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The Solonian Denomination for the Eliaia

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Instead of writing innumerable new laws from scratch, the Athenians ca. 410 B.C. set out in search of their old ones. To this voyage of discovery and to the conservatism which actuated it we owe our knowledge of three directives which guarantee popular participation in important decisions. By means of the formula *ἄνευ τοῦ δέμου τοῦ* ’Α*θηναίων πληθύοντος μὴ ἐῖναι* the whole Demos was involved in the declaration and termination of wars (IG I^3 105.34-35), the imposition of the death sentence (l. 36), and in the exaction of a *θοά*, whatever that might mean, from a citizen (ll. 40-41). It did not escape the notice of Ostwald that in these clauses one and the same expression is used to denote both political and judicial assemblies: “The fact that the expression *δῆμος πληθύων* does not differentiate between those two functions suggests that the political function…had not yet clearly been separated from the judicial at the time the original legislation was enacted.”[1] We profited from this insight by turning it into an additional argument for raising the date of the clauses in question: if the phrase was employed in 594, when there was as yet no history of judicial decisions by the Demos, its ambiguity does not elicit surprise, whereas if it was employed early in or in the middle of the fifth century,[2] its ambiguity does not admit of explanation.[3]

This insight should be shored up, not because it is tottering, but because it is crucial to our case and because it can be shored up. It is clear enough that Ostwald was right in diagnosing rather an inability than an unwillingness to distinguish between political and judicial sessions of the assembly. In an epigraphic document one might willingly confound two institutions in order to save space, here however the provisions were not summarized, but enumerated singly, so that *δῆμος πληθύων* never denotes both political and judicial assemblies at once, but always one or the other. And for someone not sundering judicial meetings from political ones, it would have been much easier to write “the Ekklesia” than “the Demos, that of the Athenians entire.” It follows that the term *ἐκκλησία* was not current when these provisions were

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[1] OSTWALD (1986) 35.

[2] OSTWALD (1986) adduces six celebrated trials for which only popular jurisdiction is attested as evidence for the prior passage of the provisions which concern us, and since, for example, the first trial of Miltiades occurred shortly before 490 (cf. p. 29 with n. 107), he assumes “an early fifth-century version” (p. 39) or “legislation enacted in the late sixth or early fifth century” (p. 35); RHODES (1972) 197-198, stressed that “the Athenians were content to retain obsolete expressions in their laws,” reckoned with “a more conservative drafter” and came to the conclusion that the provisions “are likely to have been drafted before 450, but I do not think that greater precision is possible.”

[3] RYAN (1994) 120-34, esp. 131-32.

enacted. In all probability the terms Ekklesia and Eliaia arose at the same time. The earliest known designation for the assembly is *δῆμος πληθύων*; the term Ekklesia would at first have been reserved for political sessions of the assembly and therefore presupposes the isolation of political from judicial power. It was undoubtedly the disappearance of its counterpoint, the Eliaia, when the latter was superseded by the Dikasteria, which allowed the name of a part, the Ekklesia, since it was now the only part left, by that very fact to become the name of the whole.

No scholar attempting to date the proclamation of the rights of the *δῆμος πληθύων* has brought to bear on this question the antiquity of the term Eliaia. Although the Aristotelian history (A.P. 9.1) in connection with Solon mentions a Dikasterion, Rhodes affirmed that "Solon's word will have been *ἡλιαία*" and Ostwald could call "generally agreed" the view "that Solon's name for the new tribunal was *hēliaia*."[4] If however one conjoin this view with the conclusions reached by the same scholars regarding the date of the provisions respecting the *δῆμος πληθύων*, the historical reconstruction which results is impossible to accept. For it would mean that a completely unambiguous term was known to the Athenians already in 594, but a century or a century and one-half later had given way to an ambiguous and far more cumbersome expression. The usage *δῆμος πληθύων* must be older than the designation *ἡλιαία*. In a political context the former phrase could be older than the work of Solon, but in what we now and what the Athenians eventually considered a judicial context the former phrase cannot be older than Solon, with whom the involvement of the Demos in judicial affairs began (A.P. 9.1).[5] The possibility that the phrase *δῆμος πληθύων* arose in the period 508-501 is not completely to be excluded, since one could imagine that the powers of the new Boule were defined through negative injunctions. Under this reconstruction the ability to distinguish between the political and judicial spheres must develop rather quickly. Since the term Eliaia was retained for the court of the Thesmothetai (ML 52.75-76, Ant. 6.21 [419 B.C.])[6] after the creation of dikastic panels, one is disposed to let the name arise as early as

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4 Rhodes (1981) 160; Ostwald (1986) 9-10. Bleicken (1995) 27, was more cautious: „Wie die Behörde hieß, die Solon einrichtete, ist uns nicht bekannt."

5 There is no good reason to limit Solonian *ephesis* to cases judged by magistrates; v. Original Date RYAN (1994) 132-33.

6 Since in the law quoted at [Dem.] 46.26 the Eliaia is juxtaposed to several Dikasteria, it is most natural to see in it also the Eliaia of the Thesmothetai; for a different interpretation, v. OSTWALD (1986) 11 n. 29.

possible. It is not possible to argue that the name arose only after 462 and was retrospectively applied to judicial sessions of the assembly, over which, it may be presumed, the Thesmothetai more frequently presided than the other archons. There is incontrovertible proof that the term Eliaia is of greater antiquity than the dikastic panels: the execration pronounced by the herald at the commencement of every sitting of the assembly took cognizance of the Eliaia (Dem. 23.97: *καταρᾶται καθ' ἑκάστην ἐκκλησίαν ὁ κῆρυξ...εἴ τις ἐξαπατᾷ λέγων ἢ βουλὴν ἢ δῆμον ἢ τὴν ἡλιαίαν*). If Solon did not employ the phrase *δῆμος πληθύων* to denote judicial assemblies, then he must have used an equally vague expression which eventually gave way to it, just as it in turn was replaced by *ἡλιαία*; the appearance of the last term would have been correspondingly delayed. If however Solon did subsume judicial assemblies under the heading *δῆμος πληθύων*, then the term *ἡλιαία* could be truly archaic. The concept of judicial power probably would have evolved more slowly in the first half of the sixth century than in the aftermath of the tyranny, but one might guess that it was current ca. 550.

Ostwald had maintained that "Solon's use of *ἡλιαία* is guaranteed by quotations in Lys. 10.16 and Dem. 24.105."[7] The Eliaia is mentioned in the snippet of the law quoted by the speaker in the speech composed by Lysias and it is mentioned once in the first and twice in the second of the longer excerpts from two laws found in the text of Demosthenes, and these laws are indeed attributed to Solon (Lys. 10.15; Dem. 24.103, 106). These statements would not seem to require interpretation, but in fact they are problematic.[8] An extreme example is the decree of Demophantos (Andok. 1.96-98), passed in 410 B.C., which Andokides by way of introduction calls *τὸν Σόλωνος νόμον* (Andok. 1.95). That Solon allowed laws to be repealed only by being replaced (Dem. 20.89-90) is acceptable on the condition that this restriction applied only to his own laws upon the expiration of the ten-year period in which they could not be changed; one may doubt that he opined that not even a justly composed Psephisma could outweigh a Nomos (Hyp. Ath. 22). No scholar would agree that a law of Solon regulated the activities of the Nomothetai (Dem. 20.92-93). Since the supposedly Solonian eliastic oath (Dem. 18.6-7, 24.148) in the place where it is

[7] OSTWALD (1986) 10 n. 27.

[8] RUSCHENBUSCH (1966) 76-77, accepts both the law quoted at Lys. 10.16 and the first law quoted at Dem. 24.105 as genuine, but says in the fine print (p. 77) anent the latter: „Die Benennung des Gesetzes als solonisch...ist nur zufällig zutreffend."

quoted or inserted (Dem. 24.149-151) begins with a reference to the Boule of Five Hundred, one will not give credence to the supposedly Solonian bouleutic oath (Dem. 24.148) which is not quoted and therefore cannot be inspected. There are then some false ascriptions which are harder to explain than they are to recognize,[9] but other ascriptions are difficult to judge[10] and in many cases it would be impossible to recognize as false the ascription to Solon of a law which is archaic or which uses archaic language.[11] But in the present instance the language, though possibly archaic, is not archaic enough.[12] It is not the ascription to Solon of a law containing the term ἡλιαία which proves the usage to be Solonian, but rather the presence of the term ἡλιαία in a law ascribed to Solon which proves the law to be post-Solonian. The distinction here made, that the term δῆμος πληθύων could be Solonian, whereas the term ἡλιαία cannot, is not a mere matter of correct terminology. It is not simply anachronistic to say that Solon instituted the Eliaia. It is also anachronistic, if not to credit him with the creation of a popular tribunal, then at any rate to credit him with being aware of having done so.[13]

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[9] Cf. RHODES (Paris 1993): "The forensic orators of the fourth century ascribe to Solon any feature of the fourth-century democracy of which they wish to speak with approval" (p. 60); "Forensic and political orators had a convention of ascribing…current laws and institutions to Solon: it is not clear how far they or their audiences believed in the ascription" (p. 63).

[10] Since the Athenians had not yet begun to coin money at the time of the Solonian reforms, doubts on the historicity of allegedly Solonian laws which fix „monetary fines" were expressed by OSBORNE (1996) 222; SICKINGER (1999) 204 A. 75, rejoined that "even before the introduction of coinage standardized weights of precious metals probably served as items of exchange."

[11] Cf. SICKINGER (1999) 25: „Every allegedly Solonian measure must be evaluated separately according to the style and vocabulary of an individual law (when a text is available), its content, and the overall historical probability of its origin in the early sixth century."

[12] RUSCHENBUSCH (1966) 74 considered authentic a third law (ap. Dem. 23.28), not specifically attributed to Solon but dealing with "das Blutrecht" (p. 59), in which the word ἡλιαία appears. This law also must henceforth be deemed post-Solonian. Since the text of this law refers to a law on one of the Axones (cf. Dem. 23.31: in both passages the number is lost) and without changing the penalty which the older law allows specifies what penalties are not allowed, and since the need for clarification would only have become apparent in the course of time, it was not reasonable to adjudge it Solonian in any case; Demosthenes himself, who in other passages bandies about the name of Solon, refers here to "the lawmaker" (Dem. 23.29: ὁ τιθεὶς τὸν νόμον).

[13] A Forschungsstipendium of the Alexander von Humboldt-Stiftung facilitated our work.

Literature

Bleicken (1995)	J. Bleicken, Die athenische Demokratie (Paderborn ^{4}1995).
OSBORNE (1996)	R. OSBORNE, Greece in the Making, 1200-479 BC, London 1996.
OSTWALD (1986)	M. OSTWALD, From Popular Sovereignty to the Sovereignty of Law (Berkeley 1986).
RHODES (1972)	P. J. RHODES, The Athenian Boule (Oxford 1972).
Rhodes (1981)	P. J. Rhodes, A Commentary on the Aristotelian *Athenaion Politeia* (Oxford 1981).
RHODES (1993)	P. J. RHODES, "Alles eitel gold"? The Sixth and Fifth Centuries in Fourth-Century Athens, in: Aristote et Athènes/Aristoteles and Athens (Paris 1993) 53-64.
RUSCHENBUSCH (1966)	E. RUSCHENBUSCH, ΣΟΛΩΝΟΣ NOMOI. Die Fragmente des solonischen Gesetzeswerkes mit einer Text- und Überlieferungsgeschichte (Wiesbaden 1966).
RYAN (1994)	F.X. RYAN, The Original Date of the δῆμος πληθύων Provisions of *IG* I^{3} 105, JHS 114, 1994, 120-34.
SICKINGER (1999)	JAS. P. SICKINGER, Public Records and Archives in Classical Athens (Chapel Hill 1999).