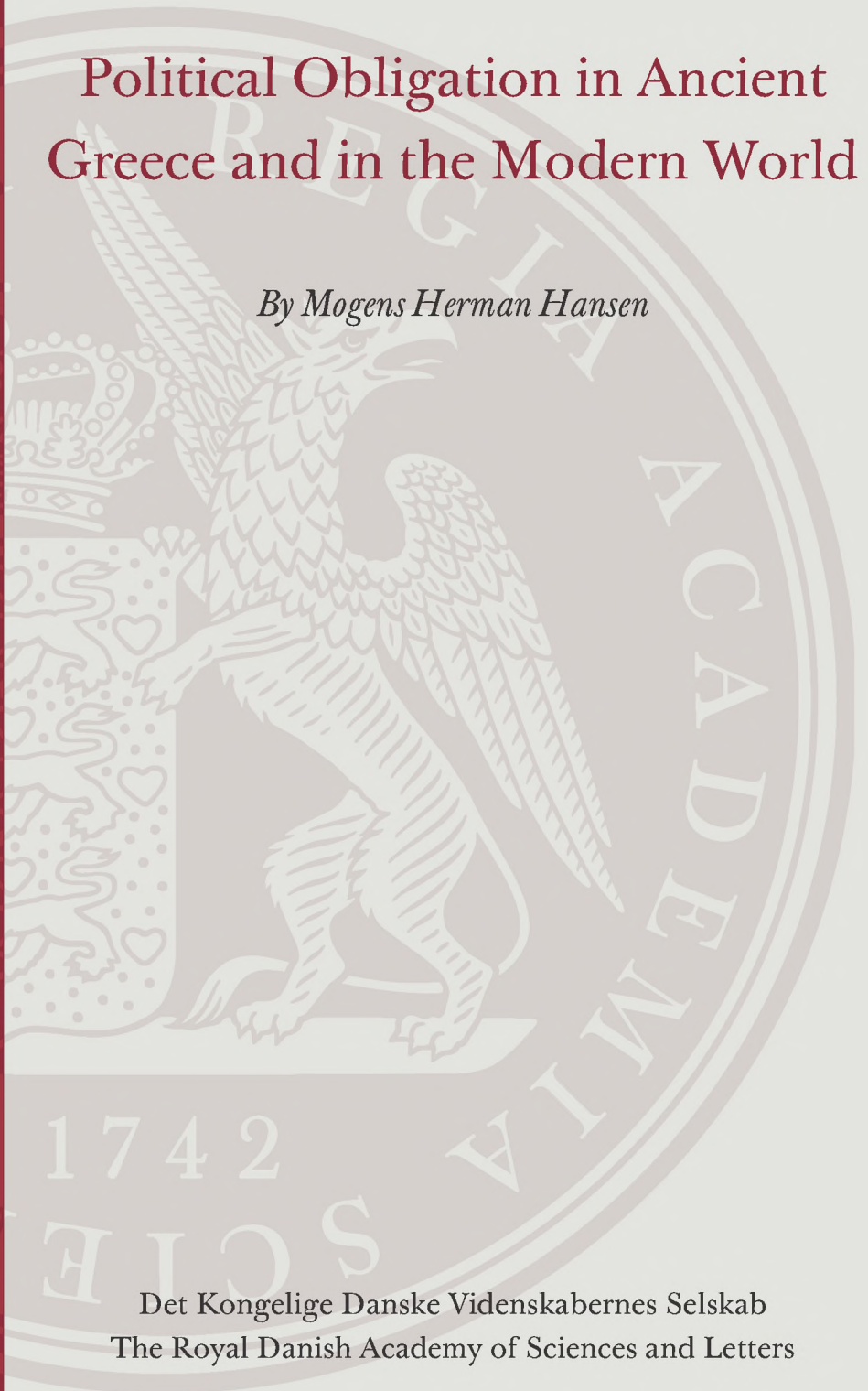


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Political Obligation in Ancient Greece and in the Modern World

By Mogens Herman Hansen



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Political Obligation in Ancient
Greece and in the Modern World

Abstract

This essay is a comparative study of the problem of political obligation in ancient Greek city-states (*poleis*) and in modern democratic states.

The citizens of a country have a duty to obey the laws, but do they also have an obligation, i.e. a moral requirement to support and comply with the laws and political institutions of the state? Modern political philosophers agree that citizens have a political obligation if they have given their consent personally and voluntarily, as, e.g., naturalised citizens in USA who swear an oath of loyalty. But an oath of loyalty sworn by all citizens and residents of a state is not practised anywhere in the modern world and is not even discussed by political philosophers as a possible foundation of political obligation. Instead the focus is on various forms of implied consent such as gratitude for what the state provides for its citizens, or membership obligations, or the principle of fairness, or other forms of tacit or implied consent. Some philosophers - called philosophical anarchists - argue that there is no reason why citizens should feel obliged to obey the laws.

In ancient Greece the problem of political obligation was treated differently. In many or even most of the city-states all citizens had to take an oath of loyalty when they came of age and often later in life as well. Therefore the problem of political obligation did not exist and is not discussed in Greek political philosophy except in one passage of Plato's *Kriton* where Sokrates in a fictitious dialogue with the laws of Athens argues that he has an obligation to accept his verdict and stay in prison. Since he probably had not sworn a civic oath when he came of age his arguments are the same as in the modern world: gratitude, membership, fairness, and tacit consent, with voluntary exile as the alternative to living under laws and a constitution one did not approve of.

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Preface

The idea to write this essay was born more than a decade ago when I studied political obligation in modern political thought: why must citizens obey the laws of their country and be loyal to its constitution? Being an ancient historian I wondered: what did the ancient Greeks think and do about the issue of political obligation? In ancient Greek political philosophy, however, the only proper discussion of the issue I could find was the fictitious dialogue between Sokrates and the laws of Athens in Plato's *Kriton* 50a-54c. The other relevant source in Classical Greek literature is a more historical passage in Xenophon's *Socratic Memoirs* where Sokrates, discussing obedience to the laws, stresses the importance of civic oaths taken in many *poleis* everywhere in Hellas (*Mem.* 4.4.16). This passage must be studied in connection with the scattered but important historical evidence we possess about civic oaths taken in individual *poleis*.

Returning to the modern world I notice that taking a civic oath is not practised in any modern state, and is not even discussed in the modern literature about political obligation. Therefore I endeavour in this essay to combine a philosophical discussion of political obligation in the modern world with a historical study of the various forms of civic oath in the ancient Greek city-state culture. For the benefit of a wider audience than classical scholars, all terms are transliterated and all quotes translated, most of them by me, some by others with the name of the translator in a note. The names of ancient Greek authors and the titles of their works are abbreviated as in *The Oxford Classical Dictionary* (4th edn. 2012). All dates are B.C.

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The concept of political obligation

“Political obligation” is an issue with which political philosophers have struggled since antiquity and to which they still try to give an appropriate answer.¹ The state demands that all who live in its territory, citizens and foreigners alike, must obey the laws and comply with all the commands and prohibitions issued by the authorities. But why must people obey? The simple answer is that the state has the authority and the power to punish offenders. The state has a right to punish offenders which corresponds to the citizens’ duty to abide by the law.² But do citizens also have an obligation to obey the laws? The words duty and obligation are often used synonymously, but in this context we must distinguish between a duty and an obligation. A duty is imposed by others. An obligation is a requirement which one has consented to fulfill. The state imposes a duty to pay taxes. A loyal citizen holds that he has an obligation to pay taxes. But there are actions towards the state which citizens are expected to perform without having a duty to do it. In some countries voting in elections is compulsory,³ in most it is voluntary, but democratically minded citizens hold that they have an obligation to vote. One has both a duty and an obligation to repay a loan. When the two concepts are juxtaposed duty is a legal concept, obligation a moral one.⁴ A state’s inhabitants have a duty to obey the laws, but do they have an obligation to do it? Such a view presupposes that in one way or another they have consented. But how can it be established that a state’s inhabitants have consented to obey the laws and thereby incurred an obligation?

1. Dagger and Lefkowitz (2014).

2. Weber (1972) 29, 822-23; Hart (1961) 79-88; Simmons (1979) 7;

3. E.g. in Australia, Belgium, Brazil and other Latin American states.

4. Simmons (1979) 29: “a political obligation is a moral requirement to support and comply with the political institutions of one’s country of residence.”

The social contract as the foundation of political obligation

From classical antiquity and until the end of the Enlightenment the issue of political obligation has often been associated with the theory of the social contract.⁵ The oldest attested version of the theory is the one advanced by Glaukon in the second book of Plato's *Republic*: it is man's nature to maximise self interest and to treat other people unjustly if it is to one's advantage. But when people come to realise that the damage they suffer by being treated unjustly by others exceeds the benefits they enjoy from treating others unjustly they enter into a covenant about not maltreating one another, whereby they avoid being maltreated themselves.⁶ This is the ancient Greek formulation of that version of the social contract which today is universally ascribed to Thomas Hobbes.⁷ During the Enlightenment the dominant version of the social contract came to be the one advocated by John Locke in the second of his *Two Treatises of Government*.

John Locke's account of the social contract

In the state of nature all men are free and equal,⁸ but at the same time bound by the law of nature according to which no one ought to harm another person's life, health, liberty or possessions.⁹ If a man transgresses the law of nature, every man has a right to punish the offender.¹⁰ But the law of nature does not provide sufficient protection and the result is a state of war,¹¹ which again leads to the formation of political society.¹² The transition from the state of na-

5. Gough (1957); Lessnoff (1986).

6. Pl. *Resp.* 358e-59b.

7. Barker (1925) 160; Guthrie (1969) 141-42.

8. Locke (1690) 2.4 (287).

9. Locke (1690) 2.6 (289).

10. Locke (1690) 2.8 (290).

11. Locke (1690) 3.16-21 (296-300).

12. Locke (1690) Political society 7.77 (337), 86-87 (341), also called civil society 8.95 (349) or commonwealth, in Latin *civitas* 10.133 (373).

ture into political society is accomplished through a compact or agreement.¹³ All the men who enter into society give up the equality, liberty and executive power they had in the state of nature, and subject themselves to the dominion and control of society, and hereafter it is left to a legislature to protect each person's liberty and property with a view to the common good.¹⁴ The compact itself must be passed unanimously by the members of society¹⁵ but subsequently any act of the majority passes for an act of the entire society.¹⁶ To be a member of society presupposes consent, at first an express consent in connection with the original contract,¹⁷ subsequently tacit consent suffices.¹⁸ Every man who has any possession or enjoyment of society has hereby given his tacit consent and is obliged to obey the laws and the government.¹⁹ But alternatively he is free to emigrate and join another political community, or with his associates to found a new one.²⁰ On the other hand, a man who has expressly consented to be a member of a political society is obliged to remain a subject.²¹ When a political society has been established by the original compact, the first and most fundamental law is to set up a legislature which is the supreme power of the commonwealth.²² The legislators are themselves bound by the laws they pass, and the people have a right to alter the legislature, or remove it by force, if it acts contrary to the trust bestowed by the people.²³

13. Locke (1690) Compact 2.14 (294), agreement 8.102 (353).

14. Locke (1690) 9.131 (371), 9.123 (368).

15. Locke (1690) 19.211 (424); 8.96 (349).

16. Locke (1690) 8.95-96 (349-50), 8.98-99 (350-51), 10.132 (372).

17. Locke (1690) 8.96 (349), 8.119 (365), 8.122 (367).

18. Locke (1690) 8.119-22 (365-67).

19. Locke (1690) 8.119 (366).

20. Locke (1690) 8.121 (367).

21. Locke (1690) 8.121-22 (367).

22. Locke (1690) 11.134 (373-4), 13.149 (384).

23. Locke (1690) 13.149 (385), 19.211-43 (424-46).

David Hume's critique of the social contract

Locke's view of state formation as a result of the social contract and political obligation as a consequence of the covenant came to dominate political thought till the end of the Enlightenment. But already during the Enlightenment some philosophers rejected the social contract as a valid justification of the claim that present-day people thereby had consented to obey the laws and those who gave the laws and claimed compliance. The best analysis to which contemporary political philosophers still refer²⁴ is David Hume's essay *Of the Original Contract*.²⁵ Hume points out that there is not a single example in history of a political regime that has been established in consequence of a social contract, not to speak of a contract to which all members of the community had given their consent.²⁶ In a few recent historical examples of a political community instituted by some form of agreement or contract it is just a negligible number of persons who have made the decision. In England in 1689 it was the majority of 700 members of parliament who restored the monarchy and the House of Lords and passed the Bill of Rights that set bounds to the powers of the monarch.²⁷ But even assuming that societies originally came into being through a contract between all their members, such a covenant took place in the remote past, and how can our distant ancestors obligate their present descendants?²⁸ As far as the current generation is concerned the social contract must at least be supplemented with other justifications for obeying the

24. Cf. Dagger and Lefkowitz (2014) 5, 12.

25. Here quoted from Knud Haakonssen's edition of Hume's Political Essays (Cambridge 1994).

26. Hume (1752) 189: "The original contract ... is not justified by history or experience, in any age or country of the world". Like Locke Hume does not mention the Pilgrim Fathers on the ship Mayflower. When they settled in North America in November 1620 they all took the following oath: "We do solemnly and mutually, in the presence of God and of one another, covenant and combine ourselves together into a civil body politic." See Gough (1957) 2 and 86 with other contemporary examples of a similar social contract.

27. Hume (1752) 191.

28. Hume (1752) 189.

law and those who make the laws.²⁹ And here Hume refers back to Locke's *Second Treatise of Government*:³⁰ Locke argues that the descendants of those who originally consented to the formation of political society have agreed to obeying the laws by their tacit consent and by enjoying the benefits of the society of which they are members. Alternatively, if they are dissatisfied with the government they are free to leave.³¹ Here Hume dissents. For a poor peasant or artisan it is not an option to emigrate to a country whose language and customs he does not know. In some cases a prince forbids his subjects to leave his dominions. If a usurper has banished the lawful ruler it cannot be asserted that the people, who abhor his treason, have tacitly consented to his authority and promised him allegiance.³² There is only one form of tacit consent Hume can accept: if a foreigner moves to a country whose government and laws he already knows and accepts. Yet his allegiance, though voluntary, is much less expected than that of a citizen.³³ Hume's own justification of the view that we must obey the laws is that "human society could not otherwise exist".³⁴

In spite of some criticism, the social contract as the principal justification of political obligation remained the predominant theory till the end of the Enlightenment both in England (Blackstone), in France (Rousseau), and in Germany (Kant). But after c. 1800 we no longer hear about the social contract, and the issue of why we have to obey the laws was marginalised in political thought. In England the social contract was categorically rejected by Bentham, who in critique of Blackstone declared that "this chimera has been effectually demolished by Mr. Hume".³⁵ In Germany it is in particular the influence of Hegel that was responsible for the disappearance of the social contract from political philosophy.³⁶

29. Hume (1752) 192.

30. Hume (1752) 200-01.

31. Hume (1752) 200-01.

32. Hume (1752) 193-94.

33. Hume (1752) 194.

34. Hume (1752) 197.

35. Bentham (1776) 49.

36. Gough (1957) 184-85; Lessnoff (1986) 97, 99-105.

The modern debate about political obligation

In the mid-twentieth century, however, the interest in what it means to have a political obligation was revived in a new political context and it has continued to grow ever since. During the Enlightenment states were governed by monarchs and the people were subjects. Since the Second World War democracy has become the dominant form of constitution. Democracy is based on the principle of popular sovereignty, and therefore it has become much more important that people not only obey the authorities but also regard the government as legitimate and feel an obligation to obey its laws.

The social contract is no longer part of the debate. It is universally rejected as an outdated philosophical fiction, that cannot any longer serve as a reason for having a political obligation to obey the laws.³⁷ In contemporary debates the core of the question is whether citizens of modern states by an explicit or implicit acceptance of the state's authority have incurred an obligation to obey its laws. There seems to be general agreement among political philosophers that an explicit acceptance provides a valid foundation of a political obligation.³⁸ One can think of a civic oath taken by all citizens when they come of age and obtain political rights. But even the warmest supporter of explicit consent as the foundation of political obligation does not explicitly envisage the introduction of such a political oath: "the following reform is necessary for the very possibility of native born citizens consenting to obey the state through acceptance of full membership in it. For native-born citizens to be able to do this there has to be either a procedure by which they can, in accepting full membership, expressly consent to obey the state or a

37. I am not going to discuss John Rawls' hypothetical contract about which form of society a person would prefer to live in if he had to make his decision under a "veil of ignorance", see Rawls (1999) 102-68. As argued by Lessnoff (1986) 140: "(1) The theory is not genuinely a contract at all. (2) The role played by the contract in Rawls's theory is superfluous and dispensable. (3) Rawls manipulates his contractarian argument in an arbitrary and question-begging way." - Rawls's "hypothetical contract" is in fact an example of fairness as the ground of political obligation, see Rawls (1999) 11, 15 and 20 with n.90 *infra*

38. Simmons (1979) 79, (2002) 35; Klosko (2005) 10; Dagger and Lefkowitz (2014) 13.

generally known convention to the effect that not leaving the state, when they cease to be political minors, counts as accepting full membership in it and as tacit consent to obey the state³⁹ In some states specific groups of inhabitants are requested to swear an oath. In Great Britain, for example, after an election all members of the House of Lords and the House of Commons have to swear an oath of Allegiance.⁴⁰ And in USA all naturalized citizens must swear an oath of loyalty.⁴¹ But an oath of loyalty sworn by all the inhabitants is not practised in any modern state.⁴² Therefore the problem is whether a tacit consent to the government is enough to obligate the citizens to obey the laws and thereby bolster the legitimacy of the state. And here opinions are divided. On the one side we have political philosophers who argue that a political obligation can be established implicitly by the citizens' behaviour and moral convictions; on the other side there are some who deny the validity of the arguments adduced to show that citizens have not only a duty but also an obligation to obey the laws. They are commonly called "philosophical anarchists".⁴³ Some are proper anarchists in the traditional sense who want to abolish the state.⁴⁴ Most want to keep the state as an indispensable form of political organisation, but are not persuaded by the arguments advanced to show that the inhabitants of a state have an obligation to obey its laws.⁴⁵

39. Beran (1987) 125-28, 149. The quotation 126. Beran's ideas are viewed critically by Klosko (2005) 10 and rejected by Horton (2010) 34-36

40. "Oath of Allegiance", www.parliament.uk.

41. "Naturalization Oath of Allegiance to the Unites States of America", www.USCitizenship.

42. The closest we get is the US Pledge of Allegiance recited in Congress, in many local government meetings and commonly in school at the beginning of every school day: "I pledge allegiance to the Flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all." See Baer (2007). The pledge of Allegiance, however, is never referred to in the literature about political obligation.

43. Miller and Dagger (2003) 453-55; Dagger and Lefkowitz (2014) 10-11.

44. Huemer (2013).

45. Simmons (1979), (2002) is commonly referred to as the leading "philosophical anarchist".

Sokrates' view of political obligation in *Kriton*

The modern debate about political obligation differs in important respects from the debate conducted in the 17th and 18th centuries, and in particular the historical foundation of the debate is different. In the works of Hobbes, Locke, Hume, Blackstone, Rousseau and Kant the pivot of the debate is the social contract. In the modern debate the historical focus is on Plato's dialogue *Kriton*,⁴⁶ which is not mentioned by any of those who take the social contract as the starting point of the debate. Only the critic Hume mentions in passing Plato's dialogue "where Sokrates refuses to escape from prison, because he has tacitly promised to obey the laws".⁴⁷

The dialogue is a conversation between Sokrates and his very old friend, Kriton, who visits Sokrates in prison on the day before his execution and attempts to persuade him to avoid capital punishment by fleeing from prison. The philosophically important part of the dialogue is the last part, which takes the form of a fictitious dialogue between Sokrates and the laws of Athens.⁴⁸ The laws are personified and appear as representatives, or rather as a manifestation, of the Athenian *polis*.⁴⁹ The laws argue that Sokrates has consented to obey the laws,⁵⁰ and his consent is described as an agreement (*homologia*)⁵¹ or even a contract (*synthêkê*),⁵² but not as a contract in the formal sense: The laws assert that Sokrates not by word (*logô*) but by deed (*ergô*) has showed his acceptance of the laws.⁵³ There is no question of express consent, but an implicit or tacit acceptance which Sokrates acknowledges in his conversation with the laws by declaring his satisfaction with the laws about marriage, upbringing

46. Edmundson (1999) 1, 17, 33, 237; Simmons (1979) 35, 95-96, 98, 160-62; (2002) 22-27; Walker (1988) 193; Horton (2010) 3-6, 21, 97; Dagger and Lefkowitz (2014) 2-3.

47. Hume (1752) 201.

48. Pl. *Cri.* 50a-54e.

49. *Polis*: 50a-d, 51d, 52b, 53a-b. *Patris*: 51a-c, 54a.

50. *emmenein*: 50c, *peithesthai*: 51e, 53a, 54b.

51. *homologia*: 50a, c, 51e-53a, 54c.

52. *synthêkê*: 52d, 54c.

53. *ou logô all' ergô*: 52d, *ergô* 51e.

and education.⁵⁴ The foundation of this agreement is precisely that it is thanks to the laws that Sokrates was born, brought up and educated,⁵⁵ and they have given him his share of all the benefits which the citizens enjoy.⁵⁶ Sokrates' relationship to the laws is like that of a slave to his master,⁵⁷ or a child to its parents.⁵⁸ But Sokrates' duty to obey the laws of his fatherland by far exceeds the obedience he owes to his parents.⁵⁹ If he now tries to escape from prison as a runaway slave tries to escape his master,⁶⁰ he will maltreat those whom least of all he ought to maltreat, namely himself, his friends, his fatherland and its laws,⁶¹ and for his part he will destroy the state and the laws.⁶² For that will be the result if the verdicts of the courts have no force but become ineffective and are disregarded by private citizens.⁶³ Throughout life Sokrates has had the option to move to another *polis*, if he had been dissatisfied with the conditions in Athens.⁶⁴ At the trial he could have proposed exile as the appropriate penalty.⁶⁵ But much more than other citizens he preferred to stay in Athens and left the town only when he served in the army and was on campaign outside Attica.⁶⁶ If he had been dissatisfied with the laws' demand for obedience, he had an opportunity at the trial to convince the jurors that a conviction would be unjust.⁶⁷ If he now

54. 50d. *areskein*: 51d bis, 52b bis, 52c, 52e, 53a bis.

55. 50d-e, 51c, 54b.

56. 51c-d.

57. 50e.

58. 51a, c.

59. 51a-b.

60. *apodidaskein*: 50a, 52d, 53d.

61. 50a-b, 54c.

62. *apolesai*: 50b, 51a, 54c; *diasthoreus tôn nomôn*: 53b-c.

63. 50b.

64. 51d, 52c.

65. 52c.

66. 52b, 53a. Pl. *Ap.* 28e. Sokrates has fought at Poteidaia (Pl. *Chrm.* 153b-c), at Delion (Pl. *Lach.* 181b) and at Amphipolis (Pl. *Symp.* 220c-21c).

67. As the object of the verb *peithein* we find both the laws (*nomoi*: 51e), the state (*polis*: 51c) and the fatherland (*patris*: 51b3). As the situations in which a citizen "must either obey or persuade" are mentioned: in war, before the courts, and everywhere (51b8-9). In Sokrates' case the reference must be to the court that heard the case against him,

tries to escape from prison⁶⁸ contrary to his lifelong devotion to goodness, truth and justice,⁶⁹ he will only confirm the jurors' belief in the belief that the death sentence was justified.⁷⁰ Therefore he must reject Kriton's offer to get him out of the prison and, in the end, he succeeds in persuading Kriton that the right course of action is to put up with the conviction and stay in prison.⁷¹

Parallels between Sokrates' and modern political philosophers' views

Many of the arguments adduced by the laws in Plato's dialogue *Kriton* overlap with those advocated by modern political philosophers either in support of the conviction that people have a moral obligation to obey the laws or against such a view, and in several accounts Sokrates' arguments are explicitly referred to. John Simmons, for example, one of the leading philosophical anarchists, states that "Sokrates, in this remarkably modern dialogue, develops a claim of tacit consent through residence which is much more plausible than the Locke-Rousseau conception".⁷² The modern debate about the political obligation can conveniently be summed up in five main points: The citizens of a state have an obligation to obey the state's laws (1) because they owe a debt of gratitude to the state for all the benefits it bestows on them, (2) because as members of an institution, they are obliged to comply with the laws of the institution, (3) because "fair play" requires that they contribute to the benefits they enjoy, (4) because by remaining in the state instead of emigrating they have tacitly consented to obey the laws, and (5) because the state would collapse if the citizens did not obey its laws.

Different philosophers focus on different explanations of why

see Kraut (1984) 54-90, who persuasively rejects the interpretation of Grote (1875) 300: "The laws allow to every citizen full liberty of trying to persuade the assembled public".

68. 50a, 52, 53a, d, 54c.

69. 51a, 53c, e.

70. 53b-c.

71. 54d-e.

72. Simmons (1979) 96.

citizens have a moral obligation to obey the laws. Some advocate a “multiple principle theory” that combines two or more of these five explanations.⁷³ The philosophical anarchists reject them all. Consent must be personal and it must be given intentionally and voluntarily.⁷⁴

Gratitude. From birth citizens have enjoyed the benefits provided by the government. Therefore they are bound to repay the government by supporting it and obeying its laws. This form of political obligation is commonly described as a “debt of gratitude” which all citizens owe to the state.⁷⁵ The anarchists object that the state is an institution and that a debt of gratitude can be owed to a person, but not to an institution.⁷⁶ The response is first that the state is not just an institution but a collection of individuals and that the obligation is owed to one’s fellow citizens collectively.⁷⁷ Second, that it is perfectly possible to feel a debt of gratitude towards an institution, e.g., the patient who donates a sum of money to the hospital, or a former student who gives a gift to the university.⁷⁸ The anarchists’ response is that a gift to a hospital is voluntary, and it is the donor who decides what the gift is, whereas the state requires that the citizens obey the laws.⁷⁹ Furthermore the benefits bestowed by the state are financed by taxes paid by the citizens. So the citizens have a right to these benefits and owe the state nothing.⁸⁰

Membership. As citizen of a country one is a member of an association, and as a member one has an obligation to comply with its rules.⁸¹ The anarchists object that in order to create an obligation

73. Klosko (2005) 98-121.

74. Simmons (1979) 57: “No man is obligated to support or comply with any political power unless he has personally consented to its authority over him.” 77: “First, consent must be given intentionally ... Second, consent must be given voluntarily.” Even when these requirements are fulfilled 191: “only a very few citizens (such as naturalized citizens) seem to be bound.”

75. Simmons (1979) 157-90; (2002) 24, 34-35; Walker (1988).

76. Simmons (1979) 187-88; (2002) 34.

77. Walker (1988) 196.

78. Walker (1988) 197-99.

79. Simmons (2002) 34; Klosko (2005) 114-15.

80. Simmons (1979) 184, 189.

81. Horton (2010) 13, 192; Klosko (2005) 114-15.

membership must be voluntary. If one joins a club, one has an obligation to follow its rules,⁸² but, apart from immigrants who have obtained citizenship by application,⁸³ people have not chosen to be citizens; they are born into a particular political community,⁸⁴ and when they come of age and obtain political rights they also incur obligations to which they have not consented voluntarily.⁸⁵ The response is that the state is not a kind of club, and that there are associations, for example the family, the members of which have responsibilities and obligations that they have not incurred voluntarily.⁸⁶ The state must be seen as such an association,⁸⁷ and one's fellow citizens are the persons to whom one has obligations. This is what is called an "associative political obligation".⁸⁸

Fair play. "When a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission."⁸⁹ The principle is that "we are not to gain from the cooperative labours of others without doing our fair share."⁹⁰ As an example of such a "joint enterprise" on the small scale we can assume that three neighbours cooperate in order to dig a well, a fourth who refuses to share their labour but later goes to the well for fresh water is subject to condemnation by the cooperators.⁹¹ How does the principle work if extrapolated and applied to states with millions of citizens? Here the state is seen as the joint enterprise and the benefits are important public goods produced by the cooperative efforts of large numbers of people, coordinated by government: the

82. Wozzley (1979) 85-87.

83. Wozzley (1979) 89-90.

84. Simmons (1979) 134; Horton (2010) 149.

85. Simmons (1979) 16, 23.

86. Horton (2010) 148-49

87. Dworkin (1986) 196; Horton (2010) 174.

88. Horton (2010) 135-66.

89. Hart (1955) 185.

90. Rawls (1999) 96.

91. Klosko (2005) 5.

rule of law, national security, roads etc.⁹² “Because we need public goods supplied by the state in order to live acceptable lives, we all have obligations to support their production.”⁹³ And it is immaterial whether or not *all* citizens consent to the obligation, as long as it is accepted democratically by “representative individuals”.⁹⁴ The philosophical anarchists object that most citizens do not regard themselves as engaged in an ongoing cooperative venture, obeying the law because fair play demands it and “at very best the principle of fair play can hope to account for the political obligations of only a very few citizens in a very few actual states.”⁹⁵

Tacit consent. As stated above there is general agreement that express consent, where it exists, is a valid ground of political obligation. But in most cases we have to be content with tacit consent or implied consent. Both these two forms of consent differ from express consent but how do they differ from one another? The distinction is illustrated by the following example adduced by Simmons: Chairman Jones stands at the close of the company’s board meeting and announces: There will be a meeting of the board at which attendance is mandatory next Tuesday at 8:00 rather than at our usual Thursday time. Any objections? The board members remain silent. In remaining silent and inactive they have all tacitly consented to the Chairman’s proposal.”⁹⁶ But suppose that the question: “any objections” had not been asked and that none of the members had objected of his own account, then we could *infer* that the members had consented, but we could not know for sure. That would be an example of implied consent. Often there is only a small difference between the two forms and the terms tacit and implied consent are mostly used synonymously, but the distinction is an important one, cf. Hume’s objection to Locke’s understanding of tacit consent: If a usurper has banished the lawful ruler it cannot be asserted “that the people, who abhor his treason, have tacitly consented to his author-

92. Klosko (2005) 5, Simmons (1979) 136-38.

93. Klosko (2005) 244.

94. Klosko (2005) 89-90.

95. Simmons (1979) 136-42, the quotation on 139.

96. Simmons (1979) 79-80.

ity and promised him allegiance, merely because, from necessity, they live under his dominion.”⁹⁷ It is precisely permanent residence in a state that, since Locke, has been the pivot of the debate on tacit consent as the principal reason for having a political obligation,⁹⁸ see 27 *infra*. But participation in democratic institutions too is often seen as an expression of tacit consent⁹⁹ although, according to the philosophical anarchists, it is at most an indication of implied consent. General elections cannot serve as the reason for having a political obligation to obey the laws.¹⁰⁰ What about foreigners who inhabit the territory of the state? Or citizens who do not vote? Or vote against what is decided by the majority?¹⁰¹ They will be bound to comply with the outcome of the vote, but they do not have an obligation to do it, as long as they have not consented intentionally and voluntarily.

The State would collapse, if the citizens did not obey the law. They would be thrown into a state of lawlessness or anarchy, which they avoid by living in a state governed by laws. That is Hume’s argument for having an obligation to obey the laws,¹⁰² and it is shared by a number of contemporary political philosophers.¹⁰³ The argument from destructiveness is based on a “consequentialist generalisation” or in plain words: “What if everyone did that?” The anarchists’ counterargument is that the state is not going to collapse if one or a few citizens refuse to obey. That would happen only if many or all were disobedient, and that is very unlikely. Applied to Sokrates’ case: “it simply seems empirically false that Sokrates’ escape would either have made an interesting incremental contribution to a bad end or have encouraged enough others to disobey that Athenian law would have been weakened”.¹⁰⁴ The argument is often applied to voting or rather to abstaining from voting: One vote out

97. Hume (1752) 193-94.

98. Simmons (1979) 95-100.

99. Plamenatz (1968) 168, 170.

100. Simmons (1979) 91-94.

101. Horton (2010) 39.

102. Hume (1752) 187, 197 see 13 *supra*.

103. Parfit (1984) 75-82; Walker (1988) 206-07.

104. Simmons (2002) 24-26; Wozzley (1979) 116-21.

of many million does not count so it does not matter if I do not vote.¹⁰⁵ But what if everyone thought like that? Again, the empirically based counter-argument is that everyone will not refrain from voting, so there will be no disaster. Another response is: it is unfair that other people have to bear the burden which you shirk. “If someone is obliged to do something just because he is a member of a certain class, then any other member of that class will be equally obliged to do that thing”.¹⁰⁶ This line of argument is based on the membership and the fair play principles combined. These five arguments tend to overlap. Each of them may obligate some citizens, but according to the anarchists neither individually nor combined can they serve as the basis of a political obligation that binds all citizens.

As stated above many of the arguments adduced by modern political philosophers in discussions of political obligation are remarkably close to the arguments found in Plato’s *Kriton* in the fictitious dialogue between Sokrates and the laws of Athens.

Gratitude (and membership). The laws argue that they in fact are responsible for the marriage between Sokrates’ father and mother, as well as for his birth, his upbringing and his education. Therefore he owes a greater debt of gratitude to his fatherland and its laws than to his parents.¹⁰⁷ The parallel drawn between the obligations one has to the family and to the state (*polis*), indicates that the membership argument is in play alongside the debt of gratitude.

Fair play. To the best of their ability the laws have given Sokrates and all other citizens a share of all communal benefits,¹⁰⁸ “and the recipients of important benefits owe their benefactors a fair return for them.”¹⁰⁹ This argument combines the debt of gratitude with the requirement of fair play.

Tacit consent. Sokrates has not been bound by an oath or a pledge to obey the laws;¹¹⁰ but his stay in Athens throughout life

105. Downs (1957) 274.

106. Strang (1960) 8.

107. Pl. *Cri.* 50d-51c.

108. Pl. *Cri.* 51c-d.

109. Simmons (2002) 24.

110. Pl. *Cri.* 52d, see 25-26 *infra*.

amounts to an agreement (*homologia*) or even a contract (*synthêkê*) about complying with the laws' demands.¹¹¹ Like any other Athenian citizen and throughout his adult life Sokrates has had the right if he so wished to move to another *polis*.¹¹² But he stayed in Athens which testifies to his satisfaction with the laws, i.e. to what Locke calls tacit consent and Simmons implied consent.

The state would collapse. By not obeying the laws and not accepting the death-sentence Sokrates would for his part destroy the laws and the *polis*.¹¹³ "For a *polis* cannot exist if verdicts have no force but are disregarded by individual citizens."¹¹⁴ The Laws and Sokrates agree about the force of the consequentialist interpretation of the principle: "What if everyone did that?"

The civic oath as ground of political obligation in ancient Greece

All five justifications relate to an implicit or tacit acceptance of obedience to the laws, and many of the arguments adduced can be traced back to the fictive dialogue between Sokrates and the laws of Athens in Plato's *Kriton*. But in the ancient Greek sources there is a substantial amount of evidence that is relevant in this context, but passed over in silence both by Sokrates and by modern philosophers. As mentioned above there is broad agreement that an explicit acceptance of a duty to obey the laws would constitute an indisputable and adequate foundation of a morally binding political obligation.¹¹⁵ There is however no contemporary evidence of a state that requires all citizens to take an oath of loyalty.¹¹⁶ But in the ancient Greek city-state culture an oath of allegiance was practised in many *poleis*. The most important general description of such an oath is in Xenophon's *Memorabilia*: "Everywhere in Hellas there is a law

111. Pl. *Cri.* 50a, 51c-53a, 54c.

112. Pl. *Cri.* 51d, 52b-c, 52e-54a.

113. Pl. *Cri.* 50.b, 51a, 53b-c, 54c.

114. Pl. *Cri.* 50b

115. Simmons (1979) 79: "I think that most of us agree that express consent is a ground of political obligation (and certainly this is my view)".

116. See 14 *supra*.

which requires that the citizens swear to be of one mind (*homonoiein*), and everywhere they take such an oath. In my opinion the purpose is not that the citizens have to vote for the same choirs, or to praise the same musicians, or to select the same poets, or to enjoy the same pursuits, but that they obey the laws. For cities are strongest and most happy when the citizens uphold the laws. For without unity of mind (*homonoia*) no city would be well governed and no household be well managed.”¹¹⁷ Individual examples are, of course, few and far between, but in some cases we have preserved a civic oath inscribed on marble, and in the literary sources there are other attestations of an oath of loyalty sworn by all citizens. From Athens we have a civic oath inscribed on a stele, *viz.* the oath every eighteen-year-old Athenian had to take when he had his name registered in his deme’s roster of citizens and began his two-year military service as ephebe. In the sources it is referred to as “the ephebic oath.”¹¹⁸ An example of an oath mentioned in the literary sources is the oath of reconciliation which all Athenians had to take after the end of the civil war between oligarchs and democrats in 404-03. For a survey of oaths of loyalty taken by all citizens, see 33-53 *infra*. Thus in the ancient Greek city-states the foundation of the political obligation was different from the one we meet in political thought during the Enlightenment and in the modern world. The taking of a civic oath which was probably practised in many and perhaps even in most city-states was an explicit acknowledgement of an obligation to obey the laws, which trumped any argumentation based on tacit consent. But why, then, is a civic oath not mentioned in the dialogue between Sokrates and the laws in *Kriton*? The laws state that Sokrates had agreed to obey the laws “not in word but in deed”¹¹⁹ Sokrates is bound by a tacit consent which he has demonstrated by the way he has lived his life. The inference is that Sokrates never took a civic oath.¹²⁰ If he

117. Xen. *Mem.* 4.4.16.

118. Quoted *infra* 35.

119. Pl. *Cri.* 51e, 52d.

120. See also Kraut (1984) 152 n.1. Contra: Finkelberg (2008); Bayliss (2013b) 13-14, 21. One of the anonymous referees suggests that “Plato, for the sake of the argument which he wanted to develop may simply have ignored the possibility that Sokrates had sworn a civic oath and had an obligation based on that”. That is a remote possi-

had, the laws would have brought it up in the dialogue. Either there was not yet a civic oath in 452/1 when Sokrates came of age, or Sokrates did not belong to those who had to swear the oath. The ephebic oath we have preserved is from the mid-fourth century, and preserved lists of ephebes indicate that it was only in this period all citizens were requested to serve as ephebes.¹²¹ In 410, however, Sokrates must have sworn the oath which all Athenians had to take that they would actively oppose any attempt to abolish the democracy.¹²² That oath was undoubtedly annulled by The Thirty in 404, but it was republished after the restoration of the democracy in 403.¹²³ We do not know, however, whether the oath-taking was repeated. He also had to take the oath of reconciliation after the termination of the civil war, first in 403 and then repeated in 401 after the closing down of Eleusis as an oligarchic *polis*.¹²⁴ But that oath was not a civic oath about obeying the laws but an oath that neither the democrats nor the oligarchs would take revenge or bear a grudge against one another¹²⁵.

Emigration as alternative to incurring a political obligation

As in modern states, citizenship in a *polis* was not something to which anyone was entitled. It was a status a citizen had obtained by birth and it was usually confirmed by a civic oath when he came of age or when, after a civil war, unity and concord (*homonoia*) had to be restored. In both cases the oath was not optional, and several of the oaths we have preserved show that the requirement that *all* citizens must swear was taken seriously. By such an oath the citizens incurred a *duty* not only towards the authorities but first of all towards the gods who would punish perjurers. But for such an oath to

bility. But even in that case the dialogue between Sokrates and the laws is based on the assumption that Sokrates had not sworn a civic oath when he came of age.

121. Hansen (2006b) 33-38.

122. See 37 *infra*.

123. Lycurg. 1.127. Hansen (2015).

124. See 44 *infra*.

125. Andoc. 1.90.

be the foundation of a *political obligation*, the citizens must have had an alternative to taking the oath itself or to comply with its consequences if they had taken it. The alternative was to leave the community, in antiquity the *polis*, in modern times the state.

For Locke, the right to emigrate is the principal reason why a citizen who prefers to stay has a moral obligation to obey the laws: a citizen who is dissatisfied with the laws of the state in which he lives can move to another state whose laws he can accept or together with other dissatisfied citizens he can find an uninhabited territory and found a new state. The implicit corollary is that a citizen who stays and does not avail himself of the right to emigrate has thereby incurred an obligation to obey the laws of the state in which he lives. Locke called it tacit consent, but it is in fact implied consent.¹²⁶ Hume dissented and pointed out that for most people emigration is not a realistic alternative and that one cannot take continued residence in a state as evidence of agreement with the laws and the government of the state. In modern discussions of political obligation most authors agree with Hume's criticism of Locke.¹²⁷ There is no longer any spot on earth to which people can emigrate and establish an independent state; and to emigrate is not just to leave the state of which one is a citizen but also to be accepted by another state as immigrant. And in most cases that is so difficult that emigration is not a realistic alternative to putting up with a regime which one dislikes.¹²⁸

But here too there is an important difference between the modern world and the ancient Greek city-state culture. The *poleis* were microstates, and they resembled one another far more than states did during the Enlightenment or do today. If one wanted to, it was comparatively easy to move to a neighbouring *polis*, or to a colony founded by the *polis* to which one belonged by birth. The language was the same, the gods were the same, society and traditions were

126. Locke (1690) 8.119-21 (366-67), see 21 *supra*; Simmons (1979) 88-93.

127. Woolzley (1979) 106. Simmons (2002) 34; Klosko (2005) 125; Horton (2010) 34.

128. Historically, however, this view minimizes or rather ignores the massive emigration from Europe to the Americas from ca. 1600 and to Australia from ca. 1800. It also ignores the waves of emigration in the 20th and 21st centuries. For the utopian proposal within each state to create a dissenters' territory, see Beran (1987) 125.

like those to which one was accustomed.¹²⁹ An immigrant could not expect to become a citizen, but both socially and economically life as a metic was not to be disdained. Permanently settled foreigners were found in all *poleis*, and often in great numbers.¹³⁰ Only Sparta was an exception.¹³¹ Furthermore, more than a fourth of all *poleis* were colonies founded by people who had left their city of origin and settled down as citizens in the new *polis*.¹³² In addition to all those who had decided voluntarily to leave their own *polis* there were many who had been forced to emigrate against their will. Many *poleis* suffered from outbreaks of civil war, and often one of the factions had to leave the *polis* at least for a period, and sometimes a long period, until internal peace was restored and the conflicting parties reconciled.¹³³ In the Greek *poleis* the need for acknowledging an obligation to obey the laws was far greater than in modern states in which civil wars have been few and far between.¹³⁴ This is the background to the laws' inference that Sokrates by staying in Athens has consented to obey the laws. The laws point out that they have neither forbidden Sokrates to emigrate nor prevented him from doing it. Throughout his adult life he has been free to leave Athens with his family and possessions.¹³⁵ He might have moved to one of the Athenian colonies¹³⁶ or to a neighbouring *polis* in which he could live as a metic.¹³⁷ Not expressly, but by his conduct of life, Sokrates has acknowledged his obligation to obey the laws.¹³⁸ And in his case there is no doubt that they are right to take his behaviour as a tacit consent to obedience. For Sokrates openly admits that he is satisfied with the laws.¹³⁹ Sokrates was a stay-at-home who did not want to

129. Hdt 8.144.2; Hansen (2006a) 33-38.

130. Whitehead (1984).

131. Thuc. 2.39.1; Xen *Lac.Pol.* 14.4, cf. Powell (1988) 228.

132. Hansen and Nielsen (2004) 152.

133. See 61-68 *infra*

134. Hansen and Nielsen (2004) 128-29.

135. Pl. *Cri.* 51d.

136. Pl. *Cri.* 51d (*apoikia*).

137. Pl. *Cri.* 51d (*metoikein*)

138. *Cri.* 51e, 52d, see 16 *supra*.

139. Pl. *Cri.* 50d-e

leave Athens, the cultural and intellectual centre of Hellas. We know both from Plato¹⁴⁰ and from Xenophon¹⁴¹ that he was critical of the Athenians' way of life, including their democratic institutions and ideology, but he felt it was his mission in life to discuss morality and the purpose of life with his fellow citizens in the *agora*, not to leave Athens.¹⁴² That Sokrates did not avail himself of the opportunity to emigrate with his family and possessions reflects his personal preference, and differs from what other Athenians preferred to do. It is worth noticing that after the trial of Sokrates a number of his "pupils" including Plato did emigrate to the neighbouring *polis* Megara¹⁴³ which in the view of Sokrates had better laws than Athens.¹⁴⁴ Precisely when Plato returned to Athens we do not know.

Sokrates' decision to accept the verdict

After he was sentenced to death Sokrates no longer had a right to emigrate. That would be in conflict with his acknowledged duty and obligation to obey the laws and, consequently, the verdict passed by the jurors. This conduct must be juxtaposed with two other episodes in Sokrates' life when apparently he took a different view.

In 406/5 he was member of the Council of Five Hundred, and on the day when the Assembly heard the trial of the eight *strategoï* who were charged with not having saved survivors after the naval victory at the Arginousai, he was member of the presiding board of *prytaneis*, and probably even the chairman of the board. Thus, as chairman of the Assembly it was his duty to put to the vote an unconstitutional motion to pass sentence on the eight *stratêgoï* collectively and not individually.¹⁴⁵ But he simply refused to put the motion to the vote, and whereas the other *prytaneis* submitted to threats so that in the end the vote was taken, Sokrates was the only one who did

140. Pl. *Prt.* 319c-d; *Grg.* 455b-57c; *Resp.* 555b-64a. Kraut (1984) 194-244.

141. Xen. *Mem.* 2.6.26; 3.1.4; 3.7.5-9; 3.9.10.

142. Pl. *Ap.* 30e-31c, 37e-38a.

143. Diog. Laert. 2.106, 3.6.

144. Pl. *Cri.* 53b.

145. Xen. *Hell.* 1.7.23, 26, 28; *Mem.* 1.1.18; Pl. *Ap.* 32.b-c.

not give in.¹⁴⁶ Again, in 404 under the oligarchy he was summoned before The Thirty. Together with four other citizens he was ordered to arrest Leon of Salamis, a citizen whom The Thirty wanted to have executed. But as the only one of the five he simply went home and failed to comply with the command.¹⁴⁷ His disobedience, however, had no consequences because The Thirty were deposed shortly afterwards. In both these cases Sokrates refused to obey the authorities. There is an apparent contradiction between Sokrates' acceptance in prison of what in his opinion was an unjust verdict and his disobedience in 406/5 in connection with the trial of the *stratêgoi* and again in 404 in connection with the order to arrest Leon of Salamis. But in both cases the opposition is only apparent. Both the decision to pass sentence on the *stratêgoi* collectively and the order to arrest Leon of Salamis were unconstitutional acts, so in both cases Sokrates appeared as the defender of the laws against an authority that acted unconstitutionally. And he did the same when after his trial he refused to escape from prison, because his trial had been conducted constitutionally. Sokrates was convinced that the verdict was wrong,¹⁴⁸ but it was not unconstitutional. In the dialogue between the laws and Sokrates in *Kriton*, the laws emphasise that it is not laws that have treated him unjustly but humans,¹⁴⁹ i.e. the prosecutors and the majority of jurors who voted against him. Therefore Sokrates had to comply with the verdict and reject his friend's offer to get him out of prison. His reason was that as a citizen it was his unconditional duty to obey the laws, even though he was convinced that he was the victim of a miscarriage of justice. If a citizen refuses to obey the laws and comply with a verdict, the state will collapse in so far as it lies with him.¹⁵⁰ Of course, that will not happen if he is the only disobedient citizen; but if he can disregard a verdict pronounced by the court with impunity, so can others, and if many follow suit there is unquestionably a risk that the state col-

146. Pl. *Ap.* 32b-c; *Grg.* 473c; *Axiochos* 369a; Xen. *Hell.* 1.7.14-15; *Mem.* 1.1.18, 4.4.2; Athen. 217f-18a.

147. Pl. *Ap.* 32c; *Ep.* 7.324d; Xen. *Mem.* 4.4.3.

148. Pl. *Cri.* 50c.

149. Pl. *Cri.* 54c.

150. Pl. *Cri.* 50b, 54c.

lapses.¹⁵¹ In the *Republic*, Plato describes democracy as a type of constitution in which citizens disobey the laws¹⁵² and disregard verdicts without any consequence.¹⁵³ To avoid such a threat to public order every citizen must endeavour to obey the laws and the authorities.

In his discussion of why he has an obligation to obey the laws and comply with the court's sentence, Sokrates focuses on several of the arguments about an implicit or tacit consent which in modern times also are central in debates over political obligation. The principal reason for the similarities between the debate in *Kriton* and in modern political thought is in my opinion that Sokrates never took a civic oath to observe the laws and that for personal reasons he did not want to leave Athens. And that is probably why his dialogue with the laws in *Kriton* is the only source in Greek literature in which the issue of political obligation is debated at length. The widespread habit in the Greek *poleis* of taking an oath of loyalty that included an express promise to obey the laws has probably rendered further discussion of political obligation superfluous.

In connection with the trial of the *stratēgoi* in 406/5 and the arrest of Leon in 404/3 Sokrates committed civil disobedience,¹⁵⁴ but he never went further than that. He stayed in Athens during the civil war¹⁵⁵ and did not join the democrats who of their own account left Athens¹⁵⁶ or were thrown out of Athens by the Thirty.¹⁵⁷ Sokrates is the first person in world history who is known to have practised civil disobedience, but in world literature he is preceded by Antigone in Sophokles' tragedy. She buried her brother Polyneikes contrary to the orders of Kreon, the ruler of Thebes, who had ordered that the body of the traitor Polyneikes be left unburied as a prey for the birds. Her reason for disobedience was not that Kreon's order was unconstitutional but that it was in conflict with the laws of the gods.¹⁵⁸

151. Pl. *Cri.* 50.b.

152. Pl. *Resp.* 557c, 563d.

153. Pl. *Resp.* 558a.

154. Cohen (1971) 39-40; Horton (2010) 190.

155. Pl. *Ap.* 21a.

156. Xen. *Hell.* 2.4.2, 10.

157. Isoc. 7.67; Diod. 14.5, 6-7.

158. Soph. *Ant.* 449-57, cf. Spitz (1954) 386-87.

Civic oaths

The civic oath is so important an aspect of the ancient Greek city-state culture that it deserves a detailed investigation both of the similarities between the different types of oath and of the different situations in which an oath was used as an instrument to corroborate obedience to law and society or to establish or re-establish unity and solidarity among the citizens.

An oath is typically composed of four elements: the oath itself, an enumeration of the invoked divinities, regulations about where and how the oath is taken, and finally a sanction whereby the swearer calls down divine wrath upon himself and his descendants if he breaks the oath, and, alternatively, calls down blessings if he remains loyal to his oath.¹⁵⁹ An important question in connection with civic oaths is whether we can be sure that they were taken by all citizens. That is either spelled out, or can be inferred in a number of the oaths we have preserved, especially the long oaths, and the presumption is that it was the case in the less detailed oaths as well.

The longest and most detailed oath that has survived shows beyond doubt that “all” was taken seriously. It is the oath that puts an end to a civil war in the Thracian *polis* Dikaia. The oath must be taken within three days by all citizens who are present in the *polis* and of good health. Those who are ill must swear within three days after their recovery, and those who are abroad within three days after their return. A citizen who does not take the oath is threatened with confiscation of property and the loss of all rights (*atimia*).¹⁶⁰ A treaty between Smyrna and Magnesia of ca. 241 B.C. stipulates that the population of both states swear mutual oaths, and after the texts of the two oaths it is added that in both cases it must be notified the day before the oath is taken that on the following day people have to stay in the city in order to swear the oath.¹⁶¹ In the decree about the oath which the Athenians had to swear in connection with the

159. As an example I refer to the oath from Dikaia (*SEG* 57 576): regulations 1-27, oath 67-105, invoked divinities 7 and 85-86, sanction 86-105. See 42-43 *infra*.

160. *SEG* 57 576.12-21. See 42 *infra*.

161. *Staatsverträge* 492.79-80. See 50 *infra*.

restoration of the democracy in 410 B.C. it is specified that all Athenians shall take the oath in their *phylai* and *dēmoi*.¹⁶² Between 30,000 and 40,000 citizens had to swear and that was only possible if they took the oath locally in the 139 demes.

On Telos¹⁶³ the oath of reconciliation was taken by all citizens over eighteen (126-27) Absent citizens must take it within 60 days after their return (136-37), and a citizen who did not swear had to pay a fine of 1,000 drachmas (137-38).

A fifth example is different in that the oath was taken in order to confirm a contract concerning the draining of marshes in the territory of Eretria (322-309).¹⁶⁴ All citizens affected by the draining had to swear the oath, and a citizen who did not swear was punished with loss of rights (*atimia*) (A43). Since the draining would take several years the incumbent *strategoí* had every year to see to it that the oath was taken by the year class of ephebes when they came of age (A41-47). All swearers were recorded by name and demotic. Some 400 names from about twenty demes were recorded on the stone (B1-57, C1-49).

Six types of political oaths sworn by all citizens

There are different scenarios that occasioned the taking of an oath by all citizens. (1) All young citizens take a civic oath when they come of age. (2) To prevent a civil war or a coup d'état all citizens have to swear that they will uphold the established constitution. (3) During a civil war each of the two factions make their body of followers swear an oath of loyalty to their cause. (4) After a civil war the reconciliation between the two factions is confirmed by an oath not in future to bear a grudge against members of the other faction (*mê mnêsikakein*).¹⁶⁵ (5) When two city-states decide to merge, all citi-

162. Andoc. 1.97. See 37 *infra*.

163. IG XII 4 1 132. See 47 *infra*.

164. IG XII.9 191.

165. *Mê mnêsikakein* – “not to bear a grudge against” means literally “to forget former wrongs”; but what that implies has in recent years resulted in a scholarly dispute over in particular the Athenian amnesty of 403. The two principal antagonists are Edwin Carawan (2002, 2012) and Christopher Joyce (2008, 2014). Joyce defends the tradi-

zens of the united city-state take an oath. (6) When a city-state founds a colony an oath is taken both by the colonists and by the citizens who remain in the *métropolis*.

There are two more types of “political oath” which I shall not discuss in this context: (a) oaths sworn by officials: in Athens, the dicastic oath taken by citizens who served on the panel of 6,000 jurors, the bouletic oath taken by the members of the Council of Five Hundred, and oaths taken by magistrates (*archai*) as, e.g., the nine archons.¹⁶⁶ On the other hand, no oath was sworn by the citizens who attended an *ekklesia*, i.e. a meeting of the popular assembly (*dêmos*). (b) Oaths to treaties. All treaties between two or more city-states were sealed by an oath,¹⁶⁷ but a vow of obedience to the laws and constitutions of the various city-states is not normally part of a treaty. Moreover, such oaths are almost always taken by representatives¹⁶⁸ and only exceptionally by all citizens.¹⁶⁹

I

We have preserved two stelai inscribed with an oath taken by young citizens. One is from Athens (ca. 350), the other from Dreros, a small Cretan *polis* (ca. 220?).

A. The official name of the Athenian oath was “the ephebic oath”,¹⁷⁰ because it was taken by young citizens when at the age of eighteen they came of age and were inscribed in their deme’s roster

tional view that *mê mnêsikakein* “entails the notion of political forgiveness, whereby those who took the pledge swore to refrain from further hostilities against their fellow citizens.” Carawan’s position is that it functioned as a formal guarantee that the covenants reached under an amnesty would not be undermined – I tend to agree with Joyce, apart from his view that Demophantos’ decree is a forgery, see -----

166. For these oaths, see Rhodes (2007); Bayliss (2013b).

167. Bayliss (2013a) 185–86.

168. *Staatsverträge* nos. 132, 134, 154, 187, 188, 189, 192, 193, 204, 205, 206, 229, 231, 248, 258, 269, 270, 289, 322, 403, 463, 468, 472, 476, 499, 549. The evidence cited here is copious but not complete. See Bayliss (2013a) 175–83.

169. For an exception, see Meiggs-Lewis, *GHI* 52: treaty between Athens and Chalkis (446–5) 19, 32–33 (*hapantes*) 21–32 (the oath); For other exceptions, see *Staatsverträge* nos. 492, 495, 552, 553.

170. *Horkos ephêbôn patrios*, Rhodes-Osborne, *GHI* 88.5.

of adult male citizens (the *lêxiarchikon grammateion*) and commenced their two years of military service as ephebes.¹⁷¹ The stele on which the oath is inscribed was set up by the priest of Ares and Athena Areia in the deme of Acharnai.¹⁷² Another copy of the oath was set up in the sanctuary of Aglauros on the Akropolis. It was that copy Aischines used when in 348 he had the oath read out to the Assembly.¹⁷³ The ephebic oath was also read out to the jurors in the speech for the prosecution delivered in 330 by the statesman Lykourgos against Leokrates.¹⁷⁴ He had left Athens in 338 in the hour of peril immediately after the Athenians had been defeated by Philip of Macedon. Lykourgos took Leokrates' hasty departure after the defeat to be a breach of the oath and went in for conviction and capital punishment. But Leokrates was acquitted due to a tied vote of the jurors.¹⁷⁵ Lykourgos emphasises that the oath was taken by all young citizens¹⁷⁶ and the text went as follows: "The ancestral ephebic oath which the ephebes must swear: I will not disgrace the sacred arms nor desert my neighbour wherever I may be stationed in the ranks. I will defend all things sacred and profane, and I will not pass on my native land diminished but greater and better, as far as in me lies and along with all others. And I will obey those in authority with due regard, and the laws, both those laid down and those which they shall afterwards lay down with due regard. And if anyone subverts the laws I will not permit it, as far as in me lies and along with all others, and I will honour the ancestral rites. Witnesses are the gods Aglauros, Hestia, Enyo, Enyalios, Ares and Athena Areia, Zeus, Thallo, Auxo, Hegemone, Herakles as well as the boundaries of the fatherland, wheat, barley, vines, olives, figs."¹⁷⁷ The description of the oath as ancestral suggests that it was considerably older than the mid fourth century and that is confirmed by the language which in some places is archaising. From Sokrates' dialogue with the laws in *Kriton*,

171. Arist. *Ath. Pol.* 42.1-2. Cf. Hansen (1999) 100.

172. Rhodes-Osborne, *GHI* 88.1-4.

173. Dem. 19.303.

174. Lycurg. 1.77.

175. Hansen (1975) 108, no. 121.

176. Lycurg. 1.76.

177. Hansen (1999) 100.

however, we can infer that it was not taken in the mid fifth century, or at least not by all young citizens, see 25-26 *supra*.

B. The other example of an oath sworn by young citizens is from Dreros on Crete.¹⁷⁸ A total of 180 ephebes, here called *agelaoi panazos-toi*, swear enmity to the Lyttians but friendship with the Knossians. In addition, they promise not to betray Dreros or Knossos, not to start a civil war, and never to join a conspiracy. The taking of the oath is presided over by the *kosmoi*, and the ephebes swear that they will report future *kosmoi* to the council and have them punished if they do not see to it that future ephebes swear the same oath. From the last provision we can infer that the oath will be repeated annually for each new cohort of ephebes. The preserved document is not just the text of the oath to be sworn. It is a law regulating the oath and it raises a demographic problem. If the 180 ephebes constituted a year class of young citizens, the presumption is that Dreros had a total of ca. 5,000 adult male citizens and a population of ca. 18,000 citizens of both sexes and all ages. It is unlikely that Dreros had so large a population. Perhaps, when this oath was taken for the first time, two or three cohorts of young citizens had to swear whereas in future the oath had to be taken annually.¹⁷⁹

2

Whereas the ephebic oath was sworn by young citizens only, an oath of loyalty was sometimes taken by all citizens. An epigraphic attestation of such an oath is from Itanos on Crete (3rd century). In literary sources we have the oath about protection of democracy which all Athenian citizens took in 410/09 in connection with the restoration of the democratic constitution.

A. The oath from Itanos¹⁸⁰ is taken by all¹⁸¹ citizens. They swear not to betray the *polis* and not to join any conspiracy. They will not

178. *Syll.*³ 527; *I. Cret.* I.9.1; Austin (2006) 109.

179. Chaniotis (1996) 199; Hansen (1985) 12; Perlman in Hansen and Nielsen (2004) 1157.

180. *Syll.*³ 526; *I. Cret.* III.5.8.

181. *Pantes* is partly but convincingly restored.

assist in any redistribution of land or cancellation of debts. As citizens they will behave in accordance with the existing laws, and they will not break the constitution. The promise not to implement any redistribution of land or cancellation of debts indicates that Itanos was an oligarchy.¹⁸²

B. In Andokides' speech *On the Mysteries*¹⁸³ a law is read out to the jurors by which every Athenian citizen is requested under oath to protect the reestablished democracy by killing anybody who introduces an oligarchy or a tyranny. The law takes the form of a decree passed by the Council and the Assembly on the motion of a certain Demophantos. "If anyone subverts the democracy at Athens or holds any office when the democracy has been subverted, he shall be regarded as an enemy of the Athenians and may be killed with impunity, and his property shall be confiscated and a tenth part of it devoted to the Goddess; and he who kills or helps to plan the killing of anyone who does that shall be pure and free from guilt. All Athenians shall swear over unblemished sacrifices by tribes and by demes to kill anyone who does that. The oath shall be as follows: "I shall kill, by word and deed, by vote and by my own hand, if I can, anyone who subverts the democracy at Athens, and anyone who holds any office after the democracy has been subverted, and anyone who sets himself up to be tyrant or helps to set up the tyrant. If anyone else kills him, I shall consider that man to be pure in the sight of gods and divinities, because he has killed an enemy of the Athenians, and I will sell all the property of the dead man and give half to the killer and not keep any back. If anyone dies killing or attempting to kill any such man, I will care both for him and for his children, just as for Harmodios and Aristogeiton and their descendants. All oaths that have been sworn against the people of Athens, at Athens or on campaign or anywhere else, I declare null and void. All Athenians shall swear this oath over unblemished sacrifices in the customary manner before the Dionysia, and they shall pray that he who keeps his oath may have many blessings, but that he who breaks it may suffer

182. Austin (2006) 108.

183. Andoc. 1.96-98.

destruction, both himself and his family.”¹⁸⁴

Demophantos’ law did not mark the end of the oligarchy. The Four Hundred were deposed in September 411, and in future power was to reside in those citizens who served as hoplites, allegedly 5,000 but in fact some 9,000 altogether.¹⁸⁵ This regime was ended in 410 by a decision to reestablish the democracy, and following upon that decision, which we have not preserved, came the oath to protect democracy against future assaults. The oath has no clause by which the two parties promised not to bear any grudge against one another (*mê mnêsikakein*), nor is there any indication in our sources that an oath of reconciliation was taken in the period between the deposition of the Four Hundred and the reestablishment of the democracy.¹⁸⁶ On the contrary we know that several of the Four Hundred were put on trial; some were executed, others sentenced to exile or to loss of all rights (*atimia*).¹⁸⁷

3

When civil war was imminent or had already broken out each of the two factions involved could take an oath of loyalty among themselves but hostility to the members of the opposing faction. In such cases the oath is sworn not by all citizens, but by all members of a faction. The term for such an association was *synômosia*,¹⁸⁸ which means precisely an association based on an oath. Both oligarchs and democrats formed *synômosiai* and the best explicit evidence of

184. Transl. MacDowell. The law is a document inserted into Andokides’ speech and read out to the jurors. According to Canevaro and Harris (2012) the inserted document is an incompetent reconstruction by some Hellenistic scholar and must be rejected as a reliable source for Athenian institutions in the late fifth century. The authenticity of the document has been defended by Sommerstein (2014) and will be further defended by me in Hansen (2015).

185. Lys. 20.13.

186. If such an oath had been taken it would have been mentioned in Lys. 20, a speech for the defence of a person who had served on the Council of Four Hundred in 411, cf. Lys. 20.16.

187. Lys. 25.25-26; Andoc. 1.78.

188. Aurenche (1974) 32-41.

such sworn communities is in connection with the oligarchic revolutions in Athens in 411 and 404, but we also possess the so-called civic oath from the *polis* of Tauric Chersonesos which probably is an oath taken by the democratic faction during a civil war.

A. After the Athenian defeat at Syracuse in 413 an oligarchic opposition grew up both in Athens¹⁸⁹ and on Samos where the main force of the Athenian fleet was stationed.¹⁹⁰ In both places the core of the opposition was a group of conspirators.¹⁹¹ The oaths sworn by the oligarchic conspirators are referred to in the oath taken by all citizens in 410 to protect and defend the restored democracy. One clause of this oath is a recantation of former antidemocratic oaths: "All oaths that have been sworn against the people of Athens, at Athens or on campaign or anywhere else, I declare null and void".¹⁹² In Athens the oligarchic faction succeeded in having the democracy abolished and the Council of Five Hundred replaced by a Council of Four Hundred oligarchically minded citizens.¹⁹³ While the oligarchs under the Four Hundred controlled Athens, there was *stasis* on Samos between an oligarchic faction led by 300 *xynômotai*,¹⁹⁴ and a democratically minded majority of Samians supported by the crews of the Athenian squadron. The democrats prevailed in an armed conflict and a settlement was negotiated:¹⁹⁵ "it was the reform leaders Thrasyboulos, the son of Lykon, and Thrasyllus, who openly wanted to change the Samian constitution into a democracy. They made all the soldiers, and in particular the oligarchs, take the most solemn oaths that they would be democratically governed, that they would be of one mind (*homonoein*), that they would carry on wholeheartedly with the war against the Peloponnesians, that they would be enemies of the Four Hundred and have no diplomatic relations with them."¹⁹⁶

189. Thuc. 8.54.4.

190. Thuc. 8.48.2.

191. Thuc. 8.54.4 (*xynômosiai*); Thuc. 8.73.2 (*xynômotai*).

192. Andoc. 1.98, quoted *supra*. 37

193. Thuc. 8.69.1

194. Thuc. 8.73.2.

195. Thuc. 8.73.6.

196. Thuc. 8.75.2.

B. Only five years after all Athenians in 410 had sworn to kill anybody who tried to abolish the democracy, new oligarchical factions were formed. In the autumn of 405, after the defeat at Aigos potamoi and during the first phase of the siege of Athens, the Athenian *demos* issued an amnesty whereby citizens deprived of their rights (*atimoi*) were rehabilitated, and among them were some and perhaps even many of those who in 411 had served on the oligarchical Council of Four Hundred.¹⁹⁷ Again, in the Spring of 404, after the Athenians' capitulation, an amnesty for exiles was imposed by Sparta and her allies as part of the peace treaty¹⁹⁸. The treaty was confirmed by an oath,¹⁹⁹ but we do not know whether it was sworn by all Athenians or only by officials on behalf of the *polis*. Many of those who returned were oligarchs, who formed political clubs (*hetaireiai*).²⁰⁰ With Sparta as the model these so-called *hetairoi* chose a board of five *ephoroi* to be in charge of the sworn conspirators (*synômotai*) and oppose the ruling majority of Athenian citizens.²⁰¹ The *ephoroi* acquired a semi-official status and when the thirty "tyrants" were elected by the people ten were nominated by Theramenes, ten by the *ephoroi* and ten by the citizens who attended the *ekklêsia*.²⁰²

C. One of the longest and most detailed political oaths we have preserved is from the *polis* of Chersonesos in the Crimea and is now dated to the early third century.²⁰³ It was taken by the citizens who swore loyalty to the democratic constitution and promised to uphold the concord among the citizens and the liberty of Chersonesos. The oath is not part of a treaty or a law or decree but is a self-contained document.

"I swear by Zeus, Gaia, Helios, Parthenos, the Olympian gods and goddesses and the heroes who possess the city, territory and forts of the Chersonesitans. I will be of one mind (*homonoiein*) with

197. Andoc. 1.77-79, the members of the Council of Four Hundred are mentioned at 78.

198. Xen. Hell. 2.2.20; Andoc. 3.11 and 1.80, 109. See Rubinstein (2014).

199. Isoc. 18.29.

200. Arist. Ath. Pol. 34.3.

201. Lys. 12.43; Arist. Ath. Pol. 34.3.

202. Lys. 12.76.

203. Syl^b 360; IOSPE I^a 401.

my fellow citizens in favour of the salvation and freedom of the city and its citizens. I will not betray Chersonesos to any Greek or barbarian nor Kerkinitis or Kalos Limen or the other forts or territories which the Chersonesitans inhabit or inhabited, but I will protect it all for the people of the Chersonesitans. I will not abolish the democracy nor will I allow anyone to betray or abolish the democracy but denounce him to the officials in the city. I will be hostile to anyone who plots against and betrays or brings about the secession of Chersonesos or Kerkinitis or Kalos Limen or the Chersonesitans' forts and territory. As magistrate and councillor I will act competently and justly. I will protect the ???²⁰⁴ for the people and I will not reveal to a Greek or barbarian any secret that shall harm the city. I will not give nor receive any gift that shall harm the city and the citizens. I will not contrive an injustice against any of the citizens who have not revolted (30-33), nor will I allow it or conceal it but bring an impeachment and decide the matter by voting in accordance with the laws. I will not join a conspiracy against the community of Chersonesitans or against any of the citizens, who has not been disclosed as an enemy of the people (38-40). But if I did join a conspiracy and if I am bound by an oath or under a curse, it is better for me and mine if I recant, but the opposite if I hold on. If I know about an existing conspiracy or one under formation I will report it to the authorities. I will not sell grain from the plain that can be exported, and I will not bring it to any other place than Chersonesos. By Zeus, Gaia, Helios, Parthenos and Olympian gods, if I hold on let it be better for me, my family and my possessions, but if I do not hold on, let it be worse for me, my family and my possessions and let neither earth nor sea bear fruit, and let not the women bear healthy children.²⁰⁵

The oath from Chersonesos is often interpreted as a civic oath to be sworn by all citizens.²⁰⁶ But it is nowhere stated that all citizens had to swear. On the contrary some of the provisions show that the oath was taken by the democrats during a *stasis*. From the provision

204. An unintelligible word.

205. The rest of the oath is lost.

206. Thus Dittenberger in *Syll.*³ 360 n.1 referring to Xen. *Mem.* 4.4.16 as a parallel.

“not to contrive an injustice against any of the citizens who have not revolted” (30-33) we can infer *e contrario* that some had in fact revolted, and from the provision “not to join a conspiracy against the community of Chersonesitans or against any of the citizens, who has not been disclosed as an enemy of the people” (38-40) we can infer that there was a group of Chersonesitans who had formed an antidemocratic conspiracy. Presumably the oath was sworn by a democratic faction that controlled the city and many of its possessions, whereas an opposed and probably oligarchic group of citizens controlled part of the territory or lived in exile.²⁰⁷ The oath cannot be the result of a reconciliation after a *stasis*, for the crucial provision *mê mnêsikakein* is missing.

D. Another example of an oath sworn by a faction is provided by Aristotle in the fifth book of *Politics* where he quotes the oath taken in some oligarchic *poleis*: “I will be hostile to the *dêmos* and will plan whatever evil I can against them”.²⁰⁸ Aristotle betrays no doubt as to the historicity of such an oath; but is unlikely that it was taken by all citizens. Here, as often, *dêmos* denotes a class and refers to the common people, i.e. the poor.²⁰⁹ In *poleis* where this oath was practised it was presumably the ruling oligarchs who swore.

4

Following the termination of a civil war both factions usually took an oath of reconciliation in order to restore internal peace and safeguard the state against a repeat. Several such oaths have been preserved on stone and in literary sources there is information about others.

A. The most detailed and informative oath is part of a reconciliation agreement after a civil war fought in the 360's between two factions in the *polis* of Dikaia on the Thracian coast.²¹⁰ The text of the

207. Dössel (2003) 187-90, whom I follow here.

208. Arist. *Pol.* 1310a7-12.

209. Hansen (1983) 151-52.

210. *SEG* 57 (2007) 576. Dated by the reference to Perdikkas who ruled Macedon 365-59.

oath is part of a decree passed by the Assembly (*ekklêsia*). It has to be sworn by all citizens within three days. Citizens abroad must swear within three days after their return and citizens taken ill must swear within three days after their recovery. Citizens who do not swear will be punished with confiscation of property and loss of all rights (*atim-ia*). King Perdikkas of Macedon is appointed witness and guarantor of the oath. The two opposing factions are identified by the names of the leaders: a group of exiled citizens under Demarchos and a group in Dikaia under Xenophon. Regulations about the oath are followed by three decrees of the people about the judicial settlement after the *stasis*. Then comes the text of the oath to be taken by the citizens: “I will be just in my behaviour as a citizen towards all in public and in private affairs. I will not change the ancestral constitution (*patrios politeia*), nor will I admit foreigners to the detriment of the commonwealth of the Dikaiopolitans or of any individual. I will not bear grudges (*ou mnêsikakein*) towards anyone in word or deed. I will not put anyone to death or punish anyone with exile or confiscate anyone’s property for the sake of what is in the past. If anyone does bear a grudge, I will not allow him. I will take down (others) from the altars and be taken down myself. I will give and receive the same good faith. I will give and receive purification as the commonwealth orders. If I bound anyone with a pledge or gave a pledge myself, I will give and receive as I exacted or gave a pledge. I will remain faithful to the judgements which the *polis* made. If I swore some other oath, I revoke it, and I will make this one the most binding. I will uphold these sworn pledges by Zeus, Gaia, Helios and Poseidon. If I keep my oath, may many good things happen to myself, my children and my property. If I break my oath, may things turn out badly for me and my children and my property. I am receiving a deposit from the altar of Apollo in accordance with the oaths which I swore. If I remain faithful to the oaths and all the pledges, may many good things occur for me and my children and my property. If I break my oath after receiving a deposit from Apollo, may I be utterly destroyed, myself and my line and all my property, and may the god from whom I took the deposit punish me with all the other gods”.²¹¹

211. Transl. B. Gray.

B. Megara was traditionally an oligarchy but in the 420s the democrats were in power and that triggered a *stasis*. Some of the oligarchically minded citizens had been exiled and held the port of Pegai, others remained in Megara, and others again took over Plataiai which was deserted after the Spartan conquest. In 424 some of the ruling democrats in Megara planned an Athenian seizure of power. In collusion with the Megarian democrats the Athenians succeeded in occupying the port of Nisaia, but a planned surprise attack on Megara was disclosed and abandoned. Instead the oligarchically minded citizens in Megara allowed a Spartan army under Brasidas to occupy the city and a reconciliation with the oligarchs in Pegai was enforced. They returned to Megara whereafter (probably all) the Megarians took a solemn oath not to bear a grudge against one another (*mêden mnêsikakein*). But shortly afterwards the oligarchs who now ruled Megara arrested about one hundred of the citizens who had collaborated with the Athenians and had them sentenced to death and executed.²¹²

C. The most famous example of an oath of reconciliation after a *stasis* is the one sworn by the Athenians in connection with the restoration of the democracy in 403. The main clause of the oath is cited by Andokides in his speech *On the Mysteries*: “I will not bear a grudge (*ou mnêsikakein*) against any citizen except the Thirty [and the Ten] and the Eleven, and not even against any of those, if he is willing to render accounts for the office he has held.”²¹³

D. In connection with the settlement between the oligarchs in Athens and the returning democrats from the Piraeus, it was decided that those of the oligarchs from Athens who so wished could leave Athens and move to Eleusis which became a self-governing polity settled with the core of the oligarchic faction in the civil war 404/3. The agreement lasted only two years. After a short armed conflict Eleusis was incorporated into Athens once again as a deme. The oath not to bear a grudge was repeated (*mê mnêsikakein*) and this time it was respected.²¹⁴

212. Thuc. 4.66-74.

213. Andoc. 1.90.

214. Arist. *Ath. Pol.* 39-1-5, 40.4; Xen. *Hell.* 2.4.43; Lys. 25.9; Diod. Sic. 14.35.6. Cf.

E. In 401 conditions in Kyrene were chaotic. Recently the five hundred most influential Kyrenaians had been killed, and others of the elite had fled from Kyrene. They were joined by 3,000 exiled Messenians who had sailed to Libya. A battle was fought between them and the Kyrenaians from the city. Many Kyrenaians on both sides and almost all the Messenians were killed in the battle. The Kyrenaians arrived at an amicable settlement. They took an oath not to bear a grudge against one another (*mêmnêsikakein*) and settled down together in the city.²¹⁵

F. In 378 Thespiiai in Boiotia was on the brink of a civil war. A group of democratically minded citizens lived in exile in Thebes and the ruling pro-Lakedaimonian part of the citizens planned to murder the remaining democrats. But Agesilaos who sojourned in the territory of Thespiiai with an army intervened. He compelled the Thespiians to come to terms and to confirm the settlement with an oath.²¹⁶

G. In the 360's the *poleis* on the island of Keos were afflicted by civil war between a faction that controlled the four *poleis* and a faction of exiled Keians.²¹⁷ The faction on Keos revolted against Athens and the Naval League, whereas the exiled Keians supported Athens and the Naval League. The rebellion was suppressed and a sworn treaty was concluded between, on the one side, the defecting Keians in Kartheia and Ioulis and, on the other side, the Athenians, their allies and the exiled Keians who could now return to Keos, while the leaders of the rebellion were executed or exiled. Shortly afterwards, however, this new group of exiled Keians returned and came to power in Ioulis. They revolted once more and destroyed the *stelai* with the settlement. This rebellion too was put down by the Athenians. A new treaty was concluded and in connection with this settlement it was decided to re-inscribe the original treaty with the three oaths that had been sworn: first, an oath sworn by the Athenian generals and the allies towards the Keian *poleis*. Second, an oath

Hansen and Nielsen (2004) 637, no. 362.

215. Diod. Sic. 14.34.

216. Xen. *Hell.* 5.4.55.

217. Rhodes-Osborne, *GHI* 39.

sworn by the Keian *poleis* towards the Athenians, their allies and the Keians whom the Athenians had brought back to Keos. And third, an oath sworn by the returned Keians. All three oaths are sworn by Zeus, Athena, Poseidon and Demeter and concluded with the usual sanction: good fortune, if the oath is kept, misfortune if it is broken. The Athenians swear not to bear a grudge (*mê mnêsikakeîn*), not to execute or exile any Keian who abides by the treaty and the oaths, and to admit the Keians to the Naval League. If any Keian does not wish to stay in Keos, he is free with his property to move to any of the allied cities. The Keians swear to fight alongside the Athenians and their allies, not to defect from the Athenians and their allies, not to allow any mistreatment of the returned Keians, the Athenians, and their allies, and to let all private and public lawsuits that involve the Athenians be submitted to third party adjudication. The returned Keians swear not to bear any grudge (*mê mnêsikakeîn*).²¹⁸

H. A civil war in Mytilene between a faction in exile and a faction in the city²¹⁹ is terminated by a settlement dictated by Alexander the Great.²²⁰ The purpose of the settlement is for all citizens to live in harmony with each other (*homonoein*).²²¹ The exiles are allowed to return, and the settlement is confirmed by an oath sworn by all citizens.²²² The date of these events is probably 332, when the Lesbian *poleis* were re-conquered by Alexander.²²³

I. In 324 Alexander the Great issued an ordinance²²⁴ that all exiled Greeks, except those under a curse, be allowed to return to their native *poleis*, and that on their return they be reinstated in their former rights. Antipatros, the king's deputy in Macedon, is instructed by Alexander to apply compulsion to those *poleis* that do not comply with the ordinance. A decree of Tegea in Arkadia shows how the Tegeans handled the problem of reintegrating their re-

218. The rest of the oath is lost.

219. Rhodes-Osborne, *GHI* 85.

220. 85.B28-29.

221. 85.B30.

222. 85.B31-32.

223. Heisserer (1980) 135-36; Rhodes-Osborne, *GHI* 85.430.

224. Diod. 18.8.2-6. The Greek term is *diagramma*, often translated "rescript".

turned exiles.²²⁵ The main part of the decree deals with the returned citizens' right to recover their former possessions. The solution is a compromise whereby the exiles regain part of their former property from the present owners and are compensated by the treasury for what is not recovered. The decree is concluded with an oath to be taken by the citizens of Tegea in connection with the return of the exiles (57-66). Only part of the oath is preserved: it comprises a promise to be well disposed (*eunoiein*) towards the exiles whom the *polis* has decided to accept, furthermore not to bear a grudge against the exiles (*ou mnêsikakein*), and finally a reference to Alexander's ordinance (*diagramma*). Since the decree breaks off we do not know whether this oath was followed by one taken by the returned exiles.

J. On the island of Telos²²⁶ a civil war (*stasis*?) between a democratic and an antidemocratic faction (40-41) was ended by an arbitration entrusted to a commission of citizens from Kos (3-16). The present document is a decree passed by the Telian assembly (1-2, 12-13). In consequence of the arbitration it is decided that the Telians shall live in full harmony (*homonoiein*), under a democratic constitution (*en demokratiai politeuesthai*) being free (*eleutheroi*) and self-governing (*autonomoi*) (5, 38-39, 126). In the central part of the decree the judicial settlement is regulated in great detail (41-125). The settlement (*dialysis*) (2, 7, 11) is strengthened by an oath (*horkos*) taken by all citizens over eighteen (126-27) Absent citizens must take it within 60 days after their return (136-37), and a citizen who does not swear shall pay a fine of 1,000 drachmas (137-38). The text of the oath is: "I will uphold the existing constitution, I will protect the democracy and will not bear a grudge (*ou mnêsikakein*) about what has been decided. Nor will I attempt to obstruct this reconciliation, or carry arms against the people, or cooperate with one who occupies the stronghold, and I will not knowingly allow anyone to plot against or overturn the democracy. If I come to know about anyone who plans a revolution or forms a faction to overturn the democracy, I will inform the authorities. If I keep my oath, may many good things happen to me, and the reverse if I break it." (128-36). The decree is dated to ca. 300.

²²⁵ *IPArk*.5.

²²⁶ *IG XII* 4, 1.132.

K. The small *polis* of Kynaitha in Arkadia was repeatedly troubled by civil war, and in 220 the citizens were split up into a group that controlled the city and a group of exiles.²²⁷ Kynaitha was a member of the Achaian League whereas the exiles fraternised with the Aitolian League but pleaded with the citizens in Kynaitha to settle the dispute and allow them to return. With the permission of the Achaian League the *stasis* was ended and the exiles returned. But soon after the reconciliation which had been corroborated by an oath, the former exiles secretly approached the Aitolians and promised to open the gates to an Aitolian army which then conquered Kynaitha; but the Aitolians began their rule of Kynaitha by killing those who had betrayed the city. Polybios comments sarcastically that the killing of the traitors was the only just act committed when the Aitolians conquered Kynaitha.

In these oaths of reconciliation to end a *stasis* the most important provision is *ou* or *mê mnêsikakein*, i.e. a sworn promise not to bear a grudge. It corroborates the agreement between the two opposed factions about coming to terms with one another. Mostly all swear the same oath about not bearing a grudge against one another, sometimes the members of each faction swear a separate oath²²⁸ about not bearing a grudge against members of the other faction. Usually one of the factions is in power when the *stasis* is brought to an end, but often the division into opposed factions during the civil war occurs among those who serve on the political institutions as well as among the citizens at large, and whether the democrats or the oligarchs are in power is subject to rapid change.²²⁹ When the oath is taken, all who swear are in principle on equal terms, those who serve as councillors or magistrates as well as all other citizens. After the oath, when the provisions of the settlement have to be implemented, the officials are empowered to inflict punishment on

227. Polyb. 4.16.11-18.7.

228. The *stasis* on Keos: Rhodes- Osborne, *GHI* 39: an oath sworn by the Athenians (57-69), another by the Keians on Keos (69-81) and a third one by the repatriated Keians (82ff).

229. Two outstanding examples are the *stasis* in Megara (Thuc. 4.66-74) and the *stasis* on Korkyra (Thuc. 3.70-85).

any citizen who breaks the oath,²³⁰ but, conversely, the oath may impose a duty on every citizen to report or impeach or even to kill anybody who breaks the oath.²³¹ Thus *mê mnêsikakein* is not an amnesty in the modern sense, i.e. an act of forgiveness for past offences, in particular political offences, issued by the government of the state to a class of persons without any previous trial or conviction of the persons in question.²³²

5

We have three treaties preserved by which a small *polis* is merged with a larger one and the union is confirmed by an oath. In all three cases the citizens in the two *poleis* to be merged take the oath separately, and in two cases it is explicitly stated that all citizens swear; in the third case²³³ it can be presumed.

A. In Arkadia in the 360's²³⁴ the large *polis* of Orchomenos entered into a union on equal terms (*epi tois isois kai homoiois*) with the small *polis* of Euaimon.²³⁵ From the provisions of the treaty it appears that the union took the form of a synoecism (*synoikia*) whereby the inhabitants of Euaimon moved to Orchomenos.²³⁶ The treaty is

230. One example is the Athenian citizen who was sentenced to death by the Council of Five Hundred and executed for not abiding by the oath of reconciliation after the restoration of the democracy in 403, Arist. *Ath. Pol.* 40.2.

231. Best attested in the oath taken by all Athenians in 410 (see 38-39 *supra*) which, however, is not an oath to end a *stasis*, but to avoid a repeat of the recent *stasis*.

232. In this context I shall not discuss the problems of judicial settlement relating to crimes committed before and under the *stasis*, and restitution of property to repatriated exiles etc. For valuable discussions of these issues, see Gray (2013), Dreher (2013), Rubinstein (2013) with further references to the relevant literature.

233. The *synoikia* between Euaimon and Orchomenos.

234. Before 362, Nielsen (2002) 350.

235. *IPArk.* 15.

236. The terms *synoikia* (A2), *anistasthai* (C62) and *exelaunein* (C81) as well as the reference to allotment of land (A11-15) indicate that the union took form of a proper synoecism. Only religious ceremonies were still to take place in Euaimon (A6-10). According to Theopompos (*FgrHist.* 115) fr. 61 Euaimon was still a *polis* in the 350s. Perhaps the union did not take place as stipulated in the decree, or perhaps Euaimon was repopulated. See Nielsen (2002) 350-52.

concluded with the texts of two oaths. The Euaimonians swear never to leave the Orchomenians, and the Orchomenians never to expel the Euaimonians.

B. The *poleis* of Smyrna and Magnesia by Sipylos were united by a treaty concluded ca. 241 after the termination of the Third Syrian War in which Smyrna had supported Seleukos II while Magnesia had been allied to Ptolemy III. By the treaty the Magnesians obtain citizenship in Smyrna and are in future to be governed by the Smyrnaians' laws and decrees. The fortress in Magnesia is handed over to a garrison from Smyrna. The fusion between the two communities is confirmed by reciprocal oaths sworn by all citizens in both *poleis*. The two oaths are at the same time statements of loyalty towards Seleukos II. The oath taken by the Magnesians include the following provision: "I will behave as a citizen in a spirit of concord (*homonía*), without causing any civil disturbance (*astasiastos*) in accordance with the laws of the people of Smyrna and the decrees of the people, and I will help to preserve the autonomy and the democracy (of Smyrna) ..." ²³⁷ Each of the two *poleis* shall appoint a delegation who shall administer the oath to the citizens of the other *polis*, and the day before the oath is taken, the citizens shall be notified and instructed to remain in the city on the following day so that the oath can be sworn in accordance with the agreement. ²³⁸

C. A union between the small *polis* on the island of Kalymna and the much larger *polis* on the island of Kos was re-established between 205 and 200. ²³⁹ What happened was in fact that Kalymna was incorporated into Kos. We do not have the treaty itself but the oath by which it was confirmed. The oath must be sworn by all citizens both in Kos and in Kalymna and it is administered by two commissions of citizens from Kos, one to administer the oath to the Koans and one to be sent to Kalymna: "I will abide by the established democracy, the restoration of the *homopoliteia*, the ancestral laws of Kos, the resolutions of the assembly and the provisions of the *homopoliteia*. I will also abide by the friendship and alliance with King

237. *Staatsverträge* 492.64-65.

238. *Staatsverträge* 492.78-80.

239. *Staatsverträge* 545; Austin (2006) 153.

Ptolemy and the treaties ratified by the people with the allies. I will never set up under any pretext an oligarchy or a tyranny or any other constitution apart from democracy, and if anyone else establishes (such a regime) I will not obey, but I will prevent (him) as far as possible, and I will not take over under any pretext any of the forts or the akropolis, whether for my own possession or in collaboration with someone else, and I will not allow the territory of Kos to be diminished, but I will increase it to the best of my ability; I will be a just judge and a fair-minded citizen, taking part in elections and casting my vote without favouritism, according to what seems to me to be in the interest of the people; all this is true by Zeus, Hera and Poseidon; if I abide by my oath may all be for the best, if I break it may the opposite happen. The [commissioners shall swear] at once in the [assembly] over [burning] victims [in accordance with the] resolution of the [assembly]²⁴⁰

6

Swearing an oath in connection with the sending out of colonists is attested in two decrees preserved on stone and may have been standard procedure in the Archaic, Classical and Hellenistic periods, whenever a *polis* decided to found a colony. In both cases the oath is taken both by the colonists and by the citizens who remain in the metropolis. Of the two colonisation decrees one is from Kyrene in Libya, the other from Chaleion in Western Lokris. A third related example is the Phokaians' oath when they abandoned their *polis* in Ionia and moved to Alalia, their colony on Corsica.

A. The *polis* of Kyrene was founded ca. 630 by colonists from the island of Thera. Some three hundred years later the Kyrenaians passed a decree that confirmed the right of the Theraians to citizenship in Kyrene, on the condition that they swear the same oath as the first colonists.²⁴¹ The decree shall be published together with the original oath. The oath that takes the form of a decree of the assem-

240. *Staatsverträge* 545.14-34, transl. Austin.

241. Meiggs-Lewis, *GHI* 5 with a discussion of to what extent the "original oath" may be a genuine archaic document, or is a re-edited version.

bly (*ekklésia*) is called “the oath of the colonists”. It lays down the general lines for the colonisation as ordained by Apollo: the selection of the colonists and sanctions against those who will not leave Thera and against those who hide them. The oath is taken both by the colonists and by those who remain in Thera. It is concluded with sanctions against those who do not observe the oath: waxen images shall be made and burnt, and all men, women, boys and girls shall swear that anyone who does not abide by the oath shall melt away like the images, himself, his descendants and his property. But those who uphold their oath – both those who sail to Libya and those who stay in Thera – shall be rewarded both themselves and their descendants.

B. At some point in the fifth century the Hypoknemidian Lokrians in Eastern Lokris decided to send colonists to Naupaktos in Western Lokris.²⁴² The decree regulating the colonisation is inscribed on a stele found in Chaleion in Western Lokris due to a provision that allows citizens from Chaleion to join the venture alongside citizens from the East Lokrian *polis* and in particular from Opous, the principal *polis* in Eastern Lokris. The colonists sent to Naupaktos must swear never of their own account to break away from the Opountians, and thirty years later the oath can be repeated: one hundred Naupaktians may administer the oath to the Opountians, and the Opountians to the Naupaktians. In the decree there is nothing more about the oath. The East Lokrian *polis* formed a federation with Opous as the hegemonic *polis*. The original oath was presumably taken in Opous by the colonists and sworn towards the Opountians.

C. In c. 546 when Phokaia was besieged by a Persian army the inhabitants decided to abandon the city. With their families and possessions they sailed to Alalia, their colony on Corsica; but before they definitively relocated the *polis* they returned briefly to Phokaia, killed the Persian garrison and sailed back to Alalia. On this occasion they took a solemn oath: when they left they sank a lump of iron in the sea and swore not to return until the lump surfaced. Nevertheless more than half of them broke the oath and sailed back to Phokaia.²⁴³

242. Meiggs-Lewis, *GHI* 20.

243. Hdt. 1.165.

The sources we possess show that there were in particular three incentives that motivated the taking of a civic oath sworn by all citizens: (1) to maintain or restore harmony among the citizens (*homonoia*),²⁴⁴ (2) to promote obedience to the laws and loyalty to the constitution of the *polis*,²⁴⁵ and (3) to ensure that different groups of citizens would not bear a grudge against one another (*mê mnêsikakein*).²⁴⁶ As Xenophon emphasises in the *Memorabilia* (4.4.16, quoted *supra* 24-25) *homonoia* and obedience to the laws combined with loyalty to the constitution are closely related; they are like two sides of the same coin.²⁴⁷ Where they do not coexist, typically during a civil war, they must be restored, and here a reconciliation oath not to bear a grudge (*mê mnêsikakein*) becomes an important remedy.

The extent and limits of political obligation

By an explicit or implicit acceptance the citizens of a state have incurred an obligation to keep the laws and obey the authorities. But is the obligation unconditional? Here opinions differ. According to Hobbes, the social contract was an agreement made by all members of society among themselves for the purpose of appointing a sovereign. It was not a contract between the people and the sovereign about how the sovereign should rule. The subjects have no right to oppose the sovereign's commands,²⁴⁸ and they have no right to and no possibility of holding the sovereign accountable. In Locke the institution of a legislature is the first law to be passed after the original compact itself and the powers of the legislature are restricted

244. See (3A) Samos; (3C) Tauric Chersonesos; (4H) Mytilene; (4J) Telos; (5B) Smyrna and Magnesia.

245. See (1A) Athens; (2A) Itanos; (2B) Athens; (3A) Athens; (3C) Tauric Chersonesos; (4A) Dikaia; (4J) Telos; (5B) Smyrna and Magnesia; (5C) Cos and Kalymna.

246. See (4A) Dikaia; (4B) Megara; (4C) Athens; (4D) Athens/Eleusis; (4E) Kyrene; (4G) Ioulis; (4I) Tegea; (4J) Telos.

247. Noted already by Breitenbach in his commentary to *Memorabilia* (Berlin 1889, 231-32): "kai homonoia: Sinn: Aber auch die Eintracht, die doch wohl das grösste Gut des Staates ist, ist nichts anderes als die Übereinstimmung in der Beobachtung der Gesetze".

248. Hobbes (1651) 2.18.3.

to what is beneficial for the commonwealth and in conformity with natural law. If the legislature does not respect these limitations the people have a right to remove it, in some cases even by force.²⁴⁹

In many Greek *poleis* there was a right to rebellion that went further than anything allowed by Locke, and in democratic *poleis* in particular it became even a civic duty to defend democracy and revolt if it was abolished and replaced by a tyranny or an oligarchy. An investigation of this issue requires a digression about the types of constitution acknowledged by the Greeks and the difference between the typology advocated by philosophers as against what we find in historians, in orators and in inscriptions.²⁵⁰

All distinguished between three types of constitution according to the number of rulers: the rule of the one, the rule of the few and the rule of the many.²⁵¹ In philosophy, and in particular among the followers of Sokrates, each of the three types was subdivided into a positive and a negative variant. In *Memorabilia* Xenophon tells us that Sokrates distinguished between a good and a perverted form of the rule of the one (*basileia* versus *tyrannis*), and of the rule of the few (*aristokratia* versus *ploutokratia*), but that he recognised only one form of the rule of all (*dêmokratia*).²⁵² In *Statesman* Plato sets out making a similar distinction. The rule of the one is subdivided into *basileia* and *tyrannis*, the rule of the few into *aristokratia* and *oligarchia*, whereas the rule of the many is simply *dêmokratia*, thus five types of *politeia* altogether.²⁵³ But later on in the dialogue Plato acknowledges that there is both a good and a bad form of *dêmokratia*.²⁵⁴ In Book 3 of *Politics* Aristotle adopted Plato's sixfold model of constitutions in *Statesman* with one minor change: The good form of the rule of the many is called *politeia* whereas *dêmokratia* designates the bad form.²⁵⁵

When we move from philosophy to history the situation is alto-

249. Locke (1690) 13.149, 155 (384-89).

250. Hansen and Nielsen (2004) 80-86; Hansen (2013) 1-17.

251. Hdt. 3.80-82.

252. Xen. *Mem.* 4.6.12, cf. Pl. *Pol.* 291c-92a..

253. Pl. *Pol.* 291d-e.

254. Pl. *Pol.* 302c-d.

255. Arist. *Pol.* 1279a25-b10. On Aristotle's typology of constitutions in *Pol.* 4-6, see Hansen (2013) 3-17.

gether different. What we find in all inscriptions, in oratory and in the historians is a basic tripartition into *tyrannis*, *oligarchia* and *dēmokratia*. Kingship (*basileia*) is almost exclusively an early form of constitution to be found in Homer and in mythology, in stories about, e.g., Theseus and Erechtheus.²⁵⁶

Apart from Sparta the few surviving *basileiai* among the classical *poleis* were on the fringes of the Hellenic world,²⁵⁷ and most contemporary communities called *basileiai* were not *poleis* but barbarian *ethne*, in particular Persia²⁵⁸ and Macedon.²⁵⁹

In all inscriptions there is just one occurrence of *aristokratia*, viz. in a Hellenistic dedication from Epidauros.²⁶⁰ And of the ten Attic orators Isokrates is the only one to mention *aristokratia*, and he does it only once, viz. in connection with his description of the ancestral democracy introduced by Theseus.²⁶¹ In the historians *aristokratia* occurs four times: three times it is used by oligarchs as a favourable designation of oligarchy²⁶² and once about the wealthy Mantineans in reference to the constitution of Mantinea after the *dioikismos* in 385.²⁶³

On the other hand, together with democracy (called *dēmokratia* or *dēmos*) oligarchy (*oligarchia*) and tyranny (*tyrannis*) were common forms of constitution in the Greek city-state culture both in the Classical and in the Hellenistic period.²⁶⁴

In the Classical period democracy had become the dominant form of constitution,²⁶⁵ and when the three basic types of constitution are juxtaposed, democracy is usually taken to be the only legitimate form of constitution, whereas oligarchy and tyranny are censured as constitutions that have to be avoided or abolished

256. Cf., e.g., Hdt. 8.44.2; Thuc. 1.13.1; Arist. *Pol.* 1286b8. Drews (1983), Carlier (1984).

257. In Epeiros and on Cyprus. Hansen (2009) 404-05 with n. 124.

258. Hdt. 1.4; Xen. *Mem.* 2.1.10.

259. Dem. 9.31, 19.327.

260. *IG IV²* 1.128.3.

261. Isoc. 12.131, 153.

262. Thuc. 3.82.8; 8.64.3; Xen. *Hell.* 2.3.48.

263. Xen. *Hell.* 5.2.7.

264. Hansen and Nielsen (2004) 84, 1338-40.

265. Arist. *Pol.* 1286b20-22; Hansen and Nielsen (2004) 84.

where they exist. That is argued, e.g., by Aischines in the *prooimion* of the speech *Against Timarchos* and repeated verbatim in the speech *Against Ktesiphon*: “All humans live under one of three forms of constitution: tyranny, oligarchy and democracy. The tyrannies and oligarchies are governed in accordance with the character of the rulers, whereas the democratic *poleis* are governed by the laws.”²⁶⁶ The same tripartition is found in other speeches.

In the speech *Against Andokides for Impiety* the prosecutor states that Andokides is a man “to whom no *demos*, no oligarchy (*oligarchia*), no tyrant (*tyrannos*) and no *polis* is willing to give a home.”²⁶⁷

In the speech *Against Leptines* Demosthenes opposes gifts given by democracies (*dêmoi*) to gifts given under other forms of constitution (*politeiai*). It is the honour and reliability of gifts bestowed by democracies that make them more valuable than the riches bestowed by tyrants (*tyrannoi*) and oligarchies (*oligarchiai*).²⁶⁸

In the speech *Against Aristokrates* Demosthenes points out that neither a tyrant (*tyrannos*), nor an oligarchy (*oligarchia*), nor a democracy (*dēmokratia*) has ventured to deprive the Areiopagos of its right to hear cases of homicide.²⁶⁹

In the historical part of *Panathênaios* Isokrates explains how Peisistratos abolished the ancestral democracy. As a demagogue he did much harm to the *polis*, he had the best citizens expelled alleging that they were oligarchs (*oligarchikoi*), and finally he abolished the democracy (*dêmos*) and set himself up as tyrant (*tyrannos*).²⁷⁰

The historians are less concerned with types of constitution than the orators but here too there are examples of a juxtaposition of the three basic types of constitution.

The famous debate over the constitutions in Herodotos is conducted between the democrat Otanes, the oligarch Megabyxos and the royalist Dareios. Popular rule is described favourably by Otanes

266. Aeschin. 1.4, 3.6.

267. Lys. 6.30.

268. Dem. 20.15.

269. Dem. 23.66.

270. Isoc. 12.148.

with the term *plêthos archon*, unfavourably by the two others who use *dêmos* in the pejorative sense of plebs. The rule of the few is described favourably by Megabyxos using the terms *oligarchie* and *andres aristoi*, unfavourably by the two others who take *oligarchie* in the pejorative sense. The rule of the one is described favourably by Dareios with the terms *mounarchos* and *mounarchie*, unfavourably by the two others who use *tyrannos* and *tyrannis* synonymously with *mounarchos* and *mounarchie*.²⁷¹

In the debate after the conquest of Plataiai in 427 as reported by Thucydides the Thebans excuse their association with the Persians in 480 by arguing that the constitution of Thebes at that time was neither an oligarchy based on equality (*oligarchia isonomos*) nor a democracy (*dêmokratia*) but the dominance of a few men (*dynasteia oligôn andrôn*) that was close to tyranny (*engytatô tyrannou*).²⁷²

In connection with the profanation of the mysteries the Athenian people (*dêmos*) suspected that the underlying purpose was an oligarchical (*oligarchikê*) and tyrannical (*tyrannikê*) conspiracy.²⁷³

At the beginning of *Agesilaos* Xenophon asserts that no other government (*archê*) than that of Sparta has demonstrably persisted unchanged, neither a democracy (*dêmokratia*), nor an oligarchy (*oligarchia*) or a tyranny (*tyrannis*) or a kingdom (*basileia*). Sparta's kingdom is the only one that remains²⁷⁴ Here *basileia* is added to the other three forms of constitution, but Xenophon emphasises that the kingdom of Sparta is an exception.

Xenophon opens the *Kyropaedia* with wondering how many democracies (*dêmokratiai*) have been abolished by people who preferred a different form of constitution, and how many monarchies (*monarchiai*) and oligarchies (*oligarchiai*) have been abolished by the people (*dêmoi*) and how many of those who attempted to set up a tyranny (*tyrannein*) have been overthrown.²⁷⁵

The view that there are three basic forms of constitution: democ-

271. Hdt. 3.80-82.

272. Thuc. 3.62.3.

273. Thuc. 6.60.1, cf. 6.27.3.

274. Xen. *Ages.* 1.4.

275. Xen. *Cyrop.* 1.1.1.

racy, oligarchy and tyranny, is reflected in the legislation of democratic *poleis*, and it influenced the understanding of what political obligation involved. A command to protect the democracy is sometimes connected with an explicit prohibition to set up an oligarchy or a tyranny or any other form of constitution than democracy; and it is prohibited to hold an office when democracy has been abolished. Such prohibitions can be supplemented with an order as far as possible to kill any person who attempts to introduce or has introduced a tyranny or an oligarchy. The following laws and decrees testify to the conviction that democracy is the only acceptable form of constitution and that it must be defended at any price.

In Athens, after the rule of the Four Hundred and the Five Thousand, democracy was restored in 410 and protected by a law which all citizens had to swear to uphold. The law and the oath is quoted *supra* p. 37. The main provision of the law is a command to kill anyone who subverts the democracy or holds an office when the democracy has been abolished or attempts to set up a tyranny. "To hold an office when democracy has been abolished" placed between *demokratia* and *tyrannein* is a periphrasis for *oligarchia*.²⁷⁶

An alliance of 362/1 between Athens, Arkadia, Achaia, Elis and Phleious stipulates: "If any one goes against Attika or overthrows the Athenian democracy (*dêmos*) or sets up a tyrant (*tyrannos*) or an oligarchy (*oligarchia*), the Arkadians and Achaians and Eleians and Phleiasians shall go in support of the Athenians with all their strength as called on by the Athenians as far as possible; and if any one goes against those cities or overthrows the Phleiasian democracy (*dêmos*) or overthrows or changes the constitution (*politeia*) of Achaia or Arkadia or Elis,²⁷⁷ or exiles anybody, the Athenians shall go in support of these with all their strength as called on by those who are being wronged as far as possible. ... The oath shall be sworn in each city by the highest officials of the Peloponnesians, and of the

276. Andoc. 1.97.

277. In 362 Elis and the Achaian *poleis* were oligarchies, whereas most of the Arkadian *poleis* were democracies, see Hansen and Nielsen (2004) 1338-39.

Athenians by the *stratêgoi*, the *taxiarchoi*, the *hipparchoi*, the *phylarchoi* and the cavalry.”²⁷⁸

A law from Eretria (ca. 340)²⁷⁹ stipulates hereditary loss of rights (*atimia*), confiscation of property and prohibition of burial in Eretria as the penalties for abolishing the democracy.²⁸⁰ If anyone attempts to set up an oligarchy or a tyranny²⁸¹ all citizens are obligated to come to the rescue of democracy,²⁸² and to remain passive is a punishable offence.²⁸³ The person who kills the tyrant or the person who attempts to set up a tyranny is exempt from punishment²⁸⁴ and will be rewarded.²⁸⁵

After the defeat at Chaironeia in 338, the Athenians passed a law in 336 that provides exemption from punishment for anyone who kills the person who attempts to set up a tyranny (*tyrannis*) or to abolish the democracy (*dêmos*, *dêmokratia*).²⁸⁶ Furthermore, the law prohibits any member of the Council of the Areiopagos to attend a meeting of the council when the democracy has been abolished. Violation will be punished by hereditary loss of rights (*atimia*) and confiscation of property.²⁸⁷

An early Hellenistic law of Ilion²⁸⁸ offers rewards to the person who kills a tyrant (*tyrannos*) or a leader of an oligarchy (*hegemon oligarchias*) or anyone who attempts to overthrow the democracy (*dêmokratia*). The rewards are graduated according to whether the killer is a citizen (? *enarchos*), a foreigner, a slave or a mercenary serving in the tyrant’s armed forces.²⁸⁹ Next, a series of provisions prescribes various punishments for acts committed by officials or private persons

278. *IG* II² 112; Rhodes-Osborne, *GHI* 41. Transl. Rhodes and Osborne with one change: *demos* is translated “democracy” instead of “people”.

279. *SEG* 51 1105.

280. A4-5, B6-10.

281. A4-5, B6-8, 20-21

282. B 20-24. B22: *dêmos*.

283. B 30-32.

284. B 10-13.

285. A5-10,

286. Rhodes-Osborne, *GHI* 79.7-11.

287. Rhodes-Osborne, *GHI* 79.11-22.

288. *I. Ilion* 25 (ca. 280).

289. *I. Ilion* 25.21-53. Teegarden (2014) 183-87.

after the democracy has been abolished.²⁹⁰ Finally some provisions regulate compensations and rewards in connection with an reestablishment of the democracy.²⁹¹ The law is presumably passed shortly after the re-establishment of the democracy.²⁹²

An early Hellenistic decree of Erythrai stipulates that the statue of the tyrannicide Philitos be restored to its original state and that Philitos be celebrated and crowned at specific monthly festivals and in connection with all other festivals.²⁹³ The background to the decree can be reconstructed as follows.²⁹⁴ When Erythrai was ruled by a tyrant – or perhaps a narrow oligarchy²⁹⁵ – Philitos succeeded in killing the tyrant but was himself killed. After the overthrow of the tyrant the constitution was changed into a democracy and it was decided to erect a statue of Philitos holding the sword with which he had killed the tyrant. At a later date the democracy was replaced by an oligarchy (*oligarchia*) and the rulers who disliked the statue as a criticism of their form of constitution had the sword removed.²⁹⁶ When the oligarchy was once again overturned and the democrats were back in power, the people passed the decree whereby Philitos was once again issued with the sword and celebrated at the festivals. The most likely chronology of the events is that the tyrannicide took place in ca. 332 when tyrannies and oligarchies in Asia Minor were replaced by democracies; that the oligarchs came to power in the wake of the battle of Ipsos in 301 but that *oligarchia* was once again replaced by a democracy after the battle of Kouropedion in 281.²⁹⁷

In Eresos on Lesbos a series of public actions against former tyrants and their descendants were heard in the period from 334 to ca.

290. *I.Ilion* 25.53-130. Teegarden (2014) 187-97.

291. *I.Ilion* 25.131-72. Teegarden (2014) 197-99.

292. *I.Ilion* 25.144-52. Teegarden (2014) 199.

293. *I.Erythrai* 503.9-30.

294. Teegarden (2014) 142-72.

295. Teegarden (2014) 158. It is in my opinion significant that the oligarchs take away the sword but do not remove and demolish the statue of Philitos. They do not want to be seen as supporters of tyranny, but on the other hand they dislike the democratic message conveyed by the sword.

296. *I.Erythrai* 503.2-6.

297. Teegarden (2014) 157-64.

300.²⁹⁸ The trials were warranted by a law against tyranny²⁹⁹ and in all the trials the tyrants and their descendants were convicted.

When Kos and Kalymna were united ca. 200 the citizens of both *poleis* had to swear that they would uphold the democracy and that they would not establish an oligarchy or a tyranny or any other constitution than democracy, but would oppose it with all their might.³⁰⁰

These examples show that in democratic *poleis* in particular the duty to obey the laws was restricted by an exhortation and sometimes even a command to break the law if the constitution was changed or if there was a serious risk that it might be changed. In such cases a special law provided for exemption from punishment and even a reward for breaking the law and in particular the law of homicide.

It is significant that all the examples we know of pertain to democratic *poleis*. As usual, we are deplorably ignorant of how a similar situation was handled in the numerous *poleis* governed by a tyrant or an oligarchical elite.

*Stasis*³⁰¹

In the ancient Greek city-state culture the problem of political obligation was essentially different from the same problem in European political thought from the Middle Ages and to the present day. The civic oath – which presumably was sworn in most *poleis* – was an explicit vow to obey the laws and the authorities that governed the *polis*. The purpose of the civic oath was, as Xenophon says, to foster concord (*homonoia*) through obedience to the laws and submission to those who had them enforced.³⁰² In the course of the Classical period *homonoia* became an essential political value cherished by the Greeks. It signifies unanimity and concord; it is associated with

298. Rhodes-Osborne, *GHI* 83. Teegarden (2014) 115-41.

299. Rhodes-Osborne, *GHI* 83 2.24-25, 6.26-27, 31-32.

300. *Staatsverträge* 545.21-23. See 50-51.

301. See Hansen (2006a) 125-26.

302. Xen. *Mem.* 4.4.16, quoted 24-25 *supra*.

friendship (*philia*)³⁰³ and freedom (*eleutheria*)³⁰⁴ or *demokratia*³⁰⁵ and its opposite is discord and civil war (*stasis*).³⁰⁶ In Athens in 411 immediately after the Four Hundred had seized power a meeting of the Assembly was devoted to *homonoia*.³⁰⁷ It occurs in some of the political oaths we have preserved³⁰⁸ and in other sources it is associated with the taking of an oath.³⁰⁹ Thus, it seems to have been a key element of the peace between Athens and Euboeia in 357/6 and the common peace in 346. And in the 320s one of the Athenian warships carried the name *homonoia*, just as others were called *demokratia* or *eleutheria*³¹⁰. Before the end of the fourth century *homonoia* had been deified and became worshipped as a goddess.³¹¹

The problem was whether the citizens kept the oath they had sworn. And often that was not the case. The reason why the civic oath was so important was the widespread and frequent outbreaks of civil war.³¹² Very few *poleis* were societies in harmony which lived up to the ideal of a unanimous body of citizens who stood together to safeguard the community. Most *poleis* were split up into two rival *poleis*,³¹³ one of the rich who supported oligarchy, and one of the

303. Dem. 18.246; Pl. *Alc.* 127a-d; *Clitophon* 409c; *Resp.* 351d, *Leg.* 708c; Arist. *Eth. Nic.* 1155a.

304. Lys. 2.18; Dem. 26.11.

305. Lys. 25.23; Isoc. 12.178.

306. Gorg. (DK) fr. 1.17; Thuc. 8.93.3; Xen. *Mem.* 4.6.14; Lys. 2.63, 65; 18.17-18; 25, 27, 30; Dem. 20.12; Isoc. 4.104, 174; 18.44, 68; Pl. *Phdr.* 237e, 263a; *Resp.* 351d, 352a, 545.d Ephorus (*FGrHist* 70) fr. 148.7; *IG* II² 1006.32; *IG* IX.2 1230.12; *IG* XII Suppl. 168.12; *Staatsverträge* 492.65

307. Thuc. 8.93.3.

308. Thuc. 8.75.2 (Samos 411), p. 38-39; Rhodes-Osborne, *GHI* 85b30 (Mytilene 332) p. 46; *IG* XII 4.1 132 (Telos c. 300) p. 47; Syll³ 360.5 (Tauric Chersonesos ca. 300) p. 40-41; *Staatsverträge* 492.65 (Smyrna and Magnesia ca. 240) p. 49-51.

309. Lys. 25.23, 27; Andoc. 1.76.

310. Diod. 16.7.2 (357/6), 16.60.3-4 (346). *IG* 11² 1629. c 655.

311. Thériault (1996).

312. The Archaic period: Lintott (1982); the Classical period: Gehrke (1985); Sicily and Southern Italy: Berger (1992). The Archaic and Classical periods: Hansen and Nielsen (2004) 124-29, 1361-62.

313. Pl. *Resp.* 422c, 551d; *Leg.* 945e; Arist. *Pol.* 1310a4ff; Eur. Fr. 173, Nauck; Cf. Thuc. 3.82-83.

poor, who preferred democracy.³¹⁴ The rival parties could also be different ethnic groups living side by side in the same *polis*, a situation typical of *poleis* founded by colonists from several different city-states.³¹⁵ Or the community could be polarised around two rival groups of the rich contending for power.³¹⁶ In all those cases the purpose of both groups was to control and, if necessary, reform the institutions of the city.³¹⁷ The result was an almost constant political tension, which often led to civil war, in which every group was ready to work hand in hand with a likeminded group in a neighbouring city or in one of the powerful cities that led the shifting alliances of *poleis*.³¹⁸ The members of both groups were therefore prepared to sacrifice the independence and autonomy of their city if, in return, they could keep or win power in the *polis*.³¹⁹ Such a group was called a *stasis*,³²⁰ and the word was also used for the civil war itself that often resulted from the splitting of rival groups.³²¹ *Stasis* always means a group that wants to preserve or obtain power by deceit or violence,³²² i.e. a revolutionary group, never³²³ a political group operating within the constitutional framework of the city-state, i.e. what we call a political party.³²⁴

If we assemble the sources for the Archaic and Classical periods we find evidence of 279 outbreaks of civil war in 122 different *poleis*,³²⁵

314. Pl. *Resp.* 555b, 557a; Arist. *Pol.* 1266a37-38, 1289b27-40, 1290b18-20, 1302a10-13; 1303a1-2.

315. Arist. *Pol.* 1303a25-b7 with eight examples.

316. Arist. *Pol.* 1305b2-06b2 with 22 examples.

317. Thuc. 3.82.8; Arist. *Pol.* 1301a20-25 and the rest of Book 5. Gehrke (2001).

318. Thuc. 1.19, 3.82, 4.76, 5.82, 6.39, 8.21, Hansen and Nielsen (2004) 127 n. 35.

319. Thuc. 3.82.1; Arist. *Pol.* 1307b19-25; Ps.Xen. *Ath. Pol.* 1.14, 3.10; Isoc. 16.17.

320. Thuc. 7.50.1; Thuc. 4.71.1; Arist. *Ath. Pol.* 13.4.

321. Arist. *Pol.* 1302a9-13; Solon fr. 9.19; Hdt. 8.3.1.

322. Hdt. 1.59-60 (Athens); Thuc. 4.71.1 (Megara); Thuc. 7.50.1 (Akragas); Arist. *Oec.* 1348b1 (Phokaia).

323. Or, rather, hardly ever. For an exceptional use of *stasis* to denote a constitutional faction, see Thuc. 2.22.3.

324. Hansen (2014) 379-81.

325. Hansen and Nielsen (2004) 125 and 1361-62. Gehrke (1985) 255-61. Some differences between the two lists are explained in Hansen and Nielsen (2004) 124 n.5 and 125 n.14.

and to this must be added the more general observation that many or all of the *poleis* in a region were plagued by *stasis*.³²⁶ Given that our sources are so fragmentary, we must presume that most of the *poleis* in the Greek world were afflicted by civil war at least once in their history, and many lived constantly with civil war as their sword of Damokles. In Syracuse there were 27 outbreaks of civil war in the period c. 670-279.³²⁷ In the sources *stasis* is described as a disease that has struck the *polis*.³²⁸ *Stasis* was the curse of the *polis* and in two of the gloomiest chapters of his history Thucydides describes the horrors of civil war, including the disrespect for oaths that only led to a short-lived reconciliation for want of better remedies.³²⁹

From the frequent civil wars it can be inferred that for many citizens the loyalty to their group was stronger than that to their *polis*. This resulted in citizens betraying sometimes their country, sometimes its constitution; but of course there was talk of treason only if you belonged to the losing faction. That is why so many Greeks were obliged to live in exile in other *poleis*, because their group had lost a civil war or was sent into exile to prevent a civil war.³³⁰ Correspondingly we hear about reconciliation of conflicting groups and, in pursuance of reconciliation, amnesty for exiles.³³¹

If one group called in a foreign *polis* to gain or keep power in their own *polis*, the result was the loss of independence (*autonomia*) of that *polis*; but in compensation, the group held on to what was much more important: the ability to use the state's political institutions to enforce their will in all the daily affairs of the citizens.³³² For a *polis*, unity among its citizens was much more important than

326. Thuc. 5.33.1 (Parrhasian *poleis* in Arkadia); Xen. *Hell.* 7.1.41-43 (Achaian *poleis* in 366).

327. Berger (1992) 34-53.

328. Hdt. 5.28; Pl. *Soph.* 228a-b, *Menexenos* 243c; *Resp.* 470c, 556e; *Tim.* 82a, 85e; *Leg.* 744d. Dem. 3.12; Isoc. 12.99, 165, Eur. *HF* 34, 273; *Soph. OT* 634. Cf. Brock (2013) 73.

329. Thuc. 3.82.7, 3.83.2, see 0000 *infra*.

330. Seibert (1979) 353-407; McKechnie (1989) 16-33.

331. *IvO* 22 (Selinous); Rhodes-Osborne, *GHI* 84 (Chios); Rhodes-Osborne, *GHI* 85 (Mytilene); *SEG* 30 1119 (Nakone); Arist. *Ath. Pol.* 39 (Athens); Seibert (1979) 401-05 with n. 388. Dreher (2013).

332. Gehrke (1985) 359; Hansen and Nielsen (2004) 126, cf. Thuc. 4.86.4-5.

independence;³³³ and this is clearly reflected in the religion of the city-states. Independence was in ancient Greek *autonomia*, unity was *homonoia*. *Autonomia* was never deified and made the object of religious festivals, but *homonoia* was indeed personified and raised to the status of a goddess whom people worshipped, especially in the late Classical and Hellenistic periods.³³⁴

The social tensions and the frequent civil wars are the reason why the oath taken by young citizens when they came of age had to be supplemented with other forms of oath. To prevent an imminent *stasis* all citizens had to swear loyalty to the constitution, and to restore concord between the factions the citizens must swear not to bear a grudge against one another. From the cases we know about it can be inferred that reconciliation after a *stasis* was normally strengthened by an oath. The important question is to what extent such oaths were kept. The oath was in fact broken in the following five cases out of the twelve recorded above.³³⁵

The civil war in Megara 427-24 was terminated by an agreement between the oligarchs and the democrats not to bear a grudge against one another, but shortly afterwards the oligarchs had close to one hundred members of the democratic faction sentenced to death and executed.³³⁶

The Athenians' oath in 410 to kill anyone who attempted to abolish or had abolished the democracy was broken five years later by the formation of oligarchic cells during the final phase of the Peloponnesian War.³³⁷

The oath taken in 403 after the civil war in 404-03 was broken when the oligarchs in Eleusis planned to recruit mercenaries. The Athenians marched out in full force and laid siege to Eleusis. During a meeting between the two sides outside Eleusis the Athenians killed the Eleusinian *stratêgoi*, and persuaded the Eleusinians to

333. Ste Croix (1954-55), countering Ehrenberg's Claim (1947) 48 that liberty (*eleutheria*) and independence (*autonomia*) were the fundamental values of the *polis*.

334. On *homonoia*, see Thériault (1996).

335. The Athenian oath of 410, quoted 37 *supra* and the eleven oaths discussed in 4 (42-49).

336. Thuc. 4.74.3.

337. Lys. 12.43; Arist. *Ath. Pol.* 34.3

move back to Athens. A new reconciliation oath was taken and this time it was kept.³³⁸

In 363 the *poleis* Kartheia and Ioulis on the island of Keos defected from the Athenian Naval Confederacy but were defeated by the Athenians who were supported by a group of exiled citizens from the two *poleis*. A settlement was strengthened by an oath of loyalty sworn by the Keians but it was broken almost immediately by Ioulis. The rebellion was suppressed and in connection with a new settlement the former oath of loyalty was repeated.³³⁹

In 220 a civil war in Kynaitha was brought to an end, and as part of the settlement between the two factions a group of exiled citizens were permitted to return. But shortly afterwards the settlement was broken by the returned exiles who betrayed the city to the Aitolians.³⁴⁰

In addition to the explicit examples of disrespect for an oath taken in connection with the termination of a *stasis*, we possess extensive indirect evidence, *viz.* the frequency of repeated civil wars in many *poleis* combined with the acknowledgement that an oath of reconciliation was regularly sworn whenever a civil war came to the end.

As stated above, we know of 279 instances of *stasis* in 122 named *poleis*.³⁴¹ For 69 of these *poleis* the sources we possess testify to just one *stasis* in the course of the Archaic and Classical periods, whereas two or more outbreaks of *stasis* are attested for 53 *poleis*.³⁴² For 30 of these *poleis* the interval between two or more *staseis* is less than a decade, and 14 *poleis* suffered *stasis* twice in the same year.³⁴³ If two outbreaks of *stasis* in a *polis* occur with an interval of thirty years or more, it is unlikely that a previous reconciliation oath had been broken, since most of the citizens who had taken the oath would have passed

338. Xen. *Hell.* 2.4.43.

339. Rhodes-Osborne, *GHI* 39.

340. Polyb. 4.17.12-18.7.

341. See 63 *supra*.

342. Hansen and Nielsen (2004) 1361-62.

343. Achaia (all *poleis*) (367/6), Argos (417), Ephesos (334), Keos (363), Kolophon (427), Milet (402/1), Naxos 500), Phigaleia (370), Rhodos (391), Samos (440), Sikyon (366), Siphnos (393), Thasos (411), Thebes (457, 338), Gehrke (1985) 255-57.

away.³⁴⁴ But when the interval is ten years or less it is reasonable to assume that a new *stasis* involved a breach of the former reconciliation and the oath taken on that occasion. In all these cases at least one of the opposed factions, and perhaps both, had broken their oath and violated their political obligation.

In such situations, however, there was a remedy whereby a citizen could avoid perjury and the sanctions attached to breaking one's oath: The new oath could include a provision whereby the swearing person by an oath of abjuration was absolved from the duty to keep former oaths. Among the oaths we have preserved there are three examples of such a provision: the Athenians' oath in 410 to protect the democracy, the Dikaiopolitans' reconciliation oath in ca. 360 and the democratically minded Chersonesitans' oath of loyalty towards the democracy.³⁴⁵

Presumably both factions in a civil war claimed – and perhaps also believed – that it was the opposing faction that had broken the oath and that they themselves were blameless and did not have to fear all the disasters inflicted by the gods on those who broke the oath.

The preserved examples show that the oath was invariably sworn in the first person singular, *omnyô*.³⁴⁶ Thus, the oath obligated the individual citizen and only implicitly the citizenry as a collective person. An oath taken by all citizens involved several hundred persons in a small *polis*, and many thousand in a large one. In 4th century Athens some thirty thousand citizens and in the 5th century many more had to swear, and for practical reasons the oath had to be taken in the 139 demes.³⁴⁷

When the oath was taken by two opposed factions, as e.g. the reconciliation oath after a *stasis*, a single episode may have been enough to invalidate the oath. If, for example, a citizen from one faction after the oath had been sworn killed a citizen from the op-

344. Note that the oath taken in connection with the colonisation of Naupaktos could be repeated after thirty years, Meiggs-Lewis, *GHI* 20.12-14.

345. Andoc. 1.98; *SEG* 57 576.82-84; *Syll.*³ 360.40-44.

346. For a rare example of the first person plural (*omnyomen*), see. *IG* XII.7 515.90, an oath sworn by a body of magistrates.

347. Andoc. 1.97.

posing faction, all members of that faction might claim that they were no longer bound by the oath, and hereafter all members of the killer's faction might do the same. The only one who had to fear the gods' vengeance was the killer, and he might perhaps argue that it was the killed person who had broken the oath and that therefore the killing had been justified.

Oaths on a treaty were almost always taken by representatives of the contracting *poleis*, e.g., members of the council, *stratēgoi*, leading officials or elected envoys.³⁴⁸ The oath was only exceptionally taken by all citizens. The representatives took the oath on behalf of the *polis*, but even in this case the oath was sworn in the first person singular so that each representative was liable to be punished by the gods if the oath was broken, whereas any other citizen was only indirectly responsible and would not fall victim to the gods' penalty for perjury.³⁴⁹

Conclusion

In a Greek *polis* the citizens had both a duty and an obligation to obey the laws and comply with the commands issued by the authorities. The civic oath, which presumably was sworn in most *poleis*, was an explicit commitment to obedience, and most Greeks had no incitement to reflect upon whether a tacit or implicit consent was needed to obligate the citizens. The reason for the long dialogue between Sokrates and the laws in *Kriton* is that Sokrates had not had to take an oath of loyalty towards the constitution and the laws; and the numerous foreigners in the *poleis*, of whom many were exiles, show that emigration as an alternative to accepting the laws and constitution of one's native *polis* was a realistic possibility in contrast to what it has become in later European states. Here again Sokrates' determined rejection of emigration as an acceptable alternative is the personal choice of a citizen who in many respects went his own way. So, apart from Sokrates' dialogue with the laws in *Kriton*, po-

348. See 34 *supra*.

349. Examples of oaths sworn by representatives which include a curse if the oath is broken: *Staatsverträge* nos. 145, 263, 289, 463, 468, 472, 476, 499, 549.

litical obligation was not an issue in ancient Greek political thought. Civic oaths taken by all citizens solved the problem. On the other hand, the Greeks were constantly confronted with the problem of what an oath was worth.

In an analysis of oaths sworn in connection with a treaty, Bayliss infers that by and large treaties were kept: “despite all the accusations of oath-breaking in the pages of Thucydides, Xenophon, Isokrates and Demosthenes, there are very few examples of unambiguously broken interstate agreements. On the whole Greeks adhered to the obligations of alliances, abided by peace treaties, and observed battlefield truces. When they did not it was worthy of comment – Even Thucydides seems to see that.”³⁵⁰ And Bayliss concludes his chapter with quoting Lykourgos: “The power which keeps our democracy together is the oath (*horkos*).”³⁵¹

The investigation of agreements after a *stasis* leaves us with a much gloomier picture which matches the lesson to be learned from Thucydides’ clinical description of the civil war on Kerkyra in 427 B.C.: “oaths of reconciliation, taken on the spur of the moment because of perplexity on both sides, had no other force.” “No argument was so convincing and no oath so frightening that it could put an end to the civil war.”³⁵²

One might have expected that oaths taken by representatives would prove less binding than oaths taken by all citizens and, accordingly, that oaths associated with treaties would be less effective than reconciliation oaths after a *stasis*. The reason for the reverse outcome is probably that treaties were interstate agreements whereas reconciliation oaths dealt with problems inside the *polis*. The main purpose of the civic oaths was to protect or restore *homonoia*, whereas oaths confirming treaties were related to *autonomia*. The social tensions in many, perhaps even in most *poleis*, made *homonoia* a much more important value than *autonomia*, but also a much more endangered one.³⁵³

350. Bayliss. (2013a) 323.

351. Bayliss (2013a) 325.

352. Thuc. 3.82.7 and 83.2.

353. Hansen (2006a) 126.

An alternative view of political obligation

In a groundbreaking article entitled “A Misconceived Discourse on Political Obligation”³⁵⁴ Bhikou Parekh has pointed out that an important aspect of political obligation has been passed over in silence or only mentioned in passing by almost all political philosophers and scientists. From Thomas Hobbes and to the present day the problem of political obligation has been about why a citizen should obey the civil authority or the law. Of the political philosophers who hold this view Parekh mentions Pufendorf, Locke, Bentham, the two Mills, Kant and Hegel (236). Among the contemporary political scientists he refers to Rawls, Simmons, Klosko, Horton (237) and others on whose works I have based my analysis in this essay.

Parekh distinguishes between civil and legal obligation *versus* political obligation. The obligation to uphold the legitimate government is civil obligation. It involves an obligation to obey the laws enacted by the civil authority, called legal obligation (240). Political obligation, on the other hand, is “an obligation to take an active interest and to participate in the conduct of public affairs, to keep a critical eye on the activities of the government, to speak up against injustices of their society” etc. (243). It comprises “voting, public protests, public pressure to persuade the government to pursue or to desist from following specific policies ... Rebellion, revolution and civil disobedience are also political activities.” (244). It follows that political obligation in this sense is found in states “constituted along the lines of western liberal democracies, but irrelevant in totalitarian, despotic or oligarchical societies.” (239).

Of modern political scientists, however, very few have followed Parekh, and the dominant view of political obligation is still that it is essentially a moral obligation to obey the law, and it is hotly debated whether citizens have such an obligation and why. Gratitude, membership, fair play, tacit consent and avoidance of a break down of public institutions are still the principal grounds adduced by those who believe that citizens have a political obligation, but, as set out above, all such arguments are rejected by philosophical anarchists.

354. Parekh (1993).

Looking for ancient Greek parallels to Parekh's view of political obligation as political participation we learn nothing from studying Plato's *Kriton* and its fictitious dialogue between Sokrates and the laws of Athens, where Sokrates appears as the loyal citizen who obeyed the laws but preferred to stay out of politics and minimise his involvement in the Athenian political institutions. In ancient Greek literature the key passage that matches Parekh's understanding of what political obligation is in a democracy, is Perikles' dictum in the Funeral Speech that the passive citizen is not merely a "quietist" but a "good for nothing".³⁵⁵ A seminal study of this understanding of political obligation is Peter Liddel's monograph: *Civic Obligation and Individual Liberty in Ancient Athens* in which he concludes: "What has emerged most clearly from this study is the centrality of performing political obligations to the Athenian conception of good citizenship. This went beyond law-abidingness, the textbook definition of political obligation, and consisted of the obligation to uphold and promote the institutions of the *polis*."³⁵⁶ Yet simultaneously we meet in the sources just the opposite idea,³⁵⁷ that a respectable citizen ought to keep clear of the Agora – not just from the shopping-centre but from the Council house and the courts³⁵⁸ – and not to be too keen on turning up to the Assembly.³⁵⁹ That was the old aristocratic attitude persisting in the people's mind into the age of classical democracy:³⁶⁰ there was nothing to be ashamed of in non-participation,³⁶¹ and in the private sphere the Athenians lived up to their ideal that every citizen might live as he chose.³⁶²

To pursue this line of thought in ancient and modern political thought leads away from the issues debated in this essay and deserves a separate treatment.

355. Thuc. 2.40.2.

356. Liddel (2007) 310.

357. Hansen (1999) 309, cf. 249 and 267-68 with references to the sources.

358. Lys. 19.55; Isae 1.1; Isoc. 15.38; Pl. *Apol.* 17.d.

359. Eur. *Or.* 917ff.

360. Carter (1986).

361. Lys. 19.18.

362. E.g. Dem. 10.70, cf Hansen (2013) 75-76.

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