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HERAUSGEGEBEN VON

EVA CANTARELLA
MICHAEL GAGARIN
JOSEPH MÉLÈZE MODRZEJEWSKI
GERHARD THÜR

in Verbindung mit
Martin Dreher, Adriaan Lanni, Alberto Maffi,
Julie Vélissaropoulos-Karakostas

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SUMÁRIO

PREFÁCIO

O vigésimo encontro da Sociedade de História do Direito Grego e Helenístico, o "Symposion", decorreu na Sala de S. Pedro da Biblioteca Geral da Universidade de Coimbra, Portugal, entre os dias 1 e 4 de setembro de 2015. Durante seis sessões, distribuídas ao longo de três dias e meio, foram proferidas quinze comunicações (sendo uma delas apresentada *in absentia*) e quinze respostas (num dos casos, com uma nota adicional), por investigadores provindos de doze países da Europa e do Norte da América. Como geralmente acontece nos encontros do "Symposion", não foi definido um tema geral para o evento, sendo concedida a cada conferencista a liberdade de expor os seus estudos mais recentes sobre um tema específico. Os contributos foram organizados, respetivamente, de acordo com o período, lugar e área de afinidade legal.

O programa científico foi complementado e amenizado por uma visita à Biblioteca Joanina e à antiga cidade romana de Conimbriga, bem como por um espetáculo de música barroca portuguesa, no Museu Machado de Castro.

O financiamento desta iniciativa beneficiou do generoso contributo da Fundação para a Ciência e Tecnologia (FCT), da Fundação Eng.º António de Almeida, do Centro de Estudos Clássicos e Humanísticos e ainda da Associação Portuguesa de Estudos Clássicos (APEC). Estamos também particularmente gratos ao Diretor da Biblioteca Geral, Prof. Doutor José Augusto Cardoso Bernardes, por nos ter facultado o acesso exclusivo à Sala de S. Pedro durante os dias do encontro. Agradecimentos são devidos igualmente à Elisabete Cação, ao Ricardo Acácio e à Joana Fonseca, da Faculdade de Letras, pelo apoio administrativo e logístico, durante a realização do evento e no período a ele subsequente.

A publicação do volume não teria sido possível sem o apoio financeiro da Fundação para a Ciência e Tecnologia e do excelente trabalho do Nelson Ferreira, do Centro de Estudos Clássicos e Humanísticos da Universidade de Coimbra, que formatou todos os contributos, segundo as orientações da Academia Austríaca das Ciências. Agradecemos finalmente aos dois árbitros anónimos, pela avaliação científica que, antes da publicação, fizeram das comunicações e das respostas apresentadas.

Coimbra e Viena, agosto de 2016 — Delfim F. Leão, Gerhard Thür

VORWORT

Die zwanzigste Tagung der Gesellschaft für griechische und hellenistische Rechtsgeschichte, das „Symposion", fand in der Sala de S. Pedro der Biblioteca Geral der Universität Coimbra, Portugal, vom 1. bis 4. September 2015 statt. In sechs Sitzungen wurden, verteilt über dreieinhalb Tage, fünfzehn Vorträge gehalten (einer *in absentia*) und eben so viele „Antworten" vorgetragen (in einem Fall noch eine zusätzliche Bemerkung). Vertreten waren Gelehrte aus zwölf Ländern Europas und Nordamerikas. Wie in den „Symposia" üblich, war kein Generalthema vorgegeben, sondern jedem Sprecher bzw. jeder Sprecherin war es freigestellt, ein spezielles Thema aus dem jeweils aktuellen Arbeitsgebiet vorzutragen. Die Vorträge waren in groben Zügen nach zeitlichen, örtlichen und sachlichen Zusammenhängen angeordnet.

Das wissenschaftliche Programm wurde ergänzt und aufgelockert durch einen Besuch der Biblioteca Joanina der Universität Coimbra, der römischen Ruinen von Conimbriga und einer Darbietung portugiesischer Barockmusik im Museum Machado de Castro.

Beiträge zu den Kosten der Tagung leisteten in großzügiger Weise die Portugiesische Stiftung für Wissenschaft und Technologie (FCT), die Stiftung Engº António de Almeida, das Zentrum für Klassische und Humanistische Studien und die Gesellschaft Portugals für Klassische Studien (APEC). Besonders dankbar sind wir dem Direktor der Biblioteca Geral dafür, Prof. José Augusto Cardoso Bernardes, dass er uns für die Tage der Veranstaltung exklusiven Zutritt zur Sala de S. Pedro gewährte. Ferner sei auch Elisabete Cação, Ricardo Acácio und Joana Fonseca von der Geisteswissenschaftlichen Fakultät für administrative und logistische Hilfe vor, bei und nach der Tagung gedankt.

Die Publikation des Bandes wäre ohne die finanzielle Hilfe seitens der Portugiesischen Stiftung für Wissenschaft und Technologie nicht möglich gewesen, ebenso wenig ohne die vorzügliche Arbeit von Nelson Ferreira vom Zentrum für Klassische und Humanistische Studien der Universität Coimbra, der die Beiträge nach den Vorgaben der Österreichischen Akademie der Wissenschaften druckreif formatiert hat. Schließlich danken wir den beiden anonymen Gutachtern, die vor der Publikation wertvolle Hinweise zu den Beiträgen gaben.

Coimbra und Wien, im August 2016 — Delfim F. Leão, Gerhard Thür

ROBERT W. WALLACE (EVANSTON, IL)

EQUALITY, THE *DÊMOS*, AND LAW IN ARCHAIC GREECE

Why did Archaic *poleis* enact laws?[1] Different reasons will have applied in different *poleis*, including inspiration from elsewhere,[2] the need for international colonies to establish their own laws,[3] or stress from a crisis, as for example in Athens where aristocratic violence after Kylon's attempt at tyranny led to Drakon's legislation in 621/0 (Plut. *Sol.* 12). A common view now, that early laws mainly aimed to regulate relations among the elite,[4] Michael Gagarin has criticized in *Writing Greek Law* (2008: 87-92). I also shall criticize it. I mention here that exhibit A in defense

[1] Many thanks to Delfim and his team for hosting the excellent Symposion XV. The following text necessarily abbreviates many issues. My concern is to lay out some of the framework for law's role in a more general reassessment of the origins of Greek egalitarian democracy.

[2] As we shall see, Spartan ideology partly inspired Solon's legislation. For Near Eastern influences on Greek law, as in the trial scene in *Il.* 18, see Westbrook 1992 (repr. in Westbrook 2015: 1-21, with D. Lyons' introductory comments, ibid. xii-xiii).

[3] For early lawgivers (Zeleukos, Charondas) in Greek colonies in Sicily and southern Italy, see Dreher 2012: 63-78.

[4] See e.g. Osborne 1996: 187; Papakonstantinou 2002: 135 but cf. 2008: 70 (where in the light of Raaflaub and Wallace 2007 he qualifies his position); Forsdyke 2005: 83; Hawke 2011 (law reflected the need of elites to limit intra-class competition, with no meaningful pressure from below [cf. Papakonstantinou's mixed review of this vol., *AHR* 118 (2013) 231]). Eder 1986 argued that the codification of laws secured the social and political predominance of elites in Greece and Rome.

of this proposition is our earliest Greek law, from Cretan Dreros, where "the *polis* has decided" that no *kosmos* may serve more frequently than once in ten years. It is usually thought that this law principally eased tensions for aristocrats by distributing the chief magistracy among them. Yet it also benefited the *polis*, by mitigating aristocratic competition or monopolies on power that could turn violent.

In *Early Greek Law* (1986: ch. 6, "The emergence of written law") and *Writing Greek Law* (2008: ch. 3, "Why the Greeks wrote laws"), Gagarin makes a good case that laws emerged in tandem with the growth of the *polis* and the increasing importance of the community. Laws provided stability especially as cities grew, and problems and their solutions became more complex (2008: 80-1). Lawgivers emerged at times of civic turmoil, to ensure that disputes did not endanger the community. Early laws were probably authorized by the community, and were inscribed in public spaces for all to see, often in large letters, sometimes with word divisions to aid reading. The point was to fix the rules and make them accessible to everyone: legal inscriptions were not simply monuments. Literacy varied but was reasonably widespread, and the illiterate could readily find people to read laws for them (2008: 65, 67-71; cf. Perlman 2002: 194-7, and her Table pp. 218-25).

How far were written laws intended to promote justice? Oddly, this view is now not in favor. According to Gagarin (1986: 123), no early evidence indicates that written laws were thought to be fairer than what preceded them. In 2008: esp. pp. 89-91, he does not mention injustice as a reason why the Greeks enacted laws. Arguing that literacy weakened oral traditions and so made writing laws necessary, Carol Thomas (1977: 455, 458) suggested that the perception that written laws meant equal justice arose as a result, not as the cause, of their publication.

If written laws were not intended to promote justice, *a fortiori* they were not intended to promote equal justice for all, and few scholars now seem to think this either, although Euripides' *Suppliants* and Perikles' Funeral Oration in Thucydides later identify equal justice as a main purpose of written law.[5] Of three arguments adduced against this idea, first, in the Archaic age the *dêmos* is not thought to have possessed the political clout to impose such changes on a powerful aristocracy. Second (and once again), scholars have questioned the importance of justice as a factor in early legislation. Finally, third, in a classic paper Kurt Raaflaub has claimed that the idea of equality (*isotês*, *homoiotês)* for all members of society is not attested before the late sixth century. In Athens, pre-510 mentions of equality

[5] In Euripides' patriotic *Suppliants* of the later 420s, Theseus states, "There is nothing more detrimental to a *polis* than a tyrant. First of all, when there are no public laws (*nomoi koinoi*), one man holds power by keeping the law all for himself, and there is no more equality (*ison*). When the laws are written down, the weak and the rich have equal justice (*dikê isê*)… The lesser man defeats the big man if he has justice on his side" (429-437). In Thucydides' Funeral Oration (2.37.1), Perikles praises Athens' democracy which favors the masses instead of the few, first because "the law secures equality for all (*pasi to ison*) in their private disputes."

apply mostly to equality among the aristocracy.[6] I discuss these three points in order.

(A) What was the social and political status of the *dêmos* in Archaic Greece? I begin by asking, where in Homer is the aristocracy? Homer knows the people — *dêmos* and *laoi*[7] — and its leaders, *basileis*, but is there an upper class? Homer and Hesiod never use birth or class words like *gennaios*, *eupatridai* or *eugeneis*; *esthlos* and *kakos* are only value words, "good" and "bad," not class words for noble or commoner, except twice in the *Odyssey*, harbinger of future developments.[8] Homer never calls the people *kakoi* as they are in later Archaic poetry (Donlan 1978: 102 with n. 12), most conspicuously by Solon who sympathized with them. Why? Snodgrass (1987: ch. 6) and Donlan (1985: 301; 1989) posit a Dark Age pre-*polis* social model lasting into the eighth century, of small, independent hamlets and villages of free and independent farmers, choosing leaders from among themselves *ad hoc* on the basis of ability, when leaders were needed.[9] As Raaflaub recently wrote to me (I add my comments in square brackets),

> I think the polis emerged as the result of the coalescing of neighboring hamlets and villages or similar processes, in which the village leaders became the groups of *basileis* and the landowning [and fighting: Raaflaub 1997] farmers the citizens. In Homer we see this process in an in-between-stage, with polis institutions and structures (assembly, army) clearly visible but not yet formalized. The elite too is still in formation: there clearly are leading families whose heads form the council and advise the leader who is primus inter pares [at Troy Agamemnon is a military leader, much despised, but did this apply in Greece?]. Their distance from the "commoners" is small, economically and ideologically, but it's there, even if the *basileis* need to earn and constantly reaffirm their position (see Glaukos and Sarpedon [*Il.* 12.310-28]).

While until recently the standard view has been that egalitarian community rule emerged only in the sixth century, in fact mass self-governments seem to have been there from the Dark Ages. Free and independent communities of field-toughened farmers were not distant from Homer, and in his poems despite their elite bias (cf.

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[6] See Raaflaub 1996: 143-5. His treatment of earlier references to equality (see esp. pp. 150-3) is conditioned by his down-dating the foundation of Athens' democracy to 462/1, a date which few other scholars share.

[7] See Donlan 1985: 298, that *dêmos* in Homer and Hesiod "signifies both an area of land and all free inhabitants of the area…, a single body with a common will." *Laos* or *laoi* means "men under arms following a *basileus*" (299).

[8] *Od*. 8.553, 17.381: see *Lexicon des frühgriechischen Epos* 734 l.43ff. Donlan 1968 argues that *aristos* never meant aristocrat.

[9] Morris 1996 and 1997: 100-1 thinks that egalitarianism emerged only in the eighth century, then to be replaced by class divisions from *ca*. 750-725. This disagreement has little consequence for my argument.

Thersites), the *dêmos* remains central, both in assemblies and in battle. Raaflaub 1997 (and elsewhere) has discussed the importance of mass warfare in the Homeric epics. As for governing, most often council meetings of *basileis* do not result in a consensus which the *basileis* together present to the *laoi*. Rather, in council each (local) *basileus* argues for his own ideas, which he then presents to the assembly, hoping to persuade them and thus be judged "best in counsel." *Peithômetha* means "let us be persuaded": now and later, Greek had no word for "obey." Aristotle (*Pol.* 1278b10-11) says that in every polity (except tyranny and monarchy) the assembly decides, although in oligarchies wealth criteria (more or less restricted) apply for participating in the assembly (*Pol.* 1291b7-13). The standard view that oligarchies are governments by powerful elite councils rests on no evidence (Wallace 2014).

As for the *basileis*, they are not necessarily hereditary but attain that status as best in counsel and battle. At sea Odysseus' *hetairoi*, his comrades (12.294), do not praise him because he is king or the son of Laertes, but because he is the strongest (12:279-80). They defy him by insisting on visiting the Island of the Sun (12.260) — Odysseus says, "you force me, as I am alone": 12.297) — and feasting on Helios' cattle. He is not their ruler. Telemachos in turn must prove that he is as able as Odysseus in stringing the bow, or someone else becomes top dog in Ithaka. The disguised Odysseus asks whether the *laoi* of the land hate Telemachos, and Telemachos says they do not (16.95-6, 114). Public approval matters. In Homer, status words and behavior are fluid. The same *hetairoi* of *basileis* are elsewhere called *therapontes*, followers (Raaflaub and Wallace 2007: 26). Odysseus returns home to Ithaka dressed as a beggar, and resides with a swineherd: not behavior anywhere associated with kings, and at a time when the Greek elite is emerging, we and surely Homer's audiences admire him, he's like us, shedding a tear when he sees his old dog lying on a dunghill, unlike the cocky suitors. The world of Hesiod and the world behind Homer, both panhellenic poets, is still that of small farmers of similar status who work, fight, and criticize their leaders when they think criticism is needed. As Christoph Ulf remarks (2009: 84), "The central theme [of *Iliad*] is: how should a leader behave in order to ensure the well-being of the community as a whole (*dêmos*)?" Johannes Haubold (2000: ch. 1) posits that *laos* occurs most often in the formulaic designation for a *basileus*, "shepherd of the people" (10, 17-20) whose responsibility is to ensure the survival of the group, although they often fail at this. Fostering the *dêmos* was an elite ideal, as when Agamemnon and Menelaos "fear lest the Argives suffer some hurt" (*Il.* 10.1-35).[10] In the world of Homer, the *dêmos* matters.

In passing legislation from the late eighth to the sixth centuries, did the community have a role? In addition to helping to resolve ever more complex problems as *poleis* grew, it is a central thesis of Gagarin 2008 chapter 3 that laws were enacted by the community. After examining early laws from Dreros, Gortyn, Chios, Eretria,

[10] See also Sarpedon at *Il.* 12.310-21. Compare Pindar *Pyth.* 10.110-11: "among the *agathoi* [= the nobility] lies the careful ancestral governing of cities."

Elis, Argos, Naupaktos, and Kleonai, Gagarin concludes (p. 92), "the ultimate authority behind archaic legislation was always the community, in whose interest and for whose use these texts were written down and displayed." To conclude this section, the *dêmos* had the clout to promulgate and inscribe legislation some of which regulated the behavior of elites.

(B) How far did (in)justice motivate seventh- and sixth-century legislation? In fact, complaints especially about elite injustice pervade Archaic sources. From *ca*. 750 down through the seventh century, amid a constellation of economic, social, political, and military changes transforming the Greek world, wealthy prestigious families (*oikoi)* became ever more powerful, designating themselves the "well born" (*eupatridai, eugeneis*, etc.), sometimes claiming lineages reaching back to gods or heroes. Seventh- and sixth-century poets voice frequent complaints against elite violence, arrogance, judicial abuse, and economic exploitation.[11] Despite its elite bias, *Iliad* takes as its theme Achilles' and Agamemnon's private quarrel over honor and booty, bringing death and destruction to their warrior community. Achilles calls Agamemnon a *basileus* who "feeds on his people" (*dêmoboros*: 1.231), the ranker Thersites lambasts Agamemnon for greed (2.225-34), Priam calls his surviving sons "shameful, boasters and dancers, the best men of the dancefloor, robbers of sheep and goats among their own people" (24.260-2, tr. van Wees). Around the same time as Homer and the emergence of written law, Hesiod laments,

> There is angry murmuring when right is dragged off wherever gift-swallowers choose to take her as they give judgment with crooked verdicts… Often a whole community together suffers in consequence of a bad man who does wrong and contrives evil… Zeus either punishes those men's broad army or city wall, or punishes their ships at sea… Beware of this, *basileis*, and keep your pronouncements straight, you gift-swallowers, and forget your crooked judgments altogether. (*Works and Days* 213-73, tr. West, adapted).

In a simile in *Il*.16.385-8, Zeus pours forth rain violently when he is angry against *andres* who "with violence in the *agora* judge (*krinousi*) crooked *themistas* and drive out justice, *dikê*." In Mytilene dominated by the Penthilid *genos,* Aristotle (*Pol*. 1311b) mentions that one night a certain Penthilos dragged out from beside his wife and beat a certain Smerdis, who killed him. In Corinth in the 650s Kypselos seized power from the Bacchiad *genos.* Contemporary evidence (Salmon 1984: 186-8) makes clear that social justice and adjudication were major issues. A contemporary Delphic oracle proclaimed that Cypselus would "bring justice" to Corinth (Hdt. 5.92b). Similarly, "Cypselus' Chest" at Olympia — written

[11] See also Stein-Hölkeskamp 1989 esp. part III "Die Aristokraten in der archaischen Gesellschaft."

(Pausanias notes) in archaic *boustrophedon* — depicted justice choking injustice (Paus. 5.18.2, 6). No one after his son and successor Periander would have dedicated such a chest, when tyranny was now discredited (see below). In Athens, Solon calls the ruling Eupatrids, "you who have pushed through to glut yourselves with many good things" (fr. 4c.2 West). "Out of arrogance many griefs must be endured," for Athens' rulers "do not know how to restrain their greed or to order their present festivities in the peacefulness of the banquet" (fr. 4.8-10). Eupatrid extravagance weighed especially on dependent farmers, some of whom were sold abroad into slavery (Solon fr. 4.23-5). Solon legislated against all these things. Sometime before 550, the elite poet Theognis mentions murderous civil strife (51) and aristocratic outrage: "Kyrnos, this polis is pregnant, and I fear that it will give birth to a man who will be a straightener of our base *hubris*" (39-40, tr. Nagy; cf. 41-52). He complains that the elite has yielded to the masses in administering justice: "Kyrnos, this *polis* is still a *polis*, but its people are different. Formerly they knew nothing of legal decisions or laws but wore goatskins around their flanks — wore them to shreds — and grazed like deer outside this *polis*. And now they are *agathoi* [elite], son of Polupaos, and those who were formerly *esthloi* [noble] are now *deiloi* [base cowards]" (53-60). Van Wees remarks that in aristocratic Megara, as elsewhere, "violence and greed were structural phenomena, rather than aberrations which could be blamed on 'the bad men'" (2000: 66).

Violent mentalities and behavior among the elite also leading to social strife persisted down through the fifth century: after Kylon's conspiracy which Drakon's lawcode did little to resolve, after 594/3 which Solon's legislation did little to resolve, and then after 510, which the Peisistratean tyranny did not eliminate. In Herodotos' constitutional debate probably written in the 430s, Darius states, "In an oligarchy, … violent personal feuds tend to arise, because every leader wants to come out on top and have his own views prevail. This leads them to become violently antagonistic towards one another, so that factions arise, which lead to bloodshed" (3.82.3). Thucydides notes that in oligarchies, "every single man, not content with being the equal of others, regards himself as greatly superior to everyone else" (8.89). Thucydides has Alkibiades (6.16) tell the Assembly that he is better than they are and so deserves more.

The emergence of powerful, arrogant rule by self-styled elites spawned four developments. First, written law, first attested by Aristotle with an Olympic date in later eighth-century Thebes, and then commonly from the first half of the seventh century. Thus, written law emerged shortly after the appearance of an arrogant and abusive aristocracy. If Homer does not know of crooked adjudication by *basileis*, on the mainland Hesiod does. We have already mentioned Greece's first extant inscribed law, *ca.* 650 at Cretan Dreros, as the *polis* restricted iteration for *kosmoi* as a source of elite contention which the *polis* wanted to control. When Solon legislated that elite magistrates' verdicts could be appealed to the *dêmos*, evidently in Attika too some verdicts by elite officials were seen as unjust.

Laws however soon showed their limitations in rectifying elite abuse. Anacharsis is said to have observed that laws were like spider webs, trapping the weak and poor while the rich and powerful tore through. Laws were useful and continued to be promulgated, but because they were ineffective in controlling abusive aristocrats, a new solution, tyrants, emerged, first as far as we know at Corinth *ca.* 655. A tyrant was a single aristocrat who stood up to defend the people against aristocratic abuse. Aristotle concluded that "a tyrant is set up from among the people and the masses to oppose the notables, that the people may suffer no injustice from them" (*Pol.* 1310b). Plato (*Rep.* 565cd) and Herodotos (1.96-100) say the same. The sources for tyrants are complicated because tyrants too became hereditary, and as Aristotle observes, sons were often not so talented as their fathers, and power corrupts: many later tyrants turned violent. A little after 600, we have seen, Solon said that he refused the violence of tyranny, our first attestation of hostility to tyranny, and hence even the early, good tyrants came to be represented badly, although we can show that these descriptions, for example of Kypselos and Periander, were not current in their lifetimes.

Yet by 600 tyranny had failed. A third remedy now appears, the *sophos* or *sophistês*, to mediate between commoners and elites. Pittakos was *aisumnêtês*, "umpire," Solon was *diallaktês,* "mediator," and boasts that he protected both sides in the civil strife. Both Solon and Pittakos wrote laws, and Pittakos also refused tyranny. Aristotle calls him "a craftsman of laws" and quotes one of them; he notes that like Drakon Pittakos did not change the constitution (*Pol.* 1274b). Diogenes Laertius says that Pittakos wrote a prose book "on laws for the citizens" (1.79). "When Croesus asked him what was the greatest rule (*archê*), he said the rule of the *poikilon xulon*, the shifting wood, by which he meant the law" (1.77, tr. Hicks). Much is legendary, but no classical laws were painted on wooden *axones*.

Finally, a fourth, barely-studied institution in reaction to elite abusive rule was the political constitution, formally apportioning various powers across the different elements of society, sometimes by means of laws, and according to Aristotle always stipulating that the assembly's *kratos* was *kurios*. Solon produced a famous *politeia*, with a council of 400, a popular assembly with powers to decide, and a popular court of appeal (or quite possibly of first instance).

(C) How far is social or civic equality or equal justice attested in Homer or the early *poleis* before the fifth century? In Homer equality is attested first in the distribution of booty, which is frequently brought *es meson* and distributed by the *laoi* (e.g., *Il.* 1.123-29) "so that nobody goes away without an equal *(isê)* share" (*Il.* 11.705), a formula recurring twice at *Od.* 9.42 and 549, although the *laoi* typically give some good stuff to worthy *basileis* (*Il.* 2.225-38).[12] In *Od.* 9.543-51, after escaping from

[12] See e.g. Detienne 1965: 430-4. Hainsworth 1993, ad loc., writes that *Il.* 11.705 was rejected by several ancient editors, because of the repetition of the verse and because of

the Cyclops, Odysseus and his *hetairoi* reach the island where the other ships were moored. They divide up the lambs of the Cyclops "so that no one on my [Odysseus'] account might be cheated of an *isê* share." Odysseus' *hetairoi* separately give him the ram, which he sacrifices and shares with them. In *Il.* 9.318-9, Achilles complains that an *isê moira* goes to everyone, however well he fights. Although Raaflaub and I wrote in *Origins of Democracy* that in Homer, "equality is not yet formalized or confirmed by law or ideology" (2007: 32), we were wrong. Equality is formalized in both custom and ideology in the distribution of common property.

Equal distribution of land is also frequently mentioned in later Archaic texts. First, two explosive bits, one by Solon in 594/3 after enacting reforms which the *dêmos* thought did not give them enough. "Nothing did it please my mind to accomplish by the force of tyranny, nor that, of our fatherland, the *esthloi* [the nobles, now a class term] have *isomoiria*, an equal sharing with the *kakoi"* — the people, now another class term and inherently pejorative although Solon did not use it that way. The *dêmos* apparently demanded equal land distribution, which Solon the "mediator" refused to grant. Especially striking is the abstract noun *isomoiria*, already a political concept and perhaps a slogan in 594/3.[13] Second, *Theognidea* 678-9 complains that no longer is there an *isos dasmos es to meson*: the "porters" i.e. "physical laborers" rule, and the *kakoi* are above the *agathoi*: again class words. Apparently, in Megara the masses deprived the upper classes of what the *agathoi* thought was their "equal" share. The concept is apparently used here for upper class protest: even the upper classes argued for "equality." This text dates sometime between 650 and 550.

Equal division of land was important also for Archaic Spartans, although explicit attestations are late (see above all Hodkinson 2000) and it is evident that equal land at best became more an ideology than the reality for ancient Spartans. In particular, scholars have questioned the chronology of Polybius 6.45.3, that all citizens must have *ison* of the *politikê chôra*. I add that in his abridgement of the Aristotelian *Politeiai*, the Greco-Egyptian statesman and historian Herakleides Lembos (in the second century BC) refers to the Spartans' *archaia moira* which they were forbidden to sell. Hence, Aristotle's *Politeiai* knew something of Spartan land arrangements. In *Politics* Aristotle writes that in the seventh century, "a poem of Tyrtaios called *Eunomia* [shows that] some people impoverished by war were demanding that the land should be distributed" (1306b37-7a2 = Tyrt. 2 West). We do not know when equal contributions to the *syssition* (common messes) were instituted, but the military basis of Spartan society was early. For a consensus view of these matters I summarize a page from Ober's recent Greek history book

"the unfairness of an equal distribution among varied creditors. If the line is retained, the important principle of 'fair share of booty' will have been embodied in a formula" — but he should say, an equal share of the booty.

[13] Raaflaub (1996: 170 n. 126) buries any importance of this term, in a discussion of fourth-century developments, in part on the grounds that Solon refused to grant it.

(2015: 140): "The Lycurgan order was premised upon equality among citizens... Each citizen was in principle the equal of every other citizen [in providing a fixed contribution of food to his messhall] … via a tract of land that may once have been given to his family… as conquered land." "Those who could not provide were demoted to the rank of Inferior."

Equal distribution of land in Greek foreign settlements from the eighth century seems to have been the rule, as among others John Graham conclude (1983: 58-59).[14] In Thuc. 1.27.1, oligarchic Corinth invites anyone to settle in Epidaurus on "equal and similar" terms, *isos kai homoios*. That same language is used in the Cyrene foundation decree of the 7th century reworked in the 4th century.[15] Joseph Carter has excavated equal plots of land at the Greek settlement at Metapontum in the second half of the seventh century. He calls this an egalitarian rural society, not a landed aristocracy.[16]

Even more intriguing is the argument in Morris 1996 that from *ca*. 750 BC or 700 although unevenly across Greece, burials which in the past could be spectacular in the case of important individuals (for example at Lefkandi) become consistently more egalitarian and undifferentiated, although, importantly, *ca*. 700 Athens itself reverts back to the older order, and lavish burials stop at Sparta only *ca*. 600 (Hodkinson 2000). Morris writes on uniform house designs in this period, and the increasing importance of civic rather than private constructions, above all temples and *polis* treasuries at Delphi and Olympia.[17] More than equal distributions of land and booty, these developments speak to Archaic Greeks' egalitarian vision of themselves.

So does a significant vein of Archaic poetry, although this was countered by poetry praising the elite. Already in the mid-seventh century Archilochos criticizes epic-heroic values; Tyrtaios proclaims that the citizenry must stand firm in the ranks, to benefit the community; Kallinos sees individual fame and glory in terms of approbation by the whole community for service to the community; Xenophanes criticizes the useless display, luxury, and arrogance of Samian aristocrats; Alkman prefers the food the *damos* eats to food luxuriously prepared; for Phokylides, wealth is a piece of good farmland. (For all sources, see Donlan 1973.)

One last point on Homer. A fundamental principle of classical Greek voting is that of the majority: even 51% of voters determine the *dêmos*' will, implying that everyone's vote was equal. As Alberto Maffi (2011: 22) and others have argued, in *Od*. 24.463ff., in a public debate after Odysseus killed the suitors, "more than half"

[14] See also A. J. Graham, "The Colonial expansion of Greece," *CAH*[2] 3.3 (Cambridge 1982) 83-162, esp. 151-2; and Asheri 1966: 7-16.

[15] R. Meiggs and D. Lewis, *A Selection of Greek Historical Inscriptions* (Oxford 1969) no. 5.

[16] J. C. Carter, "Metapontum—Land, wealth, and population," in J.-P. Descoeudres, ed., *Greek Colonists and Native Populations* (Oxford 1990) 405-41.

[17] The latter were often constructed from stones transported from home: see I. Morris, "Framing the gift: the politics of the Siphnian treasury at Delphi," *CA* 20 (2001) 273-344.

(*hêmieôn pleious*) jumped up and armed themselves to avenge these men. While this is not a vote, the phrase suggests that Greeks already knew of the principle of the majority, with equal votes for all participants, in a proto-judicial setting.

Although our earliest attestations are once again late, the early Spartans are said to have called themselves themselves *homoioi*, "similars" (in the sense that no two people are exactly *isoi*: Cartledge 1996: 178-9). Our first express attestation of this notion is Xen. *Hell.* 3.3.5, but we may compare Herodotos 7.234.2: "Sparta is a *polis* of about 8000 men; all of these are *homoioi* to [the Spartans who fought at Themopylai]. The other Lakedaimonians [the *perioikoi*] are not *homoioi* with these, but they are *agathoi*."[18] Thucydides observes, "It was the Spartans who first began to dress simply and in accordance with our modern taste, with the rich leading a life that was as much as possible like that of the ordinary people" (1.7). Quite possibly from early on, Spartans ideally enjoyed an "equal" lifestyle as *isodiaitoi* (Thuc. 1.6.5), in their childhood upbringing and military training, in common meals in communal mess-halls that were "meant to be a democratic institution" (Arist. *Pol.* 1271a32-3), although over time disparities grew. Armed "similarly," Spartan hoplites were marshaled together in battle lines, fighting side by side and required to stay together, no room for individual heroics, "daring to stand fast at one another's side and advancing toward the front ranks in hand-to-hand combat" (Tyrt. 11.11-12), "let every *anêr* strive now to reach the pinnacle of this *aretê*, with no slacking in war" (ibid. 12.43-4). Hoplite fighting was adopted not for its military advantages but for community solidarity, all fighters equal whatever their personal status, fighting together for their community. When self-styled aristocrats emerged *ca.* 725, Sparta refused: Sparta had no aristocracy, and consequently no tyrannies.[19] Voting in Spartan assemblies was by mass shouting by the collective army. As Andrewes (1966) showed, as far as we can tell the assembled Spartiates made all important decisions. They also chose the members of the Gerousia, again by shouting, and those who judged the volume of these shouts could not see the identities of the candidates. Spartans skipped both laws and tyranny, moving straight to a democratic constitution (*kratos* to the *damos*) which two generations later inspired Solon.

One other telling datum on equality and the *dêmos*, linked with early (good) tyranny and political ideologies. At Sikyon, one Orthagorid who became tyrant *ca.* 600 had been given an interesting name some years earlier when he was born: Isodamos, "Equal-people" (Nic. Dam. *FrGHist* 90 F 61). Would not a supporter of the *dêmos* against rapacious and abusive elites be pleased to bear the name, "The people are

[18] See also Hdt. 3.142, when Maiandrios of Samos set up an altar to Zeus the Liberator, repudiated Polykrates' tyranny on the grounds that he ruled men who were *homoioi* to him, "put power in the middle (*es meson*) [for parallels, see Demonax, Hdt. 4.161, and Kadmos of Cos, acting out of justice, *dikaiosunê*: Hdt. 7. 164] and proclaimed *isonomia*."

[19] In *Pol.* 1270b28-31, Aristotle is critical that the ephors decided cases on their own judgment rather than by laws.

equal"?[20] Both the idea and the practice of civic equality are firmly attested in archaic Greece in our earliest evidence.

Finally, several testimonia link law and equality. Solon stated that he "wrote laws for base and noble (*kakoi*, *agathoi*) similarly *(homoiôs)*, fitting straight justice toward each" (36.16-17). Here equal law for all is directly attested and by the word *homoiôs*, which echoes Sparta's egalitarian reforms two generations earlier, just as Solon called his new public court Eliaia, a Doric word, and his great poem Eunomia, a word that Tyrtaios used at Sparta. Solon also uses the word justice, *dikê*, a word that appears everywhere in Archaic Greek history. Solon permitted anyone dissatisfied with an official's verdict to appeal to the *dêmos*, which will have included Athenians of all social levels and where surely the majority decided. (Aristotle called Solon's polity the beginning of democracy.) Finally, Solon boasts that under his polity, *pantas anthrôpous nikêsein*, "all people will win" (32.3-4).[21]

In conclusion, both the idea and the practice of civic and social equality are attested in Greece already in Homer, as are the power and voice of the *dêmos*. These fundamental and on-going civic and social values collided with the rise of a self-styled aristocracy, provoking civil strife. Four solutions were tried: written law, publicly displayed and equal for everyone, to help resolve disputes justly; then tyrants; wise mediators; and constitutions. The main elements missing from current explanations of the origins of law are notions of justice, equality, and the *dêmos*' role in opposing the greed of and calamitous conflicts between aristocrats that troubled Archaic societies from *Iliad* onward, as ordinary farmers hated the violent rivalries, greed, and crooked justice of the elite. Written laws addressed these problems, helping communities establish formal rules for adjudication and governance.

[20] For Isodemos' family tree, see V. Parker, "Tyrants and lawgivers," in H. Shapiro, ed., *Cambridge Companion to Archaic Greece* (Cambridge 2007) 21.

[21] The Code of Hammurabi could suggest that justice and fairness to all including the weak was a basic quality in ancient laws: then Anu and Bel called by name me, Hammurabi, the exalted prince, who feared God, to bring about the rule of righteousness in the land, to destroy the wicked and the evil-doers; so that the strong should not harm the weak; so that I should rule over the black-headed people like Shamash, and enlighten the land, to further the well-being of mankind. (tr. L. W. King)

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LAURA PEPE (MILAN)

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

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

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

[1] See also Raaflaub, Wallace 2007; Wallace 2009; Wallace 2014.

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

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

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

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

[3] *Lexikon des frühgriechischen Epos*, begründet von B. Snell, Göttingen 1991, *s.v. isos*.

[4] See, *e.g.*, Wolff 1946, 41-2; cf. also Bietenhard 2002.

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

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

by birth' or 'aristocrats by right', are instead chosen *ad hoc* because they are strong, or because they possess a special ability that fits particular circumstances. Accordingly, since their position is neither steady not hereditary, they need to constantly confirm their prestige, their honor (*timē*), and their leadership in order to keep their status.[7] Ithaca offers the most evident example: to reaffirm himself as the absolute leader when he returns on the island, Odysseus must prove to have enough strength and charisma. There is generally a very small difference – we might say quantitative, not qualitative – between the *basileis* that form the elite and their leader, who is nothing more than a *primus inter pares* (cf., *e.g.*, *Il.* 1.287-9), as well as between the *basileis* and the 'people'; the popular approval, the *dēmou phēmis*, is known to be vital for whomever wants to be considered a *basileus*. This explains why, usually at least, the *basileis* have no political power over the people; when the whole community gathers in the assembly, it is not the *basileis* who decide or impose their own decision on the people (cf., *e.g.*, *Od.* 16.380-2). 'Equal participation', as Wallace has so insightfully pointed out, is a recurrent theme in the poems: it applies to the assembly, one of the main features of the Homeric civilized society (it is noteworthy that the Cyclopes, symbol of an uncivilized community, do not have an *agorē*: *Od.* 9.112-114), to the division of the booty after a successful expedition (*Il.* 1.123-9; 11.705; *Od.* 9.42, 549; but there are some exceptions to the rule, as I will show later), and, possibly, to the voting process (*Od.* 24.463-4).

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

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

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

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

[9] See, *e.g.*, Nilsson 1933.

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

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

[12] Westbrook 1992; Westbrook 2005; cf. also Nagy 1997.

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

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

> […] ὄφρ' ἐῢ εἰδῇς
> ὅσσον φέρτερός εἰμι σέθεν, στυγέῃ δὲ καὶ ἄλλος
> ἶσον ἐμοὶ φάσθαι καὶ ὁμοιωθήμεναι ἄντην.
>
> "[…] so that you will understand how much mightier I am than you, and another may shrink from declaring himself my equal (*ison emoi*) and likening himself (*homoiōthēmenai*) to me to my face."[17]

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

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

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

[14] Raaflaub, Wallace 2007, 24.

[15] Nagy 1996, 17.

[16] The first one is in *Il.* 1.163, discussed below in the text.

[17] The translation of this and other passages of the *Iliad* is by A.T. Murray, Cambridge Mass.-London 1924.

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

> οὐκ ἀγαθὸν πολυκοιρανίη· εἷς κοίρανος ἔστω,
> εἷς βασιλεύς, ᾧ δῶκε Κρόνου πάϊς ἀγκυλομήτεω
> σκῆπτρόν τ' ἠδὲ θέμιστας, ἵνά σφισι βουλεύῃσι.
>
> "no good thing is a multitude of lords; let there be one lord (*koiranos*), one king (*basileus*), to whom the son of crooked-counselling Cronos hath vouchsafed the sceptre and judgments (*themistas*), that he may take counsel for his people."

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

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

[18] Cf. recently Pelloso 2012, 78 nt. 194, 81 nt. 197.

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

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

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

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

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

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

[22] MacDowell 1978, 21; cf. Wolff 1946, 40-2.

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