für den entsprechenden Abschnitt seiner Sammlung.

8 Vgl. Versnel 2002, 49. Der Einfachheit halber werden im folgenden die Publikationen Versnels häufig ohne Namen, nur mit Jahres- und Seitenzahl, zitiert.

9 Die Texte finden sich z.B. bei Audollent 1904, Nr. 1-13; zuletzt bei Blümel 1992, Nr. 147-159. Zum Verständnis vgl. insbesondere Versnel 1994, Chaniotis 2004, 6ff.

10 Zu Unrecht wird auch diese Bezeichnung selbst manchmal H. Versnel zugeschrieben (z.B. Kropp 2008a, 5 A.2), wohl weil er am meisten zur Charakterisierung der Kategorie beigetragen hat.

11 Turner 1963 übersetzt zwar „there is given", im Lichte späterer Textfunde muß man das Prädikat aber direkt auf den Verfluchten beziehen.

12 Turner 1963, 122. Zum Zeitpunkt dieser Veröffentlichung waren *defixiones*, in denen um die Bestrafung eines Diebes gefleht wird, noch selten, Turner kann lediglich auf drei Parallelen aus dem römischen Britannien verweisen. Und selbst gegenüber diesen drei Fällen wies die neue Tafel Besonderheiten in den Formulierungen auf. Zur Anzahl der Fluchtafeln gegen Diebe gibt Tomlin, 1988, 60ff., einen neueren Stand wieder.

13 Tomlin 1988, 62, s.u. A.38. S. 59 A.3 begrüßt Tomlin den von Versnel geprägten Terminus „juridical prayer" (dazu unten).

eine umfassende Neukonzeption hat erst H.S. Versnel in seinem programmatischen Aufsatz von 1991(a) vorgelegt, auf den bis heute im allgemeinen verwiesen wird, wenn von dieser Kategorie die Rede ist. Die folgenden Ausführungen beziehen sich daher vorrangig auf diese Darlegungen Versnels, die in weiteren Publikationen dieses Autors wiederaufgegriffen und weiterentwickelt wurden.[14] Jüngst hat Versnel dem Thema wieder eine ausführliche Studie gewidmet, in der er die seit 1990 neugefundenen Fluchtafeln seiner Kategorie zuweist und seine Resultate als „new categorisation" oder „new taxonomy" bezeichnet.[15]

II. Unter Rückgriff auf Vorläufer-Forschungen[16] hat Hendrik S. Versnel seit den 1980er Jahren die oben als 4. Kategorie von Fluchtafeln bezeichneten Texte (pleas for justice and revenge, *defixiones* gegen Diebe und Verleumder, Bitten um Gerechtigkeit) von den übrigen *defixiones* abgesetzt und sie als ein eigenes genus *neben* den *defixiones* etablieren wollen.[17] So ganz aus den *defixiones* nimmt sie Versnel aber doch nicht heraus, wenn er in den meisten Fällen nicht einfach *defixiones* auf der einen Seite den „prayers for justice" auf der anderen Seite gegenüberstellt, sondern von „binding-*defixio*", „binding *defixio*", „‚binding'*defixio*" oder auch „ordinary" „traditional", „conventional" „straight or typical *defixiones*" oder

[14] Die Grundgedanken des vorliegenden Beitrags habe ich dann auch in einer englischen Kurzversion bei der Tagung „Contextos Mágicos. Contesti Magici" im Palazzo Massimo in Rom vom 4. bis 6. November 2009 vortragen können. Nachdem ich Professor Versnel beide Fassungen meines Beitrags im voraus zugänglich gemacht hatte, hat er in Rom seine Position in einer eigenen Stellungnahme verteidigt, die er mir seinerseits vor der Tagung zugeschickt hatte, so daß eine klärende, wenngleich kontroverse Diskussion stattfinden konnte. Sowohl meine Thesen als auch die Antwort Versnels sollen in den von A. Piranomonte herausgegebenen Tagungsband aufgenommen werden. Um dieser Publikation nicht vorzugreifen, geht der vorliegende Beitrag nicht auf Versnels „Response" ein, bzw. nur insoweit, als Versnels Argumente sich mit denen in seinem inzwischen veröffentlichten Beitrag (2009a) zum Thema decken.

[15] Versnel 2009a, 277 und öfter. Diese Publikation lag zum Zeitpunkt des Symposions noch nicht vor, so daß meine Argumentation erst nachträglich darauf Bezug nehmen kann. Zu den Neufunden gehören insbesondere auch die Tafeln aus Mainz, von denen J. Blänsdorf im selben Band eine Auswahl vorstellt (Blänsdorf 2009a). Da schon einige Vorveröffentlichungen bekannt waren, vgl. die Beiträge von Witteyer und Blänsdorf in Brodersen / Kropp (Hgg.), 2004; Blänsdorf 2005, und Professor Blänsdorf mir freundlicherweise sein Manuskript zur Verfügung gestellt hatte, konnte ich schon im Symposion-Vortrag auf dieses Material zurückgreifen.

[16] Turner 1963 stellt eine neue Fluchtafel aus Nottinghamshire vor.

[17] Die grundlegende und ausführlichste Darlegung seiner Ansicht ist Versnel 1991a. In mehreren anderen Studien, die im Literaturverzeichnis aufgeführt sind, wiederholt Versnel seine Thesen, ergänzt und variiert sie aber auch, insbesondere in seinem Aufsatz von 2002. Manche Kriterien, die den *defixiones* zugeschrieben werden, konstituieren sich nur aus dem Gegensatz zu den „prayers for justice", der im folgenden erst noch dargelegt werden muß.

„*defixiones* proper“ spricht.[18] Diesen *defixiones* stellt Versnel aber auf der Seite der „prayers for justice“ keinen mit *defixio* kombinierten Begriff gegenüber, auch wenn er manchmal einen Verbleib der „prayers for justice“ *innerhalb* der Gesamtgruppe der *defixiones* für akzeptabel erklärt.[19]

Die „eigentlichen“ *defixiones* hätten nämlich, so Versnel, nicht nur gemeinsam, daß sie gegen Konkurrenten der Autoren gerichtet seien, sondern wiesen auch einige gemeinsame Merkmale auf:[20]

- Die *defixiones* „binden“ ihre Opfer, wobei „binden“ eine große Bandbreite von Bedeutungen haben kann (1991a, 61).

- Sie werden in Gräbern oder Brunnen versenkt (1991a, 61).

- Die Autoren bleiben im allgemeinen anonym (1991a, 62; 2002, 47).

- Die Autoren geben keine explizite Legitimierung für das Vorgehen an (1991a, 62; 2002, 47).

- Die Autoren haben ihren Rivalen kein Unrecht vorzuwerfen außer ihrer Konkurrenz oder Rivalität (1991a, 62. 67).

- Es werden vorzugsweise Götter und Dämonen der Unterwelt angerufen (1991a, 92; 2002, 47; vgl. schon Turner 1963, 123).

- Die Autoren wollen den angerufenen übernatürlichen Mächten ihren Willen aufzwingen (entscheidend ist der zum Ausdruck gebrachte Zwang, „coercion“) (1991a, 92; 2002, 47; vgl. schon Turner, 1963, 123); unterwürfige Bitten („supplication or vow“) kommen so gut wie nicht vor (1991a, 61).

- Die Texte enthalten Elemente der schwarzen Magie (1991a, 92), sie werden zu Recht als „Schadenzauber“, „magical tablets“ oder „magical curses“ bezeichnet (1991a, 63); als überwiegend magische Aktionen korrespondieren sie mit „coercive and performative attitudes“ (1991a, 92). Die Aktion bedeutet in Jordans Worten „a forceful operation – the piercing with a nail, the binding down, backward spelling“.[21]

- Die Deponierung erfolgt heimlich (2009a, 280f.; 2009b, 12).

- Die Autoren wollen den Opfern keinen Schmerz zufügen (mit Ausnahme bestimmter erotischer Flüche, dazu Versnel 1998), sondern es machtlos machen (2002, 47).

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[18] Alle diese Varianten finden sich bei Versnel 2009a, 276. 278 A.15. 281. 325. 327. 329. 332. 337. 338 u.a.

[19] Vgl. Versnel 2009a, 275: „I argued for a distinction between *(or within)* (Hervorh. M.D.) the general category of Greek and Latin *defixiones* ...“.

[20] Selbstverständlich sind die meisten dieser Merkmale auch schon in der vorausgehenden Literatur festgehalten worden, auf die hier jedoch nur ausnahmsweise verwiesen wird.

[21] Zitiert von Versnel 2009a, 311. 324 aus einem unveröffentlichten Manuskript Jordans.

- Die Flüche zielen auf eine Auswahl von Körperteilen oder auf spezifische Fähigkeiten des Opfers, deren Funktionen unterbunden werden sollen (1998, 218f.; 2009a, 280 A.20; 2009b, 10f.).[22]

- Die *defixiones* sind präventiver Natur, sie wollen konkurrenzbedingte Aktionen in der Zukunft beeinflussen (2009b, 12).

Die so charakterisierten *defixiones* würden zu Recht auch Schadenzauber, magic tablets, magical curses usw. genannt (1991a, 63), wobei der Bindezauber, die eigentliche Bedeutung von *defixio* (griechisch: κατάδεσμος) die häufigste Form von Schadenzauber sei (1997, 363).

Unter diese *defixiones* haben die großen Sammlungen (von Audollent und anderen) auch diejenigen Fluchtafeln eingereiht, die oben als vierte Kategorie aufgeführt wurden, die Versnel jedoch als eigenes *genus* abtrennen möchte.[23] Diese „prayers for justice" oder „judicial prayers" zeichneten sich nämlich, so Versnel in seinen grundlegenden Beiträgen, durch folgende Charakteristika aus.[24]

1. Der Name des Autors ist im allgemeinen erwähnt (1991a, 68; 1997).

2. Die Texte enthalten eine Rechtfertigung oder Verteidigung des Vorgehens, sei es als einzelnen Terminus, sei es als detailliertere Begründung. Das ist im allgemeinen ein Hinweis auf erlittenes Unrecht (1991a, 68; 1997; 2002, 49). Unter den aufgeführten Vergehen überwiegt Diebstahl; Unterschlagung und Verleumdung sind die weiteren Vergehen.

3. Die Texte enthalten verschiedentlich die Bitte, daß das Vorgehen entschuldigt werde oder daß der Autor von möglichen Umkehreffekten verschont werden möge (1991a, 68). Manche Autoren entschuldigen sich für die Störung der angerufenen Gottheiten (1991a, 92).

4. Es werden die olympischen oder jedenfalls überirdischen statt der chthonischen Götter angerufen (1991a, 68. 92; vgl. schon Turner 1963, 123).[25]

5. Die Götter werden respektvoll angeredet, manchmal auch mit schmeichelnden Adjektiven (z.B. φίλη) oder mit dem Titel einer höhergestellten Person wie κύριος, δέσποινα (1991a, 68).

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[22] Versnel nennt solche Flüche „instrumental curses" im Gegensatz zu „anatomical curses" (dazu u.).

[23] Versnel sagt nicht ausdrücklich, die „prayers for justice" seien zu Unrecht in diese Sammlungen aufgenommen worden. Implizit ergibt sich dieser Schluß aber doch, vgl. besonders 2009b, 14. 24.

[24] Die Numerierung von 1-7 behält diejenige von Versnel 1991a, 68 bei. Die dortige zusammenfassende Aufzählung wird ergänzt durch weitere Aussagen Versnels aus demselben Aufsatz sowie aus den Beiträgen 1997, 365; 2002, 49; 2009a, 278f., wo eine Definition der „prayers for justice" (die dort nunmehr ohne Anführungszeichen geschrieben werden) gegeben wird und die sieben Charakteristika von 1991a wiederholt werden.

[25] Zusätzlich führt Versnel an (2009b, 22): „Bei allen *Sammel*funden von Tafeln dieses Typs war der Fundort niemals ein Grab, sondern immer das Heiligtum einer Gottheit mit einem offiziellen Kult."

6. Die Texte bringen eine unterwürfige Haltung gegenüber den Göttern zum Ausdruck, sie verwenden Ausdrücke wie ἱκετεύω oder βοήθει μοι (1991a, 68. 92; 1997; 2002, 49). Als überwiegend religiöse Aktionen korrespondieren die prayers mit „supplicative or negotiative attitudes" (1991a, 92). Die Götter werden als allessehende Richter präsentiert (2002, 49).

7. Der Kern der Texte ist die Bitte an die Götter, die Schuldigen zu bestrafen und das geschehene Unrecht wiedergutzumachen (1991a, 68; 1997). Ein Hinweis auf Rache oder Bestrafung ist im allgemeinen ein Anzeichen dafür, „that the text is some sort of prayer for justice" (1991a, 65). Die Verben ἐκδικέω (1991a, 65. 72) und κολάζω implizieren, daß die Bestrafung durch ein vorausgegangenes Unrecht gerechtfertigt ist (2002, 48).

8. Auffällig ist die Verwendung rechtlicher Terminologie (2002, 49).

In späteren Beiträgen hebt Versnel noch folgende Charakteristika hervor:

9. Die „prayers for justice" hätten einen betont emotionalen Charakter, was besonders in der Aufzählung von verfluchten Körperteilen zum Ausdruck komme (1998, 223ff.; 2009a, 280, s. dazu u.); dadurch solle das Opfer leiden, dahinsiechen oder sogar sterben.[26]

10. Die „prayers" seien oft darauf angelegt, die Beschuldigung sowie den erbetenen göttlichen Eingriff der Öffentlichkeit mitzuteilen.[27] Damit zusammenhängend wird auch auf

11. die Differenz zwischen illegitimer (*defixiones*) und legitimer („prayers") Praxis verwiesen (2009a, 331). Die magische Praxis der *defixiones* war in der griechischen Kultur wahrscheinlich nicht prinzipiell verboten, aber wohl doch sozial geächtet und nicht ungefährlich, im römischen Reich aber war sie auch verboten.[28] Deshalb mußten die *defixiones* im allgemeinen heimlich auf den Weg gebracht werden, schon gleich, wenn sie in Gräbern versteckt werden sollten, da Grabschändung überall ein strafbares Delikt war.[29] Die Bitten um Gerechtigkeit hingegen scheinen zumindest teilweise in Tempeln angebracht worden zu sein, so daß man für sie reklamieren kann, sie hätten ein berechtigtes Anliegen vertreten und seien nicht unter die staatlichen Verbote gefallen.[30] Da man aber auch viele „prayers for justice" of-

[26] Sofern Versnel auch diese Folgen als Kriterium für ein „prayer for justice" betrachten will, wie es 2009a, 296 (mit vermeintlichen Ausnahmen in A.77). 335 scheint, kann gleich gesagt werden, daß sie sich ebenso in anderen Kategorien, bei klaren *defixiones* finden, etwa in Wettkampfflüchen wie DT 187. 237. 248. 250. 252. 253. 286. Überall werden grausame Verletzungen und/oder der Tod gefordert.

[27] Versnel 2009a, 280f.; für eine weitgehende Öffentlichkeit der „prayers" argumentiert z.B. auch Kiernan 2004. Das häufig diskutierte Problem kann jedoch hier nicht tiefergehend behandelt werden.

[28] Vgl. etwa Ogden 1999, 82ff.; Lambert 2004, 75; Versnel 2009a, 330f.

[29] Diese Ansicht wird nicht von allen Forschern geteilt.

[30] Versnel 1991a, 80, spricht diese Gegebenheit für die „judicial prayers" an, bringt sie aber nicht als Gegensatz zu den *defixiones* in Anschlag; eher en passant tut er das dann 2009a, 323. 331.

fenbar nichtöffentlich verwendet hat, indem sie gerollt und gefaltet, in heiße Quellen geworfen (in Bath) oder sogar (wie in Mainz) verbrannt wurden,[31] darf man diesen Gesichtspunkt nicht zu hoch bewerten.[32]

Ein zusätzliches Kriterium wird von D. Ogden eingeführt: „Whereas other types of curse are open-ended and supposedly permanently effective, the curses in prayers for justice tend to be conditional and of finite duration, and are to be lifted when the desired justice has been achieved".[33] Diese Unterscheidung kann ich nicht nachvollziehen, denn in vielen *defixiones* wird ein Ziel angestrebt, mit dessen Durchsetzung der Fluch seinen Zweck erfüllt hat und daher endet. Denken wir nur an den Liebeszauber, mit dem eine Person unter Zufügung von Qualen dem Verfasser oder der Verfasserin des Fluches zugeführt werden soll.[34] Ist das Objekt des Begehrens gewonnen, muß es doch, um „genossen" zu werden, von den vorherigen Qualen befreit sein! Oder: Hat ein Wettkampffluch einen Rivalen (oder dessen Pferde) erfolgreich am Sieg im Wagenrennen gehindert, so gilt der Fluch doch nicht für das restliche Leben des Lenkers (oder der Pferde), so sie überleben, weiter, erst recht nicht, wenn ein bestimmter Termin im Fluch genannt ist, an dem die Wirkung eintreten sollte, wie z.B. gleich der folgende Tag.[35]

Einen weiteren Unterschied hat C. Faraone hervorgehoben: Während die *defixiones* das Opfer vorbeugend von einer zukünftigen Handlung abhalten wollten,[36] bäten die „prayers for justice" die Götter um Bestrafung eines vergangenen Unrechts.[37]

Als essentielles Kriterium für die Definition des „judicial prayer" hebt Versnel ursprünglich das zweite Kriterium heraus, die Legitimierung und Motivation des Wunsches durch die Nennung des erlittenen Unrechts. Der Wunsch erscheint so als legitimer Akt („as an act of rightful retaliation", 1997, 365). Nur in dieser Situation greife jemand zu einem „judicial prayer" (1991a, 92) – was wir vielleicht für etwas

[31] Vgl. auch Versnel 2009a, 281 A.22. Eine Tafel, die von den Herausgebern als „prayer for justice" eingestuft wird (dazu unten), ist sogar in einer Grabkammer gefunden worden (Faraone / Rife 2007 A.3). Ob dort aber wirklich die von ihnen angenommene (Halb)-öffentlichkeit gegeben war, wird man stark bezweifeln müssen.

[32] Die Ambivalenz der Gegebenheiten erkennt auch Versnel an, vgl. 2009b, 23 mit A.12. Zu schematisch erscheint daher der Gegensatz bei Thür 2002, 5, *defixiones* seien heimlich angewendet, „prayers for justice" öffentlich aufgehängt worden.

[33] Ogden 1999, 39. Versnel 2009a, 327, behauptet, daß auch dieses Argument aus seinem Aufsatz von 1991a übernommen sei. Ich finde es weder dort noch in der wiederholenden Aufzählung 2009a, 279f., auf die Versnel verweist.

[34] Zu dieser Sub-Kategorie von Liebesflüchen vgl. Faraone 1991, 10; Eidinow 2007, 207.

[35] Vgl. z.B. DT 241. 295. Wünsch 1898, 29. 49. Für die Gerichtsflüche wird eine solche Begrenzung vorausgesetzt von Lambert 2004, 79. Damit hat er zu Recht eine Gemeinsamkeit zwischen „judicial prayers" und *defixiones* benannt, auch wenn er die beiden Kategorien begrifflich vermengt, s.u. A.101.

[36] Man müßte hinzufügen: oder zu einer zukünftigen Handlung zwingen wollen, wie in vielen Liebesflüchen.

[37] Faraone / Garnand / López-Ruiz 2005, 170, zustimmend zitiert von Versnel 2009a, 323.

zu idealistisch halten mögen. In seinen jüngsten Beiträgen nennt Versnel einmal zwei wesentliche Unterschiede, nämlich erstens den unterwürfigen und ehrerbietigen Ton der „prayers for justice" und zweitens deren explizites Motiv zur Rechtfertigung (2009a, 279), und ein anderes Mal nur die „als flehend und unterwürfig zu beschreibende Grundhaltung" (2009b, 24f.).

Das Verhältnis der „judicial prayers" zu den *defixiones* faßt Versnel so zusammen: „there is an invariable distinction to be drawn between competitive *defixiones* on the one hand, and curses intended to punish the opponent by inflicting suffering on the other" (2002, 50; Verweis auf 1998, 184), oder: „related but clearly distinct" (1991b, 177).

III. Versnels Beobachtungen haben in jedem Fall das Verdienst, daß sie auf Elemente innerhalb der Fluchtafeln gegen Diebe und Verleumder hingewiesen haben, die in den bisherigen Interpretationen zu wenig beachtet wurden oder sogar unterzugehen drohten. Namentlich die – oft unterwürfig formulierte – Bitte an die Götter, und insbesondere die Übergabe sowohl der betroffenen Personen als auch des ganzen Verfahrens an die Götter wären hier hervorzuheben. Dabei hat die von Versnel vorgenommene Parallelisierung griechischer und lateinischer Texte wesentlich zum Verständnis dieser Kategorie von Fluchtafeln beigetragen (z.B. 1991a, 86), und gleichzeitig gezeigt, daß verschiedene Elemente der Fluchtafeln quasi universale Anwendung in der antiken Welt gefunden haben.

Etwa gleichzeitig mit Versnel hat, wie bereits bemerkt, auch R. Tomlin, der die Tafeln aus Bath publiziert hat, auf einen Teil der Charakteristika hingewiesen, die Versnel der Kategorie „prayers for justice" zugewiesen hat, so die Ansprache von offiziellen Göttern, ihre Anrede „by your Majesty", das Fehlen von Zauberworten und Bindeformeln, und die Nennung des Autor-Namens in den meisten Fällen. Da alle diese Flüche aus einem Gefühl der Ungerechtigkeit heraus entstanden seien, verwendet Tomlin den Terminus „pleas for justice or revenge".[38]

Referenzpunkt für die nachfolgende Forschung wurde und blieb jedoch die Studie von Versnel, und dessen Beobachtungen waren offenkundig so naheliegend und nachvollziehbar, daß auch seine daraus abgeleitete Unterscheidung und seine Terminologie in der Forschung fast durchgängig übernommen wurden. Einen kurzen Rückblick auf die Rezeption seiner Thesen hat Versnel inzwischen selbst vorgenommen (2009a, 275ff.), so daß hier einige ergänzende Bemerkungen genügen können. Erwähnen möchte ich die Stellungnahmen, die implizit oder explizit in mancher Hinsicht Vorbehalte gegenüber Versnels Thesen geltend machen. Auf die konkreten Einwände wird später im Zusammenhang einzugehen sein.[39] Hier soll nur hervorgehoben werden, daß von keinem der betreffenden Forscher eine völlige Ablehnung von Versnels Kategorisierung gefordert oder praktiziert wird. Sie bleiben

[38] Tomlin 1988, 62.

[39] Versnel 2009a, 324ff., diskutiert diese Einwände.

allenfalls ambivalent und verwenden die „prayers for justice“ letztlich doch als eine eigene Kategorie.

J.G. Gager müßte eigentlich ein Gegner von Versnels Trennung von (magischen) *defixiones* und (religiösen) „prayers for justice“ sein, denn er lehnt die Trennung von Magie und Religion ganz grundsätzlich, aber ohne Bezug auf Versnel, dezidiert ab. Hingegen referiert Gager die (damals noch junge) These Versnels ohne jede Kritik,[40] macht sich aber auch die Argumentation und Terminologie nicht wirklich zu eigen, hält also eine gewissermaßen neutrale Distanz dazu ein.[41]

F. Graf erkennt in seiner Monographie über Magie die „prayers for justice“ als eigene Gruppe an, führt aber einige Gemeinsamkeiten mit den übrigen *defixiones* an, so daß er auch die prayers in der Gesamtkategorie der *defixiones* belassen will.[42] In späteren Arbeiten hingegen folgt Graf der grundsätzlichen Trennung Versnels unter Bevorzugung des Terminus „judicial prayer“.[43]

D. Ogden verfährt grundsätzlich ähnlich wie Graf. Auch er weist auf einige Gemeinsamkeiten der von Versnel getrennten Gruppen hin, würdigt dann aber auch die Unterschiede, bei denen er weitgehend Versnel folgt.[44] Ogden will also die „prayers for justice“ einerseits nicht ganz so weit von den übrigen *defixiones* wegrücken, akzeptiert sie aber andererseits als eigene Kategorie von „curse-tablets“.[45] In der Praxis, bei seiner Analyse des Materials, verwendet Ogden dann allerdings die Kategorie Versnels ohne weitere Einschränkung, wie Versnel (2009a, 326) zu Recht bemerkt.

Dennoch ist bei näherer Betrachtung in den Arbeiten anderer Forscher nicht immer genau dasselbe gemeint, was Versnel ausgeführt hat.[46] Hier einige Beispiele aus der jüngsten Zeit.

C. Faraone / J. Rife 2007 ordnen die Fluchtafel aus dem korinthischen Kenchreai in ihrer Erstveröffentlichung zunächst als „prayer for justice“ ein: als einziges Kriterium nennen sie (S. 141) die im Text enthaltene Beschwerde an die Gottheit

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[40] Gager 1992, 175. 179 A.2.

[41] Gegen die Trennung von Magie und Religion plädiert z.B. auch Kiernan 2004, 114, der aber die Kategorie Versnels zu akzeptieren scheint (S. 100).

[42] Graf 1996, 144f.

[43] Bei Graf 2005, 254f. 264 wird die Unterscheidung ausdrücklich gefordert (entgegen der Behauptung von Versnel 2009a, 324 mit A.138 sind hier die Einschränkungen von Graf 2006 nicht wiederholt), wenngleich er statt „judicial prayers“ den Terminus „Strafflüche“ einführen möchte, vgl. u. A.104. Bei Graf 2007, 139 (von Versnel 2009a nicht zitiert) wird Versnels Kategorie der „judicial prayers“ ganz selbstverständlich akzeptiert (und von dem eigenen Terminus „Strafflüche“ ist nicht mehr die Rede).

[44] Auf die dabei gemachten Einschränkungen, die Versnel in seinem Resumee übergeht (2009a, 327), ist unten noch zurückzukommen.

[45] „Prayers for justice“ steht schon als Überschrift neben den anderen, oben genannten Kategorien. Der Abschnitt beginnt: „Prayers for justice constitute the most distinctive category of curse tablets.“ (1999, 37).

[46] Darüber führt Versnel 2009a, 277f., selbst Klage.

mit der Bitte, die Schuldigen zu bestrafen. Genauer begründet wird die Einstufung dann gegen Ende des Beitrags (S.151), wobei als weiteres Kriterium u.a. der Terminus καταγράφω in Anspruch genommen wird. Damit setzen sie sich scheinbar in Widerspruch zu dem „Hauptvertreter" der „prayers for justice", denn Versnel hatte darauf hingewiesen (1991a, 65), daß das Verb καταγράφειν gerade typisch für eine *defixio* sei. Die Lage wird nun noch kurioser dadurch, daß Versnel in jüngster Zeit seine Ansicht revidiert hat und καταγράφειν seinerseits als typisch für die „prayers for justice" ansieht.[47] Obwohl Faraone / Rife offenbar eine vorläufige Version des späteren Beitrags von Versnel kannten,[48] folgen sie ihm nicht darin, die Tafel aus Kenchreai als reines „prayer for justice" zu belassen (Versnel 2009a, 321), sondern weisen ihm „a place midway between „‚binding curse' and ‚prayer for justice'" zu, wobei sie Versnels Bezeichnung „borderline-case" vermeiden (S.154).

J. Blänsdorf macht in seinem Beitrag zu der Fluchtafel-Tagung in Zaragoza die Versnelsche Zweiteilung in *defixiones* und „prayer for justice" zum grundlegenden Prinzip bei seiner Typisierung.[49] Er gibt gleich ein Beispiel für ein „prayer for justice" aus Mainz (Appendix Nr. 2),[50] bei dem aber „an essential topic" fehle, nämlich „the reason and the justification of the curse". Bei der Zuweisung der Tafeln zu einem der beiden genres geht Blänsdorf nicht ganz einheitlich vor: Nr. 4 erkennt er nicht als „prayer for justice" an, weil eine Bitte um Rache und die Rechtfertigung des Fluches fehlten (S.151), was aber bei Nr. 2 z.B. kein Hindernis für diese Zuordnung darstellt. Nr. 4 sei aber auch keine *defixio*, weil die Bindeformel fehle (die aber bekanntlich bei vielen *defixiones* fehlt!).[51] Nr. 8 beginne wie ein „prayer for justice", insbesondere wegen des unterwürfigen Tones; aber „the reason of the curse and the bid for justice, essential for this special genre, are lacking" (S.154). Nr. 9 enthalte Elemente der Rechtssprache (eigentlich ist das nur *dolus malus*, ebenso in Nr. 16 = Blänsdorf 2005, 674), dann schlössen sich magische Formeln an. Mehrfach also, fast in der Mehrzahl der Fälle, konstatiert Blänsdorf, daß die Tafeln Elemente sowohl der „prayers for justice" als auch der magischen *defixiones* enthielten (deutlich bei Nr. 8 und Nr. 12), so daß die meisten Texte also nach Versnels Einteilung „borderland"-Fälle wären. Etwas hilflos muß Blänsdorf (S.151) eingestehen, daß viele Flüche überhaupt keine Einordnung in diese beiden grundsätzlichen Kategorien erlaubten.

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47 S. u. mit A.62. Versnel nimmt dabei keinen Bezug auf Faraone / Rife 2007.

48 Die Autoren beziehen sich (in A.23) allerdings nur auf die in vieler Hinsicht parallel stehende Fluchtafel aus Delos (SGD 58), die Versnel früher (1991a, 66f.) als „borderland"-Fall (dazu u.) eingestuft hatte, in der neuen Publikation (2009a, 319ff. 332ff.) jedoch für ein reines „prayer for justice" kategorisiert; und in diesem Text ist das Verb καταγράφειν mehrfach und an wichtiger Stelle eingesetzt.

49 Blänsdorf 2009a, 147.

50 = Blänsdorf 2004, 51ff. = DTM 5.

51 Der Schriftduktus von rechts nach links wird von Blänsdorf erwähnt, aber hier (anders S. 155) nicht für die Klassifizierung in Anschlag gebracht, obwohl es nach Versnel ein typisch magisches Element und daher charakteristisch für *defixiones* ist.

Auch A. Kropp übernimmt in ihrer Dissertation (2008b, 186) die Kategorie „prayer for justice“ und grenzt sie von den „antagonistischen Fluchtafeln“ ab. In ihrem Corpus (2008a) verwendet sie, unter Hinweis auf Versnel, dementsprechend die Kategorie „prayer for justice“, sieht sie aber, ohne die Abweichung von Versnels Meinung zu thematisieren, als eine Unterkategorie der Fluchtafeln, die sie eingangs auch als *defixiones* bezeichnet (S. 5), an. Damit wären streng genommen auch die „prayers“ als „Erzeugnisse einer magischen Praxis“, als „Schadenzauber-Ritual“ klassifiziert, was aber von der Autorin vielleicht nicht beabsichtigt ist. In der entsprechenden Kolumne des Katalogs wird das „prayer for justice“ zur Kennzeichnung des „Motivs“ der Fluchtafel verwendet, und steht so gleichrangig neben „Prozeß“, „Konkurrenz“, „Liebe“ und „unspezifisch“, wobei die „prayers for justice“ die Mehrheit der aufgenommenen Tafeln darzustellen scheinen. Auch diese Verwendung spricht eher dafür, daß Kropp die Kategorie in die *defixiones* einordnet, statt sie mit Versnel davon zu trennen.

Die Beispiele sollten zeigen, daß in der Forschung eine mehr oder weniger an Versnels Vorstellungen haftende Adaption seiner Kategorie stattgefunden hat, daß aber eine Auseinandersetzung mit den Kriterien und Argumenten Versnels bisher nicht wirklich geführt wurde. Daher sollen jetzt die Einwände zusammengestellt werden, die sich gegen Versnels Kategorisierung erheben lassen.

Einleitend soll ein methodischer Gesichtspunkt geltend gemacht werden.

Versnels Kategorisierung baut einerseits auf der früheren Einteilung auf und ist deckungsgleich mit der Kategorie der Fluchtafeln gegen Diebe und Verleumder. Andererseits geht er nicht mehr vom zugrundeliegenden Sachverhalt aus, also in welchem gesellschaftlichen Bereich der Verfasser der Tafel etwas erlitten hat oder erwartet hat zu erleiden an Unrecht, Schaden oder Kränkung, sondern er macht zum obersten Kriterium, ob überhaupt ein Unrecht zugrundeliegt oder nicht. Auf diese Weise werden die übrigen Kategorien an Fluchtafeln noch enger zusammengelegt und insgesamt von den „judicial prayers“ abgesetzt, weil sie sich, so Versnel, gegen Rivalen richteten, die kein Unrecht begangen hätten.[52] Schon diese Entgegensetzung ist nicht völlig zutreffend. Erst jüngst ist bestritten worden, daß Konkurrenz bzw. Rivalität das Motiv sei, das allen *defixiones* (im Versnelschen Sinn) zugrundeliege.[53]

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[52] Versnel 2002, 47 A.37 verweist auf Faraone 1991 und Gager 1992. Vgl. Kropp 2008b, 186. Von Faraone wird Konkurrenz oder Rivalität als durchgehendes Motiv der *defixiones* in der Tat stark betont (so auch Graf 1996, 139). Die von Versnel (1991a, 62, A.9) Kagarow (1929, 50ff.) zugeschriebene Trennung der „the curses against evildoers in general from curses against magic incantations“ kann ich der Einteilung Kagarows in fünf Kategorien (s.o. A.6) nicht entnehmen.

[53] E. Eidinow, Binding spells and the management of risks, Vortrag auf der Tagung Contextos Mágicos (vgl. o. A.14). Eidinow verweist insbesondere darauf, daß einigen Wirtschaftsflüchen (commercial curses) andere Motive als competition zugrundelägen, und daß auch Frauen, die Prozeßflüche verfaßten, nicht in einer Konkurrenzsituation gestanden hätten. Man müsse vielmehr auch andere Formen sozialen Verhaltens einbeziehen

Darüber hinaus liegt auch den *defixiones* im engeren Sinn meist ein Unrecht zugrunde, das allerdings oft eher implizit angesprochen wird. Werden etwa Zeugen des Prozeßgegners verflucht, so wird der Verfluchende, der sich normalerweise im Recht fühlt, da er es zum Prozeß hat kommen lassen, im allgemeinen doch eine falsche Zeugenaussage gegen sich entweder bereits vernommen haben oder eine solche erwarten, ein Unrecht, gegen das bekanntlich auch gerichtlich vorgegangen werden konnte (δίκη ψευδομαρτυρίων). In ähnlicher Weise könnte ein Prozeßgegner als Sykophant verflucht worden sein, statt mit einer entsprechenden Klage angegriffen zu werden. Auch von den gegnerischen Anwälten (Synegoroi) müssen sich die Verfasser der entsprechenden Fluchtafeln vorgestellt haben, ein *Unrecht* erlitten zu haben, und erst recht von dem Gericht und dessen Vorsitzendem, z.B. dem Polemarchos; all diese sind in einer dreifachen *defixio* vom athenischen Kerameikos als Verfluchte genannt.[54] E. Eidinow hat acht Fluchtafeln zusammengestellt, die sich spezifisch auf „the unjust nature of the target and/or his actions" beziehen. Davon könnten höchstens zwei Tafeln als „prayers for justice" in Anspruch genommen werden.[55] Manche Formulierungen in den Versnelschen „reinen" *defixiones* sind nur eine Haaresbreite davon entfernt, den Grund ihrer Ausfertigung ausdrücklich anzugeben, bei der einen oder anderen können wir ihn wohl als genannt ansehen, etwa bei DTA 94, einem Prozeßfluch gegen Diokles und seine Helfer, gegen die Rede des Diokles und die Zeugenaussagen zu seinen Gunsten. Auf diesen Text das Verdikt Versnels anzuwenden, er richte sich gegen Rivalen, die kein Unrecht begangen hätten, dürfte wohl kaum möglich sein. Viele andere Situationen und Ereignisse, gerade auch bei *defixiones amatoriae*, aus denen deutlich wird, daß sich die geliebte Person jemand anderem zugewandt hat, dürften zumindest subjektiv als Unrecht empfunden worden sein, auch wenn es sich nicht um gesetzliche Verbrechen gehandelt hat.[56] Es ist daher nicht verwunderlich, daß in solchen *defixiones* rechtliche Terminologie verwendet wird, vgl. die eben genannte Tafel, Z.17f.: καὶ μ(η)θ' ἓν ἀνθ(ῆ)ι Διοκλ(ε)ῖ δίκαιον („and do not let one just thing come to Diokles", Übersetzung Eidinow 2007, 375). Die rechtliche Terminologie ist mithin auch nicht, wie Versnel behauptet, typisch für die „prayers for justice".

Auf ein erlittenes Unrecht reagieren viele Menschen mit Rachegefühlen. Es erstaunt daher nicht, daß dieses Motiv auf Fluchtafeln explizit oder implizit zum Ausdruck gebracht wird. Als „Rachegebete", als „prayers for vengeance" werden die

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und vor allem das Kriterium von sozialen Risiken (risks) bedenken, vgl. dazu Eidinow 2007.

[54] Costabile 1998.

[55] Eidinow 2007, 229f.: SGD 58 ist nach Versnels Kriterien ein reines „prayer for justice", bei NGCT 14 kann es nicht ausgeschlossen werden, DTA 98 könnte Versnel als „borderline-case" einstufen. Bei DTA 100 scheint Eidinows Einordnung diskutabel.

[56] Julie Velissaropoulos-Karakostas hat dieses Argument in ihrer response auf diesen Beitrag dahingehend auf den Begriff gebracht, daß die Verfluchenden „justice subjective" suchen würden.

„prayers fo justice“ daher von Versnel manchmal bezeichnet, wenngleich er damit terminologische Verwechslungen mit einer spezifischen Gruppe von Steininschriften herbeiführt (dazu unten). Ebenso unscharf muß die Abgrenzung zu Forderungen (an die Gottheit) nach Bestrafung bleiben, da auch diesen Forderungen häufig das Motiv der Rache zugrundeliegt. Auf jeden Fall aber, und darauf kommt es hier an, ist auch zahlreichen *defixiones* zu entnehmen, daß sie aus einem starken Rachegefühl heraus verfaßt worden sind, insbesondere den eben genannten *defixiones iudiciariae*, zumal wenn der Verfluchende eine gerichtliche Niederlage für sicher halten muß, oder auch den *defixiones amatoriae*, wenn etwa der Liebhaber oder die Liebhaberin der geliebten Person, also der eigene Rivale oder die eigene Rivalin, verflucht und mit schweren Leiden beladen bzw. getötet werden soll. Gerade in diesem Bereich gibt es zahlreiche Situationen, die sich, zumindest im subjektiven Verständnis der Autoren, als Rache forderndes Unrecht darstellen, wie das Verlassenwerden des Autors oder der Autorin, oder die „Wegnahme“ des Partners durch eine dritte Person.

Schließlich kann auch der Begriff des Wettbewerbs noch erheblich umfassender verstanden werden als es Faraone, Versnel und andere in diesem Zusammenhang tun, gerade wenn man an den griechischen Begriff des *agon* denkt, der hier ja zweifellos evoziert werden soll. Denn ist nicht auch die Auseinandersetzung um ein verlorenes Kleidungsstück, ein Paradefall der „judicial prayers“, eine Art von Wettbewerb darum, wer die Sache letztlich bekommen soll, der Dieb/Finder oder der ursprüngliche Besitzer, der die *tabula* deponiert hat? Die Aufforderung an die Götter, hier Klärung zu schaffen, könnte auch eine Art von *agon* darum sein, wer sich bei den Göttern als Gewinner im Streit durchsetzt.[57] Umgekehrt ist zu beachten, daß viele *defixiones* nicht wirklich gegen Rivalen oder Konkurrenten gerichtet sind. Bei dem Prozeßfluch vom Kerameikos ließe sich zur Not noch sagen, daß die Einbeziehung von Gericht, Anwälten und Zeugen nur subsidiär zur Verfluchung der anfangs genannten wahrscheinlichen Prozeßgegnerin Eirene dazukomme.[58] Aber Liebesflüche, in denen der bisherige Partner verflucht oder ein neuer Partner zu einem Liebesverhältnis gezwungen werden soll, sind nicht gegen einen Rivalen gerichtet, auch wenn die indirekte Schädigung einer dritten Person damit impliziert sein kann.

In diesem Zusammenhang macht Versnel als einen Hauptunterschied zwischen „seinen“ Kategorien die Aussage aus, wer in der Hauptsache gegen den Rivalen bzw. Schuldigen vorgehe: bei den *defixiones* sei es der *defigens* in Person („*ich* binde“) gegen die Rivalen, bei den „prayers for justice“ sei es hingegen die Gottheit, die unterwürfig darum gebeten werde, gegen die Schuldigen zu agieren. Daß die antiken Autoren darin aber wohl keinen Gegensatz sahen, sondern immer, wenn sie schrieben: „ich binde“, meinten: ‚ich bitte die Gottheit, in meinem Namen zu binden‘, zeigt sich besonders an den Texten, die beide Formulierungen enthalten, wie

[57] Das Argument finde ich selbst weniger stark, es müßte aber denjenigen einleuchten, die selbst die Prozeßflüche unter die Flüche gegen Rivalen und Konkurrenten subsumieren wollen, wie eben Faraone und Versnel.

[58] Costabile 1998.

DTA 109: Μανῆν καταδῶ καὶ κατέχω· ὑμεῖς δὲ φίλαι Πραξιδίκαι κατέχετε αὐτ(ὸ)ν καὶ Ἑρμῆ κατοχε κάτεχε Μανῆν ... („Ich binde Manes nieder und halte ihn nieder. Und Ihr, liebe Praxidikai, haltet ihn nieder, und Hermes, Du Fessler, halte Manes nieder ...“).

Damit kommen wir zu den im engeren Sinn inhaltlichen Einwänden.

Daß sich die Abgrenzung eines eigenen Genus als „judicial prayer“ nicht gerade aufdrängt, wird schon daran ersichtlich, daß alle Elemente, die dann die „prayers for justice“ ausmachen sollen, schon in der davon abgetrennten Gruppe der *defixiones* auffindbar sind, und zwar werden sie von Versnel selbst dort „entdeckt“ (1991a, 64ff.). Er beginnt seine Differenzierung ausdrücklich mit einer Sammlung von solchen „borderline“-Fällen (1991a, 64ff.).[59] Diese Elemente, die oben aufgelistet sind, werden innerhalb der *defixiones* als fremd, als nicht traditionell bezeichnet. Aber aufgrund welchen Kriteriums sollen sie „fremd“ sein? Es scheint sich zunächst um ein zeitliches Kriterium zu handeln, wenn man Versnels Beobachtung so versteht, daß neue Elemente, die „traditionell“ nicht da waren, in den Fluchtafeln sichtbar werden. Bedenkt man aber, daß die *defixiones* frühestens in der zweiten Hälfte des 6. Jahrhunderts v. Chr. aufkamen und daß bis ins 4. Jahrhundert hinein relativ wenige davon erhalten sind, so fehlt eigentlich ein Vergleichsmaßstab, denn im 4. Jh. setzen eben auch schon die „judicial prayers“ ein. Wie Versnel selbst sagt (2002, 49) weisen gerade die frühesten Beispiele aus dem Athen des 4. Jahrhunderts nur einen Teil der Charakteristika auf, die von ihm als typisch für die „prayers for justice“ bezeichnet werden. Blickt man auf die Entwicklung der Fluchtafeln insgesamt, so kommen immer wieder „neue“ und spezifische Elemente auf, gerade bestimmte Formulierungen, die nicht selten an bestimmte örtliche oder regionale Besonderheiten gebunden waren.[60]

Es stimmt also schon von der Quantität her etwas mißtrauisch, wenn eine große Zahl von Belegbeispielen für eine eigene Kategorie sich als solche „gemischten“ Fälle darstellen.[61] Bei seiner Einteilung der Mainzer Täfelchen nach dem Versnel-

[59] Ebenso wie *defixiones* Elemente der „judicial prayers“, so können umgekehrt auch „judicial prayers“ Elemente der *defixiones* enthalten. Darauf weist Versnel zwar hin, stellt solche „borderline“-Fälle jedoch nicht zusammen, vgl. immerhin die Anmerkung 139 auf S. 105.

[60] Z.B. scheint auch die sogenannte *similia-similibus*-Formel nicht vor dem 4. Jahrhundert v. Chr. vorzukommen. Wohl nicht zufällig (aber dazu an anderer Stelle) hat sich gerade zu dieser Zeit die vielgestaltige Fluchtafel-„Landschaft“ herausgebildet.

[61] Ogden hat ebenfalls kritisch auf diesen Punkt hingewiesen (1999, 38). Natürlich ist es methodisch unzulässig, ein zahlenmäßiges Gleichgewicht zwischen „‚border area‘ cases“ und „prayers for justice“ lediglich mit den im Aufsatz Versnels (1991a) aufgelisteten Fällen zu begründen. Diese Kalkulationsbasis Ogdens zurückzuweisen war somit für Versnel (2009a, 326) ein leichtes Unterfangen. Allerdings verschweigt er bei seinem Verweis auf die etwa 270 „prayers for justice“, die allein in Britannien gefunden worden seien, daß Ogden die Täfelchen aus Bath ausdrücklich unberücksichtigt lassen will, da sie „from a single local practice“ herrührten.

schen Schema muß auch Blänsdorf die meisten „prayers for justice“ in diese Mischkategorie einordnen: sie sind mindestens ebensosehr *defixiones* wie sie „prayers for justice“ sind. Diesem Befund begegnete Versnel selbst zunächst mit dem allgemeinen Hinweis, daß alle unsere Kategorisierungen nie ganz trennscharf seien: „As always, we are speaking in terms of family resemblance and polythetic classes, with overlapping and criss-crossing similarities“ (2002, 49). Angesichts dieses doch sehr defensiven Hinweises sollte daran erinnert sein, daß wir solche starken Überschneidungen in den sonst gängigen Kategorisierungen jedenfalls nicht vorfinden!

Letztlich hat auch Versnel selbst an diesem unausgewogenen Verhältnis zwischen seinen Kategorien Anstoß genommen (2009a, 322). Im Zusammenhang damit hat er in seinem neuen Beitrag eine Revision vorgenommen und eine große Zahl von „borderline-cases“ zu reinen „prayers for justice“ befördert (2009a, 340). Die Revision besteht darin, daß Versnel zwei Kriterien, die er früher den *defixiones* zugeordnet hatte, nunmehr als typisch für „prayers for justice“ ansieht. Das ist zum einen das Verbum καταγράφειν, das Versnel früher für ein Charakteristikum der *defixiones* gehalten hatte, und das er nunmehr, eine entsprechenden Bemerkung von Jordan aufgreifend, als charakteristisch für „prayers for justice“ ansieht.[62] Während Versnel den Terminus jetzt, ähnlich wie παρατίθεμαι, als „legal or quasi-legal language“ mit der Bedeutung „‚register, record, enroll‘ (LSJ s.v. II.2)“ versteht, hatte er ihn früher parallel zu καταδέω, also als Bindewort aufgefaßt.[63] Diese frühere Bedeutung ist meines Erachtens jedoch nach wie vor mindestens ebenso berechtigt, da in ihr die Richtung, jemanden (zu den unterirdischen Gottheiten) *hinab*-zu„schreiben“, besser wiedergegeben ist. Wir sollten uns davor hüten, einem solchen mehrdeutigen Terminus eine einseitige, überzeitlich gültige Bedeutung beizulegen und ihn als eindeutiges Zeichen für die Zuweisung einer Fluchtafel zu einer bestimmten Kategorie zu benutzen.

Ähnlich steht es mit dem zweiten Kriterium, nämlich der Aufzählung von Körperteilen des Opfers, die nach dem Wunsch des Autors von der angerufenen übernatürlichen Macht „bearbeitet“ werden sollen, um das gewünschte Ziel zu erreichen.[64] Diese Zuweisung ist in Versnels „Essay on Anatomical Curses“ näher begründet worden (Versnel 1998). Aber Versnel selbst muß nicht nur einige Ausnahmen einräumen (2009a, 280 A.20; 2009b, 10f.), sondern er muß vor allem konstatieren, daß die Aufzählung von Körperteilen sich auch in Liebes- und Haßflüchen findet, die er

[62] Versnel 1991a, 66f.; 2009a, 339 mit Verweis auf Jordan 2002, 59.

[63] Aufgrund dieser Entwicklung scheint nicht einmal mehr der Terminus καταδῶ als Kriterium für eine *defixio* im Versnelschen Sinn sicher: 2009a, 307 wird eine Verfluchung (DTA 98) mit diesem Wortlaut als „pure prayer for justice“ vereinnahmt. Nicht besser ergeht es dem Synonym καταδεσμεύω, Versnel 2009a, 316 ad 3.3.5, hier wahrscheinlich, weil es gleichgesetzt wird mit καταγράφω, statt umgekehrt zu verfahren und καταγράφω an καταδεσμεύω anzugleichen.

[64] Versnel 1991a, 64: Charakteristikum für *defixiones*; 2009a, 280. 339f.: Charakteristikum für „prayers for justice“.

demgemäß mit den entsprechenden „prayers for justice“ als „anatomical curses“ parallel setzt. Diese Parallel-Setzung wird allerdings nicht eindeutig ausgelegt: Einmal stehen „both types of texts, judicial prayers *and* erotic magic“ (1998, 264, Hervorhebung M.D.) nebeneinander. An späterer Stelle behauptet Versnel hingegen: „I therefore argued, that the latter“ (i. e. der erotische „Herbeirufungszauber“) „also belong to the category of prayers for justice“ (2009a, 280 A.21). Aber auch z.B. in Wettkampfflüchen sind mehrere Körperteile aufgezählt. Wenngleich nicht von Kopf bis Fuß, so sind doch auch hier Organe genannt, die keine direkte Funktion bei der Ausübung der verfluchten Tätigkeit haben, was für Versnel einen wichtigen Unterschied zu den „prayers for justice“ ausmacht. Wenn bei mehreren Tierkämpfern „die Stärke, die Kraft das Herz, die Leber, der Geist, der Verstand“ verflucht werden, dann hätte man statt der Leber z.B. doch eher die Hände des Gladiators als zu verfluchendes bzw. zu bindendes „Tatwerkzeug“ erwartet.[65] Auch dürfte es Versnel nicht leicht fallen zu erklären, welche spezifischen Funktionen in einem Fall, der wahrscheinlich einen Prozeßfluch ausgelöst hat, der Magen, das Fett und der Hintern des Verfluchten gehabt haben sollen.[66]

Beide „neuen“ Kriterien Versnels werfen also folgende zwei Probleme auf.

1. Beide Kriterien sind nicht beschränkt auf *eine* Kategorie, sondern finden sich in unterschiedlichen Textsorten. Wenn sie irgendwo auftauchen, z.B. in einem unvollständigen Text, ist es daher nicht möglich, sie, wie Versnel das will, als hinreichendes Kriterium für die Zuordnung zu den „prayers for justice“ zu verwenden.[67] Dieses Problem entsteht, wie auch andere, dadurch, daß Versnel Textelemente und Formeln nicht als solche behandeln, sondern sie zu Kategorien formen will, denen dann jeweils *ganze* Texte eingepaßt werden sollen. Zusammenfügungen unterschiedlicher Textelemente werden durch das Überstülpen eines allgemeinen Prädikats nivelliert.

2. Durch die Vereinnahmung von zahlreichen Fluchtafeln als „prayers for justice“ deckt sich Versnels Kategorie nicht mehr mit der traditionellen Kategorie der „*defixiones* gegen Diebe und Verleumder“. Sie umfaßt nunmehr auch Fluchtafeln aus den anderen Kategorien, namentlich eine ganze Gruppe von Liebesflüchen, wenn die eben zitierte Zuordnung von Versnel so gemeint ist, aber auch Gerichtsflü-

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[65] DT 253 = Tremel 99, Z.14f.: καὶ τὴν ἰσχὺν τὴν δύναμιν τὴν καρδίαν τὸ ἦπαρ τὸν νοῦν τὰς φρένας. Ganz ähnlich DT 252 = Tremel 98, Z.8f.

[66] DTA 89, Attika, 4. Jahrhundert v. Chr., A Z.5-7.

[67] Vgl. die von ihm angeführten (2009a, 223) beiden Flüche: DT 135 = Gager 1992, Nr. 80 aus Nomentum (früheste Kaiserzeit nach Solin): auf jeder Seite der Tafel steht zunächst ein Name, gefolgt von der Liste der Körperteile, und zum Schluß die Formel: *defico in as tabelas*. Kein anderes Kriterium, das Versnel für die „prayers for justice“ aufgestellt hat, begründet die Zuordnung dazu, im Gegenteil wäre das Wort *defigo* nach der Aussage Versnels an anderer Stelle (2009a, 309f.) ein sicheres Indiz für eine *defixio*. Noch weniger ist eine Zuordnung möglich für die Tafel DT 42 aus Megara (1.-2. Jh.), zitiert ebd., auf der nur die Liste der Körperteile erhalten ist.

che[68] und Flüche unbekannter Motivation. In den 14 untersuchten Tafeln findet Versnel selbst neben „fraud / theft“ auch „ὕβρις, ... *iniuria* in connection with marriage, ... jealousy in love, ... or more vaguely ἀδικία“ (2009a, 322). Demgegenüber heißt es wenig später (2009a, 323) doch: „the strategies of the prayer for justice are strictly – and exclusively – employed by victims of theft, fraud, crime or abuse.“ Umgekehrt schließt Versnel auch *defixiones in fures* aus den „prayers for justice“ aus.[69] Es ist daher nun nicht mehr zu verkennen, daß die erweiterte Kategorie der „prayers for justice“ *quer* zur traditionellen Kategorisierung liegt. Übernimmt man sie, muß man die relativ differenzierte Einteilung nach den traditionellen Kriterien aufgeben zugunsten der groben und daher nicht wünschbaren Zweiteilung: „prayer for justice“ oder *defixio*.[70]

Weitere Überschneidungen zwischen den Kategorien, die sich bei den einzelnen Kriterien Versnels ergeben, sind zumindest teilweise von ihm selbst eingeräumt, aber als Ausnahmen eingestuft worden. Sie sollen hier anhand einiger neuerer Beispiele nur nochmals in Erinnerung gerufen werden.[71]

Die Nennung des Verfassers ist nach Versnel typisch für „judicial prayers“, ist dort aber nicht immer gegeben: Die Tafel Blänsdorf 2009a, Nr. 7 (= DTM Nr. 3) nennt immerhin noch den Namen des Ehemannes, dessen Güter der Autorin weggenommen wurden, aber ihren eigenen Namen nicht. Die Tafel Blänsdorf 2009a, Nr. 9 (= DTM Nr. 7) handelt von Diebstahl, nennt aber keinen Namen des Autors, auch die Diebe sind unbekannt; ähnlich Nr. 16 (= DTM Nr. 2) und 17 (= DTM Nr. 1) oder die Tafel aus Groß-Gerau (Scholz / Kropp, 2004, 34f.). Umgekehrt finden sich auch in einigen „reinen“ *defixiones* die Namen der Urheber: diese Namensnennung ist schon in Kagarows Typologie mehrfach als ein Element (S) aufgelistet.[72] Kagarow rechnet die Nennung des Verfassernamens zu den „Grundelementen“ des Fluches, räumt aber auch ein, daß der Name des Fluchenden nur selten erwähnt wird (S. 49, mit Nennung der Gründe dafür); Versnel selbst nennt als solche „Ausnahmen“ die etwa 15 Gerichtsflüche aus Amathous und einige Liebesflüche, auch etwa 15 Stück

[68] Wie Blänsdorf 2009b, Nr. 7.

[69] Der zweite der drei Flüche aus Sagunt, die Corell 1994 publiziert hat (Text S. 283) und der sich gegen einen unbekannten Kleiderdieb richtet, wird vom Herausgeber selbst als magische *defixio* aufgefaßt, „obwohl sie sich dem religiösen Bittgesuch nähert“ (S. 286). Genau diese Einordnung wird von Versnel 2009a, 290 A.54, übernommen, obwohl der Text nach den von Versnel aufgestellten Kriterien meines Erachtens keinerlei Zuordnung zur einen oder anderen Kategorie erlaubt.

[70] Zum Beispiel haben Blänsdorf 2009a und 2009b sowie Kropp in ihrem Corpus (2008a) viel Mühe darauf verwendet, diese nicht viel weiterführende Grundeinteilung vorzunehmen. Beide haben dabei stillschweigend die genannte Erweiterung der Kategorie mitvollzogen.

[71] Es handelt sich tatsächlich um einige Beispiele, nicht um eine vollständige Dokumentation.

[72] Typus 4, S. 29; vgl. Typus 6.

verschiedener Herkunft und Entstehungszeit, ist damit aber keineswegs vollständig.[73]

Entsprechend wird in einigen *defixiones* auch der Grund für die Anfertigung des Täfelchens genannt: Versnel selbst (1991a, 64) benennt solche Fälle, die er als Ausnahmen versteht. Zumindest sinngemäß verweisen zahlreiche *defixiones* auf die Gründe ihrer Anfertigung, wie z. B. SGD 91 (= Gager 1992 Nr. 17 = Eidinow 2007, 426), Z.3: ἐπὶ φιλότατι τâι Ευνίqο, oder Costabile 1998, 23 col. III, Z.6f.: (καταδέω...) τὰ ἔργα τὰ περὶ τῆς πρὸς ἡμᾶς δίκης (mit ähnlichen Formulierungen in den col. I und II): Die Opfer werden verflucht, weil sie Prozeßmaterial gegen den Autor der Tafel gesammelt hatten.

Das weitere Kriterium Versnels, die „judicial prayers" hätten einen anderen „Ton" als die eher befehlsförmigen *defixiones* und würden sich in bittender, unterwürfiger Form an die Götter wenden, ist, wenn wir es um der Argumentation willen einmal akzeptieren, ein sehr „weiches" Kriterium. Dahinter könnte man von vornherein nur individuelle Unterschiede vermuten, also Unterschiede in der Persönlichkeit und den Vorlieben der Verfasser, Unterschiede in ihrer religiösen Orientierung, Unterschiede im Gebrauch der Formeln, die gerade kursierten. In dieser Hinsicht sind auch die Übergänge besonders fließend bzw. lassen sich die einzelnen Formulierungen nicht eindeutig zuordnen. So etwas wie „religiöse Sprache" kann sich auch in reinen *defixiones* wiederfinden, z.B. Blänsdorf 2009a, Nr. 11 (= DTM Nr. 16): *mentem memoriam cor cogitatum.* Blänsdorf weist darauf hin (ebd. S. 156), daß diese Formulierung „common in archaic Roman prayers" sei.[74] Blänsdorf (2009a, 157) kommentiert die nächste Tafel (Nr. 12 = DTM Nr. 11) so, daß die mit dem Einschub *religione* versehene Bitte den „rules of a religious prayer" und dem Genre der „prayer for justice" entspreche, daß aber die Rückseite auf die rituelle Verbrennung der Tafel verweise: „Though introduced by an expressly religious formula, this is certainly pure magic".[75]

Die Unterwürfigkeit gegenüber den Göttern wird von Versnel meines Erachtens stark übertrieben. Auch in den „judicial prayers" sind die Anreden der Götter im allgemeinen nicht auffällig unterwürfig, man könnte sie eher neutral nennen.[76] Auch in dieser Kategorie werden immer wieder Imperative gebraucht, sei es in der Form,

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[73] Versnel 1991a, 63; vgl. schon Audollent 1904, xcii. Weitere Beispiele: DTA 55 (= Eidinow 2007, 359); SGD 91 (= Gager 1992, Nr. 17 = Eidinow 2007, 426, vgl. 157ff.); Blänsdorf 2007. Lambert 2004, 76f. weist auf Namensnennung bei den Liebesflüchen hin. Eidinow 2007, 213 verweist auf drei Namensnennungen in Liebesflüchen.

[74] Ob es sich wirklich um eine *defixio iudiciaria* handelt, wie Blänsdorf vermutet, ist aufgrund des fragmentarischen Textzustands nicht ganz sicher. Immerhin ist die Tafel mit einem großen Nagel durchbohrt und auf der Rückseite rückwärts beschriftet, worin man im allgemeinen magische Charakteristika erblickt. Den Text selbst könnte Versnel aber vielleicht auch als „prayer for justice" beanspruchen.

[75] Wahrscheinlich würde Versnel den Text eher als „prayer for justice" einstufen, zumindest tut er das mit der Eingangsformel (2009a, 309).

[76] Vgl. nur die Beispiele bei Versnel 1991a, 84ff.

sei es dem Sinn nach. Wenig unterwürfig klingt z.B. ein Text aus Wilten-Veldidena bei Innsbruck, erst recht nicht in den Übersetzungen Versnels (1991a, 83): *Secundina Mercurio et Moltino mandat* (Versnel: „charges") ... *ut persecuatis vobisque delegat* (Versnel: „and she also assigns you") ... *oc vobis mandat, vos [e]um cor[ipi]atis*, „With that she charges you; you have to catch him". Vergleiche auch die Paraphrase Versnels: „Mercurius and Moltinus *have to* take over the tasks of the earthly judge" (Hervorh. M.D.).[77] Umgekehrt finden sich die Attribute der Götter, die Versnel für die „prayers for justice" beansprucht, auch in „reinen" *defixiones*: δέσποτα (E)ρμῆ | κάτεχε Χαιρύλ(λ)ην ... (DTA 89, B Z.1f.). Darüber hinaus geben sich viele Verfasser von „judicial prayers" eher selbstbewußt als verzweifelt: Die großzügige „Belohnung" der Gottheit mit z.B. der Hälfte, einem Drittel oder sogar nur zehn Prozent des zurückgebrachten Gutes (Beispiele bei Versnel 1991a, 84. 87) wirkt eher herablassend als unterwürfig (vgl. ebd. S.). Auch die manchmal geforderte „Übergabe" von gestohlenen Gegenständen an Götter macht die Götter nicht zu unnahbaren, hochstehenden Wesen, sondern eigentlich zu „entlohnten" Erfüllungsgehilfen, um nicht zu sagen Instrumenten der eigenen Interessen (z.B. 1991a, 87 Nr. 6: Ich habe der Minerva den Dieb „geschenkt": *donavi*. 104 A.124: *donatur deo*. *dono* findet sich auch in einem Mainzer Text Blänsdorf 2009a, Nr. 4.). Die Götter der „judicial prayers" erscheinen daher letztlich nicht weniger instrumentalisiert als die Götter in den *defixiones*.[78]

Die Zuordnung von chthonischen Göttern an die *defixiones* und von „offiziellen", olympischen Götter an die „judicial prayers" läßt sich zwar oft, aber nicht immer vornehmen.[79] Versnel selbst ordnet Texte den „prayers for justice" zu, ohne sich an den darin angerufenen Unterwelts-Göttern zu stören.[80] In dem von den Herausgebern als „borderline-case" und von Versnel jetzt als „prayer for justice" eingeordneten Text aus Kenchreai[81] werden chthonische Götter angerufen bzw. ihre Zugehörigkeit zu dieser Sphäre durch das Wort κάτω unterstrichen: κάτω Βία Μοῖρα

[77] Die Existenz einiger Ausnahmen räumt Versnel ein, 1991a, 62 mit A.8. Der Hinweis darauf, daß es sich meist um lateinische und damit späte Texte handele, hat jedoch in einer systematischen Analyse keine Überzeugungskraft. Im übrigen sind auch genügend griechische „prayers for justice" ohne Unterwürfigkeit formuliert und fordern von der Gottheit Gerechtigkeit ein, vgl. etwa die von Versnel 2009a, 315ff., selbst aufgeführten Flüche 3.3.3.; 3.3.4.; 3.3.5. Z.10.15.25 übersetzt Versnel immerhin ἀξιῶ mit: „I demand"; 3.3.8. (= 2007), Z.8f.

[78] Auf diesen Aspekt verweist auch Kiernan 2004, 106ff.; seine Einstufung dieser Flüche als „Handel mit dem Gott mit dem Versprechen zukünftiger Bezahlung" (107) würde ich allerdings nicht teilen.

[79] Vgl. auch den Text Blänsdorf 2009b, Nr. 7, der vom Herausgeber (S. 224) als „prayer for justice" eingeordnet wird: die angerufenen *angilis* sind nach Blänsdorf (S. 239) der Unterwelt zuzuordnen. Versnel 2009b, 22, formuliert das Kriterium daher erheblich zurückhaltender.

[80] 1991a, 68f.: der Artemisia-Papyrus.

[81] Faraone / Rife 2007; Text auch bei Versnel 2009a, 319.

Ἀνάνκε (Z.1). Am Ende des Textes müßte man nach den Versnelschen Kriterien die mit ἄναξ eingeleitete Formel für eine eher unterwürfige Anrede einer Gottheit, also für ein „judicial prayer", in Anspruch nehmen; aber es folgen dann wieder drei eindeutig magische Namen (ἄναξ Χαν Σημειρα Ἀβρασαχ), mit denen der Text im Stil einer *defixio* schließt. Es zeugt im übrigen auch nicht gerade von Unterwürfigkeit gegen „traditionelle Götter der griechischen Unterwelt"[82], wenn ihnen der Verfasser einer an sie gerichteten Fluchtafel die eigentlich geforderte Bestrafung des Schuldigen gegebenenfalls doch nicht zutraut und für diesen Fall (εἰ μὴ) Z. 8) vorsichtshalber noch mit der Anrufung von Abrasax, einer dem magischen Bereich zugewiesenen Gottheit quasi als „Ersatzvollstrecker" droht.

Im übrigen ist es fraglich, ob eine dezidierte Trennung zwischen chthonischer und olympischer Götterwelt dem Bewußtsein der Griechen selbst entspricht. Zwar haben sie gerade durch die Zuweisung bestimmter Attribute an bestimmte Gottheiten einerseits diese Differenz betont, wie besonders bei Hermes (Erionios), wobei aber das Attribut oft fehlt (z.B. DTA 89, B). Andererseits blieben diese Götter immer auch ambivalent. Attis etwa begegnet uns in Mainz als überirdische Gottheit neben Isis (Magna Mater), während er sonst als chthonisch gilt. Das von den Verfassern unserer Texte oft eingeforderte grausame Vorgehen gegen die Verfluchten und die Bitte um Vernichtung des Opfers wird jedenfalls an alle Götter und Dämonen herangetragen, ob sie Unterirdische sind oder nicht.

Die Versnelsche Trennung schließlich, die *defixiones* bezögen ihre Wirkkraft aus der eigenen Handlung des *defigens* („ich binde"; „ich registriere" usw.), während die „judicial prayers" aus der göttlichen Handlung heraus wirkten, ist von zwei Seiten aus angreifbar. Erstens steht in den meisten Texten schon grammatisch ein ‚Ich': entweder ganz am Anfang, oder es ist doch als initiierendes Subjekt, mit oder ohne Namen, genannt. Auch in den „judicial prayers" heißt es *rogo, oro, mando* usw. Und zweitens ist auch die *defixio* ein Akt, der vom Verfasser nur angestoßen, aber nicht durchgeführt wird. Letztlich sind es die (meist unterirdischen) Gottheiten, die den erwünschten Schaden wirklich auslösen sollen, und oft wird sogar noch ein Dämon oder die ruhelose Seele eines Verstorbenen als Mittler und Überbringer der Botschaft angerufen. Obwohl also in der soeben zitierten Fluchtafel aus Kenchreai die drei Unterweltsgötter Bia, Moira und Ananke angerufen werden, interpretieren die Herausgeber Faraone / Rife diesen Teil des Textes als rein menschliche Aktion: „human activity", „human cursing" (S. 153f.).

Insgesamt liegt es also näher, um schon einmal eine Zwischenbilanz zu ziehen, statt für solche Bitten an die Götter eine eigene Kategorie zu eröffnen, die entsprechenden Formeln in die Gesamtgruppe der „Gebetsformeln" aufzunehmen, wie es schon Audollent getan hat, auf den Versnel ablehnend verweist.[83] Die Gebetsformel

[82] Faraone / Rife 2007, 154.

[83] Audollent 1904, 483-86; Versnel 1991a, 61: die Anrufung der Götter ist ihm eine zu geringe Gemeinsamkeit aller Gebete.

ist zuletzt von Amina Kropp, wenngleich in einem etwas militärisch anmutenden Jargon, definiert worden als eine Sprachhandlung, „mit der eine numinose Instanz angerufen und als Empfänger einer Botschaft mit dem Angriff auf das Zielindividuum betraut wird".[84] Diese häufigste aller in den Fluchtafeln vorkommenden Formeln läßt sich natürlich in mancher Hinsicht wieder differenzieren, Kropp beispielsweise schlägt folgende Kategorien vor: Aufforderungsformel, Klageformel (die spezifisch für die „prayers for justice" sei), Gelübdeformel, Übergabeformel, Beschwörungsformel, Anrufungsformel.[85]

IV. Die hier postulierte Unterordnung zentraler Elemente der „judicial prayers" unter die allgemeine Rubrik „Gebetsformeln in den Fluchtafeln" läßt auch Zweifel an einer weiteren Dimension aufkommen, die Versnel hervorgehoben hat, und der im Rahmen eines rechtshistorischen Symposions besondere Aufmerksamkeit gebührt. Gemeint ist die Gleichsetzung der Vorgänge, die uns in den „prayers for justice" begegnen, mit gerichtlichen Prozessen, aus der sich speziell die Versnelschen Termini „judicial prayer" oder das ganz selten verwendete „juridical prayer" herleiten.

Auch dieser Vergleich Versnels hat ohne Zweifel einige Anhaltspunkte für sich und klingt im ersten Moment recht plausibel: Der durch Diebstahl oder Verleumdung geschädigte Verfasser des Textes wendet sich statt an ein weltliches Gericht an ein göttliches und bittet die Gottheit, den Täter zu bestrafen. Bei näherer Betrachtung jedoch läuft die vermeintliche Parallele zunehmend auseinander. Grundsätzlich fehlt dem „judicial prayer" das, was einen Prozeß ausmacht, daß nämlich ein Schuldiger verurteilt wird. Vielmehr steht die Schuld des Täters für den Urheber der Fluchtafel unumstößlich fest. Dementsprechend erhebt er auch keine förmliche Klage, die terminologischen Analogien zu einer Klageerhebung bleiben vage.[86] In vielen Fällen ist der Täter dem Autor nicht bekannt, so daß kein Beklagter benannt werden könnte. Konsequenterweise fehlt auch die korrespondierende Voraussetzung eines wie immer gearteten Urteils, nämlich die Verteidigung des Beklagten.[87] Eine generelle Gleichsetzung mit einem Prozeß, wie sie Versnel vornimmt (1991a, 80f.) kann daher nicht akzeptiert werden. Der typische Prozeßverlauf, den Versnel von der Vorladung bis zur Exekution anzunehmen scheint (1991a, 81; 2002, 64f.), hat

[84] Kropp 2008b, 96.

[85] Kropp 2008b, 146ff.

[86] Chaniotis 1997, 363 A.56 hat darauf hingewiesen, daß frühere Übersetzungen von *pittakion* als „anklagende Fluchtafeln" (Latte) oder „förmliche Klageschrift" (Zingerle) ungenau seien. Dennoch formuliert auch Versnel: „genauer gesagt sind sie" (d.h. die Gebete um Gerechtigkeit) „Anklageschriften zur Eröffnung eines Prozesses" (2009b, 22). Es ist zu berücksichtigen, daß in vielen Sprachen, wie auch im Deutschen, das Wort „anklagen" sowohl eine förmliche Anklage vor Gericht als auch eine informelle Aussage über die Schuldhaftigkeit einer Person bezeichnet.

[87] Thür 2002, 7 weist deutlich darauf hin, daß die „prayers for justice" ein einseitiger Akt der Anklage seien, der Standpunkt der Verteidigung werde niemals berücksichtigt.

keine ausreichenden Anhaltspunkte in den Texten. Das Element in einem weltlichen Verfahren, das dem Vorgehen des Fluchenden am nächsten steht, ist hingegen der Schritt, der sich an einen Prozeß erst anschließt, nämlich die Vollstreckung der Strafe.[88] Bekanntlich war die Vollstreckung aufgrund eines Urteils in der Antike weitgehend eine private Angelegenheit. In den „judicial prayers" nun ist das nicht anders, die von den privaten Individuen ausgedachten Phantasie-Strafen sollten aber, da das dem Initiator selbst aus verschiedenen Gründen nicht möglich war, durch die Götter über den Täter gebracht werden. Bei unbekannten Tätern geht der Urheber der Aktion davon aus, daß diese den angerufenen Gottheiten bekannt sind. Daher fehlen auch jegliche Hinweise in den Fluchtafeln, die den Göttern bei der Suche nach dem Täter behilflich sein wollten. Die Verfluchung *statt* eines Prozesses, die bei den *defixiones* gegen Diebe und Verleumder im allgemeinen vorliegt, bedeutet nicht zugleich die Durchführung eines prozeßähnlichen Verfahrens.

Ich bezweifle daher, daß das Verb ἐπιζητέω, auf das Versnel großes Gewicht legt, in der Richtung ausgelegt werden sollte, wie Versnel das vorschlägt: absolut gebraucht heiße es auch „to investigate the affair", „to hold a judicial inquiry" (1991a, 78), lateinisch meist *persequi*, auch *exigo* (1991a, 104 A.124).[89] Hingegen reicht die Bedeutung „jemanden aufspüren" oder „verfolgen" vollkommen aus. In den Täfelchen aus Knidos ist oft von πεπρημένος die Rede („being burnt with fever", Versnel 1994; 2002, 51), in Tafel 1 auch von Folter (βάσανος): „the divine interference is intended as a sort of judicial torture, in order to force the culprit to confession and redress" (ebd. 52). Aber diese Qualen, die die Götter über die Täter bringen sollen, sind keine Instrumente, um wie in einem Prozeß die Schuld des Beklagten ans Licht zu bringen,[90] sondern sie sind bereits Teil der Strafe für den Schuldigen.[91] Das Erleiden von brennenden Fieberqualen hat viel mehr Ähnlichkeit mit dem Wirken der Dämonen, die, so die entsprechenden *defixiones*, dem Betroffenen keine Ruhe lassen sollen, und mit den bekannten ägyptischen Zauberpapyri, also gerade mit schwarzer Magie, als mit einem Gericht. Nachträglich soll der Betroffene dann gegebenenfalls (nicht alle Strafaktionen führen ja zu Bekenntnissen oder gar zu

[88] Gerhard Thür hat daher in der Diskussion die Bezeichnung *defixiones executoriae*, „Vollstreckungsflüche", für die ganze Kategorie vorgeschlagen. Diese Bezeichnung ist einerseits zutreffend, andererseits aber noch zu eng an der rechtlichen Terminologie, insbesondere weil eine Vollstreckung ein formales Urteil voraussetzt. Einen eigenen Vorschlag für die Bezeichnung dieser (vierten) Kategorie werde ich am Ende dieses Beitrags formulieren.

[89] *persequi* auch in der Mainzer Tafel Blänsdorf 2009a, Nr. 16, Z.3, mit weiteren Beispielen im Kommentar S. 181f.

[90] Im übrigen sind im athenischen Prozeß Sklaven meist als Zeugen gefoltert worden, angeklagte Freie nur in Ausnahmefällen. Und wegen relativ unbedeutender Eigentumsdelikte wurde die Folter garnicht eingesetzt. Vgl. zum Verfahren G. Thür, Beweisführung vor den Schwurgerichtsfhöfen Athens: Die Proklesis zur Basanos, Wien 1977.

[91] Daher ist auch Versnels Vorstellung, in diesem Verbrennen schwinge *gleichzeitig* die Vorstellung von einem Gottesurteil („ordeal by fire") mit (1994, 150ff.), wenig plausibel.

Beichtinschriften) seine Schuld bekennen: aber eben nicht, um ein Urteil zu ermöglichen, sondern als Anlaß dafür, die Gottheit zu preisen. Daß ferner das in den „judicial prayers" häufig verwendete Verb κολάζειν eine *gerechtfertigte* Bestrafung impliziert, wie Versnel betont, (2002, 48), setzt keineswegs eine formale Verurteilung voraus.[92]

Aber Versnel will die angerufenen Götter tatsächlich als Richter betrachten: Die Schuldigen seien „under the jurisdiction of the powers of the underworld" gekommen (2002, 52). In einem Text ist ein σύγκλητος τῶν θεῶν erwähnt, worin Versnel „the divine tribunal" erkennt (2002 64 A.93). Verallgemeinert heißt das, daß die Knidischen Tafeln „complaints before a divine tribunal" seien (2002, 66) In den meisten anderen Fällen aber hätten Einzelgötter und kein Tribunal geurteilt. In der Formulierung: die Göttin (Demeter) „presides as a judge over an imaginary court" (1991a, 73), scheint jedoch beides gleichzeitig der Fall zu sein. Die stärkste terminologische Unterstützung könnte Versnel eine Tafel aus Sizilien geben, in der Demeter angefleht wird, to „pass a just sentence", wie Versnel übersetzt, unvoreingenommener: „das Gerechte zu entscheiden" (κρῖναι τὸ δίκαιον).[93] Aber dieses Gerechte, für das sich die Göttin entscheiden soll, ist durch den übrigen Text bereits bestimmt als vielfältige Bestrafung dessen, der die Sklaven des Autors aufgehetzt hat, nicht als Urteil über die Schuld oder Unschuld eines Beklagten.

Diese selbe Gottheit, die als Richter fungiert, scheint Versnel gleichzeitig auch als Kläger zu betrachten (2002, 56): „the god in his role of prosecuter". Auch Faraone / Rife sprechen von „prosecutors in a divine court".[94] Allen Handlungsschritten will Versnel also eine formale, prozessuale Bedeutung verleihen, die jedoch meines Erachtens nicht zum Gesamtverlauf des Vorgangs paßt. In den Fluchtafel-Texten, ob „prayers for justice" oder *defixiones*, ist die rechtliche Terminologie vielmehr, ebenso wie bei den Beichtinschriften, metaphorisch gebraucht, wie es auch in anderen Textgattungen vorkommt.[95]

Schließlich sei noch ein letzter Aspekt von Versnels Zuordnung zur Rechtssphäre zitiert. Der Betroffene „is first and foremost someone accused of a crime, to be judged and persecuted by divine law" (2002, 56). Der Verweis auf *göttliches* Recht oder Gesetz eröffnet noch einmal eine neue Dimension, die jedoch meines Erachtens gänzlich außerhalb unserer Texte liegt und über die deshalb nicht weiter gehandelt werden soll. In die Sphäre des „heiligen Rechts" führen auch Äußerungen wie die von Ricl, die bei Versnel zitiert wird, wonach eine „quasi-judicial procedure" von

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[92] Vgl. Chaniotis 2004, 29, zu diesem Terminus in den Beichtinschriften.

[93] Versnel zitiert den Text (SGD 60) zwar in Übersetzung, wertet ihn aber nur hinsichtlich der Unterwürfigkeit aus (1991a, 69f.).

[94] Faraone / Rife 2007, 151. Allerdings sehen sie eine Arbeitsteilung zwischen dem „human prosecutor" und dem „divine judge-and-hangman" (S. 153).

[95] Vgl. Chaniotis 2004, 29. Nach Eidinow 2007, 146, verwendeten die Verfasser eine „public and legal language, perhaps to add authority to their curses".

lokalen Priesterschaften begleitet worden sei.[96] Die Vermutung einiger Forscher, Priester seien die Hauptakteure in dem „juridical drama" gewesen, wird allerdings von Versnel unter Verweis auf Chaniotis zu Recht zurückgewiesen (2002, 71).[97]

Gegen Versnels Zuordnung sprechen noch folgende grundsätzliche Erwägungen. Einige „judicial prayers" erinnern überhaupt nicht an irgendeine Art von gerichtlichem Verfahren; es geht ihnen nicht einmal um eine Bestrafung, sondern schlicht um die Wiedererlangung von gestohlenem Gut, vgl. z.B. eine Tafel aus Uley (Versnel 1991a, 87): Der Text bezeichnet sich selbst als *commonitorium* (Memorandum)[98] an den Gott Merkur: dieser solle dem Dieb keine Ruhe lassen, bis er das Diebesgut zurückbringe. Dem Gott wird eine Belohnung von einem Drittel versprochen. Es ist keine Klage, keine Verurteilung, keine Vollstreckung angesprochen. In meinen Augen steht der Text ganz parallel zu *defixiones*, die z.B. einen Liebeswunsch erfüllt haben wollen.

Die Vorstellung von einem Gerichtsverfahren ist umso weniger angezeigt, wenn das Gut, um das es geht, nicht gestohlen, sondern verloren wurde, wie einige Formulierungen zumindest verstanden werden können.[99] Der Finder jedenfalls war zunächst kein Verbrecher, er hatte ja nichts gestohlen. Allenfalls konnte ihm vorgeworfen werden, die Sache nicht zurückzubringen. Wir sehen hier ab von praktischen Problemen, etwa ob der Finder wissen konnte, wem die gefundene Sache gehörte; manchmal trägt der Verlierer dem Rechnung, indem er dazu auffordert, die Sache in den Tempel zu bringen. Jedenfalls konnte ein Finder nicht verurteilt werden, allenfalls konnten ihm die Götter die moralische Pflicht vor Augen halten, die gefundene Sache zurückzubringen.

Versnel sagt bezeichnenderweise auch nicht, mit welcher Art von Prozessen er die „judicial prayers" vergleicht, sondern bleibt hierin ganz allgemein. Der verwen-

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[96] Ricl 1995, 73, zitiert bei Versnel 2002, 70 A.115.

[97] Die Ausführungen von Chaniotis 1997 stehen diesem Beitrag im übrigen darin nahe, daß sie zeigen, wie wenig sich von der Verwendung juristischer Termini auf tatsächlich vorauszusetzende Prozesse, hier in Form von Tempeljustiz, schließen läßt. Diese Position wird von Chaniotis 2004, 29 nochmals bekräftigt: „Therefore, when we find in the confession inscriptions legal terms ... these do not support the assumption that the temples functioned as courts of justice."

[98] Die Übersetzung Versnels: „official complaint", ist wiederum bezeichnend.

[99] Vgl. Faraone / Rife 2007, 152f. mit eindeutigen Beispielen aus Knidos und weniger eindeutigen aus Britannien. Die Ambivalenz entsteht dadurch, daß sowohl das griechische Wort ἀπόλλυμι als auch das lateinische *perdere* die Grundbedeutung von ‚verlieren',‚einer Sache verlustig gehen', haben, und der Verlust kann in unterschiedlicher Weise eingetreten sein, eben auch durch Diebstahl: In der Tafel Tomlin 1988, Nr. 5 z.B. wird zuerst der Verlust von zwei Handschuhen angezeigt, um dann den Dieb zu verfluchen: *[D]ocimedis [p]erdidi(t) manicilia dua qui illas involavi(t)...*; ähnlich Nr. 6. 12(?); weniger sicher sind Nr. 8. 62. In Nr. 99 Z.3 scheint *perdere* geradezu synonym mit *involare* verwendet zu sein. Man muß auch damit rechnen, daß die Verfasser der Fluchtafeln durch die Annahme eines Diebstahls (sich selbst?) über einen selbstverschuldeten Verlust hinweggetäuscht haben.

deten Terminologie kann man nur entnehmen, daß er mehr an griechische als an römische Prozesse denkt. Immerhin hätte sich, da diese Kategorie der Fluchtafeln im Athen des 4. Jahrhunderts v. Chr. auftaucht, angeboten, daß Versnel sie enger mit dieser Blütezeit der griechischen Gerichtsbarkeit in Verbindung gebracht hätte. Das ist aber wohl nicht möglich. Hingegen ist manchmal auch von Schiedsgerichtsbarkeit die Rede, sogar von „an occasional mediating role for the priests who represent the divine court of arbitration" (1991a, 81), das wäre wieder ein ganz anderer, hier gänzlich hypothetischer Bereich, auf den Versnel aber auch nicht näher eingeht.

Es ist, wie oben schon in anderem Zusammenhang bemerkt, auch im Hinblick auf den Vergleich mit einem gerichtlichen Verfahren nicht ganz einleuchtend, warum Versnel sein *genus* der „judicial prayers" gänzlich auf die (traditionelle) Kategorie beschränkt, die Diebstähle, Unterschlagung und Verleumdung betrifft.[100] Sicherlich ist in diesen Fällen ein gerichtlich verfolgbares Delikt am leichtesten erkennbar. Aber eine Parallele zu gerichtlichen Prozessen oder den Ersatz eines Gerichtsverfahrens könnte man auch in Texten sehen, die anderen Kategorien zugeordnet werden, insbesondere natürlich bei den Prozeßflüchen. Es scheint aber so, daß bei den Prozeßflüchen zwar die rechtlichen Termini, aber nicht die übrigen von Versnel zusammengestellten Kriterien häufig anzutreffen wären. Von daher wird eben auch die Gleichsetzung einer traditionellen Kategorie mit den „judicial prayers" nicht gerade überzeugender.

Schließlich sei noch ein Wort zu der von Versnel verwendeten Terminologie gesagt, da sie keineswegs einheitlich ist. In seinem grundlegenden Aufsatz (1991a) hat Versnel mehrere Bezeichnungen für die von ihm abgegrenzte Kategorie eingeführt. Im Titel steht „judicial prayers", und diese Wendung ist im ganzen Text wahrscheinlich am häufigsten gebraucht. Noch in der Einleitung (S. 61) wird programmatisch angekündigt, die neue Kategorie „‚judicial prayers' or ‚prayers for legal help'" zu nennen. Die letztere Formulierung muß allerdings erstaunen, denn nach Versnel selbst wurden die Texte ja ausschließlich deshalb verfaßt, weil die Autoren keine Aussicht gehabt hätten, auf legalem, gerichtlichem Weg Gerechtigkeit zu erhalten, und sich daher der göttlichen Gerechtigkeit anvertraut hätten: sie hätten sich also von einer „legal help" nichts mehr versprochen. Wenigstens hat diese verunglückte Bezeichnung nach meiner Beobachtung keine weitere Verwendung mehr gefunden, weder bei Versnel noch bei anderen Autoren.

Bei der Erläuterung der Abgrenzung von den *defixiones* wird die neue Kategorie als „prayer for justice" eingeführt (S. 67f.). Diese Formulierung hat ein breiteres Bedeutungsspektrum, denn ‚justice' (Gerechtigkeit) kann neben der staatlichen Gerechtigkeit (der Justiz) auch göttliche Gerechtigkeit, moralische Gerechtigkeit usw. meinen, hat also nicht immer mit dem Gerichtswesen zu tun. Kurz danach aber verwendet Versnel ohne Erläuterung plötzlich die engere Formulierung „juridical

[100] Diesbezüglich erhellend ist, daß Versnel auch den Umkehrschluß zieht: „Apparantly it is a case of theft, therefore it has the tone of an appeal to justice" (1991a, A.139).

prayers“ für die eben eingeführte neue Kategorie (S. 68) und setzt sie offenbar gleich mit „prayers for justice“. Ebenso wie das eingangs angekündigte „prayers for legal help“ wird aber auch „juridical prayers“ im folgenden Text kaum mehr verwendet. Gleich danach wird angegeben, daß als Terminus „judicial prayer or prayer for justice“ verwendet werden solle, und diese Ankündigung wird dann auch tatsächlich eingehalten. Der Terminus „judicial prayers“ (und noch mehr das einmalige „juridical prayers“) erweckt aber weit stärker als das allgemeinere „prayers for justice“ den Eindruck, daß damit ein gerichtsförmiges Verfahren gemeint ist, schon weil Versnel auch von „judicial *defixiones*“ spricht (1991a, 63), womit die Prozeßflüche (*defixiones iudiciariae*) gemeint sind.[101] In seinen späteren Arbeiten bleibt Versnel dann bei den beiden Hauptbegriffen: „another category, which I labelled prayer for justice or judicial prayer“ (2002, 49). In der Forschung, die sich der Kategorisierung Versnels anschließt, wird von allen Termini, die Versnel ins Spiel gebracht hat, am häufigsten „prayers for justice“ verwendet.

Zu Beginn des Abschnitts über die „prayers for justice“ selbst (1991a, 68) will Versnel diese Kategorie unterscheiden von „two other special categories of prayer“, nämlich „the specific ‚prayer for revenge‘ and the so-called confession inscriptions“. Während der Unterschied zu den Beichtinschriften, die dann in der Tat separat behandelt werden (S. 75ff.), klar ist, bleibt die Unterscheidung zu den Rachegebeten weniger scharf. Die ersten beiden Beispiele Versnels für die neue Kategorie der „prayers for justice“, ein Papyrus und eine Bleitafel, enthalten nämlich auch eine Bitte um Rache, so daß sie sowohl als „prayers“ als auch als „request for revenge“ bezeichnet werden (S. 70).[102] Dennoch will Versnel, so ergänzt er später, die „prayers for justice“ nicht allgemein als „vindictive prayer“ bezeichnen, weil der Rachegedanke zwar manchmal, aber nicht immer darin enthalten sei (2002, 49 A.42).[103] „Prayers for revenge“ oder „revenge prayers“ hingegen scheinen im Beitrag von 1991a nur die (Stein-)Inschriften zu sein, die fast ausnahmslos Reaktionen auf ein Tötungsdelikt sind und den in der Regel unbekannten Täter zur Buße auffordern. Einerseits sind also diese inschriftlichen „prayers for revenge“ aus Gründen, die Versnel nicht nennt, von den eng verwandten „prayers for justice“ zu unterscheiden, andererseits will er die „prayers for justice“ auch nicht ausschließlich auf Bleitäfelchen beschränkt wissen, sondern schließt Texte aus anderen Quellengattungen, hier

[101] 2009a, 275 A.1 räumt Versnel ein, daß der Terminus mit den *defixiones iudiciariae* bzw. „judicial curses“ verwechselt werden könne, woraus er aber nur die Forderung nach einer genauen Definition ableitet. Eine solche Vermischung findet sich in der Tat bei Lambert 2004, 79, im Prinzip zu Recht kritisiert von Versnel 278 A.15.

[102] Besonders eindrücklich findet sich das Rachemotiv in einem Mainzer Fluch gegen Priscilla, Scholz / Kropp 2004; zu anderen Aspekten dieses Textes vgl. Versnel 2009a, 300ff.

[103] Eher akzeptieren will Versnel 2009a, 275 A.1 den von Gordon verwendeten Begriff „vindicative“ (nicht: ‚vindictive‘), gegen den er aber einwendet, daß die abweichenden Bedeutungen des englischen Wortes ‚vindicate‘ zu Mißverständnissen führen könnten. Diese ergäben sich nicht bei dem von Graf vorgeschlagenen „Vergeltungsgebet“ – damit nimmt Versnel jedoch seinen oben referierten Einwand gegen „vindictive prayer“ zurück.

einen Papyrus und ein Ostrakon (S. 71), in diese Kategorie ein.[104] Ohne auf diese Unstimmigkeiten einzugehen, behauptet Versnel neuerdings: „I have proposed a variety of names for this group: ‚judicial prayers', ‚prayers for justice', ‚prayers for revenge'" (2009a, 275).[105]

V. Versnels Kategorisierung drängt sich nicht gerade dadurch auf, daß sie die einzig sinnvolle Einteilung der Fluchtafeln wäre. Denkbar sind durchaus auch andere Kategorisierungen, wie sie zum Teil in der Literatur mehr oder weniger implizit aufscheinen.

Eine Kategorisierung wäre nach der Intensität der Gewalt denkbar, die in den Texten beschworen wird, insbesondere welche Strafen/Schicksale für die Verfluchten vorgesehen sind.[106] Eine andere Kategorisierung könnte sich an der Anwendung bestimmter Formeln orientieren.[107] Weitere Einteilungen bieten sich abhängig vom jeweiligen Untersuchungsthema an.[108]

Auch wenn also Versnels Abgrenzung der „judicial prayers" hier nicht als oberstes Gliederungsprinzip der Fluchtafeln akzeptiert wird, so sind seine Beobachtungen und Hervorhebungen bestimmter Charakteristika auch innerhalb anderer Gliederungen ganz ohne Zweifel sehr wertvoll. Die religiösen und rechtlichen Formulierungen, auf die Versnel zu Recht hinweist, müssen beachtet werden und sind unter die Formeln zu subsumieren, die sich in allen oder den meisten Kategorien von Flüchen finden. Die von Versnel ausgemachten Elemente konstituieren meines Erachtens jedoch keine eigene Kategorie. Versnel nähert sich dieser Position verschiedentlich scheinbar an, wenn er zum Beispiel betont: „this taxonomy is a registration of two contrasting extremes *as poles of a continuum*" (2009a, 328, Hervorh. M.D., vgl. 331). Das *continuum* aber würde eine übergeordnete Kategorie darstellen und müßte daher eine eigene Bezeichnung erhalten; eine solche schlägt Versnel aber nicht vor und verwendet auch keine. Stattdessen besteht er im allgemeinen auf der

[104] 2009a, 313 A.118 wird auch eine Steininschrift zu den „prayers for justice" gezählt. Konsequenter als Versnel hat Graf 2005, 254 alle Flüche, die eine Strafe fordern, unabhängig vom Trägermaterial und unter ausdrücklicher Einschließung der Steininschriften, in einer Kategorie zusammengefaßt, die er statt „judicial prayers" (wie Versnel) oder „Rachegebete" (wie Björck) lieber „Strafflüche" nennen möchte. Die Behauptung Grafs, es gehe in all diesen Flüchen nicht um Rache, sondern um Strafe, kann allerdings angesichts vieler Rache-Formeln in den Texten nicht überzeugen.

[105] 2009a, 275. In seiner deutschsprachigen Publikation sagt Versnel, er habe die Bezeichnungen „Gebete um Gerechtigkeit" oder auch „Gebete um Genugtuung" verwendet (2009b, 24). Kaum nachvollziehbar ist die Unterscheidung in derselben Schrift in „Bitten an die Götter einerseits und Bitte um Gerechtigkeit andererseits" (ebd. 22).

[106] Zur Frage der Gewalt in den Fluchtafeln vgl. zuletzt Riess, im Druck; ich danke Herrn Riess, daß er mir gestattet, auf die noch unveröffentlichte Arbeit hinzuweisen.

[107] In diese Richtung geht Eidinow 2007, 144.

[108] Vgl. etwa noch die Gliederung bei Ogden 2002.

grundsätzlichen Trennung der beiden Kategorien.[109] Selbstverständlich hat Versnel mit seinem methodischen Hinweis recht, daß die terminologische Kategorisierung eine Aufgabe der modernen Forschung sei und nicht in den antiken Texten vorgegeben sein müsse.[110] Das bedeutet aber natürlich nicht umgekehrt, daß sich eine moderne Einteilung nicht mehr an den Strukturen der Qellentexte zu orientieren hätte, denn die Erfassung dieser Strukturen, und nicht zuletzt die Erfassung der Intentionen der Autoren, ist ja gerade ihre Aufgabe.[111] Nicht jede mögliche Einteilung ist daher auch eine sinnvolle und fruchtbare Einteilung. Es ist also ein völlig berechtigtes Argument, darauf hinzuweisen, daß die antiken Autoren selbst ganz unterschiedliche Elemente nebeneinander in ihre Fluchtafeln aufgenommen und gerade deshalb einen Gesamttext nicht als „prayer for justice" oder „*defixio*" angelegt haben. Die Fluchtäfelchen lassen sich in den allermeisten Fällen nicht in (religöse) „prayers for justice" und in (magische) *defixiones* einteilen, und damit fallen sie natürlich auch als Argument für eine grundsätzliche Trennung von Magie versus Religion weg.[112]

Als Aufforderung an übernatürliche Mächte, gegen jemanden gewaltsam vorzugehen, sind die Bitten um Gerechtigkeit durchaus auch als Flüche zu betrachten. Für diese Flüche auf kleinen Täfelchen, die ganz überwiegend aus Blei bestehen, hat sich der Begriff *defixio* eingebürgert, der auf den Tafeln selbst nicht vorkommt. Von der eigentlichen Wortbedeutung her ist damit nur der *Binde*zauber bezeichnet. Auch das Verbum *defigo* ist auf den Tafeln eher selten verwendet, und auch das griechische Vorbild καταδέω findet sich nur auf einem Teil der Fluchtafeln. *Defixio* wurde aber schon immer als ein übergreifender Terminus für alle Kategorien von Fluchtafeln verwendet, und weil er schon so fest verankert ist, wird er aus der Forschungslandschaft auch kaum mehr wegzubringen sein.[113]

Wenn Versnel die Unterschiede zwischen *defixiones* und „judicial prayers" herausgehoben hat, so soll hier abschließend noch einmal auf die Gemeinsamkeiten

[109] Vgl. zusätzlich auch Versnel 1991b, 177.

[110] 2009a, 328 mit A.150.

[111] Das wird letztlich auch von Versnel 2009a, 329 anerkannt. Aber es ist eine methodische Irreführung, wenn Versnel behauptet, er würde (und man müsse) die Untersuchung der antiken Vorstellungen *völlig unabhängig* von unseren Kriterien durchführen und erhalte dann folgendes Ergebnis: „diese Unterscheidungen ähneln insgesamt verblüffend unseren Unterscheidungen zwischen magischer Manipulation und religiösem Flehen" (2009b, 46). Berücksichtigt man, daß das analysierte Material in beiden Fällen das gleiche ist, ist das Ergebnis kaum mehr „verblüffend".

[112] Zu dieser Trennung vgl. Versnel 1991b. Die Gegenposition wird z.B. von Gager 1992, Einleitung und S. 175ff., vertreten (s.o. A.40), jetzt auch im Beitrag von B. Otto, Magical meanings: historical reflections on the ambiguous term ‚magic', zu der oben in A.14 genannten Tagung.

[113] Uneingeschränkt gilt das für das Italienische, das, soweit ich sehe, keine Übersetzung verwendet, während im Französischen (tablettes de malédiction), im Deutschen (Fluchtafeln) und Englischen (curse tablets) Übersetzungen gängig sind.

verwiesen werden, aufgrund deren man die Fluchtafeln schon immer als einheitliche Kategorie (*defixiones*) verstanden hat:

Auch die „prayers for justice" sind fast immer Täfelchen aus Blei, nur ausnahmsweise aus anderem Material.[114] Sie wurden an ähnlichen Orten wie die *defixiones* deponiert.[115] Sie wurden gefaltet, wie in Knidos (vgl. Versnel 2002, 57 mit A.69), oder gerollt, wie in Bath; in Mainz sind alle 34 Tafeln, bis auf zwei, gefaltet oder gerollt oder beides.[116] Auch „prayers for justice" sind manchmal mit einem Nagel durchbohrt.[117] Gottheiten und übernatürliche Wesen sind die Empfänger der Botschaften.[118] Die angerufenen Götter sollen mit gewaltsamen physischen und psychischen Mitteln auf die Adressaten der Tafel einwirken, um gegen sie den Willen des Verfassers durchzusetzen.

Damit entsprechen auch die „prayers for justice" der Definition Jordans, die er ganz grundsätzlich für die Fluchtafeln (*defixiones*) formuliert hat und die allgemeine Anerkennung gefunden hat. Die Definition lautet: „*Defixiones*, more commonly known as curse tablets, are inscribed pieces of lead, usually in the form of small, thin sheets, intended to influence, by supernatural means, the actions or the welfare of persons or animals against their will".[119] Nachdem auch Versnel in seinem grundlegenden Aufsatz diese Definition zustimmend zitiert (1991a, 61), erwartet man, daß er im Anschluß daran argumentiert, daß ein Teil der Fluchtafeln nicht unter diese Definition falle, und daher eine eigene Kategorie bilden müsse. Dieser Schritt wird

[114] Falls das ein Zufall der Überlieferung ist, wie oft angenommen wird, so betrifft er alle Kategorien gleichermaßen.

[115] Diese beiden Gemeinsamkeiten werden auch von Graf 1996, 144, und Ogden 1999, 38, angeführt. Die dagegen vorgebrachten Argumente Versnels (2009a, 324f.) gehen ins Leere, denn die Gemeinsamkeiten zwischen „prayers for justice" und anderen *defixiones* werden nicht dadurch beseitigt, daß sie sich noch in weiteren Zeugnissen finden, wie in den Orakelsprüchen, die Versnel anführt (dieses richtige Gegenargument verwendet Versnel übrigens an anderer Stelle selbst gegen einen Kritiker: 2009a, 280 A.20). Versnel müßte hingegen zeigen, daß gegenüber diesen Gemeinsamkeiten die von ihm geltend gemachten Unterschiede überwiegen. Im Hinblick auf Grafs Aufzählung fällt das nicht schwer, da dieser die wirklich entscheidenden Gemeinsamkeiten nicht nennt. Zutreffend ist daher Versnels *dictum*: „Pits and wells are not decisive".

[116] Versnel 2002, 58 für Bath; Blänsdorf 2009a, 146f. für Mainz. Auf diese Gemeinsamkeiten weist auch Ogden 1999, 38, hin. Kiernan 2004, 101, versteigt sich zu der These, die „Gebete um Gerechtigkeit" seien erst nachträglich, nach Beendigung ihrer öffentlichen Ausstellung, so behandelt worden.

[117] Vgl. Kiernan 2004, 101. Solche Durchbohrungen werden im allgemeinen als Verstärkung des Bindezaubers interpretiert. Der Bindezauber ist aber auch in den Augen Versnels ein typisches Element der *defixiones* und paßt daher nicht zu den „prayers for justice". Auf dieses Problem, das seine Kategorisierung aufwirft, ist Versnel bislang nicht eingegangen.

[118] Vgl. auch Versnel 2009a, 331: „If the ‚binding' *defixio* and the prayer for justice have anything in common besides their material base, it is that they are both private, epistolary expressions of a direct, unmediated appeal to supernatural powers."

[119] Jordan 1985, 151.

aber nicht getan. Vielmehr setzt Versnel „seine“ Kategorie dadurch von der zitierten Definition ab, daß er unvermittelt völlig andere Kriterien einführt, auf die er seine Unterscheidung gründet. Hätte er gefragt, ob die Kategorie der „pleas for justice“ der Definition Jordans entspräche, dann hätte er nämlich mit einem klaren „yes“ antworten müssen, und sein Beitrag hätte so nicht geschrieben werden können! Gestellt und (korrekt) bejahend beantwortet wurde die Frage erst von Ogden, der die „prayers for justice“ damit, wie oben referiert, enger an die übrigen *defixiones* heranrücken will.[120] Gegen dieses Argument Ogdens will Versnel nunmehr geltend machen, „that the central issue is not so much the principal's conscious intentions, as the motives behind these intentions, the types of strategies employed, and the reasons for the choice“ (2009a, 326). Damit ersetzt Versnel jedoch die eindeutige und sinnvolle Bestimmung „intended to“ durch ein sekundäres Kriterium bzw. zwei solcher Kriterien, die klar auf einer anderen Ebene, nämlich „*behind* these intentions“ liegen, also die Intentionen näher kennzeichnen sollen. Dabei ist ein Teil des ersten Kriteriums, „the types of strategies employed“, im übrigen schon in der Definition Jordans angegeben, nämlich die Anrufung übernatürlicher Kräfte („by supernatural means“). Woran Versnel jedoch zweifellos denkt, sind seine für die „prayers for justice“ reservierten Bestimmungen der Unterwürfigkeit und der Anrufung überirdischer Gottheiten. Das gilt umso mehr für das zweite Kriterium, denn die „reasons for the choice“ werden, zumindest nach der Behauptung Versnels, ja überhaupt nur in den „prayers for justice“ genannt, ja sind sogar das entscheidende Kriterium für deren Abtrennung als eigene Kategorie.

VI. Insgesamt gilt: Je mehr Fluchtafeln gefunden werden, desto größer wird die Vielfalt an Formulierungen und an Formeln. Offenbar gab es eine Art von Grundkanon an magischen bzw. religiösen Vorstellungen, die sich über lange Perioden und über weit entfernte Gebiete erstaunlich ähnlich sind. Hier ließe sich intensiver über Probleme des Transfers und der Kontinuität nachdenken, was aber in einem anderen Zusammenhang geschehen muß.

Aus solchen Elementen oder Bausteinen werden dann die einzelnen Tafeln zusammengesetzt, sofern sie überhaupt mehr als ein einziges Element enthalten. Ja, man muß sogar sagen, sofern sie überhaupt ein einziges aufweisen, denn bekanntlich sind auch völlig textfreie und auch Tafeln mit unleserlichen oder willkürlich hingeschriebenen Buchstaben verwendet worden, deren Zweck der Autor entweder in einem mündlichen Ritual der Gottheit mitgeteilt hat, oder von dem er annahm, er sei der Gottheit aus seinen Gedanken heraus bekannt. Ähnliches gilt auch noch für

[120] Ogden 1999, 38. Seine Einschränkung, „prayers for justice conform to the *latter* part of Jordan's definition ...“ (Hervorh. M.D., zitiert ist dann Jordans Text ab „intended“) ist mißverständlich, da die Entsprechung selbstverständlich auch für den ersten Teil der Definition gilt. Ausnahmen in Form von Fluch„tafeln“, die nicht auf Blei geschrieben sind, finden sich sowohl unter den *defixiones* (einige Beispiele bei Gager 1992, 3) als auch unter den „prayers for justice“ (Versnel 1991a, 71f.).

Tafeln, die lediglich den Namen des oder der Verfluchten enthalten, die also aus diesem einen Element bestehen. Dazu können dann weitere Elemente treten, die wir mit Kagarow (1929, 47) Grundelemente nennen könnten, wie die Bindeformel, die Verfluchungsformel, die Nennung der Götter (bei Kagarow „1. Der Name des Gegners, 2. der Name der Gottheit oder des Dämons, 3. der Name des Fluchenden, 4. die Bitte oder der Wunsch.“) In ausführlicheren Texten kommen dann verfeinernde Elemente dazu, die wir als Text-Ausschmückungen verstehen könnten, wie etwa der Grund für die Verfluchung, die Bestrafung im Detail, die Aufzählung der betroffenen Körperteile, die Aufgaben der Götter und Dämonen.[121]

Einige diese Feinelemente sind offenbar abhängig von dem spezifischen Ort und den dortigen Umständen; das bedeutet natürlich in erster die Linie, daß sie sich an die Gottheit wenden, die an dem jeweiligen Ort verehrt wird, wie Sulis Minerva in Bath oder Attis und Magna Mater in Mainz. Mit dem Kultgeschehen hängen auch die Textbezüge auf die *galli* und weitere Kultpersonen in Mainz zusammen,[122] eventuell auch die rituelle Verbrennung der Täfelchen, die sowohl in Texten erwähnt wird als auch am Zustand der Bleitäfelchen ablesbar ist. Aber auch Formulierungen, die nicht direkt mit dem Kult zusammenhängen, sind typisch für bestimmte Gruppen von Fluchtafeln, wie z.B. in den Tafeln aus Knidos die Verwahrung des Autors, mit der verfluchten Person gleichzeitig unter einem Dach sein zu können, ohne von seinem eigenen Fluch getroffen zu werden.[123] Neben den ortsspezifischen sind individuelle, persönliche Formulierungen zu erkennen, die insbesondere bei den Verwünschungen und Strafandrohungen eine beeindruckend grausame Phantasie enthüllen: dem Opfer wird der Tod vor aller Augen in der Öffentlichkeit gewünscht, oder er selbst soll alle seine Körperteile absterben sehen, er soll bei lebendigem Leib von Würmern zerfressen werden und andere Appetitlichkeiten mehr.[124] Auch sprachliche Besonderheiten sind individuellen Charakteren und übrigens auch individuellen Anfertigungen[125] der Fluchtafeln zuzuschreiben, wie z.B. in klassischem Latein

[121] Wünschenswert wäre die Sammlung und Ordnung aller in den Fluchtafeln enthaltenen Elemente, damit man sie den genannten Ebenen zuordnen kann und entsprechende Schlüsse auf Tradition, Überlieferung, Spezifika usw. ziehen kann. Das Magdeburger Projekt D.I.D.O. (jetzt: *TheDeMa*), das beim Symposion kurz vorgestellt werden konnte, hat sich diese Aufgabe gesetzt und baut eine entsprechende Datenbank auf.
Kagarow hat aufgrund des damaligen Materials und unter Verwendung einiger solcher Elemente eine Typologie der Fluchtafeln entworfen, die er „Grundtypen der Struktur der Fluchformeln“ nennt (S. 28). Sie enthält einerseits nicht alle Elemente und ist andererseits zu unübersichtlich konstruiert. Auf dieser Basis hat Kagarow (S. 44ff.) sogar eine historische Entwicklung der Formeln zu rekonstruieren versucht.

[122] Blänsdorf (Zaragoza) Nr. 17 (= Blänsdorf 2005, S. 678-80) und zwei weitere Texte, vgl. ebenda S. 11.

[123] Zu den einschlägigen Stellen vgl. Thür 2002, A.35.

[124] Blänsdorf 2009a, Nr. 2 = DTM 5; Nr. 16 = DTM 2; Nr. 17 = DTM 1; vgl. Blänsdorf 2007.

[125] Dafür plädiert aufgrund der Mainzer Tafeln nachdrücklich Blänsdorf 2009a, 146f.

formulierte rhetorische Elemente[126], oder die Vorliebe für bestimmte Wörter und Formen, darunter solchen, die der modernen Philologie noch unbekannt waren.[127]

Die Elemente, die als typisch für die „prayers for justice" gelten, gehören teils zu den überregionalen und überzeitlichen Grundelementen, teils zu den orts- und personenspezifischen Feinelementen. Auch in dieser Hinsicht stehen die „prayers for justice" also parallel zu den „reinen" *defixiones*, um in Versnels Kategorien zu sprechen

Es verwundert nicht, daß solche Elemente auch außerhalb der Fluchtäfelchen zu finden sind, wie z.B. das Rachegebet in den eng verwandten Racheinschriften, in denen für den Tod eines oft jungen Menschen, für den Giftmord oder Magie verantwortlich gemacht wird, die Rache der Götter erbeten wird,[128] oder in Beichtinschriften bzw. Sühneinschriften die „aretalogie" der Götter. Die Aufzählung der Übel, die den Verfluchten befallen sollen, gibt es auch in Eid-Formularen.[129] Mehrere Formeln kommen auch in Papyri, vor, wie schon der berühmte Artemisia-Fluch zeigt, den Versnel als „prayer for justice" in Anspruch nimmt.[130] Versnels Kategorie der „judicial prayers" ist also nicht nur in den meisten Fällen mit den *defixiones* vermischt, sondern geht auch über die Kategorie der Fluchtafeln hinaus, so daß auch von daher ihre Eigenständigkeit als *genus* problematisch erscheint.

VII. Es hat sich gezeigt, daß die vor allem von Versnel definierte und propagierte Kategorie, die als „prayers for justice" oder ähnlich bezeichnet wird, von den „übrigen" *defixiones* nicht eindeutig und systematisch sinnvoll abgegrenzt werden kann. Da sie quer zu den traditionellen Kategorien liegt und nicht auf eine davon beschränkt bleibt, kann die Bezeichnung auch nicht sinnvoll statt ‚*defixiones* gegen Diebe und Verleumder' verwendet werden. Diese Formulierung umfaßt ihrerseits weder alle zugrundeliegenden Vergehen noch entspricht sie im Duktus den Bezeichnungen der übrigen Kategorien. Statt dieser und weiterer umständlicher Umschreibungen wird hiermit die griffige lateinische Wendung *defixiones criminales* vorgeschlagen, die man mit „criminal curses" beziehungsweise „Verbrechensflüche" übersetzen könnte.

[126] Blänsdorf 2009a Nr. 18 = DTM 6, vgl. ebd. S. 162.
[127] σκιάσδω bei Faraone / Rife 2007, Text Z.2 für σκιάζω: verdunkeln.
[128] Die Inschriften sind zusammengestellt bei Graf 2007. Graf rechnet diese Inschriften zu Versnels Kategorie „judicial prayers", vgl. hingegen die unklare Einordnung Versnels selbst, o. bei A.102. Spezifisch für die Racheinschriften ist der Anlaß, nämlich ein Mordfall, sowie häufig die Ikonographie der ausgestreckten Hände.
[129] Vgl. Thür 2002, 6.
[130] PGM XL, dazu Versnel 1991a, 68f.: „Here we have a real prayer for justice ...".

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JULIE VÉLISSAROPOULOS-KARAKOSTAS (ATHÈNES)

«GEBETE UM GERECHTIGKEIT» RÉPONSE A MARTIN DREHER

Avant de vous soumettre quelques réflexions occasionnées par la communication de mon savant ami Martin Dreher au sujet de la typologie des défixions proposée par Hendrik S. Versnel, je voudrais vous avouer mon incompétence en matière d'imprécations et de sollicitations aux dieux, qu'il s'agisse de *defixiones* proprement dites ou de «judicial prayers».

Dès 1985, dans une conférence présentée à l'Institut de Droit Romain de l'Université de Paris II, H.S. Versnel avait formulé une définition des *defixiones* : «Une *defixio* est un texte, le plus souvent écrit sur du plomb, par lequel on tente de nuire à un adversaire sans justification aucune et dans lequel l'auteur attend des démons et des dieux des enfers qu'ils fassent le «sale travail».[1] Écrites le plus souvent sur des tablettes de plomb, les *defixiones* proprement dites ont un but bien précis : «lier», «ligaturer» (*katadéô*) l'adversaire, par l'intermédiaire des divinités chtoniennes, d'où leur dénomination de *katadesmoi*. Le but auquel vise l'acte désigné par le verbe *katadéô* est très varié : rendre l'adversaire malade, lui infliger toute sorte de mal, le faire périr lui-même et sa famille, etc.

Dans les défixions au sens strict, estime H.S. Versnel, le destinataire des imprécations n'est pas accusé d'avoir commis un tort à l'encontre de l'auteur; ce dernier lui souhaite du mal, seulement parce qu'il est son adversaire. Ces tablettes, qualifiées de «Schadenzauber» ou tablettes magiques, sont d'après lui, les seules qui méritent la dénomination de *defixio*.

D'autres textes, en revanche, compris dans le corpus d'A. Audollent (*Defixionum Tabellae*, Paris, 1904) ne réunissent pas, d'après lui, les éléments nécessaires pour être considérés comme telles. Certains documents forment une catégorie intermédiaire qu'il place entre les tablettes magiques et celles pour lesquelles l'auteur sollicite l'intervention divine pour obtenir justice («judicial prayers»). Il s'agit d'exemples dans lesquels l'auteur de la *defictio* accuse une ou plusieurs personnes de lui avoir causé du mal, τὴν ἐμὲ ἀδικοῦσαν ou τὸν ἐμὲ ἀτιμοῦντα, et cherche à se venger par l'intermédiaire des dieux. Enfin, la troisième catégorie, les «prières pour obtenir justice», que Versnel et autres appellent aussi défixions judiciaires,[2] constituent une alternative «to taking the law into one's hands».[3]

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[1] «Les imprécations et le droit», *RHD* 65 (1987), p. 7.

[2] A titre d'exemple, P. Moraux, *Une défixion judiciaire au Musée d'Istanbul*, Bruxelles, 1960.

[3] «Beyond Cursing : The appeal to Justice in Judicial Prayers», in C.A. Faraone – D. Obbink (éds.), *Magika Hiera. Ancient Greek Magic and Religion*, Oxford, 1991, p. 79.

Les éléments qui différencient les «judicial prayers» des imprécations au sens strict sont d'après Versnel :

1. La mention (en règle générale) du nom de l'auteur de la tablette.
2. La justification de l'action au moyen de la mention de l'injustice commise à l'égard de l'auteur de la tablette.
3. Les «judicial prayers» contiennent une demande d'impunité de l'action ou de dispense de l'auteur des éventuels contre effets (notons sur ce point que cela n'apparaît que rarement).
4. A côté des divinités chtoniennes sont aussi invoqués d'autres dieux.
5. Les dieux sont invoqués avec respect, *kyrios, despoina*, ou encore *philos*.
6. Elles contiennent des expressions de supplication, comme ἱκετεύω, βοήθει μοι, βοήθησον αὐτῷ, etc.
7. Enfin, point crucial, les auteurs des «judicial prayers» demandent aux dieux de punir le coupable (*kolazô*) et de faire en sorte que justice leur soit accordée.

M. Dreher note, avec raison, que ces éléments ne sont pas propres aux «judicial prayers» mais se retrouvent parfois aussi dans les *defixiones* au sens strict. Ainsi, p. ex., même lorsque l'auteur de la tablette ne mentionne pas explicitement l'*adikia* qu'il a subie de la part de son adversaire, cela ne signifie pas que son comportement n'a pas été occasionné par un acte nuisible commis par ce dernier. Quant à l'autre argument de Versnel, à savoir que les prières judiciaires sont rédigées sur un «ton» différent de celui des *defixiones*, M. Dreher souligne, ici aussi avec raison, la fragilité de ce critère. En outre, dit-il, l'invocation des divinités chtoniennes ne se rencontre pas uniquement dans les *defixiones* au sens strict, mais est aussi attestée dans des «judicial prayers»,[4] et la nature de certaines divinités est ambivalente. De plus, souligne M. Dreher, la thèse de Versnel selon laquelle l'efficacité des *defixiones* se rattache à l'acte de *katadéô* du *defigens*, alors que celle des «judicial prayers» est liée à l'intervention divine, ne peut pas être retenue. Premièrement, parce que dans les deux espèces de documents, l'auteur de l'imprécation emploie la première personne, «je lie», «je consacre», «je dépose» (*parakatatithemai*). Deuxièmement, parce que, bien que la *defixio* soit un acte qui émane exclusivement de son auteur, ce sont les divinités chtoniennes qui infligeront la punition souhaitée, et c'est encore un démon ou l'âme agitée d'un mort qui transmettront ses vœux au dieu.

Plutôt, donc, que catégorie spécifique, estime M. Dreher, les documents réunis par Versnel sous la dénomination de «judicial prayers» feraient partie du groupe plus vaste qui rassemble les différentes espèces de prières («Gebetsformeln»).

Enfin, souligne M. Dreher, la catégorie des «judicial prayers» et leur assimilation à un procès conduit par les dieux, imaginé par Versnel, sont difficilement soutenables dans le cadre d'un Symposion d'histoire du droit. Cette assimilation paraît de prime abord plausible dans certains cas, comme le vol où l'auteur de la tablette, au lieu d'aller à un tribunal profane, s'adresse à un tribunal divin et demande la punition du voleur. Mais si on regarde de plus près, les parallélismes s'effondrent. Les éléments d'un combat judiciaire y sont totalement absents. Les «judicial prayers» ne conduisent pas au jugement du défendeur, car,

[4] Texte de Kenchreai, IIe-IIIe s., C.A. Faraone – J.L. Rife, «A Greek Curse Against a Thief from Koutsongila Cemetry at Roman Kenchreai», *ZPE* 160 (2007), p. 141-157.

pour l'auteur de la tablette la responsabilité de son adversaire est donnée. Il n'intente pas une action, et les termes relatifs à une procédure judiciaire y font défaut. Dans les prières, l'*altera pars* n'est point entendue, le présumé auteur de l'injustice n'a pas la possibilité de se défendre. L'assimilation, par conséquent, des «judicial prayers» à un procès devant un tribunal divin ne peut pas être retenue, puisque ces actes ne renvoient pas à une procédure comparable à une *dikè* qui commence par la *klèsis,* la citation du défendeur, pour se terminer par la *praxis*, l'exécution de la sentence prononcée par les juges.

Telles sont, en résumé, les objections de Martin Dreher vis-à-vis de la thèse de H.S. Versnel concernant les actes par lesquels les humains font appel aux puissances surnaturelles pour faire du mal, pour se venger d'un mal qu'ils ont subi ou pour obtenir justice pour un tort dont ils ont été les victimes. La typologie des *defixiones* et des documents similaires suivie par Versnel est sans doute intéressante et subtile. Sur la foi du vocabulaire, Versnel a mis l'accent sur l'aspect «juridique» ou «para-juridique» de certaines tablettes, par lesquelles les personnes qui les ont confectionnées sollicitent l'intervention divine, non pas ou pas seulement pour se venger de l'adversaire, mais pour que les dieux réparent l'injustice qu'ils ont subie. Ces actes sont, certes, des prières, d'humbles supplications sans trace apparente de magie noire, et leur spécificité consiste dans le fait que leurs auteurs demandent à la divinité de faire en sorte que leur soit réparé un dommage qui leur a été causé. En dépit, cependant, des termes juridiques utilisés, pas plus que les prières des croyants d'aujourd'hui, ces supplications ne constituent des «judicial prayers», «des prières judiciaires», car elles se situent en dehors de la sphère du droit. Si elles sont formulées de manière différente par rapport aux *defixiones* au sens strict, cela ne leur accorde pas une valeur juridique quelconque, et, surtout, ne les érige pas en documents procéduraux conduisant à l'ouverture d'un procès devant un tribunal divin. Plutôt qu'une référence à un tel tribunal, l'emploi de termes juridiques comme *dikè, krinai to dikaion* ou autres serait dû à des facteurs qui tiennent soit à des usages locaux soit à des motifs purement subjectifs, tels le caractère ou le niveau culturel de l'auteur de la tablette. «Prayers for justice», peut-être, puisque le suppliant sollicite l'intervention divine pour la réparation de l'*adikia*, de l'injustice ou du dommage qu'il a subi. Mais il s'agit d'une justice purement subjective, adaptée aux désirs profonds du suppliant, qui ne résulte pas de l'application d'une règle du droit et, surtout, n'est pas administrée par un tribunal.

En tant que juriste, je ne peux m'empêcher de faire quelques observations relativement à l'intérêt des «prayers for justice» pour l'historien du droit, intérêt que seul J. Mélèze-Modrzejewski avait relevé dans sa communication au Symposion de 1993 tenu aussi en Autriche. Ces remarques porteront sur trois points : 1. la forme des prières de justice, 2. les sanctions sollicitées par leurs auteurs, et, enfin, 3 l'emploi du verbe *katadéô*.

1. Parmi les nombreuses prières dans lesquelles leurs auteurs emploient quelques termes (rudimentaires) de droit, j'aimerais soumettre à votre réflexion deux textes bien connus et publiés depuis longtemps.

Le premier est la fameuse imprécation d'Artémisia, datant de la fin du règne d'Alexandre le Grand ou peu après sa mort, objet de la communication de Joseph Mélèze-Modrzejewski, au Symposion de 1993.[5]

UPZ I, 1, lignes 1-18 :

1 Ὦ δέσποτ' Ὀσερᾶπι κὰ θεοὶ οἱ μετὰ τοῦ Ὀσερ[άπιο]ς καθ[ήμενοι] [. . . . .]αι
ὑμῖν Ἀρτεμισίη
ἤδ' Ἀμάσιος θυγάτηρ κατὰ τὸ πατρὸς τῆς θυγατρὸς, [ὃς αὐτὴν τ]ῶ[ν] κ̣τ̣[ερ]έων
ἀπεστέρησε
καὶ τῆς θήκης. Εἰ μὲν οὖν δίκαια μὲ ἐποίησε ἐμὲ καὶ τὰ τέκνα ταὐτοσαυτῶ,
<<δίκαια>> [[ὡσ]]
ὥσπερ μὲν οὖν ἄδικα ἐμὲ καὶ τὰ τέκνα τὐτοσαυτῶ ἐποίησε : δόη δέ οἱ Ὀσερᾶπις
καὶ οἱ θεοὶ
5 μὴ τυχεῖν ἐκ παίδων θήκης : [μη]δὲ αὐτὸν γονέας τοὺ<ς> αὐτοσαυτοῦ θάψαι:
Τῆς δὲ
καταβοιῆς ἐνθῦτα κειμένης, κακῶς << : >> ἀπολλύοιτο κὲγ γᾶι κὲν θαλάσσηι
καὶ
καὶ τὰ αὐτοῦ ὑπὸ τοῦ Ὀσερά[π]ιος καὶ τῶν θεῶν τ<<ο>>ῶν ἐμ Ποσερᾶπι
καθημένων
μηδὲ ἰλάονος τυχάνοι Ὁ[σ]εράπιος μηδὲ τῶν θε[ῶ]ν [τῶν] μετὰ τοῦ Ὀσεράπιος
κα[θ]ημένων : Κατέθηκεν Ἀρτεμισίη τὴν ἱκετηρίην τα[ύ]την : ἱκετύουσα τὸν
10 Ὀσ[ε]ρᾶπιν τὴν δίκην δικά[σαι καὶ τοὺ]ς θεοὺς τοὺς μετὰ Ὀσεράπιος
καθημένους.
Τῆ[ς] δ' ἱκετηρίας ἐνθαῦ[τα κει]μένης : μησαμῶ[ς] ἰλαόν[ω]ν [τῶ]ν θεῶν
τυχχάνοι
ὁ πατὴρ τῆς παιδίσκης : <Ἅ>ς δ' ἀν[έλοι] τὰ γράμματα ταῦτα [κα]ὶ ἀδικοῖ
Ἀρτεμισίην,
ὁ θεὸς αὐτῶι τὴ<ν> δίκην ἐπιθ[είη μ]ηδενὶ . . θεραπυο[. . . . .]βοντι : ὅτι μὴ
τοὺς Ἀρτημισίη κελύει οτ[. . . .]τοδε[-] ὥσπερ
15 κοὐκ ἐπαρκέσαι -
με περιεῖδε : ἐπιδε[ῆ -
κἀμοὶ τῆι ζώσηι -
περιεῖδε ἐπιδε[ῆ -

Traduction[6]

«Ô Seigneur Osérapis et vous les dieux qui siégez avec Osérapis ! Moi, Artémisia, fille d'Amasis, j'élève devant vous cette plainte contre le père de ma fille qui l'a privée de présents funéraires et de sépulture. Comme il n'a pas fait justice envers moi et envers ses enfants et qu'il a commis un acte injuste envers moi et ses enfants, puissent Osérapis et les dieux (qui l'assistent) faire qu'il ne reçoive pas (lui non plus) de sépulture de la part de ses enfants et qu'il ne soit pas en mesure d'enterrer ses enfants. Aussi longtemps que cette imprécation est ici, qu'il disparaisse dans le malheur de la terre et de la mer, lui même et les siens, par la volonté d'Osérapis et des dieux qui siègent au Posérapi, et qu'il ne connaisse pas la grâce d'Osérapis et des dieux qui siègent avec Osérapis. Artémisia a déposé cette imprécation, en

[5] Pour les différentes éditions du texte, voir J. Mélèze-Modrzejewski, «Στέρησις θήκης», p. 202, n. 1; cf. H.S. Versnel, «Judicial Prayers», p. 96, n. 35.

[6] Traduction J. Mélèze-Modrzejewski, *Symposion 1991*, p. 201.

suppliant Osérapis de prononcer le jugement, lui et les dieux qui siègent avec Osérapis. Aussi longtemps que cette imprécation est déposée ici, que le père de la fillette ne connaisse nullement la grâce des dieux. Quiconque enlèverait cette écriture et léserait Artémisia, que la divinité lui inflige la punition . . . . . ».

La sollicitation d'Artémisia est dirigée contre le père indigne de ses enfants. A la suite d'U. Wilcken, de nombreux savants estimaient que l'expression στέρησις θήκης se rattachait à une loi pharaonique, rapportée par Hérodote (*Histoires* II, 136), qui permettait aux Égyptiens de contracter des emprunts en donnant comme gage la momie de leur père.[7] En cas de non remboursement à l'échéance, le créancier pouvait interdire l'ensevelissement du défunt et, par-tant, la sépulture du débiteur après sa mort. Comme l'a cependant démontré J. Modrzejewski, en fait, Artémisia accuse son ex-compagnon, en employant un langage juridique, d'avoir privé leur fille «de présents funéraires et de sépulture», et non pas d'avoir donné la momie et les présents funéraires de sa fille comme gage pour garantir une dette.

Le deuxième texte est la tablette de plomb trouvée en 1899 près d'Arkésinè d'Amorgos, aujourd'hui perdue, dont la date ne peut pas être établie avec certitude.

Th. Homolle, «Inscriptions d'Amorgos. Lames de plomb portant des imprécations», *BCH* 25 (1901), p. 412-430 ; IG XII 7, p. 1 ; D.R. Jordan, «A Survey of Greek Defixiones not Included in the Special Corpora», *GRBS* 26 (1985), no 60 :

IG XII 7 p. 1, Face A, lignes 1-14 :

1 Κυρία Δημήτηρ, βασίλισσα, ἱκέτης σου, προσπίπτω δὲ ὁ δοῦλος σου· τοὺ(ς)
ἐμοὺς
δούλους ὑπεδέξατο, του(ς) κακοδιδασκάλησε, ἐγνωμοδότησε,[8] συνεβούλευσε,
ὑπενόθευσε, κατέχαρε, ἀνεπτέρωσε, ἀγόρασαι, ἐγνωμοδότησε φυγῖν
τις Ἐπαφρόδ[ει]τ[ος], συνεπέθελγε[9] τὸ παιδίσκην αὐτὸς ἵνα, ἐμοῦ μὴ θέ-
5 λοντος, ἔχειν αὐτὸν γυναῖκα αὐτήν· δι' ἐκήνην τὴν αἰτίαν δὲ αὐτὴν πεφευ-
γέναι σὺν καὶ τοῖς ἄλλοις. Κυρία Δημήτηρ, ἐγὼ ὡ ταῦτα παθὼν ἔρημος
ἐὼν ἐπί σε καταφεύγω σοῦ εὐγιλάτου τυχεῖν καὶ ποῖσέ με τοῦ δικαίου τυχεῖν·
ποιήσαις τὸν τοιαῦτά με διαθ[έ]μενον μὴ στάσιν μὴ βάσιν μηδ(αμ)οῦ
ἐμπλησθῆναι

[7] U. Wilcken, UPZ I, p. 101 : «Andererseits werden in dieser griechischen Kolonie von Memphis auch die Verfluchungen der Heimat nicht unbekannt gewesen sein, und so erklärt sich, dass wir inhaltlich ägyptische und griechische Formeln in dem Text unterscheiden konnten».

[8] Th. Homolle, p. 417 : «mots nouveaux γνωμοδοτέω qui n'est pas donné dans les dictionnaires grecs, qui contiennent seulement γνωμολογέω. Les deux mots ont même aspect à l'œil et la correction serait aisée ; je ne crois pas qu'elle soit utile, tant la formation de γνωμοδοτέω est régulière, le sens clair et approprié. Le γνωμοδότης est une sorte de donneur de consultations ou de jurisconsulte, qui indique la conduite à tenir, les règles à suivre, les moyens à employer».

[9] Th. Homolle, loc. cit. : «Συνεπιθέλγω ou συναποθέλγω, avec sa double préposition, n'est pas connu, mais il est on ne peut mieux formé et exprime à souhait toutes les circonstances : charme pour attirer vers (epi) ou détourner de (apo), et cela en même temps que d'autres personnes (syn)».

μὴ σώματος μήτε <ο> νοῦ, μὴ δούλων μὴ παιδισκῶν μὴ δουλεύθοιτο, μὴ ὑπὸ μυ[κρ]-
ῶν μὴ ὑπὸ μεγάλου, μὴ ἐπιβαλόμενός τι ἐκτελέ<σε>σαιτο, καταδε<ε>σμὸ(ς) αὐτοῦ
τὴν οἰκίαν λάβοιτο ἔχ[ο]ι, μὴ παιδὶν κλαύσαιτο, μὴ τράπεζαν ἱλαρὰν θῦτο, μὴ κύων
εἰλακτήσαιτο, μὴ ἀλέκτωρ κοκκύσαιτο, σπείρας μὴ θερίσαιτο, καταντίσας καρποὺς
μὴ ἐπι[στα]ιτο ΕΤΕΡΑΝ, μὴ γῆ μὴ θάλασσα καρπὸν ἐνένκαιτο, μὴ χαρὰν μ[ακ]αρίαν
ἔχ[ο]ιτο, αὐτός τε κα[κ]ῶς ἀπόλοιτο, καὶ τὰ παρ' αὐτοῦ πάντα.

Face B

Κυρία Δημήτηρ, λιτανεύω σε παθὼν ἄδικα, ἐπάκουσον, θεά, καὶ κρῖναι
τὸ δίκαιον, ἵνα τοὺς τοιαῦτα ἐνθυμουμένους καὶ καταχαίροντε(ς) καὶ λύπας
ἐπιθε(ῖ)ναι κἀμοὶ καὶ τῇ ἐμῇ γυναικὶ Ἐπικτήσι, καὶ μισοῦσιν ἡμᾶς ποιῆσαι αὐ-
τοῖς τὰ δινότατα καὶ χαλεπώτερα δινά. Βασίλισσα ἐπάκουσον ἡμῖν
παθοῦσι, κολάσαι τοὺς ἡμᾶς τοιούτους ἡδέως βλέποντες.

Traduction[10]

Face A. *«Dame Déméter, reine, voici ton suppliant, je tombe à tes pieds, comme ton serviteur. Mes esclaves, on les a attirés pour les induire à mal, on les a entrepris, endoctrinés, séduits, on s'est réjoui de mon mal, on les a excités à courir l'agora, on leur a prêché la fuite : c'est un certain Epaphroditos. Il a, lui encore, jeté un charme sur ma servante, si bien qu'il en a fait sa femme, contre ma volonté, et que pour cette raison elle s'est enfuie avec les autres. Dame Déméter, voilà ce que j'ai souffert ; dans ma solitude, je me refugie vers toi ; accorde moi un accueil favorable, fais que j'obtienne justice, ne permets pas que celui qui m'a ainsi traité trouve nulle part satisfaction dans le repos ni le mouvement, ni du corps ni de l'esprit ; qu'il ne soit pas servi par esclaves, ni par servantes, ni par petits ni par grand ; s'il entreprend quelque chose, qu'il ne l'accomplisse pas ; que l'enchantement saisisse sa maison, la possède ; que pour lui l'enfant n'ait pas de cri ; qu'il ne dresse point sa table dans la joie, que le chien n'aboie pas, que le coq ne chante pas ; s'il sème, qu'il ne moissonne point ; s'il fait venir à bien des fruits, qu'il ne sache point semer ; que pour lui ni la terre ni la mer ne portent des fruits ; qu'il ne connaisse pas la joie heureuse, ni lui, et ce jusqu'à ce qu'il périsse, ni rien qui soit à lui».*

Face B. *«Dame Déméter, je te supplie, j'ai souffert l'injustice ; exauce moi, déesse, prononce la juste sentence contre ceux qui nourrissent ces pensées et qui prennent plaisir à nous imposer des peines, à la femme Epiktésis et à moi ; à ceux qui nous haïssent fais subir les plus terribles, les plus durs des maux. Reine, exauce-nous, nous qui avons souffert, et punis ceux qui se plaisent à nous voir en cet état».*

L'affaire est la suivante. L'auteur de la tablette, propriétaire d'une petite fortune, a été abandonné par tous ses esclaves, y compris une jeune servante. Il attribue cette fuite aux conseils perfides, aux manœuvres frauduleuses, au filtre d'un certain Epaphroditos et sollicite contre lui et ses complices l'assistance de Déméter. Aux

[10] Traduction Th. Homolle, loc. cit., p. 419.

ressources de la magie, qu'on a employées contre lui, il oppose les puissances de la ligature.

Aussi bien Artémisia que le maître des esclaves fugitifs d'Amorgos cherchent à obtenir justice (τοῦ δικαίου τυχεῖν) au moyen d'une supplication aux dieux (ἱκετηρία dans le cas d'Artémisia, καταφεύγω ἱκέτης λιτανεύω dans l'inscription d'Amorgos), composée de deux parties. Dans le papyrus d'Artémisia, la première partie, rédigée à la première personne, contient la mention du délit (στέρησις θήκης) et la punition, sur laquelle nous reviendrons, que la victime invite les dieux à infliger au père indigne de ses enfants. La seconde partie de la requête d'Artémisia, rédigée à la troisième personne, reprend les imprécations d'ordre général déjà prononcées dans la première partie contre l'auteur de l'injustice et, en plus, la punition des tiers qui enlèveraient l'acte écrit du lieu où Artémisia l'avait confié.

Le document d'Amorgos se compose aussi de deux parties. Dans la première, l'auteur anonyme de l'imprécation décrit le dommage qu'il a subi: fuite massive de ses esclaves, à l'incitation de son adversaire. De même qu'Artémisia, le personnage anonyme d'Amorgos se réfugie auprès des dieux, il se prosterne même à terre comme un esclave (προσπίπτω δοῦλος), en leur demandant d'écouter, d'exaucer (ἄκουσον), de se montrer favorable (εὐίλατος) ; rappelons la phrase μησαμῶ[ς] ἱλαόν[ω]ν [τῶ]ν θεῶν τυχχάνοι (ligne 11) de la requête d'Artémisia, de faire droit à la victime de l'iniquité (τοῦ δικαίου τυχεῖν – τὸ δίκαιον κρῖναι) et de punir (κολάσαι) les coupables.[11]

Comme il a été signalé en 1926 par J. Zingerle,[12] la formulation de certaines prières rappelle, sur plusieurs points, la structure des *enteuxeis* ptolémaïques, les requêtes adressées aux rois lagides par les sujets du royaume. Parmi les analogies entre les prières et les *enteuxeis* il faut signaler le fait que ni l'une ni l'autre ne parviendront pratiquement jamais à leurs destinataires : les premières pour des raisons évidentes, les secondes parce que leur itinéraire ne va pas jusqu'à Alexandrie, mais s'arrête au stratège du nome, chargé de l'examen de l'affaire. Peut-on penser que certaines des prières, bien que destinées au dieu, suivaient en réalité un parcours beaucoup plus court, qui se terminait aux administrateurs du culte de la divinité à la quelle elles étaient adressées? Une telle hypothèse n'est pas à exclure surtout dans les exemples où la satisfaction du requérant implique un bénéfice pour le temple.

C. Dunant, «Sus aux voleurs! Une tablette en bronze à inscription grecque du Musée de Genève», *Mus. Helv*. 35 (1978), p. 241-244, lignes 1-9 :

1 Ἀνατίθημι μητρὶ σε θεῶν
χρυσᾶ ἀπ(ώ)λεσα πάντα ὥ-
στε ἀναζητῆσ(α)ι αὐτ-
ὴν καὶ ἐς μέσον ἐνε-
5 κκεῖν πάντα καὶ τοὺς
ἔχοντες κολάσεσθα-

[11] Th. Homolle, loc. cit., p. 421.

[12] «Heiliges Recht», *JÖAI* 23 (1926), p. 67-72, suivi par G. Björck, «Der Fluch des Christen Sabinus», *Papyrus Upsaliensis* 8, Uppsala, 1938, p. 60 suiv., et H.S. Versnel, «Judicial prayers», p. 96-97, n. 41.

ι ἀξίως τῆς αὐτῆς δυνά-
με(ω)ς καὶ μήτε αὐτ[ὴν]
καταγέλαστον ἔσεσθ[αι].

Traduction
«Je consacre à toi mère des dieux toutes les pièces en or que j'ai perdues, afin que la déesse les recherche et qu'elle les apporte devant nous et qu'elle punisse les personnes qui les détiennent, de manière digne de son pouvoir, de sorte que nul ne puisse se moquer d'elle».

Dans une inscription de confession datant de 117/8 ap. J.-C., la confection de la tablette a été occasionnée par un emprunt, consenti par un certain Apollodoros envers Skollos. L'emprunteur ne s'étant pas, cependant, acquitté à terme, le prêteur fait cession de sa créance à la divinité sollicitée, qui punit le débiteur insolvable de la peine de mort. La malédiction n'a pris fin que lorsque sa fille et héritière a remboursé la dette de son père et a ainsi fait dissoudre les ligatures de l'imprécation.

TAM V, 1, no 440, lignes 4-19 :

χακ]οῦ *μ εἶτα ἀπαι-
τοῦντος τοῦ Ἀπολλωνίου τὸν χαλ-
κὸν παρὰ τοῦ Σκόλλου ὤμοσε τοὺς
προγεγραμμένους θεοὺς ἰς προ-
θεσμίαν ἀποδοῦναι τὸ συνα-
χθὲν κεφάλαιον, μὴ τηρήσαντος
αὐτοῦ τὴν πίστιν παρεχώρησεν
τῇ θεῷ ὁ Ἀπολλώνιος. Κολ<α>σθέν-
τος οὖν τοῦ Σκόλλου ὑπὸ τῶν θε-
ῶν ἰς θανάτου λόγον μετὰ τὴν τ[ε]-
λευτὴν αὐτοῦ ἐπεζητήθη ὑπὸ τ[ῶν]
θεῶν. Τατιας οὖν ἡ θυγάτηρ αὐτοῦ
ἔλοισε τοὺς ὅρκους καὶ νῦν εἱλα-
σαμένη εὐλογεῖ Μητρὶ Ἀτίμιτι
καὶ μηνὶ Τιάμου. Ἔτους σγ', μη(νὸς)
Ξαννδικοῦ ει'.

Traduction
«Et ensuite, lorsqu'Apollonios a réclamé à Skollos l'argent, il a juré par les dieux susmentionnés qu'il rembourserait le capital dans le délai convenu. Comme il n'a pas respecté son serment, Apollonios en a fait cession aux dieux. Skollos ayant été puni par les dieux par la mort, après son décès, les dieux ont poursuivi l'affaire. C'est alors sa fille Tatias qui a donné fin aux serments et qui, maintenant, loue la Mère Atimitis et Men Tiamou. En l'année 203 de l'ère de Sulla, mois Xanndikos».

En dehors des prières, la pratique de faire profiter le pouvoir, sacré ou profane, qui a été sollicité pour rendre justice ou pour veiller à l'observation de certaines

prescriptions apparaît fréquemment dans les inscriptions tombales[13] ainsi que dans le domaine des obligations contractuelles et délictuelles.

Parmi les nombreux exemples de cette pratique en matière contractuelle, rapportés par la documentation papyrologique, je citerai la vente d'une parcelle de vigne, rapportée par parchemin d'Avroman (Kurdistan) et conclue en 88 av. J.-C. Dans un milieu social et juridique très différent, celui des communautés des Parthes, les ventes immobilières sont fortement hellénisées, contrairement à d'autres domaines, comme celui du mariage, qui semblent suivre leur cours d'avant la conquête macédonienne.[14]

P. Avrom. I A; P. M. Meyer, *Juristische Papyri*, 36, lignes 21-25 :

Ὃς δὲ ἐγβάλῃ
ἢ ἄλλου ἐγβαλλομένου μὴ καταστὰς διεξά[ξ]ῃ καὶ μὴ καθα-
ρὰ ποιήσῃ, [ἔ]σται ἄκυρος καὶ προσαποτείσ[ει ἣ]ν ἔλαβεν τει-
μὴν διπλ[ῆν] καὶ ἄλλας ἐπιτείμου δραχμὰς [Σ κα]ὶ τῷ βασιλεῖ τὰς
ἴσας.

Traduction
«Pour celui (des vendeurs ou de leurs descendants) qui l'évincerait ou qui, si un tiers l'évince, ne soutiendrait pas la lutte (contre le revendiquant) et ne libérerait pas la chose de toute prétention (du tiers), l'éviction sera nulle et non avenue et il paiera le double du prix qu'il a reçu, ainsi qu'une amende de deux cents drachmes et la même somme au fisc royal».

2. Ma deuxième observation porte sur les sanctions sollicitées par les auteurs des «prayers for justice», et notamment par Artémisia et par le propriétaire des esclaves fugitifs d'Amorgos. Les sanctions qu'Artémisia demande aux dieux d'infliger à son ex-compagnon sont de deux sortes. Les premières sont en équivalence avec l'*adikia*, le dommage qu'elle a subi: elle demande aux dieux de faire en sorte que l'auteur de l'injustice soit privé de sépulture, de même que l'a été leur fille défunte, et qu'il ne puisse pas enterrer ses propres parents. Les secondes sont des imprecations pures dont le contenu n'est pas en rapport direct avec le délit («qu'il disparaisse dans le malheur de la terre et de la mer»). Tant dans cette première partie de sa supplication aux dieux que dans celle qui suit, Artémisia semble se réserver le droit de retirer du temple ses imprécations et de grâcier son ancien compagnon (ligne 5-6: Τῆς δὲ καταβοιῆς ἐνθαῦτα κειμένης; ligne 11: Τῆ[ς] δ' ἱκετηρίας ἐνθαῦ[τα κει]μένης).

De même que dans le papyrus d'Artémisia, les sanctions demandées par la victime dans l'inscription d'Amorgos sont de deux espèces : les unes sont des

[13] A titre d'exemple, E. Kalinka, TAM II 3, no 1028; J. Strubbe, *APAI ΕΠΙΤΥΜΒΙΟΙ. Imprecations against Desecrators on the Grave in the Greek Epitaphs of Asia Minor. A Catalogue*, Bonn, 1997 (Inschriften Griechischer Städte aus Kleinasien 52), no 377 bis, lignes 6-9: Ἑτέρῳ δὲ οὐδενὶ ἐξέσται | κηδευθῆν vac. Αἰ ἢ ὀφειλέσει θεῷ | Ἡφαίστῳ * φ καὶ τείσει δίκας καταχθολνίοις θεοῖς vac. Ibid., no 397 (Nazianzos), ligne 7 : δώσει δὲ καὶ τοῖς καταχθονίοις θεοῖς δίκην.

[14] Notamment en matière de polygamie, puisque le roi par lequel est daté le document a trois épouses légitimes.

imprécations généralement rencontrées dans les *defixiones* (lignes 9-13 : «ne permets pas que celui qui m'a ainsi traité trouve nulle part satisfaction dans le repos ni le mouvement, ni du corps ni de l'esprit», «que l'enchantement saisisse sa maison, la possède»; «que pour lui ni la terre ni la mer ne portent des fruits; qu'il ne connaisse pas la joie heureuse, ni lui, et ce jusqu'à ce qu'il périsse, ni rien qui soit à lui»), alors que les autres se rattachent de manière directe au délit concrètement dénoncé : (lignes 9-13) *«qu'il ne soit pas servi par esclaves, ni par servantes, ni par petits ni par grands ; s'il entreprend quelque chose, qu'il ne l'accomplisse pas ; que pour lui l'enfant n'ait pas de cri ; qu'il ne dresse point sa table dans la joie, que le chien n'aboie pas, que le coq ne chante pas ; s'il sème, qu'il ne moissonne point ; s'il fait venir à bien des fruits, qu'il ne sache point semer».*

Abandonné par ses esclaves, le propriétaire d'Amorgos, probablement sans descendance légitime, se trouve dans l'impossibilité de cultiver ses terres, de soigner ses animaux domestiques et même d'aménager son foyer, malheurs qu'il demande à la déesse d'infliger à son ennemi. Comme dans le cas d'Artémisia, ici aussi dans la peine sollicitée se reflète le tort, l'injustice dont a été victime l'auteur de la prière. Ces peines-miroirs se différencient des imprécations au sens strict dont le contenu et la gravité n'ont aucun rapport avec la nature de l'injustice commise.

3. Une dernière remarque porte sur l'emploi du verbe *katadéô*. Caractéristique des *defixiones*, le verbe est utilisé par l'auteur de la tablette pour exprimer la soumission de son adversaire ou de son affaire au pouvoir des divinités invoquées. Bien que ce soit lui-même qui propose la nature des maux à lui infliger, c'est aux dieux qu'en revient la réalisation. Le verbe est employé à la première personne, c'est donc l'auteur même de la tablette, par la seule confection de celle-ci, qui «lie» son adversaire afin de le livrer au pouvoir discrétionnaire des divinités invoquées.

Le verbe *katadéô* n'apparaît pas, à ma connaissance, dans le domaine du droit. Ce que l'on trouve, en revanche, c'est son opposé, le verbe *lyein,* employé aussi dans un certain nombre d'imprécations. Fréquemment utilisé à la fois dans les inscriptions, les papyrus et les textes littéraires pour indiquer l'extinction d'une obligation contractuelle ou délictuelle, le verbe *lyein* renvoie à l'idée d'un lien qui vient d'être dissous, d'une ligature, en l'occurrence d'un devoir qui a été accompli, d'une dette qui vient d'être éteinte.

Décret d'Olbia en l'honneur de Protogénès, IIIe ou début du IIe s. av. J.-C., Syll.[3] 495; L. Migeotte, *L'emprunt public*, p. 133-140, no 44, lignes 14-19 :

τῶν τε ἀρχόντων θέντων τὰ ἱερὰ ποτήρι-
α εἰς τὴν τῆς πόλεως χρείαν πρὸς Πολυχάρ-
μον πρὸς χρυσοῦς ἑκατὸν καὶ οὐκ ἐχόντων
λύσασθαι, τοῦ δὲ ξένου φέροντος ἐπὶ τὸν
χαρακτῆρα, αὐτὸς ὑπεραποδοὺς τοὺς ἑκα-
τὸν χρυσοῦς ἐλύσατο.

Traduction

«Étant donné que les archontes avaient, pour les besoins de la cité, engagé les vases sacrés en faveur de Polycharmos, pour la somme de 100 statères d'or et, comme ils

n'avaient pas de quoi les libérer et que l'étranger les portait à la frappe des monnaies, ayant versé lui-même les 100 statères d'or, il les a libérés».

Décret samien en l'honneur de Boulagoras fils d'Alexis,[15] après 243/2 av. J.-C., IG XII 6 1, 11; Migeotte, *L'emprunt public*, p. 232-235, no 67, lignes 44-48 :

αὐτὸς καὶ τὸ δάνειον ὑπὲρ τῆς πόλεως καὶ τοὺς τό-
45 κους καὶ τὰ λοιπὰ ἀναλώματα πάντα ἐπιλύσειν, καὶ τοῦτο ἔπραξεν κατὰ τά-
χος καὶ ἀπέλυσεν τὸν δανειστὴν. οὔτε συγγραφὴν οὐδεμίαν θέμενος πρὸς τὴν
πόλιν ὑπὲρ τούτων τῶν χρημάτων οὔτε προεγγύους ἀξιώσας ἑαυτῶι καταστ[α]-
θῆναι.

Traduction
«(il a déclaré publiquement) qu'il remboursera lui-même, au nom de la cité, l'emprunt, les intérêts et toutes les autres dépenses. Il l'a fait au plus vite et au sujet de cet argent et sans exiger qu'on lui fournisse des cautions».

L'emploi du couple *katadéô-lyô* dans les *defixiones* et du verbe *lyô* dans le domaine des obligations indique, me semble-t-il, que tant dans le domaine des croyances que dans la sphère du droit, la finalité visée est atteinte au moyen du recours à l'idée d'une ligature. L'adversaire de l'auteur d'une tablette de même que le débiteur dans un rapport contractuel ou délictuel sont «ligaturés» et soumis le premier au pouvoir discrétionnaire des divinités, le second à celui du juge et des tribunaux compétents.

Pour terminer ma réponse à la réponse de Martin Dreher à H.S. Versnel, je retiendrai, sans grande difficulté, le titre de «prayers for justice» pour la seule raison que c'est l'auteur même de la prière qui considère la punition de son adversaire comme «justice». Mais, tout comme Martin Dreher, je ne crois pas que ces prières soient foncièrement différentes des autres imprécations, notamment de la catégorie intermédiaire de Versnel, ni, surtout, qu'elles donnent lieu à un procès par devant une instance divine et à l'application d'un droit attribuable aux puissances de l'au-delà.

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PHILIPP SCHEIBELREITER (WIEN)

„… *APOTISATO TEN PARATHEKEN DIPLEN KATA TON TON PARATHEKON NOMON*.“ ZUM SOGENANNTEN „*NOMOS TON PARATHEKON*“ UND SEINEN WURZELN IM GRIECHISCHEN RECHT[1]

1. Das Problem

Wie Éva Jakab küzlich festgestellt hat[2], enthalten fast alle auf uns gekommenen Papyri der römischen Zeit, in denen eine Paratheke verbrieft ist, eine Strafklausel, die dem Depositar, der seiner Leistungspflicht nicht entspricht, unter Bezugnahme auf den so genannten „Nomos der Paratheken“ die Leistung der doppelten Summe auferlegt. Diese Aussage ist freilich ein wenig zu relativieren, da es auch Belege für Paratheken dieser Zeit ohne Verweis auf den νόμος τῶν παραθηκῶν gibt[3]. Immerhin bedient sich jedoch eine beachtliche Anzahl dieses Formulars: Zählte Wolf Detlev Roth 1970 noch 13 Paratheken mit dem νόμος[4], so sind nun bereits mindestens 25 Urkunden auszumachen[5]. Der älteste Beleg datiert in das Jahr 33 n. Chr. und stammt aus dem Arsinoites[6]. Der jüngste Beleg stammt aus dem Jahr 364 n. Chr. aus Antinopolis[7].

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[1] Mein Dank, diese Untersuchung im Rahmen des Symposion 2010 in Seggauberg vortragen und im Tagungsband veröffentlichen zu können, gilt dem Veranstalter dieser Tagung.

[2] Jakab (2009) 86.

[3] Als Beispiel mag hier der schon von Kastner (1962) 737 angeführte PGrenf II 17 fungieren, der für den Verzugsfall kein *duplum*, sondern eine fixe Geldstrafe von 2000 Drachmen vorsieht.

[4] Roth (1970) 57 A. 2.

[5] PTebtWall 9; PAthen 28; PGießUniv 545 (=SB VI 9291); BGU XI 2042; BGU III 856 (=MCh 331); PLond 298 (=MCh 332); PBabatha 17; SB XIV 12105; PPrag I 31; PLouvre II 110; BGU III 729; PLips II 143; SB XVI 12180; POxy 2677; PLouvre I 17; POxy 1039; BGU II 637 (=MCh 336); PLond 943 (=MCh 330); StudPal XX 45; POxy 3049; POxy 3134; PIFAO III 1; PSI VI 699; PRyl 662; SB XXIV 15881.

[6] PTebtWall 9. Unverständlich bleibt, warum Kastner annimmt, dass PHamb I 2,16 aus 59. n. Chr. – bei Kastner (1962) 42 als der damals älteste bekannte Beleg geführt – eine Duplumsstrafe enthalten haben soll; dies wird von den Editoren explizit verneint, vgl. Meyer (1911-1924) 5; Kühnert (1965) 135 führt diesbezüglich aus, dass sich PHamb I 2,16 einer Strafklausel (der Androhung von Zinsen für den Verzugsfall) ohne Verweis auf einen Nomos bedient.

[7] PRyl 662; SB XXIV 15881 ist in das 3./4. Jh. n. Chr. zu datieren und nicht gesichert jünger als PRyl 662.

Der νόμος τῶν παραθηκῶν wird also erst in kaiserzeitlichen Papyri fassbar, und der Schluss liegt nahe, hier einen römischen Einfluss auf das griechische Formular erkennen zu wollen. Auch wenn dies hier nicht Thema ist, sei davor gewarnt, voreilige Schlüsse zu ziehen: Einen Konnex zum römischen Recht zu vermuten, ist aufgrund der historischen Rahmenbedingungen zwar verlockend, für das *duplum* aber schon aus formalen Gründen zurückzuweisen: Denn seit der Einführung der *actiones depositi in factum* und *in ius conceptae*, die in der auslaufenden Republik und somit vor dem ersten papyrologischen Beleg angenommen werden kann[8], beläuft sich die Sanktion für den säumigen Depositar immer auf das *simplum*. Das haben schon Mitteis-Wilcken[9] und Roth[10] hervorgehoben. Klami versucht, sich dies zunutze zu machen, indem er einen indirekten Einfluss der *actiones depositi* auf den νόμος τῶν παραθηκῶν konstruiert: Gerade aufgrund der römischen Klage musste eine Klausel eingeführt werden, um das *duplum* älteren Rechts – in Abweichung vom geltenden römischen Recht der Provinz – zu legitimieren[11].

Ein Überblick über den Forschungsstand ergibt, dass der νόμος τῶν παραθηκῶν entweder als Gesetz oder Gewohnheitsrecht interpretiert wurde. Kübler gibt sich diesbezüglich unentschlossen, indem er – ähnlich Berger[12] und Partsch[13] – das Wort νόμος einfach nicht übersetzt[14]. Wohl sind diese Autoren aber so wie Mitteis-Wilcken zu interpretieren, der bereits – auch in Abgrenzung zu dem römischen Recht, das seit der späten Republik die Strafe des *simplum* vorsieht – an eine „noch an vorrömische Ordnungen anknüpfende Rechtsquelle“ glaubt[15]. Gerade der Vergleich mit altgriechischem Recht lässt auch Koschaker an einen Einzeltatbestand denken, ein Gesetz über Deposita[16]. Pringsheim schlägt in die selbe Kerbe[17]: „Den νόμος τῶν παραθηκῶν kennen wir als das Gesetz, nach dem das Doppelte des geleugneten *depositum* zurückzugeben ist[18], und als das Gesetz, nach dem die *ektisis* zu erfolgen hat.“[19] Taubenschlag hat anzudeuten versucht, dass der νόμος τῶν παραθηκῶν als eine Kaiserkonstitution[20], wohl aber auch – was etwa von Simon übersehen wurde[21] – als Gewohnheitsrecht verstanden werden könnte[22]. So deutet

8 Ohne die Problematik hier vertiefen zu können, sei allgemein auf Kaser-Knütel (2008) 216 und die dort angegebene Literatur verwiesen.
9 Mitteis-Wilcken (1912) 258.
10 Roth (1970) 77-78.
11 Klami (1986) 96.
12 Berger (1911) 103.
13 Partsch (1913) 453-454.
14 Kübler (1908) 198.
15 Mitteis-Wilcken (1912) 258, vor allem A. 2.
16 Koschaker (1917) 22.
17 Pringsheim (1924) 511.
18 Zitiert nach Pringsheim (1924) 511 A. 1: BGU III 856; PLond 298 (206).
19 Zitiert nach Pringsheim (1924) 511 A. 2: BGU III 729; POxy 1039; PLond 943 (175).
20 Taubenschlag (1948) 67-68; vgl. dazu Klami (1986) 95.
21 So Simon (1965) 61 A. 93 und 94.

auch Hellebrandt den νόμος „in seiner Verallgemeinerung nicht mehr als altertümliches Recht, nicht Reichsrecht, sondern vermutlich Schöpfung des volksrechtlichen Handelsverkehrs“.[23] An ein Spezialgesetz denkt wiederum Kießling[24]. Dass mit der Bezugnahme auf dieses Gesetz die Funktion der Paratheke als Verschleierungstatbestand für andere, weniger vorteilhaft ausgestatte Geschäfte (wie Darlehen oder Mitgiftbestellung) nutzbar gemacht werden hätte sollen, vermuteten schon Wenger[25], Geiger[26], Herrmann[27] und Kühnert[28]. Geiger ist jedoch hinsichtlich jener Norm, deren Rechtsfolgen bereits durch einen Verweis herbeigeführt werden konnten, unschlüssig[29]: „Ob es wirklich ein besonderes Verwahrungsgesetz gab, ist allerdings zweifelhaft. Vielleicht handelte es sich nur um eine Bezeichnung für die Gesamtheit überkommener Vorschriften der Verwahrung.“[30]

Kastner sieht in dem νόμος τῶν παραθηκῶν eine Kaiserkonstitution, die er in das Jahr 30. – 40. n. Chr. datiert[31]. Dies stieß in der Literatur jedoch größtenteils auf Ablehnung[32]. Kühnert vermutet hinter dem νόμος τῶν παραθηκῶν ein Gesetz, das als διάγραμμα noch in die ptolemäische Zeit hineingereicht und bis in die römische Epoche überdauert habe[33].

Einen neuen Weg beschreitet Roth: Er argumentiert mit der bereits festgestellten Tendenz, dass im Formular ab der Mitte des 2. Jh. n. Chr. das *duplum* als Strafe nicht mehr ausdrücklich genannt wird, woraus er eine Unsicherheit im Umgang mit dem bereits unverständlich gewordenen Formular der späteren Jahrhunderte folgert[34]. Einerseits spricht er sich gegen den νόμος τῶν παραθηκῶν als Gesetz aus, da privatrechtliche Materien selten Gegenstand antiker Einzelgesetze gewesen seien[35]. Andererseits wäre zu erwarten, dass für die Bezeichnung von Gewohnheitsrecht der Plural verwendet, also auf νόμοι Bezug genommen würde. Diese selbst geschaffene Aporie nutzt Roth für seine These von dem νόμος τῶν παραθηκῶν als „fingierter Norm“ zur Legitimation einer Rechtsgewohnheit[36].

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22 Taubenschlag (1948) 67.
23 Hellebrandt (1949) 1190.
24 Kießling (1957) 73.
25 Wenger (1953) 802-803.
26 Geiger (1961) 17.
27 Herrmann (1966) 418.
28 Kühnert (1965) 135.
29 So versteht Klami (1986) 94 die Schlussfolgerungen Geigers.
30 Geiger (1961) 18 A. 67.
31 Kastner (1962) 42.
32 Vgl. etwa Roth (1970) und Klami (1986) 95.
33 Kühnert (1965) 136.
34 So habe das Verb auch kein Objekt mehr bzw. werden juristische *termini* durch unjuristische ersetzt, vgl. Roth (1970) 80-83.
35 Roth (1970) 83-86; vgl. dazu auch Jakab (2009) 89: „Gesetzliche Regelungen über handelsspezifische Rechtsinstitute bzw. über Haftungsprobleme im Vertragsrecht sind aus der Antike ohnedies kaum bekannt.“
36 Roth (1970) 80-90.

Dem ist Modrzejewski nicht gefolgt, der vielmehr „une reference a une coutume locale“ annimmt[37]. Auch Jördens vermerkt kritisch, dass Roth „die Auseinandersetzung mit den Thesen Kühnerts vermissen“ ließe[38].

Meyer-Termeer schließlich nimmt für den νόμος eine „gesetzliche Regelung der Verwahrung“ an[39]. Zuletzt hat Jakab die Vermutung aufgestellt, dass es sich bei dem νόμος τῶν παραθηκῶν bloß um ein Formular – das in erster Linie die Strafe des *duplum* enthalten hätte – gehandelt habe, das durch einen Verweis der Kontrahierenden zum Tatbestand eines Vertrages gemacht werden konnte[40]. Damit steht Jakab auch in der Tradition von Arangio Ruiz[41], Kastner[42], Kühnert[43], Geiger[44] und Klami[45]. Durch die Annahme einer solchen „Verweisungsnorm“ ist auch die verkürzte Formel der späteren Papyri problemlos erklärbar[46]. Pieler schließlich deutet den νόμος als die „üblichen Wirkungen und Abmachungen einer Geldübergabe und kein Gesetz“[47].

Auch semantische Untersuchungen zu dem Begriff νόμος haben nicht viel Licht in die Sache bringen können – wie schon Taubenschlag festgestellt hat, kann darunter sowohl Gewohnheitsrecht als auch die Benennung eines Einzelgesetzes verstanden werden[48]. Roth hat letzteres jedoch weitgehend eingeschränkt: Während in römischer Zeit erst ab dem 3. Jh. n. Chr. Gesetze als νόμοι bezeichnet würden[49], haben legislative Akte des Königs in ptolemäischer Epoche πρόσταγμα oder διάγραμμα geheißen[50]. Νόμος bezeichne prinzipiell lokale gewohnheitsrechtliche Bestimmungen[51], was auch in den parallelen Einrichtungen des νόμος τῶν ὑποθηκῶν[52] und des νόμος τῶν ἀῤῥαβώνων seinen Niederschlag gefunden habe. Die Untersuchungen Jakabs zu diesem, nur einmal explizit genannten νόμος τῶν ἀῤῥαβώνων[53] untermauern die Annahme, dass in den Papyri damit nicht auf ein spezielles Gesetz, sondern auf allgemeine Rechtsbräuche rekurriert werde[54]. Nicht ganz außer acht gelassen werden kann aber die Tatsache, dass im griechischen

[37] Modrzejewski (1978) 228.
[38] Jördens (1998) 113.
[39] Meyer-Termeer (1978) 117 A. 72.
[40] Jakab (2001) 206-207.
[41] Arangio Ruiz (1927) 60. 63.
[42] Kastner (1962) 43-45.
[43] Kühnert (1965) 135-139.
[44] Geiger (1961) 18 A. 67.
[45] Klami (1986) 95.
[46] Jakab (2001) 207; Jakab (2009) 87.
[47] Pieler (2001) 802.
[48] Taubenschlag (1948) 67-68.
[49] Roth (1970) 68-69.
[50] Roth (1970) 61-67.
[51] Roth (1970) 70.
[52] SB I 4434.
[53] BGU II 446.
[54] Jakab (2001) 204; Jakab (2009) 84-89, insbesondere 85.

Sprachgebrauch auf solche Rechtsbräuche zumeist im Plural Bezug genommen wird, etwa in der Formulierung κατὰ / παρὰ τοὺς νόμους, was Roth ja auch zum Ausgangspunkt seiner These von einer fiktiven Norm nimmt, mit der er sich vom gewohnheitsrechtlichen Ansatz wieder wegbewegt[55].

Der kurze Überblick lässt als zentrale Problematik die Frage nach der Rechtsnatur des νόμος τῶν παραθηκῶν erkennen: *lex* oder *consuetudo*? In neueren Publikationen – die freilich keine Spezialuntersuchungen des νόμος sind – weisen Rupprecht[56], Jördens[57], Thür[58] und Jakab[59] mehrfach darauf hin: „Es ist umstritten, ob das auf eine alte Rechtsnorm oder auf Gewohnheitsrecht zurückzuführen ist."[60]

Die Lehrmeinungen schwanken im Wesentlichen zwischen diesen beiden Polen, selten wird eine dritte Position eingenommen wie sie Roth propagiert hat. Dessen Vermutung lässt sich zwar nicht nachweisen, sollte aber nicht *a priori* abgelehnt werden[61], stellt sie doch den mutigen Versuch dar, den νόμος nicht bloß durch Ausschluss eines der beiden Extreme, sondern aus deren Kombination zu erklären.

Ziel dieser Arbeit ist es nun nicht, alle Aspekte des νόμος τῶν παραθηκῶν zu ergründen, vor allem will sie sich nicht als papyrologische Studie verstanden wissen. Vielmehr wird das Schwergewicht auf die Frage gelegt werden, wie „griechisch" die *poena dupli* für die Nichtrückgabe einer Parakatatheke überhaupt ist. Dazu ist eine Untersuchung des (alt)griechischen Depositenrechts notwendig, um eventuell Kontinuitäten aufzuzeigen. Vor diesem Hintergrund wird es schließlich vielleicht auch möglich sein, neue Erkenntnisse zur Rechtsnatur des νόμος τῶν παραθηκῶν zu gewinnen. Ausgangspunkt für das eigentliche Thema muss dennoch die sprachliche Ausgestaltung des Urkunden-Formulars sein, wie sie in der papyrologischen Evidenz sichtbar wird.

2. Papyrologische Evidenz

Aus einer Gesamtschau der bisher greifbaren 25 Urkunden ergibt sich dabei das folgende Bild:

(1) Nur sieben Texte[62] sprechen von dem *duplum* (τὴν παραθήκην διπλῆν). Dieses tritt fast immer in Verbindung mit dem νόμος τῶν παραθηκῶν auf, eine Ausnahme könnte da PPrag I 31 darstellen, der ein *duplum* erwähnt, aber keinen νόμος[63]. Bereits Roth hat festgestellt dass es sich bei dieser Kombination τὴν

[55] Roth (1970) 88.
[56] Rupprecht (1994) 121.
[57] Jördens (1998) 112-113; Jördens (2005) 74.
[58] Thür (2000) 317.
[59] Jakab (2001) 206-208; Jakab (2009) 87-90.
[60] Jakab-Manthe (2003) 281.
[61] So etwa kritisch Jördens (1998) 113.
[62] PAthen 28; PGießUniv (PJandana) 545 = SB 9291; BGU XI 2042; BGU III 856; PLond 298; PLouvre I 17.
[63] Die Lücke am Beginn der Zeile 17 scheint zu klein für die Ergänzung: κατὰ τὸν νόμον τῶν παραθηκῶν. Die Editoren lassen dies zumindest offen, wenn sie vermuten: „Nel no-

παραθήκην διπλῆν κατὰ τὸν τῶν παραθηκῶν νόμον um ein Phänomen der ersten beiden Jahrhunderte n. Chr. handelt[64]. Gesichert ist dies noch für PLond 298 aus 124 n. Chr. Zwar enthält auch der PLouvre I 17, der noch jünger sein könnte, das τὴν παραθήκην διπλῆν, die Editorin Andrea Jördens warnt aber vor genaueren, weil spekulativen Datierungsversuchen als grob in das 2. Jh. n. Chr[65].

(2) Nur die Papyri PAthen 28 und PGießUniv 545 enthalten den Zusatz, dass die Leistung des *duplum* umgehend zu erfolgen habe – παραχρῆμα. Beide gewähren auch Ersatz der erlittenen Schäden (βλάβος[66] bzw. βλάβη[67]), dies ist sonst nur noch in SB XIV 12105 (βλάβος) und PBabatha 17 (μετὰ βλάβους) zu lesen.

(3) Die meisten Urkunden bedienen sich einer finiten Form eines Kompositums von τίνειν – „schulden, büßen". Vierzehnmal wird ἐκτίνειν gebraucht, dabei wieder am häufigsten in subjektiver Stilisierung: Gleich sechsmal in der ersten Person Futur Singular (ἐκτείσω – „ich werde schulden")[68], dreimal in der 1. Person Futur Plural (ἐκτίσομεν – „wir werden schulden")[69]. Daneben steht dreimal die objektive Stilisierung ἐκτίσει – er/sie (?) wird schulden[70], einmal der Futur-Infinitiv ἐκτίσιν[71]. Das Kompositum ἀποτίνειν tritt hingegen in Singular und Plural der 3. Person des Imperativs auf (ἀποτεισάτω/ἀποτεισάτωσαν – „er soll schulden"[72]/„sie sollen schulden"[73]), einmal als Infinitiv Futur ἀποτείσειν in Abhängigkeit von dem Verbalausdruck ἀνάγκη ἔσται – „es wird notwendig sein"[74]. Je zweimal ist schließlich das Verbum ἀποδιδόναι[75] und ἀποκαθιστάναι[76] in Gebrauch, um die Rechtsfolge des νόμος τῶν παραθηκῶν zu umschreiben.

(4) Auf den Nomos selbst wird in zweifacher Weise verwiesen: Entweder mit dem bloßen Dativ (τῶι τῶν παραθηκῶν νόμωι) oder aber mit dem durch ein κατὰ präponierten Akkusativ des Nomos (κατὰ τὸν τῶν παραθηκῶν νόμον,

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stro caso lo spazio permette a mala pena un semplice κατὰ τὸν νόμον (ovviamente τῶν παραθηκῶν)."

64 Roth (1970) 80.

65 Jördens (1998) 110-111.

66 PGießUniv 545.

67 PAthen 28.

68 PLips II 143; POxy 2677; POxy 1039; PLond 943; POxy 3134; PSI VI 699.

69 PGießUniv 545; PLond 943; PRyl 662.

70 PTebtWall 9; BGU XI 2042; BGU III 729.

71 PLouvre I 17.

72 PAthen 28; PLond 298; SB XIV 12105.

73 BGU III 856.

74 SB XVI 12180.

75 StudPal XX 45; PIFAO III 1.

76 PLouvre II 110; SB XXIV 15881.

zweimal[77] κατὰ τὸν νόμον τῶν παραθηκῶν). Dem bloßen Dativ, dessen Verwendung der Sprache der früheren, aber auch der zeitlich jüngsten Urkunde(n)[78] entspricht und der insgesamt fünfmal belegt ist[79], stehen 19 Belege der Akkusativkonstruktion gegenüber[80]. Hiervon weisen PTebtWall 9, PLouvre I 17 und PIFAO III 1 als Besonderheit auf, dass der zum νόμος gehörende Artikel weiblich ist, also: κατὰ τὴν τῶν παραθηκῶν νόμον. Dies hat der Herausgeber mit einer Ergänzung δίκην τε καὶ νόμον zu erklären versucht[81], Modrzejewski mit einem Zusatz πίστιν[82]. Jördens geht eher von einer bewussten Abgrenzung zum in den Urkunden so häufig verwendeten und unterschiedlich konnotierten Wort νόμος aus, etwa im Sinne eines ambivalenten Geschlechts, dessen Wortbildung sich auch aus der lautlichen Nähe zu den Feminina νόσος und νῆσος erklären könnte[83].

(5) Alleine siebenmal wird der Verweis auf den νόμος durch ein ἀκολούθως – „gemäß, zufolge" verstärkt[84].

(6) Eingeleitet wird die Formel zumeist von einem Konditionalsatz: Dieser lautet in den sieben frühesten Belegen ἐὰν δὲ μὴ ἀποδῶι – „wenn ich es dir nicht zurückgebe"[85] (davon viermal mit Verweis auf die Abmachung - καθὰ γέγραπται)[86] bzw. εἰ δὲ μή – „wenn nicht"[87].

(7) Alle 25 Urkunden haben vertretbare Sachen (Geld oder Getreide) zum Gegenstand[88].

Es fällt auf, dass über die Jahrhunderte die Formulierung in ihrer Grundstruktur unverändert bleibt, dass etwa aus der Wahl des Verbs ἐκ- oder ἀπο- τίνειν nicht auf eine sehr frühe oder sehr späte Datierung der Urkunde geschlossen werden kann. Das Gleiche gilt für die Verwendung des Dativs oder Akkusativs von νόμος. Offensichtlich ist die Tatsache, dass die wörtliche Erwähnung der Rechtsfolge, nämlich der strafweisen Leistung der doppelten Verwahrungssumme nach dem 2. Jh. n. Chr.

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77 BGU XI 2042; PBabatha 17.

78 PRyl 662.

79 PAthen 28; PGießUniv 545; BGU III 856; SB XIV 12105; PRyl 662.

80 PTebtWall 9; BGU XI 2042; PLond 298; BGU III 729; PLips II 143; SB XVI 12180; POxy 2677; PLouvre I 17; POxy 1039; BGU II 637; PLond 943; StudPal XX 45; POxy 3049; POxy 3134; PIFAO III 1; PSI VI 699.

81 J. G. Keenan in der Erstedition des P.Tebt.Wall, zitiert nach Jördens (1998) 113-114.

82 Modrzejewski (1977) 720.

83 Jördens (1998) 113-114.

84 PAthen 28; PGießUniv 545; BGU III 856; SB XIV 12105; PLouvre I 17; PRyl 662; SB XXIV 15881.

85 PTebtWall 9; PAthen 28; PGießUniv 545; BGU XI 2042; BGU III 856; PLond 298; SB XIV 12105.

86 PGießUniv 545; BGU III 856; PLond 298; SB XIV 12105.

87 PLips II 143; POxy 2677; POxy 1039; POxy 3049; POxy 3134; PSI VI 699; ähnlich PRyl 662.

88 Einzig in BGU III 729 sind außerdem noch Frauengewänder und Schmuck mit übergeben.

nicht mehr aufscheint. Auch die zusätzliche Erwähnung des Schadenersatzes und der Unmittelbarkeit des Eintritts der Rechtsfolge (παραχρῆμα) finden sich nur in früheren Belegen, letzteres nur im 1. Jh. n. Chr. Dazu kommt, dass in späteren Urkunden die Palette der verwendeten Verben erweitert und vermehrt auf die konkrete Rückleistung selbst (ἀποδιδόναι, ἀποκαθιστάναι) anstelle des abstrakteren Terminus τίνειν rekurriert wird.

Immerhin lassen sich geringfügige lokale Eigenheiten der Formulare ausmachen: So ist etwa für die sechs aus dem Oxyrhynchites stammenden Urkunden aus dem 2. Jh. n. Chr. ausnahmslos die Formulierung εἰ δὲ μή, ἐκτείσω σοι κατὰ τὸν τῶν παραθηκῶν νόμον belegt[89]. Dies erfährt durch POxy 2677, einem Vertragsmuster, das genau diesen Wortlaut aufweist, seine Bestätigung.

Dem steht als typisch für das 1. Jh. n. Chr. (bis 129 n. Chr.) ἐὰν δὲ μὴ ἀποδῶι καθὰ γέγραπται, ἐκτίσει / ἀποτεισάτω τὴν παραθήκην διπλῆν κατὰ τὸν τ ῶν παραθηκῶν νόμον gegenüber, ein Formular, das sich etwa häufig in den Belegen aus dem Arsinoites ausmachen lässt[90].

Soweit eine erste Statistik. Das Formular der Paratheke weist neben dem νόμος τῶν παραθηκῶν typischerweise auch Bestimmungen wie die ἀκίνδυνος-Klausel, womit die Gefahrtragung gänzlich auf den Depositar abgewälzt wird (ἀκίνδυνον παντὸς κινδύνου) oder Bestimmungen zur Begünstigung des Gläubigers in einem allfälligen Prozess (ἄνευ πάσης ὑπερθέσεως καὶ εὐρησιλογίας) auf[91]. Als unmittelbare Rechtsfolge des νόμος τῶν παραθηκῶν muss – dem Wortlaut nach – für das 1. und 2. Jh. n. Chr. auf jeden Fall zumindest die strafweise Zahlung des *duplum* verstanden werden[92] – und nur dies soll hier untersucht werden.

Schon Düll hat in seinem 1948 publizierten Beitrag „Zum vielfachen Wertersatz im antiken Recht" das *duplum* auch als typisch griechische Vertragsstrafe charakterisiert[93], leider ohne dabei Bezug auf den νόμος τῶν παραθηκῶν zu nehmen. Im Zuge rechtshistorischer und rechtsvergleichender Analyse (unten 3,4,5) soll nun beleuchtet werden, ob bezüglich des *duplum* so etwas wie eine griechischrechtliche Tradition ausgemacht werden kann. Dies wird unter drei Gesichtspunkten geschehen, nämlich (1) der Frage, welche Rechtsfolgen in den griechischen Rechten für die Nichtrückgabe einer Paratheke vorgesehen waren, (2) inwieweit das *duplum* dabei eine Rolle spielt und schließlich (3) in welchen Rechtsquellen sich eine solche

[89] PLips II 143; POxy 2677; POxy 1039; POxy 3049; POxy 3134; PSI VI 699; ähnlich PRyl 662.

[90] PTebtWall 9; PAthen 28; PGießUniv 545; BGU XI 2042; BGU III 856; PLond 298; SB XIV 12105; PLouvre I 17.

[91] Zu diesen Klauseln vgl. Herrmann (1966) 418-421.

[92] Vgl. Roth (1970) 59; anders nehmen Geiger (1961) 18 A. 67, Herrmann (1966) 420 oder Jördens (2005) 74 dabei die Gesamtheit aller Klauseln an, die sich auf das Depositenrecht beziehen.

[93] Düll (1948) 229.

Regelung findet. Nur eine Kombination dieser Komponenten böte ja einen dem νόμος τῶν παραθηκῶν vergleichbaren Tatbestand.

3. Die Para(kata)theke[94]: Rechtsfolgen der Rückgabeverweigerung

Die Paratheke oder Parakatatheke[95] leitet ihren Namen vom „Nieder- oder Danebenlegen" einer Sache her. Das griechische Wort steht für eine Vielzahl von Rechtsgeschäften, denen nach Simon folgende grundlegende Elemente gemein sind: (1) Das Anvertrauen einer Sache oder Person in die Obhut eines anderen auf Grundlage eines Sicherungsbedürfnisses des Anvertrauenden, (2) die Treuepflicht und (3) die Rückgabepflicht des Empfängers[96]. Weiters zeichnet sich die Paratheke – etwa im Unterschied zum Darlehen – durch die (4) jederzeitige Rückforderbarkeit des Verwahrgutes durch den Deponenten aus.

Schon in frühesten Belegen wird als Grundkonzept der Paratheke das Vertrauen des Hinterlegers auf die Treuepflicht des Verwahrers ersichtlich: Gerade das zentrale Problem des Verwahrungsverhältnisses ist die Frage, was passiert, wenn man die unentgeltlich zur Verwahrung gegebene Sache von seinem Gegenüber nicht mehr wiederbekommt. Bereits den „Sieben Weisen" wird der Spruch παρακαταθήκην λαβὼν δικαίως ἀπόδος – „wenn du anvertrautes Gut genommen hast, gib es rechtmäßig zurück"[97] zugeschrieben. Demokrit betont, dass es nicht notwendig sei, den rückstellenden Verwahrer zu loben, sondern vielmehr, den nicht rückstellenden Verwahrer zu tadeln[98], Isokrates hebt die Bedeutung bereits des Anvertrauens von Worten hervor[99], und Aristoteles urteilt, dass die Verletzung einer Verwahrung schlimmer sei als die eines Darlehens, weil erstere ihre Basis in dem Vertrauen auf die Redlichkeit des Partners habe[100].

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[94] In den Quellen sind beide Schreibweisen tradiert, die Papyri sprechen von der Paratheke, literarische und inschriftliche Quellen von der Parakatatheke.

[95] Vgl. zur Paratheke: Mitteis-Wilcken (1912); Hellebrandt (1949); Frezza (1954); Kießling (1957); Erhardt (1958); Kastner (1962); Simon (1965); Herrmann (1971); Klami (1986); Rupprecht (1994); Thür (2000); Scheibelreiter (2008).

[96] So Simon (1965) 55-56.

[97] Pittakos v. Mytilene, vgl. Stob. Anth. 3,1,94. Variationen dazu lauten παρακαταθήκην λαβόντα ἀποδοῦναι (Diog. Laert. 1,78) und παρακαταθήκην ἀπόδος.

[98] Demokrit fr. B 265 DK.

[99] Isokrates 1,22: Μᾶλλον τήρει τὰς τῶν λόγων ἢ τὰς τῶν χρημάτων παρακαταθήκας· δεῖ γὰρ τοὺς ἀγαθοὺς ἄνδρας τρόπον ὅρκου πιστότερον φαίνεσθαι παρεχομένους. Προσήκειν ἡγοῦ τοῖς πονηροῖς ἀπιστεῖν, ὥσπερ τοῖς χρηστοῖς πιστεύειν. Περὶ τῶν ἀπορρήτων μηδενὶ λέγε, πλὴν ἐὰν ὁμοίως συμφέρῃ τὰς πράξεις σιωπᾶσθαι σοί τε τῷ λέγοντι κἀκείνοις τοῖς ἀκούουσιν.

[100] Aristot. Probl. 29,2: ὁ μὲν οὖν τὴν παρακαταθήκην ἀποστερῶν φίλον ἀδικεῖ· οὐδεὶς γὰρ παρακατατίθεται μὴ πιστεύων. – Wer eine Parakatatheke vorenthält, tut einem Freund Unrecht, denn niemand hinterlegt (etwas), ohne zu vertrauen. Vgl. zu Aristoteles weiter Aristot. Rhet. 1383b; Aristot. Eth. Nik. 1160a5.

Herodot[101] berichtet von dem ungetreuen Verwahrer Glaukos, der schon für die versuchte Rückgabeverweigerung göttlicher Strafe anheim fiel, dieses Motiv begegnet auch bei Plutarch[102], Konon[103] und Stobaios[104].

Aelian weiß gar noch Schlimmeres von dem Bakchos-Priester Makareus aus Mytilene zu berichten, der dem Hinterleger nicht nur die Rückgabe verweigert, sondern ihn abgeschlachtet und statt des Verwahrguts vergraben habe und hierauf mit der Ausrottung seiner Familie bestraft worden sei[105]. Alle diese Zeugnisse lassen die Vorstellung eines in besonderer Weise auf Vertrauen basierenden, unentgeltlichen Rechtsgeschäftes erkennen[106].

Bereits antike und byzantinische Autoren sprechen nun von νόμοι über die Verwahrung:

Michael von Ephesos[107] nennt einen νόμος, demzufolge der untreue Verwahrer mit Atimie bestraft worden wäre: ὁ μὲν γὰρ νόμος καθόλου κελεύει τὸν μὴ ἀποδιδόντα τὴν παρακαταθήκην ἄτιμον εἶναι, ...[108]. Zwar ist Atimie als Sanktion der Nichtrückgabe – anders als die *infamia* beim römischen *depositum* – nicht gesichert[109], unschwer lässt sich hinter diesem Zitat jedoch der Gedanke παρακαταθήκην λαβὼν δικαίως ἀπόδος erkennen.

Den entgegengesetzten Fall schildert – wenn auch als historisch fragwürdige Quelle – Aelian. In Stageira und überall in Griechenland habe es den νόμος gegeben: ὃ μὴ κατέθου (φησί), μὴ λάμβανε (Was Du nicht hinterlegt hast, das fordere / nimm nicht).[110] Die Formulierung „in Stageira und überall gab es den griechischen Nomos“ deutet – im Gegensatz zu der Annahme von Erhardt[111] und Roth[112] – allerdings eben gerade nicht auf eine konkrete gesetzliche Norm.

Vielmehr beschreiben diese beiden Rechtssätze jene typischen Konfliktsituationen, die im Rahmen eines Verwahrungsverhältnisses auftreten können: Das Verweigern der Herausgabe anvertrauten Gutes (Verfehlung des Depositars) und das haltlose Beschuldigen einer Veruntreuung (Verfehlung des Deponenten). Die Regelung dieser beiden Grundsachverhalte, die in Folge – als Prinzipien des Depositen-

[101] Hdt. 6, 86; vgl. dazu Scheibelreiter (2008).
[102] Plut. Moralia (de sera num vind. 11 p) 556d.
[103] Konon (FrGrHist 26 F38).
[104] Stob. 3,28,21.
[105] Aelian VH 13,2. Makareus wird schließlich verhaftet, gefoltert und stirbt.
[106] Vgl. dazu auch Rupprecht (1967) 46.
[107] Michael von Ephesos zu Aristot. Eth. 5, 67.
[108] Roth (1970) 92.
[109] Vgl. Hellebrandt (1947) 1191.
[110] Aelian VH 3,46: Σταγειριτῶν νόμος οὗτος καὶ πάντη Ἑλληνικός. ὃ μὴ κατέθου φησί, μὴ λάμβανε.
[111] Erhardt (1958) 49 A. 33. 78; Erhardt (1959) 484.
[112] Roth (1970) 92.

rechts – Verwahrungsgesetze (VG) I und II bezeichnet werden, begegnet etwa schon im jüdischen Recht in Exodus 22,8[113].

Auf Basis dieses Rechtsverständnisses gilt es, das Augenmerk auf gesatzte Normen zur Parakatatheke im weiteren Sinn – römischrechtlich formuliert *leges publicae* und *leges privatae* – zu legen. Angesichts der archaischen Strenge von VG I und VG II wäre es nicht verwunderlich, dass eine materiell schwerwiegende Sanktion wie die des *duplum*[114] als Rechtsfolge für eine begangene oder behauptete Veruntreuung normiert worden wäre. Dies entspricht etwa auch der – erstmals für Solon[115] als Sanktion belegbar – *poena dupli* für Diebstahl, dem der Veruntreuungstatbestand nahesteht[116].

4. Rechtsfolgen der Rückgabeverweigerung in Einzelbestimmungen

4.1. Gortyn, IC IV 41 3,7-16

Die erste – greifbare – gesetzliche Regelung für die Verwahrung befindet sich im so genannten 2. Gesetz von Gortyn, IC IV 41; 7-17:

αἴ κα τετ-
ράπος ἢ ὄνν[ι]θα παρ-
καταθ[ε]μένοι ἢ κρη-
σάμενος ἢ [ἀλ]λâι δε-
κσάμε[νο]ς μὴ νυνατ-
ὸς εἴη αὐτ[ὸν ἀ]ποδόμ-
ην, τὸ ἀ[πλ]όον κατασ-
τασεῖ. αἰ δ[έ κ' ἐ]πὶ τâι
δίκαι [μο]λίον ἐκσαν-
νήσεται, δι[πλ]εῖ κατ-
αστâσ[αι κ]αὶ θέμημ πόλι

Wenn einer dem, der ihm einen Vierfüßler oder Geflügel anvertraut hat, diese Tiere – sei es, dass er sie entliehen oder auf andere Weise erhalten hat – nicht zurückgeben kann, soll er den einfachen Wert erlegen. Wenn er aber bei dem Gerichtsverfahren ableugnet, soll er das Doppelte erlegen und der Polis bezahlen …[117]

Bereits Beauchet[118] hat hier einen Zusammenhang zu dem *duplum* als Strafe für Veruntreuung in späterer Zeit hergestellt, und ihm folgten Lipsius[119], Mitteis-Wilcken[120], Koschaker[121], Hellebrandt[122], Kießling[123], Roth[124] und Thür-Taeuber[125].

[113] Vgl. dazu unten 5.
[114] Vgl. etwa dazu auch Koerner (1993) 383.
[115] Demosthenes 24,105 (=fr. 23d Ruschenbusch).
[116] Schon Partsch (1909) 83-85 hat für die – in römischrechtlichen Kategorien gesprochen – „Realverträge" im griechischen Recht einen deliktischen Ursprung vermutet. Der Vollständigkeit halber sei erwähnt, dass auch im klassischen römischen Recht der Bruch eines Verwahrungsvertrages, Veruntreuung, als *furtum* qualifiziert wurde; dazu und zum deliktischen Ursprung des *depositum* vgl. Scheibelreiter (2010).
[117] Übersetzung nach Koerner (1993) 382-382.
[118] Beauchet (1897) 329.
[119] Lipsius (1905) 738.
[120] Mitteis-Wilcken (1912) 258.
[121] Koschaker (1917) 22.
[122] Hellebrandt (1949) 1190.

Metzger wollte aufgrund des untypischen Verwahrguts – vierfüßige Tiere und Vögel – das παρκαταθεμένοι weniger als „verwahren“ im technischen Sinne verstehen denn als untechnisch „übergeben“ oder sogar „verpfänden“ des jeweiligen Tieres[126]. So spricht auch Davies von dem „return of animals pledged as security“[127]. Das Problem der Zuordnung des παρκαταθεμένοι zu einem Rechtsgeschäft ist aber nicht überzubewerten: Gerade die Parakatatheke ist ein weit gefasster Tatbestand – weiter als etwa der römischrechtliche Vertragstyp des *depositum*; zu sehr kategorisierendes Denken ist hier fehl am Platz. Auch werden mit der Leihe (κρησάμενος) und einer Übergabe zu anderem Zweck (ἀλλᾶι δεκσάμενος, was von Koerner als Verpfändung gedeutet wird[128]) zwei speziellere (Unter-) Arten der Übergabe gesondert angeführt[129]. Als Tatbestandsmerkmal ist jedoch vor allem relevant, dass ein Gut in die Obhut einer Partei übergegeben (umschrieben mit dem παρκαταθεμένοι) und dann als Sanktion für das Ableugnen dieses Vorganges im Prozess ein Mehrfaches als Strafe (διπλεῖ) angedroht wird. Mit Kränzlein[130] wird hier also wohl auch von einer Pflicht zur „Verwahrung“ gesprochen werden können. Und gerade diese Pflicht zu verletzen verbietet die Bestimmung dem Übernehmenden.

Damit liegt ein erstes Spezialgesetz[131] vor, das den Sachverhalt des νόμος τῶν παραθηκῶν zum Regelungsgegenstand erhebt. Freilich ist der Tatbestand von IC IV 41 3,7-17 differenzierter und weist auf einen prozessualen Hintergrund: Nur im Falle der Ableugnung (αἰ ... ἐκσαννήσεται) eines verwahrten Tieres im Prozess hat der Verwahrer das *duplum* herauszugeben; scheitert die Rückerstattung deshalb, weil der Verwahrer aus einem anderen Grund zur Rückgabe nicht in der Lage ist (μὴ νυνατὸς εἴη αὐτὸν ἀποδόμην), so schuldet er bloß das *simplum*[132].

4.2. Athen

Für Athen fehlt ein solcher unmittelbarer Beleg. Ungeachtet dessen hat Lipsius formuliert: „Doch darf man bei der Schärfe, mit der Veruntreuung eines Depositum von der öffentlichen Meinung gerichtet wurde, es wahrscheinlich finden, dass in Athen ebenso wie in Gortyn seine Ableugnung mit der Buße des *duplum* geahndet wurde.“[133]

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[123] Kießling (1957) 70.
[124] Roth (1970) 75.
[125] Thür-Taeuber (1994) 179 A. 149.
[126] Metzger (1973) 97-98.
[127] Davies (2005) 307.
[128] Koerner (1993) 382.
[129] Koerner (1993) 382-383.
[130] Vgl. Kränzlein (1963) 115.
[131] So schon Mitteis-Wilcken (1912) 258; Hellebrandt (1949) 1190; Hölkeskamp (1999) 125.
[132] Vgl. dazu schon Wlassak (1965) 110; weiters vgl. Metzger (1973) 99-100.
[133] Lipsius (1905) 758.

Ebenso räumt Paoli zwar ein: "mancano in proposito notizie precise"[134], dennoch folgt auch er der Annahme von Lipsius. David Cohen meint schließlich – in Anlehnung an Hans Julius Wolffs Theorie über die δίκη βλάβης[135] – lapidar bezüglich der δίκη παρακαταθήκης: „The remedy was either simple or double restitution"[136]. Da der Verwahrungsvertrag Gegenstand einiger Prozessreden ist, sollten sich diese Behauptungen leicht verifizieren lassen können.

Streitgegenstand der demosthenischen Reden[137] für Phormion (Demosth. 36) und für Stephanos I (Demosth. 45) sind 11 Talente, die Phormion, der ehemalige Sklave und Geschäftsführer des Pasion, nun Pächter von dessen berühmtem Bankhaus, als Parakatatheken verliehen haben soll[138]. Im gegebenen Zusammenhang fehlt jegliche Erwähnung einer *poena dupli*: Die Summe, die als Parakatatheke von Phormion angelegt worden ist, beläuft sich auf 11 Talente[139], die Forderung gegen Phormion ebenfalls. Klagsgegenstand sind allerdings nicht die Parakatatheken selbst, die Phormion mit Dritten abgeschlossen hatte, sondern die von Apollodoros, dem Sohn des Pasion, behauptete Veruntreuung dieses Geldes[140].

Im Trapezitikos des Isokrates[141], einem Prozess, der gegen Pasion und sein Bankhaus geführt wird, verlangt ein junger Bosporaner von Pasion die Herausgabe einer Parakatatheke. Das Hauptgewicht der Rede ist jedoch auf die Unehrenhaftigkeit des Ableugnens bzw. des unbegründeten Einforderns einer verwahrten Summe (also wieder VG I und VG II) gelegt[142]. So wird auch höchstens die Frage nach der Verzinslichkeit der Paratheke, nicht aber nach deren genauem Wert oder einem strafweise zu entrichtenden *duplum* thematisiert[143], und es bleibt mit Thür festzuhalten: „Für die materielle Gestalt der Paratheke gibt die Rede wenig her."[144]

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[134] Paoli (1957) 495.

[135] Vgl. dazu Wolff (1943), insbes. 323-324; ausführlicher dazu sogleich unten.

[136] Cohen (1983) 22. und insbes. A. 29.

[137] Gleich acht Reden des *Corpus Demosthenicum* nehmen auf Prozesse Bezug, die um den Nachlass des Großbankiers Pasion geführt wurden. Es sind dies die Reden Dem. 36 und 45 und die Reden (Dem.) 46, 49, 50, 52, 53 und 59.

[138] Dem. 36,5-6.13; 45,29.31.32-33. Zur genauen Darstellung des Sachverhalts siehe Beyer (1968).

[139] Phormion hatte aus staatsbürgerschaftsrechtlichen Gründen – als Nichtathener hätte er die Sicherheiten der Schuldner nicht einlösen können – Pasion zu seinem Schuldner machen müssen, vgl. Dem. 36,6. Also bestätigt es auch der mehrfach in Dem. 45 genannte Zusatz bezüglich eines Pachtvertrages: ἔνδεκα τάλαντθ' ὁ πατὴρ ὀφείλων εἰς τὰς παρακαταθήκας (vgl. Dem. 45,29,4-6. 31,4-9. 32-33,1).

[140] Beyer (1968) 15-18; freilich fordert Apollodorus 20 Talente (Dem. 36,3), was auf eine Verzinsung der 11 Talente hindeuten könnte, vgl. Beyer (1968) 17.

[141] Isokr. 17.

[142] Isokr. 17,1.9.18.45,4.50,2.56,5; vgl. dazu schon Klami (1969) 30.

[143] Vgl. etwa Thür (1971) 169.171-172.

[144] Thür (1971) 168; zum Tatbestand der Parakatatheke in Isokr. 17 vgl. auch Mummenthey (1971) 74.

Die 21. Rede des Isokrates gegen Euthynous nun ist einer δίκη παρακαταθήκης gewidmet[145]: Νικίας γὰρ οὑτοσὶ, (...), τρία δὲ τάλαντα ἀργυρίου Εὐθύνῳ φυλάττειν ἔδωκεν, αὐτὸς δ' εἰς ἀγρὸν ἐλθὼν διητᾶτο. Οὐ πολλῷ δὲ χρόνῳ ὕστερον βουλόμενος ἐκπλεῖν ἀπῄτησε τἀργύριον· Εὐθύνους δὲ τὰ μὲν δύο τάλαντα ἀποδίδωσι, τοῦ δὲ τρίτου ἔξαρνος γίγνεται. Ἄλλο μὲν οὖν οὐδὲν εἶχε Νικίας ἐν τῷ τότε χρόνῳ ποιῆσαι, προσιὼν δὲ πρὸς τοὺς ἐπιτηδείους ἐνεκάλει καὶ ἐμέμφετο καὶ ἔλεγεν ὰ πεπονθὼς εἴη. Καίτοι οὕτω τοῦτόν τε περὶ πολλοῦ ἐποιεῖτο καὶ τὰ καθεστῶτα ἐφοβεῖτο, ὥστε πολὺ ἂν θᾶττον ὀλίγων στερηθεὶς ἐσιώπησεν ἢ μηδὲν ἀπολέσας ἐνεκάλεσεν.

Nikias hinterlegt bei Euthynous 3 Talente, dieser übernimmt sie zur Bewahrung. Als Nikias die 3 Talente kurz darauf herausverlangt, weiß Euthynous nur mehr von 2 Talenten und leugnet den Erhalt eines Dritten ab[146].

Ähnlich verhält es sich mit der bei Dionysios von Halikarnassos tradierten 32. Rede des Lysias: Dort wird ein gewisser Diogeiton beschuldigt, unter anderem 5 Talente unterschlagen zu haben, die bei ihm von seinem Bruder Diodotos zugunsten von dessen Kindern hinterlegt worden waren[147]. Auch hier steht vor allem die Schande (gegenüber den Göttern)[148], eine Parakatatheke abzuleugnen (ὃς ἐτόλμησε τὰ μὲν ἔξαρνος γενέσθαι)[149] im Mittelpunkt.

Von einem *duplum*, das die leugnenden Verwahrer Euthynous bzw. Diogeiton eventuell hätten zahlen müssen, ist nichts zu lesen.

Das – schon von Wlassak[150] beanstandete – Fehlen des *duplum* als Sanktion für Veruntreuung in attischen Prozessreden[151] könnte sich auch aus deren *genus* erklären, da oft der Ausgang der Prozesse nicht bekannt ist. Aber auch Verweise auf konkrete Verwahrungsgesetze gibt es in den Reden keine.

Gleiches gilt für die platonischen Nomoi, die sich – obwohl eine fiktive Rechtsordnung darstellend – an geltendem Recht ihrer Zeit orientieren[152]: Hier scheint die Sanktion eines doppelten Ersatzes zwar mehrfach auf, die Verwahrung fehlt in dieser Liste freilich[153].

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[145] Isokr. 21,2-3.

[146] Vgl. dazu auch Mummenthey (1971) 74-75.

[147] Lys. 32,5.

[148] Lys. 32,13,3.

[149] Lys. 32,20,1.

[150] Wlassak (1965) 110.

[151] In weiteren Belegen der attischen Redner wird die Parakatatheke als geheiligte Verpflichtung vor allem metaphorisch verwendet – vgl. dazu Dem. 21,177,4. 25,11 und (Dem.) 59,76,6; für das Anvertrauen von Geheimnissen und Ähnlichem vgl. Isokr. 1,22.

[152] So wird Platon in die rechtsvergleichenden Überlegungen Theophrasts einbezogen, z.B. in Theophrast Nomoi Fr. 650 F. = fr. 21 Szegedy-Maszak (=Stob. 4.2.20); vgl. dazu weiters etwa Ruschenbusch (2001).

[153] Düll (1948) 214-216 hat die *duplum*-Strafe für Diebstahl (Plat. Nom. 9,857a; 12,954b), Schädigung wegen Gewalttätigkeit (Plat. Nom. 11,914e), Betrugs (Plat. Nom. 11,936d),

Wenn also materiell nicht fassbar, so ist das *duplum* vielleicht aus dem Prozess zu erklären – aus der oben bereits angesprochenen δίκη βλάβης: In einer von Hans Julius Wolff angeregten Dissertation zu dieser Klage kommt Mummenthey zu dem Ergebnis, dass sich der weite Begriff der βλάβη als „jedes rechtswidrige oder beeinträchtigende Verhalten, sei es gegen Vermögen, die Person, die staatliche Ordnung oder sonstige Rechtsgüter gerichtet" definieren lasse[154]. Im Unterschied zum römischen Recht und dem ihm eigenen Aktionensystem dienen im Recht Athens die Klagsnamen aber nicht als streng formale Anspruchsgrundlage, sondern bloß einer Individualisierung des jeweiligen Anspruches[155]. So sei auch die δίκη παρακαταθήκης nur als eine Unterform der δίκη βλάβης zu verstehen. Das erkläre sich wiederum aus dem griechischen Vertragsrecht und dem ihm zugrundeliegenden Haftungsmodell der „Zweckverfügung", wonach jeder Verstoß gegen eine vertragliche Abmachung nicht einen vertraglichen Anspruch auf Leistung, sondern auf deliktischen Schadenersatz des geschädigten Vertragspartners auslöse[156]. Mummenthey folgert also: „Die Vorenthaltung einer παραθήκη erfüllte als vermögensschädigendes Verhalten ebenfalls den Tatbestand der βλάβη."[157] Die Haftung für βλάβη sah nun ein strafweises *duplum* des Schädigers vor, wobei ähnlich dem Gesetz aus Gortyn zwischen fahrlässigem und vorsätzlichen Schädigen unterschieden wird[158] – so differenziert Demosthenes[159]: πρῶτον μὲν τοίνυν οἱ περὶ τῆς βλάβης οὗτοι νόμοι πάντες, ἵν' ἐκ τούτων ἄρξωμαι, ἂν μὲν ἑκὼν βλάψῃ, διπλοῦν, ἂν δ' ἄκων, ἁπλοῦν τὸ βλάβος κελεύουσιν ἐκτίνειν.

Die deliktische Haftung des ungetreuen Verwahrers ging somit in Athen *in duplum*, wenn er wider besseres Wissen das Verwahrgut vorenthalten und so den Hinterleger geschädigt hatte[160].

4.3. ISardes 7,1,1

Der großen Inschrift einer Wand des Artemistempels in Sardes, die Buckler und Robinson erstmals 1912 im *American Journal of Archeology* veröffentlicht haben, ist folgender Sachverhalt zu entnehmen: Ein gewisser Mnesimachos überlässt, bedrängt von den Tempelbeamten des Artemistempels, eine Parakatatheke von 1325 Stateren Goldes zurückzuzahlen, dem Artemistempel ein größeres Gebiet Land, dessen Dörfer und Gemeinden genau aufgeführt werden (Col. I). In einem zweiten Abschnitt der Inschrift (Col. II) werden Vertragsstrafen festgelegt.

Amtsmissbrauch (Plat. Nom. 8,846b), Körperverletzung (Plat. Nom. 9,878c) oder „Widerstand gegen die Staatsgewalt" (Plat. Nom. 8,844d) nachgewiesen.

[154] Mummenthey (1971) 42.

[155] Mummenthey (1971) 26-34.

[156] Vgl. dazu Wolff (1957).

[157] Mummenthey (1971) 73 A. 202.

[158] Mummenthey (1971) 84-85.

[159] Dem. 21,43.

[160] Als Fall der Verwahrerhaftung *in simplum* versteht Mummenthey (1971) 84-87 die in Dem. 52 belegte δίκη ἀργυρίου.

Der Text weist eine größere Lücke jeweils am Beginn von Colum. I. und II. auf, allein seine Datierung ist viel diskutiert worden[161].

Im gegebenen Zusammenhang interessiert vor allem die Interpretation des Sachverhalts: Mnesimachos hat 1325 Statere Goldes als Parakatatheke des Tempels der Artemis. Als die Tempelbeamten die Herausgabe des Geldes begehren, kann er nicht leisten (Col. I, Z. 2-4): ἐπειδὴ νῦν οἱ νεωποῖαι τὸ χρυσίον τῆς | [παρακαταθή]κης τὸ τῆς Ἀρτέμιδος ἀπαιτοῦσιν παρ' ἐμοῦ, ἐγὼ δὲ οὐκ ἔχω πόθεν ἀποδώσω αὐτοῖς. „Da nun die Tempelbeamten das Geld aus der Parakatatheke der Artemis zurückverlangen von mir, ich aber nicht weiß, woher ich es ihnen zurückerstatten soll."

Dem Wesen der Parakatatheke entspricht es, dass die hinterlegte Sache jederzeit zurückgefordert werden kann[162]. Gemäß der Inschrift muss Mnesimachos wegen Nichterfüllung der Leistung eine Sicherheit stellen und überantwortet dem Tempel die genannten Liegenschaften[163]. Buckler-Robinson vermuten dazu noch die *poena dupli*: „The deposit-loan made to Mnesimachus was doubtless accompanied by a written agreement providing that on his failure to repay the 1325 staters his property should be liable to execution for twice that amount …"[164]

Die Übertragung der Immobilien zumindest in den Besitz des Tempels deuten Buckler-Robinson als sicherungshalber vorgenommene πρᾶσις ἐπὶ λύσει des Mnesimachos[165]. Diese Interpretation ist angesichts des Textes nicht unproblematisch, schließt dieser doch eine λύσις ausdrücklich aus (Col. II, 2: μηκέτι ἀπολύσασθαι)[166]. Weiss vermutet eine pfandrechtliche Besicherung der Verwahrung[167], Atkinson hat versucht, einen zwangsweisen Verkauf des Landes durch Mnesimachos an den Tempel zu konstruieren[168]. Debord[169] und Billows[170] haben eine unverzinste Parakatatheke angenommen, deren Rückzahlung mit dem Land besichert war.

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[161] So haben Buckler-Robinson (1912) 26 die Inschrift ursprünglich in das ausgehende 4. Jh. datiert, dies in Buckler-Robinson (1932) 5 revidiert und als *terminus ante quem* für das Original der in Abschrift erhaltenen Inschrift 250 v. Chr. angenommen. Atkinson (1972) 62-66 argumentiert für eine Datierung um 214 v. Chr. Demgegenüber votieren Debord (1982) 244-251 und Billows (1995) 137-145 wieder für das Jahr 306 v. Chr.

[162] Vgl. dazu schon Kastner (1962) 13-15 und schon oben unter 3.

[163] Der Akt der Übertragung bzw. ein dies bezeichnendes, entsprechendes Verb fehlt in der Urkunde.

[164] Buckler-Robinson (1912) 60; ähnlich auch noch Buckler-Robinson (1932) 4-5.

[165] Buckler-Robinson (1912) 17; Buckler-Robinson (1932) 4.

[166] Vgl. so schon Atkinson (1972) 54-55; Billows (1995) 140.

[167] Weiss (1923) 440.

[168] Atkinson (1972) 58-61; dagegen etwa Billows (1995) 140.

[169] Debord (1982) 244-251.

[170] Billows (1995) 141-142.

Tatsache ist, dass Mnesimachos dem Artemistempel die Liegenschaft überlässt, da er die Parakatatheke nicht herausgeben kann. Dabei werden weitere Vertragsstrafen vereinbart[171]:

Nach der allgemeinen Klausel über die Unauflösbarkeit des Vertrags (μηθὲν-ἀπολύσασθαι) verpflichtet sich Mnesimachos samt seinen Nachfahren zur βεβαίωσις gegenüber ἀντιποιούμενοι (καὶ ἐάν τις ἐμποιῆται – ἐξαλλάξομεν). Für den Fall, dass er diese Gewährleistungspflicht unterlassen (ἐὰν δὲ μὴ βεβαιώσωμεν) oder auf andere Art vertragsbrüchig werden (ἢ παρὰ τὴν συγγραφὴν παραβαίνωμεν-οἰκέτας ἅπαντας) würde, werden kumulativ vier Sanktionen vereinbart:

1) Der Tempel, im Besitz des Landes, soll selbst darüber prozessieren (εἰς τὰ Ἀρτέμιδος ἐχέτωσαν – βούλωνται)

2) Mnesimachos und seine Nachkommen müssen dem Artemistempel 2650 Statere Goldes, also das *duplum* von 1325 (καὶ ἐγὼ – δισχιλίους ἐξακοσίους πεντήκοντα) zahlen

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[171] ISardes 7,1,1 (Col. II, Z. 1-12):
[– – –c.16– – – μηθ]ὲ[ν ἐξέστω μή]τε ἐμοὶ μήτε [τοῖς ἐμοῖς ἐκγόνοις μήτ]ε [– –c.10– –] | μήτε ἄλ<λ>ωι μηθενὶ μηκέτι ἀπολύσασθαι· καὶ ἐάν τις ἐμποιῆται ὑπέρ τινος τῶν κωμῶν ἢ τῶν κλήρων | ἢ ὑπὲρ τῶν ἄλλων τῶν ὧδε γεγραμμένων ἐγὼ καὶ οἱ ἐμοὶ ἔκγονοι βεβαιώσομεν καὶ τὸν ἀντιποιούμενον | ἐξαλλάξ <ο>μεν, ἐὰν δὲ μὴ βεβαιώσωμεν ἢ παρὰ τὴν συγγραφὴν παραβαίνωμεν τήνδε γεγραμμένην |[5] ἐπ[ὶ] τὰς κώμας καὶ τοὺς κλήρους καὶ τὰ χωρία καὶ τοὺς οἰκέτας ἅπαντας εἰς τὰ Ἀρτέμιδος ἐχέτωσαν, | καὶ οἱ νεωποιοὶ ὑπὲρ τούτων ἐκδικαιούσθωσαν καὶ κρινέσθωσαν πρὸς τοὺς ἀντιποιουμένους | ὡς ἂν βούλωνται, καὶ ἐγὼ Μνησίμαχος καὶ οἱ ἐμοὶ ἔκγονοι ἀποτείσομεν εἰς τ<ὰ> Ἀρτέμιδος | χρυσοῦς δισχιλίους ἐξακοσίους πεντήκοντα, καὶ ὑπὲρ τῶν γενημάτων καὶ τῶν καρπῶν | ἐὰν μὴ καρπεύσωνται ἐν ἐκείνωι τῶι ἔτει εἰς τὰ Ἀρτέμιδος ὁπόσου οὖν χρυσίου ἄξια ἦι καὶ ταῦτα |[10] ἀποδώσομεν, καὶ τῶν οἰκοδομη<μά>των καὶ φυτευμάτων τῶν τῆς Ἀρτέμιδος ἢ ἄλλο τι ὅ τι ἂν ποιήσωσιν | ὅσου χρυσίου ἄξια ἦι τὴν ἀξίαν ἀποδώσομεν, μέχρι δὲ ὅσου μὴ ἀποδῶμεν ἔστω ἡμῖν ἐν παρακαταθήκηι | τέως ἂν ἅπαν ἀποδῶμεν·
„(…) und weder mir soll es möglich sein noch meinen Nachkommen noch irgendjemandem sonst es aufzulösen. Und wenn irgendjemand einen Anspruch erhebt auf ein Dorf oder eines der Landlose oder auf etwas anderes der so aufgelisteten Dinge, dann werden ich und meine Nachkommen Gewähr leisten und den, der sich widersetzt entfernen, wenn wir aber nicht Gewähr leisten oder diese geschriebene Vereinbarung übertreten, so sollen sie bezüglich der Dörfer und der Landlose und der Ländereien und aller Sklaven (alles) im Schatz der Artemis haben. Und die Tempelbeamten sollen darüber prozessieren und Schiedssprüche erhalten gegen die sich Widersetzenden wie sie es wollen, und ich Mnesimachos und meine Nachkommen sollen schulden gegenüber dem Schatz der Artemis 2650 Gold(stateren), und auch für der Erzeugnisse und Früchte. Wenn sie aber nicht Frucht ziehen in diesem Jahr, werden wir dem Tempelschatz, wie viel an Gold dies wert wäre entrichten und für die Bauten und Pflanzen und alles andere was sie tun wie viel dies an Gold wert ist, werden wir entrichten, und solange wir nicht entrichten, wird es bei uns bleiben als Parakatatheke bis wir alles entrichten.“

3) Mnesimachos und seine Nachkommen müssen Ersatz für die *fructus percipiendi* dieses Jahres zahlen (καὶ ὑπὲρ τῶν γενημάτων – ἀποδώσομεν)

4) Weitere Ersatzleistungen des Mnesimachos und seiner Nachkommen für unterbliebene Nutzungen an der Liegenschaft (καὶ τῶν οἰκοδομημάτων – ἀποδώσομεν)

Die gesamte Strafsumme soll schließlich bis zur vollen Abzahlung an den Tempel als Parakatatheke bei Mnesimachos fingiert werden[172].

Schon Mitteis-Wilcken[173] und Roth[174] haben das *duplum* als einen dem νόμος τῶν παραθηκῶν vergleichbaren Tatbestand interpretiert[175]. Das Hauptaugenmerk muss auf die Deutung der *poena dupli* gelegt werden:

Man könnte das *duplum* folgendermaßen auf die Parakatatheke beziehen: Die Nichterfüllung war mit der Leistung der Sicherheit getilgt worden. Wird diese evinziert, so soll die bisher suspendierte Rechtsfolge in Kraft treten: Die Zahlung eines *duplum*. So verstehen es auch Buckler-Robinson, die noch hinzufügen: „The contract of *parakatatheke* must at this period have been equipped with the same penalty for non-payment as in the first and second centuries A.D., when the papyri show that the defaulting debtor was liable for twice the amount of the original loan."[176] Da – genau konträr zum Anliegen dieser Untersuchung – der νόμος τῶν παραθηκῶν dazu bemüht wird, um die Hypothese Buckler-Robinsons zu stützen, ist dieses letzte Argument im gegebenen Zusammenhang jedoch wertlos. Vielmehr muss darauf abgestellt werden, dass in Colum. II 11 und 18 die jeweils strafweise zu entrichtende Summe bis zu ihrer Leistung als Parakatatheke gelten soll: μέχρι δὲ ὅσου μὴ ἀποδῶμεν ἔστω ἐν ἐμοὶ ἐν παρακαταθήκηι καὶ ἐν τοῖς ἐμοῖς ἐκγόνοις. Damit würden die – für den Schuldner nachteiligen – Rechtswirkungen einer Parakatatheke Bestandteil der Vereinbarung, zum Beispiel auch eine *poena dupli*[177].

Neben Gortyn IC IV 41 3,7-16 und der athenischen δίκη βλάβης wäre mit der Vertragsstrafe in ISardes 7,1,1 für den griechischen Raum somit ein zweiter Beleg für die strafweise Entrichtung einer παρακαταθήκη διπλῆ gegeben, diesmal freilich aus der Vertragspraxis. Buckler-Robinson betonen diese Besonderheit: „… at the date of our document some such penalty had been imposed by law, …" Tatsächlich ist weder im Vertrag die Bezugnahme auf ein Gesetz zu erkennen noch ein solches belegt.

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[172] In einem weiteren Absatz (Col. II, Z. 12-18) wird festgehalten, dass im Falle der Eviktion des Landes durch König Antigonos neben den zuletzt genannten Rechtsfolgen nur das *simplum* an Artemis zu leisten sein solle – vgl. Buckler-Robinson (1912) 60; Atkinson (1972) 53-54.

[173] Mitteis-Wilcken (1912) 258.

[174] Roth (1970) 75.

[175] Mitteis hat die Herausgeber auch hinsichtlich der rechtlichen Qualifikation der Paratheke beraten, vgl.: Buckler-Robinson (1912) 61 A. 2.

[176] Buckler-Robinson (1912) 61; ähnlich argumentieren Buckler-Robinson (1932) 5.

[177] Vgl. Buckler-Robinson (1912) 21; 61; Atkinson (1972) 57.

Es soll aber nicht außer Acht gelassen werden, dass eine andere Interpretation mindestens ebenso wahrscheinlich ist – so könnte die *poena dupli* ähnlich der Rechtsfolge einer römischen *actio auctoritatis* für den Eviktionsfall verstanden werden[178], das freilich nur bei Unterlassen der βεβαίωσις.

4.4. Rechtshilfevertrag aus Stymphalos IPArk I 17

Folgt man der Datierung von Billows, dann steht ISardes 7,1,1 in unmittelbarem zeitlichen Zusammenhang mit dem Rechtshilfevertrag zwischen Stymphalos und Demetrias 303–300 v. Chr.[179]. Und darin ist auch eine Bestimmung hinsichtlich der Parakatatheke normiert (Z. 109-111):

§ 14 [π]αρκαταθήκας δὲ καὶ ἐνγύας [τοῦ] ξεναπατίου διπλάσιον ἀποτινέτω ἥ κ' ὧν ἀδικῆι.	Wegen einer Parakatatheka und einer Bürgschaft soll er bei Betrug an Fremden doppelt so viel zahlen, wie er Unrecht tut.[180]

Thür und Taeuber verstehen das *duplum* als Herausgabe der Sache samt einem Aufschlag von 100 Prozent[181]. Dies entspricht dem psychologischen Grundkonzept des *duplum* als Strafe für Schädigung, wie es Kelly angenommen hat: Einmal soll die Äquivalenz für den zugefügten Schaden wieder hergestellt werden, darüber hinaus soll der Schädiger selbst den gleichen Nachteil erleiden, den er dem Geschädigten zugefügt hatte[182].

Die Formulierung der *duplum*-Strafe διπλάσιον ἀποτινέτω als kausale Folge der ξεναπατία[183] bei Verwahrungsvertrag und Bürgschaft erscheint geradezu typisch und erinnert an die des νόμος τῶν παραθηκῶν. Schließlich bleibt noch anzumerken, dass sich IPArk 17, ein Rechtshilfevertrag, nicht auf ein entsprechendes Gesetz über Parakatatheken bezieht, der Vertrag vielmehr selbst zu dem Tatbestand wird, auf den sich Streitparteien eines Verwahrungsverhältnisses der beiden Gemeinden berufen können.

4.5. Weitere Quellen zur Paratheke?

Weiteres Quellenmaterial zur Paratheke oder Parakatatheke ist für die Strafe des *duplum* nicht ergiebig, vielmehr steht die generalpräventive Wirkung einer negativen Zeichnung von untreuer Verwahrung bzw. von deren Folgen im

[178] Vgl. Buckler-Robinson (1912) 21: "This sum, equal to twice the purchase money (i.e. from the deposit loan), represents the *poena dupli* exacted from a vendor who allowed his vendee to be evicted."

[179] IPArk 17 Z. 109-110.

[180] Übersetzung nach Thür-Taeuber, IPArk 17 § 14 ad locum.

[181] Thür-Taeuber (1994) IPArk 17 S. 182 A. 56.

[182] Kelly (1948) 155. Diese Teilung der *poena dupli* in ein Schadenersatz- und ein reines Pönal-Element ist jedoch zumindest für das frühe römische Recht nicht unumstritten, vgl. dazu Jansen (2003) 194 A. 80 und Scheibelreiter (2010).

[183] Vgl. zu diesem Hapaxlegomenon ξεναπατίος Thür-Taeuber (1994) S. 179 A. 48 und deren Verweis auf Pl. Ep. 7, 350c.

Mittelpunkt. Paradigmatisch hierfür sind Verfluchungen ungetreuer Verwahrer[184] aus Knidos[185] aus dem 2./1. Jh. v. Chr. oder aus Delos[186].

Allerdings weisen Verträge aus Amorgos über öffentliche Darlehen, die in das 4.–2. Jh. v. Chr. datiert werden[187], *duplum*-Strafen auf: Dort wird für den Rückzahlungsverzug eines Darlehens festgelegt: αἰ δέ κα μὴ ἀποδῶντι, ὀφελόντων τὸ διπλάσιον[188]. Neben dem *duplum* ist die – wenn auch rudimentäre – Formulierung auffällig, die in Struktur und Vokabular der des νόμος τῶν παραθηκῶν entspricht.

5. Infitiando lis crescit in duplum?

Die Beispiele aus Gortyn, Athen, (Sardes) und Stymphalos sehen eine *poena dupli* im Zusammenhang mit der Parakatatheke vor: Hier als vertraglich vereinbarte, dort als gesetzlich vorgesehene Strafe. Die möglichen gesetzlichen Tatbestände (Gortyn und die bei Demosthenes belegte νόμοι zur δίκη βλάβης) knüpfen dabei die Leistung des *duplum* jedoch an eine konkrete Voraussetzung[189]: das Ableugnen des *depositum* durch den Verwahrer in prozessualem Kontext (αἰ δ[έ κ' ἐ]πὶ τᾶι | δίκαι [μο]λίον ἐκσανlνήσεται) bzw. das vorsätzliche Vorenthalten des Verwahrgutes (ἂν μὲν ἑκὼν βλάψῃ, διπλοῦν ... ἐκτίνειν). Der Eindruck, dass es sich dabei um eine wesentliche Tatbestandsvoraussetzung im Depositenrecht handelt, wird durch einen Rechtsvergleich über Griechenland hinaus noch verstärkt: Bereits der Codex Hammurabi kennt diesbezüglich mit den §§ 120, 124 und 126 Bestimmungen[190], die für Ableugnen einer Verwahrung ein *duplum* vorsehen[191]. Dem ist Exodus 22,6-8 vergleichbar[192], wo Streitigkeiten aus einer Verwahrung ebenfalls im Rahmen eines

[184] Emphanes und Rhodo.

[185] IKnidos 149 = Knidos 258.

[186] ID 2531.

[187] IG XII,7 67: 2. Jh. v. Chr.; IG XII,7 68: 4. Jh. v. Chr; IG XII,7 69: 4/3. Jh. v. Chr.

[188] IG XII,7 67,26; ebenso IG XII,7 68,15 und IG XII,7 69,14. vgl. dazu weiters IScr. Cos. 82,17; 85,6; 215 aus dem 2. Jh. v. Chr.

[189] Vgl. Roth (1970) 89-90.

[190] §124 Wenn ein Mann einem anderen Silber, Gold oder irgendetwas vor Zeugen zur Aufbewahrung gibt und er es ihm ableugnet, so soll man diesen Mann überführen. Alles was er abgeleugnet hat, soll er doppelt geben.
§126 Wenn ein Mann, dem nichts abhanden gekommen ist, erklärt: „Etwas mir Gehörendes ist mir abhanden gekommen“ und gegenüber einem Stadtbezirk falsche Anzeige erhebt, so soll sein Stadtbezirk es ihm vor Gott nachweisen, dass nichts ihm Gehörendes abhanden gekommen ist, und alles, worauf er Klage erhoben hat, soll er seinem Stadtbezirk doppelt geben. (Übersetzung nach Otto, 1988, 7 und 8).

[191] Vgl. dazu schon Düll (1948) 212.

[192] (6) Wenn ein Mann seinem Nächsten Gold oder Gerät zur Aufbewahrung gibt, und es wird aus dem Haus des Mannes gestohlen, so soll, wenn der Dieb gefunden wird, (dieser) doppelten Ersatz leisten. (7) Wenn der Dieb nicht gefunden wird, so soll der Depositar vor die Gottheit treten, ob er nicht seine Hand ausgestreckt hat nach dem Vermögen seines Nächsten. (8) In allen Fällen von Eigentumsdelikten, mag es sich um ein Rind oder einen Esel oder ein Schaf oder ein Kleidungsstück handeln, um alles, was verlorenging, wovon er sagt: „fürwahr, dies ist es“ – vor Gott soll die Angelegenheit der beiden ge-

Prozesses geklärt werden sollen und ein *duplum* für die unterliegende Partei vorgesehen ist[193]. Schafik Allam vermutet ähnliches auch für Ägypten in Zusammenhang mit der Verdopplung einer Strafsumme für einen säumigen Schuldner in OChicago 12073[194], einem Gerichtsprotokoll. Gerade dieses letzte Beispiel könnte andeuten, dass das Phänomen einer *poena dupli* aus der Strafe für das Ableugnen einer Verwahrung im Prozess erklärbar wird, nach dem Modell des römischrechtlichen Grundsatzes: „Lis infitiando crescit in duplum"[195]. In diesem Zusammenhang wurde auch für Zwölftafel-Satz „ex causa depositi lege duodecim tabularum in duplum actio datur…"[196] ein möglicher Ursprung in dem *infitiari depositum* vermutet[197]. Doch wie eine genauere Untersuchung der Materie erweist, ist die bequeme Logik dieser Schlussfolgerung trügerisch, da die Litiskreszenz gerade für das altrömische *depositum* nicht überliefert ist[198].

Mit den einzelnen römischrechtlichen Tatbeständen der Litiskreszenz kann das ἔξαρνος εἶναι seriöser Weise nicht verglichen werden. Unabhängig davon lässt sich aber ersehen: ἔξαρνος εἶναι ist im attischen Prozess häufig das streitauslösende *momentum*[199], mehrfach im Zusammenhang mit einer Parakatatheke[200], was auf eine gewisse Technizität des Wortfeldes ἐξαρνεῖσθαι schließen lässt. Diese Technizität macht etwa Aristophanes deutlich, wenn er in den Ekklesiazusen als willkürliches Beispiel für den Anlassfall zu einem Prozess das Ableugnen eines Darlehens anführt – ἤν τις ὀφείλων ἐξαρνῆται[201].

Als Tatbestandsvoraussetzung begegnet es schließlich im Recht von Gortyn und den genannten nichtgriechischen Gesetzen (CH §§ 120 und 126; Exod. 22,6-8). In diesem Zusammenhang spricht Düll[202] von den „Vorläufern des Litiskreszenz-

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bracht werden. Wen die Gottheit für schuldig erklärt, der soll seinem Nächsten doppelten Ersatz leisten. (Übersetzung nach Otto, 1988, 16).

[193] Allgemein vgl. dazu Yaron (1969) 165-168; Otto (1988); weiters vgl. dazu Scheibelreiter (2008) 204-206.

[194] Allam (2005) 67 A. 14.

[195] Vgl. Gaius Inst. 4,9.171; D. 9.2.2.1; D. 9.2.27.5.

[196] 12Tab 8,19 (=Coll. 10,7,11).

[197] Düll (1948) 216; Klami (1969) 29-30. Daneben vermutet Klami dies nicht zuletzt aus der Nähe der Veruntreuung zum *furtum*, für das im Normalfall mit dem *duplum* gehaftet wird; diesen Konnex schließt Klami für das griechische Recht jedoch aus.

[198] Zu dieser Interpretation und der Rechtsnatur der *poena dupli* siehe Scheibelreiter (2010).

[199] Dem. 7,26,1; 21,174,1; 23,171,6. 176,6; 27,17,1; 29,10,2. 15,3. 16,3. 17,5; 33,39,2; 39,22,7. 24,4; 57,14,7; Hyp. Fr. 1,2,17; Isaios 5,26,1; 9,5,2; Isokr. 18,3,3; Lys. 1,19,1; 3,27,4; 12,31,3; 13,27,7; 16,8,2; Andok. 1,12,1. 125,7; Aisch. 1,91,5. 113,7. 136,3.7; 3,250,6; 5,51,5.

[200] Dem. 34,3,2. 43,2. 47,5. 49,3; Isokr. 21,3,4; 17,7,5. 8,8. 9,10. 18,3. 38,2. 45.5; Lys. 20,19,2; 32,20,1.

[201] Aristoph. Ekkl. 660; vgl. dazu ebenfalls ebenda 451 und Aristoph. Neph. 1230; Plout. 241; Theophr. Char. 18,5.

[202] Düll (1948) 218.

gedankens."[203] Bereits Wenger hat betont, dass der Grundsachverhalt dafür dem Depositenrecht entstammt[204]. Dies gilt es im Auge zu behalten.

6. Zurück zum νόμος τῶν παραθηκῶν: Die These Klamis

Die Untersuchung des griechischen Depositenrechts, vor allem der Vertragspraxis, ermöglicht einige Bemerkungen zum Inhalt des νόμος τῶν παραθηκῶν.

(1) Wie in den Verträgen ISardes 7,1,1 und dem Rechtshilfevertrag aus Stymphalos wird in den Papyri das *duplum* als unmittelbare Rechtsfolge angedroht. Als Quellen der Vertragspraxis ist die Vereinbarung selbst Grundlage der Leistung des *duplum*. Die Ableitung aus dem Vertrag ergibt sich aus der kondizionalen Form rudimentärer Normen wie des ἐὰν δὲ μὴ ἀποδῶι καθὰ γέγραπται, ἐκτίσει/ἀποτεισάτω τὴν διπλήν / το διπλάσιον.

(2) Im Unterschied zu den inschriftlichen Belegen wird dieses einfache Kondizionalgefüge in den Papyri aber durch den Verweis auf den νόμος „verkompliziert".

(3) Mit dem Vermerk ἔστω ἐν ἐμοὶ ἐν παρακαταθήκηι in ISardes 7,1,1 liegt dafür eine bemerkenswerte Parallele vor. Die griechische Praxis, die als bekannt vorausgesetzte Institutionen oder Verfahren mittels Verweisungsklauseln zum Vertragsinhalt macht, ist für die Parakatatheke damit sowohl inschriftlich als auch papyrologisch fassbar. In beiden Fällen wird allein durch diesen Vermerk Druck auf den Schuldner ausgeübt, nicht in Verzug zu geraten, um nicht ein *duplum* oder im Wiederholungsfalle sogar ein *quadruplum* leisten zu müssen[205]. Der Verweis in ISardes 7,1,1 ist hier schon aus sprachlichen Gründen nicht auf ein Gesetz zu beziehen, sondern auf das griechische Depositenrecht, dessen Rechtswirkungen den Vertragsparteien vertraut sind und nicht näher ausgeführt werden müssen. Wenn auch die Papyri einen solchen Verweis enthalten, so nimmt sich das ebenfalls als Verweis auf die als bekannt vorauszusetzenden gewohnheits-rechtlichen Normen des Depositenrechts aus.

Vor historisch-komparatistischem Hintergrund könnte man aber noch weiter gehen, wozu eine Hypothese Klamis[206], die wenig Beachtung gefunden hat, referiert werden soll. Klami bemüht die Gesetze der Logik, wenn er folgende Gleichung formuliert: Unmittelbare Konsequenz des νόμος ist die Zahlung eines *duplum*. Wie sich gezeigt hat, war dies in Gesetzen üblicherweise an die Voraussetzung des ἐξαρνεῖσθαι – der Ableugnung einer Verwahrung – geknüpft. Wenn nun das *duplum* durch das ἐξαρνεῖσθαι bedingt ist, und eben dieses in den Papyri fehlt, dafür aber der Verweis auf einen unbekannten νόμος vorliegt, was läge dann logisch betrachtet näher, als eben diesen νόμος mit dem ἐξαρνεῖσθαι gleichzusetzen?

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[203] Vgl. dazu auch schon Kelly (1966) 154-155.
[204] Wenger (1919) 10.16.
[205] So schon Hellebrandt (1949) 1196; vgl. dazu Klami (1968) 30.
[206] Klami (1968) 30.

Dann wäre ἐὰν δὲ μὴ ἀποδῶι, ἀποτεισάτω τὴν παραθήκην διπλῆν κατὰ τὸν τῶν παραθηκῶν νόμον sinngemäß wie folgt zu verstehen: „Wenn er (die Paratheke) nicht zurückgibt, dann soll er die doppelte Paratheke entrichten, so wie es üblicherweise der Fall ist, wenn eine Paratheke abgeleugnet wird."

Allein durch den Verweis auf die übliche Tatbestandsvoraussetzung des griechischen Depositenrechtes werden dessen Rechtsfolgen virulent. So schlüssig diese Interpretation des νόμος τῶν παραθηκῶν auch wäre – sie lässt sich schwerlich nachweisen. Auch stehen ihr schon rein faktisch Überlegungen zur Prozessführung[207] entgegen, weswegen sie kaum haltbar ist.

7. Conclusio

Wie ersichtlich wurde, ist es aufgrund der Quellenlage immerhin begrenzt möglich, im griechischen Rechtskreis Kontinuitäten für die Parakatatheke in Verbindung mit der *poena dupli* nachzuweisen, wie sie dem νόμος τῶν παραθηκῶν entsprechen. Eine abschließende Gesamtschau der Quellen ergibt nun das folgende Bild:

Die Parakatatheke ist ursprünglich als geheiligte Verpflichtung zu verstehen, für deren Einhaltung die Scheu vor den Göttern – damit wird noch im attischen Prozess argumentiert[208] – und die persönliche Beziehung zwischen Deponenten und Depositar garantieren sollten. Das erste Verwahrungsgesetz (VG I) lautet daher: παρακαταθήκην ἀπόδος[209] – „Gib eine Parakatatheke zurück!".

Das zweite Verwahrungsgesetz (VG II) schreibt vor: ὃ μὴ κατέθου , μὴ λάμβανε[210] –„Was du nicht hinterlegt hast, das fordere/nimm nicht!".

Mit VG I und VG II sind die beiden klassischen Konflikt-Situationen umrissen, die sich aus einem Verwahrungsverhältnis ergeben können. Haftungsbegründender Tatbestand und somit auch Grundlage dieses archaischen Rechtsstreites um eine verwahrte Sache ist das ἔχειν des Depositars, Ausgangspunkt eines Prozesses aber ist meist sein ἐξαρνεῖσθαι[211]. Denkbar ist nun, dass in Anlehnung an ein prozessuales Prinzip, für eine ἐξάρνησις das *duplum* als Strafe vorzusehen (etwa im Sinne der römischen Litiskreszenz), dieses „Ableugnen" in den Tatbestand der

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[207] Es wäre etwa einzuwenden, dass die Vorlage der Urkunde zu Beweiszwecken bereits ein Verfahren und somit die bereits erfolgte Weigerung des Verwahrers, seiner Leistungspflicht nachzukommen, voraussetzt. Somit müsste das Argument Klamis im Sinne einer Prozessbeschleunigung durch Verweisen auf den νόμος τῶν παραθηκῶν verstanden werden. Diese Funktion wiederum erfüllen bereits andere Klauseln des Paratheke-Formulars wie die Praxisklausel, die hier nicht mehr näher thematisiert werden können.

[208] Vgl. etwa Lys. 32,13,3.

[209] Thales 10.3. DK oder Chilon A 2 DK.

[210] Aelian VH 3,46: Σταγειριτῶν νόμος οὗτος καὶ πάντη Ἑλληνικός. ὃ μὴ κατέθου φησί, μὴ λάμβανε.

[211] So in Isokr. 17,7. 8,8. 9,10. 18,3. 38,2. 45,5; 21,3,4; Dem. 27,17,1; Lys. 20,19,2; 32,20,1.

Parakatatheke miteinbezogen wurde[212]: αἰ δέ (...) ἐκσαννήσεται, διπλεῖ καταστᾶσαι.

Ein antiker Rechtsvergleich legt eine Integration des ἐξαρνεῖσθαι in den typisierten Sachverhalt für ungetreue Verwahrung nahe. Wie Roth festgestellt hat, fehlt aber gerade diese Tatbestandsvoraussetzung in den Urkunden mit dem νόμος τῶν παραθηκῶν[213], der offensichtlich nicht zwischen Nichtzahlenkönnen (*simplum*) und rechtsmissbräuchlichem Nichterfüllen (*duplum*) differenziert[214].

Den von Roth übersehenen[215] *missing link* zwischen Gortyn und den Papyri könnten einerseits die *poena dupli* der δίκη παρακαταθ ήκης als eine Individualisierung der δίκη βλάβης, andererseits inschriftliche Belege der Vertragspraxis bilden: Nach Demosthenes wurde bei Vermögensschädigungen, worunter auch das Vorenthalten von Verwahrgut zu subsumieren ist, hinsichtlich der Haftung *in duplum*/*in simplum* nach dem inneren Tatbestand differenziert. Im Rechtshilfevertrag von Stymphalos ist ganz allgemein der Betrug eines Fremden (worunter auch rechtsmissbräuchliches Ableugnen fiele) unter die Strafe des *duplum* gestellt. In ISardes 7,1,1 wird der Vertrag nicht erfüllt und ein *duplum* geschuldet. Hier könnte diese Entwicklung, die auf ausdrückliche Nennung des ἐξαρνεῖσθαι im Tatbestand des typisierten Vertragsbruchs verzichtet, bereits abgeschlossen sein. Mnesimachos sagt wörtlich, dass er nicht leisten kann (ἐγὼ δὲ οὐκ ἔχω πόθεν ἀποδώσω αὐτοῖς)[216], er leugnet die Schuld aber nicht. Die typisierte *poena dupli* für die Unmöglichkeit der eigenen Leistung lässt sich nun, in Anlehnung an die inschriftlich[217] für Darlehen belegte Vertragspraxis αἰ δέ κα μὴ ἀποδῶντι, ὀφελόντων τὸ διπλάσιον, auch als drittes Verwahrungsgesetz (VG III) rekonstruieren: ἐὰν δὲ μὴ ἀποδῶι, ἀποτεισάτω τὸ διπλάσιον – „wenn (er) nicht zurückgibt, soll der das Doppelte schulden." Und dies entspricht bereits im Wesentlichen der Formulierung der Papyri.

Soweit die Hypothese, die eine Verbindung des bruchstückhaften Quellenmaterials anstrebt. Ein VG III, das dem Verwahrer bei Nichtrückerstattung des Verwahrguts ein strafweises *duplum* auferlegt, ist nicht unmittelbar belegbar.

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[212] IC IV 41 3,16.

[213] Roth (1970) 90.

[214] Die prozessuale Bedeutung erhält eine Paratheke-Urkunde aber erst durch die Praxis-Klausel, die mit dem νόμος τῶν παραθηκῶν nicht identisch ist; vgl. dazu Kühnert (1968) 137. Das wird auch daraus ersichtlich, dass alle Urkunden, die auf den νόμος τῶν παραθηκῶν verweisen, auch eine Praxisklausel enthalten.

[215] Roth (1970) 89-90.

[216] Mit Abstrichen lässt sich dieses Phänomen auch im römischen Recht beobachten, wenn man dazu auch auf den nicht unbedingt juristisch zuverlässigen Pseudo-Quintilian zurückgreifen muss, der in decl. 245 „infitiari" abgeschwächt mit „depositum nolle solvere" definiert, vgl. dazu Lanfranchi (1938) 300-301 und Scheibelreiter (2010). Analog könnte bereits der Zahlungsunfähigkeit des Mnesimachus und dem εἰ δὲ μή ἀποδιδόναι der Papyri ein ἐξαρνεῖσθαι intendiert sein.

[217] IG XII,7 67,26.

Tatsache ist aber, dass auch Verwahrungsgesetz I und II für das griechische Depositenrecht so grundlegend und selbstverständlich erscheinen, dass sie zumeist gar nicht ausformuliert wurden. Auch das *duplum* wird, ebenfalls relativ spät, erstmals im Gesetz von Gortyn normiert. Wenn man weiters bedenkt, dass die gesetzliche Regelung privatrechtlicher Materien in antiken Rechten eher die Ausnahme darstellt[218], so könnte dies auch auf die *poena dupli* zutreffen.

Diesen Hypothesen kann etwa das Fehlen des expliziten Verweisens auf das strafweise *duplum* bei den attischen Rednern oder die Frage, warum der νόμος τῶν παραθηκῶν erst im frühen 1. Jh. n. Chr. Eingang in das Formular der Paratheken fand (und nicht schon früher) entgegen gehalten werden. Das zu klären, war aber auch gar nicht die Absicht dieser Arbeit: Vielmehr galt es, für die *poena dupli* im griechischen Depositenrecht Kontinuitäten aufzuzeigen, einen Traditionsstrang, der sich auch bis zum νόμος τῶν παραθηκῶν und noch darüber hinaus[219] fortsetzen lässt. Da dies erwiesen ist, kann darin ein Indiz für eine (alt)griechische Rechtsvorstellung erkannt werden, was bezüglich der Rechtsnatur des νόμος τῶν παραθηκῶν nahelegt, darin kein Gesetz im Sinne einer generell-abstrakten, gesatzten Bestimmung zu sehen, wie sie etwa für Gortyn vorliegt. Allein die hier diachron untersuchten Normen zum Depositenrecht gestatten die Annahme, dass in Rechtsordnungen, die nicht auf abschließende Kodifikationen einzelner Privatrechtsmaterien abgezielt haben, allgemein anerkannte Prinzipien (*consuetudo*) wie die Strafe eines *duplum* für den ungetreuen Verwahrer je nach Bedarf zu einer *lex* (*publica* oder *privata*) verdichtet wurden oder nicht. Und in diese Tradition, die sich bis in das byzantinische Recht fortsetzt, kann auch der νόμος τῶν παραθηκῶν als Verweisungsnorm in das Depositenrecht gestellt werden.

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[218] Vgl. dazu schon Roth (1970) 83-86; Jakab (2009) 89.

[219] Vgl. dazu den νόμος Ῥωδίων ναυτικός 14.

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ANTWORT AUF PHILIPP SCHEIBELREITER

In memoriam
Raymond Westbrook

Der Beitrag Philipp Scheibelreiters zum „*nomos ton parathekon*“ gibt in zweierlei Hinsicht Gelegenheit zu einer Stellungnahme aus der Perspektive der altorientalischen Rechtsgeschichte: Zum einen im Hinblick auf die angesprochenen Parallelen im Depositenrecht der altbabylonischen Rechtssammlungen, namentlich des „Codex“ Hammurapi, zum anderen im Zusammenhang mit dem Begriff der Rechtsgewohnheit, der im Kontext der Frage nach der Rechtsnatur des „*nomos*“ im einleitenden Problemaufriss Erwähnung findet.

1. Verwahrung im (alt)babylonischen Recht

Regelungen zum Recht der Verwahrung finden sich in den altbabylonischen Rechtssammlungen im „Codex“ Eschnunna in den §§ 36 und 37[1] sowie im „Codex“ Hammurapi in den §§ 120 bis 126[2]. Unter letzteren enthalten die §§ 120, 124 und 126 CH[3] die Anordnung eines *duplum* als Rechtsfolge, die auch dem „*nomos ton pa-*

[1] Ed. Goetze (1956) 96 f.

[2] Ed. Driver/Miles (1955) 48-50.

[3] § 120: Wenn ein Mann seine Gerste zum Speichern im Haus eines (anderen) Mannes gespeichert hat, und ein Verlust in dem Speicher entstanden ist, oder der Eigentümer des Hauses den Speicher geöffnet hat und Gerste genommen hat oder die Gerste, die in seinem Haus gespeichert war, zur Gänze abgeleugnet hat, wird der Eigentümer der Gerste vor dem Gott seine Gerste erklären, und der Eigentümer des Hauses wird die Gerste, die er genommen hat, verdoppeln und dem Eigentümer der Gerste geben.
§ 124: Wenn ein Mann einem (anderen) Mann Silber, Gold oder was auch immer von dem Seinen vor Zeugen zum Verwahren gegeben hat, und er es ihm ableugnet, werden sie diesen Mann überführen, und alles, was er abgeleugnet hat, wird er verdoppeln und geben.
§ 126: Wenn ein Mann, dem etwas von dem Seinen nicht abhanden gekommen ist, sagt: „Von dem Meinen ist etwas abhanden gekommen“, er sein Stadtviertel beschuldigt, wird das Stadtviertel vor dem Gott erklären, dass von dem Seinen nichts abhanden gekommen ist, und alles, worauf er Anspruch erhoben hat, wird er verdoppeln und seinem Stadtviertel geben.

rathekon“ eignet[4]. In den §§ 120 und 124 CH trifft diese Sanktion den Depositar, der das verwahrte Gut ableugnet[5]. Diese Regelungen sind daher geeignet, zum Vergleich im Hinblick auf das von Scheibelreiter als VG I bezeichnete Prinzip herangezogen zu werden, das die Verweigerung, das anvertraute Gut herauszugeben, als Verfehlung des Depositars beschreibt[6]. Anders verhält es sich mit § 126 CH: Der früher im Hinblick auf Verständnis und systematische Zuordnung durchaus kontrovers diskutierte Textabschnitt[7] wird heute überwiegend als Verleumdungstatbestand verstanden[8], bei dem wahrheitswidrig der Verlust verwahrten Gutes zulasten des Stadtviertels (*bābtum*) geltend gemacht wird[9]. Die Sanktion des *duplum* trifft hier den Verleumder; demnach kann § 126 CH eher mit dem von Scheibelreiter als VG II bezeichneten Prinzip in Zusammenhang gebracht werden, das die haltlose Beschuldigung des Depositars mit einer Veruntreuung durch den Deponenten erfasst. Insoweit erscheint es auch schlüssig, für §§ 124 und 126 CH von einer gegenseitigen funktionalen Ergänzung innerhalb des Rechts der Verwahrung auszugehen[10]: Die Protasis des Verleumdungstatbestands knüpft gedanklich logisch an den „Grundfall“ der Ableugnung an. Hingegen hat dieser Aspekt hinsichtlich der Rechtsfolgenseite bislang noch kaum Berücksichtigung gefunden: Die Sanktion des Verleumdungstatbestands ist in Form des *duplum* mit der des Ableugnungstatbestands identisch. Das scheint für Verleumdungstatbestände indes einem allgemeinen Prinzip zu entsprechen, das sich als „analoge Talion“ charakterisieren lässt. Sie findet sich etwa in § 1 CH[11], wonach die Verleumdung hinsichtlich eines Tötungsdelikts mit der Todesstrafe geahndet wird, und noch deutlicher in § 2 CH[12], wo zur Sanktionierung der Verleumdung bezüglich der Zauberei zusätzlich zur Todesstrafe noch der Vermögensverfall zugunsten des Verleumdeten hinzutritt, der im Fall der Nachweislichkeit des behaupteten Delikts dem Anzeigenden zugutegekommen wäre. Abstrakt erfasst ist dieses Prinzip in § 17 des (ebenfalls altbabylonischen) „Codex“ Lipit-Eschtar[13], der ganz allgemein die dem Verleumdeten drohende Sanktion auf den Verleumder überträgt. Dem entspricht es, wenn dem verleumderischen „Verwahrer“ in § 126 CH das

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4 Zu den übrigen Regelungen, insbesondere zu § 125 CH, dessen Verhältnis zu den §§ 36, 37 CE, den Interpolationsvermutungen Koschakers und ihre Bestätigung durch den drei Jahrzehnte später entdeckten „Codex“ Eschnunna siehe Otto (1988) 10-16.

5 Bei § 120, der die Speichermiete als entgeltliche Form der Verwahrung betrifft, bezeichnet das Ableugnen eine von mehreren Varianten des Tatbestands.

6 In diesem Sinne bereits Scheibelreiter (2008) 205.

7 Etwa bei Koschaker (1917) 33-45 und Petschow (1965) 158.

8 So auch Driver/Miles (1956) 241-245 und daran anschließend Otto (1988) 9 f.; ferner die entsprechende Übersetzung bei Roth (1997) 105.

9 Einen ähnlichen Kontext hat vielleicht § 23 CH, wonach ein Beraubter unter bestimmten Voraussetzungen Ersatz von öffentlicher Seite beanspruchen kann.

10 In diesem Sinne etwa Otto (1988) 10.

11 Ed. Driver/Miles (1955) 12.

12 Ed. Driver/Miles (1955) 12-14.

13 Ed. Roth (1997) 29.

duplum auferlegt wird, das dem Stadtviertel als Depositar im Fall der Erweislichkeit des Vorwurfs als Sanktion gedroht hätte.

Erwähnung verdient an dieser Stelle vielleicht die Tatsache, dass sowohl die alt- wie auch die neubabylonischen Vertragsurkunden über Verwahrungsverhältnisse die in den gerade erörterten Textabschnitten der Rechtssammlungen erfasste Problematik weitgehend ignorieren. Weder die Tatbestände von Ableugnung und Verleumdung, noch die Rechtsfolge des Ersatzes des *duplum* sind im Klauselbestand der Vertragstexte enthalten[14]. Eine insofern bemerkenswerte Ausnahme hierzu stellt in gewisser Weise die spätbabylonische Urkunde ZA 3, 150 Nr. 13 (in der Edition Strassmaiers) über ein *depositum irregulare* dar[15]. Sie enthält in Z. 8-10 folgende Klausel: „[…] Wenn zu seinem Termin nicht erstattet Itti-Marduk-balatu [der Depositar], nicht gibt, gemäß der Verordnung des Königs, die über die Verwahrung geschrieben ist, wird er geben […]". Zwar ist der Umfang bzw. der Inhalt der Rechtsfolge hier nicht konkret wiedergegeben; dass die Sanktion aber über die (bloße) Herausgabe hinausgeht, liegt zumindest nahe. Bereits Koschaker und San Nicolò haben mit dem hier erwähnten „*dātu ša šarri ša ana muhhi paqdu šatri*" den „*nomos ton parathekon*" assoziiert, ohne indes weitergehende Schlüsse aus dieser möglichen Analogie zu ziehen[16]. Auch an dieser Stelle kann über die Deutungsmöglichkeiten allenfalls spekuliert werden: Der Begriff „*dātu*", möglicherweise ein persisches Lehnwort[17], das mehrfach belegt ist, wird gemeinhin mit „Gesetz, Verordnung"[18] bzw. „decree, royal command"[19] wiedergegeben. Ob damit in Ermangelung der Überlieferung anderweitiger, einschlägiger autoritativer Rechtssetzung[20] auch in spätbabylonischer Zeit der „Codex" Hammurapi gemeint ist[21], ob hierdurch eine uns (bislang) nicht überlieferte zeitgenössische Satzungspraxis der jeweiligen Herrscher angesprochen ist, oder ob es sich möglicherweise sogar um einen Rezeptions- bzw. Übersetzungsvorgang im Hinblick auf eine griechische „Vorlage" handelt, kann angesichts der Überlieferungslage des Quellenmaterials jedenfalls bislang nicht ausgelotet werden.

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[14] Westbrook (2003) 413; Oelsner (2003) 961; Textbeispiele für die altbabylonische Zeit etwa bei Schorr (1913) 101-110 (Urkunden Nr. 69-76), für die neubabylonische Zeit bei San Nicolò/Ungnad (1935) 549-553 (Urkunden Nr. 640-643).

[15] Bei San Nicolò (1931) 84 zitiert nach der Edition durch Peiser (1896) 316 f.; deutsche Übersetzung bei Koschaker (1911) 150; Edition und englische Übersetzung zuletzt bei Stolper (1994) 29-30.

[16] Koschaker (1911) 150; San Nicolò (1931) 85.

[17] Dazu San Nicolò (1931) 84 mit Fn. 2.

[18] AHw. I, 165 rechts.

[19] CAD „D", 122 rechts.

[20] Abgesehen vom neubabylonischen Gesetzesfragment, ed. Driver/Miles (1955) 324-347; siehe auch Petschow (1957-1971) 276-278.

[21] Dies ist angesichts der Überlieferungstradition des „Codex" Hammurapi zumindest nicht auszuschließen, vgl. Pfeifer (2008) 3.

2. Rechtsgewohnheit(en)

Nicht zuletzt die soeben konstatierte Unsicherheit bei der systematischen bzw. rechtsquellentechnischen Verortung vertraglicher Klauseln, die zwar mehr oder weniger offenkundig auf eine irgend gestaltete, „normative" Bezugsgröße (*nomos*, *dātu*) rekurrieren, deren konkrete Gestalt jedoch (jedenfalls für uns) im Dunkeln bleibt, gibt Anlass, nach eben dieser Bezugsgröße zu fragen. Gerade die altorientalische Rechtsgeschichte und ihr Rechtsbegriff[22] sind nachhaltig geprägt von der Diskussion über die Natur der Rechtssammlungen als gesetzlicher Normen oder Inschriften mit „bloßer" kommemorativer Funktion, ohne dass sich der „Streit" zwischen diesen beiden Positionen entscheiden ließe[23]. Beide Erklärungsmodelle gehen von einem „Gewohnheitsrecht" als Fundament der Rechtssammlungen aus[24], sei es, um den offenkundigen inhaltlich fragmentarischen Charakter der Rechtssammlungen zu erklären und ihren Reformcharakter zu verdeutlichen, oder aber um den normativen Charakter der „Codices" obsolet erscheinen zu lassen[25]. Dabei ist der Begriff des Gewohnheitsrechts im Hinblick auf seine Technizität und seine rechtstheoretische Determiniertheit, die sich aus der Bezogenheit auf ein geschriebenes Recht ergibt[26], denkbar ungeeignet, Rechtsordnungen wie die des Alten Orients zu beschreiben. Keine der dortigen Rechtsordnungen hat jemals nur den Ansatz einer wissenschaftlichen Reflexion über das Recht ausgebildet[27], an die im Rahmen dieser Beschreibung angeknüpft werden könnte; der normative Anspruch der überlieferten schriftlichen Rechtsquellen steht als solcher wie erwähnt sogar in Frage. Im Gegenteil ist womöglich die Gefahr zu besorgen, dass mit der Verwendung einer von einer ausgeprägten Rechtsdogmatik wie der des römischen Rechts bestimmten Terminologie Vorverständnisse verknüpft sind, die eine unvoreingenommene Interpretation der Quellen zumindest erschwert, wenn nicht gar verhindert.

Vor diesem Hintergrund könnte der Begriff der Rechtsgewohnheit bzw. Rechtsgewohnheiten als eigene Kategorie jenseits der Dichotomie von Gesetzes- und Gewohnheitsrecht Impulse für die teilweise stagnierende Diskussion geben. Entwickelt im Kontext der Rechtsgeschichte des Mittelalters[28], scheint sich der Begriff, zumal aufgrund seiner empirisch-soziologischen Konnotation sowie einer gewissen Offenheit im Rahmen der Auseinandersetzung mit dem Quellenmaterial, für die Erörterung sowohl allgemeiner bzw. grundsätzlicher Fragestellungen wie auch konkreter

[22] Dazu Streck (2006-2008) 280-285.

[23] Überblick über die Diskussion bei Jackson (2008) 69-113 sowie die Bibliographie 257-276.

[24] Neumann (2003) 88.

[25] Dazu Streck (2006-2008) 283; Pfeifer (2008) 3 f.

[26] Siehe etwa im römischen Recht der spätklassischen Zeit bei Ulpian im ersten Buch seiner Institutionen, überliefert in D. 1, 1, 6, 1, mit der Differenzierung zwischen *ius ex scripto* und *ius sine scripto*.

[27] Zu den rudimentären Spuren einer Reflexion siehe Streck (2006-2008) 284.

[28] Jüngst zusammenfassend reflektiert bei Pilch (2009) 273-255 mit reicher Literatur.

phänomenologischer Ansätze zu eignen. Ein Beispiel für erstere ist das Verhältnis von Norm und Schrift bzw. von Norm und oraler Rechtskultur, für deren nähere Bestimmung Rechtsgewohnheiten als „gedächtnisgebundenen Formen" eine eigene Rolle zukommen könnte[29]. Beispiele für konkrete Ausformungen des Rechtslebens, die in erkenntnisfördernder Weise als Rechtsgewohnheiten erfasst werden könnten, sind etwa Reinigungseid und Ordal, denen innerhalb des altorientalischen Rechtsaustrags – jedenfalls in bestimmten Epochen – entscheidende Bedeutung zukommt[30]; sie werden sowohl in den Rechtssammlungen als auch in den Texten der Rechtspraxis, namentlich der beträchtlichen Anzahl von Prozessurkunden, institutionell vorausgesetzt, ohne selbst Gegenstand der Regelungen bzw. der Dokumentationen zu sein. Dies gilt etwa auch für die oben angesprochenen Tatbestände des Depositenrechts im „Codex" Hammurapi, die den Reinigungseid in den §§ 120 und 126 unmittelbar, in § 124 mittelbar zur Voraussetzung der Sanktion der Leistung des *duplum* machen. Schließlich erscheint es nicht abwegig, die Rechtspraxis selbst in ihren konkreten Ausprägungen, etwa in einzelnen Vertragsklauseln wie den hier thematisierten Bezugnahmen auf „normative" Größen und auf wiederkehrende Sanktionsmechanismen als Rechtsgewohnheiten in Betracht zu ziehen[31]. Die eingehende Analyse ihrer Funktionsweise muss einer Erörterung an anderer Stelle vorbehalten werden. Ohne weiteres erkennbar dürfte indes der mit der sprachlichen bzw. terminologischen Modifikation verbundene Zuwachs an deskriptivem Potential sein.

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[29] Dazu Dilcher (2006) 33 ff.

[30] Dazu siehe Westbrook (2003) 374 ff.; Ries (1989) 56-80; Ries (1999) 457-468; zu Parallelen im archaischen Griechenland Thür (2005) 29-43; Thür (2007) 179-195. Gerade anhand dieser beiden Phänomene werden auch mögliche Parallelen zu den mittelalterlichen Rechtsordnungen manifest.

[31] In diesem Sinne wohl auch Jakab (2009) 82 ff. im Hinblick auf den *nomos*-Begriff.

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DIE SYSTASIS – EINE BESONDERE GESTALTUNG IN DER PRAXIS DER PAPYRI

Vorbemerkungen

Handeln für einen anderen und Handeln durch einen anderen ist in der urkundlichen Praxis der Papyri der ptolemäischen und römischen Zeit vielfältig belegt. Das gilt für den öffentlichen wie für den privaten Bereich.

Nach dem grundlegenden Werk L. Wengers „Die Stellvertretung im Rechte der Papyri" Leipzig 1906, hat es allerdings keine umfassende systematische Darstellung mehr gegeben. Die Literatur beschränkte sich auf einzelne Bereiche, so die Ausführungen von Ernst Rabel[1] zur Systasis und von Fritz Pringsheim zur Vertretung beim Kauf im Zusammenhang mit dem Surrogationsprinzip[2] oder auf die Erörterung einzelner Urkunden, so z.B. von J. Herrmann[3] und neuerdings G. Hamza.[4]

Auch ich will mich hier beschränken und zwar auf die Systasis – die Gründe werden im folgenden deutlich.

Dabei ist zunächst diese Figur in die allgemeine Überlieferung einzuordnen.

I. Zur Vertretung allgemein:

1, Handeln für einen Dritten begegnet im öffentlichen, im Verwaltungsbereich; ich erwähne nur ganz allgemein die zahllosen Belege für Zahlungen von Steuern und für andere Leistungen an die öffentlichen Kassen, die διά einen Dritten oder ἐκ ὀνόματος eines Dritten vorgenommen werden und in den entsprechenden Listen vermerkt sind. Innerhalb der Verwaltung finden sich häufig Fälle der Vertretung, auf die hier nicht einzugehen ist.[5]

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1 S. unten Anm. 46-49.

2 Greek Law of Sale, Weimar 1950, 215 ff. und 204 ff.

3 „Interpretation von Vollmachtsurkunden" in: Akten des XIII. intern. Papyrologenkongresses, München S. 159 ff = Ges. Schr., München 1990, 240 ff.

4 Ausführlich – wenn auch nicht immer ganz klar –: „Einige Bemerkungen zur Systasis in den Papyri", Sodalitas VI (Scritti Guarino), Neapel 1984, 2653 ff.. Die Abhandlung „Zur Frage der Stellvertretung im Willen anhand der P. Amh. 90 und P. Oxy. 501", in: Symp. 1988, 349 ff. ist weniger einschlägig.

5 Vgl. dazu M. Kat Eliassen, Substitution of strategus and royal scribe in the roman period, Actes XV. Congr. intern. de Papyrologie IV, Brüssel 1979, 116 ff. B. Kramer, Liste der Syndikoi, Ekdikoi und Defensores in den Papyri Ägyptens, Miscellanea Papyrologica in occasione del bicentenario della Charta Borgiana, I 305 ff. Florenz 1990. (Pap. Flor. XIX).

2, Im privatrechtlichen Bereich sind die Belege nicht minder zahlreich. In erster Linie zu nennen sind die Privatbriefe, in denen häufig beherrschendes Thema die Bitte ist, für den Schreiber etwas zu besorgen oder zu erledigen. Juristisch lassen die Texte an einen Auftrag, eventuell auch an direkte oder indirekte Stellvertretung denken. Da die Einzelheiten uns allerdings in der Regel verborgen sind – Selbstverständlichkeiten werden in Briefen regelmäßig nicht mitgeteilt –, bieten diese Texte nur Indizien für entsprechende Absprachen, mehr aber auch nicht. Diese Gattung hilft uns daher zumeist nicht weiter – Briefe bleiben deshalb im folgenden grundsätzlich außer Acht.[6]

Weiter bleiben außer Betrachtung die Fälle der gesetzlichen Vertretung durch Vormünder, d.h. der Waisen – die Bezeichnung für den Vormund ist üblicherweise ἐπίτροπος, es begegnen auch die Worte κύριος oder φροντιστής. Aber auch den Fall der Vertretung des minderjährigen Kindes durch den Vater will ich grundsätzlich nicht behandeln – die Kinder sind nach griechischem und ägyptischen Recht vermögensfähig, sie werden in der Regel durch den Vater, mitunter auch durch die Mutter[7] vertreten. In diesem Zusammenhang ist weiter die Rolle des Kyrios der griechischen Frau nicht näher zu behandeln, da die Frau generell vermögensfähig und handlungsfähig ist – der Kyrios wird zwar als notwendig angesehen, aber er begleitet die Frau nur und handelt nicht für sie.[8]

Für das Handeln für oder durch Dritte lassen sich im privatrechtlichen Bereich verschiedene Bezeichnungen feststellen.
Die einfachste Form ist die Verwendung von διά – Handeln durch einen Dritten; daneben begegnet die Bezeichnung des Dritten als φροντιστής, auch als ἐπίτροπος oder als συστάτης. Hin und wieder findet sich auch der Ausdruck ἐκ τοῦ ὀνόματος oder ἐν τῶι ὀνόματι. Dritte werden tätig beim Abschluß von Geschäften[9] oder bei der Leistungsbewirkung. Regelmäßig werden die Urkunden aus der Person des Vertretenen formuliert.

Als Resumee läßt sich damit festhalten: Wir haben in diesen verschiedenen Gestaltungen nur Belege für den Vertragsschluß bzw. die Leistungsbewirkung, aber kein expliziten Zeugnis für eine Bevollmächtigung – wenn man diese nicht in Briefen mit den Bitten/Anweisungen finden will, dann aber auch eben nur implizit.

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6 Eingehend zur Frage der Aufträge in Briefen: J. Modrzejewski, Le mandat dans la pratique provinciale à la lumière des lettres privées grecques d'Égypte, RHD 36, 1958, 465 ff. = Droit imp. et trad. loc. II.

7 Zur Vertretung durch die Mutter s. T. Chiusi, SZ 111, 1994, 175 ff.

8 Vgl. H.J. Wolff, Das Recht der griechischen Papyri Ägyptens in der Zeit der Ptolemaeer und des Prinzipats – 1.Band Bedingungen und Triebkräfte der Rechtsentwicklung, München 2002, 37, 70, 98.

9 Aus der Fülle des Materials nur einige Beispiele: Kauf/Verkauf: BGU II 667 (221), III 805 (137); Oxy. XLI 2972 (72); SB VI 9145 (180), XXII 15472 (134); Parachoresis: CPR I 8 (218), Diog. 31/32 (II/III). Pacht: Oxy. III 502 (165).

II. Systasis:
Ich komme zu meinem eigentlichen Thema: Der in der Literatur bevorzugt behandelten Systasis.

Ein Grund für die Sonderstellung ist vielleicht die größere Zahl von Belegen und eine auf den ersten Blick auch einheitlichere Gestaltung der Fälle. Das Thema hatte vor allem Ernst Rabel näher beleuchtet[10] – spätere Autoren haben sich daraufhin offensichtlich nur mit einer gewissen Scheu dem Bereich genähert.

Insgesamt sind über 30 Fälle einer Systasis für die Wahrnehmung privater Interessen belegt. Die Einordnung von Urkunden in diese Gruppe stützt sich zunächst auf die Bezeichnung als σύστασις, als συστατικόν und letztlich auch auf die verbale Verwendung von συνίστημι – hier zunächst in der Bedeutung „empfehlen“,[11] dann mit der eher rechtlichen Variante des „Benennens, Ermächtigens“. Unschärfen begegnen freilich, so wenn von συνεσταμένου eines Vertreters κατὰ ἐπιτροπικόν die Rede ist (BGU VII 1662, Z. 3, Fayum, 182).

Zu scheiden sind zunächst zwei Gruppen:

Fälle der Erteilung einer Systasis – in den Quellen wird die Urkunde dann gerne συστατικόν genannt und weiter

Fälle des Gebrauchs einer solchen, ggf. auch unter Zitierung oder Beifügung des συστατικόν.

1, Zunächst zu den Erteilungsfällen.
a, Dabei ragt eine Gruppe hervor, in der die Systasis erteilt wird zum Auftreten im Prozeß oder Verwaltungsverfahren bzw. im Verfahren der Demosiosis vor dem Archidikastes oder ähnlichen Verfahren; dabei handelt es sich um etwa die Hälfte aller Belege.

Ich will die Fälle nicht im einzelnen darstellen. Als Beispiele seien genannt:
Tebt. III 1, 770 (210 a.C.), der früheste Beleg dieser Art; in dieser Enteuxis bittet der Antragsteller den König, für ihn einen Vertreter im Prozeß wegen Forderungen, ev. vor den Chrematisten, zuzulassen. Oder: Eine Frau – mit Kyrios – erteilt einem Enkel eine σύστασις für die Führung eines Prozesses – aktiv wie passiv, die Art wird nicht genannt –, den sie selbst wegen ihrer weiblichen Schwäche nicht führen kann (Oxy. II 261 = MChr 346 = SP I 60, a. 55). Oder: Bestellung eines Vertreters für den Prozeß um eine Benennung als Liturgen: Ein ἀποσυστατικόν; bezeichnenderweise folgen dann detaillierte Argumentationsvorschriften (Oxy. XIV 1642, a. 289). Eine Reihe weiterer Belege will und kann ich hier nicht weiter diskutieren.[12]

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[10] S. unten Anm. 46 ff.

[11] Beispiele für Empfehlungsschreiben: Lond. VII 2026 (III a.), Mert. II 62 (6?), Oxy. II 262 (25).

[12] Oxy. I 97 = MChr 347 (Oxy., 115). Oxy. IV 726 (Oxy., 135). Mert. I 18 (Oxy., 161). P. Bodl. I 31 (Gr. Oase, 169-179). Tebt. II 317 (Tebt., 174). BGU IV 1093 (Oxy., 265). Oxy. XIV 1642 (Oxy., 289). Oxy. X 1274 (Oxy., III). P. Bodl. I 33 = SB XXIV 16286 (Gr. Oase, 300).

In einer zweiten Gruppe wird eine Systasis zur Demosiosis einer privaten Urkunde in Alexandria gegeben (alle III).[13]

Anzuschließen sind die Serapeumsbelege der Zwillinge aus dem Jahre 162 a.C. In UPZ I 25/26 und 27 wird die Bestellung eines Demetrios für den Empfang öffentlicher Naturalleistungen an die Zwillinge im Serapeum bei Memphis erwähnt – dies geschah in einer Enteuxis (UPZ I 20) an den König. In den Nr. 25-27 wird insofern von σύστασις gesprochen.

b, Erteilung zum Abschluß eines Geschäftes:
Hier begegnen drei Fälle des Verkaufs eines Sklaven und drei weitere Fälle einer Bestellung zum Verwalter von Vermögen mit der Befugnis zum Abschluß von Pachtverträgen, der Einziehung von Forderungen u.ä.

Als Beispiel für den Kauf kann angeführt werden: Oxy. I 94 = MChr 344 (Oxy., 83). Es sollen Sklaven auf dem Markt verkauft werden. Der Vertreter hat die Freiheit, zu entscheiden, an wen und zu welchem Preis er verkauft; die Konditionen sind die üblichen hinsichtlich der Mängelhaftung. Die Bebaiosis soll den Eigentümer, den Geschäftsherren treffen. Die Herausgabe des Preises ist der πίστις des Vertreters anvertraut (Z. 17 ff.: ἀποκαταστήσειν τὴν τιμὴν dem V τῆς πίστεως περὶ αὐτὸν οὔσης). Die Verfügungen sollen im übrigen wirksam sein, wie wenn der Geschäftsherr sie selbst vorgenommen hätte.

Hamza[14] hält die Urkunde eher für eine Empfehlung, da kein zwingendes Bedürfnis für eine Vertretung angegeben wird. Das εὐδοκεῖν in Z. 15 sieht er „zweifelsohne“ als auf den Vertreter bezogen an, da dieser damit die Vertretung annehme und sich dann zur Herausgabe des Preises verpflichte. So letztlich auch Wenger.[15] Das erscheint nicht zweifelsfrei, da die εὐδόκησις erteilt wird unter der Bedingung, daß der Kaufpreis dem Verkäufer erstattet werde, der auch seine Zustimmung erteilt. Die Formulierung ist nicht eindeutig; die Zustimmung bezieht sich m.E. auf die Veräußerung durch den Vertreter.[16] [17]

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[13] P. Bodl. I 31 und SB I 4653 (Gr. Oase, 240), im ersten Fall wird auch Reisegeld zugesagt, außerdem Grenf. II 71 (Gr. Oase, 244) und SB I 4651 (Gr. Oase, 250). Weiter Grenf. II 70 (Gr. Oase, 287): Registrierung einer Schenkungsurkunde.

[14] Scr. Guarino 2657 ff.

[15] Stellvertretung 219 mit Anm. 2-4.

[16] Die Ausführungen von W. Schmitz, Ἡ πίστις in den Papyri, Jur. Diss., Köln 1964, S. 73 f. zur Kaufbürgschaft des Vertreters liegen neben der Sache und beruhen auf einem Lesefehler.

[17] Sklavenverkauf weiter: a, Fam. Tebt. 27 (Tebt., 132) – hier allerdings bezieht sich die Pistis wohl auf die Auswahl der Käufer und die Vereinbarung des zu erzielenden Preises durch den Mann der Eigentümerin, ist also zu fassen als „nach seinem Ermessen, nach seinem pflichtgemäßen Ermessen“. Die Bebaiosis trifft die vertretene Frau. Anders aufgrund einer unzutreffenden Auslegung, Schmitz, Pistis S. 85/90.
b, SB V 7573 (Oberägypten, 116) = Pap. Primer nE. Nr. 27. Die Urkunde hat nach der neuen Ergänzung eine Systasis zum Inhalt; die Pistis bezieht sich auf die Herausgabe des

Für die Verwaltung nenne ich nur Oxy. IV 727 (a. 154): In einer Synchoresis erteilen zwei Brüder eine σύστασις an den X zur Verwaltung des Vermögens ihrer Neffen, deren ἐπίτροποι sie sind. X agiert schon für sie selbst als Phrontistes ihres Vermögens in Oxyrhynchos. Es wird eine Generalvollmacht erteilt: X soll den Pachtzins einziehen, Pachtverträge abschließen, alles Nötige tun, Quittungen ausstellen etc. Er soll außerdem monatlich Rechnung ablegen. Als Grund wird angegeben, daß sie zur Zeit nicht von Alexandria in die Chora reisen können.[18]

Damit lässt sich festhalten: Wie die Urkunden über die Geschäfte stilisiert werden sollen – explizit auf den Geschäftsherrn abgestellt oder ob sie auch auf den Systates gestellt werden können – läßt sich nicht sicher sagen; fest steht nur, daß die Bebaiosis, die Gewährleistung gegen Rechtsmängel – naturgemäß – den veräußernden Eigentümer trifft.[19] Im übrigen wird den Bevollmächtigten die Befugnis zum eigenständigen Handeln eingeräumt.

c, sonstige Bereiche

Ansonsten haben wir Vollmachten für Schuldbeitreibung[20] und auch für die Suche nach einem entflohenen Sklaven.[21]

Preises, die mögliche Bebaiosis ist nicht erhalten; der demotische Teil wurde noch nicht ediert.

[18] Weiter: a, BGU I 300 = MChr 345 (Fayum, 146): Verwaltung des Vermögens im Arsinoites; dazu gehört es, Forderungen gegen die Pächter einzutreiben, Grundstücke zu verpachten oder selbst zu bearbeiten, Quittungen auf den Namen des Geschäftsherren auszustellen, alles erforderliche zu tun – wie wenn dieser selbst handelte. Damit verbunden ist die Pflicht zur Ablieferung des Eingenommenen: ἀποκαταστήσι μοι ἐνθάδε παραγενομένωι τῆι ἑαυτοῦ πίστει des Vertreters (Z. 10 f.) und auch die vorweg erklärte Zustimmung des Geschäftsherren. Die Vollmacht wird noch erweitert auf das Vermögen der Enkelin, deren Vermögen der Geschäftsherr mit verwaltet. Z. 11 bringt entgegen Hamza (aaO. 2663) nicht die Verpflichtung des Vollmachtgebers zur Zustimmung zu den Handlungen des Bevollmächtigten, sondern enthält schon jetzt die – vorweggenommene – Zustimmung.
b, In einer recht fragmentarischen Form Freib. II 9 = SB III 6292 (Fayum, II): Verwaltung eines Nachlasses.

[19] Dementsprechend wird auch in den Fällen des Verkaufs aufgrund einer erteilten Systasis die Bebaiosis dem Geschäftsherrn auferlegt; s. u. 2 (Oxy. XIV 1634, Ryl. II 165, SB XX 14199, SPP XX 72 = CPR I 9).

[20] Fouad I 35 (Oxy., 48); SB XX 15033 = Oxy. II 364 (Oxy., 94); Hamb. I 102 (Fayum, II). Oxy. III 509 (Oxy., II) ist ein besonderer Fall: Die Vollmacht zum Inkasso wird nun modifiziert, da der Gläubiger die Zahlung schon erhalten hatte – von wem nicht gesagt –; die Vollmacht erstreckt sich nunmehr nur noch auf die Quittungserteilung. Es scheint sich um einen bloßen Entwurf zu handeln, da die Namen der Parteien nicht genannt werden (τὶς τινί).

[21] Oxy. XIV 1643 (Oxy., 298) Bestellung eines Vertreters für eine Reise nach Alexandria und für die Suche nach einem geflohenen Sklaven. Bevollmächtigung zu allen angebrachten Handlungen: Fesseln, Peitschen, Klage gegen Sklavenberger.

2, Belege für den Geschäftsabschluß aufgrund einer erteilten Systasis sind leider nur für vier Fälle überliefert. Alle Texte stammen aus dem 2. und 3. Jh. Es handelt sich um die Veräußerung von Häusern und Grundstücken.

Soweit der Verkäufer den Systates bestellt hat, ist das Bild nicht einheitlich. Einmal[22] wird der Vertrag auf den Systates gestellt, der denn auch mehrfach betont, daß er den Vertrag abschließe. Die Bebaiosis trifft ausdrücklich den Verkäufer (Z. 13 ff.). Das Systatikon ist leider nur frgm. in Z. 17 ff. erhalten.[23] Eine Pistis wird nicht erwähnt, aber in Z. 10 des Kaufvertrags ist eine Ablieferung für den Preis vorgesehen; eine Erwähnung der Pistis ist in diesem Zusammenhang nicht auszuschließen.

Ansonsten sind die Verträge auf die Parteien gestellt.[24]

3, Im übrigen sind belegt Fälle der Quittierung für Leistungen, die an den Systates erfolgten, die Urkunden werden auf den Geschäftsherrn gestellt.[25]
Darüberhinaus begegnet zweimal das Auftreten eines Systates für den Gläubiger im Verfahren der Zwangsvollstreckung, das Verfahren ist aber ganz auf den Geschäftsherrn gestellt.[26]

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[22] SB XX 14199 = Oxy. III 505/PSI 1035 (Oxy., 179).

[23] Hamza, Scr. Guarino 2660 ff.: Warum dies „keine systasis innehat", bleibt dunkel; wenn H. meint, daß hier keine Systasis erteilt wird, dann ist das richtig. Die weitere Annahme Hamzas, daß hier eine allgemeine, weite Systasis über dieses konkrete Geschäft hinaus zugrunde liegt, ist reine Spekulation (2662).

[24] Verkauf: Fam. Tebt. 27 (Tebt., 132), Oxy. XIV 1634 (222); Ryl. II 165 (Hermopolites, 266), Verkäuferin ist eine matrona stolata.
Kauf: SPP XX 72 = CPR I 9 (Hermopolis, 271).
Oxy. XIV 1634 liegt eine juristisch interessante Gestaltung zugrunde. Die Verkäufer sind Schuldner des Käufers; an diesen wird ein verpfändetes Haus verkauft, mit Zahlung der Differenz zwischen Forderung und Kaufpreis an die Eigentümer = Schuldner. Warum der Gläubiger nicht den Verfall des Pfandes geltend macht, ist nicht ersichtlich. Beide Parteien handeln durch Vertreter.

[25] Oxy. XXII 2349 (Oxy., 70): Quittung für Zahlungen aus einem Grundstück an einen Legionär, dieser hatte seinen Freigelassenen zum Vertreter bestellt. Für die Systasis war die Genehmigung der Chrematisten eingeholt worden. S. dazu Wolff, SZ 73, 1956, 398. Die Einzelheiten bleiben unklar, schon weil das Gesuch um die Genehmigung nur ganz bruchstückhaft erhalten ist (Z. 26 ff.). Wolff vermutet, daß aufgrund einer vorhergehenden Hypothezierung des Grundstücks, das vermutlich wieder freigegeben wurde, die Zuständigkeit der Chrematisten begründet war. Da wir nun aber auch Fälle der Systasis in Zwangsvollstreckungsverfahren haben – s. die folgende Anm. – ist mir diese Annahme nicht sicher. Vielleicht war das Verfahren nötig, da es sich um einen Katökenkleros handelte (s. Z. 7).
BGU VII 1662 (Fayum, 182) für Leistungen aufgrund Erbfalls. Es wird die (Teil-) Erfüllung eines Legats aufgrund eines römischen Testaments bestätigt. Die Tochter aus der ersten Ehe des Soldaten bekommt außerdem Teile eines Hauses und eine Sklavin. Zur mangelnden Trennschärfe der Begrifflichkeit s. schon o. S. 385.

[26] BGU XV 2472 (Fayum, 160); Fior. I 56 = MChr 241 = JP 44 (Hermopolites, 233/4).

4, Nur ergänzend sei noch hingewiesen auf Verwendungen, die im Grenzbereich zwischen privatem und öffentlichem Tätigwerden liegen.

Mitunter wird von συνίστημι bzw. ἀποσυστατικόν u.ä. gesprochen bei Arbeitsverhältnissen im Rahmen liturgischer Aufgaben.[27]

Es werden jeweils Pflichten aus der Liturgie übernommen, regelmäßig gegen Zahlung eines Lohnes. Es werden nur Aufgaben und Befugnisse übertragen, die in den Bereich der Liturgie fallen, wie bei der Steuererhebung die Eintreibung, die Quittungserteilung oder die Ablieferung bei der zuständigen Kasse, und ggf. auch Wachdienste.

Der Sprachgebrauch ist aber nicht einheitlich, z.T. wird auch die Wendung ὁμολογεῖν συνηλλαχέναι verwendet, bei im übrigen gleichen Abreden.[28]
Die eingeräumten Befugnisse beziehen sich somit nur auf die liturgischen Funktionen. Man kann insofern zutreffend von „Vertretung" sprechen, die aber vom Inhalt nicht mit der bei der Wahrnehmung privater Interessen gleich zu setzen ist.[29]

III. Auswertung

Wenn wir das bisher Vorgestellte zusammenfassen, ergeben sich zwei große Gruppen:

Einmal die Belege für ein Handeln für und durch einen Dritten in verschiedenen allgemeinen Formulierungen für das Auftreten des Dritten und zum anderen die Fälle der Systasis, die gleichfalls Handeln für und durch einen anderen dokumentieren, aber einen geschlossenen Komplex bilden, mit einem deutlichen Schwergewicht auf einem eher verwaltungsmäßigen Bereich.

1, Für die erste, allgemeine Gruppe darf ich noch ohne weitere Nachweise anmerken, daß es sich hier um Geschäfte handelt, in denen eine urkundliche Dokumentation erfolgte; die zweifellos zahlreichen Fälle, in denen dies nicht geschah, können wir nicht erfassen. Dabei wird es sich um Alltagsgeschäfte handeln. Für den Erwerb z.B. konzentrieren sich unsere Urkunden auf den Kauf von Grundstücken und Sklaven; daneben begegnet auch die Misthosis. Es sind also Geschäfte von größerer Relevanz.

Was nun die Einordnung angeht, erscheint es mir sicher, daß es sich nicht nur um Fälle einer bloßen Botenschaft handelt.

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[27] So z.B. in Lond. II 306 (S. 118 f.) = WChr 263 = SP II 358 (145); Ryl. II 88 (156); Mich. XI 604 (223). S. A. Jördens, Vertragliche Regelungen von Arbeiten im späten griechischsprachigen Ägypten (P. Heid. V), Heidelberg 1990, S. 185 ff. mit weiteren Belegen.

[28] So z.B. in Oxy. XXXVI 2769 (a. 242); SB VIII 10205 (III).

[29] Ab dem 5. Jh. wird mitunter die Wendung συνθετεῖσθαι με πρὸς σε ἐπὶ τῶι κτλ. in Arbeitsverträgen verwendet. Damit wird aber kein Vertretungsverhältnis bezeichnet, sondern nur die Übernahme von Arbeitspflichten ausgedrückt. S. P. Heid. V S. 152 mit Anm. 40.

Es erscheint jeweils handelnd der Geschäftsherrn διά den Dritten. Die Urkunden sind regelmäßig auf den Geschäftsherrn gestellt. Damit ist Offenkundigkeit gegeben. So kann wenigstens von der Möglichkeit einer direkten Stellvertretung ausgegangen werden. Das ist auch die herrschende Meinung.

Wieweit die Kompetenzen der Handelnden reichten, können wir hier mangels Unterlagen nicht feststellen. Sie reichten offensichtlich aus für die Annahme von Leistungen und den Abschluß von Vereinbarungen sowie die Ausstellung von entsprechenden Urkunden.[30] Aus diesen Belegen können demnach auch keine Schlüsse auf das Innenverhältnis zwischen Geschäftsherr und Vertreter gezogen werden.

2, Die zweite Gruppe, die der Systasis, entspricht von den Besonderheiten hinsichtlich Prozeßvertretungen und Demosiosis abgesehen in der Art und dem Umfang der Geschäfte der ersten. Man mag einen Unterschied finden in dem weiten Umfang, in dem jeweils umfassende Vermögensverwaltungen zugewiesen werden.

Sie zeichnet sich jedoch dadurch aus, daß in den Urkunden über die Bestellung eine genauere Beschreibung der Kompetenzen erfolgt. Zuweilen wird auch vermerkt, daß das Geschäft so gelten solle, wie wenn der Geschäftsherr es selber vorgenommen hätte. Eine vorhergehende Zustimmung des Geschäftsherrn – εὐδόκησις – begegnet nur in einigen Vollmachtsurkunden.[31] Mitunter, aber eben nicht regelmäßig, stehen die Bevollmächtigten in einem engeren Verhältnis zum Vollmachtgeber – aber das liegt ja wohl auch nahe.[32]

Zuweilen wird bei der Erteilung der Vollmacht auf die Pistis abgestellt und zwar überwiegend in der Formulierung τῆς πίστεως οὔσης des Vertreters. Die Wendung finden wir nur in Fällen der Erledigung privater Geschäfte. So bei Verkäufen von Sklaven,[33] bei Verwaltungen[34] und Schuldbeitreibungen.[35] Sie kann aber auch fehlen.[36] Bei der Vornahme des Geschäfts wird sie nur zweimal genannt: SB XX 14199 – im Vertrag selbst ev. zerstört und in Oxy. XIV 1634, nicht dagegen in Ryl. II 165 und SPP XX 72. Bei Quittungen wird sie nicht erwähnt. So wird die Pistis bei der

[30] S. auch den – vergeblichen – Versuch, in den Urkunden unmittelbar zwischen direkter und indirekter Stellvertretung zu unterscheiden, von G. Hamza, Symp. 1988, 349 ff. und die allgemein kritischen Bemerkungen M. Talamancas, BIDR 94/95, 1991/2, 825.

[31] Oxy. I 94 (83) und SB V 7573 (116) – jeweils Verkauf von Sklaven, in BGU I 300 (148), P. Bodl. I 31 (Verwaltung, 169), Fouad I 35 (Schuldbeitreibung, 48) und Oxy. II 261 = MChr. 346 (Prozeßvollmacht, 55).

[32] Oxy. I 97: Bruder, II 261: Enkel, IV 727: schon bestellter Phrontistes, XIV 1642: ev. Bruder, XXII 2349: Freigelassener; BGU IV 1093: Sohn, I 300: ein anderer Veteran; Fam. Tebt. 27: Ehemann; Tebt. II 387: Mann = Bruder; Mert. I 10: Freigelassener.

[33] Oxy. I. 94, SB V 7573, Tebt. I 27.

[34] BGU I 300, Oxy. IV 727.

[35] Fouad I 35.

[36] In einem Fall der Verwaltung (Freib. II 9) und weiteren Fällen der Schuldbeitreibung (Hamb. 102, Oxy. III 509 – nur Quittungserteilung –, Oxy. XIV 1643, ev. in SB XX 15033 zerstört).

Erteilung erwähnt in BGU VII 1662, nicht aber in der Quittung. Auf die Pistis wird nicht abgestellt in den Fällen der Vertretung in Verfahren oder bei der Demosiosis, ebensowenig bei Vollstreckungsverfahren.[37]

Im Ergebnis ist festzuhalten, daß die Verwendung beschränkt ist auf materielle Geschäfte, daß sie aber offensichtlich ganz zufällig erfolgt und weder räumlich noch zeitlich konzentriert anzutreffen ist. Es handelt sich damit letztlich nicht um einen konstitutierenden Bestandteil.

IV. Rechtliche Einordnung

Zunächst erscheint der allgemeine Hinweis angebracht, daß die aus dem römischen Recht bekannten Formen des Handelns durch Dritte wie Handeln durch Sklaven im rechtsgeschäftlichen Bereich offensichtlich kaum Bedeutung erlangt haben, ebensowenig Handeln durch gewaltunterworfene Kinder, da die Kinder vermögens- und nach Erreichung der Volljährigkeit auch handlungsfähig sind.

Ergänzend sei noch bemerkt, daß die Systasis als Vollmacht zum Geschäftsabschluß, beim Geschäftsabschluß selbst und bei der Schuldbeitreibung für Römer auch schon vor der *Constitutio Antoniniana* und dann generell begegnet.[38]

1, Zuvor noch eine kurze Bemerkung zur Bedeutung der Pistisklausel, über die die Literatur, wie zu erwarten, nicht einer Meinung ist.

Deutlich dürfte sein, daß sie in unserem Zusammenhang nicht als Parallele zu den Abreden über die Beweislastverteilung bei Leistungen ohne Urkunde zu fassen ist, wo z.B. dem Gläubiger der Vorrang eingeräumt wird, wenn bei Zinszahlungen der Schuldner keine Quittung vorlegen kann: τῆς πίστεως περὶ τὸν δεδανεικότα οὔσης περὶ ὧν ἐὰν μὴ ἐπιφέρωσι αὐτοῦ οἱ δεδανεισμέναι γράμματα.[39]

Die Pistis wird als Regelung im Innenverhältnis zwischen Vollmachtgeber und Bevollmächtigten und als Haftungsregelung angesehen, so Wenger,[40] zustimmend Rabel.[41] Mitteis[42] dagegen sieht die Bedeutung darin, daß der Bevollmächtigte so gut wie möglich zu verkaufen habe. Dagegen wendet sich Rabel, da aus der – zutreffenden – Ergänzung Zuckers zu BGU VII 1662 Z. 15 ff. – μηδεμίας κατοχῆς gerade die Haftungsfreistellung folge, die sonst aufgrund der Pistis anzunehmen sei. Die

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[37] BGU XV 2472, Fior. I 56.

[38] Vollmacht: Oxy. I 94 = MChr 344, a. 83, BGU I 300 = MChr. 345, a. 148, Oxy. IV 727, a. 154; Schuldbeitreibung: SB XX 15033, a. 94, Freib. II 9, II Jh.; Vertragschluß: Oxy. XIV 1634, a. 222, Ryl. II 165 – eine *matrona stolata* –, a. 266; Quittierung: BGU VII 1662 a. 182 – für Leistungen aufgrund eines röm. Testaments.

[39] Oxy. III 506 = MChr 248 Z. 15 ff. – s. Schmitz, Pistis 71, H.-A. Rupprecht, Studien zur Quittung im Recht der graeco – ägypt. Papyri, München 1971, 85.

[40] Stellvertretung 219 Anm. 4 zu Oxy. I 94.

[41] E. Rabel, Eine neue Vollmachts-Urkunde, Aeg. 13, 1933, 373 ff. = Gesammelte Aufsätze, IV Arbeiten zur altgriech., hell. und röm. Rechtsgeschichte, Tübingen 1971, 488 ff. zu SB V 7573, BGU VII 1662, Oxy. I 94.

[42] Zu MChr 344.

Unterschiedlichkeit der Aufgaben und Kompetenzen des Vertreters – Auswahl der Käufer, Preisgestaltung, Verwaltung der Vermögen etc. – kann durchaus als Argument für die Auffassung von Mitteis gewertet werden. Im übrigen müssen sich beide Akzentuierungen nicht ausschließen.[43]

Da die Klausel nur zufällig und sporadisch begegnet, kann ich hier wohl auf eine nähere Erörterung verzichten. Aus dem Auftreten erst in römischer Zeit möchte ich nicht auf Einfluß römischen Rechts, etwa der Figur des *mandatum* als *bonae fidei iudicium* schließen.

2, Was nun die zentrale Frage angeht: direkte Stellvertretung ja oder nein?
Die Literatur ging zunächst nach den Untersuchungen Wengers ohne weiteres für den griechischen Bereich von der Zulässigkeit der direkten Stellvertretung aus. In jüngerer Zeit wurde das nochmal in der Untersuchung einzelner Texte bestätigt; so durch die bereits genannten Artikel von J. Herrmann[44] und G. Hamza.[45]

Pringsheim ergänzte in seinem Greek Law of Sale (S. 215 ff.) das Bild noch mit dem dem griechischen Recht allgemein zugrundeliegenden Surrogationsprinzip. Danach tritt ein wirksamer Erwerb des „Eigentums" nur ein, wenn ein Entgelt gezahlt wird, und der Erwerb tritt bei dem ein, aus dessen Vermögen das Entgelt stammt.

Ernst Rabel hingegen äußerte in mehreren Beiträgen Bedenken gegen die Annahme einer direkten Stellvertretung.

Er ging zunächst nicht auf die Systasis beschränkt davon aus, daß nach alten Rechten der selbstverständliche Ausgangspunkt sei, daß der Dritte das Geschäft im eigenen Namen, d.h. als Geschäftspartei abschließt (entspr. § 185 BGB). Er sieht daher die Fälle der Vertretung als Handeln des Dritten im eigenen Namen unter Zustimmung des Geschäftsherrn. Sprachlicher Anknüpfungspunkt ist die allgemeine Bedeutung von συνίστημι als „präsentieren, empfehlen". Der Dritte wird den Geschäftsgegnern durch den Geschäftsherrn als möglicher Handelnder oder Leistungsempfänger präsentiert. Als Beispiel führt er die demosthenischen Reden 52 und 49 an.

So schon 1933 bei der Edition von – dann – SB V 7573.[46] Der Gedanke wurde allgemeiner ausgeführt in dem Beitrag: „Die Stellvertretung in den hellenistischen Rechten und in Rom".[47] Es handele sich ursprünglich um Fälle der Ermächtigung zur Leistung an den Dritten, der dem Geschäftsgegner vorgestellt werde, dem entspreche die Ermächtigung des Dritten zur Verfügung über Besitz und Eigentum des

[43] Auf die Ausführungen von Schmitz, Pistis 81 ff. im Zusammenhang mit der notwendigen Entgeltlichkeit und seine Diskussion der Kaufbürgschaft ist hier nicht einzugehen.
[44] S. o. Anm. 3.
[45] S. o. Anm. 4.
[46] Aeg. 13, 1933, 374 ff. = Ges. Schr. IV 484 ff.
[47] Atti del Cong. intern. di diritto romano, Pavia 1934, I 235 ff. = Ges. Schr. IV 491 ff.

Geschäftsherrn – also auch hier Handeln des Dritten im eigenen Namen mit Einwilligung/Ermächtigung des Geschäftsherrn.

1937 wurde dies in einem ausführlichen Artikel zur „Systasis“[48] genauer dargestellt. Rabel verwies insoweit auch auf seine knappen Ausführungen in den „Grundzügen des röm. Privatrechts“.[49] Bei dieser Gelegenheit darf ich eine Erinnerung aus einem Seminar von W. Kunkel Anfang der 60er Jahre einfügen, wo Kunkel einmal Ernst Levy zitierte, der zu diesen Grundzügen meinte: „Zu schwer für Privatdozenten“.

Für den Prozeß geht Rabel zunächst von dem Erfordernis des persönlichen Auftretens der Parteien aus, von dem Ausnahmen nur nach Gestattung möglich waren – eine Erscheinung, die er auch rechtsvergleichend untermauert.

Rabel argumentiert darüber hinaus mit der Pistis: Sie bezeichne die Stellung als Vertrauensstellung, als Treuhänder. Er sieht das als Argument für die Ermächtigung zum Handeln im eigenen Namen, aber mit Ermächtigung durch den Geschäftsherrn (zu SB V 7573).

Ein Bedenken gegen die Zulässigkeit einer Stellvertretung folgt für Rabel auch aus der *obligatio*, die als „Bindung“, als Haftung des Schuldners nicht durch einen Dritten, sondern nur persönlich begründet werden konnte.

Ob und inwieweit Rabel an dem Gedanken der Ermächtigung auch für die Fälle der Systasis in römischer Zeit festhält – und damit für die Mehrzahl der Belege – und sie damit nicht als Fälle der Stellvertretung ansieht, so wie das in dem Artikel von 1933 anklingt, läßt sich nicht eindeutig klären. Er legt offensichtlich auch weiter Gewicht auf die Bedeutung des „Bestellens“ und auch des „Legitimierens“. In seinem letzten Artikel von 1937 wird auf diese Gruppe nur recht summarisch verwiesen.

Wenn man das hier vorgestellte Material unter diesem Gesichtspunkt mustert, ergibt sich für die prozessualen Belege, daß eine Genehmigung durch den König nur in ptolemäischer Zeit in Tebt. III 1, 770 und in einem Beleg aus röm. Zeit (Tebt. II 317 = MChr 348, a. 174, für ein Verwaltungsverfahren) eingeholt wurde.[50]

Die von Rabel als Indiz für ein Fortleben dieser Vorstellung angeführte Begründung der Urkunden, warum eine Systasis erteilt werde – Krankheit, weibliche Schwäche oder Unmöglichkeit einer Reise, finden wir nur in vier weiteren Texten – ohne daß hier dann noch um die Genehmigung nachgesucht wird. In den Fällen der Demosiosis fehlen solche Anhaltspunkte. Das bedeutet aber auch, daß der Gedanke einer Genehmigung des Auftretens eines Dritten im Verfahren kaum mehr eine Rolle spielte.

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[48] Systasis, AHDO 1, 1937, 213 ff. = Ges. Schr. IV 607 ff.

[49] Enzyklopädie der Rechtswiss., hgg. von Holtzendorff-Kohler, Berlin 1915; gesonderte 2. Aufl., Darmstadt 1955, 187 ff., 190.

[50] Zur Genehmigung der Stellvertretung im prozessualen Bereich s. noch Wenger, Aeg. 13, 1933, 586 ff.

Für die Serapeumstexte kann dagegen die Einholung der Gestattung für das Auftreten eines Systates zwanglos mit der Natur der Leistungen aus der Staatskasse erklärt werden. Daraus lässt sich jedoch kein über den Einzelfall hinausreichendes Argument ableiten.

Für die römische Zeit – und aus dieser stammen unsere Belege für die einzelnen Geschäfte ja – scheint mir die Ausgestaltung der Urkunden über die durch den Systates abgeschlossenen Geschäfte, die ganz der der Vertretungsgeschäfte der ersten – allgemeinen – Gruppe entsprechen, für eine Charakterisierung als Stellvertretung und nicht nur als Ermächtigung zum Handeln im eigenen Namen für einen Dritten zu sprechen.

Wie für die direkte Stellvertretung typisch, tritt der Geschäftsherr = Vollmachtgeber selbst als handelnd auf – allerdings durch den Vertreter. Als Fall der Ermächtigung könnte allenfalls SB XX 14199 angesehen werden, wo der Vertreter im eigenen Namen handelt und dies besonders betont. Aber dieser Text ist die absolute Ausnahme.

Ein Argument für die Einordnung als „Ermächtigung" könnte aus der – vorhergehenden – Erklärung des Einverständnisses gezogen werden. Aber diese εὐδόκησις begegnet letztlich nur in wenigen Vollmachtsurkunden.[51] In der Mehrzahl der Fälle eines vorgesehenen Geschäftsabschlusses fehlt sie dagegen.

Auch die Bebaiosis, die – natürlich – den Geschäftsherrn trifft, könnte als Argument für die Ermächtigung herangezogen werden. Wenngleich Rabel zuzugeben ist, daß man dies als Ausnahme akzeptieren könne.

M.E. kann aber kein Argument gegen die Qualifizierung der Systasis als direkte Stellvertretung aus der Tatsache abgeleitet werden, daß die Urkunden über die Erteilung einer Systasis mitunter Abreden zum Innenverhältnis zwischen Geschäftsherren und Auftragnehmer enthalten. Diese Auffassung scheint Hamza[52] zu vertreten. Die säuberliche Scheidung von Innen- und Außenverhältnis ist ein modernes Phänomen, das heute auch mehr in zivilrechtlichen Anfängerübungen thematisiert wird als im täglichen Leben. Schon Rabel sah die Verbindung als „natürlicher Anschauung" entsprechend an.[53] Weiter kann auch nicht mit der Tatsache gegen das Vorliegen einer Vollmacht argumentiert werden, daß nicht in allen Vollmachtsurkunden der Grund angegeben wird, warum diese erteilt wurde. Die Schlußfolgerung Hamzas[54],

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[51] Oxy. I 94 (Kauf), BGU I 300, P. Bodl. I 31 (Vw), Fouad I 35 (Schuldbeitreibung) sowie Oxy. II 261 = MChr. 346 (Prozeß). SB V 7573 (116) bringt die Genehmigung, wie wenn der Geschäftsherr selbst handeln würde.

[52] Scr. Guarino 2664 ff.

[53] Aeg. 13, 1933, 376 = Ges. Schr. IV 486, S. auch Partsch, Arch. 4, 1908, 500 in der Bspr. von Wenger, Stellvertretung. Interessant ist, daß in der modernen Dogmatik nun wieder die Verbindung von Grundgeschäft und Vollmacht kontrovers diskutiert wird: V. Beuthien, Stellvertretung und Abstraktion, Festgabe aus der Wissenschaft zum 50jährigen Bestehen des BGH I, München 2000, 81 ff.

[54] Scr. Guarino 2357 ff.

daß dann nur eine Empfehlung vorliege, überzeugt angesichts der sonst übereinstimmenden Formulierungen der Urkunden nicht.

Als Ergebnis für die römische Zeit kann somit festgehalten werden, daß von einer entwickelten Form der direkten Stellvertretung, nicht mehr nur von einer Ermächtigung auszugehen ist. Daß Genehmigungen in einigen wenigen Fällen angesprochen werden, ist m.E. kein zwingendes Gegenargument, da damit auch nur die Wirkung der Vollmacht bekräftigt werden kann. Wenngleich man dies auch als Reminiszenz – aber auch nicht mehr – an die ursprüngliche Auffassung gelten lassen könnte.

Was die Problematik der *obligatio* angeht, so läßt sich vielleicht eine Lösung finden in der inzwischen im Bereich der griechischen Rechtsgeschichte weitgehend akzeptierten Theorie H. J. Wolffs von der Zweckverfügung, die zu einer als deliktsrechtlich einzustufenden Haftung bei Nichterfüllung der mit der Vermögensverschiebung gesetzten Bedingungen führt, und nicht direkt zu einem Handeln verpflichtet. Damit wäre diese Überlegung nicht mehr von solchem Gewicht.

Die Bedeutung der Systasis als Form der direkten Stellvertretung liegt wohl darin, daß hier die Kompetenzen der Vertreter genauer bezeichnet werden, die sie als Verkäufer bei der Auswahl der Käufer, bei der Preisbildung oder als Verwalter von Vermögen mit weiter Kompetenz hinsichtlich der Mittel und Maßnahmen haben. Weiter, daß diese dann in entsprechenden Urkunden niedergelegt wird.

Für die Tatsache, daß diese Figur fast ausschließlich in römischer Zeit begegnet, habe ich keine Erklärung. Die übliche Erklärung mit den Zufällen der Überlieferung ist nicht wirklich befriedigend.

Reine Spekulation ist die Überlegung, daß die zunehmende ausdrückliche Bestellung von Vertretern im verfahrensrechtlichen Bereich sich dann als Vorbild für die Verwendung im privatrechtlichen Bereich darstellte, die praktische Wirkung aufgrund ihrer besonderen Gestaltung hinsichtlich der Aufgaben und Kompetenzen entfaltete.

THOMAS KRUSE (WIEN)

ANTWORT AUF DEN VORTRAG VON H.-A. RUPPRECHT: DIE *SYSTASIS* – EINE BESONDERE GESTALTUNG IN DER PRAXIS DER PAPYRI

Der Vortrag von Hans-Albert Rupprecht nimmt sich eines prominenten Rechtsproblems an, das seit längerer Zeit nicht mehr systematisch behandelt worden ist, lebensweltlich indes von einiger Bedeutung gewesen ist, nämlich der Stellvertretung oder allgemeiner formuliert dem Handeln für einen anderen bzw. dem Handeln durch einen anderen. Dieses Rechtsphänomen hat in den Papyrusurkunden des griechischen, insbesondere aber des römischen Ägypten zahlreiche Manifestationen gefunden. Sie reichen von diversen schlichten Besorgungsaufträgen in den Privatbriefen, über die Vertretung von Mündeln als ἐπίτροπος oder die Einsetzung einer Person als φροντιστής für die Verwaltung von Grundbesitz bis hin zum Auftreten von Vertretern im Verkehr mit der staatlichen Verwaltung, so etwa bei Steuerzahlungen. Ganz abgesehen von den häufigen Vertretungsverhältnissen im administrativen Bereich, wo ein Amtsträger durch einen anderen vertreten werden kann.[1]

Sprachlich können die Vertretungsverhältnisse ganz verschieden bezeichnet werden: Zum einen durch präpositionale Konstruktionen, wie etwa das sehr häufige bloße διά mit folgender Nennung des Dritten bzw. durch Nennung des Vertreters mit einem Zusatz, der besagt, daß der Betreffende ἐν ὀνόματι oder ἐκ ὀνόματος des Mandanten handelt. Neben solchen Wendungen bzw. auch in Kombination mit ihnen begegnen konkrete Bezeichnungen des Vertreters als ἐπίτροπος, φροντιστής oder συστάτης.

Aus dem Kreis dieser so vielfältigen Erscheinungsformen des Rechtsphänomens der Stellvertretung, deren Verschiedenheit dem Versuch einer juristischen Systematisierung zu widerstreiten scheint, widmet sich Rupprecht im Speziellen der *systasis*, d.h. derjenigen Vertretungen, die das Vertretungsverhältnis ausdrücklich mittels einer Form des Verbums συνίστημι (in Einzelfällen auch ἀποσυνίστημι) bezeichnen bzw. die Fälle, in denen eine entsprechende als σύστασις, συστατικόν oder ἀποσυστατικόν bezeichnete urkundlich niedergelegte Vereinbarung oder die Bezugnahme auf eine solche vorliegt. Die überlieferten Fälle einer solchen expliziten

[1] So etwa regelmäßig der Gaustratege durch den Königlichen Schreiber, siehe Th. Kruse, *Der Königliche Schreiber und die Gauverwaltung. Untersuchungen zur Verwaltungsgeschichte Ägyptens in der Zeit von Augustus bis Philippus Arabs (30 v.Chr. – 245 n.Chr.)* (APF-Beih. 11), München – Leipzig 2002, Band II, 843 ff.

Bevollmächtigung sind solche zur Vertretung in einem Prozeß, zum Abschluß eines Geschäftes sowie zur Verwaltung von Vermögen durch den Bevollmächtigten.

Rupprechts Beitrag stellt das einschlägige Material zusammen, sichtet es und unterzieht das Rechtsinstitut der *systasis* einer erneuten juristischen Bewertung. Dies findet seine Rechtfertigung darin, daß in jüngerer Zeit, insbesondere von Gábor Hamza Versuche unternommen worden sind, eine Einordnung der *systasis* als Form direkter Stellvertretung im Anschluß an Ernst Rabel, dem prominentesten Kritiker dieser insbesondere von Leopold Wenger vertretenen Auffassung, erneut in Abrede zu stellen.[2] Dabei plädiert Rupprecht mit überzeugenden Argumenten für ein Festhalten an der Auffassung der *systasis* als eine Form direkter Stellvertretung.

Ob zunächst die σύστασις überhaupt eine Sonderstellung gegenüber anderen Vertretungsverhältnissen einnimmt, scheint mir eher zweifelhaft zu sein. Eine solche Sonderstellung (oder zumindest die Erweckung des Eindrucks einer solchen) drängt sich zunächst wegen der (zumeist auch schriftlich fixierten) vertraglichen Vereinbarung über die Vertretung auf, die somit einen geschlossenen Komplex zu bilden scheinten, wobei fraglich bleibt, ob dies als Indiz ausreicht. Demgegenüber fehlen zwar bei den anderen Ausgestaltungen einer Vertretung bisher explizite Zeugnisse für die Bevollmächtigung, sondern man hat diese nur für die Leistungsbewirkung. Nun ließe sich aber vielleicht denken, daß man im Falle der σύστασις wegen der Notwendigkeit einer Bevollmächtigung, deren Auswirkungen und konkrete Manifestation nicht absehbar war und die deshalb weit gefaßt werden mußte, eine vertragliche und urkundlich niedergelegte Vereinbarung in besonderem Maße für nötig gehalten hat. Im Gegensatz dazu war der Inhalt von Vertretungsverhältnissen, die etwa nur auf eine simple Steuerzahlung an den Fiskus „durch" (διά) einen anderen oder „im Namen" (ἐκ ὀνόματος, ἐν ὀνόματι) eines Dritten abzielen, oder durch die Bezeichnung des Vertreters als φροντιστής bzw. ἐπίτροπος für Mündel sowie κύριος für eine Frau für die Zeitgenossen möglicherweise hinreichend klar definiert bzw. durch die allgemeine Lebenserfahrung abgedeckt, so daß man gesonderte Vereinbarung über die Bevollmächtigung für obsolet gehalten hat.

Im Falle der durch σύστασις erfolgten Bestellung eines Vertreters für so komplexe Angelegenheiten wie die Vertretung in einem Prozeß bzw. für die weitgehende Verwaltung von Gütern oder den Abschluß eines Rechtsgeschäftes war der Vollmachtgeber indes darauf angewiesen, daß der auf sich gestellte Stellvertreter in Erfüllung eines besonderen Vertrauensverhältnisses im Falle unerwarteter Wendungen im Prozeßverlauf bzw. vor dem Erfordernis eines möglichst profitablen Geschäftsabschlusses auch selbständig *ad hoc* Entscheidungen fällen bzw. weitgehend frei handeln konnte, um die Interessen des Vertretenen in bestmöglicher Weise wahrzunehmen. Aus diesem Grunde könnte man sich deshalb genötigt gesehen

[2] Siehe die Zusammenstellung der gesamten relevanten Literatur bei G. Hamza, Einige Bemerkungen zur Systasis in den Papyri, in: Sodalitas VI (Scritti Guarino), Neapel 1984, 2653-2666 sowie im Beitrag von Rupprecht in diesem Band.

haben, ausdrücklich auf diese aus der Bevollmächtigung resultierende Vertrauensstellung zu verweisen; und zwar zunächst einmal, indem man überhaupt das Vertretungsverhältnis mittels einer konkreten Urkunde (σύστασις, συστατικόν) konstituierte bzw. konkretisierte; sodann, daß man in derselben auch ausdrücklich auf die Vertrauensstellung des Bevollmächtigten verwies, so vor allem durch die πίστις-Klausel; ferner, daß man ausdrücklich erklärte, daß der Vertreter über dieselbe Handlungsfreiheit verfügen sollte, wie der Vertretene, wenn er tatsächlich anwesend wäre (ausgedrückt durch die Formel: καθὰ καὶ αὐτῇ bzw. αὐτῷ παρούσῃ bzw. παρόντι ἐξῆν) und schließlich, indem der Vertreter durch die εὐδοκεῖ-Formel ausdrücklich seine Zustimmung zu der σύστασις erklärte. (Zur Interpretation dieser Formel nochmals später). – Dies schließt natürlich nicht aus, daß in besonders gelagerten Fällen, wo dies angebracht erschien, noch gesonderte Anweisungen an den Vertreter gegeben wurden, so im Falle von P.Oxy. XIV 1642 (nach 289 n.Chr.), wo der Vertreter in einem Prozeß die Nominierung einer bestimmten Person zum Nachfolger in der Agoranomie durch den Vollmachtgeber an dessen Stelle zu rechtfertigen hat und wo nach dem Schema: „Wenn er (sc. der Prozeßgegner) sagt…“ (ἐὰν… λέγῃ), „wirst Du Folgendes sagen…“ (λέξεις οὕτως…) der Vertreter detaillierte Argumentationsvorschriften erhält.

Es scheint mithin, daß *eo ipso* die *systasis* keinen Sonderfall im Recht der Vertretungsverhältnisse konstituiert, sondern sich vor allem dadurch auszeichnet, daß Vertretungsverhältnisse hier, wie Rupprecht in seinem Beitrag präzise herausarbeitet, einer besonderen Ausgestaltung unterliegen.

Die obengenannten konstitutiven Elemente einer σύστασις finden sich etwa in der σύστασις-Urkunde P.Oxy. I 94 (83 n.Chr.). Hier bevollmächtigt in Form einer objektiv stilisierten Homologie ein römischer Bürger namens M. Antonius Ptolemaios[3] einen Dionysios, Sohn des Theon, zwei ihm gehörende Sklaven auf dem Markt zu verkaufen. Die Mängelhaftung ist die bei einem solchen Geschäft übliche, d.h. die Ware wird verkauft wie sie ist, mit Ausnahme der Haftung für Aussatz und Epilepsie. Der Vertreter hat die Freiheit der Entscheidung, an wen er die Sklaven verkauft oder ob er sie einzeln oder zusammen verkauft, und er soll über die besagten Sklaven alle Verfügungen treffen können, die auch der Gewalthaber bei persönlichem Handeln treffen dürfte (Z. 13-15: καὶ τὰ ἄλλα περὶ αὐτῶ(ν) περιοικονομήσαντα καθὰ καὶ αὐτῷ Μάρκῳ Πτολεμαίῳ [π]αρόντι ἐξῆν). Es folgt die Formel über die Eudokesis, die wie folgt gefaßt ist: εὐδοκεῖν γὰρ αὐτὸν ἐπὶ τούτο[ι]ς ἐφ᾽ ᾧ τὴν δοθήσομένην αὐτῷ τούτων ἢ τοῦ ἀπ᾽ αὐτῶν πραθησομένου τιμὴν ἀποκαταστείσειν (l. -στήσειν) τῷ Ἀντωνίῳ Πτολεμαίῳ, τῆς πίστεως περὶ

[3] Der Name ist von den Erstherausgebern Grenfell und Hunt (siehe den Kommentar zu P.Oxy. I 94,3 u. 4) falsch aufgefaßt worden, die deshalb unnötige Konjekturen am Text vornahmen (was von Mitteis in seinem Wiederabdruck des Dokuments in M.Chr. 344 übernommen worden ist), da sie nicht erkannten, daß es sich bei M. Antonius Ptolemaios um einen römischen Bürger der Tribus *Sergia* handelt (siehe BL I 315).

αὐτὸν Διονύσ[ι]ον οὖσης, τῆς δὲ περὶ κυρείας βεβαιώσεως ἐξακολουθούσης τῷ Ἀντωνίῳ Πτολεμαίῳ ἐπὶ τοῖς προκειμένοις δικαίοις (Z. 15-21).

Rupprecht äußert Zweifel an der Auffassung von Gábor Hamza[4], wonach das εὐδοκεῖν γὰρ αὐτὸν in Z. 15 zweifelsfrei nur auf den Vertreter bezogen werden könne, der damit die Vertretungsvereinbarung annehme, denn die Eudokesis sei an die Bedingung der Herausgabe des Kaufpreises geknüpft, weshalb die Formulierung nicht eindeutig sei und sich auch auf die Zustimmung des Mandanten zur Veräußerung der Sklaven durch den Vertreter beziehen könne. Es scheint mir indes mehr für die Auffassung Hamzas zu sprechen, welche im Übrigen bereits die diejenige von Leopold Wenger[5] war. Die Gründe hierfür sind vor allem sprachlogischer Natur, denn in dem Text ist auch sonst αὐτός ohne näheren Zusatz immer der Vertreter, nicht der Mandant; so in Z. 6 und in Z. 16. Auf der anderen Seite wird in der anschließenden Klausel über die πίστις, wo wegen der unmittelbar vorhergehenden namentlichen Nennung des Antonius Ptolemaios ein alleinstehendes Personalpronomen αὐτόν nicht eindeutig wäre, der Name des Vertreters hinzugefügt (τῆς πίστεως περὶ αὐτὸν Διονύσ[ι]ον οὖσης).

Daß durchaus auch dem Stellvertreter das εὐδοκεῖν zufallen kann, zeigen im Übrigen auch die Vertretungsvollmachten für Prozesse, so ganz eindeutig P.Oxy. I 97 (= M.Chr. 347, 116 n.Chr.)[6], was ebenfalls von Wenger schon herausgearbeitet worden ist.[7] Hier bestellt mittels einer objektiv stilisierten Homologie ein gewisser Diogenes seinen Bruder Nikanor zum Stellvertreter in einem Prozeß vor dem *praefectus Aegypti* über die Besitzrechte an einer Sklavin. Zwar lautet die Formel am Schluß der Urkunde lediglich εὐδοκεῖν γὰρ ἐπὶ τούτοις (Z. 18-19); daß jedoch der Infinitiv εὐδοκεῖν als Subjektsakkusativ zwingend den Vertreter voraussetzt, beweisen indes die beiden Subskriptionen der Vertragspartner: Nämlich zunächst die des Mandanten: Διογένης Ἀμμωνίου τοῦ Νικάνωρος συνέστησα τὸν ἀδελφὸν ἐμοῦ Νικάνωρα ἐπὶ πᾶσι τοῖς προκειμένοις (Z. 20-23); und sodann die des Bevollmächtigten: Νικάνωρ ἀδελφὸς εὐδοκῶ τῇ συστάσει (Z. 24-25). Damit dürfte man aber m.E. bis auf weiteres davon auszugehen haben, daß die Eudokesis-Formel in solchen σύστασις-Urkunden sich i.d.R. auf die Zustimmung des Vertreters bezieht.

Zum Ausgangspunkt unserer Überlegungen zurückkehrend, nämlich der Fassung dieser Formel in der Urkunde P.Oxy. I 94 (= M.Chr. 344) über die Bevollmächtigung zum Verkauf zweier Sklaven des Mandanten scheint es mir auch nicht so sicher zu sein, daß hier die Eudokesis im strengen Sinne an die Bedingung der Herausgabe des Kaufpreises an den Vollmachtgeber geknüpft ist. Denn zunächst einmal heißt es ja bereits εὐδοκεῖν γὰρ αὐτὸν *ἐπὶ τούτοις* (Z. 15-16), also: „daß er (*sc*. der Bevollmächtigte Dionysios, Sohn des Theon) *unter diesen* (*sc*. den oben im Vertrag genannten) Bedingungen zustimmt“. Der folgende Passus ἐφ’ ᾧ τὴν

[4] Hamza, Bemerkungen (o. Anm. 2) 2658 f.
[5] *Die Stellvertretung im Rechte der Papyri*, Leipzig 1906, 219 m. Anm. 2-4.
[6] Zur Datierung vgl. ZPE 17, 1975, 282 m. Anm. 2.
[7] *Stellvertretung* 143 f.

δοθήσομένην αὐτῷ … τιμὴν ἀποκαταστείσειν (l. -στήσειν) τῷ Ἀντωνίῳ Πτολεμαίῳ (Z. 17-18) scheint mir dann weniger die Eudokesis selbst zu konditionieren als vielmehr eine selbstverständliche Bedingung nachzureichen, die bisher nicht genannt worden war, nämlich die Herausgabe des Kaufpreises an den Vollmachtgeber.

Das soll nun allerdings nicht heißen, daß es keine Belege für die εὐδόκησις des Vollmachtgebers gäbe. Diese unterscheidet sich jedoch strukturell von der soeben behandelten, als sie nicht eine Zustimmung zur Vollmachterteilung ist, sondern eine im vorhinein erteilte Zustimmung zu den Vertretungshandlungen darstellt. Sie ist deshalb auch ausführlicher gefaßt als das einfache εὐδοκεῖ oder εὐδοκεῖν des Vertreters. So heißt es etwa in dem χειρόγραφον BGU I 300 (= M.Chr. 345 = FIRA III 159; Arsinoites, 148 n.Chr.), das auf dem *verso* als ἀποσυστα[τικόν] bezeichnet wird und mittels dessen C. Valerius Chairemonianos, ein Militärveteran und Bürger von Antinoopolis, einen Kameraden namens M. Sempronius Clemens zum φροντιστής für seine Güter im Arsinoites einsetzt: καὶ εὐδοκῶ οἷς ἂν πρὸς ταῦτα ἐπιτελέσῃ (Z. 11-12), wobei mit ταῦτα die vorhergenannten Vollmachten gemeint sind, die präzise und ausführlich beschrieben werden, nämlich: die Eintreibung der Pacht, die erneute Verpachtung, die Ausstellung von Quittungen etc. In ähnlicher Weise heißt es in P.Fouad 35 (Oxyrhynchos, 48 n.Chr.), wo eine Frau namens Thaesis ihren Ehemann Ptollion zur Eintreibung ihr geschuldeter Summen und die Erledigung von Verkäufen bevollmächtigt: εὐδοκεῖ γὰρ πᾶσι οἷς ἐὰν ὁ ἀνὴρ Πτολλίων περὶ τῶν κατὰ τὴν σύστασιν οἰκονομή[σ]ῃ (Z. 10-11).

Für die juristische Bewertung der Systasis bezog sich die juristische Literatur u.a., wenn ich recht sehe, auf das in den Systasis-Urkunden für den Abschluß von Rechtsgeschäften typische Verhältnis von *pistis*-Klausel (bezogen auf den Vertreter) *vs*. *bebaiosis*-Klausel (bezogen auf den Mandanten). Ernst Rabel[8] deutete die πίστις als Vertrauensstellung bzw. Stellung als „Vertrauensmann“ bzw. „Treuhänder“ und fügte hinzu, sie bedeute im allgemeinen „Freiheit der gestion“ und in Bevollmächtigungen zum Verkauf „mit dem Recht, den Kaufpreis zu empfangen und infolge dessen der Pflicht, ihn selbst zu vergüten und die Wendung τῆς πίστεως περὶ σὲ οὔσης [zu] übersetzen; das Vertrauen ist bei dir, worauf in BGU VII 1662 folgt: keinerlei Haftung entsteht für dich. Welche Verantwortung aus dem Vertrauen folgt, ist eben je nach dem Fall verschieden. Wiederum führen diese Gedanken von unserer echten direkten Stellvertretung weg zum Handeln des Interessenvertreters im eigenen Namen kraft des ihm anvertrauten selbständigen Rechts“ (soweit Rabel[9]). – Wieso es sich aufgrund dessen nicht um eine echte Stellvertretung handeln kann, wie Rabel meint, sondern um Handeln in eigenem Namen handeln muß, auch wenn, wie etwa in BGU I 300 der Vertreter vom Vertretenen ἐκ τοῦ ἐμοῦ ὀνόματος er-

[8] Eine neue Vollmachtsurkunde, Aegyptus 13, 1933, 374-380.
[9] art. cit. 380.

mächtigt wird, Quittungen auszustellen[10] oder in anderen von einem *systates* besorgten Rechtsgeschäften ausdrücklich darauf hingewiesen wird, daß die Gewährleistung gegen evtl. Rechtsmängel den Geschäftsherrn trifft[11], ist mir nicht recht einsichtig geworden. Rupprecht merkt in seinem Vortrag im Übrigen zu recht an, daß die *pistis*-Klausel unterschiedliche Akzentuierungen besitzt, indem sie nämlich nicht ausschließlich nur auf das Innenverhältnis zwischen Vollmachtgeber und Bevollmächtigten abzielen muß, wie Rabel, aber auch Wenger meinen, sondern ebensogut auf eine dem Bevollmächtigten obliegende *pistis*, das Geschäft – was Auswahl von Geschäftspartner sowie die Erzielung eines möglichst guten Preises betrifft, aber auch im Verwaltungsbereich die Erzielung von Profit, etwa durch möglichst gewinnbringende Verpachtung –, so gut wie möglich abzuschließen, wie es etwa Mitteis m.E. zutreffend zu der oben bereits ausführlich gewürdigten Systasis P.Oxy. I 94 über den Verkauf zweier Sklaven angemerkt hat.[12]

Ansonsten konzentrierte sich die rechtshistorische Diskussion auf die Frage, ob es sich bei der σύστασις um eine direkte Stellvertretung oder um ein Handeln des Stellvertreters im eigenen Namen infolge eines ihm anvertrauten selbständigen Rechtes (so etwa formuliert es wieder Rabel) bzw. mit Einwilligung/Ermächtigung des Geschäftsherrn handelt. Diese Diskussion spielt (oder besser: spielte) sich vor dem Hintergrund der grundsätzlicheren Frage ab, ob die direkte Stellvertretung im griechischen Recht (oder vielleicht besser: den griechischen Rechten) überhaupt Anerkennung gefunden hat bzw. zulässig war. Immerhin räumt selbst Ernst Rabel, der prominenteste Gegner dieser vor allem von Leopold Wenger in seinem magistralen Werk über *Die Stellvertretung im Rechte der Papyri*[13] vertretenen Auffassung, ein, daß die *systasis* als nützliches Mittel der Herbeiführung der Wirkungen der direkten Stellvertretung betrachtet werden kann[14] und „dass eine mächtige Tendenz zu diesem Prinzip hin gegangen ist."[15]

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[10] Zu diesem Text siehe auch oben; siehe ferner Wenger, *Stellvertretung* 221-227 sowie E. Polay, ZRG (RA) 100, 1983, 658.

[11] Siehe etwa die oben bereits erwähnte *systasis* zum Verkauf zweier Sklaven P.Oxy. I 94,19-20 (= M.Chr. 344).

[12] M.Chr. 344 Einl.: „Letzterer (sc. der Mandatar, Anm. d. Verf.) übernimmt den Verkauf auf seine πίστις, d.h. er verantwortet, daß er so gut wie möglich verkauft;" man beachte ansonsten auch die gerade in dieser Urkunde sehr saubere Scheidung zwischen der dem συστάτης obliegenden πίστις und der den Geschäftsherrn treffenden βεβαίωσις (Z. 18-21: τῆς πίστεως περὶ αὐτὸν Διονύσ[ι]ον οὔσης, τῆς δὲ περὶ κυρείας βεβαιώσεως ἐξακολουθούσης τῷ Ἀντωνίῳ Πτολεμαίῳ ἐπὶ τοῖς προκειμένοις δικαίοις).

[13] Siehe oben Anm. 5.

[14] Systasis, AHDO 1, 1937, 213-237 (= ders., *Gesammelte Aufsätze, Band IV: Arbeiten zur altgriechischen, hellenistischen und römischen Rechtsgeschichte 1905-1949*, hrsg. v. Hans-Julius Wolff, Tübingen 1971, 607-627); siehe auch Hamza, Bemerkungen (o. Anm. 2) 2654.

[15] Aegyptus 13, 1933, 376.

Gábor Hamza, von dem der jüngste (immerhin auch bereits aus dem Jahr 1986 datierende) Beitrag zum Problem der *systasis* stammt, hat im Anschluß an Rabel erneut auf die Bedeutung „jemanden empfehlen" für das Verbum συνίστημι verwiesen, und dies gegen die Deutung der entsprechenden Vorgänge als direkte Stellvertretung ins Feld geführt. So argumentiert er etwa im Hinblick auf die Urkunde P.Oxy. I 94, wo M. Antonius Ptolemaios den Dionysios mittels *systasis* bevollmächtigt, zwei seiner Sklaven zu verkaufen, wie folgt: „Es stellt sich die Frage, ob das Dionysios bezogene συνιστάναι einen juristisch relevanten Vorgang oder bloß eine Art Empfehlung bzw. ein Vorstellen andeutet. Dionysios wird nämlich – wie dies der Satzfügung der Stelle zu entnehmen ist – den beikommenden Besuchern des Marktes gegenüber (συνεστακέναι αὐτὸν … τοῖς προσελευσομένοις τῶι ἀγορασμῷ) bestellt. Es gibt demzufolge triftige Gründe dafür, daß es sich in diesem Falle um keinen Rechtsvorgang d.h. um keine Vollmacht im juristischen Sinne, sondern vielmehr um eine Empfehlung gesellschaftlicher Art bzw. um eine vom juristischen Standpunkt aus irrelevante Präsentierung handelt."[16] Dies fällt schwer zu glauben, denn man stelle sich vor: Zwei Partner vereinbaren mittels einer Urkunde, und zwar dem etablierten Verfahren der Homologie, die besagte Vertretung des einen durch den anderen bei einem konkreten Rechtsgeschäft, der Vertreter stimmt dem zu, sie schließt mit der *kyria*-Klausel und wird überdies auf dem Verso *expressis verbis* als σύστα(σις) Ἀντω(νίου) Πτολ(εμαίου) bezeichnet – und das Ganze soll nur „juristisch irrelevante Empfehlung gesellschaftlicher Art" sein? Es ist m.E. sehr zu bezweifeln, daß die Beteiligten dies ebenso gesehen haben sollten.

Als Argument gegen die juristische Einordnung der *systasis* unter die direkte Stellvertretung ist ferner angeführt worden, daß die Systasis-Urkunden gelegentlich Abreden treffen, die sich auf das Innenverhältnis zwischen Geschäftsherrn und Auftragnehmer (also das Mandat) beziehen, so etwa die Verpflichtung des Vertreters Dionysios zur Ablieferung des Kaufpreises für die Sklaven an den M. Antonius Ptolemaios in P.Oxy. I 94. Indes bemerkt Hamza, der dieser Auffassung zuzuneigen scheint, im Falle zweier *systasis*-Urkunden, nämlich P.Oxy. III 505 (+ PSI IX 1035) = SB XX 14199 sowie BGU I 300, daß „die Trennung zwischen Innen- und Außenverhältnis … nicht durchgeführt war"[17] (zu P.Oxy. III 505) bzw. (im Falle von BGU I 300) „die Vermengung der Elemente des Aussenverhältniss[es] und des Innenverhältnisses klar zum Vorschein kommt."[18] Es ist also festzuhalten: Die damals Handelnden waren sich bei ihren Abmachungen der juristischen Bedeutung von Innen- und Außenverhältnis offensichtlich nicht bewußt, sondern vermengten beides munter und scherten sich nicht darum. Wenn dem aber so ist: Welche Rolle für die Deutung der dahinterliegenden Vorgänge kann diese Frage dann spielen? Wenn Rupprecht hierzu anmerkt, daß „die säuberliche Scheidung von Innen- und Außenver-

[16] Bemerkungen (o. Anm. 2) 2685.
[17] art. cit. 2662.
[18] art. cit. 2664.

hältnis … ein modernes Phänomen [ist], das heute auch mehr in zivilrechtlichen Anfängerübungen thematisiert wird als im täglichen Leben“, so kann sich der Respondent der darin anklingenden leisen Kritik, wonach sich in der rechtshistorischen Forschung allzu streng gehandhabter juristisch-dogmatischer Dezisionismus möglicherweise von der Lebenswirklichkeit der historischen Akteure entfernt, nur vollumfänglich anschließen.

Mithin steht auch von daher der zutreffenden Auffassung Rupprechts nichts im Wege, wonach nämlich auch angesichts der besonderen Ausgestaltung, die ein Vertretungsverhältnis in den *systasis*-Urkunden annehmen kann, ein Abgehen von ihrer juristischen Interpretation als Manifestationen einer direkten Stellvertretung nicht begründbar ist.

EDWARD HARRIS (DURHAM)

THE RULE OF LAW AND MILITARY ORGANISATION IN THE GREEK *POLIS*

A despotic government is best for war,
and popular government the best for peace.
J. H. Newman (1891) 326

One of the greatest fears of the Greek *polis* (city-state) was the threat of tyranny.[1] As early as the Archaic period, the Spartans had a reputation for avoiding tyranny (Hdt. 5.92.2) and overthrew several tyrannical regimes. The Athenians endured several periods of tyranny under the Peisistratids in the late sixth century (Hdt. 1.59-64; [Arist.] *Ath. Pol.* 14-19). After the Peisistratids were driven out, they set up statues of the tyrannicides Harmodius and Aristogeiton and granted exceptional honors to their descendants.[2] They also enacted several measures against tyranny. According to the Aristotelian *Constitution of the Athenians* (22.3) ostracism was originally created to stop those aiming at tyranny. After the fall of the Thirty Tyrants, the Athenians passed a decree of Demophantus declaring that anyone who killed a tyrant was to be ritually pure (i.e. innocent of wrongdoing) (Andoc. 1.95; Dem. 20.159; Lyc. *Leocr.* 124-26).[3] In 337/6 the politician Eucrates passed a law with similar provisions.[4] The law about *eisangelia* provided for prosecution and stiff penalties for those who made an attempt to overthrow the democracy or succeeded in doing so (Hyp. *Eux.* 7-8). Sparta and Athens were not the only *poleis* opposed to tyranny. In the fourth century the Thebans as leaders of the Boeotian Confederacy

[1] Several people have given me help and encouragement in writing this essay. Fred Naiden was the first to draw my attention to the importance of military organization in Greek warfare, a topic neglected in many recent works on the topic (e.g. Hanson [1989], van Wees [2004]). He read several drafts and offered suggestions for improvements. Pierre Fröhlich, Selene Psoma, and Peter Rhodes offered valuable advice and helped with bibliography. I would also like to thank Gerhard Thür for inviting me to *Symposion 2009* and to Eva Cantarella and Joseph Mélèze-Modrzejewski for their encouragment. References to ancient sources use the abbreviations found in Liddell-Scott-Jones.

[2] For the statues see Brunnsaker (1971). For the honors to the descendants of the tyrannicides see Taylor (1991) 1-12.

[3] The document inserted into the text of Andocides 1.96-98 is a later forgery and the information contained in it unreliable. See Harris and Canevaro (forthcoming).

[4] For a text of Eucrates' law based on autopsy see Schwenk (1985) 33-46.

waged several campaigns to liberate Thessaly from the tyrant Alexander (Plu. *Pel.* 26-33). Laws against tyranny were also enacted at Eretria, Ilion and Abdera.[5]

There were many paths to tyranny, but the most frequent one was through military command.[6] Several tyrants started their careers as generals and used success in battle as a means to seizing power. Peisistratus served as Athenian general in the war against Megara and captured Nisaea (Hdt. 1.59.4; [Arist.] *Ath. Pol.* 14.1). He seized power for the third time around 546/5 when he led an army of his supporters from Eretria to Marathon and won a victory over his opponents at Pallene (Hdt.1.61.2-63.2; [Arist.] *Ath. Pol.* 15.2-3).[7] Before him, Solon gained prestige by conquering the island of Salamis. Although he decided to become a lawgiver and entrust the administration of his laws to the community, Solon says that he could have become a tyrant (Plu. *Sol.* 8.1-2; 14.5-15.1 [= fr. 33 West]). When Pausanias commanded the Greek forces against Cyprus and Byzantium in 478, he was accused of attempting to become a tyrant. Although he was acquitted of the charges brought against him, the Spartans did not renew his appointment as commander and sent Dorcis and other commanders in his place (Th. 1.95). Dionysius of Syracuse set himself up as tyrant after being elected general with supreme power (*strategos autokrator*) (D. S. 13.91.3-96.4). Jason of Pherai was appointed *tagos* of Thessaly and gained control over large forces of mercenaries, yet after he was killed, his assassins were honored as tyrannicides by many Greek *poleis*, who thought that he was about to use his military position to set up a tyranny (X. *HG* 6.4.28-32). His brother Polyphron took over his position and was also accused of tyranny by Alexander, who killed him for this reason (X. *HG* 6.4.33-35). When Euphron of Sicyon was elected general, appointed his son Adeas commander of the mercenaries, and started to win the loyalty of the troops by distributing money, Xenophon charged him with acting like a tyrant by exiling his opponents and confiscating their property (X. *HG* 7.1.46).[8] After Alcibiades was elected general to lead the Athenian expedition against Syracuse, he too was suspected of aiming at tyranny (Th. 6.15; 53, 60-61). It is no coincidence that in Sophocles' *Antigone* Creon, who is called a

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[5] Law against tyranny at Eretria: Knoepfler (2001) and (2002). Law against tyranny at Ilion: *OGIS* 218 (= *IK* [Ilion] 25). Law at Abdera: Loukoupolou, Parisaki, Psoma, and Zournatzi (2005) E.2 (Abdera). The public curses at Teos call down destruction on an Aesymnetes, an office that Aristotle (*Pol.* 1285a31) called an elective tyranny: Meiggs and Lewis (1969) no. 30B, lines 4, 8-9. On the office of *aisymnetes* see Faraguna (2005).

[6] Cf. Fröhlich (2008) 431: "il est probable que la plupart des cités faisaient peser un contrôle étroit sur les magistrats militaires, pour des raisons évidentes: ils étaient les meilleurs candidats à une carrière de tyran." See also Boëldieu-Trevet (2007) 60: "Dans les cités grecques de l'époque classique on redoutait le commandement exercé par un seul. On l'y assimilait d'ailleurs fréquemment à la tyrannie."

[7] For the chronology of the period see Rhodes (1981) 191-99.

[8] Though later murdered partly on the grounds that he was a tyrant, Euphron was honored by the people of Sicyon who considered him their benefactor (X. *HG* 7.3.1-12). On Xenophon's account see Lewis (2004).

tyrant by Ismene (60), Antigone (506), Teiresias (1056), and the messenger (1169), holds the office of general (7-8) and lays great stress on the military virtues of discipline and obedience (668-76).[9]

To prevent generals from becoming tyrants, the Greek *poleis* used the same kinds of methods they adopted to prevent other officials from seizing absolute power: 1) putting armies under the command of a board of generals, 2) annual rotation in office,[10] 3) making generals accountable by requiring them to submit to *euthynai*.[11] By applying the same rules to the military sphere as were in effect in the civil sphere, however, the Greek *poleis* often inhibited the ability of generals to wage war successfully. This paper will show that each of these methods created problems for efficient military operations. Dividing command among several individuals might lead to disagreements about strategy and tactics; annual rotation in office might prevent a talented general from continuing as commander; and requiring that generals submit to *euthynai* might expose them to unfair attacks by opportunistic politicians. The ideal of the rule of law and the fear of tyranny might therefore often be at odds with the necessities of military organization.

The problem with appointing a board of two or more generals to lead an army was that divisions of opinion might arise among them, which might threaten unity and discipline. The Spartans learned this lesson in 508 BCE when the two kings Cleomenes and Demaratus led an army of Spartans and their allies to impose Isagoras as tyrant of Athens (Hdt. 5.74-76). Up to this point, it was normal for both kings to go out on expeditions. This aim of this custom was obviously to prevent either king from gaining too much influence over the army and using this as a

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[9] For Creon as a tyrant see also D. 19.247 and in general Harris (2006) 41-80. Note also that when Hermocrates tries to warn the Syracusans about the Athenian invasion of Sicily (Th. 6.33-34), Athenagoras accuses him of trying to get elected illegally and setting up a tyranny or an oligarchy (Th. 6.38). The suspicions aroused by Athenagoras may have been responsible for Hermocrates' exile several years later (X. *HG* 1.1.27, 3.13).

[10] An inscription from Teos dated to the third century BCE contains regulations about a garrison commander, which limit his term of office to only four months and forbid reappointment for five years. See *SEG* 26:1306, lines 9-10, 15-16, 21, 28 with Robert and Robert (1976) 197-98 with note 176: "il est clair que ce qui a joué pour ces stratèges, comme pour le phourarque de Téos, c'est un motif politique de sécurité de la démocratie . . ." I would like to thank Selene Psoma for giving me this reference. Generals at Erythrai were also limited to a four-month term: see *IErythrai* 24 (277/75), lines 3-4, 24-25; 29 (c. 275), lines 3, 16-17.

[11] For these and other methods of preventing tyranny in the Archaic period see Harris (2006) 14-25. For *euthynai* of officials in the Greek *poleis* see Fröhlich (2004). For the *euthynai* of generals at Athens, see Fröhlich (2000). Cf. Fröhlich (2008) 40: generals "se soumettent aux memes règles de fonctionnement que les autres magistrates: leur charge est limitée dans le temps, collégiale, soumise à un contrôle, et non cumulable avec une autre." Hansen (1991) 226 believes that boards of officials are a democratic feature but see Harris (2006) 21-2, 25-8.

stepping-stone to tyranny.[12] When the Spartans and their allies reached Eleusis and were about to attack the Athenians who had come to oppose them, the Corinthians changed their minds "because they thought they were acting unjustly" and withdrew (Hdt. 5.75). The reason why they objected is provided later in the narrative by the Corinthian representative Sosicles: they thought it wrong to overthrow a legitimate government and set up a tyranny. Demaratus sided with the Corinthians and set himself against Cleomenes. When the allies learned that the two kings disagreed and that the Corinthians had departed, they too left their positions and withdrew, forcing Cleomenes to retreat. This event caused the Spartans to pass a law making it illegal for the two kings to accompany the army and requiring that one remain behind in Sparta.

This law appears to have remained in force during the fifth and fourth centuries BCE: during this period Spartan armies are always led by one commander, whether a king or some other officer such as Brasidas. In fact, whenever there is more than one military official mentioned in accounts of the Spartan army, one is the supreme commander, and the others are subordinate to him. For instance, Thucydides (5.8.4; 10.7) says that Brasidas and Clearidas each commanded separate contingents at the battle of Amphipolis, but it is clear that the latter took orders from the former (*e.g.* X. *HG* 4.3.21). Although the law removed the potential for dissension among army commanders, the original problem remained, that is, the threat of a successful general using the army to set up a tyranny. To keep watch on the kings during military campaigns, therefore, the Spartans sent out two Ephors along with each one (X. *Lac.* 13.5).[13] The Ephors had the power to arrest, fine or bring to trial any official they caught breaking the law (X. *Lac.* 8.3-4). They also exercised power over the Kings who swore to them that they would rule according to the established laws of the state. In return the Ephors swore to uphold the kingship provided they obeyed their oath (X. *Lac.* 15.7).[14] This clearly implies that they had the power to punish or arrest them if they broke the law.[15] This solution of the Spartans was similar to that adopted by the Soviet Union to prevent the military from challenging the supremacy of the Communist Party: Soviet generals were always accompanied by political commissars, who had the power to arrest them if they deviated from the party line.

The Spartans adopted a different rule for the commander of their fleet, a position created during the Peloponnesian War. In this case they applied the rule of rotation in office, allowed the commander to serve for a limited time and made re-

[12] For the dual kingship as a means of preventing tyranny see Pl. *Lg.* 691e-692b.

[13] For the role of the Ephors in preventing tyranny on the part of the kings see Pl. *Lg.* 691e-692b.

[14] Cf. Lipka (2002) 246: "The purpose of the oaths was to demonstrate subordination of the royal powers to the power of the Spartan *nomos*, and to protect oneself against tyranny on the part of the kings."

[15] For the power of the Ephors to depose harmosts serving abroad see X. *HG* 3.2.6-7.

election illegal (X. *HG* 2.1.7; D. S. 13.100.8).[16] Although this prevented anyone from acquiring too much power in this position, it also made it impossible for a good general to continue in office. Spartan dedication to the rule of law (Hdt. 7.104) thus presented a potential obstacle to military victory. The problem is well illustrated by the career of Lysander during the last years of the Peloponnesian War. In 407/6 Lysander took over from Cratesippides, whose term of office was over (X. *HG* 1.5.1). The Spartans had enjoyed little success at sea up to this point; at the battle of Cyzicus in 410 they had lost their entire fleet (X. *HG* 1.1.16-18; D. S. 13.50). Lysander's first move was to convince the Persian Cyrus to provide the Spartans with pay for rowers so that they could man their ships and outbid the Athenians. The extra money enabled Lysander to win a major victory for the Athenian fleet at Notion in early 406, capturing many Athenian triremes (X. *HG* 1.5.10-14 [fifteen triremes lost]; D. S. 13.71.4 [twenty-two triremes captured]). But after a year in office, he was required to yield his command to his successor Callicratidas (X. *HG* 1.6.1-6; D. S. 13.76.2). According to Xenophon (*HG* 1.6.4) his authority was undermined by Lysander's friends who said that it was unwise to replace a successful general who knew his troops well with one who had no experience and was unknown to those under his command.[17] Callicratidas replied to these criticisms by insisting that the Spartans should follow the orders of the government which had appointed him navarch (*HG* 1.6.5). Despite some initial successes Callicratidas died early during the battle of Arginousai in late 406 at which the Spartan fleet lost over seventy ships (X. *HG* 1.6.26-34; D. S. 13.97-100).

Shortly afterwards, the people of Chios and other allies met at Ephesus and decided to request that the Spartans send Lysander to take over the allied fleet (X. *HG* 2.1.6). The Spartans decided not to overturn their law forbidding the same man to hold the office of navarch more than once. Despite compelling military reasons, they did not wish to abolish an important means of preventing tyranny. Instead they appointed Aracus as navarch and Lysander as his subordinate for the year 405/4 but in reality it was Lysander who gave the orders (X. *HG* 2.1.7). In this way the Spartans were able to take advantage of Lysander's military talent without sacrificing their commitment to the rule of law. It was a shrewd decision: Lysander's decisive victory at Aegopotamoi soon after his appointment led to the final defeat of Athens in the Peloponnesian War (X. *HG* 2.1.7-28; D. S. 13.105-6).

The Athenians took a different approach to the problem. In 501/0 they created a board of ten generals elected one from each tribe (*Ath. Pol.* 22.2-3). This was clearly done to provide a counterweight to the office of Polemarch and to avoid the concentration of power in the hands of one general, which had helped Peisistratus to

[16] Initially the Spartans appear to have appointed navarchs for specific campaigns. shortly before Lysander's first appointment the term of office was fixed at one year. On this issue see Sealey (1976), Bommelaer (1981) 75-79, and Piérart (1995).

[17] Diodorus (13.76.4-79.7, 97.3-99.5) gives a more positive account of Callicratidas' performance.

gain power. Later the generals were elected from all the Athenians (*Ath. Pol.* 61.1). There is controversy about the date of the change, but it appears to have occurred before 441/40 when two generals from the same tribe are attested.[18] As with all other officials at Athens, the generals were elected for one year and accountable to the people through the procedure of *euthynai*.[19] Unlike the case with the Spartan navarchs, however, Athenian generals could be re-elected.[20]

In some cases the Athenians sent single generals to command expeditions, but in others a board of three or more generals was appointed. All ten generals appear to have accompanied the expedition to suppress the revolt of Samos (Th. 1.116.1), and eight were in command at the battle of Arginousai in 406 (X. *HG* 1.6.29; 7.1-2; D. S 13.101.5-102.1). One way to avoid division of opinion would have been to rotate command in the field on a periodic basis or to appoint a supreme commander. According to Herodotus (6.110. Cf. Plu. *Arist.* 5.2), both expedients were in practice at the battle of Marathon. On the one hand, the Polemarch appears to have held a position above the generals (cf. *Ath. Pol.* 22.2-3); on the other, operational command was rotated on a daily basis. But Herodotus was not a contemporary witness, and his account of the battle is vulnerable to criticism.[21]

It appears that when a board of generals was in command, decisions were made by consensus. The best evidence for this is found in Thucydides' account of the Sicilian Expedition (Th. 6.46.5-50.1. Cf. Plu. *Nic.* 14.3; *Alc.* 20.2-3). When the Athenian force arrived at Rhegion in Southern Italy, the generals Nicias, Alcibiades, and Lamachus conferred about what strategy to adopt. Nicias proposed moving against Selinous, their original objective, demand the money promised to them by the people of Egesta, then return to Athens after forcing Selinous into submission. Alcibiades has a more ambitious plan first to win over Messana, then find other allies to join in an attack on Syracuse and Selinous. Lamachus had a more bold idea, which was to sail immediately against Syracuse before the city could finish preparations. Lamachus decided to yield and back Alcibiades' plan, which was followed by all three. When an individual general was operating with his own force

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[18] See Androtion *FGrHist* 324 F 38 (Pericles and Glaucon, both from Akamantis, in a list of generals at Samos). Alternatively there may have been an intermediate stage when one general was elected for each tribe, but exceptions were possible. For discussion of the controversy with references to earlier treatments see Piérart (1974) and Hamel (1998) 85-86.

[19] Fröhlich (2000).

[20] The Athenians did not select generals by lot but elected them because they knew that the position required expertise – see [X.] *Ath.* 1.3.

[21] According to Diodorus (13.106.1-7) this system of daily rotation was used by the Athenians before the battle of Aegospotamoi, which may lend support to Herodotus' account of the battle of Marathon. In his account of Aegospotamoi, however, Xenophon (*HG* 2.1.27-32) does not mention daily rotation. See Hamel (1998) 94-5 with references to earlier treatments. Professor Rhodes points out that in the treaty between Athens and Sparta in 369 the two powers alternated command every five days (X. *HG* 7.1.1-14).

apart from the others, he could make tactical decisions. For instance, Demosthenes, who replaced Alcibiades after his recall, carried out an assault on the Syracusan counter-wall without apparently consulting his colleagues (Th. 7.43.1).

The opposition of one colleague might however prevent a consensus from emerging and inhibit decision-making. Later in the campaign against Syracuse, Demosthenes argued that it was best to withdraw and not waste any more money on the siege, which was not going well (Th. 7.47). Nicias was more optimistic about continuing the siege but was also worried that if they returned to Athens, speakers in the Assembly would accuse them of committing treason and receiving bribes (7.48). This was not an unreasonable fear: the three generals who were sent to Sicily in 427 were punished upon their return to Athens in 424 after failing to gain their objectives (4.65). Demosthenes then proposed marching to Thapsos or Catana and raiding the territory of their enemies from there, and Eurymedon sided with him. Despite the majority against him, Nicias was able to delay the army's departure (7.49). Shortly after Gylippos returned with reinforcements for Syracuse, making the Athenian position even more precarious. Eurymedon and Demosthenes finally gave orders to break camp, but an eclipse of the moon occurred, and Nicias insisted that there be no more discussion for twenty-seven days (Th. 7.50). One general was able to prevent the decisive action of the other two that might have saved the army from total destruction. The command structure of three generals, dictated by political factors, had a fatal impact on military operations.

It is worth noting that Thucydides explicitly notes the drawbacks of a large board of generals who are subject to strict political control. After the Syracusans were defeated by the Athenians in front of their city in 415, Hermocrates advised them to institute a series of reforms (Th. 6.72.4-73.1). One was to reduce the number or generals from fifteen to three. Hermocrates argued that the large number of generals and the division of authority (*polyarchia*) had done much harm and was inefficient. It would be better to have fewer generals who were more experienced and could run the army more efficiently. He also recommended that they be given full powers (*autokratoras*) and be allowed to make their own decisions. This implies that previously the generals were required to follow specific orders from the Council and Assembly. This way they would find it easier to keep their plans secret.[22]

The problem of a division of opinion among a board of generals recurred during the Social War when Chares, Timotheus, and Iphicrates were in command of the Athenian fleet at Embata. Chares wanted to attack the opposing fleet of Chians and other rebellious allies, but Timotheus and Iphicrates, who were experienced

[22] Note that one of the advantages of monarchy mentioned by Darius in the Constitutional Debate in Herodotus (3.82.2) is that deliberations against the enemy can be carried on in secret.

commanders, argued that it was too risky to engage the enemy.[23] According to Nepos (*Timotheus* 3.4), Chares ordered the other two to follow and advanced with his own force. After his defeat, he charged Timotheus and Iphicrates with treason and succeeded in convicting the former. Had one of the generals been superior to the other two, the defeat might have been avoided. The disagreement about military tactics then ended up in the courts before judges influenced by political considerations, which resulted in the unjust conviction of Timotheus (Isocr. *Antidosis* 129).

The most notorious case of a dispute in the fleet becoming a political issue was the trial of the generals after Arginousai. After the Athenian victory over the Spartan fleet the generals commanded Theramenes and Thrasybulus, who were trierarchs, and some of the taxiarchs to pick up men stranded on disabled ships. When a storm intervened, they were unable to carry out their orders, and many of the shipwrecked men were drowned (X. *HG* 1.6.35).[24] On their return to Athens, a politician Timocrates proposed that the generals be placed in prison and tried in the Assembly. Theramenes joined in the attack and charged them with failing to pick up the bodies (X. *HG* 1.7.3-4). The generals then defended themselves by reporting that the task of recovering the shipwrecked sailors was given to Theramenes and Thrasybulus (X. *HG* 1.7.5-7). The two trierarchs were obviously worried that the people's rage might fall on them so they allegedly disguised some relatives of those who were lost in the storm to dress in mourning at the Apatouria and to attend the Assembly so as to prejudice opinion against the generals (X. *HG* 1.7.8-9). Callixenus then passed an illegal motion to have the generals tried *en masse* in the Assembly, which led to the greatest miscarriage of justice in Athenian history (X. *HG* 1.7.9-35).

The incident illustrates another problem created by the democracy for military discipline. The trierarchs were subordinate to the generals, but they were allowed to appeal directly to the Council and Assembly over the heads of the generals. The issue of recovering the sailors was a military matter, which should have been dealt with by the generals and the trierarchs without interference from the Assembly. Once the matter reached the Council, however, opportunistic politicians gained control of the debate and helped to set the trierarchs against the generals. This led to the exile or execution of eight generals and deprived the Athenians of the military talent they needed to carry on the war against Sparta. They paid the price next year when the incompetent generals elected to replace them were outmanoeuvred by Lysander and lost the entire Athenian fleet.

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[23] For the sources see Polyaenus 3.9.29; D. S. 16.21-3-4 (mistakenly placing the battle in the Hellespont); Nepos *Timotheus* 3; *Iphicrates* 3.3; Isocrates *Antidosis* 129; Dinarchus *Demosthenes* 14.

[24] Diodorus (13.100.1-3) reports that there was a division of opinion whether to pick up the bodies of dead sailors or to pursue the enemy. But Xenophon's account makes it clear that the trierarchs were ordered to rescue sailors who were still alive.

The Boeotian Confederacy also used boards of generals but appear to have avoided the problems encountered by the Athenians. In the fifth century BCE there were eleven Boeotarchs who commanded the army.[25] When the Athenians were retreating from Boeotia and camped at Delium, the Boeotarchs Pagondas and Arianthides were in favor of making an attack, but the other nine were opposed. Thucydides (4.91) states that Pagondas had a superior position (*hegemonies*), but it is not clear what this means. He may have held a superior position to the others on this campaign, or command may have alternated among the Boeotarchs as Herodotus (6.110) reports that it did for the Athenian generals at Marathon. Whatever Pagondas' position, it appears that the decision to attack was taken collectively because Pagondas had to persuade the army.[26] When the Confederacy was refounded after the liberation of Thebes in 379, seven Boeotarchs were appointed as the main officials with political and military powers. They exercised a probouleutic function in the federal assembly and led the army.[27] All the Boeotarchs were in command before the battle of Leuctra, and the decision to attack appears to have been collective (X. *HG* 6.4.12), but Epaminondas was in the position of general and had overall control (D. S. 15.52.1; Plu. *Pel*. 23.1). When the Boeotian army invaded the Peloponnese in 369, the other Boeotarchs willingly allowed Epaminondas and Pelopidas to hold supreme command (D. S. 15.62.4). It is difficult to tell whether the Boeotarchs followed their orders because of their prestige or the two men held a superior position.[28] Whatever the explanation, the Boeotians were able to create a unified command that avoided the disadvantages inherent in a board of generals.

To keep generals accountable, the Thebans required that they serve for only one year, then return home to present their accounts and stand for re-election. The term of office began and ended in Boukatios, the first month of the year in the winter, (Plu. *Pel*. 24.2; 25.1) so that generals would not have to interrupt the campaigning season.[29] According to Nepos (*Epaminondas* 7), the penalty for breaking the law was death. The law did not pose any difficulties as long as campaigns did not last into the winter, but in late 370 it became a potential obstacle for the general Epaminondas. In 371 the Thebans defeated the Spartans at Leuctra and drove the Spartans out of Boeotia. The next year the Spartan king Agesilaus went to raid the territory of Mantinea and to disrupt the new Arcadian league, which threatened Spartan hegemony in the Peloponnese. The Thebans decided to join the Eleians and

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[25] For the Boeotian Constitution in the fifth century BCE see *Hell. Oxy*. XI.2-4 (Chambers) with Bruce (1967) 157-64.

[26] Cf. Hornblower (1996) 290.

[27] For an analysis of the office of Boeotarch see Buckler (1980) 24-31. For references to more recent treatments see Fröhlich (2008) 426 with note 19.

[28] For the debate see Fröhlich (2008) 427.

[29] For the place of Boukatios in the Boeotian calendar see Roesch (1982) 32-3. Cf. Trümpy (1997) 244-45.

Argives in sending troops to protect the Arcadians late in 370 (X. *HG* 6.5.22). The aim of the expedition was clearly defensive but when the Theban army joined their allies, the Theban generals Epaminondas and Pelopidas quickly realized that there was an unprecedented opportunity to invade Spartan territory and liberate Messenia (X. *HG* 6.5.22-25). To prolong the campaign, however, would force them to break the law requiring them to return to Thebes after his term of office expired (Plu. *Pel.* 24). The two generals decided to remain in the Peloponnese and led the allied army on a campaign that saved the Arcadian League, captured Sellasia, brought about the revolt of Skiritis and Karyai and liberated Messenia.[30]

On his return to Thebes in the spring of 369 both Epaminondas and Pelopidas were brought to trial for violating the law by adding four months to their term of office. The story of their trial was famous in antiquity: Plutarch alone recounts it four times in the *Moralia* (194A-C, 540D-E, 799E-F, and 817F) and once in his life of Pelopidas (25).[31] Both men were acquitted, but one should not get the impression that the Thebans did not take their violation of the law seriously. According to Plutarch (*Pelopidas* 25.4. Cf. 28.1) the politician Menecleidas saw to it that Epaminondas was not re-elected as Boeotarch sometime later (probably in 368), which may reflect popular suspicions about his ambitions.[32] The next time Epaminondas led an army into the Peloponnese, the Thebans placed a time limit on the expedition (X. *HG* 7.5.18).[33] His earlier violation of the law had created a dangerous precedent, which the Thebans did not wish to see repeated.

To prevent the rise of tyranny and to preserve freedom, the Greek *poleis* attempted to decentralize power and place strict limits on the powers of officials. But an effective army requires a unified command structure and a hierarchical organization with subordinates following the orders of leaders without challenge.[34] Demosthenes realized very well the advantages of a centralized military and political structure when he described Philip's position was "general, master, and treasurer" who had absolute control over everything, both open and secret deliberations, and could always accompany the army without returning home to present accounts of stand for election (Dem. 1.4-5).[35] By contrast, democracy with its complex rules and

[30] On this campaign see Buckler (1980) 70-90.

[31] There are also versions in Aelian (*Varia Historica* 13.42), Pausanias (9.14.5-7), Cornelius Nepos (*Epaminondas* 7.3-8.5), and Appian (*Syr.* 41.212-18). For discussion of the relationships among the various versions see Buckler (1978).

[32] For discussion of Theban politics in this period see Buckler (1980) 142-45. For Menecleidas' charge of treason against Epaminondas see D. S. 15.72.1-2.

[33] For this explanation of the time-limit see Schaefer (1858) 7-9. For other explanations see Underhill (1900) 305.

[34] The importance of maintaining equality among all citizens in the Greek *polis* may have inhibited the development of a professional officer corps, which received special training, titles and privileges. On the birth of the officer corps in Classical Macedonia see Naiden (2007).

[35] On this passage see Burckhardt (1996) 213-14.

procedures designed to maintain the rule of law caused the Athenians to miss one opportunity after another. Discussions of policy in the Assembly only delayed the army (Dem. 4.36-37). Demosthenes was not hostile to democracy and did not hold elitist attitudes.[36] As a responsible politician, he was attempting to instruct the Assembly about the weaknesses of the *polis* when faced with a military threat.[37] The way to overcome these weaknesses was to act quickly and decisively and to manage public finances effectively by not draining the Stratiotic Fund.[38]

Modern democracies attempt to resolve the conflict between the constraints of the rule of law and the imperatives of military efficiency by making a strong distinction between the civilian and military spheres. Different rules operate in the army and navy from those applied in civilian life. Politicians are elected by popular vote, whereas military officers are promoted by professional criteria based on training, experience, and ability. Military offenses are also tried in separate courts staffed by military personnel, not by regular tribunals. Such a separation of military and civil did not exist in the Greek *poleis*. Generals were elected in the same way as political officials and could speak in the Assembly on matters of public policy just like other citizens. In some *poleis* they might enroll citizens, collect money due to the state, preside over meetings of the Assembly, or register property.[39] They were also tried for misconduct in the same courts as other politicians.[40] An attempt to separate the military from politics was not a step that the Greek *poleis* were prepared to take.[41]

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[36] *Pace* Burke (2002). For Demosthenes' democratic views see Harris (2006) 134-39 and (2008) 8-9, 20.

[37] Demosthenes was not the only writer to understand how monarchies were better suited to waging war than *poleis* in which commanders were tied down by laws and institutions: see Isocrates *Letter to Philip* 1.2-7.

[38] For Demosthenes' proposals see Harris (2006) 121-35.

[39] For the political role of generals see Fröhlich (2008) 431-40.

[40] The only partial exception to this rule may have been trials on the public charge of cowardice (*graphe deilias*). Some have argued that these cases were heard by a court manned exclusively by soldiers, but this view has not gone without challenge. For the debate see Whitehead (2008) and Rhodes (2008).

[41] Hamel (1995) claims that there was an increasing separation of military and political authority in fourth-century Athens, but see Fröhlich (2008) 49-54.

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KOSTAS BURASELIS (ATHEN)

EPONYME MAGISTRATE UND HELLENISTISCHER HERRSCHERKULT

I. Einleitung. Die Zeit bildet den Grundrahmen des menschlichen Lebens, fügt sich aber selbst als genauere Zeitrechnung in den Rahmen eben der menschlichen Gesellschafts-, also hauptsächlich Staatsformationen. Das drückt sich auch darin aus, daß es eine grundlegende Methode speziell der Jahresrechnung für die Städte und sonstige Staaten der griechischen Antike war, eine Jahresperiode mit einem wichtigen Magistrat und seinem Namen zu verbinden: Nach ihm wurde also jeweils ein bestimmtes Jahr offiziell benannt (etwa nach der Formel: „während x die y-Magistratur bekleidete"), aus diesem Grunde hieß er *eponymos*; das Jahr gründete sich, sozusagen, auf seinen Namen. Dieser Gebrauch ist uns durch mehrere Beispiele gut bekannt und ist vor Jahren nach geographisch geordneten Stichworten in einer systematischen Aufsatzreihe von Robert Sherk untersucht,[1] dann auch von Angelos Chaniotis in einem knappen, aber gehaltvollen Lexikonartikel dargestellt worden.[2]

Unter den eponymen Magistraten der griechischen Städte nahmen die sakralen Magistrate, also die Priester, einen beachtlichen Platz ein. Dies ist in Hinsicht auf die grundlegende örtliche Bedeutung eines Kults/Heiligtums (z.B. des Asklepios in Epidauros)[3] verständlich, und ist für jene Orte noch verständlicher, wo ein Gott sogar der überlieferte Gründer oder Mitgründer einer Stadt war, wie z.B. Apollo in Kyrene.[4] Grundsätzlich verschieden von diesem Modell der – in der Regel – jährlich alternierenden Zeitbestimmung, welches das Prinzip der Amtsabwechslung in einer Polis widerspiegelte, war natürlich die kontinuierliche monarchische Zeitrechnung nach Herrschaftsjahren, also z.B. die Benennung eines Jahres als des x.ten in der Abfolge der entsprechenden Regierung oder innerhalb einer größeren Periode seit Beginn einer dynastischen Ära (wie z.B. bei den Seleukiden). An sich hätte man ja erwartet, daß die Gründung und Etablierung der großen territorialen Königreiche Alexanders und seiner Diadochen das alte eponyme System völlig verdrängt hätten. Bis zu einem Punkt ist es tatsächlich auch so gekommen, besonders in der Zeitrechnung der Königreiche selbst und der ihnen direkt unterstehenden Städte. Aber, wie auch sonst so oft, repräsentierten die griechische Stadt und die mit ihr verbundenen

[1] Sherk I-V (1990-1993).
[2] Chaniotis 1998. Vgl. auch Chaniotis 2003, bes. 439.
[3] Z.B. *IG* IV. 1^2. 71, 1-2. Vgl. Sherk I (1990), 267f.
[4] Beispiele: *SEG* 9. 11ff. Vgl. Sherk IV (1992), 270-2.

politischen und sonstigen Traditionen ein ideologisches und administratives Instrumentarium, auf das die hellenistischen Monarchien nicht hätten ohne Verlust verzichten können. Auf diese Weise entstand das aufschlußreiche Phänomen, daß auch Formen der eponymen offiziellen Datierung innerhalb jener Reiche nicht nur – wo schon vorher vorhanden – beibehalten,[5] sondern auch solche zusätzlichen Systeme durch die Monarchen selbst eingeführt wurden. Es galt nämlich besonders, den Monarchen und/oder seine Dynastie auf die Ebene von Göttern zu erheben und dies im allgemeinen Bewußtsein geschickt auch durch die Entstehung entsprechender eponymer Priestertümer zu verankern. Dieser speziellen Verbindung also von Herrscherkult und eponymer Magistratur gelten die folgenden Bemerkungen.[6] Im Hauptteil wird eine kommentierende Übersicht des vorhandenen Quellenmaterials angestrebt, in chronologisch-thematischer Reihenfolge (nach Monarchen/Dynastien). Aufgrund dieser Teilanalysen werden dann einige Schlußbemerkungen als Gesamtauswertung dieser über den Kult erfolgenden, kultisch-administrativen herrscherlichen „Einpflanzung" in das Leben von Städten und Bürgern geboten werden.

II. Wie fast überall im Hellenismus scheint auch hier ein feiner Faden auf Alexander zurückzuführen. Vielleicht existierte ein Plan zur eponymen Datierung von Vertragsurkunden nach Hephaistionspriestern (?) unter Alexander. Arrian (7. 23. 7) berichtet nämlich, daß Alexander nicht lange vor seinem Tod Kleomenes als Satrapen Ägyptens unter anderem die Anordnung gegeben habe, „den Namen Hephaistions in den Verträgen der Händler untereinander einschreiben zu lassen" (...καὶ τοῖς συμβολαίοις καθ' ὅσα οἱ ἔμποροι ἀλλήλοις ξυμβάλλουσιν ἐγγράφεσθαι τὸ ὄνομα Ἡφαιστίωνος). Für die eventuelle Ausführung dieser Bestimmung gibt es allerdings keine Belege, höchstwahrscheinlich überlebte der Plan seinen Initiator nicht. Alexander war es gewiß gelungen, Hephaistions postumen Heroenstatus durch das Ammoneion anerkennen zu lassen (Arr. 7. 23. 6).[7] Wie könnte er dann besser für die Propagierung dieser Neuigkeit und das ewige Gedächtnis seines Freundes als durch die erwähnte Maßnahme gesorgt haben?[8] Sicher kann man natürlich nicht sein, daß die Umwandlung Hephaistions vom Menschen zum Heros nicht auch als eine Art Ära hätte benutzt werden sollen. Interessant ist auch, daß keine geographische Einschränkung für diese Regelung erscheint, letztere also in der ganzen Satrapie Ägypten gültig gewesen wäre. Auf jeden Fall war somit die Idee, wenn nicht

[5] Vgl. z.B. über das seleukidische Kleinasien Leschhorn 1993, 34: „Die Mehrzahl der griechischen Gemeinden Kleinasiens bewahrte auch unter seleukidischer Vorherrschaft ihre traditionelle Datierung nach eponymen lokalen Beamten."

[6] Eine erste Skizze davon habe ich schon in einer früheren Abhandlung über die Kombinationsformen der traditionellen griechischen Polisidentität mit dem hellenistischen Herrscherkult gezeichnet: Buraselis 2008, 221f.

[7] Vgl. Voutiras 1990, bes. 132-142.

[8] Nach Berve 1926, II. 174 soll die Eponymität dem Priester Hephaistions in den zwei zu seinen Ehren errichteten Heroa in Alexandrien (Stadt und Pharos) gegolten haben.

auch unbedingt ihre Verwirklichung, schon da, das Instrument von Vertragsurkunden zur Ausstattung einer politischen Persönlichkeit mit einer neuen sakralen Identität anzuwenden.

III. Noch problematischer ist die erste ausdrücklich überlieferte Umsetzung der untersuchten Verbindung in die Praxis. Die eigentliche Geburtsstunde des hellenistischen Herrscherkults nach Alexander war ja die begeisterte Reaktion der Athener auf die frühe antigonidische Befreiungspolitik gegenüber den griechischen Städten. Den Athenern schreibt also Plutarch – nach unbekannter Quelle (Philochoros? Duris?)[9] – u.a. folgende hier erörternswerte Neuerung zu: In seiner *Vita* des Demetrios erwähnt er im Kontext der für Antigonos und Demetrios im J. 307 beschlossenen Ehren der dankbaren Athener, daß sie auch … μόνοι δ ὲ σωτῆρας ἀνέγραψαν θεοὺς, καὶ τὸν ἐπώνυμον καὶ πάτριον ἄρχοντα καταπαύσαντες ἱερέα Σωτήρων ἐχειροτόνουν καθ' ἕκαστον ἐνιαυτόν· καὶ τοῦτον ἐπὶ τῶν ψηφισμάτων καὶ συμβολαίων προέγραφον (10.4). Diese Information ergänzt und unterstreicht er in einem weiteren Passus (46.2), wo es um den Aufstand der Athener gegen Poliorketes im Jahr 287 und ihre entsprechende Haltung zu ihm geht: καὶ τόν τε Δίφιλον, ὃς ἦν ἱερεὺς τῶν Σωτήρων ἀναγεγραμμένος, ἐκ τῶν ἐπωνύμων ἀνεῖλον, ἄρχοντας αἱρεῖσθαι πάλιν, ὥσπερ ἦν πάτριον, ψηφισάμενοι. Nach Plutarchs Bericht hätten also die Athener ihre traditionelle offizielle Datierung nach dem eponymen Archon in jener Periode (307-287) abgebrochen und durch eine neue nach dem Priester der Sotere, also der vergöttlichten Antigonos I. und Demetrios I., substituiert. Die Angaben Plutarchs sind aber so nicht zu retten, weil uns Archonten Athens nach dem herkömmlichen Muster für die fragliche Zeit inschriftlich bekannt sind.[10] Ein neuer Versuch,[11] diese „Priester der Sotere" mit den *anagrapheis* der späteren Herrschaftsphase des Demetrios über Athen (ab 294) zu identifizieren und so ein Authentizitätsminimum jenes Berichts aufrechtzuerhalten, überzeugt ebenfalls nicht. Wenn überhaupt, hätte die Erwähnung jener (in klarem Gegensatz zu Plutarch ergänzend eponymen!) Magistrate in den Inschriften das (angebliche Haupt-) Ziel ihrer Einführung, also die Verbindung mit dem königlichen Kult, auch im Titel zumindest andeuten sollen. Vielleicht liegt hier eine entstellende Übertreibung der anti-antigonidischen und/oder anti-athenischen antiken Historiographie vor, eventuell im Lichte und nach der Inspiration späterer hellenistischer Daten. Die primären Quellen gestatten es bisher nicht, hier den Beginn der eponymen Herrscherkultdatierung im Hellenismus anzusetzen.

IV. Nach unserem heutigen Wissen erscheint das erste sichere (und das bekannteste) solche Datierungssystem im ptolemäischen Alexandrien. Dem Sohn des Lagos lag

[9] Vgl. Dreyer 1998, 34f. mit Anm. 31, der Philochoros befürwortet.
[10] So z.B. in *IG* II^2. 478 (305/4 v.Chr.). Vgl. Habicht 1970^2, 45 (Anm. 3).
[11] Dreyer 1998.

es sehr daran, den Leichnam Alexanders in jeder Hinsicht zum politisch-ideologischen Fundament seines Reiches umzuwandeln. Als Gründer Alexandrias hatte der große Makedone nach griechischer Sitte ein Anrecht darauf, mit einem Ktisteskult in seiner homonymen Stadt geehrt zu werden. Zeugnisse dieses Kultes sind ja auch bis in die Kaiserzeit vorhanden.[12] Ptolemaios I. hat aber um 290 ein anscheinend davon zu unterscheidendes jährliches Priestertum Alexanders in seiner Hauptstadt gegründet, dessen Erwähnung für jede offizielle Datierung staatlicher und privater Urkunden in Ägypten offenbar konstitutiv war. Der erste bekannte Inhaber dieses Amtes war des Königs eigener Bruder, Menelaos. An sich hätte sich Ptolemaios zur Datierung der Dokumente seines Reiches mit der – bekanntlich systematisch praktizierten – Angabe seines jeweiligen Regierungsjahres begnügen können. Die zusätzlich erfundene Datierungsform war aber eine kluge und doppelte Huldigung, sowohl gegenüber Alexander wie auch der Tradition griechischer Städte, zu denen der Herrscher Alexandriens bestimmt seine Residenzstadt zählte und zählen lassen wollte. Man braucht hier kein detailliertes Bild der schon eingehend (besonders von Fraser und Koenen,[13] auch durch Priesterkataloge von Ijsewijn und neulich von Clarysse und Van der Weken)[14] erforschten Entwicklung dieses Priestertums abzugeben. Die unter Soter dadurch mit Alexander gesuchte Verbindung und dynastische Legitimation *ex pietate* hat dann über die Vergöttlichung Arsinoes II. und den Zusatz der *Theoi Adelphoi* zum Inhalt jenes Priesteramtes den zweiten Ring einer dynastischen Herrscherkultkette geschmiedet, die unter Philopator ergänzt und kanonisiert wurde, und bis in die spätere Ptolemäerzeit immer weiter ging. Der alexandrinische Priester Alexanders, stets ein höheres Mitglied der ptolemäischen herrschenden Gesellschaft, hat stets neue Waggons an seinen Titel-Schauzug göttlich-monarchischer Kontinuität sich anschließen gesehen. Ähnliche Priestertümer und entsprechende eponyme Angaben in den Urkunden der Zeit wurden auch speziell für Arsinoe II. und Berenike II., später auch für weitere ptolemäische Herrscherinnen und Herrscher eingeführt. In Ptolemais, das ja eine ausgesprochen ptolemäische (keine Alexander-) Gründung war, gab es auch ein eponymes Priestertum der Sotere seit Philopator, wozu später verschiedene weitere eponyme und separate ptolemäische Priestertümer addiert wurden.[15] Die Schaukonglomerate von Priestertitulaturen wurden immer schwerer und die Urkundenschreiber wohl immer unglücklicher. Es ist also sehr bezeichnend, daß schon früh und immer häufiger die Praxis der rücksichtslosen Abkürzung dieser langen eponymen Angaben erscheint. In einer Sklavenverkaufsurkunde vom J. 259 v.Chr. (P. Cairo Zen. 59003= Sel.Pap., I. 31, S.96) begegnet man z.B. am Anfang der Königsdatierung, d.h. nach dem bestimm-

[12] Leschhorn 1984, 204-212; Sherk 1992 (IV), 265f.
[13] Fraser 1972, I. 214-9; Koenen 1993, bes. 46-56.
[14] Ijsewijn 1961; Clarysse / Van der Weken 1983.
[15] Über die Zustände in Ptolemais s. zuletzt das knappe Bild von Sherk 1992 (IV), 269f. (mit Quellenverweisen), und die weiterführenden Bemerkungen im hier folgenden Beitrag von Bernard Legras.

ten (27.) Jahr des regierenden Ptolemaios (II.), und dann der θεῶν Ἀδελφῶν, κανηφόρου Ἀρσινόης Φιλαδέλφου [τῶν ὄντων ἐν Ἀλε]ξανδρείαι (die Ergänzung wird durch mehrere solche Beispiele abgesichert).[16] Man findet also hier keine – vielleicht nicht immer und nicht überall systematisch mitgeteilten – Namen von Amtsinhabern, mit anderen Worten einen offensichtlichen Verzicht auf jegliche spezifische Zusatzdatierung durch diese eponymen Priester und Priesterinnen und bloß einen Verweis auf das, „was es in Alexandrien gibt".[17] Ähnlich gelichtete Formeln kommen zunehmend vor. In einer Verkaufsurkunde sakraler Privilegien von 129 v.Chr. (P.S.I. 1016= Sel. Pap. I. 37, S.108) erscheint nach der – fest mitgegebenen – Königsdatierung die zugleich gewachsene und geleerte Formel: ἐφ' ἱερέως τοῦ ὄντος Ἀλεξάνδρου καὶ θεῶν Σωτήρων καὶ θεῶν Ἀδελφῶν καὶ θεῶν Εὐεργετῶν καὶ θεῶν Φιλοπατόρων καὶ θεῶν Ἐπιφανῶν καὶ θεοῦ Φιλομήτορος καὶ θεοῦ Εὐπάτορος καὶ θεῶν Εὐεργετῶν, ἀθλοφόρου Βερενίκης Εὐεργέτιδος, κανηφόρου Ἀρσινόης Φιλαδέλφου, ἱερείας Ἀρσινόης Φιλοπάτορος, ἐφ' ἱερείων καὶ ἱερειῶν τῶν ὄντων καὶ οὐσῶν ἐ[ν] Ιτολεμαΐδι. Zusätzlich bemerkenswert ist hier der Verzicht auf die Nennung auch der genaueren Titel der eponymen Priestertümer in Ptolemais. Offensichtlich entsprach den administrativen Zweckvorstellungen inzwischen völlig diese summarische Angabe, die nackten Amtsnamen in Bezug auf Alexandrien und der lapidare Verweis auf die Existenz wohl entsprechender Ämter in Ptolemais reichten aus. Was ursprünglich als ein sinnvolles Mittel gedacht sein mußte, ganz Ägypten ideologisch an die zu unterstreichende Stadtstruktur von Alexandrien und Ptolemais anzubinden, war inzwischen ein leicht dem Verwaltungsrealismus zu opferndes Detail geworden. Diese Mentalität wird dann an einem anderen, noch späteren Beispiel greifbar, wo diese Angaben als „üblich, gemein" bezeichnet werden, also gerechtfertigt auszulassen waren: in einer Vermietungsurkunde von Kleruchenland im Jahr 73 v.Chr. (P. Oxy. 1628= Sel. Pap. I. 40, S.123) folgt der Königsdatierung der Satz τὰ [δ'] ἄλλα *τῶν κοινῶν* ὡς ἐν Ἀλεξανδρείαι γράφεται.

Im Laufe der Zeit hat man auch das Annuitätsprinzip der Herrscherkultpriester in prägnanten Fällen aufgegeben: Nicht nur wurde z.B. die eponyme Priesterin von Κλεοπάτρα (III.) Θεὰ Ἀφροδίτη ἡ καὶ Φιλομήτωρ lebenslang gewählt,[18] sondern auch ihre beiden nach (und gegen) einander regierenden Söhne, Ptolemaios IX.

[16] So z.B. auch in P. Grenf. II.15≈ Wilcken 1912, 106.

[17] Eine interessante Ausnahme bildet BGU III. 993= Wilcken 1912, 107, aus dem Jahr 127 v.Chr.: hier werden im Aktpräskript der eponyme Priester des Alexander- und Dynastiekultes und die eponymen Priesterinnen von Berenike II., Arsinoe II. und Arsinoe III. als ἐν τῷ τοῦ βασιλέως στρατοπέδῳ, „im Lager des Königs (: Ptolemaios' VIII.)" befindlich, bezeichnet, ohne daß ihre spezifischen Namen auch in diesem Fall mit erwähnt sind. Offensichtlich faßte man diese Priesterposten als einen selbstverständlichen Teil des königlichen Gefolges auf, also die Institution dieser Priestertümer im Endeffekt als ein Bestandteil der offiziellen staatlichen Repräsentation. Wie später im Römischen Reich war der Staat, wo immer sich der Herrscher befand.

[18] Sherk 1992 (IV), 263.

Soter II. und Ptolemaios X. Alexander I. haben sich – dem ursprünglichen Sinn der Institution zum Trotz – selbst und kontinuierlich mit dem Alexander- und Dynastiepriestertum versehen.[19]

Ebenfalls bemerkenswert ist die gelegentliche Abkürzung des Alexander- und Dynastiepriesters der Ptolemäer in verschiedenen Dokumentsangaben einfach als „Priester". So haben wir z.B. in einer Kornverkaufsurkunde (P. Hibeh 84 (a)= Sel. Pap. I. 34, S. 102, ca. 285 v.Chr.) die schlichte Form ἐφ' ἱερέως Μενελάου τοῦ Λάγου. Dies ist auch der Fall bei einem Gelddarlehen von 273 v.Chr. (P. Cairo Zen. 59001= Sel. Pap. I. 66, S. 198), wo die Datierung vorkommt: ἐφ' ἱερέως Λεοντ[ί]σκου τοῦ Καλ[λιμήδους]. Der Hauptpriester Alexandriens (und Ägyptens) konnte also sinngemäß und schlicht als „(der) Priester" in den offiziellen Datierungsformeln anscheinend bis etwa 270 v.Chr. apostrophiert werden.[20] Der Punkt ist nicht unbedeutend in zweierlei Hinsicht: (a) weil eine sichere Unterscheidung der angeblichen Belege eines Priesters Alexanders als Ktistes von Alexandrien (wie z.B. im bekannten, auf Stein überlieferten alexandrinischen Dekret aus dem dritten Jhdt. v.Chr.)[21] von demjenigen des Dynastie-Kults sehr schwierig wird – oder Anlaß dazu geben kann, einen ab ca. 290 und bis zur römischen Zeit kontinuierlichen *und* unabhängigen Ktistes-Kult anzuzweifeln;[22] (b) weil sich dies mit ähnlichen Lapidarformen bei anderen Priestern hellenistischer Herrscher-, spezieller Gründerkulte, vergleichen läßt (s. unten).

Wie sah es nun mit einer eventuellen Benutzung dieses eponymen Datierungssystems an der ptolemäischen Peripherie aus? Die Beantwortung der Frage ist wichtig in Bezug auf den ideologischen Zusammenhalt des Reiches und die entsprechende Sorge der Dynastie. Bis vor einigen Jahrzehnten konnte man noch kaum eine Antwort darauf geben. Herrscherkulte für die Ptolemäer gab es ja an verschiedenen Orten, die von ihnen mehr oder weniger abhängig waren, aber weder eine lokale eponyme Funktion entsprechender Priester noch ein „Export" des eponymen alexandrinischen Systems außerhalb Ägyptens war bekannt. Das bleibt die Norm. Um nur zwei Beispiele zu nennen: (a) In Methymna auf Lesbos gab es unter Ptolemaios IV. einen Stadtkult des Königs und seines Sohnes, auch einen Spezialpriester dafür,[23] aber eindeutig ohne eponyme Funktion. Der *prytanis* bleibt auch in dieser Periode der eponyme Magistrat der Stadt.[24] (b) Auch in den Mitgliedstädten des unter ptolemäischem Protektorat stehenden Nesiotenbundes der Kykladen kennen wir Manife-

[19] Zusammenstellung und Besprechung der Zeugnisse bei Glanville-Skeat 1954, 56-8; Sherk 1992, 265.

[20] Vgl. Wilcken 1912, 135f.

[21] Fraser 1972, II. 173f.; zuletzt: Bernand 2001, 40.

[22] Der erste sichere Beleg des Gründerkultes Alexanders ebenda stammt bekanntlich erst aus dem Jahr 120/1 n.Chr. (*SB* 6611). Vgl. Fraser 1972, I. 212, II. 360f.; Leschhorn 1984, bes. 206-212.

[23] Labarre 1996, Choix d'inscriptions, Nr. 54.

[24] Labarre 1996, Choix d'inscriptions, Nr. 52, vgl. S. 174.

stationen des Herrscherkults der loyalen Nesioten für Soter und Philadelphos,[25] wir haben aber keinen Beleg für die Einführung eines eponymen Priesters zur Datierung von Dekreten des Bundes oder seiner Mitglieder. Lehrreich ist der Vergleich mit einem Doppeldatierungssystem von Bundesdekreten während der späteren Periode des Nesiotenbundes unter rhodischem Protektorat, wo man nach dem Heliospriester des Bundeshegemons Rhodos *und* dem eponymen Archonten des Bundeszentrums Tenos datierte.[26] Auch auf Außenbesitzungen der Ptolemäer wie Zypern oder Thera kennt man keine eponyme Herrscherkultdatierung, trotz der Systematisierung der Kultfragen des ptolemäischen Zypern hinsichtlich der Doppelfunktion des ptolemäischen Gouverneurs als *strategos* und *archiereus* der Insel (ab etwa 205).[27]

Um so interessanter ist die Bekanntmachung einer Einführung und Verzweigung des alexandrinischen Systems im lykischen, den Ptolemäern unterstehenden Xanthos. Darüber werden wir jetzt nämlich unterrichtet durch: (a) ein Stadtdekret,[28] welches datiert ist erstens nach dem (17.) Königsjahr Ptolemaios' IV. (und seines Sohnes), also 206/5 v.Chr., und dann einerseits nach dem lokalen Priester von Theoi Euergetai *und* König Ptolemaios (IV.), Andronikos, Sohn des Perlamos, andererseits nach dem Priester *pro poleos* Tlepolemos, Sohn des Artapatos; (b) ein zuerst nach dem Königsjahr (4. Jahr Ptolemaios' V., also 202/1 v.Chr.) datiertes Stadtdekret,[29] dessen weitere Datierungsformel diejenige von Alexandrien völlig[30] übernimmt, außer der Angabe von konkreten Priesternamen (man spricht einfach von τῶν ὄντων ἐν Ἀλεξανδρείᾳ), und dann kombiniert mit den Angaben des lokalen Priesters der Theoi Euergetai *und* Theoi Philopatores *und* des regierenden Ptolemaios (V.), Nearchos, Sohn des Polykritos, und desselben *pro poleos* Tlepolemos, Sohn des Artapatos. Im Fall dieses letzteren Zeugnisses sprach sogar der Herausgeber, J. Bousquet, von einer ganzen Anzahl („assez grand nombre")[31] weiterer, unveröffentlichter Inschriften aus Xanthos mit solchem Präskript.

Unter Ptolemaios IV. – wohlgemerkt zur Zeit einer bedeutenden Systematisierung und Ergänzung des Herrscherkults in Ägypten selbst (s. oben) – findet man so in Xanthos zuerst den Beleg eines eponymen Priestertums der Theoi Euergetai und Philopators selbst. Als lokale Gegenfolie dazu erscheint das ebenfalls eponyme Amt *pro poleos* mit Tlepolemos Artapatou als Inhaber. Bis zu den ersten Jahren der Regierung des Epiphanes ist dort auch die eponyme alexandrinische Herrscherkultformel hinzugekommen, während das lokale eponyme Herrscherkultamt inzwischen auch die Theoi Philopatores und den regierenden Ptolemaios V. eingeschlossen und

[25] Habicht 1970[2], 111-3.
[26] *IG* XII. 5. 824; vgl. Sherk 1993 (V), 280.
[27] Vgl. Müller 2000, 537 mit den einschlägigen Zeugnissen.
[28] Bousquet 1988, 14= *SEG* 38. 1476.
[29] Bousquet 1986, 31= *SEG* 36. 1218.
[30] Alle drei Teile (Alexander- *und* Dynastiepriester, Athlophoros Berenikes II., Kanephoros Arsinoes II.) sind enthalten.
[31] Bousquet 1986, 30.

Tlepolemos seinen früheren Posten (wohl weiter) behalten hat. Man gewinnt den Eindruck, daß eine lokale Variante des eponymen Herrscherkultpriestertums in Xanthos unter Philopator eingeführt wird, welche sich dann nach dem ägyptischen Vorbild additiv weiterentwickelt. Parallel dazu aber wird auch das ägyptische Modell selbst zu irgendeinem Zeitpunkt zwischen Philopator und Epiphanes mit eingeführt, in gleich gelichteter Form wie in Ägypten. Xanthos verhält sich dabei genau so wie ein beliebiger Ort des ptolemäischen „Hauptreiches", der Alexandrien dadurch als seine administrative und ideologische Metropole anerkennt. Für die Datierung xanthischer Urkunden ergibt das nichts, für das Selbstverständnis des mittelptolemäischen Xanthos aber viel. War Xanthos hier allein? Eponyme Priester waren gang und gäbe im hellenistischen Lykien,[32] aber ein Herrscherkultpriestertum in dieser Funktion ist dort sonst bisher nicht belegt.

Man ist versucht, diesen xanthischen – *testibus praesentibus* – Sonderfall mit der dortigen Tätigkeit bzw. Einflußnahme des lokalen „ultra-eponymen", also mehrjährigen Magistrats, des Tlepolemos Artapatou, in Verbindung zu setzen. L. Robert hat vor etwa fünfundzwanzig Jahren unvergeßlich zur Beleuchtung von dessen Persönlichkeit und Amt beigetragen.[33] Dieser lykische Magnat ist höchstwahrscheinlich mit dem gleichnamigen polybianischen,[34] einem der wechselnden Regenten in der ersten Phase von Epiphanes' Regierung gleichzusetzen.[35] Auf einen solchen Mann und seinen lokalen Einfluß, auch während er in Alexandrien weilte (203-202 hatte er zunächst mit Sosibios d.J. und dann allein die Regentschaft inne), könnte man sehr gut eine so enge Angliederung von Xanthos an das ptolemäische Vorbild eponymen Herrscherkultpriestertums und Datierungsprotokolls zurückführen. Nach Roberts einleuchtender Interpretation seines lykischen Amtes *pro poleos* war ihm das Priestertum der lokalen Schutzgottheit/-en in Xanthos, also wohl der Leto und ihrer Kinder, anvertraut. Auf diese Weise verband sein Wirken wohl symbolisch und geschickt die Verehrung von Schutzgöttern des Ptolemäerreiches und seiner Metropole mit den traditionellen Stadtschutzherren seiner Stadt. Es wäre so auch besser zu begreifen, wie unbeweglich ein solcher „eponymer" Funktionär auf seinem Posten saß, und – wie noch zu sehen ist – weiter sitzen sollte. Für eine gelungene Aufführung ist besonders der wachsame Regisseur unentbehrlich.

V. Die Seleukiden waren seit Antiochos d. Gr. die großen Spätentwickler bezüglich eponymen Herrscherkultpriestertums. Neue Inschriften[36] und spezielle Studien[37] haben nun zunächst Form und Verständnis der Institution der programmatisch urkundendatierenden seleukidischen Archiereis/-eiai auf eine neue Basis gestellt. Es

[32] Vgl. Sherk 1992 (IV), 225f.
[33] Robert 1983, 168ff.
[34] Pol. 15. 25. 26ff. Vgl. Walbank 1967, 487.
[35] *PP* I. 50, 337; II. 2180; VI. 14634.
[36] Bes. *SEG* 37. 1010≈ Ma 1999, ED 4.
[37] Müller 2000; Debord 2003; Van Nuffelen 2004.

geht dabei um die von Antiochos III. regional (nach Satrapien oder weiteren administrativen Bezirken) eingeführten „Erzpriester", die jeweils für den Kult des Königs und seiner Vorfahren (*progonoi*) zuständig waren (spätestens seit ca. 204), während in einer zweiten Phase (193) eingestellte, der Stellung und den Funktionen der „Erzpriester" nachgebildete „Erzpriesterinnen" dem Kult der Königin Laodike III. vorstanden. Wichtig war auch hier die von Anfang an vorgesehene, sogar als traditionsgemäß präsentierte Miterwähnung dieser Oberbeamten des dynastischen Kults in allen privaten Verträgen und offiziellen Akten ihres jeweiligen Sprengels.[38] Ihre Eponymität war somit zugleich gewährleistet und verlängert, zumal sie – soweit bekannt – lebenslang dienten und sich so deutlich dem monarchischen Datierungsprinzip anglichen.

Dank neuer Zeugnisse kann man nun einiges darüber feststellen, wie die Praxis der obigen Bestimmungen aussah und wie städtische Herrscherkultpriestertümer auch im Seleukidenreich eine parallele eponyme Funktion übernehmen konnten. Es geht zunächst um zwei von L. Robert veröffentlichte Dekrete der Stadt Amyzon in Karien, deren Datierung eine sehr interessante Kombination solcher eponymen Ämter auf Reichs- und Lokalniveau aufweist. Im ersten[39] beginnt die lange Datierunsformel mit der genauen Angabe der regierenden Könige (Antiochos' III. und seines Sohnes) *und* des (111.) Jahres der Seleukidenära *und* des makedonischen Monats (Dios), also Okt.-Nov. 202. Es folgt dann die Datierung (ausgedrückt wieder durch ἐπί mit Genitiv) nach dem seleukidischen *archiereus*, dessen Name nicht erhalten ist, und dem – ähnlich hoch gestellten – Priester des Zeus Kretagenes und Diktynna namens Timaios. Dann geht die Datierungsformel ausdrücklich auf städtischer Ebene weiter (ὡς [δὲ ὁ δῆμος ἄ]/γει), also nach dem eponymen Stephanephoros, dessen Amt in jenem Jahr Apollon selbst bekleidete, und dem städtischen Monat (Thesmophorion). Das zweite Dekret[40] ist eingangs datiert nach demselben Regierungspaar, dem nächsten (112.) Jahr der Seleukidenära und dem makedonischen Monat (Apellaios), also etwa Nov.-Dez. 201. Aber auch hier geht die Datierungsformel, wieder auf zwei Ebenen, weiter: Zunächst wird der Text in die Zeit eines seleukidischen *archiereus* (wohl [Nikan]or) und eines Priesters des Zeus Kretagenes und der Diktynna (Name nicht erhalten) gesetzt. Auf städtischer Ebene, wieder eingeleitet mit der Formel [ὡς δὲ ὁ δ]ῆμος ἄγει, wird diesmal nicht nur nach dem Stephanephoros, Apollon in zweiter Amtsperiode (ἐπὶ στεφανηφόρου θεοῦ δευτέρου), sondern auch nach dem örtlichen „Priester der Könige" (ἱερέως τ[ῶν βασι/λ]έων), Iason, Sohn des Bala(g)ros, datiert.

Der historische Kontext ist wichtig: In dieser Zeit geht die seleukidische Wiedergewinnung und Reorganisation Kariens unter Antiochos' III. General Zeuxis

[38] Ma 1999, ED 4, 44-6, über die Archiereis: καταχωρίζειν δὲ αὐτὸν καὶ ἐν ταῖς συγγραφαῖς καὶ ἐν τοῖς ἄλλοις χρηματισμοῖς οἷς εἴθισται; vgl. ebd. 37, 26-8, über die Archiereiai: ἐπιγραφήσονται δὲ καὶ ἐν [τοῖς] συναλλάγμασι.

[39] Robert 1983, S. 146≈ Ma 1999, ED 9.

[40] Robert 1983, S. 151≈ Ma 1999, ED 10.

zügig weiter.[41] Amyzon ist sicherlich daran interessiert, sich möglichst loyal zu zeigen und nichts vom Protokoll reibungsloser Beziehungen mit der Reichsverwaltung zu unterlassen. Sein Fall sollte also als typisch dafür verstanden werden, was von einer Stadt dieses Bereichs (Karien) zu erwarten war. Die Angabe des *archiereus*, wohl des oben erwähnten, für Kleinasien diesseits des Tauros zuständigen Nikanor, nimmt kaum wunder. Die gleich untergeordnete Datierung nach dem Priester (oder auch Erzpriester?) des Zeus Kretagenes und der Diktynna und der entsprechende Kult sind zwar von L. Robert plausibel auf die mythische Tradition karisch-kretischer Verwandtschaft zurückgeführt worden, bleiben aber in ihrem genaueren Sinn rätselhaft.[42] Man gewinnt jedoch den Eindruck, daß hier ein gesamtkarisches Priestertum, etwa organisatorisch-hierarchisch eine kultische Zwischenebene zwischen Nikanor und den städtischen Priestern, vorliegt. Man wüßte auch gern, ob Kult und Priestertum in dieser Form der seleukidischen Reconquista vorausgingen oder folgten. Auf jeden Fall ist m.E. dieses deutliche karische Pendant zum eponymen *archiereus*-Posten für den lokale Verhältnisse berücksichtigenden Geist der seleukidischen Reorganisation Kariens bezeichnend.

Die sauber unterschiedene, lokale eponyme Datierung von Amyzon legt ein beredtes Zeugnis der dortigen Zustände ab. Zwei Jahre lang muß Apollon selbst als eponymer Stephanephoros fungieren. Die Eponymität des Gottes – das Phänomen ist oft belegt[43] – ist ein deutliches Indiz finanzieller Schwäche der Stadt bzw. verbreiteten Desinteresses ihrer reicheren Bürger, das sicher persönliche Munifizenz voraussetzende Amt zu übernehmen. Trotzdem erscheint aber im zweiten Jahr (201) als mitdatierender Magistrat der städtische „Priester der Könige" Iason, Sohn des Bala(g)ros, dem Namen nach sehr wahrscheinlich makedonischer Herkunft. Die Stadt hat also inzwischen auch einen eigenen eponymen Posten des Herrscherkults eingerichtet und einen bereitwilligen Priester dafür finden können. „Die Könige", denen Kult und Priestertum galten, werden wohl nicht nur die regierenden Könige, sondern die ganze vorausgehende Dynastie eingeschlossen haben.[44]

Auf jeden Fall erscheint ein solches eponymes Priestertum „der Könige" wieder in zwei Urkunden[45] des nunmehr seleukidischen Xanthos in August bzw. September-Oktober 196, deren Datierung völlig nach dem früheren Typus von Amyzon (Angabe der regierenden Könige, des Jahres der Seleukidenära und des *archiereus* Nikanor) anfängt. Dann geht die Datierung auf lokaler Ebene (ἐν δὲ Ξάνθ[ωι]) weiter, einerseits (μέν) nach dem lokalen Priester „der Könige", Prasides, Sohn des Nikostratos, andererseits (δέ) nach dem – schon ptolemäischen (s. oben)! – *pro poleos* Tlepolemos, Sohn des Artapatos. Xanthos hat sich also nach seiner seleukidi-

[41] Speziell über Amyzon: Ma 1999, 66f.
[42] Vgl. darüber auch Debord 2003, 290, Anm. 74.
[43] Analyse und Beispiele: Sherk 1993 (V), 283-5; Chaniotis 1998, 6.
[44] So schon Robert 1983, 167f. aufgrund einer unveröffentlichten Inschrift von Olymos (Karien).
[45] Ma 1999, ED nos. 23 und 24, vgl. S. 236f.

schen Umkehr auch mit einem eponymen Lokalposten des Herrscherkults versehen, an Loyalitätsäußerungen wollte es niemandem nachstehen. Dennoch wurde die lokale Kontinuität auch in der eponymen Datierung unterstrichen, durch die ununterbrochene, offensichtlich dem neuen Regime schon angepaßte Präsenz des Tlepolemos Artapatou als *pro poleos*. Seine darin inzwischen (vielleicht mehr als) zehnjährige Dienstzeit lieferte natürlich wieder keine präzise Datierung, sondern das Gefühl der Sicherheit, daß die städtischen Belange in bewährten Händen bleiben sollten.

Die bemerkenswerte Uniformität im Verhalten der Amyzoneis und der Xanthier als Teile des Seleukidenreiches in puncto eponyme Magistratur des Herrscherkults legt auch nahe, was schon als These vorgeschlagen worden ist,[46] daß diese Lokalposten die regionalen Archiereis-Positionen der Seleukiden zum Vorbild genommen haben. Besonders in Xanthos scheint man deutlich dem Übergang vom akkumulativen Typus dieser lokalen Herrscherkulte unter den Ptolemäern auf das von Anfang an gesamtdynastische Konzept unter den Seleukiden nachzueifern, stets gemäß dem zentralen Modell. Eine Order dazu war kaum nötig, „the necessities of life" und der ideologische Einfluß der Zentrale wirkten schon gut genug.[47]

Sonst findet man aber bei den Seleukiden eine beachtliche Variation in solchen eponymen Priestertümern des Herrscherkults. In Antiocheia in Persis trifft man einen eponymen (sogar halbjährigen!) lokalen Priester aller seleukidischen Könige bis einschließlich zum regierenden Antiochos III. und seinem Mitregenten: [ἐ]πὶ ἱερέως Σελεύκου Νικάτορος καὶ Ἀντιόχου Σωτῆρος καὶ Ἀντιόχου Θεοῦ καὶ Σελεύκου Καλλινίκου καὶ βασιλέως Σελεύκου καὶ βασιλέως Ἀντιόχου καὶ τοῦ υἱοῦ αὐτοῦ βασιλέως Ἀντιόχου Ἡρακλείτου τοῦ Ζωέους τῆς πρώτης ἐξαμήνου δόγματα …[48] Dagegen hat sich Seleukeia in Pieria verschiedener, wahrscheinlich ebenfalls eponymer Priester der früheren und des herrschenden Seleukiden bedient: (a) Σελεύκου Διὸς Νικάτορος καὶ Ἀντιόχου Ἀπόλλωνος Σωτῆρος καὶ Ἀντιόχου Θεοῦ καὶ Σελεύκου Καλλινίκου καὶ Σελεύκου Σωτῆρος καὶ Ἀντιόχου καὶ Ἀντιόχου Μεγάλου, und (b) βασιλέως Σελεύκου (also wohl des regierenden Seleukos IV. Philopator, 187-175 v.Chr.).[49] Während nun hier Seleukos I., der Gründer der Stadt, nicht nur mit seinem standardisierten Beinamen (Nikator) sondern auch als Hypostase des Zeus erscheint, findet man in einem Kaufvertrag von Dura-Europos[50] noch im Jahr 180 n.Chr. einen eponymen Priester βασιλέως Σελεύκου Νικάτορος. Hier beginnt die lange Datierungsformel mit der römischen (Konsular- und Kaiser-) Datierung, der dann die Angabe der lokalen und separaten eponymen Priester des Zeus, des Apollo, der „Ahnen" (τῶν προγόνων) und eben am Ende des Seleukos I. folgen. Mit den zwei letzten eponymen Priestertümern hat die Stadt wohl

[46] Van Nuffelen 2004, 298-300.

[47] Debord 2003, 290 möchte hier eher einen staatlich vorangetriebenen „processus de rationalisation au moins à l'échelle des provinces cistauriques" erkennen.

[48] *OGIS* 233= Rigsby 1996, Nr. 111 (S. 257), 2-6; vgl. *SEG* 32. 1148.

[49] *OGIS* 245≈ *SEG* 35. 1521; vgl. Sherk 1992 (IV), 259.

[50] Welles et al. 1959, Nr. 25; ähnlich: ebd. Nr. 37.

ein Stück ihrer historischen Identität aufrechterhalten. Solche separaten Priestertümer für Seleukos I., Antiochos I. Soter und weitere Mitglieder der Dynastie sind auch in Seleukeia am Tigris schon in der ersten Hälfte des 2. Jhdts. v. Chr. wahrscheinlich.[51]

VI. Das eponyme Priestertum des Herrschers als Gründers (bzw. Neugründers) einer Stadt war ja eine völlig auf der Linie der griechischen Tradition liegende, einfache Form des Gesamtphänomens;[52] darum erscheint es auch bei den hellenistischen Königshäusern, die keine breitere und feinere Ausgestaltung davon aufweisen. Der einzige sichere einschlägige Ort auf europäischem Boden ist Kassandreia (Makedonien), wo man zunächst einen Lysimachospriester in solcher Funktion findet. Man kennt nämlich jetzt zwei Inschriften von Kassandreia, die Publikation einer Landschenkung des Lysimachos und ein Ehrendekret der Stadt,[53] die mit dem Datierungsvermerk anfangen ἐφ' ἱερέως τοῦ Λυσιμάχου Τιμησίου. Beide Urkunden datieren aus der Zeit, als Lysimachos über diesen Teil Makedoniens herrschte (287-1), zumindest die erste auch genauer vor 284/3 (Tod von Lysimachos' Sohn Agathokles). Es geht also dabei um ein eponymes Priestertum der Stadt für ihren damaligen Herrscher. Weitere inschriftliche Belege eines Priesters als eponymen Magistrats von Kassandreia tragen keinen erklärenden Zusatz im Genitiv. Trotzdem sind die Gründung seiner homonymen Stadt durch Kassandros und der Inhalt einer dieser Inschriften (eine ähnliche Landschenkung im Bereich der Stadt, diesmal durch Kassandros) ausreichende Gründe, dieses Priestertum mit dem Kult des königlichen Ktistes ebenda zu verbinden. Wie wir schon in Ägypten sahen und noch in Pergamon sehen werden, brauchte man nicht immer zu präzisieren, wessen Priester die Urkunden einer königlichen Gründung datierte. Bei Lysimachos war es anders, weil seine Verbindung mit der Stadt nachträglich und wohl ohne Namensbezug auf die Stadt war.[54] Ohne den Zusatz „des Lysimachos" hätte also der neue Herrscherkult mißverstanden werden können. Ob Lysimachos sich auch irgendwie als Neugründer der Stadt darstellte bzw. darstellen ließ, ist ungewiß.[55] Auf jeden Fall überdauerte das Priestertum Lysimachos' Herrschaft nicht, in Kassandreia gab es später ein ἀρχηγέτειον[56] und demgemäß wohl einen Kult der Archegeten der Stadt (vielleicht darin auch des Kassandros, nach der Parallele Demetrias-Demetrios),[57] aber ein damit einhergehendes eponymes Priestertum ist bisher nicht belegt.

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[51] Van Nuffelen 2001.
[52] Vgl. schon Habicht 1970², 146.
[53] Hatzopoulos 1988, 17-9, vgl. 21-2, 28.
[54] Dies hat schon Habicht 1970², 37 bemerkt.
[55] Vgl. ebd., 40.
[56] Rigsby 1996, Nr. 25 (S. 136).
[57] *IG* IX. 2. 1099 b (Kult der *archegetai* und *ktistai* in Demetrias). Zum Kult von Demetrios Poliorketes ebd.: Leschhorn 1984, 262-8, wo die weiteren Zeugnisse zusammengestellt sind.

VII. Pergamon trug keinen herrscherlichen Namen, war aber doch auch wesentlich als Stadt eine herrscherliche Neugründung, der seit Philetairos die ganze Dynastie der Attaliden ihren Stempel aufgedrückt hat. Während man nun seit langem wußte, daß der eponyme Beamte des hellenistischen Pergamon den Titel „Prytanis und Priester" trug, war bis vor einigen Jahren unbekannt, wem dieses Priestertum galt. Aufgrund einer neuen pergamenischen Urkunde der Zeit unmittelbar nach dem Ende der Dynastie hat jetzt Wörrle beweisen können,[58] daß es dabei um ein Priestertum des Philetairos ging. Der Gründer der Dynastie war ja, noch in römischer Zeit, in der Stadt als ihr zweiter Ktistes nach dem mythischen Pergamos in Erinnerung.[59] Es war offenbar so allgemein gegenwärtig, daß der eponyme Priester von Pergamon dem Kult des Philetairos diente, daß es bei Datierungsformeln nie dieses Zusatzes bedurfte. Im oben erwähnten neuen Zeugnis ist ja auch der vollständige Magistratstitel deshalb gegeben, weil sein Inhaber als Dekretvorschlagender erscheint.

Auch sonst fehlte es in Pergamon nicht an eponymen Priestertümern der Attaliden. Ein unter Attalos III. beschlossenes, im Datierungsteil lückenhaft erhaltenes Ehrendekret der Stadt[60] erwähnt nach dem „grundeponymen" Prytanis und Hiereus nicht weniger als vier weitere solche, sonst unbelegte Priestertümer:

(a) wohl ein Attalos II. Philadelphos betreffendes: [ἱερέως θεοῦ (?)] τοῦ βασιλέως Ἀττάλου Φιλα[δέλφου….

(b) ein anderes für Eumenes II. und Attalos II. zusammen als Philadelphoi: ἱερέως θεῶν Φιλαδέλφω[ν.[61]

(c) eines [ἱερέως θεῶν] Εὐσεβῶν *und* Priestername, ein wohl der Großmutter und der Mutter Attalos' III., Apollonis bzw. Stratonike, geltendes, die auch mit dieser Eigenschaft belegt sind.[62]

(d) schließlich eines für den regierenden Attalos III. als Philometor und Euergetes: [ἱερέως βασιλέως Ἀττάλου Φιλομή]τορος καὶ Εὐεργέτου *und* Priestername.[63]

Man sieht also, daß die attalidische Hauptstadt ihre Könige und Königinnen auch durch eine Reihe solcher separat laufender eponymer Priestertümer geehrt hat. Eine genauere Koordination oder Vereinigung solcher Ämter erfolgte nicht. Auch der uns jetzt bekannte attalidische *archiereus*[64] scheint nur eine Fortsetzung der von den Seleukiden eingeführten eponymen Regionalinstitution in Kleinasien nach 188 gewesen zu sein. Außer Pergamon trifft man sonst unter den Attaliden ein eponymes

[58] Wörrle 2000, 544, vgl. 550-4.
[59] *IGRR* IV. 1682.
[60] Jacobsthal 1908; vgl. Hamon 2004, bes. 172 n. 16, 181ff.
[61] Also wohl nicht für Philetairos und Athenaios wie Jacobsthal 1908, 375 meinte. Vgl. Hansen 1971[2], 468; Allen 1983, 156; Hamon 2004, 181.
[62] So schon Jacobsthal 1908, 378.
[63] Vgl. Hamon 2004, bes. 181ff.
[64] *SEG* 46. 1519; vgl. Müller 2000, 520ff.

Herrscherkultpriestertum nur für Eumenes II. in Verbindung mit dem Agonothetes-Posten des Kleinasiatischen Technitenvereins an.[65]

VIII. Wenn man nun versuchen sollte, eine kurze Bilanz der verschiedenen Typen und Formen der eponymen Herrscherkultämter im Hellenismus zu ziehen, wird man sich leider zuallererst wieder der großen Lücken unserer Dokumentation bewußt bleiben müssen. Außerhalb Ägyptens ist unsere Information noch spärlich, also nicht unbedingt repräsentativ.

Trotzdem läßt sich zunächst eine deutliche Unterscheidung, aber keine Trennung zwischen herrscherlicher und städtischer Initiative bei der Entstehung dieser Priestertümer vornehmen. Der Herrscher hat sich auch in diesem Punkt der Traditionen der griechischen Stadt als Inspirationsquelle bedient, aber auch die Stadt hat die monarchisch konstituierten Formen zu integrieren oder nachzuahmen versucht. Da aber in der Regel die Dynastien vergingen und die Städte bestehenblieben, waren besonders die im Zusammenhang mit den Herrschern als Gründern eingeführten eponymen Datierungen langlebiger. Solche waren auch die Hauptäußerung des Phänomens bei den kleineren Dynastien, besonders wo es eine „königliche Stadt" *par excellence* gab, wie z.B. bei den Attaliden.[66] Bei den Ptolemäern blieb Alexandrien und das Alexanderpriestertum das Modell jeglichen Versuchs, wenn überhaupt, etwas ähnliches an der Reichsperipherie herzustellen. Die Seleukiden haben ihr eigenes System einerseits zentral konzipiert und gesteuert, andererseits lokal durchaus den jeweiligen Zuständen anzupassen gewußt. Ein Stadt-Modell gab es hier nicht, jede Stadt des Reiches ordnete ihr eigenes System im Dialog mit den königlichen Satzungen.

Langfristig hatte auf jeden Fall ein solches zusätzliches Datierungssystem mit Propagandazwecken, mit Ausnahme des Gründerkultpriestertums, keine stabilen Perspektiven. Die Herrscher selbst, wie überdeutlich im Fall der späteren Ptolemäer, tendierten dazu, es in ihre sonstigen Insignien einzugliedern, während auch die Untertanen oder die Bürger untergeordneter Städte den Sinn einer eigentlich überflüssigen Datierung nicht recht erkannt haben werden, von den strapazierten Schreibern ganz zu schweigen. Aber die monarchischen Bedürfnisse möglichst weiter Kenntlichkeit des Herrscherkults und, vom städtischem Blickwinkel, möglichst lückenloser Absicherung gegenüber der monarchischen Macht, wie besonders im Falle der kürzlich untergeordneten Städte, blieben hier wichtige Existenzgründe der Institution. Was die Magistrate selbst betrifft, spielte sicher auch die menschliche Eitelkeit, eine als historische Größe nie zu unterschätzende Macht aus der Schwäche heraus, ihre Rolle. Denn die Inhaber dieser Posten werden gewiß kaum anders gedacht und gehandelt haben als der Kaiserkultpriester, den Epiktet[67] einmal zur Vernunft zu-

[65] *OGIS* 325= Aneziri 2003, D 11a und D 14. Vgl. ebd. S. 130; Allen 1983, 152.

[66] Vgl. Hamon 2004, 184.

[67] Diatr. 1.19.26-28: Σήμερόν τις περὶ ἱερωσύνης ἐλάλει μοι τοῦ Αὐγούστου. Λέγω αὐτῷ «ἄνθρωπε, ἄφες τὸ πρᾶγμα· δαπανήσεις πολλὰ εἰς οὐδέν.» – «Ἀλλ' οἱ τὰς ὠνὰς»,

rückzugewinnen versuchte. Des ersteren entwaffnende, in der menschlichen (und zumal der griechischen) Gedächtnissucht wurzelnde Erwartung: „Μενεῖ μου τὸ ὄνομα“ („mein Name wird bleiben“) verrät die große Anziehungskraft eines solchen Systems für die Priesterkandidaten. Herrscher und Priester ernteten ihre Dividenden einer gemeinsamen Publizität, die sonst eben nur Altgöttern und deren Priestern vorbehalten bliebe.[68]

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φησί, «γράφοντες γράψουσι τὸ ἐμὸν ὄνομα.» – «Μή τι οὖν σὺ τοῖς ἀναγιγνώσκουσι λέγεις παρών· ἐμὲ γεγράφασιν; Εἰ δὲ καὶ νῦν δύνασαι παρεῖναι πᾶσιν, ἐὰν ἀποθάνῃς, τί ποιήσεις;» – «Μενεῖ μου τὸ ὄνομα.» – «Γράψον αὐτὸ εἰς λίθον καὶ μενεῖ. Ἄγε ἔξω δὲ Νικοπόλεως τίς σου μνεία;»…

[68] Für eine sprachliche Durchsicht meines Ms. danke ich Gereon Becht-Jördens. Für allerlei verbleibende Fehler trage ich allein die Verantwortung.

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RÉPONSE À KOSTAS BURASELIS LE CULTE ROYAL PTOLEMAÏQUE: TROIS REMARQUES

Dans sa belle et stimulante communication, Kostas Buraselis apporte une nouvelle pierre à une série d'études qu'il a consacrées ces dernières années au culte du souverain principalement dans le monde hellénistique, mais aussi dans l'empire romain. Le thème est indéniablement riche. Des sources nouvelles, grecques et non grecques, et des travaux novateurs expliquent sa faveur parmi les historiens de l'*Altertumswissenschaft*. Le colloque international organisé par Henri Melaerts à Bruxelles en 1995 sur le « Culte du souverain dans l'Égypte ptolémaïque au III^e^ siècle avant notre ère »[1], avait montré, de manière exemplaire, le profit tiré par l'historien de l'Égypte des sources grecques, mais aussi démotiques, généralement moins sollicitées. On pourra aussi rappeler l'importance de la problématique synthétique proposée en 1987 par Hans Hauben lors du congrès de Bologne *Egitto e storia antica* « Aspects du culte des souverains à l'époque des Lagides »[2].

Le grand intérêt de la communication de Busarelis vient de l'angle juridique par lequel il aborde un sujet qui ne saurait rester l'apanage des spécialistes du politique ou de la religion. Sa méthode est de recenser les mentions des magistrats éponymes du culte royal dans les décrets et les documents juridiques de l'oecoumène hellénistique. L'ensemble de la période est couvert. La documentation est remarquablement variée, littéraire, épigraphique et papyrologique. Elle s'étend du règne d'Alexandre à la fin de l'ère hellénistique. J'adhère avec conviction à la conclusion générale qui montre combien le culte des souverains et des souveraines s'est implanté (l'allemand utilise avec bonheur la même image, *Einpflanzen*) dans la vie des habitants des royaumes. J'ai été particulièrement sensible à la mise en valeur de transferts culturels dans le domaine étudié, à la fois dans l'exportation (*Export*) du système alexandrin des éponymes en dehors de l'Égypte (Point IV), et dans la mise en valeur des emprunts par les souverains aux *poleis* quand ils mettent en place eux-mêmes ce culte (*Inspirationsquelle*) (Point VIII).

Ma réponse se concentrera sur trois points : la langue des sources, les richesses de la documentation papyrologique, et la question de la chronologie du culte royal en Égypte. Il s'agira de rappeler l'importance des sources non grecques pour un tel

[1] Melaerts 1998.
[2] Hauben 1989, p. 441-467.

sujet, le grand intérêt du dossier des actes agoranomiques de Haute Égypte (Périthèbas et Pathyrite) pour l'analyse des protocoles d'inscription des prêtres éponymes d'Alexandrie et de Ptolémaïs, et enfin l'apport des inscriptions grecques de Ptolémaïs pour réfléchir aux étapes de la mise en place du culte des souverains à Ptolémaïs. Ce troisième point pourra fournir matière à une discussion plus générale étendue à tout l'espace hellénistique.

I. *L'apport des sources démotiques pour l'Égypte*

La liste des sources concernant les prêtres éponymes d'Alexandrie et de Ptolémaïs a été établie en 1983 par W. Clarysse, G. Van der Veken et S.P. Vleeming[3]. Si pour Alexandrie les sources grecques sont largement majoritaires, il n'en va pas de même pour Ptolémaïs. Ces auteurs dénombrent 36 numéros pour les prêtres éponymes ptolémaïtes, le premier, Nikanor fils de Bakchios étant mentionné sous Ptolémée IV Philopatôr en 215/214, le dernier sous Ptolémée VIII Evergète II dans le dernier tiers du II^e^ siècle avant n.è. Or, seuls 3 numéros sont abondés par des sources grecques (115b, 138c, 138 bis d). Toutes les autres sources sont démotiques. Pour nous en tenir à Ptolémée IV, le premier souverain sous lequel le prêtre est mentionné à Ptolémaïs, deux prêtres sont connus : Nikanor fils de Backhios (5 numéros correspondant à 6 documents) et Hêniochos fils de Lusanias (2 numéros correspondant à 3 documents). Ceci signifie que ces noms sont restitués d'après leur écriture en démotique.

Ce fait vient conforter la thèse de l'enracinement du culte royal au sein de la double composante, grecque et égyptienne, des habitants du royaume. Il souligne l'apport des sources égyptiennes indispensables pour l'étude d'une cité qui n'est donc pas coupée de son environnement égyptien, telle une tour d'ivoire grecque en Haute Égypte. Il faut donc relativiser l'affirmation de Jean Scherer qui estimait dans son commentaire du *P. Fouad I^er^* inv. 211 (= SB VI 9016), qui conserve un descriptif des institutions de Ptolémaïs à l'époque romaine, que contrairement aux « vicissitudes d'Alexandrie », « l'hellénisme se maintint là plus vivace, plus pur, et pour ainsi dire plus complet »[4]. Ces documents démotiques datés par le prêtre éponyme de Ptolémaïs issus de Haute Égypte – Gerhard Plaumann l'avait déjà noté dans sa monographie publiée en 1910 – désignent clairement la zone d'influence de Ptolémaïs[5].

Elles permettent aussi d'analyser le jeu qui s'établit entre Alexandrie et Ptolémaïs. Le prêtre éponyme de Ptolémaïs n'apparaît pas dans les documents de Basse et de Moyenne Egypte. De 210 à 115, il figure avec ses titres complets à Alexandrie et Ptolémaïs dans les documents de Haute Égypte. À partir de 115 n'apparaissent que les titres de Ptolémaïs. Cette évolution semble bien indiquer l'affermissement de l'influence de Ptolémaïs sur la Haute Égypte.

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3 Clarysse, Van der Veken, with Vleeming 1983.

4 Scherer 1942, p. 71.

5 Plaumann 1910, p. 42, n. 2.

Ces sources sont également remarquables pour l'étude des formulaires qui présente l'idéologie royale sur laquelle se fonde le culte : sous Ptolémée IV et sous Ptolémée V, le prêtre est celui de Ptolémée I^er^ Sôter et du souverain régnant ; sous Ptolémée VI, il est celui de Ptolémée I^er^ et du père du souverain régnant (en l'occurrence Ptolémée V) ; lorsque Ptolémée VI règne avec Ptolémée VIII et Cléopâtre II, le prêtre éponyme voit son domaine s'individualiser : prêtre de Ptolémée I^er^, de Ptolémée II, de Ptolémée III, de Ptolémée IV, de Ptolémée V, de Ptolémée VI ou de Ptolémée VIII. Le sens historique de ces protocoles est clair : le culte qui débute pour le fondateur de la dynastie et le *ktistês* de la cité associé au souverain régnant s'étend peu à peu à tous les membres de la dynastie.

La recherche croisée des sources grecques et démotiques reste cependant un impératif absolu pour Ptolémaïs[6]. Un bon exemple est notre connaissance fine de l'un des prêtres, Hippalos fils de Sôsos, prêtre de Ptolémée I^er^ et de Ptolémée V, en charge sous Ptolémée VI, durant la décennie 180 (n°112 bis à 121bis). Aux dix-neuf textes démotiques le mentionnant, vient s'ajouter une dédicace grecque à Philométôr (*OGIS* I 103=*SB* V 8876) d'un autel par Nikomakhos, prêtre de Zeus. Cette inscription, datée d'environ 176/175[7], donne deux titres d'Hippalos : un titre aulique, il est τῶν πρώτων φίλων, et un titre administratif le plaçant à l'un des sommets de la hiérarchie des agents territoriaux, il est épistratège de Thébaïde. Sa position dans l'appareil d'État ptolémaïque illustre cette donnée fondamentale du culte des souverains qui est son intégration totale aux instruments de pouvoir de la dynastie. Ces prêtres appartiennent bien à la *herrschende Gesellschaft* du royaume, chargée d'affirmer les liens intimes entre politique et religion au niveau du culte du souverain.

II. *Les protocoles d'inscription des prêtres éponymes d'Alexandrie et de Ptolémaïs dans les actes agoranomiques de Haute Égypte (Périthèbas et Pathyrite)*

La richesse des sources grecques de la *chôra* égyptienne permet de réfléchir à la spécificité de l'expression des protocoles des prêtres en fonction du lieu où est rédigé l'acte juridique le mentionnant. On sait qu'au II^e^ siècle l'institution de l'agoranomie s'est développée comme « un raz de marée » pour reprendre l'expression de P.W. Pestman, et que la Haute Égypte offre en ce domaine des sources abondantes avec plus de 120 actes issus des bureaux agoranomiques de Pathyris et Krokodilopolis[8]. Alors que Thèbes (Diospolis Magna) concentrait encore en 174 av. n.è., tous les actes agoranomiques du Périthèbes et du Pathyrite, on assiste dans le dernier quart du siècle à l'ouverture de quatre autres bureaux, Pathyris, Krokodilopolis, Hermônthis et un bureau face à Thèbes sur la rive droite.

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[6] Stephen Miller l'avait souligné dans l'*editio princeps* publiée en 1885, « Inscriptions grecques de l'Égypte », *BCH* 9, p. 142, en renvoyant à la *Chrestomathie démotique*, Paris, 1880 (p. 135) d'Eugène Revillout.

[7] Datation par Leon Mooren, *Ancient Society* 4 (1973), p. 118 (24).

[8] Pestman 1985.

L'examen de la datation de ces actes permet de pousser l'analyse des protocoles d'inscriptions des prêtres éponymes d'Alexandrie et de Ptolémaïs. Nous limiterons nos remarques à Pathyris et Krokodilopolis, mais les documents des autres bureaux sont également intéressants.

L'acte agoranomique cité par Buraselis (Point IV) issue de Diospolis Magna (Thèbes), *PSI* IX 1016=*SP* I 37 (+*BL* VIII, 1992, p. 404), un contrat de vente d'ἡμέραι ἀγνευτικαί, daté du 21 décembre 129, peut ainsi être mis en regard du *P. Stras*. II 81, issu du même bureau, une vente de terre conclue en 115, dont le formulaire diffère. En 129 dans le papyrus florentin l'agoranome Hêrakleidês ne mentionne que « les prêtres et prêtresses, quels qu'ils soient, à Ptolémaïs » (l. 21) alors que l'agoranome Apollônios, en 115, dans le papyrus strasbourgeois, est plus complet puisqu'il ajoute pour les prêtres et les prêtresses ceux d'Alexandrie à ceux et celles Ptolémaïs et qu'il précise qu'il s'agit de Ptolémaïs « de Thébaïde » (l. 15-16).

Pathyris et Krokodilopolis offrent des variantes de formulaire qui ont permis à P.W. Pestman d'individualiser leur provenance dès 1969 lors de la publication dans le *JEA* d'un testament grec de Pathyris (*P. Lond*. inv. 2850 = *P. Lond*. VII 2191)[9]. Les agoranomes de Pathyris usent du génitif ἐφ' ἱερείως (pluriel ἱερείων) alors que ceux de Kroko-dilopolis ne connaissent que le génitif ἐφ' ἱερέως (pluriel ἱερέων). Pour le participe exprimant le prêtre en fonction « quel qu'il soit » Pathyris use de la forme τῶν ὄντων alors que Krokodilopolis utilise τῶν οὐσῶν. Enfin troisième variante Pathyris nomme la prêtresse ἱέρισσα tandis que Krokodilopolis écrit ἱέρεια.

L'interprétation historique de ces actes de la pratique juridique nous paraît double. Elle montre d'abord la forte présence de la cité grecque de Ptolémaïs en Haute Égypte puisque certains actes ne font pas référence à la lointaine Alexandrie. Les sources démotiques nous avaient conduit à la même remarque. L'existence de différences notables d'un bureau agoranomique à un autre illustre d'autre part l'existence de traditions juridiques locales au niveau des formulaires. Des formulaires stéréotypés sont nés dans des milieux locaux proches et liés entre eux, puisque le bureau de Pathyris est issu de Krokodilopolis et qu'il ne devient indépendant qu'en 89-88 environ. L'apparition au II^{e} siècle en Thébaïde de ces formulaires grecs différenciés est très certainement l'expression d'une volonté d'indépendance de ces nouveaux bureaux agoranomiques. En créant leurs propres formulaires, les titulaires de ces bureaux permettent au jusgrécistes de voir naître dans la *chôra* égyptienne l'individualisation d'une tradition écrite grecque locale. Ces innovations sont d'autant plus remarquables que ces agoranomes sont souvent d'origine égyptienne[10], ce qui montre leur degré d'hellénisation.

[9] Pestman 1969, en part. p. 138-139. Cf. Pestman 1985 p. 11.
[10] Cf. Pestman 1978, p. 203-210.

III. *Culte royal et vie politique à Ptolémaïs : « haute » et « basse » époque hellénistique*

La question de la chronologie des documents grecs et démotiques concernant les prêtres du culte royal à Ptolémaïs constituera ma troisième remarque. Il faut en effet expliquer leur apparition à la fin du III^e^ siècle, en 215-214 av. n.è. Hans Hauben estime que la naissance du culte du *ktistês* de la cité date peut-être de son vivant, et qu'il n'est pas impossible qu'il ait été à l'origine un culte héroïque qui se serait transformé en culte divin[11]. La fondation de la cité par Ptolémée Sôter est mentionnée explicitement par deux inscriptions du second siècle de n.è. (*I. Prose* 62 et *I. Philae* II 166). Les années 280 sont généralement avancées pour dater cette création. Il y a donc eu un délai entre la mise en place du culte et les premières mentions des prêtres et prêtresses.

Nous proposons de ne pas y voir une lacune fortuite de nos sources, mais l'effet à Ptolémaïs d'une organisation renforcée de ce culte. Elle pourrait bien être lié à une évolution que révèlent les sources épigraphiques, en particulier un décret du Conseil et du Peuple en l'honneur des prytanes (*IG Louvre Bernand* 4) datant probablement de 240/239, et un décret des membres du gymnase en l'honneur de Sarapion (*I. Prose* 27) datant du 26 janvier 104. Ces deux décrets attestent de reculs démocratiques et d'une montée du pouvoir oligarchique. Le premier entend mettre fin au scandale que représente les faits répétés de violence et d'impiété « dans les sessions du conseil et de l'assemblée et surtout durant les élections aux magistratures ». Tout en réprimant ces excès « à l'aide des peines prévues par la loi », la solution consiste « à recruter le conseil et le tribunaux parmi des citoyens choisis », et à mettre en place un administrateur (dioecète) dans la cité. Le second décide de la réalisation de deux statues, l'une du roi, l'autre de Sarapiôn, un ancien gymnasiarque, qui reçoit le privilège de choisir lui-même dix hommes qui seront accueillis au gymnase, et qui deviendront de ce fait citoyens de la cité. Cette évolution est l'un des aspects mis en valeur par Louis Robert, Pierre Debord ou Philippe Gauthier pour désigner la basse époque hellénistique : période de dépolitisation réelle de la vie politique, d'amenuisement ou de disparition du contrôle du peuple, de croissance du poids des notables et des évergètes. Les évergètes bénéficiaient dans le même temps d'honneurs civiques inouïs, qui pouvaient aller jusqu'à l'institution d'un culte de leur vivant. Un colloque organisé par Pierre Fröhlich et Christel Müller en 2004, à Paris, en a montré bien des ressorts dans le monde hellénistique, mais sans traiter de l'Égypte[12]. Ce poids renforcé de l'« élite » peut aller de pair avec un contrôle plus grand du roi sur la vie politique qui restreint de son côté l'autonomie de la cité. La liberté des citoyens est donc prise en étau entre les notables, le roi et son appareil administratif, formant une alliance objective et efficace. La vitalisation du culte royal à Ptolémaïs qui ressort de nos

[11] Hauben 1989, p. 447 (42).
[12] Fröhlich, Müller 2005.

sources serait dans ces conditions un élément de cette stratégie alliant l'élite civique et le pouvoir royal pour renforcer leur pouvoir respectif au détriment de la participation des citoyens à la vie de leur cité.

Philippe Gauthier constatait dans son introduction méthodologique à ce colloque que la transition entre la haute et la basse période hellénistique variant suivant les royaumes et les cités. Dans le royaume des Ptolémées l'évolution aurait été précoce et daterait de la fin du III^e^ siècle. Ptolémaïs aurait donc suivi la même évolution qu'Alexandrie, qui connaît un recul des institutions démocratiques durant la période.

En conclusion, il faut redire la pertinence du thème retenu par notre collègue athénien, et le remercier chaleureusement pour cette réflexion de grande ampleur méthodologique et géographique. Mes quelques remarques n'auront eu pour but que de souligner la richesse de sa synthèse, qui ne peut qu'inciter les spécialités des différents royaumes, jusgrécistes et historiens, à poursuivre l'enquête qui montre l'unité, mais aussi la spécificité et la diversité des mondes hellénistiques (*Einheit in der Vielheit*).

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FRITZ GSCHNITZER †

Fritz Gschnitzer, am 6. Januar 1929 in Innsbruck geboren und seit 1962 bis zu seiner Emeritierung 1997 Ordinarius für Alte Geschichte an der Ruprecht-Karls-Universität Heidelberg, war ein Symposiast der ersten Stunde. Insgesamt fünf Mal nahm Gschnitzer zwischen 1971 und 1995 an Symposia teil; vermutlich war es mehr als nur Zufall, daß sie sämtlich in den drei Ländern Österreich – wenn auch nicht seinem geliebten Tirol –, Griechenland und Deutschland stattfanden, die ihm von Herkunft, Werk und Wirken her die vertrautesten waren. Sein letzter Beitrag, den er in Korfu zur Terminologie von „Recht" und „Gesetz" im frühen Griechisch hielt, kann dabei geradezu als Inbegriff seiner Arbeitsweise gelten, knüpfte er darin doch ein weiteres Mal an seine wissenschaftlichen Anfänge an, die nach der schon 1951 erfolgten Promotion über die inneren Verhältnisse des Achämenidenreiches bei Franz Hampl mit einer Assistentenstelle am Sprachwissenschaftlichen Seminar seiner Heimatstadt und -universität Innsbruck begonnen hatten. Die Rechtsgeschichte wiederum stand ihm als Sohn des renommierten Juristen Franz Gschnitzer seit jeher besonders nahe. Beides sollte er sich ein Leben lang bewahren, auch nachdem er mit seiner 1956 angenommenen und nur zwei Jahre später publizierten Habilitationsschrift über *Abhängige Orte im Altertum* wieder auf das Gebiet der Alten Geschichte zurückgekehrt war.

Beredtes Zeugnis hierfür legen namentlich seine zweibändigen *Studien zur griechischen Terminologie der Sklaverei* von 1964 und 1976 ab, doch prägen diese Interessen ebenso noch seine *Griechische Sozialgeschichte von der mykenischen bis zum Ausgang der klassischen Zeit*. Erstmals 1981 vorgelegt, gilt sie inzwischen als Standardwerk, wie Übersetzungen ins Spanische (von dem Symposiasten F. X. Fernández Nieto) und ins Italienische, demnächst auch ins Griechische (von dem Symposiasten A. Chaniotis) bezeugen; eine Neuauflage mit erweiterter Bibliographie ist in Planung. Bis zuletzt arbeitete Gschnitzer an einer monographischen Darstellung des mykenischen Griechenland für das Handbuch der Altertumswissenschaften, wozu er aufgrund seiner frühen und intensiven Anteilnahme an der Erforschung der Linear B-Täfelchen wie kein zweiter berufen war. Es steht zu hoffen, daß das nahezu abgeschlossene Manuskript wenigstens noch aus dem Nachlaß publiziert werden kann.

Gleichwohl war umfangreiche Bücher zu schreiben Gschnitzers Sache eigentlich nicht. Auch Vorträge wie bei den Symposia stellten eher die Ausnahme dar, da er zwar gerne sprach, aber wohl ungern reiste. Seine wahre Meisterschaft zeigte sich vielmehr in der kleinen Form. Neben einer Fülle von Festschriftbeiträgen, Besprechungen, Aufsätzen und Miszellen ist dies nicht zuletzt an den über 100 Lexikonartikeln abzulesen, wovon sogar drei – die für Suppl. XIII der Realencyklopädie bestimmten Lemmata *Politarches*, *Proxenos* und *Prytanis* – ihrer Bedeutung wegen 1974 als Separatdruck mit dem Untertitel *Beiträge zum griechischen Staatsrecht*

erschienen. Mehr als 50 seiner wichtigsten Aufsätze sind inzwischen in den von C. Trümpy und T. Schmitt herausgegebenen *Kleinen Schriften zum griechischen und römischen Altertum* vereint, wobei allein schon ihre Aufteilung in historische und sprachwissenschaftliche Beiträge zum frühen Griechenland (Band I, 2001) und historische und epigraphische Studien zur Alten Geschichte seit den Perserkriegen (Band II, 2003) die große Spannbreite der Forschungen Gschnitzers erkennen läßt. Zeitlich wie räumlich erstreckten sich seine Interessen in einer heute kaum mehr anzutreffenden Selbstverständlichkeit weit über die vertraute Welt des Mittelmeers hinaus. Er gehörte zu den letzten, die noch den gesamten Alten Orient überblickten und die dazu unabdingbaren sprachwissenschaftlichen und rechts- sowie religionshistorischen Forschungen nicht nur berücksichtigten, sondern selbst beherrschten und vorantrieben.

Überaus erfolgreich war Gschnitzer aber auch in seiner Lehrtätigkeit. Für seine Schüler, von denen viele heute Professuren im In- und Ausland bekleiden, war er ein begeisternder Lehrer, stets an Sachfragen orientiert und, sobald er ein echtes Interesse verspürte, jederzeit auf den verschiedensten Feldern zu intensiver Diskussion bereit, wie nicht zuletzt auch die ungewöhnliche Breite der von ihm betreuten Arbeiten zeigt.

Fritz Gschnitzer, Mitglied der Heidelberger Akademie der Wissenschaften und des Deutschen Archäologischen Instituts, war einer der bedeutendsten Althistoriker unserer Zeit. Prägend für ihn waren zum einen die griechischen und lateinischen Historiker, die er, jahrelang ans Bett gefesselt, schon als Jugendlicher durcharbeitete und auch im Alter immer wieder zur Entspannung las, zum anderen die bei aller Enge von Selbstbewußtsein und Freiheitswillen gekennzeichneten Verhältnisse seiner alpenländischen Heimat. Dem frühen Griechenland und namentlich den Völkerschaften jenseits der großen politischen Zentren galt daher stets seine besondere Sympathie. Markenzeichen all seiner Arbeiten war der wache Blick für das von anderen als unbeachtlich beiseitegelassene Detail, das er, lange bevor auch andere sich dieses Materials annahmen, stets kenntnisreich in den sozial- und kulturhistorischen Kontext einzuordnen wußte. Schon seit längerem zurückgezogen lebend, ist Fritz Gschnitzer nur wenige Wochen vor seinem 80. Geburtstag am 27. November 2008 überraschend verstorben.

Andrea Jördens, Heidelberg

MARIO TALAMANCA †

Mario Talamanca, scomparso a Roma l'11 giugno 2009, è stato indubbiamente uno dei maggiori studiosi italiani di diritto greco fra la seconda metà del XX secolo e l'inizio del nostro secolo. Dopo essere stato invitato da H.J. Wolff a partecipare al I Symposion di Storia del diritto greco, tenutosi in Germania nel 1971, dove presentò il primo abbozzo della sua ricerca sul processo attico (che non riuscì a pubblicare in vita), Talamanca partecipò attivamente al II Symposion, tenutosi nel 1974 a Gargnano del Garda, nei cui Atti fu pubblicato il suo contributo, tuttora fondamentale, su *dikazein* e *krinein* in età arcaica, cioè sui due principali termini che designano l'attività degli organi giudicanti nel mondo greco. Negli anni '70 del '900 videro così la luce i più importanti lavori di Talamanca nel campo del diritto greco: dagli articoli sulle orazioni 17 di Lisia, 21 (in tema di arbitrato privato) 36 e 45 di Demostene, fino all'agile ma penetrante sintesi pubblicata nel 1981 (*Il diritto in Grecia*, Bari 1981). Dopo essersi tenuto lontano per circa venticinque anni dai Symposia, Talamanca riprese a frequentarli assiduamente (Symposion 2003, 2005, 2007), fornendo, nel ruolo di "respondent", contributi critici molto stimolanti. Anche se nel frattempo non aveva pubblicato lavori dedicati specificamente a temi giusgrecistici (pur continuando fino al 1991 a tenere un insegnamento giusgrecistico presso la Scuola, poi Corso, di perfezionamento della Facoltà di Giurisprudenza di Roma), non aveva smesso di seguire da lontano la produzione dei cultori della disciplina, come dimostrano sia le recensioni agli Atti dei *Symposia*, pubblicate sul Bullettino dell'Istituto di Diritto Romano, sia in particolare il grande articolo intitolato *Gli studi di diritto greco dall'inizio dell'Ottocento ai nostri giorni* (pubblicato in *Scintillae iuris. Scritti in memoria di G. Gorla*, I, Milano, 1994, pp. 889 ss.), dove si dimostrava perfettamente al corrente degli sviluppi recenti e contemporanei della giusgrecistica.

Volendo esprimere in estrema sintesi una valutazione dell'apporto di Talamanca agli studi giusgrecistici, si deve partire dal presupposto che Egli guardava sempre al diritto greco (anzi, ai diritti greci, dato che Talamanca era un convinto assertore della pluralità dei diritti greci) dall'angolo visuale dello studioso di diritto romano, consapevole che la grande originalità del diritto tramandato ai posteri da Roma va identificata con il ruolo interpretativo/creativo dei giuristi, assente in tutti gli altri diritti dell'antichità, ivi compreso il diritto greco. Il diritto greco è infatti contenuto essenzialmente nei testi di legge e nei documenti della prassi. La sua interpretazione avviene essenzialmente attraverso l'opera dei logografi, autori delle orazioni giudiziarie attiche. Il tribunale popolare non è in grado di creare un diritto giurisprudenziale analogo a quello su cui si basa il moderno "common law". Nelle orazioni giudiziarie le argomentazioni giuridiche svolgono dunque un ruolo

secondario rispetto alle argomentazioni retoriche, che tendono con ogni mezzo a convincere la giuria. Pur partendo da queste premesse, che comportano come necessaria conseguenza una svalutazione dello studio del diritto greco rispetto allo studio del diritto romano, Talamanca ha in realtà prodotto una serie di studi esegetici fondamentali aventi ad oggetto le orazioni giudiziarie attiche, e ha così grandemente contribuito a mostrare l'interesse che il diritto greco (attico in particolare) riveste dal punto di vista della storia e della teoria del diritto europeo.

Alberto Maffi, Milano

RAYMOND WESTBROOK †

Am 23. Juli 2009 verstarb Raymond Westbrook, W.W. Spencer Professor of Semitic Languages, Ancient Law, Assyrology an der Johns Hopkins Universität, Baltimore MD. Er war der Gelehrte, der — von der Rechtswissenschaft her kommend — zu den führenden Köpfen der Assyrologie zählte und in gleicher Weise auch die Gebiete des altgriechischen und römischen Rechts überblickte, die er durch wertvolle, originelle Beiträge bereicherte. Am „Symposion" nahm er 2001, 2003 und 2007 teil; 2009 war er als Teilnehmer vorgesehen.

Westbrooks Lebenslauf war keineswegs geradlinig. Er wurde am 1. Jänner 1946 in Southend-on-Sea geboren und verbrachte dort seine Jugend. Schon früh kam er mit dem Hebräischen in Kontakt, im Cheder, den er parallel zur Westcliff Highschool besuchte, wo er intensiv Latein und Griechisch lernte. 1965–1968 studierte er am Magdalen College in Oxford Rechtswissenschaft mit dem Abschluss eines B.A. in Law. David Daube wies ihm in Oxford die Richtung in die antiken Rechte, Godfrey Rolles Driver in den Alten Orient. 1970 erwarb er den Grad des LL.M. an der Hebräischen Universität in Jerusalem, 1982 den Ph.D.-Grad in Yale mit der Schrift „Old Babylonian Marriage Law". Neben seiner wissenschaftlichen Arbeit war er ab 1976 zugelassen zur Bar of England and Wales, kurz als Barrister praktisch tätig, zwei Jahre lang, 1977–1979, lehrte er auch an der Inns of Court School of Law, worauf er für vier Jahre als Direktor in die Abteilung für Englische Übersetzung am Europäischen Rechnungshof nach Luxemburg wechselte (1979–1983).

1983 wagte Westbrook den Sprung in den akademischen Beruf, zunächst als Lektor an der Hebräischen Universität, wo er bis 1987 je eine halbe Stelle an der Juristischen Fakultät und im Department für Biblische Studien bekleidete. Nach einem Sabbatical an der Johns Hopkins Universität wurde ihm dort 1988 eine Stelle als Assistant Professor angeboten. Johns Hopkins wurde schließlich seine akademische Heimat.

Zu Westbrooks wissenschaftlichem Œuvre zählen neun Bücher, vier als (Mit-) Autor verfasst, fünf (mit-)herausgegeben[1], ca. 80 Aufsätze und zehn Rezensionen,

[1] Monographien: Studies in Biblical and Cuneiform Law, Cahiers de la Revue Biblique, Nr. 26, Paris 1988; Old Babylonian Marriage Law, Archiv für Orientforschung, Beiheft Nr. 23, Horn 1988; Property and the Family in Biblical Law, Journal for the Study of the Old Testament Supplement Series, Nr. 113, Sheffield 1991; Everyday Law in Biblical Israel: an Introduction (Textbuch, gem. mit B. Wells), Louisville, Kentucky, 2009. Herausgeberschaft: Amarna Diplomacy: The Beginnings of International Relations (mit R. Cohen), Baltimore 2000; Security for Debt in Ancient Near Eastern Law (mit R. Jasnow), Leiden 2001; A History of Ancient Near Eastern Law. Handbuch der Orientalistik 72, Leiden 2003; Women and Property in Ancient Near Eastern and Mediterranean So-

davon zwei im Umfang von Aufsätzen.[2] Jenes Werk, welches vielleicht die größte Wirkung entfalten wird, dürfte das zweibändige, 1.200 Seiten starke, von Westbrook allein herausgegebene Handbuch „History of Ancient Near Eastern Law" sein. Es gibt den Juristen, die manchmal noch naiv von „dem" Altorientalischen oder „Keilschrift"-Recht sprechen, das Werkzeug in die Hand, die Rechtsordnungen der verschiedenen Epochen und Schriftkulturen zu unterscheiden. Anhand eines vom Herausgeber dem Autorenteam vorgegebenen und strikt durchgehaltenen Themenkatalogs findet auch der jener Sprachen unkundige Benutzer in jedem Abschnitt die relevanten Antworten auf seine Fragen.

Das Handbuch ist eben jetzt hoch willkommen, da der Einfluss des Vorderen Orients auf das archaische griechische Recht immer mehr Beachtung findet. Die im vorigen Jahrhundert eingetretene ‚Sprachenbarriere' hat auch den Blick der Juristen verengt. Westbrook hat für die Rechtswissenschaft an dem Brückenschlag Pionierarbeit geleistet[3]. Sein letzter großer Vortrag, im Jänner 2009 an der Brown Universität, Providence RI, gehalten, ist postum in der Savigny-Zeitschrift erschienen[4]. Als Vermächtnis aus seinen weit verzweigten Studien gibt er den Rat, in der Erforschung der alten Rechte von der Idee des Evolutionismus Abschied zu nehmen. Die wesentlichen Entwicklungsschritte lägen weit vor den ältesten uns erhaltenen Schriftzeugnissen. Seit dem dritten vorchristlichen Jahrtausend bis in die hellenistische Zeit seien im Alten Orient nur Nuancen einer Rechtsentwicklung festzustellen. Erst die griechische Philosophie habe eine Wende gebracht.

Sein Lebenswerk zu vollenden war ihm nicht gegönnt. Er hat in seinen letzten knappen drei Jahren, das Ende des Lebens stets vor Augen, noch eine reiche wissenschaftliche Ernte eingebracht, Freundschaften gepflegt, sich seiner Familie gewidmet.

Gerhard Thür, Wien

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cieties (mit D. Lyons), Washington DC: Center for Hellenic Studies, 2005 electronic publication: www.chs.harvard.edu/publications.sec; Isaiah's Vision of Peace in Biblical and Modern International Relations: Swords into Plowshares (mit R. Cohen), New York 2008.

2 S. die Auswahl von R. Westbrooks Aufsätzen, hg. von B. Wells/F.R. Magdalene, Law from the Tigris to the Tiber. The Writings of Raymond Westbrook I, The Shared Tradition. II, Cuneiform and Biblical Sources, Eisenbraun 2009.

3 The Trial Scene in the Iliad, Harvard Studies in Classical Philology 94 (1991) 53–76; Penelope's Dowry and Odysseus' Kingship, in: Symposion 2001, hg. v. R.W. Wallace/M. Gagarin, Wien 2005, 3–23; Drakon's Homicide Law, in: Symposion 2007; hg. v. E. Harris/G. Thür, Wien 2008, 3–16.

4 The Early History of Law: A Theoretical Essay, ZSStRom 127 (2010) 1–13. (S. auch einen ausführlichen Nachruf im selben Band, S. 667–660.)

D. M. MACDOWELL †

Douglas MacDowell was born in London on 8 March 1931, and educated in Classics at Highgate School and at Balliol College Oxford, where he graduated with a double first (Mods 1952, Greats 1954). He worked for a few years initially as a schoolteacher, but took up his first University post at Manchester (where he was successively Assistant Lecturer, Lecturer, Senior Lecturer, and then Reader, all in the space of 1958-1971), before being appointed at the unusually young age of forty as Professor of Greek at Glasgow, a post which he held for thirty years until retirement (1971-2001). Despite increasing ill-health, which made it impossible for him to travel to the 2009 Symposion, he remained active as a scholar throughout his retirement until shortly before his death on January 16, 2010.

MacDowell's scholarly output is perhaps best seen as comprising three separable strands: Attic oratory, Aristophanic comedy, and Athenian law. These strands were, however, often interconnected. It is notable for instance that his first major work on comedy was an edition and commentary on Aristophanes' *Wasps* (OUP 1971), a play which is best known for its extended parodies of lawcourt procedure, though his subsequent book on *Aristophanes and Athens* (OUP 1995) dealt equally with all the extant plays.

Perhaps the highlight of his work on the Athenian orators was his three substantial commentaries on particular speeches, beginning with an early study of Andokides' speech *On the Mysteries* (Andok. 1, OUP 1962), and followed somewhat later by two magisterial volumes on Demosthenes' *Against Meidias* (Dem. 21, OUP 1990) and on the same orator's *On the False Embassy* (Dem. 21, OUP 2000). Each of these displays to powerful effect his grasp of the language of the Greek text, and his ability to use this to disentangle the nuances of the argument, as well as his comprehensive knowledge of previous scholarship particularly on legal problems. The two Demosthenes commentaries are notable also for the inclusion of a facing translation that is linguistically graceful while remaining close enough to the text to serve as an exegetical tool; his wider work as a translator included two contributions to the University of Texas Press's *Oratory of Classical Greece* series (the four speeches of Andokides alongside Gagarin's Antiphon in 1998, and Demosthenes 27-38 as a free-standing volume in 2004). There were also article-length studies: two of his Symposion papers were on the authenticity of Demosthenes 29 as a source of information about Athenian law (*Symp. 1985*), and a reading of Lysias 9, which he entitled "The case of the rude soldier" (*Symp. 1993*). But Demosthenes was perhaps the one of the orators that most interested him, and it is fitting that his final book, which he lived just long enough to see, was a general study of *Demosthenes the Orator* (OUP 2009), in which the latter's career and all the speeches were covered systematically.

Of most interest to readers of this volume, however, will be MacDowell's work on Athenian law. Following the death of A. R. W. Harrison,[1] he remained the leading (and for many years the only) UK scholar working in this field. Notable among his books are the early volume on *Athenian Homicide Law in the Age of the Orators* (Manchester Univ. Press 1963), which for all its brevity remains the starting-point for all aspects of this area of law, and his handbook on *The Law of Classical Athens* (Thames & Hudson 1978), which is by some way the most readable broad survey of the field. His wider interest in the legal history of the Greek *poleis* led him to produce an adventurous if perhaps not wholly successful volume on *Spartan Law* (Edinburgh University Press, 1986). There were also many articles. He attended his first meeting of the *Symposion* for ancient Greek and Hellenistic law in 1982, and was regularly invited thereafter, though there were a few years especially in the second half of the 1990s when he turned down these invitations because he was at that time working primarily on Aristophanes. In total, he contributed papers to seven of the *Symposion* volumes (1982, 1985, 1990, 1993, 2001, 2003, 2007). Several of these, as noted above, dealt with the interpretation of particular texts and the legal problems resulting from them, which was one of his greatest strengths, as somebody whose perspective was primarily that of a philologist rather than a jurist. But he was also highly skilled at collecting, sifting and unpicking the disparate evidence for overlapping legal statutes in particular areas of law or legal procedure, as evidenced by his papers on "Athenian laws about choruses" (*Symp. 1982*), or "Mining cases in Athenian law" (*Symp. 2003*), or "The Athenian procedure of *dokimasia* of orators" (*Symp. 2001*).

MacDowell received many academic honours, most notably election as Fellow of the British Academy in 1993.

Stephen C. Todd, Manchester

[1] It is perhaps worth noting here the editorial work which MacDowell undertook in preparing the posthumous second volume of Harrison's *Law of Athens* (OUP 1971) for publication following the latter's death in 1969: it is typical of MacDowell's generosity that the book was published under Harrison's name alone.

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Bearbeitet von Theresia Pantzer (Wien)

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