

through Hippias, as Jaap Mansfeld suggests;³² perhaps through Cratylus, as Marcovich hazards. The playful way in which Plato handles Heraclitean flux, with comic and hyperbolic imagery, suggests that his audience would have known and recognized Heraclitean flux as a familiar theory from the context of contemporary oral dialectic.³³ This altered version of Heraclitus' philosophy seems to have prevented later philosophers from grasping Heraclitus' own intended point about flux: namely, its harmonious unity with stability.³⁴

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³² Jaap Mansfeld, building on an idea first put forth by Bruno Snell, suggests that the sophist Hippias compiled a handbook of philosophical and poetical commonplaces arranged by theme, such as 'water', and that this was Plato's source for the linking of Heraclitus and Homer with the flux doctrine. Cf. B. Snell, 'Die Nachrichten über die Lehren des Thales und die Anfänge der Griechischen Philosophie- und Literaturgeschichte', *Philologus* 96 (1944), 170–82, repr. in his *Gesammelte Schriften* (Hildesheim, 1966), 119–28 and J. Mansfeld, 'Cratylus 402a–c: Plato or Hippias?', in L. Rosetti (ed.), *Atti del Symposium Heracliteum* 1 (1981), 63–4.

³³ The flux thesis, whether from Heraclitus or elsewhere, was familiar enough to be fodder for popular comedy well before Plato's day. Cf. Epicharmus, fr. 170 Kaibel and Plutarch, *De comm. not.* 44 (1083 A).

³⁴ A lone exception is the use of the river by the Stoic Cleanthes in his physiological psychology, in which flux of the soul constitutes it as intelligent. Cf. M. Colvin, 'Heraclitean flux in Stoic psychology', *OSAPh* 28 (2005), 257–72 and A. A. Long, 'Soul and body in Stoicism', *Phronesis* 27 (1982), 34–57, repr. in id., *Stoic Studies* (Cambridge, 1996), 224–59.

THE *ASTYNOMOI*, PRIVATE WILLS AND STREET ACTIVITY

Isaeus 1 is an oration on the estate of a certain Cleonymus, who seems to have taken under his wing his nephews (sister's sons) after their guardian Deinias had died. Cleonymus apparently had feuded with Deinias and during that time wrote up a will transferring his property to others whose exact kinship, if any, with Cleonymus is unknown (4ff.). Cleonymus specifically ignored his nephews despite his own father's wishes that Cleonymus' property devolve on them (5). Cleonymus had his will deposited at the office of the *astynomoi*, explicitly named in 15 but referred collectively as ἐπὶ τῇ ἀρχῇ in other sections of the oration (3, 14, 18, 21, 22).¹ According to the speaker who was one of the nephews, Cleonymus wished to annul the will and sent for someone from the office of the *astynomoi* to carry out his wishes (3, 14, 15, 21, 22). The opponents, on the other hand, claimed that Cleonymus summoned the magistrate to confirm the terms of the will (18). Cleonymus' bequest was an adoption by testament. In Attic law a man who had no male heirs could adopt whomever he wished—he did not have to adopt a close kinsman, for instance. Although the cases of adoption do reveal that a testator frequently adopted kinsmen, especially through

¹ W. Wyse, *The Speeches of Isaeus* (repr. edn. New York, 1979.), 185.

the female line, Cleonymus was well within his rights to choose adoptees outside his kin group.²

My purpose here is not to determine which side was telling the truth, but to ask who were the *astynomoi*, the magistrates in question, and why would their office safeguard wills. This note will argue that the *astynomoi*'s jurisdiction was over property in the city. According to the *Ath. Pol.* there were ten *astynomoi*: five for the city and five for the Peiraeus (50). Their duties included seeing that dung collectors did not drop their dung within ten stades of the city wall. They also prevented anyone from building over the street, probably from extending balconies over the street. They also would not allow gutters discharging water into the street to be built overhead, and they prevented windows from opening into the street. Under their supervision were public slaves who removed those who had died on the street (*Ath. Pol.* 50):³

καὶ ἀστυνόμοι δέκα· τούτων δὲ ἑ μὲν ἀρχοῦσιν ἐν Πειραιεῖ, πέντε δ' ἐν ἄστει . . . καὶ ὅπως τῶν κοπρολόγων μηδεὶς ἐντὸς ἑ σταδίων τοῦ τείχους καταβαλεῖ κόπρον ἐπιμελοῦνται καὶ τὰς ὁδοὺς κωλύουσι κατοικοδομεῖν καὶ δρυφάκτους ὑπὲρ τῶν ὁδῶν ὑπερτείνειν καὶ ὀχετοὺς μετεώρους εἰς τὴν ὁδὸν ἔκρουν ἔχοντας ποιεῖν καὶ τὰς θυρίδας εἰς τὴν ὁδὸν ἀνοίγειν· καὶ τοὺς ἐν ταῖς ὁδοῖς ἀπογιννομένους ἀναιροῦσιν, ἔχοντες δημοσίους ὑπηρέτας.

In his utopian society in the *Laws*, Plato states that the *astynomoi* will divide the city into three sections; they will oversee the roads of the city and the roads leading to the city from the country as well as construction on the street. Also they will oversee the supplies of water to insure that they will be pure and plentiful. In other words, as Plato states, they are to beautify the city (*Leg.* 6.763C3–D4):

ἔπoinτο δ' ἂν ἀγρονόμοις γε ἀστυνόμοι . . . τριχῇ δώδεκα μέρη τῆς πόλεως διαλαβόντες, μιμούμενοι ἐκείνους τῶν τε ὁδῶν ἐπιμελούμενοι τῶν κατὰ τὸ ἄστυ καὶ τῶν ἐκ τῆς χώρας λεωφόρων εἰς τὴν πόλιν αἰὲ τεταμένων καὶ τῶν οἰκοδομιῶν, ἵνα κατὰ νόμους γίνωνται πᾶσαι, καὶ δὴ καὶ τῶν ὑδάτων, ὅπως ἂν αὐτοῖς πέμπωσι καὶ παραδιδῶσιν οἱ φρουροῦντες τεθεραπευμένα, ὅπως εἰς τὰς κρήνας ἱκανὰ καὶ καθαρὰ πορευόμενα, κοσμῇ τε ἅμα καὶ ὠφελῇ τὴν πόλιν.

Aristotle in his *Politics* confirms that the *astynomoi* repair falling buildings and maintain roads (6.1321b18–27). Beautifying the streets and public buildings was still a charge for these magistrates in the third century, in 287/6 the *astynomoi* are found cleaning the temple of Aphrodite Pandemos, anointing the altars, washing the seats and applying pitch to the roof of the temple (*IG* 2² 659). Why, then, are these magistrates safeguarding Cleonymus' will? What have these magistrates to do with wills, especially considering that Cleonymus' will is the only instance of a will being protected by the *astynomoi*?

To answer these questions we must discuss who safeguarded wills in Athens. Simply put, there was no fast rule. In several cases a will was left with a testator's kinsman or in-law. In Isaeus 6 Philoctemon made a will adopting the son of one of his sisters. He deposited his will with the husband of another sister (6–7). After Philoctemon's death, his father Euctemon drew up a will leaving some of his property to a child by his second wife and deposited the will in the hands of a kinsman and fellow demesman, Pythodorus of Cephisia (27–8). When Euctemon decided to change his will, he demanded it from Pythodorus in front of the archon, presumably the eponymous

² For a discussion of adoption: C. A. Cox, *Household Interests: Property, Marriage Strategies and Family Dynamics in Ancient Athens* (Princeton, 1998), 125–7.

³ D. M. MacDowell, *The Law in Classical Athens* (Ithaca, NY, 1978), 159.

archon, and Pythodorus was prepared to destroy the will (32–3). In another speech, Isaeus 9, on his mother's side the speaker had a half-brother, Astyphilus. According to Cleon, the speaker's opponent, Astyphilus had adopted Cleon's son. Astyphilus then left a will to that effect in the hands of Astyphilus' mother's brother, Hierocles (5, 18, 22).

In an oration dealing with his father's estate, Demosthenes the orator depended on his mother's memory for his testimony. The elder Demosthenes, the orator's father, had drawn up a will listing his property. In the will he stated the sums that the guardians were to take and the property they were to lease out. The will, according to the orator, was deposited with Aphobus, a sister's son to the elder Demosthenes (27.40, 48). For his part, however, Aphobus denied he was given a will (28.14–15), and indeed the document could not be produced during Demosthenes' lawsuit against Aphobus. According to the orator, Aphobus had destroyed the will (27.64, 28.5, 10, 29.42, 57). In another case, the banker Pasio, an ex-slave with no kinsmen in Athens, deposited copies of his will with individuals who were making depositions in Demosthenes 36.7 on behalf of the guardian of Pasio's estate, Phormio. One of these witnesses was Pasio's bank manager, so it may be that a copy of the will was deposited in Pasio's bank. A copy of the will was definitely left with Cephalion of Aphidna, who left it in turn with his son, Cephisophon and the latter's *kedestes*, in-law, Amphias (Dem. 45. 8, 17, 19).⁴ Furthermore, Pasio's widow, Archippe, had in her possession notes and writings (*grammata*) from which Pasio wrote up his will (36.18). Similarly, Polyuctus' wife in Demosthenes 41 had papers (*grammata*) giving details on her husband's estate; she had sealed and deposited the papers with a certain Aristogenes, perhaps one of her brothers or a family friend (41.21).⁵

It could be lucrative to be the holder of another person's will: the holder could be rewarded from the testator's estate for his efforts. In Isaeus 9, according to the speaker, by producing a will which claimed Cleon's son as the adoptee of Astyphilus, Hierocles would receive a share of Astyphilus' estate (24). Demosthenes' guardian, Aphobus, certainly benefited as trustee of the elder Demosthenes' will. As one of the guardians of an estate estimated around fourteen talents, Aphobus was bequeathed the testator's widow with a dowry of eighty minae and the use of the house (Dem. 27.4, 28.19).⁶

From what has been noted above, it seems that wills could be destroyed or made to disappear, and Cleonymus may very well have wanted his will deposited in the hands of magistrates who had no share in his estate. Why then did he choose the *astynomoi*? A closer reading of the *Ath. Pol.*, of the *Laws* and of the *Politics* reveals that the charges of the *astynomoi* covered both public and private matters. According to the *Politics* (6.1321b18–27), these magistrates had curatorship of both public and private properties in the city: they were to assume the good order and preservation of streets and buildings. Plato's *Laws* confirms this: the *astynomoi* were to see that houses faced the street and were to supervise those dwelling in the houses to keep their property clean and to enforce this cleanliness through fines (7.779b7–c4). Significantly Aristotle adds that the *astynomoi* oversaw the boundaries of individuals' estates (*Pol.* 6.1321b18–27). Plato states in his *Laws* that these officials saw that no individual

⁴ J. K. Davies, *Athenian Propertied Families 600–300 B.C.* (Oxford, 1971), 291–93. Davies assumes (292–3) that Amphias was Cephisophon's brother-in-law. Cephisophon seems to have had other connections with bankers: Davies, 292, citing *IG* 2² 1675.33.

⁵ On *grammata* see M. I. Finley, *Studies in Land and Credit in Ancient Athens 500–200 B.C.*, rev. edn. (New Brunswick–Oxford, 1985), 214–15.

⁶ Davies (n.4), 118, 127.

encroached on state property by building on it or digging into it (7.779b7–c7). Therefore the *astynomoi* were concerned with property issues. Fines and punishments could be meted out by these magistrates to anyone disobeying the law (*Leg.* 764C, 779C, 844C, 845C).

It becomes somewhat clearer why Cleonymus chose the *astynomoi* to keep his will: they were objective officials who saw that an estate's boundaries remained intact. Commentators have not discussed the locale of Cleonymus' property simply because its location is not stated in Isaeus 1. However, because the *astynomoi*'s jurisdiction lay in the city, we may infer that Cleonymus' estate, or much of it, was situated in the *astu*. Cleonymus may have chosen the *astynomoi* for another reason, which is that they were in charge of the good order of the streets. Good order here may have included the prevention of conflicts which resulted from the use and transfer of property.

Athenians could become embroiled in quarrels, sometimes violent, when property was transferred. Cleonymus was faced with two sets of conflicting kinsmen, his sister's sons on the one hand, and his alleged adoptees, if they were kinsmen of Cleonymus, on the other. Judging from the case of Aphobus, kinsmen could not always be trusted with guarding the will properly. Furthermore, property could be misappropriated by rapacious relatives; Demosthenes' lawsuit against Aphobus is a case in point. Aphobus had appropriated the dowry of Demosthenes' mother, his father's house and his slaves (27.48, 28.12). Wealth and household effects could cross property lines in such disputes. In Isaeus 6, according to the speaker, Euctemon tried to bequeath some of his property to his sons by Alce, a *hetaira*. After his death, and in the confusion over the distribution of his estate, Alce and her cohorts, who included Euctemon's next-door neighbour, Antidorus, removed Euctemon's furniture from his house and placed it in Antidorus' house next door. It may well be that some of Euctemon's kinsmen in these machinations were trying to protect the rights of Euctemon's sons born of his second wife (3ff.). In any case, the adopted son of Euctemon's dead son, Philoctemon, and his friends went to Antidorus' house but were refused admittance by Antidorus (40ff.).

Private quarrels could be aired through arbitration on the street. In the case of Apollodorus, the son of Pasio, and his suit against Phormio over his father's Pasio's will, Apollodorus charged that the copy produced was a forgery and challenged Phormio in front of the Painted Stoa in the agora. Phormio in turn challenged Apollodorus that the document produced at the arbitration by Cephisophon's *kedestes*, Amphas, was indeed Pasio's will (*Dem.* 45.24ff., 46.5). At this arbitration Apollodorus further challenged Stephanus, an ally of Phormio, with hiding a document which would have strengthened Apollodorus' position against Phormio. In the challenge Apollodorus ordered Stephanus to produce a slave for torture, but Stephanus refused (45.57ff.).

The agora was one public place where challenges were staged concerning disputes over private property.⁷ As the centre of the polis, the agora blended the public and private: the activities in the agora included administration, justice, imprisonment, processions, prostitution, torturing of slaves for information and buying and selling.⁸ The agora was also a public place in which one could declare that one's duties to an estate had been performed well: according to Demosthenes, a certain Theogenes had

⁷ V. Hunter, *Policing Athens: Social Control in the Attic Lawsuits, 420–320 B.C.* (Princeton, 1994), 73–4, 91–2.

⁸ P. Millett, 'Encounters in the agora', in P. Cartledge, P. Millett and S. Todd (edd.), *Nomos: Essays in Athenian Law, Politics and Society* (Cambridge, 1990), 211, 215–16 and n. 25, 218.

leased an orphan's estate and by so doing had increased the wealth of a three-talent estate to six talents. Indeed, Theogenes had counted out the money in the agora: . . . καὶ ταῦθ' ὑμῶν τινὲς εἶδον· Θεογένης γὰρ . . . ὁ μισθωσόμενος αὐτοῦ τὸν οἶκον, ἐν τῇ ἀγορᾷ ταῦτα τὰ χρήματ' ἐξηρίθμησεν (27.58). It is no coincidence, therefore, that the *astynomoi* in most cities were located in the agora, or a public, accessible street (Arist. *Pol.* 7.1331b6–13).

Street order may be behind another charge of the *astynomoi*; at first sight it seems incongruous with their other duties: they were to check that flute-girls, harp-girls and lyre-girls were not hired out for more than two drachmae. If several men wanted the same girl, the magistrates are to draw lots to see who the winner is and let the girl go with that man.⁹ Men were known to fight in the streets over *hetairai* (young women who played the flute, lyre or harp and were hired out to men). Demosthenes 21.36 relates for instance, how a thesmothete was struck trying to rescue a flute-girl from an assault. The magistrate in question was not an *astynomos*, but there is a great deal of evidence to suggest that the street was the scene of violent conflicts between rivals over *hetairai*. Lysias 3 is an extended argument detailing the city-street fighting between two rivals with their respective bands of friends and associates over the affections of a boy. In the midst of describing such brawls, the speaker equates such altercations with those over *hetairai* (43). Lysias 4 is devoted to a brawl between two men over a slave *hetaira*, with one rival going to the other's house with the intent to wound, if not kill him. The speaker's opponent in Demosthenes 54 described how young men in *hetairiai*, or clubs, allegedly fought against their rivals over prostitutes. According to the opponent he and his son with friends assaulted the speaker in the agora for this reason (7–8, 13–14). David Cohen points out that fighting over *hetairai* arises in agonistic contests. Feuds last over an extended period of time and frequently result in street brawls, as the three cases above show.¹⁰

So far I have focused on the *astynomoi* in Athenian texts. Can texts outside Athens give us any indication as to the role of these magistrates in the city? The Pergamum inscription on the *astynomoi* (SEG 13.521) reveals that in Hellenistic times the duties of these magistrates remained essentially the same. The inscription of the law is dated to the second century B.C. but was re-engraved four centuries later in the Roman era because the law was still applicable in later times.¹¹ The first column of the text deals with street maintenance. The second column is concerned with cleaning and the disposal of rubbish in town. The third column focuses on building policies, while the fourth column is interested in water sources.¹² The magistrates in Pergamum, like their counterparts in Athens, saw to it that private citizens did not construct buildings on public land (1–14).¹³ The *astynomoi* in Pergamum were responsible for keeping the streets passable and cleaning up after festivals (1–14, 29–37).¹⁴ They were also in charge of the *amphodarchai*, lower officials who oversaw 'blocks' in the neighbourhoods and saw to it that the streets here were kept in good repair (49, 53, 56–7, 76, 94).¹⁵ The *astynomoi* were also concerned with the layout of private houses and if a

⁹ Although MacDowell (n. 3), 159, saw this as a miscellaneous charge, my point here is that the charge makes sense given the concern of the *astynomoi* with street order.

¹⁰ D. Cohen, *Law, Violence and Community in Classical Athens* (Cambridge, 1995), 123–36.

¹¹ S. Saba, *The Astynomoi Law: Urban Maintenance in Pergamon* (Diss., Duke University, Durham, NC, 2006), 10, 12–13.

¹² Saba (n. 11), 33–8.

¹³ Saba (n. 11), 39–40 and bibliography therein.

¹⁴ Saba (n. 11), 41–5.

¹⁵ Saba (n. 11), 75–7.

private citizen damaged a neighbour's property (105–16).¹⁶ If a citizen disobeyed the law, he could be subjected to a court proceeding or an arbitration in which the *astynomos* had the last word (94–101, 123–7).¹⁷

In the Hellenistic era on the island of Ceos, the *astynomoi* oversaw foreigners (*IG* 12.5.594). On Delos in the mid-third century B.C. these magistrates were in charge of slaves who were taken away and protected the property of local citizens against local thieves (*IG* 11.4.1296 A and B). Here the magistrates were situated in the harbour and the local market. In Rhodes in the first century B.C. the *astynomoi* were in charge of sacred matters, moving statues and engraving inscriptions (*IG* 12.1, 1). Interestingly, the *astynomoi* at Tenos, in an inscription dating to the third century B.C. and recording the sales of plots or houses, ensured that the payment of dowries was registered with them (*IG* 12 5, 872.1).

It is clear as well that in Roman times the duties of the *astynomoi* remained essentially the same. The Pergamum inscription recorded a Hellenistic law in the Roman era because the law still applied to the *astynomoi*. In Ankara under Marcus Aurelius and Commodus a certain Zotikos is honoured for his work, among other duties, as an *astynomos*. Bosch, the editor of the inscription (201) points out that the *astynomoi* oversaw streets and public buildings and wells.¹⁸ According to Justinian's *Digest* (43.10), Papinian, who lived and worked under Septimius Severus, mentions in his work on the *astynomoi* that these officials were still concerned that no one dug up streets or encumbered them with filth and that no one built on public land. The magistrates could fine anyone disobeying the law (43.10).¹⁹ Public streets and gutters were to be left clear to facilitate the passing of wagons. Most interesting for our purposes, the *astynomoi* were not to allow fighting in the streets (μη ἐάτωσαν δὲ μηδὲ μάχεσθαι ἐν ταῖς ὁδοῖς . . .).

Cleonymus, then, resorted to the *astynomoi* to protect the terms of his will because the interests over his private property may well have spilled over into the public domain. As David Cohen emphasizes, in the orations Athenians are conceived as individuals who have both private and public roles. The judge or magistrate is in a public role but he may have to make decisions concerning private interests. Cohen defines private interests as those interests involving the home, the *oikos*. Here the private sphere includes the physical boundaries of the home as well as the family who occupies that home. The law at times defines and protects the private sphere as well as intrudes on it from time to time.²⁰ The *astynomoi* were interested in the maintenance of street orderliness and the boundaries of city property, but in Cleonymus' case they oversaw private property. They also appear to be officials tied to the urban neighbourhood. This blending of public and private is not unusual for magistrates. Consider the eponymous archon, for instance, who made decisions concerning inheritance strategies and the management of estates. He made decisions regarding orphans, guardians, heiresses and so on. Far from keeping public and private separate, Cleonymus mixed the two spheres, intent on having his will observed. That there was

¹⁶ Saba (n. 11), 104–9.

¹⁷ Saba (n. 11), 152.

¹⁸ E. Bosch, *Quellen zur Geschichte der Stadt Ankara im Altertum* (Ankara, 1967), 262–4.

¹⁹ For a discussion of the texts from the islands, from Asia Minor and from Roman times: Saba (n. 11), 167–86.

²⁰ D. Cohen, *Law, Sexuality, and Society: The Enforcement of Morals in Classical Athens* (Cambridge, 1991), 71–84.

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Two lines in the galliambic metre, quoted anonymously by the second century metrician Hephaestion (p. 39.1–2 Consbruch), have been tentatively ascribed to Callimachus (= fr.761 inc. auct. Pf) on the strength of a passage in the Byzantine grammarian George Choeroboscus (p. 246.4–5 C). Both the integrity of the text of Hephaestion, and the ascription to Callimachus, have been impugned by David Mulroy,¹ and his arguments have been accepted by E. Courtney and D. F. S. Thomson² (and perhaps others). The arguments for so doing are quite ill-founded, but in order to demonstrate this it will be necessary to set forth the evidence in detail. In so doing I hope to prove Hephaestion's text to be for the most part sound, and make a stronger case for the ascription of the two galliambic lines to Callimachus.

Τῶν δὲ ἐν τῷ μέτρῳ μεγεθῶν τὸ μὲν ἐπισημότατόν ἐστι τὸ τετράμετρον καταληκτικόν, οἷόν ἐστι τὸ Φρυνίχου τοῦ τραγικοῦ τουτί (fr.14 TGrF)

τό γε μὴν ξεινία δούσαις, λόγος ὥσπερ λέγεται,
 ὀλέσαι, κάποτεμῖν ὀξεί χαλκῷ κεφαλάν
 καὶ παρὰ Φρυνίχῳ τῷ κωμικῷ (fr.76 PCG)
 ἃ δ' ἀνάγκα' σθ' ἱερεῦσιν καθαρεῦεν φράσσομεν
 τοῦτο μέντοι καὶ γαλλιαμβικὸν καὶ μητρικακόν [καὶ ἀνακλώμενον] καλεῖται — ὕστερον δὲ
 <καὶ> ἀνακλώμενον ἐκλήθη — διὰ τὰ πολλὰ τοὺς νεωτέρους εἰς τὴν μητέρα τῶν θεῶν
 γράφαι τοῦτ' ὡς μέτρω (ἐν οἷς καὶ τὰ τοὺς τρίτους παιῶνας ἔχοντα καὶ παλιμβάκχειον
 καὶ τὰς τροχαϊκὰς ἀδιαφόρως παραλαμβάνουσι πρὸς τὰ καθαρὰ), ὥς καὶ τὰ πολυθρύλητα
 ταῦτα παραδείγματα δηλοῖ (Call. fr.761 inc. auct. Pf.)
 Γάλλαι μητρὸς ὀρείης φιλόθρσοι δρομάδες
 αἷς ἔντεα παταγείται καὶ χάλκεα κρόταλα

Of the line-lengths in the (ionic a minore) metre, the most notable is the catalectic tetrameter, such as this one by the tragic poet Phrynichus:

τό γε μὴν ξείνια δούσαις, λόγος ὥσπερ λέγεται,

ὀλέσαι, κάποτεμειν ὁξεί χαλκῷ κεφαλάν

and in the comic poet Phrynichus:

ἀ δ' ἀνάγκα' σθ' ἱερέυσιν καθαρῶς φράσμεν.

¹ D. Mulroy, 'Hephaestion and Catullus 63', *Phoenix* 30 (1976), 61–72.

² E. Courtney, 'Three poems by Catullus' *BICS* 32 (1985), 90–1; D. F. S. Thomson, *Catullus: Edited with a Textual and Interpretive Commentary* (Toronto, 1997), 375.