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JUSTICE OF THE «KAKOI»: LAW AND SOCIAL CRISIS IN THEOGNIS *

The elegies transmitted under the name of Theognis constitute a highly intractable corpus that defies a straightforward historical interpretation¹. Scholarly disagreement spreads over a number of issues related to the authorship, composition and historicity of these elegies². In spite of these difficulties, Theognis can be a valuable

* The following abbreviations are used throughout this paper:

Et.Thas: *Etudes Thasiennes*, Athens - Paris, since 1944.

GIBM: *Ancient Greek Inscriptions in the British Museum*, I-V, London 1874-1916.

IC: M. Guarducci, *Inscriptiones Creticae*, I-IV, Rome 1935-50.

IGT: R. Körner, *Inscriptifliche Gesetzestexte der frühen griechischen Polis*, Köln 1993.

IvO: W. Dittenberger - K. Purgold, *Die Inschriften von Olympia*, Berlin 1896.

ML: R. Meiggs - D. Lewis, *A Selection of Greek Historical Inscriptions to the End of the Fifth Century BC²*, 1988.

Nomima: H. van Effenterre - F. Ruzé, *Nomima. Recueil d' inscriptions politiques et juridiques de l'archaïsme grec*, I-II, Rome 1994-95.

¹ Although aware of the complex problems surrounding the authorship and composition of the corpus, for the sake of convenience I will use interchangeably throughout this paper the terms «Theognis» in the singular and *Theognidea* to refer to the elegiac corpus as we have it today and the ideological stance projected by it.

² For ancient testimonia on Theognis see *s.v.* «Theognis», in *RE VA*, 1972-1984, and E. Bowie, *s.v.* «Theognis», in *Der Neue Pauly*, 12.1, Stuttgart 2002, pp. 351-354. For a survey of earlier literature on the Theognidean question see D.E. Gerber, *Early Greek Elegy and Iambus 1921-1989*, «Lustrum» 33 (1991), pp. 186-214; Idem, *Theognis*, in D.E. Gerber (ed.), *A Companion to the Greek Lyric Poets*, Leiden - New York - London 1997, pp. 117-128. The original Theognis composed sometime in the late archaic period (*i.e.* mid-late sixth century; see most recently R. Lane Fox, *Theognis: An Alternative to Democracy*, in R. Brock - S. Hodkinson [eds.], *Alternatives to Athens. Varieties of Political*

source for late archaic and early classical Greek history, yet several aspects of the *Theognidea* remain relatively underutilized by classical scholars. In this paper I examine the picture of law and justice that emerges from the *Theognidea* against the evidence for enactment of law and administration of justice in the contemporary Greek world (*i.e.* late archaic/early classical period) as revealed from inscriptional and literary evidence. Theognis, legal inscriptions and other contemporary evidence corroborate and elucidate each other in revealing law as an ideologically contested category during the period in question. The right to enact statutory law and administer justice was at times appropriated by different groups within the Greek *polis*, a situation that often contributed to civic crisis. Not surprisingly, legal statutes and procedures were subject to constant re-interpretation and change. Theognis' discussion of law and justice fits this picture of constantly adapting Greek law to suit shifting class interests and provides valuable commentary on the social strife for control of jurisprudence during the late archaic and early classical period.

Organization and Community in Ancient Greece, Oxford 2000, pp. 35-51) yet the corpus in its present state bears clear signs of re-elaboration in later centuries. Most likely the *Theognidea* contain poems not necessarily composed by a single poet but rather poems that depict the same ideological disposition which were composed in a process of 'cumulative synthesis of Megarian poetic traditions' during a period of one and a half centuries (late seventh-early fifth centuries B.C.) and then performed and probably expanded in other parts of the Greek-speaking world. See quote from G. Nagy, *Theognis and Megara: A Poet's Vision of His City*, in Th.J. Figueira - G. Nagy (eds.), *Theognis of Megara. Poetry and the Polis*, Baltimore - London 1985, p. 33; see also L. Kurke, *Coins, Bodies, Games and Gold. The Politics of Meaning in Archaic Greece*, Princeton 1999, pp. 27-28; Eadem, *The strangeness of 'song culture': Archaic Greek poetry*, in O. Taplin (ed.), *Literature in the Greek and Roman Worlds. A New Perspective*, Oxford 2000, p. 62. Hence Theognis is not simply a parochial source for sixth century Megara but an elegiac corpus of wider appeal across Greece that articulates the concerns, values and ideals of social élites. In other words, the *Theognidea* offer us a template of aristocratic attitudes towards politics, civic strife and leisure during the late sixth and the early fifth centuries B.C.

THEOGNIS AND THE LATE ARCHAIC GREEK ARISTOCRACY

The poetry of Theognis voices the anxieties of a disgruntled aristocrat in the fast-changing world of late archaic Greece³. The high-class origins and aspirations of the author are evident throughout the corpus. A rather simplistic division of Greek society in «noble» (ἔσθλοί, ἀγαθοί) and «base» (δειλοί, κακοί) is a universal theme that constitutes the backbone of Theognis' ideology and philosophy of life⁴. What is particularly repugnant for Theognis and his aristocratic peers is the collapse of traditional élite symbols and the reversal of status distinctions in the *polis*. As Theognis succinctly puts it «those who were formerly noble are now base, and those who were base before are now noble» (οἱ πρόσθ' ἀγαθοὶ νῦν αἶ κακοὶ, οἱ δὲ κακοὶ πρὶν νῦν ἀγαθοί, Thgn. 1109-1110; cf. also 679). This social reversal went hand in hand, according to Theognis, with what was perceived by the aristocrats as a taxonomic anarchy with reference to the signifiers of status in late archaic Greece. Hence leaders (ἡγεμόνες), who by virtue of their position should be considered as part of the «noble», have fallen into the depths of depravity (εἰς κακότητα πεσεῖν), thus behaving like the «base» (Thgn. 39-42, 1081-1082b); the «base» who used to wear goatskins, true rustics who lived outside the city like deer ignorant of the distinctive marks of their class or of nobility

³ For attempts to interpret Theognis' work with particular reference to the internal political conditions in sixth century Megara see Fox, *Theognis* cit. (as in n. 2); H. van Wees, *Megara's Mafiosi: Timocracy and Violence in Theognis*, in Brock - Hodkinson, *Alternatives to Athens* cit. (as in n. 2), pp. 52-67; van Wees, unconvincingly in my opinion, argues for a mafia-style aristocratic ethos in Theognis' Megara. For the political history of Megara in the period in question see R.P. Legon, *Megara. The Political History of a Greek City-State to 336 B.C.*, Ithaca - London 1981, especially p. 104 ff.; see also Th.J. Figueira, *The Theognidea and Megarian Society*, in Figueira - Nagy, *Theognis of Megara* cit. (as in n. 2), pp. 112-158. E. Stein-Hölkeskamp, *Adelskultur und Polisgesellschaft. Studien zum griechischen Adel in archaischer und klassischer Zeit*, Stuttgart 1989, pp. 86-93 and 134-138, argues convincingly that Theognis portrays a new canon of aristocratic values more in tune with the collective sensibilities and interests of the *polis*.

⁴ See in general G. Cerri, *La terminologia sociopolitica di Teognide*: I. *L'opposizione semantica tra ἀγαθός-ἔσθλος e κακός-δειλός*, «QUCC» 6 (1968), pp. 7-32. D. Konstan, *Friendship in the Classical World*, Cambridge 1997, pp. 49-52, offers the best (albeit short) analysis of friendship in Theognis in the context of class divisions and social conflict.

(Thgn. 53-60), now yield unfair judgments (δικας) for the sake of their own profit and power (οικείων κερδέων εἵνεκα καὶ κράτους, 44-46)⁵. Moreover, besides simply bearing the outer signs of nobility, the «base» have achieved a position within the city that allows them to yield real power. In a well-known metaphor of the state as a ship Theognis maintains that the base have taken over (Thgn. 675-676: «they have overthrown the good helmsman», κυβερνήτην μὲν ἔπαυσαν ἐσθλόν; Thgn. 679: «the porters rule and they are above the nobles», φορτηγοὶ δ' ἄρχουσι, κακοὶ δ' ἀγαθῶν καθύπερθευ) and desperately warns the noble to fight back before it is too late (Thgn. 680: «I'm afraid that perhaps a wave will swallow the ship», δειμαίνω, μή πως ναῦν κατὰ κῦμα πίη)⁶.

Νόμος AND Δίκη IN THEOGNIS

An important aspect of the social malaise endemic in the Greek *poles* is according to Theognis the manipulation of justice and legal procedures by the *kakoi*. Law and the administration of justice are presented by Theognis as both an ethical and practical concern for the late archaic aristocracy. Time-honored aristocratic ideals of *dikaiosyne* are tumbled by a new discourse of justice championed by the emerging *demos*. Furthermore, the *kakoi* have seized control of legal procedures, thereby applying in everyday life their subversive perceptions of justice.

For Theognis a noble (ἀγαθός) man is inherently just (δίκαιος) (145-148) and justice is a noble principle that encapsulates the spirit of aristocratic way of life (ἐν δὲ δικαιοσύνη συλλήβδην πᾶσ' ἀρετῆ ὕστιν, 147; κάλλιστον τὸ δικαιοτάτον, 255; ἀμφ' ἀρετῆ τρίβου, καὶ τοι τὰ δίκαια φίλ' ἔστω, 465). Frequently justice is presented as divinely inspired (ὁσίη δίκη, holy justice, 132; εὐθείη θεῶν δίκη ἀθα-

⁵ Note that verses 43 ff., referring to the crooked practices of the base after they take hold of power in the city, immediately follows a segment (39-42) in which Theognis castigates the fall of the nobles to a condition of «baseness» (κακότητα). Since the segment 43-52 is syntactically independent I interpret it here as referring to low-class parvenus who acquire wealth and power in the city-state and not actual aristocrats who have degenerated, according to Theognis, to the condition of the rabble.

⁶ For the city as a ship metaphor cf. also 855-856.

νάτων, the direct justice of the immortal gods, *i.e.* as opposed to the justice administered by crooked citizens, 330). In a couplet the poet assumes the voice of a judge⁷ and equates justice with evenhandedness (543-544: Χρή με παρὰ στάθμην καὶ γνώμονα τήνδε δικάσσαι, Κύρνε, δίκην, ἴσόν τ' ἄμφοτέροισιν δόμεν). Contrary to this aristocratic ideal, Theognis' contemporary world is presented as replete with duplicity and crookedness (*e.g.* Thgn. 73-47, 79-82, 91-92, 93-96, 101-112 and *passim*)⁸. Theognis blames the «base» for this state of affairs: «what the noble consider vices are deemed virtues by the base [τὰ τῶν ἀγαθῶν κακὰ γίνεται ἐσθλὰ κακοῖσιν] and they [*i.e.* the «base»] rejoice in perverted ways [νόμοις]» (Thgn. 289-290). With particular emphasis on justice, Theognis points out that the base «formerly knew neither justice (δικας) nor laws (νόμους)» (53-56) but are now in control of the city and thus able to impose their «base view of justice» (κακῶς τὰ δίκαια νομίζειν, 279). As a result, lawlessness and anarchy rule, and the city is on the brink of self-destruction⁹.

What is more deplorable for Theognis, however, is the fact that judicial proceedings are often controlled by the *kakoi*. Administration of justice, along with statutory law, was extremely important in preserving social equilibrium in the Greek *polis*. The political power of a certain social group can be partly measured by the extent to which that group was able to promulgate law and hold sway of the city's courts. Theognis provides very little information on law-making procedures or the content of statutes in his city but makes abundantly clear that, in his view, justice was largely administered by and suited the interests of the *kakoi*. The base «give judgments in favor of the unjust for the sake of their own profit and power»¹⁰, a statement

⁷ It is not clear, although it is certainly not implausible, whether the historical Theognis ever served in this capacity.

⁸ Duplicity is frequently associated in the Theognidea with the declining state of friendship, an important institution for archaic Greek aristocracy. On the themes of friendship and duplicity in Theognis see W. Donlan, *Pistos Philos Hetairas*, in Figueira - Nagy, *Theognis of Megara* cit. (as in n. 2), pp. 223-244.

⁹ Thgn. 541-542, 603-604, 1103-1104.

¹⁰ [κακοῖ] ... δικας τ' ἄδικοισι διδῶσι οἰκείων κερδέων εἴνεκα καὶ κράτεος, 45-46; it is quite interesting that in this passage Theognis asserts that the same *kakoi* ruin the *demos* (δημόν τε φθείρωσι), suggesting that the *kakoi* are populist leaders but not necessarily of low-class origin themselves. Cf. also 947-948.

that Theognis elucidates in other parts of the corpus by asserting that the *kakoi* seize possession of their opponents' property through legal manipulation¹¹. This is bound to lead to social unrest (στάσις), civil strife (ἔμφυλοι φόνοι) and tyranny (μούναρχοί)¹².

But how exactly were Theognis' *kakoi* able in practice to control legal proceedings? In ancient Greece justice was meted out either by judges (adjudicating alone or collectively in a panel) or juries who collectively acted as judges (e.g. the popular courts of Athens). In the case of the *Theognidea* the composition of legal courts is not clear, although given the limited formal authority that the *demos* had in legal proceedings throughout the archaic period¹³, it is very likely that Theognis had in mind judges and not juries when he complains about the crooked utterances of unjust men (ἀδίκων ἀνδρῶν σκολιὸν λόγον, 1146-1150). *Skolios logos* in a legal context has the meaning of «crooked verdict» and by extension «crooked justice», comparable to the *skolia dike* of Hesiod's gift-devouring kings¹⁴. But contrary to Hesiod, in Theognis the lower orders are in charge of justice and the source of corrupt judicial decisions.

The *kakoi* are, according to Theognis, able to endow their crooked judgments with a shroud of legitimacy through «false oaths» (ῥρκω παρ τὸ δίκαιον, 200; ὄλεσθήνορας ῥρκους, 399; ῥρκοι δ' οὐκέτι ... δίκαιοι, 1139; cf. also, 745, ῥρκον ἀλιτρών). These passages refer to

¹¹ 145-148, 197-202, 465-466, 677-679, 748-752, 753-756. Cf. also 825-830 referring to mortgaged land.

¹² See 50-52; cf. also 667-682.

¹³ The only known possible cases of popular courts in archaic Greece are the Solonian *Heliaia* in Athens, Aristot. *Pol.* 1273b35-a3; [*Ath. Pol.*] 7.3, 9.1; and Chios (ML 8 = Nomima I, 62 = IGT 61), C, where a βουλή δημοσίη is authorized to hear appeals, probably of cases originally tried by the *demarkbos*. For the *Heliaia* see in general D.M. MacDowell, *The Law in Classical Athens*, Ithaca - New York, 1978, p. 29 ff.; M.H. Hansen, *The Athenian Heliaia from Solon to Aristotle*, «CM» 33 (1981-82), pp. 9-47. For the law from Chios see below, note 22. Beyond Athens and Chios, archaic evidence at best depicts ordinary citizens in a judicial context as mere spectators with no formal role. They could however exert some social pressure on the judges. See for instance the description of a trial depicted in Achilles' shield, *Il.* 18.497-508. This picture is in keeping with the evidence for the administration of justice from other archaic and early classical literary (Herodotus, with reference to the story of Deioces, 1.96-98; Hesiod) and inscriptional sources. See in general, M. Gagarin, *Early Greek Law*, Berkeley - Los Angeles 1986, *passim*.

¹⁴ *Op.* 221, 250, 261-264.

cases of perjury in sworn testimonies by litigants, witnesses or judges. In trials where only circumstantial or no evidence was presented, judicial oaths often had the validity of direct proof and were therefore extremely important in clinching the outcome of the trial (cf. next section below). Theognis insists that while the *agathoi* are inherently prone to justice and fair oaths (373-400) the *kakoi* manipulate the system to acquire property through false oaths that lead to crooked judgments. In fact, Theognis claims that he himself had been the victim of such crooked justice by the *kakoi* and that he had suffered loss of personal property as a result of it (341-350)¹⁵.

In sum, Theognis presents a picture of law and justice as completely controlled and manipulated by the *kakoi*, i.e. the lower social orders and their leaders (presumably upperclassmen who championed the cause of the *demos*; see note 10 above). Furthermore, the poet depicts law as a field of social and ideological contestation. Statutes and verdicts could be manipulated as the need arose to promote personal or class interests. This situation is depicted as a recent phenomenon; the poet claimed he knew of a period when aristocratic ethics and judicial practices reigned supreme. Theognis describes a stage of this social struggle over law when the *kakoi* are in charge; yet the poet also presents as feasible the possibility that, with the coordinated effort of all *agathoi*, aristocratic control of law-making and the courts can once again be restored to dominance.

THEOGNIS AS A SOURCE FOR LATE ARCHAIC GREEK LAW

To what extent does this picture of law and justice as described by Theognis fit other contemporary evidence? The question is crucial not only for evaluating a complex source such as Theognis, but also for our understanding of the workings and social significance of law

¹⁵ Perjury was not a unique feature of judicial procedures at the time of Theognis. Hesiod proclaims that «Oath runs faster than crooked justice» (αὐτίκα γὰρ τρέχει Ὀρκος ἅμα σκολιῆσι δίκησιν, *Op.* 219). See also *Theog.* 231-232: «Oath, who brings most grief to men on earth, when anyone knowingly swears falsely». What is different between Hesiod and Theognis is the social origin of those who habitually abuse justice (the aristocracy in Hesiod, the lower classes and their leaders in Theognis).

during the period in question¹⁶. One aspect of legal procedure that, Theognis claims, is repeatedly abused by the *kakoi* are judicial oaths. Independent evidence confirms the importance of oaths in late archaic/early classical Greek jurisprudence. Depending on the occasion, judicial oaths could be sworn by several parties involved in a legal case, including the litigants, witnesses and even the judges themselves. Often assertions that could not be substantiated by any other evidence made by litigants and witnesses were supported through evidentiary oaths. Frequently, after a formal charge has been filed, the defendant could clear himself by taking a purgatory oath. Finally, in those instances where legal points of dispute remained after pleas had been established and all parties and witnesses testified, the judge frequently had to decide the case on his own oath, *i.e.* an oath of arbitration whereby he swore to deliver an honest verdict according to his own judgement but in keeping with the general spirit of the law¹⁷.

¹⁶ For law in archaic and early classical Greece see Gagarin, *Early Greek Law* cit. (as in n. 13), and K.-J. Hölkenskamp, *Schiedsrichter, Gesetzgeber und Gesetzgebung im archaischen Griechenland*, Stuttgart 1999. One should keep in mind the distinction between laws as published statutory norms and the interpretation and practical application of these norms in the courts and everyday life. While legal norms frequently differed widely from *polis* to *polis*, thus making it almost impossible to speak of «Greek Law» as a set of rules that were universally applied across the Greek world, literary and inscriptional evidence regarding the process of promulgation and use of statutes in courtrooms and beyond reveals a number of recurring patterns. The remainder of this paper aims at analyzing some of these patterns (regarding in particular perjury and other abuses of law) based on the combined evidence of Theognis and legal inscriptions. I hope to offer a more elaborate discussion of these issues in a future monograph on archaic Greek law.

¹⁷ For perceptions of oaths and oath-taking among the Greeks, R. Hirzel's, *Der Eid*, Leipzig 1902, is still useful. For oaths in Greek jurisprudence see R.J. Bonner - G. Smith, *The Administration of Justice from Homer to Aristotle*, II, Chicago 1938, pp. 145-191; J. Plešcia, *The Oath and Perjury in Ancient Greece*, Tallahassee 1970, pp. 33-57; M. Gagarin, *Oaths and Oath-Challenges in Greek Law*, in G. Thür - J. Vélissaropoulos-Karakostas (hrsgg.), *Symposion 1995. Vorträge zur griechischen und hellenistischen Rechtsgeschichte* (Korfou, 1.-5. September 1995), Köln - Weimar - Wien 1997, pp. 125-134. Legal inscriptions from archaic and classical Crete are particularly helpful in elucidating various aspects of procedure, including the role of oaths. For oaths in Cretan jurisprudence see J.W. Headlam, *The Procedure of the Gortynian Inscription*, «JHS» 13 (1892-93), pp. 48-68; R.F. Willetts, *The Law Code of Gortyn*, Berlin 1967, pp. 33-34; For witnesses and their oaths in the Gortyn Law Code see M. Gagarin, *The Testimony of Witnesses in the Gortyn Laws*, «GRBS» 25 (1984), pp. 345-349, and Idem, *The Function*

The epigraphic record demonstrates the central role of oaths in Greek jurisprudence. As a late-sixth-century law from Eretria emphatically states, «justice is to be done only after oaths have been administered» (δικεν ἐπεὶν κατομόσει)¹⁸. Numerous late archaic and early classical laws specify that frequently verdicts were pronounced only after the litigants and/or witnesses had taken an oath¹⁹. Moreover, often judges and other officials were also required to swear an oath. For instance, the Law Code of Gortyn (c. 450 B.C.) prescribes that if a case cannot be decided according to the existing laws and the sworn testimonies of the litigants then the judge should decide on his own oath of arbitration²⁰. Given the power of the judges to determine by oath, in case of statutory gaps or conflicting evidence, the outcome of legal cases it is not surprising that Greek *poleis* sometimes enacted legislation related to the oaths of judges and other magistrates. Hence an early-fifth-century law from Gortyn (IC IV 42, 6-9) prescribes that refusal to take an oath on the part of the judge and the *mnamon* («rememberer», *i.e.* an official charged with recording and/or memorizing legal decisions and probably proclaiming legal precedents) is tantamount to a refusal to mete out

of Witnesses at Gortyn, in G. Thür (hrsg.), *Symposion 1985. Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, Köln - Wien 1989, pp. 29-54. For the technical terminology of oaths in Cretan legal inscriptions see M. Bile, *Le dialecte crétois ancien*, Paris 1988, pp. 352-353.

¹⁸ IG XII 9, 1973-1974 (= Nomima I, 91 = IGT 72-73). For the sixth century laws from Eretria see E. Vanderpool - W.P. Wallace, *The Sixth Century Laws from Eretria, «Hesperia»* 33 (1964), pp. 381-391; F. Cairns, *The «Laws of Eretria» (IG XII 9, 1273 and 1273): Epigraphic, Legal, Historical and Political Aspects*, «Phoenix» 45 (1991), pp. 296-313.

¹⁹ *e.g.* IC IV 51 (= Nomima II, 13 = IGT 139), Gortyn, 500-450 B.C.; IC IV 72, 11, 46-50 (= Nomima II, 16 = IGT 166), Gortyn, c. 450 B.C.; GIBM IV 886 (= Nomima I, 19 = IGT 84), 16-18, Halikarnassos, c. 475-450 B.C.; IG IX 1², 3, 718 (= Nomima I, 43 = IGT 49), 44-45, Lokris, c. 460-450 B.C.; IC IV 22B (= Nomima II, 84 = IGT 104), Gortyn, c. 550 B.C.; Et.Thas. III, 1954, nr. 7 (= Nomima II, 96 = IGT 66), 9, (oath of ignorance), Thasos, early 5th century B.C.; numerous other examples could be adduced.

²⁰ IC IV 72, 11, 26-31 (= Nomima II, 4 = IGT 181): τὸν δικαστᾶν, ὅτι μὲν κατὰ | μαίτυρανς ἔγρατται δικάδδεν ἔ ἀπόμοτον, δικάδδεν αἱ ἔιγρατται, τὸν δ' ἄλλων ὀμνύν- | τα κρίνεν πορτί τὰ μολιόμενα. Cf. also IC IV 72, 6, 53-55 (= Nomima I, 13 = IGT 171), Gortyn, c. 450 B.C.; IC IV 76 B, 4-7, (= Nomima II, 86 = IGT 150-151), Gortyn, c. 450 B.C.; IC I X 2, 8 (= Nomima II, 80 = IGT 94), Eltynia, early 5th century B.C. Promissory and evidentiary oaths were of course widely used by magistrates outside of strictly legal contexts (*i.e.* upon assumption of office or with regard to accountability procedures).

justice²¹. More generally, laws frequently include provisions against negligent magistrates who fail to perform their judicial responsibilities aptly. Hence a law from early fifth century Lokris (IG IX 1², 3, 718, 41-45 = Nomima I, 43 = IGT 49) stipulates that the *archon* who fails to prosecute will lose his civic rights (ἄτιμον) and have his personal property confiscated. In addition, an early sixth century (c. 575-550 B.C.) law from Chios (ML 8 = Nomima I, 62 = IGT 61), prescribes fines for the negligent performance of judicial responsibilities of the local *basileus* and *demarchos* and outlines the procedure for appeals of their verdicts at the «people's council» (βουλὴ δημοσίη), consisting of fifty representatives from each tribe²². All these laws indicate that in a number of cities, similar to the situation described by Theognis, the potential manipulation of judicial procedure by judges, court officials and other magistrates was a growing concern.

These negligent judges, public officials and all other *kakoi* who abuse the legal system are among the primary targets of Theognis. But who were these people? Extant archaic laws and literary sources provide some evidence regarding the composition and social background of the judiciary. During the early archaic period, in the Homeric epics and the works of Hesiod, judges are identified as *basileis*, «chieftains»²³. In Crete the *kosmoi*, the highest magistrates of the Cretan *poleis* who were elected only from a small group of aristocratic families, often served as judges²⁴. Yet, despite the predominance of the aristocracy in politics and jurisprudence, a number of archaic and early classical laws include provisions against negligent

²¹ IC IV 42, 6-9 (= Nomima II 5 = IGT 129*): αἱ δὲ κα μὲ ὁμόσονται κελομένο (*i.e.* the judge), κατὰ τὰ αὐτὰ πράδειθαι τὸ μὲ ὁμόσαντος ἄπερ αἱ κα μὴ ληθι δικάσσαι. For «rememberers» in archaic Greek jurisprudence see R. Thomas, *Literacy and Orality in Ancient Greece*, Cambridge 1992, p. 69 ff.; Eadem, *Written in Stone? Liberty, Orality and the Codification of Law*, «BICS» 40 (1995), p. 66 ff.

²² See the fundamental discussion of this law by L.H. Jeffery, *The Courts of Justice in Archaic Chios*, «BSA» 51 (1956), pp. 157-67. See also Nomima I, 259, for earlier bibliography and Hölkeskamp, *Schiedsrichter* cit. (as in n. 16), pp. 80-86.

²³ See M. Gagarin, *The Poetry of Justice: Hesiod and the Origins of Greek Law*, «Ramus» 21 (1992), pp. 61-78.

²⁴ «BCH» 61 (1937), 333 (= Nomima I, 81 = IGT 90), Dreros, c. 650 B.C.; IC I X 2 (= SEG 2, 509 = Nomima, II, 80 = IGT 94), Eltynia, early 5th century B.C.. For law and aristocratic politics in archaic and classical Crete see Zinon Papakonstantinou, *Written Law, Literacy and Social Conflict in Archaic and Classical Crete*, «AHB» 16 (2002), pp. 135-150.

magistrates²⁵. Such provisions suggest an inter-aristocratic strife for political domination, a popular reaction to the abuses of power by the elite, or a combination of both. Moreover, even though members of the elite were certainly very instrumental in the process of formulating these statutes²⁶, sanctioning formulas in a number of Greek laws indicate that several civic bodies, including the *demos*, were potentially involved in the enactment of law²⁷. The historical circumstances that led to most extant archaic laws elude us but the fact that different groups within the *polis* could potentially enact law suggests an attempt on behalf of these groups to appropriate law-making procedures from the politically dominant aristocracy. Moreover, besides the legal provisions limiting the powers of the aristocracy and the right to participate occasionally in law-making procedures members of the lower classes could also, as Theognis suggests, work the system and gain a legal advantage through perjury and other legal tricks. Thus a closer look reveals that the perceived aristocratic control of law and the administration of justice did not always go unchallenged from other social groups within the *polis*.

This opposition to traditional elitist perceptions and practices of law left its marks in the extant laws which very often clearly indicate the highly contested and arbitrary nature of law in archaic and classical Greece. Greeks perceived law as a body of arbitrary norms that

²⁵ See R. Körner, *Beamtenvergeben und deren Bestrafung nach frühen griechischen Inschriften*, «Klio» 69 (1989), pp. 450-498.

²⁶ See W. Eder, *The Political Significance of the Codification of Law in Archaic Societies: An Unconventional Hypothesis*, in K.A. Raaflaub (ed.), *Social Struggles in Archaic Rome. New Perspectives on the Conflict of the Orders*, Berkeley - Los Angeles - London, pp. 262-300. Although Eder is right in pointing out the critical role of the aristocracy in the promulgation of archaic law, he downplays the contributions of other social groups in law-making and the administration of justice.

²⁷ See e.g. «BCH» 70 (1946), 590, nr. 2 (= Nomima I, 64 = IGT 91), Dreros, late 7th century B.C. approved by the *polis* after deliberation of the tribes (πόλις ἔφαδε διαλήσασαι πύλασι); «BCH» 70 (1946), 597, nr. 3 (= Nomima I, 68 = IGT 92), Dreros, late 7th century B.C. approved by an *betaireia* (ἐ(τ)αρηιῶν ἔφαδε); *Kadmos* 9 (1970), 118 A 1-2 (= SEG 27, 631 = Nomima I, 22) end of the 6th century B.C. jointly approved by the «Dataleis» and the representatives of the tribes of the *polis* (ἔφαδε Δαταλεῦσι καὶ ἐσπένσαμεν πόλις | Σπενσιθίωι ἀπὸ πύλαν πέντε ἀπ' ἐκάστας); GIBM IV 886 (= Nomima I, 19 = IGT 84), Halikarnassos, c. 475-450 B.C., law jointly approved by the *syllagos* (assembly) of Halikarnasseans-Salmakiteans and Lygdamis: Τάδε ὁ σύλλογ[ος] ἐβόλευσατο | ὁ Ἀλικαρνατέ[ων] καὶ Σαλμακιτιέων καὶ Λύγδαμις.

could be revised and reinterpreted as social conditions and needs changed²⁸. Changes in statutory law certainly reflected to a certain extent shifts in the balance of power within each *polis* – a process whereby law serves primarily the interests of the socially dominant group but also partly articulates the concerns of other social groups. Any law that flagrantly violates popular ideals of civic order is very likely to provoke uproar and ultimately to be rescinded or become defunct. Archaic laws often bear the signs of social and ideological conflict; the enactment of laws that often articulate oppositional paradigms of social and political organization without any doubt helped redefine the terms of the social conflict that was partly responsible for generating them. It is obvious then that in the case of archaic Greece we are not dealing simply with a fixed set of laws that were unanimously interpreted and universally applied, but rather with a multitude of perceptions, interpretations and practices of law that often overlooked the letter of written statutes and brought to the surface social feuds.

CONCLUSION

All in all, the epigraphic evidence suggests a picture of ongoing social strife in the Greek *poleis* over the promulgation and interpretation of law. The right to enact law and administer justice was contested and renegotiated as opposing social groups strove to impose their ideologies and interests as the dominant paradigm in the archaic *poleis*. In other words, statutory law and its practical application in jurisprudence were primarily strategies employed in the ongoing struggle for political and social ascendancy²⁹. This inference squares

²⁸ See for instance for ancient Gortyn J.K. Davies, *Deconstructing Gortyn: When is a Code a Code*, in L. Foxhall - A.D.E. Lewis (eds.), *Greek Law in its Political Context. Justification and Justice*, Oxford 1996, pp. 33-56.

²⁹ For a similar approach that views Greek law as discourse see S.C. Humphreys, *Law as Discourse*, «History and Anthropology» 1 (1985), pp. 241-264; Eadem, *The Discourse of Law in Archaic and Classical Greece*, «Law and History Review» 6 (1988), pp. 465-493; L. Foxhall - A. Lewis, *Introduction*, in L. Foxhall - A.D.E. Lewis (eds.), *Greek Law in its Political Setting*, Oxford 1996, pp. 1-8. Contrary to the scholarship on

well with Theognis who portrays law and the administration of justice as a socially and ideologically contested category. Theognis associates law and justice with economic and class interests. Law is portrayed as essential in the effort of the *kakoi* to assume control of politics and wealth. On the other hand, traditional elitist discourses and practices of justice are, according to Theognis, central in the aristocracy's opposition and counteroffensive to regain control of the *polis*.

Overall, the poetry of Theognis elucidates aspects of elitist ideology relative to law and the administration of justice and provides valuable evidence for the workings of law-courts and the social significance of jurisprudence in general. Taken in conjunction with the epigraphical record it also alludes to the constant renegotiation over the meaning and practical application of law in the late archaic and early classical *poleis*³⁰.

archaic Greek law, recent studies on classical Athenian law and administration of justice are more theoretically informed. See for instance D. Cohen, *Law, Sexuality, and Society. The Enforcement of Morals in Classical Athens*, Cambridge 1991, pp. 1-69, and Idem, *Law, Violence and Community in Classical Athens*, Cambridge 1995, pp. 3-24, whose approach emphasizes the dialectic between legal structures and human agency; S.C. Todd, *The Shape of Athenian Law*, Oxford 1993, influenced by legal anthropology; S. Johnstone, *Disputes and Democracy. The Consequences of Litigation in Ancient Athens*, Austin 1999, who incorporates different strands of social theory.

³⁰ I am grateful to Prof. Carol Thomas and Prof. Paul Cartledge for providing valuable feedback on an earlier version of this paper. I am solely responsible for any remaining errors.