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Two passages in pseudo-Xenophon

ROGER BROCK (UNIVERSITY OF LEEDS)
MALCOLM HEATH (UNIVERSITY OF LEEDS)

ABSTRACT: This paper discusses textual problems in [Xenophon] *Athenian Constitution* 2.9 and 3.5.

1. [Xenophon] *Athenian Constitution* 2.9

θυσίας δὲ καὶ ἱερὰ καὶ ἑορτὰς καὶ τεμένη γνοὺς ὁ δῆμος ὅτι οὐχ οἷόν τε ἔστιν ἑκάστῳ τῶν πενήτων θύειν καὶ εὐωχεῖσθαι καὶ ἴστασθαι ἱερὰ καὶ πόλιν οἰκεῖν καλὴν καὶ μεγάλην, ἐξηῦρεν ὅτῳ τρόπῳ ἔσται ταῦτα.

ἴστασθαι Kirchhoff: κτᾶσθαι ABCM ἱερὰ ABCM: ἱερεῖα Müller-Strübing

This sentence has long been regarded as problematic; Kirchhoff's emendation is palaeographically simple and has met with general approval, but if ἱερὰ is taken to mean 'temples', as is usual, the phrase is not without its difficulties. ἴστασθαι is normally used of inscriptions, statues and trophies rather than buildings;¹ *LSJ* cite only one instance of the latter usage, Thucydides 1.69.1, and there it might be argued that the Long Walls were not a building as such (although Thucydides does use οἰκοδομεῖν of them at 1.107.1). Furthermore, it does seem rather pointless to say that individual poor members of the demos are unable to build temples, for that was something that even the richest were unlikely to be able to afford.

The solution may lie in understanding ἱερὰ in a different sense: not 'temples', but 'rites' (*LSJ* s.v. III.lc). This has occurred to previous editors, but they have failed to carry the idea through: Frisch, in 1942, took the word to mean 'divine services' in its first occurrence, but 'sanctuaries' in its second, and, not surprisingly, found the passage lacking in coherence,² while Serra, the most recent editor, gives the word the same sense in both places but, in line with his conservative approach, keeps κτᾶσθαι, which leads him into the clumsy periphrasis 'procurarsi i mezzi necessari alle pratiche rituali'.³ In fact, ἴστασθαι ἱερὰ makes perfect sense in the sense 'establish rites': the use of ἴστασθαι to refer to the establishment or institution of festivals and ritual acts is well attested in Herodotus and Pindar (Hdt. 4.76.3, Pi. *O.* 2.3, 10.58; cf. B. 11.112), and could easily be extended to rites in general; a verb with a similar sense is found in combination with ἱερά in the phrase ἰδρυθέντων δὲ σφι ἱρῶν ξεινικῶν (Hdt. 1.172.2). However, those who do not find these parallels sufficiently close might

¹ So M. Treu, 'Ps.-Xenophon Πολιτεία Ἀθηναίων', *RE* IX A2 (1967), 1979-80.

² H. Frisch, *The Constitution of the Athenians* (Copenhagen 1942), 25 with 148, 255.

³ G. Serra, 'La Costituzione degli Ateniesi dello pseudo-Senofonte', *Bollettino dell' Istituto di Filologia Greca, Università di Padova, Supplemento* 4 (1979).

consider a further small step which is palaeographically not difficult and achieves the same sense by reading καθίστασθαι, on the basis of Pl. *Lg.* 738c θυσίας τελεταῖς συμμείκτους κατεστήσαντο.

This interpretation is the more attractive since the period in which the treatise is likely to have been composed saw the introduction at Athens of cults of Bendis (c. 430 BC) and Asclepios (c. 420 BC).⁴ It also chimes with two observations made by the author elsewhere, namely the exceptional number of festivals at Athens (3.2, 3.8) and the concern of the demos to manage such events in its own interest (1.13). Thus the reference to the establishment of new rites has a particular point here.

Finally, it is possible on this interpretation to establish a sequence of thought in the paragraph as a whole. The author, enumerating the material benefits of the Athenian regime to the demos, turns to religion, and begins with a list of its material advantages in ascending order of significance and cost: ‘sacrifices, rites, festivals, sanctuaries’. The nouns are picked up by the following infinitives, θυσίας and ἑορτὰς by θύειν καὶ εὐωχεῖσθαι and ἱερὰ and τεμένη by ἵστασθαι ἱερὰ; the latter disturbs the sequence, but follows a certain logic, since the establishment of a cult would entail the creation of a τέμενος.⁵ Such a τέμενος could also be considered an amenity, hence πόλιν οἰκεῖν καλὴν καὶ μεγάλην, and this in turn leads the author on to consideration of the secular buildings with which the city is adorned, a discussion which is linked to the first half of the paragraph by the argument that this is another area in which the demos has acquired for itself benefits which were hitherto largely or wholly the preserve of rich individuals.

2. [Xenophon] *Athenian Constitution* 3.5

ταῦτα μὲν οὖν ὅσα ἔτη διὰ χρόνου δὲ δικάσαι δεῖ ἀστρατείας καὶ ἔάν τι ἄλλο ἐξαπιναῖον ἀδίκημα γίγνηται, ἔάν τε ὑβρίζωσί τινες ἄηθες ὑβρισμα ἔάν τε ἀσεβήσωσι.

δὲ δικάσαι Kirchhoff: διαδικάσαι codd. ἀστρατείας Brodaeus: στρατιᾶς AC: στρατιᾶς M: στρατιὰ B: στρατηγικὰς Lipsius

The author is discussing the demands on the time of the Boule and demos which make it difficult for individuals to consult them: after mentioning festivals briefly in 3.2, he has turned to public business, including judicial affairs. After a brief excursus on the merits of bribery in 3.3, he returns to judicial matters in 3.4, listing various disputes which the Athenians must διαδικάζειν; that is, they are

⁴ See now R. Garland, *Introducing New Gods* (London 1992), 99-135; note especially his remark that, by the middle of the 5th century, ‘the Demos had arrogated to itself outright control over the introduction of new gods’ (115).

⁵ The *temenos* was the most essential feature of the sanctuary (W. Burkert, *Greek Religion* [Oxford 1985], 84-7); hence the Athenian acceptance of Citian Aphrodite is signalled by a grant of γῆς ἔγκτησις (M.N. Tod, *Greek Historical Inscriptions* [Oxford 1948], 189.33-45). Not every *temenos* contained a temple (Burkert, *op. cit.*, 50, 88) and indeed the temple of Asclepios at Athens was only built a generation after the acceptance of the cult (Garland [n.4], 118-21, 126-8).

disputes between claimants on which the courts must arbitrate.⁶ In the last sentence of 3.4, however, he seems to veer back to the regular duties of the Boule.⁷ All these duties, he remarks at the beginning of 3.5, arise annually, but there are also occasional trials (δικάσαι rather than διαδικάζειν):⁸ some sort of military matter,⁹ serious outrages and impiety. He also appears to include under ‘irregular judicial matters’ the four-yearly reviews of tribute with their attendant judicial proceedings.¹⁰ After making the point that all these duties are indispensable, and that they must be done on a yearly basis, he slides in 3.6 from the administration of civil law to the criminal courts, considering their size in 3.7 and rounding off the discussion with an explicit statement of a point already made implicitly at 3.2, that the large number of Athenian festivals restricts the number of days available for public business.

This outline of the argument should help to clarify the nature of the military offence at issue in 3.5: it ought not to recur annually as a matter of procedure, and it ought to be a serious matter, but it should not be part of the regular work of the criminal courts.¹¹ Desertion (ἀστρατεία) seems a poor candidate on these grounds, and something to do with the generals much more promising, hence Lipsius’ στρατηγικός (sc. δίκας).¹² For the use with δίκαι an adjective ending in -ικός defining (in a nontechnical manner) the object or area of interest one may compare the regular expressions φονικαὶ δίκαι (*LSJ* s.v. φονικός II), ἐμπορικαὶ δίκαι (Dem. 7.2, 35.46, [Arist.] *Ath. Pol.* 59.5) and μεταλλικαὶ δίκαι (Dem. 37.36, [Arist.] *Ath. Pol.* 59.5). This suggestion can be supported by two considerations: first, the same procedure, εἰσαγγελία, was likely to be used both

⁶ With the exception of building on public property: in the fourth century, at least, this came under the jurisdiction of the ἀστυνόμοι ([Arist.] *Ath. Pol.* 50.2), which makes it sit oddly here, the more so since the author regards it as recurring annually; it may be that the fifth-century practice involved the demos directly (perhaps at a specified meeting of the assembly?).

⁷ The bulk of δοκιμασία seem to have fallen to the Boule (P.J. Rhodes, *The Athenian Boule* [Oxford 1972], 171-8), and one might expect orphans to come under their scrutiny, like ἀδύνατοι or, more generally, epebes; ‘guards of prisoners’ is problematic, since the Eleven were chosen by sortition ([Arist.] *Ath. Pol.* 52.1), but the reference might be to their subordinates, whether slave or free.

⁸ The manuscripts have διαδικάσαι, but when applied to judges or juries at Athens, this (and the cognate noun denoting the procedure, διαδικασία) always otherwise refer to adjudication between rival disputants or claims; no such procedure is attested in the military field, and it is difficult to envisage one (particularly where ἀστρατεία is concerned). It makes better sense to assume that the simple δικάσαι has been assimilated to the (correct) use of διαδικάσαι in the previous section.

⁹ It is conceivable that the corruption runs deeper; however, all the manuscripts have -στρατ-, which is difficult to accommodate except in a word with a military reference (there seems to be no alternative in the classical historians or orators, at any rate).

¹⁰ For the provision for appeal by allied states against their tribute assessments, see R. Meiggs and D.M. Lewis, *A Selection of Greek Historical Inscriptions*² (Oxford 1988), 69.12-15 with commentary, Antiphon fr. 25-33, 49-56 Thalheim.

¹¹ Technically, (ἀστρατεία and related offences were not tried by a regular court, but by a jury of the soldiers involved (D.M. MacDowell, *The Law in Classical Athens* [London 1978], 160), though this might still have been considered representative of the demos as a whole.

¹² E. Kalinka, *Die pseudoxenophontische ΑΘΗΝΑΙΩΝ ΠΙΟΛΙΤΕΙΑ* (Leipzig and Berlin 1913) *ad loc.* made some of these points, but responded with the neologism παραστρατηγίας; Lipsius’ suggestion is both more elegant and closer to the reading of the manuscripts.

in cases of dereliction by generals and for the other offences mentioned in the sentence, unusual outrages and acts of impiety such as the mutilation of the herms and the parodying of the Mysteries; secondly, prosecutions of generals, usually by εἰσαγγελία, show a sharp rise in the early years of the Peloponnesian War.¹³

Lipsius' neglected suggestion deserves to be adopted. The only drawback is the need to understand the cognate noun δίκας (although this did not worry either Lipsius or Kalinka); the emendation might therefore be improved by reading στρατηγικὰς δίκας in full,¹⁴ on the assumption that the noun has dropped out by haplography and so caused confusion as to the significance of the adjective.

¹³ See M.H. Hansen, *Eisangelia* (Odense 1975), for the procedure and a register of cases (esp. nos. 6-10); on prosecutions of generals, n.b. W.K. Pritchett, *The Greek State at War II* (Berkeley 1974), 4-33.

¹⁴ For the formula in full cf. Dem. 35.46, Arist. *Pol.* 1275b8-11.