

UNITY AND DIVERSITY IN ANCIENT GREEK LAW

By Edward M. Harris

Summary: In the twentieth century there were several works that assumed the essential unity of Greek Law: *Griechisches Bürgschaftsrecht* by J. Partsch, *Griechisches Privatrecht auf rechtsvergleichender Grundlage* by E. Weiss, and *The Greek Law of Sale* by F. Pringsheim. In a review of Pringsheim's book, and in an essay on the topic, however, M.I. Finley challenged the notion of the unity of Greek Law. Finley observed that the Greek world was divided into hundreds of different city-states, each with its own political institutions, laws, and legal procedures. According to Finley, there was just too much diversity in the laws of the Greek city-states to justify any discussion of 'Ancient Greek Law' as a unified body of statutes and legal concepts. He did however allow that there might have been some unity in commercial law. More recently, M. Gagarin has claimed in the *Cambridge Companion to Ancient Greek Law* that there was unity in the laws of the Greek *poleis* in respect to procedure but not in respect to substantive provisions. This essay revisits this issue and shows that there was a considerable amount of unity in the laws of the Greek *poleis* in substantive and constitutional matters. The article examines several areas of unity: marriage law, contracts, real security, the status of freed persons, the accountability of officials, and the relationship between Council and Assembly. It will also examine the unity of Greek law in regard to legal terminology. On the other hand, it will show that there was considerable diversity in legal procedures, which often varied according to the political constitution of a state.

Introduction

In the late nineteenth and most of the twentieth centuries there were several works that assumed the essential unity of Greek law: *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs* by Ludwig Mitteis in 1891, *Griechisches Bürgschaftsrecht* by Iosef Partsch in 1909, *Griechisches Privatrecht auf rechtsvergleichender Grundlage* by Egon Weiss in 1923, *Die Willenslehre im griechischen Recht* by Richard Maschke in 1926, *The Greek Law of Sale* by Fritz Pringsheim in 1951, *The Law and Legal Theory of*

the Greeks by J. Walter Jones in 1956, and *Eigentum und Besitz im griechischen Recht des fünften und vierten Jahrhunderts v. Chr.* by Arnold Kränzlein in 1963. The book of Walter Erdmann: *Die Ehe im alten Griechenland*, published in 1934, took for granted broad similarity in marriage practices. In 1982 Arnaldo Biscardi published a book entitled *Diritto greco antico*. Sealey however preferred in 1994 to give the title *The Justice of the Greeks* to his general treatment but still argued for the unity of Greek law. In 2020 Stolfi gave the title *La cultura giuridica dell'antica Grecia* to his book on Greek law.

In a review of Pringsheim's book published in *Seminar* in 1951, and in an essay on the topic published in 1968 and reprinted in *The Use and Abuse of History* in 1975, M.I. Finley challenged the notion of the unity of Greek Law.¹ Finley observed that the Greek world was divided into hundreds of different city-states, each with its own political institutions, laws, and legal procedures. According to Finley, there was just too much diversity in the laws of the Greek city-states to justify any discussion of 'Ancient Greek Law' as a unified body of statutes and legal concepts. Finley concentrated most of his critique in two areas, marriage and property. He denied any similarities in the marriage practices of Homeric Greece, classical Athens, and Ptolemaic Egypt, a point to which we will return. As for property, he dismissed the three common principles enunciated by Mitteis: private ownership, the exclusion of next of kin other than blood heirs from claims, and a different conception of ownership from Roman *dominium* - as neither illuminating nor useful. By contrast, he found major differences in three areas: (1) limitations on the size of land holdings, (2) prohibitions on the right to sell, and (3) restrictions on the sale of an 'original allotment'. He also observed differences in practices about manumission. The only exception he noted was the widespread use of the Rhodian Sea Law, but this was because "Every *polis* with cargo ships on the high seas faced the same problems, exacerbated by the frequency of shipwreck, and the seamen and shippers required neither notaries nor jurists in order to come to an agreement with each other across the po-

1 Finley 1951, Finley 1968 and Finley 1975: 134-46.

litical boundaries of small autonomous states. The same was true of commercial law more generally.”² Finley did not discuss constitutional law or make a distinction between procedural and substantive law.

More recently, M. Gagarin has claimed that there was unity in the laws of the Greek *poleis* in respect to procedure but not in respect to substantive provisions.³ Gagarin asserts “although Athenian law may be different in its substantive details, in the realm of procedure (broadly understood) it shares significant features with other legal systems of archaic and classical Greece.” He continues: “The unity I find in Greek law, therefore is a general procedural unity, grounded in the archaic and classical periods, not the substantive unity grounded in Hellenistic law.” One aspect of this procedural unity is: “Greek laws, for example, at least those found at Athens and at Gortyn, devote considerable attention to procedure and show less interest in setting precise penalties for offenses.”⁴ We will return to the first assertion, but the second assertion is contradicted by the evidence of fifth-century inscriptions and the inscribed laws of the fourth century. Out of 156 decrees in *IG I³* (1-154, 236, 1453b) forty-five contain penalties. One must also bear in mind that some are fragmentary and that over thirty are honorary decrees, in which we would not expect to see penalties.⁵ Gagarin also detected a widespread tendency in Greece to inscribe laws on stone and to display them in public places. But this has nothing to do with procedure but with publication and accessibility.⁶ Gagarin next asserts that in the Gortyn Code and at Athens there was a “highly restricted use of writing” and that legal proceedings relied mainly on oral argument in open settings. As we will see below, this is certainly not true for Athens.

To anticipate my conclusion I am going to show that contrary to Gagarin’s assertions there were broad similarities in substantive provisions in many areas, but in general wide differences in legal procedures. The

2 Finley 1975: 146.

3 Gagarin in Gagarin & Cohen 2005: 29-40.

4 Gagarin in Gagarin & Cohen 2005: 34.

5 Fragmentary decrees: *IG I³* 22, 25, 26, 33, 44, 50, 51, 59, 87, 88, 94, 111, 112, 115, 121, 124. Honorary decrees: *IG I³* 19, 20, 23, 24, 27, 28, 29, 48, 56, 57, 69, 73, 74, 80, 81, 91, 92, 95, 97, 98, 102, 103, 106, 107, 110, 113, 114, 116, 119, 122, 125, 126.

6 On publication and accessibility of laws at Athens see Sickinger 2004.

main reason for this is that the Greeks shared some basic notions about the rights and duties of citizens, which formed the foundation of substantive law. But legal procedures involved the allocation of power – who decides and who has power to enforce norms – which varied from one constitution to the next. We need however to start by defining our terms. I quote the discussion of the legal scholar J.W. Salmond, who is followed by Gagarin in his *Early Greek Law* and by other scholars and is widely accepted.⁷

Substantive law is concerned with the ends which the administration of justice seeks; procedural law deals with the means and instruments by which those ends are to be attained. The latter regulates the conduct and relations of courts and litigants in respect of the litigation itself; the former determines their conduct and relations in respect of the matters litigated. Procedural law is concerned with affairs inside the courts of justice; substantive law deals with matters in the world outside.

One cannot claim that this analysis is *etic*, that is, a modern distinction anachronistically imposed on the ancient evidence, and therefore inappropriate for the study of ancient Greek law. As Carey has noted many laws of the Greek city-states are formulated in the casuistic form as a conditional sentence starting with a *protasis* naming the substantive offense – ‘if anyone commits theft’ or ‘if anyone commits *hybris*’ – then followed by the name of a procedure in the *apodosis* such as ‘let there be a private action for theft’ or ‘let there be a public action for *hybris*’ (Dem. 21.46).⁸ The distinction is implicit in the wording of the statute. The *protasis* names the illegal behavior – theft or *hybris* – and indicates the actions one should not commit in daily life. The *apodosis* names the procedure to be followed by an accuser if someone commits a certain illegal action. For instance, if someone wishes to accuse a person of theft, he will bring a private action. The procedural rules will indicate how the

7 Salmond 1913: 438 followed by Gagarin 1986: 72.

8 Carey 1998, who however believes that Athenian law was mainly procedural, but his analysis is vitiated by his reliance on several documents that have now been shown to be forgeries and by his neglect of inscriptions.

legal action will be initiated (e.g. present a summons to the defendant with two witnesses, submit a written charge to a certain magistrate) and how the case will be tried in court (e.g. the manner of selecting judges, the amount of time allocated for each litigant to speak, the method of voting the verdict). Several passages in the orators make a clear distinction between the offense and the ways of bringing an action to court (e.g. Dem. 21.23-28). In 1975 Mogens Hansen claimed that Athenian law was mainly procedural, and scholars such as Michael Gagarin, Stephen Todd, Paul Millett, and Robin Osborne followed him in claiming that Greek law in general and Athenian law in particular were mostly concerned with procedure and paid little attention to substance.⁹ In an essay published in 2009-2010 and reprinted in my book of 2013, I collected all the laws mentioned in the Attic orators and the fourth century laws inscribed on stone and demonstrated that most laws were primarily concerned with substantive matters and that Athenian laws were organised by substantive categories (e.g. laws of homicide, laws of adoption, laws on traders, laws about order in the Assembly).¹⁰ Because the evidence against his previous assumption is overwhelming, Hansen has recently admitted that he was wrong.¹¹ In a recent essay David Lewis and I analyzed all the inscriptions in Koerner's valuable collection *Inschriftliche Gesetzestexte der frühen griechischen Polis* down to 450 BCE and came to the same conclusion about laws during the archaic period.¹²

Differences in Legal Procedures

First point. The differences between the basic procedures of city-states could be enormous. Let us start with the laws of Gortyn in the fifth century BCE. To initiate proceedings, one party summoned (καλῆν) the other

9 Hansen 1975: 10, 14, 21 followed by Osborne 1985, Todd & Millett 1990: 5, Todd 1993: 65, Foxhall & Lewis 1996: 3, and Lanni 2006: 87.

10 Harris 2013a: 138-74, 359-78.

11 Hansen 2016: 465-66.

12 Harris & Lewis 2022 analyzing the laws in Koerner 1993.

before a judge (δικαστάς).¹³ Each presented his case (πονῆν) and presented witnesses who testified. These could be formal witnesses, who were asked to be present at some transaction and then were summoned to testify that the transaction took place, or accidental witnesses who happened to be present at some event and were later called on to testify about the facts of this event. The judge then made a decision in one of two ways. First, the judge might be required in some cases to decide according to witnesses or according to an oath. For instance, if one litigant presented witnesses and the other none, the judge was ordered to decide for the former litigant. In divorce cases in which a woman was accused of taking her husband's property but swore an oath that she did not take anything, the judge was ordered to decide for the woman. This form of decision according to evidence was called δικάδδεν or καταδικάδδεν. In other cases, the judge would hear the evidence and decide according to the substantive rule in the law. This was called *krinein*. There is no mention of written documents in the laws of Gortyn aside from written statutes. At Gortyn a slave could swear an oath and in some cases it might be ὀρκιότερος, more binding, than that of a free person.

The difference with Athenian procedures could not be greater. In Athens the accuser summoned the defendant to appear before an official on a certain day but had to have two witnesses to the summons.¹⁴ The accuser then submitted a plaint containing his name, patronymic, and deme and the name, patronymic, and deme of the defendant, the type of procedure, and a brief description of the actions of the defendant violating the substantive part of the relevant statute.¹⁵ After the trial this document was kept in the Metroon.¹⁶ This key document has no parallel in the laws of Gortyn. In a private procedure after 400 most cases were sent to a public arbitrator, who could try to mediate the dispute or if both sides rejected mediation, would make a decision ([Arist.] *Ath. Pol.* 53.1-7).¹⁷ The arbitrator would receive documents and testimony and could

13 On procedure at Gortyn see Gagarin in Gagarin & Perlman 2016: 136-39.

14 On initiating a lawsuit at Athens see Harrison 1971: 85-94.

15 On the plaint see Harris 2013b.

16 See Harris 2013b: 167-69, endorsed by Boffo & Faraguna 2021: 264, 288 (rejecting Gagarin 2008: 86, who denies without evidence that the plaint was kept in the archives).

17 On public arbitration at Athens see Harris 2018.

question the litigants. If the litigants did not accept the decision, the evidence was placed in an *echinos*, and the case went to a court of several hundred judges who had sworn the judicial oath and decided by secret ballot. The oath bound the judges to vote according to the laws and decrees of Athens, to vote only about the charges in the plaint, to cast a just vote without favor or hostility, and to listen to both sides.¹⁸ Each litigant gave two speeches measured by the κλειψύδρα. Other private cases were decided by διαδικασία, which dispensed with the public arbitrator but was in other respects similar.¹⁹ At Gortyn there were no public arbitrators, no large panels of judges, the official who received the charges also tried the case, and there was no need for secret ballot. On the other hand, oaths at trials were not dispositive in Athenian law. The procedural differences in private suits could not have been greater. One might add that in public and private cases at Athens many written documents could be submitted: letters from officials, letters from foreign kings, catalogues of trierarchs and public debtors, records of import and export duties, accounts of officials, inventories in the *antidosis* procedure, leases of mines, citizen lists kept in the demes, and honorary decrees from other states.²⁰ Gagarin's assertions about the lack of written documents in Athenian trials is not supported by the evidence. And for private suits the Athenians made a distinction between normal suits and monthly suits (ἔμμηνοι δίκαι), which were decided within a month ([Arist.] *Ath. Pol.* 52.2-3), a distinction not found at Gortyn. The differences between Athens and Gortyn could not have been greater.

We know a little more about trials of kings and other officials such as Sphodrias in Sparta.²¹ These cases were often tried in the Gerousia or Council of Elders where there was no selection of judges by lot. By contrast, the Council at Athens might impose fines up to 500 drachmas (Dem. 47.43), but could not vote larger fines, permanent exile or death, and all

18 On the judicial oath at Athens see Harris 2013a: 101-37. Lanni 2006: 72 claims that the pledge to vote according to one's most just judgment was the most frequently cited pledge, but this is not true: see the overwhelming evidence collected in Harris 2013a: 353-57.

19 On the *diadikasia* see Harrison 1971: 79, 88, 235-38 and *passim*.

20 On written documents in Athenian trials see Harris 2022 and Boffo & Faraguna 2021: 265-93 with detailed criticisms of Gagarin 2008.

21 For procedure at Sparta see MacDowell 1986: 123-50.

public cases took place in courts staffed by five hundred or more judges. The kings at Sparta tried cases involving heiresses, public roads and adoption (Hdt. 6.57.4-5), and the Ephors had a broad jurisdiction over other private cases (Arist. *Pol.* 1275b9-10; Xen. *Lac. Pol.* 8.4). At Athens these cases were tried in courts staffed by hundreds of judges. Another major difference was that important trials at Sparta took place over several days while trials on public charges at Athens were decided in one day, something noted by Socrates at his trial (*Ap.* 37a-b; cf. *Plut. Eth.* 217a-b). Not much is known about procedure in laws of Ptolemaic Egypt, but here cases were decided either by royal edict or by civic laws.²² There were also rules for cases between Greeks, who were tried in the *dikasteria*, and Egyptians, who were tried before the *laokritai*. For trials between Greeks and Egyptians if the documents were in Greek, the trial was before the *dikasteria*, if the documents were in Egyptian, before the *laokritai*. There was nothing similar in Athens where citizens, metics, and foreigners were tried in the same courts according to Athenian law.²³ There are some similarities such as the requirement that two people witness the summons and the use of a written plaint, but there is no evidence for large courts in Ptolemaic Egypt.

The Laws of the Greeks in Interstate Relations

By contrast, there are significant similarities in substantive law. In a famous passage Herodotus (8.144) states that the Greeks were united by their common ancestry, common language, common religion and common customs. These common customs often took the form of similar laws enforced by many different city-states. For instance, in 367/366 BCE the Athenian Assembly sent a herald to the Aitolians to protest against the arrest by the Trichonians of the *spondophoroi* sent to announce the truce for the Eleusinian Mysteries, an act that violated the laws of the Greeks (*Agora* 16.48, ll. 13-14: παρὰ τοὺς νόμους τοὺς κοινούς τῶν Ἑλλήνων). The decree of the Assembly assumes the existence of a rule

22 See M. Modrzejewski in Keenan, Manning & Yiftach-Firanko 2014: 470-81.

23 Charges involving metics and foreigners were brought before the Polemarch, but the cases were tried in the regular courts. See [Arist.] *Ath. Pol.* 58.2-3.

recognized by all the Greeks that it is wrong to hold those sent to announce a truce for a Panhellenic festival. This is similar to the Greek rule that one does not harm heralds sent from one city to another.

Several speakers in Thucydides' history refer to the laws of the Greeks. When the Athenians invaded Boeotia and fortified the sanctuary at Delium, the Boeotians claimed that they had violated the laws of the Greeks that required those invading a country not to damage sanctuaries (Thuc. 4.97.2; cf. Polyb. 4.67.4). The Athenians replied that the laws of the Greeks provided that sanctuaries belonged to whoever was in control of the territory as long as they observed the traditional rites of the sanctuary (Thuc. 4.98.2). They also insisted that the Boeotians follow the rule of the Greeks that the bodies of soldiers killed in battle be returned for burial. It is well known from other sources that this was a Panhellenic rule and widely enforced.²⁴ In his funeral oration Lysias refers to the Greek law that the dead should not remain unburied (2.7-10; cf. 9: Ἑλληνικοῦ νόμου), a common rule underlying the legislation about burial in different communities.²⁵

When the Plataeans were put on trial by the Spartans after their surrender in 427 BCE, the former pointed out that they have surrendered as suppliants to the Spartans who have accepted them, and that it is wrong according to the laws of the Greeks to put suppliants to death (Thuc. 3.58.1). The Boeotians retort that it is the Plataeans who have violated the laws of the Greeks by not honoring the rights of suppliants (Thuc. 4.68.4; cf. 66.2-3). As F.S. Naiden has shown, the norms of supplication were a quasi-legal ritual recognised throughout the Greek world.²⁶ In a debate at Athens, the Corinthians appealed to the laws of the Greeks about the right to discipline members of an alliance (Thuc. 1.41.1; cf. 3.9).

24 For the sources about the law see Harris 2006: 65-68 and Pritchett 1985: 235-41 for a collection of testimonia from different city-states about the practice.

25 See Harris 2006: 65-68 with the literature cited there.

26 See the thorough treatment of Naiden 2006.

Similarities in Homicide Law and Family Law

Some of these rules relate to interstate law, but there were also broad similarities in the area of family law. In the speech *On the Murder of Erasthenes* written by Lysias (1.1-2), the defendant Euphiletus tells the court that the laws against seduction (μοιχεία) do not differ in oligarchies and democracies: all Greek city-states condemn this crime and enact harsh penalties against those who seduce wives (cf. Xen. *Hier.* 3.3). It was also a universal rule among the Greeks that the property and inhabitants of a city conquered in war belonged to the victors (Pl. *Resp.* 5 468a-b; Arist. *Pol.* 1.6 1255a 6-7; Xen. *Cyr.* 7.5.73). In every one of these cases the rules apply to substantive matters, not procedure. There also appear to have existed broad similarities in regard to homicide law. In a speech of Antiphon (5.13), the defendant states that all Greeks who were accused of murder had the right to avoid punishment by going into exile. The belief that homicide caused pollution was also widespread and was incorporated into the laws of the Greek city-states.²⁷ And in a story about the return of a deposit, a Spartan named Glaukos replied to some citizens of Miletus that he would follow the laws of the Greeks about this matter (Hdt. 6.86). The study of marriage by A.-M. Vérilhac & C. Vial, *Le mariage grec du VIe siècle av. J.C. à l'époque d'Auguste*, has also revealed basic similarities in substantive law.²⁸ In all Greek cities, marriage was an agreement between the woman's father or brother and her husband, which transferred the woman from her natal household to that of her husband (*virilocal*). The marriage was normally accompanied by a dowry (προίξ) given by the wife's family to the husband. Everywhere legitimate children (γνήσιοι) were distinguished from bastards (νόθοι). In general, legitimate children had the right to inherit their parents' property while bastards did not. In the Greek rules for inheritance, descendants took precedence over collaterals, and males in the same degree received equal portions (*partible inheritance*); there is no evidence for primogeniture. All heirs were universal successors, which meant that they were responsible for the debts of the estate as well as entitled to the assets. If the liabilities exceeded the value of the assets, the heir(s) had to pay the debts. There

²⁷ Harris 2018c.

²⁸ Vérilhac & Vial 1998.

were, of course, local variations: at Gortyn, for instance, sisters could inherit along with brothers although their share was only half that of their brothers. In some cities, *nothoi* were citizens, in others they were not. Yet the main substantive provisions remained the same.

Similarities in Property Law

Another area in which there was broad consistency in substantive matters was in regard to the ownership of land.²⁹ The concept of ownership is universal, found in all societies and contains several standard incidents: (1) the right to possess, (2) the right to use, (3) the right to manage, (4) the right to income, (5) the right to capital, (6) the right to security, (7) transmissibility, (8) absence of term, (9) prohibition of harmful use, and (10) liability to execution. Three aspects of ownership may vary from one society to the next: (1) who can own? (2) what can be owned? and (3) what restrictions are placed on the powers of ownership?³⁰ As observed by D. Hennig in an important essay, “Nach einem in allen griechischen Staaten unabhängig von der jeweiligen Verfassungsform gültigen Rechtsgrundsatz waren Besitz und damit auch Erwerb von Grundstücken und Gebäuden prinzipiell nur den eigenen Bürgern gestattet.”³¹ This of course is seen in a famous passage from Demosthenes’ speech *For Phormio* (36.6) where we learn that when Phormio leased the bank of Pasion and took over the deposits, he could not recover all the loans that Pasion had made on the security of land and lodging houses because he had not yet obtained citizenship. In other words, if the borrowers in these loans defaulted, Phormio as a non-citizen could not seize these properties because he had no right to acquire property in Attica. As a result, a foreigner could only obtain the right to own property if the community granted him an *enktēsis gēs*, a right to acquire property.³² Such grants are

29 On ownership and property records see Harris 2016.

30 On the incidents of ownership see Honoré 1961.

31 “According to a legal principle valid in all Greek states, regardless of the respective constitutional form, ownership and thus also the acquisition of land and buildings were in principle only permitted to their own citizens” (Hennig 1994).

32 On *enktēsis gēs* at Athens see Peçirka 1966.

attested throughout the Greek world. Appendix I shows that they are found in all regions: the Peloponnese, Central Greece (Megara, Phocis, Lokris, and Boeotia), Northwestern Greece, Thessaly, Aetolia, many of the Aegean islands including Crete, Caria and other parts of Asia Minor, Thrace and the Black Sea regions. They are mostly found in proxeny decrees, but they are also found in treaties of *sympoliteia* such as the one between Miletus and Pidasa (*Milet* I 3, 149). There are also examples of communities that awarded foreign benefactors with land, but the award was clearly accompanied with the privilege of owning land, a kind of implicit *ἔγκτησις γῆς*. It is true that some Athenians acquired property in the territory of allied states during the fifth-century empire as we can see from the confiscation records for the religious scandals of 415 (*IG* I³ 426, lines 35-41; cf. lines 144-49), but the practice was viewed as an infringement of autonomy and was banned in the Second Athenian League (*IG* II² 43).

There is a question about the right of citizens in one community of a federal league to acquire property in the territory of another community of the same league. This appears to have been the case in the Chalcidian League (*Xen. Hell.* 5.2.11-19), which has led E. Mackil to conclude that the same held true for other federal leagues.³³ Two recent articles by Sizov have however demonstrated that this arrangement did not exist in the Thessalian, Achaean and Aetolian leagues, which undermines Mackil's assumption.³⁴ Even though this privilege was granted to cities in the Chalcidian League, the principle still held that those who were not citizens of one of the member cities could not obtain land in the territory of the league. The way in which this rule was enforced would have varied from one community to the next according to their different legal procedures, but the general substantive rule was universally followed.

The basic modes of acquiring ownership in the Greek *polis* were widely recognized and agreed. In a famous arbitration between Hierapytna and Itanos on Crete decided by judges from Magnesia, it is stated that "Men have rights of ownership over land because they have received the land themselves from their ancestors, or because they have bought it by giving money, or by conquering it by the spear or taking it from someone of

33 Mackil 2013: 256-57.

34 Sizov 2021a, and Sizov 2021b.

those more powerful” (*I. Cret.* III iv 9, lines 133ff.).³⁵ While the basic substantive principles are universal, the specific procedures for transferring ownership varied from one community to the next. In a famous fragment from his work *On the Laws* (fr. 97 Wimm. = Stobaeus 4.2.20) Theophrastus lists several different modes of conveyance in various Greek states. According to Theophrastus, some lawgivers require that the sale be announced by a herald several days in advance while others order that sales take place before a magistrate. At Athens the sale must be announced in writing no fewer than sixty days ahead and the buyer should deposit one sixtieth of the price so that whoever wishes may have the right to dispute and to lodge an objection.³⁶ Once again, the procedures differ from one community to the next.

The Status of Freed Slaves

Finally a widespread rule in Greece was that freed slaves did not automatically become citizens but were metics, or *katoikoi*.³⁷ In 217 BCE Philip V of Macedonia sent the people of Larissa a letter in response to their concerns about their recent loss of citizens (*IG IX, 2 517 = Syll.*³ 543).³⁸ He contrasted the Greeks with the Romans who, when they manumit their slaves, admit them to the citizen body and grant them a share in the magistracies. In this way, they have not only made their country great, but also sent colonies to almost seventy places (lines 29-34). We know that the Athenians did not automatically make their freed persons citizens. Pasion, the father of Apollodorus, was freed, but was not given citizenship until after he made many generous contributions ([*Dem.*] 59.2). In the 1,341 manumission documents preserved at Delphi there is no mention of any former slaves receiving citizenship, which is the reason why

35 [... ἄν]θρωποι τὰς κατὰ τῶν τόπων ἔχουσι κυριείας ἢ παρὰ προγόνων π[αραλαβόν]τες αὐτοὶ [ἢ] πριάμενοι | [κατ'] ἀργυρίου δόσιν ἢ δόρατι κρατήσαντες ἢ παρὰ τινος τῶν κρεισσόν[ων]σχόντες. On this text see Chaniotis 2004: 185-87.

36 For the inscriptions recording these payments see Lambert 1997.

37 For the status of freed persons see Zanovello 2021, who shows that they are free and not between free and slave. For their status at Athens see Canevaro & Lewis 2014.

38 On manumission and citizenship in ancient Greece and Rome see Harris with Zanovello 2023.

these texts assign many witnesses and guarantors to protect their freedom.³⁹ Had they become citizens, this would not have been necessary. The manumission documents from Thessaly point in the same direction.⁴⁰

Similarities in Constitutional Law

In some cases the similar provisions about substantive rules derive from a common belief in the rule of law, a set of values that goes back to the late archaic period and spread throughout Greece by the classical period. In Euripides' *Medea* (536-38) Jason tells his ex-wife that she is lucky to have come from barbarian territory to Greece where she learns justice and to follow the laws and not to live in a way that gives free rein to force. When Tyndareus faults Orestes for killing his mother and not prosecuting her for murder in court, he accuses him of violating the laws of the Greeks, not merely the laws of Argos (Eur. *Orestes* 491-517). As Canevaro has shown, the rule of law became the main criterion for legitimacy in the Greek *poleis*.⁴¹ In his *Panegyricus* Isocrates (4.39) claims that it was the Athenians who brought the rule of law to the Greeks in place of tyranny and anarchy. This is Athenian propaganda, but these three passages are important for showing the importance of the rule of law for Panhellenic identity, a point to which we will return. It would be a serious mistake to believe that there was a shift from popular sovereignty to the sovereignty of law in Athens around 400 BCE; democracy and the rule of law went hand in hand in the fifth and fourth centuries BCE.⁴² The basic features of the rule of law go back to the late archaic period when they were articulated in the poetry of Solon and implemented in the many laws

39 For an overview of these documents with statistics see Mulliez 1992. For the first volume of these manumission documents see Mulliez 2019.

40 On the documents from Thessaly see Zelnick-Abramovitz 2013.

41 Canevaro 2017.

42 Hansen 2018: 29 claims that there was a shift from popular sovereignty to the rule of law, but his view rests on a misunderstanding of the concept of the rule of law and of the identity of the *nomothetai* in the legislative procedure after 403 BCE. For detailed analysis and refutation see Harris with Esu 2021: 94-100.

preserved on stone from the period.⁴³ There are some differences between ancient and modern conceptions of the rule of law, but several features are the same: (1) equality before the law, (2) no person above the law, that is, all officials are accountable, (3) stability and consistency of the laws, and (4) fairness in procedure (defendant informed about charges before the trial, trial before impartial judges, decision about guilt according to fixed rules, which means no *ad hoc* decisions, defendant given time to present evidence and witnesses, enforcement of *res iudicata*).⁴⁴ Here I would like to concentrate on the second and third features.

In the famous debate about the constitutions in Book 3 of Herodotus, Otanes states that with *isonomia* the laws are respected, free women are not victims of abuse, and people are not put to death without a trial. In this form of government there is alternation in office by use of the lot, no official holds office without being accountable (ὑπεύθυνον δὲ ἀρχὴν ἔχει), and all plans are discussed in common (Hdt. 3.80.6). The historicity of the debate is questionable, but the passage demonstrates that the Greek audience for whom Herodotus wrote contrasted *isonomia* with tyranny and associated *isonomia*, equality before the law, with the accountability of officials. The practice of penalizing officials for not carrying out the law goes back to the late archaic period. In Koerner's collection of inscriptions we find examples of fines for officials disobeying the law from Tiryns, Argos, Arcadia, Olympia, Naupactos, Thasos, Eretria. In his speech *Against Ctesiphon* Aeschines (3.2-23) explicitly links the rule of law with the accountability of officials and provides a long list of those accountable. The procedures at Athens are succinctly described at the Aristotelian *Constitution of the Athenians* (54.2): all officials after their term of office had to submit their accounts to ten accountants (λογισταί) and their assistants (συνήγοροι). The accountants could bring three kinds of charges before a court: (1) embezzlement (κλοπή), (2) bribery (δῶρα), and (3) 'injustice' (ἀδικιῶν) which is probably mismanagement of public funds. For the first two offenses, the penalty was ten times the amount, but for the last only the amount involved. The Council also selected by lot ten auditors (εὔθυνοι), one per tribe, and two assessors (πάρεδροι) for each auditor. If anyone wished to bring a private or a public charge

43 See Harris 2006: 3-28.

44 See Harris 2013: 4-10.

against a magistrate, he wrote his name, that of the defendant, the name of the offense, and the amount of the fine or damages sought. If the auditor considered the charges proven, he handed a public charge to the *thesmothetai* and a private charge to the Forty ([Arist.] *Ath. Pol.* 48.3-5). As P. Fröhlich has shown, the principle that all officials were accountable is almost universal, but the procedures for implementing this substantive rule varied from place to place.⁴⁵ We can see the contrast in the decree about the foundation of Aristomedes and Psylla from the second century BCE on Corcyra (*IG IX,1 694*). The Council takes responsibility for receiving accounts and imposing fines for misconduct. If officials do not submit accounts, the *nomophylakes* examine their accounts. There is no division into two parts and different bodies are involved. On the other hand, in Boeotia during the third and second centuries BCE officials called the *κατόπται* exercised a close supervision of payments made by officials and not only at the end of their term of office.⁴⁶ There is no mention of trials in court. According to Aristotle (*Pol.* 2.9.26.1271a6-8), the Ephors at Sparta had the task of supervising all officials, a marked difference from the procedure at Athens. If an anecdote from Aristotle's *Rhetoric* (3.18.1419a31-35) is reliable, the Ephors too were accountable, but the procedure is not known. On the other hand, several sources indicate that the Spartan kings were tried either in the Assembly or in court. Cleomenes appears to have been charged with bribery for not capturing Argos and acquitted before the Assembly (*Hdt.* 8.82.1-2), and the friends of Cleombrotus may have warned him about a trial before the people for allowing the Thebans to escape (*Xen. Hell.* 6.4.4-5). On the other hand, Leotyichidas was tried twice in court (*Hdt.* 6.72.2; 85.1).

The concern for the stability of the law is best seen in an anecdote told by Demosthenes in his speech *Against Timocrates* (24.139-41): The Locrians “are so committed to the idea that it is necessary to follow the long-

45 Fröhlich 2004.

46 Fröhlich 2004: 179: “Au III^e et au II^e siècle, dans chaque cité béotienne, il existe donc un collège de magistrats spécialisés dans le contrôle de leurs collègues et dans la reddition de comptes, les *katoptai*. Ils surveillent (souvent en collaboration avec les polémarques) toute opération financière soit par des magistrats ordinaires (en particulier les polémarques et les trésoriers), soit par des commissions temporaires. La surveillance peut sembler-t-il s'exercer sur un domaine plus étendu que seules finances, par exemple la transcription de documents publics à Thespies.”

established laws, to preserve the ancestral ways, and not to legislate on a whim nor to provide guilty men with a means of escape that if anyone wishes to pass a new law, he proposes his law with a noose around his neck; if the law is judged good and beneficial, the proposer lives and walks away; but if not, he dies when the noose is drawn tight. In fact, they do not dare to pass new laws, but strictly adhere to the long-established laws. Men of the court, it is said that for many years only one new law was enacted in the community. There was a law that if someone gouged an eye, he was to have his own eye knocked out in return, and no monetary penalty was permitted. The story goes that a man threatened to gouge the eye of his enemy who had just one eye. The one-eyed man, alarmed by this threat and thinking that life would not be worth living were it carried out, is said to have worked up the courage to introduce a law ordering that if anyone gouged the eye of a person with just one eye, he was to have both his eyes gouged out in return so that both men would suffer an equal misfortune. It is reported that this is the only law the Locrians have passed in more than two hundred years” (trans. Harris). The tendency to overturn traditional laws was characteristic of tyrants as Otanes mentions in the constitutional debate in Herodotus (3.80.5: νόμιαί τε κινέει πάτρια). The normal way to keep the laws stable was less extreme than the Locrian method. Starting in the archaic period important laws contain an entrenchment clause threatening severe penalties if anyone attempted to alter or repeal the statute. One of the earliest is found in Draco’s law of homicide: Let any official or private citizen who is responsible for overturning or changes this law be without rights and his children and his property (Dem. 23.62).⁴⁷ We find similar clauses in laws from “Tauromenium and Issa in the west to places as far as to the east as Acmonia and Termessus,”⁴⁸ and the late D. Lewis collected those from Athens in fifth century inscriptions.⁴⁹ Around 403 the Athenians introduced a distinction between laws and decrees and a new procedure for enacting laws as a way of promoting stability. This contained a series of steps designed to make it harder to enact new laws and to promote

47 For a new text of Draco’s homicide law in *IG I³ 104* see Harris & Canevaro 2023.

48 Rhodes with Lewis 1997: 524-25.

49 Lewis 1997: 136-49 with the discussion in Harris 2006: 23-25.

stability without resorting to the noose.⁵⁰ This made it unnecessary to add entrenchment clauses at Athens, but other cities continued to use them.

Herodotus, The Persian Wars, and the Rule of Law

It is appropriate at the end of this essay to return to the battle of Plataea, which served as the inspiration for the conference, and the Serpent column, which was erected at Delphi after the battle and later taken to Constantinople, now Istanbul.⁵¹ When Herodotus wrote about the Persian Wars, he portrayed the conflict not only as a struggle between Greeks and barbarians (though there were many Greeks fighting on the Persian side such as the Thessalians and Thebans), but also as a struggle between different forms of government, between tyranny and constitutional government by the rule of law. Herodotus makes the contrast explicit throughout his work, starting with the interview between Solon and Croesus and especially during the conversation between Demaratus and Xerxes, when the Spartan exile tells the Persian king that the Spartans are free but not completely free because they fear the law more than the Persians fear him (Hdt. 7.104.4). We see the same message in Aeschylus' *Persians*, which makes clear the difference between the Persian monarchy and the Athenian form of government. As we will see, this is an oversimplification but in a way it is quite accurate. Appendix II provides a list of all the communities listed on the Serpent Column, which is close to the lists in Herodotus and Pausanias.⁵² Even though some communities in Greece were ruled by monarchs/tyrants such as Macedonia, all those on the Serpent Column were not ruled by tyrants at the time. Among the three leading powers, Sparta never had a tyrant while Athens and Corinth overthrew their despots in the sixth century. This is also true for the others on the list. Even though for some there is no evidence for their constitutions at the time of the Persian Wars, evidence for later in the fifth century and the early fourth reveals the presence of civic institutions

50 See Canevaro 2013, Canevaro 2018, and Canevaro 2020.

51 For the text see Jacquemin, Mulliez & Rougemont 2012: 43-45.

52 For the different lists see Steinhart 1997: 61-69.

like officials, councils, and assemblies. We should not doubt the hostility of the Greek allies to tyranny. Most of the *poleis* listed on the Serpent Column were members of the Peloponnesian League. When Cleomenes led the members of the Peloponnesian League to reinstate Hippias as tyrant of Athens, they were convinced by the speech of Socles against tyranny and voted with their feet, deserting the expedition (Hdt. 5.93). Their opposition to the Persian invasion was not because of geography but from political conviction.

But this was not the only great victory of Greeks over non-Greeks in this period. According to Diodorus (11.20-26), the victory of Gelon and Theron at Himera was as great as the victories of the Greeks over the Persians at Salamis and Plataea. The Carthaginian threat to Sicily was as serious as the Persian threat to mainland Greece. Diodorus claims that the number of Carthaginians who sailed with Hamilcar to Panormus was not less than three hundred thousand (the same as the number of Persian troops at Plataea [Hdt. 8.32.2]), and there was a fleet of two hundred triremes and more than a thousand ships to transport supplies. Even though many of the ships were lost in a storm (just as many Persian ships were lost in a storm off Euboea [Hdt. 8.13-14]), the army was large enough to conquer the entire island. Theron, who was guarding the city, called on Gelon from Syracuse to help him defend Himera, and the two leaders won a decisive victory. Diodorus puts the number of Carthaginian prisoners at 10,000 and the number of soldiers slaughtered at 150,000 and reports, "Because of this achievement many historians compare this battle with the one which the Greeks fought at Plataea and the stratagem of Gelon with the ingenious schemes of Themistocles, and the first place they assign, since such exceptional merit was shown by both men, some to the one and some to the other" (11.23.1). Although Themistocles and Pausanias, the victors of Salamis and Plataea, were later driven into exile, Gelon continued in power and died while still on the throne. The victory at Himera was celebrated by Pindar (*Pythian* 1.67-80) who placed the victory on the same level as those of Athens and Sparta over the Persians. When Gelon dedicated his column at Delphi near the Serpent Column on the terrace in front of the temple of Apollo, he was clearly creating an equivalence between the two victories (*Syll.*³ 34A). As Jacquemin, Mulliez & Rougemont observe, "Dès 470, Pindare (*Ier Pythique* v. 71-80) faisant

l'éloge des Deinomenides, établissait un parallèle entre Himère, Salamine et Platées. Le trépied et la victoire étaient en or et l'on comparait l'ensemble aux offrandes légendaires de Crésus (Hérodote 1.50-51). La richesse de l'offrande et surtout le choix de son emplacement, à proximité immédiate de l'Apollon de Salamine et du trépied de Platées, auquel l'offrande de Gélon ressemblait, répondent précisément à la même intention que les vers de Pindare."⁵³

Herodotus (7.153-67) was not unaware of the victory of Gelon and Theron over the Carthaginians, but he devotes only a few chapters to the campaign and its impact. Herodotus mentions the victory of Gelon in the context of the Greek mission to ask for his support against the Persian invasion. Herodotus (7.163-67) gives two alternative explanations for Gelon's refusal to send troops. According to one version, he sent three ships under Cadmus of Cos with gold to Delphi. If the Persians won, Cadmus was to give Xerxes the money along with a pledge of earth and water (i.e. submission). If the Greeks won, he was to return with the money. According to the other version, he declined to send help because Terillus of Himera invited Hamilcar to invade with an army of 300,000 (the same figure as in Diodorus). Herodotus does not describe the battle and gives a different version of Hamilcar's death. Herodotus also omits any mention of the temples built to celebrate the victory at Himera and the dedication at Delphi though he mentions the Greek dedications at Delphi after Salamis and Plataea.

For Herodotus the main lesson of the Persian Wars was the superiority of Greek *eunomia* over Persian tyranny. The communities that participated in the victories at Salamis and Plataea all had constitutional governments. To be a good Greek was to hate tyranny. And even a Greek like Alexander of Macedon, who was considered a tyrant by some Greeks (Hdt. 8.142.5), might have his Greek ethnicity questioned (Hdt. 5.22), and tyranny might go hand in hand with collaboration with the Persians as it did at Athens (Hdt. 6.107-9). As a result, Herodotus did his best to marginalize the battle of Himera despite its importance, to downplay Sicilian

53 Jacquemin, Mulliez & Rougemont 2012: 44-45.

affairs, and to question Gelon's loyalty to the Greek cause.⁵⁴ Too much attention to Himera, a victory won under the leadership of a tyrant, would have spoiled the dichotomy he so carefully constructs. His choice of emphasis still has an effect on the way modern scholars write the history of ancient Greece. And it explains why the conference about unity and diversity in the ancient Greek world took place at Delphi and not on Sicily.⁵⁵

Appendix 1 Places where Grants of Enktesis are Attested

Peloponnese and Saronic Gulf

Aegina
Troezen
Epidauros
Sparta
Kythera
Kotyrtá
Geronthrai
Tainaron
Elis
Messenia

Phocis
Delphi (many)
Elateia
Tithronion
Ambryssos
Antikyra
Stiris

Aegean Islands
Keos (several)
Delos (many)

Megara, Oropia, Boeotia

Aulis
Thebes
Aigosthena
Thespiái
Oropos (many)

Rhodes
Kos
Kalyмна
Andros
Tenos
Amorgos

54 Gauthier 1966 claims that Herodotus gives less prominence to Sicilian affairs because he was less well informed about them, but this does not explain why Herodotus chose not to inquire more about these events and overlooks the ideological reasons for his selectivity.

55 I would like to thank Kostas Buraselis for the invitation to present an earlier version of this paper at the Delphi conference. I would also like to thank Mirko Canevaro and David Lewis for their helpful comments.

Peparethos

Euboea

Chalcis

Eretria (many)

Ionian Islands

Kerkyra

Epeiros

Dodona

Buthrotos

Crete

Knossos

Lato

Hierapytna

Praisos

Polyrrhenia (?)

Caria

Iasos

Halicarnassos

Keramos

Labraunda

Magnesia (several)

Mylasa

Olymos

Ionia

Colophon

Phokaia

Priene

Teos

Ephesos

Aeolis

Gryneion

Kyme

Temnos

Troas

Mysia

Pergamon

Bithynia

Kios

Lycia

Telmessos

Aetolia

Thermos (several)

Akarnania

Actium

Lokris

Amphissa

Thessaly

Halos

Thaumakoi

Thebai

Hypata

Lamia

Herakleia Trachinia

Larisa,

Skotoussa

Perhaibia

Kierion

Pharsalos.

<i>Thrace and Lower Danube</i>	Doriskos
Mesambria	
Odessus	<i>Black Sea</i>
Dionysopolis	Kallatis
Maroneia	Olbia

Appendix 2 Greeks Fighting at Plataea

Serpent Column (Syll.³ 31; serial numbers are those in Hansen-Nielsen *Polis Inventory*):

Lacedaemonians (345): same laws for four hundred years (Thuc. 1.18.1); hostile to tyranny (Thuc. 1.19).

Athenians (361): overthrow tyrant in 510; constitutional government from 510.

Corinthians (227): tyranny ends ca. 580.

Tegeans (297): evidence for civic institutions in fourth century and possibly in the fifth century.

Sicyonians (228): Spartans overthrow tyrant before 500 ([Plut.] *Mor.* 859d).

Aeginetans (358): Figueira 1981.

Megarians (225): ‘democracy’ in sixth century (Arist. *Pol.* 1300a15-19, 1302b31-32, 130-4b35-40).

Epidaurians (348): “...the narrow *politeuma* points to an oligarchy in the archaic period” (Hansen-Nielsen *Polis Inventory* 607).

Orchomenians (286): civic institutions attested in the classical period.

Phleisians (355): possible tyrant in the sixth century (Diog. Laert. 1.12, 8.8), but a democracy by the early fourth century (Xen. *Hell.* 5.3.16).

Troezenians (357): Aristotle (fr. 613-15) lists a constitution; no evidence for tyranny.

Hermionians (350): called a *polis* at Hdt. 8.42.1; Hdt. 3.59.1 appears to indicate a non-tyrannical government.

Tyrinthians (356): a *lex sacra* (SEG 30.380) indicates civic institutions in the sixth century; no evidence for tyranny.

- Plataeans (216):** appears to be a democracy in the fifth century (Thuc. 2.72.2).
- Thespians (222):** allied to Thebes in 506 (Hdt. 5.79.2); appears to be an oligarchy in 410 (Thuc. 6.95.2); no evidence for tyranny.
- Myceneans (353):** not clear if this was a dependent *polis* or not; destroyed in 460s.
- KEIANS (491-494):** this covers four *poleis*, Ioulis (491), Karthaia (492), Koresia (493), and Poiessa (494); Ioulis appears to have civic institutions in the fifth century; Karthaia and Koresia have civic institutions in the classical period; no evidence for tyranny.
- Melians (505):** Aristotle (fr. 564) gives a constitution; Thucydides (5.84.4-86) indicates civic institutions (officials and council).
- Tenians (525):** civic institutions attested in the classical period; possible change from democracy to oligarchy in 411 (Thuc. 8.64.1).
- Naxians (507):** Spartans drive out tyrant Lygdamis in late sixth century ([Plut.] *Mor.* 859d).
- Eretrians (370):** oligarchy to 'democracy' around 510 (Arist. *Pol.* 1306a35-36; *IG XII Suppl.* 599).
- Styrians (377):** no evidence of tyranny; absorbed into Eretria around 400.
- Eleians (251):** oligarchy before synoikism (Arist. *Pol.* 1306a12ff.)
- Poteidaians (598):** civic office attested at Thuc. 1.56.2; no evidence of tyranny.
- Leukadians (126):** constitutional government (Arist. *Pol.* 1266b21-24).
- Anactorians (114):** Thucydides (4.49) calls it a *polis* of the Corinthians; no evidence for tyranny after the overthrow of the Cypselids at Corinth; evidence for civic institutions in the classical period.
- Kynthians (501):** elected generals in fourth century.
- Siphnians (519):** Isoc. 19.13, 38 (democracy in late fifth century).
- Ampraciots (113):** moderate oligarchy to democracy (Arist. *Pol.* 1303a20-23); Spartans drive out tyranny in late sixth century ([Plut.] *Mor.* 859d).
- Lepreans (306):** Heraclides Lembos (42) mentions a constitution; later a perioikic community of Elis; no evidence of tyranny.

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