

## NOTES AND DISCUSSIONS

### LYCURGUS I. 149

From the time secret balloting was introduced at Athens, roughly mid-fifth century, until a time after 405 B.C. (just how long is not known), an Athenian dikast voted by dropping a single pebble into one of two urns.<sup>1</sup> One urn, the nearer, was for votes to convict, while the other, farther away (from the dikasts, presumably), was for votes to acquit.<sup>2</sup> If we do not know exactly when Athenians changed this procedure for another, it is clear at least that by 345, the date of Aeschines' oration against Timarchus, they were using two distinct, specially designed bronze ballots instead of single pebbles,<sup>3</sup> and the two urns had become a different two, namely, those Aristotle describes some twenty years later in *Athenaion Politeia* 68. 2–69. 2. One urn, made of bronze, received ballots that counted. The other, of wood, received discards. This change in procedure is well attested both in literature and by archaeological finds,<sup>4</sup> and for that reason an anachronism in Lycurgus' speech against Leocrates has puzzled readers for many years.

In 331, at a time when Athenians were using the second mode of voting described above, Lycurgus addresses a dikasterion as follows: "Each one of you should believe that if you acquit Leocrates you condemn your fatherland to death and slavery, that of the two urns, one stands for betrayal, the other for survival, and that you are casting your ballots in one urn for desolation of your fatherland, in the other for happiness and security in the city."<sup>5</sup> Of the two urns, it is patent that neither receives discards.

H. Sauppe, in his effort to explain the anachronism as only apparent, established what has come to be a canonical explanation, and A. R. W. Harrison phrases it as follows: "The κύριος καδίσκος will be the urn of safety (the safety of the state) if it proves to contain more condemning than acquitting votes, while

1. A. L. Boegehold, "Toward a Study of Athenian Voting Procedure," *Hesperia* 32 (1963):366–74. Cf. E. S. Staveley, *Greek and Roman Voting and Elections* (London and Southampton, 1972), pp. 95–100.

2. Aristophanes *Wasps* 986–91 shows Philokleon being fooled by Bdelykleon. He wants to drop his pebble in the nearer urn (πρότερος) and convict the defendant but instead votes to acquit (ἀπολέλυκεν) when he drops his pebble into the farther urn (ὕστερον). Cf. Phrynichus F 32 (Edmonds): ἰδοῦ, δέχου τὴν ψήφον· ὁ καδίσκος δέ σοι / ὁ μὲν ἀπολύων οὗτος, ὁ δ' ἀπολλύς ὁδὶ.

3. Aeschines I. 79 τῶν ψήφων ἡ τετριμμένη ὅτε δοκεῖ πεπορνεύσθαι Τίμαρχος, ἡ δὲ πλήρης ὅτε μῆ.

4. See H. A. Thompson and W. E. Wycherley, *The Agora of Athens*, Agora 15 (Princeton, 1978), p. 56; A. L. Boegehold, "Ten Distinctive Ballots: The Lawcourt in Zea," *CSCA* 9 (1976):7–19.

5. I. 149: ὅμων δ' ἕκαστον χρή νομίζειν τὸν Λεωκράτους ἀποψηφίζόμενον θάνατον τῆς πατρίδος καὶ ἀνδραποδισμόν καταψηφίζεσθαι καὶ δυσὶν καδίσκοιν κειμένοιν τὸν μὲν προδοσίας, τὸν δὲ σωτηρίας εἶναι καὶ τὰς ψήφους φέρεσθαι τὰς μὲν ὑπὲρ ἀναστάσεως τῆς πατρίδος, τὰς δ' ὑπὲρ ἀσφαλείας καὶ τῆς ἐν τῇ πόλει εὐδαιμονίας.

the ἄκυρος καδίσκος will be the urn of betrayal if *it* proves to have a majority of condemning votes."<sup>6</sup> G. Colin offers "un explication un peu plus recherch  ."<sup>7</sup> Lycurgus, he supposes, is pretending that all the dikasts will vote to convict, and as a result, that all the ballots with solid axles (i.e., votes to convict), when found in the valid urn, will certify everybody's condemnation of a traitor. All the ballots with hollow axles (i.e., votes to acquit), when invalidated by being deposited in the discard urn, transform that vessel into one that saves the country. Both attempts, however, require us to imagine a single, highly complex, and specific response on the part of some five hundred dikasts. If an explanation can be found whereby the complexities are assigned to just one man, preferably Lycurgus, economy at least and perhaps greater plausibility will be gained.

The phrase δυοῖν καδίσκουν κειμένον can be read as poetry, for it is two-thirds of an iambic trimeter, resembling somewhat, for example, Euripides *Erechtheus* fragment 362 N.<sup>2</sup>, line 9 δυοῖν παρόντοιν πραγμάτων.<sup>8</sup> Since Lycurgus often quotes poetry in this speech,<sup>9</sup> these iambs can originally have been composed as poetry and are not merely accidental metrical feet in a prose sentence. The poetic work could have been a play.

Elsewhere in this speech, Lycurgus announces quotations of poetry by citing author or work. If, in the present instance, he does not, he falls short—as human beings do—of perfect consistency, but only within the narrow range of a single oration. If we had fifteen of his speeches, we might find more unannounced quotations. In the absence of an extensive sampling of Lycurgan prose, let us look to Plato and Plutarch, two prose authors whose work is preserved in abundance, and who quote widely from all sorts of writers. Some examples of their practice can be instructive.

To take Plato first, Chaerophon at the beginning of the *Gorgias* (447B1) says (without any signal that he is quoting) ἐγὼ γὰρ καὶ ἰάσομαι, and E. R. Dodds explains: "... the phrasing echoes the oracle given to Telephos. . . . In Plato's world, as in the eighteenth century, neatness in handling such literary allusions was no small part of the art of conversation" (*Plato: "Gorgias"* [Oxford, 1959], pp. 189–90). Plutarch shows in repeated quotations of one line from a poem of Semonides that it does not concern him to introduce quotations in a consistent way. He announces Semonides fragment 5 (West) by name at *De profectu in virtute* 14P, 84C–D, *An seni respublica gerenda sit* 12P, 790F, and fragment 210 Sandbach (Stob. 4. 50. 19; *Paroem. Gr.* 2. 541. 20), but accommodates the same verse to the syntax of a prose sentence without any announcement or attribution at *De tuenda sanitate praecepta* 24P, 136A, *De virtute morali* 7P, 446D–E, and *De esu carnum* 2. 2P, 997D.

6. *The Law of Athens: Procedure* (Oxford, 1971), p. 165, n. 2, following J. H. Lipsius, *Das attische Recht und Rechtsverfahren* (Leipzig, 1915), pp. 926–27, n. 98, and H. Sauppe, "De Atheniensium Ratione Suffragia in Iudiciis Ferendi," *Ausgewählte Schriften* (Berlin, 1896).

7. "Les sept dernières chapitres de l'ΑΘΗΝΑΙΩΝ ΠΟΛΙΤΕΙΑ," *REG* 30 (1917):75, n. 1. H. Hommel, *Heliaia*, Philologus Suppl. 19 (Leipzig, 1927), p. 99, n. 246, is willing to accept the explanations of both Lipsius and Colin.

8. Cf. also Soph. *Ant.* 13 δυοῖν ἀδελφοῖν ἐστερήθημεν δύο.

9. At 1. 92, 100 (fifty-five lines of Euripides' *Erechtheus*), 103, 107, 109, 132. Cf. Hermogenes B, p. 416 (H. Rabe, p. 402. 24) χρῆται δὲ πολλαῖς πολλάκις καὶ ταῖς παρεκβάσειν, ἐπὶ μύθους καὶ ἱστορίας καὶ ποιήματα φερόμενος. . . .

But why, it may be asked, does Lycurgus quote poetry and then introduce his anachronism? Once the poetic phrase has been pronounced, why not then invoke proper, contemporary voting procedures? There are no metrical constraints on τὸν μὲν προδοσίας, τὸν δὲ σωτηρίας κτλ. No single answer—indeed perhaps no series of answers—will suffice to answer this question finally, but certain considerations and a comparandum may lead to a plausible conjecture. First the comparandum: Callicles, at *Gorgias* 484B3–C3, quotes from Pindar (frag. 169 Maehler), gets part wrong, confesses his inadequacy, and finishes with a prose summarization. Why does Plato represent Callicles as misquoting? One answer may have to do with Plato's ways of portraying character, and more specifically with a historical Callicles, but the question has prompted much discussion (see Dodds, pp. 370–72), and more than one answer may be right.

As for considerations: consider first that Lycurgus continues in prose a vision or image or metaphor that his poetic phrase has set in motion—in the way perhaps of Callicles. If in the original context two urns had been set up, each with an active function, it will follow that Lycurgus, once embarked, continues the sense of the passage even if he abandons the meter. Second, consider that in Attic oratory a look to the past is never out of place, and that Lycurgus, a mature aristocrat, gives a full one-third of his oration against Leocrates (75–130) to celebration of past kings, heroes, virtues, and accomplishments.

In view of the foregoing, we can surmise that Lycurgus liked the notion of that particular piece of poetry right where it is but did not want to quote *in extenso*. He therefore rounded off his quotation in prose, including the words προδοσίας and σωτηρίας, both of which are relevant to the matter of the current trial. That in doing so he evoked a picture from the past, an obsolete method of voting commemorated by this time chiefly in dramatic works of the fifth century, was no bad thing. A herald in due course was going to explain current voting procedure to the dikasts, who were already thoroughly familiar with it.

If Lycurgus is quoting dramatic poetry, can a likely drama be identified as the source? It is worth noting that one legendary Greek hero under the walls of Troy had a famous misadventure with a charge of *prodosia*, namely, Palamedes. He was the eponym of plays written by Aeschylus, Sophocles, Euripides, and Astydamos II, and in any one of these plays there could have been an *agon* in which Palamedes, or a *synegoros*, answered a charge.<sup>10</sup> If a poet wanted to include an allusion to voting, or create a scene in which voting took place, he was free to do so without having to worry about whether he was creating an anachronism or not. He would, however, not invent a new method of voting, nor would he try to reconstruct how Odysseus *et alii* might have used an older form of jury trial. He employed his own idiom and the procedure current in his own time.

10. Aesch. frags. 302–5 (Mette); Soph. frags. 478–81 N.<sup>2</sup>; Eur. frags. 578–90 N.<sup>2</sup>; Astydamos II, frag. 5a N.<sup>2</sup>. H. Mette, *Der verlorene Aischylos* (Berlin, 1963), pp. 106–8, does not allude to the possibility of a trial scene in Aeschylus' *Palamedes*. A. C. Pearson, comm. ad frag. 479, thinks a *synegoros* might have spoken in Palamedes' defense in Sophocles' play. R. Scodel, *The Trojan Trilogy of Euripides*, Hypomnemata 60 (Göttingen, 1980), pp. 90–93, envisions such an *agon* in her reconstruction of Euripides' *Palamedes*. We have only the name of Astydamos' version.

If Lycurgus is quoting from a *Palamedes* or some other fifth-century drama that contained a trial, the wording of his prose summary and the functions he assigns the two urns are a result of an earlier poet's use of procedures that he saw in the Athens of his own time. And so Lycurgus' urn of preservation (σωτηρίας) is the urn that Aristophanes and Phrynichus call πρότερος and ἀπολλύς, because votes to convict, says Lycurgus, will save the state. (Neither Lycurgus nor the legendary prosecutor he quotes wants the defendant to survive.) Correspondingly, the ὕστερος or ἀπολύων urn of Aristophanes and Phrynichus now becomes that of treason (προδοσία).

We may ask how Lycurgus thought he might gain by identifying his effort even remotely with the sinister work of Palamedes' persecutors. Here perhaps we should not invest the allusion with as much meaning as a shorthand reference to another work of literature might carry in a modern English poem—if only because we do not know enough. It may be that Lycurgus on uttering the words flung out his arm to point to the voting amphoras in the dikasterion in which he stood. The dikasts were alerted by the gesture and by paradox. They recognized that Lycurgus had quoted a snatch of poetry, a few may have thought of Palamedes, most knew he was referring to an older way of voting, and all understood what he was telling them to do, viz. convict Leocrates of treason.

To sum up, Lycurgus tends to quote poetry. Δυοῖν καδίσκοιν κειμένοιν, two-thirds of an iambic trimeter, can have been composed as poetry. If so, the phrase may have come from a play. "Two *kadiskoi*" evokes a trial scene. The charge in the present trial is treason. Palamedes, falsely convicted on a charge of treason and killed, was a popular subject of tragedy. A trial of some kind can be imagined as a feature of any play titled *Palamedes*. Euripides wrote a *Palamedes*. The clause δυοῖν καδίσκοιν κειμένοιν is like one in Euripides' *Erechtheus*.

These observations, put in a series and considered *in toto*, do no more than sketch a possibility. There were trial scenes and expressions drawn from juridical procedures in many plays.<sup>11</sup> Lycurgus may have been making only a loose association. At the least, however, it is credible that Lycurgus is quoting poetry. His "anachronism" therefore can be explained in terms of recognized aspects of his technique. And the passage in question, when translated, will benefit from the use of quotation marks: "... that 'of the two urns that have been set up' one stands for betrayal. . . ." Readers in that way will recognize that something more than a statement of plain fact stands in the text.<sup>12</sup>

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11. See J. Duchemin, *L'ATΩN dans la tragédie grecque* (Paris, 1968). Aesch. *Agam.* 810–18 evokes two vessels, each a repository for ballots that count. Note that ἀλοῦσα in line 818 completes the judiciary metaphors of the previous eight lines. An expanded translation of the line might go as follows: "The city is still now conspicuous by smoke as having been captured <and at the same time having been found guilty and condemned>."

12. I wish to thank G. L. Huxley, an anonymous referee of *CP*, and the Editor for helpful criticism of this note.