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Demokratie, Recht und soziale Kontrolle im klassischen Athen

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Herausgegeben von
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Die Forschungsstipendien, deren Verleihung zugleich eine Auszeichnung für die bisherigen Leistungen darstellt, sollen den berufenen Wissenschaftlern während eines Kollegjahres die Möglichkeit bieten, frei von anderen Verpflichtungen eine größere Arbeit abzuschließen. Professor Dr. David Cohen (Berkeley, Cal.) war – zusammen mit Professor Dr. Gerhard Besier (Heidelberg), Prof. Dr. Wolfgang Reinhard (Freiburg i.Br.) und Dr. Lutz Klinkhammer (Rom) – Stipendiat des Historischen Kollegs im Kollegjahr 1997/98. Den Obliegenheiten der Stipendiaten gemäß hat David Cohen aus seinem Arbeitsbereich ein Kolloquium zum Thema „Democracy, Law, and Social Control in Classical Athens" vom 16. bis 19. Juni 1998 im Historischen Kolleg gehalten. Die Ergebnisse des Kolloquiums werden in diesem Band veröffentlicht.

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Inhalt

David Cohen

Introduction

This volume of essays grew out of a conference on Democracy, Law, and Social Control at the Historisches Kolleg. The starting point for this conference was the question of how to understand the mechanisms of social control that operated in the participatory democracy of classical Athens. Since most previous approaches to this question have been quite narrow in focus, my aim was to bring together an international group of leading scholars in law, classics, history, anthropology, and social theory who shared a common interest in different aspects of social control. Since different disciplines have tended to approach social control from a variety of perspectives, the goal was to explore the way in which comparative studies can enrich our understanding of processes of regulation, socialization, normalization, and deviance in traditional societies, and particularly those of classical Greece and, to a lesser extent, Rome. The participation of classicists and ancient historians whose work focuses upon these two cultures provided a central focus. At the same time, because the participants' contributions addressed not only law, but also religion, magic, gender, slavery, economy, war, and so on, we were able to move beyond the narrow concentration of formal coercive institutions that has too often characterized studies in this area.

Even more importantly, the vital contribution of scholars whose work involves other disciplines and historical areas provided us with comparative perspectives and theoretical models framing the general issues regarding social control that transcend any particular historical setting. The contribution of some of those scholars, such as Dieter Simon, Robert Bartlett, Peter Landau, and Christian Meier, was made through forms of participation other than publication of formal papers, but was nonetheless invaluable in stimulating the thinking of the authors represented in this volume. – Readers will note the absence of an index, which was felt to be unnecessary as the individual contributions are heavily thematic and analytical.

Athenian society of the classical era was a face-to-face society. In recent years some ancient historians (e.g. Osborne and Cartledge) have questioned this, arguing that historians like Moses Finley were naïve in assuming that all Athenians knew one another and that social control operated in Athens in the direct way familiar from studies of small village communities. Their doubts, however, rest upon the assumption that a face-to-face society can have no more than a few hun-

dred members, all of whom know one another intimately. As a review of the literature of Mediterranean anthropology reveals, what matters instead are the *qualitative* characteristics of social interaction. It is these, of course, which distinguish social control in Athens from anonymous modern mass urban societies.

Athens was a face-to-face society, but one which differed in important respects from the smaller communities which have been the object of so many anthropological studies of social control. Not only did Athens posses a large and stratified population composed of citizens, slaves, metics, and foreigners, but it also exhibited the complex centralized governmental and regulatory institutions of a state, albeit of a rather peculiar kind from the perspective of a modern state. Thus, although there were law courts, there was no state controlled coercive mechanism for the investigation or prosecution of crime, or for the enforcement of judgments in private lawsuits. Although there were state officials who were appointed to regulate many aspects of economic and public life, they differed radically from the modern bureaucracies whose disciplinary and normalizing activities have been studied by contemporary scholars of deviance and social control.

Above all, Athens was also a participatory democracy. Only a minority of the Athenian population were full citizens, but the participatory nature of Athenian law and politics makes it difficult to distinguish, for example, between official and unofficial, judicial and extra-judicial mechanism of social control. It was for this reason that I selected the title „Democracy, Law, and Social Control" for the conference. The challenge is to understand the way in which social control operates in that particular type of direct, participatory democracy that we find in classical Athens. This was a democracy centrally grounded upon an ideology of equality, but which also privileged the wealth elite in crucially important ways and excluded the majority of free inhabitants, to say nothing of slaves, from the exclusive male citizen club which alone governed. It is unfortunate that originally planned contributions on the most important disenfranchised groups, women and slaves, could not be included here, but it is worth noting the importance of extending the study of social control to the way it operated for these groups who categorically did not participate.

As I suggested above, though the city of Athens was inhabited by a fairly large scale urban society, it was not so large so as to exclude, in qualitative terms, those forms of social knowledge and face-to-face interaction which distinguish it from a modern metropolis. As Aristotle famously argues in his *Politics* it was part of the defining characteristic of a Greek polis to be just such a face-to-face community. On his account if a polis is too large it cannot embody the moral community which makes a polis a distinctive form of political community. Above all, a polis must not be so large that it cannot deliberate collectively. And it must not be so large that citizens cannot have the knowledge of one another which is necessary for effective participatory politics. So while Athens may have differed in important respects from modern or traditional very small-scale face-to-face communities, it also displayed many similarities in the patterns by which social norms are articulated, interpreted, enforced, and reproduced.

The papers in this volume broaden the context of the study of social control beyond the realm of formal judicial mechanisms of coercion. Including often neglected fields like religion and magic, as well as reflections upon political and legal theory, they also bring to bear the experience of other societies with very different institutional structures and traditions. These, together with perspectives of anthropology, philosophy, and social theory represented by other contributors, invite us to think beyond conventional accounts of social control and, I hope, beyond the temporal and spatial boundaries of classical Athens.

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Jon Elster

Norms, Emotions and Social Control*

I. Introduction

The term "social control" is multiply controversial. (i) It suggests that "society" is capable of acting to "control" the behavior of its members. Yet societies cannot act: only individuals can. (ii) It is often also taken to suggest that the purpose of control is a benign one, that of reducing the extent of behavior that is in some sense harmful to society. Yet some mechanisms of social control are capable of causing harm as well as of containing it. (iii) The term suggests, finally, that the behavior that is to be controlled is independent of the control mechanisms. Yet these mechanisms can generate the very behavior they regulate. They can serve as pyromaniacs as well as firefighters, putting out the fires they have set. Note the difference between (ii) and (iii). According to (ii), suppression of behavior through social control may be harmful. According to (iii), harmful behavior suppressed by mechanisms of social control may itself be caused by these mechanisms.

In the older literature on social control, these implied "suggestions" were part and parcel of the research paradigm. On the one hand, these writings tended to violate the principle of methodological individualism. On the other hand, they often fell into an unthinking functionalism according to which the needs of "society" create their own satisfaction. In the more recent literature, these suggestions are less prominent[1]. Yet the very term "social control" has an insidious tendency to guide the mind along the lines of (i) – (iii) above. It would be better if one substituted "mechanisms of social control" for "social control", and even better if one simply talked about "social norms".

I am assuming, in fact, that social norms provide the mechanism of social control. By this assumption I exclude the *law* as a vehicle of social control. This is a purely stipulative definition, and hence cannot be defended by argument. Yet I am prepared to argue that the differences between social norms and legal systems are so numerous and important that for most purposes it would be unhelpful to group

* This paper draws heavily on my "Alchemies of the Mind", forthcoming from Cambridge University Press.

[1] For an explicit rejection, see: *R. Bartlett*, Trial by Fire and Water (Oxford 1986) 34–42, who also provides some samples of the older literature. For other samples, see my: Norms of revenge, in: Ethics 100 (1990) 862–85.

them together, either as explananda or as explanantia. Although legal and social norms have in common that both are enforced by sanctions, they differ in that legal sanctions are formal, carried out by specialized enforcers who have a clear self-interest in enforcing the sanctions (they would lose their jobs if they failed to do so). Social sanctions, by contrast, are informal (there is no code stipulating the appropriate level of disapproval or ostracism for spitting in the street or rate-busting); their enforcement is diffused among the population at large; and it's not clear that the enforcers have any interest in doing what they do. Also, whereas one can assert (albeit not without some conceptual problems) that laws express the will of "society" and that they tend to protect its members against harmful behavior, there is no basis for making similar claims about social norms. Finally, whereas social norms are intimately linked to the emotions, laws and their enforcement need not owe anything to the latter.

The distinction between legal and social norms is not entirely hard-and-fast. In some cases, a moral norm against doing X gives rise both to a legal ban on X and to a social norm against X. Violence against children is an example. Also, a legal norm can generate a social norm. If there is a legal ban on driving faster than 60 miles per hour, some people will express disapproval of those who exceed that speed. Conversely, some legal norms may simply formalize a preexisting social norm. Social norms against incest antedate laws against incest. Yet all these examples involve benign norms, which in some obvious sense benefit the members of society. Social norms that suppress socially useful behavior or generate socially harmful behavior are less likely to be encoded in law. Also, as noted below, laws may be necessary because the appropriate norms are lacking.

I now proceed as follows. In Section II I consider the reciprocal relation between emotions and social norms. In Section III I turn to the behaviors that are prescribed or proscribed by social norms. Section IV offers a brief conclusion. Although the main thrust of the paper is general, the more extensive illustrations are taken from ancient Greece.

II. Emotions and social norms

The relation between emotions and social norms is twofold. Most obviously, the emotions of shame and contempt ensure the efficacy of social norms. At the same time and somewhat more paradoxically, emotions (along with other motivations) can themselves be the target of social norms.

Emotions as the support of social norms. Social norms as I understand them are non-outcome-oriented injunctions to act. In their simplest form, they take the form of unconditional imperatives: "always wear black at funerals". They may be contrasted with outcome-oriented imperatives: "always wear black in strong sunshine" (as do people in Mediterranean countries to maintain circulation of air between the clothes and the body). In a more complex form, they can be conditional

imperatives that make the action contingent on the past behavior of oneself or others rather than on future outcomes to be achieved. Norms of reciprocity, for instance, have this form: help those who help you, and harm those who harm you. For these norms to be *social* rather than merely private rules, they have to be shared with other members of the relevant culture or subculture.

Social norms affect action through the disapproval meted out to norm-violators. There are two distinct mechanisms involved. On the one hand, disapproval often goes together with material sanctions. One can refuse to have any dealings with a norm-violator, or punish him directly in a variety of ways. For some writers, this is the main way social norms operate[2]. On the other hand, disapproval often induces painful feelings in the norm-violator. Two correlative emotions are involved: contempt in the observer of the norm-violation and shame in the norm-violator. As Aristotle noted, the deterrent effect of shame must be distinguished from the deterrent effect of the concomitant material sanctions. "Shame is the imagination of disgrace, in which we shrink from the disgrace itself and *not from its consequences*" (Rhetoric 1384a; italics added).

In my opinion, the emotional sanctions are more important than the material ones. In fact, the latter matter mainly in so far as they are vehicles for the former. When I refuse to deal with a person who has violated a social norm, he may suffer a financial loss. More importantly, however, he will see the sanction as a vehicle for the emotions of contempt or disgust, and suffer shame as a result. The material aspect of the sanction that matters is *how much it costs the sanctioner to penalize* the target, not how much it costs the target to be penalized. The more it costs me to refuse to deal with him, the stronger he will feel the contempt behind my refusal and the more acute will be his shame. Although high costs to the sanctioner often go together with high costs for the target, as when the sanctioner renounces the opportunity for a mutually profitable business transaction, this need not be the case; and even when it is the case, my claim is that the costs to the sanctioner are what makes the sanction really painful to the target. It tells him that others see him as so bad that they are willing to forego valuable opportunities rather than have to deal with him.

Besides shame, the emotion of *guilt* is also capable of modulating behavior. Although both emotions are probably found in all societies, their relative importance differs. Ancient Greece, for instance, was closer to the shame end than to the guilt end of the continuum[3]. For the Greeks, "goodness divorced from a repu-

[2] *D. Abreu*, On the theory of infinitely repeated games with discounting, in: Econometrica 56 (1988) 383–96; *G. Akerlof*, The economics of caste and of the rat race and other woeful tales, in: Quarterly Journal of Economics 90 (1976) 599–617; *R. Axelrod*, An evolutionary approach to norms, in: American Political Science Review 80 (1986) 1095–1111; *J. Coleman*, Foundations of Social Theory (Cambridge, Mass. 1990).

[3] *D. Cairns*, Aidos: The Psychology and Ethics of Honour and Shame in Ancient Greek Literature (Oxford 1993) 27–47; *B. Williams*, Shame and Necessity (Berkeley 1993); *K. Dover*, Greek Popular Morality (Indianapolis 1994) 220–23.

tation for goodness was of limited interest"[4]. Conversely, what they feared was being *seen* to act badly rather than the bad action itself. This being said, the Greeks carved out a conception of guilt within their conception of shame. Bernard Williams observes the Greeks were concerned with many of the things that we associate with guilt rather than shame, such as indignation, reparation and forgiveness[5]. There is also something like a concept of guilt in Aristotle's discussion of shame. He writes that we are not "ashamed of the same things before intimates as before strangers, but before the former of what seem genuine faults, before the latter of what seem conventional ones" (Rhetoric 1384 b). Also, he notes, we feel friendly "towards those with whom we are on such terms that, while we respect their opinions, we need not blush before them for doing what is conventionally wrong; as well as towards those before whom we should be ashamed of doing anything really wrong" (1381 b). Something like the shame-guilt distinction appears here, then, as a distinction between shame before strangers and shame before friends, or, equivalently, between shame for conventionally wrong actions and shame for genuinely wrong actions[6].

Even in societies that have a more prominent place for guilt, shame provides the stronger motivation. A.O. Lovejoy quotes Voltaire as saying that "To be an object of contempt to those with whom one lives is a thing that none has ever been, or ever will be, able to endure", Adam Smith as asserting that "Compared with the contempt of mankind, all other evils are easily supported", and John Adams to the effect that "The desire of esteem is as real a want of nature as hunger; and the neglect and contempt of the world as severe a pain as gout and stone"[7]. Modern psychologists also assert that the burning feeling of shame is more intensely painful than the pang of guilt[8]. To my knowledge, people rarely commit suicide out of guilt. By contrast, six Frenchmen killed themselves in 1997 after they were caught in a crackdown on pedophilia.

Feelings of shame must have been unusually strong in the competitive world of the Greeks. Aeschylus, for instance, "wrote his plays for performance at a dramatic competition with the hope presumably of securing first prize"; hence when

[4] *Dover*, Greek Popular Morality 226. We may contrast this attitude with that of *Montaigne*: "The more glittering the deed the more I subtract from its moral worth, because of the suspicion aroused in me that it was exposed more for glitter than for goodness: goods displayed are already halfway to being sold." (The Complete Essays [Harmondsworth 1991] 1157f.) Similarly, *Pascal* wrote that "the finest things about [fine deeds] was the attempt to keep them secret" and that "the detail by which they came to light spoils everything" (Pensées, *Sellier* [ed.], 520).

[5] *Williams*, Shame and Necessity 91.

[6] In his discussion of "conscience" *Dover*, Greek Popular Morality 220–223 by and large agrees that the Greeks did not have our (non-religious) concept of guilt, but also cites "passages which seem to carry a suggestion (perhaps in some cases illusory) that self-respect and the prospect for self-contempt are genuine motives" (221).

[7] *A.O. Lovejoy*, Reflections on Human Nature (Baltimore 1961) 181, 191, 199.

[8] *M. Lewis*, Shame (New York 1992) 77; *J.P. Tangney*, Assessing individual differences in proneness to shame and guilt: development of the self-conscious affect and attribution inventory, in: Journal of Personality and Social Psychology 59 (1990) 102–11, at 103.

he left Athens for Sicily "it will occasion no surprise that one reason advanced in antiquity for his departure from Athens was professional chagrin, defeat at the hands of the young Sophocles or at the hands of Simonides"[9]. Among the Greeks, losing was always shameful; in fact "defeat is *aischron* [shameful] even when the gods cause it"[10]. The value attached to glory in the Greek world was so strong that shame could attach not only to losers but also to non-contestants. Thus in Xenophon's Memorabilia (III.7.1) Socrates and Charmides agree that "a man who was capable of gaining a victory in the great games and consequently of winning honour for himself and adding to his country's fame, and yet refused to compete" could only be a coward. Moreover, as I argue below, feelings of shame were intensified by the fact that nobody bothered to hide their contempt.

Emotions as the target of social norms. Typically, social norms prescribe or proscribe specific forms of *behavior.* Social norms targeting emotions would not seem to make much sense. In the standard case, observed violation of a norm triggers a sanction that provides an incentive to respect the norm. Emotions, however, are largely unobservable; also they cannot be modified by incentives. It is nevertheless indisputable that people can feel ashamed of their emotions or lack of emotion. One is supposed to be happy at one's wedding day or sad at a funeral, and failure to experience these emotions is likely to induce shame. Because of strong social norms against envy people often feel ashamed when they experience this emotion. In societies that value courage very highly, people may be ashamed of being afraid.

If emotions were nothing but involuntary and unobservable mental states it would indeed be paradoxical to have norms targeting them. Yet emotions also have physiological and behavioral *expressions*, which are often observable and at least partly under the control of the will. Some of the emotion-related norms do in fact only target the expression of emotions. These "display rules", as Paul Ekman calls them, are mainly rules of etiquette[11]. Just as there is a norm enjoining me to wear black at a funeral, there is one that tells me to put my face in serious folds even if I was not particularly close to the deceased. The behavior is intended to show respect for those who grieve, not to make them (or others) believe that I am grieving. In other cases, a person may simulate emotional expressions (or hide them) in order to make others think that he is (or isn't) in a specific emotional state. One reason for doing so is squarely instrumental: I may fake anger, to get my way; or hide my anger, to avoid attack. Another reason is provided by the need to abide by a social norm. I may try to hide my fear or my envy because of the opprobrium often attached to these emotions, or simulate grief when I *was* close to the deceased.

[9] *P. Walcot*, Envy and the Greeks (Warminster 1978) 50f.
[10] *A. W. H. Adkins*, Moral Values and Political Behaviour in Ancient Greece (New York 1972) 60.
[11] *P. Ekman*, Biological and cultural contributions to body and facial movement in the expression of the emotions, in: *A. Rorty* (ed.), Explaining the Emotions (Berkeley, Los Angeles 1980) 73–102.

I would like to place the issue in a larger perspective, by considering the general phenomenon of norms that are directed towards the motivation behind behavior rather than towards the behavior itself. For this purpose I shall use the tripartite classification of emotions suggested by La Bruyère: "Nothing is easier for passion than to overcome reason; its greatest triumph is to conquer interest" (Characters IV.77). I shall understand the ideas of passion (or emotion) and interest more or less in their everyday sense. As for reason, I shall understand it as any kind of impartial (disinterested and dispassionate) motivation, aimed at promoting the public good, individual rights, and the like.

In any given society, these motivations (and their subspecies) will appear in a normative hierarchy. Some will be valued highly, others tolerated, still others despised. These evaluations set up a pressure on individuals to misrepresent their motivations to others so as to appear in a more favorable light[12]. For illustration, consider the Melian dialogue in which the Athenians make the following statement to the Melians:

> For ourselves, we shall not trouble you with specious pretenses – either of how we have a right to our empire because we overthrew the Mede, or are now attacking you because of wrong that you have done us – and make a long speech which would not be believed; and in return we hope that you, instead of thinking to influence us by saying that you did not join the Spartans, although their colonists, or that you have done us no wrong, will aim at what is feasible, holding in view the real sentiments of us both; since you know as well as we do that right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must. (5.89)

Here, the Athenians very explicitly claim that they will *not* try to misrepresent their real motives. Commenting on this and other passages, A. H. M. Jones writes that "If these speeches are intended to reproduce the actual tenor of Athenian public utterances, it must be admitted that the Athenians of the fifth century were [...] a very remarkable, if not unique, people in admitting openly that their policy was guided purely by selfish considerations and that they had no regard for political morality". In fact, he finds the speeches so implausible that he concludes that "Thucydides, in order to point his moral, put into the mouths of Athenian spokesmen what he considered to be their real sentiments, stripped of rhetorical claptrap"[13]. Even the notoriously frank Greeks, in other words, would not be that frank. In other cultures, presumably, the pressure towards misrepresentation would be even stronger.

In ancient Greece, the unavowability of envy, *hybris* and interest induced commoners as well as kings to present actions thus motivated in a different light. Plutarch writes that "men deny that they envy [...]; and if you show that they do, they allege any number of excuses and say they are angry with the fellow or hate

[12] They also set up a pressure on individuals to misrepresent their emotions to *themselves*, as when an envious person redescribes the situation so as to justify the more acceptable emotion of righteous indignation. For reasons of space, I ignore this phenomenon here. For reasons that I do not understand well, it does not seem to be prominent in the writings of the Greeks.
[13] *A. H. M. Jones*, Athenian Democracy (Baltimore 1957) 66 f.

him, cloaking and concealing their envy with whatever other name occurs to them for their passion"[14]. In classical Athens, this tendency was revealed by the practice of denouncing others, who claimed to act for the sake of revenge, of being really motivated by envy. In David Cohen's summary, the orator Lysias "argues that his opponent will falsely claim that he brings the prosecution out of enmity so as to get revenge, but in fact it is only out of envy because the speaker is a better citizen. [...] The desire for revenge apparently would be seen by the judges as a legitimate reason for prosecuting, so the speaker must deny that this is the case. Meanspirited envy, on the other hand, reflects badly upon the accuser's character and indicates that the suit is unreliable."[15]

In Athens, *hybris* was a punishable offense and, moreover, a strongly disapproved form of behavior. There was a legal category, *graphe hybreos*, which enabled victims (or others) to prosecute hybristic behavior. Against accusations of *hybris* therefore, it was expedient to represent one's behavior as motivated by a more acceptable urge. In the Politics (1311 b), Aristotle tells a story about a tyrant, Archelaus, who was killed (among other reasons) because one of his boyfriends decided that their association had been based on "*hybris* not on erotic desire". Aristotle then offers the advice to tyrants who want to stay in power, that in their acquaintances with youth, they should appear to be acting from desire rather than from *hybris*[16]. In other contexts, those accused of *hybris* represent their behavior as motivated by revenge. Although there may have been truth in their allegations of having been wronged, they might still be guilty of *hybris* if the revenge was disproportionate to the offense[17].

In classical Athens, there were "sycophants" or professional accusers who initiated public lawsuits (*graphe*) for private gain, either because they could hope for a share of the fine or because they hoped that even innocent plaintiffs would settle in private rather than taking the risk of litigation. As sycophants were regarded with deep suspicion, it was important for them to misrepresent their motivation. As explained by Mogens Herman Hansen, it was more effective to disguise their interest as passion than to try to pass themselves off as motivated by impartial motives: "When a citizen appeared in court as a public accuser his first anxiety was [...] to dispel any suspicion that he was a sycophant. He could stress his public-spiritedness, but that tends to make ordinary folk even more suspicious, and usually there was a much more cogent argument to deploy: he could declare that the accused was his personal enemy and that he was using his citizen right to prosecute for revenge and not for gain."[18]

[14] *Plutarch*, On envy and hate.
[15] *D. Cohen*, Law, Violence and Community in Classical Athens (Cambridge 1995) 82f.
[16] Politics 1315 a; see also *Cohen*, Law, Violence and Community in Classical Athens 145 and *N. R. E. Fisher*, Hybris (Warminster 1992) 30f.
[17] *Fisher*, Hybris 509 (summarizing his analyses in earlier chapters, notably Ch. XI).
[18] *M. H. Hansen*, The Athenian Democracy in the Age of Demosthenes (Oxford 1991) 195; see also: *J. Ober*, Mass and Elite in Democratic Athens (Princeton 1989) 212 for a similar comment.

Innumerable speeches of the Greek orators make it clear that the desire to enhance the glory of the polis was at the apex of the hierarchy of motivations. As the passage just cited implies, claims to be public-spirited were not always taken at face value. Dover also notes that the category of "polypragmosyne" or meddlesomeness was used about "the man who claims always to be ready to prosecute in the city's interest"[19]. Yet this fact does not exclude – on the contrary, it presupposes – the primacy of public-spiritedness. The other passages I have cited suggest that in the hierarchy of motivations, reason was ranged above revenge (a passion), which was above interest, which was above envy and hybris (also passions). Of the latter two, envy seems to have been viewed as the most despicable. In spite of the legal ban on *hybris*, an Alcibiades fascinated his fellow-citizens in a way that an envious person could never do.

An important feature of the Greeks can be summarized by saying that they were (relatively) *unashamed of shaming*. Robert Levy writes that in Tahiti, there is both control by shame (*ha'ama*) and control of shame: "Although gossip is an important part of ‚shame control', the words designating gossip have a pejorative tone, and gossiping is said to be a bad thing to do. Ideally, the behavior which would produce shame on becoming visible has to spontaneously force its way into visibility; people are not supposed to search out shameful acts. Such a searching out is itself a *ha'ama* thing."[20] Ancient Greece, by contrast, was a world with very little emotional tact, a world in which a man was not afraid to express disapproval of others merely because they were born ugly or poor – just as a child in our own society may express spontaneous disgust at the sight of a disfigured person. Ober cites a law "that forbade anyone to reproach any Athenian, male or female with working in the agora"[21], presupposing both a tendency to disapprove of such work and a tendency to disapprove of the disapproval. In modern Western societies, the latter is sufficient to neutralize the former, either because the one is very strong or because the other is very weak. Among the Greeks, the relative strength of the two tendencies was such that a law was needed.

III. Social norms and behavior

Writers on social norms tend to assume that they are by and large utilitarian, either in the sense of benefiting all members of society or in the sense of benefiting some at the expense of others[22]. Many also tend to assume that the benefits *explain* why the norms exist[23]. Contrary to these writers, I believe there are norms that do not

[19] *Dover*, Popular Greek Morality 188.
[20] *R. Levy*, The Tahitians (Chicago 1973) 340.
[21] *Ober*, Mass and Elite in Democratic Athens 276.
[22] For a more refined classification, see: *J. Coleman*, The Foundations of Social Theory (Cambridge, Mass. 1990) 246–49.
[23] Again I refer to *Coleman* (ibid., Ch. 11).

benefit anyone, and that even when a norm does provide benefits one cannot assume without further argument that these have explanatory power. Here I shall focus on the behavioral effects of norms, leaving the explanatory issues aside[24].

Norms that benefit everyone. It is undeniable that some social norms work out to the benefit of everybody. The norm against spitting in public has (or had) beneficial hygienic effects. The norm against incest reduces the number of persons born with genetic defects. The norm of voting in general elections sustains democracy, to everybody's benefit. Norms against envy give more room for innovation and entrepreneurship. Norms against vengeance reduce overall levels of violence. At a more general level, the norm of reciprocity works out to the benefit of all, at least when combined with the norm that others should be trusted if and only if they have not shown themselves to be unworthy of trust ("Fool me once, shame on you; fool me twice, shame on me").

In the Greek context, it is at least arguable (but hardly provable) that the strict *norms of accountability* may have worked out to everybody's benefit in the long run, even if on a given occasion they may have led to manifestly unjust outcomes[25]. The Athenian mode of accountability did in fact resemble the legal principle of strict liability[26]. Theirs was not only a "shame-culture", but also a "results-culture"[27], in which people were held accountable for the outcome of their actions regardless of mitigating or extenuating circumstances[28]. If this principle was adopted in Western societies today, it would probably have undesirable results on the whole. In a society that was almost constantly at war, such as the Athenian democracy, it may have been useful overall. As Dover notes, "a nation at war turns itself into an organization with a specific and definable purpose, and it deals more severely with negligence and inefficiency than a nation at peace; the more perilous its situation, the less importance is attached to distinctions between incapacity, thoughtlessness and treachery."[29] I leave it to the reader to ponder whether the perilous situation *induced* the adoption of the results-culture, or whether this attitude was simply a useful by-product of the shame-culture.

Norms that benefit some at the expense of others. Some norms have a utilitarian aspect by favoring some members of society at the expense of others. In contemporary Western societies, the norm against smoking in public benefits (or is believed to benefit) non-smokers, at the expense of smokers. Norms of equality serve the interest of those who are badly off at the expense of those who are well off. In hierarchical societies, norms of deference serve the upper tiers of the social

[24] I discuss those issues in: The Cement of Society (Cambridge 1989) 147–49.
[25] The following draws on my: Accountability in Athenian politics, in: *B. Manin, A. Przeworski, S. Stokes* (eds.), Democracy, Accountability and Representation (forthcoming from Cambridge University Press).
[26] *Williams*, Shame and Necessity, Ch. 3.
[27] *Adkins*, Moral Values and Political Behaviour in Ancient Greece 61.
[28] For other examples of strict-liability societies see: *R. Edgerton*, Rules, Exceptions and the Social Order (Berkeley, Los Angeles 1985) 161 f.
[29] *Dover*, Popular Greek Morality 159.

system at the expense of the lower ones. I assume that the norms are held by those whom they harm as well as by those whom they benefit. Hence the statement "Children should be seen and not heard" does not, in my terminology, express a social norm unless it is one to which children also subscribe[30]. When adults enforce this principle merely through their power to punish children we are dealing with a very different phenomenon from what we observe when members of a subordinate class police each other to ensure the proper deference to their superiors. In the latter case, but not in the former, emotions also come into play.

Many Greek writers and their modern commentators have asserted a strong behavioral impact of norms of equality in such matters as ostracism, liturgies and jury sentencing[31]. Yet in most cases, alternative explanations are possible. Ostracism could be used somewhat like our general elections, to decide between two alternative policies by expelling the proponent of one of them. To the extent that it was directed against individuals rather than against policies, the motivation is not necessarily one of envy. Alcibiades, for instance, was widely seen to be hybristic, and the fear that he might use power to set up a tyranny was not at all implausible[32]. As Paul Veyne has argued, convincingly to my mind, the Greek system of liturgies was based on more complex motivations than fear of egalitarian envy[33]. And if the Greek juries imposed heavy fines on rich defendants, the motive may have been interest rather than envy. In a hand-to-mouth economy such as Athens there was always "a temptation to jurors to vote in the interest of the treasury when money was short, and an informer dangled before their eyes a fat estate whose owner, he alleged, had been guilty of some serious offense"[34]. More generally, the Athenians were much too susceptible to norms of wealth and status for any simple egalitarian view of their society to make sense[35].

[30] Here my terminology differs from that of: *Coleman*, Foundations of Social Theory 247, from whom I take this example.

[31] *Walcot*, Envy and the Greeks, is a useful summary.

[32] *Fisher*, Hybris 87.

[33] *P. Veyne*, Le Pain et le cirque (Paris 1976) Ch. II.

[34] *Jones*, Athenian Democracy 58, citing three speeches by *Lysias* (30, 27, 19). A proposal by Aristotle would, if implemented, have provided an ingenious way of testing the envy hypothesis versus the interest hypothesis. In the Politics, he notes that "The demagogues of our own day often get property confiscated in law-courts to please the people" (1320 a), because the people has a direct financial interest in the size of the state coffers. He then goes on to recommend "a law that the property of the condemned should not be public and go into the treasury but be sacred. Thus offenders will be as much afraid, for they will be punished all the same, and the people, having nothing to gain, will not be so ready to condemn the accused". In terms of La Bruyère's trichotomy of motives, Aristotle claims that if you remove any *interest* the people might have in the outcome, they will decide in accordance with *reason* or justice, thus assuming that they would not be moved by *passion*, e.g. by envy.

[35] *Ober*, Mass and Elite in Democratic Athens 224 f., 287 f. His argument is based on the fact that the classical orators offered elitist arguments when addressing the democratic jury. *Dover*, Greek Popular Morality 34 f. discusses whether the jurors were prosperous or simply liked to be treated as if they were, and opts, tentatively, for the former alternative. *Ober* argues (op.cit., p.141) that the jurors were representative of the population as a whole; see also:

Norms that benefit no one. I have discussed norms that benefit all and norms that benefit some at the expense of others. But some norms do not benefit anyone[36]. Consider the norm in our society against walking up to the person at the head of the bus queue and asking to buy his or her place in the queue. This practice, if allowed, would not harm anyone. The person asked to give up the place is free to refuse. If the offer is accepted both parties to the transaction will be better off and no third parties will be hurt. By blocking such potential Pareto-improvements, the norm makes everybody worse off. Or consider the pointless suffering induced by norms of etiquette, which penalize people for wearing the wrong kind of clothes or having the wrong kind of haircut. The argument that these norms are useful in that adherence to them "will declare one's group identity to other members and to nonmembers"[37] may be adequate in some cases, but hardly in all. When a small girl comes home crying because her friends ridicule her purchase of the wrong sort of pram for her doll, no useful function is served. These may seem to be inconsequential matters, and in one sense they clearly are. Yet as Tocqueville noted, although "nothing, at first sight, seems less important than the external formalities of human behavior [...], there is nothing to which men attach greater importance"[38]. Proust and Edith Wharton would have concurred.

Some norms that are unambiguously consequential also fail to provide any benefits. In my view, norms of revenge fall in this category[39]. The Mediterranean and Middle Eastern societies that subscribe to these norms have levels of violence and mortality rates among young men far above what is found elsewhere. The idea that the practice of revenge is a useful form of population control is too arbitrary to be taken seriously. The idea that norms of revenge provide a functional equivalent of organized law enforcement in societies with a weak state is also fallacious, albeit more subtly. Norms of revenge and the larger code of honor in which they are usually embedded set, as I said in the opening paragraph, as many fires as they put out. In many cases, the question "whether feuds created more disruption than they controlled"[40] may be answered in the affirmative.

In dueling and feuding societies, many people do in fact engage in deliberate provocation, to insult or offend another. Moreover, one cannot achieve honor by insulting just anybody. In Iceland, "the possession of honor attracted challenges, because that was where honor was to be had"[41]. For a medieval knight, the "prime concern must be pursuit of distinction, and a challenge should never be rejected.

M.H. Hansen, The Athenian Democracy in the Age of Demosthenes (Oxford 1991) 186 (the poor and the elderly were the majority in the courts).

[36] This statement is slightly inaccurate. Usually, some individuals benefit *ex post* from the operation of the norms discussed below. This is compatible with the idea that nobody benefits *ex ante*, and a fortiori with the idea that the average benefit is negative.

[37] *Coleman*, Foundations of Social Theory 258; also: *P. Bourdieu*, La distinction (Paris 1979).

[38] Democracy in America 605.

[39] The following draws on my "Norms of revenge".

[40] *C. Boehm*, Blood Revenge: The Anthropology of Feuding in Montenegro and Other Tribal Societies (Lawrence 1984) 183.

[41] *W. I. Miller*, Bloodtaking and Peacemaking (Chicago 1990) 33.

Rather he should go out of his way to confront others."[42] Montaigne refers to "what is said by the Italians when they wish to reprove that rash bravery found in younger men by calling them *bisognosi d'honore*, ‚needy of honour': they say that since they are still hungry for that reputation, which is hard to come by, they are right to go and look for it at any price – something which ought not to be done by those who have already acquired a store of it."[43] The behavior of Meidias when he slapped Demosthenes in public during a festival conforms to this pattern.

Athenian society was based, roughly speaking, on the pursuit of glory through competition and of honor through confrontation. More than anything, the Athenians wanted to excel and to stand out. Other societies have been based squarely on the norm against sticking one's neck out. In Aksel Sandemose's "Law of Jante" (a mythical small town in Denmark), the fourth of the ten commandments is "Thou shalt not fancy thyself better than *we*"[44]. Keith Thomas writes that in many primitive societies, beliefs in witch-craft "are a conservative force, acting as a check on undue individual effort. Similarly, in twelfth-century England the chronicler William Malmesbury could complain that the common people disparaged excellence in any sphere by attributing it to demonic aid."[45] Unlike egalitarian norms that have a redistributive effect, the norm against sticking one's neck out does not benefit anyone.

IV. Conclusion

I have argued elsewhere[46] that the idea of "social order" can be understood in two distinct ways. On the one hand, social order is the solution to the Hobbesian dilemma, the achievement of the cooperative solution to a collective action problem. On the other hand, social order is the avoidance of chaos, the realization of a stable and predictable state of affairs. This state may be abysmally bad, but at least it offers no surprises.

The idea of "social control" may be taken in a similarly dual sense. On the one hand, the control may target individuals who engage in non-cooperative behavior. On the other hand, they may target individuals who deviate from expectations. In either case, the control may be achieved through the vehicle of social norms. Some norms promote cooperation by punishing non-cooperators. Other norms pro-

[42] *V. Kiernan*, The Duel in European History (Oxford 1986) 33.
[43] *Montaigne*, The Complete Essays 839; *R. F. Bryson*, The Point of Honor in Sixteenth-Century Italy (New York: Publications of the Institute of French Studies, Columbia University 1935) 28, cites a sixteenth-century Italian writer to the effect that "giving [insults] pertains to the nature of man; because everyone seeks distinction, one mark of which is to offend *fearlessly*".
[44] *A. Sandemose*, A Fugitive Crosses his Track (New York 1936) 77.
[45] *K. Thomas*, Religion and the Decline of Magic (Harmondsworth 1973) 644.
[46] In the Introduction to: "The Cement of Society".

mote stability by punishing deviants. And in either case, the norms operate through the social emotions of shame and contempt.

Classical Athens does not fit either case very well. The most prominent norms involved competition and confrontation, which are constant-sum forms of interaction. It was neither true that everybody gained by the operation of the norms nor that nobody gained: rather, some gained at the expense of others. (At least this view can be defended for the competitive pursuit of glory. As noted above, the confrontational pursuit of honor is more ambiguous.) To the extent that the Athenians managed to solve their collective action problems, cooperation was achieved through the law rather than by informal social norms. At the same time, as David Cohen has shown, the legal system was itself a vehicle of confrontation and competition[47]. For that reason, the distinction between social norms and legal systems that I made initially is more tenuous in Athens than in modern societies. Informal social norms pervaded even the sphere of legal regulation of behavior.

[47] *Cohen*, Law, Violence and Community in Classical Athens.

William Ian Miller

Weak Legs: Misbehavior before the Enemy*

Statutes make for appallingly tedious reading unless primitively short and to the point as, for example, this provision in the early Kentish laws of Æthelberht (c. 600): "He who smashes a chin bone [of another] shall pay 20 shillings" or this one from King Alfred (c. 890): "If anyone utters a public slander, and it is proved against him, he shall make no lighter amends than the carving out of his tongue."[1] Yet on very rare occasion a modern statute can rivet our attention and when it does it seems to do so by mimicking some of the look and feel of legislation enacted in less lawyer-ridden times. Consider the statute presently codified in the United States Code as part of the Uniform Code of Military Justice:

Misbehavior before the enemy

Any member of the armed forces who before or in the presence of the enemy:

(1) runs away;

(2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;

(3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) casts away his arms or ammunition;

(5) is guilty of cowardly conduct;

(6) quits his place of duty to plunder or pillage;

(7) causes false alarms in any command, unit, or place under control of the armed forces;

(8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy;

(9) does not afford all practicable relief and assistance to any troops, combatants, vessels or aircraft of the armed forces … when engaged in battle;

shall be punished by death or such other punishment as a court-martial may direct[2].

* Special thanks to Larry Kramer. – Portions of this essay are included in *William Ian Miller*, The Mystery of Courage (Cambridge, MA 2000); and an earlier version appeared in: Representations 70 (2000) 27–48.

[1] *Æthelberht* cap. 50; *Alfred* cap. 32. The provisions are most conveniently accessible in: *F. L. Attenborough* (ed.), The Laws of the Earliest English Kings (Cambridge 1922) 11, 77. I have altered the diction of Attenborough's translation.

[2] 10 USCS @ 899 (1997) Art. 99.

Making cowardice a capital offense strikes us as a kind of barbaric survival from a rougher age, a time, that is, when few doubted that courage ranked higher than pity or prudence in the scale of virtues. And if many of us today believe that capital punishment cannot be justified even for the sadistic torturer, what a shock to discover that, as an official matter at least, Congress reserves it for the person who cannot kill at all. Not to worry: although the state has the power and right to execute those who misbehave before the enemy we are too unsure of ourselves, or maybe even too charitable, to enforce the statute maximally. We have done so but once since 1865 when Private Eddie Slovik was executed by firing squad 'pour encourager les autres' in the bleak Hürtigen Forest of 1945[3]. Still, even if only by inertia, we have preserved the option.

Quite independent of the grimness of its sanctions, the statute prompts our attention because of its strangely absurdist quality. Most of its provisions seem merely to restate each other. What, for instance, is running away (1) that isn't also cowardly conduct (5). And aren't paragraphs 2 and 8, the one covering the shamefulness of cowardice on defense, the other governing slacking off on offense, really special cases of cowardly conduct punished in 5? Paragraph 7 goes so far as to make jitteriness a capital offense to the extent one's nerves lead one to overinterpret causes for alarm, while paragraph 3, in contrast, authorizes putting the sleeping sentry before the firing squad apparently because he is not jittery enough even to stay awake.

There is also the statute's strange relation with fear. All law must pay homage to fear for if the law does not succeed in nurturing the passions that will make it self-enforcing, such as a sense of duty or a special reverence for the law as law, it must have recourse to fear, the passion that underwrites all coercive law – fear of punishment or the fear of the shame of being execrated as a law breaker. But this statute places fear at its substantive core, for it is fear-impelled action that it mostly seeks to regulate.

Only paragraph 6 – the stricture against looting – cares nothing about fear, not even the fear that you and your raping and pillaging comrades inspire in the enemies' civilian population as you quit your proper place to plunder. Like the other provisions the anti-looting provision is devoted to maintaining the delicate balance of forces that keep armies behaving as armies rather than as crowds. At times that balance is as susceptible to being undone by routing the enemy as by being routed by him. Success can be as disordering as failure[4]. The initial success of the German offensive on the western front in March 1918 was stopped, say some, as much by the German soldiers stumbling upon stores of wine and cognac as by Allied resistance. But the weight of these strictures shows that loss of discipline and order bred by greed, cruelty, lust, and other manifestations of exultant riot is of significantly less concern than the loss of discipline bred by fear, slackness, and

[3] See *William Bradford Huie*, The Execution of Private Slovik (New York 1954).
[4] On crowds and armies see *John Keegan's* discussion in: The Face of Battle (New York 1976) 174–176.

failure of nerve. Narrow self-interest in the exuberantly acquisitive style of the looter is just not as worrisome to an army as narrow self-interest in the life-preserving style of the coward. Fearfulness, not lust or gluttony, count as a soldier's first sin.

There lurk in this strange statute various attempts at a theory of the moral and legal economy of courage, cowardice, duty and fear in the context of the demands a polity, in this case the American polity, makes upon its combat soldiers. The exposition that follows, structured mostly as a gloss on the various provisions of the statute, seeks to reveal the features of that economy.

Running Away

Isn't running away, punished in paragraph 1, running like hell for the rear, precisely how we visualize the purest cowardice (punished in paragraph 5), just as casting away arms (punished in paragraph 4) so you could run away faster was how Plato and Aristotle envisioned it[5]? In fact, the very vividness of the image of running away has led some defendants to prefer being charged with the vaguer and more abstract cowardice under paragraph 5 considering it less prejudicial than an accusation of running away[6]. But statutory provisions that to the normal eye look duplicative will inspire interpreters to invent differentiating glosses, just as language itself, though needing all kinds of structural and particular redundancies, never quite allows a perfect synonym. So paragraph 5 – cowardice – was read to require a showing of fear as a necessary element of the offense[7]. Cowardice had to be motivated by fear or it was not cowardice, but running away, it was decided, did not need to be so motivated. This strikes normal people, non-lawyers, that is, as somewhat perverse. Why else would anyone flee battle, run away, if not in panic, terror, or out of simpler fears of death and mayhem?

The military judges struggled to give running away a meaning that would distinguish it from cowardice. They wanted to avoid defining running away so expansively as to undo the mercy implicit in differently defined and lesser offenses such as "absent without leave"[8], those acts of desertion that did not take place in the presence of the enemy. One military court became the final word on the subject with this desperate attempt:

> This term [runs away] must connote some form of fleeing from an ensuing or impending battle ... [I]t appears that to limit the phrase to flight from fear or cowardice is too restricted.

[5] See *Aristotle's* Ethics 5.2; 5.9. Rhetoric 2.6; *Plato,* Laws, xii.944e. See also *Polybius* on capital offenses in Roman army, Histories 6.37–38, in: *Polybius,* The Rise of the Roman Empire, trans. *Ian Scott-Kilvert* (Harmondsworth 1979).

[6] See United States v Gross 17 (1968) USCMA 610; 38 CMR 408.

[7] United States v Smith (1953) 3 USCMA 25, 11 CMR 25; United States v Brown (1953) 3 USCMA 98, 11 CMR 98; United States v McCormick (1953) 3 USCMA 361, 12 CMR 117.

[8] See 10 USCS §885 (desertion); 10 USCS §886 (AWOL).

It would appear to be more in keeping with the offense, if an intent to avoid combat, with its attending hazards and dangers is considered as an essential part of running away[9].

"An intent to avoid combat" seems to be a catchall for whatever motives other than fear might prompt a soldier to run away. What precisely might these motives be? One could, I suppose, run away out of treachery, or out of the most calculating thin-lipped prudence[10], or out of love as the humane Abner Small supposes for deserters he was asked to round up on home leave back in Maine in 1863: "My sympathies, I admit, were often moved for deserters whose love of family was apparently stronger than their love of country. They weren't running away; they were merely going home."[11]

But the narrative suggested by each one of these motives seems incomplete without complementing them with fear of death. The most psychologically plausible motive for running away that dispenses with such fear is fleeing in disgust, sick at being stuck in a situation where so much is asked of you and so little given you in return; not fear, but the feeling of being ripped off, revolted by unfairness and injustice. But such a person does not run away; the image is wrong, even the notion of fleeing misrepresents the insolence, even the fearlessness, with which he walks, sullenly saunters, but manifestly does not *run* away, while muttering "fuck this".

But the court doesn't offer us a picture of sullen withdrawal. Still desperate they turn to Winthrop's *Military Law and Precedents* where he too evinces bafflement, and in good legal form provides authority for his bafflement by citing an older writer who was discussing something not precisely on point:

RUNNING AWAY. This is merely a form of misbehavior before the enemy, and the words 'runs away' might well be omitted from the Article as surplusage. Barker, an old writer cited by Samuel, says of this offense: – 'But here it is to be noted that of fleeing there be two sorts; the one proceeding of a sudden and unlooked for terror, which is least blameable; the other is voluntary, and, as it were, a determinate intention to give place unto the enemy – a fault exceeding foule and not excusable[12].

[9] United States v Sperland (1952) 5 CMR 89.

[10] Running away is not always prudent. You are a much easier target to the enemy when you show your back because he needs not worry about you firing back. And when whole armies turn and run that is when they are butchered by the pursuing victors. Military strategists have often tried to impress their troops with the superior rationality of facing the enemy and fighting rather than fleeing in panic; see *Keegan's* discussion of Ardant du Picq in The Face of Battle 70. Of course, any game theoretician would note that it is still rational to be the first to flee, that is, to flee when all your comrades are still firing at the enemy thereby covering your back.

[11] *Abner Small*, The Road to Richmond: The Civil War Memoirs of Major Abner R. Small, *Harold Adams Small* (ed.), (Berkeley 1939) 112.

[12] *William Winthrop*, Military Law and Precedents (Washington ²1920) 624, cited in Sperland, at 92. Winthrop is discussing the provisions as they appear in the army's Articles of War which provisions were later codified in the statute being glossed in the Sperland case and in this essay.

The court citing Winthrop citing Samuel (early nineteenth century) citing Barker (late sixteenth century) distinguishes two types of fleeing, the first "proceeding of a sudden and unlooked for terror" and the second of "a determinate intention"[13]. Barker considers this first kind of flight the "least blameable", reminding us that, in normal life, we sometimes are willing to excuse one who commits his offense in a panic. We may even be tempted to say that panic-stricken conduct is involuntary, something for which we cannot hold the actor accountable. To be sure, suddenness hardly precludes volition (when I flee in panic I am still voluntarily quitting the field), but Barker is right to notice that our ordinary ideas about culpability distinguish between the offender who coldly calculates, the picture of self-interested prudence itself, and the one who offends while in the grip of terror or some other strong passion[14]. The distinction Barker is making is also likely to capture the difference in culpability of the first man to flee from those who follow infected by his contagion. But the statute does nothing to incorporate Barker's distinction; the statute catches in its lethal sweep the cold calculator and the panicked wreck, whether under paragraph 1 or 5.

Panic, one suspects, is treated more leniently by Barker because it is impractical to do otherwise, not just as a concession to ideas of *mens rea* or culpability. Panic usually involves large numbers in headlong flight, and however harmful its consequences it hardly makes sense to hand over the entire army to the firing squad. Let them make amends by regrouping and fighting better another day. Barker's distinction between "exceeding foule" flight of "determinate intention" and less blameworthy panicked flight follows immediately upon his discussion of Roman decimation, the practice of killing by lot one in ten of a failed legion. This association suggests that decimation might be suitable in the case of generalized panic-propelled fleeing, but that fully individualized punishment, rated at 1.0 probability rather than at the 0.1 discounted group rate, be meted out to the voluntary calculator of his own immediate best interests.

A prosecution brought under paragraph 5, cowardly conduct, must show, as noted, that the conduct was motivated by fear. This is one of the few areas in the law where the decision-maker is asked actually to find that the person was motivated by a particular passion, not just to find that the person was in the sway of some generalized powerful passion. How do we prove that fear was the motive? Do certain bodily clues betray him? Was he pale, did he tremble, sweat, shed tears, urinate or defecate in his pants? Even if so, such bodily indicators are ambiguous. Heat too makes us sweat, while joy, grief, and the cold may make us shed tears. The most lethal saga hero of ancient Iceland grew pale in anger, not in fear. Montaigne observes that both "extreme cowardice and extreme bravery disturb the stomach and are laxative". Even the nickname "The Trembler", he notes, given as

[13] See *E. Samuel,* An Historical Account of the British Army and of the Law Military (London 1816) 599–601; *Robert Barker,* Honor Military and Civill (London 1602) 1.16.

[14] See too *Hobbes,* Leviathan 2.21, regarding "men of feminine courage": "When Armies fight, there is on one side, or both, a running away; yet when they do it not out of treachery, but fear, they are not esteemed to do it unjustly, but dishonorably."

an honorific to King Garcia V of Navarre, "serves as a reminder that boldness can make your limbs shake just as much as fear"[15]. Dysentery can cause us to befoul ourselves. And the fear of getting caught with one's pants down often leads the soldier, at least in the trenches of World War I, to become desperately constipated[16]. Fear does have a distinctive facial expression but the expression can be suppressed when one is scared and faked when one isn't.

This is not earth-shattering news. State of mind always ends up being inferred either by legal convention or by supplying the social knowledge necessary to make sense of whatever act or omission whose motivation we are searching for. If one is in a battle and trembles *and* runs away, or cries while curled up in a fetal position and hence cannot advance, then we judge that behavior to be a consequence of fear, and so confident are we of our judgment that we would not believe any one who behaved in such manner and said he was not fearful.

In peace the law of duress assumes that fear is excusing[17]; in the military fear is incriminating. In the civilian world one who succumbs to fear may plead duress to avoid criminal liability; but in battle the soldier may not succumb to fear unless a substantial number of his fellows give in at the same time. If he is the only one (or one of few) who gives way we judge him to be of insufficient firmness and thus culpable. In cases of common law duress the defendant is measured against a norm whose constraint on actual behavior is hypothesized by figuring what the "reasonable man" would do under like circumstances; but in battle the norm is situated concretely: we know whether most held firm, or whether most didn't. If most don't hold firm they are all off the hook, for we do not, in the Roman style, cast lots and decimate the battalion[18].

[15] Essays I.54, trans. *M. A. Screech,* Michel de Montaigne: The Complete Essays (Harmondsworth 1991) 349.

[16] At stake is the misery of constipation vs. the plague of diarrhea. Modesty produces the former, fear the latter, but that is not always the case either since bearing down under fire and artillery shelling can produce the former. See *Humphrey Cobb*, Paths of Glory (1935; rpt. Athens 1987) 4: it is not diarrhea but constipation, contrary to popular opinion, that is the disease of the front. The Germans have the latrines zeroed in and so you hold it; see also *Modris Eksteins*, Rites of Spring: The Great War and the Birth of the Modern Age (New York 1989) 226, on the leitmotif of excremental concern in WW1.

[17] The American Model Penal Code (§ 2.09, cmt. 2) is concerned to make sure the actor's "cowardice" doesn't excuse him but not by going so far as to demand that "heroism be the standard of legality".

[18] In the French army, however, as late as the Great War, a man selected by lot from each company of a badly failed regiment could be executed; see *Alistair Horne*, The Price of Glory: Verdun 1916 (Harmondworth 1964) 64. Such an occasion forms the substance of Cobb's novel.

Gentle offense vs. craven defense

Fear has been read in as an element only in the specific charge of cowardice in paragraph 5. But it is also the psychological and social *éminence grise* in other provisions. Paragraph 2 deals with the shameful abandonment or surrender of men, a position, or material; paragraph 8 deals with the willful failure to do one's utmost to encounter the enemy. Paragraph 8 can be seen as the failure to give cause to the enemy to violate their version of paragraph 2; that is, the most desired outcome of your aggressive moves is to cause the enemy to abandon shamefully what it is their duty to defend. The "shamefully" explicitly makes this a moral issue, as well as a legal one. Paragraph 2 involves the kind of mettle needed to defend properly, paragraph 8 the kind needed to offend or attack. And although we understand failures under each provision to involve cowardice, it is not clear that these cowardices carry the same moral weight or are understood in quite the same way.

Courage on defense seems to demand a different mix of virtues and talents than courage on offense, and it may be that cowardice also varies with the different styles of courage demanded. We can, I think, imagine someone who is perfectly courageous when attacked, who will not flee, who will even die before abandoning the fight, who at the same time does not have the ability to initiate violence, who, if not quite a mass of quivering jelly, may tend to find too many reasons, with all the trappings of an admirable prudence, as to why it would not be in anyone's best interests to go over the top: a slacker. A person constituted like this would not strike us as a psychological impossibility. In fact U. S. Grant complained that such was exactly the problem with one of his generals – G. K. Warren: Warren was able to see "every danger at a glance", too many dangers apparently and he delayed moving until he had made exacting preparations for each of them with the result that he never got to his appointed place in time to coordinate with others. But still "there was no officer more capable, nor one more prompt in acting, than Warren *when the enemy forced him to it*" (emphasis supplied)[19]. Nor is the obverse unimaginable: someone brave in the attack, but cowardly in defense. Some have suggested that this describes Mike Tyson's moral failure in his fights with Evander Holyfield, who when his ominous aggressiveness failed to cow the opponent he either folded sullenly or folded violently, but in such a way that announced he was quitting the field. Aristotle may have had such a type in mind in

[19] Personal Memoirs of U. S. Grant, (1885–86; New York 1990) 543, 580, 701–02. A refined ability to discern risk and difficulty may be in some respects necessary to a field general, but such a capacity also tends to prompt despair or indecisiveness in all but specially endowed sensibilities. But we can also see Warren's reluctance on offense as no smirch on his general courage at all. Warren is a general. That means his offensive designs do not expose him to any greater bodily risk than defense does. His reluctance on offense is about risking his men. He is cautious on offense because he doesn't want to see his men die; he is quick and prompt on defense because he doesn't want to see his men die. Grant's gift as a general, and gifted he was, was not to have Warren's scruples on this precise matter.

his rather implausible portrait of the rash man, who turns cowardly the moment he experiences any real resistance[20].

Consider a special kind of failure on offense described by Abner Small, a union officer, recalling the battle at Fredericksburg, in which Federal troops were massacred as they charged repeatedly over open ground against Confederate guns and soldiers safely placed behind stone fences, a kind of Union anticipation of Pickett's charge or of the horror of July 1, 1916 on the Somme:

> I wondered then, and I wonder now equally, at the mystery of bravery. It seemed to me, as I saw men facing death at Fredericksburg, that they were heroes or cowards in spite of themselves. In the charge I saw one soldier falter repeatedly, bowing as if before a hurricane. He would gather himself together, gain his place in the ranks, and again drop behind. Once or twice he fell to his knees, and at last he sank to the ground, still gripping his musket and bowing his head. I lifted him to his feet and said, "Coward!" It was cruel, it was wicked; but I failed to notice his almost agonized effort to command himself. I repeated the bitter word, "Coward!" His pale, distorted face flamed. He flung at me, "You lie!" Yet he didn't move; he couldn't; his legs would not obey him. I left him there in the mud. Soon after the battle he came to me with tears in his eyes and said, "Adjutant, pardon me, I couldn't go on; but I'm not a coward". Pardon him! I asked his forgiveness[21].

This passage is remarkable not just for the substantial literary talent it reveals, but also for the penitent self-understanding of its author, an officer, who has the moral courage to beg forgiveness of one of his men who cannot bear the disgrace of one interpretation of his failure to advance. This is also an account of weak legs, one of many that could be culled from war memoirs and courts martial, with all the particular moral ambiguity that such cases reveal. The soldier's spirit, it seems, was willing, but his flesh was weak. His body just would not respond to the dedication of his will to do the right thing, to go forward. That is one view of the matter: the soldier's view it seems. There are other ways of looking at it.

Weak legs are a near unfathomable mystery. It is the mind-body problem in spades, not as an intellectual exercise, but sadly offering this soldier his most dignity-preserving defense. Without a convincing account of mind and body, emotion and body, conscious and unconscious, we do not know how to apportion blame as between body and will. Though this soldier's fear may be generated unconsciously by brain processes that are old enough evolutionarily to be available also to reptiles, he also has self-consciousness, and we cannot read his weak legs without paying heed to his own view of what happened to himself. His own bewilderment, anguish, and frustration with his will's inability to effect his conscious good desire to acquit himself well is not quite the same as the classic case of weakness of will, in which the will is without means to overcome conscious *bad* desires. All his conscious desires are proper.

Here the will is undone by we know not what. Unconscious desires to flee? Or something more primitive than desire, pure automatic freeze reflex? Or does he

[20] Nicomachean Ethics 3.7. For a fuller exposition see *William Miller*, The Mystery of Courage (Cambridge 2000) 148–56.

[21] *Small*, 70–7. As the quoted passage readily reveals, Small possesses no small literary gift.

will his weak legs but self-deceive into thinking he has willed otherwise? Are weak legs a peculiarly male form of hysteria? Surely some instances resemble classic cases of hysteria, as when the legs give way when ordered to attack, but remained hysterically paralyzed as part of more generalized shell-shock, combat stress, or just plain cracking up[22]. Might he know he fears and intends to indicate that he does not ratify his fear; he means to move on in spite of it and is desperately ashamed that an undesired desire for safety is causing his body to defeat his desired desire to move forward? To his mind he is not a coward, even though he couldn't go on. Most cowards's legs remain quite serviceable for running away, but this man's legs do not let him flee either. Cowards flee, not him; he just can't go forward: "I'm not a coward", he says with vehement conviction.

Who or what to blame, who or what to understand, excuse, pardon, or convict. Mr. Small's own theory varies with the exigencies of the setting and no doubt ours would too. In the heat of battle Small was not generously disposed toward the shaken soldier. In battle Small's interests were such that he must hold the soldier strictly liable for the poor performance of his legs, whatever the source of their weakness. He had just grounds for suspicion, for weak legs are so easy to fake. Small's man sells the sincerity of his excuse, however, but only once the battle is over and Small has time and quiet to ponder the mysteries of courage and cowardice is he willing to accept the excuse. The soldier not only now sheds tears of frustration, contrition, and shame, but he had also rebuffed his officer's accusation as a man of honor would: he gave Small the lie, the traditional manly challenge to a duel upon an accusation of cowardice. The poor man means well in the aftermath and Small's lack of certainty as to the psychological and physiological components of weak legs make him incline toward lenience and thus believe the soldier meant well on the field of battle too. The statute punishing "willful failure to engage" the enemy follows Small in giving some credence to a weak-legs defense, for weak legs are not understood to occur willfully. If there was a mutiny it was of the legs, not of the will. He will be spared the firing squad. Though he can't help his weak legs he may still be in the martial world a coward, but in the more nuanced judgment of one civil war soldier "a good coward", one who tried hard to stick it out, though in the end he ran away every time[23].

Weak legs figure in soldiers' accounts as an insistent motif, seeming to stand as the emblem for the all kinds of fracturing that battle works on the unity of sense and sensibility, but mostly the split between mind and body. The body just goes its own way and the soldier looks on in dismay. This is the body that befouls the soldier's pants during shelling or in the midst of a charge; this is the body that sheds tears, sweats, faints and even instinctively feints. This also may be the same perverse body that thwarts male desire, as well as male will, as when a man "can't

[22] See *Joanna Bourke*, Dismembering the Male: Men's Bodies, Britain, and The Great War (Chicago 1996) 109–113.

[23] See the memoir of *Robert J. Burdette* , The Drums of the 47th (Indianapolis 1914) 101–08. Bad cowards, according to Burdette, find ways of falling out well before the battle starts.

verse and often ambivalent ways in how we talk about courage and cowardice: courage is heart, cowardice losing heart; courage is nerve, cowardice nerves; it takes guts to go forward, but the same guts cramp in agony or explode in diarrhea. (Note that when courage is playing on disgust's home turf rather than on fear's it takes "stomach", not guts, to overcome the horror.)

Like guts, legs play both sides of the fence; they are as likely to do their duty against a desire to fold as they are to fold against a desire to stay the course. Thus men march asleep, stand at their posts though asleep on their feet; the soldier would prefer to fall out of line, but his legs keep going with a will of their own. One of Tim O'Brien's characters in *Going After Cacciato* can consciously resolve to fall down, yet have his legs refuse to obey – "the decision did not reach his legs"[24]. Then there are the cases, often medal-winning cases, of those who fight on despite failed and very weak legs, who manage to continue when their legs have been mangled by mines or even severed by shells. Winner of a posthumous Medal of Honor, Private Herbert Christian, in action in Italy in 1944, had his right leg severed above the knee by cannon fire, but continued to "advance on his left knee and the bloody stump of his right thigh, firing his sub-machinegun", killing three enemy and thereby rescuing twelve of his comrades. He continued forward for another twenty yards to within ten yards of the enemy position where he killed "a machine pistol man" before he finally succumbed[25].

Irony is at the core of weak legs in all its manifestations; the body makes a joke out of our disembodied aspirations, and those aspirations repay the favor by making the body into a bit of joke itself. From the conventional case in which legs give out against the will of their owner, to the unconventional case in which they don't give out even when they are no longer there, Irony smirks from above or from wherever Irony has its mythic home. Weak legs are the governing explanatory force in incidents in which they have been metamorphosed almost beyond recognition. Robert Graves's dark eye gives us this account:

> So [Captain] Samson charged with 'C' and the remainder of 'B' Company ... When his platoon had gone about twenty yards, he signalled them to lie down and open covering fire. The din was tremendous. He saw the platoon on his left flopping down too, so he whistled the advance again. Nobody seemed to hear. He jumped up from his shell-hole, waved and signalled "Forward!"
>
> Nobody stirred.
>
> He shouted: "You bloody cowards, are you leaving me to go on alone?"
>
> His platoon-sergeant, groaning with a broken shoulder gasped: "Not cowards, Sir. Willing enough. But they're all fucking dead." The Pope's Nose machine-gun, traversing, had caught them as they rose to the whistle[26].

[24] *O'Brien*, Going After Cacciato (1978, New York 1989) 150.
[25] Committee on Veterans' Affairs, U. S. Senate, Medal of Honor Recipients (Washington, DC 1979) 517–18.
[26] *Graves*, Good-bye to All That (1929, New York 1957) 155–56.

legged soldier. The commanding officer finds his men unable to go forward; they, through a spokesman this time for obvious reasons, testify that they are not cowards; indeed they are as willing as can be ("Not cowards, Sir. Willing enough"), but being dead, their legs are simply unable to carry out their noble posthumous wishes. Weak legs, by hook or crook, come to explain the failure of most all failed charges. Death, in this bitterly comic tale, is merely a special and conclusive case of weak legs.

One of the more interesting instances of the weak-legs' problems is weak legs of the trigger finger. According to a well-known and very influential claim made by military historian General S. L. A. Marshall in 1946, only 15%, and in any event no more than 25%, of American World War II infantrymen ever fired their guns in battle, even once[27]. Marshall's numbers may not be plausible and they have been strongly and convincingly disputed[28], but for our purposes it is sufficient simply to note the phenomenon as a form of weak legs, however extensive it may have been. These same men did not run, but they could not or would not fire, even, he claimed, when they were being overrun in bonzai charges. They were "not malingerers ... They were there to be killed if the enemy fire searched and found them"[29].

Marshall offers two main explanations; one is the standard case of weak legs:

> When the infantryman's mind is gripped by fear, his body is captured by inertia, which is fear's Siamese twin. "In an attack half of the men on a firing line are in terror and the other half are unnerved." So wrote Major General J. F. C. Fuller when a young captain ... [Not firing] is the result of a paralysis which comes of varying fears[30].

The other qualifies as weak legs too, but a very unstandard case. In this explanation the idea is that people actually fear killing more than being killed. Your legs give out because you fear dying; your finger gives out because you fear killing. What do you expect, asks Marshall, after socializing our citizens in non-aggressiveness and in the value of human life: "[His upbringing] stays his trigger finger even though he is hardly conscious that it is a restraint upon him ... At the vital point, he becomes a conscientious objector, unknowing."[31] A colleague of mine who fought as a second lieutenant at T-Bone Hill in Korea offers another explanation, which Marshall dismisses: The soldier who doesn't fire at the enemy, he says, holds the magical belief that his kindness will be reciprocated[32].

[27] *S. L. A. Marshall*, Men Against Fire: The Problem of Battle Command in Future War (1947, New York 1966) 50–63.
[28] See the devastating attack on Marshall's implausible numbers by *Frederic Smoler*, The Secret of the Soldiers Who Didn't Shoot, in: American Heritage 40, 2 (1989) 37–45.
[29] *Marshall*, 59.
[30] 71.
[31] 78–79.
[32] *Marshall*, 71; communication from Yale Kamisar; see also *Michael Walzer*, Just and Unjust Wars (New York 1992) 38–43, for a discussion of the reluctance of soldiers to shoot at enemy

This same colleague raised another matter relevant to our theme. Weak legs may be the only way of raising the white flag on offense. When I asked him about his fears going up the hill he answered impatiently: "What the hell was I supposed to do? Raise a white flag on an assault? A cook or some rear-echelon guy can raise a white flag. But how do you raise a white flag in a charge?" Weak legs move in to fill the void raised by the comic incomprehensibility of surrendering as you go forward in an attack.

Cowardice on defense seems more craven than cowardice on offense. Our image is of begging not to be killed, turning tail and running, or simply despairing and not just not fighting, as on offense, but not fighting *back*. Failure under each provision, paragraph 2 or 8, is cowardly, and hence shameful, but only one offender, the miscreant defender, is branded shameful. Why the difference? There are several possible reasons. One involves the different stakes between losing as a defender and not measuring up as an aggressor. In the paradigm case we understand that the failure to defend means losing all; whereas the weakness on offense means you go home with your tail between your legs. But there is a home to return to. We are all expected to defend what is ours, our property and our loved ones. Consider too the almost ridiculous obviousness of this statement: the moral demand to defend to the utmost is greater than the moral demand to attack or aggress to the utmost. Even in aggressive honor-based cultures that is true. However fearful you are, you must defend; but no one expects everyone to volunteer to be the forlorn hope, the first through the breach in the wall. And as a psychological matter, we tend to find losses of what is already ours much more grievous than failures to acquire an equivalent amount of what is not ours.

The defender doesn't have the same kinds of choices the aggressor has or as many, for the latter is the moving party. It is aggressors who get to choose the timing, and even to determine that the battle will be on your turf rather than mine. The defender has no choice but to resist, even though he has some choices about how to carry this out: sometimes he must fight pitched battles, but other options are available, as long as they are understood to be forms of resistance. The Russians, for instance, have let the vastness of their land defeat its invaders until it was safe to assume an offensive posture; others have worn their attackers down with pesky gnatlike resistance, as Fabius did to Hannibal. But we should also note that Fabius had to muster great reserves of moral courage to persevere in the face of being thought cowardly by his countrymen for not engaging more aggressively[33]. Gnatlike resistance, though effective in the end, may in certain warrior cultures not look 'manly' enough to preempt accusations of poltroonery. The prudent warrior must always endure suspect glances and innuendoes about his fearfulness and lack of nerve. The statute may capture some little bit of that mistrust of the good faith of justifications for retreat and surrender, holding the defender of

who appear vulnerably human as when they are defecating, eating, looking silly, or just smelling the flowers.

[33] See *Polybius*, Histories 3.89.

hearth and home to a higher moral standard than the weak-legged attacker. The paradigm we see embedded in the statute – of invading aggressor vs. the defenders of the homeland – grants the attacker other options; it even allows him to plead weak legs from time to time, but the defender's legs must stand firm. And may be too we seem to feel that we have more right to ask legs to stand still than to move forward, by which ruse we simply restate the differing moral stakes in not defending as opposed to not offending.

Throwing away one's weapons

The prescription against casting aside one's arms has a long tradition. It is a triumph of the grim literalism that often characterizes law that this provision, paragraph 4, wouldn't be understood to be implicit in paragraphs 1 (running away), 2 (shameful abandonment of a position), or 5 (cowardice), but especially 1. Running away, except as perversely understood by the military courts, and casting away one's weapons, as I noted earlier, are both meant to capture the quintessence of martial cowardice: headlong panicked, *sauve-qui-peut* flight:

Well, what if some barbaric Thracian glories
in the perfect shield I left under a bush?
I was sorry to leave it – but I saved my skin.
Does it matter? O hell, I'll buy a better one.[34]

The comic energy of Archilochus's little song is parasitical on the power of the norms he so gleefully confesses to violating. The wit of such self-mockery, at such brazen shamelessness, is only possible because the norm against running away and debarrassing oneself of one's burdensome shield demands some kind of psychic homage even when not adhered to[35]. But there is another kind of heroic inversion that takes place here. To be this cheerfully a coward in a warrior culture may itself mimic courage: such unapologetic shamelessness requires a certain kind of fearlessness, as Aristotle recognized[36]. This is the fearlessness that informs what we might vulgarly call the "I-don't-give-a-shit-what-they-think" attitude in matters touching upon reputation, an attitude as unfathomable to most of us as is the berserk courage of the kind that we associate with Alexander the Great. In keeping

[34] http://cac.psu.edu/~ltv100/Classics/Poetry/archilochus.html
[35] Tossing away the shield, *rhipsaspia*, was especially grievous in the phalanx style of fighting Archilochus was engaging in. Those accused of *rhipsaspia* "were assumed to have been among the first to have abandoned their friends in an effort to save their own lives during a general collapse of the phalanx; that is, they had endangered the men who kept their arms and were notable, or had no desire, to make good such an ignoble escape"; quoted from *Victor Davis Hanson*, The Western Way of War: Infantry Battle in Classical Greece (1989, New York 1990) 63. Plutarch notes that, unlike helmet and breastplate, a man carried his shield "for the sake of whole line"; because an unbroken shield wall was "virtually impregnable"; *John Lazenby*, The Killing Zone, in: *V. D. Hanson* (ed.), Hoplites (London 1991) 95.
[36] Nicomachean Ethics 3.6.

with his perversely inverted courage Archilochus refuses even to allege fear as the reason for casting away his shield. It is all a matter of rational choice. His weapons, as he observes, are completely replaceable, something which he is quite pleased to believe is not the case with himself. And although Archilochus knows he will have to fight again (that is one of the risks that running away does not completely resolve unless he is capitally punished for it), there is not the least hint he will do better next time.

Archilochus's wit also reveals that virtue funds a powerful comedic impulse dedicated to deflating virtue's own pretentiousness and goody-two-shoes piety. Archilochus's comedy celebrates a life-affirming world of very unrigorous virtue, what somber professors of virtue might even call vice. Life-affirming affability, as unrigorous a virtue as we might find, is not a trait we think of as likely to describe the hero as it does the amiable hedonist, who means well and even does well as long as life or limb are not at stake, who prefers to keep fear safely relegated to worries about whether the sauce is sufficiently piquant to satisfy his guest's palate. Yet unlike the other cardinal and theological virtues, courage thrives in certain restricted comedic veins. It is not just the butt of the comedic; in some cultural settings the heroic style means to be funny with the nasty in-your-face mordancy of gallows humor. Here the mockery is not directed against the virtue of courage at all, but against all arguments that would undermine it, such as life itself.

With Archilochus compare the keen comedic eye of this confederate soldier running away to beat hell at Sharpsburg:

> Oh, how I ran! Or tried to run through the high corn, for my heavy belt and cartridge box and musket kept me back to half my speed. I was afraid of being struck in the back, and I frequently turned half around in running, so as to avoid if possible so disgraceful a wound. It never entered my head to throw away gun or cartridge box; but, encumbered as I was, I endeavored to keep pace with my captain, who with his long legs and unencumbered would in a little while have far outstripped me but that he frequently turned towards the enemy, and, running backwards, managed not to come out ahead in this our anything but creditable race[37].

John Dooley, our soldier, runs his anything but creditable race desperately aware of the comedy of trying to maintain the appearance of honor in headlong retreat: don't get shot in the back if you can help it and don't throw away your arms, although you realize that they have less than zero value to you now, pure dead weight. Dooley is a wit after a fashion. He is not unaware of a kind of double competition with his captain, one to see who can get away the fastest and the other to see who can get away the slowest. He envies his captain's benefits of rank: no pack, they are in a wagon somewhere, and no rifle. By this time the weapons of officers are becoming symbolic indicia of rank, like the pistols, whistles, and walking stick of the British officers who led their men into no-man's-land in the Great War. The ambivalence in the account and in the action itself gives the comedy multiple layers.

[37] *Joseph T. Durkin* (ed.), John Dooley, Confederate Soldier: His War Journal (Georgetown, UP 1945) 46–47.

The heroic ideal of standing your ground at all costs turns out to give way before fear and not an altogether irrational fear, though as with Archilochus the fear is not mentioned directly but supplied by the comic action, giving it its motivating force. Both John Dooley and his captain are still giving respect to the norms they are not quite living up to by adhering to some of their forms: John will not throw away his gun or ammunition – although by denying the thought ever entered his head he is merely saying that he resisted a temptation that had indeed entered his head – and both he and his captain engage in the farce of trying to prevent the ignominy of being shot in the back by running backwards every now and then.

It is the comic voice with its almost self-delighting self-mockery that indicates this is not culpable cowardice. The comedy is probably the surest sign that Dooley and Archilochus are not alone in flight. The whole army is in a route. This is a pure case of running away to live to fight another day as long, that is, as they do not throw their weapons away. Dooley's attempts to maintain the forms of honor indicate quite well that he means to be back. Even Archilochus means to return with his new shield, but by throwing his old one away he committed an offense that Dooley may have wanted to commit, but his implicit contest with his captain to see who could minimize their mutual dishonor kept him honest. Archilochus, however, does more than just disarm himself, he arms the opposition.

From the military's point of view casting aside arms is a very serious matter. It renders the soldier useless; it arms the opposition, and in societies in which the work and material that was congealed into the weapon represented the most valuable objects in the culture, throwing away weapons was culpable waste, even sacrilege. But non-military moralists take a kindlier view: Aquinas was willing to find the soldier who cast away his shield less sinful than the licentious man, because "grave fear and sorrow especially in dangers of death, stun the human mind, but not so pleasure which is the motive of intemperance"[38]. But Thomas might also be under-estimating the deliberative capacity of the weapon dropper. Dooley deliberately refrained from casting his aside; others might deliberately do so, for they might reason that an unarmed man might look like a non-combatant and thus fade by degrees into a general population, a plausible motive before uniforms made a general appearance in the late seventeenth century.

[38] Summa Theologiæ 2a2æ. Q. 142. Art. 3. Is Aquinas right? Is it harder to stand and fight than to resist pleasureful indulgence? Don't we speak loosely of the "courage" it requires to refrain from proffered pleasure? In any event commanders and their men knew that the pleasures of alcoholic indulgence often served to stun the human mind in a way that worked to cabin fear.

False alarms

Paragraph 7 punishes capitally the person who causes false alarms and it must be seen as the companion of paragraph 3 which punishes the person who "through disobedience [or] neglect ... endangers the safety of command, unit, [or] place". One provision sets limits on jitteriness, the hyperalertness and excessive imagination that if not quite inventing danger overrates its imminence; the other seeks to limit the lack of jitteriness, the lack of imagination or insensibility that lets the sentry fall asleep on his watch. Falling asleep on the watch is a strict liability offense. It does not matter that you didn't mean to. And the same is the case for causing false alarms. There are no requirements in the provision that one cause them knowingly or intentionally and no cases have read them in[39]. It is not only the prankster that set off the fire alarms in junior high, though he too, that the law can put before the firing squad, but the nervous wreck, the poor high-strung, anxious soul, who suffers from being too alert to the prospect of danger and has not managed to develop the cool or the expertise that distinguishes between the general danger of being in the presence of the enemy from the particular imminent danger that requires immediate and total mobilization of one's resources. This poor soul does not feel the difference between the state of daily alertness to the possibility of alarm on the one hand and being alarmed on the other, between normal vigilance and the sense that something indeed is up. For we suspect that this is an imaginative soul and much too sensitive. Risk to him is not a probabilistic assessment, but certain danger. His lot is constant insomnia and nausea.

This type of false alarmist, however, may also be the very man who is asleep at his post. Given that for him there is no distinguishing between the various levels of danger or its imminence, sleep, never easy to achieve under the best of circumstances, might just as well come at one anxiety-ridden time as another[40]. But we usually think of the sleeping sentry as utterly opposed to the false alarmist, as a study in insensibility, an anxietyless person for whom sleep has always been easy. And it is for this reason alone that he is simultaneously an object of the nervous insomniac's envy and his contempt.

The sleeping sentry and false alarmist contrast in other ways. As a purely Darwinian matter the species needs an alarm system that engenders some false positives or it wouldn't be sensitive enough. A system that gave no false positives would have left us all in the viscera of our predators or slaves of our more sensitive enemies. But an alarm system too responsive would, as Goffman noted, have us

[39] The Manual for Courts-Martial, 1984 IV.23. Art. 99, makes it an element of the offense that "the alarm was caused without any reasonable or sufficient justification or excuse". *Winthrop,* 619, is explicit that knowledge of its falsity or the specific intention to occasion a false alarm need not be shown.

[40] It is not rare to find reports of troops falling asleep under intense bombardment, not in nonchalance or even in exhaustion, but as a kind of ostrich-like escape from intense horror. See the examples cited in: *Richard Holmes*, Acts of War: The Behavior of Men in Battle (New York 1985) 267.

spending all our time in dither and not in grazing, digesting, sleeping, playing, or whatever we need to do to survive[41]. This is why we divide the labor; the sentry is to be vigilant so that the rest can sleep. We want our sentry to be experienced and cool, but not insensitive or dull. We need him alert, or if not alert, alertable by all those signs that, if we lived in a movie, would be accompanied by ominous music.

The false alarmist and sleeping sentry impose costs in different ways. The false alarmist runs up the bill each time he occasions a false alarm. To the obvious costs of wasted energy spent mobilizing, the physiological costs of misused adrenaline, mis-summoned fear, and loss of sleep should be added the disclosure of one's positions to the enemy by the mobilization or merely by the panicked firing into the threatening night. But the greatest cost is that false alarms lead to mistrusting the next true alarm. And although we may recoup some of these costs by the disbelief of future *false* alarms, that would be a penny-wise and pound-foolish accounting, for the alarm would not be disbelieved because false but disbelieved because of the belief that all alarms are more likely to be false than true. Such a belief leaves one effectively without a functioning alarm system. The jittery false alarmist, after all, does not *mean* to be false and in other settings his sensitivity may be a most valuable asset. True, its value suffers serious diminution if he is not right most of the time. And if he were right most of the time we would consider him a man of experience and discernment, not a jittery pathetic wreck whom we can imagine putting up before the firing squad.

If the false alarmist imposes serious costs each time he blows it, that is not the case with the sleeping sentry. His sleep imposes harm if the attack occurs on his watch, otherwise his sleep, though negligent or even reckless, yields no great harm. But not quite. If others suspect he is asleep or know he is asleep then they must increase their vigilance to compensate. Their anxiety levels rise and they begin to expend energy in dither that could have better been spent relaxing. The sentry functions in the way catastrophe insurance functions. Most days go by without us having gained much for carrying such insurance except the ease of mind having it confers. The sentry provides such insurance. He is meant to allow others to rest secure in the belief that his eyes and ears are just as serviceable at the moment as theirs would be.

To the extent that insensibility produces fearlessness it may be very useful in the midst of combat either on attack or in defense. But in the myriad of soldiers' memoirs I have been plowing through fear is not the only psychically and morally destructive emotion that threatens soldierliness. Fear dominates in battle or in immediate anticipation of it; but soldiers do more than fight. They also stand and wait. Boredom defeats almost as many soldiers as fear. If fear defeats our false alarmist, boredom defeats our sleeping sentry, so bored he cannot generate the imagination to fear the consequences of his boredom.

[41] *Erving Goffman*, Relations in Public (New York 1971) 239.

Omnipotent fear

No one, however, doubts that soldiers are afraid[42]. There have been through time different views as to whether it was acceptable for them to admit openly that they were, but fear, was clearly always a gloomy and tormenting omnipresence. Those few who qualify as genuine berserks aside, the dominant passion in battle, the one each party expects its comrades and its opponents to be intimately involved with, is fear. We might see all heroic literature as a desperate attempt to keep it at bay. One pays homage to it by working hard to deny it in oneself and to insult one's opponent with it. Agamemnon has images of Terror and Panic painted on the sides of his shield[43]. Before the battle of Gaugamala Alexander sacrificed to Fear. Beowulf drinks and boasts the night before seeking out Grendel to raise the moral stakes of failure. Even Achilles, if not quite fearful, doesn't dare fight without armor as some of the Norse berserks would do. And Alexander again, who was surely a berserk in combat and feared no one in the host arrayed opposite him, nor the whole host for that matter, was still rather paranoid at times about suspected plots against his life from within his own ranks. (There is an interesting idea to pursue here: the different issues raised for the demands on our courage by our fear of enemies as opposed to our fear of friends. And this would hardly be solved by the fiat of declaring that our friends are those whom we do not fear.)

Commanders have always assumed the fearfulness of their soldiers. The subtlest observer of all, Thucydides, noticed the tendency of battle lines to extend by degrees to the right so that each army slowly flanked its opponent's left as it too moved to its right:

> This is because fear makes every man want to do his best to find protection for his unarmed side in the shield of the man next to him on the right, thinking that the more closely shields are locked together, the safer he will be[44].

Exhortation speeches try to counter fear and reluctance with other passions: revenge, perhaps, anger, confidence, bloodlust, and often, in extremis, desperation. But no commander trusted to mere words. The Persians whipped their men to battle; many a general used his cavalry to deter his fleeing troops more than to engage the enemy. One military theoretician, Raimondo Montecuccoli, a general on the Imperial side in the Thirty Years War, spent the bulk of his treatise on how to delay just long enough the natural cowardice of one's own troops to give enough time for the natural cowardice of the troops on the other side to assert itself. He lists some of the devices one may use to keep one's men on the field: let the enemy cut off lines of retreat (!), forbid the inhabitants of nearby friendly cities from

[42] To claim someone is fearless or acts fearlessly is often meant only to register awe on the part of the speaker; no descriptive claim is being made about the actor's inner state. The heroic action is understood to have been accomplished "as if" the actor was without fear. For a fuller treatment of the motives of courage see: *Miller*, The Mystery of Courage.

[43] Iliad 11.35

[44] *Thucydides*, The Peloponnesian War 5.71.

admitting any of the troops, dig trenches behind your troops, burn bridges and ships, delegate certain men to shoot retreating soldiers[45]. When arraying the troops and forming their lines, Raimondo advises embedding the cowards in the middle of the ranks behind the valorous ones whom they can follow at less risk to themselves and hemmed in by the ranks behind them[46].

One can also combat fear by instilling confidence, he notes. Nor does it matter that that confidence is ultimately indistinguishable from those crude self-deceptions that actually on occasion do succeed in bootstrapping us into performing better than we have any right to expect. "One may conceal or change the name of the enemy general if he happens to have a great reputation." Confidence can also be acquired by the indirection of stimulating contempt for the enemy by

> presenting naked prisoners to the soldier. Once they have viewed the captives' fragile, flabby, filthy, diseased, and infirm legs, as well as their hardly valiant arms, then men will have no reason to be afraid, for they will have had the chance to see the kind of people with whom they must fight – namely, pusillanimous, humble, and tearful individuals.

While cowards like me and a good portion of my readers may find in this display additional reason to desert or flee rather than fight to the death Raimondo thinks otherwise:

> Indeed, the troops may come to fear the state of bondage themselves once they have perceived the wretched fate of such afflicted, shackled, castigated, and emaciated persons, and they may conclude that it will be better to fall in battle rather than, dragging on their lives unhappily, necessarily experience such contumely and calamity[47].

Our statute joins Raimondo in adding to these *in terrorem* motivational exercises. As we have seen, the statute authorizes the killing of cowards, slackers, craven defenders, jittery false alarmists, and supposes to dissuade these behaviors by taking from them exactly what they sought to save: their lives. The statute testifies to the power of fear as a motivator: make them fear the court martial as much as they fear the enemy. This is probably not the wisest strategy since it gives the soldier no reason, once the crunch is on, to prefer one outcome to the other; and it loses all its force should he fear the enemy more. Moreover, it is not uncommon that the coward in battle faces the firing squad with dignity and courage. Such was the case with Eddie Slovik, who spent his last moments trying to alleviate the anxiety of those who had to execute him. The fear that motivates cowardice may not only be the fear of death, but the inability to suffer Death's malicious teasing. Certain death, whether by suicide or firing squad, may be a kind of relief, a good-bye to all that.

The statute also hints of another motivating fear; it is the fear of being disgraced as a coward, the fear of shame. This is hardly a startling revelation. It is a common-

[45] *Raimondo Montecuccoli*, Sulle battaglie, in: *Thomas M. Barker* (ed. and trans.), The Military Intellectual and Battle: Raimondo Montecuccoli and the Thirty Years War (Albany 1975) 82.
[46] 92.
[47] 133–134.

place, the theme of honor itself which demands that fear of losing esteem and esteemability is worse than death. In this light the law can be seen not only as the scourge of those too shameless to be properly motivated by their sense of shame, but also as a bit player in backing the norms that support the sense of shame. The law then, though mostly negative in its means of motivating, also has a positive role to play in securing the behavior it desires.

To conclude, reconsider the statute. One may wonder at the impossible standard it sets. The soldier is to do his duty, but the duty demanded seems almost to be beyond the call of duty. It is as if the law asks that soldiers not only not be cowards, but that they be courageous as a matter of routine. But then consider briefly paragraph 9, the one provision we have left unnoticed until now. It governs, among other things, the obligation to rescue. In contrast to the heroic demands of the other provisions not to run, not to fail willfully to advance, not to abandon shamefully a position, we move to the world of prudence: not to "afford all *practicable* relief". Of course, it doesn't make sense to throw good bodies after bad unless it is rational to do so. Presumably one must balance the likelihood of saving the endangered person against the risk incurred to save him plus some value assigned to the overall morale of fighting men who will fight harder for a polity that cares to rescue them. Still it was hardly irrational for the men charged with saving Private Ryan to question why eight of them should be risked to save someone whose only special claim to rescue was that he was the last survivor of four brothers[48]. Yet even practicable and rational rescue hardly dispenses with the need for courage on the part of the rescuers.

It is precisely in the domain of rescue that twentieth-century battle has made its particular addition to the styles of the heroic. In the Great War stretcher bearers get Victoria Crosses and in Vietnam medics get their Medals of Honor. In the Civil War the same medal was more likely to be awarded for rescuing the regiment's colors. Is it that the anti-glory, anti-honor discourse has finally become sufficiently suspect that we prefer the heroism manifested in the greater love that lays down or risks its life for another as against those acts in which we suspect that the motive may be glory itself? Heroic culture would consider glory and honor as fine a motive as there could be; we mistrust it precisely because it seems, in spite of its frequent rashness and irrationality, self-regarding and even self-interested, even though it must risk self-sacrifice. By setting our heroic stories in narratives of rescue are we arguing for a kinder styled heroic: selfless, fearless, and life-saving rather than life-destroying[49]? Or is it that we see the medic, the stretcher bearer, as needing no special physical attributes, that they indeed are everyman or indeed every woman, that they hold for all of us the possibility of grand action, even if we

[48] Saving Private Ryan (1998).

[49] Rescue narratives only begin to become common when medical care rises to a level at which the wounded and disabled are likely to survive if saved.

do not have the body of Ajax or the spirit of Alexander or the ability to kill other human beings even when it is in our best interests to do so[50]?

But for most of us I would guess that what is most salient in this statute is not its substantive commitments so much as its formal attributes. For surely the statute's most remarkable feature is its redundancy, which in a statute that seeks to punish capitally becomes a redundancy of both literal and figurative overkill. Yes, the statute excuses cases of weak legs as long as the mind did not willfully collude with the body to produce them and puts no extraordinary demands on the rescuer, but it otherwise is quite clear about reserving the firing squad for cowardice motivated by fear and if that lets too many off the hook of culpability it specifically includes the jittery alarmist, the person who turns tail for whatever motivation other than fear, the slack attacker, the person who casts away his weapons, the quiveringly craven defender, and the exuberant looter.

The statute received its present form in 1950 when it was cobbled together from the Articles of War and the Articles for the Governance of the Navy into a Uniform Code of Military Justice. Most of the clauses were already extant in the British Articles of War of 1769 which in turn were enacted virtually verbatim as the American Articles of War of 1776. In them are found the strictures against looting, shameful abandonment of a position, casting away arms, and causing false alarms, but not the clauses against cowardice and failure to engage, that is, the weak legs provision. Those have their origin in the navy articles[51]. Weak legs turn out to be a certain kind of sea legs. Not that the army couldn't always get the weak-legged advancer under various general orders[52], but the navy was concerned less with the legs of its sailors, at least until they might have to board the enemy ship, than with the will of a captain to make his ship advance. The sailors could be standing on the deck with legs quivering and still be advancing because the sailor was being borne by a higher will, willy-nilly. The provision that I have been dealing with as a weak-leg provision is historically not about legs at all, but about a naval captain's weakness of will.

One final observation about cobbling, statutory revision and uniform laws in this world of uniforms: it was the modern reform, the modern consolidation of the articles providing a uniform law for all the armed services that produced the archaic, casuistic, ad-hoc absurdist look of the present statute, not the remnants of pre-eighteenth century diction still lingering about in shameful abandonments and the casting away of arms. It was the 1950 consolidators, that is the modernizers, who made this statute look more like a law of Æthelberht or Alfred than a law of the most advanced industrial power of the 1950-world.

[50] *Horne*, The Price of Glory 181–83, writes that the most deserving of the title of hero at Verdun were those who occupied the humble categories of runners, ration parties, and stretcher-bearers. Runners had to go it alone; their courage was solitary; stretcher bearers couldn't dive for cover amidst the exploding shells. Stretcher bearers were generally recruited among the company's musicians, or from its complement of the miserably unmartial.

[51] An Act for the better government of the navy, 1800. Sec. 1, Arts. 4–6.

[52] See *Winthrop*, 623 n26.

Henk S. Versnel

Writing Mortals and Reading Gods
Appeal to the Gods as a Dual Strategy in Social Control*

Questions of definition**

An invitation to participate in a symposium on social control comes as a thrill – in more than one sense of that word – for the person who happens to be ignorant of what social control *is*. This, indeed, was the situation of the present author. So I asked those colleagues and friends who are good at difficult words, if they could tell me what social control was. Unanimously and categorically, they refused to respond to such a silly question, since, they told me, *everybody knows* what social control is. A person who feigns ignorance on this point tries to pull your leg. All this did not help me as much as I had hoped.

So, finally and reluctantly being forced to consult the relevant literature, in particular some standard encyclopedias of sociology[1], it was a great relief to discover that the reason why I did not know what social control *is*, is that social control *does not exist*. What do exist are definitions of the concept. Many a specialist devotes the first part of his scholarly life to creating his own definition, while spending the rest of it on proving that all other definitions are wrong (or vice versa)[2]. As

* I wish to express my gratitude to my (in every sense of that word) magic class at Berkeley (1999), for criticism of form and content of the present paper, in particular to Laura Gibbs who showered me with questions, corrections and suggestions (and to whom I owe a reference to the maker of what I consider to be the most helpful definition of social control). Also many thanks to Angelos Chaniotis, who read a draft of this paper and offered many helpful suggestions and corrections, while also allowing me to benefit from an unpublished article (Chaniotis forthcoming 2001). Henrike Florusbosch did wonders in severely eliminating or adding punctuation and quotation marks (and other ill-defined niceties) wherever she saw fit to.

** Scholars who believe that research can be done without defining the object of their research may skip this section. See also n.6.

[1] *J. Gould, W. L. Kolb*, A Dictionary of the Social Sciences (New York 1964) 650–52; *A.* and *J. Kuper*, The Social Science Encyclopedia (London 1985) 765–68; *E. F.* and *M. L. Borgatta*, Encyclopedia of Sociology 4 (1992) 1818–23.

[2] But compare n.6.

a bonus I also found out that having a *wrong* definition is far worse than having *no* definition, the first being unforgivable, the latter only unimaginable.

Fortunately, the horrifying variety of individual definitions allows for a few – no less diverging – lowest common multiples. One group – in the wake of the founding father of the term social control, E. A. Ross[3], – takes social control as "concerned with that domination which is intended and which fulfils a function in the life of society", which in the end practically amounts to the idea that social control equals any collective activity that somewhere contributes to social order. Another, more recent, trend, following its best-known representative Talcott Parsons[4], defines social control by reference to deviant behaviour: "Every social system has, in addition to the obvious rewards for conformative and punishments for deviant behavior, a complex system of unplanned and largely unconscious mechanisms which serve to counteract deviant tendencies." These two definitions represent radically distinct positions in their general purport as well as in their particular implications. They reveal that social control may be viewed either as intentional or as unconscious, as an institutional system or a *conscience collective,* as external or internal, as reactive or deterrent, etcetera etcetera. To single out one specific distinction: it is obvious that the first trend will take law and jurisdiction as a central marker of social control, whereas the latter lays emphasis on mechanisms beyond the well-defined institutional powers of repression. The contrast between the element of enforcement through an institution (or its representatives) and less formal types of social pressure exerted by individuals or groups seems to draw a major dividing line in the modern discussion.

It is, then, (again) a relief to come across a series of studies by J. P. Gibbs[5], who, first, provides a systematic and precise critique of the major theories, showing that more often than not they are circular, tautological, unprecise, hence unhelpful and in fact misleading, secondly, provides a clear general definition, which – beyond its appeal for various other reasons – has the great advantage of avoiding a fatal flaw typical of most others, by rigorously excluding other ill-defined concepts, such as social, deviant, power, or control, and, thirdly, suggests that "social control is not one thing – a unitary, homogeneous phenomenon. Rather, *social* control is described as any one of five types of control behavior."[6]

[3] *E. A. Ross*, Social Control: Survey of the Foundation of Order (New York 1901).
[4] *T. Parsons*, The Social System (New York 1951).
[5] *J. P. Gibbs*, Norms, Deviance, and Social Control: Conceptual Matters (New York, Oxford 1981), which will be my main source; *idem* (ed.), Social Control: Views from the Social Sciences (Beverly Hills 1982); *idem*, Social Control, in: *A.* and *J. Kuper*, The Social Science Encyclopedia (London 1985) 765–68; *idem*, Control: Sociology's Central Notion (Urbana, Chicago 1989), Ch. 3: Basic Types of Control, Power, and Major Questions 43–75.
[6] And there is much more. In *Gibbs* (1989) 58, we read: "Yet any definition is preferable to a common practice in sociology – to use the term *control* or write on "social control" without defining either term (follow examples), let alone confronting conceptual issues and problems. One related practice is to publish an edited book bearing the title of social control without the slightest indication as to the sense in which the individual papers bear on the subject (follow examples)." Substitute "magic" for "social control" and you have a precise description of

Here is his definition: "Social control is an attempt by one or more individuals (the first party) to manipulate the behavior of one or more other individuals (the second party) through still another individual or individuals (the third party) by means other than a chain of command or requests." This definition merits praise for its cleanness. Gibbs' point of departure is his decision that the concept of social control requires three parties involved, which in a way is part of *his* answer to a most pertinent question raised by himself: "what is social about social control?" Consequently, his definition excludes what he calls *proximate* control, meaning control without a third party (as when a mother physically restrains her child); and it also excludes *sequential* control (as when X orders Y to order Z). Instead there are different types of control involved in his five types of social control of which I select the first two for treatment because they are the only ones that are directly relevant to my main argument[7].

"Social control is an attempt by one or more individuals (the "first party" in either case) to manipulate the behavior of another individual or individuals (the "second party" in either case) *by or through*:

1) the first party communicating to the second party some reference to a third party,

2) the first party manipulating a third party's behavior by communicating allegations about the second party to the third party."

The first type belongs to the category of *referential* social control. For instance, a child says to a sibling: "Give me back my candy or I will tell Mother!" Note that there are numerous different ways of telling the third party, and of communicating the message about this telling to the second[8].

The second type belongs to the category of *allegative* control, and is exemplarily conspicuous in – though by no means restricted to – tort law. This time the first party does not address the second but turns directly to the third party with his complaint. Yet it is still *control*, not *constraint*: a plaintiff cannot command a judge to compel the defendant to pay damages; rather the goal is realized by allegations about the defendant which the judge finds credible and evaluates negatively.

Gibbs (1989, 60) adds: "Although both allegative and referential control entail judgments by the first party about authority, normative standards, and credibility, the two are distinct. Whereas in referential control the first party does not presume that the third party will become involved directly, that presumption is essential in allegative control. *However, one and the same act can be both allegative and referential control*" (my italics HSV)[9]. This might suffice for my present issue. For

what is happening in another sector of the scholarly world. And then I have not even quoted ibid. 23: "Indeed, a pernicious belief is pervasive in sociology: constructive research and theorizing are possible without confronting conceptual problems (follow examples)."

[7] I quote from *Gibbs* (1981) 78, which is summarized in his other works.

[8] See the example infra in n. 9.

[9] In order to clarify that social control is not only about accusations and requests for justice or vengeance, I here add Gibbs's own illustration of this double strategy: "Although Hitler

we will find precisely this double strategy of social control in the material that I wish to discuss. But first I must add a few words on another fundamental series of studies, this time specifically concerned with social control in the ancient world.

Gibbs' broad but precise typology of social control covers both the informal types such as for instance gossip, and the formal, institutionalized types such as law or litigation – but only in so far as they involve three parties. Starting from a theoretical-conceptualist point of view, he thus levels the barrier between the two sometimes radically opposed schools described above. There is, however, another way to re-assess the rigid distinctions between these two categories, namely by showing that it is our modern legalistic conception of law and jurisdiction that is responsible for the all too harsh distinctions between justice as *belonging to* or *as contrasted with* social control. This is what David Cohen has done for Classical Athens in his innovative books of 1991 and 1995. On the basis of socio-historical and comparativist research, and with the aid of the evidence provided by modern Mediterranean anthropology, he showed that:

> The informal social control of gossip and reputation, though still vibrantly present and socially contiguous with the judgments of the courts, supplemented a radically democratic mode of social control in which the people as a whole (symbolically at least) directly dispensed a judgment which in this context could claim, as so many orations put it, to serve at once both justice and their interest. (1995, 188)

Not only did – in accordance with Gibbs' definition – both informal and formal strategies to force persons and groups to normative conformity belong to what we may call social control, but in Classical Athens there were no sharp boundary lines between the two at all. If Athenian litigation is just as much an aspect of social control as is gossip, we now learn that these two are far more mutually related than modern (law-)historians have realized. And, as Cohen shows, the historian ignores this at his peril: serious historical misinterpretation is the demonstrable result.

> In other words, legal rhetoric is made possible through an understanding of the shared moral judgments on which the political community is based. This rhetorical nature of Athenian litigation made it ideal as a democratic mechanism for social control and the clarification of social and political hierarchies precisely *because* the courts did not reach decisions purely through the interpretation of legal norms and principles and their application to a particular transaction. (1995, 191)
>
> The Athenian courts arrived at decisions in such a way as to make them a powerful vehicle for the articulation and expression of shared moral, social, and political judgments. As such, they provided a very powerful "democratic" mechanism for social control and for the regulation of competition among those vying for power, wealth, and influence. (1995, 192)

I mention this exposure of the essentially social nature of Athenian jury-litigation[10] not only for its fundamental significance to the concept of social control

engaged in Jew-baiting to gain support of German gentiles (*referential* control, with Jews as the third party), he may have acted also in the belief that it would provoke violence against Jews that would drive some of them from Germany (*allegative* social control, with Jews as the second party).

[10] For the complex and sophisticated interconnections of a community's normative "taxonomies" including their concomitant sanctions and control – and the official laws of the cen-

as applied to Greek society, but – perverse as it may seem – in the first place to announce and explain its absence from the following discussion. What is true and revealing for Athenian society, is not, or less so, for the societies which I shall discuss. My focus will be on different types of communities in different areas of – or even outside – Greece proper, where democracy either did not occur or was of a different vintage and where different judicial systems prevailed. And, secondly, the justice that I shall discuss was not in the hands of men but in the hands of gods.

Gods and justice in classical Athens

In a recent paper entitled "Strategies of Religious Intimidation and Coercion in Classical Athens" Robert Garland (1996), pursuing a line of research he had broached more than ten years earlier[11], investigates two related issues. The first concerns the strategies whereby the Athenian democratic system enforced religious conformity, in his words: "strategies to encourage and enforce religious obedience". This type of civic protection of the religious codes and – as sceptics would sneer – of the gods themselves against acts of impiety are of course best exemplified in the *asebeia* processes, which dominate the modern debate on the limits of religious tolerance in Athenian religion[12]. However, this is not my concern in the present paper[13]. The second issue, in a way its reverse, concerns the question of how individual or collective behaviour in classical Athens might be manipulated and controlled through an appeal to divine authority. Or, to put it

tral authority in modern Mediterranean communities see: *Cohen* (1991) 52–54. His chapters 2 and 3: Models and Methods I and II (1991, 14–69), should be compulsory reading for any student of ancient (and modern) Mediterranean societies.

[11] Religious Authority in Archaic and Classical Athens, in: BSA 79 (1984) 75–123.

[12] *E. Sandvoss*, Asebie und Atheismus im klassischen Zeitalter der griechischen Polis, in: Saeculum 19 (1968) 312–9; *K. J. Dover*, The Freedom of the Intellectual in Greek Society, in: Talanta 7 (1975) 24–54; *B. Kötting*, Religionsfreiheit und Toleranz im Altertum, Vortr. Rhein.-Westfäl. Ak. (1977); *A. Momigliano*, Freedom of Speech ad Religious Tolerance in the Ancient World, in: *S. C. Humpreys*, Anthropology and the Greeks (London etc. 1978) 179–93; *P. Garnsey*, Religious Toleration in Antiquity, in: Persecution and Toleration (Studies in Church History 21, Oxford 1984) 1–27; *Cohen* (1991) 203–17.

[13] This is not to say that *asebeia* trials cannot be exploited as strategies of social control in different ways, for instance as an instrument to eliminate persons who for some reason or other are undesirable or have raised envy. Socrates is the most notorious case in point. For twin accusations (religious and social or political) see: *Versnel* (1990) 116–8. However, the hidden social agenda is seldom revealed in explicit terms. A very telling exception is *Aesop.* 91: A sorceress made a profession of supplying charms and spells for the appeasing of the anger of the gods. She was assiduous in her business and thus made a comfortable living. But envious of her success, someone accused her of making innovations in religion, and prosecuted her for it in court. Her accusers succeeded and had her condemned to death. As she was led away from the court, someone shouted to her: "Hey woman! You made such a profit from diverting the wrath of the gods! Why can't you divert the wrath of the people?"

differently, how can the gods be deployed as instruments of social control[14]? This issue is all the more interesting since religious authority as represented by priests or other cult-officials did not generally claim an absolute authority over the life and destinies of the adherents. Unlike Israelite religion for instance, it was never a central objective of Greek and Athenian religion to promote morality, since, as a rule, morality was not judged to be revealed through religion. One of the interesting aspects of social control through religious manipulation, namely conditional and promissory curses or imprecations, is the subject of Chris Faraone's contribution to this volume[15]. As for the rest, hard evidence of divine retribution *invoked by the demos*[16] in classical Athens seems to be exhausted by exactly two curses against religious transgressors, each of them concerning a notorious case: the curse against the Alcmaeonids for their sacrilegious manslaughter of their opponent Kylon, who had sought refuge with the statue of Athena, and the curse against Alkibiades for his parody of the Eleusinian Mysteries. Furthermore orators would occasionally threaten members of a jury with the wrath of the god if they were to vote incorrectly. In this context we encounter sporadic expressions claiming that the gods "oversee all human acts" (Lyc. c. Leoc. 94)[17]. Similar expressions can be found in other literary genres, for instance tragedy: "though far off in heaven, they see all that men do" (Eur. Bacchae 393 ff.).

On the whole, the fact that, in classical Athens, these expressions occur seems to be less interesting than that their occurrence is so rare. Where, by Jove, is Homer's Zeus who sees all and hears everything[18]? Where are Hesiod's "thirty thousand

[14] *Burkert* (1996) 7: "In this sense one might even say the divine is a social tool to manipulate communication" referring to *V. Sommer*, Lob der Lüge: Täuschung und Selbstbetrug bei Tier und Mensch (Munich 1992) 85–88, 111 f. for the concept social tool. And, of course, there is the immense field of religion applied as justification of political power and subjection: *Burkert* (1996) 93–97.

[15] His paper, Curses and Social Control in the Law Courts of Classical Athens, has been published in the meantime in Dike 2 (1999) 99–121. Garland correctly points out that the issue here is not divine punishment of moral errors, but revenge of oath-breaking considered to be an insult against divine majesty. Cf. *Dover* (1974) 250–3; *Mikalson* (1983) Ch. 5: The Gods and Oaths; *Versnel* (1995) 372.

[16] Thus *Garland* (1996).

[17] Cf. ibid. 146, where the orator reminds the jury that "each of you, in casting his vote now in secret, will make his own thought apparent to the gods." Note, however, that, "only in cases involving some form of impiety was it thought that the gods would take cognizance of the vote of each juror and punish him if he voted unjustly" (*Mikalson* 1983, 29).

[18] *Mikalson* (1983) 29 rightly censures *Dover* (1974) 255, for taking the isolated expression in [*Demosthenes*] 25, 10–11: "solemn Justice sits by the throne of Zeus and watches over all the affairs of men" as a "fundamental religious concept in the classical period." Mikalson of course admits that the idea is familiar in poetic literature from Hesiod onwards, but contends that it "occurs nowhere else in our sources". This is true only if one restricts one's sources to epigraphy, the Attic orators and Xenophon, as Mikalson does. By excluding tragedy, comedy and philosophical literature – for whatever valid reason – Mikalson ignores an essential section of Athenian religious expression, as several critics have noted. His ensuing rigorous distinction between the gods of tragedy and those of popular religion including their respective behaviour, in his Honor Thy Gods: Popular Religion in Greek Tragedy (Chapel Hill 1991)

daimones", those "watchers of mortals ... who keep watch on lawsuits and crimes, as they roam about the whole earth, clothed in mist" (Erga 252–5)? Perhaps even more remarkable is the fact that whenever Athenian authors or speakers feel inclined to remind their audience of divine omniscience, it is without exception in a markedly persuasive context. It is as if these expressions, being of a gnomic nature, remain available to be put into action at moments of real urgency or desperation[19]. Similarly, it is almost exclusively in the rhetoric of the lawcourt (or the classroom) that we find warnings about the way in which the polluting presence of a single criminal can put an entire city at risk, or endanger fellow passengers on board a ship[20], as for instance in Antiphon Tetralogies 5.82, and Aeschin. 2.158. A live interest in similar cases of pollution may occur in different sources. In an oracle question the people of Dodona ask their god: "Is it because of some human's impurity that we are suffering this storm?"[21] However, for classical Athens Parker (1983, 130 and cf. 278ff.) hits the mark when he notes: "Specific instances, however, prove surprisingly hard to discover. ... It seems that the author of the *Tetralogies* has taken the doctrine of pollution to a theoretical extreme some way beyond the level of unease that in practice it created."[22]

provoked two particularly thoughtful reactions and re-considerations: *R. Parker,* Cruel Gods and Kind: Tragic and Civic Theology, and *Chr. Sourvinou-Inwood*, Tragedy and Religion: Constructs and Readings, both in: *Chr. Pelling* (ed.), Greek Tragedy and the Historian (Oxford 1997) 143–160 and 161–186, respectively. *Sourvinou-Inwood* promises a book on the question: Tragedy and Athenian Religion: A Discourse of Exploration.

[19] *Garland* (1996) 96 n.20, reminds us that Olympians were not on the whole mind-readers and therefore could not punish individuals for their unrevealed intentions of desires. "Omniscience was never a feature of Olympianism." *Hdt.* 6.86 is an exception but only after the intention has been revealed. And in Kritias's play Sisyphos the impious protagonist expounds (B25.20ff.) how some wise man in the remote past invented religion and persuaded his fellow-men that there exists a superhuman power such that "even if you plan an evil deed in silence, this will not escape the gods". Cf. *Dover* (1974) 257f. The belief that the intention and knowledge of a crime may be the object of divine punishment – so central in Christian theology – does prevail in pagan texts, but only in later texts from peripheral areas, as for instance in the material that we shall discuss later, and most emphatically in a sacred law from Philadelphia (second or first century B.C.: SIG 3 985; LSAM 20; *O. Weinreich*, SB Heidelberg [1919]), which betrays a religious climate very similar to that of the confession στῆλαι discussed below (*Nilsson*, GGR II 291) and to that of Christian communities. See: *S. C. Barton* and *G. H. R. Horsley*, A Hellenistic Cult Group and N.T. Churches, in: JAuC 24 (1981) 7–41.

[20] *D. Wachsmuth*, ΠΟΜΠΙΜΟΣ Ο ΔΑΙΜΩΝ. Untersuchung zu den antiken Sakralhandlungen bei Seereisen (Berlin 1967) Ch. V § 33: Schiffbruch durch Asebie, presents the evidence from myth and legend.

[21] SEG 19.427.

[22] Cf. the evidence collected by *Burkert* (1996) Ch. 5: Guilt and Causality, where he discusses illness and other catastrophes conceived as sent by the gods as a penalty for some form of misconduct. There is not one case from Athens and the majority of examples are either very early (i.e. mythical) or very late (imperial period) and come either from marginal regions of the Greek world or from non-Greek areas. Xenophon should be mentioned as one remarkable exception in being rather prone to explain disasters as divine intervention to punish impiety. E.g. in Hell. 5.4.1, he attributes the Spartan defeat at Leuktra to their flagrant breaking of their oath in 382 BC, being in his words one "of many instances among Greeks and bar-

In other words, we may well doubt whether in the eyes of the Athenians gods were consistently regarded as being actively involved in this type of retribution. Rather we get the impression that automatic and natural effects of *miasma* or curses dominate the imagery of supernatural retribution. As for the gods, at least in the Athenian evidence they seem to be interested in their own rights rather than in what *is* right[23]. Hence they were expected to interfere only in matters such as perjury, punishing perjurers or those who "forget" to fulfil their vows[24]. Besides, Euripides' tragedies or Aristophanes' comedies – like for instance Aristophanes' Birds 1606–25 – provide revealing glimpses of doubts concerning the intensity, the perseverance and the efficacy of their supervision. According to one source, Diagoras ὁ ἄθεος became an atheist as a result of a loan that was never repaid to him[25]. Accordingly, his notorious arguments against the existence of gods include the observation that Zeus does strike the roofs of his own temples with his thunderbolt but not the houses of criminals, which, according to myth, he is expected to do[26].

barians to demonstrate that the gods are not indifferent to those who are impious or perpetrate unholy deeds". Another outspoken instance in Hell. 4.4.12. On the Anabasis: *Nilsson*, GGR I, 787. Note, however, that all this concerns mainly post eventum interpretation and may have been politically inspired. Moreover, "the hand of God is an explanation that dulls the quest for truth": *G. L. Cawkwell*, Xenophon, A History of my Times (Harmondsworth 1979) 45.

[23] "It would appear that the gods became directly involved in legal affairs only when those affairs concerned (1) acts which were considered impious and (2) perjury" (*Mikalson* 1983, 28). On *hierosulia* and theft of sacred property: *D. Cohen*, Theft in Athenian Law (Munich 1983) 93–103, with a full list of evidence at pp. 105–7, including examples involving *asebeia*.

[24] Practically all the oracle questions (and answers) concerning the causes of illness, or mishap as collected by *H. W. Parke*, *D. E. W. Wormell*, The Delphic Oracle (Oxford 1956) are related to *religious* – not interhuman – trespassing. They are handed down by later authors and mostly refer to (collective) legendary or mythical cases, breathing the atmosphere of post-classical religiosity: nos. 50, 58, 63, 64, 75, 108, 150, 158, 179, 191, 199, 210, 211, 292, 331, 386, 387, 389, 405, 445, 455, 464, 467, 485, 493, 516, 529, 530, 536, 544, 546, 552, 554, 556. There are only three historical personal oracle questions concerning violations of sacral law (*Plut.* Mor. 404 A = P.-W. 464; *Heliodor.* Aeth. 4.19 = P.-W. 516; *Porphyr.* De Abst. 2.9 = P.-W. 536) which concern offences and display a terminology closely related to those of the confession inscriptions of the 2nd and 3rd centuries A.D. that we will discuss later.

[25] See *F. Jacobi*, ΔΙΑΓΟΡΑΣ Ο ΑΘΕΟΣ (Berlin 1960) 5. Exactly the reverse in *Ar.* Nub 1455–1464, where the divine Clouds tell Strepsiades that it is their custom to plunge people into misery as a reminder to fear the gods (ἕως ἂν αὐτὸν ἐμβάλωμεν εἰς κακόν, ὅπως ἂν εἰδῇ τοὺς θεοὺς δεδοικέναι). Whereupon Strepsiades suddenly recalls that he should not have kept the money he had borrowed and sets out to repair the offence.

[26] A related case of ‚apostasy' can be found in Babrios' second fable. A farmer has lost his mattock and starts an inquiry (ἐπιζητέω) to ascertain whether it was stolen by certain individuals. When they deny it, he takes them to a temple in a nearby city to take an oath. Once in the city, they hear a public herald putting up a reward for information about the whereabouts of property stolen from the temple. The farmer reacts: "How useless for me to have come here. How could this god know about other thieves, when he has no inkling about the ones who have stolen his own property?" The fable does not occur in earlier collections of fables and generally breathes a cultic atmosphere characteristic of post-classical religiosity, as we shall discuss below.

Altogether, we may conclude with Adkins[27] that the Athenians of the classical period – and not only the stray sceptic or atheist among them – generally no longer believed "that the gods punish injustice"[28]. Even if tragedy and comedy prove that the Athenians were well aware of gnomic, poetical or philosophical notions concerning the justice of Zeus or of the Gods, they conspicuously failed to take advantage of that notion in the literary genre that was specifically preoccupied with the problems of human justice, viz. the forensic speeches. "Only in such instances, when their own prerogatives were threatened, did the gods act directly and on their own accord without human prompting. Crimes such as theft, embezzlement, assault, rape, and so forth did not concern the gods, unless the crime also included some act of impiety", thus finally Mikalson (1983, 30). Aristophanes Nub. 1455–64, as quoted in n.25, though at first sight contesting this, in fact offers confirmation. Aside from being an exception the passage seems to ridicule a notion of divine punishment that is well-known but not really taken all too seriously in Athenian religious practice.

As for the rest of Greece in the classical period we have not much information but the little we have seems to point in the same direction. I here single out one rich source, the oracle questions found at Dodona, mostly dating from the classical period[29]. In that context we often encounter the wish to discover the identities of culprits: "has Dorkilos stolen the garment?"[30], "has Thopion stolen the money?"[31], "is the child with whom my wife Annula is pregnant my child?"[32] And so on and so forth[33]. Most relevant to our topic are a few recently published oracular questions, all from the 4th century BC[34]. "Did he (she?) apply a *pharmakon* (poison or witchcraft?) to my children or to my wife or to me, on behalf of Lyson?"; "did Timo bewitch/poison (κατεφάρμαξε) Aristoboula?" These are the very same suspicions that we shall encounter time and again in later texts from

[27] *A. W. H. Adkins*, Merit and Responsibility (Oxford 1960) 255.

[28] Pace *H. Lloyd-Jones*, The Justice of Zeus (Berkeley 1971) 109, who claims that "from the time of Hesiod to the collapse of paganism, it is generally true that anyone who believed in the existence of the gods believed that they were just and righteous". The difference may be sought not so much in the supposed moral nature of the gods, but in their supposed readiness (or lack thereof) to interfere *according* to that moral nature. Moreover, with regard to the evidence from both daily life and literary sources "the problem is that few scholars like to face the intractability of the problem of evil; they would rather explain it away and believe that justice triumphs, that divinity is ultimately benevolent. As Kant has showed with devastating finality, however, in his *Über das Misslingen aller Philosophischen Versuche in der Theodicee* (Leipzig 1821) no such comfort is rationally possible. This is, I am convinced, precisely the way in which Aeschylus wished to present the problem of innocent suffering, and easy explanations should not be sought to defuse the force of his argument" (*D. Cohen*, Justice and Tyranny in the Oresteia, in: G&R 33 [1986] 129–141, esp. 140 n.11).

[29] More than 1400 tablet texts from the excavations of *D. Evangelidis*, 1928–35 (!) are finally "nearly ready to appear in print", *Christidis* (1999) 67.

[30] *W. H. Parke*, The Oracles of Zeus (Oxford 1967) no. 29.

[31] Epeirotika Chronika 10 (1935) 259 no. 32.

[32] *W. H. Parke*, The Oracles of Zeus (Oxford 1967) 266 no. 11.

[33] Compare the Amasis-anecdote in *Hdt.* 2.174.

[34] All are taken from *Christidis* (1999).

Knidos and the so-called confession texts from Lydia. However, different from these later texts the Dodona texts restrict themselves to requests for information, and do not present accusations or appeals for divine help. Unfortunately, we do not know how the inquirer reacted after having received the answer. Suppose the answer was: "Yes, Dorkilos did pinch your stola and, by the way, he was also the one who fathered your child", did the questioner go to the police? Or did he knock Dorkilos on the head? The interesting thing is that exactly this type of problem is attested in one of the new Dodona tablets: "Sosandros enquires about the curse (ἐπαράσιος) of Alex[...]: should I succeed if I go to court (ἢ τυγχάνοιμι κα δικαζόμ[ενος];)." Indeed, what *can* you do if you know a person has cursed you, apparently in an illegitimate way, perhaps by depositing a *defixio* and then telling the target or spreading the rumor about this action? Go to court? Anyway, in the published oracles texts from this marginal area of classical mainland Greece we find no trace of divine justice[35].

Altogether the evidence for appeals to the gods for the sake of justice in the classical period[36] is not overwhelming and to find richer and more detailed information on the appeal to gods in the interest of social control we must move to later periods and different regions. As I am going to discuss this type of strategy, in accordance with the definition cited in the beginning of this paper, I start from the idea that divine intervention owes its relevance to the issue of social control by its being provoked or exploited through human initiative, most specifically

[35] In other regions and later periods, however, oracular practice might offer ample room for combinations of information and revenge. An Oxyrhynchus papyrus written by a victim of theft first provides a – very conventional – oracle question concerning the culprit's identity, but immediately adds a judicial prayer against the thief. (*B. Kramer*, POxy XII 1567: Orakelfrage, in: ZPE 61 [1985] 61 f., who also gives a full bibliography on oracular questions in papyri. Also in the Maeonian confession procedures, discussed below, oracles may have played a part: BIWK no. 98.). From Kula in Lydia (TAM 257, mentioned in BIWK p. X n.11; *Chaniotis* [1997] 363 n.61) we have an inscription which refers to an oracular answer to a similar question, which is so decisive that the thief could be traced (and presumably juridically prosecuted). It is a votive stele for the goddess Meter Aliane. A slave woman Rhodia had asked the goddess to reveal the identity of the person who had stolen a large sum of money from the corn-barn of her husband. The money was discovered in the house of a person named Crescens. And Rhodia thanks the goddess.

[36] There is a text which, though not Athenian, dates back to the late classical period. The story of Alcinoe, told by Moero (c. 300 BC) in her *curses* (*L. Watson*, ARAE: The Curse Poetry of Antiquity [Melksham 1991] 227 f., with thanks to *Chris Faraone* for the reference): "The story goes that Alcinoe, the daughter of Polybus of Corinth, the wife of Amphilochus son of Dryas, because of Athena's wrath fell madly in love with a Samian stranger, whose name was Xanthus. For she had employed in her house a hire-woman called Nicandre and put her to work for a year, but after that drove her from the house without giving her wages in full. And she prayed earnestly to punish Alcinoe for unjustly depriving her of what was hers. As a result, Alcinoe came to the point where she left her home and the children that she had there, and took ship along with Xanthus. But when she was in mid-voyage she came to the realisation of what she had done and straightway poured forth many tears, and called now upon her lawful husband, now upon her children, by name. And, finally, though Xanthus did everything he could to soothe her and promised to make her his wife, she would not listen and flung herself into the sea."

through prayer or comparable forms of appeal. Secondly, the relevance of any type of evidence will be considerably enhanced if it is not inspired by official regulation and public law, but, on the contrary, if it is actually a response to the inadequacy of official channels, consisting of individual attempts to influence social behaviour through an appeal to divine intervention.

Cursing the competitor

My material consists mainly of tiny pieces of text written on lead sheets and normally not available for inspection because of the secrecy of the places where they were deposited. Traditionally, these lead tablets – of which some fifteen hundred have been recovered – are referred to as curse tablets or *defixiones*. As has been emphasized in recent scholarly discussion, especially by Faraone, these *defixiones* are mainly inspired by motives of competition[37]. More than three-quarters of the published Greek *defixiones* do not provide any hint of their specific purposes, but the majority of those that do reveal a purpose concern social competition in largely four domains: 1) commerce and trade, 2) athletics, theatre and amphitheatre, 3) love and erotics[38], 4) lawsuits. Just as we see defendants binding – that is silencing – the tongues of their opponents, or athletes binding – that is laming – the limbs of their rivals, so we also find shopkeepers or artisans cursing their competitors, including their skills, their business and their hands and minds. These *defixiones* share a number of characteristics: they do not provide any explicit legitimation for the act, are anonymous, are addressed to powers of the underworld, who are often instructed or even commanded to do their jobs, and generally do not wish to inflict pain on[39] – let alone kill – the targets but only to make them powerless. These *defixiones* are what we would call a-moral and, although widely applied, were at times both legally forbidden and socially censured. Yet, a double moral can be perceived, as the practitioners would argue that they simply cannot avoid resorting to these unsympathetic devices, since they are indispensable instruments to advance or protect the well-being of themselves and their families in the social struggle for life.

[37] See especially *Faraone* (1991) and *Gager* (1992), who arranged his chapters according to the various agonistic classes. For earlier classifications (*Audollent, Kagarow, Preisendanz*) see *Faraone* (1991) 27 n.45. Cf. also: *Graf* (1997) 157–60, who pays special attention to a more comprehensive principle: the experience of crisis and uncertainty.

[38] For which see: *Chr. A. Faraone*, Ancient Greek Love Magic (Cambridge, Mass., London 1999).

[39] With the exception of a certain class of erotic curses or spells, as elucidated by *Versnel* (1998).

Praying for justice

However, there is another type of tablet texts, which is of special interest to our present issue. By way of introduction let us have a look at a tablet from Athens (DTA 98, fourth/third century). The first part of the tablet is a perfect sample of a genuine *defixio* as just described:

Euruptolemos of Agrule. I bind Euruptolemos and Xenophon who is with Euruptolemos, and their tongues and words and deeds; and if they are planning or doing anything let it be in vain.

The second part, however, is different in tone:

Beloved Earth, restrain Euruptolemos and Xenophon and make them powerless and useless; and let Euruptolemos and Xenophon waste away. Beloved Earth, help me; and since I have been wronged by Euruptolemos and Xenophon I bind them. (φίλη Γῆ. βοήθει μοι. ἀδικούμενος γὰρ ὑπὸ Εὐρυπτολέμου καὶ Ξενοφῶντος καταδῶ αὐτούς).

There is a sudden change in atmosphere. Instead of an instruction to the god in a more or less instrumental action, we find a flattering (φίλη!) request for help, which is supported by a reference to the injustice suffered. Perhaps more than argumentation is hiding in the phrase ἀδικούμενος γάρ. Let us have a look at another fourth century B.C. Attic tablet (DTA 100), which displays a similar constitution. First an authentic *defixio* formula:

Saturos from Sounion and Demetrios and all of them as well, whoever else [is hostile] to me. I bind (καταδῶ) them, o Onesimos[40]. All of them, their persons and their acts against me I entrust to you, in order that you take care of them (τηρ(ε)ῖν), Hermes Restrainer, restrain their names, and all that belongs to them.

Then the tone changes abruptly:

Hermes and Ge (Earth), I implore you to take care of all of this and punish them, but [save him] who has struck the lead.

Ἑ]ρμῆ καὶ Γῆ, ἱκετεύω ὑμᾶς τηρ(ε)ῖν
ταῦτα καὶ τούτους κολάζ(ε)τ⟨ε⟩
σφῦζετε τὸ]ν μολυβδοκόπον

Neither the verb ἱκετεύω ("to pray and implore devoutly") nor the phrase "help me" in the previous text, is really at home in the majority of *defixiones*. Another key word, κολάζ⟨ε⟩τ⟨ε⟩, implies a justified punishment. More interesting, however, is the closing passage, which (although it is mutilated) almost certainly asks that the writer of the tablet himself should suffer no harm. It seems as though he excuses himself for this indelicate, but unfortunately unavoidable device. In our collections of *defixiones* we find quite a few of these 'deviant' texts concerning pleas for justice, punishment and revenge and adding a legitimation for this appeal

[40] For this interpretation as a vocative of the addressee, viz the dead person, see *Bravo* (1987) and *Voutiras* o.c. infra n.78.

to the deity. Here are some more all stemming from fourth century Athens. DTA 102 begins as follows:

I send a letter[41] to the demons (? the text has only ...]aimo) and to Persephone and "deliver" to them Tibitis, daughter of Choirine, who has wronged me (τὴν ἐμ⟨ἐ⟩ ἀδικο⟨ῦ⟩σαν).

In DTA 120 the victim is similarly designated: τὸ[ν] ἐμὲ ἀτιμο(ῦ)ντα ("who has treated me shamefully") and on a very severely mutilated tablet (DTA 158) we read,

το]ῖς ἀδικο(υ)μέν[οις ... ἀ]δικ⟨υ⟩μέν[οις ... ⟨κ⟩αὶ δικ[η...].

Finally DTA 103:

To Hermes and Persephone I send this letter. Because I direct this (curse) against criminal people (ἁμαρ[τωλο(υ)ς), they must, O Dike, receive their deserved punishment (τυχεῖν τέλο(υ)ς δίκης).

On account of these and other texts I have argued for a differentiation between the *defixiones* proper and another category, which I labelled prayer for justice or judicial prayer[42]. As always, we are speaking in terms of family resemblance and polythetic classes, with overlapping and criss-crossing similarities[43]. Even so, the prayers for justice are generally marked by a series of characteristics that clearly separate them from the *defixiones* proper. These may include the use of legal terminology, the notion that gods are all-seeing judges and hence a deferential form of address and the association of the action with a more or less official temple ritual, and finally, the desire to legitimately inflict pain, ailment, death upon the adversary as a punishment or constraint to redress an offence. Obviously in all these cases the plaintiffs feel fully entitled to their actions, legitimating them with references to the injuries they have suffered. Theft[44] prevails among these injuries, which implies that the perpetrators are mostly unknown, a circumstance which may lend an additional aspect of ordeal[45] to the action of the divine judges.

Altogether, then, in this specific type of tablet text the target is *not* (or not principally) a competitor in the social sphere; he is first and foremost someone accused of a crime, to be judged and persecuted by divine law. The earliest Athenian attestations – as cited above – date from the fourth century BC. They are rare and display only a fraction of the characteristics just mentioned. Their numbers increase in the Hellenistic period and peak in the imperial period. Regardless of their his-

[41] On this Jenseitskorrespondenz see: *K. Preisendanz*, Fluchtafel (Defixio), RAC 8 (1972) 7–8 and *Faraone* (1991) 4, and *infra* n.77.

[42] *Versnel* (1991). I have a problem with the term vindictive prayer – as it is sometimes applied – since it implies the notion of vengeance or spite, which may, but does not always, occur in this type of appeal.

[43] I have discussed these concepts in the context of magic in: Some Reflections on the Relationship Magic-Religion, in: Numen 38 (1991) 177–197.

[44] Especially theft of garments or footwear. This seems to have been a major concern in antiquity: O. *Meynersen*, Der Manteldiebstahl des Sokrates. Ar. *Nub.* 175–9, in: Mnemosyne 46 (1993) 18–32. However, refusal to return a loan also occurs in curses and is also reflected in the very same comedy: *Ar.* Nub 1455–1464. Vide supra n.25.

[45] *Versnel* (1995). And cf. the fable of Babrios mentioned in n.26.

torical and topographical setting however, 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[46].

Now, both types of tablet texts provide fascinating insights into strategies of social control. The *defixiones* proper, being inspired by competition, give us welcome insights into the feelings of envy cherished by the authors. On the other hand, they may also function as a kind of counter-magic to ward off or counter the envy, gossip and *Schadenfreude* as demonstrated by enemies of the author. Envy, gossip, slander and mockery are among the most popular and effective strategies in the competition for social equality, especially in order to prevent others from outmanoeuvering you on the scale of honour. "No family can stand to see another prosper without feeling envy and wishing the other harm", writes the anthropologist E. G. Banfield[47]. Hence the extreme mistrust and secretiveness of the family in its eternal competition against other families and groups, all permanently engaged in attempting to discredit one another, so as to rise – or keep the other from rising – in the social scale[48]. In these competitive societies "gossip serves as a particularly effective form of social control since it is impossible to locate its exact source and eliminate it"[49]. I have discussed this fascinating aspect of social behaviour in a recent paper, starting from an apposite judicial prayer on a lead tablet asking the goddess Demeter to "punish those who rejoice in our misery"[50].

Heiliges Recht in Knidos and other places

So, for the present occasion our topic will be the prayers for justice and their relevance to the issue of social control. During the excavations of the temple of Demeter and Persephone at Knidos in the South West of Asia Minor in the middle of the 19th century, C. T. Newton found a number of lead tablets containing texts which, as he soon discovered, betrayed some similarity with, but were clearly different from, magical *defixiones*[51]. The majority are sorely damaged and because precise dating could not be established by either the archaeological context or the letter type, Newton ventured a rough estimation between 300 and 100 BC, perhaps somewhat later. The majority of later commentators opted for the second or

[46] *Versnel* (1998) 184.
[47] *E.G. Banfield*, The Moral Basis of a Backward Society (New York, London 1958) 115.
[48] On the social functions of gossip etcetera there is a rich literature, for which I refer to *Versnel* (1999). On ancient Greece, especially Athens, two excellent studies appeared recently: *Cohen* (1991), index s.v., and *V. J. Hunter*, Policing Athens: Social Control in the Attic Lawsuits, 420–320 B.C. (Princeton 1994) 96–118, Ch. 4: The Politics of Reputation: Gossip as a Social Construct, a revised form of an article with the same title in Phoenix 44 (1990) 299–315.
[49] *J. Cutileiro*, A Portuguese Rural Society (Oxford 1971) 140.
[50] *Versnel* (1999).
[51] *Newton* (1863) nos. 81–95.

first century BC. The texts as given by subsequent editors and commentators including Wünsch, Bechtel, Audollent, Steinleitner and most recently Blümel (1992) nos. 147–159[52], can be considered definitive. At any rate, new suggestions on the basis of autopsy cannot be expected in view of the current deplorable state of the material. The texts have often been introduced as evidence in various studies on *defixiones*, curse texts, confession texts and the like, but this by no means implies that all the riddles have been solved. I shall first give a short picture of the rather stereotyped contents of these 13 to 15 tablets[53].

The reason for their existence is that the authors, who are always women – not surprisingly in a sanctuary of Demeter and Kore –, believe that they have been wronged by another – generally unknown – person. Cases in point are theft, refusal to return a deposit, physical injury, seduction of a husband by another woman, slander or false accusations, especially with respect to black magic or poison. By means of these tablets the injured person resorts to the deities of the local temple. She devotes or commends (ἀνατίθημι or ἀνιερόω) the culprit – sometimes the stolen object – to Demeter, Kore and the gods who are with them. Next, there are two possibilities: the culprit can redeem his/her error, for instance by returning the stolen object to the owner, after which the case is closed. Or he/she remains obstinate, in which case Demeter is requested to force the culprit to a public confession (ἐξαγορεύειν) and/or to restore the damage by bringing it to the temple. In cases of slander, of course, mere confession suffices. By way of example let us read parts of three of these texts (the numbering follows Audollent's DT).

No. 2, (A) Artemis dedicates to Demeter and Kore and the gods with Demeter, all of them, the person[54] who did not return the garments that I had left behind, although I asked them back. May he, in his own person, bring them up to Demeter, also if it is another person who has my possessions, burning with fever (πεπρημένος), publicly confessing his deed (ἐξαγορεύων).
(B) Let it be permissible for me to drink and eat together and to come under the same roof (as the cursed person). For I am wronged, Lady Demeter.

The two words πεπρημένος (being burnt with fever) and ἐξαγορεύων (openly confessing) are mutilated on the tablet but can be supplemented with certainty since they are formulaic and return in the majority of the texts. For instance No. 4, a curse written by Hegemone. This lady is rather unrestrained in her complaints, which require two sides of the tablet, of which I only quote side A:

[52] DTA p. Xff.; *H. Collwitz*, *F. Bechtel*, Sammlung der griechischen Dialekt-Inschriften, vol. 3., pt. 1 (Göttingen 1899) 234ff.; DT 1–13; *Steinleitner* (1913) nos. 34–47. Some of them in SIG3 1178–1180. Two of them in English translation in *Gager* (1992). Discussions in *Latte* (1920) 80; *Zingerle* (1926); *Björck* (1938) 221ff.; *Nilsson* GGR I 221f.; *Versnel* (1991) 72ff., on which the present section is based. There are some textual conjectures in *E.G. Kagarow*, Griechische Fluchtafeln, Eos Suppl. 4 (Leopoli 1929) 52.
[53] The number depends on the editor's decision whether or not two fragments belong to one tablet. In this paper I shall follow the arrangement as proposed by Audollent.
[54] Blümel proposes a different interpunction and a different constitution of the text. In the light of the parallel texts wrongly so.

I hand over to Demeter and Kore the person who has accused me of preparing poisons/spells (φάρμακα) against my husband. Let him go up to Demeter, burnt by fever, with all his family (μετὰ τῶν αὐτοῦ ἰδίων), publicly confessing (ἐξαγορεύων). And let him not find Demeter, Kore or the gods with Demeter merciful. As for me let it be permissible and acceptable for me to be under the same roof or involved with him in any way. And I hand over also the person who has written negatively (or: who has written charges) against me or commanded others to do so. And let him not benefit from the mercy of Demeter, Kore, or the gods with Demeter, but may he go up burnt by fever together with all his family.

No. 1, finally, provides a unique conditional self-curse by the author of the tablet Antigone:

I, Antigone, make a dedication to Demeter, Kore and all the gods and goddesses with Demeter. If I have given poison/spells (φάρμακα) to Asklapiadas or contemplated in my soul doing anything evil to him; or if I have called a woman to the temple, offering her a *mina* and a half for her to remove him from the living, (if so) may Antigone be burnt by fever and go up to Demeter and make confession, and may she not find Demeter merciful but instead suffer great torments. If anyone has spoken to Asklapiadas against me or brought forward the woman, by offering her copper coins …

This is the only text in which the word for confessing is not a form of ἐξαγορεύειν but ἐξομολ⟨ογ⟩ουμ[ένα]. Elsewhere we find once κολαζόμενοι[55] instead of the fixed term for the divine coercion πεπρημένος. In a few texts it is added that the culprit may find the goddess unmerciful or implacable (μὴ τύχοι εὐιλάτου Δάματρος), which is only in no. 1 also circumscribed as μεγάλας βασάνους βασανιζομένα (put to the test by great tortures). This much is clear: the culprit must experience the action of the goddess as a kind of bodily coercion and the divine interference is intended as a sort of judicial torture, in order to force the culprit to confession and redress.

As a result of their being dedicated to the gods, the culprits have come into a provisional situation which in Latin is referred to as *sacer*: they are cursed and in a way have come under the jurisdiction of the powers of the netherworld. In order to escape contagion the author sometimes adds a sort of proviso. The curse must not fall upon the author of the tablet, not even if she might meet the cursed person, be in his company, eat or drink with him or be at the same table or under the same roof. We encountered a comparable expression earlier in a fourth century tablet[56].

[55] In no. 3 A ; no. 8 has the variant: τιμ[ω]ρίας τύχοι and πᾶ[σ]αν κόλασιν.

[56] The wish containing the opposition "to me ὅσια, to the culprit ἀνόσια" is common: *Latte* (1920) 64ff. with many examples; *Björck* (1938) 122ff. esp. 124 n.1 and 132; *Wünsch*, DTA Praef. XII. On the wish that the guilty may not be a friend or ὁμόστεγος see: *K. Latte*, Schuld und Sühne in der griechischen Religion, in: ARW 20 (1920/21) 254–98 = Kleine Schriften 9. In his view this is the reason that processes for manslaughter are always in open air, following *O. Weinreich*, Blutgerichte ΕΝ ΥΠΑΙΘΡΙΩΙ, in: Hermes 56 (1921) 326–31 = Ausgew. Schriften I, 552–7. The idea of pollution among people being under one roof already occurs in the famous inscription from Cyrene of the 4th c. BC (SEG 9.72; LSS 115; *Parker* (1983) 332–51, esp. 336): "The woman in childbed shall pollute the roof … she shall not pollute (anyone) outside the roof unless he comes in …" Also in the sacred law from Philadelphia mentioned above in n.19. Cf. on the infectious state of the accursed also: *W. Speyer*, Fluch, RAC 7 (1969) 1181. Generally on the role of women: *S. Guettel Cole*, GUNAIKI OU THEMIS: Gender Difference in the Greek Leges Sacrae, in: Helios 19 (1992) 104–22, esp. 109–110;

Chance encounters and unavoidable meetings can easily be imagined in a small face to face community, especially if the identity of the accursed person is unknown. Another recurrent element, which we also noticed earlier, is that the author excuses herself for having to resort to these unsympathetic measures, but has no alternative: ἀδίκημαι γὰρ Δέσποινα Δάματερ, a formula with which we are well acquainted from other related texts and from secular petitions for justice[57]. As a matter of fact, it can be shown that the secular *enteuxis* (petition), well-known from Hellenistic and Roman Egypt, has been transferred literally to this special instance of divine justice[58].

All this makes it abundantly clear that these texts cannot be identified with the *defixio* proper but rather belong to a genre which, since Latte 1920 and Zingerle 1926, is generally referred to as *Heiliges Recht*, appeals to divine justice in order to bring about some form of retaliation. The remarkable fact that both the culprit and the stolen object may be dedicated or commended to the goddess has given rise to quite some alarm among scholars. "Aber welcher Fluch!" exclaims one of the first commentators, Wachsmuth (1863), deriding Newton's interpretation, "Wenn sie aber das Gestohlene nicht wiedergeben, so sollen sie es der Göttin zustellen." He cannot believe this to be the correct interpretation and yet this is exactly what the texts tell us[59]. Fortunately, more than a century later, a hoard of

A. Chaniotis, Reinheit des Körpers – Reinheit der Seele in den griechischen Kultgesetzen, in: *J. Assmann, Th. Sundermeier* (eds.), Schuld, Gewissen und Person (Studien zum Verstehen fremder Religionen 9, Gütersloh 1997) 142–79, esp. 147, and on the Philadelphia inscription: ibid. 159–62. A related type of expression still prevails in medieval and early modern Greek curses from South Italy (15–16th c.) (*E. Pradel*, Griechische und Süditalienische Gebete, Beschwörungen und Rezepte des Mittelalters [Religionsgeschichtliche Versuche und Vorarbeiten III.3, Giessen 1907] 22. l. 11): μὴ συμπῇς, μὴ συμφάγῃς, μὴ συγκοιμήθῃς, μὴ συνανάστῃς μετὰ τοῦ δούλου τοῦ θεοῦ.

[57] The evidence can be found in *Versnel* (1991).

[58] The juridical jargon is particularly clear in a recently published curse tablet from Oropos (3rd/2nd cent.), whose nature was not recognised by its editor, *B. C. Petrakos*, Οἱ ἐπιγραφὲς τοῦ 'Ωρωποῦ (Athens 1997). I owe this reference to EBGR (1997) no. 296, and quote the summary by *Chaniotis* forthcoming 2001. "Someone cursed a series of persons, willing them to be delivered to Plouton and Mounogenes (Persephone), and wishing them death and misery. Unlike ordinary defixiones, the cursor justified himself: "I demand that my request be heard, because I have been wronged" (ll. 15 f.: [ἀδικο]ύμενος ἀξ[ιῶ πάντα] ἐπηκοα γενέσ[θαι]); "having been wronged, and not having wronged first, I demand that what I have written down and deposited to you be acomplished" (ll. 25–29: ἀξιῶι οὖν ἀδικούμενος καὶ οὐκ ἀδικῶν πρότερος ἐπιτελ[ῆ] γενέσθα(ι) ἃ καταγράφω καὶ ἃ παρατίθεμαι ὑμῖν; cf. l. 10: ἀξιῶ; l. 45: ἀδικούμενος ὑπ' αὐτῶν). The cursor obviously believed that the more or less mechanical application of a curse formulary against the person who had wronged him would not suffice; his appeal to the gods of the Netherworld would be more effective if he presented legal („I have been wronged") and moral justifications („not having wronged first").

[59] For cession (παραχωρέω) of either the stolen object or the thief (or both) to the god, see *Versnel* (1991) 79–83. A splendid new example from a dedication of the nature of a judicial prayer to Men Axiottenos (AD 176/7) in: *H. Malay*, Greek and Latin Inscriptions in the Manisa Museum (TAM Ergänzungsband 19, Vienna 1994) no. 171 (EGBR 1994–5, no.225): Tatias has purchased certain objects which were probably not delivered to her. So she ceded them to the god and leaves it to him to do whatever he wishes. [Τα]τιὰς ἀγοράσασα [...]α

new finds has unequivocally confirmed that cession of stolen or lost objects to a god is normal practice in this type of judicial procedure.

At present we have access to a considerable number of judicial prayers comparable to the series found at Knidos from various parts of the Roman Empire. There is an extensive collection from the sanctuary of Sulis Minerva at Bath, as well as stray finds from other regions of England, and a smaller one from the temple of Demeter at Corinth[60]. Unlike (other) curse tablets, these pleas for justice are phrased in a deferential tone *vis-à-vis* the gods. Moreover, they also have been found in places that are *not* typical of the *defixio* proper, namely in sanctuaries of (generally chthonic) gods, including deities associated with wells or (hot) springs. This is also true for the majority of the rather idiosyncratic judicial prayers from Sicily, where the sanctuaries of Demeter Malaphoros at Gaggara (Selinous Va?) and of the chthonic gods at Morgantina (Ia) claim pride of place. The same is true for tablets from Spain, where Nymphs associated with springs and other goddesses, for instance Isis, are addressed in a most reverential jargon, as well as for quite a few finds scattered all over Italy and Western Europe, and some unpublished ones from Greece.

For that matter, a comparatively early curse text from South Italy (DT 212), found already in 1775 and dating to the third century BC., is instructive, given the many striking resemblances which it shares with the Knidian ones. I quote only the second half of the text:

> Kollura consecrates (ἀνιαρίζει) to the servants of the goddess the three gold pieces which Melitta received but does not return. Let her (Melitta) dedicate (ἀνθείη) to the goddess twelve times the amount together with a *medimne* of incense according to the measure valid in the city. And let her not breathe freely until she has dedicated (ἀνθείη) it to the Goddess. But if the writer of the tablet eats or drinks with her without knowing it[61], then let her be unpunished, even if she finds herself under the same roof.

There are obvious parallels with the Knidian texts; a prayer for divine justice containing elements of a "consecration" to the gods (here the verb is ἀνιαρίζω) pressures the (identified) victim to right the wrong she has committed. She is "not to

καταφρονουμε[νη] ἐξεχώρησα αὐτὰ [M]ηνὶ Ἀξιοττηνῷ, ἅτινα πράξει ὡς ἂν θέλῃ. Note that it is left unclear whether "to do whatever he wants", refers to the object or to the culprit. Not by mistake, I would guess.

[60] *R. S. Stroud*, The Sanctuary of Demeter on Acrocorinth in the Roman Period, in: *T. E. Gregory* (ed.), The Corinthia in the Roman Period. Including the Papers Given at a Symposium Held at the Ohio State University on 7–9 March 1991 (JRA Suppl. 8, 1993 [1994]) 65–74. *R. E. DeMaris*, Demeter in Roman Corinth: Local Development in a Mediterranean Religion, in: Numen 42 (1995) 105–17, connects the emergence of the curse tablets in the Roman period with a change in the local cult: from agricultural towards chthonic, as also testified by the appearance of Kore and Pluton.

[61] This may seem odd since, in this special case, the author knows the culprit by name. There are several possibilities. The author may accidently find herself in Melitta's company through no fault of her own, or she may simply be using a prescribed formula which is not quite appropriate to her present situation, as it frequently happens in magical texts copied from a sample book.

breathe freely" (μὴ πρότερον δὲ τὰν ψυχὰν ἀνείη)[62] until the stolen item is returned to the temple of the goddess (here the verb is ἀνθείη). The Italian tablet also ends with a very similar "protection clause". What is different is the additional, very heavy fine imposed upon the criminal by an overlap of the spheres of divine and human justice[63]. Most interesting to our issue is that not the culprit, but the stolen object is "consecrated" and is hence made the "god's affair".

We encounter something similar in a text written on a bronze tablet, of unknown provenance, but which comes at any rate from Asia Minor[64]. The tablet which has been dated anywhere from 100 B.C. to 200 A.D. has a round hole in the middle of the top edge, which will play a part in a later section of our discussion.

I consecrate to the mother of the gods the gold pieces which I have lost, all of them, so that the goddess will track them down and bring everything to light[65] and will punish the guilty in accordance with her power and in this way will not be made a laughing stock.

ἀνατίθημι μητρὶ σε θεῶν
χρυσᾶ ἀπ⟨ώ⟩λεσα πάντα ὥ-
στε ἀναζητῆσ⟨α⟩ι αὐτ-
ὴν καὶ ἐς μέσον ἐνε-
κκεῖν πάντα καὶ τοὺς
ἔχοντες κολάσεσθα-
ι ἀξίως τῆς αὐτῆς δυνά-
με⟨ω⟩ς καὶ μήτε αὐτ[ὴν]
καταγέλαστον ἔσεσθ[αι].

The text betrays a clear relation to the Knidian curses as well as to the South Italian tablet. Here too the stolen object is consecrated to the goddess, who has to track it down and punish the guilty. However, this tablet also refers to another

[62] I interpret the phrase in this way, although the syntax suggests that the culprit herself is the subject. I recognize here a situation opposite from e.g. στέβλωσον αὐτῶν τὴν ψυχὴν καὶ τὴν καρδίαν ἵνα μὴ πνέωσιν (DT 241 line 14). In a tablet from Hadrumetum we read, καὶ μὴ ἀφῇς τὴν ψυχήν (*Audollent*, Bull. Arch. C.T.H. [1908] 10–21 = SGD 147).

[63] The combination of divine and secular penalties is common practice: *J. Merkel*, Über die sogenannten Sepulcralmulten, in: Göttinger Festgabe für R. von Ihering (Göttingen 1892) 79–134; *Zmgerle*, Philologus 53 (1894) 347 ff.; *Latte* (1920) 80 n.53; *Björck* (1938) 108 f. An interesting example: *S. Sahin, M. H. Sayor*, Fünf Inschriften, in: ZPE 47 (1982) 45–6, on the fine to be paid to the fiscus by a potential grave robber followed by: l. 9: καὶ μετὰ τοῦτο νόμῳ φθιμένων ὑποκείμενος ἤτω. On the duplication or multiplication of fines, see: *A. Berger*, Die Strafklauseln in den Papyrusurkunden (1911) 131; *Zmgerle* (1926) 36; *W.-D. Roth*, Untersuchungen zur Kredit-παραθήκη im römischen Ägypten (Diss. Marburg 1970) 91–95 and 99; *Burkert* (1996) 124.

[64] *C. Dunant*, Sus aux voleurs! Une tablette en bronze à inscription grecque du musée de Genève, in: MH 35 (1978) 241–244. *M. Ricl*, Meonsi πιττάκιον u Zenevi?, in: *P. H. Ilievski, V. Mitevski* (eds.), Greek-Roman Antiquity in Yugoslavia and on the Balkans, Proceedings of the Vth Yugoslav Congress on Classical Studies held in Skopje 1989 (Ziva Antika Monographs 9, Skopje 1991) 201–6 – a reference I owe to EBGR 1994/95, no. 302 – argues that this tablet is a *pittakion* of the kind mentioned in the confession inscriptions from Maeonia (see below) as I did simultaneously in *Versnel* (1991).

[65] The phrase ἐς μέσον ἐνεκκεῖν means "make known the truth".

genre of inscriptions (the so-called confession *stelai*), to which we shall turn later on.

So far these texts offer precious glimpses into the social life of a small city with its face to face (or mask to mask) society. Local gods – or rather local goddesses, because so far most of them are female – are invoked by means of a set of ritual formulas and requested to do what secular justice is unable to do: trace the unknown culprit and see to it that the injury is redressed and/or the perpetrator punished. As such this action belongs to *allegative* social control: "one party (the plaintiff) manipulates a third party's behavior (namely that of the god in his rôle of prosecutor) by communicating allegations about a second party (the suspect) to the third party". The same type of social control is applied in human legal procedure, with the difference, however, that divine justice is supposed to be both more powerful (gods know and see more than human judges) and less immediately or directly perceptible (the slow-moving wheels and capricious nature of divine justice). It is this distinction between human and divine justice that makes the appeal to the gods such a fascinating instance of social control. Its specificity will become even more manifest when we now turn to its aspects of *referential* social control: "the first party communicates to the second party some reference to a third party". With this we will re-open a discussion that was broached more than a century ago but has so far not yielded a satisfactory result.

Temple justice and social control

Soon after the discovery of the Knidian texts a debate started concerning the question: what exactly did the authors *do* with their written tablets? The archaeological context is not very informative on their original location: the tablets were found, so Newton says, near some statue bases in the temple precinct. Originally they may have been buried in the ground (like *defixiones* frequently are), or placed near or even fixed to the altar or wall of the temple. The latter was suggested by the excavator Newton himself (1863, 724), who claimed that the tablets show holes in the corners to suspend them on a wall and thus publicize the texts. The majority of later commentators including Wachsmuth, Zundel, Bechtel, Ziebarth, Steinleitner, Zingerle, Latte and Blümel endorse this view adding further arguments based on the evidence provided by the texts themselves. Ziebarth (1899, 124), for instance, pointed out that the promise in one of the tablets to pay a κόμιστρον (finder's reward) if the present illegitimate possessor brings the object back – as an alternative to the penalty by the god in case he does not – simply must imply some kind of publication: "Das ist also die reine Bekanntmachung und öffentliche Warnung!"[66]. And he wryly adds: "Auf die dortige Rechtspflege im zweiten Jhdt. v. Chr. scheinen (die Texte) freilich kein allzugünstiges Licht zu

[66] Cf. *Wünsch* DTA praef. XII.

werfen." However, as he admits, these accusations concern cases in which the culprits were desperately anonymous and could not possibly be traced with the help of normal judicial procedures[67]. Moreover, even in classical Athens, reclamation of a deposit (money consigned to a third party) could not be enforced by law. This was the major reason for entrusting one's money deposit to a temple, a common practice throughout the Greek world, temples serving as banks in this and other respects. Accordingly, Steinleitner (1913, 104) concludes: "Diese Übertragung der Straffolgerungen auf die Gottheit konnte nur dann praktische Erfolg haben, wenn der Schuldige von dem auf ihn herabgerufenen Fluche auch Kenntnis nahm und aus Furcht vor der Vollstreckung desselben vonseiten der Gottheit in sich ging und sein Vergehen wieder gut machte. Um diesen moralischen Druck auf die Schuldigen auszuüben, hing man in Knidos die Fluchtafel an den Mauern des Temenos oder sonst an einem sichtbaren Orte innerhalb des heiligen Bezirks als öffentliche Bekanntmachung auf." Compare, more recently, Blümel (1992, 85): "die meisten Bearbeiter vermuten, wohl richtig, dass sie an der Tempelwand aufgehängt wurden, denn die meisten sind an den oberen Ecken mit Löchern versehen. Die in mehreren Tafeln enthaltene Aufforderung, verlorenes oder gestohlenes Gut zurückzugeben, hat nur in diesem Falle Sinn. Auch unterscheiden sich die Knidischen Fluchtafeln von allen anderen uns bekannten dadurch, dass die Weihenden sich hier mehrfach von übler Nachrede reinigen wollen und sich für den Fall, das sie die Unwahrheit sagen, selbst verfluchen. Auch dies hat nur Sinn, wenn auf Leute gerechnet wird, die diese Unschuldserklärungen lesen."[68]

Fortunately, things are less simple than that and in being less simple become a lot more interesting. Audollent (DT, CXVI), for one, against all others remained firmly convinced that the tablets had been buried, just like his *defixiones*. First of all, he argued, the alleged holes are in fact untraceable. The borders of the tablets are so mutilated that there is on the whole more hole than lead. Only one tablet displays a hole that seems to have been made intentionally. Furthermore, all other commentators conveniently ignore Newton's explicit account that most of the lead sheets were "broken and doubled up" (1863, 382), that is: folded once. Surely, this should be a serious blow to the assumption that the tablets were meant to be read by any other person than the god, and if one should not be convinced by this argument – and why shouldn't one[69]? – there is still the following problem. *If* the

[67] Rightly *Chaniotis* (1997) 18: "Das Appellieren an die Götter erklärt sich manchmal nicht aus dem Misstrauen gegenüber der profanen Gewalt oder dem Vertrauen zu den Priestern, sondern aus der Ausweglosigkeit einer rechtlichen Angelegenheit."

[68] Cf. most recently *Ricl* (1995) 70: "The tablets (i.e. the Knidian ones) were publicly displayed at the temple, since publicity was indispensable for their effectiveness; the confession of guilt that eventually followed was also public."

[69] Chaniotis suggests to me that theoretically the folding up of the tablets could have happened after the fulfilment of the dedicant's wish. Indeed, from the confession inscriptions we know of the procedure of cancelling curses and oaths. The suggestion is important enough to merit a brief discussion. Generally I agree, but with an emphasis on the word ‚theoretically'. However, three considerations make it less likely. First, the folding up of lead tablets is such a common ritual in the *defixiones* (*before* they were deposed in a grave or well), that I assume it

slanderer of Hegemone mentioned in tablet no. 4 could read what he was accused of in the tablet attached to the wall, those accused of other nasty things at the reverse side could not! It is even more complicated with tablet no. 3, not reproduced here. On one side of the tablet Nanas curses those who have accepted a deposit from Diokles and now refuse to give it back. On the reverse side the same Nanas curses Emphanes and Rhodo for the very same offence. Which of the two sides then should be available for inspection[70]?

There is one more consideration: the Attic curses with elements of prayers for justice that we quoted in the beginning, were, as far as we know, found in graves where they had been buried by their authors. At the very least this proves that public display is not an absolute or universal condition for this type of vindictive prayer. It should be noted, however, that these early Attic specimens do *not* contain inquiries concerning the identity of the culprit nor requests for the restitution of stolen objects. Their one and only aim is revenge: punishment of the offender. Apparently, this much could be unconditionally left to the sole responsibility of the gods, who, after all, were also credited with the power to execute the curses in normal *defixiones*. As for confession of guilt and restitution of stolen goods, on the other hand, the argument is that it might be at least helpful if the guilty person had the suspicion that somebody was after him. I am here paraphrasing expressions such as "Sinn haben" and "praktischen Erfolg", which were so prominently featured in the arguments of modern no-nonsense observers.

Fortunately again, we are still not at the end of the complications. The numerous curse texts from Bath[71] and other areas of England contain comparable requests that stolen objects be returned to the temple, sometimes including explicit stipulations that the goddess may retain the object or its value or part of what it is worth. They also add that the thief may pay with his blood (this is a formulaic phrase in the Bath tablets just as the phrase "burnt by fever" is in Knidos). My favourite, by the way, is the ingenious prayer that the thief must vomit his blood into the very vessel that he had stolen. Now, these tablets are often folded up, sometimes pierced with a needle and do not display (intended) holes. What is more, the fact that they have been recovered in such large numbers in recent years is solely due to the fact that they were definitely hidden from view after their

may easily have influenced the practice in the judicial prayers. Secondly, it is unlikely that the tablets after their fulfilment were preserved at all in the temple (where they have been found). Having done their work such materials were generally removed, as we know so well from the votive deposits in temple precincts. The third and most important consideration concerns the condition of the numerous tablets from the sanctuary at Bath, folded up and thrown into the hot springs *before* and not *after* their fulfilment, as described in the text.

[70] Here Chaniotis reminds me that we have the same problem concerning the *lex sacra* from Selinous (*M. H. Jameson, D. R. Jordan, R. D. Kotansky,* A *Lex Sacra* from Selinous (GRB Monographs 11, Durham 1993), for which *G. Nenci* (ASNP 1996) has suggested that these sheets were attached on wooden boards and could be reversed. Again, certainly not impossible, but perhaps more probable for an official ritual instruction than for a private prayer.

[71] Collected with a full discussion by *Tomlin* (1988).

deposition: they were thrown into the hot spring, hence beyond the reach of any potentially interested person.

Altogether this survey should serve as a serious warning not too rashly to accept the principle of public access as a rigid, universal and monolithic condition. Nor would I argue for the reverse. For, in order to continue complicating matters I now must add some ammunition for the counterargument, defending the legibility of the ritual accusations. We do have judicial prayers that were undeniably *available* and in particular cases even indeed *intended* for inspection. One is the bronze tablet dedicated to the Mother of the Gods, cited above with its nice hole in the upper middle, no doubt intended to suspend the tablet so that it could be read. The material used for this particular tablet points in that direction as well: bronze is practically never used for tablets that are meant to be buried. Another instance is the earliest *Greek* papyrus text from Egypt, namely the famous curse of Artemisia from the temple of Oserapis in the Serapeum of Memphis (late fourth century B.C.)[72]. I give a complete translation, but for our purpose only the last section is of importance:

O Lord Oserapis (ὦ δέσποτ' Ὀσεράπι) and you gods who sit enthroned together with Oserapis, to you I direct a prayer (εὔχομ]αι ὑμῖν), I Artemisia, daughter of Amasis, against (κατά) the father of my daughter, who robbed her of her death gifts (?) and of her coffin. Now, if he has done justice to me and to his children, then may that be just. Exactly in the way that he did injustice (ἄδικα) to me and to my children, in that way Oserapis and the gods should bring it about that he not be buried by his children and that he himself cannot bury his parents. As long as my accusation against him (καταβοιῆς) lies here, may he perish miserably, on land or sea, he and all his (possessions), through Oserapis and the gods who sit enthroned with Oserapis, and may he find no mercy (μηδὲ ἵλάονος τυχάνοι) with Oserapis nor with the gods who sit enthroned with Oserapis.
Artemisia placed this petition (κατέθηκεν τὴν ἱκετηριὴν τα[ὐ]την), begging (ἱκετεύουσα) Oserapis to do justice (τὴν δικην δικά[σαι) and likewise the gods who reign with Oserapis. As long as this petition (again the word is ἱκετηρία) lies here, may the father of the girl find no mercy in any way with the gods. Whoever takes away this petition (τὰ γράμματα) and does injustice to Artemisia, may the god punish him (τὴ⟨ν⟩ δικην ἐπιθ[εὶη), ... insofar as Artemisia has not ordered this to them ... (a not very legible passage follows).

The text displays striking similarities with the Knidian ones. However, here at least – but we are in an Egyptian context, as in other papyri that we will discuss – it is undeniably clear that the text was not buried but could instead be touched and inspected – and removed – by anybody who had the wish to do so.

[72] *Fr. Blass*, Philologus 41 (1882) 746ff.; *Wessely*, 11. Jahresber. d. Franz-Joseph Gymnasiums (Vienna 1885); *Wünsch*, CIA III, appendix XXXI; *Preisigke*, Sammelbuch I, 5103; *Wilcken*, UPZ I, no. 1; *Gerstinger*, WS 44 (1924/25) 219, with a new reading adopted by *Wilcken*, UPZ, 646ff.; PGM XL; *Steinleitner* (1913) 102; *Björck* (1938) 131ff. Some remarks: *W. Crönert*, in: Raccolta di Scritti in Onore di G. Lumbroso (Milan 1925) 470–474; *R. Seider*, in: Festschrift zum 150jährigen Bestehen des Berliner Aegyptischen Museums (Berlin 1974) 422–23.

Do gods read their mail?

Why, for that matter, should anybody feel the urge to take away such a *Himmelbrief* – or rather "letter to the Netherworld"? One could imagine various different reasons, but the most obvious – and cogent – one is that the culprit or persons "who knew about it" (as it is formulated several times) would not be pleased to have the accusation divulged, either horizontally or vertically. This involves an interesting question: did ancient people, or *some* ancient people, believe that by eliminating the letter the god would be prevented from knowing the request or – if he knew already – would forget about it? In the case of *defixiones sensu stricto* we happen to know that a stray recovery of a buried curse indeed could stop its fatal effects – at least after drastic ritual interventions by the official clergy[73]. But what about 'letters to gods'? The answer – or at least one possible answer – is not hard to find. Whoever visits a Mediterranean or Latin American chapel of a local wonderworking Christ, Holy Virgin or Saint, will notice letters from far and wide sent by believers who pray for whatever they need at the moment[74]. And if their wishes are not readily granted, soon a reminder will follow: I once found two *identical* letters at the feet of the Bambino of the Aracoeli in Rome, sent by the same little boy with an interval of two weeks. People not belonging to the local clergy are not supposed to remove these letters (and will suffer divine wrath if they do) for they must remain in the visual field or at least in the immediate vicinity of the statue of the holy addressee. The notion of divine omniscience, for that matter, as far as it prevails at all, is as inoffensive to the idea that letters are there to be *read* as it is to the truism that oral prayers are intended to be *heard*[75].

As far as antiquity is concerned, we have seen above that two curse texts (DTA 102 and 103) have the phrase "To (Hermes and) Persephone I send this letter"[76], while others have the names of the chthonic gods on the outside of the rolled-up tablet as if "to imitate the method in which ordinary letter scrolls were regularly

[73] Two instances, one from antiquity, one from modern Greece, in *Versnel* (1991) 63.

[74] Lovely examples in: *S. Bonnet*, Prières secrètes des Français d'aujourd'hui (Paris 1976). A good discussion in: *W. Heim*, Briefe zum Himmel. Die Grabbriefe an Mutter H. Theresia Scherer in Ingenbohl (Schriften der Schweiz. Ges. f. Volkskunde 40, Basel 1961). For their relevance to ancient prayer: *Versnel* (1981) 1–3.

[75] Two gold leaves found in the cemetery of Pella are inscribed with the names of the persons, in whose grave they were placed, and who are *mystai* of Dionysos. One of the leaves is addressed to Persephone in the dative: not by way of a dedication, but in the sense of "tell Persephone", as *M.W. Dickie*, The Dionysiac Mysteries in Pella, in: ZPE 109 (1995) 81–6, convincingly argues (cf. EBGR 1994–5, no. 104). This means that Persephone should be informed that the deceased had been initiated into a mystery cult of a Dionysiac nature in which the goddess herself takes part. These clashes beween logical and psychological considerations – so irritant to the modern scholar and hence readily discarded – are ubiquitous and basically inherent in religious perception. A considerable part of the Sather lectures of 1999 (to be published as Coping with the Gods: Wayward Readings of Greek Theology) is devoted to various types of this inconsistency.

[76] Other instances of explicit references to the notion of the letter: *Graf* (1997) 276 n. 40.

addressed", as Faraone[77] suggests. He also surmises that "the efficacy of a few early Attic curses may hinge on the corps's ability to read the tablet placed in his grave and act accordingly". This is not unlikely at first sight, but analogy – and we do have a form of analogy here – can take an unexpected and even radically opposite turn. A much discussed[78] curse, perhaps from Megara, reads:

> Whenever you, O Pasianax, read this letter – but neither will you, O Pasianax, ever read this letter, nor will Neophanes ever direct a lawsuit against Aristandros. But just as you, O Pasianax, lie here inert, so also will Neophanes fall into inertia and nothingness.

Although some earlier commentators interpreted Pasianax as a name of the divine ruler of the Nether World, it is now generally accepted that Pasianax is the name – or a euphemistic rebaptization – of the dead person to whom the message was sent and in whose grave it has been recovered. As the reference to the inertia of the corpse unequivocally proves, it has never been the intention that the corpse should *read* the message. On the contrary, it is the dead's self-evident *unability to read* which provides the material for the analogy. This is confirmed by other comparable curses[79]. Even the often assumed function of the dead person as "the infernal postman who brings the text to the divine or demonic addressees", (Graf [1997] 131) in these texts falls victim to this totally different kind of analogy and disappears from view[80]. However, the two types of analogy can also be combined. This is the case in a fascinating curse, known for more than a century but only recently definitely deciphered by David Jordan[81]. In the first part the words, works

[77] *Faraone* (1991) 4, where he discusses the epistolary nature of some curses. See for this also *A. L. Jimeno*, Las cartas de maldición, in: Minerva 4 (1990) 134–144; *Graf* (1997) 130–1. See also supra n.41.

[78] It is one of a pair of nearly identical texts. I mention only the most relevant literature: DT 43 (and 44); *Bravo* (1987) 199–201; *Gager* (1992) no. 43; *Graf* (1997) 130–1; *E. Voutiras*, ΔΙΟΝΥΣΟΦΩΝΤΟΣ ΓΑΜΟΙ: Marital Life and Magic in Fourth Century Pella (Amsterdam 1998) 64–7; *idem*, Euphemistic Names for the Powers of the Nether World, in: *Jordan* (1999) 72–82, esp. 76–7, with further literature.

[79] For instance the very interesting DT 52, discussed by *Bravo* (1987) 201, but with a surprising new reading by *Jordan*, which we will cite presently. A variant is that the author of the tablet stipulates that the curse will be solved only at the – imaginary – moment that *(s)he him/herself* will unroll and read the text again. So in the new spell amply discussed by *Voutiras* (o.c. previous note) and in the curse of Artemisia.

[80] If it ever *was* in view in the classical period. Cf. *Bravo* (1987) 196 (and cf. 198): "Si l'on passe en revue les tablettes magiques grecques depuis la seconde moitié du VIe siècle jusqu'à la fin de l'époque hellénistique, on ne rencontre pas beaucoup de cas où l'on peut avoir la certitude que l'opération magique s'adresse à un mort conçu comme une puissance." If existent at all, they are indeed extremely rare and no one antedates the IVth century. For instance, I doubt whether DTA 100, cited above in the text, belongs to this category, since the syntax allows and the idiom suggests to connect the instruction with Hermes as addressee and not with the deceased Onesimos. All this is very different in tablets of the imperial period. For a more generous assessment of the activity of the dead see: *S. Isles Johnston*, Restless Dead: Encounters Between the Living and the Dead in Ancient Greece (Berkeley etc. 1999) 71–81; 85–6; 91–3.

[81] *Ziebarth* (1899) 20; *R. Wünsch*, Neue Fluchtafeln, in: RhM 55 (1900) no. 20; DT 52; *Bravo* (1987) 201; *D. R. Jordan*, Three Curse tablets, in: *Jordan* (1999) 118f., who emphasizes the function of analogy.

and tongue of Kerkis are "bound with the ἠιθέοις (sc. the young premature dead)"[82], and whenever they read these (sc. words) then shall it be Kerkis' to speak. The dead's ability to read is thus presented as an *adunaton*. However, the text ends with the words: "Hermes Chthonios, control these things and read these (sc. words) as long as they (sc. the intended victims) are alive (ἀνάγνωθι ταῦτα τέως ἂν οὗτοι ζῶσιν)", where it is precisely the god's "continuous reading" of the letter[83] that effectuates the desired incapacity of the victims.

"Continuous reading by the divine adressee", then, is at least one of the – now explicitly attested – objectives of writing a letter to the god and depositing it at a place where the god is thought to be present, be it his sanctuary[84] (as in the modern use of "Himmelbriefe") or the nether world via a grave, a pit or a well. It is, of course, not the only imaginable motive for writing a text on a lead tablet. For the *defixiones* proper it is generally assumed that the writing of a curse has the goal of fixing the language spoken and making it permanent. And being permanently lodged in the realm of subterranean powers it binds the victim permanently with these powers, as in a text from Pannonia[85]: "Abrasarx, I dedicate to you this Deiectus, son of Cumita, that he may be unable to act as long as [this text] is lying in this way; in the same way as you are a corpse, he may be with you, as long as he lives." There is simply not one monolithic and exclusive motive. However, one may presume that in the field of the conventional *defixio* the motive of fixing the spoken curse formula is more dominant then in the prayer for justice, which naturally *and demonstrably* is generally explicitly phrased as a letter or at least as a direct form of communication with the god, like the ones we know so well from ancient prayer. In that case it is equally natural that the letter must reach the adressee, is expected to be read by the god, and, as we have seen, should remain available for continuous reading.

[82] See: *S. Isles Johnston*, o.c. (supra n.80), 76ff.

[83] Just as in the Egyptian Memnoneion the god πολλάκις δ' ἀκούσεται, as long as the inscription remains visible. See infra n. 114.

[84] In fact by being delivered to the god the letters have become his property in the same way as other kinds of *anathemata*, which therefore are inalienable. "It is forbidden to remove votive offerings fom the sanctuary or to damage any of them" says an inscription from Loryma on the Rhodian Peraia (LSAM no. 74, 3d c. BC). Melting down ex votos in order to use the material for one more impressive *anathema*, requires the recording of the names of the original dedicants (LSCG no 4). "This inscription very clearly illustrates, that votive offerings constituted a sort of *permanent link between the worshipper and his god* (my italics, HSV). Therefore, if votive offerings are interfered with, both parties, dedicant and god, have to be given satisfaction." (*F. T. van Straten*, Votives and Votaries in Greek Sanctuaries, in: *O. Reverdin, B. Grange* [eds.], Le sanctuaire grec [Entretiens Hardt 37, 1992] 247–84, esp. 72–4). Cf. the same author, ibid. 287: "From Herondas *Mime* 4, one gets the impression that the closer the votive offering was placed to the divine image, the better it was considered to be." *J. Bingen* ibid. suggests that representations of sacrificial or praying groups in votive reliefs also in Greece (and not only in Egypt, where they have often been interpreted this way) are "a kind of symbolic prolongation of the act of worship in the presence of the deity".

[85] *D. Gáspár*, Eine griechische Fluchtafel aus Savaria, in: Tyche 5 (1990) 13–16, quoted by *Graf* (1997) 276 n.42.

I have brought up this issue[86] because we do have an analogy for the disappearance of a tablet in a type of evidence that I announced above and to which we must now turn our attention.

The contribution of the Maeonian confession texts

The nineteenth century witnessed the first publications of inscriptions from *stelai* found in the north-eastern area of Lydia (known as Maeonia or Katakekaumene) and in the adjacent area of Phrygia, which were, as a group, different from the usual votive inscriptions. Since they often contain a kind of confession of guilt, they are generally called "confession steles"[87]. The steles are often precisely dated and with only two or three exceptions date from the second and third centuries A.D. Although there exists great variation, they can generally be classified as praises or aretalogies of the god, in which the δύναμις (power)[88] of the usually local divinity (e.g. the Great Mother, especially as Meter Leto; Men with several epithets; Apollo with epithets such as Lairbenos, Axiottenos etc.; Zeus; Sabazios; and Anaeitis) is described and glorified. We encounter the following elements. First there is an acclamation of the type: "Great (is) Men" or "Great (is) Anaeitis", etc. The reason for the erection of the stele is often a confession of guilt, (ὁμολογέω or ἐξομολογέω) to which the author has been forced by the punishing intervention of the deity (κολάζω, κόλασις) often manifested by illness or accident. Sometimes the victim of the punishment has asked (ἐρωτάω or ἐπερωτάω) the deity the reason for the punishment and what he should do to propitiate the god. Unsolicited divine commands also occur. By his confession and eventual reparation of the wrong the culprit has appeased the god (ἱλάσκομαι or ἐξιλάσκομαι). The god therefore reveals his *dynamis* by both the punishment and the cure of the victim, and as homage to the god the story of the miracle is now written on a stele (στηλογραφέω) sometimes at the command of the god, but not necessarily so. The text often ends with a clear profession of faith: "And from now on I praise the god" (καὶ ἀπὸ νῦν εὐλογῶ) or sometimes, especially in Phrygia, it ends with a warning: "I warn all mankind not to hold the gods in contempt, for they (i.e. mankind) will have this stele as an admonition" (παραγγέλλω πᾶσιν μηδὲν καταφρονεῖν τῶν θεῶν ἐπεὶ ἔξει τὴν στήλην ἐξενπλάριον).

[86] Which surely merits a more ample discussion, which I cannot give here. For instance I have not mentioned possible psychological safety valve-effects involved in writing a curse or plea, nor the efficacy embodied in the mere *placing* of a petition. Once more it would be mistaken to see these notions as mutually exclusive. Nor can I even begin to discuss the implications and intentions involved in keeping things secret in religious contexts: *H.G. Kippenberg, G.G. Stroumsma* (eds.), Secrecy and Concealment: Studies in the History of Mediterranean and Near Eastern Religions (Leiden 1995); *S. Montiglio*, Silence in the Land of Logos (Princeton 2000).

[87] Collected and discussed in BIWK, which supersedes all earlier publications.

[88] The στῆλαι are veritable μαρτυρίαι; see *Versnel* (1981) 60ff.

The juridical aspects of these Maeonian inscriptions have received a thorough treatment recently by Angelos Chaniotis (1997)[89]. They often focus on transgressions of the type which we encountered in the tablets from Knidos: theft, failure to return a deposit and slander, especially with regard to allegations of poison or black magic[90]. Perjury, mentioned with some frequency, forms a bridge of sorts between the transgressions against men and those against gods. For our present enquiry it is interesting that in the category of profane transgressions the god is sometimes appealed to by the injured person in order to punish the guilty and in this way to do justice. And in some cases it is also explicitly announced by what means the god has been summoned to action. I quote a well-known confession inscription[91]:

To Men Axiottenos. Since Hermogenes, son of Glykon, and Nitonis, son of Philoxenos, have slandered Artemidoros with respect to wine, Artemidoros has given a πιττάκιον. The god has punished Hermogenes, who has propitiated the god and from now on he will extol (the god).

A πιττάκιον is a tablet covered with writing, which is presented to the deity. It is, among other things, a technical term for oracle questions placed before the gods in Egypt[92]. In another confession inscription (BIWK 69; TAM 318) we are told how a woman, Tatias, stands accused (in a campaign of gossip) of poisoning her son-in-law who had subsequently gone out of his mind. She reacted as follows:

Tatias erected a scepter and placed ἀραί (curses) in the temple, as if to show that she was not guilty of the transgressions attributed to her, although she was aware of her guilt. The gods subjected her to a punishment which she did not escape.

ἡ δὲ Τατιας ἐπέστησεν
σκῆπτρον καὶ ἀρὰς ἔθηκεν
ἐν τῷ ναῷ, ὡς ἱκανοποιοῦ-
σα περὶ τοῦ πεφημίσθαι αὐ-
τὴν ἐν συνειδήσι τοιαύτῃ.
οἱ θεοὶ αὐτὴν ἐποίησαν ἐν
κολάσει, ἣν οὐ διέφυγεν.

Apparently the poor woman died and in the remainder of the text we are told how her relatives unbound (λύω) the ἀραί and successfully propitiated the gods.

The text contains many interesting elements of which the following are of importance to us. There is a ritual opening of the divine judicial process by the "drawing up of a scepter"[93]. We meet this and closely related expressions again

[89] And cf. *Chaniotis* forthcoming 2001.

[90] There is an exemplary list of sins in the sacral law from Philadelphia concerning a private sanctuary (supra n.19). See for a collection of the offences attested in the confession inscriptions: *S. Mitchell*, Anatolia: Land, men, and gods in Asia Minor. Volume I. The Celts and the impact of Roman rule (Oxford 1993) 192–194; BIWK *Petzl* (1994) xii-xiii; *Chaniotis* (1997) 354 f.

[91] BIWK 60; TAM no. 251, where one can find references to literature on the term πιττάκιον.

[92] ἐξελθῃ τὸ πιττάκιον (POxy 8.1150 = PGM VIIIb). That this is formulary is demonstrated by an oracle published in: ZPE 41 (1981) 291.

[93] For the discussion on the meaning of these σκῆπτρα and further literature: BIWK p.4. The divine tribunal is literally mentioned as σύνκλητος τῶν θεῶν in a new unpublished confes-

several times. In particular some recently found texts make it clear that it is here a question of supplying a visible manifestation of the god's presence and power. The ἀραί most likely contained a conditional self-curse which Tatias uttered in order to prove her innocence, a procedure similar to that which appears in the Knidian tablet cited earlier (DT 1). What is essential is that these ἀραί are clearly related to the πιττάκιον of the first confession text; the case is entrusted to the god in writing, and punishment is implored for the culprit. Perhaps we can find another example of such a judicial prayer in another confession inscription from Maeonia (TAM 362) which mentions "someone who has overthrown and removed the tablet (π[ι]νακίδιον)"[94]. One way to appeal to divine justice (ἐπεκαλέσατ[ο κατ' αὐτοῦ τὸ]ν θεόν, in the words of TAM 525) is therefore a written complaint in a temple. Now, we have already become acquainted in detail with such petitions in Knidos and elsewhere. The similarity even goes so far that Artemisia in Memphis feared that her curse would be taken away, something which seems to have happened in TAM 362 just quoted. Without doubt the Knidian prayers provide the closest analogy to these confessions[95]. There is, to be sure, a time difference of at least one, and most likely two or three centuries between the Knidian prayers and the Maeonian confessions, but the dated confession inscriptions themselves prove precisely how persistently a religious practice can be maintained over two centuries, even to details of wording.

In an article of 1991 on judicial prayer I argued that the Knidian tablets form the opening to a legal proceeding, just like the ἀραί, the πιττάκιον and the πινακίδιον mentioned in the confession inscriptions, while the confession inscriptions themselves describe the course and the conclusion of the whole lawsuit[96]. Conversely, it also appears that such forms of divine justice will flourish especially in a culture where illness, misfortune or even death are regarded in the first place as divine punishment, and thus lead to serious self-examination for possible sins committed against gods or men[97]. We are talking of a mentality that Plutarch in his *De superstitione* so evocatively pictured as *deisidaimonia*, describing (*de superst.* 168c) how

sion text, thus proving that the same term in BIWK no. 5, was not a council of priests but of gods, as Chaniotis informs me.

[94] On the word πινακίδιον, see *Chr. Habicht*, Altertümer von Pergamon.VIII, pt.3 Inschriften des Asklepieions, ad no. 72. The custom to give *pinakidia*, *pittakia* etc. as prayers for justice is a variant on that of suspending *pinakes* in temples, trees etc : *P. Veyne*, Titulus praelatus: offrande, solennisation et publicité dans les ex-voto gréco-romains, in: RA (1983) 289.

[95] The correspondence was noticed for the first time by *Ziebarth* (1899) 122 ff. and has been further explored by *Steinleitner* (1913) 100–104; *Zingerle* (1926) 19 f.; *Björck* (1938) 112 ff.; *Eger* (1939) 288 ff.; *R. Pettazzoni*, La confessione dei peccati III, pt. 2 (Bologna 1936) 74–6 and 141 n. 96.

[96] If so, the situation is less desperate than *Speyer*, art. Fluch RAC 1213, says about the Knidian procedure: "Welche Folgen und Wirkungen diese Verwünschungen gehabt haben, erfahren wir nicht."

[97] For a full discussion of the afflictions in the confession *stelai* see: *A. Chaniotis*, Illness and cures in the Greek propitiatory inscriptions and dedications of Lydia and Phrygia, in: *Ph. J. van der Eijk, H. F. J. Horstmanshoff, P. H. Schrijvers* (eds.), Ancient Medicine in its Socio-Cultural Context (Amsterdam, Atlanta 1995) II, 323–44.

the *deisidaimon* "classes any disposition of the body, loss of property, deaths of children, or mishap and failures in public life" (exactly the afflictions recurring time and again in the confession inscriptions) "as afflictions of God (πληγαὶ θεοῦ) or attacks of an evil spirit (προσβολαὶ δαίμονος)", while the reaction to any human offer to help is: "Leave me, sir, to pay my penalty, impious wretch that I am, accursed and hateful to the gods and all the heavenly host" (ἔα με διδόναι δίκην, τὸν ἀσεβῆ, τὸν ἐπάρατον, τὸν θεοῖς καὶ δαίμοσι μεμισημένον)[98]. A series of short votive inscriptions from Philadelphia, halfway between Maeonia and Knidos[99], illustrates perfectly the two possible reactions to illness and cure. On the one hand we find the usual type εὐ[ξά]μενος ... εὐχὴν ἀνέ[θ]ηκα, in which a vow for the cure of an illness is simply redeemed, but on the other hand there are texts like κολασθεῖσα το[ὐ]ς μασστο[ὺς] εὐχὴν ἀ[ν]έθηκα[100], in which an illness affecting a woman's breasts is clearly – and apodictically – seen as a divine punishment.

The relationship between the Knidian tablets as complaints before a divine tribunal and the confession inscriptions as records of divine justice becomes even closer if we consider the fate of the object obtained illegally by the culprit. As was already noted above, the wording of the Knidian tablets and the related tablet from Southern Italy seemed to indicate that the object brought to the temple could in fact become the possession of the goddess(es) (which by itself does not necessarily mean that this would have placed it outside human use)[101]. And we also saw that this procedure raised Wachsmuth's indignation, because it seemed senseless, hence illogical to him. Why ask for justice if this justice does not contribute to regaining your property?

The problem here is that what makes sense to ancient man (or *some* ancient people) does not necessarily do so in the eyes of the modern observer (and vice

[98] For the religious mentality involved see: *J. Keil*, Die Kulte Lydiens, in: Anatolian Studies. Festschrift W. M. Ramsay (1923) 239–66; *G. Petzl*, Lukians Podagra und die Beichtinschriften Kleinasiens, in: Metis 6 (1991 [1994]) 131–145; *G. Petzl*, Ländliche Religiosität in Lydien, in: *E. Schwertheim* (ed.), Forschungen in Lydien (Asia Minor Studien 17, Bonn 1995) 37–48.

[99] *H. Malay*, The Sanctuary of Meter Phileis near Philadelphia, in: EA 6 (1985) 111–125. I quote from his nos. 2 and 9 respectively.

[100] For a most unequivocal expression of this, a dedication to Men Axiottenos: πεποσχότα ... ὑπὸ Μηνός ("suffering ... through Men"), published by *G. Manganaro* (ZPE 61 [1985] 199 ff.). The terminology κολασθεὶς εἰς or ἀπό plus part of the body is formulaic. For a recent survey of pictures of parts of the body in confession texts see *Chr. Naour*, Nouvelles inscriptions du Moyen Hermos, in: EA 2 (1983) 107–122, esp. 109. In general: *F. T. van Straten*, Votive Offerings Representing Parts of the Human Body (the Greek World), in: *Versnel* (1981) 105–151; *B. Forsen*, Griechische Gliederweihungen. Eine Untersuchung zu ihrer Typologie und ihrer religions- und sozialgeschichtlichen Bedeutung (Papers and Monographs of the Finnish Institute at Athens 4 [1996]).

[101] It was possible, for instance, to give an object to the god and keep the usufruct: *A. Cameron*, Inscriptions Relating to Sacral Manumission and Confession, in: HThR 32 (1939) no. 1, Edessa no. 10. Actually the sacral *manumissio* is an example of this principle, so that εἶναι αὐτὴν τῆν θεοῦ actually means ἐλευθέραν εἶναι : *Cameron*, ibid. 149. Comparable examples from the Roman world: *P. Veyne*, Titulus praelatus: offrande, solennisation et publicité dans les ex-voto gréco-romains, in: RA (1983) 296 f.

versa). If we read the texts in an unbiased way, we cannot but infer that there are a variety of options, each of which in turn may become interesting to the author of the tablet. If, for the moment, we restrict ourselves to cases of theft and related offences, there is nothing against assuming that the first and immediate reaction may have been that the plaintiff wants her property back. At this stage, procedures like putting up a *komistron* are in order[102]. But, if the thief remains obstinate, the second best wish may be that the culprit is unmasked and humiliated by a public confession – preferably with all his *idioi*! At this point, the redemption of the loss becomes a secondary element and revenge the primary one[103]. Of course, both elements may play their parts, but not necessarily always with the same emphasis and at the same moment. In the confession texts, too, we see requests for recovery of lost property and mere revenge alternating freely[104]. And again there are interesting variations. According to an inscription from Koresa in Lydia[105], a garment was stolen from a bathing-establishment:

> The god was vexed with the man and after some time had him bring the cloak to the god. He openly confessed his guilt. Then the god ordered him, through the agency of an "angel", to sell the article of clothing and to publicize his miracles on a stele.

There are many similar attestations[106]. In addition, it can also happen that the legitimate owner gets the lost or stolen item back again. Clearly there was no strict uniformity here as is confirmed by the recent Latin material from Bath.

[102] This does not *per se* imply that the tablet has been open to inspection. As *Björck* (1938) 124 n.2 notes, one may assume that the *komistron* has been advertised in another way, or may even belong to normal and accepted procedure.

[103] As we find it in Aesopus' 74th fable, where a robbed person is even willing to pay a reward to the god for learning the identity of the thief (not for recovering the stolen object): "A cowherd lost a calf. So he made a vow to Zeus that if he ever managed to discover the thief, he would sacrifice a kid to the god in thanks."

[104] *Chaniotis* (1997) 364. In his forthcoming paper (2001) *Chaniotis* presents the attractive suggestion that especially in cases of loss of face and honour the wish for revenge might have preference over the wish to have one's property back.

[105] BIWK 3; TAM no. 159, where one finds references to the discussion on ἄγγελος. On dream commandments in general see: *F. T. van Straten*, Daikrates' Dream: A Votive Relief from Kos and some other *kat' onar* Dedications, in: BABesch 51 (1976) 1–38.

[106] We have several confession texts in which the perpetrators are punished through public confession *and* a heavy fine to the god, without a glimpse of the original sum or object being returned to the rightful owner. From the neighborhood of Kula (Maeonia) comes a confession inscription (BIWK 46; TAM no. 510) whose readable part relates the gods' request that certain individuals return a sum of money which they are illegally withholding. They did not return it to its rightful owner, but instead "the sons of the culprits gave double (for double fines see supra n.63) the original amount to erect a *stele*"; thus it is somewhat comparable with the South Italian prayer discussed earlier. In a confession inscription from Usak (BIWK 38) two people ask the *patrioi theoi* what they could have done wrong. Somewhere along the line this is made clear to them for they tell us: "we deposited 100 *denarii* just as the *patrioi theoi* had demanded (καθὼς ἐπεζήτησαν)." On the whole issue of payments to the god see the fundamental discussion by *Chaniotis* forthcoming 2001.

Once more: divine justice and social control

Finally, let us return to the special type of relationship between divine justice and social control in the evidence under discussion. Different from secular judges or jury-courts, the divine judges, being the autocratic lords and mistresses of temple and village, are not impersonal and objective authorities, whose only professional task it is to administer justice, but rather they are first and foremost divine *persons* very much interested in their own honour, status and dignity and hence demanding from the believer (an appropriate term in this context) an attitude of submission and reverence[107], radically different from what we know of classical Athens. The gods are concerned in a twofold sense. First they are involved in the interests of the believer, because an appeal has been made for them to intervene. But they are also personally interested in the whole affair, which always at least implies demonstrating their *dunamis* or *arete* as is so often emphasized in the confession texts. Hence, they may even claim their own remuneration. An inscription (BIWK 73; TAM 327) begins as follows: "Anaeitis is great. Since Phoebus has sinned, the goddess asked for a ἱεροπόημα." This term, which occurs several times in these texts[108], means a gift to the deity, and sometimes may be embodied by the στηλογραφία. There is one text from Knidos which, although it has disappeared from the scholarly discussion since Newton's edition, nevertheless offers a nice parallel to this. In it we read that a woman dedicated χαριστεῖα and ἐκτίματρα[109] to Demeter, Kore and the gods with Demeter and Kore, in which the term ἐκτίματρα, otherwise unattested, must mean (using the analogy to terms such as σῶστρα, λύτρα or μήνυτρα) something like "payment", in this case high veneration and thanks, somewhat comparable to the confession stele as ἱεροπόημα and praise.

Of all the obvious differences between these post-classical texts and what we know of classical Greece the public confession of sins is no doubt the most remarkable one[110]. The testimonia from Asia Minor have been generally explained –

[107] Of course, their earthly representatives, no less interested in their own status and dignity, have had their share in the construction and propagation of this tyrannical imagery of the divine. On the notion of divine tyranny: *H.W. Pleket* in: *Versnel* (1981) 152–92; *Versnel* (1990) Ch. 1.

[108] BIWK 70 (ποήσαντες τὸ ἱεροπόημα); BIWK 73 and 74 (ἐπεζήτησεν ἱεροπόημα); TAM 320 (ἀπέδωκαν τὸ [ἱε]ροπόημα); TAM 321 (idem), all from the temple of Anaeitis and Men Tiamou at Kula. For a discussion of the meaning of the term see BIWK p. 91–2.

[109] *Newton* (1863) 716: "this word may mean 'atonements' or 'sin-offerings'." For ἴατρα demanded by the god see *Wörrle* in *Chr. Habicht*, Altertümer von Pergamon VIII., pt. 3, Die Inschriften des Asklepieions, 184 ff.

[110] Cf. *Burkert* (1996) 122, on confession, which is conspicuously lacking in classical Greece (except for the Epidaurean cult of Asklepios): "Apparently the style of Greek society was averse to the form of humiliation expressed by confession. In the context of a political system run by self-responsible citizens without king or overlord, the belief system led to a certain pride of endurance or to a tragic insight beyond all hope, as exemplified by the end of King Oedipus in Sophocles."

rightly in my view – either as a relic of earlier cults in Asia Minor or as the result of religious influences from Near Eastern cultures (or both). The first clear attestations for Greece itself are three instances in the fourth century miracle cures by Asklepios: the so-called *iamata*, where lack of faith or even mockery on the part of human observers is punished with illness, after which the unbelievers have to confess their error in public. This so-called *paradeigmatismos* (making an example of somebody) is a regular element of the confession texts where, as we saw, it is referred to as ἐξενπλάριον. Moreover, we have also seen that the Knidian texts may demand the same from wrongdoers.

This aspect, which so far has been exploited exclusively as an illustration of Hellenistic religious mentality, is of equal interest if viewed as a strategy of social control. If Wachsmuth and later commentators found a request to a goddess without its publication senseless this is because they are brazen unbelievers. In the religious imagery of the ancient cultures under discussion, however, it may have been perfectly superfluous to scatter around notes of warning, because the goddess was believed to take care of the whole affair, which by ceding it to her, had become *her* affair. Among the confession texts only a few attribute the initiative to a mortal plaintiff. The majority of texts concern either offences against the gods, for instance ritual impurity or other violations of sacred rules, or punishments for transgressions without any judiciary procedure being involved. How, then, did the culprit *know* that he was being persecuted by divine justice? Well, about the answer to that question we can be absolutely certain because it is the core of each confession text: he feels sick, a sickle falls on his foot, one of his children falls ill, or the cow dies: sickness and disaster are automatically considered as *kolasis*. So, as soon as you feel unwell (for instance with a fit of fever diagnosed as πεπρημένος in Knidian medicine) you had better take action before it is too late. In an early stage you may consider returning a stolen object or a borrowed sum – which just might settle the matter. But if the process has passed beyond that point there is only one solution, which everybody was well aware of since it apparently belonged to normal routine: to disclose the whole affair through public confession.

However, all this is not to deny that a stimulus or a hint from the side of the plaintiff might come in handy. First there was the option to publish the accusation as we have seen in a few isolated cases: almost certainly in the cases of the bronze tablet to the Mother of the Gods and probably also the South Italian tablet with the official fine, in which, moreover, by way of exception, the name of the guilty person appeared to be known and publicized. Elsewhere, one could "give" a *pittakion* and place it in the temple in such a way that it was visible, hence could be stealthily inspected[111] (and taken away) as we saw, *inter alia* in the curse of Arte-

[111] A confession text (BIWK 36) may refer to such an unholy inspection of a curse-tablet: "For Men Labana(s). Elpis has despised Men Labana(s) by mounting his podium (βῆμα) in an unclean state (ἀκατάλουστος: perhaps "in an uninitiated state"?) and by searching (ἠρεύνησεν) his podium and his tablets (τὰς τάβλας αὐτοῦ)." *P. Herrmann*, Anz. Ak. Wien 122 (1985) 251–4, prefers an interpretation of τάβλαι as "Kultgeräte" over that of votive or curse tablets. Certainty cannot be reached here, but the Greek word is a literal transscription

misia. When Artemidoros, victim of slander by Hermogenes and Nitonis, in the confession text quoted earlier, reacted by submitting a tablet to the sanctuary (πιττάκιον ἔδωκεν), its contents must have been known to the public in some way or other. For when mischief befell Hermogenes this was readily interpreted as divine punishment and was responded to with the necessary atonements[112]. Curiously enough and in stark contrast, we have some Coptic, that is late antique, judicial prayers on papyrus, where the author gives the warning that "whoever opens this papyrus and reads its text, every curse that it contains will come down on his head"[113]. One of them has this warning note in the opening line of the text, the other has it isolated at the verso side, so that in both cases this warning could be read separately from the main text. All this, however, is probably traditional Egyptian practice[114].

Finally, another aspect should be considered: all judicial prayers designed for use in the temple contained formulaic elements. Persons who resorted to this type of sacred justice needed instruction about the correct procedures and formulas and there can be little doubt that this was the privileged task of the local priestesses or priests, who – no less interested in their own dignity then in that of their god(dess) – readily offered their expert services, perhaps even writing or prompting the texts[115]. This implies that the priests may have been acquainted with the contents of the prayers. Note that in a different, but in some aspects very related, ritual practice, namely the consultation of oracles at Dodona, discussed earlier in

of Latin *tabula* or *tabella*, which, like τάβλα itself in other texts (see LSJ), are *termini technici* for writing tablets in general and for curse tablets in particular. If so, we have here a precise picture of such a stealthy inspection of a written complaint.

[112] As noted by *Chaniotis* forthcoming 2001, who argues that in the Maeonian practice the accusations were always public or at least known to the public.

[113] *Björck* (1938) nos. 30–31 = *M.W. Meyer, R. Smith* (edd.), Ancient Christian Magic: Coptic Texts of Ritual Power (San Francisco 1994) nos. 88 and 90. The editors comment (ibid. 186): "Even these formulae are stereotyped. Little-known Demotic temple graffiti from Dakka, Aswan, and Medinet Habu promise just such a curse on those who would read or deface the inscriptions. Let the reader be forewarned."

[114] For the custom to curse those who will erase the letters of a *proskunema* inscription, see: *E. Bernand*, Réflexions sur les proscynèmes, in: *D. Conso, N. Fick, B. Poulle* (edd.), Mélanges François Kerlouégan (Paris 1994) 43–60, esp. 54 f. From some texts it clearly appears that by engraving the inscription the worshiper perpetuates his/her presence in the place of worship or in the memory of the god; hence "the god will frequently hear the prayer" (πολλάκις δ' ἀκούσεται, as in the Memnoneion, *Kaibel*, EG 1010; cf. EBGR 1994/5, no. 29).

[115] Cf. *Ricl* (1995) 73: "Although I do not believe that Maeonian village-priests possessed complete judicial authority (...) I think their role was important (...). They were probably present at all stages of the quasi-judicial procedure that took place in their temple; they witnessed the lodging of a complaint, the setting up of the divine sceptre, the taking of an oath. Also they consulted the gods on the transgressor and communicated back divine answers and commandments. Fines in money or natural products were delivered to them and they saw to it that the transgressor erected a stele informing everyone of his sin, sometimes, perhaps, even taking part in formulating the text of the inscription." See the examples from the confession texts in *Chaniotis* (1997) 373 n. 102, and his fundamental treatment in *Chaniotis* forthcoming 2001.

this paper, all kinds of private questions written by the enquirers themselves on lead tablets were put before the priests who must have read them in order to be able to function as the channel for the oracular responses.

In any case, the priests did bear the responsibility for what happened in their temple, as is still the case in churches of modern Greece. In such circumstances they simply have the right to know what is going on. Consequently, in a very good passage of a very good, but generally ignored, dissertation *Der Fluch des Christen Sabinus*, (Uppsala 1938) 123–4, G. Björck makes the priests into the central actors in the juridical drama: "Die Tafeln wurden also, denke ich mir, im Tempel eingereicht (...) und darauf hin hat die Priesterschaft kraft der göttlichen Autorität ihre Massnahmen treffen können. Die Einzelheiten entziehen sich natürlich vollends unseren Kenntnis." Long before him, Wachsmuth (1863, 569) had suggested that the priests may have recited the accusation during an official cultic gathering, just as in contemporary Greece the papas can be heard doing, with *very* satisfactory results. Zingerle 1926, in his turn, devised what I would call a hyperbole of *Heiliges Recht* by arguing that the priests were actively involved in inflicting various types of ailments presenting them as divine penalties. That surely goes too far[116] and in his fundamental recent discussion Chaniotis 1997, 360, rightly concludes: "Wenn also in einigen Beichtinschriften die Tätigkeit der Götter mit rechtlichen Termini charakterisiert wird, heisst dies nicht unbedingt, dass die Tempel für alle oder nur für bestimmte Angelegenheiten als Gerichtshöfe fungiert hatten." On the other hand, one cannot deny that an occasional success of the divine intervention resulting in a public confession (*paradeigmatismos, exemplarion*) was in the priests' interest, so that a few more or less veiled hints may have come in handy[117].

However, those who are even superficially acquainted with modern Mediterranean social communication know that all these different channels for official pronouncements are not really necessary. It suffices to tell your best friend that you have just "given" a *pittakion* in the temple concerning the stola that you have been missing recently or regarding the false accusation that has been laid against you

[116] More cautious: *G. Petzl*, BIWK ad no. 5. See for reactions: *Eger* (1939) 291–3; BIWK, passim; *M. Ricl*, The Appeal to Divine Justice in the Lydian Confession Inscriptions, in: *E. Schwertheim* (ed.), Forschungen in Lydien (Asia Minor Studien 17, Bonn 1995) 67–76, on the belief that disease and other misfortunes were a punishment for unatoned crimes. She contests (71) the view (as for instance *Zingerle's*) that there was an official temple jurisdiction, tolerated by the state authorities, and carried out by priests as divine representatives, and argues, with examples, that "for most of them it is obvious that one simply cannot talk of judiciary proceedings taking place". Cf. also the recent ample treatment by *Chaniotis* (1997) with more literature in n.18, and *idem*, forthcoming 2001.

[117] Besides, we should not be over-cautious in considering the possibility of human manipulation of divine judgement. The third century BC Indian document Arthásastra, attributed to Kautiliya says: "To those who do not believe, he (i.e. the ruler) should administer poison when they are sipping water or washing themselves and declare it to be a curse of the divinity" (5.2.44), a citation I owe to *Ch. R. Phillips*, The Sociology of Religious Knowledge in the Roman Empire to A.D. 284, ANRW II,16.3 (1986) 2677–2773, espec. n. 103, with more interesting literature on (not so) *pia fraus*.

and the news would instantly spread far and wide[118]. Sometimes more official hints to spread the rumor may have been available. I think this is the most obvious *social* function of the enigmatic sceptres that were erected at the opening of a divine judicial process in the confession texts. These sceptres were visible and are sometimes called ἄλυτα "irrevocable". They clearly communicated the message that a person (or a whole community[119]) was making an accusation through a *pittakion.* As Chaniotis says: "Der terminus technicus für Verfluchungen" (which he considers to have been pronounced by the priests) "*unbekannter* Täter ist 'das Szepter aufstellen'"[120]. Anyway, people would be aware, and felt a fever coming on (at Knidos) or their blood-pressure dangerously rising (at Bath).

Conclusion

As I said before, perhaps the worst course of action in these matters – and not only in these matters – is to assume the existence of universal, monolithic and fixed rules in this game of social control. A luxuriant variety of options and possibilities presents itself. One extreme is to play it hard and publicly drag a person you suspect to the temple of a powerful god there to confess or disclaim guilt under oath, as it is so nicely pictured in Babrios' second fable[121]. (Deities of) hot springs in particular are cherished refuges for those who wish to plead innocence, the immediate punishment of a false oath being for instance that the waters burn the perjuror to death or afflict him with serious illness, blindness etc.[122]. No doubt, the sanctuary of Sulis Minerva at Bath thus began its career. At the opposite extreme of the scale, you can scratch completely illegible letter forms, clearly only intended to *look* like letters, in a lead tablet, fold it six times, and throw the result into a hot spring – from where it could not be recovered anyway. This happened with one of several illiterate curses from Bath[123]. "After all, the goddess would be able to read it" so the editor soothes us. And so it is, just as a pious rabbi once prescribed that the only correct way of praying was to write down the letters of the alphabet and ask the Almighty to make the appropriate prayer of it. In between these two extremes there is a wide gamut of possibilities, as we have seen, ranging

[118] The more so, since "from her doorstep a woman can hear what is said at five or six other doorsteps", *Cohen* (1991) 49, with literature on "the quick flow of information into gossip and information networks", and quoting Wilamowitz' *dictum* about classical Athens: "the neighbors who know everything".

[119] So in BIWK no. 35.

[120] *Chaniotis* (1997) 366. I cannot accept *Eger's* (1939, 290) distinction between ἀρὰς τιθέναι in the meaning of "giving a *pittakion*" only for known offenders and the drawing up of a scepter only for unknown ones. BIWK no. 69, as quoted above, seems to refute this. So does BIWK no. 68.

[121] Supra n. 26.

[122] I have discussed these procedures in *Versnel* (1995).

[123] *Tomlin* (1988) nos 112–6.

from tablets suspended on walls so that they could be read, via the deposition of tablets or papyri so that they could – but should not (or should they, after all?) – be opened and inspected by persons concerned, to the deposition of the material while attracting attention to the complaint by informing a priest or a neighbour, who then would take care of the circulation of the rumour. Moreover, it should be stressed that there is no reason for assuming that an appeal to divine justice excludes an appeal to secular courts[124], just as an appeal to Asklepios does not exclude a visit to the doctor. There are even clear examples of co-operation between religious and secular authorities and procedures. For instance, Achilles Tatius, *Clitophon and Leukippe* 7.13, describes a temple of Artemis only accessible to men and virgins while matrons were forbidden to enter. Slave girls might enter with a legal complaint against their masters as a suppliant to the goddess, while, outside, the judges deliberated on the case between her and her master[125].

Regardless of their form and performance, all these strategies offer splendid examples of the manipulation of social control by an appeal to the divine world. And the most rewarding result is that we have detected a *double-edged* strategy, uniting the two different strategies of social control as defined in our introduction. The first is the appeal to a powerful third party for help against a second party. The second is the suggestion to the second party that a third party has been called in for assistance. If one does not work, the other may. This double strategy comes to flourish when and where divine justice prevails over the working of secular law, either as a result of the predominance of a strong religious climate or due to the lack of reliable secular juridical institutions[126], or both. This may explain why

[124] As *Chaniotis* (1997) 370ff. rightly stresses, giving good examples. The best known example from mainland Greece in the classical period is the enigmatic "ordeal" from Mantinea (IG V 2, 262, ca. 460 BC) concerning homicides which occurred in the sanctuary of Alea and the condemnation of the persons involved by the goddess and by judges. Most recent and most thorough treatment: *G. Thür, H. Täuber*, Prozessrechtliche Inschriften der griechischen Polis: Arkadien (Veröffentlichung der Kommission für Antike Rechtsgeschichte 8, Vienna 1994) no. 8. The authors suggest that the involvement of the goddess may be explained by the fact that the bloodshed occurred in her sanctuary and that the killers (except for one person) remained in the sanctuary as suppliants. Cf. *A. Chaniotis*, Conflicting authorities: Greek Asylia between Secular and Divine Law in the Classical and Hellenistic Poleis, in: Kernos 9 (1996), esp. 75–78.

[125] More generally, of course, official documents were often published in a temple as a sign of official ratification: *H. Rädle*, Untersuchungen zum griechischen Freilassungswesen (diss. Munich 1969) 60. A beautiful illustration of this co-operation is provided by a new (unpublished) confession text, in which the author asks both gods and the divine council *and* the human *katoikia* and *hiera doumos* of the village to be forgiven.

[126] We have numerous testimonies of this lack of confidence in secular judicial systems. Most of them are implicit, such as the one in Babrius' second fable (supra n.26), some explicit. In a funerary imprecation from Termessus in Pisidia (*R. Heberdey*, TAM III,1 [Vienna 1941] no. 742; 3d c. AD) potential grave violators are, in accordance with the local usage, threatened with a fine to be paid to the imperial treasury, but a proviso adds: "but if someone will despise this [sc. the secular penalty], he will be childless". Thus supernatural powers, prompted by the curse, are expected to act where worldly justice may fail. Generally, we observe an increase in the application of curses and other forms of appeal to the supernatural in periods or

there is so little of these practices in classical Athens and so much in later times, especially in Asia Minor. One common feature – if not precondition – of this type of divine intervention is the presence of sacred centres where a superior, omniscient and omnipotent god(dess) was believed to reside. This concerns especially the ‚tyrannical' gods who reigned supreme over human believers who submitted themselves with devoted belief and utter subjection, as we have seen them in Asia Minor. In such a religious climate we also encounter the practice of public confession at the instigation – and as a cure – of physical ailments that were interpreted as divine punishment. These conditions were not satisfied in classical Athens. It is not by chance – but that is not our subject now – that the environment in which we see the combination of *all* these elements emerging *together* for the first time in (fourth century) Greece is the temple of Asklepios at Epidauros.

places where worldly authorities are weak and inefficient: *L. K. Little*, Annales ESC 34 (1979) 43–60, esp. 47, 57–8; *W. Wiefel*, Numen 16 (1969) 218; *S. Gevirtz*, Curse Motifs in the Old Testament and the Ancient Near East (Chicago 1959) 258–9, as discussed by *J. H. Strubbe*, "Cursed be he that moves my bones", in: *Faraone, Obbink* (1991) 33–59, esp. n. 76.

Abbreviations

BIWK	*G. Petzl*, Die Beichtinschriften Westkleinasiens, EA 22 (1994).
DT	*A. Audollent*, Defixionum Tabellae (Paris 1904).
DT	*R. Wünsch*, Defixionum Tabellae Atticae, IG 3.3 (1897).
EBGR	*A. Chaniotis*, Epigraphic Bulletin for Greek Religion, 1987 →..., in: Kernos 4 (1991 →).
GGR	*M. P. Nilsson*, Geschichte der griechischen Religion 1–2 (Munich ^{3}1967–^{2}1961).
I.Knidos	*W. Blümel*, Die Inschriften von Knidos I (Bonn 1992).
LSAM	*F. Sokolowski*, Lois sacrées de l'Asie Mineure (Paris 1955).
LSCG	*F. Sokolowski*, Lois sacrées des cités grecques (Paris 1969).
SEG	Supplementum Epigraphicum Graecum (ed. *J. Hondius et alii,* 1923–71, continued by *H.W. Pleket* et *alii*, Amsterdam 1976–...).
SGD	*D. R. Jordan*, A Survey of Greek *Defixiones* Not Included in the Special Corpora, GRBS 26 (1985) 151–97.
SIG	Sylloge Inscriptionum Graecarum I-IV (ed. *W. Dittenberger* et *alii*, Leipzig 1915-^{3}24).
TAM	Tituli Asiae Minoris vol. V, pt. 1 (Vienna 1981).

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Curses and Social Control in the Law Courts of Classical Athens

Despite the reluctance of some modern scholars to discuss the topic, the ancient Greeks, like their Near Eastern neighbors, used curses for a variety of purposes, sometimes to control social disputes and sometimes to exacerbate them[1]. On the socially positive side, we find that conditional self-curses were a regular part of important oath ceremonies to sanction treaties and political agreements, to keep public officials, athletes and prosecutors honest in competitive venues, and to vouchsafe important testimony about paternity or citizenship. On the other hand, private binding curses were often deployed in some of the same competitive arenas to prevent open and free competition between private citizens, a social practice that underscores an important parallelism between athletic games and legal courts as areas that focus and exacerbate aggressive competition, rather than diffuse it.

The best example of the socially constructive use of curses is to be found in this oath used by the people of Thera in the seventh century BCE, when they sent off colonists to found the city of Cyrene in Libya[2]:

> On these conditions they made an agreement, those who stayed there (i.e. in Thera) and those who sailed on the colonial expedition, and they put curses (*arai*) on those who should transgress these conditions and not abide by them ... They molded wax images and burnt them up while they uttered the following imprecation, all of them, having come together, men and women, boys and girls: "May he, who does not abide by these oaths but transgresses them, melt away and dissolve like the images – himself, his seed and his property."

[1] This essay grows out of a lecture I gave at a conference, "Democracy, Law and Social Control" organized by David Cohen at the Historisches Kolleg München in June 1998. An earlier version of it appears in: Dike 2 (1999) 99–121. I owe many thanks to him and the other participants for their stimulating comments and questions. I use the following perhaps unfamiliar abbreviations:
DT = *Audollent, A.*, Tabellae Defixionum (Paris 1904).
DTA = *Wünsch, R.*, Defixionum Tabellae Atticae, Appendix to Inscriptiones Graecae III (Berlin 1897).
SGD = *Jordan, D.*, A Survey of Greek Defixiones Not Included in the Special Corpora, in: GRBS 26 (1985) 151–97.

[2] SEG 9.4; for a more detailed discussion see: *Faraone* (1983) 60–62 and 76–80. The translation is from: *Graham* (1983) 226.

In this case, a city in some kind of crisis (probably overcrowding) is forced to make an unpopular decision: to send a percentage of its people away – drawing some from each individual family – to form a colony. In anticipation of strong resistance and non-compliance, they resorted to this very dramatic curse that is clearly designed to embrace the entire populace, that is: not just the men who in archaic Greece are the primary actors in political life, but the women and children as well. This curse is, of course, coercive, but it spreads the burden equally and it seems to aim at a public good that is to be shared by the whole populace. We find another very early example of an elaborate self-cursing ritual in the third book of the *Iliad*, where the Greeks and Trojans seal a cease-fire agreement by swearing oaths which include the following ceremony[3]:

> Drawing off wine from the mixing bowl, they poured it into cups and prayed to the gods who live forever. And in the following fashion each of the Achaians and Trojans said: "Most glorious and greatest Zeus and the other immortal gods, whichever of the two sides is the first to violate their oaths, may their brains flow upon the ground just as this wine (i.e. flows upon the ground), their own brains and those of their children ..."

As in the Theran ritual, the person swearing the oath utters the conditional self-curse while performing a destructive ritual act – either melting wax effigies or pouring wine out onto the ground. Although as it turns out both of these oath curses in the end fail to achieve their goal – the Therans returned home after a few years and the Trojans notoriously break their oath and resume hostilities – they were clearly performed with the goal of shaping future behavior in a manner that was thought to benefit the larger social group.

This is quite different from the case of the *katadesmoi* or binding curses, which were used primarily in the archaic and classical Greek world in agonistic contexts to inhibit rivals. Perhaps the earliest literary example of such a binding curse is the request of Pelops in Pindar's first *Olympian Ode*[4]: "Poseidon come and bind (*pedason*) the brazen spear of Oinomaos and give me the faster chariot by Elis' river!" Here, in a poem celebrating a victory in the chariot races at the Olympian games, Pindar narrates the charter myth of the founding of the games: Pelops' race against Oenomaus for the hand of his daughter Hippodameia. In this myth, Pelops prays to the god to bind his opponent and make his chariot go faster, and since he wins the race, we are to assume, of course, that the prayer was answered. The first half of his prayer may offend our modern sensibilities about fair play in competitive sports, but in fact we know that such requests for binding a rival were used repeatedly in the ancient world in precisely this situation. See for example, a Greek curse from the Roman-era, which calls on a number of demons to[5]:

> ... bind every limb and every sinew of Victoricus, the charioteer of the Blue team ... and of the horses he is about to race... Bind their legs, their onrush, their bounding, their running, blind their eyes so they cannot see and twist their soul and heart so that they cannot breathe.

[3] Iliad 3.295–301; for a more detailed discussion see: *Faraone* (1983) 72–76.
[4] Olympian 1.75–78, with discussion in: *Faraone* (1991) 11 f. and *Heintz* (1998).
[5] DT 241.

Just as this rooster has been bound by its feet, hands and head, so bind the legs and hands and head and heart of Victoricus, the charioteer of the Blue team, for tomorrow...

Here, like Pelops, the author of the curse calls upon supernatural forces to bind the charioteer and his horses. He also performs an expressive ritual that uses a *similia similibus* formula similar in design to that used in the two oath-ceremonies discussed earlier: he apparently ties up the wings, legs and head of a rooster in the expectation that his rival be bound in a similar manner[6]. Note, however, that both this curse and the one used by Pelops are immediately enacted, in contrast to the conditional curses uttered during an oath, where the painful and destructive effects of the curse will only be felt if the person violates their oath at some future time.

Given the focus of this essay on classical Athens, I shall now (with one exception) leave the rest of Greece behind and focus on how these two types of curses – the oath-curse and the binding curse – were used within the context of fourth-century Athenian legal proceedings to shape, control or exacerbate social conflict. In part, I shall review how such rituals have been traditionally interpreted by scholars using an evolutionary model, who argue that during the late archaic period, Athenians gradually abandon feuding and clan-based competition, by ceding authority and rights to an allegedly dispassionate central authority with its democratic courts – a change that is allegedly narrated and eulogized in Aeschylus' *Oresteia*, where the vendetta claims of bloodthirsty Furies cede to the authority of an Athenian jury. In short: "legal process triumphs over private violence."[7] This model has, of course, been rightly and roundly criticized in recent years[8], but most of this recent work fails to take into account the important role played in legal confrontations by curses . We shall see, for example, that oath-curses remain popular throughout Athenian history and that far from being atavistic vestiges of some earlier pre-legal system, they play a crucial role in Athenian homicide trials, where – I shall argue – the increased intensity of their public performance probably reveals a proportional increase in anxiety over the inability of the legal and political system to provide adequate forms of sanction in and of themselves. Or to put it another way: those points in legal procedure where we find the most dramatic and frightening oath-curses are most probably sensitive "hot spots" of conflict or suspicion where it would seem that false accusation or perjury cannot be adequately shaped or controlled by civic sanctions or – more importantly – where it is feared that the failure of the city to control perjury can have dire consequences for itself and its people. On the other hand, we shall see that binding curses used in the context of an upcoming trial seem to reflect the mentality of those who use litigation as a vehicle for extending personal rivalries and crushing their personal enemies at all costs. In general, this paper builds on the gains made by scholars in recent years, who have collapsed the modern distinctions between politics and the

[6] *Faraone* (1988) discusses this kind of *similia similibus* formulae in detail.
[7] As nicely summarized by: *Cohen* (1995) 3.
[8] *Cohen* (1995) 3–24 and passim.

law, and have given us a much richer and nuanced understanding of the Athenian judicial system by showing how it is embedded in a much wider web of social relationships and that rather than eradicating or suppressing conflict, the law courts provide an arena for extending and perhaps even exacerbating long-term feuds and disputes. It is time, I think, to add rituals and beliefs about the supernatural to this mix as well, and to resist the idea that such a complex system can be described and comprehended without any mention of those other inhabitants of Attica whose existence the Athenian people repeatedly acknowledge throughout the fourth century: the gods, the demons and the ghosts of the dead.

Oath-Curses in Athenian Courts

Athenian men employed oaths at numerous points in their public lives[9]. Thus, for example, when a young child was enrolled in his or her phratry during the Apaturia festival, the father had to make a sacrifice to Zeus and make an oath concerning the child's paternity, an oath which contained a conditional curse and blessing: "These things are true by Zeus Phratrios! If I am swearing a true oath, may I have all good things, but if I am swearing a false oath, may I have the opposite."[10] In comparison with the two oaths described earlier, this curse is very simple and undramatic: perjury will result in the punishment of only one person and the words of the curse are apparently not accompanied by any ritual. Two historical anecdotes suggest, however, that in some contexts, questions of paternity might generate much stronger oaths. Andocides, for instance (1.126), tells the story of how the prominent Athenian politician Callias was confronted at this same festival by the male relatives of a former mistress who demanded that he recognize her son as his own. Instead of yielding to these men and swearing the usual oath, Callias, instead, "took hold of the altar and swore that the only son he had or had ever had, was Hipponicus ... if that was not the truth, he prayed that he and his house might perish completely". Here, Callias seems to improvise a more serious or powerful form of oath, in order to signal his utter resistance to their appeal; he gives a rhetorically exaggerated form of the oath by saying that Hipponicus (now an adult) was "the only son he had or had ever had", and he performs a dramatic and intensified version of the self-curse, as he grips the altar itself of Zeus Phratrios and calls for the complete destruction of himself and his household if he is lying. Herodotus tells of an even more vivid oath sworn by a parent, when he narrates the story of Demaratus, the Spartan king, who had been deposed as a bastard and then stymied by his inability to prove his royal paternity. This Demaratus eventually sacrifices a bull to Zeus Herkeios – the traditional protector of the household – and forces his mother to hold its entrails (*splanchna*), while she swore to the true identity of his father (6.67–68). Here, too, it seems probable that Demaratus – because

[9] *Cole* (1996) provides a recent and thorough survey.
[10] SIG^3 921.109–15.

his father Ariston is dead – is improvising on a similar Spartan version of the paternity oath, and although the exact wording of the mother's oath is not quoted, it is presented as an excessively fearful oath designed to force the unwilling woman to speak the truth.

In their political life Athenian males took many other important oaths, which like these paternity oaths can be arranged along a scale of increasing severity and fearfulness. Thus it seems that all officials took oaths before and during their term of office, including the members of the Boule, jurors, generals, archons and various other commissioners and overseers. Most of *these* oaths, however, seemed to the Athenians to be unremarkable, especially when compared to an extraordinary form of oath sworn by litigants in murder trials. Antiphon describes this special oath as the "greatest and most powerful oath" and Demosthenes concurs when he gives us our most detailed description of the oath[11]:

> On the Areopagus, where the law allows and orders trials for homicide to be held, first the man who accuses someone of such a deed will swear an oath invoking destruction on himself and his family and his household, *and no ordinary oath either, but one which no one swears on any other subject*, standing upon the cut pieces of a boar, a ram, and a bull, which have been slaughtered by the right persons on the proper days, so that every religious requirement has been fulfilled as regards the time and as regards the executants.

Here we discover what makes the oaths sworn before the Areopagus so special: the self-curse that is merely stated verbally in other Athenian oath ceremonies is here acted out in a very lengthy and grisly ceremony: the litigants swear their oaths while standing upon the cut-up pieces (*ta tomia*) that have been prepared by special ritual performers, who on specially designated days slaughter and then mutilate a triad of special animals. Like the oath forced upon Demaratus' mother, we must imagine that this very elaborate curse ceremony (unlike any ordinary oath, as Demosthenes says) was designed to be more fearful and compelling, and thereby (we suppose) more difficult for the potential perjurer to swear falsely, especially in a public ceremony that may have been witnessed by members of his own family and household, people who would suffer under such a curse if he should forswear it[12].

A few lines later in the same passage Demosthenes says that defendants in a murder trial also swore this same oath, a point that is corroborated by Antiphon and Lysias[13]. Other sources suggest, moreover, that the man who won a murder trial had to make an additional oath at the end of trial[14]:

> In homicide trials at the Palladion our ancestors very properly introduced the rule (and you have maintained this tradition up to the present day) that those who are victorious in the vot-

[11] *Antiphon* 5.11 (*horkon ton megiston kai ischurotaton*) and *Demosthenes* 23.67–68, the latter translated by: *MacDowell* (1963) 90–91, with one change: "standing *upon*" for *MacDowell's* "standing *over*" (the Greek is *epi* with the genitive). This is an important detail for my argument, as most of these special oaths involve contact with mutilated animals.
[12] *Faraone* (1993) 65–72.
[13] *Demosthenes* 23.67; cf. idem, 59.10, *Antiphon* 6.16 and *Lysias* 11.
[14] *Aeschines* 2.87; trans. *MacDowell* (1963) 91–92.

ing cut the cut pieces (*temnontas ta tomia*) and swear that those of the jurors who voted for him were making the true and right decision, and that he had spoken no lie, and that otherwise he invokes destruction on himself and his house, but prays that the jurors who voted for him have many blessings.

Here, Aeschines suggests that the special ritual of swearing upon a mutilated animal at another homicide court (the Palladion) is a very old custom introduced by their ancestors. The wording of this passage suggests, moreover, that just like the Greeks and Trojans in the Homeric oath (discussed earlier), the person who swears this oath also participated in the mutilation of the animal as he swore the oath. The goal of this ceremony is also more complex than the pre-trial oaths, for it makes the person swearing responsible for his own perjury, while at the same time it explicitly deflects responsibility for a wrong judgment away from the jury, an important addition to which I shall return.

Other evidence suggests, moreover, that witnesses at murder trials also had to perform the same type of self-curse as the principle litigants. Thus the speaker of Antiphon 6 complains that the man who has accused him of murder has cleverly bypassed the correct procedure for prosecuting a homicide in order to avoid having his witnesses swear the proper oath: "The witnesses are giving evidence against me unsworn, although they ought to swear the same oath as you[15] and touch the slaughtered animals (*sphagia*) before giving evidence against me" (Antiphon 5.12). It would seem, then, that all of the principle participants in a murder trial were required to take this extraordinary form of oath, while participants in other trials were only compelled to take the ordinary form of oath. Finally, a single source reports that similarly grisly oaths were sworn by some public officials. The Aristotelian *Constitution of Athens* speaks of a special oath that the nine archons swore upon a special stone in the Agora at the beginning of their term of office (55.5):

... they go to the stone upon which are the cut-up (i.e. animal) bits (*ta tomia*) – the stone on which the arbitrators also take an oath before they issue their decisions and (on which) the persons who are summoned as witnesses (take an oath) that they have no evidence to give – and mounting on this stone they (i.e. the archons) swear they will govern justly and according to the laws, and that they will not take bribes.

This oath is mentioned in passing in a few other sources (e.g. ibid. 7.1 and Plutarch *Solon* 25.2), but this is the only ancient testimony which mentions standing upon the *tomia*. This text seems to suggest that arbitrators and potential witnesses also took an oath at this rock, but it is not clear from the Greek if their oath included the cut pieces as well.

One gets the impression, then, from these descriptions that there was spectrum of Athenian oath-curses, that can be arranged along a scale of increasing dread and power: (i) a simple verbal curse that calls down destruction only upon the single individual who swears the oath; (ii) a more powerful curse that implicates one's family and household in the destruction; (iii) to this more powerful and global

[15] He turns to speak at this point to the man who is prosecuting him.

version of the curse is added a ritual in which the one who swears the oath cuts up the animal himself or otherwise comes in contact with the carcass of a mutilated animal; and (iv) the most powerful curse of all, those apparently sworn only by principle litigants in murder trials while standing upon the cut-up bits of three different animals, which have been slaughtered in a very elaborate and public ritual performed by special performers on a special day. The text of the curse for these two most forceful versions, although it is sometimes briefly paraphrased, does not survive, but parallels from other parts of Greece and the eastern Mediterranean suggest that it went something like this: "Just as I, so-and-so, cut this animal into tiny pieces, in this very manner may I, too, be destroyed, and my family and my household, if I am lying." It would seem, then, that what appears as a range of informal possibilities in the oaths of paternity discussed earlier, has in the rituals of the Athenian courts been more formalized, with the result that in the classical period the oaths connected with homicide trials were required to take this most fearsome and dramatic form.

This process is, as you can imagine, difficult to understand in light of an evolutionist model. On the one hand, the use of these same terrifying curses in group oaths or international agreements – like the oaths of the Theran colonists or those of the Trojans and the Greeks – does, in fact, begin to fall out of use in the early classical period[16], a development that has traditionally lent some support to the evolutionist argument that such curses belong to a more primitive period of Greek cultural development. But if this is so, I find it all the more puzzling that equally dramatic rituals come to be formalized primarily in Athenian homicide trials and that this is in fact stressed by the Athenians themselves, as we saw in the testimony of Demosthenes and Antiphon. In fact, the only other evidence that I can find for the continuation of such terrifying rites is in connection with the Olympic games. Pausanias gives us a detailed description of the special ritual performed by the athletes, their entourage and the judges prior to competing in the games at Olympia (5.24. 9–11):

> But the Zeus in the council chamber is of all images of Zeus the one that has been designed to strike fear in men who do wrong (*adikôn andrôn*). His epithet is Horkios ("Of the Oath") and in each hand he holds a thunderbolt. It is required that beside this image the athletes, their fathers and their brothers and even their trainers swear an oath upon the cut-up bits (*tomia*) of a boar that there will be no misdeed (*kakourgêma*) on their part in the competition at Olympia... The oath is also taken by those who examine the boys and foals entering the races, that they will decide fairly and without taking bribes, and that they will keep secret what they learn about a candidate, whether accepted or not... Before the feet of (i.e. this statue of Zeus) Horkios, there is a bronze plaque with elegiac verses inscribed upon it designed to instill fear in those who forswear themselves.

Once again it is our misfortune that Pausanias does not quote the actual words of the oath. He does, nonetheless, stress that the especially fearful and solemn nature of the statue and the oath is clearly designed to dissuade men who would otherwise act unjustly. This oath, as we shall see, will provide a helpful comparandum

[16] *Faraone* (1993).

for the oaths in the Athenian court system, which as we shall see is a very similar site of intense personal competition.

About thirty-five years ago, J. M. Roberts surveyed ethnographic reports from around the world and suggested that "oaths and autonomic ordeals are patterns associated with somewhat complex cultures where they perform important functions in the maintenance of law and order in the presence of weak authority and power deficits"[17]. This description can, I think, make sense of the oaths of the participants of the Olympian games or even those of the Athenian archons, for both venues seem in fact to lack a strong central authority which could guarantee that these individuals would not cheat or accept bribes. The use of such curses in law courts, however, is more complicated. Ethnographic parallels suggest that these kinds of extraordinary curses were often used in an ad hoc manner when judges suspect perjury. Thus Leach, in his discussion of a Sri Lankan village where perjury was widespread and openly acknowledged, reports that if the accuser and accused give diametrically opposed accounts in a court of law, the judge could insist that the litigants go to a temple or a sacred tree to swear an oath, a process that is perceived in some cases at least to elicit the true story[18]. Gibbs also suggests that oaths are usually employed in an ad hoc manner in the absence of proof or in the case of conflicting testimony, when (in his words) there is no "rational" way to resolve the case[19]. Frake discusses a Muslim village, where if a court fails to formulate an acceptable ruling, the litigants may turn over their dispute to god by swearing on the Koran an oath that will bring down disease on themselves and their relatives. Frake stresses the fact, moreover, that the threat of this oath is apparently a very effective deterrent to false prosecutions in this culture, since one's relatives are crucial in pursuing and arbitrating such disputes[20]. These improvisational uses of a more solemn oath as an additional sanction is similar to the ad hoc variations to the Athenian paternity oath discussed earlier, in which Callias and Demaratus employ a much more powerful version because the circumstances seem to call for it. On the other hand – as Gagarin and others have noted – the *required* oaths in Athenian homicide trials are somewhat unique; the closest parallel seems to be the practice of the Tiv who make all witnesses swear to tell the truth while touching a fetish known as the *swem* and to proclaim that if they swear falsely, the *swem* will make them ill and cause them to die[21].

We have no direct information as to why Athenian public officials or Olympian athletes were made to swear this especially terrifying oath, but it seems prudent to assume that then, as now, top athletes and politicians were thought to be particularly prone to cheating and bribery. Thus, as in the case of the Theran oath over the melting effigies, these very dramatic and frightening curses were probably used to create sanctions more powerful than those available to civic authorities or

[17] *Roberts* (1965) 209.
[18] *Leach* (1961) 40–41, quoted by: *Cohen* (1995) 112.
[19] *Gibbs* (1969) 187.
[20] *Frake* (1969) 163.
[21] *Gagarin* (1986) 31, citing *Bohannan* (1957) 41–47 on the Tiv.

peer pressure. The use of such curses in murder trials, however, needs some additional explanation, for it is hard to see why such a sanction is needed in a homicide trial and not, say, a trial over a large inheritance. In both types of cases, there were in fact legal sanctions against false prosecutions and perjury, although the latter seem to have been pursued only rarely, in cases when the mendacity was particularly outrageous. In fact – as David Cohen has emphasized – the orators frequently complain about the perjury of their opponents in ways that suggest that mendacity was widespread in Athenian trials and that jurors needed to depend instead on their own impressions of a litigant's character and how well he was respected in Athenian society[22]. Indeed, I suspect that this high tolerance for perjury in Athens, reflects an equally high tolerance for a well-told lie – a tradition that is as old as the *Odyssey* and the Homeric *Hymn to Hermes* and one that survives down to the present day in some parts of Greece, where as Herzfeld and others have shown, outright fiction plays an important role in face-saving and in the gossip and other verbal attacks on one's enemies[23].

In the light of apparently widespread perjury, the use of extraordinary curses to sanction oaths in murder trials *alone* requires some further explanation. First of all, I would reject any notion that this apparently unique use of very powerful oath-curses reveals a suspicion that mendacity was greater in homicide trials, but rather I suggest that it points to a much greater fear that the endemic perjury at Athens might result in a false conviction of murder and then an unjust execution. Indeed, I think that Aeschines hints at the right explanation in a passage that I quoted earlier, where he reminds his audience that the winner in a murder trial had to "swear that those of the jurors who voted for him were making the true and right decision, and that he had spoken no lie, and that otherwise he invokes destruction on himself and his house, but prays that the jurors who voted for him have many blessings"[24]. There was clearly a fear that if the jurors falsely acquit a murderer or falsely condemn an innocent man to death, pollution or other supernatural forces like the Furies would attack the false swearing litigant as well as the jurors themselves, clearly a very dangerous outcome for the city[25]. By forcing litigants and witnesses in homicide trials to swear these especially fearful oaths in public, the city could probably expect that some proportion would in fact be dissuaded from perjury by the oath, but the more important feature seems to have been that the wording of the oath protect the jurors and the city in those numerous cases where men perjured themselves and won the case.

[22] *Cohen* (1995) 107–11.
[23] *Herzfeld* (1985).
[24] See above note 11.
[25] *Mikalson* (1983) 31–38 gives a superb discussion of such fears.

Binding Curses in the Context of the Law Courts

Now let me turn to the second kind of cursing associated with the law courts: binding curses[26]. Despite the general reluctance on the part of some scholars to acknowledge the fact, we now have clear and compelling evidence that the ancient Greeks in Sicily, Attica and Olbia from as early as the fifth century BCE did indeed practice a form of magic known in Plato's day as a *katadesmos* or "binding spell". This kind of curse was usually accomplished by inscribing the victim's name on a lead tablet, which was then folded up, pierced with a nail and then deposited in a grave or underground body of water, such as a well or cistern. More than two hundred of these tablets dating to the classical period have been unearthed in or near Athens, mostly from graves in the Piraeus or the Ceramicus. Of those whose social context is decipherable, the majority focus on an upcoming trial, such as the list of names in a curse which begins with the name Nereides and then closes with the telltale phrase: "... and all of the others who are prosecutors (*katēgoroi*) with Nereides."[27] Other texts, however, give us more insight into context and the goals of this procedure[28]:

> Theagenes the butcher. I bind his tongue, his soul and the speech he is practicing.
> Pyrrhias. I bind his tongue, his soul and the speech he is practicing.
> I bind the wife of Pyrrhias, her tongue and soul.
> I also bind Kerkion, the butcher, and Dokimos, the butcher, their tongues, their souls and the speech they are practicing.
> I bind Kineas, his tongue, his soul and the speech he is practicing with Theagenes.
> And Pherekles. I bind his tongue, his soul and the evidence that he gives for Theagenes.
> ... All these (i.e. their names) I bind, I hide, I bury, I nail down. If they lay any counterclaim before the arbitrator or the court, let them seem to be of no account, either in word or deed.

The primary concern of this curse is to silence the tongues and speeches of the primary opponent Theagenes and his associates – a typical feature in Athenian *katadesmoi* used in a legal context[29]. This tablet also gives us a charming glimpse into upper middle-class life in Athens; we can well imagine a lawsuit that somehow involves the testimony of three butchers and their friends. Note that the "tongue and soul" Pyrrhias' wife are also bound, but there is no specific mention of her testimony since women are normally not permitted to testify in person in Athenian courts. But despite her inability to testify, the author of this tablet nonetheless feels compelled to bind her as well, fearing no doubt that her thoughts and her advice to her husband might prove detrimental to his own case.

Other texts are more expansive and give us even more insight into the specific goals of binding spells used against rival litigants[30]:

[26] For what follows, see generally: *Faraone* (1985), (1989) and (1991).
[27] DT 60, Attic, fourth-century BCE. *Humphreys* (1985) gives a detailed discussion of the numerous helpers at Athenian trials.
[28] DT 49, Attic, late 4th- or 3rd-century BCE.
[29] *Faraone* (1989).
[30] DTA 107, Attic, late 5th- or early 4th-century BCE.

Let Pherenikos be bound before Hermes Chthonios and Hekate Chthonia ... Just as this lead is worthless and cold, so let that man and his deeds be worthless and cold, and for those men with him (also let) whatever they say and plot concerning me (be worthless and cold). Let Thersilochos, Oino[philos], Philotios and whoever else is a legal associate (*syndikos*) of Pherenikos be bound before Hermes Chthonios and Hekate Chthonia.

Here again, we see the *similia similibus* formula used in the oath- and binding curses discussed earlier. Like the previous text, moreover, this curse concerns an upcoming hearing in a court of law, as the technical term *syndikos* suggests, and like the previous examples, the main target is a single man – the prime litigant – and a number of his associates who are also apparently involved in the trial.

In most cases it is clear that such curses were written for a single and probably imminent trial[31]. But the following *katadesmos* (also from classical Athens) suggests that some of these texts may be designed as a permanent injunction against a rival[32]:

O Lady Katoche ("Binder"), I bind Diokles, my legal adversary (*antidikos*). (You also) bind (his) tongue and mind, and all his helpers, as well as his speech, his testimony, and all the pleadings which he is preparing against me. (Grant that) Diokles not accomplish any of the pleadings which he is preparing against me and that Diokles be defeated by me in every courtroom.

Here the author apparently anticipates a series of legal attacks from Diokles over a period of time, suggesting that the man may have been a longtime enemy, from whom the author can expect numerous prosecutions in a number of different venues.

There is, then, a sizable body of epigraphic evidence pointing to the use of binding spells in classical Athens to pre-empt or restrain the speeches of legal opponents. But just how widespread was this phenomenon and how important was it in the minds of the Athenians? Apparently quite important, for Aeschylus, when he presents a charter myth in his *Oresteia* about the founding of the first Athenian court of homicide, also includes a binding spell, in a way that implies that such magic spells were a traditional, albeit unofficial part of the Athenian legal system from the earliest periods[33]. In the *Eumenides*, the closing play of the trilogy, Orestes is chased and tormented by the Furies of his dead mother, who eventually track him to Athens where he seeks the trial and exoneration that Apollo has promised him. As I mentioned earlier, Aeschylus' *Eumenides* is typically interpreted as a celebration of the successful evolution of Athens from a feuding society, which settles disputes by violent reprisals, to a more rational and law abiding one with juries who adjudicate such matters with sensible laws. As it turns out, this traditional reading ignores the fact that Aeschylus also gives us the charter myth, as it were, for the first use of binding spells at Athens, for when the chorus of Furies find Orestes safely clinging to Athena's statue they begin to sing a song

[31] *Faraone* (1991) 15, with note 67.
[32] DTA 94, Attic, late 4th or 3rd century BCE.
[33] For a more detailed discussion, see: *Faraone* (1985).

that they call a *hymnos desmios*, which literally means "a binding song"[34]. The refrain of the song is as follows[35]:

Over our victim
we sing this song, maddening the brain,
carrying away the sense, destroying the mind,
a hymn that comes from the Furies,
fettering the mind, sung
without the lyre, withering to mortals.

Like so many of the *katadesmoi* discussed above, the Furies hope that their song will bind Orestes' senses and thoughts. Clearly their goal in singing this binding song before Orestes' trial is the same as those individuals who inscribed the lead tablets discussed above: to fetter the mind of their legal opponent so that he is unable to defend himself.

Perhaps the most startling feature of Aeschylus' dramatic treatment of this judicial binding curse is its apparent success. Although the trial scene in the play does not follow the traditional format of an Athenian trial with its set speeches for prosecution and defense, Orestes is clearly presented as a weak and diffident advocate. After conceding with feeble protests to the first two accusations of the prosecuting Furies, he suddenly gives up completely his own defense and appeals to Apollo to come forward as both a witness and an expounder of the law. From this point on in the play, Orestes is, in fact, completely silenced and one wonders how the trial might have ended if the Furies had also included Apollo – as Orestes' *syndikos* - in their binding song, much as the binding spells discussed earlier are careful to include the names of the principal litigant *and* all of his helpers. Indeed, it seems that, just as Pindar includes a traditional binding curse in his charter myth for the Olympic games, Aeschylus also provides a mythical explanation for the popular use of these curses against litigants, when he stages the first judicial binding curse prior to the foundation of the very first Athenian jury.

These binding curses, then, would seem to occupy an important role in the Athenian imagination, but what precisely do they tell us about the actual role of curses in legal procedures at Athens? As it turns out, binding curses aimed at litigants in classical Athens have repeatedly resisted modern interpretation. Richard Wünsch, an excellent scholar who produced the most important corpus of Athenian binding spells, was apparently so discomforted by the idea that the presumably enlightened citizens of classical Athens were using such devices, that he simply assumed that all of the *katadesmoi* should be dated to the third century or later, except when epigraphic or prosopographic evidence explicitly pointed to a much earlier date[36]. Other scholars concede the classical date of these texts and try

[34] *Aeschylus* Eumenides 299–306 (trans. *H. Lloyd-Jones*): "Not Apollo, I say, or mighty Athene shall save you from going all neglected down to ruin, not knowing where in your mind joy can dwell, a bloodless shadow, food for spirits … and you shall hear this song to bind you (*hymnon … tonde desmion* = lit. "binding song")".
[35] *Aeschylus* Eumenides 328–33 and 341–48; trans. *H. Lloyd-Jones.*
[36] *Faraone* (1991) 30 n. 74.

to get around this problem by suggesting that there might be a sociological or psychological explanation for why these curses were used in Athens against litigants. Thus some suggest that they were deployed mainly by women, slaves, metics or other disenfranchised classes of people, and thus reflect neither the beliefs or the motives of the male citizens of Athens[37]. Others have proposed that these curses were only invoked *after* the author had lost a trial and was in a burst of passion seeking revenge; presumably he takes things into his own hands as a protest against an unfair decision. Recent research and excavation has, however, proved beyond a shadow of a doubt that throughout the fourth-century Athenians of *all* social classes were using these kinds of curses and that they were deployed *prior* to the trial as a kind of pre-emptive strike against one's rivals. There is, in short, no evidence for a disgruntled litigant using such a curse *after* a defeat in the court system[38].

In my own work, I have toyed with yet another psychological explanation: namely that these curses were used by diffident or less talented litigants in a defensive manner to protect them from what they perceived as an unfair attack by a superior adversary, that is: defendants, when prosecuted on a charge by a particularly talented orator, might be pushed to use such magical devices simply to level the playing field[39]. Good examples of this kind of defensive scenario are found in the two binding-curses discussed earlier: the one against Nereides and his fellow prosecutors and especially the curse against Diokles, where the author seems to bracing himself for a series of legal attacks. In retrospect, however, my general characterization of the users of these classical-era binding spells as "perennial underdogs" now seems a bit naive as it ignores evidence that such spells were used aggressively by prosecutors as well. Indeed, it seems abundantly clear that the wealthy and powerful in Athens employed professional sorcerers to curse rival litigants just as they hired talented speech writers like Lysias to write speeches for them. Both, it would appear, were simply additional weapons with which they hoped to win a victory against their political enemies. Our most explicit literary testimony for this aggressive use of binding spells can be found in a passage from the second book of Plato's *Republic* (364c):

> And then there are the begging priests and soothsayers, who going to the doors of the wealthy persuade them (i.e. the wealthy) that ... if anyone wants to harm an enemy, whether the enemy is a just or unjust man, they (i.e. the priests and soothsayers), at very little expense, will do it with incantations (*epagôgai*) and binding spells (*katadesmoi*), since (they claim) they have persuaded the gods to do their bidding.

A group of lead effigies dated securely to Plato's lifetime clearly corroborates the philosopher's testimony for such professional sorcerers in Athens. Each effigy was inscribed with a name or names and then apparently imprisoned within a lead box which was itself inscribed with a more fulsome binding spell. The first of this

[37] *Jordan* (1983) and *Faraone* (1989) for discussion.
[38] *Faraone* (1991) 15, with note 67.
[39] *Faraone* (1991) 20.

group was discovered in a grave in the Kerameikos more than forty years ago: its right leg is inscribed with the name Mnesimachus and the lid of the coffin bears the names of nine men – including the same Mnesimachus – and closes with the now familiar phrase: "and anyone else who is either a legal advocate (*syndikos*) or a witness (*martys*) with him."[40] This elaborate cursing ensemble was therefore clearly designed to bind a legal opponent and his associates.

Three more figurines of very similar manufacture and date were recently discovered in a grave only a few meters from the one that contained the curse against Mnesimachus[41]. One lead effigy has the single name Theochares inscribed on its left arm, while the box that contained it mentions three other individuals and "my other legal adversaries (*antidikoi*)". The second has a different arrangement: on the inner surface of the coffin lid we read a list of four names that begins with Theozotides, and the effigy itself is inscribed twice with Theozotides's name and once each with the other names. Although there is no clear clues (e.g. words like *antidikos* or *martyr*) to the social context of this particular spell, it clearly aims primarily at Theozotides and then his three associates in a manner that is, as we have seen repeatedly, typical of Athenian juridical *defixiones*. The third figurine is uninscribed, but the floor of the coffin lists five victims beginning with a man named Mikines, who once again we assume to be the primary target. Because the victims named on all four of these texts are not identified fully and formally by their patronymic and demotic, we can never identify these individuals with full certainty. Nonetheless, David Jordan has pointed out that three of the principle targets of these magical devices – Theozotides, Mikines and Mnesimachos – have extremely rare names, and therefore they can in all probability be identified with Athenian politicians who were prominent around 400 B.C.E. and who all were apparently prosecuted in this same period in lawsuits by men using speeches ghost-written by Lysias[42].

Most scholars see in these rather elaborate cursing ensembles the work of a professional magician, much like those whom Plato describes as offering their services to the rich. Indeed, Jordan suggests very plausibly that we might see evidence here of some kind of political group at work, which is trying to ensure victory in a series of legal attacks by employing both a professional speech writer and professional sorcerer. On the one hand, they pay Lysias to write speeches for them by which they can prosecute these men in the courtroom, while at the same time they hire a magician to inscribe these magical devices with another highly specialized kind of language: spells that aim at binding their opponents and thereby prevent them from mounting a credible case in court. It would seem, then, that my earlier attempts to characterize the users of these curses broadly as "underdogs" was erroneous, and that we need to understand that such curses were used with-

[40] *Trumpf* (1958) and *Jordan* (1983) 275.
[41] What follows is entirely dependent on: *Jordan* (1983) .
[42] *Jordan* (1983) 276–77. Theozotides, Mikines and Mnesimachos all appear as the principle defendants in speeches composed by *Lysias*; see: *P. Hibeh* 4 and frags 170–178 and 182 (*Baiter, Sauppe*). Theozotides' son was Nicostratus, a disciple of Socrates.

out discrimination by both prosecutors and defendants, just as they made use of professional speech writers, who were indeed trained to argue either side of a case with equal conviction.

Conclusion

Let me conclude, then, by quickly summarizing some of my thoughts on the use of cursing in the Athenian courts of law and their possible role as instruments of social control. It is clear, I think, that the special and very dramatic oaths sworn while standing upon or laying hold of the bloodied carcass of a slaughtered animal were obviously used to inhibit certain types of abuse of Athenian political system, namely to deter officials from taking bribes and most especially to prevent false prosecution and false witness in murder trials. The oath curses suggest, moreover, that the Athenians sought to limit the destruction that widespread perjury and unbridled competition might bring about in the law courts, by placing enormously powerful sanctions on those who might be tempted to use the courts as vehicles for killing their enemies. In other words it was apparently tolerable and even admirable to accuse your enemies falsely and lie in court, if conviction resulted in a large fine, banishment or loss of citizenship. It was, however, apparently intolerable in a homicide case. I would stress, however, the likelihood that such a scruple was generated *not* by any enlightened or evolved sense of fair play, but rather by deeply felt fears about pollution or other supernatural attacks, which might result if a man were unjustly executed by the city. We saw this most clearly in the comments of Aeschines on the post-trial victory oaths, which focus the blame for any false conviction and execution squarely on the prosecutor and explicitly deflect any responsibility away from the jurors and the city as a whole.

This scruple against allowing intramural competition to spill over into homicide also seems to govern the use binding curses as well, for although such curses are widely used in the post-classical periods to torture and kill rivals, nearly all of the extant examples from classical Athens merely aim at binding their victims and preventing them from competing[43]. There is, moreover, little sign outside of Plato that such curses were frowned upon or discouraged by society. Indeed, we have seen how Pindar's foundation myth about the chariot races at Olympia and Aeschylus' charter myth for Athenian trials both include aitiological stories about binding spells, which seem to have been invented simultaneously with these notorious sites of competition. It is almost as if these two poets could not conceive of an Olympic chariot race or an Athenian trial without a binding spell. Here, too, one gets the impression that such curses were a traditional, expected and even approved part of the competition itself, as long as they did not cross the line and lead to intramural killing. In the end, the Athenian courts emerge from this inquiry as

[43] *Faraone* (1991) 26 n. 38.

sites of intense competition where perjury and binding curses are typical weapons which citizens used to attack each other as they vigorously pursued their own personal vendettas within the legal system. In both cases, however, there was one important constraint: that such competition not result in intramural killing. This scruple seems to lie at the heart of the extraordinary self-curses performed by participants in homicide litigation and in the customary limitations on the *katadesmoi*, which use similar cursing technology to inhibit their victims without killing them.

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Cynthia Patterson

The Polis and the Corpse: the Regulation of Burial in Democratic Athens

Of the many competitions and contests – athletic, poetic, political or military – that gave ancient Greek culture its distinctive character, there was one that every mortal was bound to lose – the contest with death. Yet death was a defeat that could bring honor as well as shame to the deceased and to his or her family and community. Indeed, death was a critical high-risk moment of both potential honor and shame, a moment that continued until the dead body found proper burial and the lost life was properly lamented. Only after a man's death, said Solon, and only after appreciating the manner as well as the community reception of that death, could one judge that man's happiness (Herodotus 1.30). So, much to Croesus' irritation, Solon gave the first prize of happiness to Tellus, an Athenian who was fortunate in both his city and his family – and ended his life gloriously: "he came to the rescue during a battle between the Athenians and their neighbors in Eleusis and died nobly after breaking the enemy's ranks. The Athenians honored him highly and buried him at the public expense right where he fell" (Ibid.). That is a familiar story – both to the modern and also no doubt to Herodotus' fifth century Athenian audience. In this essay I look more closely at one element of the story, the treatment of the corpse as a "vehicle for honor and dishonor"[1] – and in particular at the way in which the ritual of burial was the focus of political debate and regulation in democratic Athens.

I. Greek Burial Tradition: the Homeric Paradigm

Although Greeks of the fifth century were aware (if they believed Herodotus that is) that not all societies treated the bodies of their dead in the same way – the Persian magi exposed corpses to the dogs and vultures, the Egyptians embalmed them, and some Indian tribes ate them[2] – there seems to have been a strong and

[1] *Robert Parker*, Miasma: Pollution and Purification in Early Greek Religion (Oxford 1983) 46.

[2] See the comments of *S.C. Humphreys*, Comparative perspectives on death, in: The Family, Women and Death (Ann Arbor 1983) 169.

conservative conviction among Greeks speakers at large that, whether cremated first or simply inhumed, the dead ought to be buried. Indeed, the ritual of burial, through which honor was won by both the dead and the mourners is, in Emily Vermeule's words, "the longest-surviving and most powerful of all Greek traditions"[3]. The regulation of and debate over burial in democratic Athens may thus illuminate in a particularly vivid way the dynamic and at times contested relationship of the new in Greek culture with the old. Before considering the democratic Athenian engagement with traditional rules and honors of burial, however, it may be useful to identify and illustrate what those traditions of burial were. As is the case for most elements and paradigms of Greek culture, the place to begin is with Homer and with the *Iliad*. The value of giving Homer's evidence more than a cursory glance will, I hope, be apparent by the end of the essay.

From the opening lines of Book 1 – "Rage, Goddess, sing the rage of Peleus' son Achilles, murderous, doomed, that cost the Achaeans countless losses, hurling down to the House of Death so many sturdy souls (...) but made their bodies carrion, feasts for the dogs and birds"[4] – to the burial and lament of Hector in the final lines of Book 24, the treatment of the dead body and its honoring or shaming by friends and enemies (those who love or hate the person the body once was) is a persistent issue. The threats and taunts of the heroes to let their enemies lie unburied and the actual casualties of the fierce fighting combine to keep the question of burial continually at hand. Who is responsible for these bodies? Who cares about them? What should be done with the corpses of friends or of enemies?

In the *Iliad*, burial of the cremated corpse seems to be the general rule for all dead regardless of status. In Book 1, in the midst of the plague inflicted by Apollo upon the Greek army, the poet says "the corpse-fires burned on, night and day, no end in sight" (52) as the living gave final rites to the dead. Burial was not, however, an unchallenged given for the Homeric dead, and the Homeric hero delighted in threatening an enemy with the denial of burial and with the shameful alternative of mutilation by dogs and birds. As Charles Segal has shown, the theme of burial becomes a focal point of the last eight books of the poem and of the portrait of Achilles, the poem's primary hero[5]. Early in the war, according to the later report of Andromache, Achilles had killed her father Eetion but still treated him with respect: He killed Eetion, not that he stripped his gear – he'd some respect at least – for he burned his corpse in all his blazoned bronze, then heaped a grave-mound high above the ashes and nymphs of the mountain planted elms around it. Although Andromache goes on to say that Achilles also "slaughtered" her seven brothers as well, in the light of what is to come his burial of Eetion seems strangely gentle.

[3] Aspects of Death in Early Greek Art and Poetry (Berkeley 1979) 2.
[4] I.1–5, translated by *Robert Fagles*. Unless otherwise noted all quotations from the Iliad are from the *Fagles* translation (Penguin 1990). Line numbers, however, refer to the Greek text.
[5] The Theme of the Mutilation of the Corpse in the Iliad, Mnemosyne Supplement (1971).

Achilles' suffering and anger at the death of Patroclus in book 16, however, turn him into a wild beast, and the consequences are deadly, culminating in the final divinely orchestrated contest between Hector and Achilles, and in Achilles' mutilation and shaming of Hector's corpse. The issue of the treatment of the corpse is raised early in this last dramatic duel. Hector offers to agree not to mutilate Achilles' corpse "merciless as you are" if he should win, and asks Achilles to swear the same. Achilles refuses, saying that no such oaths are possible "between men and lions"; later when he has Hector at his mercy he gloats, saying "and you – the dogs and birds will maul you, shame your corpse". To Hector's plea "by your life, your parents – don't let the dogs devour me by the Argive ships! / Wait, take the princely ransom of bronze and gold / and the gifts my father and noble mother will give you / but give my body to friends to carry home again /so Trojan men and Trojan women can do me honor / with fitting rites of fire once I am dead" (22.338–343), Achilles responds only by expressing his desire to "eat Hector raw" and by refusing categorically the possibility of ransom and burial. His animal rage allows no more words. After killing Hector, Achilles strips the body and presides over a public shaming of the naked corpse, into which each of his companions stabs his spear. Achilles then ties Hector's ankles together and drags him through the dust back to the Greek ships where he leaves the corpse to its fate, as he turns his attention to honoring his own dear Patroclus with a funeral and elaborate funeral games.

But, as Homer makes quite clear, Achilles has gone too far. He had taunted Hector that "No man alive could keep the dog-packs off you" – and no man does. But the gods themselves step in to restore the basic human rules of behavior. Protesting Achilles' behavior before the gods on Olympus, Apollo asks "what honor will Achilles win from this?" and asserts "Achilles has lost all pity! No shame, shame that does great harm or drives men on to good" (24.44–45). Knowing the rules of honor and shame is essential to being human – and Achilles at this point has lost that knowledge[6]. So Zeus restores order, commanding Achilles (through his mother) to accept Priam's ransom and allow Hector's burial; and the *Iliad* draws to a close with the powerfully emotional encounter between Achilles and Priam, in which Achilles regains his humanity and his sense of shame, and with the Trojan lament and burial of Hector. Hector's return and funeral provide closure for the poem if not the war.

Two aspects of the Homeric burial ritual are worth noting. First, although the gods (particularly Zeus) make it possible, the funeral is essentially a social, family and most of all human ritual. The gods take no part, and it is not directed to them.

[6] "Shame" thus joins "hope" and "strife" (see *Hesiod*, Works and Days) as a moral concept of both positive and negative character. Pericles specifically notes that a sense of shame can be a good thing, as a feeling that prevents impious behavior, when he claims that the Athenians obey the "unwritten laws" which carry "agreed upon shame" (*aischune homologoumene* 2.37). Plato also points to a sense of shame or reverence as crucial to the human community in Protagoras story of Zeus' gift of *aidos* (together with *dike*) to the first humans (*Protogaras* 322c).

Only when their own peace is disturbed by Achilles' extreme behavior do the gods intervene. No priests preside but rather close kin and family of the dead. This is an intense human interaction, which allows the expression of grief and love, and distributes honor to both the living and the dead. Second, as carried out by the Trojans, Hector's burial reveals the public face of family relationships and the importance of family responsibilities to the well being (or good order) of the community as a whole.

The steps of the ritual are clear: first Achilles' servant women under Achilles' direction wash the corpse. Then Achilles "lifted Hector up in his own arms and laid him down on a bier" – a clear sign that he has rejoined the human community. The bier is then put onto the wagon, which Priam – departing with divine help in the middle of the night – drives back to Troy. Cassandra sights them from the walls and leads the people of Troy to greet the dead hero. At the front are Andromache and Hecuba, "the first to tear their hair, embrace his head" (24.710ff). The Trojans might have stayed there mourning if Priam had not insisted on entering the city where the body is laid out for formal lamentation begun by singers, with antiphonal response from Andromache, Hecuba and Helen. The lament goes on until Priam orders the collection of timber for the funeral pyre, a task that takes 9 days. On the morning of the tenth day, the Trojan men carry Hector's body to the pyre and set it aflame. After a day of burning, the Trojans collect the bones, wrap them in purple cloth and put them into a chest. This they bury in a grave over which they place "huge stones closely set". Finally, the Trojans return to the city and share a "splendid funeral feast in Hector's honor". "So the Trojans", says Homer, "buried Hector breaker of horses"; and so we have, in epic style, the traditional elements of the Greek burial ritual: the setting out of the corpse (prothesis), the procession to the grave-site (ekphora), the burial proper (with or without cremation), and the familial or communal feast.

II. Athenian law and the regulation of burial

Although the people of Troy participate in Hector's funeral and although the army of the Greeks at times acts as a community of sorts, these are not political societies. The polis has only a shadowy existence, and developed institutions of law and government are still to come[7]. The intense interactions of the poem are accordingly not political but personal – between Gods and their heroes, heroes and one another, and, at the end of the poem, between the greatest Greek hero and the Trojan king. The emergence in the 6th and 5th centuries, however, of self-conscious polis identities and polis institutions interjected another interest into the burial of members of the community, now citizens of the polis. The citizen fu-

[7] For discussion of the character of the early polis, and particularly the Homeric polis, see *Kurt Raaflaub*, Homer to Solon: The Rise of the Polis, in: The Ancient Greek City-State (Copenhagen 1993).

neral, like other aspects of social and family experience with clear public significance, became the focus of legal regulation as well as political ideology, and the proper place of burial became a contested issue. I turn now from epic paradigm to the historical engagement of that paradigm by democratic Athens.

Not surprisingly, the classical Athenians attributed their burial *nomoi* to their lawgiver Solon, and in this case it may well in part be true. That Solon in the early 6th century did articulate specific rules for the manner, time, place, and personnel of funerals seems likely[8]. Explicit testimony comes from the fourth century text of [Demosthenes] 43 and from Plutarch's even later *Life* of Solon; the two accounts are essentially consistent but are embedded in significantly different contexts and reflect different purposes. The author of the speech "Against Makaratatos" argues an inheritance claim for one relative who seems to be an adopted first cousin of the deceased once removed against another who (as I read it) is a second cousin once removed, and supports his argument by bringing out all the laws he can find that prescribe the responsibilities and identity of kin[9]. One of these is a law of "the lawgiver Solon" giving responsibilities as well as property to the relatives of the dead. The speaker discusses portions of the law, which is inserted in full into the text of the speech[10].

"The deceased", reads the inserted law

> shall be laid out in the house (*endon*) in any way one chooses, and they shall carry out the deceased on the day after that on which they lay him out, before the sun rises. And the men shall walk in front when they carry him out and the women behind. And no woman less than sixty years of age shall be permitted to enter the chamber of the deceased, or to follow the deceased when he is carried to the tomb, except those who are within the degree of children of cousins; nor shall any woman be permitted to enter the chamber of the deceased when the body is carried out, except those who are within the degree of children of cousins. (62)

Plutarch provides some more details relating to women's participation, and to the character of the funeral in general, in a section of the *Life* of Solon about the "going out" of women. After noting that:

> when [women] went out, they were not to wear more than three garments, they were not to carry more than an obol's worth of food or drink, nor a basket more than a eighteen inches high, and they were not to travel about by night unless they rode in a wagon with a lamp to light their way,

[8] For the character and content of the law code of the historical Solon see *E. Ruschenbusch*, Solonos Nomoi (Wiesbaden 1966); *M. Gargarin*, Early Greek Law (Berkeley 1986). With only a few exceptions, all our knowledge of Solonian law comes from such later quotations.
[9] See *David Cohen*, Law, Violence, and community in Classical Athens (Cambridge 1995), chapter 8 for the flexibility and manipulability of Athenian "rules" of kinship as illustrated in this and other family lawsuits.
[10] The authenticity of this and other such insertions is a problem. In general, it seems that each case needs to be considered on its own merits; here, the language and character of the law seem genuinely archaic – even though as Plutarch's comments (see next note) indicate, later post-classical Greek lawgivers continued or revived this sort of social legislation.

Plutarch goes on to say that Solon

> forbade the laceration of the flesh of the mourners, and the use of set lamentations, and the bewailing of any one at the funeral ceremonies of another. The sacrifice of an ox at the grave was not permitted, nor the burial with the dead of more than three changes of clothing, nor the visiting of others' tombs [*allotria mnemata*] except at the time of burial (*Solon* 21)[11].

It has been customary to follow Plutarch's lead and see these regulations as primarily concerned with limiting the authority of the family and with controlling the behavior of women, whose freedom of movement and "status" were significantly curtailed by the emergence of the democratic polis[12]. But when these passages are set against the Homeric paradigm, they clearly reflect an interest in the delineation of a boundary between the private and the public spheres and a move towards what might be called the privatization of the ordinary citizen burial. As many have observed, Solon's regulations deny – in as much as it was possible – the public character of the funeral which was so prominent in Homer. The funeral, the lawgiver says, ought not as a rule be a publicly visible or contested event.

The point is made simply with the single word "inside" (*endon*): the prothesis must be held "inside" – within the house itself or its courtyard limits. This setting of the *prothesis* "inside" identifies the ritual as a private matter. Similarly, the requirement that the *ekphora* take place at night "before the sun rises" reinforces the idea that the funeral was not a part of public, daylight business. (The activity of the courts, for example, was limited to daylight hours[13].) The restriction of the female mourners (apart from those over the age of 60) to those within the degree of children of cousins is particularly interesting in that it draws upon the legal definition in Athens (known also from Drakon's law on homicide and from inheritance law) of the kindred, called the *anchisteia tou genous* or "closest in birth", an ego-focused web of relatives extending first to paternal and then to maternal relatives, with male preceding female in each degree of relationship. It is interesting to note here that a man's wife was not part of his *anchisteia* and so technically

[11] *Loeb* translation, modified. Plutarch then adds the interesting comment that such practices were also forbidden by "our laws" [i.e. those of Chaeronea in the early 2nd century c.e.] and that offenders were punished by *gunaikonomoi* because they had shown unmanly and effeminate behavior in their expression of grief.
Earlier in the same Life, Plutarch attributes the Solonian regulation of funerals to the influence of the Cretan Epimenides: "When he [Epimenides] arrived in Athens, he formed a friendship with Solon, gave him help in many ways and prepared the way for his legislation" (12). Among other things, Epimenides was responsible for "abolishing the harsh and barbaric practices in which Athenian women had indulged up to that time" (ibid.) [See below for the story of banishment of the family of Megacles – dead and alive which Plutarch tells in this same chapter].

[12] See, for example, *M. Alexiou*, The Ritual Lament in Greek Traditon (Cambridge 1974) 20–22. This is a key feature of what I have elsewhere called the "evolutionary paradigm" of the development of the Greek polis, according to which the two main "victim" of the rise of the political state are the family and women. See The Family in Greek History (Harvard University Press 1998).

[13] Plato's institution of a nocturnal council in the *Laws* would seem to be one his radical non-democratic innovations, within a text that is often quite traditionally Athenian.

at least may have been excluded from attending his funeral (unless she was over 60). Perhaps that was simply a technicality and did not in fact hold in the definition of female mourners – to exclude the wife would indeed be a major change in burial tradition. But it may be possible that the wife's natal family was excluded from her husband's funeral in order to keep the ritual as narrowly private as possible[14]. This restriction, plus the rule noted by Plutarch forbidding the "bewailing of anyone at the funeral ceremonies of another" seem to show a concern that the ordinary citizen funeral not be political or extend into the public sphere. The ordinary funeral should not be the occasion for political competition or public display. To sacrifice an ox, it hardly need to noted, at the funeral of a family member would certainly create the possibility of a larger than "family size" funeral feast and would be a grand display.

In addition to, or in conjunction with, the Solonian creation of a conceptual private sphere to which the ordinary citizen funeral was limited, early Athenian law allowed for the public honoring of heroes in burial and the total exclusion of traitors and certain criminals from any burial at all within the polis. I will return later to the public funeral ceremony described by Thucydides and termed by him "*patrios nomos*"; here it is enough to recall the story of Tellus who was buried where he fell in battle and also received publicly visible – and publicly paid for – funeral rites. At the other end of the spectrum was the denial of any burial ritual at all or the exclusion of the corpse from burial within the limits of the polis. According to Thucydides, the relatives of Themistocles (who had been declared a traitor in the turbulent decade after the Persian wars) brought his bones home from Asia and secretly buried them "since it is against the law to bury in Attica the bones of one who has been exiled for treason" (1.117); and Xenophon, in his continuation of Thucydides, specifically cites the law forbidding the burial of traitor and temple robber within Attica (Hellenika 1.7.33)[15]. Perhaps Plato's imposition of a similar punishment for those who murder a family member reflects not only his conservatism but his knowledge of archaic Athenian law:

[14] It is interesting that the the city-state of Florence also legislated highly specific rules on the public performance of citizen funerals and on family participation in those funerals; see *Sharon Strocchia* in: Death and Ritual in Renaissance Florence (Baltimore 1992) chapter 1.

[15] Cf. At the beginning of his excursus on Themistocles, *Thucydides* relates the story of the attempted coup by Cylon in c.630 and the impious killing of his supporters who had taken refuge at the altar on the Acropolis. As a consequence, the family of Megacles, the perpetrator of this crime, was at key moments in Athenian history expelled from Athens – the dead as well as the living. Thucydides says that this was done when Cleomenes invaded Athens at the end of the 6th century ("they exiled the living and dug up and cast out the bones of the dead" 1.126). In his Solon, *Plutarch* says that this happened earlier as well during the crisis that led to Solon's appointment as law-giver: "Those members who were still alive were banished and the bodies of those who had died were dug up and cast out beyond the frontiers of Attica" (12). Nonetheless, as Thucydides says, "they came back later, and their descendants still live in Athens." Indeed, among their numbers were Pericles and Alcibiades. For discussion of this extreme penalty, see *R. Parker*, Miasma (Oxford 1983) 45–48.

"If a man be found guilty of such homicide, the officers of the court with the magistrates shall put him to death and cast him out naked, outside the city at an appointed place where three ways meet. There, all the magistrates, in the name of the state, shall take each man his stone and cast it on the head of the corpse as in expiation for the state. The corpse shall then be carried to the frontier and cast out by legal sentence without burial." (Laws 873b-c).

Finally, the same sort of articulation of private, public, and extra-polis space is evident in the early Athenian law on homicide that drew a distinction not only between intentional and unintentional homicide but between homicides committed in space outside or inside the polis and outside or inside the *oikos*. As quoted by Demosthenes (23.53), the law stated that if a man committed homicide in an athletic contest, in a fight on the road or in battle, or when he found another man "upon" his wife, mother, sister, daughter or concubine, in these specific cases he should not go into exile as a murderer[16]. It is striking that the law envisions both an exterior and an interior sphere in which a man could kill with impunity.

Legal rules and boundaries, however, provide only a sort of conceptual map of archaic Athenian society; the public/private distinction in particular was hardly a real fence at the courtyard gate. This point becomes particularly clear when we consider not the burial rites themselves, but the burial monument, which was afterward set up over the tomb. Although often called "private" grave monuments, they are of course aimed at a public audience. One particularly interesting such monument is a late 6th century black-figure pinax, most likely used to decorate an earth-built tomb, which shows a remarkable self-consciousness about the proper carrying out of private funeral ritual[17]. In the representation of the prothesis each member of the deceased's family is carefully and precisely identified – and apart from the nurse all are within the proper degree of "private" family relationship. The production of such pinakes did not continue into the fifth century, and the commemoration of the dead with stone monuments also came to a temporary end in the early fifth century. This apparent scaling back of private funeral monuments in Athens has been attributed to a specific law or to a general democratic mood of restraint or to a natural swing in style or popular taste[18]. The discussion is a long-standing one. I do not want to enter into that debate here, but rather turn to the public sphere – to the important testimony of Thucydides on the Athenian public funeral for the war dead and finally to the dramatic discussion of burial ritual carried out in the Athenian public theater.

[16] Demosthenes attributes the law to Drakon. That the law is archaic in origin is supported by the use of the term "pallake" for concubine. See my comments on this term and the status it implies in *M. Gargarin* (ed.), Symposium (1990) 281–287.

[17] On the funerary pinakes, see *J. Boardman*, Painted Funerary Plaques and Some Remarks on Prothesis, in: BSA 50 (1955) 51–66 and, briefly, *D. Kurtz* and *J. Boardman*, Greek Burial Customs (London 1971) 83, 148–49. See also *H. A. Shapiro*, The Iconography of Mourning in Athenian Art, in: AJA 95 (1991) 629–656, for discussion of the pinakes within the larger context of Athenian funerary iconography.

[18] See *Shapiro* (previous note) for discussion and references to earlier literature.

III. Thucydides' Portrait of Athenian Public Burial

According to Thucydides, *patrios nomos* (ancestral custom) in Athens called for the annual public funeral of the war dead and burial outside the city walls. The *nomos* in fact is probably not much older than Thucydides himself[19] and clearly reflects the ethos and structures of the Cleisthenic democracy. It also tells the continuing story of the negotiation between public and private interests in the burial of Athenian citizens. Thucydides' description of the ritual (excluding the funeral speech) is worth quoting in full:

> These funerals are held in the following way: two days before the ceremony the bones of the fallen are brought and put in a tent, which has been erected, and people make whatever offerings they wish to their own dead. Then there is a funeral procession in which coffins of cypress wood are carried on wagons. There is one coffin for each tribe, which contains the bones of members of that tribe. One empty bier is decorated and carried in the procession; this is for the missing, whose bodies could not be recovered. Everyone who wishes to, both citizens and foreigners, can join in the procession, and the women who are related to the dead are there to make their laments at the tomb. The bones are laid in the public burial place, which is in the most beautiful quarter outside the city walls. (2.34, Warner trans.)

Discussions of this passage have often emphasized the way in which the polis as state has taken over the family responsibility of burial – and also, calling upon Pericles' later advice to the widows in his audience that "the greatest glory for a woman is to be least talked about by men, whether in praise or blame", have seen this rite as revealing the "men only" character of Athenian democracy in which women were "silenced"[20]. But is that really what Thucydides' text implies?

[19] See *F. Jacoby*, Patrios Nomos: State Burial in Athens and the Public Cemetery in the Kerameikos, in: JHS 64 (1944) 67–75.

[20] So the authors of Women in the Classical World (Oxford 1994) entitle the section, which begins with Pericles' advice to war widows (p. 79). The view that women were excluded from the democratic public funeral was articulated most forcefully by *Nicole Loraux,* The Invention of Athens: the Funeral Oration in the Classical City (English tran. 1986): "At the demosion sema … a functional opposition, even within the same group of Athenians, isolated the andres, adults and soldier-citizens, forever separated from their parents, their children, and even their wives. The Athenian city, which democratized military activity, opening it to every citizen, was, perhaps more than any other polis, a ‚men's club' … War was men's business, as were civic funerals" (p. 24). But she significantly qualifies that position in the sentences that follow: "the exclusion of women seems to be simply a particular case of the general phenomenon whereby families were pushed into he background. However, the family's lot must be distinguished from women's, for with regard to relatives the Athenian democracy was a good deal more flexible than it might seem at first, at least in the periods before and after the funerals. Private individuals were permitted to honor their dead in perfect freedom at the prothesis, and the funeral banquet, though strictly regulated, took place in private houses, at the home of the dead man's closest relatives. So, without going as far as some modern historians and declaring that the role of the family in these funerals was an essential one, we should speak perhaps of a compromise between city and family." (ibid.) Loraux leaves the exclusion of female relatives unsupported and improbable, even by her own argument; and the suggestion of a compromise of sorts is just what I am suggesting here.

It seems to me that the ritual Thucydides describes could be considered an accommodation of sorts between the family's interest in seeing its dead member honorably buried, however he died, and the polis' interest in publicly honoring those who as citizens died fighting for their state. The bone are first set forth (*protithentai*) for three days in a tent constructed for that purpose, and each Athenian makes what offering he wants to "his own" dead (*toi hautou*). This in essence is a group *prothesis* of the dead – combined with the more specific honoring of "one's own". Then, on the third day, as in the traditional rite, there is a funeral procession with one bier for each tribe and one for the missing – an *ekphora* (34.3) for the dead in their citizen groups. This funeral procession, however, is fully public, held in the daylight and attended by "anyone who wishes, foreigner or citizen" (*ho boulomenos kai aston kai xenon*). The phrase emphasizes the very public character of this ritual, comparable to a dramatic performance in the theater where foreigners attended as well as citizens, or to deliberations in the law courts or assembly, where *ho boulomenos* of the citizens could participate. Thucydides' sentence continues, however, with an additional clause: "women are present – those who are related are there to lament at the tomb" (*kai gunaikes pareisin hai prosekousai epi ton taphon olophuromenai*), so incorporating into the public ceremony a ritual as old as Homer. The term translated "related" is a somewhat general one, and does not seem to imply any restriction such as "within the degree of children of cousins"; in any case, since Pericles later addresses his famous advice to "those now in widowhood" (2.45), wives of the dead are clearly present. Thus, although it may be true to say that the public funeral described by Thucydides takes over what is traditionally a family responsibility, it does so in a way which does not exclude the family or women, but incorporates both into a new ritual which carefully follows the traditional order of the old. The new heroes of democratic Athens receive a burial appropriate to their deeds and death[21]. The stories of the old heroes, however, as repeatedly dramatized on the Athenian stage, suggest that the new burial ritual contributed to a heightened interest in the issues of burial – not a flattening of discussion into a monolithic democratic unison.

IV. The Body of Polyneices: what is at issue?

By the mid-fifth century (or somewhat earlier), Athens seems to have sorted out the layers of public and private interest in the funeral of its citizen members, articulating 1) a private sphere in which burial was carried out by family members in a progression of ritual from within the house to the grave site; 2) a public sphere and public rite of burial carried out by the polis itself for special or heroic dead; and 3) a sphere "beyond the borders" where those guilty of betraying the polis or

[21] Although women were part of the ritual public ceremony, they were not of course recipients of this burial honor. Male heroism in war was in the fifth century, as it has continued to be in modern times, the focus of public recognition with honorific burial.

its gods were left unburied and unmourned. But the spheres and the rules and responsibilities appropriate to each were hardly uncontested. The persistent presentation on the fifth century Athenian stage of the story of the unburied dead before Thebes – told by each of the three major tragedians and no doubt by others as well – reveal some interesting fault lines in Athenian attitudes towards public and private, male and female, responsibility for the dead and towards the honors those dead should receive.

The legends of Thebes and the house of Labdacus – especially those of Oedipus and his children – had an undeniable appeal to the Athenian theater audience in the fifth century and to its playwrights. Each of the three major tragedians told and retold some part of the story, adding details and filling in empty spaces in the plot. Aeschylus' *Seven against Thebes*, the third in a trilogy produced in 467, is the first of the surviving Theban plays; Sophocles wrote the *Antigone* in 441 and returned (at least) twice to the story, with *Oedipus Tyrannos* in c.430 and *Oedipus at Colonus* in 405. Two surviving plays of Euripides retell the latter parts of the story: *The Suppliant Women* (420–415) celebrates the Athenian democracy's protection of the bodies of the "Seven" while *The Phoenician Women* (c.410), says a translator, "covered in its episodic action and in its reminiscences of the past and prophecies for the future, more stages of the Oedipus legend than one would have thought a single play could hold"[22]. In brief, the Athenian version of the story was that Oedipus unknowingly killed his father, Laius the king of Thebes, and then married his mother. After discovering his own guilt, he blinded himself and later cursed his two sons. The two sons, Polyneices and Eteocles, quarreled over the rule, and eventually Polyneices with the help of Argos and six other "heroes" attacked the walls of Thebes, where he and Eteocles killed one another. The rule then passed to Creon, brother-in-law of Oedipus, who issued a decree forbidding the burial of the Argive heroes and of Polyneices. Antigone, the sister of Eteocles and Polyneices, defied the order, so sparking the tragic destruction of the remnants of the family but in the end (with the help of Tiresias) winning her brother a proper burial. Finally, the Athenians saw the story end with the intervention of their king Theseus into the tragic conflict: the Athenians battled the Thebans for the bodies of the unburied dead and carried out their proper burial.

This is a complex and rich tradition, which has certainly not been neglected by historians of Athenian society and culture. I focus here only on the issue of burial and on the many-stranded conflict as it is developed in three plays, *The Seven Against Thebes*, the *Antigone* and *The Suppliants* (one play by each of the three tragedians) in order to illuminate the open-ended and creative discussion on burial presented to the Athenian theater audience.

[22] *Elizabeth Wyckoff* in her introduction to the play in Euripides V, Chicago 1959. Later fourth century producers added further detail, bringing in (not always with complete consistency) "everything really memorable in the dramatic tradition of Oedipus which Euripides had left out" (ibid.).

Aeschylus' *Seven Against Thebes* tells through messengers the story of the attack on Thebes by Polyneices and his Argive allies, but the central confrontation of the play itself, on stage, is between Eteocles and the chorus of young Theban women. At the opening of the play, word has just come, through a messenger, that the Argives (led by Adrastus along with the exile Polyneices) are near, prompting Eteocles to pray to the gods not to let his father's curse destroy the Greek and free city of Thebes (69–77)[23]. But Eteocles' brief, concise prayer, ending with the claim "I think I speak for everybody's good, for a city that fares well honors the Gods", is followed by one hundred lines of extravagantly fearful lament and woe from the chorus. To this outburst, Eteocles responds with a tirade against women, questioning their understanding of and commitment to the public good: "You insupportable creatures, ... is this the best, is this for the city's safety?"

The chorus continues to express its fear and to appeal to the gods, and Eteocles, growing more angry, tells them again and again, "Be Quiet!" (250, 262 ...). Or, if they must pray to the gods, he tells them what to say: "no lamenting", no "vain wild panting and moaning" (280–81) but a simple "May the Gods stand as our allies" (267). The messenger then returns with a description of each of the attackers. The seventh and last is Polyneices, against whom Eteocles declares he himself will go. Then the chorus, quiet through all of this description, try to dissuade Eteocles from going against his brother: "listen to women though you like it not" (712), but his mind is made up. The chorus returns to its lamenting, now of the destructive curse of the house of Labdacus. The Messenger reenters with the news of the brothers' deaths, and the chorus, together with the sisters Antigone and Ismene, enter upon an extended lament – now of actual rather than potential woes. The end of the play as we have it is of disputed authenticity – and indeed seems to have been adjusted in the light of Sophocles' *Antigone*. A herald comes from Creon the new king saying that Eteocles should be buried but his brother Polyneices would be "cast out unburied". "It is resolved", announces the herald in the language of Athenian public decisions, "that he shall have, as his penalty, a burial granted dishonorably by the birds of the air and that no raising of a mound by hand attend him nor observance of keening dirge. Unhonored shall his funeral be by friends" (1019–1024). In the text as it has come down to us, Antigone asserts her determination to defy the order and the play ends with the chorus lamenting, as usual, but dividing into two half choruses, one to attend the burial of Eteocles and one to attend that of Polyneices. Despite Eteocles' strong words on women's worthlessness, the chorus does have the last word in this play – over his dead body. Without

[23] The emphasis on the "Greek tongue" of Thebes is interesting, since Argives were also Greek speakers. It would seem the Athenian memory of the attack on their city by the Persians just 12 years earlier is being invoked. If that is so, then one could wonder whether Polyneices is intended to call up memories of the Athenian exile and ex-tyrant Hippias who came with the Persians to Marathon in 490 or of other Greeks who marched on the Persian side. Translations of the Seven Against Thebes are those of *David Grene* in the Chicago edition, with occasional modifications.

the chorus, he together with his brother would have died unlamented and unhonored.

The Seven Against Thebes is a somewhat static play, but it does establish the basic conflicts that were developed and debated through the rest of the century. Eteocles and the chorus anticipate the conflict and the language of the more famous treatment of the story by Sophocles some 25 years later. In the *Antigone*, Sophocles narrowed the temporal scope of the play to the moment of decision about the burial of the two brothers. The play opens with Antigone relaying to Ismene the news of Creon's decree that Polyneices must not be buried, but left "unwept, untombed, a rich sweet sight for the hungry birds' beholding" (28–30), and ends with the suicides of Antigone, her intended husband Haemon, and his mother Eurydice. Creon is confronted with his wife's death after he, or rather his servants, finally carry out the burial of Polyneices. The plot is well known and I will not rehearse it here, but rather consider specifically the provocative argument of Christiane Sourvinou-Inwood in several articles that Antigone in this play is essentially a "bad woman", and exhibits behaviors and attitudes of which the Athenian audience would not have approved[24]. In the end her cause, i.e., giving the body burial, is proved to be what the gods want; but Antigone herself, according to Sourvinou-Inwood, remains a "bad woman", because she steps outside her proper feminine role, is disobedient to male and public authority, and rejects marriage and (hypothetically) her own children. Creon is wrong to keep an unburied body above the ground, but his position on the necessity of loyalty and obedience is one with which the audience would have sympathized. Those who view Antigone as a heroine, says Sourvinou-Inwood, are reading the play ahistorically; when the attitudes of contemporary Athenians are understood the "correct reading" is possible[25].

Certainly Creon is clear in his view that women do not belong in public. Like Eteocles in the *Seven Against Thebes*, Creon cannot tolerate women's "free running" in the public sphere, and cannot imagine that a woman has in fact committed the act of public disobedience in burying Polyneices' body ("what man has dared to do it?" he asks – 248). He sees the interest of the polis as single, simple and essentially one-dimensional – it is limited to political and military security as articulated and protected by men. With such a perspective, Antigone becomes simply a rebellious subordinate whose behavior is completely out of place and exacerbated by the fact that she is a woman. But Creon can hardly be taken as a cultural model of political wisdom. His refusal to listen and his single-minded be-

[24] Assumptions and the creation of meaning: reading Sophocles, Antigone, in: JHS 109 (1989); Sophocles, Antigone as a 'Bad Woman', in: Writing Women in History (Amsterdam 1990). For perceptive critique of these articles, see *Helene Foley*, Antigone as Moral Agent, in: *M. Silk* (ed.), Tragedy and the Tragic (Oxford 1996).

[25] *Sourvinou-Inwood* (1989) p. 136: "Severe limitations of space prevent me from setting out the correct step by step systematic reading of the *Antigone;* I shall present a condensed version of some aspects of, and some conclusions derived from, that reading ..." Cf. other uses of the term "correct" on pp. 140 and 148.

lief that the polis subsumes all other social relationships, including those with the gods, leads to the destruction – with heavy tragic irony – of his own household and immediate family[26]. Sourvinou-Inwood considers Antigone a "bad woman" because she implicitly rejects marriage and children ("Had I had children or their father dead, I'd let them moulder" – 906–7)[27], but she does not notice that Creon, like Etoecles before him, also devalues marriage. Eteocles had proclaimed "never may I live with a woman" (187), using the term generally used to describe the marital relationship, and Creon, in saying that Haemon can simply find "another furrow to plough" (569) also devalues the institution of marriage and the relationships it produces.

Further, Creon is a very late learner of traditional rituals and responsibilities that he should have known already. And by looking first to the dead Polyneices, he comes too late to prevent the death of both Antigone and Haemon. Then, although the messenger hopes that Eurydice will keep her mourning "private" within the house, there is little chance of that. Again ritual is perverted, as in her grief Eurdice dies "on the sword". As the chorus says, Creon may now, with this final loss, have "learned justice", but it is too late (1270).

Antigone, on the other hand, is as single-minded as Creon in her interpretation of her public responsibility to bury her brother (but not – if the issue arose – a husband or a son, 905–912). To honor her brother with burial is for Antigone a moral absolute that brings her honor as well (69–77, 502–3) and one that excludes all other responsibilities or authority. For Creon, on the other hand, only "the man who is well-minded to the state ... in life and death shall have his honor" (201–210). The positions are fixed. Sophocles' solution to this dramatic and ethical impasse is signaled in Antigone's distinction between Creon's mortal, political rules and "the gods, unwritten and unfailing laws" (453–5), then verified by Tiresias, warning and prophecy to Creon of the consequences of his refusal to grant burial ("The Furies sent by Hades and by all gods will even you with your victims", 1067–68). There is, Sophocles seems to be saying, a human responsibility to a social order larger than the single polis. Despite the narrowness of her own vision, Antigone's extension of the city's interest beyond Creon's political boundaries is important. Just as in the *Iliad* Achilles is brought back into the human community by regaining a sense of pity and shame, so Antigone's appeal to "unwritten laws" not limited by Creon's political necessities provides the way to a resolution of the conflict. The polis community must be rooted in the human community and in laws, which Pericles himself describes as unwritten but "carrying agreed upon shame" (2.37). Thucydides' Pericles leaves this shame in the human realm, but Sophocles seems to join Homer in regarding the failure to

[26] Cf. *P. Siewert*, The Ephebic Oath in Fifth-Century Athens, in: JHS 97 (1977) 105 for a specific discussion of the way in which Creon's demands for absolute loyalty to the city "right or wrong" (lines 666–667) might have seemed to the Athenians a distortion of the ephebes oath requiring obedience to those who rule "reasonably".

[27] For these much-debated lines, see the recent discussions of *Helen Foley* (above note 24).

honor such laws – including the ritual of burial – as a disruption of an order encompassing both gods and men.

Sourvinou-Inwood emphasizes the popularity of the *Antigone* (it won first prize) and uses that fact to argue that Sophocles could hardly have been criticizing the contemporary polis-centered ideology of Periclean Athens. But Athenian democratic ideology may be more complex than she suggests. Rather than seeing the play's popularity as evidence for the "correct reading" of the character of Antigone as a "bad woman", I suggest that the Athenian response was rooted in the play's moral solution – which comes of course too late for Creon but not for the audience.

This seems to be supported by the way in which the Athenian protection of the common right of burial becomes a point of pride in Athenian funeral oratory. The story that becomes a fixed element of Athenian orations in the later fifth and fourth centuries is precisely the Athenian rescue and burial of the dead who fell before the walls of Thebes (including of course Polyneices). Euripides' *Suppliant Women*, our third and last play, provides the democratic reading in its dramatic form.

Produced in the middle of the Peloponnesian War, *Supplicant Women* is in essence a play celebrating Athenian democracy. In fact, it may contain the most extensive defense of Athenian democracy of any surviving text including Pericles' funeral oration. In addition, however, to enunciating the principles of democracy ["This city is free, and ruled by no one man./The people reign, in annual succession./They do not yield the power to the rich;/the poor man has an equal share in it"][28], the play also recognizes and honors what Theseus and the chorus of Argive mothers call the common and "Panhellenic" law giving all dead the honor of burial. And unlike Eteocles and Creon, who couch their claim to speak for the polis in language that excludes [denies] women's participation, Theseus listens to both his mother and the Argive mothers. Theseus' image of democracy then is one that emphasizes the pious attention to basic human laws beyond the immediate sphere of the polis – and also the essential and necessary participation of women in a well-ordered and pious democracy.

It is striking that Theseus, like Achilles in the *Iliad*, himself washed the bodies of the dead sons and "spread the couches and covered the bodies" – before turning them over for mourning and lament by their kin. The rite of burial, supported and undertaken by the democratic king, reveals a sense of community that is larger than its political dimensions alone. The Athenian democracy, Euripides seems to be saying, and perhaps both Aeschylus and Sophocles would agree, is a ritual community as well as a political community and responsible for defending a larger social order than that held within its own city walls. There seems to be a certain Homeric message here – that Athens, a heroic and proud polis, should yet hold onto its humanity.

[28] 28 Lines 405–408, trans. *Frank Jones* (Chicago).

Gerhard Thür

Two 'Curses' from Mantineia (IPArk 8, IG V2, 262), Prayers for Justice, and Oaths

Since Kurt Latte[1] no author on Greek religion and magic has dealt with the famous 'Judgement of Mantineia'[2]. Lines 24–36 of the inscription seem to pronounce officially two curses on 13 men condemned for murder. Their names are carefully listed at the same square limestone in lines 1–13. The text of the 'curses' runs:

„The following shall be the proclamation (*euchola*) –: (25) If anyone (present) in the sanctuary is a murderer of those who perished at that time, either himself or any of his descendants in the male line, (a murderer) of either the men or the maiden, it shall be reprehensible (*inmenphes*) according to the oracle; if not, it shall be propitious (*ilaon*).

(30) If Themandros is a murderer of either the men or the maiden who perished at that time in the sanctuary, and was not absent from the deed of violence which took place then, he is to be put in reproach (*in monphon th[enai]*); if he was absent (at the time) of the deed, and is not a murderer, it shall be propitious (*ilaon*)."[3]

The heading *euchola* does neither indicate nor exclude a curse. Until now the neutral translation 'official proclamation' seems the best[4]. A contemporary curse tablet from Sicily, Gager 17 (around 450 BC), may have a similar heading *eucha*, otherwise not attested in defixiones. In favor of his friend Eunikos Apelles 'binds' several rival *choregoi*. It is a private affair completely different to the Mantineia

[1] *K. Latte*, Heiliges Recht (Tübingen 1920) 45–47; e.g. *H. S. Versnel*, Beyond Cursing: The Appeal to Justice in Judicial Prayers, in: *Ch. A. Faraone, D. Obbink* (eds.), Magika Hiera, Ancient Greek Magic and Religion (Oxford 1991) 60–106, and *J. G. Gager*, Curse Tablets and Binding Spells from the Ancient World (Oxford 1992), do not mention the text.

[2] IG V2, 262 (around 460 BC); new edition with legal commentary *G. Thür, H. Taeuber*, Prozessrechtliche Inschriften der griechischen Poleis: Arkadien = IPArk (SBOAW ph 607, Vienna 1994) no. 8; text and commentary *H. van Effenterre, F. Ruzé*, Nomima II. Recueil d'inscriptions politiques et juridiques de l'archaïsme grec (Rome, Paris 1995) no. 2; *R. Koerner*, Inschriftliche Gesetzestexte der frühen griechischen Polis (Cologne, Weimar, Vienna 1993) no. 34, lines 14–23 only. These authors, on the other hand, don't take note of the new literature on curses and magic (v. supra n. 1).

[3] My translation partly follows *C. D. Buck*, The Greek Dialects (Chicago 1955) no. 17.

[4] IPArk p. 86 n. 26; Nomima II p. 28.

document. Some authors read the invocation *tucha* instead of the heading *eucha* - in that case every parallel vanishes[5].

The text itself refers to a murder case (ll. 25–28, 31/32): several men and a maiden were struck at the sanctury that, as we learn from l. 1, belongs to (Athena) Alea[6]. The lines quoted above content two clearly divided paragraphs: the first deals with several persons under suspicion, being at the sanctuary yet[7], the second deals with a single person, Themandros, who also is suspected. He is said to have been there, but at the moment he is not. He pleads for an alibi. (Finally, his name is included in the list of the 13 persons condemned, ll. 1–13.) In either paragraph generally formulated sanctions, 'reproach' (by the goddess) or 'propitiousness', follow the precisely recorded facts. Up to now, the first alternative, the reproach, caused all scholars to interpret the whole section as a curse.

I. I am doubtful about that. It does not bother me that no divine punishment is proclaimed towards the murderers (under suspicion). Contemporary curse tablets don't do so, either[8]. But, a simple curse would have mentioned at least the names of the persons inflicted[9]. The first paragraph tells not a single name[10]. Every serious attempt has to face the further difficulty that the proclamation formulates an alternative: reproach or propitiousness.

Latte[11] has suggested a sophisticated solution. Alea whose shrine was violated by the slaughter gave an oracle how to deal with the persons under suspicion: a secular court had to find and condemn the culprits. Latte, therefore, unterstands the text quoted above as a conditional curse. The condition was that secular judges (*dikasstai*, l. 19) give a sentence on every person accused. I can follow Latte only partly[12]. To sum up: the *diskasstai* mentioned here are the political authority who proclaimed, with consent by the goddess (*„edikasamen"*, *a te theos kas oi dikasstai*, ll. 18/19), the *euchola* to instruct the trials against the persons accused for murder. The verdict was given in two different ways: the defendants who remained in the sanctuary under sacral protection of the goddess were tried by her oracle (l. 14), exactly as provided in the 1st paragraph of the *euchola* (l. 29). These are the first 12 condemned mentioned in the list (ll. 1–12). Themandros – condemned too (l. 13) – had to submit to ordinary secular trial, he was sentenced by *gnosia* (l. 15). If we read the 2nd paragraph of the *euchola*, concerning Themandros, carefully we neither find him mentioned to be in the sanctuary nor is an

[5] Cf. *Gager*, (s. n. l.) p. 76 n. 123; *Ch. A. Faraone*, The Agonistic Context of Early Greek Binding Spells, in: Magica Hiera (s. n. 1) 5 holds *eucha*.
[6] *M. Jost*, Sanctuaires et cultes d'Arcadie (Paris 1985) 129.369.374 sq.
[7] Cf. *Buck*, (s. n. 3); IPArk p. 87 n. 29 and 32; *A. Chaniotis*, Kernos 9 (1996) 76.
[8] *Gager*, (s. n. 1) p. 5; *Faraone*, (s. n. 5) 5.
[9] Cf. *Gager*, (s. n. l) no. 50, Sicily 475–450 B.C.; the verb *parkatagraphein* instead of *katagraphein* seems to indicate an additional private curse added to an official act.
[10] *Koerner*, (s. n. 2) p. 97 sq. cannot imagine that the oracle did not mention names. Only future offenders are uncertain persons, as the *dirae Teiae* show (SIG[3] no. 27–38, *Koerner* no. 78), cf. *Faraone*, (s. n. 5) 37 sq. n. 40.
[11] S. n. 1.
[12] Cf. my arguments in IPArk p. 91 and *Chaniotis*, (s. n. 7) 76–78.

oracle mentioned here. So he must have been treated differently from the other twelve.

Recently, van Effenterre[13] attempts to unterstand the text in a completely different way. The 13 persons (ll. 1–13) are not listed as condemned, they were rather granted amnesty after a time of exile. So the whole document was not a judgement but an act of reconciliation. Since the polis had only secular authority, it could waive only the profane punishments, the confiscation of the houses formerly owned by the condemned persons (l. 17). The sacral inflictments, the banishment from the sanctuary, still were in force. To be quite sure not to offend the goddess the polis proclaimed a conditional curse, our text. Only the goddess really knew whether the persons formerly condemned were guilty or not. The goddess herself may take care. This theory cannot stand. Beside other objections, I cannot imagine how an archaic polis would have granted reconciliation to exiles without admitting them to the official cult[14].

Nevertheless, both Latte and van Effenterre have strong points. Apart from understanding our text as 'conditional curses' Latte thought that the goddess instructed the trials against the accused persons by an oracle: she gave "Anweisung für den Prozess, vergleichbar auf profanem Gebiet der Instruktion des Praetors an den Judex"[15]. Van Effenterre compares the same text with the usual alternative formulas of questions to an oracle: "La forme est celle des alternatives ordinairement utilisées pour les questions ou réponses d'oracles."[16] Based on my research on the verb *dikazein* in archaic sources[17] I would combine both ideas: the political leaders of Mantineia (the *dikasstai*, l. 19) – with consent of the goddess (l. 19) – pronounced (*edikasamen*, l. 18) the *euchola*. This was the first step, the instruction setting the terms for final decision. With Latte we may call this first enactment oracle: an oracle formulating the alternative 'murderer or not murderer' to be decided finally, as far as the 12 first mentioned culprits are concerned, by a further oracle (l. 14 and 29). Based on a similar alternative also enacted by the goddess and the *diskasstai* (ll. 18/19) Themandros, the 13th on the list (ll. 13 and 30), was condemned by sentence of judges, by *gnosia* (l. 15).

To sum up, we cannot call our *euchola*-text simply a curse. The ‚reproach' by the goddess is provided as sanction against murderers, twelve condemned by divine judgements, one by profane sentence. Only these condemnations result in a curse – as the reproach may be seen to be. Curses seem to be a normal way of handling profane justice. In the whole inscription reproach is the strongest sanction: every amendment of the terms on confiscating the property and exiling the culprits is punished by 'reproach' (l. 23)[18]. On the other hand, every condemned

[13] Nomima II (s. n. 2) no. 2.
[14] *G. Thür*, Dike 1 (1998) 126.
[15] *Latte*, (s. n. 1) 45 sq.
[16] Nomima II (s. n. 2) p. 30; for oracle-questions cf. *Versnel*, (s. n 1) 81.
[17] Cf. *G. Thür*, Oaths and Dispute Settlement in Ancient Greek Law, in: *L. Foxhall, A. D. E. Lewis* (eds.), Greek Law in its Political Setting (Oxford 1996) 59 with further references.
[18] Reproach is a very simple solution. In similar cases of such a 'Bestandsklausel' we find the

person giving up his property in accordance with the verdict and going to exile will automatically recover 'propitiousness' (l. 22). So, curse and blessing work together in upholding social and political peace in a community that probably did not yet achieve its full constitutional shape[19].

II. As we have seen, the curses from Mantineia have nothing to do with the private curse tablets discussed in this volume. From a legal point, private curses are a kind of self-help[20] administered in the underground. Nobody boasts in public of such practices or would even confess them privately[21]. Also, when used in legal and political disputes they stay within their unofficial, secret setting. Divine reproach and blessing survived, nevertheless, in the legal system of the classical polis: till now modern scholars did not pay enough attention to the different oaths to be sworn in every lawsuit[22]. Anyway, in the classical period no magistrate was entrusted to handle divine power as freely as the Mantineian authorities apparently did. Surprisingly, in communities not as well organised as Athens we find elements of sacral methods in deciding litigation performed by priests of mighty gods. There are striking parallels to the *euchola* handed down by chance in the archaic inscription from Mantineia which have never been discussed. These kinds of divine judgement survived in a practice called 'prayers for justice'.

A person who suffered an injustice and was not able or not willing to go to the state authorities had one more remedy, the gods[23]. Many documents from the hellenistic and Roman world show that it worked. The legal historian, of course, is mainly interested in how it worked. At the moment, I am concerned only with the continuity from archaic to hellenistic times. In spite of many similarities to simple private curses there are some distinctive features: in a prayer for justice normally the name of the supplicant is mentioned, in a curse it is not. He or – very often – she addresses the god in a humble, flattering language, mentions the wrong he or she suffered (frequently theft or degradation), and in terms of cursing asks for divine punishment unless the culprit would act justly. The act is not a secret magic self-help-binding to prevent a personal enemy from doing future harm – as defixiones in curse tablets are – but, generally, a public step to recover lost property or honor[24]. At least, the culprit is expected to get notice of the prayer and the divine sanctions threatening him[25]. After suffering some personal misfortune, as illness,

sanction of *atimia* (*Dem.* 23.62, Drakon's law), a fine of 30 talents and death penalty IPArk 16.4/5 (IG V2.344), a fine of the double of the damage, IPArk 30.14/15 (IG V2.433), a fine of 10.000 drachmae SIG^3 976.88–90 (Samos); cf. IPArk p. 88 n. 23 sq.

[19] The 'judgement'-inscription dates before the *sunoikismos* of Mantineia, IPArk p. 77; different opinions *Thür*, Dike 1 (1998) 128 n. 23.

[20] *Faraone*, (s. n. 5) 4.

[21] *Versnel*, (s. n. 1) 62.

[22] Too schematicly *J. Plescia*, The Oath and Perjury in Ancient Greece (Talahassee 1970) 47 sqq.

[23] *Versnel*, (s. n. 1) 68 sqq.

[24] A different type are the 'prayers for revenge' e.g. for a killed relative; here the damage is irreparable, and the divine punishment serves exclusively as satisfaction, cf. *Versnel*, (s. n. 1) 70.

[25] For some kind of publicity cf. *Versnel*, (s. n. 1) 69, 74 and 81.

death of a relative, or something like that the culprit comes up to the temple, praises the power of the god, confesses and rights his wrong, and sometimes erects a stele to honor the god. So, the extra-judicial procedure may result in a confession inscription[26].

Here, only the first step, the prayer for justice, is of interest. The most striking parallels between the *euchola* from Mantineia and the prayers found e.g. in Cnidus[27] are the alternative formulations: in Mantineia we have the alternative 'guilty or not'; the consequences are 'reproach or propitiousness' (*inmenphes* or *ilaon enai*) by the goddess Alea. In Cnidus several prayers concern stolen or lost property. The supplicants ask Damater to punish the persons who won't return the objects stolen or found: "If he gives back it will be according to divine ordonance (*osia*), if not the opposite (*anosia*)."[28] *Anosia* means the accused will not find Damater well disposed to him (*me tuchoi Damatros euilatou*)[29]. Both, in Mantineia and in Cnidus, the only sanction against a culprit is that the goddess will be 'not merciful' to him. The terminology changed only slightly: in Mantineia *ilaon* is used in positive sense, in hellenistic times we find instead of *inmenphes* a negative *me euilatos*[30]. The negative divine sanctions immediatly stop when the culprits act justly: in Mantineia the condemned murderers have to go into exile and it will become *ilaon* again (l. 22). In Cnidus the thief has to face unmercyful gods "until" (*achris*) he restores the stolen garment. The curses are temporary[31].

There is one essential difference: in Mantineia, the *euchola* resulted from ordinary jurisdiction. The plaintiffs turned to the political authorities (the *dikasstai*, l. 19) who administered divine justice. In Cnidus, a ‚sacred plaintiff' addresses his prayer for justice directly to the gods and asks them to inflict certain evils on his opponent. Divine and profane jurisdiction in Cnidus are strictly separated, a prayer for justice is irrelevant to the profane judiciary.

One other difference seems of minor importance: the *euchola* mentions both "reproach" and "propitiousness", in a prayer for justice the sacred plaintiff formulates only carefully listed evils.

This reminds one of simple curse tablets. But, lists of threatening evils are common in oath-formulas too. I see parallels between the curse-formulas in the prayers for justice and the double oaths sworn by the parties in every ordinary profane trial[32]. Anachronistically, in classical and hellenistic times those initial oaths survived as a relic of divine justice[33]. Going to court both parties take the risk of perjury. In the same way, a 'sacred plaintiff' is also aware that the curse

[26] Cf. the typology in *Versnel,* (s. n. 1) 77 and *A. Chaniotis*, 'Tempeljustiz', in: Symposion 1995, *G. Thür, J. Velissaropoulos* (eds.), (Cologne, Weimar, Vienna 1997) 353–384.
[27] The set of tablets is published now by *W. Blümel*, Die Inschriften von Knidos I (IK 41.1; Bonn 1992) no. 147–159.
[28] IK 41.1.149 A 8–10, 150 B 3–6, 152 B 2–4, 157.5–7.
[29] IK 41.1.147 A 24, 150 A 4.
[30] For *ileos* and *euilatos* see *H. S. Versnel*, ZPE 58 (1985) 260–266.
[31] IK 41.1.152 A 4–9; a provisional taboo situation, *Versnel,* (s. n. 1) 73.
[32] For the different strength of procedural oaths see Dem. 23.68; cf. *Plescia,* (s. n. 22).
[33] Against this relic *Plato*, Laws 948b; cf. *Thür,* (s. n. 17) 64.

could fall back on himself. Intentionally, a woman formulated a curse upon herself if a slander should turn out true[34]; the curse upon her adversaries has the usual proviso "but it shall be *osia* for me to be with them ... under the same roof"[35]. Not only social contact with the 'sacred defendant' being under curse is dangerous but even the prayer for justice itself. Sometimes a 'sacred plaintiff' excuses himself for cursing[36]. More technically, a claimant for returning a deposit – after the well known alternative "to give it back shall be *osia*, the opposite *anosia*" (A 8–10) – closes the document "for me *osia*, for those who do not give back *anosia*" (B 6/7)[37]. A prayer for justice bears the same 'sacred risk' as the double oaths in an ordinary trial. In the inscription from Mantineia we only can conclude from *gnosia* (l. 15) that the trials started with double oaths. The *euchola* does not mention them.

Finally a prayer for justice is a one-sided act, the *euchola* from Mantineia was enacted by the authorities (*dikasstai*, l. 19) after hearing both parties. Apparently, Themandros produced an alibi that found its way into the wording of the *euchola* (ll. 33,35). No prayer for justice considers a defence plea[38]. Here, the procedure is different from secular trials. The 'sacred defendant' may just wait in full confidence that nothing will happen to him. If his social reputation is stained by his opponent's praying for justice he may take measures by praying himself to reject the slander. No human authority can blur a prayer for justice, only lack of confidence.

[34] IK 41.1.147 A 6–28.
[35] B 1–7; cf. IK 41.1.148 A 16-B4, 150 A 6–7, 153 B 1–9, 154.22–24, 155.8–11.
[36] *Versnel,* (s. n. 1) 66.
[37] IK 41.1.149, cf. 152 A 4–9. The simple proviso "for me *osia*" 150 B 9, 13/14; 151.11–13; 159.718.
[38] Only in IK 41.1.149 B 8 the text closes with an aposiopesis: "but if they dare to say ..." (the following space is intentionally left free).

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Nomos, Thesmos und Verwandtes

Vergleichende Überlegungen zur Konzeptualisierung geschriebenen Rechts im klassischen Griechenland*

Eine moderne Begriffsgeschichte jener zentralen Konzepte von Recht und Ordnung, Regel, Norm und Satzung, die in der griechischen Poliswelt der archaischen und klassischen Zeit entwickelt wurden, sieht sich auf mehreren Ebenen zugleich mit besonderen Ansprüchen und Erwartungen konfrontiert. Zunächst stellt sich ein spezifisches theoretisches Grundproblem der Begriffsgeschichte als eigenständiger Methode wie als Teildisziplin einer umfassend verstandenen Gesellschaftsgeschichte, und zwar wiederum auf mehreren Ebenen gleichzeitig: Jeder neue Versuch einer solchen Begriffsgeschichte muß jenes Spannungsverhältnis zwischen sozialen, politischen oder eben auch rechtlichen Sachverhalten und Begriffen, das „bald aufgehoben wird, bald wieder aufbricht, bald unlösbar erscheint“[1],

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Verzeichnisse der Siglen (Inschriftensammlungen, Corpora, altertumswissenschaftliche Reihen und Zeitschriften) finden sich bei *Russell Meiggs, David Lewis*, A Selection of Greek Historical Inscriptions to the End of the Fifth Century (revised edition, Oxford 1988), im folgenden zitiert: ML, hier XVII ff.; Inschriftliche Gesetzestexte der frühen griechischen Polis. Aus dem Nachlaß von *Reinhard Koerner*, hrsg. von *Klaus Hallof* (Köln, etc. 1993), im folgenden zitiert: *Koerner*, hier XVII ff.; *Henri van Effenterre, Françoise Ruzé*, Nomima. Recueil d'inscriptions politiques et juridiques de l'archaïsme grec I–II (Rom 1994–1995), im folgenden zitiert: *van Effenterre/Ruze* I–II, hier I XI ff. Antike Autoren, Fragmentsammlungen etc. werden nach international üblicher Praxis abgekürzt zitiert.

[1] *Reinhart Koselleck*, Vergangene Zukunft. Zur Semantik geschichtlicher Zeiten (Frankfurt a. M. 1979) 121, im folgenden zitiert: *Koselleck*, Vergangene Zukunft. Vgl. zur Kritik an Koselleck und zur Erweiterung von „Begriffsgeschichte“ zu einer „historischen Semantik“ als Mentalitätsgeschichte etwa *Dietrich Busse*, Semantik. Analyse eines Programms (Stuttgart 1987), im folgenden zitiert: *Busse*, Semantik, hier 43 ff. u.ö.; *Melvin Richter*, The History of Political and Social Concepts. A Critical Introduction (New York 1995); *Fritz Hermanns*, Sprachgeschichte als Mentalitätsgeschichte. Überlegungen zu Sinn und Form und Gegenstand historischer Semantik, in: Sprachgeschichte des Neuhochdeutschen. Gegenstände, Methoden, Theorien, hrsg. von *Andreas Gardt, Klaus J. Mattheier, Oskar Reichmann* (Tübingen

eigens thematisieren und besonders ernst nehmen. Denn einerseits muß dieses Spannungsverhältnis in diesem Falle besonders komplex sein: Die Sache ist hier ja die Ordnung einer vergangenen Gesellschaft selbst, ihrer Institutionen und ihres Regelwerks, und die entsprechenden Begriffe bezeichnen auch noch philosophische Vorstellungen, moralische Grundwerte und politisch-soziale Orientierungen von Recht und Gerechtigkeit, Maß und Gleichgewicht, Gültigkeit und Bindung[2]. Die Fülle und Vielschichtigkeit der Bedeutungen, die prinzipiell allen sozialen und politischen Begriffen zu eigen sind, wird dadurch noch einmal gesteigert. Andererseits stellt die bezeichnete Sache selbst ein eigenes Problem dar. „Recht" und „Verfassung" der Polis im allgemeinen und Athens im besonderen, die spezifischen gesellschaftlichen, politischen und institutionellen Strukturen griechischer beziehungsweise athenischer „Stadtstaatlichkeit" und damit die gesamten Bedeutungs-, Erfahrungs- und Wahrnehmungszusammenhänge, in denen und für die ein Begriff wie *nomos* entwickelt und gebraucht wurde, sind nur sehr bedingt auszumachen: Die Verhältnisse im Athen des 7. und 6. Jahrhunderts und außerhalb Athens generell sind bestenfalls punktuell zu rekonstruieren – und dann oft aus eben den gleichen Quellen, die als Texte die Basis der eigenständigen Begriffsgeschichte bilden.

Aus diesem Grundproblem resultieren hohe Anforderungen an die methodische Kontrolle des konkreten Vorgehens. Dabei muß man zunächst auf die Reihe anspruchsvoller und eindringlicher Analysen eingehen, die bereits einige Antworten auf die fundamentale „temporale Testfrage" einer Begriffsgeschichte im engeren Sinne geliefert haben, nämlich auf die Frage nach Dauer, Wandel und Neuheit der Bedeutungen und des Gebrauchs des Begriffes *nomos*. Eine der ersten und bis heute wichtigsten Arbeiten ist natürlich Rudolf Hirzels Buch *Themis, Dike und Verwandtes*[3], auf das der Titel dieses Beitrages anspielt. Seitdem ist die vielschich-

1995) 69–101, im folgenden zitiert: *Hermanns*, Sprachgeschichte; *Rolf Reichardt*, Historische Semantik zwischen *lexicométrie* und *New Cultural History*, in: Aufklärung und Historische Semantik. Interdisziplinäre Beiträge zur westeuropäischen Kulturgeschichte, hrsg. von *dems.* (Zs. für Historische Forschung, Beiheft 21, Berlin 1998) 7–28, im folgenden zitiert: *Reichardt*, Semantik, und die Beiträge in: History of Concepts – Comparative Perspectives, ed. by *Iain Hampsher-Monk, Karin Tilmans, Frank van Vree* (Amsterdam 1998).

[2] Vgl. dazu und zum Folgenden *Kurt Raaflaub*, Die Entdeckung der Freiheit. Zur historischen Semantik und Gesellschaftsgeschichte eines politischen Grundbegriffes der Griechen (München 1985), im folgenden zitiert: *Raaflaub*, Entdeckung, hier 7ff., sowie zuletzt *Paul Cartledge*, Writing the history of archaic Greek political thought, in: Archaic Greece: New Approaches and New Evidence, ed. by *Nick Fisher, Hans van Wees* (London 1998) 379–399, im folgenden zitiert: *Cartledge*, Writing, hier 382ff. mit weiteren Nachweisen und allgemein *dens.*, Greek political thought: the historical context, in: The Cambridge History of Greek and Roman Political Thought, ed. by *Christopher Rowe, Malcolm Schofield* (Cambridge 2000), im folgenden zitiert: Cambridge History, hier 11–22. Vgl. auch *Stephen Todd, Paul Millett*, Law, society and Athens, in: NOMOS, Essays in Athenian law, politics and society, ed. by *Paul Cartledge, Paul Millett, Stephen Todd* (Cambridge 1990) 1–18, hier 11f. und passim, auch zum Folgenden.

[3] Themis, Dike und Verwandtes. Ein Beitrag zur Geschichte der Rechtsidee bei den Griechen (Leipzig 1907), im folgenden zitiert: *Hirzel*, Themis. Vgl. auch das ganz anders konzi-

tige „Tiefengliederung sich durchhaltender, überlappender, ausgefällter und neuer Bedeutungen“[4] dieses Kernbegriffs des griechischen Rechtsdenkens immer wieder thematisiert worden[5]. Dabei ist das Problem der Verwerfungen zwischen dem Begriff, seinen alten Bedeutungen und neuen Gehalten zwangsläufig in den Vordergrund gerückt: Gerade im Falle des *nomos*-Konzeptes der klassischen Zeit ist danach mit einer besonders komplexen Gemengelage von Bedeutungen zu rechnen, die chronologisch aus verschiedenen Zeiten und sachlich aus unterschiedlichen Bereichen herrühren[6].

I.

Trotz erheblicher Unterschiede in der Interpretation einzelner Belege kann dabei als grundsätzlich unstrittig gelten, daß jene Bedeutung des Konzeptes, die im Mittelpunkt der folgenden Betrachtungen stehen soll, erst um die Mitte des 5. Jahrhunderts greifbar wird: Erst jetzt finden sich eindeutige Indizien, daß der Begriff *nomos* eine schriftlich fixierte verbindliche Regelung als Ergebnis eines gesetzgeberischen Aktes bezeichnen konnte. Interessanterweise handelt es sich dabei

pierte klassische Werk von *Eric Voegelin*, Order and History, vol. II: The World of the Polis (o.O. 1957).

[4] *Koselleck*, Vergangene Zukunft 118, 125, auch zum Folgenden.

[5] *Martin Ostwald*, Nomos and the Beginnings of Athenian Democracy (Oxford 1969), im folgenden zitiert: *Ostwald*, Nomos, hier 20ff.; *Friedemann Quass*, Nomos und Psephisma. Untersuchung zum griechischen Staatsrecht (Zetemata 55, München 1971), im folgenden zitiert: *Quass*, Nomos, hier 14ff. Vgl. ferner *Hirzel*, Themis 359ff.; *Victor Ehrenberg*, Die Rechtsidee im frühen Griechentum (Leipzig 1921), im folgenden zitiert: *Ehrenberg*, Rechtsidee, hier 103ff.; *Felix Heinimann*, Nomos und Physis. Herkunft und Bedeutung einer Antithese im griechischen Denken des 5. Jahrhunderts (Basel 1945), im folgenden zitiert: *Heinimann*, Nomos, hier 59ff.; *Emmanuel Laroche*, Histoire de la racine *NEM-* en Grec ancien (Paris 1949), im folgenden zitiert: *Laroche*, Histoire, hier 163ff.; *Jacqueline de Romilly*, La loi dans la pensée grecque des origines à Aristote (Paris 1971), im folgenden zitiert: *de Romilly*, Loi, hier 25ff.; *Eric A. Havelock*, The Greek Concept of Justice. From Its Shadow in Homer to Its Substance in Plato (Cambridge, Mass. 1978); *Christian Meier*, Die Entstehung des Politischen bei den Griechen (Frankfurt a.M. 1980), im folgenden zitiert: *Meier*, Entstehung, hier 305ff.; *Michèle Giraudeau*, Les notions juridiques et sociales chez Hérodote. Etudes sur le vocabulaire (Paris 1984), im folgenden zitiert: *Giraudeau*, Notions, hier 115ff.; *Albin Lesky*, Grundzüge griechischen Rechtsdenkens II. Nomos, in: WSt N.F. 20 (1986) 5–26; *Christian Wagner*, Das Rechtsdenken der Vorsokratiker, in: Antike Rechts- und Sozialphilosophie, hrsg. von *Olof Gigon, Michael W. Fischer* (Frankfurt a. M., etc. 1988) 220–250, im folgenden zitiert: *Wagner*, Rechtsdenken; *Albrecht Dihle*, Der Begriff des Nomos in der griechischen Philosophie, in: Nomos und Gesetz. Ursprünge und Wirkungen des griechischen Gesetzesdenkens, hrsg. von *Okko Behrends* und *Wolfgang Sellert* (Abh. Akad. Göttingen, Phil.-hist. Klasse 3, 209, Göttingen 1995), im folgenden zitiert: Nomos und Gesetz, hier 117–134, im folgenden zitiert: *Dihle*, Nomos.

[6] *Sally Humphreys*, Law, Custom and Culture in Herodotus, in: Arethusa 20 (1987) 211–220, im folgenden zitiert: *Humphreys*, Law; *dies.*, The Discourse of Law in Archaic and Classical Greece, in: Law and History Review 6 (1988) 465–493, im folgenden zitiert: *Humphreys*, Discourse.

um inschriftlich festgehaltene Gesetze aus Halikarnassos und Erythrai[7], die noch vor die Mitte des 5. Jahrhunderts zu datieren sind. Diese Gesetze verweisen mit dem Begriff *nomos* auf sich selbst, auf ihre eigenen als verbindlich eingeschärften Regelungen und – im Falle des Gesetzes aus Erythrai – anscheinend auch auf andere, ähnlich fixierte Satzungen. Auf solche Verweise beziehungsweise Selbstverweise in Gesetzestexten, ihre Begrifflichkeit und ihre Bedeutung für das Problem der Konzeptualisierung geschriebenen Rechts wird noch zurückzukommen sein.

Daß der früheste inschriftliche Beleg der gleichen Art aus Athen erst aus dem Jahre 418/17 stammt[8], besagt vor diesem Hintergrund und angesichts der Überlieferungslage nicht viel. Auch im Athen der Jahrhundertmitte war diese Variante des *nomos*-Konzepts ohne Zweifel bereits bekannt und wurde in der Tragödie sogar vielschichtig reflektiert. Denn diese Bedeutung wird in der zu Recht vielzitierten Berufung der Antigone des Sophokles auf die „ungeschriebenen und unerschütterlichen Gesetze der Götter" (ἄγραπτα κἀσφαλῆ θεῶν νόμιμα), nach denen sie ihre Pflicht zu erfüllen und ihren Bruder zu begraben hatte, offensichtlich schon vorausgesetzt (450 ff.): Damit wird nicht nur explizit ein Gegensatz zu den von Kreon als König erlassenen (und offenbar von der ganzen Polis und Bürgerschaft getragenen) *nomoi* aufgebaut[9], nach denen die Ehrung und Bestattung des Verräters verboten war und auf Zuwiderhandlung die Todesstrafe stand; mindestens implizit wird dabei die Vorstellung vorausgesetzt, daß solche *nomoi* „gesetzt" und geschrieben seien. Eine ähnliche Unterscheidung macht dann auch Thukydides, wenn er seinen Perikles ebenfalls von (mindestens) zwei verschiedenen Arten von *nomoi*, solchen zum Schutz der Verfolgten einerseits und *agraphoi nomoi* andererseits, reden läßt[10].

[7] ML 32 = *Koerner* 84, Z.19; 32; 34 f.; IvErythrai 2 = *Koerner* 75, A, Z.21; 27; B, Z.19 f. Vgl. auch SEG 31, 985 = *Koerner* 79, A, Z.19; IG IX 2,1226 = *Koerner* 52, Z.1 (Phalanna in Thessalien, 5. Jh.); IG XII 5,593 = *Koerner* 60, Z.1. Ob der Begriff in dem Fragment einer Vorschrift aus dem lakonischen Gytheion, das in das frühe 5. Jh. datiert wird, schon in diesem Sinne zu verstehen ist, muß offen bleiben (IG V 1,1155 = *van Effenterre/Ruzé* II 88, Z. 7 mit Kommentar). Das gilt auch für die schlecht erhaltene *lex sacra* aus Kleonai aus der Mitte des 6. Jh. v. Chr. (IG IV 1607 = *Koerner* 32, Z.9; 14).

[8] IG I³ 84, Z.18; 25. Vgl. *Humphreys*, Law 216 f.; *dies.*, Discourse 473.

[9] Vgl. *Soph.* Ant. 59 f.; 213; 382; 449; 452; 481; 663, vgl. 26 ff.; 192 ff., sowie 78 f. und 657 (ganze Bürgerschaft). Vgl. dazu *Erik Wolf*, Griechisches Rechtsdenken, Bd. II: Rechtsphilosophie und Rechtsdichtung im Zeitalter der Sophistik (Frankfurt a.M. 1952), im folgenden zitiert: *Wolf*, Rechtsdenken II, hier 260 ff.; *Ostwald*, Nomos 47 u.ö.; *ders.*, From Popular Sovereignty to the Sovereignty of Law. Law, Society and Politics in Fifth-Century Athens (Berkeley etc. 1986), im folgenden zitiert: *Ostwald*, Sovereignty, hier 148 ff.; *Christian Meier*, Die politische Kunst der griechischen Tragödie (München 1988), im folgenden zitiert: *Meier*, Kunst, hier 219 f.

[10] 2,37,3. Vgl. zu dem Konzept und seinem Hintergrund generell *Rudolf Hirzel*, ΑΓΡΑΦΟΣ ΝΟΜΟΣ (Abh. der Philolog.-historischen Classe der Kgl. Sachs. Gesellschaft der Wiss. 20,1, Leipzig 1900); *Martin Ostwald*, Was There a Concept of ἄγραφος νόμος in Classical Greece?, in: Exegesis and Argument. Studies in Greek Philosophy Presented to Gregory Vlastos (Assen 1973) 70–104, im folgenden zitiert: *Ostwald*, Concept; *de Romilly*, Loi 26 ff.; *Rosalind Thomas*, Written in Stone? Liberty, Equality, Orality and the Codification of Law, in: BICS 40 (1995) 59–74, im folgenden zitiert: *Thomas*, Stone, hier 64 ff.

Schon zuvor, nicht allzu lange nach der *Antigone,* die im Jahre 442 aufgeführt wurde, nämlich in den *Acharnern* des Aristophanes, wird das Megarische Psephisma geradezu betont als „geschriebene Gesetze" (νόμοι γεγραμμένοι) charakterisiert[11]. Im Athen dieser Jahre werden schriftlich fixierte *nomoi* explizit als besondere Errungenschaft begriffen, wenn sie in den *Hiketiden* des Euripides (433 ff.) als die alleinigen Garanten eines gleichen Rechts für Arm und Reich bezeichnet werden. Und schließlich sind es dann bei Gorgias die „geschriebenen Gesetze", die als die „Wächter der Gerechtigkeit" bezeichnet werden[12].

Allerdings ist hier sogleich festzuhalten, daß diese neue Bedeutung des *nomos*-Konzepts die anderen Bedeutungsschichten des Begriffs, die dieser zu diesem Zeitpunkt bereits in sich akkumuliert hatte, keineswegs verdrängt – nicht sofort und auf breiter Front und vor allem nie rückstandslos. Nicht einmal im Athen des 4. Jahrhunderts, also nach der Einführung des Nomothesieverfahrens, der Institutionalisierung des Unterschiedes zwischen *nomos* und *psephisma* und der sich daraus ergebenden objektiven Kanonisierung eines Bestandes an *nomoi* als höherrangigen und -wertigen Normen scheint das Konzept immer in diesem Sinne technisch und völlig exklusiv für diese Kategorie von Regeln gebraucht worden zu sein[13].

Vielmehr bleibt die auffällige Bandbreite an Bedeutungsvarianten, die das Konzept schon früh angenommen hatte, weitgehend erhalten. Einerseits kann der *nomos* die „Ordnung" in einem allgemein-umfassenden Sinne bezeichnen, nicht nur die Lebens- und Rechtsordnung der Menschen im weitesten Sinne, sondern auch die Ordnung der Götterwelt, der Natur und des Kosmos. In dieser generellen Bedeutung kommt das Konzept bereits bei Hesiod vor: Damit bezeichnet er einerseits die umfassende Ordnung der Götter, andererseits jenes „Naturgesetz", nach dem sich Tiere gegenseitig fressen, während Zeus den Menschen *dike* gegeben habe – auch das sei ein allgemeiner *nomos*[14]. Ein solches umfassendes, kosmisches „Gesetz" ist natürlich auch der „eine göttliche" *nomos*, der bei Heraklit zudem explizit als souverän „gebieterisch" definiert wird[15]. Genau das klingt

[11] Ach. 532, vgl. den Kontext 530–534. Vgl. dazu *Ostwald*, Nomos 48 f.

[12] FVS 82 B 11a, 30: νόμους τε γράπτους φύλακας [τε] τοῦ δικαίου, … Vgl. zum *nomos*-Begriff in der Demokratie generell *Raaflaub*, Entdeckung 293 ff.; *Charles W. Hedrick*, Writing, Reading, and Democracy, in: Ritual, Finance, Politics. Athenian Democratic Accounts Presented to David Lewis, ed. by *Robin Osborne*, *Simon Hornblower* (Oxford 1994), im folgenden zitiert: Ritual, Finance, Politics, hier 157–174, im folgenden zitiert: *Hedrick*, Writing, hier 167 ff.

[13] *Humphreys*, Law 217 gegen *Mogens H. Hansen*, The Athenian Ecclesia (Copenhagen 1983) 161 ff. Vgl. auch *Ostwald*, Concept 92 ff. (auch zu *Aristot.* Pol. 1319b40–1320a2; Eth.Nic. 1180a34-b3 etc.) und zur Sache generell *Hans-Joachim Gehrke*, Der Nomosbegriff der Polis, in: Nomos und Gesetz 13–35, im folgenden zitiert: *Gehrke*, Nomosbegriff, hier 25 ff.; *Christopher Carey*, *Nomos* in Attic rhetoric and oratory, in: JHS 116 (1996) 33–46.

[14] Theog. 66; Op. 275 ff. Vgl. auch frg. 280,14 *Merkelbach-West*. Vgl. dazu *Heinimann*, Nomos 61 ff.; *Erik Wolf*, Griechisches Rechtsdenken, Bd. I: Vorsokratiker und frühe Dichter (Frankfurt a.M. 1950), im folgenden zitiert: *Wolf*, Rechtsdenken I, hier 151.

[15] FVS 12 B 114. Vgl. dazu generell *Wolf*, Rechtsdenken I 269 ff; *Wagner*, Rechtsdenken 227 f. (mit problematischer Begrifflichkeit).

dann wiederum in den bekannten Zeilen Pindars an, wonach der *nomos* „der König aller" sei, nämlich der „Sterblichen wie der Unsterblichen"[16].

Spätestens bei Heraklit kann das Konzept auch die Ordnung der Polis, das ihr eigene Recht oder auch ihre „Verfassung" bezeichnen: Der grundlegende *nomos* der *polis* soll offenbar aus dem erwähnten göttlichen *nomos* hergeleitet sein, und dieser ist es wohl auch, um den der *demos* kämpfen soll wie um die Mauer[17] – seit Homer die Metapher für die Grenze der Polis als befriedetem Raum gegen eine feindliche Außenwelt[18]. Auch bei Pindar kann *nomos* einerseits als positiv konnotierte Bezeichnung für eine politische „Grundordnung" dienen wie in seinem Lob des hergebrachten, durch die Aristokraten und ihre Führung der Städte hochgehaltenen *„nomos* der Thessaler"[19]. Andererseits kommt der Begriff in den *Pythien* aber auch durchaus neutral vor, wenn hier sowohl die Tyrannis und die Herrschaft der „ungestümen Menge", als auch das Regime der „Weisen" so bezeichnet werden[20].

Wenigstens in dem vielzitierten Begriff *eunomia*, der ja – wie auch immer – ebenfalls vom *nomos*-Konzept abgeleitet ist, könnte jedoch auch schon lange vorher eine genuin „politische" Dimension in den Begriff selbst eingedrungen sein: Die „Wohlordnung" der Polis – oder ihr Gegenteil, *dysnomia* – hat da immer auch schon mit dem Zusammenfließen von Recht, rechtlichen Regeln und Verfahren der friedlichen Streitschlichtung und Herstellung von Konsens in einer allgemein anerkannten und in sich ruhenden „Ordnung" des Gemeinwesens zu tun, wie Solon sie als Ideal und Maßstab entwarf[21]. Damit ist aber weder jetzt noch später eine auf „Satzung" beruhende Ordnung oder Verfassung gemeint.

Mit *nomos* oder dem Plural *nomoi* kann aber auch eine Ordnung in einem Sinne erfaßt werden, der zwar von der allgemeinsten Bedeutung nur schwer zu trennen ist, aber doch zuweilen als spezifische Konnotation durchscheint: Dann zielt der Begriff inhaltlich auf eine solche Ordnung als Summe vieler einzelner Prinzipien,

[16] Frg. 169,1 f. *Snell-Maehler*; s. ferner *Pind.* Pyth. 2,43; Nem. 1,72. Vgl. dazu *Humphreys*, Law 212 f.; *Marcello Gigante*, ΝΟΜΟΣ ΒΑΣΙΛΕΥΣ (Neapel 1956); *Wolf*, Rechtsdenken II 187 ff.

[17] FVS 12 B 114, vgl. B 44.

[18] *Karl-Joachim Hölkeskamp*, *Agorai* bei Homer, in: Volk und Verfassung im vorhellenistischen Griechenland, hrsg. von *Walter Eder*, *Karl-Joachim Hölkeskamp* (Stuttgart 1997), im folgenden zitiert: Volk und Verfassung, hier 1–19, im folgenden zitiert: *Hölkeskamp*, *Agorai*, hier 5 ff.; *Justus Cobet*, Milet 1994–1995. Die Mauern sind die Stadt. Zur Stadtbefestigung des antiken Milet, in: ArchAnz (1997) 249–284.

[19] Pyth. 10,69 ff., vgl. *Xen.* Hell. 6,4,28 und dazu *Thomas R. Martin*, Sovereignty and Coinage in Classical Greece (Princeton 1985) 81 ff. mit weiteren Nachweisen.

[20] Pyth. 2,86 f. und dazu *Meier*, Entstehung 235. Vgl. *Herakl.* FVS 12 B 33, wonach es auch *nomos* sei, dem Willen eines einzigen zu gehorchen.

[21] Frg. 3 *Gentili-Prato* = 4 *West*, Z. 30 ff. Vgl. dazu *Wolf*, Rechtsdenken I 202 ff.; *Ostwald*, Nomos 62 ff.; *Meier*, Entstehung 279 ff. u. ö.; *Dihle*, Nomos 118 f. Vgl. allgemein *Kurt Raaflaub*, Poets, lawgivers, and the beginning of political reflection in archaic Greece, in: Cambridge History 23–59, hier 39 ff; *Jean Rudhardt*, Thémis et les Hôrai. Recherche sur les divinités grecques de la justice et de la paix (Genf 1999), im folgenden zitiert: *Rudhardt*, Thémis, hier 97 ff.

Lebens- und Verhaltensregeln, die zusammengenommen „Ordnung" ausmachen und reproduzieren – diese Bedeutungsschattierung wird etwa bei Pindar, aber auch bei Herodot und Thukydides mehrfach erkennbar[22]. Das steckt natürlich ebenfalls in dem erwähnten Satz des Heraklit, daß sich „alle" – man könnte auch sagen: „alle einzelnen" – menschlichen *nomoi* aus dem einen göttlichen *nomos* nähren[23]. Konkret meint *nomos* dann etwa eine Gesamtheit von „Sitten" und „Brauchtum".

Schließlich, am anderen Ende des Bedeutungsspektrums und wiederum von der zuvor genannten Ebene oft kaum zu differenzieren, können *nomos* respektive *nomoi* die jeweils einzelnen „Bräuche" und Sitten, Verhaltensnormen, Pflichten, Gebote und Verbote und konkrete Vorschriften bis hin zu alltäglichen Lebensregeln bezeichnen. Auch diese Bedeutung ist schon bei Hesiod bezeugt: Grundgegebenheiten und -regeln des bäuerlichen Lebens heißen bei ihm ebenso *nomos* wie traditionelle religiöse Regeln und Opfervorschriften, die einmal auch als *nomos archaios* charakterisiert werden, der das Beste für die Polis sei[24].

In diesem Sinne kommt der Begriff des *nomos* beziehungsweise der *nomima* ebenfalls bei Pindar, Herodot[25] und noch bei Aischylos, Sophokles und Euripides[26] vor – und auch bei Thukydides dient er gerade zur Bezeichnung „alter", ehrwürdiger Bräuche in Sparta, Athen oder einer anderen bestimmten Polis, also konkreter „Sitten" und Regeln „der Väter"[27] und allgemeiner, allen Griechen gemeinsamer Bräuche und Konventionen[28].

Dabei schwingt in dem Begriff – ebenfalls von Anfang an und in allen seinen Schattierungen – eine ihm eigentümliche Ambivalenz mit: Einerseits ist *nomos* immer etwas Geltendes, tatsächlich Gültiges und charakterisiert insofern den positiv-faktischen Zustand der Dinge, wie sie nun einmal sind. Andererseits schwingt mit, daß der Begriff auch eine normative Dimension hat, also eine verbindliche Gültigkeit als Anspruch und Forderung einschließt[29]. Wiederum schon bei Hesiod ist nicht nur die „Ordnung" der Natur selbstverständlich, natürlich hat auch ein *nomos archaios* als religiöse Vorschrift einen hohen Grad an konkre-

[22] Vgl. etwa *Pind.* Pyth. 1,61 ff.; *Hdt.* 7,102,1 f. mit 103,1 und 104,4; 5,42,2 (zu Sparta); *Thuk.* 1,77,3; 84,3; 2,37,1 ff.; 3,37,3 ff.; 62,3 f.; 82,6; 84,2 f.; 6,18,7; 54,6; vgl. auch 3,62,3; 6,4,3; 4,4; 5,1; 7,57,2 (*nomima*).

[23] FVS 12 B 114. Vgl. etwa auch *Soph.* Oed.Rex 863 ff. S. dazu *Heinimann*, Nomos 65 ff.

[24] Op. 388; Theog. 417 und frg. 322 *Merkelbach-West*. Vgl. auch Pherekydes von Syros, FVS 7 B 2, col.2 etc.; *Ostwald*, Nomos 40 u.ö.

[25] *Pind.* Ol. 1,101; 8,78; Isthm. 2,37 f.; Nem. 3,55; 10,28; *Hdt.* 1,35,1; 94,1; 199,1; 2,35,2; 37,1; 3,80,5 u.ö. Vgl. *Giraudeau*, Notions 120 ff., auch zum Folgenden; *Rosalind Thomas*, Herodotus in Context. Ethnography, Science and the Art of Persuasion (Cambridge 2000) 102 ff.

[26] Vgl. dazu *Wolf*, Rechtsdenken II 215 f.; 453 ff. u.ö; *Ostwald*, Nomos 21 ff.; *ders.*, Sovereignty 89 ff.

[27] *Thuk.* 1,24,2; 71,3; 77,6; 132,2; 2,34,1; 35,1 und 3; 46,1; 52,4; 53,4; 4,118,1 und 3; 133,3; 5,49,1; 66,2; 69,2; 8,76,6 u.ö.

[28] *Thuk.* 1,41,1; 3,9,1; 58,3; 59,1; 67,6; 84,3; 4,97,2; 98,2 u.ö.

[29] *De Romilly*, Loi 24; *Meier*, Entstehung 305 f.; *Ostwald*, Sovereignty 85 ff.

ter Verbindlichkeit. Das Gleiche gilt sicherlich für den „politischen" *nomos* als Ausfluß des „gebieterischen" göttlichen *nomos* bei Heraklit.

Daß diese verschiedenen Schichten oft kaum zu trennen sind, braucht nicht erneut betont zu werden. Wichtig ist aber die Feststellung, daß gerade die Nichttrennbarkeit – positiv gewendet: das Aufeinanderbezogensein und Aufeinanderverweisen der verschiedenen Bedeutungsebenen – selbst zum Kerngehalt des Konzeptes gehört. Daran änderte sich auch nichts, als schließlich die Bedeutung des schriftlich fixierten Gesetzes als weiterer Inhalt hinzutritt. Deswegen kann der neue Gehalt gewissermaßen an der etablierten normativen Dimension des Konzeptes partizipieren: Die „gesetzte" Regelung kann mit dem *nomos* generell und verschiedenen *nomoi* anderer Art und Herkunft vor allem die Vorstellung einer besonderen Bindungswirkung teilen, ja sie kann als „junges", „neues" Recht mit dieser (Selbst-)Bezeichnung als *nomos* in den bewährten, „alten" Kreis eintreten und dadurch nur an Legitimität und Bindungswirkung gewinnen[30]. Aber diese „technische" Bedeutung bleibt die randständige Unterkategorie eines inhaltlich stabil bleibenden *nomos*-Begriffes, die sich spät entwickelt und zunächst vereinzelt hinzutritt, ohne den inhaltlich traditionell fest besetzten Kern des Konzeptes zu berühren.

Tatsächlich muß man sogar feststellen, daß die Anzahl der Zeugnisse für den Gebrauch des Konzeptes *nomos* für „Gesetz" in diesem eingegrenzten Sinne in Relation zur Gesamtheit der bekannten Belege aus dem 5. Jahrhundert gering ist – schon die wenigen weiteren Stellen in den Tragödien und in den späteren Komödien des Aristophanes, die dafür in Anspruch genommen werden, sind keineswegs durchweg eindeutig zu interpretieren[31]. Das Problem wird wiederum bei Herodot noch deutlicher: Zwar nennt er Solons Gesetze *nomoi* – und daß diese Gesetze schriftlich fixiert waren, war natürlich allgemein bekannt; aber weder in diesem Fall noch an anderen Stellen, an denen Herodot mit dem Begriff möglicherweise geschriebene Gesetze bezeichnen wollte[32], macht er das wirklich eindeutig klar. Anders und pointiert formuliert: Allein auf der Basis der herodoteischen Begrifflichkeit könnte man nicht einmal sicher sagen, ob Solons Gesetze überhaupt geschrieben waren. Und auch Thukydides gebraucht das Konzept nirgendwo zweifelsfrei in der neuen Bedeutung[33].

Angesichts dieses Befundes fragt sich darüber hinaus sogar, ob das Konzept *nomos* allein und für sich, also ohne ein die Schriftlichkeit irgendwie indizierendes Attribut, überhaupt eindeutig ein solchermaßen fixiertes Gesetz bezeichnen kann. Wenn diese Bedeutung unzweideutig signalisiert werden soll, kommt der Begriff

[30] Vgl. *Meier*, Entstehung 308 f.

[31] Vgl. dazu *Ostwald*, Nomos 46 ff.; *Dihle*, Nomos 123 f. Ich bin gegen *Ostwald*, Nomos 58 f. nicht überzeugt, daß der Begriff bei *Aeschyl.* Suppl. 387 ff. eindeutig ein schriftlich fixiertes Gesetz meint.

[32] 1,29,1 f.; 2,177,2. Vgl. auch 2,136,2; 177,2. Vgl. dazu mit Recht *Ostwald*, Nomos 46 f.

[33] *Ostwald*, Nomos 49. Gegen *Humphreys*, Law 217 f.; *dies.*, Discourse 473 ist νόμος (προ)κειμενος nicht als „Satzung", sondern als „bestehende", „gegebene", d. h. „vorgegebene" Regel, Norm etc. zu verstehen.

offenbar ohne entsprechende qualifizierende Attribute nicht aus – wie in den erwähnten Passagen aus Aristophanes, Euripides und Gorgias, so auch noch in dem berühmten Dictum des Andokides: Danach sollte ja ein Magistrat und überhaupt jeder ausschließlich „gemäß der geschriebenen Gesetze" ein Verfahren einleiten oder irgendeine Initiative ergreifen; denn – so wird dort das (natürlich seinerseits geschriebene) Gesetz zitiert – „einen ungeschriebenen *nomos* sollen die Beamten auch nicht in einer einzigen Sache anwenden"[34].

II.

Diese Diagnose der fortgesetzten Mehrschichtigkeit des *nomos*-Begriffs scheint sich durch die begriffsgeschichtliche Analyse des anderen zentralen Konzeptes des griechischen Rechtsdenkens zu bestätigen, das eher präziser einzelne „Satzungen" als „gesetzte", das heißt gestiftete Regelungen und Vorschriften bezeichnet haben soll, nämlich das Konzept *thesmos,* dessen Inhalt und Bedeutungswandel mit dem Begriff *nomos* und seiner speziellen Geschichte untrennbar verbunden scheint[35].

So versucht man bis heute, der Überwindung des Problems durch eine solche vergleichende Begriffsanalyse näher zu kommen[36]. Wenn der *nomos*-Begriff allein als konkrete Bezeichnung für das schriftlich fixierte Gesetz bis an das Ende des 5. Jahrhunderts notorisch unscharf blieb, kann anscheinend nur eine parallele und dann integrierte Analyse jenes anderen Begriffes weiterführen, der offenbar die gleiche Sache bezeichnete, auch noch viel älter war und damit näher an die Anfänge der schriftlichen Fixierung von Recht heranführte.

Natürlich steht außer Frage, daß ein solcher vergleichender Ansatz grundsätzlich in die richtige Richtung führt: Gerade wegen der eingangs erwähnten Spannung zwischen einer relativ klar definierten Sache und ihrer notorisch unscharfen Begrifflichkeit muß dieser semasiologische Ansatz durch einen onomasiologischen Zugriff ergänzt werden: Die Untersuchung der Konzeptualisierung des „geschriebenen Rechts" muß notwendig die Frage nach der ganzen Bandbreite der Begrifflichkeit für ein und dieselbe Sache stellen[37] – und das heißt in diesem Falle, daß das Feld der in Frage kommenden und daher zu untersuchenden Bezeichnungen neu und wesentlich weiter abgesteckt werden muß.

Allerdings stellt sich auch hier zunächst der Gewinn an inhaltlicher Trennschärfe als relativ begrenzt heraus. Grundsätzlich ist festzuhalten, daß der Begriff

[34] *And.* 1,85–87. Vgl. dazu *Meier*, Entstehung 310f., 34; *Ostwald*, Sovereignty 161ff.
[35] Vgl. dazu generell *Ostwald*, Nomos 12ff. u.ö.; *Quass*, Nomos 11ff. u.ö.
[36] Vgl. bereits *Hirzel*, Themis 320ff., 373ff. u.ö.; *Ehrenberg*, Rechtsidee 103ff.; *Laroche*, Histoire 184ff.; *Ostwald*, Nomos 9ff. und passim, sowie zuletzt *Fritz Gschnitzer*, Zur Terminologie von ‚Gesetz' und ‚Recht' im frühen Griechisch, in: Symposion 1995, Vorträge zur griechischen und hellenistischen Rechtsgeschichte, hrsg. von *Gerhard Thür* und *Julie Velissaropoulos-Karakostas* (Köln etc. 1997) 3–10, im folgenden zitiert: *Gschnitzer*, Terminologie.
[37] *Koselleck*, Vergangene Zukunft 121. Vgl. dazu *Busse*, Semantik 56ff.

thesmos - und die verwandten *thesmios* beziehungsweise *thesmia* - wie das Konzept *nomos* ein breites Spektrum an Bedeutungen behält, das der semantischen Bandbreite des *nomos*-Begriffs ähnlich und wenigstens partiell sogar damit identisch ist[38]. Dieses Spektrum reicht nämlich ebenfalls von allgemeiner „Ordnung" über Ordnung als Summe von Regeln bis hin zu einzelnen elementaren Lebens- und Naturgesetzen und konkreten Regelungen, Vorschriften, Geboten und Verboten, die oft direkt oder implizit als alt, ehrwürdig und immer gültig charakterisiert sind. Wiederum sind viele dieser Bedeutungen bei Pindar, Aischylos, Sophokles und noch bei Euripides und in den Komödien des Aristophanes bezeugt[39]. Bei Herodot ist dieser Gebrauch des Konzepts hingegen selten[40]; allerdings läßt sich wenigstens einmal zeigen (3,31,3–5), daß im gleichen Kontext die gleiche Ordnung beziehungsweise einzelne ihrer Regeln als (*patrioi*) *thesmoi* und als *nomoi* bezeichnet werden können.

Dabei können auch diese Begriffe eine spezifisch politische Bedeutungsdimension annehmen: Die in Athen bestehenden *thesmia,* die der Tyrann Peisistratos nach Herodot bei seiner Machtergreifung nicht angetastet habe (1,59,6), bezeichnen sicherlich die Grundordnung der Stadt als Summe hergebrachter Regeln und Gesetze – traditionelle ungeschriebene wie vermutlich die schriftlich fixierten von Drakon und Solon. Darauf wird noch zurückzukommen sein.

Damit nahe verwandt ist eine spezifische Bedeutung des Wortfeldes *thesmos*: Es kann auch religiöse Einrichtungen wie Feste und Spiele, gesellschaftliche oder politische Institutionen und auch den Akt der Stiftung einer solchen Institution durch einen Gott oder einen Gesetzgeber bezeichnen[41]. Dabei ist zuweilen auch die verbindliche Festlegung der Funktionen solcher Einrichtungen, ihrer Zuständigkeiten und Verfahren eingeschlossen. In diesem Sinne sind etwa die *thesmoi* Athenes zur Einrichtung des Areopags in Athen in den *Eumeniden* des Aischylos zu verstehen[42].

Aber der Begriff kann auch eindeutig eine (schriftlich fixierte) „Satzung" bezeichnen – und zwar schon sehr früh: Noch im neu publizierten Text aus dem Jahre 409/8 bezieht sich Drakons Gesetz über die unvorsätzliche Tötung auf sich selbst als „diese Satzung" (θεσμός), und es besteht kein Grund, darin nicht den ursprünglichen Sprachgebrauch des Gesetzes zu sehen, das in die Zeit um 620 gehört[43]. Auch Solon bezeichnete ja seine Gesetze ausdrücklich als *thesmoi*[44].

[38] Vgl. dazu generell *Hirzel*, Themis 320ff.; *Ehrenberg*, Rechtsidee 104ff.; *Kurt Latte*, Thesmos und Verwandtes, in: *ders.*, Kleine Schriften zu Religion, Recht, Literatur und Sprache der Griechen und Römer (München 1968) 146–151 (zuerst RE 6 A1, 1936, 31–37).

[39] *Pind.* Pyth. 1,62ff.; *Aesch.* Suppl. 708; Agam. 1562ff.; Eum. 391ff.; *Soph.* Aias 1104; Trach. 682; *Eurip.* Helena 866; Troad. 267; *Aristoph.* Aves 331. Vgl. dazu *Wolf*, Rechtsdenken II 185ff. u.ö.

[40] Vgl. *Giraudeau*, Notions 130.

[41] Vgl. etwa *Pind.* Ol. 6,69; 7,88; 8,25; 13,29 und 40; Pyth. 1,64f.; Nem. 10,32f.; 11,27. *Ostwald*, Nomos 13ff.

[42] Eum. 484; 491; 571; 681.

[43] IG I³ 104 = ML 8 = *Koerner* 11, Z.20.

Außerhalb Athens ist der Begriff in dieser spezifischen Bedeutung bekanntlich ebenfalls vielfach bezeugt. Nur ein Beispiel ist das Gesetz über die neuen Siedler aus Naupaktos, das um oder kurz nach 500 zu datieren ist: Gleich zu Anfang bezeichnet es sich selbst als „diese Satzung über das Land" (τεθμὸς ὅδε περὶ τᾶς γᾶς), bezieht sich auch später mit dem gleichen Begriff auf sich selbst und zitiert damit auch noch ein anderes Gesetz, nämlich die „Satzung über Mord" (ἀνδρεφονικὸς τετθμός)[45]. Im 5. Jahrhundert war dieser Gebrauch des Begriffs auch anderswo noch durchaus üblich, wie ein Strafgesetz aus dem thessalischen Argoura und ein Gesetz über Erbrecht aus Tegea[46] belegen.

Dabei ist zu betonen, daß diese spezifische Bedeutung des *thesmos* -Konzeptes noch im 5. und 4. Jahrhundert und vor allem auch neben dem Begriff *nomos* erhalten blieb. So bezeichnet schon das Gesetz der opuntischen Lokrer bezüglich ihrer Kolonisten im westlokrischen Naupaktos aus dem frühen 5. Jahrhundert sich selbst wiederum eindeutig als *thethmion;* an anderer Stelle des Textes wird dann aber auf bestimmte Klauseln des Gesetzes selbst mit dem Begriff *ta nomia* verwiesen, und mit solchen Begriffen *(nomima, nomos)* werden im gleichen Text auch noch andere Gesetze von Naupaktos beziehungsweise der Lokrer bezeichnet[47]. Zumindest in Delphi ist noch um und nach 400 ein solcher paralleler Sprachgebrauch nachzuweisen: In den Statuten der Phratrie der Labyaden werden diese selbst wie die „Gesetze der Polis" generell *nomoi* genannt, die Bestattungsvorschriften bezeichnen sich jedoch als „dieser *tethmos*"[48]. Auch das Gesetz über Zinswucher aus dem frühen 4. Jahrhundert beginnt mit der Selbstbezeichnung *tethmos*, verweist aber später auf sich selbst als *nomos*[49].

In Athen wurden vor allem Drakons und Solons Gesetze noch lange als *thesmoi* oder *thesmia* bezeichnet, aber auch andere, vor allem ältere Gesetze[50] – so heißt es in dem auf einer Inschrift des späten 4. Jahrhunderts erhaltenen archaischen (oder archaisierenden) Eid der Epheben, daß der Schwörende den bestehenden wie den in Zukunft „mit Vernunft" erlassenen Gesetzen (*thesmoi*) gehorchen werde[51]. Andererseits aber werden auch Drakons und Solons Gesetze zuweilen sogar in den gleichen Zusammenhängen *nomoi* genannt[52] – selbst in Urkunden, in denen

[44] Frg. 30 *Gentili-Prato* = 36, Z.18 *West*, vgl. frg. °40 *Gentili-Prato* = 31 *West*. Vgl. dazu *Ostwald*, Nomos 3 f. mit weiteren Nachweisen.
[45] ML 13 = *Koerner* 47, A, Z.1 und 14, sowie 13 f.
[46] *Koerner* 50, Z.1; Syll.[3] 1213. Vgl. auch IG V 2,159 = *van Effenterre/Ruzé* II 59, Z.8; 11 f. S. dazu *Quass*, Nomos 13.
[47] ML 20 = *Koerner* 49, Z.46 bzw. 27 f.; vgl. Z.15 f.; 19; 26; 30; 45.
[48] CID I 9 = *Koerner* 46, A, Z.2 und 28; B, Z.16 f.; C, Z.10 bzw. 19.
[49] DGE 324, Z.1; 18 f.
[50] *Aristot.* Ath.Pol. 4,1; 7,1; 16,10 (Drakon); 35,2 (Solon); vgl. etwa *Demosth.* 23,62.
[51] *Marcus N. Tod*, Greek Historical Inscriptions II (Oxford 1950) 204, Z.12 ff. Vgl. dazu *Peter Siewert*, The Ephebic Oath in Fifth-Century Athens, in: JHS 97 (1977) 102–111, der den Eid für archaisch hält, und zuletzt *Leonhard A. Burckhardt*, Bürger und Soldaten. Aspekte der politischen und militärischen Rolle athenischer Bürger im Kriegswesen des 4. Jahrhunderts v. Chr. (Stuttgart 1996) 57 ff.
[52] *Aristot.* Ath. Pol. 41,2; Pol. 12744b15 f. (Drakon); Pol. 1273b34 (Solon).

man einen präzisen, technischen Sprachgebrauch erwarten würde: Das ebenfalls inschriftlich erhaltene Einleitungsdekret zu der schon erwähnten Neupublikation des drakontischen Gesetzes bezeichnet dieses als *nomos*, während das Gesetz auf sich selbst ja als *thesmos* verweist[53]. In der ebenfalls bereits erwähnten Passage bei Andokides werden – fast in einem Atemzug – Drakons Gesetze als *thesmoi* wie als *nomoi* bezeichnet, das dort zitierte Dekret des Teisamenos über die Republikation nennt sie dann wieder *thesmoi*, während die Gesetze Solons hier wie dort als *nomoi* bezeichnet werden. Das ist wiederum nicht neu: Zumindest in bezug auf Solons Gesetze kommt der *nomos*-Begriff schon seit der Mitte des 5. Jahrhundert gelegentlich vor, und zwar bei Herodot[54].

Selbst wenn man also eine gewisse Tendenz konzediert, daß der Begriff *thesmos* zunehmend auf „alte", ehrwürdige, religiöse, von der höheren Instanz eines Gottes oder großen Gesetzgebers gestiftete und (schriftlich) festgelegte „Satzung" beschränkt wird: Auch bei diesem Begriff kann weder von einem einfachen Prozeß des sukzessiven Abscheidens und Ausfällens älterer, „überholter" Bedeutungsschichten die Rede sein, noch kann es (daher) einen linearen Prozeß der vollständigen Verdrängung von *thesmos* durch *nomos* als Bezeichnung für „Gesetz" gegeben haben.

III.

Der onomasiologische Zugriff muß also nochmals erweitert werden – man kann offenbar nicht umhin, das gesamte bezeugte Begriffsspektrum für „Gesetz" in den Blick zu nehmen. Dabei empfiehlt es sich allerdings, auf dem bereits eingeschlagenen methodischen Weg zu bleiben: Man muß sich auf die gesamte Begrifflichkeit konzentrieren, mit der vor allem die inschriftlich erhaltenen Gesetze sich selbst benennen und/oder andere Satzungen ihrer eigenen Art zitieren. Denn diese Quellen sind gleich aus zwei Gründen von ganz zentraler Bedeutung für die Konzeptualisierung von geschriebenem Recht: Erstens handelt es sich um primäre Texte im strengen Sinne und in doppelter Hinsicht – als urkundlich erhaltene (und nicht in literarische Form gekleidete) „Satzungen" wie als besonders unmittelbare Zeugnisse für die Beantwortung der hier diskutierten Problematik. Denn – und das ist der zweite, entscheidende Gesichtspunkt – ihre Schriftlichkeit ist offensichtlich, sie bedarf keines besonderen Hinweises und muß nicht mühsam erwiesen werden, sie ist vielmehr von vornherein eine evidente Qualität dieser Zeugnisse als Urkunden[55].

[53] IG I³ 104 = ML 86 = *Koerner* 11, Z.5 bzw. 20.
[54] *And.* 1,81–82 und 83–84 bzw. *Hdt.* 1,29,1 f., vgl. 2,177,2.
[55] Vgl. dazu und zum Folgenden *Marcel Detienne*, L'espace de la publicité, ses opérateurs intellectuels dans la cité, in: Les savoirs de l'écriture. En Grèce ancienne. Sous la direction de *Marcel Detienne* (Lille 1988), im folgenden zitiert: Les savoirs, hier 29–81, im folgenden zitiert: *Detienne*, L'espace, hier 36 ff., 48 ff. und passim; *ders.*, L'écriture et ses nouveaux objets

Tatsächlich wird die Komplexität der gesamten Thematik an der Vielfalt der zeitlich wie regional und oft jeweils auch noch inhaltlich zu differenzierenden Begriffe für das rechts-, verfassungs- und auch mentalitätsgeschichtliche Phänomen von „Gesetz" und „Gesetzgebung" in der archaischen und klassischen Polis besonders deutlich – gerade die in den Urkunden verwandten Begriffe und die damit bezeichneten Sachverhalte sind direkt und zugleich vielschichtig aufeinander bezogen.

Zunächst fällt auf, daß im Gegensatz zu den Konzepten *nomos* und *thesmos* mit ihren notorisch unscharfen Bedeutungsaspekten die meisten anderen (Selbst-)Bezeichnungen von „Satzungen" auf unterschiedlich direkte Weise, aber durchweg eindeutig auf den Aspekt des „Verfahrens", also der Entstehung einer Regelung durch „Setzung" oder Inkraftsetzung verweisen. Dieser Aspekt kann zwar durchaus auch schon im Begriff *thesmos* präsent sein: Besonders deutlich wird das aber erst durch einen entsprechenden Zusatz, wie in der erwähnten Inschrift aus Argoura in Thessalien (θεθμὸς τοῖ δάμοι) – hier wird der *damos*, also wohl die Volksversammlung, als Organ der Beschlußfassung über die folgende Regelung geradezu hervorgehoben[56].

Wenn eine Satzung sich selbst oder eine andere Regelung ihrer Art mit dem Begriff *psephisma* beziehungsweise *psephos* bezeichnet[57], braucht sie den Hinweis auf ein Beschlußorgan jedoch nicht einmal, denn mit diesem Konzept und den daraus abgeleiteten Verbformen ist diese Bedeutungsdimension eindeutig privilegiert[58]. In attischen Volksbeschlüssen aller Art im 5. Jahrhundert – Gesetzen, Dekreten wie Verträgen – ist dieser Begriff bekanntlich die übliche Selbstbezeichnung, die etwa in den Publikationsvorschriften regelmäßig benutzt wird[59]. Auch sonst kommt er häufig vor, etwa in Erythrai, Thasos, Milet und auf Kreta. Dabei steht immer ein Beschluß beziehungsweise ein Beschlußverfahren im Vordergrund – und wiederum taucht diese Bezeichnung vor allem dann auf, wenn sie im gleichen Text etwa neben dem Konzept *nomos* vorkommt, der sich dann oft eher auf den eigentlichen Gehalt des Beschlusses bezieht[60].

Auch der Begriff „Rhetra" in allen seinen Varianten (ῥήτρα, *F*ράτρα)[61] verweist auf den Ursprung der so bezeichneten Satzung in einer Willensäußerung

intellectuels en Grèce, ebda., hier 7–26, im folgenden zitiert: *Detienne*, L'écriture, hier 17f.; *Henri* und *Micheline van Effenterre*, Écrire sur les murs, in: Rechtskodifizierung und soziale Normen im interkulturellen Vergleich, hrsg. von *Hans-Joachim Gehrke* (Tübingen 1994), im folgenden zitiert: Rechtskodifizierung, hier 87–96; *Karl-Joachim Hölkeskamp*, Schiedsrichter, Gesetzgeber und Gesetzgebung im archaischen Griechenland (Stuttgart 1999), im folgenden zitiert: *Hölkeskamp*, Schiedsrichter, hier 273ff.

[56] *Koerner* 50, Z.1 mit dem Kommentar S. 203f. Vgl. auch IvOlympia 7 = *Koerner* 42, Z. 2.

[57] Vgl. dazu *Quass*, Nomos 2ff.

[58] IG I³ 52 = *Koerner* 9, B, Z. 15ff.

[59] IG I³ 10, Z. 5f.; 11, Z. 11; 23; 32, Z. 32; 37, Z. 12; 38, vgl. 20; 40, Z. 57; 90, Z. 8; 153, Z. 19; 258, Z.16f.

[60] ML 43 = *Koerner* 81, Z.11; IvErythrai 2 = *Koerner* 75, B, Z.1f., vgl. A, Z.21; 27; B, Z.19f.; IvErythrai 17 = *Koerner* 77, Z.16; IG XII 8,264 = *Koerner* 71, Z.12; ML 13 = *Koerner* 47, Z.10; CID I 9 = *Koerner* 46, A, Z.21; ICret I,xxx,1 = *van Effenterre/Ruzé* I, 54,1, Z.10f.; 16.

[61] Vgl. dazu *Quass*, Nomos 7ff., 13.

durch Abstimmung in der Volksversammlung. Schon die „Rhetren des Volkes" (δήμορήτραι), die in der bekannten Inschrift von Chios über politische Institutionen und Verfahren aus der Mitte des 6. Jahrhundert genannt werden, können nicht anders verstanden werden[62].

Schließlich betonen der Begriff *hádos* beziehungsweise die viel häufiger vorkommenden zugehörigen Verbformen[63] eindeutig und geradezu akzentuiert den Charakter der betreffenden Satzung als Beschluß der Bürger einer Polis oder zuweilen auch der Polis als solcher – oder genauer: der Bürgerschaft beziehungsweise der Polis in institutionalisierter Gestalt als Versammlung. Schon in der einleitenden Sanktionsformel des ältesten bislang bekannten inschriftlich erhaltenen Gesetzes – der Regelung der Iteration des Kosmosamtes aus dem kretischen Dreros, die noch in das 7. Jahrhundert gehört – heißt es: „so hat die Polis beschlossen" (ἁδ' ἔFαδε πόλι)[64]. Ähnliche Formeln mit diesem Verb kommen zum Teil noch Jahrhunderte später auch in den Gesetzen anderer kretischer Städte vor – „so haben die Gortynier (beziehungsweise Lyttier etc.) beschlossen" (τάδ' ἔFαδε τοῖς Γορτυνίοις o.Ä.)[65]. Der Charakter der jeweils folgenden Satzung als Beschluß der Volksversammlung und/oder einer anderen Institution der Polis ist natürlich auch in jener üblichen Formel evident, die dann im 5. Jahrhundert in Athen und vielen anderen Städten die Gesetze, Dekrete und Verträge einleiteten: „Es beschloß das Volk" (ἔδοξε τῷ δήμῳ) oder „es beschlossen Rat und Volk" (ἔδοξε τῇ βουλῇ καὶ τῷ δήμῳ)[66].

Vielsagend erscheint wiederum die zuweilen variierende Begrifflichkeit der (Selbst-) Bezeichnungen in ein und demselben Gesetz. Einerseits bezeichnet sich zwar das erwähnte Gesetz der opuntischen Lokrer über Naupaktos dort, wo der Geltungsbereich der Regelungen festgelegt wird, als *thethmion*, andererseits bezieht es sich aber auch auf sich selbst als „die Beschlüsse" – mit der Verbform zu *hádos*, hier substantiviert zu τὰ *F*εF*αδεφότα und zwar bezeichnenderweise in einem Kontext, der unter anderem das legale Beschlußverfahren einer eventuellen Aufhebung oder Änderung der Satzung regelt; bei den im gleichen Text auch noch erwähnten *nomia* handelt es sich schließlich um verschiedene andere konkrete Vorschriften – etwa über Erbrecht – des Herkunftsortes beziehungsweise der

[62] ML 8 = *Koerner* 61, Z.A1. Vgl. auch ML 83 = *Koerner* 70, Z.13; IvOlympia 2 = *Koerner* 37, Z.1; IvOlympia 7 = *Koerner* 42, Z.2; IvOlympia 9 = *van Effenterre/Ruzé* I 52, Z.1; IvOlympia 10 = *van Effenterre/Ruzé* I 51, Z.1; IvOlympia 11 = *van Effenterre/Ruzé* I 21, Z.1. Vgl. dazu *Hölkeskamp*, Schiedsrichter 81ff., 270ff., sowie 75ff., 100ff.

[63] Vgl. dazu *Quass*, Nomos 5f.

[64] ML 2 = *Koerner* 90, Z.2. Vgl. auch *Henri van Effenterre*, BCH 70 (1946) 590ff., Nr. 2 = *Koerner* 91, Z.1. Vgl. dazu *Hölkeskamp*, Schiedsrichter 90f., 270f.

[65] S. z.B. ICret IV 78 = *Koerner* 153, Z.1; SEG 37, 752 = *Koerner* 87, A, Z.1 und 88, B, Z.1.

[66] IG I³ 1 = *Koerner* 1, Z.1; IG I³ 4 = *Koerner* 5, Z.27; IG I³ 105 = *Koerner* 12, Z.34 etc. Vgl. auch SEG 4, 71 = *Koerner* 56, Z.1; IG XII 7,1 = *Koerner* 65, Z.1; IG XII 8,264 = *Koerner* 71, Z.1 und 7; IvErythrai 1 = *Koerner* 74, Z.18. Vgl. auch BCH 77 (1953) 395–397 = *van Effenterre/Ruzé* I 35, Z.1; IvOlympia 11 = *van Effenterre/Ruzé* I 21, Z.7; ICret I,viii,4 = *van Effenterre/Ruzé* I 54 II, Z.44f.; *Peter J. Rhodes*, The Decrees of the Greek States (Oxford 1997), im folgenden zitiert: *Rhodes*, Decrees, hier 18ff. und passim.

neuen Siedlung[67]. Das ebenfalls schon erwähnte Gesetz über Grundbesitzstreitigkeiten aus Halikarnassos nennt sich zwar *nomos*, wenn es um die Regelungen insgesamt, ihre Geltung und Verbindlichkeit geht – aber dort, wo der Zeitpunkt der Beschlußfassung und Inkraftsetzung des Gesetzes eine Rolle spielt, heißt es dann doch *hados*[68].

IV.

Aus diesem Befund hat man den Schluß gezogen, daß bis in das späte 5. Jahrhundert hinein die Unterscheidung zwischen ungeschriebenem Recht und schriftlich fixierter Satzung für die Konzeptualisierung von Recht und Regeln gar keine primäre Rolle gespielt habe. Im athenischen und gemeingriechischen Rechtsdenken sei die entscheidende Trennlinie an anderer Stelle verlaufen, nämlich zwischen hergebrachten, gewissermaßen historisch legitimierten und allgemein als bindend anerkannten Regeln des Verhaltens, Sitten, Bräuchen, Vorschriften – und zwar schriftlich fixierten wie ungeschriebenen – einerseits und neuen, in formalisierten Entscheidungsverfahren erst geschaffenen und auf diese Weise „gesetzten" Regeln andererseits[69].

Diese Einsicht ist zwar prinzipiell richtig und wichtig – sie wird in anderem Zusammenhang auch wieder eine Rolle spielen. Aber sie verkennt eine wesentliche Tatsache: Von Anfang an muß die schriftliche Fixierung ein konstitutives Merkmal einer solchen „gesetzten" Regelung gewesen sein; denn Schrift und Schriftlichkeit waren eine notwendige, wenn auch nicht die einzige und allein zureichende Bedingung der Entstehung von Gesetz und Gesetzgebung als Verfahren[70].

[67] ML 20 = *Koerner* 49, Z.15; 19; 26ff.; 38ff.; 45f.; vgl. auch ML 32 = *Koerner* 84, Z.19; 34f. Vgl. dazu *Ostwald*, Nomos 16, 45 u.ö.

[68] ML 32 = *Koerner* 84, Z.32 und 34f. bzw. Z.19.

[69] *Humphreys*, Law 217; *dies.*, Discourse 473.

[70] Vgl. dazu *Karl-Joachim Hölkeskamp*, Written Law in Archaic Greece, in: PCPhS 38 (1992) 87–117, im folgenden zitiert: *Hölkeskamp*, Written Law, hier 97ff.; *ders.*, Arbitrators, Lawgivers and the „Codification of Law" in Archaic Greece. Problems and Perspectives, in: Metis 7 (1992, erschienen 1995) 49–81, im folgenden zitiert: *Hölkeskamp*, Arbitrators, hier 62ff.; *ders.*, Tempel, Agora und Alphabet. Die Entstehungsbedingungen von Gesetzgebung in der archaischen Polis, in: Rechtskodifizierung 135–164, im folgenden zitiert: *Hölkeskamp*, Tempel; *ders.*, Schiedsrichter 273ff.; *Hans-Joachim Gehrke*, Verschriftung und Verschriftlichung im sozialen und politischen Kontext. Das archaische und klassische Griechenland, in: Verschriftung und Verschriftlichung. Aspekte des Medienwechsels in verschiedenen Kulturen und Epochen, hrsg. von *Christine Ehler, Ursula Schäfer* (Tübingen 1998) 40–56, im folgenden zitiert: *Gehrke*, Verschriftung, hier 43ff.; *ders.*, Verschriftung und Verschriftlichung sozialer Normen im archaischen und klassischen Griechenland, in: La codification des lois dans l'Antiquité. Actes du Colloque de Strasbourg…Édités par *Edmond Lévy* (Paris 2000) 141–159, im folgenden zitiert: *Gehrke*, Verschriftung II; *Carol G. Thomas*, Justice is in the Air, in: PP 49 (1994) 337–355; *Thomas*, Stone 71ff.; *Giorgio Camassa*, Leggi orali e leggi scritte. I legislatori, in: I Greci. Storia-Cultura-Arte-Società, a cura di *Salvatore Settis*, vol. II 1 (Turin 1996), im folgenden zitiert: I Greci II 1, hier 561–576, auch zum Folgenden.

Schon Solon betonte geradezu emphatisch, daß er seine *thesmoi* geschrieben hatte: „Satzungen schrieb ich (θεσμοὺς ἔγραψα) – gleichermaßen dem Niedrigen und dem Guten, gerades Recht jedem angepaßt“[71]. Hier wird deutlich, daß Solon das Schreiben der *thesmoi* als seine besondere Leistung, als einen Akt der Innovation gesehen wissen wollte und daß von dieser Seite seines Handelns sogar eine eigene Ausstrahlung oder gar Wirkungsmacht ausgehen sollte.

Die besondere Tragweite dieses Handelns bestand allein schon darin, daß sich die Technik der schriftlichen Fixierung von Regeln und Vorschriften ja keineswegs von selbst verstand – und erst recht nicht das Medium der Schrift. Das Athen dieser Zeit und das archaische Griechenland generell kannten zwar längst die Schrift – das Schriftsystem des Alphabets war ja relativ einfach zu handhaben, flexibel und vielfältig anwendbar. Es hatte sich bis etwa 700 auch erstaunlich schnell im gesamten griechischen Raum verbreitet und dabei noch eine Reihe lokaler Varianten entwickelt. Aber die Weih- und Grabinschriften, Graffiti, Besitzernamen und Verse auf Gefäßen waren und blieben erst einmal isolierte „Komponenten der Schriftlichkeit“, die sich keineswegs zu einer ausgebildeten „Schriftkultur“ addierten[72]. Es kann keine Rede davon sein, daß die Schriftlichkeit etwa alle oder auch nur weite Bereiche des öffentlichen und privaten, religiösen, gesellschaftlichen und politischen Lebens bereits durchdrungen hätte und sich dabei die ihr eigentümlichen Methoden und Medien der Bewahrung von Wissen, der Systematisierung und Formulierung von Regeln und Normen durchgesetzt hätten. Schon gar nicht konnte die Schrift zu einem Medium mit einem privilegierten, etwa sakralen Status werden. Im Gegensatz etwa zu den Hochkulturen des Nahen Ostens[73], zu Ägypten und Israel[74] fehlten im archaischen und klassischen Grie-

[71] Frg. 30 *Gentili-Prato*, Z.18ff. Vgl.dazu *Nicole Loraux*, Solon et la voix de l'écrit, in: Les savoirs 95–129.

[72] *Øivind Andersen*, Mündlichkeit und Schriftlichkeit im frühen Griechentum, in: A&A 33 (1987) 29–44, hier 35ff., bes. 35 und 37. Vgl. dazu auch *Simon Stoddart*, *James Whitley*, The social context of literacy in Archaic Greece and Etruria, in: Antiquity 62 (1988) 761–772; *William V. Harris*, Ancient Literacy (Cambridge, Mass. 1989) 45ff.; *ders.*, Writing and Literacy in the archaic Greek City, in: ENERGEIA. Studies on Ancient History and Epigraphy presented to H. W. Pleket, ed. by *J. H. M. Stubbe*, *R. A. Tybout*, *H. S. Versnel* (Amsterdam 1996) 57–77; *Rosalind Thomas*, Literacy and Orality in Ancient Greece (Cambridge 1992), im folgenden zitiert: *Thomas*, Literacy, hier 52ff.; *Kevin Robb*, Literacy and Paideia in Ancient Greece (New York 1994), im folgenden zitiert: *Robb*, Literacy, hier 21ff.; *Zsuzsanna Várhelyi*, The Written Word in Archaic Attica, in: Klio 78,1 (1996) 28–52, im folgenden zitiert: *Várhelyi*, Word; *James Whitley*, Cretan Laws and Cretan Literacy, in: AJA 101 (1997) 635–661.

[73] Vgl. etwa *Hans J. Nissen*, The Emergence of Writing in the Ancient Near East, in: Interdisciplinary Science Reviews 10 (1985) 349–361; *ders.*, The Context of the Emergence of Writing in Mesopotamia and Iran, in: Early Mesopotamia and Iran: Contact and Conflict 3500–1600BC, ed. by *John Curtis* (London 1993) 54–71; *Alan Millard*, The uses of the Early Alphabets, in: Phoinikeia Grammata. Lire et écrire en Méditerranée, édités par *Claude Baurain* et alii (Namur 1991), im folgenden zitiert: Phoinikeia Grammata, hier 101–114; *Claus Wilcke*, Die Keilschriftkulturen des Vorderen Orients, in: Schrift und Schriftlichkeit. Writing and Its Use, hrsg. von *Hartmut Günther*, *Otto Ludwig*, 1. Halbband (Berlin etc. 1994), im folgenden zitiert: Schrift und Schriftlichkeit, hier 491–503, mit weiteren Nachweisen.

[74] *Jan Assmann*, Das kulturelle Gedächtnis. Schrift, Erinnerung und politische Identität in

chenland alle Voraussetzungen, die die Schrift dort vor allem zu einem Instrument der zentralen Macht und ihrer Verwaltung, einem Medium der herrschaftlichen Repräsentation oder auch zu einem Organ göttlicher Weisung werden ließen: Die Gesellschaften der Poleis kannten weder monarchische Zentren, Bürokratien oder entsprechend ausgeprägte Hierarchien, noch geheime „heilige" Texte, allmächtige Propheten und Priester.

Zwar war die Schriftlichkeit in Griechenland zunächst ein Phänomen, das eine durchaus wichtige, aber lange begrenzt bleibende intellektuelle und gesellschaftliche Tiefenwirkung entwickeln konnte, weil sie durch eine spezifische strukturelle Oralität der griechischen Kultur definiert wurde. Aber nicht einmal in jenen Bereichen, in die die Schriftlichkeit eindrang und die sie dabei auch veränderte – wie die Dichtung von den Epen bis zur attischen Tragödie –, wurde deren ursprüngliche „strukturelle Mündlichkeit" rückstandslos beseitigt[75].

Das hat viel mit einem anderen Aspekt der gleichen Sache zu tun: Gerade die politische und die Rechtskultur der kleinräumigen face-to-face-society der griechischen Polis in archaischer wie in klassischer Zeit war ihrerseits durch eine geradezu allgegenwärtige Oralität geprägt[76]. Beamte, Rat und Volksversammlung traten sich immer direkt gegenüber, das gesprochene Wort beherrschte die Kommunikation und alle Bereiche der Interaktion zwischen ihnen, wie etwa die for-

frühen Hochkulturen (München 1992), im folgenden zitiert: *Assmann*, Gedächtnis, hier 162ff., 277ff.; *ders.*, Die ägyptische Schriftkultur, in: Schrift und Schriftlichkeit 472–491; *Wolfgang Schenkel*, Wozu die Ägypter die Schrift brauchten, in: Schrift und Gedächtnis. Beiträge zur Archäologie der literarischen Kommunikation, hrsg. von *Aleida* und *Jan Assmann*, *Christof Hardmeier* (München 1983, ³1998), im folgenden zitiert: Schrift und Gedächtnis, hier 45–63; *Wolfgang Röllig*, Die nordwestsemitischen Schriftkulturen, ebda. 503–510, jeweils mit weiteren Nachweisen. Vgl. dazu jetzt die differenzierende Kritik von *Rüdiger Haude*, Alphabet und Demokratie, in: Saeculum 50 (1999) 1–28, im folgenden zitiert: *Haude*, Alphabet.

[75] *Assmann*, Gedächtnis 271, vgl. 266ff.; *Gehrke*, Verschriftung 49ff. und passim; *Jules Labarbe*, Survie de l'oralité dans la Grèce archaïque, in: Phoinikeia Grammata 499–531. S. auch *Jesper Svenbro*, Phrasikleia. An Anthropology of Reading in Ancient Greece (Ithaca 1993, zuerst 1988); *Wolfgang Rösler*, Schriftkultur und Fiktionalität. Zum Funktionswandel der griechischen Literatur von Homer bis Aristoteles, in: Schrift und Gedächtnis 109–122; *ders.*, Die griechische Schriftkultur der Antike, in: Schrift und Schriftlichkeit 511–517, mit weiteren Nachweisen.Vgl. zum „transitional character" der Tragödie jetzt *Charles Segal*, Tragedy, Orality, Literacy, in: Oralità: cultura, letteratura, discorso, a cura di *Bruno Gentili* (Rom 1985) 199–231. Vgl. zum Verhältnis zwischen Mündlichkeit und Schriftlichkeit in verschiedenen anderen (etwa kulturellen, politischen und religiösen) Bereichen: *Rosalind Thomas*, Oral Tradition and Written Record in Classical Athens (Cambridge 1989), im folgenden zitiert: *Thomas*, Tradition; *dies.*, Literacy 56ff., 101ff.; *dies.*, Literacy and the city-state in archaic and classical Greece, in: Literacy and Power in the Ancient World, ed. by *Alan K. Bowman*, *Greg Woolf* (Cambridge 1994) 33–50, im folgenden zitiert: *Thomas*, City-state; *Tullia Linders*, Inscriptions and Orality, in: SymbOsl 67 (1992) 27–40.

[76] *Hölkeskamp*, *Agorai* 14f.; *Carmine Ampolo*, Il sistema della *polis*. Elementi costitutivi e origini della città greca, in: I Greci II 1, 297–342; *Paul Cartledge*, Writing 384f., 388f. und passim. *Corinne Coulet*, Communication en Grèce ancienne. Ecrits, discours, information, voyages.... (Paris 1996), im folgenden zitiert: *Coulet*, Communication, hier 55ff., 85ff., 117ff., auch zum Folgenden.

malen Verfahren der Beratung und Entscheidung in Versammlungen und Gerichten. Sie alle beruhten selbstverständlich auf unmittelbarer Rede und Gegenrede – und dieser politisch-kulturelle Aggregatzustand wurde durch die für die Polis generell und insbesondere die athenische Demokratie typische agonistische Debattenkultur eher noch gekräftigt. In dieser Kultur wurde schließlich der Redner als „Demagoge", Antragsteller und Anwalt, der den *demos* mit den raffinierten Mitteln einer seit der Sophistik immer höher entwickelten Rhetorik für sich und seine Positionen einnehmen konnte, zur eigentlich zentralen Figur[77].

Es ist nur scheinbar paradox, daß es gerade diese Ausgangsbedingungen der „Stadtstaatlichkeit" der Polis waren, die eine wesentliche Voraussetzung für den besonderen Rang des geschriebenen Rechts in der Polis bilden sollten. Denn gerade in einer weithin oral geprägten Kultur, in der die Schrift eben nicht schon durch eine Vielzahl von religiösen, ideologischen und „geheimen" administrativen Funktionen beansprucht war, konnte die schriftliche Fixierung als bewußter, geradezu feierlicher Akt der Hervorhebung und Privilegierung einer Regelung oder Norm erscheinen, die ihr in ihrer oralen Umwelt die besondere Qualität einer „Satzung" und einen im wahrsten Sinne des Wortes sichtbar hervorgehobenen Status eintrug.

Diese Umwelt war und blieb ja weithin von ihrem traditionellen Wissen geprägt, auf das nicht nur in archaischen Gesellschaften Erleben und Erfahren, Denken und Handeln vielfach bezogen zu sein pflegen – dazu gehören die Vorstellungen über Götter, Natur und Kosmos, Mythen und Traditionen und darauf gründende Sitten und Bräuche, aber auch der Vorrat von Wertvorstellungen, Gewißheiten und Überzeugungen über Ordnung und Unordnung, Richtig und Falsch, Zulässigkeit oder Unzulässigkeit eines bestimmten Handelns. Darunter fallen mithin auch viele allgemeine Prinzipien des menschlichen Zusammenlebens und damit zugleich Regeln der Streitbeilegung, Befriedung und Versöhnung. Mit

[77] *Josiah Ober*, Mass and Elite in Democratic Athens. Rhetoric, Ideology, and the Power of the People (Princeton 1989); und allgemein bereits *Yehuda Elkana*, Die Entstehung des Denkens zweiter Ordnung im antiken Griechenland, in: Kulturen der Achsenzeit 1, hrsg. von *Shmuel Eisenstadt* (Frankfurt a. M. 1987, 52–88), im folgenden zitiert: *Elkana*, Entstehung, hier 65 ff.; *Mogens H. Hansen*, Die Athenische Demokratie im Zeitalter des Demosthenes. Struktur, Prinzipien und Selbstverständnis (Berlin 1995, zuerst 1991), im folgenden zitiert: *Hansen*, Demokratie, hier 146 ff., 278 ff. u.ö.; *David Cohen*, Law, Violence, and Community in Classical Athens (Cambridge 1995), im folgenden zitiert: *Cohen*, Law, hier 61 ff.; *Karl-Wilhelm Welwei*, Politische Kommunikation im klassischen Athen, in: Kommunikation in politischen und kultischen Gemeinschaften, hrsg. von *Gerhard Binder*, *Konrad Ehlich* (Trier 1996) 25–50, mit weiteren Nachweisen; *Coulet*, Communication 88 ff., 140 ff.; *Harvey Yunis*, The Constraints of Democracy and the Rise of the Art of Rhetoric, in: Democracy, Empire, and the Arts in Fifth-Century Athens, ed. by *Deborah Boedeker*, *Kurt A. Raaflaub* (Cambridge, Mass. 1998), im folgenden zitiert: Democracy, Empire, and the Arts, hier 223–240, 228 ff.; *Karl-Joachim Hölkeskamp*, Zwischen Agon und Argumentation. Rede und Redner in der archaischen Polis, in: Rede und Redner, Bewertung und Darstellung in den antiken Kulturen, hrsg. von *Christoff Neumeister*, *Wulf Raeck* (Möhnesee 2000) 17–43, im folgenden zitiert: *Hölkeskamp*, Agon; *Elke Stein-Hölkeskamp*, Perikles, Kleon und Alkibiades: Eine zentrale Rolle der athenischen Demokratie im Wandel, ebd. 79–93.

einem Wort: Dieses Wissen umfaßt etwa das, was sich „ziemt" und „sich gehört" oder „ungehörig" ist – was in der Formel der homerischen Epen also *themis* ist oder eben nicht[78]. Dazu gehört aber auch vieles aus jenen Bereichen des Normativen, die die Konzepte *nomos* und *thesmos* mit ihren breiten Spektren unspezifisch-allgemeiner Bedeutungen bezeichnen, die sich so lange und so hartnäckig neben dem „jungen", „technischen" Begriffsinhalt hielten. Und auch das Reflektieren über „altes" und „neues" Recht, über *nomoi agraphoi* und ihre Verbindlichkeit, über Rang oder Vorrang des übergeordneten göttlichen „Rechts" gegenüber menschlichem „Gesetz" in der klassischen Tragödie wird vor dem Hintergrund dieses Wissens und seines Wirkens noch im Athen des 5. Jahrhunderts erst verständlich.

V.

Erst vor dem Hintergrund dieses treffend als „nomologisch" charakterisierten Wissens[79] wird der besondere Status einer Satzung überhaupt wahrnehmbar, indem sie diesem Vorrat an ungeschrieben bleibenden Normen und Regeln gegenübertritt und sich auch in anderen Hinsichten davon abhebt.

Wiederum ist es der empirische Befund aus den inschriftlich erhaltenen Gesetzen, der die besondere Bedeutung der Dimension der Schriftlichkeit für die Konzeptualisierung des „gesatzten" Rechts dokumentiert: die schiere Häufigkeit und die vielen Varianten, in denen diese Gesetze sich selbst und andere Normen ihrer Art als „geschriebene" Texte bezeichnen[80]. Mit Wendungen wie „die" oder „diese Schrift", „das (hier) Geschriebene" oder „wie es (hier) geschrieben steht"(ἃι τάδε τὰ γράμματα ἔγρατται, ἃι ἔγρατται, τὰ ἐγραμμένα, τὸ γράφος etc.) verweisen der sogenannte große „Code"[81] und viele weitere Satzungen aus Gortyn[82], aus

[78] Vgl. dazu etwa *Hirzel*, Themis 1 ff., 38 ff.; *Ehrenberg*, Rechtsidee 3 ff.; *Wolf*, Rechtsdenken I 22 ff., 56 ff., 76 ff., 95 ff. u.ö.; *Albin Lesky*, Grundzüge griechischen Rechtsdenkens I. Θέμις und δίκη, in: WSt N.F. 19 (1985) 5–40; *Rudhardt*, Thémis 15 ff.

[79] Vgl. dazu *Hölkeskamp*, Tempel 155 f.; *ders.*, Schiedsrichter 275 ff. *ders.*, Agon 24, 31 f. im Anschluß an *Meier*, Entstehung 396; *ders.*, Kunst 43 f., mit weiteren Nachweisen. Vgl. zur (allzu scharfen) Differenzierung von „law", „norm" und „custom" *Paul Bohannan*, The Differing Realms of Law, in: Law and Warfare. Studies in the Anthropology of Conflict, ed. by *Paul Bohannan* (Austin 1967) 44–56. Vgl. allgemein zum Denken „zweiter" (und „erster") Ordnung *Elkana*, Entstehung passim, sowie zur verwandten Kategorie des „Überlieferungswissens" *Rüdiger Schott*, Die Macht des Überlieferungswissens in schriftlosen Gesellschaften, in: Saeculum 41 (1990) 273–316, hier 311 ff.

[80] *Quass*, Nomos 9 f.; *Gschnitzer*, Terminologie mit weiterer Literatur; *Gehrke*, Verschriftlichung 43 f., auch zum Folgenden.

[81] ICret IV 72, coll. I 46; 55; IV 30 f.; 45 f.; 48; VI 15 f.; VII 47 f.; VIII 10; 25 f.; 29 f.; 35 f.; 40; IX 15 f.; X 44 ff.; XI 19 f.; 26 ff.; XII 5. An folgenden Stellen könnten die Wendungen auf andere Gesetze verweisen: coll. III 20 f.; 29 f.; IV 10 f.; 30 f.; 45 f.; 48; 50 f.; VI 31; IX 23 f.; XII 2 f. Vgl. den Kommentar von *Ronald F. Willetts*, The Law Code of Gortyn (Kadmos Supplement I, Berlin 1967), jeweils ad loc.

anderen Städten Kretas[83], des Mutterlandes und Kleinasiens[84] aus archaischer wie aus klassischer Zeit auf sich selbst und andere Satzungen.

Wiederum stellt sich heraus, daß auch diese Art der Begrifflichkeit in einer vielfältigen Gemengelage mit den anderen, bereits erwähnten vorkommt – das scheint sogar eher die Regel als die Ausnahme zu sein. Die erwähnten elischen Satzungen aus Olympia nennen sich auch nicht nur „Rhetren", sondern zugleich die „Schrift" oder „das Geschriebene" (τὰ γράφεα oder τὸ γράφος etc.), eine von ihnen bezieht sich auf ein früheres Gesetz und bezeichnet es als „das alte Geschriebene" (τὸ γράφος τἀρχαῖον)[85]. Auch in den ebenfalls schon erwähnten Inschriften aus Delphi aus der Zeit um 400 taucht eine ähnliche Terminologie des Verweisens neben *thethmos* und *nomos* auf[86].

In der überwiegenden Zahl der Dokumente kommt diese Begrifflichkeit in zwei ganz bestimmten Kontexten vor: Zunächst taucht sie in Wendungen wie κατὰ τὰ ἐγραμμένα beziehungsweise κατὰ τὸ γράφος oder auch παρὰ τὸ γράφος beziehungsweise παρὰ τὰ γράμματα auf – also in sachlichen Zusammenhängen, in denen es konkret etwa um Handlungen von Beamten, Entscheidungen von Richtern „gemäß" oder eben „im Gegensatz zu dem Geschriebenen" geht[87]. Damit wird nicht nur eine generelle Einhaltung des Gesetzes an sich eingefordert, sondern ganz betont eine besondere Genauigkeit, das heißt eine strikte, eben „buchstabengetreue" Umsetzung jeder Klausel. In diesem Zusammenhang liefert wiederum das neue Gesetz von Teos über Bürgereid und öffentliche Verfluchung eine besonders vielsagende Variante: Darin werden jenen Beamten – Timuchen, Tamias oder bezeichnenderweise auch dem von ihnen beauftragten Schreiber – Sanktionen angedroht, die an den dafür bestimmten, ausdrücklich genannten öffentlichen Festen eine spezielle Amtspflicht verletzen, nämlich das „auf der Stele Geschriebene" nicht „nach bestem Wissen und Vermögen", also wohl vollständig genau und wortwörtlich, „zur Verlesung (zu) bringen"[88].

Diese Klausel ist zugleich ein Beleg für den anderen typischen Kontext, in dem die Terminologie der Schriftlichkeit zu finden ist: Es geht um eine besondere Variante jener vielfältigen Schutz- und Sanktionsvorschriften, die eine Satzung

[82] ICret IV 41, coll. I 11; II 6; VII 11; 43, col. Aa, Z.7–9; b, Z.7 f.; 45, B, Z.3; 47, Z.23 f.; 75, col. A, Z.4 f.; 76, col. B, Z.5; 77, col. B, Z.10; 78, Z.7; 80, Z.10; 12; 81, Z.7 f.; 83, Z.5; 8 f.

[83] ICret I,x,2 = *Koerner* 94, Z.7 (Eltynia); I, xviii, 4, Z.9 f. und 6, Z.7 (Lyttos); II, v, 9, Z.3 f. (Axos); II, xii, 13, Z.7 (Eleutherna).

[84] IG IV 506 = *Koerner* 29, Z.1; IvOlympia 3 = *Koerner* 38, Z.5 f.; IvOlympia 7 = *Koerner* 42–43, Z.2; 3; 7 f.; 9; IvOlympia 9 = *van Effenterre/Ruzé* I 52, Z.1; 7 f.; 10; IvOlympia 16 = *Koerner* 44, Z.13; 19; 20; 23; ML 13 = *Koerner* 48, Z.23.

[85] Vgl. etwa ML 17, Z.1 bzw. 7 f.; 10; IvOlympia 7 = *Koerner* 42, Z.2 und IvOlympia 3 = *Koerner* 38, Z.5.

[86] CID I 9 = *Koerner* 46, A, Z.2; 13; 28; B, Z.16; 26; 37; 47; 53; C, Z.10; 51 f.; D, Z.17 f.; DGE 324, Z.14.

[87] Vgl. auch Études Thasiennes 14 (1992) 18 f. = *van Effenterre/Ruzé* II 95, Z.7 f., 27 f. (ca. 460).

[88] *Peter Herrmann*, Teos und Abdera im 5. Jahrhundert v. Chr. Ein neues Fragment der Teiorum Dirae, in: Chiron 11 (1981) 1–30, im folgenden zitiert: *Herrmann*, Teos = *Koerner* 79, D, Z.11 ff.

durch ebenso scharfe wie detaillierte Strafandrohungen – vor allem gegen die für ihre wortwörtliche Anwendung verantwortlichen Beamten – vor Verletzung, Nichtbeachtung oder willkürlicher Aufhebung und sehr oft sogar gegen jede Änderung schützen sollen[89]. Die hier gemeinte Variante besteht in Sanktionen, insbesondere Verfluchung, gegen denjenigen, der „das Geschriebene zerstört"[90] – oder, noch genauer und bezeichnender, „die Buchstaben aushaut oder verschwinden läßt", wie es in dem anderen Gesetz aus Teos heißt[91]. Und wenn eine so geschützte Norm doch einmal übergangen oder gar revidiert werden darf, wird das genauen Verfahrensregeln unterworfen – und da treten dann bezeichnenderweise wieder jene Begriffe in den Vordergrund, die den formalen Beschlußcharakter einer solchen Maßnahme hervorheben[92].

Daraus ergeben sich durchaus weitreichende Schlußfolgerungen: In der Terminologie der Schriftlichkeit drückt sich die Forderung der so bezeichneten Satzung auf Respektierung und regelmäßige Durchsetzung aus, also ein Anspruch auf Verbindlichkeit und Gültigkeit. Zugleich manifestiert sich darin aber eine weitere Qualität, die den anderen, den Beschlußcharakter betonenden (Selbst-)Bezeichnungen von Satzungen gerade nicht eigentümlich ist: Der Akt der schriftlichen Fixierung verleiht ihnen Festigkeit und Dauerhaftigkeit, und das heißt eine in die Zukunft hineinragende, ja potentiell unbegrenzte Gültigkeit. Die betonte Bindung an das „Geschriebene" und die Schutz- und Sanktionsvorschriften formulieren diesen Anspruch auf unveränderliche Geltung über die Gegenwart und das Amtsjahr der aktuellen Beamten, aber vor allem auch über den konkreten Akt der Beschlußfassung hinaus. Mit ihrer Fixierung als „geschriebene" Regelung läßt die Satzung das noch wesentlich orale Verfahren der Antragstellung, der Debatte und des Beschlusses hinter sich: Jenseits der Abstimmung mit Stimmsteinen – das ist ja die Kernbedeutung von *psephisma*[93] – oder, anders ausgedrückt, jenseits des seiner Natur nach nur oralen „Spruches des Volkes", die *rhetra* des *damos*, wird die Satzung als solche permanent.

Davon ist ein weiteres, wiederum sehr konkretes Spezifikum der Satzung als „Schrift" nicht zu trennen: Ihre durch die Fixierung hergestellte reale und andauernde Sichtbarkeit. Dabei kam es nicht oder nicht in erster Linie auf die Lesbarkeit des Textes an – und zwar nicht nur wegen der schlichten Tatsache, daß die Litera-

[89] Vgl. das Material bei *Rhodes*, Decrees 16f., 524f. und Register s.v. Entrenchment clauses, und dazu etwa *Giorgio Camassa*, Verschriftung und Veränderung der Gesetze, in: Rechtskodifizierung 97–111; *Alan Boegehold*, Resistance to Change in the Law at Athens, in: *Demokratia*. A Conversation on Democracies, Ancient and Modern, ed. by *Josiah Ober*, *Charles Hedrick* (Princeton 1996), im folgenden zitiert: *Demokratia*, hier 203–226.

[90] ML 17, Z.7ff. (Elis/Olympia, um 500). Vgl. auch IG IV 506 = *Koerner* 29 (Argos, Mitte 6.Jh.); SEG 34 (1984) 290 = *van Effenterre/Ruzé* I 110, Z.5ff.; IvOlympia 9 = *van Effenterre/Ruzé* I 52, Z.7ff.; IvOlympia 16 = *Koerner* 44, Z.19 (Skillous/Elis, 450–425 v.Chr.).

[91] ML 30 = *Koerner* 78, B, Z.35ff. Vgl. auch IG I³ 21, Z.47f. Vgl. dazu auch *Detienne*, L'espace 49ff.

[92] IvOlympia 7 = *Koerner* 42–43, Z.2ff.; ML 20 = *Koerner* 49, Z.38ff.

[93] Das wird etwa noch in der Begrifflichkeit der Labyadeninschrift besonders deutlich: CID I 9 = *Koerner* 46, B, Z.11 und 18.

lität in dieser oralen Umwelt wie auch immer beschränkt war. Vor allem wandten die Vorschriften des Textes sich inhaltlich ja zumeist gar nicht direkt an die Bürgerschaft, sondern an die Beamten. Und wie in Teos konnte deren Pflicht ja auch darin bestehen, sie feierlich – und wortgetreu – bei bestimmten Anlässen zu rezitieren, bei denen die gesamte Bürgerschaft präsent sein konnte.

Viel wichtiger als die Lesbarkeit war offenbar die Sichtbarkeit der Satzung im konkreten Sinne, nämlich als Symbol und Garantie ihrer unabänderlichen und dauerhaften Geltung. Deswegen kam es auch nicht nur auf die „Schrift" an, sondern auch auf den Träger dieser Schrift: Nicht zufällig sind jene Formen des Verweises auf den Text verbreitet, die genau das hervorheben, etwa durch Wendungen wie „das auf der Stele" oder „diesem Stein Geschriebene"[94]. Selbst die Begriffe für den Träger der Schrift – Stein, Stele, Block in der Tempelwand oder auch eine Bronzeplatte – können wiederum dem Verweis auf die Satzung selbst dienen: So bezeichnet das schon mehrfach erwähnte Gesetz von Erythrai ein bestimmtes vorschriftswidriges Verhalten offenbar als „entgegen dieser Stele" (παρὰ τὴν στήλην)[95], eine Tafel mit einer *rhetra* aus Olympia nennt sich *pinax*[96]. Auch in der literarischen Tradition wird wenigstens zuweilen ein schriftliches Gesetz durch die Anspielung auf seine Fixierung als Inschrift auf einem besonderen Träger charakterisiert – wenn etwa in den *Vögeln* des Aristophanes (Z.1353ff.) von einem „alten Gesetz" auf *kyrbeis* die Rede ist, das ein unmißverständliches Zitat des solonischen Gesetzes über die Pflicht zur Unterhaltung der Eltern im Alter ist.

Damit verweisen diese Satzungen explizit darauf, daß sie nicht nur ein „Text" sind, sondern auch und zugleich ein „gesetztes", also in einem bewußten, eigens beschlossenen Akt errichtetes „Monument". Denn die „Verewigung auf Stein oder Erz" war keineswegs die selbstverständliche und automatische Form der Publikation aller Gesetze und sonstigen Beschlüsse – dazu eigneten sich ja auch hölzerne *axones*, auf denen etwa die Gesetze Solons fixiert waren, oder Holztafeln: Das dem mytilenischen Gesetzgeber Pittakos zugeschriebene Dictum, daß die Herrschaft des „bunten Holzes" die beste sei, spielt natürlich auf die Praxis der Aufzeichnung von Gesetzen auf solchen Trägern an[97]. Die Publikation gerade dieser Texte auf Trägern aus dem repräsentativen Marmor war und blieb ein besonderer Akt der Sichtbarmachung und demonstrativen Hervorhebung[98]. Schon

[94] IG I³ 4B = *Koerner* 5, Z.25 und 28; IG I³ 131 = *Koerner* 13, Z.18. Vgl. außerdem SEG 31, 958 = *Koerner* 79, D15ff.; DGE 732 = *van Effenterre/Ruzé* I 32, A, Z.1f.; B, Z.8f. (Argos, 6. Jh.); ICret I,viii,4 = *van Effenterre/Ruzé* I 54, II,B, Z.43ff. (Vereinbarung zwischen Knossos und Tylissos, ca. 460–450). Vgl. dazu *Thomas*, Tradition 46ff.; *dies.*, Literacy 84ff.

[95] IvErythrai 1 = *Koerner* 74, Z.18ff. Vgl. auch IG I³ 46, Z.24f.

[96] IvOlympia 2 = *Koerner* 37, Z.9.

[97] *Diod.* 9,27,4; *Diog.Laert.* 1,77.

[98] *Adolf Wilhelm*, Beiträge zur griechischen Inschriftenkunde, mit einem Anhange über die öffentliche Aufzeichnung von Urkunden (Wien 1909), im folgenden zitiert: *Wilhelm*, Beiträge, hier 235, 284 u.ö. und dazu *Günther Klaffenbach*, Bemerkungen zum griechischen Urkundenwesen (Berlin 1960), 5f., 26ff; *Várhelyi*, Word 29; *Thomas*, Literacy 82ff.; *Hedrick*, Writing 172f.; *Hölkeskamp*, Schiedsrichter 278ff. Vgl. auch die grundsätzlichen Bemerkungen von *Werner Eck*, Inschriften auf Holz. Ein unterschätztes Phänomen der epigraphischen

seit der Mitte des 5. Jahrhunderts wurden vor allem in Athen die ohnehin aufwendig gestalteten Stelen oft auch noch mit Reliefs geschmückt, deren bildliche Motive und Symbolik beziehungsreich auf den Text der Urkunde anspielten: Ein besonders beredtes Beispiel ist eine Stele, die einerseits die Beschlüsse über weitreichende Ehren für die zu Athen und zur Demokratie loyal gebliebenen Samier verzeichnete und andererseits ein Relief trug, auf dem Hera und Athene sich demonstrativ die rechte Hand reichen[99]. Gerade dieser Abschluß des Gesetzgebungsverfahrens bedurfte deswegen einer eigenen Verfügung und wurde immer wieder ausdrücklich den Beamten aufgetragen: Sie sind es, die für das „Aufschreiben auf eine (steinerne) Stele" zu sorgen haben. Das wird regelmäßig ausdrücklich in den attischen Dekreten des 5. Jahrhunderts angeordnet – oder genauer: im Wortsinne „vorgeschrieben"[100]. Ähnliche Wendungen finden sich aber auch in den Gesetzen anderer Poleis[101].

So wie die Verschriftlichung von „Satzungen" ein expliziter Gegenstand von formalen Beschlüssen und damit eine sichtbar öffentliche Angelegenheit ist, ist auch das Amt des „Schreibers" nicht nur im demokratischen Athen des 5. Jahrhunderts eine öffentliche, genuin politische Funktion: Hier ist der *grammateus* regelmäßig der Adressat der erwähnten „Vorschrift" der Verschriftlichung und Publikation[102]. In Erythrai ist das vergleichbare Amt immerhin wichtig genug, um ausdrücklich einem strengen Iterationsverbot unterworfen zu werden[103]. Und in jener unbekannten Polis im östlichen Zentralkreta, die um 500 einen gewissen Spensithios als *mnamon* und *poinikastas* („Erinnerer" und „Schreiber") in ihren Dienst nahm, hatte der Schreiber an allen öffentlichen, profanen wie kultischen Angelegenheiten teilzunehmen – neben dem *kosmos*, dem höchsten Beamten beziehungsweise Beamtenkollegium der Polis[104].

Kultur Roms, in: Imperium Romanum. Studien zu Geschichte und Rezeption. Festschrift für Karl Christ, hrsg. von *Peter Kneissl*, *Volker Losemann* (Stuttgart 1998) 203–217, bes. 216f.

[99] IG I³ 127 = ML 94. Vgl. dazu *Marion Meyer*, Die griechischen Urkundenreliefs (Berlin 1989) im folgenden zitiert: *Meyer*, Urkundenreliefs hier 273 (A. 26); vgl. generell 8ff., 81ff. u.ö.; *Carol L. Lawton*, Attic Document Reliefs. Art and Politics in Ancient Athens (Oxford 1995) im folgenden zitiert: *Lawton*, Document Reliefs hier 88f. (Nr. 12); vgl. generell 5ff., 29ff. und passim.

[100] IG I³ 32 = *Koerner* 7, Z.32ff.; IG I³ 153 = *Koerner* 15, Z.20ff.; IG I³ 257 = *Koerner* 20, Z.3f. Vgl. außerdem IG I³ 10, Z.22ff.; 11, Z.11f.; 24, Z.9ff.; 78, Z.48ff.; 84, Z.26f.; 106, Z.20f.; 110, Z.20ff.

[101] IvErythrai 2 = *Koerner* 75, B 1f.

[102] IG I³ 153, Z.19ff.; 156, Z.19ff. Vgl. auch IG I³ 10, Z.22ff.; 12, Z.4ff.; 37, Z.38ff.; 40, Z.57ff.; 104 = ML 86 = *Koerner* 11, Z.1ff; 6ff.; 106, Z.19ff.; 110, Z.20ff. u.ö.

[103] IvErythrai 1 und 17 = *Koerner* 74 und 77, Z.3. Vgl. *Thomas*, Stone 66ff. mit weiteren Belegen.

[104] *Van Effenterre/Ruzé* I 22, mit weiteren Nachweisen; *Lilian H. Jeffery*, *Anna Morpurgo Davies*, ΠΟΙΝΙΚΑΣΤΑΣ and ΠΟΙΝΙΚΑΖΕΝ. BM 1969.4–2.1, a new Archaic Inscription from Crete, in: Kadmos 9 (1970) 118–154, hier 148ff.; *Thomas*, Stone 68ff. Vgl. zu dem Amt des φοινικόγραφος in Teos *Herrmann*, Teos 12.

Noch in einem weiteren Sinne muß das als ganz konkret und geradezu physisch erfaßbar begriffen werden: Auch der Ort der Aufstellung eines derartigen Monuments in den reservierten und markierten öffentlichen Räumen der Polis ist für die Wahrnehmung der Satzung und ihres hervorgehobenen Status konstitutiv. Dieser Ort wird nicht selten im Text der Satzung selbst explizit und präzise festgelegt – derartige Anordnungen finden sich nicht nur im üblichen Formular attischer Dekrete des 5. Jahrhunderts[105], sondern auch schon in früheren Gesetzen anderer Städte. Ein besonders interessantes Beispiel ist eine entsprechende Vorschrift aus Erythrai: Danach wurde in zwei auf der gleichen Stele publizierten Gesetzen einerseits anscheinend die Aufstellung „in der Nähe" des Tagungsortes desjenigen Gerichtes angeordnet, das gleichzeitig auf die genaue Beachtung des Gesetzes festgelegt wurde; andererseits wurde die Publikation im „Rund des Zeus Agoraios" vorgeschrieben[106].

Genau hierher, in den „öffentlichen Raum" oder „espace civique" – also auf die Agora oder die Akropolis, zu den zentralen Tempeln und den anderen öffentlichen Gebäuden, wo nicht nur die Kulte und Feste der Polis, sondern auch ihre Institutionen und die darin stattfindenden Verfahren angesiedelt sind[107] – gehören ihrer Natur nach auch diese Monumente. Denn schließlich sind sie selbst das sichtbare, dauerhafte Resultat eines solchen genuin politischen Verfahrens, nämlich des Handelns der Bürgerschaft als Versammlung. Gerade insofern können die in Stein gehauenen Gesetze eben auch als „Monumente" erscheinen, weil sie zu den beziehungsweise neben die anderen Denkmäler und Bauten treten, die die Polis und ihre Bürgerschaft sich errichtet hatten.

[105] Vgl. etwa IG I³ 10 = ML 31, Z.22ff.; IG I³ 32 = *Koerner* 7, Z.33f.; IG I³ 40 = ML 52, Z.59ff.; IG I³ 78, Z.48ff.; 156, Z.19ff. etc. Vgl. dazu bereits *Wilhelm*, Beiträge 284, 298f. u.ö.; *Meyer*, Urkundenreliefs 21ff; *Lawton*, Document Reliefs 14ff.

[106] IvErythrai 2 = *Koerner* 75, A, Z.25ff. bzw. B, Z.5ff. Vgl. dazu generell *Detienne*, L'espace 41ff.

[107] Vgl. dazu generell *Jean-Pierre Vernant*, Espace et organisation politique en Grèce ancienne, in: Annales ESC 30 (1965) 579–595; *Marcel Detienne*, En Grèce archaïque, géométrie, politique et société, ebda., 425–441, hier 431ff.; *Roland Martin*, L'espace civique, religieux et profane dans les cités grecques de l'archaïsme à l'époque hellénistique, in: Architecture et société de l'archaïsme grec à la fin de la république romaine (Actes du colloque ... 1980, Paris, Rom 1983) 9–41; und jetzt grundlegend *Tonio Hölscher*, Öffentliche Räume in frühen griechischen Städten (Heidelberg 1998) im folgenden zitiert: *Hölscher*, Räume, sowie *Ulf Kenzler*, Studien zur Entwicklung und Struktur der griechischen Agora in archaischer und klassischer Zeit (Frankfurt a.M. 1999) im folgenden zitiert: *Kenzler*, Agora.Vgl. zur Entwicklung der öffentlichen Räume Athens *Tonio Hölscher*, The City of Athens: Space, Symbol, Structure, in: Athens and Rome, Florence and Venice. City-States in Classical Antiquity and Medieval Italy, ed. by *Anthony Molho, Kurt Raaflaub, Julia Emlen* (Stuttgart 1991) im folgenden zitiert: City States hier 355–380, im folgenden zitiert: *Hölscher*, City of Athens, hier 362ff. Vgl. dazu auch *Paul Millett*, Encounters in the Agora, in: KOSMOS. Essays in order, conflict and community in classical Athens. Ed. by *Paul Cartledge, Paul Millett, Sitta von Reden* (Cambridge 1998) 203–228, hier 211ff.; *Sitta von Reden*, The well-ordered *polis:* topographies of civic space, in: ebd. 170–190.

VI.

Eigentlich war erst mit dieser Aufstellung jenes mehrstufige Verfahren, mit dem die Polis einer Regelung oder Norm den besonderen Status einer Satzung verlieh, abgeschlossen: Erst jetzt ragt sie wirklich als „Monument" in ihrer ganzen Prominenz und Andersartigkeit gegenüber ihrer oralen Umwelt hervor und setzt sich in aller Deutlichkeit, ja Schärfe von dem allgegenwärtigen Hintergrund des nomologischen Wissens ab.

Dabei besteht diese Absetzung nicht nur in der andersartigen Qualität der Bindungswirkung. Auch das nomologische Wissen hat eine normative Kraft eigener Art, die aus der allgemeinen Zustimmung und dem vielzitierten „Grundkonsens" der betreffenden Gesellschaft herrührt. Dagegen muß die Verbindlichkeit des „gesatzten" Rechts ja erst durch explizit fixierte Umsetzungsgebote und scharfe Sanktionsdrohungen bei Verletzung und Nichtbeachtung hergestellt werden.

Der entscheidende Unterschied ist fundamentaler: Seiner Natur nach ist und bleibt das nomologische Wissen die vorauszusetzende und selbstverständliche Basis des gesellschaftlichen, religiösen und auch politischen Lebens; die in ihm beschlossenen Gewißheiten, Regeln und Normen erklären, ordnen und bestimmen Natur und Kosmos, das Allgemeine, das schon immer Vorhandene, das Gewöhnliche und die Gewohnheiten, die übliche Praxis bis hin zur Normalität des Alltags – und deswegen sind solche Regeln und Prinzipien auch nie „gestiftet", sie können gar nicht formalisiert sein, ja sie sind oft nicht einmal formuliert oder auch nur formulierbar: Wie etwa im Falle der „geraden", also allgemein als „gerecht" und „richtig" akzeptierten Urteile der „guten Richter" bei Homer und Hesiod[108] kann das nomologische Wissen zuweilen nur in der konkreten Anwendung auf einen Fall, ein Problem, einen Konflikt überhaupt Gestalt annehmen.

Ganz anders die Satzung: Sie ist eine positive, explizit ausformulierte Norm, die man sehen, gegebenenfalls auch lesen und immer wieder zitieren kann. Vor allem aber ist eine solche Satzung das Resultat eines aktiven, zweckrationalen Handelns und bewußten Gestaltens der Verhältnisse in der Polis durch diese selbst als Institution. Das ist nicht der Alltag. Durch das Verfahren der willentlichen Setzung, durch die der Satzung eigentümliche Gestalt als Text und Monument ist die Stiftung einer Satzung durch die Polis immer ein Akt, der für bestimmte Anlässe reserviert bleibt. Seiner ganzen Natur nach konnte dieser Akt nie ein Routineverfahren werden – und schon gar nicht ein Verfahren, das etwa zu dem Zweck einer linearen und rückstandslosen Kodifizierung oder gar systematischen Ersetzung des nomologischen Wissens durch ein rationales, positives, kohärentes System von Regeln, Normen und Verfahren entwickelt worden wäre. Von Anfang an diente Gesetzgebung der Polis zur Erfüllung einer ganz bestimmten Funktion, nämlich der Beilegung konkreter Konflikte, der Lösung einzelner Probleme und

[108] Vgl. etwa Ilias 18,497ff.; Od. 2,231ff.; 19,109ff.; *Hesiod*, Erga 225ff.; *Theog.* 84ff. u.ö., vgl. dazu zuletzt *Gregory Nagy*, Images of Justice in Early Greek Poetry, in: Social Justice in the Ancient World, ed. by *K. D. Irani, Morris Silver* (Westport etc. 1995) 61–68.

generell der Regelung umschreibbarer Gegenstände, denen nur eines gemeinsam war: Sie waren mit hergebrachten Mitteln nicht oder nicht mehr zu bewältigen – Themen und Herausforderungen also, die im nomologischen Wissen nicht vorgesehen waren, die es überforderten. Mit einem Wort: Gesetzgebung diente immer der Bewältigung dessen, was sich nicht von selbst verstand, ungewöhnlich und eben neu war[109].

VII.

Eine Analyse der Konzeptualisierung im umfassenden Sinne kann also nicht bei einem rein begriffsgeschichtlichen Zugang stehenbleiben: Sie braucht die Kontextualisierung in einem mehrfachen Sinne – nicht nur als Kontext der Begriffe, sondern als Kontext der bezeichneten Sache; denn, um es noch einmal mit Koselleck zu formulieren, inhaltliche und konzeptuelle Bedeutungen „haften" zwar am Begriff, aber sie speisen sich auch aus Konnotationen und dem (mit-)intendierten Inhalt – und nicht zuletzt eben aus dem „gesprochenen oder geschriebenen Kontext" und dem weiteren gesellschaftlichen, institutionellen und intellektuellen Umfeld. Dazu gehören einerseits die Erwartungen, das Welt-, Situations- und Handlungswissen der Sprecher und Hörer, ihre Orientierungen, Sicht- und Wahrnehmungsweisen, andererseits aber auch die sie alle verbindenden Rahmenbedingungen bis hin zu den jeweils geltenden moralischen Wertsystemen, politischen und sozialen Handlungsregeln. Erst auf der Basis einer Analyse, die diese Rahmenbedingungen ernsthaft einbezieht, kann man hoffen, die anspruchsvollen Erwartungen an eine moderne Begriffsgeschichte hinsichtlich gesellschafts- und mentalitätsgeschichtlich aussagekräftiger und tragfähiger Ergebnisse zu erfüllen, also einen Beitrag zur Erforschung der Genese und Geschichte kollektiven Denkens, Fühlens und Wollens (respektive Sollens) am konkreten Beispiel zu leisten[110].

VIII.

Im konkreten Fall führt diese anspruchsvolle Forderung zu einer ebenfalls hier erst einmal programmatisch zu formulierenden Schlußfolgerung: Es geht um die Verortung von Gesetzgebung und Gesetz in der Polis und ihrer politischen Kultur. In dieser Kultur der griechischen „Stadtstaatlichkeit" in klassischer Zeit und

[109] Vgl. dazu *Hölkeskamp*, Written Law 89ff., 102ff; *ders.*, Arbitrators 74ff.; *ders.*, Tempel 155f. und passim; *ders.*, Schiedsrichter 280ff.; *Hans-Joachim Gehrke*, Konflikt und Gesetz. Überlegungen zur frühen Polis, in: Colloquium aus Anlaß des 80. Geburtstages von Alfred Heuß, hrsg. von *Jochen Bleicken* (Kallmünz 1993) 49–67; *ders.*, Nomosbegriff 14ff.; *ders.*, Verschriftung 44f. und passim.

[110] Vgl. *Koselleck*, Vergangene Zukunft 119; *Reichardt*, Semantik 12 und dazu *Busse*, Semantik 54ff., sowie *Hermanns*, Sprachgeschichte 94.

des demokratischen Athen kann das „Gesetz" als schriftlich fixierte Satzung nur im beziehungsweise aus dem Kontext dieser besonderen „Staatlichkeit" konzeptualisiert werden: Der Dichte und oralen Direktheit aller politischen Vorgänge und Verfahren entspricht notwendig die reale Sichtbarkeit ihrer Resultate, der schließlich fixierten und „monumentalisierten" Normen und ihre tatsächliche physische Präsenz in der kleinräumig-dichten Öffentlichkeit der Polis.

Dabei lassen sich nicht weniger als fünf miteinander vermittelte Dimensionen namhaft machen, die je nach Kontext begrifflich privilegiert werden mögen, aber erst im Bezug aufeinander beziehungsweise in der Verschränkung miteinander die spezifisch griechisch-stadtstaatliche Konzeptualisierung von „Gesetz" als schriftlich fixierter Form des Rechts ausmachen. Dazu gehört zunächst das genuin politische Verfahren der „Setzung" vom Antrag über die „Inkraftsetzung" bis hin zur Fixierung und Aufstellung. Die Polis „ergreift das Wort", wie Marcel Detienne es treffend formuliert hat[111]: Dabei gibt die Polis und die mit ihr identische Bürgerschaft in ihrer institutionalisierten Gestalt als Versammlung wiederum im Wortsinne „ihre Stimme ab" und erklärt ihren Willen.

Die zweite Dimension ist der Text als Ziel des Verfahrens: Die Äußerung des Willens der „vielstimmigen *agora*"[112] wird zu einem einzigen, einheitlichen Text, der den Beschluß als Norm formuliert und schon damit den Anspruch auf Verbindlichkeit anmeldet.

Dazu braucht es aber die dritte Dimension – die Schrift als Medium der Fixierung, als Garantie der Genauigkeit durch detaillierte Umschreibung. Der einmal fixierte Text läßt sich nun nicht mehr einfach ändern, willkürlich beugen oder schlicht ignorieren – mehr noch, er kann und soll nicht einmal mehr großzügig interpretiert werden: Die typische Präzision der Formulierung jeder einzelnen Klausel und die Auflistung aller denkbaren Anwendungsfälle, die strikten Umsetzungsgebote und sanktionsbewehrten Festlegungen auf den Wortlaut dieser Klauseln sollen Auslegungsspielräume nicht mehr zulassen. Zugleich wird dadurch der Status des Textes als Norm mit dem ihr eigenen und eigentümlichen Anspruch auf unbedingte Geltung und Verbindlichkeit „kodifiziert".

Dazu braucht es auch die vierte Dimension, die aufwendige „Monumentalisierung" des Textes auf einem besonderen, repräsentativen Träger, der ihn sichtbar hervorhob: Die eigentümliche Botschaft des Steins oder der Bronze – oder auch: die „Peitho des Marmors" – besteht in der sichtbaren Endgültigkeit, Unabänderlichkeit und vor allem Dauerhaftigkeit des Textes, die der Satzung eine eigene „Auto-Nomie" verleihen[113]: Der verschriftlichte Text auf dem Stein steht noch in

[111] *Detienne*, L'espace 48, 55, vgl. auch *dens.*, L'écriture 15ff. u.ö.; *Hölkeskamp*, Agon 39f.
[112] Begriff nach Od. 2,150, vgl. *Hdt.* 5,79,1.
[113] *Detienne*, L'écriture 15; *ders.*, L'espace 48ff. Vgl. auch *Domenico Musti*, Democrazia e scrittura, in: S&C 10 (1986) 22–48, im folgenden zitiert: *Musti*, Democrazia, hier 27, 33 u.ö.; *Hölkeskamp*, Schiedsrichter 279. Vgl. dazu auch *Cornelius Castoriadis*, Die griechische *polis* und die Schaffung der Demokratie, in: Autonome Gesellschaft und libertäre Demokratie, hrsg. von *Ulrich Rödel* (Frankfurt a.M. 1990) 298–328) im folgenden zitiert: *Castoriadis*, Demokratie, hier 306f., 314f. Übrigens zeigt dies, daß die „demokratische" und „monumen-

einer weiteren Hinsicht nun nicht mehr zur Disposition – nämlich auch nicht der Polis beziehungsweise ihrer Bürgerschaft, die ihn zunächst „gesetzt" hatten. Vor allem in diesem Sinne ist die Satzung damit ein Monument „eigenen Rechts".

Das ist wiederum von der fünften Dimension nicht zu trennen, die durch die dauerhafte Sichtbarkeit des Monumentes zugleich die physische Präsenz des Gesetzes inmitten der Bürgerschaft gewährleistet. Das Gesetz gehört nämlich als Denkmal des Willens der Polis zu Gestaltung und Entscheidung an den ihm gebührenden Ort – nämlich in den öffentlichen Raum in ihrer eigenen Mitte. Wenn es erst einmal dort aufgestellt ist, erlangt die Satzung endgültig jene Distanz und situationsentbundene Normativität, die die Polis und ihre Bürgerschaft vom souveränen Herrn ihrer Beschlüsse zum gehorsamspflichtigen Adressaten ihrer eigenen Gesetze werden läßt.

IX.

Erst wenn alle diese Bedingungen voll und ganz erfüllt sind, kann das Gesetz als geschriebenes Recht auch noch mehr als ein gebieterischer „König" über Menschen wie Götter werden, nämlich der „Wächter der Freiheit" und der Garant der Gleichheit von Hoch und Gering. Das konnte man aber wohl selbst im demokratischen Athen erst nach der Mitte des 5. Jahrhunderts so bewußt wahrnehmen, wie es Gorgias respektive Euripides ausdrückten. Dazu mußte eine Bürgerschaft als Träger der politischen Ordnung nicht einfach nur alltägliche Realität geworden sein – ein entsprechendes Selbstbewußtsein und -verständnis dieser Bürgerschaft, die ihre Funktion als Zentrum der Ordnung auch tatsächlich begriffen und als ihre ureigene Rolle angenommen hatte, war dazu ebenso notwendig. Das „kratistische" Credo der Demokratie, das den *demos* als Herrschaftsträger zur entscheidenden, ja allein legitimen Instanz der Polis und ihrer Ordnung machte, mußte also institutionell wie intellektuell bereits voll eingelöst sein: „In den Vielen ist das Ganze", wie es Herodot auf eine treffende Formel gebracht hat[114].

Die doppelte Einlösung dieses Anspruchs realisierte sich im Athen der Jahre um 450 in der Ausbildung jener besonderen politischen Identität der Bürger-

tale" Verwendung der Schrift (vgl. *Haude*, Alphabet 17, 21 und passim) mithin keineswegs notwendig in Gegensatz zueinander stehen.

[114] *Hdt.* 3,80,6: ἐν γὰρ τῷ πολλῷ ἕνι τὰ πάντα. Vgl. zum Konzept der „kratistischen Epoche" *Meier*, Entstehung 427 ff., 281 ff. u.ö., danach *Tonio Hölscher*, Tradition und Geschichte. Zwei Typen der Vergangenheit am Beispiel der griechischen Kunst, in: Kultur und Gedächtnis, hrsg. von *Jan Assmann*, *Tonio Hölscher* (Frankfurt a.M. 1988) 115–149, im folgenden zitiert: *Hölscher*, Tradition, hier 137. Vgl. zur Sache generell *Elke Stein-Hölkeskamp*, Adelskultur und Polisgesellschaft. Studien zum griechischen Adel in archaischer und klassischer Zeit (Stuttgart 1989) 168 ff., 205 ff.; *dies.*, Kimon und die athenische Demokratie, Hermes 127 (1999) 145–164; *Karl-Joachim Hölkeskamp*, Parteiungen und politische Willensbildung im demokratischen Athen: Perikles und Thukydides, Sohn des Melesias, in: HZ 267 (1998) 1–27; *Karl-Wilhelm Welwei*, Das klassische Athen. Demokratie und Machtpolitik im 5. und 4. Jahrhundert (Darmstadt 1999) 107 ff.

schaft[115], die eben nicht nur auf den vielfältig ausgestalteten und gesicherten Verfahren der Partizipation an der Politik basierte. Vielmehr wurde das spezifische Selbst-Bewußtsein der Bürgerschaft auch noch durch ein breites Spektrum von „civic rituals", das von den vielen religiösen Festen und Prozessionen wie den Panathenäen bis hin zu den Staatsbegräbnissen und jährlichen Gefallenenreden reichte, permanent symbolisch inszeniert und reproduziert[116]. Zugleich wurden diese Identität, ihr Charakter, ihre Inhalte und Voraussetzungen, Werte und Ziele in Literatur, Architektur und bildender Kunst vielfach visuell und auf andere Weise repräsentiert und intellektuell reflektiert – gerade etwa in den erwähnten Tragödien von Aischylos bis Euripides wie in der auf ihre ganz eigene Art politisierten Komödie, aber auch in Plastik, Baukunst und sogar einigen typischen Motiven der Vasenmalerei[117].

115 Vgl. zu dieser Kategorie *Christian Meier*, Die politische Identität der Griechen, in: Identität, hrsg. von *Odo Marquard*, *Karlheinz Stierle* (Poetik und Hermeneutik VIII, München 1979) 371–406; *ders.*, Entstehung 247ff. u.ö.: *Tonio Hölscher*, Immagini dell' identità greca, in: I Greci. Storia-Cultura-Arte-Società, a cura di *Salvatore Settis*, vol. II 2 (Turin 1997), im folgenden zitiert: I Greci II 2, hier 191–248, im folgenden zitiert: *Hölscher*, Immagini. Vgl. allgemein *Castoriadis*, Demokratie 306ff.

116 Vgl. dazu *Adalberto Giovannini*, Symbols and Rituals in Classical Athens, in: City States 459–478; *W. Robert Connor*, Festival and Democracy, in: Démocratie athénienne et culture, hrsg. von *Michel Sakellariou* (Colloque international organisé par l'Académie d'Athènes, 1992, Athen 1996), im folgenden zitiert: Démocratie athénienne, hier 79–89; *ders.*, Civil Society, Dionysiac Festival, and the Athenian Democracy, in: *Demokratia* 217–226; *Lisa Maurizio*, The Panathenaic Procession: Athens' Participatory Democracy on Display, in: Democracy, Empire and the Arts 297–317, ferner generell *Christian Meier*, Zur Funktion der Feste in Athen im 5. Jahrhundert vor Christus, in: Das Fest, hrsg. von *Walter Haug*, *Rainer Warning* (Poetik und Hermeneutik XIV, München 1989) 569–591; *Angelos Chaniotis*, Gedenktage der Griechen. Ihre Bedeutung für das Geschichtsbewußtsein griechischer Poleis, in: Das Fest und das Heilige. Religiöse Kontrapunkte zur Alltagswelt, hrsg. von *J. Assmann* (Gütersloh 1991) 123–145, sowie *Nicole Loraux*, The Invention of Athens. The Funeral Oration in the Classical City (Cambridge, Mass. 1986, zuerst 1981); *Christopher W. Clairmont*, Patrios Nomos. Public Burial in Athens during the Fifth and Fourth Centuries B.C. (Oxford 1983); *Reinhard Stupperich*, The Iconography of Athenian State Burials in the Classical Period, in: The Archaeology of Athens and Attica under the Democracy, ed. by *William D.E. Coulson et alii* (Oxford 1994), im folgenden zitiert: Archaeology, hier 93–103.

117 Vgl. generell *Karl-Wilhelm Welwei*, Zwischen Affirmation und Kritik. Die demokratische Polis des 5. Jahrhunderts im Spiegel der zeitgenössischen Literatur, in: Affirmation und Kritik. Zur politischen Funktion von Kunst und Literatur im Altertum, hrsg. von *Gerhard Binder*, *Bernd Effe* (Trier 1995) 23–50 und jetzt *Deborah Boedeker*, *Kurt A. Raaflaub*, Reflections and Conclusions, in: Democracy, Empire, and the Arts 319–344, mit weiteren Nachweisen. Vgl. zu Tragödie und Komödie *Meier*, Kunst passim, sowie die Beiträge in den Sammelbänden: Nothing to Do with Dionysos? Athenian Drama in Its Social Context, ed. by *John J. Winkler*, *Froma I. Zeitlin* (Princeton 1990); Tragedy, Comedy and the Polis, ed. by *Alan H. Sommerstein et alii* (Bari 1993) *Suzanne Saïd*, Tragedy and Politics, in: Democracy, Empire, and the Arts 275–295; *Jeffery Henderson*, Attic Old Comedy, Frank Speech, and Democracy, ebenda 255–273, jeweils mit weiteren Nachweisen; zuletzt *Simon Goldhill*, Greek drama and political theory, in: Cambridge History 60–88. Vgl. zur Kunst *Tonio Hölscher*, Griechische Historienbilder des 5. und 4. Jahrhunderts v.Chr. (Würzburg 1973), im folgenden zitiert: *Hölscher*, Historienbilder, hier 202ff.; *ders.*, Tradition 143ff. und passim; *ders.*, Images and Political Identity: The Case of Athens, in: Democracy, Empire, and the

Auf dieser Grundlage war die Bürgerschaft des demokratischen Athen einerseits überhaupt erst in der Lage, sich als Souverän und „gesetzgebende" Versammlung vollständig mit der Polis in eins zu setzen. Und erst damit konnte sie andererseits auch die vollständige Kontrolle und Gestaltungsmacht über die öffentlichen Räume in ihrer Mitte gewinnen[118], die in der spezifischen Kultur der Polis eine weitere Voraussetzung für einen vollständigen Gesetzgebungsakt darstellte: Auch der Ort der Aufstellung der Gesetze mußte erst einmal „demokratisiert" werden, bevor diese Monumente als Garanten demokratischer Freiheit und bürgerlicher Gleichheit begriffen werden konnten. Vor diesem Hintergrund gewinnt auch eine unklare und umstrittene Nachricht vielleicht doch einen Sinn: Danach seien die *axones* und *kyrbeis* mit den Gesetzen Solons zu einem bestimmten Zeitpunkt – vielleicht durch Ephialtes, den Vollender der Demokratie – von der Akropolis auf die Agora, in das Prytaneion, das Bouleuterion beziehungsweise die Stoa Basileios verlagert worden[119]. Nur vor diesem Hintergrund wird auch die schiere Zahl der inschriftlich fixierten Texte von Gesetzen und Verträgen über die Ehrendekrete bis hin zu den Listen aller Art überhaupt erklärlich[120]: Die „Öffentlichkeit", die Präsenz inmitten der Bürgerschaft und die damit garantierte allgemeine Zugänglichkeit dieser Texte konnte erst in der entwickelten und ihrer selbst bewußt gewordenen Demokratie bedeutungsvoll und geradezu notwendig werden – faktisch und vor allem symbolisch. In diesem Sinne ist dann auch jene Formel zu verstehen, die dem entsprechenden Anspruch jedes einzelnen Bürgers und Mitgliedes des *demos* als Entscheidungsträger explizit Rechnung trägt: Ein Gesetz ist als Inschrift an einem bestimmten öffentlichen Ort anzubringen, damit „alle, die

Arts 153–183, im folgenden zitiert: *Hölscher*, Images; *David Castriota*, Myth, Ethos, and Actuality. Official Art in Fifth-Century B.C. Athens (Madison 1992), im folgenden zitiert: *Castriota*, Myth, hier 33 ff. und passim; *Carol C. Mattusch*, The Eponymous Heroes: The Idea of Sculptural Groups, in: Archaeology 73–81, im folgenden zitiert: *Mattusch*, Heroes; *H. Alan Shapiro*, Religion and Politics in Democratic Athens, in: Archaeology 123–129. Vgl. zu den „Staatsgrabmälern" *Hölscher*, Historienbilder 104 ff. Vgl. zu den Vasenbildern *Paul Zanker*, Die Maske des Sokrates. Das Bild des Intellektuellen in der antiken Kunst (München 1995) 51 f. mit Nachweisen 324 Anm. 8; *Hölscher*, Immagini 248 ff.; *ders.*, Images 176 ff.; *Heinz-Günter Hollein*, Bürgerbild und Bildwelt der attischen Demokratie auf den rotfigurigen Vasen des 6.–4. Jahrhunderts v.Chr. (Frankfurt a.M. etc. 1988); *Ch. Ellinghaus*, Aristokratische Leitbilder – Demokratische Leitbilder. Kampfdarstellungen auf athenischen Vasen in archaischer und frühklassischer Zeit (Münster 1997) 262 ff., 295 ff.

[118] Vgl. dazu jetzt *Tonio Hölscher*, Politik und Öffentlichkeit im demokratischen Athen: Räume, Denkmäler, Mythen, in: Démocratie athénienne 171–187; *ders.*, Räume 84 ff.; *T. Leslie Shear*, Ἰσονόμους τ' Ἀθήνας ἐποιησάτην: The Agora and the Democracy, in: Archaeology 225–248, im folgenden zitiert: *Shear*, Agora, auch zum folgenden, ferner *Musti*, Democrazia 27 ff.; *Hölkeskamp*, Schiedsrichter 284 f.

[119] Anaximenes von Lampsakos bei Didymos, FGrHist 72 F 13; Pollux 8, 128 in Verbindung mit *Aristot.* Ath.Pol. 7,1. Vgl. dazu *Ronald S. Stroud*, The Axones and the Kyrbeis of Drakon and Solon (Berkeley 1979) 12 f.; *Shear*, Agora 240 f; *Kenzler*, Agora 270 ff. u.ö.

[120] *Hedrick*, Writing 157 ff., mit Nachweisen und Kritik, z.B. an *Benjamin D. Meritt*, Epigraphica Attica (Cambridge, Mass. 1940) 89 ff. Vgl. auch *Thomas*, Literacy 144 ff.; *dies.*, City-state 40 ff.; vgl. dazu zuletzt *Ch. W. Hedrick*, Democracy and the Athenian Epigraphical Habit, in: Hesperia 68 (1999) 387–439.

es wollen," das dort publizierte Beschlossene „wissen" oder „sehen" können: σκοπεῖν τῷ βουλομένῳ, wie es bezeichnenderweise im Dekret des Teisamenos heißt. Die auffällige Affinität der Begrifflichkeit zu derjenigen einer anderen, wesentlich bekannteren Formel ist natürlich kein Zufall – danach konnte und sollte „jeder (dazu berechtigte Athener), der will", in der Volksversammlung und vor Gericht als Redner, Antragsteller oder Ankläger die Initiative ergreifen[121].

Damit trat diese besondere Form von Monumenten neben die wachsende Zahl der symbolträchtigen Denkmäler, die die Bürgerschaft sich um diese Zeit setzte. Die Statuen der Tyrannentöter, die repräsentativen Gebäude für Rat und Heliaia, die erwähnte Stoa Basileios und die berühmte Stoa Poikile an der Agora, die anderen Monumente für die Siege im Perserkrieg und für die mythische Vergangenheit der Stadt und nicht zuletzt die Bauten auf der Akropolis und das vielsagende Programm dieser Architektur und ihres Schmucks prägten das gesamte Bild dieser Stadt[122]. Auf verschiedene Weise sollten sie dabei durchweg die Einheit von Polis und Bürgerschaft, deren Identität und ihre historischen, politischen und institutionellen Grundlagen repräsentieren – besonders beredte Zeugnisse dafür sind die Statuengruppe der Heroen der zehn kleisthenischen Phylen als Repräsentation der Bürgerschaft als Ganzer und die Kultstätte des *demos* nahe der Pnyx, des neuen Ortes der Volksversammlung, die beide ebenfalls um die Mitte des 5. Jahrhunderts, in der „perikleischen" Epoche der vollendeten Demokratie, entstanden sein dürften[123]. Gerade solche Monumente und ihre Räume – Agora, Pnyx und Akropolis – bildeten den richtigen visuellen und ideellen Kontext der Gesetze der Polis, die aus dieser Nachbarschaft Bedeutung, Sinn und zusätzliche Bindungskraft beziehen konnten.

Spätestens zu dieser Zeit war also auch die letzte Voraussetzung erfüllt, damit ein Gesetz und das gesamte Verfahren des Beschließens und Publizierens nicht

[121] *Andoc.* 1,83 und 84; vgl. auch IG I³ 84, Z.26 und dazu *Thomas*, Tradition 51, 61; *Hedrick*, Writing 161 f. Vgl. IG I³ 34, Z.31 ff.; *Demosth.* 13,11; 24,23 und 63; *Andoc.* 1,23; *Aeschin.* 1,23; 2,65; und dazu *Ostwald*, Sovereignty 80 ff., 208 ff.; *Hansen*, Demokratie 72 f., 276 ff.

[122] Vgl. zu den Einzelheiten *Johannes S. Boersma*, Athenian Building Policy from 561/0 to 405/4 BC (Groningen 1970) 42 ff., 65 ff. u.ö.; *Homer A. Thompson, Richard E. Wicherley*, The Agora of Athens. The History, Shape and Uses of an Ancient City Center (Princeton 1972) mit Belegen. S. dazu generell *Hölscher*, Historienbilder 50 ff., 85 ff. u.ö.; *ders.*, City of Athens 370 ff.; *ders.*, Images 157 ff., 163 ff.; *Castriota*, Myth 96 ff., 134 ff. und passim; *Heinrich Theodor Grütter*, Die athenische Demokratie als Denkmal und Monument: Überlegungen zur politischen Ikonographie im 5. Jahrhundert v.Chr., in: Volk und Verfassung 113–132; *Christoph Höcker, Lambert Schneider*, Pericle e la costruzione dell' Acropoli, in: I Greci II 2, 1239–1274; *Karl-Joachim Hölkeskamp*, Marathon – vom Monument zum Mythos, in: Gab es das griechische Wunder? Griechenland zwischen dem Ende des 6. Und der Mitte des 5. Jahrhunderts v. Chr., hrsg. von *D. Papenfuß, Volker Michael Strocka* (Mainz 2001) 329–353, hier 337 ff., und die Angaben oben, Anm. 117.

[123] *Uta Kron*, Die zehn attischen Phylenheroen. Geschichte, Mythos, Kult und Darstellungen (MDAI [A], Beiheft 5, Berlin 1976) 228 ff.; *dies.*, Demos, Pnyx und Nymphenhügel. Zu Demos-Darstellungen und zum ältesten Kultort des Demos in Athen, in: MDAI (A) 94 (1979) 49–75; *Mattusch*, Heroes 74 ff.; *Chrissoula Ioakimidou*, Die Statuenreihen griechischer Poleis und Bünde aus spätarchaischer und klassischer Zeit (München 1997) 100 ff., 274 ff.

nur als Fixierung, „Monumentalisierung" und Verewigung des Willens der Polis als Souverän verstanden werden konnte. Darüber hinaus war es nun möglich geworden, die Gesetze Athens als das Fundament der egalitären Gleichheit aller Bürger vor dem Gesetz als Ausdruck des Willens der Polis zu konzeptualisieren. Vor diesem Hintergrund wird dann eine noch spätere, vielleicht tatsächlich erst in das 4. Jahrhundert gehörende Sichtweise verständlich. Da wird die Demokratie rhetorisch und ideologisch mit der Herrschaft ihrer eigenen, selbst gegebenen Gesetze identifiziert. Darüber kann man zwar streiten, aber immerhin: Demokratie wird nun zumindest auch als „Nomokratie" begriffen und offensiv propagiert[124]. Und das heißt auch, daß die großen Philosophen, Theoretiker eines abstrakten Idealstaates und intellektuellen Kritiker der Demokratie Platon und Aristoteles[125] nicht oder noch nicht allein die Debatte über die Polis und ihre „rechte Ordnung" beherrschten[126].

[124] *Gehrke*, Nomosbegriff 25ff. *ders.*, Verschriftung II 147f., 151. Vgl. auch *Rosalind Thomas*, Law and the Lawgiver in the Athenian Democracy, in: Ritual, Finance, Politics 119–133; *Cohen*, Law 34ff.; *ders.*, The Rule of Law and Democratic Ideology in Classical Athens, in: Die athenische Demokratie im 4. Jahrhundert v.Chr. Vollendung oder Verfall einer Verfassungsform?, hrsg. von *Walter Eder* (Stuttgart 1995) 227–244.

[125] Vgl. dazu *Hans-Joachim Gehrke*, Die klassische Polisgesellschaft in der Perspektive griechischer Philosophen, in: Saeculum 36 (1985) 133–150, hier 134ff., und zuletzt *Malcolm Schofield*, Approaching the *Republic*, in: Cambridge History 190–232, hier 191f.; 197; 225ff. u.ö.; *Christopher Rowe*, The *Politicus* and other dialogues, ebda., 233–257, hier 245ff. (zu Platon); *Malcolm Schofield*, Aristotle: an introduction, ebda., 310–320, hier 316f.; *Christopher Rowe*, Aristotelian constitutions, ebda., 366–389, hier 369f.; 378ff. (zu Aristoteles).

[126] Eine frühere Fassung dieses Textes ist unter einem anderen Titel erschienen: (In-)Schrift und Monument. Zum Begriff des Gesetzes im archaischen und klassischen Griechenland, in: ZPE 132 (2000) 73–96. Der Beitrag wurde überarbeitet, mehrfach ergänzt und aktualisiert.

Alberto Maffi

Gesetzgebung und soziale Ordnung in Platons Nomoi

I.

Der letzte große unvollendete Dialog Platons, die Nomoi, enthalten den Entwurf einer ideellen Gesetzgebung für eine Kolonie, die auf Kreta gegründet werden sollte.

Der Gesetzgebung, die in den Nomoi vertreten wird, liegt eine besondere Absicht zugrunde. Erziehen hieß für Platon, das Verhalten der Bürger möglichst bis in die letzten Einzelheiten zu regeln. Um dieses Ziel zu erreichen, führte Platon im Rahmen der Gesetzgebung ein neues Mittel ein: die sogenannten Prooimia. Das Prooimion sollte jedem Gesetz als Mahnung vorangehen. Wenn die Bürger der Mahnung nicht gehorchten, dann sollte das Gesetz diesen Ungehorsam bestrafen.

Der Mechanismus Gehorsam / Ungehorsam war aber nicht so einfach anwendbar: Denn in vielen Fällen, besonders wenn es sich um schwere Verbrechen handelte, mußte erst entschieden werden, ob der Verbrecher heilbar war oder nicht. Die Metapher „heilbar", die aus der Sprache der Medizin kommt, war deshalb angebracht, weil Platon den Verbrecher in gewisser Weise als Kranken betrachtete. Platon hielt nicht viel von der menschlichen Natur und glaubte, sie widerstehe dem Gesetzgeber und sei imstande, alle Erziehungsergebnisse zunichte zu machen. (Im allgemeinen ist die Entscheidung den Richtern anvertraut: 957 e; im Falle des Diebstahls öffentlicher Güter ist aber die Entscheidung automatisch: Der Bürger wird zum Tode verurteilt.)

Platon stand vor einem Paradox: Eigentlich hätte die durch die Gesetzgebung erzielte Erziehung Gesetze überflüssig machen müssen, da aber im Vorgang des Erziehens auch das Scheitern mit inbegriffen sein konnte, sollten die Gesetze auch Verbrechen und Strafen berücksichtigen, die seit vielen Jahrzehnten ein beliebtes Thema der Forschung sind. Strafen war aber nur ein Teil jenes Mechanismus von sozialen Kontrollen, der sich in seiner Gesamtheit viel komplizierter und nuancierter darstellte. Nur durch diesen Mechanismus glaubte Platon die soziale Ordnung gesichert, und nur dadurch schien ihm die Gesetzgebung ihre Ziele erreichen zu können.

Manche Aspekte sind in der Tat von Platon im Ungewissen gelassen worden: Einzelheiten, die noch nicht vorgesehen waren, sollten von jüngeren Gesetzgebern geregelt und den Grundlinien des großen gesetzgeberischen Entwurfs angepaßt werden. Aber trotz dieses Mangels sind die Grundprinzipien der Gesetzgebung Platons ziemlich deutlich entwickelt.

Die Wirksamkeit der Gesetze wird von Platon nicht nur den Magistraten, sondern auch den einfachen Bürgern anvertraut. Behörden und Bürger sind also gemeinsam verantwortlich für die korrekte Anwendung der Gesetze: Wie Platon schreibt, sollen die Bürger zusammen mit den Behörden die Verbrecher bestrafen (*sunkolazein*: V 730 d).

Kaum eine Rolle spielten dagegen die Bürger bei der Einführung neuer Gesetze oder bei der Änderung der bestehenden Gesetze. Die Durchsetzung von neuen Gesetzen war in der Tat unentbehrlich, nicht nur um den gesetzgeberischen Rahmen zu vollenden, sondern auch, weil Platon ein grundsätzliches Muster (*paradeigma*) aufzubauen gedachte, dessen Realisierbarkeit jedoch im Einzelfall zu prüfen war: Die Gesetze, die sich als nicht anwendbar erweisen würden, sollten getilgt oder geändert werden.

Bei dieser Anpassung der Gesetze an die Realität spielten die Bürger keine aktive Rolle. Das heißt: Auch wenn eine Volksversammlung einberufen wurde, um neue Gesetze zu bestätigen, besaß kein Bürger ein Antragsrecht. Dieser Tatbestand läßt sich ableiten aus dem Abschnitt über den Bürger, der aus dem Ausland zurückkehrt: Ihm wird besonders streng verboten, die bestehenden Gesetze zu kritisieren; dies schließt meines Erachtens auch irgendwelche Antragsbefugnis gegenüber der Volksversammlung aus.

Diese grundsätzliche Entpolitisierung der Bürger (darauf werden wir später noch zurückkommen) steht in scheinbar paradoxem Gegensatz zum Prinzip der Rechenschaftspflichtigkeit aller Amtsträger (*upeuthynoi*). Denn jeder Bürger darf eine Klage gegen die Behörden anstrengen. Dies ist ein Paradox, denn gerade dieses Prinzip kennzeichnet die Demokratie schon bei Herodot: Ich verweise auf die persische Verfassungsdebatte in III 80. In der Tat beruht die Rechenschaftspflicht der Amtsträger in den Nomoi auf einer anderen Grundlage. Die *archai* (Amtsträger) werden in den Nomoi mehrmals als „Sklaven der Gesetze" bezeichnet. Die Amtsträger sind also rechenschaftspflichtig nicht, weil die Volkssouveränität dies vorsehe, sondern um die korrekte Anwendung der Gesetze ihrerseits zu sichern.

Die Rechenschaftspflicht wird von Platon sogar in einer besonders strengen Art betont. Nicht nur gegen die Magistrate, sondern auch gegen Richter kann Anklage erhoben werden. Außerdem dürfen die Euthynoi selbst, das heißt die Magistrate, die für die Rechenschaft zuständig sind, von beliebigen Bürgern angeklagt werden.

II.

Ich komme nun zu den Mitteln und Wegen, die die Wirksamkeit der Gesetze sichern sollen. Der Klarheit wegen werde ich diese Mittel in drei Kategorien einteilen: in soziale, verwaltungsrechtliche und prozeßrechtliche.

Als soziale Mittel können wir auf der einen Seite Lob und Tadel betrachten, auf der anderen Seite das unmittelbare Eingreifen einzelner Bürger.

Was Lob und Tadel betrifft, so gilt es zu betonen, daß dieses Mittel, das wir schon seit Homer als spontanes, ich würde sagen, naives Instrument der gesellschaftlichen Bewertung kennen, unter die Kontrolle des Gesetzgebers gestellt wird.

Wenn man diejenigen Fälle betrachtet, die zu dieser Form von Sanktion oder von Reaktion Anlaß geben, hat man den Eindruck, daß Platon sie benutzt, wenn er sich herkömmlicher Werte (mit Dover würde ich von Volksethik sprechen) entgegensetzt. Unterlassungstatbestände fallen einem dabei ein: Zum Beispiel werden die Bürger bestraft, die ihrer Anzeigepflicht nicht nachkommen. Im allgemeinen werden die Bürger aufgefordert, sich in die Angelegenheiten der Mitbürger einzumischen (ich verweise z. B. auf jenen Freien, der ein Sklavenkind oder dessen Pädagogen oder Lehrer nicht oder nicht richtig bestraft, obgleich dies nötig wäre: 808 e).

Gegen traditionelle Werte richtet sich auch jene Norm, die öffentliches Lob für Verwandte vorsieht, die eine vom Gesetz festgelegte Summe für die Ausrichtung von Hochzeitsfeiern nicht überziehen. Hier wird die Norm sogar dadurch verstärkt, daß Platon bei Zuwiderhandlung eine Buße vorschlägt.

Bis zum Extrem wird diese Tendenz getrieben mit der Norm, die jenen Dichtern alle Reputation abspricht, die ihre Werke auch dann unters Volk bringen, wenn der Leiter des Erziehungswesens diese bereits abgelehnt hat. Wir wissen, daß Platon von den Dichtern verlangte, daß sie *agathoi kai timioi en te polei* seien, auch wenn sie künstlerisch weniger begabt waren (829 d). Es mutete in der Tat als ein Paradox an, daß Dichter, die vom Gesetzgeber als die besten anerkannt werden, unter Umständen einen schlechten Ruf haben.

Wie die öffentliche Meinung beeinflußt wird, sagt Platon in den meisten Fällen nicht.

Ein besonders strenges Mittel war der Fluch. Aber Platon wagte kaum, dieses Mittel, außer bei Fällen von herkömmlichen Gesetzesmißbräuchen, in Anwendung zu bringen. Von Vergehen wie Mord oder Beleidigung der Eltern abgesehen, wird der Fluch nur gegen solche Bürger als angemessen betrachtet, die Geld aus wertvollem Metall besaßen, und solche, die dies nicht zur Anzeige brachten (742 b). Wir können vermuten, daß eine solche *Ara* von einem Amtsträger ausgesprochen werden sollte, wie es manche Inschriften vorschreiben (z. B. in den Dirae Teiae).

In anderen wenigen Fällen sollte ein derartiges Verbrechen auf der Agora schriftlich publik gemacht werden, so daß das Schrifttum auf unbestimmte Zeit auf die Schande hinwies (755 a) (s. unten).

In den meisten Fällen wird aber die Art der Orientierung nicht festgestellt. Platon sagt nur, daß Lob und Tadel gemäß Gesetz (*kata nomon*) ausgesprochen werden sollten (774 c). Man hat dennoch den Eindruck, daß Platon an einer Kontrolle aller Mündlichkeit und Kommunikation gelegen war, denn in der griechischen Polis blieb die öffentliche Meinung von der Mündlichkeit geprägt (957 c–d).

III.

Betrachten wir jetzt die anderen Mittel, die die Wirksamkeit der Gesetze sichern sollten. In der Anwendung der verwaltungsrechtlichen und der prozeßrechtlichen Mittel spielten die Magistrate die wichtigste Rolle. Um die Aufrechterhaltung des Staates zu sichern, durften die Magistrate einem Freien drohen und ihn tadeln (wie wir 879 e lesen), sie durften auch Bußen verhängen und Recht sprechen: Für die Rechtsprechung der Magistrate wurde eine Wertgrenze festgelegt; über diese Grenze hinaus waren entweder andere Magistrate oder besondere Gremien zuständig.

Außerdem durften und sollten die Magistrate eine Klage anstrengen: *epagein diken tini*, 881 e, oder gewöhnlich *diken eisagein eis to dikasterion*; 928 b *eisagein eis to dikasterion* bezeichnet sowohl die Klage des Vormunds gegen den Magistrat als auch die Klage der Verwandten des Mündels oder irgendeines Bürgers gegen den Vormund; 928 c findet man *diken lachein*.

Obwohl nach 735 a die Befugnisse der Magistrate von den Gesetzen festgelegt werden sollten (ein *eidos tes politeias* ist *nomous apodounai tais archais*), sollten die Magistrate ihre Befugnisse offenbar ohne besondere Reglementierung ausüben dürfen: Als Gegenteil war, wie wir gesehen haben, die Rechenschaftspflicht vorgesehen.

So läßt sich verallgemeinernd sagen, daß die Magistrate von Magnesia mehr Macht gehabt hätten als die athenischen Behörden; sie hätten sich vielleicht den Magistraten der oligarchischen Poleis angenähert.

Das Gegengewicht zu dieser Art von Machtfülle bildete das System der Kontrollen. Die Magistrate waren nicht nur den Euthynoi rechenschaftspflichtig; sie sollten auch von jedem Einzelbürger gerichtlich belangt werden dürfen. Wir haben schon gesehen, daß sowohl Magistrate als auch Richter im Falle von Ungerechtigkeiten belangt werden durften. Die wichtigste Stelle hierzu ist 846 b 4–6: *ean de tis tôn archontôn dokêi met' adikou gnômês krinein tas zêmias, tôn diplasiôn hupodikos estô toi blaphthenti: ta de au tôn archontôn adikêmata eis ta koina dikasteria epanagein ton boulomenon hekastôn tôn enklêmatôn.*

„If any of the magistrates be thought to have given an unjust verdict in deciding the penalties, he shall be liable to pay to injured party double the amount; and who so wishes shall bring up the wrong-doings of the magistrates before the public courts in the case of each complaint." (Bury)

Die Worte *krinein tas zemias* können hier in dem Sinn verstanden werden, daß sowohl gegen die Bußen als auch gegen die eigentlichen Urteile Berufung eingelegt werden durfte.

Gegen *Adikemata* der Magistrate sollte jeder Bürger zu jedem Zeitpunkt eine Klage anstrengen dürfen: Es wurde nicht zwischen Privatklage und öffentlicher Klage unterschieden. Wir wissen andererseits, daß sowohl in Athen (AP 45) als anscheinend auch in Gortyn (IC IV 72, I 54–56) Privatklagen erst nach den jeweiligen Amtsperioden angestrengt werden durften.

Was die Kontrolle über die Richter betraf, so ist 767 e die wichtigste Stelle:

ean de tis epaitiatai tina hekonta adikôs krinai tên dikên, eis tous nomophulakas iôn katêgoreitô: ho de ophlôn tên toiautên dikên hupechetô men tou blabous tôi blaphthenti to hêmisu tinein, ean de meizonos axios einai doxêi zêmias, prostiman tous krinantas tên dikên hoti chrê pros toutôi pathein auton ê apotinein tôi koinôi kai tôi tên dikên dikasamenôi.

„Anyone who accuses a judge of deliberately giving an unjust judgment shall go to the Law-wardens and lay his charge before them: a judge that is convicted on such a charge shall submit to pay double the amount of the damage done to the injured party; and if he be held to deserve a greater penalty, the judges of the case shall estimate what additional punishment must be inflicted, or what payment made to the State and to the person who took proceedings." (Bury)

(Nach Ritter[1] soll hier *to diplasion* eingesetzt werden, im Vergleich zu 762 b und 846 b. Aber von Einzelrichtern ist in den Nomoi nirgendwo die Rede. Es wird also verständlich, daß ein jeder nur die Hälfte des Schadens wiedergutmachen sollte. Auf jeden Fall läßt diese Norm manche Fragen offen. Was sollte mit dem Urteil geschehen? Sollte es irgendwann ungültig werden? Oder sollte es gültig bleiben, wenn die meisten Richter ein gutes Gewissen hatten? Oder sollte das Urteil immer gültig bleiben? Und was passierte, wenn der Angeklagte zum Tode verurteilt worden war?)

IV.

Wir wollen endlich die Rolle der Bürger betrachten. Wie wir gesehen haben, waren die Bürger aufgerufen, an die Seite der Magistratur zu treten, um die Gesetze durchzusetzen.

In manchen Fällen waren die Bürger gehalten, unmittelbar einzuschreiten. Es handelte sich insbesondere um Hilfe in Notlagen[2] (von *apagoge* hingegen spricht Platon anscheinend nur in einem Fall: 879 d5–e6: Der Fremde, der einen Bürger geschlagen hat, wird von diesem zu den Astynomoi geführt).

In anderen Fällen waren die Bürger gehalten, einen Verbrecher anzuzeigen (ein allgemeines Lob einer solchen Anzeige finden wir in 730 d).

[1] C. *Ritter*, Platos Gesetze. Commentar zum griechischen Text (Leipzig 1896).
[2] *W. Koch*, Die Strafbestimmungen in Platons Nomoi (Wiesbaden 1960) 115 ff.

In beiden Fällen wurde eine Unterlassung bestraft.

Ein drittes Mittel, das dem Bürger zur Verfügung stand, war die gerichtliche Klage und besonders die *graphe*, die Klage, die öffentliches Interesse schützen sollte.

V.

Besonders wichtig für die Charakterisierung der sozialen Ordnung von Magnesia war die Begrenzung aller Möglichkeiten der Bereicherung.

Die Bevölkerung war in vier Zensusklassen eingeteilt. Wenn der Reichtum eines Bürgers das vierfache des niedrigsten Zensusbetrages erreichte, sollte der darüberliegende Betrag an die öffentliche Kasse abgegeben werden. Wenn der Bürger es nicht tat, und wenn sein Verbrechen entdeckt wurde, wurde eben dieser Teil eingezogen (vermutlich von Amts wegen als verwaltungsrechtliche Maßnahme). Außerdem durfte jeder beliebige Bürger Klage gegen ein solche Person erheben (754 e–755 a). Die Sanktion war eine Ehrenstrafe, die mit der historischen *atimia* nicht völlig übereinstimmte. Dem Verurteilten ging keines seiner Rechte verloren; allerdings durfte er auch keinen Anspruch auf die Vorteile erheben, die die Polis den Bürgern eventuell in Zukunft erteilen sollte. So erfahren wir mittelbar, daß es keine *misthoi* in Magnesia gab, sondern eine Art von Verteilung der Gewinne (und der Verluste: 744 b), die die Solidarität der Bürger offenbar stärken sollte und die an eine archaische Fassung des Stadtschatzes erinnert. Vermutlich dachte Platon an solche Konsequenzen, wenn er an anderen Stellen der Nomoi einen Bürger als *kakos* erklären ließ.

Zudem sollte der Name des Verurteilten lebenslang auf der Agora geschrieben stehen. Hier scheint Platon die Schrift als moderneres Medium betrachtet zu haben als den schlechten Ruf. Eine Erklärung dieser Maßnahme, die in den Nomoi selten vorkommt, mag in der Tatsache zu finden sein, daß das Urteil als Schlußakt eines formellen gerichtlichen Verfahrens eine konkrete Publikationsform verlangte. Die Schriftform erlaubte auch die Setzung eines Termins, bis zu welchem die Strafe zu gelten hatte: Eine mündliche *kakos*-Erklärung hätte nur dann präzise sein können, wenn ein Magistrat jedes Jahr in feierlicher Form den Urteilsspruch gegen den Verurteilten wiederholt hätte, was aber Platon nirgendwo in Verbindung mit der gerichtlichen Verurteilung vorgesehen hatte.

Phthonos und die daraus folgenden Konflikte wegen der Wiederverteilung von Reichtums sollten auf diese Weise vermieden werden. Eine Folge dieser Regeln war aber auch das Ende des Evergetismus, nämlich des wichtigsten Mechanismus zur Lösung der sozialen Konflikte innerhalb der Polis. Von Leiturgien sprach Platon beiläufig, wenn ich recht gesehen habe, nur einmal (949 d).

Die Knappheit an Geld behinderte auch die Anleihemöglichkeiten: So wurde der Hauptgrund des Schuldproblems, das so viele griechische Poleis ängstigte, völlig getilgt. Als zusätzliche Maßnahme wurde verfügt, Kredite als nicht einklagbar zu deklarieren.

Wir wissen nicht, was geschah, wenn ein Verurteilter nicht genug Geld hatte, um die Strafsumme zu bezahlen. In 855 d war das Gefängnis vorgesehen; es handelte sich aber um *zemiai*, die von einem Magistrat auferlegt wurden.

Aus diesem knappen Überblick mag man sehen, wie ernst Platon Probleme der sozialen Ordnung nahm: Hauptmittel zu deren Lösung war für ihn die Erweiterung der Rolle des Gesetzgebers. Heute sind alle civil-law-Systeme durch eine fast unübersehbare Menge von Gesetzen geprägt; aber mit der sozialen Ordnung hat der Gesetzgeber nichts mehr zu tun. So kann man sagen, daß das platonische Projekt sich nur zum Teil verwirklicht hat, und man kann sich die Frage stellen, ob der beste Teil davon verwirklicht worden ist.

Jochen Martin

Formen sozialer Kontrolle im republikanischen Rom

I. Vorüberlegungen

1. Ich unterscheide bei meinen Ausführungen nicht zwischen sozialer Kontrolle (*social control*), die sich auf abweichendes Verhalten (*deviance*) bezieht, und sozialem Zwang (*social constraint*), der es mit den „gewöhnlichen normativen Elementen einer Sozialstruktur" zu tun hat[1]. Die Prävention abweichenden Verhaltens durch Erziehung und Sozialisation, durch bestimmte Familienstrukturen, gesellschaftliche Abhängigkeitsverhältnisse sowie Regelungen gesellschaftlicher Kommunikation bildet nur die andere Seite der Verurteilung und Bestrafung aktuellen abweichenden Verhaltens. Praktiken der Sozialisation verweisen auf Konzepte darüber, was gutes, richtiges, angemessenes Verhaltens ist. Nicht alles davon abweichende Verhalten muß bestraft werden. An den Strafen lernen wir nur besonders allergische Punkte eines sozialen Systems kennen.

Die Ordnung einer Gruppe kann darauf ausgerichtet sein, die Subsistenz und das Überleben zu sichern. Aber dieser funktionale Bezug gilt für viele Gruppen, kann also kaum spezifische Regelungen erklären – ganz abgesehen davon, daß die Ordnung sich von bestimmten funktionalen Zwecksetzungen gleichsam emanzipieren, zum Selbstzweck, zu einem Identitätsmerkmal werden kann. Hier greift dann nicht mehr eine funktionale, sondern eher eine strukturale Analyse: Gefragt werden muß, welche Elemente einer Ordnung für das Funktionieren des gesellschaftlichen und politischen Lebens so unverzichtbar sind, daß man sie als strukturale Elemente bezeichnen kann. In diesem Sinn sollen im folgenden Teile der römischen Sozialordnung untersucht werden, und zwar vor allem für die frühe und mittlere Republik.

2. Jede Aussage über soziale Kontrolle in der römischen Republik steht unter dem Vorbehalt, daß wir fast nichts darüber wissen, wie z.B. das Leben in einem römischen Dorf aussah. Die römischen Historiker interessierten sich in der Regel nur für Dinge, welche die gesamte *res publica* betrafen. Einige Hinweise bieten aber die Zwölftafeln (um die Mitte des 5. Jahrhunderts): In Tafel 6 ist davon die

[1] Vgl. *Jesse R. Pitts*, Social Control I: The concept, in: International Encyclodedia of the Social Sciences 14 (1968) 381–396, bes. 381–383.

Rede, daß ein gestohlener Balken, der in ein Haus oder einen Weingarten fest eingebaut ist, nicht entfernt werden darf; in Tafel 7 geht es u. a. um Grenzregulierungen und Wegerecht. Besonders aufschlußreich ist die Tafel 8: Hier werden einerseits typische Phänomene für den bäuerlichen Bereich genannt (daß ein Tier Schaden verursacht und Früchte auf ein fremdes Grundstück fallen; daß Feldfrüchte nachts gestohlen werden etc.); zum anderen begegnen Delikte, die auf Rügebräuche verweisen: so das Absingen von Schmähgedichten (8,1a und b), das Wegsingen (Wegzaubern) von Feldfrüchten (8,8), das In-Brand-Setzen von Gebäuden oder von Getreidehaufen nahe beim Haus (8,10). Das sind Formen von Gewaltanwendung, die in bäuerlichen Gesellschaften sich gegen diejenigen richten, welche die Ordnung eines Dorfes stören. Es hat sie, wie Winfried Schmitz gezeigt hat, auch im archaischen Griechenland gegeben[2]. Die Zwölftafel-Gesetzgebung wäre nicht das einzige Beispiel für Versuche, solche Rügebräuche im Sinne einer gesamtstaatlichen Ordnung zu unterbinden. Aber wie Beispiele aus Griechenland und aus frühneuzeitlichen Gesellschaften zeigen, halten sich solche Bräuche gegen staatliche Verbote. In Rom spricht für die Existenz solcher Rügebräuche auch, daß 1. die Hauszerstörung in das Repertoire der Bestrafung von Staatsfeinden (insbesondere solchen, die sich dem Tyrannis-Vorwurf aussetzen) übernommen wurde[3], 2. Rügebräuche noch im Vorgehen des Clodius gegen Cicero im Jahre 58 eine Rolle spielten[4]. Es läßt sich nicht beweisen, ist aber dennoch aus den genannten Indizien sehr wahrscheinlich, daß Rügebräuche in Dörfern ein wichtiges Mittel sozialer Kontrolle bildeten.

II. Zwei grundlegende Merkmale der römischen Gesellschaft

1. Die politische Organisation der attischen Gesellschaft des 5. Jahrhunderts durchbricht die bestehenden sozialen, ökonomischen, bildungsmäßigen Unterschiede zwischen den Bürgern, ist im Hinblick auf die politische Beteiligung der Bürger eine egalitäre. Über die starke Stellung der Volksversammlung und des Volksgerichts wird versucht, die genannten Unterschiede gleichsam zu neutralisieren; die politische Organisation überlagert die gesellschaftliche, was z. B. auch darin zum Ausdruck kommt, daß es viele Gesetze gibt, die in den Bereich des Hauses eingreifen. Soziale Kontrolle findet also vielfach über politische Institutionen statt, und David Cohen hat ja anschaulich gezeigt, wie sich das in den Gerichten vollzieht[5]. Die politische und soziale Organisation Roms bleibt dagegen während der ganzen Republik (und auch später) hierarchisch strukturiert. Die gesell-

[2] *Winfried Schmitz*, Nachbarschaft und Dorfgemeinschaft im archaischen und klassischen Griechenland (unveröff. Habil.schrift Freiburg 1995).
[3] *Wilfried Nippel*, Aufruhr und „Polizei" in der römischen Republik (Stuttgart 1988) 116f.
[4] Ebd. 123.
[5] *David Cohen*, Law, Violence and Community in Classical Athens (Cambridge 1995).

schaftliche Organisation überlagert zumindest partiell die politische; das wird deutlich in den Einwirkungsmöglichkeiten, die Patrone beim politischen Entscheid haben. Oder: die Strafgewalt des *pater familias*, des Hausvaters, konkurriert im Hinblick auf die seiner Gewalt Unterworfenen mit der politischen bzw. ist in vielen Fällen allein zuständig. Ein den politischen Institutionen zustehendes Gewaltmonopol gibt es nicht.

Was die Hierarchie angeht, so waren die Hausväter der adligen Familien nicht nur Herren über ihre jeweilige *familia*, sondern auch Patrone über ausgedehnte Klientelen. Dieselben Hausväter fungierten als Senatoren und Amtsträger, die politisch die Volksversammlungen dominierten. Und mehr noch: Auch innerhalb der Senatoren gab es trotz „standesmäßige(r) Gleichheit (nämlich der Chancen, Ämter und Ruhm zu erlangen)" eine klare Gliederung nach Rangklassen: Diese wurden bestimmt durch den Rang des erreichten Amtes[6]. Wir haben es hier nicht mit einem bürokratischen System zu tun, in dem die höhere Gewalt der niederen befehlen konnte (jedes Amt hatte einen eigenen Amtsbereich, eine *provincia*); aber der Rang des bekleideten Amtes bestimmte das Ansehen der Person. Innerhalb der jeweiligen Rangklasse bildeten das Amtsalter und das Ansehen der Familie (das sich wiederum nach der Zahl und der Qualität der bekleideten Ämter bemaß) weitere Kriterien des Vorrangs. Dieses strikte Rangklassensystem begrenzte den Raum der Konkurrenz innerhalb des Adels in doppelter Hinsicht: Zum einen war in der politischen Kommunikation immer klar, wer die gewichtigere Meinung vertrat. Da weiter allein die politisch-militärische Leistung den Rang bestimmte, richtete sich auch der Ehrgeiz der Adligen auf das politische Feld, d.h. die Erlangung von Ämtern; alle anderen denkbaren Felder der Konkurrenz wurden ausgeschlossen[7].

2. Dieses Ordnungssystem wird noch strikter dadurch, daß die Römer ausgeprägte Vorstellungen von Rollen entwickelt haben, die das Handeln jedes Einzelnen in der Gesellschaft jederzeit erwartbar machen sollten. Nach Manfred Fuhrmann läßt sich der lateinische Begriff *persona*, der ursprünglich die Maske des Schauspielers im Theater bedeutet, oft mit dem deutschen „Rolle" übersetzen[8], und es ist nicht von ungefähr, daß diese Bedeutung in Ciceros Werk *de officiis* (von den Verpflichtungen) besonders häufig greifbar wird. So übernimmt z.B. ein Magistrat die *persona civitatis*[9]; an den *pater* und die *mater familias*, an Onkel und Tanten, an Patrone und Klienten richten sich feste Verhaltenserwartungen[10], die

[6] *Egon Flaig*, Politisierte Lebensführung und ästhetische Kultur. Eine semiotische Untersuchung am römischen Adel, in: Historische Anthropologie 1 (1993) 198.
[7] Ebd. 198f.
[8] *Manfred Fuhrmann*, Persona, ein römischer Rollenbegriff, in: *Odo Marquard, Karlheinz Stierle* (Hrsg.), Identität (Poetik und Hermeneutik VIII, München 1979) 83–106.
[9] *Cic.* de off. 1, 124: *est igitur proprium munus magistratus intellegere se gerere personam civitatis...*
[10] Zu den Erwartungen an Verwandte vgl. *Maurizio Bettini*, Familie und Verwandtschaft im antiken Rom (Historische Studien 8, Frankfurt, New York 1992) 13–127, und unten 160f. Die Einwände von *Richard P. Saller*, Roman Kinship: Structure and Sentiment, in: *Beryl Rawson, Paul Weaver* (Hrsg.), The Roman Family in Italy (Canberra 1997) 7–34, beziehen

zwar häufig nicht unmittelbar justitiabel sind; dennoch muß, wer „aus der Rolle fällt", mit erheblichen sozialen Sanktionen rechnen. Man kann die Rolle geradezu als ein Dispositiv der römischen Gesellschaft bezeichnen. Spontane, unberechenbare Aktionen sollen, selbst wenn sie für das Haus oder die *res publica* Vorteile bringen könnten, unterdrückt werden[11]. In diesem Sinne läßt sich die römische Gesellschaft als eine *mask-to-mask-society* begreifen[12], wobei masken- oder rollenhaftes Verhalten nicht auf den politischen oder „öffentlichen" Bereich beschränkt war. Damit soll nicht behauptet werden, daß es affektbestimmtes, spontanes Handeln nicht gegeben habe. Aber das Leitbild war ein anderes, und es fand seinen Niederschlag in historischen Mythen und Erzählungen, in stereotypen Grabinschriften und in vielen einzelnen Verhaltenserwartungen, auf die noch einzugehen sein wird. Dem Leitbild entspricht einer der römischen Zentralwerte, nämlich *fides*, Zuverlässigkeit. Wir stoßen hier auf die kulturellen Grundlagen für den Grad der Objektivierung, den die Römer in ihren politischen und rechtlichen Institutionen erreicht haben. Diese Objektivierung war gerade deshalb so wichtig, weil die wenigen hierarchischen Spitzen der römischen Gesellschaft eine gesellschaftliche Macht auf sich vereinigten, die ihresgleichen suchte.

III. Beziehungskreise für die soziale Kontrolle

1. Die familia

Die römische *familia* umfaßt alle diejenigen, die unter der Gewalt – *patria potestas* – eines *pater familias*, eines Hausvaters, stehen, d. h. alle männlichen Nachkommen (Söhne, Enkel, Urenkel), unverheiratete weibliche Nachkommen, schließlich auch die Ehefrau, wenn sie bei der Heirat in die Gewalt (*manus*) ihres Ehemannes übergegangen war. Dieses Verhältnis gilt, solange ein Hausvater lebt. Nur er ist *sui iuris*, d. h. voll rechtsfähig, während alle übrigen *alieni iuris* sind.

Die *patria potestas* war eine Vollgewalt, deren Charakter besonders deutlich in der Arrogationsformel zum Ausdruck kommt:

Velitis, iubeatis, uti L. Valerius L. Titio tam iure legeque filius siet, quam si ex eo patre matreque natus esset, utique ei vitae necisque in eum potestas siet, uti patri endo filio est. Haec ita, uti dixi, ita vos, Quirites, rogo (Gell. 5,19,9).

Für die hausväterliche Vollgewalt konnte also die *vitae necisque potestas* stehen, das Recht des Hausvaters, Haussöhne (und d. h. immer auch: Enkel und Urenkel) mit dem Tod zu bestrafen. Aber man mißversteht diese Vollgewalt, wenn man sie

sich vor allem auf die Setzung strukturaler Antagonismen. Eine Antwort *Bettinis*, die vor allem die statistische Methode der Quellenauswertung durch *Saller* untersucht, ist in Vorbereitung. In jedem Fall bleibt die von *Bettini* herausgearbeitete Bedeutung des cognatischen Verwandtschaftskreises von den Argumenten *Sallers* unberührt.

[11] Vgl. *Bettini*, (wie Anm. 10) 19f. die Geschichte von T. Manlius Vater und Sohn.

[12] Vgl. zum Begriff *John Comaroff* in diesem Band.

als ein Bündel festgelegter Vollmachten interpretiert[13]. Grundsätzlich konnte der *pater familias* Handlungen Gewaltunterworfener anordnen oder verbieten. Das war jedoch nicht die Lebenspraxis. Die Römer setzten vielmehr voraus, daß ein Einverständnis des Hausvaters vorlag, wenn von dessen Seite kein Widerspruch erfolgte. Ausdrücklichen Befehlen des *pater familias* mußte aber Folge geleistet werden.

Was den Bereich des Vermögens angeht, so war der Hausvater spätestens seit der Entstehung der *heredis institutio*, die Franz Wieacker in die 2. Hälfte des 4. Jahrhunderts datiert[14], Alleinbesitzer des Familienvermögens und konnte es testamentarisch vererben. Es war aber unüblich und gegen gesellschaftliche Erwartungen, Haussöhne ohne schwerwiegende Gründe zu enterben. Gewaltunterworfene konnten grundsätzlich kein Eigentum erwerben. Der Hausvater konnte ihnen aber ein Sondervermögen, ein *peculium*, aussetzen, mit dem sie wirtschaften konnten. Das *peculium* blieb, wie auch jeglicher Zugewinn, Eigentum des Hausvaters[15].

Der ideale Hausvater sollte auch auf die geistige und körperliche Erziehung seiner Söhne Einfluß nehmen; wir wissen nicht, wieweit dieses Ideal erfüllt wurde[16]. Das Verhältnis zwischen Vätern und jugendlichen Söhnen (nicht das zu Knaben im Kindesalter) war eher ein distanziertes, bei dem vielleicht auch Vermeidungsregeln (*avoidances*) wirksam waren: So durften Väter und jugendliche Söhne nicht zusammen baden; in der Gegenwart jugendlicher Söhne durften keine ungebührlichen (wohl auf den sexuellen Bereich bezogenen) Ausdrücke gebraucht werden[17].

Die Gewalt des Hausvaters unterlag keiner gesetzlichen Einschränkung. Bei Verurteilungen zum Tode sollte der *pater familias* allerdings ein *consilium* von Verwandten und Freunden hinzuziehen, was eine gewisse Kontrolle der Öffentlichkeit darstellte. Ferner fiel mit der Einrichtung der zensorischen *cura morum* (wohl gegen Ende des 4. Jahrhunderts) auch hausväterliches Verhalten unter die Aufsicht der Zensoren[18]. Und schließlich konnten Maßnahmen eines Hausvaters auch vom Volk mißbilligt werden, wie in einem der historischen Mythen Roms das Verhalten des L. Manlius Imperiosus, der seinen Sohn wegen eines Sprachfehlers auf das Land verbannt hatte[19].

[13] *Yan Thomas*, Vitae necisque potestas. Le père, la cité, la mort, in: Du châtiment dans la cité (Rom 1984) 499–548. Ein anderes Konzept z. B. bei *Erich Sachers*, potestas patria, in: RE 22,1 (1953) 1046–1175.

[14] *Franz Wieacker*, Hausgenossenschaft und Erbeinsetzung. Über die Anfänge des römischen Testaments (Leipzig 1940).

[15] Zum *peculium: Aaron Kirschenbaum*, Sons, Slaves and Freedmen in Roman Commerce (Jerusalem 1987).

[16] Das Ideal bei *Plutarch*, M. Cato 20.

[17] *Bettini*, (wie Anm. 10) 21–26.

[18] *Ernst Baltrusch*, Regimen morum: die Reglementierung des Privatlebens der Senatoren und Ritter in der römischen Republik und frühen Kaiserzeit (München 1989).

[19] *Livius* 7,4–5, hier besonders 7,5,7.

Das führt schließlich zu der Frage nach der Bedeutung der lebenslangen *patria potestas* in Rom. Nach Richard Saller hätten Männer über 30 aufgrund der normalen Lebenserwartungen in der Antike nur zu einem geringen Prozentsatz unter der Gewalt von Hausvätern gestanden[20]. Selbst wenn diese Rechnung richtig ist, bleibt es erstens bemerkenswert, daß der Status *sui iuris* von vielen erst spät erreicht wurde. Zweitens wurde mit dem Konzept der lebenslangen *patria potestas* die – aus der griechischen Kultur ja bekannte – Konkurrenzsituation zwischen Vätern und erwachsenen Söhnen ausgeschlossen. In jeder *familia* gab es nur ein Haupt, und dessen Rechte fielen sofort nach seinem Tod in einem „perfekt verbundenen System, das keinerlei Zäsur entstehen ließ", dem Sohn zu[21]. Drittens steht die lebenslängliche hausväterliche Gewalt für ein Grundfaktum der römischen Gesellschaft, daß nämlich jeder Römer in soziale Verbände eingegliedert war, die ihrerseits das Gerüst der *res publica* bildeten. Entsprechend zielte auch die *patria potestas* in der Republik nicht primär darauf, häuslichen Ungehorsam einzudämmen, sondern darauf, die soziale und politisch-militärische Einordnung (*disciplina*) der Gewaltunterworfenen zu sichern. Dafür spricht auch die von Yan Thomas hervorgehobene Tatsache, daß in allen mythischen und historischen Beispielen die Verurteilung eines Haussohnes zum Tode oder zur Verbannung nur angewandt wurde bei politisch-militärischen Verfehlungen[22]. Der Hausvater sollte also kein häuslicher Tyrann sein. Seine Gewalt korrespondiert eher der Coercitionsgewalt der römischen Magistrate – ich werde darauf später noch eingehen.

2. Die cognatische Verwandtschaft

Der nächste Beziehungskreis, der für die soziale Kontrolle wichtig war, war die agnatische und cognatische Verwandtschaft. Maurizio Bettini hat gezeigt, daß der Bruder des Vaters (und vielleicht auch die Schwester) die Disziplinierungsfunktionen des Vaters gegenüber dessen Kindern unterstützte, so daß der Vaterbruder (*patruus*) geradezu als *obiurgator* oder *censor* tituliert wurde. Die Kontrolle bezog sich primär auf den Lebensstil (z. B. Verschwendungssucht) und das Sexualverhalten der Neffen und Nichten. Umgekehrt kam den Geschwistern der Mutter eine Entlastungsfunktion zu, ohne die das strikte System der römischen *familia* wohl auch kaum funktioniert hätte. Der Mutterbruder, der *avunculus*, mußte die Nichten und Neffen unterstützen, selbst um den Preis eigener politischer Überzeugungen. Cicero liefert dafür schöne Beispiele[23]. Die Matronen beteten am Fest der Mater Matuta für die Kinder ihrer Schwestern[24]. Wir haben es hier nicht mit af-

[20] *Richard P. Saller*, Patriarchy, Property and Death in the Roman Family (Cambridge 1994).
[21] *Yan Thomas*, Die Teilung der Geschlechter im römischen Recht, in: *Georges Duby, Michelle Perrot* (Hrsg.), Gedichte der Frauen Bd. 1: Antike, hrsg. von *Pauline Schmitt Pantel* (Frankfurt, New York 1995) 105–171, hier 115.
[22] *Thomas*, (wie Anm. 13).
[23] Zu den Verhaltensmustern der Verwandten *Bettini*, (wie Anm. 10) 26–129.
[24] *Marie-Luise Deißmann*, Aufgaben, Rollen und Räume von Mann und Frau im antiken

fektivem Verhalten zu tun, sondern mit festgelegten Rollen: Derselbe Mann mußte ja gegenüber den Kindern seines Bruders als *patruus*, gegenüber denen seiner Schwester als *avunculus* fungieren.

Darüber hinaus hat das römische Verwandtschaftssystem aber noch eine weitere, auch aus der Ethnologie gut bekannte Bedeutung. Die Römer hatten die ausgedehntesten Heiratsverbote der antiken Welt. Bis zum 2. Punischen Krieg (also bis etwa 220) gab es gemäß einem *vetus mos* ein Heiratsverbot bis zum sechsten Grad der cognatischen Verwandtschaft[25]. Das Gebot, über den engeren Verwandtenkreis hinaus zu heiraten, dient in der Regel dazu, gesellschaftliche Gruppen durch Verwandtschaftsbande enger zusammenzuschließen. Diese Interpretation diskutiert für die römischen Heiratsregeln auch Plutarch (*Quaestiones Romanae* 108), und nach Augustinus (*de civitate dei* 15,16) dient die Heirat entfernter Verwandter der Stärkung der *vita socialis*. Insofern soziale Kontrolle auch auf die Sicherung der Integration einer Gesellschaft bezogen ist, gehört also das Heiratssystem der römischen Republik zu dieser Thematik. Die Integrationsfunktion der cognatischen Verwandtschaft kommt sinnfällig zum Ausdruck im Verwandtenkuß, den jede römische Frau ihren männlichen Verwandten bis zum sechsten Grad (also genau innerhalb des Kreises, der durch das Heiratsverbot charakterisiert war) immer leisten mußte, wenn sie sie an einem Tag zum ersten Mal sah[26]. Cognatische Verwandte mußten zu einem *consilium* herangezogen werden, in dem über die Bestrafung einer angeheirateten Frau beraten wurde[27]. Ferner sollten diese Verwandten am Fest der *Cara Cognatio*, das am 20. Februar gefeiert wurde, gemeinsam speisen und dabei ihre Streitigkeiten beilegen[28]. Schließlich kommt die Bedeutung der cognatischen Verwandtschaft auch darin zum Ausdruck, daß der Praetor, als er im 2./1. Jahrhundert die Intestatserbfolge nach den Zwölftafeln ergänzte, auch die cognatischen Verwandten bis zum 6./7. Grad zur Erbfolge berief[29].

3. Die Klientel

Ein letzter Beziehungskreis, der über den Bereich der *familia* und der Verwandtschaft hinausging, war die Klientel. Einfache Plebejer, Ritter und auch niedrigstehende Senatoren konnten sich in die *fides* hochstehender Senatoren (*nobiles*) begeben, was gegenseitige Verpflichtungen nach sich zog. Durch die Klientel wurde idealiter die ganze römische Gesellschaft in das Verwandtschaftssystem der füh-

Rom, in: *Jochen Martin, Renate Zoepffel* (Hrsg.), Aufgaben, Rollen und Räume von Frau und Mann 2 (Veröff. des Inst. für Hist. Anthropologie 5/2, Freiburg, München 1989) 524.

[25] *Bettini*, (wie Anm. 10) 153–178. Dort auch eine Diskussion der folgenden Textstellen von Plutarch und Augustinus.

[26] Ebd. 163.

[27] Vgl. *Gunter Wesener*, iudicium domesticum, in: RE Suppl. IX (1962) 373 f.

[28] *Val. Max.* 2,1,8.

[29] *Max Kaser*, Das römische Privatrecht, 1. Abschnitt (Handbuch der Altertumswissenschaft 10,3,3,1, München ²1971) 697–701.

renden Familien eingegliedert. Gellius berichtet von einer Diskussion *de gradu et ordine officiorum* (V,13; ein für die Römer bezeichnendes Thema). Dabei sei die Rangfolge der Verpflichtungen so festgelegt worden, daß an 1. Stelle die Eltern, an 2. die Mündel, an 3. die Klienten, an 4. die Gastfreunde und dann erst die *cognati* und *adfines* standen. Zum Beleg führt Gellius eine Rede Catos an, der darin ausführte, daß man zwar gegen *cognati* für Klienten, nie aber gegen einen Klienten zeuge (was auch deshalb ausgeschlossen war, weil der Patron den Klienten vor Gericht vertreten mußte). Der Name des Vaters stehe an erster, der des Patrons an zweiter Stelle.

Allen diesen Regelungen liegt, wie Gellius mehrfach ausdrücklich bemerkt, der *mos* zugrunde. Aber schon in den Zwölftafeln gibt es ein Gesetz zur Klientel: *Patronus si clienti fraudem fecerit, sacer esto* (8,21). Das ganze Zwölftafelwerk wurde dem Patriziat von der Plebs abgetrotzt. In diesem Rahmen nimmt aber das Gesetz über den Patron noch eine Sonderstellung insofern ein, als es meines Wissens das erste – und für lange Zeit das einzige – ist, in dem eine soziale Nahbeziehung – die zwischen Patron und Klient – gesetzlich geschützt und der Machtmißbrauch von seiten des Patrons mit der härtesten Strafe, der Sakration, belegt wird. Ich kenne keinen Fall der Anwendung dieses Gesetzes, aber es hatte zunächst wohl eine starke demonstrative Bedeutung: Angesichts der Auseinandersetzungen zwischen Patriziern und Plebejern lag es auch im eigenen Interesse der Patrizier, ihre Klienten durch die Betonung ihrer *fides* an sich zu binden.

Wenn die Verletzung der *fides* durch den Patron mit Sakration geahndet werden soll, wenn weiter die Beziehung zwischen Patron und Klienten vor der zwischen cognatischen Verwandten rangiert, dann ist das ein Indiz dafür, daß diese Beziehung ein zentrales Element der römischen Sozialordnung ist[30]. Man kann das noch weiter zuspitzen: Die Zuverlässigkeit alles dessen, was mit den Erwartungen an einen Patron verbunden ist, ist eine zentrale Bedingung dafür, daß die Herrschaftsposition der Aristokratie aufrechterhalten werden kann. Anders formuliert: Der Gehorsam der römischen Unterschichten gegenüber der Aristokratie hat ein entscheidendes Fundament darin, daß diese Aristokratie gegenüber ihren Klienten ganz bestimmte Verpflichtungen erfüllt[31]. Die entsprechenden Tätigkeiten füllten einen großen Teil der Zeit römischer Adliger aus[32].

Die Gegenleistungen der Klienten bestanden nicht nur allgemein im Gehorsam und in affektiver Nähe gegenüber den Patronen; sie ehrten die Patrone durch Teilnahme an Geburtstagsfeiern, Morgenempfängen, Ausgängen. Vor allem aber stimmten sie in den Volksversammlungen im Sinne ihres Patrons, was besonders bei Wahlen wichtig war. Da bis 139 alle Abstimmungen öffentlich waren, konnte das Abstimmungsverhalten auch kontrolliert werden. Die sukzessive Einführung der geheimen Abstimmung durch Tabellargesetze erklärt Martin Jehne mit dem

[30] Vgl. *Jochen Bleicken*, Die Verfassung der römischen Republik (Paderborn [4]1985) 22–24. *Christian Meier*, Res publica amissa (Neuauflage Frankfurt 1980) 28.
[31] Das wird besonders dicht ausgeführt von *Flaig*, (wie Anm. 6).
[32] Ebd. 211. – *Meier*, (wie Anm. 30) 59 und öfter.

Versuch, das Patronagesystem zu retten. Seit dem 2. Jahrhundert sei es immer häufiger zu Überlagerungen von Bindungen gekommen, d. h. Klienten seien Bindungen an mehrere Patrone eingegangen. Bei Abstimmungen habe das zu Loyalitätskonflikten führen können, die zwar durch die geheime Abstimmung „nicht gelöst, aber wenigstens verdeckt" worden seien[33].

Jedenfalls überlebte das Bindungswesen (und verwandte Formen wie Gastfreundschaft oder Nachbarschaft) auch im 2. und 1. Jahrhundert. Schon früh war es auch auf Roms Verhältnis zu auswärtigen Städten, Stämmen und Staaten übertragen worden. Es handelte sich bei der römischen Klientel um ein regelrechtes „Patronagesystem"[34], das „alle Bereiche des gesellschaftlichen und politischen Lebens durchdringt und daher auch das Wertesystem gänzlich beherrscht"[35]. Von einer „losen Patronage", die es in vielen Gesellschaften gibt, unterscheidet es sich dadurch, daß die Klientel organisiert ist und die Adligen ein „formalisiertes Verpflichtungsverhältnis" eingehen[36], das zur Disziplinierung nicht nur der Klienten, sondern auch der Herrschaftsschicht beiträgt.

4. Mann und Frau

In der römischen Gesellschaft konnte man nur, wie Yan Thomas betont hat, Mann oder Frau sein, da alle Rechte und Pflichten nur für diese beiden formuliert waren. Bei Hermaphroditen (Androgynen) wurde nach Überprüfung der Geschlechtsmerkmale entschieden, ob jemand mehr Mann oder mehr Frau war, d. h. das römische Recht behandelte das Mann- oder Frausein als eine „verpflichtende Norm"[37]. Auch hier waren die Rollen also klar verteilt.

Männer im Vollsinn sind *patres familias*, die durch ihre Machtposition gekennzeichnet sind[38]. Durch die *coniunctio maris et feminae* sichern Frauen und Männer zwar die physische Reproduktion der Gesellschaft, aber von der Übertragung der häuslichen Machtposition waren Frauen ausgeschlossen. *Pater familias* wurde man, indem man beim Tod seines *pater* dessen Nachfolge antrat; der Status war unabhängig davon, ob man Kinder hatte oder nicht. Diese rechtliche Verbindung zwischen *pater familias* und dessen Gewaltnachfolge ist für die Römer so wichtig, daß im Falle „der nach dem Tod des Vaters geborenen Kinder (*postumi*)" die Juri-

[33] *Martin Jehne*, Geheime Abstimmung und Bindungswesen in der Römischen Republik, in: HZ 257 (1993) 593–613, das Zitat S. 613. Jehne setzt sich ausführlich mit anderen Deutungsversuchen auseinander. – Zur Überlagerung von Bindungen anschaulich *Meier*, (wie Anm. 30) 7–23.

[34] *Terry Johnson, Christopher Dandeker*, Patronage: Relation and System, in: *Andrew Wallace-Hadrill* (Hrsg.), Patronage in Roman Society (London, New York 1989) 219–242.

[35] *Jehne*, (wie Anm. 33) 596.

[36] *Flaig*, (wie Anm. 6) 210 f.

[37] *Thomas*, (wie Anm. 21) 106–108.

[38] Vgl. dazu auch *Thomas Späth*, Männlichkeit und Weiblichkeit bei Tacitus. Zur Konstruktion der Geschlechter in der römischen Kaiserzeit (Frankfurt, New York 1994) zusammenfassend 306–311. Männer, die unter der *patria potestas* stehen, bezeichnet Späth als „virtuelle" oder „werdende Männer", 317–319.

sten „die Herrschaft des verstorbenen Ehemannes bis in den Leib der schwangeren Frau hinein ausdehnten“[39].

Kinder folgen immer dem Mann. Frauen besitzen keine *patria potestas* und haben deshalb auch keine Hauserben (*sui*); in der Intestatserbfolge werden ihre Kinder nicht berücksichtigt. Deshalb können Juristen von Frauen sagen, daß sie „der Anfang und das Ende der eigenen Familie“ sind, weil sie eben die Familiengewalt nicht übertragen können[40].

Generell sieht Yan Thomas den rechtlich konstruierten Unterschied zwischen römischen Männern und Frauen in der Auffassung begründet, daß Frauen zwar für sich handlungsfähig sind, nicht aber für andere. So wie Frauen die Familiengewalt nicht haben und nicht übertragen können (was auch Adoptionen durch Frauen ausschließt), sind sie auch nicht zu politischer Tätigkeit zugelassen; sie können nicht Patroninnen vor Gericht sein, keine Vormundschaft übernehmen, nicht als Bürgen oder Vermögensverwalterinnen agieren[41].

Haben Frauen in der Herrschaftsvermittlung keinen Platz, so ist ihre Rolle als Trägerinnen von Vermögen und in deren Weitergabe – wenn auch nicht an ihre Kinder – nicht gering einzuschätzen. In der Intestatserbfolge erben Frauen wie Männer, sie können auch Legate und Geschenke erhalten. Begeben sie sich bei einer Heirat nicht in die *manus* des Ehemannes oder heiraten sie nicht, so können sie, wenn ihr *pater familias* nicht mehr lebt, in den Oberschichten über ein großes Vermögen verfügen und damit wirtschaften. Für bestimmte Vermögenstransaktionen bedürfen sie zwar der *auctoritas* eines (agnatischen) Vormunds[42], aber das gilt nicht für alle das Vermögen betreffende Handlungen. Insofern das Wirtschaften auf das Haus bezogen war, verstieß es nicht gegen die Normen weiblichen Handelns. Wenn sich aber in einer manusfreien Ehe das Verhältnis zwischen dem Ehemann und einer reichen Ehefrau geradezu umkehrte, war das Anlaß für heftige Kritik[43].

Einer strikten Kontrolle, die im wesentlichen durch den Ehemann oder den *pater familias* ausgeübt wurde, blieben Frauen im Hinblick auf Ehebruch und *stuprum* (sexuelle Beziehungen zwischen einer unverheirateten Frau und einem Mann) unterworfen. Bei Vergewaltigung konnten Männer wahrscheinlich schon in der Republik gerichtlich belangt werden – freilich nicht durch die betroffene Frau. Bei Ehebruch und *stuprum* wurde das erst durch die Gesetze des Augustus ermöglicht[44].

[39] *Thomas*, (wie Anm. 21) 108–118, Zitat 116.
[40] Ebd. 120–125, Zitat 125.
[41] Ebd. 163–168.
[42] *Kaser*, (wie Anm. 29) 277 f.
[43] Vgl. *M. Porcius Cato* zur lex Voconia von 169 bei *Gell.* 17,6,1: *principio vobis mulier magnam dotem adtulit, tum magnam pecuniam recipit, quam in viri potestatem non committit, eam pecuniam viro mutuam dat; postea, ubi irata facta est, servum recepticium sectari atque flagitare virum iubet.* Martial 8,12: *Vxorem quare locupletem ducere nolim quaeritis? Vxori nubere nolo meae, inferior matrona suo sit, Prisce, marito: non aliter fiunt femina virque pares.*
[44] Vgl. *Jane F. Gardner*, Women in Roman Law & Society (London, Sydney 1986) 117–136.

Trotz ihres Ausschlusses von der Herrschaft konnten Frauen erheblichen politischen Einfluß gewinnen. Generell wird in der Forschung die starke persönliche (im Gegensatz zu einer programmatischen) Komponente der Politik hervorgehoben; entsprechend waren Häuser auch Zentren der Politik. So wurden Allianzen über Heiraten geschlossen oder bekräftigt[45]. Dabei spielten Frauen als Scharnierstellen zwischen zwei agnatischen Gruppen eine wichtige Rolle[46]. Bei einer Heirat brachten sie die Ahnen ihrer *gens* in das neue Haus ein, und diese konnten berühmter sein als die Ahnen des Mannes[47]. Anders als in Griechenland waren Frauen von den Treffen der Männer in den Häusern nicht ausgeschlossen. Sie konnten Vertraute und Ratgeberinnen ihrer Männer sein, aber dies alles durchbrach nicht grundsätzlich die Rolle, die Frauen zugeschrieben wurde und die Thomas Späth in einer glücklichen Formulierung als ein „Handeln-in-bezug-auf" charakterisiert hat[48]. Den Bezugsrahmen dafür bildete die *domus* im weiteren Sinn, d.h. unter Einschluß der Verwandtschaft. Es gibt Ausnahmen von dieser Regel[49], aber sie sind selten und werden auch als Regelverstoß gebrandmarkt.

Die *mater familias* bzw. die *matrona* hatte, wenn sie ihre Rollen erfüllte, Anspruch auf hohen sozialen Respekt. Und im Symbolhaushalt Roms waren es Frauen, die an zentraler Stelle den Männern eine Grundbedingung ihres Handelns vor Augen hielten. Das Herdfeuer der Vesta symbolisierte die *res publica*. Für den Kultdienst wurden junge Mädchen ausgewählt, deren beide Eltern noch leben mußten. Mit dem Antritt des Kultdienstes schieden sie aber aus der *patria potestas* aus – eine singuläre Erscheinung in Rom. Sie durften während ihrer Funktion als Vestalinnen – 30 Jahre – nicht heiraten und keinen sexuellen Kontakt mit Männern haben. Im Vestatempel übten sie häusliche Tätigkeiten aus, wie sie in jedem Haus durchgeführt wurden[50], aber sie übten sie repräsentativ für alle Häuser, d.h. für die *res publica*, aus, und die Voraussetzung dafür war, daß sie von jeder Bindung an ein Haus, an Ehegatten, an Verwandtschaft frei waren. Deutlicher konnte der Vorrang der *res publica* vor den Häusern nicht herausgestellt werden: Die adligen Hausväter herrschten zwar in der *res publica*, aber sie waren nicht die *res publica*. Wie bei der Verurteilung eines Haussohnes zum Tode oder der Hintanstellung von cognatischen Beziehungen zugunsten der Klienten sollten sie häusliche Belange zurückstellen, wenn es um die *res publica* ging. Die Vestalinnen unterlagen

[45] Vgl. *Jean Andreau, Hinnerk Bruhns* (Hrsg.), Parenté et stratégies familiales dans l'Antiquité romaine (Collection de l'École française de Rome, Rom 1990).
[46] Vgl. *Späth,* (wie Anm. 38) 303–339 passim.
[47] Zu den genealogischen Stemmata allgemein *Bettini,* (wie Anm. 10) 137–145. – Zur Übertragung von Ansehen *Späth,* (wie Anm. 38) 315 und öfter.
[48] Ebd. 313–317, Zitat 317.
[49] Vgl. *Maria H. Dettenhofer* (Hrsg.), Reine Männersache? Frauen in Männerdomänen der antiken Welt (Köln, Weimar, Wien 1994). Manche der in dem Buch dargestellten Handlungen – so die von Cornelia, Mutter der Gracchen, oder Servilia, Mutter des Brutus, ordnen sich in das von Späth gezeichnete Schema insofern ein, als diese Mütter politisch die Karrieren (oder sogar das Leben) ihrer Söhne zu fördern bzw. zu sichern suchten.
[50] *Georg Wissowa*, Religion und Kultus der Römer (Handbuch der Altertumswissenschaft 4,5,1, München ²1912, Nachdruck 1971) 158–160.

der striktesten Kontrolle (durch den *pontifex maximus*), die es in Rom für Frauen gab, aber sie repräsentierten auch die höchsten Werte, die die Römer für sich in Anspruch nahmen.

IV. Berührungszonen zwischen hausväterlicher und magistratischer Gewalt

Fast alle Magistrate in Rom hatte eine Zwangsgewalt, die *coercitio*, aufgrund derer sie ihren Befehlen gegenüber Bürgern Geltung verschaffen konnten. Diese Zwangsgewalt ähnelt in ihrer Unbestimmtheit der *patria potestas*, und bei manchen Exempeln der römischen historischen Literatur wissen wir nicht, ob ein Hausvater seinen Haussohn oder ein Konsul als Militärbefehlshaber seinen ungehorsamen Untergebenen zum Tod verurteilte. Der allgemeine Begriff für die Gewalt der Magistrate – *potestas* – ist der gleiche wie der für die hausväterliche Gewalt[51].

Bei Akten mit Rechtsfolgen müssen die Hausväter die gleiche Befehlssprache verwenden wie die Magistrate, z.B. bei der Erbeinsetzung: *Titius heres esto* oder *Titium heredem esse iubeo* (Gaius 2,177). Ein weiteres Beispiel: Als Decimus Iunius Silanus im Jahre 139 wegen Amtsmißbrauchs während seiner Praetur in Makedonien angeklagt wurde, erreichte sein Vater Torquatus vom Senat, daß er selber die Untersuchung durchführen durfte. Er gelangte zu einem Schuldspruch. Sein Urteil lautete: *et re publica eum et domo mea indignum iudico protinusque e conspectu meo abire iubeo* (Val. Max. 5,8,3). Der Fall ist nicht nur deshalb aufschlußreich, weil es für das Vergehen, dessen Silanus angeklagt wurde, seit 149 den ersten ständigen Geschworenengerichtshof gab; interessant ist weiter, daß Torquatus nicht nur für sich und seine *domus*, sondern auch für die *res publica* spricht, wie denn generell die Formel *pietas in patrem patriamque* häufig benutzt wird (z.B. Liv. 7,10,4). Auch *patres* handeln wie Magistrate im Namen der *res publica*. Man könnte den *pater familias* als einen Magistrat verstehen, dessen Amtsbereich (*provincia*) die *familia* ist. Für den adligen *pater familias* gibt es keine Unterscheidung zwischen „öffentlich" und „privat". Er repräsentiert immer die *res publica*, auch im eigenen Haus. Im Unterschied zu den Magistraten, welche die *persona rei publicae* übernehmen, bezieht sich seine Gewalt nicht auf alle Bürger, sondern nur auf die seiner Hausgewalt Unterworfenen. Ich erörtere hier nicht das Problem, was geschah, wenn die hausväterliche Gewalt in Konflikt geriet mit der magistratischen Gewalt eines Haussohnes. Auf der symbolischen Ebene war der Vorrang der magistratischen Gewalt klar: Ein Hausvater, der zu Pferd seinem Haussohn, der Konsul war, begegnete, mußte vom Pferd absteigen und dem Kon-

[51] *Jochen Bleicken*, Zum Begriff der römischen Amtsgewalt: auspicium – potestas – imperium, in: Nachr. Akad. Göttingen, Phil.-hist. Kl. (1981) 255–300, hat ausgeführt, daß der Begriff *potestas* (anders als z.B. *auspicium* oder *imperium*) mit keiner konkreten Gewalt verbunden sei.

sul seine Reverenz erweisen (Val. Max. 2,2,4). Aber offensichtlich konnten sich die Römer vorstellen, daß faktisch die *patria potestas* die magistratische Gewalt brach (Val. Max. 5,4,5). Ich halte es aber für wahrscheinlich, daß das Verhältnis zwischen beiden Gewalten nie systematisch reflektiert wurde.

Angesichts des geringen Umfangs der Magistratur in Rom und des Fehlens einer Polizei im organisatorischen Sinn – das Tötungsrecht im Rahmen der magistratischen *coercitio* wurde seit 300 durch Provokationsgesetze eingeschränkt – ist eine umfassende staatliche Ordnungssicherung schwer vorstellbar[52]. Und ohne Einübung der Disziplin und Gehorsamsbereitschaft durch die dargestellten Gewalt- und Beziehungsverhältnisse ist auch schwer zu verstehen, weshalb sich ein Magistrat in der Regel gegenüber einer Gruppe von Bürgern durchsetzen konnte, obwohl ihm kaum Machtmittel zur Verfügung standen.

V. Die Disziplinierung der Aristokratie

Die adligen *patres* vereinten eine in der Republik noch ständig zunehmende gesellschaftliche Macht auf sich. Da auch der römische wie jeder Adel von der Konkurrenz lebte, konnte diese Macht leicht aus dem Ruder laufen. In diesem Sinn ist das Problem der Kontrolle der adligen *patres* ein inneraristokratisches und stellt sich deutlich schon mit dem Ende des Königtums[53]. Angesichts der gesellschaftlichen Machtstrukturen war es keineswegs selbstverständlich, daß die Organisation des Patriziats zu einer homogenen politischen Elite gelingen würde. Entscheidend für das Gelingen war neben äußeren kriegerischen Anforderungen – zunächst scheinen auch noch Raub- und Stellvertreterkriege von adligen *gentes* geführt worden zu sein[54] – die Tatsache, daß dem patrizischen Adel eine sich organisierende *plebs* gegenübertrat – eine Situation, die in der antiken Geschichte keine Parallelen hat. Man kann die folgenden Ständekämpfe unter dem Gesichtspunkt eines politisch-sozialen Konflikts betrachten. Für unseren Zusammenhang ist wichtiger, daß die organisierte *plebs* dem Adel nicht nur die Beteiligung an der Herrschaft abtrotzte, sondern ihn auch dazu zwang, sich seinerseits strikter zu organisieren und die Herrschaftsausübung zu normieren. Diese Normierung hatte einen weiteren Grund darin, daß nach der Zulassung der führenden plebeischen Familien zu den Ämtern, insbesondere zum Konsulat, die Integration der Aufsteiger gesichert werden mußte. Die Organisation, die so entstand, erklärt sich

[52] Vgl. dazu *Nippel*, (wie Anm. 3).

[53] Vgl. *Bernhard Linke*, Von der Verwandtschaft zum Staat. Die Entstehung politischer Organisationsformen in der frührömischen Geschichte (Stuttgart 1995) mit weiterer Literatur. Ich teile nicht alle Vorstellungen Linkes über die generelle gesellschaftliche Entwicklung vor 500, stimme aber mit ihm darin überein, daß sich die patrizische politische Organisation erst allmählich herausgebildet hat.

[54] Dazu die differenzierte Analyse von *Dieter Timpe*, Das Kriegsmonopol des römischen Staates, in: *Walter Eder* (Hrsg.), Staat und Staatlichkeit in der frühen römischen Republik (Stuttgart 1990) 368–387.

also teils aus der Notwendigkeit für die adligen *patres*, sich selber als Gesamtheit handlungsfähig zu machen, teils aus dem Druck von außen und innen. Das Ergebnis war eine in der Antike beispiellose Festlegung der politischen Elite auf Ziele der *res publica*[55].

Wir wissen im einzelnen nicht genau, wann und wie die im folgenden zu nennenden Regeln und Ordnungen geschaffen wurden. Nur in den seltensten Fällen ist eine gesetzliche Grundlage bekannt. Manche Gesetze wurden in der spätrepublikanischen Annalistik fingiert. Jochen Bleicken rechnet die nicht auf Volksgesetz gründenden Regeln zum *ius publicum* Roms; ihr Geltungsanspruch sei eine als „immer schon vorhanden gedachte, die Ordnungsprinzipien der *res publica* berührende Rechtspraxis"[56]. Ich führe hier einige für unseren Zusammenhang wichtige Regeln nur kurz an – sie sind gut bekannt[57]:

– Die Annuität der römischen Magistratur, durch die diese vom lebenslangen Königtum abgesetzt wurde.

– Die Kollegialität der Magistrate, spätestens 367/366 für den Konsulat eingeführt; zwar war jeder Magistrat auch für sich allein handlungsfähig, aber den Kollegen stand ein Vetorecht gegen Handlungen des (der) Kollegen zu. Damit wurde ein Zwang zur vorherigen Abstimmung mit den Kollegen geschaffen, der noch durch das Recht der höheren Gewalt, Handlungen der niederen zu verbieten, verstärkt wurde.

– Das Recht der wahlleitenden Magistrate (für die beiden Ämter mit Imperium waren das die Konsuln), Bewerbungen um eine Magistratur anzunehmen und die Gewählten zu verkünden; erst dadurch wurde eine Wahl rechtskräftig.

– Das in den Ständekämpfen entstandene *ius intercessionis* der Volkstribune, die Handlungen aller anderen Magistrate verbieten konnten.

Zwei weitere Regelungen betrafen das Verhältnis des Senats zu Komitialbeschlüssen und damit indirekt auch die Magistratur:

– Die *auctoritas patrum*, im engeren Sinn eine „Willensäußerung des patrizischen Senats zu Gesetzen und Wahlen" in den Komitien, die bis 339 bzw. 292/19 nach, später vor den Komitialbeschlüssen erfolgte. Nach Jochen Bleicken bezog sie sich auf das von den Patriziern allein für sich reklamierte *ius auspicii*, ohne das die Komitien nicht einberufen werden konnten, und war in den Ständekämpfen ein Kampfmittel gegen in die Magistratur aufsteigende Plebejer. Nach dem Ausgleich der Stände wurde der Mangel der Auspizien bei den Plebejern dadurch ausgeglichen, daß die *auctoritas patrum* grundsätzlich vor den Komitialbeschlüssen

[55] Zur Ausbildung der Nobilität als eines Leistungsadels *Karl-Joachim Hölkeskamp*, Die Entstehung der Nobilität (Stuttgart 1987). – Eine Auseinandersetzung mit neuerer Literatur bei *dems.*, in: Gnomon 66 (1994) 332–341.

[56] *Jochen Bleicken*, Lex publica (Berlin, New York 1975) 347–354, Zitat 354.

[57] Vgl. z. B. *Bleicken*, (wie Anm. 30) 74–83, 87. – *Ernst Mayer*, Römischer Staat und Staatsgedanke (Zürich, Stuttgart ^{3}1964) 106–155. – Zur Magistratur ausführlich *Wolfgang Kunkel, Roland Wittmann*, Staatsordnung und Staatspraxis der römischen Republik, 2. Abschnitt: Die Magistratur (Handbuch der Altertumswissenschaft 10,3,2,2, München 1995).

erfolgte[58]. Das hinderte aber nicht daran, daß nun die Obnuntiation, d.h. die Ankündigung ungünstiger Vorzeichen (z.B. durch einen Kollegen des Magistrats, der eine Volksversammlung abhalten wollte), zu einem Mittel in der politischen Auseinandersetzung wurde[59].

– Die *auctoritas senatus* im weiteren Sinn betraf den Einfluß des Senats als ganzen auf die Gesetzgebung der Republik. Der Senat konnte nicht selber als Gesetzgeber agieren, sondern bedurfte dafür der Magistrate. Viele Gesetze wurden *ex auctoritate senatus* von Magistraten (besonders Volkstribunen) beantragt. Bei den übrigen wurde erwartet, daß entweder die Magistrate, die ja selber Mitglieder der Führungsschicht waren, um deren Meinung wußten oder formell vor einer Abstimmung in den Volksversammlungen den Senat befragten. Insofern wurde die *auctoritas senatus* zum entscheidenden Mittel, um die Magistrate an die Mehrheitsmeinung des Senats zu binden[60]. Gegen Magistrate, die dieser Mehrheitsmeinung zuwiderhandelten, konnten andere Magistrate für eine Interzession oder eine Obnuntiation gewonnen werden; ferner konnten Magistrate nach ihrer Amtszeit angeklagt und damit ihr politisches Ansehen und ihre Karriere zumindest schwer beeinträchtigt werden.

Die vielen Bindungen, denen magistratisches Handeln in Rom ausgesetzt war, sind geradezu ein Charakteristikum der römischen Herrschaftsordnung, die wiederum in der Sozialordnung gründete. In der Herrschaftsordnung wird insbesondere die inneraristokratische soziale Kontrolle faßbar. Der Senat nahm für sich das Recht in Anspruch, die Sozialordnung zu interpretieren.

Über die *auctoritas patrum* und die *auctoritas senatus* hinaus war der Senat insofern eine Zentralinstitution sozialer Kontrolle, als er das wichtigste Gremium politischer Kommunikation war und diese Kommunikation entsprechend den Regeln der politisch-sozialen Rangordnung ablief (vgl. oben). Diese strikten Regeln beschränkten die Konkurrenz innerhalb einer Senatssitzung; da den ersten Rednern besonderes Gewicht zukam, wurde ein Druck auf die übrigen ausgeübt, die sich nicht selten der Meinung eines der Vorredner anschlossen. Die Geschäftsordnung zielte also auf den Konsens des Gremiums.

Ein der römischen Republik eigentümliches Mittel sozialer Kontrolle war schließlich die Zensur. Ende des 4. Jahrhunderts wurde ihr die *lectio senatus* übertragen. Verbunden war diese mit einer umfassenden Sittenaufsicht (*cura morum*), denn die Zensoren konnten auch – mit Begründung – Senatoren aus dem Senat ausschließen. Diese Aufsicht bezog sich keineswegs nur auf das im engeren Sinn politische Verhalten, sondern betraf die gesamte Lebensführung wie z.B. das Verhalten in der Ehe, den Gebrauch der *patria potestas*, den Aufwand bei Gastmählern etc. Jeder Adlige war in ein striktes Rollenverhalten eingezwängt, das sein Verhalten jederzeit erwartbar machen sollte[61].

[58] *Bleicken*, (wie Anm. 56) 296–304, Zitat 296.
[59] Ebd. 453–458.
[60] Ebd. 304–314.
[61] Vgl. *Baltrusch*, (wie Anm. 18).

Die zensorische Lösung der aristokratischen Selbstkontrolle hatte viele Vorteile: Man brauchte keine Gesetze zu machen, die es ermöglicht hätten, auch das Volk – z. B. über den tribunizischen Kriminalprozeß – in aristokratische Auseinandersetzungen hineinzuziehen. Die Zensoren konnten flexibel reagieren, sie waren in die aristokratische Kommunikation eingebunden. Da sie in der Regel die Beamtenlaufbahn bis zum Konsulat durchlaufen hatten, genossen sie auch das Vertrauen der Führungsschicht. Zudem bot der Zwang, daß beide Zensoren einer Rüge zustimmen mußten, einen Schutz gegen Willkür.

Um so erstaunlicher ist es, daß seit dem 2. Punischen Krieg zunehmend Materien durch Volksgesetz geregelt wurden, die auch durch die zensorische *nota* hätten geahndet werden können. Dazu gehört insbesondere eine lange Reihe von Sumptuargesetzen, die den Kleiderluxus, den Aufwand bei Gastmählern, die Zahl der Einzuladenden etc. begrenzten. Eine ebenso große Zahl von Gesetzen wurde gegen den *ambitus*, d. h. gegen unerlaubte Praktiken bei der Ämterbewerbung, beschlossen. Beide Gruppen gehören wohl insofern zusammen, als z. B. über den Aufwand bei Gastmählern auch Wahlwerbung betrieben werden konnte. Das „Geschenkenehmen" für Tätigkeiten als Patron wurde untersagt. 218 wurde den Senatoren der Besitz größerer Schiffe verboten, was sie von großen überseeischen Handelsgeschäften ausschloß. Auf einer anderen Ebene liegen Gesetze, welche die Ämterlaufbahn regelten, den ersten ständigen Geschworenengerichtshof in Rom für das *crimen repetundarum* schufen, schließlich die schon erwähnten Tabellargesetze, durch die in den Volksversammlungen die geheime Abstimmung zu verschiedenen Materien eingeführt wurde. Diese Gesetzgebungstätigkeit setzte sich auch in der späteren Republik verstärkt fort. Jochen Bleicken spricht in diesem Zusammenhang vom „normativen Gesetz"[62].

Die meisten der genannten Gesetze – Ausnahmen sind z. B. das Gesetz von 218 und die Tabellargesetze – wurden *ex auctoritate senatus* vor die Volksversammlung gebracht. Offensichtlich wurden also herkömmliche Spielregeln im sozialen und politischen Leben nicht mehr genügend beachtet bzw. reichten die üblichen Kontrollmechanismen nicht mehr aus. Besonders die Ausdehnung des Reiches, der Ruhm und die Popularität, die große Militärs infolge der Veränderung des Charakters der Kriege gewinnen konnten, die quasi-monarchische Stellung der Statthalter in den Provinzen und die Möglichkeiten der Bereicherung, die Statthalterschaften und Heereskommandos boten und die zu einer wirtschaftlichen Differenzierung innerhalb der Eliten führten, gefährdeten den Zusammenhalt und die Chancengleichheit innerhalb der Herrschaftsschicht und verstärkten die Konkurrenz um die Praetur und den Konsulat. Die Schaffung neuer Praetorenstellen für die Verwaltung der nach dem 1. und dem 2. Punischen Krieg eingerichteten 4 Provinzen ließ den Weg von der Praetur zum Konsulat schwieriger werden.

In dieser Situation nahm die Aristokratie selber das Volksgesetz gleichsam zur Hilfe, um ihre eigenen Verhaltenscodices schärfer zu formulieren und justitiabel

[62] *Bleicken*, (wie Anm. 56) 137–177. Eine knappe, überzeugende Darstellung schon bei *Alfred Heuß*, Römische Geschichte (Braunschweig [6]1998) 135–137.

zu machen. Beim Gesetz über die Handelsschiffe von 218, gegen das die Senatsmehrheit opponierte, handelte es sich wohl darum, daß Aufsteigergruppen versuchten, die Führungsschicht auf traditionelle landwirtschaftliche Formen des Gelderwerbs festzulegen[63], also auch zu verhindern, daß die politische Elite die neuen wirtschaftlichen Möglichkeiten, die das Weltreich bot, für sich monopolisierte.

Die *ex auctoritate senatus* beantragten Gesetze sind auf den ersten Blick Selbstreformen der Führungsschicht. Aber die Sumptuar- und die *ambitus*-Gesetze mußten häufig wiederholt bzw. modifiziert werden. Der Gedanke liegt nahe, daß viele Aristokraten ihnen nur halbherzig zustimmten. Ich neige deshalb dazu, diese Gesetze als Konzessionen insbesondere der Nobiles an die übrigen Senatsmitglieder zu verstehen und als Demonstrationen dafür, daß die politische Elite die Chancengleichheit innerhalb des Adels respektierte. Zu solchen Demonstrationen eignete sich das Volksgesetz besser als etwa zensorische Maßnahmen, die – wenn überhaupt – immer nur Einzelfälle betrafen. Gegen eine solche Interpretation spricht nicht, daß seit 200 faktisch nur wenigen der Aufstieg in die Nobilität gelang. Um so wichtiger wurden demonstrative Willensbezeugungen von seiten der Nobilität, um den Zusammenhalt der Senatsaristokratie nicht zu gefährden[64].

VI. Schlußbemerkung

Mir ging es im Vorstehenden darum, einige Beispiele sozialer Kontrolle in der gesellschaftlichen und politischen Organisation Roms darzustellen und exemplarisch auf Unterschiede zum demokratischen Athen hinzuweisen. Das Thema ist damit für Rom bei weitem nicht erschöpft. Insbesondere wurde nicht behandelt die Welt der Zeichen und Gesten[65]. In einer Gesellschaft, die durch so eindeutige Rollenzuweisungen geprägt war, mußten die einzelnen Rollenträger auch klar erkennbar sein. Entsprechend waren den einzelnen Status, Ständen und Amtsträgern jeweils eine unterschiedliche Kleidung, Standesabzeichen und Amtsinsignien zugeordnet[66], wobei die Art der Kleidung (schwere Stoffe, komplizierte Schnittmuster) auch zu Distanz und gravitätischem Verhalten zwang[67]. Eine weitere

[63] So *Bleicken*, (wie Anm. 56) 172f.

[64] *Martin Jehne*, Die Beeinflussung von Entscheidungen durch „Bestechung": Zur Funktion des *ambitus* in der römischen Republik, in: *ders.* (Hrsg.), Demokratie in Rom? (Historia Einzelschriften 96, Stuttgart 1995) 51–76, interpretiert den *ambitus* als Ausfluß des Patronagesystems, d.h. als eine Form des Euergetismus, den Kandidaten bei der Bewerbung aufwenden mußten. Angesichts der Überlagerung von Klientelbeziehungen seit dem 2. Jahrhundert (vgl. oben im Text) habe sich dieser Euergetismus intensivieren müssen.

[65] Dazu vgl. vor allem die Analyse von *Flaig*, (wie Anm. 6).

[66] *Frank Kolb*, Zur Statussymbolik im antiken Rom, in: Chiron 7 (1977) 239–259; *Thomas Schäfer*, Imperii insignia, sella curulis und fasces (Mainz 1989).

[67] Dazu ausführlich *Joachim Marquardt*, Das Privatleben der Römer, 2. Teil (Leipzig ²1886, Nachdruck Darmstadt 1975) 475–597, bes. 550–583.

Gruppe von Zeichen betraf die adlige Repräsentation, in der die Nobilität durch Ahnenbilder (*imagines*) und damit verbundene genealogische Stemmata, durch Grabinschriften, den feierlichen Leichenzug (*pompa funebris*), in dem die *imagines* samt Amtsabzeichen der verstorbenen Amtsträger einer *gens* mitgeführt wurden[68], durch den Triumph[69], ferner durch Denkmäler aller Art[70] dem Volk die Leistungen eines Geschlechts vor Augen führte und damit auch den Führungsanspruch für die Zukunft bekräftigte. Schließlich sind hervorzuheben die „Gesten der Nähe", durch die römische Adlige nicht nur „die schmerzliche – und riesige – Distanz zwischen Adel und Plebs zu überbrücken" suchten, sondern beim Volk auch affektive Zuneigung hervorriefen. Feldherrn trugen demonstrativ die Strapazen der einfachen Soldaten mit, bedankten sich nach Siegen oder weinten im Falle von Ungehorsam der Truppen. Adlige verwiesen auf die Gefallenen ihres Geschlechts oder zeigten sogar ihre eigenen Wunden und Narben[71].

Alles dies macht einmal mehr deutlich, wie stark der Raum des Politischen in Rom konnotiert und mit wie vielen Verpflichtungen er besetzt war. Die Aufrechterhaltung hierarchischer Herrschaft hatte ihren Preis.

[68] *Egon Flaig*, Die *Pompa Funebris*. Adlige Konkurrenz und annalistische Erinnerung in der Römischen Republik, in: *Otto Gerhard Oexle* (Hrsg.), Memoria als Kultur (Göttingen 1995) 115–148.

[69] *Henk S. Versnel*, Triumphus (London 1970). – *Ernst Künzl*, Der römische Triumph (München 1988).

[70] *Tonio Hölscher*, Die Anfänge römischer Repräsentationskunst, in: RM 85 (1978) 315–357. – *Mario Torelli*, Typology and Structure of Roman Historical Relief (Ann Arbor 1982). – *Götz Lahusen*, Untersuchungen zur Ehrenstatue in Rom (Rom 1983). – *Luca Giuliani*, Bildnis und Botschaft. Hermeneutische Untersuchungen zur Bildniskunst in der römischen Republik (Frankfurt 1986).

[71] *Flaig*, (wie Anm. 6) 209–213, Zitat 213.

Lin Foxhall

Social Control, Roman Power and Greek Politics in the World of Plutarch*

Introduction

The writings of Plutarch, philosophically, rhetorically and morally charged as they are, provide vivid glimpses of the world of Greek provincial élites under Roman rule. In this paper I shall explore aspects of Plutarch's political treatises in the larger context of the civic life of Greece in the Roman period. Inscriptions reveal something of the civic titles and public benefactions of the wealthy[1]. Plutarch adds a more personal dimension, promoting an ethos of self-imposed social control as the best alternative for those who have more or less prospered under Rome as caretakers of municipal government.

By Plutarch's time, the cities of Greece had long been welded together within the Roman provincial organisation. However, 'Romanisation' had not been a simple process[2]. Across the Greek world new hierarchies of power were imposed and gradually urban-based élites were encompassed by them. Local accommodation to Roman rule had been accomplished in different ways in different places. From hellenistic through to Roman times, in contrast to the socio-political insu-

* I would like to thank David Cohen and the Historisches Kolleg Munich, especially Frau Dr Müller-Luckner. All translations of Plutarch Moralia into English are taken from *D. Russell*, Plutarch. Selected Essays and Dialogues (Oxford, New York 1993), unless otherwise acknowledged.

[1] There is a vast literature on the epigraphical sources for cities in Roman Greece. The classic works are still *A. H. M. Jones*, The Greek City from Alexander to Justinian (Oxford 1940); The Cities of the Eastern Roman Provinces (Oxford ²1971). See also *M. Wörrle*, Stadt und Fest im Kaiserzeitlichen Kleinasien (München 1988); *M. Sartre*, L'Orient romain: provinces et sociétés provinciales en Méditerranée orientale d'Auguste aux Sévères (31 av. J.-C.-235 ap. J.-C.) (Paris 1991); *F. G. B. Millar*, The Greek City in the Roman Period, in: The Ancient Greek City-State, ed. *M. H. Hansen* (Copenhagen 1993) 232–60; *R. van Bremen*, The Limits of Participation. Women and Civic Life in the Greek East in the Hellenistic and Roman Periods (Gieben 1996).

[2] *S. E. Alcock*, Greece: a Landscape of Resistance?, in: Dialogues in Roman Imperialism. Power Discourse and Discrepant Experience in the Roman Empire, ed. *D. J. Mattingly* (JRA Supp. 23, Portsmouth, RI 1997) 103–15; *Millar*, Greek City (n. 1) 247–51; cf., *R. Lamberton*, Plutarch and the Romanizations of Athens, in: The Romanization of Athens, eds. *M. C. Hoff, S. I. Rotroff* (Oxford 1997) 151–60.

larity of many classical *polis* communities, local elites had developed a wide range of regional and even international connections through friendship, patronage, and sometimes even marriage[3]. Greek cities continued to function internally as *poleis*, but the rules of engagement had changed.

Plutarch's 'Rules for Politicians': viewing Roman rule from a Greek city

Plutarch wrote several treatises which deal with contemporary, broadly political themes[4]. These include 'Whether an Old Man should be in Politics'[5] and 'Against Borrowing Money'[6], and contemporary themes appear in parts of his other work, for example, 'Roman Questions'[7] and 'The Seven Wise Men at Dinner'[8]. The treatise which deals most explicitly with civic life, 'Rules for Politicians'[9], is addressed to a wealthy and well born young man from Sardis, Menemachos, who is about to launch a political civic career. Typically of Plutarch's writing, points are illustrated by an eclectic range of historical examples, citing the deeds and words of great figures of the glorious Greek and Roman pasts. Nonetheless, the framework of the treatise is firmly grounded in Plutarch's present. It thus offers an illuminating personal account of the ideals and values of Greek political life under Roman rule, covering political lifestyle, rhetoric, friendship, patronage and knowing the limits. It also complements epigraphical sources in providing information on the kinds of things politicians did in these cities.

Political lifestyle

For Plutarch, politics was a lifestyle. As portrayed in his writing, it was *the* lifestyle for those of wealth and good birth, ideally to be pursued not as a source of gain ("it is wrong to enter upon public life as a money-making business ..."[10]), but for the sake of public service after consideration and planning. "Just as people who are not happy at home spend most of their time in the agora, even if they have no call to be there, so too there are persons who throw themselves into public life

[3] E.g., *M. Woloch*, Roman Citizenship and the Athenian Elite A.D. 96–161 (Amsterdam 1973); *A. J. S. Spawforth*, Families at Roman Sparta and Epidauros: Some Prosopographical Notes, in: BSA 80 (1985) 191–258.
[4] *C. P. Jones*, Plutarch and Rome (Oxford 1971) 110–21.
[5] Plut. Mor. 783B-797F.
[6] Plut. Mor. 827D-832A.
[7] *Plut.* Mor. 263D-291C.
[8] *Plut.* Mor. 146B-164D.
[9] *Plut.* Mor. 798A-825F.
[10] *Plut.* Rules for Politicians 798E.

because they have no interests worth troubling about. Their politics is their pastime. With many, again, it is chance that has led them to put their hands to public affairs; then, when they have had enough of it, they find it hard to escape."[11]

Moreover it was a lifestyle which permeated a man's being and lasted a lifetime. Echoing the words but updating the sense of Aristotle's 'Politics' 1,2, Plutarch maintains: "... they are mistaken who think that engaging in public affairs is like going to sea or to war, something undertaken for an object distinct from itself and ceasing when that object is attained; for engaging in public affairs is not a special service (*leitourgia*) which is ended when the need ends, but is a way of life of a tamed social animal living in an organised society, intended by nature to live throughout its allotted time the life of a citizen and in a manner devoted to honour and the welfare of mankind."[12]

In Plutarch's view, there was a complex hierarchical matrix of civic duties and behaviours. Which were appropriate for an individual depended on his ranking within the social order of the city, his wealth, and his age, life-stage and skills. So, for example, 'poor' men should not aspire to the offices and public activities of the very rich. "If your means are moderate and circumscribed, so as just to meet your needs with nothing to spare, there can be nothing mean or disgraceful in confessing your poverty and declining to take a part in the expensive displays of the well-to-do, rather than borrowing money and making a laughing stock of yourself over your public service."[13]

Similarly, old men should restrict their activities to those which dignify their age and status. "But the old man in public life who undertakes subordinate services, such as the farming of taxes and the supervision of harbours and of the market-place, and who moreover, works his way into diplomatic missions and trips abroad to visit commanders and potentates, in which there is nothing indispensable or dignified, but which are merely flattery to curry favour, seem to me, my friend, a pitiable and unenviable object, and to some people, perhaps a burdensome and vulgar one. For it is not seasonable for an aged man even to be occupied in public offices, except in those which possess some grandeur or dignity, such as that which you are now administering at Athens, the presidency of the Council of the Areopagus, and by Zeus, the honour of membership in the Amphyctionic Council which your native State (*patris*) bestowed upon you for life ..."[14]

However, the order of statuses in political life was complex and not always what it seemed. Behaviours were context specific, and accrued dignity or shame according to the civic setting in which they were performed. How one held office was even more important than which offices one held. Both etiquette and strategy played important roles in the power games of office holding. ",Powers' and elective offices are not to be pursued too often or too anxiously, for love of office is

[11] *Plut.* Rules for Politicians 798C-D.
[12] *Plut.* Whether an Old Man should be in Politics 791C.
[13] *Plut.* Rules for Politicians 822D; cf. Against Borrowing Money.
[14] *Plut.* Whether an Old Man should be in Politics 794A-B.

neither dignified nor popular. But neither are they to be rejected, if the people (*demos*) offers an office legally and invites you to accept it. Even offices which are beneath your position should be welcomed and made a source of pride. It is only fair that men honoured by great office should in turn lend their honour to lesser ones, and prove themselves modest enough to sacrifice some of the grandeur of such offices as the generalship at Athens, the presidency at Rhodes, or our post of boeotarch, and lend respectability and weight to positions of less importance."[15]

Taking a personal interest was to be encouraged. "When they reproach me with personally supervising the checking of the tiles and the delivery of cement or stones, I reply 'Well, I'm not building this for myself, but for the city'. In many other causes, of course, one would be mean and petty-minded to organise things for oneself and be one's own manager; but if it is in the public cause and for the city's sake, one does not demean oneself ..."[16]

However, in contrast to a considerable proportion of the surviving epigraphical evidence, Plutarch predictably takes a very moral line on benefactions and 'bread and circuses'. Euergetism should not be excessive[17], nor should benefactors seek excessive honours in return[18]. The most vulgar displays and outrageous expenditure should be avoided if possible[19], or at least only provided in a limited way to indulge the masses and get them on your side[20].

Further, Plutarch argues, it is an abuse of power and privilege "for the man of wealth and standing to despise a poor, uneducated (*idiōtes*) magistrate". It diminishes rather than enhances a rich man's prestige to be seen "insulting umpires at the games, abusing producers at the Dionysia, and ridiculing generals and gymnasiarchs". "It does greater credit to a man of great influence to be seen in attendance on a magistrate than to be attended or escorted by one."[21]

Nonetheless it is clear that the wealthiest and strongest called the shots in city life, though there were not rigid divisions between rich and 'poor' (or at least the less rich). Persons from a range of statuses, at least from Plutarch's point of view, might hold office[22]. The politician, says Plutarch, is the "head bee"[23]. He "... should allow others to hold office, and invite them onto the platform in a kindly and generous spirit, not doing all the city's business by his own words, proposals, and actions, but by having loyal and able helpers, and assigning each his task according to his ability"[24].

[15] *Plut.* Rules for Politicians 813C-D.
[16] *Plut.* Rules for Politicians 811C.
[17] *Plut.* Rules for Politicians 822C.
[18] *Plut.* Rules for Politicians 820A-F.
[19] *Plut.* Rules for Politicians 818C-E; 823E.
[20] *Plut.* Rules for Politicians 818A-B.
[21] *Plut.* Rules for Politicians 817A-C.
[22] See *Plut.* Rules for Politicians 816A-B.
[23] *Plut.* Rules for Politicians 813C.
[24] *Plut.* Rules for Politicians 812C.

Persuasion and rhetoric

Persuasion both by word and by deed were crucial elements of Plutarch's politics. But, rhetoric in his time carried a very different significance than in earlier periods. Politicians lived their lives in front of the ancient equivalent of the popular press and as eminent men were objects of public curiosity and slander. People wanted to know all about eminent men, not just their political life, but also their dinner, sex-life, marriage and amusements[25]. Smooth talking persuaded 'friends' and superiors, but was particularly important for winning over the masses[26], and Plutarch distinguishes carefully between the kinds of speeches appropriate in the assembly or other political settings from those appropriate to the lawcourts[27]. In the civic world of Plutarch, politicians were not just part of the *demos* and the citizen body, they were superior to it[28].

Friendship and patronage

Friendship was critical to the operation of political life, and a successful politician would from the start of his career try to cultivate 'friends'. So, for example, as a young man a budding politician will attach himself (like a vine climbing a tree) to a man of power and reputation who has achieved these things by his goodness[29]. The importance of friendship (*philia*) as a political relationship is manifest in the large proportion of Plutarch's political writings dedicated to friendship and enmity (its opposite in his view)[30]. Much political life was based on using wealth, influence and connexions to build up the loyalty of linked circles of friends, preferably with oneself at the centre[31]. Some of these 'friends' might also be or become family; and the epigraphical record provides abundant evidence of families cooperating in office holding, benefaction and other political activity[32].

Friends worked together to establish the laws and pass the measure they thought best before the citizen body. Despite his disapproval of factionalism (*staziasthai*, see below), it is clear that Plutarch envisaged civic affairs as directed by small groups of cooperating (and competing) friends, generally the men of wealth and influence. "Many useful measures, even if they do not produce party strife or

[25] *Plut.* Rules for Politicians 800D.
[26] *Plut.* Rules for Politicians 801E; 802D-E.
[27] *Plut.* Rules for Politicians 802E-803A; 803F.
[28] E.g. *Plut.* Rules for Politicians 801E; 803F; 818A-D.
[29] *Plut.* Rules for Politicians 806B-C.
[30] Cf. 'How to Profit from your Enemies', *Plut.* Mor. 86B.
[31] See *Plut.* Rules for Politicians 813A-C, quoted below.
[32] E.g. *van Bremen,* Limits of Participation (n. 1); *M.T. Boatwright,* Plancia Magna of Perge: Women's Roles and Status in Asia Minor, in: Women's History and Ancient History, ed. *S. B. Pomeroy* (Chapel 1991) 249–72; The City Gate of Plancia Magna in Perge, in: Roman Art in Context: an Anthology, ed. *E. D'Ambra* (Englewood Cliffs, NJ 1993) 189–207.

vocal opposition, are suspected of being the product of conspiracy. This greatly discredits clubs (*hetaireiai*) and friendships (*filiai*). ... But when the public (*hoi polloi*) has suspicions about some important measure which will save the situation, we must not all come forward, as if by prior arrangement, to make the same proposal. Two or three of our friends should quietly separate themselves from us and oppose the item, then later claim to be convinced and change their minds. They will carry the people with them, because it will be thought that they are guided by their sense of the expedient. In small matters of little consequence, on the other hand, it is a good idea to let one's friends have genuine differences of opinion, each with his own arguments, so that their consensus for good in matters of moment and significance does not appear to have been preconcerted."[33]

"Friends are the living thinking tools of the statesman."[34] So, although in theory 'friends' were equal, in fact a man of wealth and influence would use his resources and connexions both to help and to obligate his friends as part of an overall career strategy. "There are also honourable ways of giving financial help to friends in need through one's public position. ... Give one man a well-paid brief in a good cause; introduce another to a rich man who needs management services and legal protection; help another to get this contract or profitable lease."[35]

The dividing line between friendship and patronage or dependency was mobile, fuzzy and deliberately mystified. However, political 'friends' and colleagues were clearly aware of distinctions of rank, social status and prestige[36]. "If people regard comradeship in the army (*sustrateuesthai*) or as students (*sunephêbusai*) as a basis of friendship, but treat colleagues in the office of general or magistrate as a cause of enmity, they are bound to fall into one of three errors: if they think their colleagues are their equals, they are creating factions; if they think them their superiors, they are guilty of envy; if they think them below themselves, guilty of contempt. The right attitude is to serve your superior, advance your inferior, and honour your equal, remaining agreeable and friendly to all."[37]

Simultaneously, cultivating friends of higher rank than yourself was important for helping one's own career and for the benefit of the city. The most critical friendships of this sort, two-edged as they were, were with powerful Roman officials. "It is not enough to keep oneself and one's city blameless in the eyes of our rulers; one should always have a friend among the really powerful people up there, as a secure prop for one's policy. The Romans themselves are very keen to support their friends' political interests."[38]

However, one should not be tempted to abuse relationships with powerful men among the Romans for short-term political gain against local adversaries. The price paid is likely to be the destruction of the *polis* and Greek political life itself.

[33] *Plut.* Rules for Politicians 813A-C.
[34] *Plut.* Rules for Politicians 807D.
[35] *Plut.* Rules for Politicians 808F-809A.
[36] Cf. *Plut.* Rules for Politicians 812C, quoted above; 817A-C, discussed above.
[37] *Plut.* Rules for Politicians 816B.
[38] *Plut.* Rules for Politicians 814C.

"However in ensuring that your country is obedient to the ruling power, there is no need to chain up your neck as well. Yet some do precisely this. They refer great matters and small alike to the governor, and so make our subject-status a reproach, or rather destroy the whole basis of our political life, reducing us to cowering, frightened impotence. ... The main cause of this is the greed and ambition of our leading men. Either they force lesser persons into exile by the damage they do to them, or they bring in the superior power because, in their disputes with one another, they cannot beat to take second place among their fellow citizens. In both cases council, people, courts and magistrates lose their power altogether."[39]

The other side of friendship

This ideal vision of public life as public service undertaken for worthy motives (*philanthropia*), is, however, disrupted by the sordid realities of engaging in political discourse with (allegedly) less worthy, and certainly competing, politicians. Competition, strife, and ambition are words which appear repeatedly in 'Rules for Politicians'. Consequently, Plutarch has much to say about the evils of greed, gain, and factionalism[40]. Personal enmity is also highlighted as a major cause of trouble in politics. It is the subject of a whole separate treatise, '*How to Profit from your Enemies*'[41], and can too easily spill over from private to public life[42].

Envy is singled out as a particular problem endemic in civic life[43]. Envy is a hazard for a young man at the outset of his career[44]. For old men in public life; however, envy, "the greatest evil attendant upon public life"[45], is less of a problem, though old should let the younger men have their turn[46].

Concord (*homonoia*) and strife and the limits of political activity

For beekeepers, the healthiest hive is that which buzzes loudest, but for Plutarch, the hum of factionalism in a city signalled the malady of disorder and chaos[47]. The

[39] *Plut.* Rules for Politicians 814E-815B.
[40] E.g. *Plut.* Rules for Politicians 815A-B; 823F.
[41] *Plut.* Mor. 86b-92. The treatise was addressed, to an eminent Greek from Epidauros who was also a prominent Roman official, whom Plutarch assumed was familiar with Rules for Politicians.
[42] *Plut.* Rules for Politicians 824F-825A.
[43] See *Plut.* Rules for Politicians 814E-815B, quoted above; 813D.
[44] *Plut.* Rules for Politicians 804 D-E; 806C.
[45] *Plut.* Whether an Old Man should be in Politics 787C.
[46] *Plut.* Whether an Old Man should be in Politics 795A; Rules for Politicians 806C.
[47] *Plut.* Rules for Politicians 823F.

ideals of concord (*homonoia*) which Plutarch promotes are prominent in other Greek literature, inscriptions and coins throughout the Roman period[48]. Sheppard has assembled the evidence for *homonoia* as a feature of relationships both between and within cities. He argues that within cities, *homonoia* served as a shield of unity against the Roman authorities, but at the same time stifled political debate between the wealthy elite who ran the cities and the popular assemblies[49].

Close examination of Plutarch's work suggests this may be an oversimplification, if we are to believe Plutarch's depiction of civic life, as small groups of 'friends' (and families) from a range of ranks and statuses each striving for their own interests and engaged in an almost permanent state of factional strife. Plutarch perceived the threat of factionalism as a serious problem in the face of Roman rule[50] because it exposed the city to possibility of direct interference by the Roman authorities: "cities where total confusion reigns [as a result of factionalism] are utterly ruined, unless forcibly brought to their senses by disaster, through some external compulsion or chastisement."[51] This was not, of course, in the best interests of the elites who ran the cities in their own interests. *Homonoia*, therefore, was not just a veneer of political claptrap or a rhetorical ideal. It was more like a one way mirror: a public presentation of the city as a united community of citizens and magistrates facing the external perspective of the Roman rulers. Viewed from the other direction, however, the factional elements within cities, wealthy individuals and families striving for local control and eminence, are clearly visible. Moreover, Plutarch's stress on concord and the evils of factionalism might well imply that the latter was an endemic problem.

Hence, for Plutarch, one of the most important jobs of the man active in civic life was to prevent *stasis*, "this is the greatest and noblest part of the art of statesmanship"[52]. Echoing, but not replicating Aristotle[53], he lists the *megista agatha* for cities as peace, freedom, plenty, population and concord[54]. But, these concepts took on new meanings under the rule of Rome. Plenty and population a prudent (*sophron*) man will request from the gods for his fellow citizens. However, "for peace our peoples (*hoi demoi*) have no need of politicians at present; every Greek war, every foreign war has passed away from us. As to freedom, the people have as much as the ruling power allows; and it is perhaps best that they should have no

[48] *S. Swain*, Plutarch's Moral Program, in: Plutarch's Advice to the Bride and Groom and A Consolation to his Wife, ed. *S. B. Pomeroy* (New York, Oxford 1999) 87–9; *A. R. R. Sheppard*, *Homonoia* in the Greek Cities of the Roman Empire, in: Ancient Society 15–17 (1984–6) 229–52.

[49] *Sheppard*, *Homonoia* (n. 48) 246–8.

[50] *Plut.* Rules for Politicians 815A, quoted above.

[51] *Plut.* Rules for Politicians 824A-B.

[52] *Plut.* Rules for Politicians 824B-C.

[53] Cf. *Arist.* Rhet. 1359b-1362a on important subjects for deliberation regarding the city and happiness (*eudaimonia*) for individuals and cities. Among Aristotle's concerns paralleled by those of Plutarch are the defence of the city, wealth and plenty, population, honour and honourable descent. Significantly absent are freedom and concord.

[54] *Eirene*, *eleutheria*, *euteria*, *euandria*, *homonoia*, *Plut.* Rules for Politicians 824C.

more". In other words, the two political functions of war/peace[55] and freedom/autonomy were no longer in the control of Greek cities and it had become dangerous to meddle with them. This is underpinned by the elevated importance of the only one of these activities left to the politician: "to ensure perpetual concord (*homonoia*) and friendship (*philia*) among one's fellows, and the removal of all kinds of strife, dissension and hostility"[56]. For a man of wealth and influence engaged in the local politics of Greek cities under Roman rule, this represented the course of prudence. It ensured that the eyes of Rome were not drawn to a trouble spot, and maintained maximum freedom for individual manoeuvre in political activity. In this sense, *homonoia* is more a negative than a positive virtue: an ideal which highlights that the most important common interest of competing individuals, families and groups within a Greek city was avoiding Roman interference in internal affairs, for if that happened everyone lost and no one gained[57].

Plutarch freely acknowledges recognises that all the competition and striving for honour and glory within the city is petty and insignificant, for Greek affairs are weak[58] and Rome has the ultimate power: "fortune has left us no other prize to fight for. What power, what glory can the victor expect? What influence (*dynamis*) is this, that a short pronouncement from the proconsul suppresses or transfers to another? Even if you keep it there is nothing there worth the trouble."[59] Ultimately, the boots of Roman hegemony are visible over the crown of office and one cannot invest pride or trust in such a crown[60].

Civic activity and citizenship

Within the confines of Roman rule, the activities of politicians were limited. Foremost among those mentioned by Plutarch are serving on embassies, especially to put requests to Roman officials, lawsuits and legal activity, public speaking in the assembly and on other occasions, and office holding. The first two jobs are mentioned as particularly suited to men of high standing[61]. It is difficult to be certain about whether the legal activity to which Plutarch refers relates to Roman law and courts, or local judicial structures operating within the city state, encompassed by Roman law but somewhat disarticulated from it.

Sheppard notes that Plutarch ignores the fact that some members of the wealthy elite would also have been Roman citizens, settling their disputes to Roman under

[55] In effect, foreign policy, cf. *Plut.* Rules for Politicians 805A and *Arist.* Rhet. 1359b-1360a.
[56] *Plut.* Rules for Politicians 824D.
[57] Cf., *Plut.* Rules for Politicians 814E-815B, quoted above and 824F-825A.
[58] *Plut.* Rules for Politicians 824E.
[59] *Plut.* Rules for Politicians 824E-F.
[60] *Plut.* Rules for Politicians 813F.
[61] *Plut.* Rules for Politicians 805A-B. Plutarch mentions these activities as the kind of subjects which eminent men at dinner like to discuss, since they have a chance to show off their successes *Plut.* Quaest. conviv. 2, Mor. 630E-631A.

Roman law[62]. However, a striking feature of Plutarch's political treatises is that civic life is portrayed as entirely the outcome of Greek *polis* citizenship. Despite the fact that he himself was a Roman citizen, and though he places great emphasis on creating and maintaining proper relationships with the Roman authorities, Plutarch says nothing about Roman citizenship, treating it as if it were irrelevant to Greek civic and political life. This might be because for the most part Roman authority was genuinely irrelevant to the inner workings of *poleis*, which sometimes still portrayed themselves as if they were 'democratic'[63]. The titles which magistrates held, the local forms of governing bodies (e.g. councils, assemblies, etc.), many civic religious activities were framed in 'traditional' Greek terms, even if they were not altogether ancient in origin[64]. Individuals who were Roman citizens did not always use their full Roman names in inscriptions but used their Greek names exclusively, or included them in addition to their Roman names[65]. The question of whether Greek cities kept their own laws and customs where they did not impinge on Roman authority is more difficult (see below). This is probably a further manifestation of the Janus-faced stance of these cities and élites who ran them. Their internal 'autonomy' was most effectively preserved by presenting themselves to Roman authority as a self-contained and effective, if somewhat alien, political order which if left untampered would serve them well. If a united front, a smooth surface, could be maintained, the competition of local élites for local power could continue on the other side of the glass beyond the notice of the Roman rulers. Significantly, one of the 'jobs' Plutarch specifically earmarks for 'politicians' is to act as envoys to Roman officials on behalf of their native cities, and he describes his own experience as an envoy to the proconsul[66]. For such tasks Greek politicians who were also Roman citizens might have served their own cities particularly well[67].

For Plutarch, civic life and political discourse is a fully masculine preserve. In his accounts of political life, women have no place in political activity, not even in public service to the city. This is a notable contrast to the considerable number of inscriptions which document women's civic benefactions and office holding, on their own or jointly with their husbands or other members of their families. It might also appear to contrast with Plutarch's reputation for holding women in high esteem[68], and his celebration of marriage and family. It is hard to know how

[62] *Sheppard*, *Homonoia* 241 (n. 48).
[63] Cf. *Plut.* Rules for Politicians 816F.
[64] With the obvious exception of imperial cult.
[65] E.g. *C. P. Jones*, A Leading Family of Roman Thespiae, in: HSCP 74 (1970) 223–55; *Spawforth*, Families at Roman Sparta and Epidauros (n. 3).
[66] *Plut.* Rules for Politicians 816D.
[67] In Plutarch's time relatively few Greeks bore Roman citizenship compared to the much larger number of Roman citizens in the western provinces, see *P. Brunt*, The Romanization of the Local Ruling Classes in the Roman Empire, in: Assimilation et résistance à la culture gréco-romaine dans le monde ancien, ed. *D. M. Pippidi* (VI Cong. Int. d'Et. Cl., Paris 1976) 161–2.
[68] *A. G. Nikolaides*, Plutarch on Women and Marriage, in: WSt. 110 (1997) 27–88; *C. Patter-*

to read this apparent contradiction. I have argued elsewhere that Plutarch most esteems women in their place, which is under the firm control of men[69]. It may also be an idealised, and to some extent archaising, aspect of his discourse on public life which leaves it to 'real men' and cut out women whether they were in fact there or not. However, women are very unlikely to have been directly involved in many of the activities of politicians on which he dwells (lawsuits, embassies, public speaking etc.). The aspect of civic life in which women are most clearly documented in the epigraphical record, euergetism, is also, perhaps not coincidentally, one which Plutarch considers morally ambivalent.

Roman law and Greek custom?

Much harder is the question of interfaces between Roman law and Greek custom and local legal systems. It is apparent in the 'Roman Questions'[70] that even after several generations of Roman rule Plutarch (and presumably other Greeks) still viewed Roman culture and custom as alien. Of the 113 questions, most deal with matters of religion (52 – significantly none deal with imperial cult) and 'ancient' history (43), typical concerns of Plutarch. However some of the questions clearly belong in the time of Plutarch, and attempt to explain elements of Roman culture which are odd to Greek eyes. Of these, a striking 25 deal with marriage and family customs, 15 with custom more generally and 7 with the peculiarities of the Roman calendar (see table 1).

Plutarch portrays Roman notions of kinship and behaviour towards kin (both agnates and affines) as particularly odd to Greeks. For example, question 108: 'why don't they marry women who are close kin?'[71], is also addressed at the end of question 6[72]. The answer to question 108 is framed in terms comprehensible for Greek social structures (did they wish to enlarge their sphere of kin, were they worried about intra-familial quarrels and did they wish to expand the number of potential protectors for vulnerable women). However, it misses the point that Romans of Italian origin considered marriage between close kin to be incestuous. By Plutarch's time, marriage between cousins, a normal and ancient Greek practice, had become more regular in Roman society, perhaps partly under the influence of Greek and other provincial customs, and certainly for financial reasons (i.e. keeping the property in the family)[73]. In question 6 Plutarch notes that in his time

son, Plutarch's Advice to the Bride and Groom: Traditional Wisdom through a Philosophical Lens, in: *Pomeroy*, Plutarch's Advice (n. 48) 128–37.

[69] *L. Foxhall*, Foreign Powers: Plutarch and Discourses of Domination in Roman Greece, in: *Pomeroy*, Plutarch's Advice (n. 48) 139, 145–50.

[70] *Plut.* Mor. 263D-291C.

[71] *Plut.* Mor. 289D-E.

[72] *Plut.* Mor. 265D-E.

[73] *S. Treggiari*, Roman Marriage (Oxford 1991) 37–9; *S. Dixon*, The Roman Family (Baltim-

Roman men would marry their cousins but not their aunts or sisters. Also, law and custom varied widely across the Roman empire, so for example brother-sister marriage, regularly practised in Egypt, or the levirate of Jewish law, would not have been considered acceptable in other parts of the Roman world[74]. Nonetheless, despite the cosmopolitan nature of the upper eschelons of *polis* society, other traditions of construing marriage and family are portrayed as alien.

The aetiological story he tells to explain how the marriage to cousins became permitted among the Romans is again framed in Greek not Roman terms, focusing on a man who married his cousin, an *epikleros*[75]. The notion of the *epikleros*, a woman without father or brothers living, was meaningless in Roman law where women could inherit property in their own right, but crucial to Greek ideas of marriage and inheritance of property (where most important forms of wealth ideally travelled through agnates).

I have argued elsewhere that the notion of the *epikleros* appears in the 'Erotikos', and that the roles of the characters in socio-legal terms are consistent with their actions in the dialogue[76]. The mother of Ismeodora's young beloved, Bacchon was most likely an *epikleros* in Greek terms, perhaps also the widow Ismenodora herself, however they might have been legally construed in Roman terms[77]. Anthemion, an older relative of Bacchon, who advocates his marriage with Ismenodora, appears to be acting as a guardian for him. The dialogue is a kind of philosophical Menandrian comedy in prose, and it would be a mistake to take it too literally and rash to assume that it reflects contemporary 'real life' in any way directly. However, if the notion of the *epikleros* is central to the plot, this does suggest that the concept still had some social meaning for Greeks whatever its legal validity might have been. Indeed, its legal validity might have varied depending on the statuses of those involved in any particular situation, and the particular arena in which it arose as an issue.

The main issue of 'Roman Questions' 6[78]: "why do women kiss their relatives on the mouth?" provides another interesting example. In question 108 the issue was a custom which Greeks found normal but was not part of Roman tradition. This one is just the opposite: a custom which Greeks would have found unfamiliar and even shocking, but which was normal to Romans. Plutarch suggests that the custom might have been granted as a privilege to women, and that it might have been relates to the issue of permitted marriage partners. But, rather than attempting to explain the custom, Plutarch almost excuses it by relating two aetiological stories about detecting women who had drunk wine and the Trojan women land-

ore 1992) 82, 91. On the frequency of marriages between close kin in Greek cities in Roman times see *van Bremen*, Limits of Participation (n. 1) 257–61.

[74] *K. Hopkins*, Brother-Sister Marriage in Roman Egypt, in: CSSH 22 (1980) 303–54.

[75] *Plut.* Mor. 265D-E.

[76] *Plut.* Mor. 748F-771E. *Foxhall*, Foreign Powers (n. 70).

[77] It is not clear from the work, and is not relevant to the plot, whether or not they were Roman citizens.

[78] *Plut.* Mor. 265B-E.

ing in Italy who burned the boats behind them. The peculiarity of the custom, to Greek eyes, rendered it incomprehensible.

The depiction of Roman custom as alien, in conjunction with loyalty to Greek 'traditions' may have been a conscious attempt on the part of elite Greeks to distance themselves from the culture of foreign oppressors. Upholding their own 'ancient traditions' could serve as a way of asserting their cultural superiority and expressing cultural resistance which was not perceived by the Romans in the negative way that political resistance would have been. Perhaps the lack of reference to imperial cult in the political treatises or in the 'Roman Questions' is significant in this regard. Simultaneously, it seems probable that many elements of Roman culture remained foreign because the Greeks really had stuck to their own traditions and customs within city life. The big question is the extent to which local Greek customs served as a basis for local law in the cities of Roman Greece, and the surviving evidence is inadequate to answer it definitively[79]. The realm of law is a critical interface between culture and politics, particularly in the areas of family and property which straddle public and private interests. Perhaps it is not coincidental that Plutarch was so concerned with marriage and family custom in the 'Roman Questions': these are areas where Greeks who were also Roman citizens could be regularly crossing the boundaries between Roman law and Greek custom in everyday life. Certainly the Roman legal framework appears to fit quite uncomfortably around some Greek socio-legal practices.

Conclusion

Social control in the cities of Roman Greece was incorporated in a set of hierarchal relationships of power. Yet even in the face of imperial rule social control was not straightforward. Plutarch's work reveals a world in which Roman authorities controlled Greek cities by metaphorically giving their wealthy elites enough rope to hang themselves. As long as everything ran smoothly, the Romans were prepared to leave most of their internal affairs to local elites. The rivalry and factionalism rife within Greek cities focused largely on local issues, and was the product of competition between wealthy individuals and families. Rather than stifling political debate as Sheppard argues[80], elites appear to have engaged in vigorous political struggles among themselves and enlisted other groups in these struggles (hence Plutarch's paranoia about the dangers of this practice). They may have encouraged

[79] The subject has been much discussed in the scholarly literature from *L. Mitteis*, Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs (Leipzig 1891). See also *H. Galsterer*, Roman Law in the Provinces: Some Problems of Transmission, in: L'impero romano e le struttore economiche e sociali delle province, ed. *M. Crawford* (1986); *Sheppard*, *Homonoia* (n. 48) 241 n. 92; *J. Triantaphyllopoulos*, Le droit romain dans le monde grec, in: JJP 21 (1991) 76–85; *van Bremen*, Limits of Participation (n. 1) 225–36.
[80] *Sheppard*, *Homonoia* (n. 48).

TABLE 1: Roman Questions: Analysis of Subjects

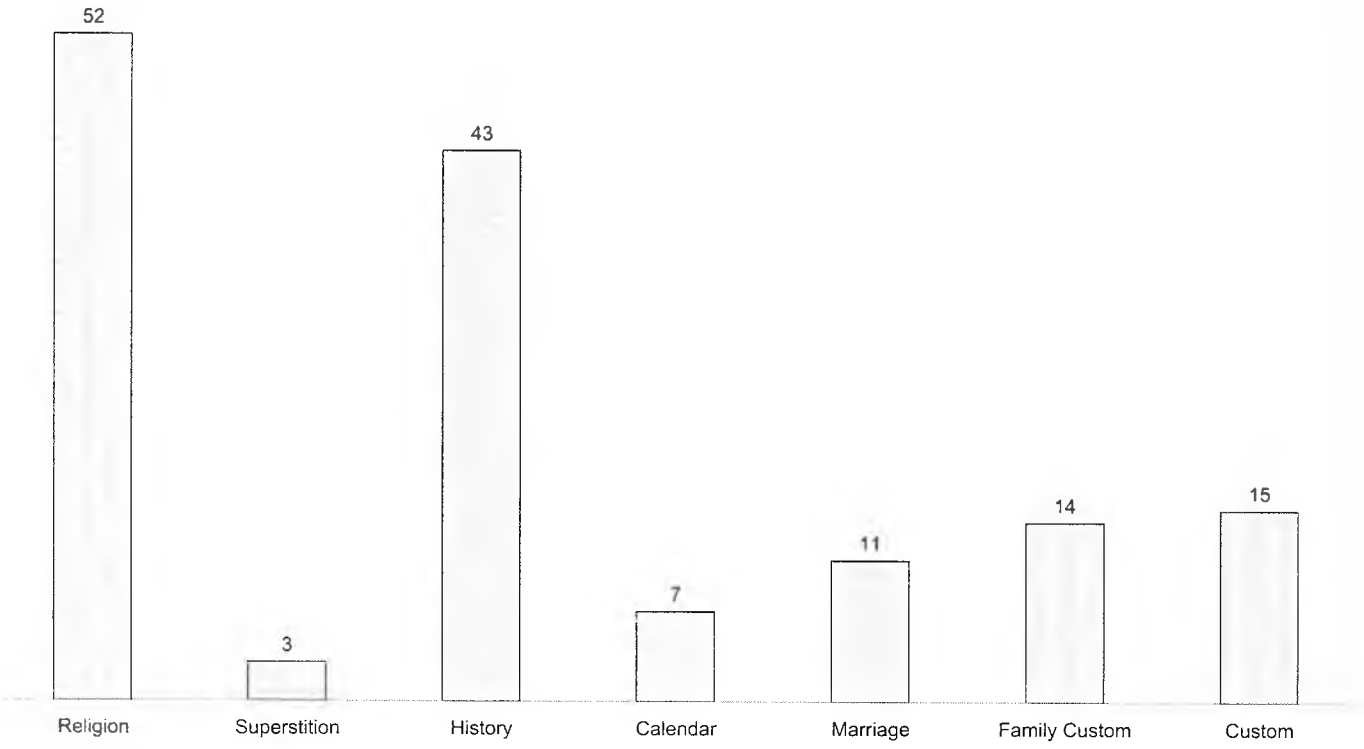

TABLE 1: Roman Questions: Analysis of Subjects

Religion	Superstition	History	Calendar	Marriage	Family Custom	Custom
52	3	43	7	11	14	15
Q. nos	Q. nos	Q. nos	Q. nos	Q. nos	Q. nos	Q. nos
4	5	33	19	1	6	5
10	21	34	24	2	7	23
11	28	35	25	29	8	27
12		36	77	30	9	36
13		38	84	31	14	42
15		39	86	50	17	43
16		41	100	65	26	53
17		46		86	28	55
18		47		87	62	64
20		49		105	100	71
21		50		108	101	72
22		54			102	81
23		55			103	82
32		56			108	88
34		58				100
37		62				
40		63				
42		66				
43		67				
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73		92				
74		95				
77		96				
78		98				
89		99				
90		107				
93		111				
94		112				
96		113				
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Some questions cover more than one subject area.

the retention of Greek social and legal traditions as a form of popular resistance to Roman rule. This might have been favoured by non-elites, but proved relatively harmless in terms of relations with the Romans. There may also have been significant differences between the cities of 'old Greece' and the more recently hellenised cities of Asia Minor in this regard, drawing as they did on quite different pre-Roman social and legal traditions. Such differences might perhaps partially explain Plutarch's neglect of imperial cult in his writings, despite his interest in the religious life of his own times.

However, it was critical that elite rivalry did not get out of hand to the detriment of civil order. However much competition developed between different factions, their ultimate interests were better served by presenting a united front of orderliness and harmony to the Roman authorities, than by trying out-compete other factions by appealing to less wealthy and less contented groups. On the other hand, allowing social discontent to get out of hand, for example by over-exploitation of the poor, might also draw the eye of the Roman authorities towards the city, with unpleasant consequences for its eminent politicians. The publicly expressed ideal of *homonoia* sent the right message to the Romans, presenting them with a superficially united and harmonious image of a city. Nonetheless, Greeks still endeavoured to retain their social identity as Greeks, accommodating Roman rule by defining Roman culture as alien, and simultaneously re-defining politics and civic life in new ways with a limited scope.

The realm of women's behaviour, the family and marriage was particularly well suited to manipulation by Greeks living in a Roman world. Falling as it did between social custom and law, the use of local 'Greek' conventions served as a marker of Greek identity. However, families and individuals could have negotiated the gaps between local 'Greek' and Roman practice to their own advantage, depending upon the circumstances. So, Rome does not appear to have outlawed endogamous marriage with close kin, which encouraged the consolidation of wealth in limited family groups. On the other hand, individuals with Roman citizenship must have ensured that it was passed on to their children via Roman legal practice. Perhaps this liminal position of domestic relationships, between public and private spheres and Greek and Roman identities, provides a small part of the explanation for the changed and enhanced significance of marriage and the family in the cities of Roman Greece (though the issue is complex and much discussed). What is certainly clear is that accommodating Roman rule had a major impact on the processes of social control within Greek cities. The writings of Plutarch offer a personal, though certainly not impartial, view of these processes.

John L. Comaroff

Out of Control: an afterword

> The main foundations of every state, new states as well as ancient or composite ones, are good laws and good arms.
> *Machiavelli*, The Prince, p. 77

What might a legal anthropologist, especially one trained in the assertively narrow tradition of British African Studies, have to contribute to a profound, provocative discourse on law and social control in Classical Athens? What angle of vision is he likely to bring to a topic with which he has only sketchy acquaintance, a topic remote in both time and space from the worlds – the material worlds, the scholarly worlds, the cultural, moral, jural worlds – with which he is familiar? How, equipped only with his naivete, does he proceed to enter into a somewhat arcane conversation among a circle of experts?

With an odd mix of hubris, humility, and hesitation.

But first let me acknowledge an intellectual debt which is not unrelated to the matter at hand. Although unschooled in the history of the ancient world – thanks, largely, to a rather unfortunate colonial education – I owe at least some of my own roots in anthropology to a reading of Sir Henry Maine's *Ancient Law*. The late Max Gluckman – doyen of modern legal anthropology and the charismatic core of the Manchester School when I began my career there – was wont to declare, loudly and often, that any anthropologist worth their salt had to have a close knowledge of Maine. Anthropology in the Maine-stream, my peers and I used to call it, a little derisively; although never, of course, to Gluckman's imperious face. One passage in *Ancient Law* remains with me more than any other. It happens to be about classical Greece. In "developing" their law, argued Sir Henry (1917:44):

> the more progressive Greek communities ... soon ceased to attach any superstitious value to rigid rules and prescriptions ... One of the rarest qualities of national character is the capacity for applying and working out the law, as such, at the cost of constant miscarriages of abstract justice, without at the same time losing the hope of the wish that law may be conformed to a higher ideal. The Greek intellect, with all its nobility and elasticity, was quite unable to confine itself within the strait waistcoat of a legal formula; ... Greek tribunals exhibited the strongest tendency to confound law and fact ... [Q]uestions of pure law were constantly argued on every consideration which could possibly influence the mind of the judges.

Maine was deeply concerned about this. In his view, "no durable system of jurisprudence" – not even in a society as "precociously mature" as classical Athens – could be produced in a world with such scant respect for the strict application of rules. Which meant that Greece could not serve as an evolutionary model, a legal *fons et origo*, for the development of the rest of humanity. In retrospect, of course, the very idea that *any* system of jurisprudence might have assumed that historical role is, well, imprudent. And yet there *is* something enduringly important to be learned from his account. In describing it as he did, Maine showed – inadvertently, it is true – that classical Greek law, *in its practice*, anticipated what American realism was to essay, in its theory, many centuries later: that *no* system of jurisprudence, no living legal culture, no regulatory order – not even ones in which the language of formal precept and principle is at its most pervasive – has ever evinced a truly consistent body of "abstract justice" at the core of its everyday, manifest workings. Or been founded on unvarnished, rule-governed reason; this *pace* Hobbes (1995: 110, 115), who shared with Maine both the belief that "laws be the strongest sinews of human society" and the axiom that "law is nothing but reason dilated, ... nothing else but obedience to reason[1]". Here, observe, is the irony: ancient Greek law exhibited a "precocious maturity" for precisely the reasons that, according to Maine, it had no evolutionary future. If his description is to be believed, this was a legal order whose dynamics were rooted in a complex dialectic of "law" and "fact", of principle and practice, of rule and process[2]. Like *all* legal orders, past and present (Comaroff and Roberts 1981). Which, notwithstanding its singularities of substance and differences in detail, makes it recognizable, immediately, to a student of African law. Also to a *fin de siecle* legal anthropology according to whose canonical truths all "systems" of jurisprudence – to the extent that they are "systems" at all – are, finally, ensembles of performance, practice, poetics, politics, precepts, and principles under perpetual construction, perpetual contestation. This, to be sure, informs David Cohen's own highly original contribution to our understanding of the social workings of the classical world and, by extension, to the comparative study of law, *sui generis* (see e.g. Cohen 1995).

Here, then, is where that mix of humility and hubris comes in. It grows out of a disciplinary genealogy that, beginning with Maine and ending in contemporary African legal anthropology, renders law in classical Athens at once recognizable and yet different, familiar yet strange; a genealogy, in other words, that authorizes my reading the essays in this volume not from the conventional perspective of

[1] As is clear from his "Three Discourses" (1995), and especially "A Discourse of Laws", Hobbes (1995: 115) saw law and reason as mutually constitutive, *sensu stricto*. "Twins" was the term he used for their relationship, adding not only that the "absence of one, is the deformation of the other" but that they are *convertibilia* – capable of being converted into each other, explain Reynolds and Saxonhouse (1995: 115, n. 29) – and, therefore, "inseparable". Elsewhere (1990), Hobbes added to this an ethical dimension, measuring "the virtue of a subject" in terms of obedience to the law.

[2] And, as we are reminded by Plato's "Republic", of "strength" and "justice", a point brought home to me recently in reading an "everyman" edition of the text, translated many years ago (1935: 14–17).

modernist, Euro-American legal scholarship, valuable though that vantage patently is, but through a comparative, Africanist-inflected optic. This I do on the old anthropological assumption that a critical hermeneutic, a hermeneutic founded on epistemic estrangement, sometimes destabilizes the firmest of empirical truths – and the taken-for-granted concepts by means of which we produce them. Which is salutary in light of Cassirer's (1956: 261) somewhat didactic reminder that, in Greek, "the term *episteme* is etymologically derived from a root that means firmness and stability".

Modernist concepts, classical worlds

> social control ... is a subject on which nearly everything remains to be done.
>
> *J. S. Mill*, On Liberty p. 130

First a small caveat, however. This volume, like the conference from which it grew, is, quite deliberately, an exercise in diversity: conceptual diversity, orientational diversity, theoretical diversity, topical diversity. All of which makes it impossible to conjure out of it any kind of synthetic whole that is equal to, or more than, the sum of its parts. To do so would be pure artifice; indeed, a synoptic illusion (cf. Bourdieu 1987). But there *is* a point to the diversity. It lies in the creative tension that hovers just beneath the angular surfaces of the discourse here, a tension that arises from two things. One is an implicit ensemble of premises, presumptions, propositional truths that, for all their wide ranging thematic concerns, are *shared* by the contributors – despite being quite controversial outside present company. The other is a clutch of foundational differences among those contributors, differences of principle and perspective that, for the most part, go unspoken – and yet make a real difference to our grasp of law and order in the classical world. Where better, then, to begin interrogating these tensions, where better to take a first critical step into the hermeneutic circle, than by subjecting to scrutiny the most pervasive trope of the volume, its most marked term: social control.

Rethinking Social Control, theoretically

Most of the foregoing essays – although not all, as we shall see – appear to have been written on the unstated assumption that social control, *qua* concept, is self-evident; that we all know to what, as a signifier, it refers. Taken together, these essays assay various aspects of "its" workings in classical Greece, addressing, often to insightful effect, the mechanisms by which social order[3] was accomplished. At

[3] The uncritical use of this term, too, has been subjected to challenge. See e.g. Strathern

one moment in the course of their presentation at the conference, however – it was at 15.43 on Thursday, June 18, 1998, to be precise – their discursive flow was ruptured. Just as, for Victor Turner (1957), social dramas opened up the seams of a seamless world to reveal the conflicts concealed by the ordinariness of everyday life, so that moment at Munich – a moment of theater, almost – disclosed a tension at the heart of the conversation there; a tension previously obscured by the axiomatic, collective terms of reference around which the discourse had been organizing itself.

It happened like this.

Jochen Martin had been taking great pains, as he does in his chapter above, to lay out the principles of social control endemic to Roman society. Jon Elster, having listened patiently to his account – which, as I recall, was heavier on taxonomy than on analysis – asked him, rather suddenly, what would the consequences have been if, every time he spoke of *social control*, Martin would have substituted *social conflict*. The rhetorical force of the challenge, like a joke that depends for its humor on the circumstance of the telling, is difficult to recapture here; what Elster was *really* asking, I suspect, was what ontological difference it would make if one were to replace a purely normative perspective with a political one. It is, of course, a crucial question. But, behind it, lies a yet deeper problem, a problem of ontology: exactly what species of concept is "social control" in the first place? How do we differentiate it from, say, the idea of "society" – with apologies to those turn-of-the-millennium neoliberals who do not believe in the existence of the latter (cf. Tester 1992: 8f.) – especially if, by that term, we intend something like Durkheim's notion of a normative moral order? Nor only Durkheim. John Stuart Mill (1962: 130) long ago suggested that "Society" enforces its "own ideas and practices as rules of conduct, ... compel[ling] all characters to fashion themselves upon the model of its own [ways]"; to wit, Mill described this, explicitly, as "social control". Foreshadowings here, also, of more recent social theory, not least the Foucaultian conception of the capillary power of the modernist state, and, in particular, of its forms of governmentality.

In short, to the extent that it is a concept at all – a heuristic concept, an analytic concept, an ontological concept – what might *social control* actually denote? One or more institutional mechanisms? An ensemble of processes? A repertoire of rules, along with the modes of their enforcement? A more or less dispersed set of dispositions and disciplinary practices? Is "it" located *within* persons or populations, or *outside*, as an exogenous force that acts upon them? More specifically,

(1985: 111f.), who observes that "order" has long had a double valence in anthropology: on one hand it refers to *pattern*, to the abstraction of everyday social practices, their reduction to form, design, legibility; on the other, it evokes the *regulation* of those practices. The conflation of the two things, she argues, has major theoretical consequences. But that is a topic for another time. Note that, in his essay above, Elster also refers to two understandings of "social order"; they are yet different from those identified by Strathern.

on what imagining of society – or, if you prefer, of social life – does its description and analysis depend? Note that the problem, phrased thus, points to a first principle: that "social control" is not a thing in or of itself; that what it is cannot be determined empirically or descriptively; that, ineluctably, it is a *theoretical* construct, even if, as in some of the essays above, it is deployed, largely undefined and unspecified, for primarily descriptive purposes. Which, I suspect, is why Versnel (infra) had so much difficulty in deciding what manner of beast it is, concluding finally that, beyond a "horrifying variety of … definitions", social control "*does not exist*". (The italics are his, the emphasis mine.) Put another way, its use *always* entails some or other *a priori* take on the workings of the social world, on its nature, its construction, its persistence, its historicity. This theoretical scaffolding may or may not be made explicit. And it may be the product of principled argument or simply be presumed. But it is never absent. In the classical tradition of the social sciences – and, here, in the social science of classical Athens – the default position seems, indeed, to be a Durkheimean structural functionalist one[4]. According to that tradition, as everyone with even a rudimentary education in sociology or anthropology is aware, the social universe is essentially a rule-governed place in which there exist mechanisms for protecting the "natural order of things", mechanisms to deal with dysfunctional or (literally) unruly behavior, mechanisms known analytically by their effects, mechanisms that, analogically, evoke the homoeostatic operations of the living body, mechanisms that, together, are subsumed under the sign of "social control". It hardly needs saying that this model of social order has little purchase any more. It has long been discredited. And yet it lives on as a kind of autonomic orthodoxy, a reflex vision of social order to which many of us return in the heat of the heuristic moment[5]; there are also, to be perfectly blunt, a few scholarly backwaters in which it sustains an anachronistic authority. Recall, in this respect, Ian Jarvie's (1965) cursory-but-convincing explanation for the persistence of sociological paradigms, most notably of functionalism, in the face of repeated refutation; it is an explanation that resonates closely with, but goes beyond, Kuhn's (1962) paradigmatic account of the (re)production of scientific knowledge[6].

[4] Cf. Elster (infra), who also notes that writings on social control – especially "older" ones – have often fallen "into an unthinking functionalism". I shall return to Elster's views below, since they have important implications for the way in which we engage the topic at hand, *tout court*.

[5] In many different ways. Elsewhere (1980), I have noted, for example, that much of what are still taken to be the basic social "facts" of African kinship and marriage – and taught as such – are derived almost entirely from structural functionalist ethnographic studies in the British modernist tradition.

[6] Summarily stated, for Jarvie (1965), it is not simply the nature of the (social, institutional, and educational) contexts in which specialist knowledge is produced and disseminated that give it its paradigmatic character; nor is it just the means by which that knowledge is produced. It is also the manner in which different modes of social scientific explanation resonate with everyday, culturally dominant ways of knowing and explaining events in the world.

That the treatment of social control is always theory-driven – that its substantive description depends on a prior vision of the workings of the social world – is underscored, tellingly, by the *absence* of the term from accounts of social life written from the vantage of other theoretical paradigms, modernist and postmodern alike. In most species of Marxism, for example, it dissolves itself into social relations of production, into the forms of exploitation, alienation, and domination inherent in them, into the ideological scaffolding and "ideological state apparatuses" (Althusser 1971) that buttress them, into the political and social practices by which they are sustained, into the "habitus", the "structuring structures", via which they disappear below the level of discourse (Bourdieu 1977); this, French Marxist anthropology would have us believe, is as much the case in precapitalist as in capitalist "formations", albeit in different guise (see e.g. Meillassoux 1981). Similarly methodological individualism. None of the various theoretical perspectives subsumed within its broad penumbra give any explicit attention to "social control", this being a corollary of seeing all forms of constraint on social action – and, by extension, of treating social order – as an emergent property of interaction (e.g. Blau 1964) or transaction (e.g. Barth 1966). Similarly, too, as I have already intimated, critical postmodernisms of one kind or another, stretching from Foucault (1977) on modernist disciplinary institutions to post-Gramscian approaches to hegemony (see Comaroff and Comaroff 1991: 19ff.).

But even *within* the structural functionalist tradition, those who, after Georg Simmel, took conflict to be endemic to society – and sustained a highly political view of social life – paid little heed to social control *per se*. Or, more accurately, sought its logic elsewhere. To take one celebrated instance, Max Gluckman and his colleagues in the Manchester School, who might well have posed exactly the same challenge to Martin as did Elster[7], presumed, as a first principle, that human beings *everywhere* pursue their own interests according to culturally conditioned means and ends[8]; that *all* social orders, and the institutions at their core, are founded on rules and norms that are intrinsically ambiguous, open to negotiation, and variously mobilized in the competitive pursuit of position, property, power; that the processes to which this gives rise are the instrument by which social arrangements and cultural values are reproduced; that, ultimately, the aspirations and ambitions of living persons are constrained to the degree that they run up against the opposing actions of others – and, hence, the countervailing social forces implicit in those actions. It is thus, and *not* by abstract principles of social

[7] Although it is as well to note that, in his now classic writings in legal anthropology, Gluckman (see e.g. 1967) gave much more weight to the normative dimensions of dispute (and hence social control, broadly conceived) than he did in his political anthropology (see e.g. 1963).

[8] In fact, the Manchester School, being part of the classical tradition of British anthropology – whose orientation was strongly sociological – would *not* have used the term "culturally" conditioned. For reasons that lie deep in the history of ideas and the political economy of knowledge, "custom", "traditional beliefs/values", even, in some circumstances, "cosmology" were preferred. But the essence of the matter remains the same.

control, that social behavior is "reduced to structure", so to speak[9]. Interestingly, this so-called "conflict structural functionalism" has been portrayed as a kind of structural Marxism (or, with respect to Gluckman himself, Maxism) of and for noncapitalist societies[10]; for societies, that is, founded on status rather than on class.

It is not surprising, then, that "social control", as a marked trope, scarcely appears in the Manchester lexicon. To the extent that the term is used at all, it is simply an abstract way of describing the final limits of social existence. Indeed, for Gluckman et al, most of the things treated in the essays above as mechanisms of social control were more liable to *produce* conflict, contention, and inequity – or to sustain unequal relations of power – than to remove them, regulate them, or mediate their effects. Take, for example, the curses which Thür (infra) refers to as a "kind of self-help"; curses that often invoked divine intervention; curses that, he says, "right[ed] wrongs". Or the oaths in which Versnel detects a "double strategy ... of social control". For the Manchester School in Africa, curses and oaths of this kind – performatives that are replete with the "magical power of words" (Tambiah 1968) – were instruments by means of which the material, social, and sacred authority wielded by some over others was (re)produced; or, conversely, if less so in practice, a "weapon of the weak". In other words, they were *political* resources rather than normative means of righting wrongs, of regulating antisocial activity, or of sanctioning illegalities. Faraone (infra), of course, realizes this. While he is as concerned as are the other contributors with the mechanisms of social control in the classical world – in this case, with curses and their capacity "to inhibit certain types of abuse [in the] Athenian political system" – he begins by noting how these verbal performatives were used "sometimes to control social disputes and sometimes to exacerbate them". Which, in turn, raises another set of questions that lurk close to the core of most of the essays in this volume: When is a social act to be deemed an instance of "control" or "regulation" rather than, say, the pursuit of self-interest, an expression of power, or an assertion of resistance? Are such things at all distinguishable? By what means? Who or what precisely *is* it that exercises social control? Individuals, institutions, constitutions, constabularies, society? These, too, are profoundly theoretical issues. To wit, our present and future

[9] To the degree that the Manchester School saw the limits of conflict, and the ultimate constraints upon it, to inhere in "social structure" – a view that emerges clearly in Turner's classic *Schism and Continuity in an African Society* (1957) – it might seem that there is a parallel between its perspectives and the position advanced by Jochen Martin (infra). However, this is only so to the degree that conflict (the dominant trope of the Manchester School) and control (the construct with which Martin is concerned) are regarded as synonymous – which takes us back, yet again, to the exchange between Elster and Martin, and to the difference between normative and political treatments of the dynamics of social order.

[10] Note, in this respect, that all the scholars of the Manchester School were sometime members of the Communist Party. While the parallel between Marxism and Maxism – or, at least, Maxism as a Marxism for precapitalist societies – was not explicitly made in the writings of the School, it was mentioned to me several times by Gluckman in the last years of his life.

understanding of law and society in ancient Greece depends upon the manner in which they are addressed.

Few, of course, would still hold to the social theory of the Manchester School[11]. Like the structural functionalist paradigm of which it was a variant, it has long passed into anachronism, although much anthropology and sociology continues to be written in its wake. But that is not the point here. My object is to reassert a truism that, alas, is often only recognized in the breach: that even the most innocent of analytic concepts carries an epistemic load, a load that ought never to be taken as read. Note once more why Versnel ran into such difficulty in his effort to find a satisfactory definition of "social control". It proved impossible, he says, because "everyone" simply assumes that they "know what it is". As it happens, the essays in this volume – although tending, as I said earlier, to resort, *conceptually*, to the Durkheimean reflex – gesture, in their analytic *substance*, to a more nuanced view. Those who, like Faraone, explicitly address the ways and means of social regulation treat them, to a greater or lesser extent, as Janus-faced: as likely, at once, to engender dissent as to resolve it; as likely to heighten inequity as to provoke reactions to its excesses; as likely to underwrite hierarchical social tendencies as to conduce to an egalitarian justice; as likely to be a political tool as a social constraint. In other words, these ways and means are seen less as things in themselves than as social *processes* whose dynamics were integral to the construction of classical Athenian society. What is to be found on the underside of this volume, then – partially visible, partially obscured, wholly understated – is a complex theory about the workings of this ancient world. Of which more later.

Whatever theoretical dispositions we bring to the description and analysis of the Athenian world – note the plural – a great deal hangs on the way in which we portray its normative scaffolding. On what manner of rules and principles was it erected? How are we to construe the relationship between those rules and the practices of everyday life? Did the former determine the latter? Or were they merely a means of rationalizing the outcomes of conflict, alike epic and ordinary? Could it be that they were strategic implements and/or tactical tools for constructing social and political realities? Or were they, more straightforwardly, the mechanisms by which unruly social activity was brought to order? These questions have provoked a substantial comparative literature (see e.g. Comaroff and Roberts 1981; Moore 1978). They are obviously critical to any account of law, social control, and democracy in classical Athens.

[11] Taking Gluckman and the Manchester School as an exemplar within structural functionalism to complicate the problem of social control is, of course, a somewhat arbitrary choice. I could as easily have taken, say, Edmund Leach, whose *Political Systems of Highland Burma* (1954) is one of the most enduringly interesting studies produced in the classical tradition of British anthropology; Leach's complex view of structure, and his then highly novel take on the representation of social systems in motion – illustrated by his contentiously brilliant account of the "oscillating equilibrium" of Highland Burmese politics – also makes it plain why, from a theoretical position that problematizes the normative bases of social existence, "social control" is not a useful analytic construct.

Interrogating Norms, Exploring Emotions

First, though, a short step backward in order to move forward.

Jon Elster (infra; see n. 4 above) argues that the very term "social control" is "insidious". Why? Because it suggests that "societies" are themselves capable of regulating the behavior of their members. And that they do so, essentially, for benign purposes. The very notion that this may be the case, that an abstraction can act on its own account, he adds, "violate[s] the *principle* of methodological individualism" (italics added). Only human beings act. What is more, so-called mechanisms of social control may in fact produce the very ("harmful") behaviors that they ostensibly regulate. The conclusion? That, instead of focusing on "social control", we address ourselves to "social norms". This, of course, is itself a theoretical choice: it arises out of the very methodological individualism – which, with due respect, is less a "principle" than a "position" – for which Elster himself speaks so cogently. Nonetheless, the more general point is well-taken: it *is* impossible to make sense of the phenomena described in this book without paying attention to the nature of the normative.

Where to begin? As it happens, Jon Elster's essay provides the most apposite place, perhaps because he approaches the topic at its most general, using classical Athens more as illustration than as an object of analysis. Elster makes a series of important, more or less explicit claims. Among them, the first and most fundamental is that norms, being enforceable by sanctions of one kind or another, are significant determinants of behavior; the second, that legal and social norms[12] may be usefully distinguished, even though the line between them is fudged as a matter of course in everyday life; the third, that social norms are associated with diffuse, informal sanctions, while legal norms are buttressed by the formal ways and means of legal systems; the fourth, that social norms are backed not merely by material sanctions but also, and "more important[ly]", by emotional ones. Leaving the first to last – this because it undergirds all the others – let us ponder these propositions for a few moments.

Treating norms taxonomically is hardly new, of course: the literature of legal anthropology is littered with efforts to parse them into various kinds, to attach adjectives of distinction to them, to establish which among them are of most consequence in regulating human behavior – and by what means. Indeed, Elster's contrast between social and legal norms is reminiscent of Gluckman's (1967) famous effort to separate moral rules from the rules of law; the difference between them in the African case allegedly being that, where violations of the former were likely to elicit informal rebuke – and often *did* provoke stern public reactions on the part of indigenous authorities – only the latter were actually enforceable in "traditional" courts. Echoes here, too, of the time-worn, troubled opposition between "custom" and "law" (see e.g. Moore 1971: 13f.; Comaroff 1995), often said to be distinguished from each other not just lexically (see e.g. Schapera 1938 on

[12] Social norms are defined here as "non-outcome-oriented injunctions to act".

Tswana *mekgwa* ["custom"] and *melao* ["law"]; or Gluckman 1967 on Barotse *mikwa* and *milao*)[13], but also by their degree of formality, by the species of sanction called forth by their breach, and by the kinds of emotional attachments evoked by them (see below).

In point of fact, there is much comparative evidence to suggest that, alike in everyday social life and in specifically judicial contexts, it is often impossible to sustain such distinctions. Courts and constabularies almost everywhere can and do find (at least putatively) lawful ways to punish those guilty of repeated moral delinquency. Or of contravening closely-guarded "customary" taboos that, strictly speaking, fall beyond their purview. Conversely, many legal infractions are allowed escape the law – nowhere, after all, can *all* rules actually be enforced – only to become, by either design or default, the subject of informal, diffuse, more or less public sanction. In our own work on African law, Simon Roberts and I (1981) found that it made little sense to separate jural from moral or social norms, let alone law from custom, in the context of dispute[14]. The way in which vernacular rules came to regulate relations, interactions, and transactions among people, and to mediate the disagreements among them, depended much more on the social logic of conflict, on its form and content, than on anything intrinsic to the rules themselves *in abstracto*: on whether a particular struggle involved, as the object of argument, ruptured relations or social obligations, property or promissory contracts, deaths or debts; on the immediate acts or events that brought it to light; on the precise nature, and prehistory, of the social ties between the parties involved; on their intersecting intentions, their contrapuntal strategies, their respective tactics of both the short and the long run; on their location in a wider field of social and political connections. And other things besides.

As with custom and law, moral and jural rules, so with social and legal norms. On one hand, it seems eminently sensible, *prima facie*, to differentiate between various sorts of injunction[15]; although it *is* a matter of opinion whether or not this particular antinomy – between the social and the legal, that is – provides the most appropriate terms for doing so. On the other hand, not only was the distinction often blurred in practice; according to Elster himself, social norms were not at all important in solving "collective action problems" or regulating unruly behavior in ancient Athens. In fact, he goes so far as to say that the contrast between the two types of norm actually turns out to have been rather tenuous in this context – where, as David Cohen (1995; see above) has shown, the legal system was itself a "vehicle of confrontation and competition". So why make the distinction in the

[13] Interestingly, *thesmoi* and *nomoi*, as Hölkeskamp (infra) describes them, seem to bear more than passing similarity to these two pairs of African terms; see below.

[14] Note that, in this context, there was no distinction drawn between criminal and civil law: all infractions of "law and custom", including crimes such as homicide, theft, and bodily assault, were initiated by a complainant against a named respondent.

[15] Doing so, of course, has a long history in the modernist social sciences. We need hardly remind ourselves that Durkheim (1964: 68ff.) made a strong plea for "classify[ing] jural rules according to the different sanctions which are attached to them".

first place? And why, in the circumstances, reduce the problem of social control to the calculus of norms? Elster does not answer these questions directly, but three reasons emerge, one from his own essay, the other two from those of Maffi, Miller, and Hölkeskamp.

The *first* is this. By specifying two sorts of norm, and by making clear the dissimilar consequences occasioned by their breach, it becomes possible for Elster to formulate the following proposition: that it is emotional rather than material sanctions – guilt, shame, fear, desire – that persuade human beings to comply with social norms[16]. Is this true? Perhaps, perhaps not. For one thing, no attention is given, in the formulation, to moral or social or other kinds of sanction. For another, materialities and sentiments are, arguably, phenomenological refractions of one other – which would make it impossible to affirm Elster's proposition without falling into tautology. Nonetheless, he *is* making an important point here. Or, more accurately, he is replaying one that goes back to the dawn of modern sociology. It was Durkheim, Victor Turner (1967: 30) reminds us, who was first fascinated by the problem of "why many social norms and imperatives were felt to be at the same time 'obligatory' and 'desirable'". Turner himself went on to demonstrate how, in the context of symbolic behavior, of which the enactment of social sanctions is obviously an instance, the obligatory actually *does* become desirable. And vice versa. "Law", Thurman Arnold ([1962] 1969: 47) once said in a very different connection, "is primarily a great reservoir of emotionally important social symbols". This is even more salient today than it was when Turner, or Durkheim before him, raised the matter: ours is an age, an age increasingly dubbed "neoliberal", in which social theory is turning ever more toward the psychology of affect – most notably of desire, anxiety, trauma, ambivalence – in order to make sense of postmodern selfhood, subjectivity, even sociality. Hence, in contrasting different kinds of behavioral injunction so as to bring to the fore the emotional aspect of norms and sanctions, Elster is making a salutary case, one rarely heard in the comparative study of law. He is asking us to take sentiment seriously – which, elsewhere in this volume, and in a rather different register, William Miller also does – in explaining how it is that disciplinary regimes become positively valued, voluntarily internalized, and publicly authorized. The point is far from trivial. It bears a good deal of further thought.

More immediately, however, it also opens a window onto another dimension of the analysis of social regulation and, with it, a *second* justification for paying attention to social norms and sanctions: their didactic aspect.

In *The Prince*, Machiavelli (1961: 121) offers a suggestion that is, well, Machiavellian: "[I]n the event someone accomplishes something exceptional, for good or evil, in civil life", he says, that person "should be rewarded or punished *in a way*

[16] Elster phrases this proposition, which is made in passing, in rather abstract terms. He does *not* return to it in his conclusion, where he discusses the limited purchase of informal social norms on everyday life in ancient Athens. It is not clear, therefore, how his general argument about the emotional force of those norms applies to the case in question.

that sets everyone talking". The same point, transposed into an analytic key, has long been made of social sanctions in general: that their efficacy resides not merely in punishing an offender appropriately, but also, and even more, in the impact they have on the community that inflicts, and bears witness to, the act of punishment (Radcliffe-Brown 1952: 210–211). In short, they are more or less ritualized, more or less dramaturgical exercises in public pedagogy – and, patently, one of the vectors through which self-regulating, self-disciplined subjects are made in any historical context. But the pedagogy of the law is not exhausted by sanctions-in-action. Legal texts, statutes, and discourses also have a didactic dimension. Albert Maffi makes this clear in his chapter on legislation and social order in Plato's *Laws*, whose preludes, he explains, teach not merely laws, in the lower case, but the positive values of The Law. And, by extension, the values of the positive law. By these and other means are social norms, and the culture of legality of which they are part, internalized, naturalized, reproduced; by these and other means, too, do the minutiae of a population's behavior come to be ordered, supervised, regulated; foreshadowings here of Foucault, centuries before the rise of modernist modes of governmentality.

In sum, it is the instructional aspect of the law – in both its texts and its practices, its explicit and its tacit teachings – that transforms a legal system into a *regime of regulation*, a workaday world of disciplined subjects governed by taken-for-granted rules, routines, orientations, dispositions. At times this has unexpected sides to it. Thus, moving away from ancient Athens, William Miller demonstrates the almost comic perversity of some American statutory law as embodied in the Uniform Code of Military Justice. In doing so, he recalls Ernest Gellner's (1970: 43) complaint that social scientists have tended to be blind "to the possibility of ... social control through the employment of absurd, ambiguous, inconsistent or unintelligible doctrines". Not so Miller. His is an acute lesson in the persuasive force of absurdity, of its subtle role in the physics of social regulation.

The didactic dimensions of the vernacular law – and the means, both sensible and absurd, by which it is made into a regime of regulation – depend on another side of the life of social norms. Or, more properly, the social life of norms. Baldly stated, it is that, in any social world, prevailing rules of conduct evince a complex cultural logic; culture being intended not in its old, and now much criticized, anthropological guise, but as an historically labile space of signifying practices in which human beings, differentially empowered and sometimes in contestation, construct and represent themselves and others – and, by implication, the worlds they inhabit (Comaroff and Comaroff 1991: 21–2). Here lies the *third* reason for paying heed to the normative, a point that comes out especially clearly in Hölkeskamp's chapter.

Social norms, to the extent that they constitute a vernacular grammar of conventional practice, translate the architecture of the social world, as it is apprehended from within, into an ethnosemantics for everyday life. Put another way, they provide an historically-sensitive language of reference – a language of com-

municable signs and silent gestures, a language that may be more or less explicitly invoked in the public sphere (Comaroff and Roberts 1977) – in terms of which the materialities, moralities, politics, spiritualities, and social particularities of an inhabited world may be made commensurable, negotiated, contested. This is why vernacular norms tend so often to take on the properties of a cartography for the resolution of dispute – even where few disputes are actually decided by them – and yet, simultaneously, may be mobilized as a resource in, and a rationalization of, the pursuit of rights, justice, position, and interest. Hölkeskamp, although more directly concerned with the question of literacy and the law in classical Greece, makes it clear quite how complex a body of vernacular rules of conduct can be. What is particularly striking to me about the *thesmoi* and *nomoi* he analyses is the close parallel that they suggest between Athens and Africa. At least in respect of the normative dimensions of the law.

For one thing, the injunctions embodied in *nomoi*, some of which were written and some not, appear to have congealed the "entire relationship between meaning, experience and awareness" (infra); the same is true of vernacular normative repertoires in many parts of Africa. For another, while *nomos*, in the broadest sense, may be taken to have denoted "order", its more specific connotation seems to have corresponded closely to what is usually rendered by legal anthropologists as "custom". Which adds an interesting twist to Hölkeskamp's citation of Heraclitus on the divinity of *nomos* as "the king of all people". Why so? Because it evokes an old aphorism in African anthropology, mythically associated with Max Gluckman but really of unknown provenance, that "custom is king". By this was meant not just its dictates enjoyed sovereignty over the hearts, minds, and behavior of "natives" everywhere. Nor only, as John Stuart Mill (1962: 131) would have it, that its "magical influence" made a certain species of rules so "self-evident and self-justifying" as to elevate them to "a second nature". It also implied that, in its indigenously spoken forms, "custom" – however the term itself might now be understood, given its disreputable colonial history (see e.g. Moore 1986; Chanock 1985) – afforded a vocabulary for imagining a socially ordered universe that stretched back, as "tradition", to time immemorial. This, in turn, resonates with the fact that, in translating *nomoi*, Hölkeskamp elides custom, tradition, and order, an elision that underscores the salience of vernacular norms in the phenomenological process of constructing, inhabiting, and arguing over the lineaments of the lived world. In fact, taken together, *nomoi* and *thesmoi* comprised a body of "custom and law" very like *mekgwa le melao* among Tswana or *mikwa li milao* among the Barotse (see above). As in Africa, they – *nomoi* and *thesmoi* – are not easily set apart; although, in each case, one term of the pair (*thesmoi*, *melao*, *milao*) tends to be seen, if tentatively, as more "law-like", more enforceable, more liable to have its origin in legislation. And, as in Africa, it is impossible to understand the regulation of everyday conduct, the negotiation of conflict, or the way in which the interiors of the world are apprehended, without a close understanding of their cultural logic.

These three reasons for taking the normative seriously – arising, respectively,

out of its emotional, didactic, and cultural dimensions – do not suffice, however, as an answer to a prior problem. That problem is highlighted by Elster's argument for redirecting the study of social control, *ab initio*, toward the interrogation of social norms: Are we to allow that the disciplining of behavior is reducible to rules of conduct and their effects? And ought we to concur that only individuals, not "societies" or the institutions that exist under their sign, have the capacity to influence the actions of other human beings? The resolution of these issues, I scarcely need repeat yet again, depends on higher order theoretical considerations over which reasonable minds might disagree. Nonetheless, the preceding chapters would seem to defy any notion that "social control" – even if we take the term, heuristically and generically, to denote no more than the regulation of human behavior – might finally be understood through the lens of normative injunctions; this in spite of the obvious importance of these injunction in the construction and representation of social life everywhere. As crucial are the processes by which naturalized, embodied, ostensibly unregulated, more or less habituated social practices – as well, patently, as the intentions that suffuse them and the meanings ascribed to them – are produced.

From Norm to Process, Rule to Practice

I have already alluded to the curses and oaths discussed by Faraone and Thür. To an Africanist anthropologist, these conjure up a complex regime of regulation, a regime that grows, on one hand, out of the practical exercise of patriarchal authority and, on the other, out of the metapragmatic capacity of linguistic performatives to bring about the effects that they enunciate. It is a regime with a double valence: while it disciplines the routine behavior of the members of a political community, affirming the legitimacy of patriarchal command, it may also provide a means for the sanction of abuses of power. In contexts with which I am more familiar, the potency of curses appears to derive not from social norms but from the transcendent dominion of the ancestral world: they enjoy the "magical" capacity of "custom" – the Mill here, if I may be forgiven a pun, grinds exceedingly fine – to render a whole world of behavioral minutiae into "second nature". Of course, custom is itself congealed practice, practice that has become hegemonic, habitual, beyond history. It presents itself, in fact, as vernacular knowledge, "tradition". In the case of curses and oaths, it embodies the sedimentation of patriarchal authority-as-practiced into the patriarchate as a normative order. Which, by turn, justifies the exercise of various substantive forms of male domination and the sanction of the curse that attends its violation – either against those who defy it or against those who abuse it. In short, norm and practice exist in a dialectical relationship, a relationship that appears to underpin the very nature of order (not to mention the order in nature), a relationship nonetheless that is subject, through contestation or resistance or refusal, to revision, rupture, reformulation. History.

The point? There are two, each being an answer to one half the problem posed a moment ago.

The first is that "social control" is irreducible to the normative, however that term might be qualified; that it is embraced in an ongoing dialectic of rule and process, meaning and practice, human subjects and their sociocultural contexts. An aside here: in light of this, perhaps the concept itself – social control, that is – is better replaced by *regimes of regulation*, which does not carry the same functionalist baggage, points to the profoundly political nature of all discipline, carries within both of its component nouns a fan of multiple connotations, and reminds us of its intrinsic historicity. The second point, offered again with due respect to Elster's argument, is that such regimes of regulation consist in much more than the contrapuntal actions of individuals upon each other; that, inevitably, they implicate a complex world of signifying practices, a world of congealed of social intentions, a world of internalized values and un-cognized disciplinary routines. In short, the social, material, and cultural architecture of a living moral economy.

I have chosen to illustrate these points, perforce very sketchily, with reference to curses, oaths, and African patriarchy. However, they may as well be extended to, say, the burial ceremonies described by Cynthia Patterson (infra). Drawing on the dramaturgical power of death – on its accompanying practices and its emotive framing – to authorize social realities, those rites seem to have been both a site and a vehicle for the enactment of the distinction between the private and public domains; indeed, perhaps even for its practical objectification. (A second, less enunciated theme in these funerals appears to have been the performance of the jural subordination of women, made real through restrictions on travel and clothing; the latter, of course, being a well-established nexus for the construction of embodied, disciplined subjectivity.) Likewise the marriage processes on which Lin Foxall's essay focuses. Wealthy Greeks living under Roman rule, Foxall suggests, asserted their elite standing, performatively, by adopting the rules and conventions of Roman family law. This, it appears, allowed them to devolve their elevated position to their children, accompanied presumably by the passage of property, thus contriving an enduring jural status for their agnatic offspring. (In Africa, it has been said, such inter-generational transfers are the means by which the immanent principle of descent, as a jural construct, is concretized into corporate patrilineages; Comaroff 1980: 34f.). Note, once again, the complexly interwoven dialectics of rule and practice, of convention and intention, of legality and materiality, of the manufacture of jural facts through social acts.

Coda

Out of control, then – or, more accurately, out of an Africa-tinted encounter with the problem of social control in ancient Athens – emerges a challenge: How best to rethink the nature of law and society in the classical world in light of what we might now call a dialectical jurisprudence? How do we arrive at an outline for the

practice of theory in this context? I, plainly, am not the person to answer these questions. But, to return to my Maine point, so to speak, an observation may be in order: perhaps the "precocious maturity" of Greek law has been a mixed blessing to its scholars. Precisely because it *did* constitute such a hugely complex world, a world that has drawn many raiders to the lost archive, ancient Athens has tended *not* to invite much comparison with the legal anthropology of less ancient elsewheres. My only contribution to a field of scholarship that I admire greatly but know shamefully little about, is to call for more comparison; comparison, in particular, that estranges law and social order in such a way as to discomfort existing orthodoxies. Some, of course, have already begun to rise to the challenge: not least David Cohen, the moving spirit behind the present volume. It is to his work that this passing reflection, finally, is intended as tribute.

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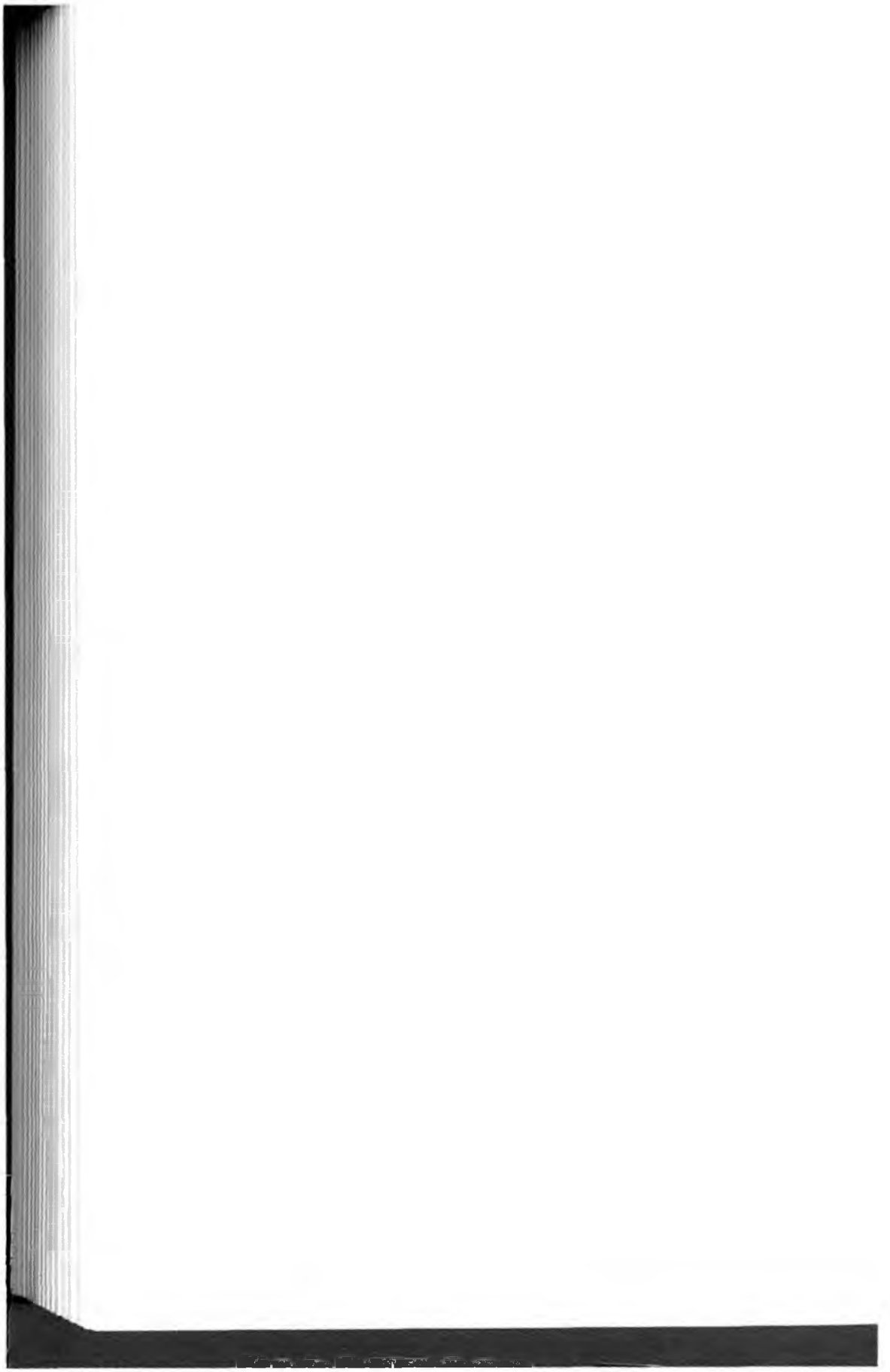

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