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WOMEN IN ATHENIAN COURTS

The question, were women present in Athenian courts, has generally been cast in terms of legal competence: were women permitted to fulfill certain legal roles, particularly the role of witness [1]? A recent paper by Simon Goldhill, however, which is primarily directed at the broader issue of how women's place in the Athenian democracy is represented especially at the Greater Dionysia, brings a different perspective to the question of women's presence in court. He concludes that «the Athenian court seems to have been remarkably unwilling to allow any female presence in the civic space of the law-court itself, and any female engagement with legal procedure is carefully and ritually regulated, and indeed severely limited». He invokes differences in status – slaves, prostitutes, and citizen wives – to explain «the very few exceptions to the general rules of exclusion» [2]. I think Goldhill is essentially correct in this assessment, and indeed

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[1] Bonner's contention (Bonner 1906) that women were allowed to testify in homicide cases was disputed by Leisi (pp. 12-18). Lipsius (p. 874) agrees with Bonner, but other scholars either leave the question undecided (MacDowell 1963, pp. 102-109; Harrison, pp. 136-137) or conclude that women could not testify (MacDowell 1978, p. 243; Todd 1990, pp. 25-26).

[2] See Goldhill, esp. pp. 357-360. Goldhill is the first to take sufficient note of this distinction in status. I use the term «citizen» of women for convenience, without entering the debate, in what sense it can properly be applied to them. I am in general agreement with Patterson that although excluded from the Athenian political body, women were full members of the Athenian community in a larger sense. Goldhill (pp. 354-355) insists that women are not citizens but «wives, mothers, and daughters of citizens, at best,» and in the context of his paper this is reasonable. But the term he uses, «citizen wives» (or «citizen's wives and daughters»), is not always satisfactory either, as we shall see below.

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there is more evidence than he cites to support it. A review of this evidence will enable us both to confirm the general rule of women's exclusion and to be more precise about the possible exceptions to the rule. Obviously the evidence will not allow certainty on the matter, but if we not only distinguish carefully between citizens and non-citizen women, but also make some further distinctions within the category of citizens, the picture becomes reasonably clear.

Since there is no doubt that the jurors and the magistrates who directed the proceedings in court were male, we can begin with the main actors in the forensic *agón*, the two litigants. Women are defendants in only two of the surviving speeches, though there were certainly other cases with female defendants (e.g., Dem. 57.8); to my knowledge, however, there is no evidence for a female plaintiff (but see below on Myrtia). Even if a woman was a party to the suit, her case would be presented in court by her male *kýrios* or other interested (male) person: in Demosthenes, 59 Neaira is defended by her lover and protector Stephanus; the stepmother in Antiphon, 1 is defended by her son, and this pattern undoubtedly held for other cases [3]. Furthermore, although a woman is officially the defendant in these suits and her conduct is a central issue in each, it is clear that Dem. 59 is largely directed against Stephanus [4], and Ant. 1 may similarly be part of a dispute between the speaker and his half-brother, who presents the case for the defense.

Were either of these defendants in court? As Goldhill recognizes, the evidence indicates that the latter was present but the former was not. Neaira's presence is clear from the use of the deictic pronoun (αὐτήί) to refer to her (14, etc.). Part of Apollodorus' strategy, in fact, is repeatedly to direct the jurors' attention to her presence. This culminates in his direct request that the jurors «look at her» (τήν τε ὄψιν αὐτῆς ἰδόντες, 115). In Antiphon's speech against the stepmother accused of poisoning her husband, on the other hand, the speaker uses no deictics [5] and reserves the demonstrative pronoun οὗτος for the stepmother's sons, who are present. In referring to the

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[3] Isaeus, 11.21 etc.

[4] This is made explicit in the opening remarks, where Theomnestus explains that they have brought this suit in retaliation for previous wrongs suffered at Stephanus' hands.

[5] The deictic pronoun is fairly common in Ant. 5 and 6 but absent from 1.

stepmother he generally uses an expression implying she is not present (such as ἡ τούτων μήτηρ, etc.). Only in two contexts is she designated by the demonstrative pronoun αὕτη, and in both the pronoun provides emphasis but does not indicate her presence in court. In discussing his challenge to interrogate the slaves about an earlier episode (9-10) the speaker uses the demonstrative of his stepmother but immediately glosses it the first time (τὴν γυναῖκα ταύτην, μητέρα δὲ τούτων); in the peroration (25-27) the demonstrative supports an extended contrast between the woman and her hapless victim.

The speakers' words thus indicate that the defendant Neaira is present whereas the stepmother probably is not, a difference we may plausibly explain in terms of the women's different statuses: the stepmother, a citizen, would do all she could to avoid the public gaze, especially when facing an accusation of murder, whereas Neaira, a non-citizen (metic), has no such compunction. There is nothing to indicate whether either Neaira's presence or the stepmother's absence was a legal requirement. My guess is that the law said nothing on the subject and that the stepmother's absence is typical of what Goldhill calls «the protocol of invisibility for women» (p. 351). Whether Neaira's presence represents the normal practice of non-citizen female litigants is uncertain, but I suspect it does [6].

If citizen women did not appear in court as litigants, did they perhaps appear as witnesses? In giving an affirmative answer to this question, Bonner (1906) bases his conclusion on Dem. 47.70 and Plato, *Laws*, 937a. Plato allows women over the age of 40 to be witnesses in any type of case, and Bonner argues that this must reflect Athenian practice. Plato's rules do sometimes agree with Athenian laws or legal practice (when these are known, which of course they often are not), but frequently they do not. In this case there is no reason to think that Plato's rule sheds light on Athenian rules for female witnesses, let alone for witnesses specifically in homicide cases [7]. Dem. 47.69-70 is more difficult. The speaker, a former trier-

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[6] Todd 1997 finds in a group of Attic inscriptions from the 320s, which appear to record litigation between citizens and their freed slaves, evidence for «86 women and probably more, presumably appearing in person before the court and offering in principle to plead their own cases» (pp. 123-124). But if the procedure is a legal fiction, as seems plausible, these tell us nothing about freedwomen's actual appearance in court.

[7] See Leisi, p. 13.

arch, is explaining why he did not take legal action following the death of a freedwoman who had formerly been his slave: he consulted the *exegetái* and was advised (he says) not to bring a suit since the only witnesses to the woman's death were his wife and children [8], and the victim was neither his relative nor (any longer) his slave. If he tried to prosecute, they advised him, and took an oath at the Palladium together with his wife and children, he would lose respect: if he lost the case people would think he was a perjurer, whereas if he won he would generate ill will. It is not clear whether the oath that the trierarch's wife and children would swear concerned the facts surrounding the death, which would make them quasi-witnesses, or (more likely) the relationship between the trierarch and his former slave, but in either case, the oath would apparently be sworn before the trial and thus not in the presence of the court [9]. There is no suggestion that the trierarch's wife would be called to testify in court.

In addition to the absence of any evidence for a woman being a witness in court, we have considerable information about the ways in which litigants could bring women's evidence to the attention of the jurors instead of calling them as witnesses. Since no slave could testify in court in any case, the evidence of a female slave (like that of a male slave) would be presented by means of a challenge to interrogate her in the presence of free witnesses; if the other party to the case accepted the challenge, the evidence of the interrogation would then presumably be presented in court by these witnesses. Since these challenges are routinely refused by the opposing litigant, however, speakers instead convey to the jurors the essential facts of the slave's testimony by relating to them what the slave would have said if she had been interrogated [10].

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[8] The words of the *exegetái*, «since you have no other witnesses» (ἄλλοι δέ σοι μάρτυρες οὐκ εἰσίν, 47.69) are sometimes understood to imply that women could be witnesses (Bonner 1906, p. 129), but as MacDowell notes (1963, p. 105), a μάρτυς, like an English «witness», does not necessarily testify in court.

[9] Unlike the *dikastéria*, the *Palladium* was not regularly a court, but a temple of Athena next to which a homicide court convened on occasion. Thus, the preliminary oaths could not have been sworn in the court when it was not in session.

[10] See Gagarin 1996. In some cases (not all, as Mirhady argues) an accepted challenge may have ended the dispute.

The evidence of free women is also presented in ways that do not require their presence in court. Commonly speakers report the evidence of women in a narrative account, sometimes even quoting their words directly. In Dem. 55, to take just one example, among the arguments the speaker uses in his defense against a suit for damages to a neighbor's farm during a flood is that the actual damage suffered was much less than the penalty being sought. He knows the extent of the damage, he tells us, from his mother, who visited the plaintiff's mother soon after the flood (55.24): «She said that she saw and was told by the mother of these men that less than three medimni of barley had gotten wet (and she herself saw them drying it), and about half a medimnus of wheat flour; and that a jar of olive oil had tipped over but had not been damaged». This sort of report is routine in forensic oratory. Of course, the evidence of men is also reported in narrative accounts, but in the case of men, litigants may reinforce their account by calling the man himself as a supporting witness. This suggests, though it does not prove, that women were not called as witnesses to support the litigant's account of their evidence because they were not allowed to testify in court. As with the appearance of litigants, the restriction on female witnesses in court may have been more social than legal, but it would not have been less effective on that account.

The exclusion of women as witnesses is also evident in the treatment of oath-challenges. Just as in the challenge to interrogate a slave, a litigant could challenge his opponent to swear or have one of his supporters swear an oath, or the litigant could offer that he himself or one of his supporters would swear an oath. In the speech just discussed, for example, after describing the damages his opponent suffered, the speaker says that he challenged his opponent's mother to swear an oath and also offered to have his own mother swear to the facts just reported (55.27). As with challenges to interrogate slaves, oath-challenges are routinely refused [11], as this one was, but litigants report the refusal, together with the substance of the

[11] The one oath-challenge that we know was accepted (Dem. 39.3-4 and 40.10-11) confirms that they were normally refused. In this case the challenger had arranged beforehand that his challenge would be refused, but this arrangement was unexpectedly violated.

oath that they requested or offered, to the jurors as confirmation of the evidence they have presented.

The orators give accounts of both men and women being challenged to swear an oath or offering to swear, but there is a significant difference between the two. All the men for whom oaths are proposed are parties to the suit that gives rise to the challenge and the challenge is issued as part of the dispute. Either the speaker himself offers or has offered to swear [12], or his opponent is or has been challenged to swear [13]; in two cases we learn that an oath-challenge was issued in the past as part of another dispute to which the person whose oath was proposed was a party [14]. Speakers never seek an oath from a male third party in order to confirm facts to which the man could himself testify in court. In such cases the speaker instead calls the man as a witness and in this way confirms the man's evidence, which the speaker has already reported in his own words. Thus challenges that propose oaths for men are issued between litigants as part of the dispute process; when third parties have evidence, they are called as witnesses, not issued an oath. Thus, if the speaker in the case just discussed (Dem. 55) had learned the amount of damages from a male relative or friend, he would almost certainly have called the man as a witness to confirm the facts rather then reporting that the man had offered to swear an oath.

The women who are asked to swear oaths, on the other hand, are not parties to the suit [15] but third parties who have information that is relevant [16]. The speaker reports the evidence of these women and notes that they offered or were willing, or were unwilling, to swear an oath to the facts that he reports. Although in all but one case the oath-challenge was refused, the woman's reported willingness or unwillingness to swear is treated as confirmation of the information reported by the speaker. It is scarcely conceivable that if

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[12] Is. 12.10; Dem. 29.52, 49.42, 49.65, 50.31, 52.12, 54.39-42, 55.35.

[13] Dem. 29.52-53, 31.9, 33.13-14, 49.65; cf. Is. 9.24.

[14] Dem. 52.15, 59.60.

[15] Neither Neaira nor the stepmother are challenged to swear an oath. In the reported speech of Diogeiton's daughter (Lys. 32.12-17), she offers to swear an oath in support of her claims. This is one of the typical forensic features of this speech that indicate, I would argue, that the whole speech is Lysias' creation; see Gagarin forthcoming.

[16] Lys. 32.13; Is. 12.9-10; Dem. 29.26, 29.33, 39.3-4 and 40.10-11, 55.27.

women were allowed to testify in court, their evidence would consistently have been introduced by this indirect means, which is never used in the case of men. Thus, the practice of issuing oath-challenges had the effect of allowing, and probably was intended to allow, the evidence of a citizen woman to be conveyed to the jurors without the woman herself appearing in court [17]. We can probably assume that the same rules applied to free non-citizen women, though the extant speeches provide no evidence on this point [18].

If citizen women did not enter the courtroom as litigants or witnesses, there may have been other roles for them. We have two reports of evidence being presented to the court by a woman who was not a witness, but in both cases the circumstances are exceptional and neither provides a model for a citizen woman to appear in court. In Isocrates, 18.52-54 we are told how a certain Cratinus was once accused of murdering a slave woman even though his accusers knew that the woman was still alive. After they had sworn in court that the woman was dead, Cratinus presented the woman herself, alive, to the court; he was then acquitted unanimously. The woman's role in this case is unusual, as would be a man's appearance under the same circumstances [19], but entirely legal. If the woman in question had been a citizen, however, she would probably not have been brought into court; instead, her survival would probably be reported by witnesses and challenges would have been issued to the accusers to observe her themselves.

Another instance of a woman in court comes in the well-known story of the famous courtesan Phryne [20]. In the best known version

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[17] Witnesses served other purposes than simply providing evidence (see Todd 1990); to the extent that they lent public support to the litigant, women would not, of course, have any place in this public role.

[18] Demosthenes' mother Cleobule, who offered to swear various oaths (Dem. 29.26, 29.33) is sometimes thought to have been a non-citizen, but even if this was in some technical sense the case, she appears to have conducted herself and to have been treated as a citizen throughout her life. Cohen 1997 offers a useful perspective on this issue; see esp. 85-87 on Demosthenes and his mother.

[19] So in Dem. 37.44 Pantaenetus presents a male slave in court so that the jurors may see for themselves how feeble he is.

[20] Different versions of the story are found, all in late sources. Goldhill, p. 359 gives the main sources; he is skeptical, probably with good reason.

(Plutarch, *Hyperides*, 849e), Phryne secured acquittal on a charge of impiety by baring her breasts in front of the jurors. If the story is true, it indicates simply that like Neaira, Phryne was present in court during her own defense (which was presented to the jurors by the famous orator Hyperides) and resorted to some unusual non-verbal communication («body language») to assist her case. Not only would Phryne's gesture of course be improper for a citizen woman [21], but if she was a citizen, she would presumably not have been attending her trial in the first place.

One other capacity in which citizen women are often thought to have appeared in court, is as supporters of their husband's appeal for pity [22]. But with one or two exceptions the passages cited in support of this view, including the parody in the *Wasps* and Socrates' pointed rejection of the practice, do not mention women, only the litigant's children. One passage sometimes cited only confirms the absence of citizen women: in Dem. 48.57 the speaker appeals to the jurors, invoking his wife and daughter, and asks the jurors to imagine (νομίσατε) that they are present in court. Clearly these women are not in fact present except in the jurors' imaginations, and thus, if anything, the passage confirms the rule of women's absence [23].

One or two other passages, however, may suggest that women were occasionally present in court to generate sympathy. In Dem. 25.84 the speaker condemns the cruelty of Aristogeiton, who in court always demanded death for the accused. The jurors would acquit the defendants, but Aristogeiton's cruelty was evident: «Not even when he saw the children, nor the aged mothers (μητέρας ... γραῦς) of those on trial standing by them (παρεστώσας) did he have pity». It is hard to avoid the conclusion that the mothers in question are present in court standing by their sons [24]. This does not mean that

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[21] It would be improper for a citizen woman even to shake hands with each juror, as Phryne does in Athenaeus' version (591e).

[22] Bonner 1905, p. 34, citing Dem. 48.57; and Harrison, pp. 163-164, citing Lys. 20.34, Dem. 21.99, 21.186, Ar. *Wasps*, 568 ff., 976 ff. and Plato, *Apology*, 34c. There are many other references in the orators.

[23] Similarly, Aschines etc.

[24] Goldhill (pp. 358-359) translates παρεστώσας «brought forward»; but the more natural sense is «standing by» (in both senses); the context makes clear that the scene took place in court and that the women were physically present.

women regularly supported their husbands or sons in court. It may be significant that the women in this account are old (see below); being at an age where they might be less bound by social propriety, they may have taken extraordinary measures to help their sons in this emergency. But the passage provides evidence nonetheless for at least some presence of citizen women in court.

The second passage, Aristophanes, *Plutus*, 382-385, is more problematic. Blepsidemus thinks Chremylus has committed some crime and is speculating on what it might be. He urges Chremylus to say what he has done, for he (Blepsidemus) can help him (by bribing the jurors). Chremylus responds sarcastically that Blepsidemus will cheat him, but Blepsidemus continues, «I see someone seated on the *béma* with his wife and children holding a supplication branch [25], just as in "The Children of Heracles" by Pamphilus» [26]. The context suggests a judicial scene with Chremylus' wife present, but the image may rather be that of supplication at an altar, for litigants did not sit on the *béma*, and Blepsidemus may have added a wife to the scene to create a closer correspondence with Pamphilus' painting. It is possible, however, that the passage reflects the occasional presence of wives as supporters of their husbands in court.

I would conclude from these passages that citizen women did not normally come to court to support their husbands, though some may have done so on occasion. As with female litigants, the normal absence of citizen women in this supporting role was a matter of traditional rules and practices, not statutory law: a proper Athenian woman would not appear in court even if no law prohibited her presence. But a social custom like this would leave room for a degree of flexibility in practice. Non-citizen women would be less bound by such rules and did appear in court on occasion; they may also have sometimes joined the crowds of onlookers who regularly lent their presence to legal proceedings [27]. And even among citizen women customary rules of propriety may have had differing degrees of force depending on the circumstances.

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[25] ὁρῶ τιν' ἐπὶ τοῦ βήματος καθεδούμενον ἱκετηρίαν ἔχοντα μετὰ τῶν παιδίων καὶ τῆς γυναικός.

[26] This painting stood in the *Stoá Poikíle*.

[27] See Lanni for the importance of this audience for the litigants.

One factor was the woman's age. We have already considered the possibility that older women might feel less bound by such rules, and the relative freedom of older women is also suggested by a fragment of Hyperides (fr. 205) that does not specifically address the issue of women in court but may be illuminating nonetheless: «A woman who leaves the house should be at such an age in life that those she encounters ask not whose wife she is but whose mother» [28]. Female children, another factor may have been the seriousness of the case, which might influence a woman to participate in a capital case but not otherwise. A third factor was probably economic status: the rule of women's absence must have been less compelling for poorer women, who could not afford to observe the niceties of upper-class behavior. We know that poorer women or women who were temporarily impoverished worked outside the house. These women more often mingled with men in the agora and other public places and they may on occasion have participated in the legal process. Moreover, a relatively high proportion of poor women may have been unmarried – either too poor to attract a husband or (especially toward the end of the Peloponnesian War) widows with no other family to turn to – and having no *kýrios*, these women may on occasion have had to appear in court themselves.

A brief episode in the *Wasps* (1388-1412) shows a bread-seller named Myrtia accusing Philocleon of damaging her loaves. When he insults her, she summons him in legal language (προσκαλοῦμαί σε) to appear before the market officials (*agoranómoi*) on a charge of damage (βλάβης), and she formally calls Cherephon as a witness. Although disputes like this were presumably handled by the market officials and did not reach court, the scene raises the possibility that a woman like Myrtia might become involved in litigation that took her to court, perhaps even as a plaintiff. We would not hear of such litigation, since women like Myrtia could hardly afford to hire a logographer [29], but the possibility remains that on occasion a poor

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[28] δεῖ τὴν ἐκ τῆς οἰκίας ἐκπορευομένην ἐν τοιαύτῃ καταστάσει εἶναι τῆς ἡλικίας ὥστε τοὺς ἀπαντῶντας πυνθάνεσθαι, μὴ τίνος ἐστὶ γυνή, ἀλλὰ τίνος μήτηρ.

[29] All the litigants for whom forensic speeches survive are at least moderately well off or, like the man on welfare in Lys. 24, have friends who can pay the logographer's fees. But although the rich undoubtedly dominated litigation in Athenian courts, we have no reason to think the poor were completely excluded.

woman may have been directly involved in litigation. It is worth noting that Myrtia speaks in the language of law and apparently feels no need to explain how she became familiar with it (perhaps from observing an occasional case?). This is a notable contrast to women of higher status like Lysistrata or Praxagora, both of whom must explain their familiarity with the public language of the assembly (Aristophanes, *Lys.* 1126-1127, *Eccl.* 243-244). Unlike these well bred women, Myrtia may have had to participate in the discourse of public life, which more respectable women were able to avoid.

None of these considerations alters the basic ideology of exclusion of citizen women from Athenian public discourse and thus from the city's lawcourts. Of course, the cases that regularly came before the courts often involved women in various roles, and they were especially prominent in many inheritance cases. Therefore, ways had to be, and were, found to bring women into the forensic discourse while keeping them out of the physical space of the courts. Most commonly, if a speaker desired a woman's presence as a witness, he could report her evidence to the jurors himself – sometimes in what purported to be the woman's own words [30]. If he wished, he could add an oath-challenge to confirm her testimony in the expectation, normally fulfilled, that the woman would not actually have to swear.

On occasion a litigant would evoke women's presence in more imaginative ways. We have already noted that the speaker in Dem. 48.57 asks the jurors to imagine women present; his language almost makes it seem as if they are: «I beg and entreat you – not just I but my wife and daughter – we all beg you, jurors (for you should imagine that they are present)». Similarly, Lycurgus (1.141) invokes the presence of the jurors' wives and children: «Even though in no other case, gentlemen, is it the rule or the custom for jurors to have their wives and children sitting by them when they judge, it ought to be right to do this in a trial for treason». Since they cannot be here, he continues, «you must judge on their behalf ... and report to your wives and children when you have put him to death» [31]. All these

[30] For these «women's voices» in oratory see Gagarin forthcoming.

[31] Cf. the famous invocation of the women of Athens at home awaiting the jurors' return from court in Dem. 59.110-111.

various ways of bringing women to the jurors' attention helped compensate for their physical absence and enabled the Athenians to preserve the physical invisibility of their women in the public space of the courtroom while creating a forensic presence for them in the public discourse of the litigants.

WORKS CITED

Bonner, R.J. (1905) *Evidence in Athenian Courts*, Chicago.

Bonner, R.J. (1906) *Did Women Testify in Homicide Cases at Athens?*, «CP» 1, pp. 127-132.

Cohen, E.E. (1997) *The «Astoi» of Attika: Nationality and Citizenship at Athens*, in G. Thür - J. Vélissaropoulos-Karakostas (hrsg.), *Symposion 1995: Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, Köln, pp. 57-87.

Gagarin, M. (1996) *The Torture of Slaves in Athenian Law*, «CP» 91, pp. 1-18.

Gagarin, M. (forthcoming) *Women's Voices in Attic Oratory*, in A. Lardinois - L. McClure (eds.), *Making Silence Speak: Women's Voices in Greek Literature and Society*, Princeton.

Goldhill, S. (1994) *Representing Democracy: Women at the Great Dionysia*, in R. Osborne - S. Hornblower (eds.), *Ritual, Finance, Politics: Athenian Democratic Accounts Presented to David Lewis*, Oxford, pp. 347-369.

Harrison, A.R.W. (1971) *The Law of Athens*, vol. 2: *Procedure*, Oxford.

Lanni, A.M. (1997) *Spectator Sport or Serious Politics? οἱ περιεστηκότες and the Athenian Lawcourts*, «JHS» 117, pp. 183-189.

Leisi, E. (1908) *Der Zeuge im attischen Recht*, Frauenfeld.

Lipsius, J.H. (1905-1915) *Das attische Recht und Rechtsverfahren*, Leipzig.

MacDowell, D.M. (1963) *Athenian Homicide Law in the Age of the Orators*, Manchester.

MacDowell, D.M. (1978) *The Law in Classical Athens*, London.

Mirhady, D.C. (1996) *Torture and Rhetoric in Athens*, «JHS» 116, pp. 119-131.

Patterson, C. (1987) *«Hai Attikai»: The Other Athenians*, «Helios» 13, pp. 49-67.

Todd, S.C. (1990) *The Purpose of Evidence in Athenian Courts*, in P. Cartledge - P. Millett - S. Todd (eds.), *«Nomos»: Essays in Athenian Law, Politics and Society*, Cambridge, pp. 19-39.

Todd, S.C. (1997) *Status and Gender in Athenian Public Records*, in G. Thür - J. Vélissaropoulos-Karakostas (hrsg.), *Symposion 1995: Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, Köln, pp. 113-124.

Alberto Maffi

ARNALDO BISCARDI: *IN MEMORIAM*

Il 13 gennaio 1998 Arnaldo Biscardi ci ha lasciato. Scompare con lui lo studioso italiano che, dopo Ugo Enrico Paoli, ha più contribuito alla rinascita degli studi giusgrecistici in Italia e nel mondo: infatti, oltre ad aver pubblicato numerosi e fondamentali lavori di diritto greco, fino alla sua morte egli ha fatto parte del Comitato organizzatore dei Convegni di diritto greco ed ellenistico (*Symposia*), che si tengono periodicamente dal 1971.

Biscardi è stato uno dei più importanti studiosi di diritto romano in Italia; ma, fin dagli inizi della sua carriera scientifica, ha coltivato parallelamente anche gli studi di diritto greco. Sulle tracce del suo Maestro, Ugo Enrico Paoli, Biscardi si è interessato soprattutto di diritto attico (ma anche di diritto dei papiri, sia di epoca tolemaica sia di epoca romana). Gli interessi di Biscardi giusgrecista (ai quali è esclusivamente dedicata questa breve commemorazione) spaziano dal diritto pubblico al diritto privato, dall'età arcaica alla logografia giudiziaria attica. Ci limiteremo qui a ricordare i lavori più significativi di Biscardi.

Al problema cruciale dell'interpretazione delle leggi da parte dei giudici, e in particolare da parte dei tribunali popolari attici, è dedicato *La «gnome dikaiotate» et l'interpretation des lois dans la Grèce ancienne*, «RIDA» 17 (1970) (articolo che si può leggere anche in versione italiana in appendice a *Diritto greco antico*, Milano 1982). Interessanti contributi alla comprensione del concetto stesso di diritto nella Grecia arcaica e classica sono le voci *Phýsis dikáiou* (1966) e *Thémis e díke* (1973), originariamente scritte per il *Novissimo Digesto Italiano* e successivamente ripubblicate anch'esse in appendice a *Diritto greco antico*.

Dike, 1 (1998), pp. 181-183

Nel campo del diritto privato, fondamentali restano: l'articolo *Sul regime della comproprietà in diritto attico*, in *Studi Paoli*, Firenze 1956 (anche in versione francese e tedesca, rispettivamente in «RHD» 36 (1958), e *Zur griechischen Rechtsgeschichte*, Darmstadt 1968), e il successivo studio di largo respiro sempre in tema di diritti reali: *Il regime della pluralità ipotecaria*, che fu pubblicato come capitolo del libro *Appunti sulle garanzie reali in diritto romano*, Milano 1976 (pp. 219-254), preceduto dalla versione tedesca in «ZSS» 86 (1964), e seguito da quella francese in «JJP» (1978/1979). Si tratta di un lavoro in cui Biscardi ha saputo magistralmente collegare e confrontare normativa greca e normativa romana. Un altro ambito in cui Biscardi ha valorizzato la comparazione fra esperienza greca ed esperienza romana è il diritto commerciale, con particolare attenzione verso il contratto di prestito a cambio marittimo a cui è dedicato il suo fondamentale libro *Actio pecuniae traiecticiae*, Torino 1974

Una sintesi del pensiero di Biscardi sulle principali tematiche giusgrecistiche si può leggere nel già citato manuale *Diritto greco antico*, in cui Egli ha raccolto (mettendo a frutto anche le lezioni tenute per alcuni anni da Eva Cantarella) i risultati del suo insegnamento presso le Facoltà di Giurisprudenza di Siena e di Milano. Il testamento scientifico del Biscardi in campo giusgrecistico può essere però considerato l'articolo *Diritto greco e scienza del diritto*, cioè la Relazione introduttiva del II *Symposion* (da leggersi ora nella versione ampliata pubblicata in appendice a *Diritto greco antico*), che si svolse in Italia nel 1974 per iniziativa di Biscardi stesso. In questo saggio, Biscardi, dopo aver fatto il punto sul rinnovamento degli studi giusgrecistici fra il primo e il secondo dopoguerra, delineava quelli che secondo lui dovevano essere i metodi e gli scopi di tali studi. Per Biscardi occorre andare alla ricerca del contributo specifico che la civiltà giuridica greca può fornire alla formazione culturale del giurista. Sempre secondo Biscardi, tale contributo non risiede nella disciplina concreta di specifici istituti giuridici (perché il diritto dei paesi europei è stato storicamente influenzato quasi soltanto dal diritto romano e dai diritti germanici), e nemmeno nella dogmatica o nella sistematica giuridica, perché anche in questo campo l'influsso dei giuristi romani è preponderante. Il messaggio ai posteri del diritto greco sta piuttosto «in certi princìpi, che sono un po' i cardini, attorno a cui ruota l'ordinamento giuridico di ogni società civile» (*Dir. gr. ant.*, p. 329). Fra gli esempi addotti da Biscardi acquistano

particolare rilievo: il primato della legge e il controllo di costituzionalità delle leggi, princìpi che si affermano per la prima volta nell'Atene classica; nel campo privatistico il principio dell'autonomia contrattuale e l'elaborazione di un diritto commerciale agile ma rigoroso; infine «il contributo di riflessione che i pensatori greci hanno dato alle dottrine della volontà e della causalità nell'analisi degli atti leciti ed illeciti» (*ibid.*, p. 332). Sono indicazioni preziose che spetta ai cultori di diritto greco, e in primo luogo agli allievi del Maestro scomparso, sviluppare nella scia del Suo insegnamento.

La bibliografia giusgrecistica di Arnaldo Biscardi si può leggere nelle pagine introduttive del I volume degli Studi a Lui dedicati (Milano, 1982). Riteniamo opportuno elencare qui gli articoli attinenti al diritto greco pubblicati da Biscardi dopo quella data.

Nota minima sugli «ectemoroi», in *Aux origines de l'hellénisme. Hommage à H. van Effenterre*, Paris 1984, pp. 193 ss.

Polis, politeia, politeuma, in *Atti del XVII Congresso internazionale di Papirologia*, Napoli 1984, pp. 1201 ss.

Mariage d'amour et mariage sans amour en Grèce, à Rome et dans les Evangiles, «Annali della Facoltà di Giurisprudenza di Genova» 20 (1984-1985) (in onore di C. Castello), pp. 205 ss. (ripubblicato in P. Dimakis (éd.), *Eros et droit en Grèce classique*, Paris 1988, pp. 3 ss.).

La successione legittima degli ascendenti nel diritto ereditario panellenico: uno spunto epigrafico del VI o V secolo a.C., «SDHI» 51 (1985), pp. 276 ss.

Recensione a J. Triantaphyllopoulos, *Das Rechtsdenken der Griechen*, «Labeo» 33 (1987), pp. 126 ss.

Contratto di lavoro e misthosis nella civiltà greca del diritto, «RIDA» 36 (1989), pp. 75 ss.

Sulla c.d. consensualità del contratto dotale in diritto attico, in *Symposion 1988*, Köln-Wien 1990, pp. 3 ss. (= «BIDR» 91 (1988), pp. 231 ss.).