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# Civic Obligation and Individual Liberty in Ancient Athens

Peter Liddel



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## *Preface*

This work analyses the phenomenon of participation in the public affairs of fourth-century Athens and the factors which encouraged citizens to partake in the life of their city. Its primary concern is to elucidate how the considerable obligations of the citizen to the city and to the society that surrounded him (known here as civic obligations) were reconciled with ideas about individual liberty, and the ways in which this reconciliation was negotiated, performed, and presented in the Athenian law courts and assembly, and through the inscriptional mode of publication.

My interests in political theory and the history of ancient Greece were stimulated by the flexibility of my undergraduate degree, the London University BA in History. This book is a revised version of my Oxford D.Phil. thesis, written under the inspirational supervision of Oswyn Murray, and examined in February 2003 by John Ma and François Hartog. That work built upon an M.Phil. thesis supervised by Robert Parker, who first introduced me to Lycurgus the orator as the chief advocate of obligations in post-Social War Athens. Since leaving Oxford, I have enjoyed the continued support of former teachers and contemporaries and have amassed other academic debts. Robin Osborne, my adviser for the Oxford Classical Monographs series, read my work with great patience and commented with great insight, and the final shape of this book owes a good deal to him. Roger Crisp read and commented very helpfully on my application of political theory in Chapters 1, 2, and 6, and encouraged me to clarify some significant points. I owe thanks to many others, including Matthew Haysom, Deborah Kamen, Polly Low, Nikolaos Papazarkadas, and Christopher Whitfield, for reading parts of this work or discussing it with me. I have the fondest possible memories of my two years as Walsh Family Lecturer in Ancient History at the School of Classics at Trinity College, Dublin, where my colleagues provided the most welcoming of introductions to academic life. I am grateful to my colleagues in the Department of Classics and Ancient History at the University of Manchester for enabling me to finish this

book by allowing me a semester's leave in academic year 2005/6. My mother and brother have always been highly supportive and a cheerfully encouraging presence. Andrew Asibong has, for many years, given me friendship and intellectual engagement. Christy Constatkopoulou has been, and will continue to be, a source of inspiration and love that grows alongside our son, Theo Liddel.

P.P.L.

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## *Abbreviations and Conventions*

With regard to Greek names, I refer to the guidance given in the *Journal of Hellenic Studies*, 118 (1998), that complete consistency is probably neither practical nor necessary. Translations are my own unless stated, and in the case of literary texts are based, unless stated, upon those of the Loeb Classical Library; inscriptions cited as RO are as translated by Rhodes and Osborne (2003). All ancient dates are BC unless otherwise stated. Abbreviations not listed below are from H. G. Liddell and R. Scott, *A Greek–English Lexicon*, 9th edn (Oxford: Clarendon Press, 1996), pp. xliii–xlv.

- Ag.            *The Athenian Agora: Results of the Excavations Conducted by the American School of Classical Studies at Athens*, 31 vols (Princeton: American School of Classical Studies at Athens, 1953–)
- APF           J. K. Davies, *Athenian Propertied Families 600–300 BC* (Oxford: Clarendon Press, 1971)
- Arnaoutoglou I. Arnaoutoglou, *Ancient Greek Laws: A Sourcebook* (London: Routledge, 1998)
- BCH           *Bulletin de Correspondance Hellénique* (Paris: École française d’Athènes, 1877–)
- CAT           C. W. Clairmont, *Classical Athenian Tombstones*, 6 vols (Klichberg: Akanthus, 1993–5)
- CEG           P. A. Hansen, *Carmina Epigraphica Graeca*, 2 vols (Berlin: Walter de Gruyter, 1983–9)
- CIG           A. Boeckh, *Corpus Inscriptionum Graecarum* (Berlin, 1828–77)
- CP            J. Rawls, *Collected Papers*, ed. S. Freeman (Cambridge, Mass. Harvard University Press, 2001)
- DAA           A. Raubitschek, *Dedications from the Athenian Acropolis: A Catalogue of the Inscriptions of the Sixth and Fifth Centuries BC* (Cambridge, Mass. Archaeological Institute of America, 1949)
- FGrH        F. Jacoby, *Die Fragmente der griechischen Historiker* (Berlin, 1926–)

- HCT* A. W. Gomme, A. Andrewes, and J. K. Dover, *A Historical Commentary on Thucydides*, 5 vols (Oxford: Clarendon Press, 1945–81)
- History* J. Rawls, *Lectures on the History of Moral Philosophy*, ed. B. Herman (Cambridge, Mass.: Harvard University Press, 2000)
- Hornblower, Commentary* S. Hornblower, *A Commentary on Thucydides*, 2 vols (Oxford: Clarendon Press, 1991–6)
- IG* *Inscriptiones Graecae* (Berlin, 1873–)
- I Orop.* V. Petrakos, *Οι Επιγραφές του Οροπού* (Athens: Archaeological Society, 1997)
- I Rhamnous* V. Petrakos, *Ο δήμος του Ραμνούντος II, Οι επιγραφές* (Athens, 1999)
- Lambert* S. D. Lambert, *Rationes Centesimarum: Sales of Public Land in Lykourgan Athens*, *Archaia Hellas* 3 (Amsterdam: J. C. Gieben, 1997)
- Law* J. Rawls, *The Law of Peoples. With 'The Idea of Public Reason Revisited'* (Cambridge, Mass.: Harvard University Press, 1999)
- Lawton* C. Lawton, *Attic Document Reliefs* (Oxford: Clarendon Press, 1997)
- LGPN* M. J. Osborne and S. G. Byrne, *A Lexicon of Greek Personal Names, ii: Attica* (Oxford: Clarendon Press, 1994)
- Mill, CW* J. Robson *et al.* (eds), *Collected Works of John Stuart Mill* (Toronto: University of Toronto Press; London: Routledge, 1973–)
- ML* R. Meiggs and D. Lewis, *A Selection of Greek Historical Inscriptions to the End of the Fifth Century BC* (Oxford: Clarendon Press, 1988)
- Nat. D.* M. J. Osborne, *Naturalization in Athens*, 4 vols (Brussels: AWLSK, 1981–3)
- PL* J. Rawls, *Political Liberalism*, new edn (New York: Columbia University Press, 1996)
- RE* A. F. Pauly, G. Wissowa, and W. Kroll *et al.*, *Real-Encyclopädie der klassischen Altertumswissenschaft*, 83 vols (Stuttgart, 1894–1980)

- Restatement* J. Rawls, *Justice as Fairness: A Restatement* (Cambridge, Mass.: Harvard University Press)
- Reinmuth O. W. Reinmuth, *The Ephebic Inscriptions of the Fourth Century BC*, *Mnemosyne* suppl. 14 (Leiden: Brill, 1971)
- RO P. J. Rhodes and R. G. Osborne, *Greek Historical Inscriptions, 404–323 BC* (Oxford: Oxford University Press, 2003)
- Schwenk C. Schwenk, *Athens in the Age of Alexander: The Dated Laws and Decrees of ‘The Lykourgan Era’, 338–322 BC* (Chicago: Ares, 1985)
- SEG *Supplementum Epigraphicum Graecum* (Leiden: Brill, 1971–)
- SIG<sup>3</sup> W. Dittenberger, *Sylloge Inscriptionum Graecarum* (Leipzig, 1915–24)
- TJ J. Rawls, *A Theory of Justice*, 2nd edn (Oxford: Oxford University Press, 1999)
- Todd S. Todd, *Lysias* (Austin: University of Texas Press, 2000)
- T Rhamnous* V. Petrakos, *Ο δήμος του Ραμνούντος Ι, Τοπογραφία* (Athens, 1999)

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## Introduction

The recent scholarship of ancient democracy has offered critical analysis of the claim that studies of ancient democratic concepts might contribute to the resolution of contemporary political dilemmas.<sup>1</sup> The application of antiquity to instruct modernity is in fashion in some quarters: in 2003 Harvard Business School Press published an exposition of ways in which the ethics of ancient Athenian democracy might be exercised in the modern workplace,<sup>2</sup> though this approach is not without its critics.<sup>3</sup>

Ancient ideas about liberty, however, have undergone a reception independent of that experienced by the ancient idea of democracy. Few nowadays would advocate a return to a form of liberty that existed in the ancient world. In 1819, at the Athénée Royal in Paris, the novelist and political theorist Benjamin Constant made a speech entitled ‘The Liberty of the Ancients Compared with that of the Moderns’, in which he warned against the confusion of ancient and modern liberty. The speech has won prominence with both scholars and political theorists who advocate a conceptual distinction between

<sup>1</sup> In an introduction to a recent collection of articles, Ober and Hedrick (1996: 3) are convinced that ‘the political experience of classical Athens is interesting not only in itself but also as a tool for rethinking contemporary political dilemmas’. For other statements on the application of antiquity to modern political problems, see Ober (1989a: 9); Euben *et al.* (1994: 2); Rahe (1994, p. xxii). For analysis of this school of thought, see Roberts (1994: 300–1); Demetriou (1998); Davies (2002: 235). For a cautious discussion of the use of classical principles in guiding political axioms, see Holmes (1979).

<sup>2</sup> Ober and Manville (2003).

<sup>3</sup> Rhodes (2003c); Samons (2004).

ancient and modern liberty.<sup>4</sup> This distinction is useful to draw, but is not the only way of thinking about liberty in ancient Athens. Indeed, Mogens Hansen, a prominent Danish scholar of Athenian democracy, has recently emphasized the overlaps between ancient and modern ideas of liberty, and in so doing has revived a way of thinking about Athenian liberty characteristic of the nineteenth-century historian George Grote.<sup>5</sup> This book highlights an important congruity in ancient and modern liberal ideas of liberty: the coexistence and interdependence of the notions of liberty and obligation, and thereby presents a reassessment of individual liberty in ancient Athens. However, this congruity is advanced with two warnings: it is not reliant upon delineating continuity in democratic or political concepts from ancient times to the present,<sup>6</sup> nor does it support the idea that ancient notions of liberty readily form models necessarily worthy of emulation.

The ancient Athenian ideas of liberty and obligation paired here have rarely been investigated in tandem, and the consequence of this is that interpretations of Athenian liberty have been taken out of their historical context. This work assesses the extent to which the Rawlsian model of liberty might be used to elucidate the kind of liberty that existed in the ancient Greek city. The reconstructivism of Rawls, consisting of his advocacy of renewed conventional modes of justice and liberty, gives rise to a reinterpretation of the workings of Athenian liberty and obligation. The historical context of the interpretation is Athens in the period between the end of the Social War of 357–355 BC and the start in 317 of the tyranny of Demetrios of Phaleron. During

<sup>4</sup> Those emphasizing the conceptual differences between ancient and modern liberty include the following: Croce (1931); Momigliano (1931); Ehrenberg (1974: 29); Vlachou (1992: 18); Raaflaub (1985: 1); Brunt (1988: 298–9); Walicki (2004: 17).

<sup>5</sup> For Hansen (1996a: 96), the two are similar because they both consist of both the freedom to participate in political decision-making and the freedom from political oppression; furthermore, ‘together with *demokratia* and *isotes*, *eleutheria* formed a triad, just as liberty, equality and democracy form a triad in liberal democratic thought’. On Grote, see Ch. 1.2.

<sup>6</sup> On the lack of continuity between ancient and modern ideas of democracy and ideology, and for warnings against overrating ‘tradition’, see Hansen (1992, 1994a); Ruschenbusch (1994); cf. Maddox (1996). Hansen (1989b; cf. Lipson 1995) recognizes that this does not preclude the congruency of ancient and modern political ideologies. More generally, on the invention of tradition as a modern phenomenon, see Hobsbawm (1983).

this period it is possible to observe a growing concern, expressed in the oratorical and epigraphical sources, for the performance by citizens of obligations. This phenomenon is epitomized in the sole surviving speech of Lycurgus, the *Against Leocrates*, of 330. I will investigate the negotiation of obligations in the courts and assembly and the records of this provided by Attic oratory and epigraphy of the fourth century. I will survey the obligations of the citizen and the ways in which their performance was presented in the same contexts. The final chapter measures the survey of Athens with that gleaned from the theory of Rawls: notwithstanding certain historical peculiarities, it is suggested that the model may be a useful one for thinking about cities and organizations beyond fourth-century Athens.

While my conclusion highlights both congruencies and discrepancies between the Athenian evidence and Rawlsian ideals, I hope to have shown how this model may produce a fresh perspective on the workings of the Athenian *polis*, even if Rawlsian theory at times appears to jar with the historical peculiarities of fourth-century Athens. My decision to use prescriptive modern political theory to understand ancient political systems may prove to be a controversial one, and may throw my interpretation open to contention among both ancient historians and political theorists. The hope is, however, that this book will illustrate the potential contribution of comparative analysis to the continued vitality of the study of the sociology of ancient Athens and will also highlight Rawls's elaboration of liberty and obligation, an often overlooked contribution to political theory.

As well as providing an analysis of the relationship between liberty and obligations, it is the hope that this book will provide an overview of the nature and substance of the obligations of the Athenian citizen and the appropriate references to more detailed discussions of particular duties. My decision to concentrate on the liberty of the citizen, rather than human liberty, means that there is no detailed examination of the idea or practicalities of slavery. For my purposes, slavery falls out of the equation because slaves lack basic obligations towards the city, and their liberty was never a concern of the fourth-century sources: what is revealing, however, is the general shock expressed at the proposal, made in the aftermath of Chaironea, to free slaves in order to allow them to be conscripted.

This introductory chapter will outline the traditional distinction between ‘ancient’ and ‘modern’ liberty; it will demonstrate the range of modern scholarly and philosophical interpretations of ancient Greek liberty with particular reference to the work and reception of Benjamin Constant (1.1 and 1.2); and it will examine presentations of *eleutheria* (liberty) in Attic oratory and inscriptions (1.3), the notions of liberty as living as one pleases (1.4), freedom of speech (1.5), and rights (1.6). Chapters 1.7 and 1.8 introduce the notion of civic obligation and its relevance to an interpretation of liberty in ancient Athens.<sup>7</sup>

### 1.1. THE PROBLEM OF ANCIENT AND MODERN LIBERTY

Constant’s speech was a reaction to the wide spectrum of views about the relevance of ancient political thought to contemporary political situations. Explicitly, Constant directed his argument against Rousseau and de Mably, philosophers whom he blamed for the misguided attempts of revolutionaries to install an ancient notion of liberty in the revolutionary period. He accused Rousseau of ‘transposing into our modern age an extent of social power, of collective sovereignty, which belonged to other centuries’, and claimed that both Rousseau and de Mably mistook ‘the authority of the social body for liberty’ and had consequently stifled individual liberty in the name of the subjugation of the individual to the state.<sup>8</sup> Indeed, Rousseau, in the *Social Contract*, had discussed the value of the Roman Republican *comitia*, tribunate, censorship, and dictatorship.<sup>9</sup> Constant, as in his *Spirit of Conquest and Usurpation* of 1814, was interested in undermining what he claimed to be Rousseau’s advocacy of Greek-style direct democracy. In that work he argued that modern states

<sup>7</sup> The investigation of ancient sources in this chapter is preliminary; for explanation of the decision to concentrate on inscriptions and oratory, see Ch. 3.2.

<sup>8</sup> Constant (1988: 318).

<sup>9</sup> Rousseau (1913: 97–122); for discussion of Rousseau’s application of the Roman example, see Millar (2002: 113–20).

were, on the whole, too large to manage the practice of such political liberty, and advocated representative government as a necessary condition for liberty in the modern world.<sup>10</sup> Unsurprisingly, Constant was guilty of some dissimulation: Rousseau and de Mably did not advocate the absolute imitation of ancient institutions, but rather set them up as a standard of excellence against which the shortcomings of contemporary institutions might be measured.<sup>11</sup> Rousseau, in particular, recognized that the liberty and equality of ancient republics was reliant on their remaining small in both size and population, and that the virtues of ancient institutions would not endure in a larger organization.<sup>12</sup>

But the revolutionaries against whom by implication Constant also directed his speech were sometimes less cautious in their enthusiasm for ancient values. One such revolutionary was Camille Desmoulins, the initiator of the three-day uprising which resulted in the storming of the Bastille, who extolled a view of Athens gleaned from, among others, Plutarch, Montesquieu, Rousseau, and de Mably.<sup>13</sup> He claimed that liberty would bring to France, as it had to Athens, flourishing commerce and luxury, rewards for the talented, equality before the law, prosperity, and happiness.<sup>14</sup> Indeed, journalists and deputies of the revolutionary National Convention claimed that

<sup>10</sup> Constant (1988: 102–4).

<sup>11</sup> As H. T. Parker (1937: 35) wrote, ‘for them, republican antiquity was not a Heavenly City toward which French society was tending or should tend, but a Garden of Eden, to regret and to set up as a standard of excellence which might reveal the shortcomings of the present’.

<sup>12</sup> For analysis of Rousseau’s position on antiquity and democracy, see Cartledge (1999) and Leigh (1979). For his position on Sparta, see Rawson (1969: 220–300, esp. 242); Roberts (1994, esp. 156–74); Holmes (1984: 93–5, 101–3); Cartledge (1999). On the political thought of de Mably, illustrating his use of ancient Greek examples, see Wright (1997).

<sup>13</sup> For a statistical analysis of the revolutionaries’ citations of Cicero, Horace, Plutarch, Tacitus, Vergil, Seneca, Livy, Sallust, Plato, Montesquieu, Rollin, Rousseau, Voltaire, and de Mably, see H. T. Parker (1937: 18–19). On the role of the Greek example in French revolutionary rhetoric, see H. T. Parker (1937); Avlami (2000); Hartog (2000).

<sup>14</sup> As H. T. Parker (1937: 75–6) writes, ‘at Athens, he informed his fellow citizens, liberty meant rewards for the talented; civic crowns for the virtuous; and equality before the law... at Athens, politics, the art of governing men, was employed in making them happy, in using “the liberty and the arts, these gifts of heaven, to make enchanting the dream of life”’.



France ought to imitate classical institutions by restricting office tenure, introducing popular referendums, abolishing property qualification, the election of army officers and ambassadors by the people, and opening the jurisdiction to all.<sup>15</sup> Forty years later, regardless of the inconsequentiality of the rhetoric of the ‘cult of antiquity’, Constant was able to blame the violence of the revolutionary years on the confusion of ancient and modern liberty.<sup>16</sup>

An important contribution of Constant’s speech was its elaboration of a distinction between modern liberty as individual liberty and ancient liberty as political liberty.<sup>17</sup> It viewed ancient liberty as primarily the privilege of participation in the administration and policy-making of the state, and conceived of modern liberty as constituting peaceful enjoyment of private independence and individual choice, freedom of conscience, freedom of expression, freedom of movement, inviolability of property rights, the condition of being subject to law alone, and freedom from detention without trial.<sup>18</sup> In its purest sense, modern liberty was the ‘triumph of individuality’, something invented by the moderns, and was a manifestation of progress from the ancient *polis* to the modern political state.<sup>19</sup> While Constant was instrumental in initiating this conceptual distinction,<sup>20</sup> he did not put an end to the practice of comparing ancient and modern ideas about liberty. Nor did he intend to: heavily influenced by Montesquieu’s method of creating comparative constructs, and as the author also of a comparative study of ancient and modern religions, he was not per se opposed to the comparative method of

<sup>15</sup> H. T. Parker (1937: 95). <sup>16</sup> Kelly (1992: 60).

<sup>17</sup> Constant (1988: 102–14, 309–28). <sup>18</sup> Kelly (1992: 56).

<sup>19</sup> On Constant’s interest in the idea of progress in history, see Dodge (1980: 41); Holmes (1984: 28–9, 181–206); Kelly (1992: 48).

<sup>20</sup> Constant (1988: 312) noted that Condorcet had already recognized that the ancients ‘had no notion of individual rights’. According to Holmes (1984: 34), Constant’s formulation has its origins in the essay of Mme de Staël, influenced and perhaps co-authored by Constant, of c.1798, *Circonstances actuelles qui peuvent terminer la Révolution*. For the relation between de Staël’s and Constant’s critique of ancient democracy, see Avlami (2001). Hume, Montesquieu, and others had already formulated other distinctions between ancient and modern liberty: see Croce (1941: 245); Dodge (1980: 35, 43); Holmes (1984: 29–30); Vidal-Naquet (1995: 114). Conservatives at the time of the French revolution also condemned the imitation of antiquity, perceiving this rhetoric as a threat to the *ancien régime* (H. T. Parker: 1937: 80–8).

composing sociological models.<sup>21</sup> Indeed, at the end of his lecture he stressed that he did not wish to separate fully the political (ancient) and private (modern) spheres of liberty: ‘far from renouncing either of the two sorts of freedom which I have described to you, it is necessary, as I have shown, to learn to combine the two together’.<sup>22</sup> What he aimed to do was to curtail the pernicious confusion of the two.

Furthermore, he suggested that Athens was exceptional in the ancient world because, by virtue of its commercial nature, it allowed its citizens a higher degree of individual liberty.<sup>23</sup> Thereby, he practically invited scholarly comparison of the liberty of Athens with that of modern states. Constant was writing at a time just before thinkers were starting to look to Athens as the ancient model of politics.<sup>24</sup> Desmoulins had been exceptional in his advocacy of Athenian models, while Montesquieu and Hume, like Hegel after them, had been interested in Athenian society and culture, rather than its political form. Constant, in this sense, seems to have anticipated the Athenian focus of the work of John Stuart Mill and George Grote’s *History of Greece*.<sup>25</sup> Indeed, modern scholars of ancient Athens have followed Grote in using the *epitaphios logos* (funeral speech) of Pericles as a starting point for analyses of the nature of liberty in Athenian democracy,<sup>26</sup> while political thinkers have also used the Athenian model as a starting point.<sup>27</sup> Grote’s agenda, however, was very different from that of Constant. He attempted to de-emphasize the

<sup>21</sup> As Kelly (1992: 55, 74–5) points out, five volumes of his *De la religion, considérée dans sa source, ses formes et ses développements* were published between 1824 and 1831, and two further volumes, *Du polythéisme romaine, considéré dans ses rapports avec la philosophie grecque et la religion chrétienne*, appeared posthumously in 1833.

<sup>22</sup> Constant (1988: 327). <sup>23</sup> Constant (1988: 103, 312, 315–16).

<sup>24</sup> For the adoption by liberal thinkers of the Greek model, see Loraux and Vidal-Naquet (1979); Roberts (1994: 208–26); Avlami (2000).

<sup>25</sup> On Grote’s *History*, see now Momigliano (1969); Chambers (1996); Tritle (1999); Demetriou (1999). On the relationship between the work of Mill and Grote’s *History*, see Irwin (1998); Urbinati (2002); Liddel (2006).

<sup>26</sup> Those scholars include Muller (1961: 178–94); Loraux (1986); D. Cohen (1991: 229–30; 1995a: 54–5); Wallace (1994a, 1996a; cf. 1993, 1994b, 1996b, 1997). Contrast the refreshing scepticism of Thomas (1994b: 121), juxtaposing the practice of Athenian law with ‘the comforting image based on Pericles’ words’.

<sup>27</sup> Political thinkers citing the *epitaphios logos* include Mill, *CW* xi. 317–20 (on whose use of antiquity, see Biagini 1996; Irwin 1998: 318; Urbinati 2002); Arendt (1958: 197, 205); Popper (1962: i. 186, 255); Geuss (2001: 40).

division between ancient and modern liberty, and stressed instead that individual liberty in Athens was protected by political liberty and the citizens' public-spirited performance of obligations. Grote's comments on the congruity of ancient and modern individualism were made on the basis of his analysis of Thucydides' Periclean *epitaphios logos*:

It is the pride of Athens to exhibit a rich and varied fund of human impulse—an unrestrained play of fancy and diversity of private pursuit, coupled with a reciprocity of cheerful indulgence between one individual and another—and an absence of 'black looks' which so much embitter life, even if they never pass into enmity of fact. This portion of Pericles deserves particular attention, because it serves to correct an assertion, often far too indiscriminately made, respecting antiquity as contrasted with modern societies—an assertion that the ancient societies sacrificed the individual to the state, and that only in modern times has individual agency been left free to the proper extent.<sup>28</sup>

The portrait of Athens in Grote's *History of Greece* contributed to the liberal philosophical preoccupation with reconciling obedience to the state with individual liberty.<sup>29</sup> While Grote's work focused modern scholarship on Pericles' funeral speech, and was a precursor to Mill's rejection of the ancient–modern distinction in *On Liberty*,<sup>30</sup> his solution to the problem of liberty in ancient Athens lost prominence among scholars to the tendency, derived from Constant, to distinguish between ancient and modern, positive and negative, or individual and political, liberties. Thus Lord Acton, viewed usually as a Whig historian rather than a scholar of antiquity,<sup>31</sup> in his lectures on the history of liberty, decided that Periclean Athens rather than Sparta provided his ancient pioneer of European freedom.<sup>32</sup> Meanwhile, he essentially agreed with Constant's conclusions, theorizing that the

<sup>28</sup> Grote (1846–56: vi. 261).

<sup>29</sup> For the argument that Grote's reconciliation of liberty and obligation coincided with that of Mill, see Liddel (2006).

<sup>30</sup> Urbinati (2002: 28) suggests that Mill advocated the idea that political and individual freedom were practised in Athens. For differences between the position of Grote and Mill, see Irwin (1998).

<sup>31</sup> On Acton, see Butterfield (1973: 80–4); Tulloch (2000).

<sup>32</sup> Acton (1877). His planned *History of Freedom* was never published: Tulloch (2000: 160).

ancients had a less advanced perception of individual liberty than the moderns, that the ancient citizen was a slave to the state, and compared the Athenians' treatment of unsuccessful generals to that of the French Republic. But Acton's focus on religion redirected the discussion: for Acton, the most important aspect of liberty was freedom of religious conscience, the seeds of which, if not the realization of which, existed in classical Athens. Only the division of state and religion could furnish the right environment for the development of liberty.<sup>33</sup>

Croce, who, in his *History as the Story of Liberty*, followed Hegel's view that history can be best understood by understanding it as the struggle for liberty,<sup>34</sup> restated Constant's position, insisting, with his contemporaries, that 'it is not only admissible but indispensable to distinguish between an ancient and a modern liberty'.<sup>35</sup> However, to Constant's thesis he added the observation that the division between ancient liberty as political liberty and modern liberty as civil liberty was too sharp, for 'there is no political liberty which is not at the same time civil liberty'.<sup>36</sup> Furthermore, following Acton, he pointed out that the Greek city-state did contain early manifestations of the same idea of liberty, which underwent developments from the beginnings of Christianity through the Middle Ages, the Renaissance, the Reformation, the Industrial Revolution, and the Enlightenment.<sup>37</sup>

In the second half of the twentieth century, the theorist who developed this division of liberty was Isaiah Berlin. Berlin took notice of Constant's warning about ancient and modern liberty, suggesting that the idea of individual liberty 'had not explicitly emerged, and was therefore not central to Greek culture', despite his belief that the Greeks enjoyed a great deal of both individual and political liberty.<sup>38</sup> Berlin's division of liberty into positive and negative currents elucidated a philosophical problem more clearly than any

<sup>33</sup> Acton (1877: 8).

<sup>34</sup> Croce (1941). Compare Hegel's statement (1991: 456): 'the History of the World is nothing but the development of the Idea of Freedom'.

<sup>35</sup> Croce (1941: 245); cf. Croce (1931); Ferrabino (1931); Momigliano (1931).

<sup>36</sup> Croce (1941: 246). <sup>37</sup> Croce (1931; 1941: 245–6).

<sup>38</sup> Berlin (1969: xli; 2002: 283).

predecessor.<sup>39</sup> Berlin identified negative freedom as the absence of obstacles (such as slavery) to human action, and suggested that it was concerned with the answer to the question ‘How much am I governed?’ He perceived the positive sense of liberty as arising in answer to the question ‘By whom am I ruled?’, or ‘Who is to say what I am, and what I am not, to be or to do?’, and as concerned with the capacity for self-realization.<sup>40</sup> Positive liberty therefore demands certain socio-economic conditions; intervention on the part of the state is required to secure them for its citizens. Given his overlapping conceptualization of positive and negative,<sup>41</sup> it is of no surprise that his system has sustained criticism, and the sense of his division has been disputed.<sup>42</sup> Berlin’s idea of negative liberty has been criticized wrongly for taking into account only coercion as an obstacle to negative liberty:<sup>43</sup> in fact, Berlin realized that ‘coercion is not, however, a term that covers every form of inability’.<sup>44</sup> Ignorance and poverty are other forms of inability, which make positive liberty useless: this is why Berlin stressed that liberty as he conceived of it was of little use to a Third World peasant lacking clothes or medicine.<sup>45</sup> Just as his distinction between positive and negative liberty has not gone unchallenged, his division must not be considered to be the only way of thinking about ancient liberty.

<sup>39</sup> On the origin of the division between negative and positive liberty in modern political thought, see F. Rosen (1990a); Skinner (2002: 16).

<sup>40</sup> Berlin (1969: xliii, 129, 131). <sup>41</sup> Berlin (1969: il–I, lvi, 122).

<sup>42</sup> F. Rosen (1990a: 14), for instance, argues that ‘Berlin’s conception of negative liberty becomes incoherent when liberty as the absence of interference is translated into categories of civil and political liberty which depend on interference’. C. Taylor (1979) and Skinner (1984) criticized Berlin for apparently prioritizing negative liberty over positive liberty. Taylor’s conception of liberty as the freedom of an individual from a range of potential or actual restraints for a range of potential or actual actions was formulated in opposition to the existence of Berlin’s divide. MacCallum (1967) provides a slightly different angle, arguing that freedom is always to be discussed as an absence from something, proposing that liberty is to be understood triadically as: X is to be free from Y to do Z. Skinner (2002) emphasizes a ‘third concept of liberty’ that is a different aspect of negative liberty: independence from arbitrary power.

<sup>43</sup> Skinner (1998: 115; 2002: 17). <sup>44</sup> Berlin (1969: 122).

<sup>45</sup> Berlin (1969: liv–lv; 124). Compare the kind of response offered in the work of Amartya Sen (1992, 1999) that political freedom for a peasant might actually allow him or her to direct the sovereign body towards the best sources of water, or to investigate the best methods of social improvement.

## 1.2. GREEK LIBERTY IN CLASSICAL SCHOLARSHIP

With the exception of Grote, nineteenth-century scholars tended to deny the congruity of ancient and modern liberty, or to deny altogether the existence of a concept of individual liberty even in Athens. In the late nineteenth century Wilamowitz and Burckhardt held that state intervention in the life of the citizen and the duties of the citizen infringed the individual liberty of the Athenian citizen.<sup>46</sup> Fustel de Coulanges perceived the liberty of the individual to be absent in Greece because the city possessed absolute authority with which to regulate the family.<sup>47</sup> He argued that individual liberty emerged alongside Christianity as the Church developed an idea of morality separate from that of the state.<sup>48</sup>

Arnaldo Momigliano was preoccupied with the interpretation of Greek liberty. He appears to have taken Constant's line, that Greek freedom was primarily political freedom, emphasizing the prominence of freedom of speech in a political assembly, and locating its fullest expression in Athens.<sup>49</sup> Indeed, since Grote, the notion of political freedom in classical Greece has by some been closely identified with democracy in fifth-century Athens.<sup>50</sup> Pohlenz perceived political freedom in fifth-century Athens to be the result of a general tendency of Greeks towards freedom and to revolt 'against any obligation'.<sup>51</sup> Freedom in Periclean Athens was manifested in *demokratia*, political activity, self-identification in the face of Sparta, and equality

<sup>46</sup> Wilamowitz-Moellendorff's reasoning was based on the fact that he took 'living as one likes' to be the measure of liberty (1893: i. 191). Burckhardt argued that the absence of any guarantee of property or life that ran counter to the interests of the *polis* implied the enslavement of the individual (1998: 57–8, 315–16), and pointed directly to Lycurgus' speech: 'there is a good deal of patriotic claptrap in this oration' (315).

<sup>47</sup> Fustel de Coulanges (1980: 211); for discussion of the background to Fustel's view, see Hartog (1988: 30–1); Momigliano and Humphreys (1980); Finley (1981: 8–10).

<sup>48</sup> Fustel de Coulanges (1980: 386–7).

<sup>49</sup> Momigliano (1931; 1973–4; 1978: 178–92; 1992: 500). On Momigliano's ambitious project to subject the idea of liberty to a broad analysis, see Humphreys (2004: 35–7).

<sup>50</sup> Ehrenberg (1974); Muller (1961). Samons (2004), on the other hand, dismisses any possibility of identifying democracy as an expression of Greek *eleutheria*.

<sup>51</sup> Pohlenz (1966: 34).

before the law. However, for Pohlenz, the rejection of serious limits on popular sovereignty made inevitable the collapse of Greek democracy and the eventual loss of independence in the fourth century. Pohlenz's explanation represents very well two traditions that this study will challenge: that Athenian democratic liberty had nothing to do with obligations; and also the idea that liberty in Athens is best understood through a 'rise and fall' model which lends focus to the fifth-century sources: the focus of this book is on fourth-century Athens.

The notion that Athenian liberty consisted primarily of positive liberty has endured in recent studies of Athenian politics and society. Josiah Ober, in *Mass and Elite in Democratic Athens*, an interpretation of the workings of Athenian democracy through an examination of the rhetoric of mass and elite identities, stresses the positive thread in Athenian liberty,<sup>52</sup> though elsewhere he has allowed for the negative aspects of the value.<sup>53</sup> Ellen Wood, in a study of the Athenian 'peasantry', conceived of the freedom of independent labour as an important part of liberty.<sup>54</sup> Patterson's investigation of liberty in the Western world locates the expression of Berlin's liberties in democratic Athens and added a third type, that of sovereign freedom, which, as Murray points out, in Greek terms might be identified with power,<sup>55</sup> and may be considered as a refined form of positive liberty.

Raaflaub's analysis of liberty, pioneering inasmuch as it dealt with liberty as a social and political concept, is concerned with the semantics of *eleutheria* and the effect of historical events on the development of this ideology.<sup>56</sup> For Raaflaub, the concept of the freedom of the individual was inextricably linked to the freedom of the *polis*. Greek

<sup>52</sup> Ober (1989a: 295–6): 'the Athenians construed freedom more in terms of the positive right of the citizen to engage in political activity than in his "negative freedoms" from governmental interference'. On the relation of Ober's work to Rawls, see Ch. 2.12.

<sup>53</sup> Ober (2001: 187).

<sup>54</sup> Wood (1988: 136–7). In some contexts, there arose a notion that working for another precluded individual liberty: A. Jones (1957: 11); Dover (1974: 40); de Ste Croix (1981: 84–5).

<sup>55</sup> O. Patterson (1991: 4–5); Murray (1995: 423).

<sup>56</sup> Raaflaub's analysis of freedom (Raaflaub 1985, 2004) is based upon his accumulation of ancient references to *eleutheria* in Welskopf's lexicon of concepts relevant to Greek social history (Raaflaub 1981). The inspiration for this collection came from the insistence that social and conceptual history were interdependent, an idea pursued by Koselleck (1985: 73–91) and others.

liberation from the Persians in the first quarter of the fifth century led the Athenians to develop a concept of liberty that extended to the individual.<sup>57</sup> Moreover, as Athens was free to rule the Aegean after the Persian Wars, the most important concept of individual freedom that developed in Athens was the positive freedom to rule.<sup>58</sup> For Raaflaub, therefore, freedom is ruling, or even mastery, and on the level of the individual is represented by the political liberty granted by the participatory Athenian democracy. It is closely related to Mulgan's identification of the right to have power over others as an important aspect of the Greek idea of liberty.<sup>59</sup> Raaflaub's interpretation is firmly rooted in the fifth-century evidence, and he claims that including fourth-century material would add nothing to his arguments.<sup>60</sup> Raaflaub's work, however, leaves unanswered the question of how it might be possible to reconcile an idea of individual liberty with the obligations of the citizen; indeed, he suggests that the slogan of freedom to live as one pleases is a consequence of the political liberty of the Athenian citizen.<sup>61</sup>

Other classical scholars took up a different strand of Constant's speech, while concentrating on aspects of negative liberty that existed in Athens. Gomme extended Constant's thesis that Athens was exceptional in terms of the liberty that she allowed her citizens. In a posthumously published essay entitled 'Concepts of Freedom', he focused on the freedom to travel as an aspect of *polis*-freedom. Gomme refined Constant's idea that the commercial character of a city guaranteed the freedom of the individual to travel freely, proposing that this kind of freedom might be located also in other Greek *poleis*.<sup>62</sup> Hansen identifies freedom from restraints and freedom to participate as manifestations of negative and positive liberty in Athens.<sup>63</sup> Wallace argues that the lack of Athenian regulations of private life until the last third of the fourth century, combined with an ideology of freedom, respect for freedom of speech in cases when it did not threaten the interests

<sup>57</sup> On liberation from the Persians as the foundation of Greek freedom, see Momigliano (1979); on Herodotus' concept of freedom, see von Fritz (1965).

<sup>58</sup> Raaflaub (1985, 2004). Ostwald (1995) has concurred with these conclusions.

<sup>59</sup> Mulgan (1984: 10–12). <sup>60</sup> Raaflaub (2004: 19 with n. 66).

<sup>61</sup> Raaflaub (2004: 204–39).

<sup>62</sup> Gomme (1962: 141, 147); cf. Constant (1988: 314–15).

<sup>63</sup> Hansen (1989*b*: 28; 1996*a*: 99). See n. 5.



of the city, and regulations such as the outlawing of execution without trial, indicates Athenian concern for, although not guarantee of, negative liberty.<sup>64</sup>

With reference to Pericles' *epitaphios logos*, Cohen and Wallace postulate the existence of an Athenian idea of democratic liberty, perhaps coexistent with other contrary definitions, consisting of living as one likes.<sup>65</sup> This sometimes relates to a commitment to freedom of behaviour in the private sphere, as long as it does not contravene legal or religious duties to the city. Even so, it is widely recognized that the 'freedom to live as one likes' was an extreme or controversial form of liberty which was used by opponents of democracy to denigrate the liberty which was said to characterize that form of government.<sup>66</sup> In addition to attempts to formulate an all-embracing definition of liberty in the Greek world, there have been significant efforts to define those ancient Greek terms that have important connotations for the definition of liberty, such as *parrhesia* (freedom of speech) or *isegoria* (equality of speech).<sup>67</sup>

It must be noted that many of the modern interpretations have taken one of the sides of Constant's dichotomy between ancient and modern liberty. Yet none of them has attempted to reconcile the evidence for considerable obligations of the ancient Athenian citizen with an idea of liberty. This book attempts to develop an idea of liberty and civic obligation that removes the stress upon the dichotomy, whether that consists in the division between ancient and modern liberty, positive and negative liberty, or individual and political liberty.

With the exception of George Grote, only two scholars, G. K. Vlachou and Moses Finley, have attempted to interpret ancient Athenian liberty while acknowledging the significance of the obligations of the citizen. Vlachou's analysis of the *symbouleutic* (assembly) and forensic (law court) oratory of Demosthenes leads to the conclusion that, in Athenian democratic thought, the concept of the free

<sup>64</sup> Wallace (1994a, b, 1996a, 1997).

<sup>65</sup> D. Cohen (1991: 229–30; 1995a: 54–5); Wallace (1994a, 1996a).

<sup>66</sup> Hansen (1989b: 10; 1996a: 93; 1999: 75); Lintott (1992). For discussion of this kind of liberty in the ancient sources, see Ch. 1.4; for Aristotle's discussion of the idea, see Ch. 6.3.

<sup>67</sup> *Parrhesia*: Peterson (1929); Monoson (2000: 58–9). *Isegoria*: Griffith (1966); J. Lewis (1971); de Laix (1973: 161, 186–92).

man was tied up with the concept of citizenship.<sup>68</sup> This liberty consisted of participating in the affairs of a society featuring fundamental rights (the freedom of speech and thought) and corresponding duties, the two axes essential for the survival of the *polis*. While the assembly superseded individual free will, any repression that this may have entailed was corrected by the rule of law.<sup>69</sup> In the judicial sphere, rules and regulations guaranteed the freedom of personal security. Accordingly, constitutional liberty acted as the ultimate regulatory concept of Athenian democracy.<sup>70</sup> Perceiving the state as a community of citizens, Vlachou argues that the main concern of the citizen-body was with the protection of its constituent individuals in terms of freedoms which would be congruent with the interests of the state.<sup>71</sup> Vlachou's work is important, but his conclusions might be elaborated and extended by placing analysis of liberty within a full consideration of the obligations of citizenship and their justifications.

The work of Moses Finley laid some foundations for developing an interpretation of the relationship of liberty to obligation in ancient Athens. In one essay, Finley attempted to come to an interpretation of freedom on the level of the state as secured by the institutional system of the *polis* that formulated and sanctioned the 'intricate network of rights and duties that are subsumed under the label "freedom"'.<sup>72</sup> It is, of course, difficult to ascertain whether Finley's use of what appears to be the terminology of modern liberal thought is deliberate, coincidental, or owed to some common intellectual background. The latter is likely.<sup>73</sup> However, Finley never worked out this compatibility of freedom in full format.

The fact that modern scholarship produces such a diversity of analyses of the ancient Athenian idea of liberty owes a lot to the range of modern intellectual approaches to the subject, but also to the wide-ranging Greek discussion of the subject. Despite the plethora of ancient sources,<sup>74</sup> as has already been noted,<sup>75</sup> interpretations of

<sup>68</sup> Vlachou (1992: 26).

<sup>69</sup> Vlachou (1992: 42–3).

<sup>70</sup> Vlachou (1992: 15, 41, 43–4, 120–2).

<sup>71</sup> Vlachou (1992: 19–21).

<sup>72</sup> Finley (1981: 93).

<sup>73</sup> For a detailed study of Finley's background in the theories of Polanyi and his formation of the debate about the ancient economy, see Nafissi (2005: 191–283).

<sup>74</sup> For full analysis of the occurrences of the word *eleutheria*, see Raaflaub (1981).

<sup>75</sup> See Ch. 1.1.

liberty have often focused on the Periclean funeral speech. It was not until the 1980s and 1990s that scholars, notably Josiah Ober and Mogens Hansen, applied to the corpus of Attic oratory questions about the nature of Athenian liberty. This study attempts to formulate an understanding of the relationship between liberty and civic obligation on the basis of an analysis of Attic oratory and inscriptions. It will emerge that the corpus of Attic oratory offers a variety of interpretations of the idea. Most striking is the apparent clash between two apparently antithetical ideas of liberty: living within the *polis* and living as one likes.

### 1.3. *ELEUTHERIA* IN ATHENS

#### 1.3.1. *Eleutheria* in Attic Oratory

*Eleutheria* in forensic and symbouleutic oratory appears to have had several usages. As Hansen and others point out, it was identified as a characteristic of Athenian democracy and was posed in juxtaposition to alternative forms of government, such as the tyranny of the Thirty, the Spartan constitution or oligarchy in general,<sup>76</sup> or the threat of Macedonian rule (D. 18.65, 68, 296).<sup>77</sup> The idea of *polis*-freedom was never completely detached from concern for individual freedom: concern for the freedom of the city from external oppressors, in the shape of the Spartans at the end of the fifth century and the Macedonians in the second half of the fourth century, appears to have inspired discussion of the notion of the freedom of the citizen.<sup>78</sup> It has frequently been pointed out that, on an individual level, freedom was most frequently juxtaposed with human slavery (e.g. Aeschin. 1.66; D. 59.19; cf. Is. fr. 15 Thalheim).<sup>79</sup> It is uncontroversial that possession of citizenship entailed possession of freedom (Aeschin. 3.169; D. 57.69),

<sup>76</sup> Lys. 12.73, 13.17, 18.25, 26.2–3, 31.26; Dem. 15.17, 18.46, 20.102–8.

<sup>77</sup> Hansen (1974: 57–8); Cawkwell (1996); Milns (2000: 216–17).

<sup>78</sup> This connection between *polis* and individual liberty is central to Raaflaub's study of liberty: see Ch. 1.2.

<sup>79</sup> Beringer (1985); Mulgan (1984: 8–9); Hansen (1996a: 93).

while the laws of the *polis* were conceived of as defending rather than encroaching upon liberty (D. 24.5).<sup>80</sup>

The institutions and values of Athenian democracy frequently were praised in epideictic and exhortatory oratory without being subject to the potential contention to which the genres of forensic and symbouleutic oratory were subject. It should be no surprise, therefore, that within the former genres there exists unguarded praise for a usually more controversial interpretation of liberty: the freedom to live as one likes. Pericles claims that in Athens the freedom of public life extends to freedom of interaction on a personal level (2.37.2). The nature of this freedom is elaborated in his comparison of the Athenian and Spartan education systems where he claims that the Athenians 'live without restrictions' (2.39.1). However, this can somehow coexist alongside obedience to laws and the existence of magistracies (2.37.3). The idea of liberty as doing nothing unwillingly occurs in the *epitaphios logos* of Lysias, where the author refers to the myth of the Athenians offering refuge to the sons of Heracles. The Athenians refused to give up the Heraclids to Eurystheus, 'believing *eleutheria* to mean not doing anything involuntarily' (Lys. 2.14). However, this idea of absolute liberty is qualified later in the speech, where *eleutheria* is identified as 'the strongest bond of agreement' and a quality which coexists with the application of law to honour and punish (Lys. 2.18–19). In situations of praise, therefore, it appears that *eleutheria* can coexist with obedience to the law.

Absolute liberty is praised without such qualification in Thucydides' indirect quotation of Nicias' exhortation to the Athenians before their attempt to break out from Syracuse. Thucydides tells us that Nicias reminded the Athenians of the extreme freedom of their homeland and even of the unrestrained permissiveness (*anepitaktos exousia*) of their lifestyle (Th. 7.69.2).<sup>81</sup> But such expressions of praise for absolute liberty do not occur in forensic or symbouleutic oratory,

<sup>80</sup> See Ch. 4.1.1.

<sup>81</sup> For another example of boasting of Greek freedom in an exhortatory context, see X. *Anab.* 3.2.13. On the concept of liberty in the funeral speeches, see Loraux (1986: 175, 180–1, 195–6); on the absence of terms such as *parrhesia* and *isegoria* from the funeral orations, see Loraux (1986: 175).

where words spoken were more subject to the criticism of opponents in litigation or in the assembly.<sup>82</sup>

For the most part, this study will be concerned with the implied coexistence and mutual reliance of liberty and obligations. On occasions, however, orators in forensic contexts formulate explicitly the idea that the obligations of citizenship support *eleutheria*. This emerges in Lycurgus' speech against Leocrates. Lycurgus tells us that those who died at Chaironea died defending the *eleutheria* of the Greeks (50; cf. 47, 144). Freedom is the state which the Athenians sustain by resisting the Macedonian threat to their independence, but that freedom is preserved only by the performance of the duties of citizenship. Those fighters at Chaironea became accomplished by performing virtuously the duties of military service; Leocrates conversely failed in his duties (64), and failed to defend freedom. The idea that dying for one's country on behalf of *eleutheria* was truly praiseworthy for those who had fallen in battle emerges in both funerary oratory (D. 60.27) and funerary epigraphy.<sup>83</sup> Accordingly, Leocrates does not deserve to partake in what Lycurgus perceives to be two rights of citizenship: to go to the *agora* and to share in the public sacrifices (5). This demonstrates two important points: it suggests that citizens must carry out their duties in order to secure freedom for the *polis* and its citizens; and it asserts a basic reciprocity of rights and duties: rights are deserved only by citizens who carry out the duties of citizenship.

An even more explicit formulation of the mutual reliance of duties and freedom occurs in Demosthenes' speech *Against Leptines*. As part of his argument stressing the significance of the Athenian system of public rewards, Demosthenes tells the court that the *eleutheria* of the Athenian *demos* was guarded by the rivalry (*hamilla*) with which good citizens competed for awards offered by the people (D. 20.108). Again, freedom appears to be protected by the fulfilment of obligations, but this time by the supererogatory performance of obligations.

<sup>82</sup> For a treatment of this kind of liberty in forensic and symbouleutic oratory, see Ch. 1.4.

<sup>83</sup> See Ch. 1.3.2.

### 1.3.2. Epigraphical *Eleutheria*

*Eleutheria* in Athenian decrees most frequently refers to the liberty of the *polis* from excessive external intervention. In the decree containing the charter of the Second Athenian Confederacy of spring 377, the Athenians made two statements with bearing on the concept of liberty. The decree was enacted on the basis ‘that the Spartans shall allow the Greeks to be free and autonomous’ (RO 22.9–10), and contained the pledge that any of the Greeks or barbarians living in Europe, or the islanders, who do not belong to the king of Persia, may join the alliance, ‘being free and autonomous, living under whatever constitution he wants, neither receiving a garrison not having a governor imposed upon him nor paying tribute’ (RO 22.19–23). In the former clause, liberty is freedom from Spartan hegemony; in the latter, liberty is freedom from Persian despotism,<sup>84</sup> but also from the kinds of restriction to which the Athenians subjected their fifth-century imperial subjects.

Independence from another power was the meaning of *eleutheria* in 318/17 when the Athenians reinscribed the honours for Euphron of Sicyon, whose role in the liberation of Sicyon is commemorated thus: ‘Euphron, returning from exile, expelled the garrison from the Acropolis with the support of the Sicyonians and after freeing the city made it a friend and ally of the people of Athens, the first of the cities in the Peloponnese’ (IG II<sup>2</sup> 448.45–9). This meaning of liberty was sustained in Athenian third-century epigraphically preserved rhetoric, as a reference to the struggle for freedom from particular Hellenistic monarchs.<sup>85</sup> But more instructive for an interpretation of individual liberty are the aspects of *eleutheria* highlighted in three late fourth-century grave epigrams, two of them commissioned for a public monument, and a third for an individual:

<sup>84</sup> On the employment of the slogan ‘the freedom of the Greeks’ in the effort to rally the Greeks of Asia Minor, see Seager (1981); Seager and Tuplin (1980). For the slogan in the Hellenistic and Roman periods, see Gruen (1984: i. 132–57); G. J. Oliver (2001b: 36–9).

<sup>85</sup> This is most clear in the decree of Chremonides on the alliance between Athens and Sparta of the 260s: IG II<sup>2</sup> 687.7–18, translated by M. Austin (1981: 94–7); for other examples, see IG II<sup>2</sup> 657, 682.38–9, 687.7–18, 832, 834.1–28; *I Rhamnous* 22, 26.

There is nothing better than liberty for noble men,  
 For which these men lying here died  
 In the contest of a sea-battle; the grave which the *demos* gave  
 Informs the *patris* and surrounds them with gratitude.

(IG II<sup>2</sup> 5225)

These youths died on behalf of their country  
 Saving all of Greece with their souls on the day of freedom.

(SEG xxviii. 240)

Philocrates son of Phrynichos of Acharnai  
 When you set foot for freedom  
 Fate deprived you of life. Philocrates . . .

(IG II<sup>2</sup> 5847)

These individuals are presented as having died on behalf of *eleutheria*, which is portrayed as the ultimate aim of battle. In the context of late fourth-century history, these clearly refer to the Athenian struggle against the Macedonian threat. But what is notable here, and indeed central to the line of argument to be pursued, is that through their supererogatory performance of military obligations, these citizens have contributed to the liberty of the Athenians: the formula emerges that liberty is sustained by the performance of obligations.

#### 1.4. LIBERTY AND THE FREEDOM TO LIVE OR DO AS ONE PLEASES

The characterization of Athenian democracy as allowing its citizens to live as they please is most famously expressed in Aristotle's *Politics*.<sup>86</sup> This section will be concerned with the orators' interpretation of this idea, and will stress that the idea is more often encountered as a criticism of the anti-democratic behaviour of individual reprobates.

It is worth remembering that this idea of liberty was commonly held up as a criticism of democracy: certainly, this was the intention of Plato's view that in a democracy individuals were free to do as they pleased, thus equating freedom with anarchy (Pl. *Resp.* 8.557b–8c, 562b–4a).<sup>87</sup> For Plato, as Wallach has suggested, the rule of freedom

<sup>86</sup> See Ch. 6.3.

<sup>87</sup> Samaras (2002: 65–8).

was an inadequate guarantor of justice.<sup>88</sup> Isocrates, too, associated democracy after Cleisthenes with lawlessness, political equality as the freedom to speak as one pleased, and happiness as the right to do as one pleased (Isoc. 7.20, 12.131), and in the *Areopagitikos*, a speech strongly critical of the workings and ideologies of democracy in the period after the Social War of 357–355,<sup>89</sup> set in opposition lawful, moderate, and civic behaviour with *eleutheria* (Isoc. 2.4–5, 20). Later writers appear to have assumed that living as one pleased was a catchphrase of Athenian democracy. Plutarch, writing almost 500 years later, had sympathy with the derivative idea that in particular Athenian democracy possessed this kind of liberty: ‘In Athens everyone could live as he liked; in Sparta, that was permitted to nobody’ (Plu. *Lyc.* 24). It appears that the liberty to live as one likes is conceived of as a shortcoming of Athenian democracy, and as symptomatic of a society where individuals fail to perform their obligations adequately. The employment of this idea in forensic oratory had a more specific reference.

A passage in Lysias’ speech *On the Scrutiny of Evandros*, a prosecution speech in a preliminary scrutiny (*dokimasia*) of a man suspected of involvement in the regime of the Thirty in 404–403, deserves closer scrutiny. The speaker tells the audience that it is more important to investigate not Evandros’ moderate (*sophron*) behaviour under the democracy, at which time there was no chance for licentious behaviour, but rather his behaviour at the time of the tyranny of the Thirty, at which point he was able to choose how he lived and chose to act unlawfully (Lys. 26.5). Clearly, therefore, the passage refers to living as one pleases not as a democratic virtue, but as a condition that arose from the situation which allowed Evandros to choose whether he would join the democratic or the oligarchic party.

It is possible to divide living and doing as one likes into separate categories. Living as one likes was connected with outrageous or unconstitutional behaviour: Aeschines argues that Timarchus wanted to live and speak as he liked, something indicated by his attack on the law about speaking in the *boule* (council of 500) or *ecclesia* (assembly) (Aeschin. 1.34–5). In Demosthenes’ speech *Against Euboulides*,

<sup>88</sup> Wallach (2001: 301).

<sup>89</sup> On the significance of this context, see Ch. 3.6 and 3.7.



Euxitheus uses the association of not being able to live as one likes with democratic citizenship to his advantage. Admitting that he and his mother had worked as ribbon sellers, he ran the risk of anti-banausic prejudice and the Athenian association of menial mercantile tasks with non-citizens. Accordingly, he associates selling ribbons with the fact that they could not live as they wished (D. 57.31). Euxitheus went on to stress that this was not an indication (*semeion*) that they were not Athenians. For the cogency of his argument, Euxitheus relied on the assumption that Athenian citizens were not necessarily able to live as they liked.

The freedom to do whatever one likes appears even lower on the scale. Doing as one likes was associated with a number of subversive or anti-constitutional practices: a disregard for the laws of Athens and her magistrates (Lys. 14.11; D. 26.13), a disregard for the procedures of law-making (D. 20.94, 24.47), and a curtailment of the restriction of behaviour (Lys. 12.85). It was classified together with breaching the laws (Lys. 3.5, 22.5), or a private agreement (D. 42.2), the redundancy of the law code (Isoc. 8.102–3), and opposition to the council and people (D. 25.20, 26; 35.28; 42.9; 59.112; Aeschin. 1.34), and was linked to the state of nature and the life of animals (D. 25.20, 26–7). Criminals were said to have made their defence speeches so that they could do whatever they liked in the future (Lys. 22.19, 30.34). Doing as one likes was associated with *exousia* ('permissiveness') (Isoc. 7.20, 12.131; D. 9.3, 23.67), a degrading term to describe the behaviour of reprobates. Lycurgus criticized what he saw as the *exousia* granted by the jury to speakers in the law courts which allowed them to discuss irrelevant subjects (Lycurg. 1.12), in the words of an early twentieth-century commentator, 'improper freedom.'<sup>90</sup> Laws were enacted with the specific purpose of taking away the *exousia* to act as a criminal (D. 24.123), and the vice was associated by Demosthenes with fraud and Timocrates' law (D. 24.105), or with Aristocrates' breach of the law protecting even murderers from maltreatment (D. 23.180). Conversely, Demosthenes stated that the laws of Athens defend the prosperity, democracy, and liberty of Athens (D. 24.5).<sup>91</sup>

<sup>90</sup> Petrie (1923: 223).

<sup>91</sup> Herodotus' formulation of Spartan liberty asserts the idea that law acts as a remedial restraint to liberty: 'being free they are not totally free; for law is their master, whom they fear much more than your men fear you', and that they behave

Thucydides and Xenophon perceived speaking or doing as one pleases as a sign of sedition, or mentioned the notion in relation to a threat of unbridled violence. Three examples will suffice. The leaders who met at Colonus in 411 established a constitution which allowed any Athenian to make any proposal he pleased at the assembly (Th. 8.67.2). This was a means of overcoming the limits enforced by the entrenchment clauses (statements in laws and decrees that forbade their abolition) that safeguarded the democratic constitution,<sup>92</sup> and was simultaneous with the temporary suspension of the judicial prosecution against those who made an unconstitutional proposal (*graphe paranomon*).<sup>93</sup> After the battle of Arginusae in 407, the moderating efforts of Euryptolemus to delay the execution of the generals by way of *graphe paranomon* were overturned by the people on the basis of the protest that it was a terrible thing to prevent the Athenian *demos* from doing whatever it liked (X. *HG* 1.7.12): this retort opened the way for the execution of the generals.<sup>94</sup> In the oligarchic revolution of 404, the oligarchs removed Theramenes from their clique as the barrier to doing as they wanted (X. *HG* 2.3.23). The same associations emerge in oratory: Demosthenes associated *exousia* with *stasis* (civil war) (D. 9.61). According to Lysias, chaos in the Piraeus gave the Thirty the apparent liberty to do as they pleased (Lys. 25.17, 32–3). A comparable sentiment of the mid-fourth century was the fear attached to the growing power of Philip: in the Third Philippic, Demosthenes argued that if the Athenians did not take action, then Philip would be free to do and speak as he liked (D. 9.2, 22).

The liberty of doing whatever one liked was, within the discourse of the Attic orators, a concept too extreme to be applied to any human being, dead or alive: Demosthenes stated that it would have been wrong for even tyrannicides to be granted the right of doing as they liked (D. 21.170). Absolute freedom of action therefore was

as law consistently bids them to do (Hdt. 7.104.4). On Herodotus' idea of freedom as a reflection of the complexity of the Greek view of the relationship between law and freedom, see von Fritz (1965). On Herodotus' conception of freedom as freedom from the Persians, see Momigliano (1979).

<sup>92</sup> On entrenchment clauses, see Ch. 4.1.9.

<sup>93</sup> Boegehold (1996: 208). The first use of the procedure took place probably in 415 (And. 1.17). On this procedure in the fourth century, see Hansen (1974).

<sup>94</sup> Consequently, 'for the first time in Athenian history the principle of popular sovereignty was asserted to its logical conclusion' (Ostwald 1986: 444).

not permitted for any one individual, however virtuous. In certain circumstances (with the exception of the debate about the generals of Arginusae), it was acceptable for the people (*demos*) of Athens to be granted the right to do as it liked (D. 20.148; 24.151; [59].4, 88; Th. 3.37–40).<sup>95</sup> In contrast to those scholars who emphasize the rule of law in fourth-century Athens,<sup>96</sup> it appears that the right of the collective *demos* to do or live as it likes was in some oratorical contexts an acceptable position.

This consideration of the contexts of the idea of living as one likes suggests that the idea was used as an attribute of the individual citizen of the Athenian democracy only in the context of exhortatory and, in a more qualified sense, epideictic oratory. In these contexts, Athenian political habits could be praised with attractive slogans which were not designed to stand up to critical pragmatic analysis. However, the situation in forensic oratory is quite different. Most frequently, the idea of living or doing as one likes is used by proponents of democracy to degrade the behaviour of men who they claim are breaking the law. Accordingly, the idea of democracy and individual liberty as communicated in forensic oratory is distant from the extreme position of living as one likes. The main argument of this book is that freedom was frequently identified with citizenship rather than with freedom from legislation or constitutional restraint. It is therefore necessary to explain how that liberty was reconciled with the duties and obligations of citizenship. The plausibility of this approach will become clear by looking closely at the notion of the freedom of speech: it appears to be a liberty or right, the exercise of which carries with it considerable duties or responsibilities.

### 1.5. FREEDOM OF SPEECH

The Attic orators frequently present freedom of speech as a positive characteristic of Athenian democracy.<sup>97</sup> Freedom of speech was praised as one of the great features of the Athenian democratic *polis*

<sup>95</sup> Andrews (2000: 61–2).

<sup>96</sup> On the rule of law and alternative interpretations of sovereignty in the Athenian *polis*, see Ch. 4.1.

<sup>97</sup> Sluiter and Rosen (2004: 4–8); Balot (2004a: 236–42).

(D. 7.1), and it was claimed the Athenians enjoyed more of it than citizens of other *poleis* (D. 9.3).<sup>98</sup> Demosthenes conceived of the freedom to praise non-democratic constitutions as a privilege exclusive to Athenian democracy (D. 20.105–8); Aeschines suggested that it was upheld by the Athenian laws (Aeschin. 3.6). Freedom of speech is often described with reference to the term *parrhesia*, which is best translated as ‘frank speech’.<sup>99</sup> It was a value which could be conceived of as a privilege restricted to citizens ([D.] 59.28; D. 9.3),<sup>100</sup> or as a characteristic of citizenship,<sup>101</sup> though another strand of thought claimed that in Athens it was granted to non-citizens too (D. 9.3, 58.68). In fact, the Athenians did limit freedom of speech: when the herald at the start of the Athenian assembly asked, ‘Who wishes to speak?’, the question was directed at the citizens (D. 18.170; Aeschin. 1.23–4, 3.4). The right of speaking in the public arena was restricted to those citizens who behaved in an orderly fashion; those deprived of it include those who had prostituted themselves (Aeschin. 1.3, 19, 22; D. 22.30–2), those who were conceived of as criminals (D. 25.28), and those who had mistreated their parents, thrown away their shields in battle, had not fulfilled military obligations, had wasted paternal estates, had remained in Athens in the time of the Thirty, or had been convicted three times by *graphe paranomon*.<sup>102</sup> Speaking in the popular assembly, according to Aeschines, was something proper for those citizens who were willing to do so, and when it seemed good to them (Aeschin. 3.220).

*Parrhesia* was valued particularly when it was a quality the application of which implied democratic, patriotic, dutiful behaviour that required understanding, intelligence, and daring. As Monoson argued, in the Athenian *polis*, right *parrhesia* defended the institutions of democracy and the *polis* or served ‘to confront, oppose, or

<sup>98</sup> For a discussion of the Athenian aspects of *parrhesia*, see Radin (1927); Peterson (1929); Scarpat (1964: 29–61); on the notion as it emerges in Demosthenes’ prosecution of Aristogeiton, see Carmignato (1998).

<sup>99</sup> Monoson (2000: 54).

<sup>100</sup> Bastards were excluded from the rights of free speech: Ogden (1996: 171 with nn. 50–2).

<sup>101</sup> On the restriction of rights in the Greek world to those who were citizens, see D. Carter (2004).

<sup>102</sup> On those citizens excluded from the right of free speech, see Wallace (1994b: 114–15); Monoson (2000: 24).

find fault with another individual or a popular view in a spirit of concern for illuminating what is right and best.<sup>103</sup> *Parrhesia* enabled the prosecution of criminals (Aeschin. 1.80) and the elucidation of matters of public policy (D. 8.21; cf. 1.1). Demosthenes contrasted *parrhesia* with the deceit and profiteering of prosecutors and flatterers (D. 10.76), in order to support his own image of integrity, his clarity of perception, and his self-sacrifice on behalf of the Athenians.<sup>104</sup> It could even be held up as a duty of the Athenian assembly to allow *parrhesia* to the orators (D. *Prooem.* 27). *Parrhesia* appears to be a liberty that clearly implies the duty of speaking in the interests of the *polis* of the Athenians. Someone who took bribes to make proposals in the assembly could be said to have sold the right of *parrhesia* (Din. 2.1).

There is another side to the story, however: opponents of democracy criticized democracy for allowing everyone, not just the cleverest, to speak on equal terms ([X.] *Ath. Pol.* 1.6). It should therefore be no surprise that, even in forensic and symbouleutic oratory, the notion of either individuals or the collective *demos* speaking recklessly, with excessive freedom of speech, attracted criticism. While Wallace shows that the evidence for Athenian restriction of intellectual freedom of speech is limited and problematic, it is the case that the Athenians prosecuted those who spoke impious things, Diogenes being an example (Lys. 6.17; *FGrH* IIIb Suppl. I 199–200).<sup>105</sup>

A wide range of sources attest to an excess of freedom of speech as an equivalent of *exousia*.<sup>106</sup> The *demos* at the *ecclesia*, jurors, and rival politicians were often berated for their habit of interrupting speakers, or for creating *thorubos*, an uproar.<sup>107</sup> While *parrhesia* in the assembly was construed as useful to the working of the *polis*,

<sup>103</sup> Monson (2000: 53). The idea that freedom of speech was guaranteed only when the words spoken championed the interests of the *polis* is not a new one: see Spina (1986); Henderson (1998); Carmignato (1998; 1999: 98–101).

<sup>104</sup> Monson (2000: 60 with n. 35).

<sup>105</sup> Wallace (1994a: 132–3 with n. 26). Wallace argues that intellectual freedom was left untouched by the Athenians unless it was perceived as threatening public interests (1994a).

<sup>106</sup> Scarpat (1964: 46–57); Carmignato (1998: 44–5 with n. 22; 1999: 98–101); Monson (2000: 62 n. 41).

<sup>107</sup> On *thorubos* in the law courts, see Wallace (2004: 223–7); Bers (1985). On *thorubos* in the assembly, see Hansen (1987: 69–72); Tacon (2001).

Demosthenes claimed that *thorubos* was damaging to the democratic process (D. *Prooem.* 4.1). Aeschines implied that Solonic laws arranged an order of speaking (Aeschin. 3.2). It has been suggested that by swearing to listen to both sides of a legal case, jurors purported to renounce *thorubos*.<sup>108</sup> Furthermore, there also existed laws against speaking ill of the dead, against slander, forbidding the revelation of religious secrets, and against the abuse of a magistrate.<sup>109</sup> The nature and extent of the short-lived restrictions imposed on satire at points in the fifth century are debated.<sup>110</sup> Aeschines argued that Timarchus, by breaching the law against prostitutes speaking in public, showed his group's desire to live and speak however they pleased (Aeschin. 1.34). Elsewhere Demosthenes criticized speaking irresponsibly against the law or in contradiction to oneself (D. 25.26–7, 51.16).

As Boegehold has argued, the practice of including entrenchment clauses—with the effect of making adjustment or abolition of particular legislation illegal—in Attic decrees was one way of ensuring that no one might speak out against the measures included in a decree;<sup>111</sup> indeed, the prosecution against illegal proposals (*graphe paranomon*) might be employed to censure proposals made at the assembly. In short, someone saying anything that could be construed as contrary to the interest of the *demos* could find their freedom of speech curtailed. Accordingly, freedom of speech in the law courts and *ecclesia* should be seen as located within civic obligations and oratorically negotiated norms, rather than reflecting a disinterested obsession with absolute freedom. Freedom of speech in ancient Athens, given its lack of legal protection, far from being an inalienable right, was an attribute of citizenship that carried with it both rights and duties. As

<sup>108</sup> Wallace (1994b: 110 n. 6).

<sup>109</sup> Wallace (1994b: 112–15).

<sup>110</sup> Scholiast to Ar. *Ach.* 67; [X.] *Ath. Pol.* 2.18; Ar. *Ach.* 377–8, 502–3. The most recent discussion has suggested that attempts by politicians to censure, by way of prosecution, the criticism that they received in comedy were unsuccessful, and reflect a shared understanding that it was the role of comedy to criticize political activity: Sommerstein (2004a). Sommerstein's (2004b) idea that the freedom of speech of comedy was no different from that of the average Athenian citizen is challenged by Halliwell's (2004) suggestion that comedy was immune from the laws of slander: Halliwell (2004). For earlier discussion of restrictions on comedy, see Radin (1927); Sommerstein (1986); Spina (1986); Atkinson (1992); Csapo and Slater (1995: 165–71); Halliwell (1991: 49, 64).

<sup>111</sup> Boegehold (1996: 208). On entrenchment clauses, see Ch. 4.1.1.

will become clear, this interpretation of Athenian freedom appears to resemble closely a Rawlsian ‘basic liberty’.<sup>112</sup>

## 1.6. RIGHTS AND OBLIGATIONS

The close relationship that rights bore to obligations within the framework of citizenship has already been observed in studies of Athenian democracy and discussions of Greek concepts of rights,<sup>113</sup> though the strands of this relationship have never been thoroughly explicated with reference to a set of non-philosophical texts. The notion that rights and obligations might be conceived of as containing overlapping aspects of citizenship differently construed has emerged in scholarly discussions of rights in Aristotle’s *Politics*. Miller concludes that Aristotle’s theory of rights concentrates on the ‘right to do what we ought’, in direct contrast to the modern, libertarian view of rights.<sup>114</sup> Schofield suggests that Aristotle’s conception of rights, as the perquisites of citizenship, might be seen as obligations of the *polis* towards the individual.<sup>115</sup> Indeed, another way of conceiving of rights such as political or litigious involvement may be to construe them as ‘shares’, a word that indicates both social and political relevance, as well as being neutral about whether or not they are voluntary acts.<sup>116</sup>

The oratorical sources appear to coincide with the view that rights bore a close relationship to obligations when they existed within the framework of citizenship, and this relationship is expressed in four related but distinct forms. One analysis suggests that certain public activities might be subsumed under the heading of either

<sup>112</sup> On Rawlsian liberty, see Ch. 2.8.1.

<sup>113</sup> Pomeroy (1975: 60); Finley (1981: 93); Forrest (1983: 285); Murray (1990a: 23; 1995: 49); Meier (1990: 169–71); Manville (1990: 7, 210); Korsgaard (1996, esp. 209); Vlachou (1996: 344); Ober (2001: 182–4); D. Carter (2004).

<sup>114</sup> F. Miller (1996: 905; cf. 884–5); cf. Sorabji (1993: 134–57); Allen (1996: 84).

<sup>115</sup> Schofield (1996: 852) has argued that Miller’s theory of the existence of a concept of ‘rights’ in Aristotle is unhelpful, as it might preclude explanation of merit or deserts; cf. F. Miller (1996). On the concept of human rights in Greek literature, see Burnyeat (1994).

<sup>116</sup> Ostwald (1996).

'rights' or 'duties' without its affecting the substance of those activities: certain opportunities or activities which were by some considered rights could, for rhetorical purposes, be described as obligations. When Lysias presented participation in the law courts and in the *ecclesia* as aspects of Athenian *eleutheria* (Lys. 26.2), he conceived of these activities as rights. Chapter 5 will demonstrate that political activity, litigation, and other public activities could be construed by orators, keen to justify their political or litigious activity, as obligations.

The second expression of the relationship was enunciated by Lycurgus, who perceived the relationship between rights and obligations as one of desert: he argued that only those who fulfilled their obligations in the past deserved to partake in any public activity. The third interpretation of the relationship between rights and obligations states that citizens' rights are reliant on others' performance of obligations. Certain perquisites of citizenship, such as freedom from execution without trial (Lys. 22.2) and torture (And. 1.43), security of one's home from being broken into by a magistrate (D. 18.132), protection of private property ([Arist.] *Ath. Pol.* 56.2), conceived of by Hansen as the negative rights of the citizen, were all reliant thus.<sup>117</sup> This was made explicit in Demosthenes' account of Androtion's extraction of arrears of the property tax (*eisphora*). He claims that Androtion acted as a thief and a bully, and was free to do as he pleased owing to the financial crisis of the time (22.49). By proposing terrible and unconstitutional decrees, he was able to extract these arrears unfairly, together with the Eleven he forced his way into the homes of private citizens (22.49–50), and he exacted vengeance from the persons of citizens as if they were slaves (22.56). He is described as unfit to play a public part in democracy (22.47). In these passages, Demosthenes suggests that the citizen has the right to expect some degree of privacy in his own home. But there is also a significant inference that one citizen has an obligation not to encroach excessively on the lives of others. Thus a right of the citizen is reliant on others' obedience to obligations. Moreover, the right of a citizen to become involved in public life bestowed upon him certain duties of behaviour. Freedom

<sup>117</sup> Hansen (1996a: 127; 1998: 92–4).



of speech is the prime example of a right which demanded the correct performance of duties.<sup>118</sup>

According to a fourth formulation, rights might inspire the performance of obligations: Demosthenes, in the speech against Meidias, insisted that what encourages *philotimia* and expenditure in Athens is each citizen's reflection that he has the right to partake in democracy (D. 21.67). What all these interpretations have in common is that they suggest that when they exist within a framework of citizenship, rights and obligations are mutually reliant and that there is no difficulty in reconciling their existence: there exists no right to be without duties. Having explained the relationship of rights and obligations, it is necessary to explain the term 'civic obligation'.

### 1.7. OBLIGATION AND LIBERTY IN MODERN THOUGHT

The term 'political obligation', in modern political theory, is often used to refer to the general obligation to accept the state—to obey the directives and officials of a government<sup>119</sup>—the problem that is encountered in Plato's *Crito* (51e4).<sup>120</sup> Rosler has recently suggested that Aristotle too was deeply interested in this question.<sup>121</sup> As Parekh pointed out in 1993, a second sense of political obligation in modern thought refers to the obligation to participate in societal activity to the degree of at least upholding the institutions that protect justice,<sup>122</sup> a problem also addressed in the *Crito* (52c2, d2–3, d5).<sup>123</sup> Along Parekh's line of thinking, political obligation might be held to consist of a number of diverse activities that would uphold just institutions: jury service and military conscription are examples. Indeed, Klosko's work has examined how a significant obligation such as military service is enforced through political obligations in Germany, the United

<sup>118</sup> See Ch. 1.5.

<sup>119</sup> Uses of the term in this sense occur in the following works: Plamenatz (1968); Pateman (1979); Dunn (1980, 1991); P. Harris (1990); Horton (1992); Allison (2003); Rosler (2005).

<sup>120</sup> Wozzley (1979: 97 n. 7); cf. Kraut (1984: 158).

<sup>121</sup> Rosler (2005).

<sup>122</sup> Parekh (1993).

<sup>123</sup> Wozzley (1979: 97 n. 7).

States, and Israel.<sup>124</sup> A third meaning of political obligation (which differs from the second sense only in the nature and number of those obligated) is that in which Rawls uses it in *A Theory of Justice*, that is, to describe the expected behaviour of those citizens who are specifically politically engaged: this consists primarily of the promotion and application of justice, which becomes obligatory as a result of the voluntary act of political participation.

In this book the third meaning of political obligation will be of concern in Chapter 5.2, and the first sense will be touched upon in Chapter 4.1, but the main interest is in the second sense. While political obligation in the first sense is the response to the question ‘Must I obey?’, the subject of greatest interest is the response to the questions ‘What must I do?’ and ‘Why must I do it?’ The second sense of obligation will be referred to as ‘civic obligation’, as it refers to those obligations, both political and non-political, the fulfilment of which was deemed compulsory, or the performance of which was deemed virtuous. According to some thinkers, the strict sense of obligation necessitates the formulation of an agreement made tacitly or expressly, whereas duty is moral and natural and presupposes no such agreement.<sup>125</sup> As this distinction is not expressed in the ancient sources, it will not be drawn in this interpretation of Athenian liberty: duty and obligation will be treated as synonyms.

Were we to perceive liberty as the absolute freedom to do and live as one pleases, all three kinds of political obligation could be regarded as detrimental to the liberty of the individual. As has been made clear, these senses of liberty were extremely controversial. However, there are few questions less frequently asked by the political philosopher than how men’s desire for liberty might be reconciled with the need for authority, obedience, and the necessity of participation in the institutions of the state or society that are supposed to safeguard men’s liberty. Indeed, a strong tradition in British and German political thought from the nineteenth century onwards urges that freedom can be achieved by the individual only within the society towards which that individual has obligations. This idea was restated by the British Kantian political philosopher and radical T. H. Green (1836–82). In *On the Different Senses of ‘Freedom’ as applied to the Will*

<sup>124</sup> Klosko (2005: 162–80).

<sup>125</sup> Rawls, *TJ* 294.

and to the *Moral Progress of Man*, an extract from a series of lectures delivered in 1879, Green shows that, for Kant, freedom means merely awareness of the possibility of freedom, a state that can be reached only by living within society, when the spirit expressed in the law of that society becomes the independent being's principle of action.<sup>126</sup> This view provides one means of reconciling freedom and obligation: the notion that freedom itself is at least partly constituted by fulfilling one's obligations. Green's own treatment of the subject, in his *Lectures on the Principles of Political Obligation*, concluded with the following formulation: 'I am properly *obliged* to those actions and forbearances which are necessary to the general freedom, necessary if each is not to interfere with the realization of another's will.'<sup>127</sup> To Kant's solution to the problem of liberty and obligation, Green therefore added another solution: to uphold popular freedom, it is necessary that a sufficient number of people fulfil their obligations.

The congruity of liberty and obligations is a constitutive part of liberal political thought: in the nineteenth century a utilitarian liberal philosophy emerged bearing the notion that the presence of duties or obligations which contributed to the total happiness in society was more valuable than the utility of the organic liberty upon which coercion or sanction impacts. Later utilitarians such as Grote and John Stuart Mill drew support for the compatibility of obligations and liberty from the Athenian historical example.<sup>128</sup> But the compatibility of duties or obligations looms large also in twentieth-century liberal thought, such as the realistic utopia of John Rawls's *Theory of Justice*, where it is worked out as one aspect of an ideal liberal society. Chapter 2 will explain Rawls's exposition in depth. Rawls's theory provides a useful starting point principally because it leaves behind the positive–negative division which has become embedded in the scholarship of Athenian liberty since Constant. Moreover, this interpretation of liberty and obligation is superior because it can be worked out in the sources which are remains of the transactions of Athenian society.

<sup>126</sup> Green (1895: 4–5); cf. Krieger (1957: 86–125). On the relationship between liberty and obligation in political thought generally, see Bergson (1942).

<sup>127</sup> Green (1895: 246); on Green's theory of positive liberty, see Wempe (2004).

<sup>128</sup> See Ch. 1.1.

## 1.8. OBLIGATION AND LIBERTY IN ANCIENT ATHENS

This encounter with the problem of the clash of obligation and liberty in ancient Athens began as an attempt to answer the question of whether political participation was compulsory in the Athenian *polis* of the fourth century, and if so, what would be the connotations for the nature of liberty in ancient Athens. The ancient testimonia do not indicate whether or not the institutions of Athenian democracy made attendance at the *ecclesia* or any other kind of political involvement compulsory.<sup>129</sup> Indeed, the sources are ambiguous about the extent to which institutional compulsion was used to ensure the fulfilment of financial obligations.<sup>130</sup> The problem lies in the need to distinguish the subject of political practice from the kinds of historical and constitutional description pursued by scholars ancient and modern from the time of the Aristotelian *Athenaion Politeia* ('Constitution of the Athenians').<sup>131</sup> Accordingly, it is important to pose questions in terms sympathetic to the nature of the sources and to the nature of Athenian law and society itself. Five such questions are to be addressed in this book:

1. What obligations, conceived as social pressures or institutional obligations, were there on the Athenian citizen to become involved in politics and, more widely, in the affairs of the city?
2. How, if they were exerted by statutes, were they fulfilled, or, if inspired by social pressure, performed?
3. How, and between which parties, was their existence negotiated?
4. How were these reconciled with the Athenian understanding of liberty?
5. Did Athenian concepts of liberty clash with the existence of such obligations?

<sup>129</sup> See Ch. 5.2.

<sup>130</sup> Vannier (1988: 107) makes this general point; see Ch. 5.4.

<sup>131</sup> Gauthier's (1985: 4–5) distinction between political and institutional history is drawn by others, such as Connor (1971: 4–5); R. G. Osborne (1985*b*: 64). On the employment of an analysis of institutions in understanding political practice, see Hansen (1989*d*). Note also Gomme's (1951) and A. Jones's (1957: 99–137) studies of the working of Athenian democracy, based upon a descriptive analysis of the institutions, procedures, and origins of democracy.

A study of the obligations of the Athenian citizen and the grounds upon which these were founded (namely, 'civic obligation') in classical Athens is certainly wanting. The study of obligation in ancient Athens as a holistic concept has received little attention from historians of classical Athenian democracy. Studies of Athenian society frequently acknowledge the existence of duties or obligations of the citizen, but use the terms without any analytical basis.<sup>132</sup> The only historian to discuss, albeit in an exploratory mode, the idea of obligation in the context of Athenian democracy was Finley, in a discussion of 'political obligation' as the question of obedience to authority.<sup>133</sup> He concluded that 'in the absence of a serious consideration of legitimacy, one cannot expect to find genuine reflection about authority within the city state or about its converse, the political obligation of the individual citizen to the state as a whole or to its agents'.<sup>134</sup> As was noted above, the conception of 'civic obligation', on the other hand, concerns the question of why the citizen ought to take an active interest in the conduct of public affairs (Chapter 4) and the substance of such participation (Chapter 5).

The lack of any serious modern study of the concept of civic obligation is surprising given some of the ancient sources' concern with the subject and indeed the general concern with obligations in ancient political literature.<sup>135</sup> This is the result of an old tendency to argue that ancient philosophers were unconcerned with rights and obligations.<sup>136</sup> While the misconception that duties or obligations were unimportant to classical Greek political thought is now being challenged from mainly philosophical quarters,<sup>137</sup> it is still current. The index of the *Cambridge History of Greek and Roman Political*

<sup>132</sup> Hermann (1889: 470–2); Kahrstedt (1934: 129–32); Lacey (1968: 154, 176); Manville (1990: 22–3); Todd (1993: 267–71); Hunter (1994: 188); Gabrielsen (1994: 8); Lambert (1998: 31); Hansen (1999: 99–101); Ober (2001: 182–4). For a recent general discussion, see Sinclair (1988a: 24–86).

<sup>133</sup> Finley (1982). For Finley's discussion of the relationship between liberty and obligation, see Ch. 1.2.

<sup>134</sup> Finley (1982: 13).

<sup>135</sup> This is a concern expressed by several scholars: Holmes (1979: 116, 126); de Romilly (1989: 98); Stauffer (2001: 10–12).

<sup>136</sup> Anscombe (1958: 2) wrote, 'we cannot, then, look to Aristotle for any elucidation of the modern way of talking about "moral" goodness, obligation etc.'; cf. Kahn (1997: 27).

<sup>137</sup> Stauffer (2001: 10–12); White (2002: 82–3); Crisp (2004: 83–7); Rosler (2005).

*Thought* lists only a solitary entry, s.v. 'obligation': this is a reference to a discussion of the *Crito* and *Apology*.<sup>138</sup> In one recent textbook Balot suggests that Greek political thought was concerned with the ethics of virtuous behaviour rather than morality formulated through prohibitions, obligations, and rules of behaviour.<sup>139</sup> Such a view does not recognize that virtuous behaviour, as conceived in Attic oratory and inscriptions, is rated by the performance of certain obligations said to be owed to the city and citizen-community.

Indeed, the duties of the citizen were a central concern of the sources. Athenian tragedy, such as Sophocles' *Antigone*, and to a lesser degree old comedy, such as Aristophanes' *Acharnians*, were concerned with thinking or joking about the obligations of the individual towards the *polis*. The notion of obligation was discussed analytically in dialogue form: the relationship of the individual towards the *polis* in terms of political obligation was explored in Plato's *Crito*. This study will be concerned with Athenian inscriptions and Attic oratory owing to the fact that these texts are 'leftovers' of the day-to-day transactions of Athenian democracy, which illuminate the individual's relations with the *polis*. These relations consisted of obligations towards the *polis* and participation in the affairs of the *polis*: in the eyes of the orators, citizenship entailed participation and duties.

These preliminary investigations have been pursued in order to set the agenda for a study of the relationship between liberty and obligation. Thus far, it has emerged that even within the corpus of Attic oratory and Athenian inscriptions, there exist diverse interpretations of liberty (1.3). The notion of liberty as living, doing, or speaking as one likes appears to have been an unacceptable position for an individual to advocate in a competitive context (1.4), and it has become apparent that liberties like freedom of speech carried with them serious obligations as well as rights (1.5). Obligations might be seen as rights of citizenship differently construed (1.6). Liberty and obligation have been reconciled in modern thought (1.7), and despite the very high prominence of obligations in ancient sources (1.8), no attempt has been made to reconcile them with liberty by the modern scholarship of ancient Greece.

<sup>138</sup> Rowe and Schofield (2000).

<sup>139</sup> Balot (2005: 11–12).

Given that living in the *polis* was the most significant liberty that could exist for an Athenian citizen, a consideration of the negotiation and performance of the obligations of the citizen to the *polis* is necessary to understand the individual liberty of the Athenian citizen. This interpretation of Athenian liberty will be distinct from other attempts to interpret the subject as it attempts to construct an interpretation of liberty that is fully embedded in the workings of Athenian society rather than being restricted to occurrences of the word *eleutheria*, because it accounts for both positive and negative liberties and abandons the traditional dichotomy of the two, and also because it is formulated in the light of the political thought of John Rawls. Chapter 2 will consist of an introduction to the thought of Rawls and explanation of why his work forms an appropriate springboard for an interpretation of ancient liberty. Chapter 3 introduces the historical context and evidential basis of this investigation. Chapters 4 and 5, the substantive core, will demonstrate the nuances and devices used in the negotiation of obligations between the *polis* and the citizen and will explore the performance of obligations by citizens, and their presentation in the assembly and law courts and through epigraphical forms of communication. Envisaging obligations as undergoing the processes of 'negotiation' and 'performance' will serve to emphasize the importance of factors other than law in the relationship between the individual and *polis*, the contextually determined nature of the discussion of obligations, the perceived relationship of obligations to liberty, and the significance of individual presentation of obligations, not least of claims about supererogatory performance and euergetic behaviour. Chapter 6, as well as reviewing the coincidences between Athenian and Rawlsian liberty, will consider the extent to which the relationship between freedom and obligation that has emerged might be applicable to that which existed in Greek *poleis* outside Athens, and in the *polis* of Aristotle's *Politics*.

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## Rawls on Liberty, Duty, and Obligation

### 2.1. MODELS IN THE STUDY OF ANCIENT CONCEPTS

Ancient sources provide a vocabulary, and a diversity of inconsistent or even competing explanations of ideas like liberty, rights, or duties. On the whole, modern interpretations of ancient Greek liberty which are heavily reliant upon surveying occurrences of Greek terms for liberty do not prioritize any particular strand of that liberty.<sup>1</sup> Their emphasis has been on dissecting the concept into its component meanings and tracing its evolution.<sup>2</sup> While it is possible to assess the liberty of individuals within any one community according to the quantity and quality of their freedoms, it is impossible to locate an ancient concept that would work for every situation: as was highlighted in Chapter 1, the Athenians occasionally conceived of liberty as the freedom for the people to do collectively as they pleased. More coherence may be achieved by focusing on one particular aspect of ancient Greek interpretations of liberty.

Modern scholarship has pursued several interpretations of ancient Greek ideas about liberty, some of which highlight the differences, others the similarities, between ancient and modern liberty.<sup>3</sup> The diversity of modern interpretations of liberty means that there is no all-embracing modern concept against which it might be possible to measure the equally elusive ancient Greek liberty. It makes more sense to explain one well-chosen modern interpretation of liberty and then determine what features of that interpretation emerge in an

<sup>1</sup> The best example is the work of Raaflaub (1981, 2004).

<sup>2</sup> For instance, see Raaflaub (2004: 7).      <sup>3</sup> See Ch. 1.1–2.



ancient context. Indeed, two recent explorations of rights in antiquity have employed modern comparanda in their attempt to make more meaningful the discussion in ancient Greece.<sup>4</sup> This methodology is particularly appropriate given that the interest of this book is in one strand of individual liberty: its relation to the obligations of citizenship—a relation that is developed in the work of John Rawls.

The expression of liberty as a network of rights and duties in Rawls's theory of justice as fairness and political liberalism provides a suitable starting point for an interpretation of the nature of liberty and civic obligation expressed in the sources for the workings of the fourth-century Athenian *polis*. Conversely, the close examination of the Athenian notion of liberty and civic obligation helps to fill out with practical examples the Rawlsian vision of liberty as a network of duties and rights. This sets in motion a two-way exchange of ideas: the theory of justice allows an interpretation of an ancient Athenian idea of liberty while ancient Athens provides elucidation and criticism of the idea of liberty described in Rawls's theory. This chapter will highlight the centrality to Rawls's justice as fairness of duties and obligations. This is an area of his work that has been largely overlooked by critics of Rawls.<sup>5</sup> Chapter 6 will assess the extent to which Athenian liberty resembles Rawlsian liberty, and will incline towards assimilating Athenian and Rawlsian ideas of liberty and obligation on the general level while recognizing the differences that appear on a closer scrutiny of the workings of obligation in Athens.<sup>6</sup>

This application of Rawls's theory of justice as fairness is not intended to act as an all-encompassing interpretation of the workings or ideology of Athenian democracy: the focus is on the relationship between liberty and obligation. There are too many differences between Athenian democracy and Rawls's well-ordered society for an uncomplicated or exclusive interpretation of Athenian democracy as the working out of a Rawlsian utopia: for instance, Rawls's division

<sup>4</sup> For a contrast of the Greek view of citizenship as sharing in a community with the American notion of citizenship as possession of inalienable rights, see Ostwald (1996); by reference to the Bill of Rights, Wallace has argued that the rights of the modern American are more secure than those of the ancient Athenian, but that the extent of state intervention is greater in the modern case: Wallace (1996a).

<sup>5</sup> e.g. Selbourne (1997: 5). Note, however, Horton's (1992: 90–108) commentary on Rawls's understanding of political obligation and the criticisms of Hart (1973).

<sup>6</sup> See Ch. 6.2.

between religious and political morality, essential to his thought, did not exist in fourth-century Athens. However, important for employing Rawls's interpretation is the fact that his idea of liberty emerges in the context of what he envisages to be a well-ordered society: a danger in any elucidation of an ancient idea of liberty is that it might remove it from its social context. The setting of Rawls's idea of liberty asserts the importance in preserving context, albeit a historical rather than utopian one, for an investigation of Athenian liberty.

Rawls's ideas about liberty and its compatibility with duties or obligations are the main subject of this chapter, but a general description of his theory of justice provides context for those ideas. After a general introduction to Rawls, his thought, and the ideas that inform his work and his expressed intentions, this chapter will set out those aspects of his principal works, *A Theory of Justice* and *Political Liberalism*, most significant for this project.

## 2.2. RAWLS AND HIS WORK

John Rawls (1921–2002) was perhaps the most important political theorist of the twentieth century. Professor of Philosophy at Harvard from 1962 until 1991, his *A Theory of Justice*, published in its first edition in 1971, had by 2003 sold some quarter of a million copies in English and had been translated into twenty-seven languages.<sup>7</sup> Some have claimed that his work has contributed to the revival of the intellectual pursuit of political theory, in particular social contract theory,<sup>8</sup> has redirected the attention of philosophy to the substantive questions of justice, liberty, equality, and community,<sup>9</sup> and has emphasized the importance of political culture in the construction of coherent liberal theory.<sup>10</sup> He is considered to have made an important contribution to liberalism<sup>11</sup> and democratic thought,<sup>12</sup> and has

<sup>7</sup> S. Freeman (2003: 1).

<sup>8</sup> Kukathas and Pettit (1990: 16). Social contract theory: Lessnoff (1990).

<sup>9</sup> Kahn (1981: 92); A. Ryan (1985); Kymlicka (1990: 9); S. Freeman (2003: 1); Nussbaum (2003).

<sup>10</sup> Mara (2002) considers this to be 'liberalism's cultural turn'.

<sup>11</sup> Nagel (2003). <sup>12</sup> J. Cohen (2003).

fuelled controversies about the nature of liberalism, justice, and the relationship of the right to the good.<sup>13</sup>

*A Theory of Justice* attempted to outline a comprehensive moral theory of justice. It was first published in 1971, with a second edition, revised to take account of criticism, in 1999. This work presents a philosophically worked out basic structure for a well-ordered society. It consists of a systematic account of 'justice as fairness' in terms of social contract liberalism. It puts forward a set of principles for arranging society according to the fair division of advantages and social 'goods'. In response to criticisms and rethinking, his ideas developed over the 1970s and 1980s,<sup>14</sup> and in 1993 the theory of justice as fairness was recast in the series of lectures published under the title *Political Liberalism*. Rawls stressed that, in contrast to *A Theory of Justice*, this work was not a comprehensive moral doctrine of the highest good but was limited to investigating the concept of political justice.<sup>15</sup> Accordingly, in *Political Liberalism*, Rawls tried to work out a conception of political justice for a constitutional democratic regime that a plurality of reasonable moral, religious, and philosophical doctrines might endorse (*PL* xx). The work stressed also the notion of public reason, and the idea that political power is legitimate only when it is exercised in accordance with arrangements that free and equal citizens might be expected to endorse in the light of principles and ideals acceptable to human reason (*PL* 137). Rawls's *Justice as Fairness: A Restatement*, published in 2001, is precisely a restatement of the idea of justice as fairness, confined to the political sphere, once it has been adjusted to the changes made in *Political Liberalism* and other later papers.

The publication in 1999 of *The Law of Peoples* extended the relevance of justice as fairness and asked how, if at all possible, a well-ordered society might coexist with societies that reject some or all aspects of the principle of justice as fairness. Accordingly Rawls distinguishes between just liberal societies, decent non-liberal, and indecent or 'out-law' societies. Just liberal societies have a duty to cooperate with decent non-liberal societies. By reference to an idea of public

<sup>13</sup> Sandel (1998: 184–218). For the communitarian and libertarian responses to Rawls's work, see Ch. 2.10.

<sup>14</sup> Kukathas and Pettit (1990: 119–51).

<sup>15</sup> For a review of the differences between the two works, see Wallach (1987).

reason, he lays out the principles which are to be enunciated by both liberal and decent non-liberal societies as the standard for regulating their behaviour towards each other. The basis for these is respect for basic human rights, consisting of the right to life and the security of the person, freedom of movement, freedom from forced work, the right to hold personal property, formal equality, the protection of the rule of law, and at least some degree of freedom of conscience, thought, and religion (*Law*, 65).

With the help of assistant editors, the last years of Rawls's life saw growth in his published output. Despite the fact that he was too ill to rework his manuscripts drastically, two important works appeared: a set of his lectures from Harvard, *Lectures on the History of Moral Philosophy*, and a set of *Collected Papers*, which republish lectures and other papers from a wide span of his career.

Rawls's historicist principles deserve comment. Lecturing widely on the history of moral and political philosophy, he insisted on the value of studying historical philosophical texts dealing with apparently disparate problems as part of the training, development, and enlightenment of the philosopher.<sup>16</sup> This reflects the inclination on the part of contemporary political philosophers to value the study of the history of political and moral thought in attempts to reinterpret philosophical problems such as the nature of liberty and political obligation.<sup>17</sup> Such a methodology is clear also from Rawls's published work, where Kant is the most prominent of those philosophers referred to for their contribution to social contract theory and the theory of justice as fairness (*CP* 303–58).<sup>18</sup> His enthusiasm for historical philosophers extends to Aristotle, though, as will become clear,<sup>19</sup> he does not admit the possibility that the study of ancient Greek philosophy or history might offer any solutions to modern problems.

Rawls's work is one in a line of works of political philosophy that allow for the compatibility of duties and liberty.<sup>20</sup> Rawls's work is of interest because he is the most recent prominent political theorist to account for the compatibility of liberty and obligation and does so in

<sup>16</sup> B. Herman (2000).

<sup>17</sup> Liberty: Skinner (2002); political obligation: Dunn (1980: 243–99).

<sup>18</sup> Wolff (1977: 101–16).

<sup>19</sup> See Ch. 2.11.

<sup>20</sup> See Ch. 1.7.

the context of a realistic utopia, the well-ordered society of justice as fairness, and political liberalism.

### 2.3. RAWLS AND THE HISTORY OF POLITICAL PHILOSOPHY

Before describing in more detail the theory of justice as fairness, and the place of liberty, duty, and obligations in his work, it is necessary to locate Rawls in relation to modern political thought and philosophy. The most immediately striking of influences on Rawls's work is that of Kant: like Kant, Rawls seeks to discover 'the fundamental moral principles that regulate reasoning and judgements about justice'.<sup>21</sup> However, he differs from Kant in that he does not believe that principles of justice are a priori, but rather that human nature and the social conditions within which reason is exercised need to be understood in order to elaborate the principles of justice. Rawls attempts to carry through to a higher level of abstraction and detail the theory of the social contract as represented by Locke, Rousseau, and Kant (*TJ* xviii). According to this tradition, a political constitution is just when free, equal, and rational parties agree to the principles guiding it at an 'original position'. Within liberalism, Rawls defines his position by way of contrast to utilitarianism, which he believes provides only a weak basis for institutions of constitutional democracy.

Rawls claims that, unlike utilitarianism, contractarianism makes room for a concept of voluntary action and in particular supererogation. His objections are drawn up against Sidgwick's formulation of utilitarianism, that society is rightly ordered, and therefore just, when its major institutions are arranged so as to achieve the greatest net balance of satisfaction of all participants (*TJ* 20). Rawls's emphasis on supererogation is important for our interpretation of Athenian duties and liberty.<sup>22</sup> Rawls objects also to the utilitarian insistence that the best arrangement of goods (rights, duties, opportunities, privileges, wealth) is to maximize them. Utilitarianism does not insist on equal liberty for all: the violation of the liberty of one group may be justified

<sup>21</sup> S. Freeman (2003: 2).

<sup>22</sup> See Ch. 2.9.1.

by increasing the greater good shared by many (*TJ* 23). Rawls asserts, on the contrary, that justice as fairness, as a deontological theory, while allowing for some inequality of liberty, does not admit the possibility that the absolute loss of liberty for some is made right by a greater good shared by others (*TJ* 25). He works on the basis that persons will accept a principle of equal liberty as part of the basic structure of society (*TJ* 27). Furthermore, Rawls insists that a teleological theory like that of utilitarianism is by its nature unsuitable for systematic arrangement of institutions for the sake of justice because it does not specify the prior terms of the structures of society (*TJ* 281–2).

Rawls's critique of utilitarianism is framed also by way of a reaction to the utilitarian tendency to extend to society the principle of choice for one man: the idea that as each individual would look for a way to maximize satisfaction, thus society too should work in this way. On the contrary, justice as fairness, as a contract view, assumes that the principles of social choice, and so the principles of justice, are themselves the object of an original agreement made by individuals who possess reason but are unaware of their future position in society (*TJ* 25).

#### 2.4. RAWLS'S INTENTIONS

Before embarking upon a description of the most important aspects of Rawls's theory of justice, it is necessary to consider his intentions and how far they might coincide with the application of his theory to an ancient situation. Rawls insists on the practicability of his theory, dedicating the third part of *A Theory of Justice* to showing that his principles constitute 'a feasible conception' of justice, and says in *The Law of Peoples* that what he proposes is a 'realistic utopia.' However, in one sense, the work is highly abstract: although he presumes that the main institutions of the structure are those of a constitutional democracy, *A Theory of Justice* never describes in detail democratic procedure, laws, or instruments of government. Rawls intends his principles to be applied only to the basic structure of society. He envisages a degree of constitutional development taking place (*TJ* 171–6),<sup>23</sup> but

<sup>23</sup> Cf. Ch. 2.6.

leaves the question of what government or regime is most suited to justice as fairness relatively open. He claims that the design of a constitution cannot be settled by political theory alone, but has to take into consideration the particular political history and the democratic culture of the society in question (*PL* 415).

Much of Rawls's thought appears to have arisen in response to real-world situations. For instance, his thinking on the duty of civil disobedience towards conscription during an unjust war has its origins in the means of conscription used during the Vietnam War.<sup>24</sup> In his explanation of political liberty, Rawls in *Political Liberalism* draws on examples of decisions of the Supreme Court of the United States (*PL* 355); *The Law of Peoples* contains direct references to ethical issues facing United States foreign policy in particular in its reaction to Islamic states (*Law*, 76, 110, 151). Indeed, he conceives of political philosophy as a reaction to the condition of the world: it is a means of continuing public discussion when shared understandings of lesser generality have broken down (*PL* 46). Stated in its most practical form, the aim of justice as fairness as a political conception (in other words, the theory put forward in *Political Liberalism*) is to resolve the impasse in the democratic tradition as to the way in which social institutions are to be arranged if they are to conform to the freedom and equality of citizens as moral persons (*PL* 338). Rawls's work, however, has been attacked for its lack of applicability by some of his critics. The postmodern liberal Richard Rorty interpreted Rawls's retreat from moral and philosophical conceptions of the good as an indication that he is no longer committed to developing innovative philosophical bases for democratic institutions, but is rather 'trying to systematize the principles and intuitions typical of American liberals'; John Gray meanwhile argued that Rawls's world cannot address the oppressed who feel a sense of injustice.<sup>25</sup> However parochial Rawls's liberalism might be considered, his *Law of Peoples*, with its concern for cooperation between societies other than liberal ones, confirms that, while limited to the realm of the political, his work self-consciously strives towards utopian but realistic ideals.

<sup>24</sup> Pogge (1999).

<sup>25</sup> Gray (1995: 1–10); R. Rorty (1988: 268).

In the *Restatement*, Rawls summarizes four roles of political philosophy (*Restatement*, 1–5). It plays a practical role in the attempt to ‘focus on deeply disputed questions’, to see whether some basis of agreement can be found, and, if not, it attempts to narrow the divergence of opinion at the root of political differences so that mutual respect and social cooperation can be maintained. Secondly, it can contribute to how a people thinks of its political and social institutions as a whole, and their basic aims and purposes as a society, and help them to conceive of its own political status. As Hegel pointed out, it might illustrate the rationality of institutions, when understood clearly and philosophically, and might explain how they have attained their present form. It might also be an attempt to outline the ideals and principles of a future decent political order. Accordingly, it is clear that Rawls’s intention, as well as setting a utopian but realistic goal for future constitutional development, is to help understand aspects and problems of political philosophy. Therefore, his work might contribute to an understanding of the ancient Athenian idea of liberty and civic obligation, though there do exist potential problems in using political philosophy in the interpretation of an ancient idea.<sup>26</sup>

## 2.5. JUSTICE AS FAIRNESS

In the first place, *A Theory of Justice* is an explanation and justification of an idea of justice as a means of arranging institutions and their relationship to citizens in a well-ordered society. From the start of his work, Rawls insists upon the desirability of justice: it is ‘the first virtue of social institutions, as truth is of systems of thought’ (*TJ* 3). Accordingly, a society is well ordered when it is designed to advance the individual good of its members through effective regulation by a public conception of justice, and when everyone accepts and knows that others accept the same principles. A public sense of justice allows secure association and makes cooperation possible, establishes bonds of civic friendship, and might be considered the fundamental charter of a well-ordered human association (*TJ* 3–5). These are the opening

<sup>26</sup> See Ch. 2.13.



propositions of *A Theory of Justice*, and the rest of the work is dedicated to elucidating and justifying the well-ordered society in terms of liberty, justice, rationality, and moral psychology.

Rawls is most interested in justice on the level of the basic structure of society, the way in which major social institutions allocate basic rights and duties and distribute the division of advantages from social cooperation. Just institutions function according to publicized rules so that those engaged in them know what limitations on conduct there are and what kinds of action are permissible and which are forbidden. The major social institutions of concern are those that define people's rights and duties towards society and heavily sway their life prospects, and consist of the political constitution, economic and social arrangements, and the family. From the outset, therefore, duties are a central feature of justice as fairness.

## 2.6. THE ORIGINAL POSITION

According to Rawls's interpretation of the contract view of political philosophy, the theory of justice is to be selected at the original position from a list of alternative conceptions of justice drawn up by an analysis of the history of moral and political philosophy (*TJ* 105–9; *PL* 305). In effect, the theory of justice is bound to be chosen. The notion of the contract is essential as it means that individuals are responsible for consenting, as free and rational individuals, to adhere to a system of justice. Of course, nothing resembling the original position need ever take place: it is a hypothetical or theoretical situation, a fiction which aims to show that, in an original position of equality, the moral reasoning of free and rational persons concerned to further their own interests would lead them to choose a well-ordered society (*TJ* 104). However, those making the contract are subjected to a veil of ignorance, so that none of them know their future place in society, class position, social status, fortune in the distribution of natural assets and abilities, intelligence, strength, conceptions of the good, their special psychological propensities, needs, and inclinations other than their own dedication to justice (*TJ* 11). Accordingly, no one is able to prejudice the agreement of a concept of justice in order for it to benefit them unfairly: justice as fairness demands that the principles

of justice are agreed to in an initial fair situation and that the persons making the choices are unable to exercise even reasonable self-interest (PL 305).

These principles decided at the original position direct all further agreements and will regulate the kinds of social cooperation and the constitutional forms that can be established. The selection of the principles of justice is the first part of the four-stage sequence constituting the implementation of justice as fairness (TJ 171–6); it is followed by the selection of a constitution and establishment of the basic rights or liberties of the citizens, the selection of laws and policies that are in accordance with justice as fairness, and finally the application by judges and other officials of rules.

## 2.7. THE PRINCIPLES OF JUSTICE

Rawls's next concern is to elucidate those principles of justice that would be chosen in the original position. Given the combination of rationality and ignorance of their own social position, opportunities, and abilities in the future, Rawls assumes that persons would assign rights and duties equally (TJ 13); he argues also that social and economic inequalities would be accepted on the condition that they result in compensating benefits in particular for the least advantaged members of society (TJ 54). Given that the well-being of all depends upon a scheme of cooperation, the division of advantages should be such as to draw forth the willing cooperation of everyone taking part in it (TJ 13). As will become clear, this notion of cooperation as the starting point of mutual benefit is central to Rawls's theory.

Rawls's principles of justice, which are intended to be the most rational for the parties at the original position, assume their most developed form in *Restatement*:

- (a) Each person has the same infeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all.
- (b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under

conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society. (*Restatement*, 42–3)

These principles are to be offered and would be chosen by rational parties at the original position. Consequently, they are to be applied to the basic structure of society and are to govern the assignment of rights and duties, to regulate the distribution of social and economic advantages, and to shape those institutions that are to sustain them (*TJ* 53). Within these principles of justice, Rawls plays out the disputed priority between liberty and equality, and grants priority to liberty:

The principles of justice are to be ranked in lexical order and therefore the basic liberties can be restricted only for the sake of liberty. There are two cases:

- (a) a less extensive liberty must strengthen the total system of liberty shared by all;
- (b) a less than equal liberty must be acceptable to those with the lesser liberty. (*TJ* 266)

The aim of justice as fairness is therefore the most extensive and equal liberty possible. The basic liberties may not be compromised in order to accrue wealth or a greater total happiness in society. Rawls's decision to grant the basic liberties 'lexical' priority of the two theories of justice means that 'the second-rank criterion comes into operation only to break ties between things which cannot be distinguished on the basis of the first-rank criterion'.<sup>27</sup> All this, at least, is the case under 'reasonably favourable conditions': it is possible that some circumstances, say a national emergency which threatened certain basic liberties, could well lead to a suspension of other basic liberties (*PL* 297).

The priority of liberty dictates that basic liberties covered by the first principle can be limited only for the sake of liberty itself, that is, only to ensure that the same or another basic liberty are properly protected (*TJ* 187). A rarefaction of this idea leads to the assertion that the basic liberties can be either less extensive or less equal on the condition that 'if liberty is less extensive, the representative citizen

<sup>27</sup> Barry (1973: 173).

must find this a gain for his freedom on balance; and if liberty is unequal, the freedom of those with the lesser liberty must be better secured' (*TJ* 214–15).

## 2.8. LIBERTY

### 2.8.1. Liberty, the Basic Liberties, and the Primary Goods

Liberty is a certain structure of institutions, a certain system of public rules defining rights and duties. Set in this background, persons are at liberty to do something when they are free from certain constraints either to do it or not to do it and when their doing it or not doing it is protected from interference by other persons (*TJ* 177).

This definition of liberty holds two important features for our purposes: firstly, it attempts to allow for both positive and negative liberty. The liberty of individuals is said to emerge when it is guaranteed in a negative sense, that is when they are free from certain constraints or interferences. Substantively, liberty is positive and negative: it is held to consist of the basic liberties, a list of which is drawn up by surveying the constitutions of democratic states and also by considering which liberties are the essential social conditions for the adequate development and full exercise of the two moral powers (*PL* 292–3). These basic lists consist of aspects conventionally conceived of as 'positive' and 'negative':<sup>28</sup> political liberty (the right to vote and to hold public office), freedom of speech and association, liberty of conscience and freedom of thought, freedom of the person, which includes freedom from psychological oppression and physical assault and dismemberment, the right to hold personal property, and freedom from arbitrary arrest and seizure (*TJ* 53; cf. *PL* 291). The basic liberties result from institutional forms, and their existence is determined by the rights and duties established by the major institutions of society (*TJ* 55). The second factor of interest for our purposes is the definition of liberty in terms of both duties and rights. That the basic liberties themselves consist of a network

<sup>28</sup> At least according to Berlin's convention: see Ch. 1.1.

of rights and duties can be shown with the example of freedom of conscience. Freedom of conscience exists when individuals are free to pursue their moral, philosophical, or religious interests without restrictions and when men and just institutions have a legal duty not to interfere (*TJ* 180–5). Accordingly, it is understood that each basic liberty is aimed at ensuring collective liberty, and does so through the existence of rules, duties, and rights.

The position of the basic liberties needs more explanation. The basic liberties appear top of the list of primary goods, those things which are generally necessary as social conditions and means to enable persons to determine a concept of justice, to pursue their conceptions of the good, and to develop and exercise their moral powers (*PL* 307), which he assumes that every rational individual desires (*TJ* 54). *Political Liberalism* lists the five kinds of primary goods:

- (a) The basic liberties, which are necessary for the development of moral powers.
- (b) Freedom of movement and free choice of occupation against a background of diverse opportunities: these opportunities allow the pursuit of diverse final ends and give effect to a decision to revise and change them if we so desire.
- (c) Powers and prerogatives of offices and positions of responsibility which give scope to various self-governing and social capacities of the self.
- (d) Income and wealth, understood briefly as all-purpose means (having exchange value): income and wealth are needed to achieve directly or indirectly a wide range of ends.
- (e) The social bases of self-respect: these are needed if citizens are to have a lively sense of their own worth as persons and to be able to develop and exercise their moral powers and to advance their aims and ends with self-confidence. (*PL* 308–9)

These primary goods are to be equally distributed except in cases when an unequal distribution is to everyone's advantage. In *Political Liberalism*, the priority of liberty and the appearance of liberties at the top of primary goods is justified in terms of human psychological development. The basic liberties contribute more to their development than any other of the primary goods. This is because liberty is

necessary in order to accrue a fully developed and rational conception of the good, understood as the ability to reason for the purpose of forming, revising, and pursuing a system of ends and values. Freedom of conscience and choice are necessary to allow citizens to make mistakes from which they might learn. Freedom of association is required in order to give full effect to liberty of conscience, for unless citizens are at liberty to associate with other like-minded citizens, the exercise of liberty is denied (*PL* 313; cf. *TJ* 197). Only in this condition is it possible to appreciate why our beliefs are true, our actions right, and our ends good and suitable for us, and to justify our allegiances. Here Rawls refers to Mill's idea that individuals should conceptualize their own notion of good, rather than accepting it without reason from others (*PL* 313). Liberty is required for the development of a concept of justice and self-respect. The public knowledge that everyone has an effective sense of justice contributes to the readiness of the members of society to participate on an equal basis (*PL* 315–24).

### 2.8.2. Political Liberty

Following Constant, Rawls describes as 'ancient' the idea of positive liberty that requires all citizens to have an equal right to take part in and to determine the outcome of the constitutional procedures that establish the laws with which they are to comply (*TJ* 194–5). While Rawls maintains that the 'modern' liberties, freedom of thought and conscience and the civil liberties, ought not to be sacrificed to 'ancient', political liberty, he conceives of political liberties as essential to his society. The success of his claim to adjudicate between the two types has been disputed by Gutmann, who contends that Rawls gives priority to political liberty over the other basic liberties (*PL* 2).<sup>29</sup> However, the equation seems to be that all the basic liberties in general are reliant on the existence of the political liberties, but that the civil liberties ought not to be sacrificed for the sake of political liberties.

Indeed, perhaps because *Political Liberalism* is concerned with political justice to the exclusion of a comprehensive view of morals

<sup>29</sup> Gutmann (2003).

and philosophy, Rawls invests a good deal of explanation in the workings of political liberty. Fair and roughly equal political liberties consist of ensuring that citizens have fair and, as far as possible, equal access to those public facilities and political institutions involved in governing and creating legislation and policies (*PL* 328–9). Political liberties, he emphasizes (*PL* 330), are treated in a special way—not because political activity is seen as the most important end of life for citizens, but because access to the political process is essential in order to establish just legislation and also to ensure that fair political process is open to all on a basis of equality.<sup>30</sup>

Rawls argues that some form of representative democratic regime and appropriate protections are required for freedom of political speech and press and freedom of assembly. If these liberties are to be guaranteed, the other basic liberties, the liberty and integrity of the person, and the rights covered by the rule of law are likely to follow (*PL* 335). Rawls discusses the freedom of political speech in order to illustrate how the basic liberties may be further specified and adjusted at later stages and how liberties themselves are subject to the network of rights and duties. Freedom of political speech, Rawls admits, has to be restricted in order to allow equal freedom of political speech: access to rights of political speech in public places and the use of public resources to express political views must be subject to restraints to ensure their equality. Rawls goes into details about the nature of political liberty and the freedom of speech, promising that in a well-ordered society there can be no such thing as the crime of seditious libel nor can there exist prior restraints on the freedom of the press, apart from special cases (*PL* 341–2); revolutionary activity cannot be outlawed per se as it might serve as a safeguard of justice within the state; meanwhile, civil disobedience too is necessary in the case of conscription for an unjust war.

The importance of positive political liberties is one of the qualities that distinguishes a just liberal from a non-liberal society. As outlined in the *Law of Peoples*, a decent non-liberal society will offer those basic human rights that are a condition of decent society, but not necessarily full or indeed any political liberties. In sum, even though Rawls does not give priority to political liberties, they are essential to

<sup>30</sup> For further discussion, see Ch. 2.9.2.

the well-ordered society because they guarantee justice and protect the other liberties.

### 2.8.3. Individual Liberty

An important strand of negative liberty runs through Rawls's work: his understanding of individual liberty relies on the notion of the individual as a free and rational being, unclaimed by prior moral ties (*TJ* 491). Only the hypothetical contract to adhere to justice as fairness at the original position and other freely and rationally agreed ties can legitimately interfere with individual freedom. Other than the submission to duties and constraints that were given in the original position, individuals are free to make up their own minds about matters of morality that exist outside the realm of the political.

In *Political Liberalism*, Rawls argues that liberty contributes to the development of the moral powers of citizens. In the *Restatement*, the relationship between the moral powers and freedom emerges as one of mutual exchange, as Rawls suggests that the ability to exercise moral powers themselves constitutes the substance of individual liberty. Firstly, given their moral power to form, to revise, and rationally to pursue a conception of the good, they are free to change their conception of good (*Restatement*, 21). This freedom may be exercised by citizens, for instance when they want to change their religion. The second respect in which citizens regard themselves as free is that, as self-authenticating sources of valid claims, they are the starting point of duties and obligations through claims they make on the basis of their own individuality (*Restatement*, 23–4). This means that individuals can only possess liberty when they live within Rawls's utopia.

### 2.8.4. Inequality

At the first stage of the well-ordered society, those primary goods which can be equally distributed, such as rights, liberties, and opportunities, income and wealth, are distributed thus. However, Rawls thinks that inequality, especially that of natural primary goods, like talent and intelligence, is natural, neither just nor unjust, but a fact.



What is just and unjust is the way that institutions deal with the fact of inequality. He does not attempt to compensate absolutely for the inequality of natural goods, as does Amartya Sen, by giving those naturally disadvantaged an automatic and absolute priority in decisions concerning justice.<sup>31</sup> Rawls is concerned that interfering too much with natural inequality might interfere with individual liberty. Instead, Rawls deals with inequality rather by limiting its extent and connotations and negotiating its relationship with liberty. In the first place, the financial connotations of inequality are to be limited by the 'social minimum', a social entitlement to a minimum of income and wealth, at least enough to guarantee the worth of the basic liberties (*PL* 6, 156–7).

Rawls is certain that, in the well-ordered society, the effects of inequality can either be nullified or even turned to the advantage of the common benefit. His difference principle states that the higher expectations of those better situated should be considered just only if they form part of a scheme which improves the expectations of the least advantaged members of society (*TJ* 65). This amounts to a contract of mutual benefit between the rich and poor (*TJ* 88), according to which the better off are accordingly prevented from accruing further benefits without contributing to the well-being of others. The same principle demands also that those who are worst off in terms of primary social goods are better off in a well-ordered society than they would be under any other arrangement (*PL* 326). For example, the allocation of resources in education is directed towards improving the expectation of the least favoured in society (*TJ* 87). Furthermore, Rawls argues that the difference principle actually contributes to society a feeling of fraternity, 'the idea of not wanting to have greater advantages unless this is to the benefit of others who are less well off' (*TJ* 90).

Rawls maintains that the worth of basic liberties declines without the maintenance of certain social and economic standards for all; accordingly governments are to maintain basic goods such as education, income, housing, and health care. Rawls realizes that inequalities

<sup>31</sup> Sen (1999: 54–6, 63–5); cf. Rawls, *Restatement*, 168–76. For Sen (1992: 21–3), the enhancement of human freedom is an object but also a means of social and economic development and alleviation of inequality. Sen (1976) is a critique of Rawls's approach to welfare inequalities.

such as ignorance and poverty or the lack of material means generally might potentially prevent people from exercising their rights and from taking advantage of these openings. But this is said not to restrict liberty but to affect its worth (*PL* 326). However, he reasons that the lesser worth of their liberty is compensated by the difference principle.

## 2.9. REQUIREMENTS AND PARTICIPATION

### 2.9.1. The Requirements

Obligations and duties are central both to Rawls's conception of the well-ordered society and to his idea of justice as fairness. Duties and obligations are important principles in an individual's relationship with both other individuals and institutions. Indeed, institutions and associations, from the level of the state down to that of the family, are characterized by the rights and duties of their members towards institutions and their fellow members (*TJ* 409). Additionally, persons in different generations have duties to each other just as contemporaries do: men have a natural duty to uphold and to further just institutions for the sake of their descendants (*TJ* 258).

Rawls most clearly enunciates the centrality of duty and obligation to his scheme in *A Theory of Justice*. While the principles of institutions are bounded by laws, those of citizens are bounded by duties and obligations (some of which are themselves defined by laws): these are set out under the heading of 'requirements' in a schematic format (*TJ* 94). This relationship is just because living in society is construed as mutually beneficial: if one sacrifices one's natural liberty for the duties demanded by life in a well-ordered society, one has a right to expect liberties and other goods which are consequent on others' having made the same sacrifices.

Following Kant, Rawls distinguishes between duties and obligations. Duties arise naturally as a response to a mutually interested society; obligations arise in relation to a just form of government and as a result of voluntary acts. For instance, the political act of running for and, if successful, holding office in a constitutional regime is an act that gives rise to the obligation of fulfilling the duties of office: thus

obligation is characterized by fairness and fidelity to promises made towards institutions or individuals (*TJ* 94). All obligations arise from the principle of fairness which states that persons are obliged to do their part as directed by the rules of an institution whenever they have voluntarily accepted, or have had accepted on their behalf, at the original position, the benefits of the scheme or have taken advantage of fairness, in the shape of the two principles of justice.

Meanwhile, there are many natural duties, both positive (things one should do) and negative (things one should not do): the duty of helping others in need, provided that one can do so without excessive risk or loss to oneself; the duty of mutual respect; the duty not to harm or injure another; the duty not to cause unnecessary suffering (*TJ* 98). The most important natural duty is that of supporting and furthering just institutions. This duty has two parts: to comply with them and partake in them where they already exist,<sup>32</sup> and, secondly, to assist in the establishment of just arrangements where they do not exist, at least when this can be done with little cost to ourselves (*TJ* 293–301). The avoidance of excessive infringement of the individual is important to Rawls: it means that the appeal of Rawls's requirements is not to the principle of utility but rather to the notion of liberty (*TJ* 296). Duties accordingly can be described as acts which contribute to well-being but that at the same time are carried out without much personal expense.

Rawls's duties are deemed natural partly owing to the fact that they would have been accepted by the representative individuals at the original position, and all requirements are based on the principle of fairness (*TJ* 113–15). Duties can be founded upon either law or social pressures (*TJ* 177), and obligations in some cases are based upon laws or regulations (*TJ* 211). Ideals which might encourage the fulfilment of requirements include the following: a sense or sentiment of justice (*TJ* 420, 435), friendship, authority, love, trust, shame (*TJ* 420–5), goodwill (*TJ* 412), and guilt (*TJ* 415). But Rawls does not think that such sentiments would provide a stable foundation for requirements: the suspicion that others are not honouring their duties and obligations would encourage others to avoid them. To give an example, he suggests that even under reasonably ideal conditions,

<sup>32</sup> See Ch. 2.9.2.

it is hard to imagine a successful income tax on a voluntary basis (*TJ* 211). Rawls therefore conceives of rules and regulations as the most reliable foundation of duties and obligations, but anticipates that the existence of liberty and justice will cultivate a spirit that will displace the necessity of coercion.

It appears to be the case that whenever citizens engage in a mutually advantageous cooperative venture according to certain rules, they automatically and voluntarily compromise aspects of their liberty (*TJ* 301). The liberty of conscience, he claims, may be restricted in the interests of public order and security, itself 'an enabling right which the government must have if it is to carry out its duty of impartially supporting the conditions necessary for everyone's pursuit of his interests and living up to his obligations as he understands them' (*TJ* 187). However, the compatibility and indeed mutual reliance of liberty and requirements becomes more apparent in Rawls's explanation of the duty of military service. Rawls conceives of conscription as an encroachment on the liberties of the citizen (*TJ* 333–4). Accordingly, it is justified only when a war has been declared on behalf of the liberty of the society in question or that of persons in other societies (*Restatement*, 47; *TJ* 334–5). On the other hand, conscientious refusal is a duty in the case of an unjust war fought not on behalf of liberty (*TJ* 335).

Why is such a system of duties and obligations so important? Rawls conjectures that the honouring of obligations and duties is good not only for its short-term effects. He maintains that the evident public intention to honour one's obligations and duties is generally conceived as a form of public good will, the recognition of which arouses feelings of friendship and trust in return: 'in due course the reciprocal effects of everyone's doing his share strengthen until a kind of equilibrium is reached' (*TJ* 412). The perfect state of moral psychology of humans is that meeting one's duties and obligations will be considered universally as the correct answer to the actions of others, thus leading to a reciprocally cooperative society. This even leads to a spirit of emulation, as ambitious individuals view the attributes of those in privileged positions, an assertion based on the 'Aristotelian Principle' that 'we enjoy the display of more complex and subtle activities and these displays tend to elicit a desire in us to do these things ourselves' (*TJ* 413).

This spirit of emulation may be related to supererogatory behaviour. This forms a subset of that class of actions known as ‘permissions’, which are by definition not requirements. They include acts of benevolence, mercy, heroism, and self-sacrifice. These acts do not contradict requirements, but coincide with and exceed their demands. They include actions which go beyond stipulations that make allowance for reasonable self-interest (*TJ* 385): they are acts that cannot be expected but might be hoped for. Still, they do not exempt an individual from the normal requirements (*TJ* 100–1). Although Rawls does not specify the exact function of supererogation in society, it might be assumed that it would contribute to the security of maximum goods for citizens; moreover, he implies that it might inspire other public-spirited behaviour (*TJ* 237–8). The duty of sharing in and supporting just institutions by way of participation appears to have a special place in Rawls’s conception of justice.

### 2.9.2. Participation

For Rawls, the most basic level of participation is living daily life within a society, which is good for both citizens as individuals and society as a whole. Following von Humboldt, he assures his reader that ‘the good of a social union is most completely realized when everyone participates in this good’ (*PL* 320); as for the individual, Rawls argues that, like an orchestra playing together, ‘only in the activities of social union can the individual be complete’ (*PL* 321; cf. *TJ* 456–64).

Rawls values highly participation in the political process: an important aspect of liberty is that ‘all citizens are to have an equal right to take part in, and to determine the outcome of, the constitutional process that establishes the laws with which they are to comply’ (*TJ* 194). Rawls is clear that widespread political participation is a good for both the individual participant and the community: with Mill, he suggests that participation in the positive liberties of political rights is necessary for instilling in citizens an affirmative sense of political duty and obligation ‘that goes beyond the mere willingness to submit to the law and government. Without these more inclusive sentiments, men become estranged and isolated in their smaller

associations, and affective ties may not extend outside the family or a narrow circle of friends' (*TJ* 205–6).

Rawls believes that political participation is to be encouraged for the protection of basic liberties. He champions political participation from the viewpoint of classical republican advocates of the mixed constitution,<sup>33</sup> who argue that the safety of democratic liberties relies upon active participation of citizens who have the political virtues needed to sustain a constitutional regime (*Restatement*, 144). It follows that widespread participation in democratic politics by a vigorous and well-informed citizen-body is necessary to safeguard political justice and public good, to guard against even well-ordered political institutions falling into the hands of those who crave for power and military glory, or pursue narrow class and economic interests.

Participation in political activity is not, however, regarded as the pre-eminent good for fully autonomous citizens: 'to the contrary, assigning a central place to political life is but one conception of the good among others. Given the size of a modern state, the exercise of the political liberties is bound to have a lesser place in the conception of the good of most citizens than the exercise of the other basic liberties' (*PL* 330). Of course, his relative disinterest in political activity in the strongest sense should not be mistaken for a rejection of political liberties.

Even the smallest degree of political participation confers obligations: when acting in such a capacity, for instance when electing or supporting representatives (chief executives, legislators, and the like), citizens are expected to consider carefully what enactments or policies are most reasonable by imagining themselves to be lawgivers (*Law*, 56). Those who take part in public office by holding judicial and other similar offices are constantly required to apply and interpret ideas of justice (*TJ* 414), thus meaning that their obligations are heightened. Therefore, Rawls introduces the same kind of amplificatory exhortation used by Lycurgus, who urges his audience to consider themselves lawmakers.<sup>34</sup> Pragmatically, Rawls reflects that it is more likely for the better-placed members of a society to take up positions of political responsibility than members from the lower strata (*TJ* 302). This is

<sup>33</sup> On classical republicanism, see Fink (1962); Pocock (1975); Nelson (2004: 3–4).

<sup>34</sup> See Ch. 4.1.3.

because, on the whole, it is easier for a well-placed person to gain political office and to take advantage of the opportunities offered by the state. Accordingly, given the fact that those who are more privileged in terms of wealth and natural abilities are more likely to hold political office and acquire obligations, there arises a sense of *noblesse oblige* (*TJ* 98, 100).

At the other end of the scale, in his discussion of egoistical conceptions of justice, Rawls describes hypothetical members of society who refuse to participate in accordance with the arrangements of justice as fairness. They are described under three headings: the advocate of the first-person dictatorship, who demands that everyone serve the interests of the dictator; the free-rider, who seeks the advantages of just institutions but fails to do the adequate share to uphold them; and the hypothetical situation of general and widespread egoistical justice, where everyone is to advance their interests as they please (*TJ* 104). Such alternative conceptions of justice are deemed as incompatible with justice as fairness (*TJ* 112–18): their advocates would not fulfil the duty of helping the establishment or supporting the existence of just institutions.

## 2.10. REACTIONS TO RAWLS

Rawls's theory of justice as fairness has provoked energetic reaction: as early as 1982, a bibliography of works on the theory of justice as fairness listed more than 2,500 items.<sup>35</sup> The flow continued after the publication of *Political Liberalism* and continues after Rawls's death.<sup>36</sup> His work has faced diverse and strong criticisms: in a recent collection it is claimed that he paid too little attention to democratic institutions and a disproportionate amount of attention to notions of liberty,<sup>37</sup> that he has ignored the question of how equal justice for women is

<sup>35</sup> Wellbank *et al.* (1982).

<sup>36</sup> The five-volume collection edited by Richardson and Weithman (1999) contains a selection of the kind of criticism and critique and comment that Rawls's work has faced; for more critical studies, see Daniels (1975); Kukathas and Pettit (1990).

<sup>37</sup> Gutmann (2003).

to be achieved,<sup>38</sup> that he has fallaciously assumed individuals to be fundamentally self-interested, has posited an incoherent essence of the person, or has failed to construct an adequate conception of the community.<sup>39</sup>

*A Theory of Justice* and *Political Liberalism* have contributed to three separate debates in the sphere of political philosophy. They have championed the claims of rights-oriented liberalism over the utilitarian idea that justice is founded upon the concern for maximizing the aggregate happiness of all. They have provoked reactions from both libertarians and communitarians. Debate within the school of rights-oriented liberalism provoked a reply to Rawls from advocates of a libertarian minimalist state, such as Robert Nozick and Friedrich Hayek, whose absolute priority of civil and political liberties is violated by Rawls's notion of a social minimum and other redistributive policies.<sup>40</sup> The communitarian critique consists of the objection to Rawls's conception of the free person which makes him or her free from aims and attachments outside the agreements at the original position.<sup>41</sup> It is argued that Rawls's theory is flawed because morality is something rooted in practices rather than something to be uncovered by abstract principles. One objection, pursued by Alasdair MacIntyre, argued that Rawls's conception of a person as thus free and independent meant that his theory is unable to account for certain moral and political obligations which might arise without the individual's consent.<sup>42</sup> Rawls's response came in the shape of *Political Liberalism*, in which the sphere of his interests was restricted to the political, and which reinforced his notion that government should take a neutral stance about what constitutes the good life. Thence follows his insistence that it is possible to allow for an overlapping consensus of moral and theological views underneath a government that adheres to political liberalism. More recently, Sandel's objections to *Political Liberalism* related to the unfeasibility of separating the moral and political spheres of deliberation, and in the 'fact of

<sup>38</sup> Pateman (1989); Okin (1989); Nussbaum (2003).

<sup>39</sup> Mulhall and Swift (2003).

<sup>40</sup> For a synopsis of the debates to which Rawls has contributed, see Sandel (1998: 184–5); Kukathas and Pettit (1990: 74–118).

<sup>41</sup> Sandel (1998: 184–95).

<sup>42</sup> MacIntyre (1984: 246–52).



reasonable pluralism', and questioned the true extent of the liberal public reason upon which Rawls relies so heavily.<sup>43</sup>

Such controversies centre on issues other than the congruency of liberty and requirements. However, one of the earlier critiques of Rawls's priority of liberty was that of the philosopher of jurisprudence H. L. A. Hart, whose criticisms strike at the heart of this issue.<sup>44</sup> Hart perceived several problems with Rawls's treatment of liberty. First of all, he was concerned with the apparent tension between the 'liberty' of the general principle and the detailed, 'basic liberties'.<sup>45</sup> Hart criticized the principle that basic liberties may be limited only for the sake of liberty, leading to the question, how is it possible to prioritize between the different liberties, and how can it be ascertained that citizens would prefer one liberty to another?<sup>46</sup> Secondly, he suggested that the principle of limiting liberty for the sake of liberty alone does not provide adequately for the duty of preventing harm or suffering of others.<sup>47</sup> He argued that the existence of natural duties undermines the alleged priority of liberty.<sup>48</sup> Finally, he claimed that the only possible justification for the priority of liberty as such was that Rawls possessed a latent ideal of the public-spirited citizen who approaches political activity as a service to others and who would choose equal liberty for all as a priority. Hart maintained that this idealistic preference for liberty went against his claim that liberty does not rest on prior ideals.<sup>49</sup>

Rawls replied to Hart in a lecture published in *Political Liberalism*. Rawls stressed that the priority he assigned to liberty was supported by the tradition of aiming at certain 'basic' liberties and constitutional guarantees, as evidenced in various bills of rights and declarations of man. As the list of basic liberties themselves are directed at achieving justice as fairness, it is these basic liberties that possess priority, rather than liberty as such. Moreover, he stressed that priority is assigned to the basic liberties rather than any other kinds of liberty which are of lesser importance, and that the order in which the basic liberties are prioritized can be affected by particular circumstances. Rawls restated the case for the priority of liberty, arguing that the

<sup>43</sup> Sandel (1998: 196–218).

<sup>45</sup> Hart (1973: 536–42).

<sup>47</sup> Hart (1973: 547–50).

<sup>49</sup> Hart (1973: 551–5).

<sup>44</sup> For other early reactions, see Daniels (1975).

<sup>46</sup> Hart (1973: 542–7).

<sup>48</sup> Hart (1973: 550–1).

moral powers of individuals can be secured only by the security of the basic liberties, and in particular liberties that can be classified as political.

It should be noted that Hart's failure to account for the centrality of requirements as an inherent part of the Rawlsian notion of liberty undermined the second and third of his objections: for Rawls, liberty is a certain structure of institutions, a certain system of public rules defining rights and duties. Hart conceived of the basic liberties as if they are negative liberties concerned only with the freedom of the individual. For Rawls, however, given that each basic liberty is made up of duties as well as rights, Hart's concern about the limitation of liberty for the sake of preventing harm is eliminated: Rawls says explicitly that there exists a natural duty not to be cruel (*TJ* 98). It appears, therefore, that the compatibility of requirements and liberty is fundamental to understanding Rawls's notion of a well-ordered society.

In contrast to Hart's critique, one reaction to Rawls deeply versed in the significance of requirements to Rawls's theory is that to be found in George Klosko's *Political Obligations*. Klosko claims that Rawls's attempt to use an idea of natural duty to support the just institutions as a basis for political obligations is unsuccessful.<sup>50</sup> Klosko argues that Rawls's failure to elaborate the justification of natural duties would lead to problems when those duties oblige individuals to make onerous sacrifices,<sup>51</sup> and in particular that 'a moral requirement to support the state's central functions must have some other basis'.<sup>52</sup> The point of Klosko's book is to assert that obligations can be expected from citizens when they receive essential public goods and other benefits from the state. While Rawls does indeed suggest that certain sentiments encourage the performance of requirements, these are not enough to guarantee or justify their existence.<sup>53</sup> As will become clear, the underdeveloped nature of Rawls's justification of his natural duties stands in sharp contrast to the plethora of ways in which the Athenians justified the obligations of the individual to the city.<sup>54</sup>

<sup>50</sup> Klosko (2005: 75–92).

<sup>51</sup> Klosko (2005: 81–2).

<sup>52</sup> Klosko (2005: 85).

<sup>53</sup> See Ch. 2.9.1.

<sup>54</sup> See Ch. 4.

## 2.11. RAWLS'S REJECTION OF ANTIQUITY

It is an irony that while recent scholarly work has attempted to analyse ancient Athenian democracy by reference to the work of Rawls, Rawls rejects the idea that antiquity might provide material for thinking about ethics and politics. Whatever the value of using Rawls's theory of justice as fairness as a device for understanding the Athenian democracy of the fourth century, it must be stressed that Rawls distances his work from either the philosophy or the social arrangements of the *poleis* of ancient Greece. He dismisses ancient philosophical thought as principally eudaimonist and unconcerned with duties, rights, and obligations.<sup>55</sup> However, this does not detract from the success of his claim to adjudicate between ancient and modern liberty, which even produces a model of liberty that can be profitably reapplied to the ancient Athenian situation.

Only in the case of Aristotle does Rawls ever come close to making self-conscious use of ancient models. The best example of this is what he describes as the 'Aristotelian Principle', referring to his basic principle of motivation, the notion that humans take pleasure in doing something that they are good at and that humans enjoy the exercise of their innate or trained capacities (*TJ* 374). This is based on an interpretation of what Aristotle says about the relations between happiness, activity, and enjoyment in the *Nicomachean Ethics* (5.11–14, 10.1–5). It leads to the contention that the development and exercise of moral powers is a good for individuals.

Rawls conceives of Aristotelian thought as far removed from the rest of Greek antiquity. But even his interest in the thought of Aristotle is limited. In his first lecture on the history of moral philosophy, 'Modern Moral Philosophy 1600–1800', he began by drawing a distinction between classical and modern moral philosophy, characterizing the ancient philosophers as concerned exclusively with ascertaining the most rational way to true happiness or the highest good, and the relationship of virtuous conduct to the highest good. Modern philosophy as conceived by Rawls, on the other hand, is concerned with the prescription of right reason and the rights, duties, and obligations to which these give rise (*History*, 2–4). Moreover,

<sup>55</sup> Annas (1998) discusses the role of happiness as an ancient and modern virtue.

he thought of the distinction between the political and non-political identities which is so central to *Political Liberalism* as a fundamentally modern democratic distinction (*PL*, pp. xxi, 13).

It is likely that Rawls derived the idea that the ancients were interested in happiness, but not the notion of obligation, from Kant,<sup>56</sup> and from the tendency prevalent among modern moral philosophers to distance their thought from antiquity.<sup>57</sup> It is beyond the subject of this study to comment in such general terms on the interests of ancient philosophy, but it is a central contention that the evidence of non-philosophical genres of fourth-century Athens certainly indicates that the Greeks were indeed interested in the way that the obligations of the citizen were construed.

Rawls has little to say about non-philosophical constructions of the Greek city-state of the classical period. In his last major publication, on the basis of Athenian foreign policy in the fifth century, he ruled out the idea that ancient Athens might be considered a liberal democracy—though she herself might have considered herself to have been (*Law*, 28 n. 27 [29]). In the introduction to *Political Liberalism*, Rawls frames his investigation of political liberalism as a reaction to a set of problems that he claims to be particularly modern and did not trouble the citizens of ancient Greece. He paints a picture of Greek citizens as rather blindly carrying out what was expected of them: ‘as long as one participated in the expected way and recognized the proprieties, the details of what one believed were not of great importance. It was a matter of doing the done thing and being a trustworthy member of society, always ready to carry out one’s civic duties as a good citizen—to serve on juries or to row the fleet in war—when called on to do so’ (*PL*, p. xxiii; *History*, 3). Certainly, then, Rawls recognizes the centrality of duties in the ancient Greek *polis*, but he thinks that the ancients were uninterested in discussing the nature of these duties, and that this was partly owing to the fact that Greek religion offered no ethical code alternative to that of the gods and heroes. He believes that the emergence of philosophical speculation with Socrates constituted a rejection of a traditional Homeric code of agonistic ethics (*History*, 3–4). However, this did not, in his opinion, lead to any speculation on the subject of justifying

<sup>56</sup> Stauffer (2001: 10); White (2002: 24–5).

<sup>57</sup> See Ch. 1.

obligations or duties. The idea that, at the end of the fifth century, the emergence of philosophical speculation led to a more individualistic brand of ethics in the Greek *polis*, eventually leading to the eclipse of *polis*-civilization in the fourth century, is one which, as Wallach has pointed out, emerges with most frequency in the work of modern philosophers, whose works on Plato's moral theory are uninterested in political issues.<sup>58</sup> It is also highly reminiscent of Hegel's position in the *Lectures on the Philosophy of History*, suggesting that upheavals and developments in philosophy curtailed the dominance of religious sentiment in late fifth-century Greece.

Rawls employs Constant's distinction between ancient and modern liberty, referring by the former to equal political liberties and the values of public life, and by the latter to freedom of thought and conscience, certain basic rights of the person and of property, and the rule of law. Importantly, however, in *Political Liberalism*, he claims that the idea of liberty in justice as fairness attempts to adjudicate between the stylized contrast between 'ancient' and 'modern' liberty (PL 5). Rawls insists that, regardless of Constant's division, in a well-ordered society the role of the political liberties should be to protect the other basic liberties and they should be protected by the priority of liberty (PL 299).

Rawls has coincided with the philosophical tendency, prevalent, with the exception of the work of Grote and John Stuart Mill,<sup>59</sup> since Constant, to present the ancient notion of liberty and citizenship as far removed from, and even a foil to, the modern idea of liberty. This work will show how, by elucidating the idea of liberty and civic obligation based on an analysis of the workings of Athenian democracy, it is possible to highlight a significant congruity between ancient and modern ideas of liberty. In so doing, it will illustrate how Rawls's conclusions on the nature of liberty might be reapplied to ancient Athens in a way that it is unlikely he would have thought feasible.

## 2.12. RAWLS AND ATHENS

The act of comparing a reading of ancient Athens to the ideals of Rawls has already been attempted explicitly by Josiah Ober and

<sup>58</sup> Wallach (2001: 404–5).

<sup>59</sup> See Ch. 1.1.

Edward Harris. Harris compared Rawls's notion of an 'overlapping consensus', whereby different interest groups share an allegiance to certain principles, thus ensuring political stability, with Demosthenes' idea that a social contract ensures stability in Athens.<sup>60</sup> In an article entitled 'The *Polis* as a Society: Aristotle, John Rawls and the Athenian Social Contract',<sup>61</sup> Ober justified a three-way analysis of ancient Athens, Aristotle's 'best-possible *polis*', and Rawls's well-ordered society on the basis of the argument that comparing Athens with a meticulously developed ideal society might highlight historically distinct elements of Athenian democratic practice. Ober supposes his understanding of ancient Athens, centred upon the coexistence and cooperation of a wealthy, educated elite with non-elite citizens who participated in the political process, to be a practical expression of the social contract in the ancient world.<sup>62</sup>

Coincidence, though not explicit comparison, between democratic Athens and Rawls is to be found in Ober's other work and also in the work of the Danish historian Mogens Hansen. As has been widely recognized,<sup>63</sup> Rawls addressed the clash in political thought between the concepts of liberty and equality by giving priority to the first principle of justice (equal and extensive basic liberties) over the second (the minimization of social and economic inequalities). The priority of liberty over equality in ancient Athens is championed by Hansen,<sup>64</sup> while others champion the priority of equality,<sup>65</sup> or allocate equal worth to both values.<sup>66</sup>

Noteworthy also is the similarity between Rawlsian justice as fairness and the portrayal of Athenian democracy that has emerged in Ober's *Mass and Elite in Democratic Athens*. In that work, Ober argues that the mass and elite in Athens struck a bargain whereby the mass acquiesced in a state of inequality in terms of wealth, political position, education, and eloquence in exchange for an egalitarian political discourse upheld by the wealthy liturgists, eloquent orators, and powerful politicians. This is highly reminiscent of several Rawlsian

<sup>60</sup> E. Harris (1996: 73); cf. Rawls, *TJ* 340. <sup>61</sup> Ober (1996: 161–87).

<sup>62</sup> Ober (1996: 179). <sup>63</sup> Lukes (1991).

<sup>64</sup> Hansen (1989*b*, *c*, 1996*a*); cf. Bleicken (1995: 71, 355).

<sup>65</sup> Zhu (2003) makes a case for equality of worth as a precondition for justice in Greek thought.

<sup>66</sup> J. Miller (2001).

principles: the so-called difference principle, which allows for the existence of inequality of wealth and income (*TJ* 65), his principle of mutual benefit, whereby the better off are accordingly prevented from accruing further benefits without contributing to the well-being of others (*TJ* 88), and his second principle of justice, whereby inequality of income and wealth are to be arranged to the benefit of the worst off in society (*Restatement*, 43).<sup>67</sup>

Ober's and Hansen's readings of Athens highlight a wider phenomenon, whereby, according to one theorist, 'we are living in a time and at a place in which we do not really have any effective general framework for thinking about politics other than liberalism'.<sup>68</sup> One critic has even suggested that the inability to come up with alternative models for thinking about society reflects the contemporary sterility of Enlightenment values and reasoning.<sup>69</sup> Liberalism has not been the only way of thinking about Athens in recent scholarship: Samons objects strongly to the liberal model.<sup>70</sup> While de Ste Croix seems to have avoided applying the Marxist model to the Athenian democracy, commenting that the class struggle there was 'much milder',<sup>71</sup> the idea of Athens as a peasant or agrarian society may also be seen as deviating from the liberal model.<sup>72</sup> However, Ober's use of Rawls reflects the tendency for analyses of Athenian democratic practice over the past twenty years to rely upon liberal models.<sup>73</sup> While Ober uses the theory of justice to evaluate the idea of the social contract in democratic Athens, this study employs the work of Rawls to provide a structure for the notion of liberty and civic obligation under investigation in this work. It is worth also stressing that Ober, Harris, and Hansen all treat Athens as an inherently democratic city: accordingly, they couch their comparisons in the language of democracy. It is,

<sup>67</sup> Balot (2005: 84–5) follows Ober in suggesting coincidence between the difference principle and the workings of Athenian society.

<sup>68</sup> Geuss (2001: 114), referring to the work of John Dunn. For the idea that the interpretation of the Athenian economy proposed by Burke (1992) and others approximated to the 'Rawlsian condition of minimum equality compatible with the maximum welfare for the poorest citizens', see Nafissi (2005: 261).

<sup>69</sup> Gray (1995). <sup>70</sup> Samons (2004).

<sup>71</sup> De Ste Croix (1981: 295; cf. 298). For other Marxist and Marxian variants on the Athenian model, see Nafissi (2005: 246–52).

<sup>72</sup> Wood (1988); Hanson (1995: 388); N. F. Jones (2004).

<sup>73</sup> Ober and Hedrick (1996); Hansen (1996a).

however, not the case that the compatibility of liberty and obligations is exclusive to democracy: this compatibility is a feature of the *polis* of Athens rather than specifically democratic Athens.

### 2.13. PHILOSOPHY AND HISTORY

There exists a potential problem with using abstract political philosophy to interpret the workings of the fourth-century Athenian *polis*: the gulf between the disciplines. On the one hand, Rawls's work is a modern political theory outlining an idea of justice to be applied to the basic structure of society; on the other, there are ancient testimonia which record the transactions of Athenian democracy. One is utopian idealism; the other involves reconstruction of a feasible picture of the workings of democracy in the ancient Athenian context. However, such differences do not deem Rawls's theory completely unsuitable for thinking about the ancient world; indeed, the abstract nature of his work if anything broadens its range of applicability. It is possible to apply the detailed sociological and political testimonia from fourth-century Athens to flesh out the skeletal structure that Rawls presents, and the optimal result would be that both contribute something to the other. The significance of the gulf between philosophical and non-philosophical conceptions of political society evaporates on close scrutiny: Rawls envisaged his own work as contributing to a realistic utopia (*Law*, 11–12) which itself is based on interpretation of past political philosophy and is heavily influenced by, or even inspired by, real events.<sup>74</sup> Furthermore, it is necessary to acknowledge that the notion that it is possible to reconstruct the workings of ancient Athenian society is an optimistic one. All sources, even the 'leftovers' (Chapter 3.2) of the transactions of ancient *poleis*, intentionally or unintentionally idealized the functioning of that political system. Any portrait of the ancient *polis* contains utopian aspects, and the temptation is huge to regard Athens as the 'historical utopia *par excellence*'.<sup>75</sup> This applies regardless of whether or not Athenian democracy is envisaged as essentially a well-ordered society.

<sup>74</sup> See Ch. 2.4.

<sup>75</sup> Nafissi (2005: 286).



Accordingly the divide between political theory and historical reconstruction is less significant than it might at first appear. It is certainly not enough to annul the possible advantages that might accrue from using a philosophical model to elaborate more clearly the relationship between liberty and obligation.<sup>76</sup>

#### 2.14. THE COMPATIBILITY OF REQUIREMENTS AND LIBERTY

Rawls has composed a theory of justice which purports to revive social contract theory; this has been adjusted to create a theory of political liberalism. Though on the surface it appears to be an abstract and utopian theory, it is based upon ideas grafted from the history of political thought and can be perceived as a reaction to developments in modern democratic societies and political thought. It is a theory which is reliant on notions of cooperation, reciprocity of relationship between individuals and between individuals and society, on the consent of the individual at the original position towards justice as fairness, and the promise that cooperation and participation in justice as fairness under the conditions of political liberalism will lead to the reward of moral improvement for the individual as well as better socio-economic conditions. This chapter has described the most important aspects of justice as fairness and political liberalism, and has attempted to outline the most important aspects of the basic liberties, the adjudication between 'ancient' and 'modern' liberty, the account of the relationship between liberty and requirements, and Rawls's attitude towards participation in society and participation in the political process.

Kant and Green outlined two ways in which obligations are compatible with, or indeed form the very substance of, liberty.<sup>77</sup> Rawls too allows for the compatibility of requirements and liberty, and the centrality of this compatibility is illustrated by four observations.

<sup>76</sup> For suggestions as to how philosophy might help to conceptualize historical problems, see Chartier (1988: 53–70).

<sup>77</sup> See Ch. 1.7.

Firstly, it is clear that, for Rawls, liberty will be best fostered in the well-ordered society. Individuals limit their own organic liberty by the act of consent to life in society which is given in the social contract at the original position. This guarantees them basic liberties, duties, and, for those who are willing, obligations. Alongside the idea that the basic liberties are constituted as a network of rights and duties, this is the closest that Rawls comes to envisaging that freedom itself is at least partly constituted by fulfilling one's duties and obligations. Secondly, closely related to the first is the fact that, for Rawls, duties uphold liberty: citizens must perform duties in order to defend their own and other citizens' liberty. Thirdly, while excessive duties might preclude individual liberty, when properly directed they do not. Accordingly, as military conscription constitutes interference in the basic liberties of citizenship, conscription is permissible only if it is demanded for the defence of liberty itself. Fourthly, he takes Mill's line that liberty will result in the emergence of a public spirit which will inspire members to fulfil their obligations and duties.

Having described the Rawlsian comparandum, it is now necessary to investigate the reconciliation of liberty and civic obligation in ancient Athens, and to identify which of Rawls's ideas are most applicable to Athens, and at what points the Athenian example departs from the Rawlsian model. Although Rawls's work lies within a tradition of political thought that allows for the compatibility of duties and liberty, what gives Rawls the edge over these other theories is the fact that his idea emerges in the context of the description of the basic structure of a well-ordered society, that he is concerned with duties other than political obligation, and his readiness to construe duties like military service and taxation as, after the original position, the realistic equivalent of the abstract notions of natural duty.

## Ancient Texts and Ancient Contexts

### 3.1. INDIVIDUAL AND *POLIS*

The concern of the sources with the obligations of the individual towards the *polis* is a consequence of the Greek habit of forming communities in which they shared a common purpose or interest.<sup>1</sup> In fourth-century Greece these communities commonly took the shape of the *polis* (city-state), its subdivisions (which were usually military or religious associations), the *oikos* (family), and other descent groups (Arist. *Pol.* 1325<sup>b</sup>23–32; *EN* 1160<sup>a</sup>8–30).<sup>2</sup> Members of these bodies enjoyed rights, assumed a series of often nested identifications, and were liable to obligations. The most significant members of the *polis* in Athens were its citizens (*politai*):<sup>3</sup> collectively these were known as the *demos* (people).<sup>4</sup>

<sup>1</sup> I have translated the term *polis* as ‘city-state’. However, Berent (2004) restates his case against Hansen (2002) that the ancient Greek *polis* lacked some of the essential features connoted by the modern term ‘state’.

<sup>2</sup> The Aristotelian term *koinonia* frequently surfaces in modern scholarship as ‘community’: see Finley (1970); Murray (1990a: 23); and, translating *koinonia* as a ‘communality’, Millett (2000: 353).

<sup>3</sup> There are many studies of ancient Athenian citizenship: see Davies (1977); Manville (1990); Whitehead (1991); Sealey (1983); Sagan (1995); Farrar (1996); Ostwald (1996). On the terminology for citizenship, see Blok (2005). For the possibility that there existed Athenians who were neither slaves nor metics but were not citizens, and the possibility that the citizen-body was a more fluid group than has previously been supposed, see E. E. Cohen (1997; 2000a: 49–78); note the objections of R. G. Osborne (2002). The focus of this book is on the obligations of citizens; the obligations of metics and bastards are discussed briefly at Ch. 6.1.

<sup>4</sup> The frequent identification of the *demos* with the *polis* as a community means that there is no point in attempting to draw conclusions from the use of *polis* as opposed to the use of *demos* in relation to discussions of citizenship. For discussion of reference to *polis* or *demos* in Athenian state honorary decrees, see Veligianni-Terzi

Meier's statement that the affiliation of the individual to the *polis* was the only significant relationship that transcended the *oikos* is derivative of the fact that the most substantial sources concentrate on this particular relationship.<sup>5</sup> However, demes, tribes, phratries, *gene* (clans), and other corporate groups set up their own inscriptions preserving decrees, marking boundaries, or recording sales of land.<sup>6</sup> Thus the Athenian citizen was liable also to regulations, social pressures, and obligations on the level of these organizations. The institutions of the city's subdivisions executed directives decreed by the *polis*: Euxitheos, speaker of Demosthenes' speech *Against Euboulides*, describes the meeting of the deme of Halimous at which they put into practice the *diapsephisis* (scrutiny) of deme registers decreed in 346/5.<sup>7</sup> Indeed, the demes, tribes, and other associations frequently prepared the business of the *polis*: the selection of citizens for bouleutic (council) service was carried out in the demes;<sup>8</sup> phratry membership was probably a necessary condition of citizenship;<sup>9</sup> tribes were important in military organization, conscription, and manning the Athenian fleet;<sup>10</sup> and sponsors of Athenian dramatic competitions were allocated among the Athenian tribes ([Arist.] *Ath. Pol.* 56.3).<sup>11</sup> It would therefore be wrong to ignore entirely their transactions as evidence for the working of civic obligation. Indeed, deme decrees could share a stone inscription with one of the *polis* (SEG xlv. 42;

(1997: 234–46). Meier (1990: 21) and others closely identify the *demos* with the *polis*: Manville (1990: 6); Murray (2000: 325); Piepenbrink (2001: 133). For the *polis* as a rhetorical construct, see C. R. Miller (1993). Fouchard (1998: 68) perceives of the *demos* as a narrower community nested within the community represented by the *polis*: this distinction is valid, but was often forgotten about in Athenian oratory. There was also a partisan meaning of the term *demos*, referring to the poor: see de Ste Croix (1981: 72).

<sup>5</sup> Meier (1990: 142–3).

<sup>6</sup> For a dossier of deme decrees, see Whitehead (1986a: 374–93); for a recent dossier of decrees of tribes, see N. F. Jones (1999: 321–3); for phratry documents, see Lambert (1998: 279–351).

<sup>7</sup> For the sources for this scrutiny, see R. G. Osborne (1985b: 248 n. 56); Whitehead (1986a: 103–6).

<sup>8</sup> Whitehead (1986a: 111–14).

<sup>9</sup> Lambert (1998: 57).

<sup>10</sup> See Ch. 5.5. The clearest link between naval conscription and the tribes is at D. 14.22–3.

<sup>11</sup> See Ch. 5.4.1.1.

IG II<sup>2</sup> 949).<sup>12</sup> For the most part, however, obligations towards the *polis* will be the ones emphasized. Despite the fact that recent work has highlighted the mass of evidence on organizations subordinate to the *polis*,<sup>13</sup> the sources, in particular oratory, provide the most adequate basis for an examination of the relationship between the individual and the *polis*. Furthermore, it was on the level of the *polis*, the only organization that claimed to safeguard the liberty of its citizen-members, that the question of the relationship between obligations and liberty was broached in the oratorical sources.

### 3.2. WHY INSCRIPTIONS AND ORATORY?

Previous interpretations of the Athenian idea of liberty have focused upon readings of Thucydides' *epitaphios logos*.<sup>14</sup> This book makes use of forensic and symbouleutic oratory and the inscriptions of the Athenian *polis*, inscribed dedications and epitaphs, of the period 410–317. This choice of historical context and sources demands explanation, as does their employment for understanding the relationship between civic obligation and individual liberty.

A study of civic obligation could be carried out with reference to one of several types of source. It may be possible to investigate obligations through comedy, lyric poetry, epic, or tragedy, as all of these are arguably popular modes of communication that may have acted to reinforce or express ideas of civic obligation. While excluding these sources necessarily limits the conclusions of this study, it may enable the avoidance of the dangers of decontextualization which make studies of concepts in ancient societies so problematic. It will become evident that these two types of source emphasize different aspects of the obligations of the Athenian citizen: oratory, for instance, has less to say than epigraphical publications on the religious obligations of

<sup>12</sup> For discussion of the deme as a local political unit, see R. G. Osborne (1985b: 64–92), suggesting that the deme could serve as a sphere for political activity by the less well off (1985b: 87).

<sup>13</sup> Associations in general: R. G. Osborne (1990b); N. F. Jones (1999); phratries: Lambert (1998); *gene*: Lambert (1999); demes: R. G. Osborne (1985b); Whitehead (1986a); religious groups: R. C. T. Parker (1996: 328–42); Arnaoutoglou (1998a). For an exemplary and detailed survey of the deme Atene, see Lohmann (1993).

<sup>14</sup> See Ch. 1.1.

the citizen. A study of civic obligations in epic, tragedy (which tends, unlike oratory, to emphasize clashes in obligations),<sup>15</sup> the philosophers,<sup>16</sup> New or Middle Comedy,<sup>17</sup> or the work of Xenophon would give a different picture.<sup>18</sup>

While the Athenians could conceive of human obligations to the gods,<sup>19</sup> and to other men through interpersonal relationships,<sup>20</sup> this book concentrates on the obligations of the citizen towards the *polis*, and those obligations guaranteed by the *polis* towards bodies other than the *polis*, in particular the family.<sup>21</sup> The two main sources for the transactions between the citizen and *polis* are inscriptions and symbouleutic and forensic oratory. They provide evidence for laws and decrees of Athens, and for the norms of civic behaviour postulated on the basis of non-statutory bases. Thus they provide 'pre-historical' evidence for civic obligation: evidence for publicly disseminated ideal standards of behaviour. In another way they provide historical evidence for the performance of civic obligations. Oratory and inscriptions are grouped together by Hansen as *Überste* (left-overs) of the transactions of the *polis* of Athens.<sup>22</sup> These sources are defined in opposition to *Berichte*, descriptive accounts of the workings of the *polis*. For the purposes of this book, symbouleutic and forensic oratory, and the inscriptions of fourth-century Athens, might be seen as *Überste* of the negotiation and performance of civic obligation. But oratory and inscriptions also provide *Berichte* of the performance of obligations: a defendant typically claims that he has performed certain obligations; an honorary inscription may state that somebody is being honoured for their civic virtue; a dedication might record the ordinary or supererogatory performance of a duty; and funerary sculpture might refer to the deceased's civic activity. But

<sup>15</sup> Clashes in obligations: Goldfarb (1992); Goldhill (1987: 75); deep concern with obligations: Ober and Strauss (1990); Maitland (1992). On tragedy as a repository of *polis*-values, see Rhodes (2003a).

<sup>16</sup> Kraut (1984); C. Taylor (1990).

<sup>17</sup> Scafuro (1997); Hofmeister (1997); Nesselrath (1997); Lape (2004).

<sup>18</sup> For a study of civic virtues in Xenophon, particularly those related to Athenian democratic ideology, see Seager (2001).

<sup>19</sup> C. Taylor (1990: 238); R. C. T. Parker (1998).

<sup>20</sup> Herman (1987); Mitchell (1997); Cox (1998).

<sup>21</sup> See Ch. 5.1.

<sup>22</sup> Hansen (1999: 323). For Hansen (2001: 343), one defining characteristic of documents is that they are concerned with business.

even these reports of the performance of obligations play a protreptic role inasmuch as they provided examples with the sometimes express intention of inspiring other citizens towards emulation.

This choice of sources follows the recent tendency to use Attic oratory as evidence for the social, sociopolitical, and institutional history of ancient Athens.<sup>23</sup> The discursive practices of orators and their structural role in the functioning of the Athenian *polis* are to be investigated.<sup>24</sup> The oratory of the law courts and *ecclesia* record agonistic contexts in which obligations were contested, laid down, and reinforced, or 'negotiated', and in which the performance of obligations was presented publicly. The idea, pursued in the work of Ober, Hunter, Lotze, and Piepenbrink, that orators have an important role in the functioning of the political, sociological, and litigious structures of the Athenian *polis*<sup>25</sup> is highly relevant; to this we might add that it is also possible to conceive of epigraphical publication as playing a significant part in the negotiation of interests between *polis* and citizen.

The interest of this book is not focused on investigating implicit or explicit expressions of democratic ideology,<sup>26</sup> or attempts to manipulate those values.<sup>27</sup> The extant corpus of Athenian oratory and Athenian inscriptions contains a heterogeneous mass of *polis* ideologies (not all of them exclusive to democratic government), but also public and individual affectations and prejudices. In the partial world of the orators and the publications on stone of the Athenian *polis*, in contrast to the ideals of modern liberal political theory, obligations did not necessarily have to be backed up with a reasoned or moral claim, but could be demanded by fiat.<sup>28</sup> An obligation, in the strong sense, is something that the orator or proposer of a decree or law

<sup>23</sup> See, for instance, on popular morality: Dover (1974, 1978); D. Cohen (1991, 1995a); political sociology: Ober (1989a); litigation: Hunter (1994); M. R. Christ (1998); Johnstone (1999); and political structures: Hansen (*passim*).

<sup>24</sup> For investigations of the discourses and argumentation of the orators, see Nouhaud (1982); Ober (1989a; 1996: 86–106); Todd and Millett (1990); Wilson (1991); Butti de Lima (1996: 17–36); Gotteland (2001).

<sup>25</sup> Ober (1989a); Hunter (1994, 2000a); Lotze (2000: 273–81); Piepenbrink (2001).

<sup>26</sup> The most important investigation of the competing strands of Athenian democratic ideology in fourth-century Athens is Ober (1989a); on fifth-century democratic values, see Raaflaub (1989); Brock (1991).

<sup>27</sup> On the oratorical manipulation of democratic values, see Yunis (1996: 238).

<sup>28</sup> On this form of 'negotiation', see Ch. 4.1.11.

claims that an individual, *qua* good citizen, is obliged to carry out, usually implicitly or explicitly grounded on the basis of the interests of the city or the *demos* of Athens. But this book extends the reference of obligation to refer to those types of public activity that were deemed virtuous or praiseworthy in a public context, including the kinds of activity that were said to constitute supererogatory or euergetic performance of obligations.

The focus on political and litigious oratory and inscriptions means that the obligations ‘negotiated’ in those contexts will be the ones emphasized. ‘Negotiation’ refers to the exposition of values and justifications in support of obligations in a range of frequently contentious contexts. This took place at the law courts; orators sometimes claimed that liturgies were carried out with the intention of winning favour in that context (Lys. 25.13). Demosthenes speaks of Meidias boasting of his outlay in the *ecclesia* and ‘everywhere’ (21.153); in Menander’s comedy *The Samian Woman*, Moschion, introducing his riches and virtuous behaviour to the audience, refers to his *choregia* (Men. Sam. 13–14).<sup>29</sup> It is possible to detect the workings of such a timocentric discourse outside the law courts through the evidence of inscriptions and dedications recording the performance of obligations.

The impression obtained of the workings of civic obligation is bound to be influenced by the fact that the oratorical evidence, in terms of word count, is more voluminous than the corpus of fourth-century Athenian inscriptions. Moreover, until the early third century, Athenian honorary decrees were usually rather formulaic in their descriptions of honorands’ praiseworthiness.<sup>30</sup> The difficulty inherent in creating a coherent picture of the workings of Athenian democracy from inscriptions is exacerbated by the fragmentary state of their preservation. Furthermore, it is impossible to be absolutely sure of the Athenian rationale for publishing decrees and laws on stone. However, it seems feasible to suggest the Athenians published laws and decrees on stone with the intention of promoting the ideal standards of the performance of civic obligations.

Given that an investigation of civic obligations demands consideration of the kind of behaviour that was deemed virtuous in a public

<sup>29</sup> For analysis of this passage, see Scafuro (1997: 362–4).

<sup>30</sup> See Ch. 4.2.3.



context, it will be necessary to recognize that a great deal of information can be gleaned from dedications made by individuals and groups working in a public capacity and also funerary monuments which record or reflect on some kind of civic service.<sup>31</sup> Such evidence is useful in that it reflects on the desire of individuals to display publicly their engagement with civic obligations, and they may be thought of as recording a popular reaction to the *polis*-sponsored promotion of the performance of obligations.<sup>32</sup>

### 3.3. THE SELECTIVITY AND IDEOLOGY OF PUBLICATION ON STONE

Stone inscriptions were set up on a medium that was, notwithstanding human intervention, permanent.<sup>33</sup> They provided a slow means of publication: publication on non-permanent media such as whitened wood, used for the creation of lists of conscripted men ([Arist.] *Ath. Pol.* 53.4; ML 23.27–31), would be quicker.<sup>34</sup> Some form of written legislation had probably existed in Athens from the late seventh century onwards.<sup>35</sup> Rhodes suggests that the Athenians took seriously the large-scale publication of documents in the 450s after the democratic reforms of Ephialtes.<sup>36</sup> However, it is only with the instruction of 410/9 given to the *anagrapheus* (secretary) Nicomachus and his colleagues to write down the laws of Solon that there was a clear manifestation of the growing concern for the principle of writing down laws and decrees from that date onwards (Lys. 30.2). It is possible that the secretaries of these years were ordered to republish

<sup>31</sup> Bergemann (1997: 151–6).

<sup>32</sup> On dedications and civic obligation, see Chs. 4.4, 5.4, 5.8.

<sup>33</sup> MacMullen (1982: 246).

<sup>34</sup> On publication in general, see Klaffenbach (1960: 1–24); Rhodes (2001*a, b*); on non-permanent publication, see Wilhelm (1909: 239–49); Rhodes (2001*a*: 33–5). On the use of *sanides* (planks), see Fischer (2003). On publication of lists of conscripts, see Rhodes (1981: 555); see also below, Chs. 4.3.2, 5.4.

<sup>35</sup> Stroud (1968, 1979). The earliest epigraphically attested inscriptions relating to political or judicial regulation from the Greek mainland date from the last quarter of the sixth century: van Effenterre and Ruzé (1994).

<sup>36</sup> Rhodes (2001*b*: 139–40).

all currently valid laws.<sup>37</sup> Nicomachus' tenure of this office lasted for six years (Lys. 30.2); in a second tenure from 403/2 to 400/399 he was commissioned to write down the sacred laws of Solon (Lys. 30.4, 25).<sup>38</sup> Moreover, in the years 410/9 and 409/8, the Athenians inscribed on stone Draco's law on homicide (IG I<sup>3</sup> 104), a set of council laws (ibid. 105), a trierarchic law, a law concerning finances of colonists and cleruchs, and a calendar of sacrifices (ibid. 236–41). Even if it had been the intention of the Athenians to write down all their laws and set them up in a public place, it was never fulfilled.

Again, in 403/2 a decree of Teisamenus, recorded in Andocides' speech *On the Mysteries*, appears to have directed that the whole of the revised Athenian law code should be inscribed in the Stoa Basileios (Royal Stoa), the traditional location of the laws of Solon (And. 1.82; Ag. iii. 4–23). It may well be the case that this was the intention.<sup>39</sup> However, the orators never again refer to the Stoa as the place where laws other than those of Solon were inscribed. The Athenians may have abandoned the publication of a full collection because so many laws were amended or new ones introduced soon after 403/2.<sup>40</sup> Teisamenus' decree was a reflection of an optimistic desire to publish laws, not the plausibility of publishing them all, and this sentiment was expressed in other laws. A law of 403/2 which declared that magistrates were not allowed to make use of *agraphoi nomoi* (unwritten laws) seems to reflect this idea that the Athenians should use the written word to give authority to their ordinances (And. 1.85, 87).<sup>41</sup> Another law of the same date stated that new laws

<sup>37</sup> Rhodes (1991: 93). Generally, on the publication of laws in the period 410–399, see N. Robertson (1990); Rhodes (1991). For discussion of the republication of Draco's law on homicide, stressing that it was a project distinct from the republication of laws by the secretaries, see Gallia (2004).

<sup>38</sup> For a reconstruction of the chronology of Nicomachus' second term, see Dow (1960).

<sup>39</sup> That the Athenians intended to write up all the laws passed by the *nomothetai* is argued by Hansen (1990b: 69–71; 1999: 163–4). N. Robertson (1990: 46–9) has suggested that the decree of Teisamenus refers to the temporary posting of those laws being considered for revision; Rhodes (1981) has suggested that it refers to the temporary posting of laws which were enacted by the *ecclesia* rather than, as was the norm for laws after 403/2, by the *nomothetai*.

<sup>40</sup> Hansen (1990b: 71); cf. N. Robertson (1990: 44 n. 2).

<sup>41</sup> It is possible that non-magistrates could make use of *agraphoi nomoi*. Orators are known to have used the concept in argumentation: Lys. 6.10; D. 18.275, 23.70.

had to be displayed in front of the *eponymoi* (Eponymous Heroes of the ten Athenian tribes) before they could be discussed at the assembly, both before and after ratification by the council and *nomothetai* (And. 1.83–4; D. 20.94).<sup>42</sup> These pieces of legislation suggest the view that laws should be publicly inscribed, and this was in part a necessary step towards giving the law code authority after the turmoil of the oligarchic regimes.<sup>43</sup> However, it is likely that the Athenians soon realized that such a full publication was impracticable: the abortive first attempt and overzealous second attempt of Nicomachus to write up the calendar of state sacrifices had already illustrated the problems stemming from attempts at codification (Lys. 30).<sup>44</sup>

Accordingly, even in times of law revision, there existed no comprehensive law code for public view on stone.<sup>45</sup> Nor is there any evidence for an attempt to ensure that the Athenians published all their decrees on stone. While it is feasible that, in the fifth century, stone inscriptions acted sometimes as the only record of the laws and decrees of Athens,<sup>46</sup> from the end of the fifth century an archive of documents recording laws and decrees on papyrus developed, and in all likelihood formed not a comprehensive repository of ordinances but one that was more thorough than the documents preserved on stone.<sup>47</sup> In the fourth century stone inscriptions and papyrus records existed concurrently:<sup>48</sup> some pieces of legislation were published in both media, and others in one only. It follows that those documents set up on *stelai* (stone inscriptions) were the ones regarded as particularly worthy of permanent display.

an analysis of other occurrences of the term, suggesting that it had no formal usage, see Ostwald (1973); Thomas (1996: 16–19).

<sup>42</sup> Hansen (1971–80); MacDowell (1975); N. Robertson (1990: 44).

<sup>43</sup> Ostwald (1986: 509–24); Bleicken (1987: 268).

<sup>44</sup> On Nicomachus' commission, see R. C. T. Parker (1996: 218–20). On the attacks he faced, see Todd (1996). For the latest modern edition of the sacrificial calendar, see Lambert (2002*b*).

<sup>45</sup> E. Meyer (1899: ii. 115); Klaffenbach (1960: 1).

<sup>46</sup> Thomas (1989: 45–6).

<sup>47</sup> For an optimistic assessment of the extent of the archive, see West (1989: 537–8), suggesting a comprehensive filing and retrieval system; Sickinger (1999: 105–13); on the date of its foundation, see Boegehold (1972). For a view of the Athenian archives as piecemeal rather than comprehensive, see Thomas (1989: 132–4); cf. Boffo (1995).

<sup>48</sup> Rhodes (2001*a*: 33).

The fact that only selected texts were published undermines an interpretation of the Athenian habit of epigraphical publication, suggested by Meritt, which views it as a manifestation of democratic accountability.<sup>49</sup> Taking this argument to extremes, one scholar envisaged the public display of laws as a manifestation of the desire for individual freedom in opposition to the growing power of the state.<sup>50</sup> However, following Finley, Thomas suggests that the public dissemination of inscriptions might be alternatively read as authoritative intimidation to follow rules, and that the publication of inscriptions was inherently neither democratic nor authoritarian.<sup>51</sup> The impression of inscriptions having democratic value was created only by their constant application in a democratic context (D. 21.223–4).

More recently, scholars have advocated the view that concern for democratic accountability was expressed by the clauses contained in public documents.<sup>52</sup> From the fifth century onwards, wooden documents were set up ostensibly ‘for anyone who wants to see’.<sup>53</sup> The Athenians used other similar means of disclosure on their stone documents, declaring that they were published ‘so that it may be possible to know’, ‘so that they may see’, or ‘so that it may appear’.<sup>54</sup> In Hedrick’s view, such formulae express the sentiment that ‘the affairs of the state are made public because the state is accountable to its citizens’, a manifestation of democratic accountability.<sup>55</sup> However, in the fourth century, with the exception of a decree directing the handing over of sacred objects (*IG II<sup>2</sup> 216 b 7–8*), such clauses appear only on decrees concerning honours for non-Athenians.<sup>56</sup> They were

<sup>49</sup> Meritt (1940: 92–3). <sup>50</sup> Gerner (1950: 21).

<sup>51</sup> Thomas (1994a: 44, 49–50; 1996: 11); cf. Steiner (1994); W. Harris (1989: 79–80). Lévi-Strauss (1961: 294–304) suggested that writing might be used as a tool of political and social oppression.

<sup>52</sup> For explanation of the terms of epigraphical publication (superscript, prescript, enactment formulae, motion formulae, motivation formulae, substance), see Rhodes with Lewis (1997: 5).

<sup>53</sup> *σκοπεῖν τῶι βουλομένῳ*: Hedrick (2000a). The translation of *σκοπεῖν* as ‘to see’ or ‘to read’ is controversial: see Thomas (1989: 51); Hedrick (1994a; 1999: 411 n. 128; 2000a); cf. Stroud (1998: 46 n. 95).

<sup>54</sup> *ὅπως ἂν εἰ εἰδέναι τῶ[ι] βουλομένοι; ὅπως ἂν εἰδῶσι, ὅπως ἂν φαίνηται*: Hedrick (1999: 413–20).

<sup>55</sup> Hedrick (1999: 414); cf. Bodet (2001: 13).

<sup>56</sup> *IG II<sup>2</sup> 183.5–9, 222.11–16, 233.18–23, 269.9–12, 276.16–20, 391.10–15, 423.2–6, 438.6.*

often part of an express intention to publicize the fact that the Athenians were generous in the returns they made to their benefactors. The formulae of disclosure do not appear on decrees or laws that might be described as prescriptive or regulatory. Where expressions of motivation do occur on such inscriptions, they point to specific goals related to the substance of the statute.<sup>57</sup>

Inscriptions set up by or on behalf of the Athenian *polis* demonstrated legal and officially sanctioned decisions, regulations of legal procedure, the duties of magistrates, evidence of the generosity of the *polis* in bestowing honours, and examples of virtuous participation in the affairs of the city. There survive on stone and in literary testimonia only a limited number of laws and decrees concerned with regulation of civic behaviour;<sup>58</sup> accordingly they give an incomplete picture of the statutory obligations of the Athenian citizen.<sup>59</sup> The preponderance of honorary decrees among those surviving inscribed decrees suggests that the habit of publishing decrees on stone was concerned less with the comprehensive detailing of substantive obligations of the Athenian citizen,<sup>60</sup> but more with the promotion of ideal standards of their performance and advancing the competitive public reward system of fourth-century Athens. The writing down on stone of lists of individuals who had played a part in public activities was significant in inserting into the public memory a record of individuals' performance of public services.<sup>61</sup>

Survival rates of inscriptions suggest that the Athenians in the period from 355 to 318 increased the regularity with which they published their honorific decrees, accounts, and other inscriptions

<sup>57</sup> For more discussion of the stated intention of decrees, see Ch. 4.1.1, 4.2.2.

<sup>58</sup> For a review of the decrees of the Athenian *polis* known from epigraphical and literary testimonia of the period 355–322, see Hansen (1987a: 108–13), counting 488 on stone, 68 referred to by other sources, and 219 in literary sources; Lambert (2005: 130 n. 31) says that 'there are about 800 inscribed state decrees of the 4th century'. For a list of laws preserved on stone, see Stroud (1998: 15–16).

<sup>59</sup> This is the case in Athenian law of the fifth and fourth centuries, but also archaic and classical Greek law from the rest of the Greek world: Gagarin (1986: 1); Hölkeskamp (1992: 89–92).

<sup>60</sup> Of those 488 decrees preserved on stone counted by Hansen, 288 are honorary decrees and grants of citizenship (Hansen 1987a: 110).

<sup>61</sup> See Ch. 4.3.

on stone.<sup>62</sup> By the 330s honoured ephebes and councillors appear to have habitually dedicated rosters of their own names together with records of the honorary decree granted them.<sup>63</sup> This practice may be interpreted as a reflection of a combined effort of the Athenian assembly and other groups to stimulate euergetism and to invigorate the public-spirited performance of obligations.

### 3.4. USING THE ORATORICAL EVIDENCE

Aristotle divided oratory into epideictic (praise and display), sym-bouleutic (deliberative), and forensic (law court) types (Arist. *Rhet.* 1358<sup>b</sup>7–8; cf. [Arist.] *Rhet. ad Alex.* 1421<sup>b</sup>). This division is still conventional: analysis of the 150 or so extant speeches of the ten canonical orators is regularly determined by these categories.<sup>64</sup> Meanwhile the distinction is not absolute in terms of content: forensic speeches could include exhortations or advice about foreign policy, and forensic oratory could also include epideictic elements.<sup>65</sup>

#### 3.4.1. Forensic Oratory

Orators in forensic speeches made reference to their performance of obligations with two purposes: as part of the portrayal of the individual as a good citizen, and as part of a wider appeal for the reciprocal *charis* (gratitude) of the audience and the Athenian *demos*. Even in Isaeus' or Demosthenes' 'private' forensic oratory, in cases unrelated to the fulfilment of civic obligations, defendants claim that they have

<sup>62</sup> Accounts of the naval *epimeletai*: Clark (1993: 122–4); decrees and dedications of lists of councillors and ephebes: Hedrick (1999: 394); records relating to sales of public land: Lambert (1997); records relating to public revenues in particular leases: Shipton (2000: 22); honorific decrees: Lambert (2004: 86); festival regulations: Lambert (2005: 131).

<sup>63</sup> Ephebes: Reinmuth (1971*b*); *prytaneis*: Ag. xv. 26–56. On such dedications, see Ch. 4.3.6.

<sup>64</sup> In an overview of Greek classical oratory, Usher (1999: 210) has recently written: 'the different aims of deliberative and epideictic- (or display-) oratory are thus described by differences in both style and content'.

<sup>65</sup> On the epitaphic elements to Lycurgus' law court speech against Leocrates, see Maas (1928); for an interpretation of Lysias 25 as a piece of political deliberation, see Murphy (1992).

made public donations or performed military obligations, or that their fathers had done so, or criticize others' neglect of these obligations, in order to support the rectitude of a substantial inheritance or other arguments.<sup>66</sup> For fear of losing a case, being prosecuted, or being deprived of their rights at a *dokimasia* (preliminary scrutiny of a public official), defendants claimed that they had fulfilled duties, or were likely to do so if they were acquitted.<sup>67</sup> In order to win the favour of the audience, plaintiffs too would, albeit less frequently,<sup>68</sup> boast of their performance of obligations: the act of prosecution was presented as representing a performance of some sort of public service in itself.<sup>69</sup> While plaintiffs would often anticipate the use of the demand of *charis* in return for the performance of obligations, as Rubinstein has noted,<sup>70</sup> they never challenged the validity of this kind of argument, but rather attacked the opponent's fulfilment of obligations on more particular points, for instance, by making the claim that payments of liturgies had been avoided altogether.<sup>71</sup>

In all likelihood, it would be difficult to challenge the rectitude of the demand for *charis* without good reason. Examples of boasts of the performance of such obligations, in particular of liturgies, in the construction of the idea of the good citizen have been collected in previous scholarly work.<sup>72</sup> Accordingly what is needed is a study of how the negotiation, performance, and discussion of these obligations related to the idea of liberty.

Even in cases not necessarily directly concerned with obligations, orators would often direct the point of their cases towards their performance: the speaker of the speech *Against Boeotus I* argued that the onomastic confusion, which is the subject of his speech, will adversely affect the performance of duties (D. 39.7–10, 16–18). However, most useful for this study of civic obligation are the speeches classified

<sup>66</sup> Is. 4.29; 5.36, 37–8, 41–5; 6.9, 60; 7.37–41; cf. D. 28.24; 29.24; 38.25–6; 40.36; 42 *passim*; 45.66, 85; [49].49.

<sup>67</sup> Millett (1998a).

<sup>68</sup> Davies (1981: 82–5); Rubinstein (2000: 214), pointing to Demosthenes 21, [53], and 58.

<sup>69</sup> See Ch. 5.3.1. <sup>70</sup> Rubinstein (2000: 214).

<sup>71</sup> Piepenbrink (2001: 116); for a discussion of liturgy avoidance and its emergence in litigious contexts, see M. R. Christ (1990).

<sup>72</sup> See, for instance, Kahrstedt (1934: 217–28); Herza (1966); Dover (1974: 176–7); Vannier (1988: 119–21, 143–4); Ober (1989a: 231–3); Millett (1998a).

as 'public' forensic oratory. In the 'public' category are included speeches made concerning cases of treason (*eisangelia*), or prosecutions made against unconstitutional proposals (*graphe paranomon* against decrees, and *graphe nomon me epitedeion theinai* against laws).<sup>73</sup> The type of process employed by a prosecutor and the arguments used were usually determined by the confidence and means of the prosecutor:<sup>74</sup> to some degree, orators were able to set their own agenda. Thus Demosthenes' *Against Meidias* can be regarded as a public speech, since Demosthenes, prosecuting a rival for punching him in a public place, claimed that he is making the prosecution on behalf of the common good (D. 21.1–3; cf. D. 54.42).

The great concern in the law courts for the performance of civic obligations is illustrated by the subject of several 'public' speeches dated to the period and aftermath of the Social War (357–355), in which the Athenians tried and failed to restore rebel states to their naval confederacy. These related to the subject of Athenian public finances, which were of great concern to the Athenians in the aftermath of that conflict:<sup>75</sup> Demosthenes' speeches *Against Leptines*, *Against Androtion*, *Against Aristocrates*, and *Against Timocrates* concern the dispute about exemption from liturgies, the collection of the property tax (*eisphora*), the award of inviolability, and the collection of public debts (D. 20, 22, 23, 24). Central also to this analysis of civic obligation are those speeches made in 330 concerning the crowning of Demosthenes (D. 18; Aeschin. 3) because they represent two divergent analyses of the obligations of a politician. In the same year Lycurgus prosecuted Leocrates for leaving the city in the aftermath of the battle of Chaironea, and supported his case with a speech which negotiated civic obligations using a number of devices. The significance of these speeches, together with the increasing rate of epigraphical publication, makes it appropriate to focus on Athens in the period after the Social War.

<sup>73</sup> Hansen (1974: 17). On the political significance of the *graphe paranomon*, see Yunis (1988).

<sup>74</sup> R. G. Osborne (1985a); Allen (1996: 94). Carey (2004), however, has contended that procedural flexibility is less pervasive than has been recently suggested, as some cases could be pursued only by bringing a *graphe* (public prosecution); others only by a *dike* (private prosecution).

<sup>75</sup> Sealey (1955b: 78; 1993: 112–13, 126–7); Radicke (1995: 27–32); Badian (2000: 27–8).



A number of factors affect the content of a speech and consequently its usefulness to this study of civic obligations: these include the sociopolitical status of the speaker, the type of speech, the type of prosecution in the case of forensic oratory, the relation between surviving text and the words spoken, and the balance of input by both the litigant and the speech-writer.<sup>76</sup> The arguments employed in every speech, as recent studies have suggested, were contingent on its context.<sup>77</sup> The identity of the speaker, and his economic, political, and educational background, determined the kind of civic obligations which he was capable of performing, or those about which he was ready to boast. Isocrates, for instance, took the political stance of a quietist and an oligarch;<sup>78</sup> Andocides developed an idea of civic virtue which was compatible with a democratic context.<sup>79</sup> Other speakers assumed essentially elitist positions (Lys. 16, 21, 25),<sup>80</sup> or asserted a position of intellectual superiority.<sup>81</sup> An alternative stance to public-spirited activity for the rich was quietism (*apragmosune*),<sup>82</sup> a quality which could be connected also with poverty (D. 44.4). In the speeches which contested Aeschines' *graphe paranomon* against Ctesiphon's honorary decree for Demosthenes, the defendant emphasizes the obligations of the statesman, whereas the prosecutor emphasizes the obligations of the jury (D. 18; Aeschin. 3).<sup>83</sup> Indeed, civic obligations to which a citizen was liable were dictated by his profile within the city and his level of wealth.

### 3.4.2. Symbolleutic and Epideictic Oratory

At the *ecclesia*, the orators frequently allocated collective obligations, most frequently military obligations and payment of the *eisphora*, to the citizen-body. The *Second Olynthiac* is a good example of this,

<sup>76</sup> Dover (1968); Usher (1976: 31–40); Worthington (1993); Cooper (2000: 234–7).

<sup>77</sup> Ober (1989a: 231–3); Piepenbrink (2001: 109).

<sup>78</sup> Too (1995); contra Orth (1997). For other treatments of Isocrates' political position, see Perlman (1957); Ober (1978: 119 n. 4); Markle (1976); Moysey (1982); Davidson (1990).

<sup>79</sup> Missiou (1992: 15–52).

<sup>80</sup> Craik (1999); E. Alexiou (2001).

<sup>81</sup> Murphy (1992: 556–7).

<sup>82</sup> L. Carter (1986: 99–130).

<sup>83</sup> See Ch. 5.2.

with Demosthenes urging the citizens to contribute to the levies and serve in the army (D. 2.23–31).<sup>84</sup> The fact that all the surviving symbouleutic speeches were exhortations and discussions of policy concerning themes of public funding and military organization suggests that debates at the *ecclesia* were often related to the discussion of the mechanisms of civic obligation (cf. esp. D. 13, 14).<sup>85</sup> In order to seek the support of their audience, orators could boast of having urged the Athenians to their obligations in past times (D. 13.9). Accordingly, the subject of the obligations of the citizen was probably a central theme in forensic and symbouleutic Attic oratory.

Epidictic oratory, which in the context of the fourth century consists mostly of public funeral speeches, will be treated with caution.<sup>86</sup> This is because such speeches did not face the same kinds of political or litigious opposition, and accordingly were liable to represent potentially amplified advocacy of normative values, intended as exhortations or as eulogies of the dead.<sup>87</sup> Thus, when Pericles was reported to have said in his *epitaphios logos*, ‘for we alone call the man not taking part (*ton meden metechonta*) not uninvolved (*apragmon*) but useless (*achreion*)’ (Th. 2.40.2), he gives the clearest indication of an idea of political obligation, but one which must be treated with caution and substantiated with examples from agonistic contexts. The non-forensic oratory of Isocrates will also be excluded because it similarly may not have faced intense public scrutiny. The *Areopagitikos*, for instance, which advocates that the Athenians return to an ancient form of government, was composed not with a public litigious or symbouleutic context in mind, but in all likelihood for a smaller academic audience.<sup>88</sup>

<sup>84</sup> Cf. Yunis (1996: 258 n. 38). The work of Yunis (1996: 237–77) is the most extensive discussion of the oratorical strategies and ideological stances taken by Demosthenes in his symbouleutic speeches. Yunis (1996: 247–57) discusses extensively also the positions adopted by Demosthenes in the fifty-six preserved symbouleutic preambles.

<sup>85</sup> Hansen (1984a).

<sup>86</sup> On the diversity of the extant *epitaphioi logoi*, see Loraux (1986).

<sup>87</sup> Ch. 1.4; Loraux (1986: 77).

<sup>88</sup> Usher (1999: 296–8); for other views on Isocrates’ audience, see Markle (1976); Moysey (1982). On the context of Isocrates’ ‘small voice’, see Too (1995).

### 3.4.3. Publication and Authenticity

Perhaps the most important factor which affects the content of a speech as it is preserved is the relation of the text of the speech in the form that it has survived to the words actually spoken. Revision by the author of an unconvincing speech,<sup>89</sup> or by a 'publisher' with the author having lost control of the text,<sup>90</sup> confusion of papyrus rolls,<sup>91</sup> and interpolation of work by different authors<sup>92</sup> have all been suggested as measures that might have altered the words or order of words in any particular speech. Ultimately it is not possible to know the extent to which a speech has been altered since it was spoken or written.<sup>93</sup> It is likely that, even if the content of the speech were altered, details may have been changed, but the general argumentation may have remained largely the same. The best test of 'authenticity' therefore relates to the likelihood that the arguments contained within the speech were used or were at least of the kind that were used. If it is possible to find a parallel for a given argument or citation of obligation in more than one speech, then it can be assumed that the argument was indeed employed by the orators, and may therefore be treated as evidence for the expression of civic obligation in Attic oratory.

The matter of whether or not the surviving symbouleutic speeches of Demosthenes were actually made or written specifically for publication is unimportant to this line of argument:<sup>94</sup> publication (if it took place in the fourth century) may have had the same exhortatory

<sup>89</sup> Worthington (1993: 68) is a strong advocate of the idea that speeches were revised before circulation; cf. D. Lewis (1997: 247–8).

<sup>90</sup> In the case of Lysias: Dover (1968: 152, 159, 161).

<sup>91</sup> Haslam (1976: 9–10).

<sup>92</sup> On the interpolation of later philosophical ideas in Demosthenes 25 *Against Aristogeiton*, see Pohlenz (1924); Treves (1936); Gigante (1956).

<sup>93</sup> For this reason, I have not marked with square brackets those speeches, like Demosthenes 25, which are normally flagged thus on the basis of doubts of their authorship. Similarly, I have not flagged those speeches, like Demosthenes 59, which were spoken and probably composed by another orator.

<sup>94</sup> Trevett suggests that Demosthenes' speeches were collected and circulated after his death: Trevett (1996a); Hansen (1984a) suggests that he was exceptional in publishing his symbouleutic speeches. Tuplin (1998: 319) is more cautious, contending that 'the selection, recreation and arrangement of items in the Demosthenic demegoric corpus is consciously informed by considerations of a literary and paradigmatic nature'.

practical purpose as oratorical performance.<sup>95</sup> The same argument justifies employing as historical evidence the letters of Demosthenes, some of which were written to be read to the assembly,<sup>96</sup> and undelivered speeches: Demosthenes' speech *Against Meidias*, though it may never have been delivered,<sup>97</sup> appears to have been composed with the intention of being delivered.

Finally, it is necessary to consider the fact that orators can mislead, deliberately or accidentally. Advocates are inclined to exaggerate the readiness of their patron's performance of obligations, and adversaries are inclined to underestimate that of their opponents. However, the attempts of orators to mislead are as interesting as whatever they tell us about the workings of Athenian democracy. The orators told audiences what they wanted to hear. When the orators presented liberty and obligation as coexistent and not mutually antagonistic, they were presenting a congruity that was acceptable to all, but not necessarily factually sound or philosophically worked out. It is this negotiation of liberty and obligation that this work attempts to recapture.

### 3.5. THE 'FOURTH CENTURY' (410–317)

Ideas and norms about the negotiation and performance of obligations, citizenship, and liberty exist independently of, but affected by, constitutional developments. With the exception of the years 404–403 and 322–318, Athens was democratic for the period encompassed by this study. This means that a considerable element of this interpretation of Athenian *polis* liberty might coincide with aspects of democratic ideology. However, the compatibility of civic obligation and individual liberty was not exclusive to democratic societies but rather a feature of the wider Greek *polis*.<sup>98</sup> For the purposes of this study, principles with which to establish a time span of investigation are required. The starting point of 410 relates to the developing desire on the part of the Athenians to write down their laws and decrees.<sup>99</sup> Certain features of the Athenian *polis*, because they are well attested

<sup>95</sup> Yunis (1996: 246–7); Milns (2000: 207–9).

<sup>97</sup> MacDowell (1990: 28).

<sup>96</sup> Goldstein (1968: 261, 265).

<sup>98</sup> See Ch. 6.3.

<sup>99</sup> See Ch. 3.3.

in oratorical and epigraphical evidence of the period 410–317, allow us to detect the negotiation, performance, and presentation of civic obligation in detail. These features include an assembly (*ecclesia*) attended by citizens (which had the power to pass decrees); a council, which prepared the agenda of the assembly; magistracies, which were held by citizens; a system of laws, which was overseen by a board of citizens selected from the jurors known as *nomothetai* (scrutinizers of the law); law courts, in which rivalries of politicians and other citizens were played out and judged by boards of citizen jurors; the fulfilment by citizens of obligations related to a broad spectrum of political, financial, and military activities (the performance of which was integral to possession of citizenship); and a widespread habit of public and private epigraphical publication. These basic institutions of the Athenian *polis* are the ones which allow us to understand the working of civic obligation, and they are best attested in the period of 410–317.

Ober, Hansen, and others advocate Athens's defeat in the Lamian War in 322 and the date of the last preserved piece of forensic oratory as a convenient cut-off point for the study of Athenian democracy.<sup>100</sup> Some scholars, however, have suggested that democratic institutions continue into the Hellenistic period,<sup>101</sup> while Dreyer suggests that the end of the Chremonidean War in 262 coincides with the end of Athenian democracy.<sup>102</sup> The date of the end of democracy is not a direct concern of this book because the institutions central to the negotiation and performance of civic obligation were largely unaffected by the disruption of the democratic constitution in the years 322–318.

In the years between 322 and 318 only 9,000 Athenians remained citizens with political rights.<sup>103</sup> It is likely that enrolment into the

<sup>100</sup> Ober (1989a: 37); Hansen (1990a: 349).

<sup>101</sup> Gabbert (1986); Hackl (1987); G. J. Oliver (1995: 191, 8 n. 29). The most comprehensive discussion of the working of democratic institutions in Athens after the death of Alexander is Rhodes with Lewis (1997: 34–61).

<sup>102</sup> Dreyer (2001).

<sup>103</sup> The Athenians were subject to a garrison at Mounichia, a fine for the cost of the war, and the franchise was limited to those possessing property valued over 2,000 *drachmai* (Plu. *Phoc.* 27). The figure of 9,000 comes from Diodorus (D.S. 18.18.5; cf. Plu. *Phoc.* 28.7). Williams (1982) suggested that the restriction of the franchise may have reflected a broader disinclination over the fourth century of the poor to

epebic corps was reduced accordingly, or that the service was suspended.<sup>104</sup> It is possible that the system of *diaitetai* (arbitrators) was abolished.<sup>105</sup> However, many institutions of *polis* and of civic life remained largely unchanged.<sup>106</sup> The Athenians continued to pass decrees and published them on stone prolifically.<sup>107</sup> Sortition continued to be used in the allocation of magistracies.<sup>108</sup> No alteration of the assembly, council, or tribal system is recorded. Given their attestation in the Hellenistic period,<sup>109</sup> it is likely that the boards of 6,000 jurors who functioned as *nomothetai* continued to function as previously. Payment for jury service may have continued.<sup>110</sup> In short, other than the number of citizens able to participate in the democracy, the abolition of certain minor offices,<sup>111</sup> and the ascendancy of the secretary (*anagrapheus*),<sup>112</sup> there was a considerable element of continuity in the *polis*-institutions.<sup>113</sup> The functioning of institutions that would have allowed the performance and negotiation of civic obligation was probably unaffected by the restriction of the franchise.

After Antipater's death in 319, Polyperchon declared his intent to 'liberate the cities in Greece and to overthrow the oligarchies set up in them by Antipater', and to restore democracy as it was in the time of Philip and Alexander (D.S. 18.55.2–4, 56.3). Consequently, the Athenians 'filled the offices with the most democratic men, and

participate in politics, as well as being inspired by Antipater's worry that poorer Athenian citizens would most resent Macedonian domination and the abolition of the navy.

<sup>104</sup> Mitchel (1964: 346–8) suggests reduction in numbers; de Marcellus (1994: 172–6) suggests abolition.

<sup>105</sup> Rhodes (1981: 591).

<sup>106</sup> On the labelling of this regime, see G. J. Oliver (2003: 40–1, 50–1).

<sup>107</sup> G. J. Oliver (2003: 43–7), pointing out that a higher than usual proportion of decrees passed under the oligarchy were non-probouleumatic.

<sup>108</sup> Williams (1982: 128).

<sup>109</sup> Hansen (1983: 203 n. 58); *IG* II<sup>2</sup> 487; *SEG* xl. 91.

<sup>110</sup> Williams (1982: 127).

<sup>111</sup> For the abolition of the *astynomoi*, see *IG* II<sup>2</sup> 380.

<sup>112</sup> On decrees in this period, the name of the office of the secretary (*anagrapheus*) appears above or in the prescript of decrees: see G. J. Oliver (2003: 49–50).

<sup>113</sup> Ferguson (1911: 22–6); Dow (1963); Tracy (1995: 18–19 with 76); Rhodes with Lewis (1997: 40). The evidential basis for the claim that the law courts were closed is weak: Suda, s.v. Demades.

condemned those who had held office under the oligarchy' (D.S. 18.65.6; cf. Plu. *Phoc.* 34–5).<sup>114</sup>

During the rule of Demetrios of Phaleron the reform of institutions significantly affected social relations associated with the performance of civic obligations. The degree to which his reforms were affected by his philosophical or anti-democratic tendencies is disputed.<sup>115</sup> The competitive choregic system of funding Athenian festivals was replaced with the monolithic agonothetic system at some point between 315 and 307. Accordingly, whereas before, several *choregoi* (sponsors of choruses) funded competitively the production of tragedies, from the time of Demetrios a single elected *agonothetes* (producer) produced the choruses, in all likelihood making use of a combination of public and private funds.<sup>116</sup> Competitive choregic activity may have continued in the demes (*SEG* xxxvi. 186).<sup>117</sup> This change has been interpreted as an autocratic attempt to repress competitive ostentation or as an expression of philosophical objection to such expenditure.<sup>118</sup> The trierarchic system may have been abolished,<sup>119</sup> moral legislation seems to have become more prevalent,<sup>120</sup> and *diatetai* (arbitrator) service was abolished through a reshuffle of minor officials.<sup>121</sup> Demetrios' introduction of restrictions on burial

<sup>114</sup> The restored democracy of 318 appears to have restored awards made by the old democracy. Euphron of Sicyon had supported Athens in the Lamian War and was awarded citizenship in 323/2, but the regime of 322–318 destroyed the records of the honours. The Athenians, after the return of a broader franchise, published the reward on stone once more (*IG* II<sup>2</sup> 448.60–2).

<sup>115</sup> Gagarin (2000: 265) says that he attempted to implement a philosophical desire for order and precision in Athenian law; Tracy (2000*b*: 331, 345) suggests that he was 'clearly not a dictator, probably not an anti-democratic tyrant', and talks of his 'enlightened rule'. Gottschalk labels him a 'philosopher among politicians'. Williams (1997), however, emphasizes the anti-democratic nature of his policies.

<sup>116</sup> Raubitschek (1943: 52–5); Veyne (1990: 183 n. 201); Wilson (2000: 307–8); Tracy (2000*b*: 342).

<sup>117</sup> For the evidence of an inscription carrying two decrees of Acharnai in the period of Demetrios of Phaleron, see Steinhauer (1992).

<sup>118</sup> Mikalson (1998: 55); R. C. T. Parker (1996: 268); Wilson (2000: 271–4); Lape (2004: 45).

<sup>119</sup> Ferguson (1911: 58); cf. Williams (1982: 192).

<sup>120</sup> Wallace (1997) suggests that legislation to control private life reached its greatest extent under Demetrios; O'Sullivan (2001: 60–1) suggests that the board of *nomophulakes* (law-guardians) introduced by Demetrios were concerned with orderly behaviour.

<sup>121</sup> Rhodes (1981: 591); O'Sullivan (2001: 60).

markers might be thought of also as part of an effort to restrain citizens' expression of their performance of obligations.<sup>122</sup> Only two certain inscribed decrees of the assembly are extant from this period (*IG II<sup>2</sup>* 450, 453), though this dearth of epigraphical evidence has most recently been seen as a result of the destruction of records by the restored democracy rather than the curtailment of the epigraphical practice or an indication that fewer decrees were passed by the assembly.<sup>123</sup> However, this does not explain the absence of inscribed dedications by councillors or ephebes of this period:<sup>124</sup> it is probably the case that the whole system of public commemoration and private dedication underwent upheaval. Therefore, given that some of the *polis*-institutions central to civic obligation appear to change at the time of Demetrios of Phaleron, and that the frequency of epigraphical publication appears to wane at the same time, this study will not make substantial use of material dating to the period after 317.

While the changes in the institutions of democracy over the course of the fourth century noted by Hansen and Rhodes may have altered certain aspects of the performance of civic obligations,<sup>125</sup> the overall picture of the compatibility of liberty and obligation was unaffected. This approach to the evidence allows the consideration of the forensic oratory and inscriptions surviving over a ninety-three-year period, and broadens the applicability of the conclusions reached. Recent challenges to traditionally held views about the change between the fifth and fourth centuries of the nature of Athenian generalship or the importance of mercenaries have shown that caution is necessary when postulating ideas about change in terms broader than

<sup>122</sup> Garland (1989: 15); Stears (2000: 219–20).

<sup>123</sup> Tracy (1995: 36–51, esp. 36 n. 2); Hedrick (1999). For Plutarch's attribution to Demetrios of Phaleron of a decree granting a pension to the sister and mother of Lysimachus, a descendant of Aristides, see *Plu. Arist.* 27.5.

<sup>124</sup> For this period, there exists only one ephebic dedication which might be dated to the period between 323/2 and 307/6 (Reinmuth 16). De Marcellus (1994: 176–81) suggests that the ephebic system was revived by Demetrios of Phaleron, but that it was restricted to a small number of citizens.

<sup>125</sup> Hansen (1975: 51–5; 1999: 158–9) notes that judicial powers of the assembly were abolished in the middle of the fourth century; Rhodes (1972*a*: 219–21; 1979–80; 1995) notes the introduction of a board of arbitrators, 'monthly' lawsuits providing an accelerated procedure for some cases, the increasingly elaborate method of allocating jurors to lawsuits, and the growing powers of the Areopagus in the 340s.



the constitutional.<sup>126</sup> Nevertheless, the fact that most substantial evidence (the most relevant speeches and the bulk of epigraphical evidence) for the negotiation and performance of civic obligations comes from the period of Athenian history after the Social War means that the interpretation focuses upon this period, and consequently is most applicable, but not exclusively so, to Athens in that period.

### 3.6. ATHENS AFTER THE SOCIAL WAR AND ATHENIAN EUERGETISM

Over the past forty years discussions of Athenian history have suggested that Athens underwent accelerated economic, cultural, and political change in the period between the end of the Social War of 357–355 and the victory of the Macedonians in the Lamian War in 322. The Social War put an end to Athenian dreams of reviving her influence in the Aegean on the scale of that realized in the fifth century. But the collapse of Athenian influence abroad and the failure of the Second Athenian Confederacy appear to have coincided with apparent improvement in financial conditions at home.<sup>127</sup> For some, Athenian prosperity was inspired by the politician Lycurgus.<sup>128</sup> The period is sometimes held up as one in which Athens was revived in cultural and economic terms,<sup>129</sup> or as a period of transition to Hellenistic-style social relations.<sup>130</sup> Both approaches are scholarly antidotes to the once-dominant notions of a

<sup>126</sup> Mercenaries: L. Burckhardt (1996); generalship: Tritle (1992, 1999). For the very strong case that there was an increasingly clear separation between generalships and oratorical careers in the fourth century, see Davies (1981: 124–30).

<sup>127</sup> On Athenian foreign policy after the Social War, see Sealey (1955*b*, 1993); Cawkwell (1962, 1963*a*, *b*, 1996).

<sup>128</sup> Mitchel (1970); Faraguna (1992: 245). On the character of Lycurgus as a reformer, see Mossé (1989). See Ch. 3.7.

<sup>129</sup> Mitchel (1970); Reinmuth (1971*a*); Burke (1992).

<sup>130</sup> Engels (1992*b*); Lambert (1997: 291); Wallace (1997); Humphreys (2004: 108–9).

'fourth-century decline'<sup>131</sup> and the 'end of the *polis*'.<sup>132</sup> Such interpretations have used the archaeological and epigraphical evidence and the *Life of Lyscurgus* attributed to, though unlikely to have been written by, Plutarch ([Plu.] *Moralia* 841a–844a, 850f–852e).<sup>133</sup>

Opinions have developed since Jacoby dismissed Lyscurgus' reforms as 'reactionary or archaizing'.<sup>134</sup> Wirth, for instance, postulated that an economic and cultural reorganization of the city was a reaction to the growth of Macedonian power, the crisis after the battle of Chaironea, and Alexander's concentration on the conquest of the East.<sup>135</sup> Others, such as Hintzen-Bohlen and Knell, have suggested that a cultural rebirth of Athens in the period after the Social War is attested by the evidence for the expansion of venues for public activity such as the Panathenaic stadium.<sup>136</sup> Both Parker and Mikalson have noted the combination of religious and cult revivalism and innovation which took place at the time of the ascendancy of Lyscurgus.<sup>137</sup>

Wallace has placed the beginnings of 'moralizing legislation' in the period alongside a growth in the power of the Areopagus,<sup>138</sup> while Engels emphasized a reorganization of the generalship and military structures of the city, deme structure, and population movement.<sup>139</sup> The postulated reconstruction of the Pnyx,<sup>140</sup> the introduction of

<sup>131</sup> For discussion of the idea of 'fourth-century decline', see Bleicken (1995: 673–7); Davies (1995); Tritle (1999). On the idea in Soviet historiography, see Marinovič (1989).

<sup>132</sup> For discussion of the point at which the *polis* stops being a significant entity, see Gomme (1937a); Pečírka (1976); Runciman (1990). It is now widely recognized that the *polis* was an important institution also in the Hellenistic period: see Gauthier (1993); Gruen (1993).

<sup>133</sup> On the authorship of this work, see Cuvigny and Lachenaud (1981–93: 25–34); on the variety of sources for this work, see Pitcher (2005); on the documentary sources used in the collection, see Faraguna (2003). The work survives in another version preserved in Photius' *Bibliotheca*: see Smith (1992).

<sup>134</sup> *FGrH* IIIb Suppl. F 324, 112.

<sup>135</sup> Wirth (1999: 30–53).

<sup>136</sup> Hintzen-Bohlen (1997); Knell (2000: 167–72). More controversially, for an identification of the stoas above the Pnyx as the Panathenaic stadium, see Romano (1985, 1996).

<sup>137</sup> R. C. T. Parker (1996: 242–53); Mikalson (1998: 11–45).

<sup>138</sup> Wallace (1997, esp. 158; 2000); Sullivan (2003).

<sup>139</sup> Engels (1992b). <sup>140</sup> See Ch. 5.2.3.

newly elaborated machinery for the functioning of the law courts,<sup>141</sup> and even improvements to the water supply have recently been interpreted as constituting part of a Lycurgan reformation.<sup>142</sup> The importance of the ephebic institution in the period has taken precedence for Humphreys, who, in the most detailed overview of Lycurgan Athens,<sup>143</sup> has postulated ‘a decentring of politics, a shift from a conception of the ideal-typical citizen as active, mature contributor to the defence of the city’s interests in war and to the formulation of policy in assembly debates to a vision of the citizen as (pre-political) ephebe’.<sup>144</sup>

As for politics, Rhodes has suggested that a shift from democratic to expert control can be observed in the fields of finances and public works.<sup>145</sup> Faraguna has suggested, on the basis of a prosopographical survey, that Athenian politics in the period after 338 was dominated by a wealthy elite.<sup>146</sup> Rubinstein has suggested that there was some disenchantment with the ideal of popular participation in the second half of the fourth century.<sup>147</sup> In addition, the revival of the economic fortunes connected with the financial management of Lycurgus has been seen as part of the growth of state intervention in the economic sphere,<sup>148</sup> an ‘onset of genuine commercialism’ which, according to Burke,<sup>149</sup> involved the abandonment of status-bound ethics and the development of a cash-based economy. Other scholarship has sometimes emphasized the growing significance of private wealth in a public context in the period after the Social War.<sup>150</sup>

It is likely that there was significant continuity in perceptions of euergetism from the wealth-based munificence of fifth-century

<sup>141</sup> Ag. xxviii, esp. 36–41, 110–13; Mitchel (1970: 40–1); cf. Kroll (1972: 5–7). On the rhetorical significance of the law courts and their machinery, see Blanshard (2004c). On the possibility of some renewal of the law courts in this period, see Humphreys (2004: 120 [121] n. 34).

<sup>142</sup> Sallares (1991: 392–3 with 500 n. 5); G. J. Oliver (1995: 284).

<sup>143</sup> Humphreys (2004) consists of Humphreys (1985), and an ‘Afterword’ (2004: 110–29), consisting of reconsiderations and accounts of the most recent bibliography.

<sup>144</sup> Humphreys (2004: 120). See Ch. 3.7. <sup>145</sup> Rhodes (1972a: 220).

<sup>146</sup> Faraguna (1992: 211–43). <sup>147</sup> Rubinstein (1998).

<sup>148</sup> Faraguna (1992: 289–380). <sup>149</sup> Burke (1992: 225).

<sup>150</sup> Vlachou (1992: 27–8 n. 1); Faraguna (1992: 381–96); Leiwo (1997: 107); Hakkarainen (1997); Humphreys (2004). For *polis*-encouragement of the demes to raise money through the sale of lands, see Lambert (1997); through the lease of lands, see Shipton (2000).

Athens (e.g. Plu. *Cim.* 10), through the performance of obligations in the fourth century that took the shape of liturgies and *eisphora* payments, to Hellenistic euergetism.<sup>151</sup> Indeed, it is necessary to be sceptical about the significance of the alleged shift from a democratic, apparently compulsory, liturgical system of the late fifth and fourth centuries to an apparently voluntary aristocratic liturgical system of the Hellenistic and Roman periods.<sup>152</sup> While this shift may in fact have taken place, the fact that fourth-century orators tend to stress the voluntary or public-spirited aspects of their donations, regardless of whether they were voluntary or coerced, suggests that there was considerable continuity in the presentation and perception of euergetism from the early fifth century, through the period of the Attic orators, to the Hellenistic period.

It is clear from the biographical, oratorical, archaeological, and epigraphical evidence that, in the period after the Social War through to the end of the Lamian War, there was a concerted (though not necessarily legislative) effort to encourage citizens' performance of obligations and to encourage euergetism. This should be related to Athens's declining inter-*polis* status after her defeat in the Social War; her status was further diminished in the aftermath of the defeat at Chaironea in 338. As Athens's power vis-à-vis the Macedonians declined, orators and proposers turned their attention to the functioning of her domestic military and political institutions, demanding that obligations were fulfilled, praising supererogatory performance, and carving roles for themselves in terms of euergetic behaviour. At one desperate moment after Chaironea, the whole question of the nature of citizenship and freedom appears to have been contested, as Hyperides' proposal that the slaves should be freed 'in order that the free might not experience slavery' appears to have been rejected, but the *graphe paranomon* brought against him appears to have been

<sup>151</sup> Pace Davies (1981: 96), arguing that reference to expenditure made in the fourth-century law courts was 'an attenuated survival, and was a translation into national and liturgical terms of a form of spending for political motives which, older than liturgical spending and carried on very largely at an international level, was of much wider scope and importance than a simple claim for a jury's goodwill'.

<sup>152</sup> This shift is suggested in the work of Lauffer (1974: 147–59); Veyne (1990: 10–11, 70–101).

unsuccessful (Hyp. frs. 27–9 Jensen; [Plu.] *Moralia* 848f–849a).<sup>153</sup> This did not prevent Lycurgus from attempting to capitalize upon popular revulsion towards the proposal (Lycurg. 1.41).<sup>154</sup>

### 3.7. 'LYCURGAN' ATHENS

Lycurgus appears to have been the most prominent politician on the domestic front at Athens in the period from 336, when he gained control of Athenian finances, until his death in 325/4.<sup>155</sup> Over the course of twelve years ([Plu.] *Moralia* 841b; D.S. 16.88.1) he was the politician with the most influence over public finances,<sup>156</sup> and was a treasurer of the military fund for at least one year ([Plu.] *Moralia* 841c). Hegemon's law had previously limited the tenure of posts concerning money to one year per quadrennium, and so he is thought to have controlled finances through associates after his official tenure ([Plu.] *Moralia* 841c). No office mentioned in [Aristotle]'s *Athenaion Politeia* can satisfactorily describe his position, but it is possible that he was a self-styled financial administrator (*ho epi tei dioikesei*: Hyp. fr. 118 Jensen; cf. *SEG* xix. 119.8–9).<sup>157</sup> Lycurgus was famous for his management of finances, and he is said to have improved the city's revenues, raising them from 60 to 1,200 talents per year (*Moralia* 842f).<sup>158</sup>

Coincidences between Lycurgus' speech, the decrees he proposed, and the reforms of his time might be held to reflect a specifically

<sup>153</sup> For this as a crisis-inspired inversion of the normal division between slaves and citizens, see Hunt (1998: 216–17); Cartledge (2002: 164).

<sup>154</sup> At a comparable moment of crisis seventy years earlier, a similar debate went on: during the regime of the Thirty in 404/3, the democrats promised *isoteleia* (equality of rights) to any non-Athenians who would join them (X. *HG* 2.4.25). After the restoration of democracy, Thrasylbulus proposed to give citizenship to all who had helped the democrats return to the city. The proposal was attacked in a *graphe paranomon* by Thrasylbulus ([Arist.] *Ath. Pol.* 40.2; Ostwald 1986: 473–4). For the eventual rewards for the supporters of democracy, see RO 4, with commentary on the disputed interpretation of the inscription.

<sup>155</sup> D. Lewis (1997: 221–9); Humphreys (2004: 78).

<sup>156</sup> [Plu.] *Moralia* 852b; Hyp. fr. 118 Jensen; D.S. 16.88.1; D. *Ep.* 3.2.

<sup>157</sup> Rhodes (1972a: 106–8).

<sup>158</sup> Burke (1985: 251–62) suggests that increased exploitation of mines and taxation at the Piraeus did most to improve the condition of Athenian finances.

Lycurgan political programme: to preserve and nurture cult tradition, to foster Athens's military power, and to revive her economic clout.

Lycurgus was a member of the *genos* (clan) of Eteoboutadai, from which group the priesthoods of Poseidon–Erechtheus and Athena Polias were drawn (fr. 38 Conomis; *Moralia* 843a–c). The fact that this priesthood was based on the Acropolis might be taken as evidence to connect Lycurgus closely with religious developments at the time. The extension of a monumental building programme to Eleusis, the Theatre of Dionysus, Asklepieion, and Amphiareion at Oropos,<sup>159</sup> as well as the growth in setting up state decrees in locations outside the Acropolis, may well be aspects of a diffusion of Acropolis-based practices across the whole city.<sup>160</sup> Building work took place at the *agora* at the Eleusinion,<sup>161</sup> the temple of Apollo Patroos, and the renewal of the base of the monument of Eponymous Heroes.<sup>162</sup> Moreover, the Erechtheid theme, which held clear associations with the Acropolis,<sup>163</sup> appears twice in his extant speeches: he tells the story of the daughters of Erechtheus in the speech *Against Leocrates*, and seems to have mentioned the same mythical king of Athens in his impeachment of Lycophron.<sup>164</sup> The theme also appears in the works of the mythographer Phanodemus, prompting Jacoby to describe him as Lycurgus' minister of public worship and education (*FGrH* IIIb Suppl. F 325, 172).<sup>165</sup>

A concern for the promotion of cults of Athena Soteira and Zeus Soter, which are mentioned in the speech *Against Leocrates* (17, 136), emerges in a record of the sale of skins and other byproducts of sacrifices in the years 333/4–331/0 (*IG* II<sup>2</sup> 1496.68–151, esp. 88–9), and it appears that work on the Stoas of Zeus and Athena Soter in the *agora* went on in this period (*IG* II<sup>2</sup> 1669).<sup>166</sup> Of the extant legislation of Lycurgus, his law about religious reforms (Schwenk 21), which ensured that sacred finances were accounted for and put

<sup>159</sup> Hintzen-Bohlen (1997); Miles (1998: 68–9); Knell (2000: 11–22); Humphreys (2004: 87–8).

<sup>160</sup> Liddel (2003). <sup>161</sup> Miles (1998: 68).

<sup>162</sup> Humphreys (2004: 87). <sup>163</sup> Connelly (1996).

<sup>164</sup> Lycurg. 1.100; fr. 71 Conomis; cf. D. 60.27; [Demades] 1.37. On the connections between the priesthood of Poseidon–Erechtheus and Lycurgus' account, see Christopoulos (1994).

<sup>165</sup> Harding (1994: 28–30); Humphreys (2004: 82–4, 111–14).

<sup>166</sup> Hintzen-Bohlen (1997: 18).

to proper use, and arranged for the reorganization of dedications, is the one that most suggests his interest in cult activity. The evidence of Lycurgus' family burial plot discovered in 1979, revealing his concern for the preservation of his family's traditions, must be mentioned as an indication of his own piety, while its relatively humble nature indicates no deliberate attempt to display aristocratic background.<sup>167</sup> Lycurgus seems to have been involved in a number of prosecutions for religious improprieties,<sup>168</sup> and Lambert has noted that an increased number of festival regulations were inscribed from the 340s onwards.<sup>169</sup>

A concern with Athens's military preparedness was also a very prevalent theme in this period. The fleet was built up to a strength of 392 triremes (*IG II<sup>2</sup>* 1627.266–9) and there were introduced a small number of 'four-bankers' and 'five-bankers', ships with more than one man per oar (*IG II<sup>2</sup>* 1627.266–9, 275–9; 1629.783–812).<sup>170</sup> Reserves of weapons were developed and Athens's wall defences were improved (D. 18.114, 117; *IG II<sup>2</sup>* 244). In the speech *Against Leocrates*, Lycurgus frequently points to the walls, dockyards, and ships as reminders of Athens's greatness (Lycurg. 1.17, 38, 61, 143, 150). The construction of a new wrestling school, a *palaistra*,<sup>171</sup> may be linked to the ephebic reforms of probably 335/4 (Lycurg. fr. 20 Conomis),<sup>172</sup> the oath attached to which was quoted by Lycurgus (Lycurg. 1.77).

Developments in the religious, economic, and military institutions of Athens in this period might reflect some tightening of the obligations of the citizen: this will become clearer over the course of Chapter 5. Although it will emerge that such a tightening was a constant concern of fourth-century Athens, the fact that it is most prolifically attested in the oratory and inscriptions of the period after the Social War means that it provides a good starting point for the study of civic obligation.

It appears that Lycurgus believed that the award by the assembly of honours and setting them up on stone would encourage energetic

<sup>167</sup> Matthaiou (1987); G. J. Oliver (2000a: 71); *APF* 9251.

<sup>168</sup> See Burtt (1962: 142–7); for Lycurgus' prosecution of a priestess for her transgression of religious regulations, see Conomis (1961: 107–20); Lycurg. frs. 28–49 Conomis.

<sup>169</sup> Lambert (2005: 131). <sup>170</sup> Morrison (1987: 90–1).

<sup>171</sup> Ritchie (1989). <sup>172</sup> Ephebic service: see Ch. 5.5.3.

generosity: a decree proposed by Lycurgus in honour of Eudemos of Plataia, who made a gift to the Athenians of a thousand yoke of oxen for the construction of the stadium and Panathenaic theatre (RO 94), was placed on the Acropolis; another fragmentary stone records his proposal of honours for a public benefactor (Schwenk 15). His decree allowing the Citian merchants to acquire land for a temple probably at Piraeus also points to an attempt to encourage commercial activity (RO 91). Lycurgus' financial expertise is suggested in his speech but is worn lightly: he draws attention to Leocrates' financial arrangements in Megara (22–3) and a previous attack on the defendant concerning his administration of the 2 per cent tax (19). A decree of Lycurgus suggests that improving the navy might not just improve Athens' military standing but might also protect commercial interests: a reference within a naval list of the 330s records that Lycurgus was the joint proposer of a decree about using Athenian triremes to guard against piracy (*IG II<sup>2</sup>* 1623.279–83).

But there is no objective evidence to prove that developments in this era were entirely the work of, or inspired by, Lycurgus himself, even when measures were proposed by Lycurgus himself. Much of the apparently close connection between Lycurgus and the reforms might be owing to his successful self-promotion: the very high rate of publication and survival of Lycurgus' decrees and laws, of which ten survive in stone and one in a literary source,<sup>173</sup> may be related to his legislative productiveness (he employed an Olynthian to draft his decrees: [Plu.] *Moralia* 842c) and also his eagerness to commit his legislation to stone,<sup>174</sup> which itself was reflected in the growth of the habit of publishing on stone in this period.<sup>175</sup> Alternatively or in addition, their survival could also be considered as a result of the high esteem in which his legislation was held after his death: according to a decree preserved at the end of [Plutarch]'s *Lives of the Ten Orators*, in 307/6 his decrees were inscribed and set up on the Acropolis ([Plu.]

<sup>173</sup> Hansen (1989e: 102–3).

<sup>174</sup> By way of contrast, of the forty known decrees attributed to Demosthenes, only one is preserved in the epigraphical sources: see Hansen (1989e: 103). It may be the case, as Lambert (2001b: 14) suggests, that this reflects the 'Demosthenic bias of the contemporary literary record'. It is possible also that the number of Lycurgan decrees on stone reflects the Lycurgan bias of the epigraphical record.

<sup>175</sup> See n. 62.



*Moralia* 852e). The survival of the speech *Against Leocrates* and the citation in antiquity of a number of fragments of his speeches, and the tendency of the *Life of Lycurgus* to attribute so much activity to him, may be related to the posthumous honours passed for him in 307/6,<sup>176</sup> his fame in antiquity as an Eteoboutad, politician, and orator,<sup>177</sup> and the fact that he was the subject of a fourth-century work of biography by Philiscus of Miletus.<sup>178</sup> A more nuanced understanding of the period, therefore, might consider Lycurgus not as the sole instigator and advocate of the programme of reform and revival, but rather his surviving speech and legislation as manifestations of a more general growth in concern for the civic obligation expressed in the law courts and decrees of the assembly.

### 3.8. THE IMPEACHMENT OF LEOCRATES

Leocrates, an otherwise unknown Athenian citizen, left Athens for Rhodes in 338, after the Athenian defeat at Chaironea (Lycurg. 1.16, 17). From there he moved to Megara (21), where, according to Lycurgus, he lived for five (56) or six years (21, 145). He was away for a total of six years (58), and returned to Athens in probably 332 or 331.<sup>179</sup> Lycurgus appears to have prosecuted Leocrates under the process brought against those who had betrayed the city, known as *eisangelia* (Lycurg. 1.1, 5, 29, 30, 55, 137),<sup>180</sup> and the surviving

<sup>176</sup> IG II<sup>2</sup> 457; [Plu.] *Moralia* 852. On the relationship between the epigraphical and literary copies of this decree, see Oikonomides (1986). On the documentary sources of [Plutarch]'s *Lives of the Ten Orators*, see Faraguna (2003).

<sup>177</sup> Paus. 1.29.16; for a second-century base of Philtera, a priestess of Athena Polias with an inscription commemorating her Eteoboutad ancestry mentioning Lycurgus the orator's preservation of freedom, see IG II<sup>2</sup> 3474 (for translation, see Mikalson 1998: 171–2), statue bases of Lycurgus: IG II<sup>2</sup> 3776 (fourth century) and IG II<sup>2</sup> 4259 (Roman era).

<sup>178</sup> FGrH 496 F9 *bis* (addenda 757) = FGrH 1013.

<sup>179</sup> Burke (1977: 338). Sullivan (2002a: 95) suggests that he returned to Athens in 332, but points out also that Lycurgus claims also that the defendant was away for a total of eight years (Lycurg. 1.26–7, 43–5, 141–5), but suggests that this claim was a rhetorical flourish (2002a: 121).

<sup>180</sup> The offences mentioned in a law quoted by Hyperides for which *eisangelia* could be used are uncontroversial: subversion of democracy, betrayal of Athenian forces, and misleading the people (Hyp. *Eux.* 7–8, 29); for a comprehensive account of the purported law on *eisangelia*, see Hansen (1975: 12–20). See also n. 182.

speech is the only extant oration of Lycurgus. The trial took place shortly before Aeschines' speech *Against Ctesiphon*, which was made in support of a *graphe paranomon* in 330 (Aeschin. 3.252; D.H. *Amm.* 1, 12). Lycurgus appears to have prosecuted Leocrates at least a year after his return to the city. It is quite possible, as Petrie suggested,<sup>181</sup> that Lycurgus waited until Leocrates had exercised his civic privileges before impeaching him: Lycurgus talks of Leocrates sharing in the sacrifices and entering the *agora* (5, 142). This is supported by the scholiastic *hypothesis*, which says that 'when he spoke out, Lycurgus prosecuted him as a traitor', suggesting that the prosecution was made only after Leocrates had spoken at the *ecclesia*.

Lycurgus' interpretation of the process seems to have been very loose: elsewhere a fragment of his supporting speech against Lycophron claims that Lycurgus argued that, by his adultery, Lycophron was undermining the laws that preserve democracy (Hyp. *Lyc.* 3 Jensen). In sections 8–9 of the prosecution of Leocrates, Lycurgus claims that no one has ever committed so monstrous a crime, and that the jury must act as *nomothetai*, apparently referring to a less well-known part of the *eisangelia* law, which provided grounds for prosecution against new offences.<sup>182</sup> Lycurgus referred to Leocrates' purported *prodosia* (treason: 29, 33, 35, 77) of the democracy, another aspect of the law (Hyp. *Eux.* 7–8, 28–9).<sup>183</sup> Lycurgus mentions only in a passing remark (53) the decree, mentioned in the scholiastic *hypothesis* to the speech, passed after the battle of Chaironea, which forbade anyone from leaving the country or evacuating their children or wives.<sup>184</sup> There Lycurgus says that the *demos* decreed that 'those who were evading the danger which their country's defence involved were liable for treason (*prodosia*)'. It is possible

<sup>181</sup> Petrie (1923: 59).

<sup>182</sup> Bonner and Smith (1930–8: i. 295); Harrison (1968–71: ii. 54–5); MacDowell (1978: 184); Rhodes (1979: 107). Hansen (1975: 19–20) has rejected the idea that this ever constituted sufficient grounds for bringing an *eisangelia*. For the view that this process was abolished by a revision of *nomos eisangeltikos* c.350, see Lipsius (1905: 191–2, 192 n. 53); Valchenko (1975: 120). For extended discussion of Lycurgus' application of *eisangelia*, see Sullivan (2002a: 23–35).

<sup>183</sup> Petrie (1923: 61); Hansen (1975: 109).

<sup>184</sup> For social pressures and legislation discouraging leaving the city at the time of crisis, see Ch. 5.7.

that the decree was not passed until Leocrates had left the city, did not apply retrospectively, and therefore did not apply to him.<sup>185</sup> Otherwise, given his application of documentary evidence elsewhere in the speech,<sup>186</sup> it is surprising that Lycurgus does not make more of the decree.

Lycurgus based his case not on one particular crime of Leocrates, but on the grounds that he had failed to fulfil a number of civic obligations routinely expected of the Athenian citizen, some pertaining to law and others not pertaining to law. The notion of civic obligation offered the chance to fill a ‘credibility gap’<sup>187</sup> left by the absence of specific charges that could be brought against Leocrates. He was able to employ this line of argumentation because, in his estimation, public enthusiasm for the right performance of civic obligations was so strong. Given the failure of the prosecution of Leocrates (Aeschin. 3.252), or at least his failure to convince the jury of the appropriate punishment,<sup>188</sup> however, it appears to have been not strong enough for his indictment to be successful.

### 3.9. LYCURGUS’ MOTIVATIONS

It is necessary to ask why Lycurgus has laid such serious charges against someone who, by returning to Athens, suggests that he is unaware of having done anything substantially wrong. Burke suggested that, spurred on by the news of Darius’ defeat at Gaugamela in spring 330, Lycurgus brought the case in order to communicate to the Athenians and the other Greeks that Athenian patriotism was not moribund; a move which had the advantage of not devoting Athens to any line of action against the Macedonians.<sup>189</sup> Indeed, in the same

<sup>185</sup> Hansen (1975: 109); Bleicken (1986: 13 n. 16). <sup>186</sup> See Ch. 4.1.2.

<sup>187</sup> On the strategy of filling the rhetorical ‘credibility gap’ with truisms and tropes, see Ricoeur (1991: 315).

<sup>188</sup> Sullivan (2002*b*) suggests, on the basis of an interpretation of Aeschin. 3.252, that Leocrates was found guilty but that he failed by one vote in the second ballot to secure the majority needed to enforce his punishment of execution. For refutation of Sullivan’s argument, see Bianchi (2002).

<sup>189</sup> Burke (1977: 336–7).

year Lycurgus had successfully prosecuted Autolycus the Areopagite on similar charges (Lycurg. 1.53; fr. III Conomis).

Burke goes on to suggest that, in cooperation with Lycurgus' patriotic drive, Demosthenes began making slanderous comments to the effect that Aeschines was pro-Macedonian, which spurred on Aeschines to revive his prosecution of Ctesiphon, the proposer of honours for Demosthenes.<sup>190</sup> The idea that Lycurgus and Demosthenes collaborated to provoke the two trials in close succession is speculative but reasonable, given the apparent contemporary preoccupation of the law courts and *ecclesia* with subjects that concerned citizens' fulfilment and performance of obligations.

There may have been another motive behind Lycurgus' prosecutions: Athenian public finance. Revenues were swelled by the sale of the possessions of condemned men: [Plutarch] says that Diphilus was condemned to death for speculating on the sale of pit props, and his estate, amounting to 160 talents' worth, was confiscated (*Moralia* 843d).<sup>191</sup> Indeed, Leocrates must have been a fairly wealthy man, as acting as a tax farmer would demand (Lycurg. 1.19, 58).

Such an explanation for the prosecution is, however, not of the kind that we would expect to hear about in Lycurgus' impassioned indictment. Lycurgus claimed that his case was made purely on behalf of the city, and he claims that there was no personal enmity behind the prosecution: the speech was made 'on behalf of the whole fatherland' (7). This was not an unusual claim: prosecution was frequently based on the argument that the defendant should be condemned for the good of the city, the laws, and its inhabitants.<sup>192</sup> However, in contrast to many other public prosecutions (D. 21.2, 22.1, 58.1, [59].1), the motivation of private enmity is denied outright (6), and, uniquely, Lycurgus identifies his personal interests with Athenian public interest. Such a rhetorical move is in tune with Lycurgus' emphasis on the notion of civic obligation.

<sup>190</sup> Bauman (1990: 113), independently of Burke, elaborates this idea, pointing to other points of comparison.

<sup>191</sup> Bosworth (1988: 207–8); Usher (1999: 324); Lambert (2002a).

<sup>192</sup> Lycurg. 1.138, 148, 150; D. 25.95; cf. Antiph. *Stepmother* 3–4; Lys. 1.36, 47; 10.32; Aeschin. 1.2.

3.10. OBLIGATIONS AND ORTHODOXY IN THE  
SPEECH AGAINST LEOCRATES

Lycurgus mentions a wide range of obligations to which Leocrates was liable but had failed to perform. These include the obligation of the citizen not to hinder the Athenian grain supply and commercial interests in general (14–15, 26, 55–6, 58), military duties (39, 43–4, 77, 147), and obligations to parents and of marriage (17, 25, 131, 136). He pointedly criticized Leocrates' advocates for spending their riches on horse-breeding rather than the trierarchy (139–40). Leocrates, most importantly for this prosecution, had left his country in the time of warfare, and has failed his military obligations (5, 21–2, 25, 29, 53, 93). Such obligations of the Athenian citizen are discussed frequently throughout the corpus of Attic forensic and symbouleutic oratory. For this reason the speech provides a good starting point for an understanding of the Athenian concept of civic obligation encountered in Attic oratory, though we need to turn to a contemporary speech, Demosthenes' *On the Crown*, to understand the workings of political obligation.<sup>193</sup> It would not be unreasonable to suggest that the clarity with which Lycurgus expounds civic virtues in the speech against Leocrates made it a speech worthy of imitation and preservation.<sup>194</sup> Given that Lycurgus relies on a highly amplified argument about civic obligation, his speech cannot appropriately be described as typical, but the fact that themes pertinent to civic obligation arise regularly in other speeches means that there is much that is orthodox about its argumentation.

In a recent article Allen stresses the novel and Platonic approach to politics and punishment in Lycurgus' speech.<sup>195</sup> For the purpose of uncovering the ideological framework that bounded the ethical discourse of this speech, Allen's analysis relies on picking out elements of Lycurgus' speech and comparing and contrasting these with passages in other law court speeches and other Greek literature. By the same count, it is possible to stress the orthodox emphasis on

<sup>193</sup> See Ch. 5.2.

<sup>194</sup> Parker suggests that he made use of his 'unique prestige with the jurors in order to turn the courtroom speech into a textbook in civic virtue' (1996: 251).

<sup>195</sup> Allen (2000*b*).

obligation in order to present a very different idea of Lycurgus' tactics. Both analyses, although they give antithetical pictures of Lycurgus' method, are plausible.

Attempts have been made to understand the speech of Lycurgus as Platonic. A scholiast to Plato's *Gorgias* quotes Philiscus of Miletus as saying that Lycurgus achieved many things of which he would have been incapable had he not heard the *logoi* of Plato.<sup>196</sup> The Platonic aspects of Lycurgus' speech were examined by Renehan;<sup>197</sup> it is not essential to re-examine all the passages which he cited. It seems relevant to point out that his observation that Lycurgus' ideology that laws are too brief to give instruction but nevertheless state what must be done (102) resembles Plato's insistence that oratorical preambles are necessary to explain the law code (*Laws* 722e). Perhaps the most notable shared characteristics are the justifications for obligations encountered in the *Crito*, an important text for the subject of political obligation.<sup>198</sup> Indeed, Ober observes that both works centre on the responsibility of the individual citizen to his *polis*.<sup>199</sup> Opinions have been divided over whether the philosophy of Plato and the Academy was at all influential on contemporary politics or oratory.<sup>200</sup> It is just as likely that Plato simply focused and commented on topical points.<sup>201</sup> Moreover, at certain times any orator could sound 'Platonic'.<sup>202</sup> Accordingly, it is not necessary to attribute any particular Platonic influence to the speech of Lycurgus, but it is important to note that the orator and philosopher shared a profound interest in obligations.<sup>203</sup>

Finally, it is worth observing what Lycurgus' speech had in common with surviving contemporary oratory.<sup>204</sup> Demosthenes' first speech against Aristogeiton, made around 325, a speech made in

<sup>196</sup> *FGrH* 496 F9 *bis* (addenda 757) = 1013.

<sup>197</sup> Renehan (1970).

<sup>198</sup> See Ch. 4.1.6. <sup>199</sup> Ober (1999: 340).

<sup>200</sup> Brunt (1993: 282); Yunis (1996: 277).

<sup>201</sup> As Dušanić (1999: 15–16) shows, when outlining the political context of the *Euthydemus*.

<sup>202</sup> De Marcellus (1994: 129–30) suggested that Lycurgus cultivated a Socratic image.

<sup>203</sup> On Plato's interest in obligations, see Stauffer (2001: 10–12).

<sup>204</sup> Whitehead (2006) compares the strategies employed by Lycurgus' *Against Leocrates* with those of Lysias 31 *Against Philon*, pointing out key differences and correspondences.

support of Lycurgus' prosecution of the man, bears similarities of style noted by ancient commentators (*Hypothesis* to D. 25).<sup>205</sup> The most famous speeches from the period are probably those made by Aeschines and Demosthenes in 330 contending Aeschines' *graphe paranomon* against Ctesiphon. Both Demosthenes' and Lycurgus' speeches open with a prayer (D. 18.1; Lycurg. 1.1),<sup>206</sup> quote epic poetry<sup>207</sup> and decrees, and praise those who died at Chaironea. Significantly, all three speeches share a concern for the freedom of Athens from the Macedonians, and combine invective with reflection on how the behaviour of the citizen, whether as private individual or public politician, might contribute to the preservation of the freedom ensured by the *polis* of the Athenians.

<sup>205</sup> Blass (1893–8: III. i. 418). I have used Demosthenes 25 *Against Aristogeiton* as evidence for orthodox constructions of civic obligation despite the reservations of Sealey (1993b: 237–9) and Carawan (2000: 652). Indeed, Carmignato (1999) has argued for the speech's authenticity (made also by Hansen 1976: 144–52) on the basis of the conventional employment of *parrhesia*, *nomoi*, and *eunomia*.

<sup>206</sup> Pulleyn (1997: 10 n. 23).

<sup>207</sup> On the introduction of Homeric poetry into law court contexts, see Toohey (1994); Ford (1999).

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## The Negotiation of Obligations

### 4.1. INTRODUCTION

To understand the ideas by which obligations were justified in ancient Athens requires an exploration of the devices employed in public contexts to negotiate the potential clash between individual liberty and obligations to the Athenian *polis*. The aim of this chapter is to emphasize the range and variety of ideas held up as justifications of civic obligations, the significance of the Athenian honorific system, and the popular response to this system expressed primarily by the dedicatory habit.

This chapter begins by examining how the prescriptive statutes (laws (*nomoi*) and (non-honorary) decrees (*psephismata*)) and the legal procedures of the Athenians functioned as the bases of civic obligations (4.1.1). It will consider the ways in which the Athenians explained the legitimacy of their laws, and made public the range of civic obligations to which they referred by their physical and oral dissemination (4.1.2). But laws and decrees were not the only means by which civic obligations were propounded. There was a wide range of values used in the grounding of obligations: piety and adherence to oath, values related to sharing, reciprocity, and consensual contribution, and the emulation of mythological and historical precedent (4.1.3–8). Forms of argumentation based on ideas such as amplification, evocation of pity and imagery, and oratorical fiat were also extensively employed (4.1.9–11). The Athenians encouraged the competitive fulfilment of obligations through publication of honorary decrees and lists (4.2–3). The Athenian dedicatory habit may be interpreted as a popular response to the city's encouragement of obligations (4.4).



#### 4.1.1. Statutes and Procedures in the Negotiation of Obligation

The first meaning of ‘political obligation’ in modern political thought relates to the question of how obedience to the statutes, the officials, and institutions of the city might be justified.<sup>1</sup> A passage in Demosthenes’ second speech against Aristogeiton conceives of a system resembling this notion of political obligation, with ordinances situated at the summit of a hierarchy of authority within the *polis*:

Just as magistrates believe that *idiotai* (private persons) ought to obey them when they are rulers, so when they in their turn descend to the rank of private citizens, they ought to submit to the laws, which are the real rulers of the state. Again, all the *politeuomenoi* (statesmen), if you will pass them in review from the earliest times, can be proved to have submitted in the same way to your justice. (D. 26.5–6)

This passage insists that the laws are the ‘real rulers’ of the state, and that private citizens and politicians rightly submit to them, but makes no attempt at justifying this state of affairs. The ordinances of the Athenians, however, were not always treated as self-legitimizing entities. This section will firstly demonstrate the ways in which the Athenians justified or explained the necessity of the obedience to the laws and decrees of the *polis*; secondly, it will stress the range and scope of obligations delineated by laws and decrees in ancient Athens.

As will become clear over the course of Chapters 4 and 5, the negotiation between individual liberty and the civic obligations of the Athenian citizen was never in Attic oratory expressed explicitly as a bargain between the extremes of the individual as an organic, independent entity and the individual as a slave of the *polis*. Liberty, instead, was conceived to be safeguarded by the laws and the institutions of the city. One expression of this relationship emerges in Demosthenes’ speech made in support of the *graphe paranomon* against Timocrates: ‘No man living will attribute the prosperity of Athens, her liberty (*eleutheria*), her democracy (*demokratoumene*), to anything rather than the laws’ (D. 24.5). The

<sup>1</sup> See Ch. 1.7.

rule of law could be viewed as a state symptomatic of enjoying freedom from tyranny (Hyp. fr. 214 Jensen). Essential to the view that laws were vital to the preservation of her liberty and democracy is the fact that Athenian statutes were expressed as enactments of the bodies which represented the Athenian citizen-community, and, for this reason, could hardly constitute infringements of individual liberty.<sup>2</sup>

The enactments of the Athenian *polis* consisted of laws and decrees: jurors swore to vote according to the laws and decrees (D. 24.149) and orators referred to ‘the laws and decrees’ to describe the body of statutes to which Athenians were subject.<sup>3</sup> Decrees of the Athenian *polis* were enacted by the Athenian *ecclesia*. Probouleumatic decrees ratified verbatim a *probouleuma* (prior recommendation) of the *boule*, but non-probouleumatic decrees were revised from a *probouleuma* made by the *boule* or made in response to an open *probouleuma* (a matter referred without specific recommendation to the assembly for proposal or debate), in which case the degree to which the decree was constitutional may have been open to contention.<sup>4</sup> In publicly inscribed documents this process was referred to within an enactment clause, which validated the directives contained within the substantive text by reference to those bodies that drew them up, and can be translated as ‘resolved by (the council and) the people.’<sup>5</sup>

Laws of the Athenians recorded that the legislative commission of *nomothetai*, the body (selected from the 6,000 jurors) responsible for enacting laws, had approved the motion with the words ‘resolved by the *nomothetai*.’<sup>6</sup> These clauses would appear on the inscribed versions of laws and decrees. Thus were decrees and laws publicly

<sup>2</sup> On the relationship between the rule of law and democracy in Athenian thought, see D. Cohen (1995b).

<sup>3</sup> References are collected in Hansen (1983: 161).

<sup>4</sup> For discussion of decrees of the *boule* and *demos*, see Rhodes (1972a: 52–81). The catalogue of Rhodes (1972a: 246–68) distinguishes between probouleumatic and non-probouleumatic decrees. Aristogeiton’s decree against Hierocles was said by his enemy to be *aprobouleuton* (not discussed by the *boule*); this was probably an argument used against it when it was successfully attacked in a *graphe paranomon* (D. 25.1–2).

<sup>5</sup> ἔδοξε (τῆι βούλῃ) καὶ τῶι δήμῳ: Rhodes with Lewis (1997: 20–1). For detailed study of this and other prescripts to Athenian decrees, see Henry (1977).

<sup>6</sup> ἔδοξε τοῖς νομοθέταις: Rhodes with Lewis (1997: 17, 32).

empowered by reference to the *demos* or the group selected from the jurors, itself a subgroup of the *demos*.<sup>7</sup> This sentiment is elaborated later in the speech against Timocrates, where Demosthenes insists that laws, the characteristic of the democratic form of government, are enacted because they are believed to be favourable to the *demos*: ‘The laws prescribe what shall be done in the future (οἱ δὲ νόμοι περὶ τῶν μελλόντων ἂ χρῆ γίγνεσθαι φράζουσι), such laws having been enacted by convincing people that they will be beneficial to those who live under them’ (D. 24.76).

Inscribed Athenian laws and decrees in their most fully developed fourth-century form explained their existence by quoting the proposal made by an orator at the assembly. This clause of motivation included a brief explanation of the situation which caused the decree to be passed,<sup>8</sup> and sometimes there was a forward-looking intention, often expressed in terms of a purpose clause.<sup>9</sup> While honorific decrees frequently expressed a ‘hortatory intention’, explaining the intention behind the setting up of the inscription, the sum spent on it, or the awards being granted,<sup>10</sup> prescriptive statutes sometimes included a statement somewhere on the inscription or within the substance of the decree referring to the general or specific intention of the decree.<sup>11</sup> Intentions were grounded in terms of the security of the Athenian grain supply and correct performance of religious obligations. Agyrrius’ proposal in the law of 374/3 on the grain tax begins with a statement of intention: ‘so that there may be grain for

<sup>7</sup> Piérart (2000) stresses that the *nomothetai* performed an assembly-like function and that their appointment was decided by decree of the people, to which suggestion Rhodes (2003b) has responded that as a body they exhibited a hybrid of assembly-like and jury-like features. Others have drawn wider conclusions: part of the thesis of Hansen (1999: 154–5) that the law courts possessed sovereignty relies upon conceiving of the jurors and *nomothetai* as organs of government separate from the *demos*, that the *nomothetai* were not subcommittees of the assembly and that there was a significant separation of powers in fourth-century Athens. The view of Ober (1989a: 147) is that ‘*demos* and *dikasterion* stood in a synecdochical relationship: the part (*dikasterion*) stood for the whole (*demos*)’. Blanshard (2004b) makes the point that a number of different formulations coexisted and circulated about the relationship between jury and *demos*.

<sup>8</sup> On the motivation clause, which began with ‘since’ (*epeide*), see Rhodes with Lewis (1997: 5).

<sup>9</sup> On the language of purpose clauses in Athenian decrees, see Henry (1966).

<sup>10</sup> See Ch. 4.2.2.

<sup>11</sup> For catalogues of these motivations, see Larfeld (1902–7: ii. 688–90).

the people in the public domain (*en toi koinoi*)' (RO 26.5–6).<sup>12</sup> Thus all the duties of magistrates and of the people in general delineated within that law were justified on the basis that they would contribute to the common goal of securing grain for Athens.<sup>13</sup>

Religious regulations frequently express intention. The law on the Lesser Panathenaia of c.335 was framed with the intention of piety and profit, 'that the sacrifice to Athena may be as good as possible in the Lesser Panathenaia and that the income might be as great as possible for the *hieropoioi* (steward of sacred rites)' (RO 81. A 5–6).<sup>14</sup> The decision about whether or not the Athenians should cultivate the *hiera orgas* (sacred land) on the border between Eleusis and Megara of 352/1 BC, once made, would aspire towards piety and the avoidance of *asebeia* (impiety), 'that relations with the two goddesses may be as pious as possible and in future no impiety may be done concerning the sacred land and other sacred things at Athens' (RO 58.52–4).<sup>15</sup> But such justifications could suggest also an interest in fairness: the decision-making procedure outlined in the decree was motivated by the intention that 'they may place the boundaries as piously and fairly as possible' (RO 58.15–16).<sup>16</sup> Working from the basis of laws which

<sup>12</sup> Other examples of decrees presenting their intention in terms of securing the Athenian grain supply include Cephisophon's decree authorizing the colony to the Adriatic of 325/4: 'in order that the people may for all future time have their own commerce and transport in grain, and that the establishment of their own naval station may result in a guard against the Tyrrhenians' (RO 100.217–20); in a decree of c.330, someone is made the *epimeletes* of the *emporoi* and *naukleroi* (overseers of the merchants and ship-masters) 'so that grain might enter as plentifully as possible for the people of Athens' (*IG II<sup>2</sup>* 416.10–11); an honorary decree says that two men are to be chosen from all the Athenians to go to Sinope and to request the *demoi* of the Sinopians to take care 'so that enough grain is transported to Athens' (*IG II<sup>2</sup>* 409.14–15).

<sup>13</sup> This is a common justification also for honorary decrees for non-citizens (see Ch. 5.6).

<sup>14</sup> A decree on the Panathenaia preserved in the Demosthenic corpus is justified 'in order that sacrifices may be offered, that provision may be adequate, and that any lack of funds for the Panathenaia be made good' (D. 24.27). Compare the law on the Eleusinian *aparche* (first fruits): 'so that there might be *aparche* for the two deities and that the sacrifices be made by the *demoi* of the Athenians' (*IG II<sup>2</sup>* 140.16–17). The law concerning the duties of the *agoranomoi* (market clerks) is concerned 'that the agora in the Piraeus might be furnished and flattened as beautifully as possible' (*IG II<sup>2</sup>* 380.8–12), in preparation for the procession for Dionysus and Zeus Soter.

<sup>15</sup> On religious backing for civic obligations, see Ch. 4.1.4.

<sup>16</sup> This decree is treated by Scafuro (2003: 143) 'as a matter pertinent only to the internal affairs of Athens, ensuring that the oversight of the sacred *orgas* be brought in

are preserved in documentary form in the corpus of Attic oratory,<sup>17</sup> it appears that these intentions were preserved also in archive copies of decrees (D. 18.29, 24.27). It was sometimes left to orators themselves to devise an intention of legislation for their own purposes: Aeschines claimed that the lawgiver legislated with the intention of discouraging fathers from prostituting their sons (Aeschin. 1.13–14; D. 47.20);<sup>18</sup> Demosthenes disputed the stated intention of Timocrates' decree, who, he claims, attained by decree a change in the date of the session of *nomothetai*: 'his intention was, not that something belonging to the Festival should be done as handsomely as possible, for in fact there was nothing left to be done, and no financial deficiency to be made good' (D. 24.28).<sup>19</sup>

Orators found it useful for the sake of persuasion to remind the jury of their obligation not just to obey, but also to defend or guard, to come to the aid of, or even to avenge the laws of Athens.<sup>20</sup> This was appropriate, given that jurors had sworn to defend the laws. Thus speakers would remind the jury that they had sworn to pass a verdict in accordance with the laws and decrees of Athens in the dikastic oath (D. 24.149–51; Aeschin. 3.6): indeed, this was the most frequent context for quoting the dikastic oath.<sup>21</sup> But there were other means of justifying the authority of law as the basis of civic obligations: Demosthenes claimed that laws were an appropriate guide to behaviour

line with the kind of lawfully sanctioned care bestowed on other religious properties of the polis'

<sup>17</sup> Some of these may well be Athenian archive copies accumulated by antiquarians like Craterus, author of the *Collection of Decrees* (*FGrH* 342), a work that one ancient commentator claimed collected all the decrees written in Greece (*FGrH* 342 T 1c). For the idea that Craterus or an assistant collected decrees from Athenian archives, see *CIG* i. ix n. 2; *FGrH* IIIb Kommentar i. 96; Higbie (1999: 46); de Ste Croix (2004: 309–10). These records may have been inserted at appropriate points into the text of speeches by overenthusiastic editors in the Hellenistic period or later. For discussion of the status of such documents, see Isager and Hansen (1975: 175–6); MacDowell (1990: 43–7); Yunis (2001: 29–31).

<sup>18</sup> On the tendency to frame intention by reference to lawgiver, see Thomas (1994*b*); on intentions and perceptions of the intention behind legislation with reference to the law reform of the late fifth century, see Todd (1996: 120–31).

<sup>19</sup> For another example of disputed intention behind a decree, see D. 58.53–4.

<sup>20</sup> Aeschin. 1.4–5, 7; 3.6–7; Antiph. 1.3–4; Lys. 10.32; D. 19.283, 21.224, 24.36–7, 25.6, 26.27, 43.84, 57.32.

<sup>21</sup> For an assessment of employment of the oath in the fourth-century law courts, see Johnstone (1999: 35–42).

because of their origins in human invention, divine inspiration, and social contract:

The laws desire what is just (*to dikaion*) and honourable (*to kalon*) and expedient (*to sumpheron*); they seek for it, and when they find it, they set it forth as a general commandment, equal and identical for all. The law is that which all men ought to obey for many reasons, but above all because every law is an invention and gift of the gods, a tenet of wise men, a corrective of errors voluntary and involuntary, and a general covenant (*suntheke koine*) of the whole city, in accordance with which all men in that city ought to regulate their lives (*καθ' ἣν πᾶσι προσήκει ζῆν τοῖς ἐν τῇ πόλει*). (D. 25.16)<sup>22</sup>

Obedience to the laws of Athens could be said to be backed by necessity (*anangke*: D. 40.13, 47.23), fear (Lys. 14.14–15), or placed alongside other forces such as shame or respect for kin (Is. 1.39). Laws were justified by attributing them to the archaic lawgivers Solon or Draco.<sup>23</sup> Such modes of argumentation, however, far from suggesting the low esteem of the laws in ancient Athens, suggest the breadth of authorities, historical, legislative, and moral, to which the orators referred to insist upon the pertinence of the laws or particular laws.

Oratory leaves contradictory impressions about the extent to which Athenians viewed statutes as the foundation of good behaviour. Apollodorus, when urging the prosecution of Neaira, tells his audience that the laws 'are the foundation of civic life (*δι' ὧν οἰκεῖται ἡ πόλις*)' (D. 59.115). Demosthenes suggested that the safety of Athens, founded on the basis of the expeditions of her navy and land forces, was possible only because they were organized through laws and

<sup>22</sup> Hyperides mentions social contracts of the city ('*κοινὰ τῆς πόλεως συνθήκαι*') in his prosecution of Athenogenes. Athenogenes, it seems, has broken the contract by moving to Troizen at the time of the battle of Chaironea, a similar crime to that of Leocrates, Hyp. *Ath.* 30–1. The notion of the social contract was a metaphorical basis for the notion of reciprocity between the city and the citizen (cf. law as a *ἁμολόγημα πόλεως κοινόν* at Arist. *Rh. Al.* 1422a3–4). For a collection of the occurrences of the social contract, see also Triantophyllopoulos (1985: 10 with n. 87); with particular reference to philosophical texts, see Mulgan (1979); Kahn (1981).

<sup>23</sup> Aeschin. 3.175; Hyp. *Ath.* 21–2; D. 20.90; Lys. 1.31; for discussion of references to ancient lawgivers in oratory, see Thomas (1994*b*); on Athenian perceptions of 'Solonian democracy', see Hansen (1989*a*); Mossé (2004). For the view that fourth-century sources were well informed about Solon, see Rhodes (1993*b*). For discussion of 'Solonian' laws, see Ruschenbusch (1966); Andrewes (1974); Murray (1990*b*). For discussion of the significance of allusions to the 'ancestral constitution', see Fuks (1953); Ruschenbusch (1958); Finley (1975: 35–59); Walters (1976).

decrees which levied financial contributions and military service (D. 24.91–2). Lycurgus, on the other hand, suggests that the laws are limited in their scope when he turns the audience's attention to poetry in order to recommend the prosecution of Leocrates: 'laws are too brief to give instruction: they merely state the things that must be done (*ἐπιτάττουσιν ἃ δεῖ ποιεῖν*); but poets, depicting life itself, select the noblest actions and so through argument and demonstration convert men's hearts' (Lycurg. 1.102). Indeed, the connections between legislation and non-legal factors suggest the oratorical view that laws were powerful only within the context of a political and legal system. Lycurgus and Demosthenes justified their role as prosecutor by arguing that laws helped to hold the city together only if the orators acted on it by bringing prosecutions (Lycurg. 1.3–4; D. 21.224–5). By making this claim, they suggested that the working of Athenian law was reliant on the litigants' recitation of it in the courts. According to this view, whatever the extent of the obligations that might appear to be grounded in law, the obligations prescribed by laws could be enforced only when brought to the attention of a court by a litigant and when that litigant had persuaded the jury that the regulation needed to be enforced by sanction.

Some scholars have recently emphasized the absence of coercive power of the Athenian *demos* and the idea that the Athenian system of volunteer prosecution meant that commencement of legal procedures and imposition of the laws, for the most part, were left up to individual initiative.<sup>24</sup> It might be added that even bodies such as the Eleven, which oversaw capital punishment and incarceration, did not make arrests on their own initiative but were reliant on thieves, kidnappers, and pickpockets being brought before them ([Arist.] *Ath. Pol.* 52.1). It must be noted, however, that there existed regular legal processes which served to hold citizens and magistrates to obligations attached to their offices.<sup>25</sup> Whenever his office expired, that magistrate

<sup>24</sup> Hunter has suggested that private initiative amounted to a fundamental duty to prosecute (1994: 188); cf. Ch. 5.3.1. For another statement of the view that the Athenians lacked the machinery of public coercive apparatus, see Berent (2004); cf. n. 25.

<sup>25</sup> Epigraphical and oratorical instances of law enforcement in the hands of officials have been collected by E. Harris and were discussed in a paper entitled 'Who Enforced the Law in Classical Athens?' delivered in London in January 2006. Gabriel Herman has argued that the Athenian democracy combined volunteer prosecution

underwent a public examination of his behaviour in office (*euthuna*), which consisted of an examination of his financial management overseen by the ten *euthynoi* (examiners) and the opportunity for any citizen to bring charges against him ([Arist.] *Ath. Pol.* 48.3–4, 54.2).<sup>26</sup> Magistrates in office were held to their duties by the existence of a ‘vote on the magistrates’ (*epicheirotonia ton archon*) on the agenda of the *ecclesia kyria* (principal assembly) in each of the ten prytanies of the year, which gave any citizen the right to propose a vote of no confidence against any of the magistrates, and which would be followed up by an independent procedure ([Arist.] *Ath. Pol.* 43.4).<sup>27</sup>

Before entering office, officials, ephebes, new citizens, cavalrymen, mounted skirmishers, and infantry underwent a preliminary scrutiny (*dokimasia*).<sup>28</sup> This process was an attempt not to test the expertise or competence of the individual, but to monitor legal and moral qualifications.<sup>29</sup> No punishment automatically followed from a failure to pass the *dokimasia* for an office: as MacDowell has pointed out,<sup>30</sup> the citizen was simply excluded from the office to which he had been appointed. The questions posed related to the names and demes of the citizen’s father, mother, and grandfather, the whereabouts of family tombs and shrines of Apollo Patroos and Zeus Herkeios, his treatment of his parents, and payment of taxes (*tele*) and performance of military service ([Arist.] *Ath. Pol.* 55.3–4; Din. 2.17–18).

These procedures seem to be the most straightforward examples of direct institutional enforcement of civic obligations, but even the application of these procedures was no simple process and could

with agencies devoted to exercising coercion in its attempts at law enforcement in a paper delivered in London in May 2003.

<sup>26</sup> Hansen (1999: 222–4). For a detailed account of how *euthuna* worked in Athens, with particular reference to Aeschines’ employment of the process against Demosthenes, see MacDowell (2000: 15–22). For the forms of *euthuna* attested across the Greek world as a means to controlling the behaviour of officials, see Frölich (2004: 53–74, 103–16, 331–437).

<sup>27</sup> Hansen (1999: 220–2). For a survey of the kinds of scrutiny to which magistrates were subject across the Greek world, see Frölich (2004: 253–304).

<sup>28</sup> [Arist.] *Ath. Pol.* 42.2; 49.1–2, 4; D. 57.66–7; Aeschin. 1.28–30.

<sup>29</sup> Adeleye (1983); for criticisms to this approach, see Todd (1993: 285–9); on the scrutiny of new citizens as ‘a political rite which reinforced the ideology of a citizen’s body’, see B. G. Robertson (2000: 163).

<sup>30</sup> MacDowell (1978: 168).



provoke drawn-out legal proceedings (*euthuna*: Aeschin. 3 and D. 18; *dokimasia*: Lys. 16). Magistrates appear to have been obliged to monitor other officials' performance of obligations. The *Athenaion Politeia* suggests that the obligations of certain officials were enforced by particular magistrates without any need for volunteer prosecution. The council, for instance, enforced the obligation of cavalrymen to look after their horses (49.1) and summoned those enrolled as cavalrymen (49.2); ten *epimeletai* (overseers) ensured that importers supplied the upper city with two-thirds of the grain coming from overseas (51.4); the archons compelled guardians to provide the necessary sustenance for orphans in their care (56.7); the eponymous archon appointed the *choregoi* for the tragedies (56.3). Other enforcement seems to have been devolved to corporate groups other than the *polis* and her magistrates: for instance, the tribes seem to have assigned the five *choregoi* to the comic poets (D. 21.13). The Athenian council must also have played an important part in overseeing the fulfilment of obligations by magistrates, in particular those concerned with the public works and the financial, religious, and military administration of Athens:<sup>31</sup> individual *bouleutai* (councillors) were granted the power of launching investigations into the activities of any magistrate.<sup>32</sup> The Areopagus also seems to have had the role of investigation of the activities of public magistrates (D. 18.133).<sup>33</sup> The role of magistrates combined with the laws, and with volunteer prosecution, to enforce the performance of civic obligations. However, as Harris has suggested, in circumstances when magistrates gave orders contrary to law, it became the duty of the Athenian citizen to disobey.<sup>34</sup>

Having accounted for how the Athenians made their laws and decrees authoritative and enforced them, at this point it is necessary to consider the scope and variety of obligations which appear to have been laid out in these statutes. Laws and decrees, as will become clear over the rest of this chapter, were one of several means with which civic obligations were grounded.

<sup>31</sup> For exhaustive discussion of the spheres of administration in which the *boule* was involved, see Rhodes (1972a: 88–134, 147–78).

<sup>32</sup> Hansen (1999: 258).

<sup>33</sup> On the growing frequency of investigations and reports produced by the Areopagus from the 340s to the 320s, see Wallace (2000).

<sup>34</sup> E. Harris (2004: 32–4).

Orators frequently associated the fulfilment of obligations with living according to the law. Speakers argued in passing that laws were the motor behind the fulfilment of a specific duty, would present their own behaviour as the fulfilment of obligations according to the laws, or would present their opponents' behaviour as an infringement of them (Lys. 1.26, 34; D. 47.48, 58.55–6). In practice, while Athenian laws often assumed the prior existence of obligations, a significant body of epigraphical and oratorical evidence suggests that they did sometimes consist of substantive recommendations, which laid out the rights and obligations and prescribed appropriate behaviour of citizens.<sup>35</sup> Indeed, they could regulate the obligations of both public and private life. In a speech supporting a *graphe paranomon* against Timocrates, Demosthenes holds up the laws of Solon as a paradigm to be contrasted with the recklessness of Timocrates' law:

The laws enacted by Solon, a very different legislator from the defendant, provided that if a man found guilty of ill-treating his parents intrudes upon the market-place, he shall go to prison; and that if a man, having been convicted of shirking military service, behaves as though he were not disenfranchised, he also shall be convicted. Timocrates gives impunity to all these offenders, for he abolished imprisonment if they put in bail. (D. 24.103)

The implication of this passage is that Solon's laws were directly concerned with laying down the obligations of both private and public life.<sup>36</sup> Indeed, the idea that regulation of private life was, in the late fourth century BC, closely associated with the ancient laws of Draco and Solon is suggested by Aeschines, who claimed that they legislated with the intention of protecting the moderation (*sophrosune*) of children, 'prescribing what were to be the habits of the free-born boy (*ἀπέδειξαν ἂ χρῆ τὸν παῖδα τὸν ἐλεύθερον ἐπιτηδεύειν*), and how he was to be brought up', and that they legislated for the young men and the other age groups in succession, 'including in their provision,

<sup>35</sup> See Carey (1998), suggesting that the conventional view (for which, see Hansen 1975: 10; Todd 1993: 64–6), that Athenian laws were more frequently to do with procedure, is overstated.

<sup>36</sup> For a collection of laws attributed to Solon, see Ruschenbusch (1966). Some of these, such as those directing commemoration of the dead or heiresses, were related to domestic affairs: see Ruschenbusch (1966, fr. 109; 1988). Murray (1990*b*) stresses that the Solonian law of hubris highlights one area of life in which the public and private spheres overlapped.

not only private citizens, but also the public men' (Aeschin. 1.6–7). There were laws other than those attributed to Solon that suggested standards of private life: a law incurred an obligation on the nearest male relative to marry an unmarried heiress, or else provide her with a dowry (D. 43.54); a law stipulated the conditions for the procreation of legitimate offspring (D. 46.18); and laws prohibited marriage between Athenians and non-Athenians (D. 59.16, 52). Legislation directed treatment of the dead and restricted the scale on which the dead were commemorated from the mid-fifth century at the latest (D. 43.62; Cic. *Leg.* 2.64).<sup>37</sup> Indeed, Wallace has suggested that during and after the Lycurgan period, an unprecedented number of laws affecting private conduct were introduced. It is significant, however, that the majority of laws affecting private life were concerned with marriage and the preservation of the Athenian citizen-body.<sup>38</sup>

More frequently, laws concerned behaviour in the sphere of obligations owed directly to the rest of the community, in particular its piety, financial well-being, food supply, military levy, and the security of the constitution: a fourth-century speech preserves a law which made it illegal to contract a loan on a ship that would take grain to a place other than Athens (D. 35.51). Laws concerned the treatment of olive trees (D. 43.71), and laid out the necessary circumstances for a legally binding contract (D. 42.12). There existed laws against shirking military service (D. 24.103), desertion, throwing away one's shield, and other military misdemeanours, and these were dealt with in a number of judicial procedures.<sup>39</sup> The highly public sphere of political obligations could occasionally be directed by statutes, such as the decree of Demophantus and law of Eucrates.<sup>40</sup>

Notwithstanding the wide range of public and private duties of citizens adumbrated in statutes, the frequently observed<sup>41</sup> procedural emphasis in extant laws means that the obligations contained therein were often geared towards not citizens in general but magistrates or citizens acting in specific, often legalistic, capacities. These included the procedure to be followed by someone prosecuting for homicide,<sup>42</sup>

<sup>37</sup> Garland (1989). <sup>38</sup> Wallace (1997). See Ch. 5.1.

<sup>39</sup> These could be brought by a general or a volunteer and were sometimes tried in front of one's fellow soldiers: Harrison (1968–71: ii. 32); Todd (1993: 106).

<sup>40</sup> See Ch. 5.2.1. <sup>41</sup> See n. 35.

<sup>42</sup> D. 47.71; *IG I<sup>3</sup>* 104.21–5; *Lys.* 1.30; D. 59.75.

and a wide range of public officials: of *bouleutai* (IG I<sup>3</sup> 105.7–8), the eponymous archon (D. 43.75), the demarch (D. 43.57–8), the public testers of the coin (RO 25.4–7, 13–16), grain-tax farmers, and those who were to measure out grain (RO 26.10–30, 36–44). Laws concerning religious activity addressed obligations most frequently to particular magistrates: the inscription concerning the Lesser Panathenaia gives precise details about the sacrificial duties of the *hieropoioi* (RO 81 B 8–17, 33–5).<sup>43</sup> Laws prescribing the behaviour of trierarchs were laid out on stone (IG I<sup>3</sup> 153, 154, 236); Demosthenes invoked such laws (D. 18.105, 47.29); there survive also laws related to the behaviour of the *choregos* (Aeschin. 1.9–11). Laws provided guidance for procedures such as the workings of the assembly (D. 21.8) and the process of law-making (D. 24.20–2, 33, 45). On balance, it is likely that the kind of obligations most frequently directly the subject of statutory legislation were those that affected or defined the duties of office-holders or individuals involved in public life at an official level.

Decrees are conventionally considered to be directed at issues more temporary and specific than laws,<sup>44</sup> though this was a distinction always open to contention,<sup>45</sup> and may have been challenged in the last third of the fourth century,<sup>46</sup> and at times of crisis.<sup>47</sup> Despite the convention, sometimes associated with Solon, that laws ought to have greater authority than decrees (Hyp. Ath. 22),<sup>48</sup> decrees appear to have been directed as frequently at the obligations of the citizen-body as a whole, often in response to certain contingencies, as they were at particular magistrates. This is the case owing to the fact that decrees rather than laws were employed by the Athenians to regulate

<sup>43</sup> For religious regulations, for which the epigraphical evidence takes most often the form of laws, see Chs. 4.1.1, 5.8, and Lambert (2005: 131–59).

<sup>44</sup> Hansen (1983: 187–90; 1987a: 113).

<sup>45</sup> See, for instance, D'Angour (1999: 110 n. 9), suggesting that the decree on the Athenian alphabet may be viewed as a general rule.

<sup>46</sup> Atkinson (2003) follows Aristotle's suggestion that there was a shift from laws to decrees (Ath. Pol. 41.2) as the predominant form of legislation, and points to the diminished role of probouleumatic decrees, the abuse of the court of *nomothetai* and *graphe paranomon*, and the blurring of the distinction between laws and decrees.

<sup>47</sup> Hansen (1983: 38–9; 1987a: 113).

<sup>48</sup> The principle that laws should be more authoritative than decrees was first enunciated after the democratic restoration in 403/2. See And. 1.87; D. 23.87; 24.30; Hansen (1983: 161–77); Whitehead (2000: 325).

matters relating to foreign policy.<sup>49</sup> Processes such as the conscription of soldiers by age classes and the levying of *eisphora* would in all likelihood have been set in motion by decree of the assembly (D. 1.20, 4.20–4). The speaker of *Against Euergus and Mnesibulus* boasted that his demands for the return of public naval equipment were made in accordance with both *psephismata* and *nomoi* (D. 47.19): the speech clearly illustrates the difficulties in enforcing decrees, in this case the return of naval equipment in the way demanded by the decree of Chairedemos (D. 47.20–6). Indeed, failure to fulfil individual duties, such as a trierarch not returning his ship to a pier, could be presented to a law court as a deed done in contravention of a decree (D. 51.4). A decree of 320/19 transferring the duties of the *astynomoi* (city magistrates) to the *agoranomoi* (market magistrates) obliges everyone not to pile earth and waste on the streets (*IG II<sup>2</sup>* 380.25–8). Legislation laid down a general obligation for citizens to acquiesce in the foreign policies of the *ecclesia*: a decree of 357/6, introduced to dissuade Athenians from selling themselves for mercenary service to a state hostile to Athens,<sup>50</sup> banned individuals from campaigning against Eretria or against any other allied state (*IG II<sup>2</sup>* 125.9–14). Similarly, the decree containing the charter of the Second Athenian Confederacy banned Athenians from owning land in the allied states (RO 22.35–46), and forbade anyone from voting or speaking against the decree (51–62).

However, the infrequency with which the Attic orators used *psephismata* as a basis for the grounding of civic obligation, combined with Lycurgus' failure to cite in a straightforward way the decree about not leaving the city during times of warfare,<sup>51</sup> suggests that they had less practical authority in the courts than laws. Moreover, as Demosthenes recognized in the *Third Olynthiac*, the gap between the duties decreed by the people and those carried out by the people was huge:

A mere decree is worthless without a willingness on your part to put your resolutions into practice. If decrees could automatically compel you to do

<sup>49</sup> This becomes particularly clear when we consider that, according to Hansen's count (which omits the decrees cited by, for instance, Diogenes Laertius and Plutarch), of the 219 decrees quoted or referred to in literary sources, 106 relate to foreign policy (Hansen 1987a: 111).

<sup>50</sup> For this interpretation, see Toogood (1997: 296).

<sup>51</sup> See Chs. 3.8, 5.7.

your duty (εἰ γὰρ αὐτάρκη τὰ ψηφίσματ' ἦν ἢ ὑμᾶς ἀναγκάζειν ἃ προσήκει πράττειν), or could accomplish the objects for which they were proposed, you would not have passed such an array of them with little or no result, and Philip would not have had such a long career of insolent triumph. (D. 3.14)

So far, this chapter has stressed the roles which the epigraphical and oratorical legitimization of statutes played in the negotiation of civic obligations, and the range of obligations which were laid down by statutes and enforced by legal procedures. The picture of the relationship between decrees and civic obligation will be consolidated by consideration of honorary decrees.<sup>52</sup> For now, it remains to emphasize the flexibility of the relationship between obligation and law as it was presented in oratory. The recent scholarship of Athenian law has placed as much emphasis on the social context of laws as on the objective content of the laws themselves.<sup>53</sup> For the purposes of this study, it is very important to consider the oratorical interpretation and employment of pieces of legislation.<sup>54</sup> Indeed, laws were cited by litigants as persuasive devices, as part of an attempt to demonstrate to the jury that they were the type of citizen who would live a life according to law, or to represent the kind of behaviour that their opponent had omitted: laws had as much persuasive as prescriptive force in the grounding of civic obligation. Prosecutors introduced a law, or sometimes 'the laws', to a case in order to argue that the Athenian laws as a whole were undermined by behaviour of the defendant. Lycurgus, though unable to pin contravention of any one particular law on Leocrates, suggests that he has broken universal standards of conduct

<sup>52</sup> See Ch. 4.2.

<sup>53</sup> For an assessment of recent trends in work on Athenian law, see Golden (2000*b*). Golden stresses the breadth of topics investigated within law as well as the relevance of the contemporary scholarship of Athenian law to social history, anthropology, and comparative jurisprudence. Golden observes three trends, treating law as 'parallel discourse' (thus distanced from social reality), as 'productive discourse' (thus law creates and reinforces social differences and hierarchies), and 'permeable discourse' (thus law was integrated into, and strongly influenced by, other areas of social life). The second and third of these interpretations are deeply integrated into this book, as laws and decrees are interpreted both as the basis of civic obligations and also as manifestations of obligations grounded on values other than legislation.

<sup>54</sup> Carey has stressed that litigants tend to put themselves on the side of 'the laws' generally, appropriate for themselves the discourse of law, associate the opponent with breach of the laws, and suggest that the laws are endangered and that it is necessary for the jurors to come to their aid (Carey 1996).

rather than any particular Athenian statute, but can still claim to be working ‘on behalf of the laws’ (Lycurg. 1.138, 150). According to Lycurgus and others, law negotiates a general sense of behaviour, laying down what ‘it is necessary to do and not to do’ (4).<sup>55</sup>

What, therefore, was central to persuasion was not the matter of obedience to particular laws, but the measure of behaviour in comparison to the general sense of the law code. Indeed, so flexible was the discourse of law in the Athenian law courts that living a *kosmios* (orderly) lifestyle, in other words one of obedience to the laws, could be presented even as a service to the city on a par with financial outlay (Lys. 12.20, 14.41, 21.19; Is. fr. 30 Thalheim).<sup>56</sup> Furthermore, orators were able to cite non-Athenian laws as examples of ‘good law’ (Lycurg. 1.129; D. 24.139–41).<sup>57</sup> Law did not necessarily direct every element of the behaviour of the good citizen, but, rather, acted as a parameter of civic obligation. Accordingly, the oratorical impression of the relationship of laws and civic obligations relies on the idea that good citizenship constitutes a lifestyle of reasoned compatibility with the laws rather than coerced obedience to the minutiae of the laws. Before moving to looking at the substantial evidence for the negotiation of obligations through non-statutory precepts, it is necessary to assert the significance of physical and oral dissemination of legislation in the negotiation of obligations.

#### 4.1.2. Physical and Oral Dissemination of Prescriptive Ordinances

Demosthenes used the imagery of inscriptional publication to invoke support for the laws: while Meidias, he speculated, might surround himself in court with his children, Demosthenes asks his audience to imagine that the laws themselves were standing by his side, reminding the jury of the oath that they swore to protect them, urging the justice of obedience to them, and suggesting that they were the foundation of equal rights of participation (D. 21.188). The success of

<sup>55</sup> ὁ μὲν γὰρ νόμος πέφυκε προλέγειν ἃ μὴ δεῖ πράττειν. Cf. Lycurg. 1.102; D. 24.53, 47.48; Lys. 1.35.

<sup>56</sup> For discussion of this line of argument, see Saunders (1991: 114).

<sup>57</sup> On the employment of Spartan virtues in Lycurgus Athens, see Fisher (1994).

this appeal relied on the feasibility of thinking about laws as material objects. Indeed, this was appropriate in fourth-century Athens not just because of the intention, albeit unfulfilled, of the Athenians to compose a comprehensive law code in 403 BC,<sup>58</sup> but because of the very real presence of inscriptions bearing laws and decrees and the apparent legitimacy that this bestowed upon them.

Some ordinances appear to have been directed at specific readers or viewers. The Athenian habit of placing decrees and laws on the Acropolis, though predominant, was far from absolute in the fourth century BC: decrees and laws, when not set up on the Acropolis, were set up in places where they might be seen by those concerned with the regulations.<sup>59</sup> Richardson has located the place of publication of the law relating to the Lycurgan rebuilding of the walls of Piraeus (Schwenk 3) at the quarry that may have provided stone for the walls.<sup>60</sup> Thus the obligations of those who were cutting the rock for the building works would have been accessible to them as they worked.

Laws referring to legal procedure were sometimes set up in places where that procedure took place. The law on silver coinage was set up ‘one in the city between the tables, the other in Piraeus in front of the *stele* of Poseidon’ (RO 25.44–7). In both cases, what could have been a better place for the regulation to be accessible for the citizen wanting to hale a lawbreaker caught in the act in front of the relevant magistrates? According to the same document, offenders were to be denounced before the *sitophulakes* (grain guardians), the *syllogeis tou demou*,<sup>61</sup> or before the *epimeletai* of the market (RO 25.18–23), all of whom were officials who probably officiated in the vicinity of the stone. Furthermore, the testers (*dokimastai*) sat next to the *stele* (42), giving easy reference to the minutiae of the legislation.

<sup>58</sup> See Ch. 3.3.

<sup>59</sup> Liddel (2003). Both M. Richardson (2000) and Sickinger (2004: 95–6) have suggested that Athenian prescriptive laws were set up in places according to some rationale, for instance at a location where there might be found officials whose responsibilities were related to a specific kind of place. For discussion of the significance of decrees set up on the Acropolis, see Ch. 4.1.4.

<sup>60</sup> M. Richardson (2000: 601, 606).

<sup>61</sup> This board was defined by Hansen (1987a: 224) as a committee of thirty who were members of the *boule*, responsible for ensuring that only citizens participated in the assembly.



A concern for the alacrity of public action is also detectable in the twin places of publication of Eucrates' anti-tyranny law set up 'near the entrance of the Areopagos which leads to the council chamber (of the Areopagos), the other in the *ecclesia*' (RO 79.24–6).<sup>62</sup> The obligations encountered in this law had particular relevance to Areopagites, who were, as the decree and historical circumstances suggested, more likely than any other party in Athens to support an undemocratic regime,<sup>63</sup> and had relevance to citizens who went to the assembly, who would be exempt from punishment for attacking a usurper.

Sickinger has suggested that the epigraphically attested practice of addressing laws and decrees to the relevant audience would have been common to non-permanent publication, and, perhaps more speculatively, that by the fourth century, legislation was available to all seekers in a well-organized archive.<sup>64</sup> It is the case that considerable publicity in a well-known location was granted for laws that were to be considered by the *nomothetai*. Before the meeting of an assembly, any Athenian who wished wrote down laws that he wished to propose on a non-permanent medium and posted them in front of the Eponymous Heroes at the *agora* (D. 20.94; 24.17–18, 23, 36), and this was done, Demosthenes intimates, with the intention that all may have prior knowledge of it (D. 24.36).<sup>65</sup> If any of the *thesmothetai* (the six junior archons) found an invalid or contradictory law, they were obliged to write it out and post it in the same place (Aeschin. 3.39).<sup>66</sup> Such processes of publication may be interpreted as manifestations of democratic accountability. It is better, however, to see this habit as part of an attempt to promote and give authority to the civic

<sup>62</sup> For discussion of this translation, see Koumanoudes (1986: 157–8). For other views on the identity of this council chamber, see M. Richardson (2003: 332 n. 1).

<sup>63</sup> Ostwald (1955); Sawada (1996: 82–4). For other interpretations of the law, see Meritt (1952); de Marcellus (1994: 143–4); Rhodes and Osborne (2003: 390–3). For the case that the intended audience was the citizen-body as a whole, see Blanshard (2004a).

<sup>64</sup> Sickinger (2004).

<sup>65</sup> This was located strategically at the heart of the Athenian *agora* (see Thompson and Wycherley 1972: 38–41) and was also used to post notices of relevance to the tribes, lists of conscripts, proposals of decrees, and court hearings: see Camp (1986: 99).

<sup>66</sup> The details of the processes of lawmaking and law revision are debated: see MacDowell (1975); Rhodes (1985); Hansen (1985a).

obligations of the citizen demanded in laws and decrees. The orators' employment of documents and inscriptions certainly strengthens the latter interpretation.

However, ordinances of the Athenian state were given publicity also by being read aloud.<sup>67</sup> Laws proposed by citizens were to be read by the secretary at meetings of the assembly, with the purpose, Demosthenes intimates, 'that you may hear them more than once and digest them at leisure' (D. 20.94). Decree-making in the Athenian assembly was heavily reliant on oral exchange: the proposer would read their own proposal to the assembly or one sent by the council (*probouleuma*: IG II<sup>2</sup> 223 A 10), and the assembly might suggest additional clauses or riders (e.g. IG II<sup>2</sup> 373.22–33; Plu. *Phoc.* 35–6).<sup>68</sup> The author of the *Athenaion Politeia* says that in his day a secretary (*grammateus*) was responsible for the reading out of newly passed decrees ([Arist.] *Ath. Pol.* 54.5).<sup>69</sup> Non-honorary legislation on stone from this period does not contain provisions of proclamation, but does sometimes specify when particular regulations are to be read out. The law on silver coinage commands that the *grammateus* of the *boule* is to announce the price of corn to the *poletai* (sellers) (RO 25.48), while the decree concerning the sacred *orgas* directs that the oracular response is to be read to the *ecclesia* (RO 58.48). The assembly was the place for the dissemination of a wide range of information: ten times each year officials made a report to the people of the revenues, and lists of confiscated property were read to the people, as were claims to inheritances and heiresses.<sup>70</sup>

Laws and decrees were disseminated also by their recital in the courts. Orators used different means of referring to the laws. Hyperides favoured paraphrasing the laws (*Hyp. Ath.* 13–17, 21–2); Aeschines, perhaps manipulatively, used a combination of verbatim quotation and interpretation (*Aeschin.* 1.19);<sup>71</sup> others quoted or paraphrased documents from the public records or called upon

<sup>67</sup> The coexistence of oral and literate forms of legislation has been stressed in the work of Thomas (1989: 41–9, 61–8; 1996); with particular reference to archaic law, see Arnaoutoglou (2004).

<sup>68</sup> Rhodes with Lewis (1997: 22–3). For a catalogue of riders to decrees, see Rhodes (1972a: 278–9).

<sup>69</sup> On proclamation of honorary decrees, see Ch. 4.2.2.4.

<sup>70</sup> Hansen (1987a: 123). <sup>71</sup> Merkelbach (1975: 145–50).

a secretary to read a document (D. 19.129, 46.10; Aeschin. 2.58–9, 89–92); others referred to a copy recorded on stone. Despite the piecemeal nature of publication of legislation on stone inscriptions,<sup>72</sup> the method with potentially the most impact was to cite ordinances inscribed on stone.<sup>73</sup> Quotation from a *stèle* could potentially provide exactitude and trustworthiness, and might have been related to the religious or monumental power of inscriptions.

An excellent example of the oratorical perspective that obligations of the citizen could be inspired by inscribed documents emerges in the prosecution of Nicomachus. Lysias' speech *Against Nicomachus* was a prosecution of an *anagrapheus ton nomon* (secretary of the laws) who failed in his duty of republishing the Athenian calendar of sacrifices. According to the councillor speaking for the prosecution, Nicomachus was guilty of claiming pre-eminence for his own skewed sacrificial calendar over the ancient version of the tablets (*kurbeis*) and pillars (*stelai*). The prosecutor sides himself with what he claims to be ancient documents, and suggests that the performance of the rites detailed thereon, as well as lying within the Athenian budget, has secured the success of the *polis* of the Athenians (17–19): consequently, he can place himself on the side of popular interests, piety, and tradition. On the other hand, 'when we are guided by the *stelai* as copied by this man, numerous rites are abolished' (21). As Todd has suggested, Nicomachus was the victim of resentment at expertise in written documents.<sup>74</sup> But the plaintiff appears to be as much an expert as Nicomachus given his knowledge of ancient documents. Epigraphy is employed as exclusive knowledge also by Apollodorus, who emphasizes the obscurity of the law governing the choice in marriage of the archon basileus: this was set up, for reasons of piety, in the sanctuary of Dionysus in Limnai, 'in order that few only might have knowledge of the inscription; for once only in each year is the sanctuary opened' (D. 59.76).

The use of documents and indeed inscriptions became more frequent in the law courts in the period after the Social War. Certain patriotic documents read out and inscriptions referred to in the speeches of this period may have been fabrications of the 340s,

<sup>72</sup> Thomas (1996).

<sup>73</sup> Thomas (1989: 47–8).

<sup>74</sup> Todd (1996).

elements of the Athenian effort to rouse spirits after the fall of Olynthus.<sup>75</sup> Indeed, Lycurgus was the keenest employer of documentary evidence and uses it to postulate moral standards and civic obligations.<sup>76</sup> This is no surprise, given that he was a prolific proposer and many of his decrees were inscribed on stone.<sup>77</sup> In his speech Lycurgus both quoted and paraphrased Athenian decrees condemning the traitor Phrynichus, ordering the destruction of the statue of the traitor Hipparchus, condemning those who deserted to the Spartans at Decelea, one passed against a traitor who tried to betray the city in 480 BC, and the obsolete decree of Demophantus against tyranny of 410 (112–15, 117–18, 122–7, 146).

Lycurgus clearly made much out of the physical manifestation of Demophantus' decree against tyranny, and stressed the significance of the location of the *stele* at the *bouleuterion*, 'as a reminder to those who daily met in the council over affairs of state what their attitude to men like this should be (*ὡς δέῃ πρὸς τοὺς τοιοῦτους ἔχειν*)' (126). Even though it does not appear as a document in the extant text, it is possible that he read out the text verbatim to the court. Lycurgus puts emphasis on the part of the decree that declares that Athenians are to kill those guilty of betrayal (*prodosia*: 127), using the provision as an example of the Athenians' harsh treatment of traitors while attempting to implicate Leocrates. Importantly, he was able to introduce the court to a decree that was no longer officially valid, given the unlikelihood that it was re-enacted after the revision of the law code in 403/2 BC.<sup>78</sup> Thus he employed documentary evidence, regardless of its historicity or lack of direct relevance to the matter at hand,<sup>79</sup> to support his claim that Leocrates' behaviour is out of step with Athenian and Greek practice and is therefore unacceptable.

<sup>75</sup> Habicht (1961); Rhodes and Osborne (2004: 444–5). For a catalogue and discussion of the phenomenon of inscribing ancient historical documents on stone, see Chaniotis (1988: 234–77).

<sup>76</sup> He was probably more prolific than even Aeschines, whose citation of historical documents has been noted by Thomas (1989: 88) and Lane Fox (1994: 141), and should be related to the fact that he acted as a public secretary (E. Harris 1995: 29–30).

<sup>77</sup> See Ch. 3.7.

<sup>78</sup> On the enactment of laws, see Ch. 3.3. Lycurgus misleads his audience into thinking that the decree was re-enacted after the fall of the Thirty: see Conomis (1959a); Sullivan (2002a: 196). Andocides (1.95–6, 99) calls this decree a law.

<sup>79</sup> Davies (1996a: 32).

His concern, however, was not with statutory accuracy or democratic accountability, but with reinforcing his interpretation of civic obligation.

This tendency to exploit the power of inscriptions to augment the effectiveness of documentary evidence extended beyond those inscriptions recording laws and decrees.<sup>80</sup> An unknown pleader claimed harmony with the intention of the accounts of the naval *epimeletai* in the speech *Against Euergus and Mnesibulus* preserved in the Demosthenic corpus (D. 47; see Chapter 4.3.3). The speaker made much of the fact that Theophemus' name appears on the record of the naval *epimeletai* listing indebted former trierarchs—at a time when the outbreak of the Social War created general alarm concerning the state of the Athenian navy.<sup>81</sup> He claims that the appearance of the names on *stelai* compelled him to recover from Theophemus what he owed (22–5). Whereas the speaker behaves in accordance with the decrees and the law (19), he claims that Theophemus' activities have an extremely detrimental effect: among other consequences they threaten to shake the Athenians' faith in their inscriptions (18). The speaker's interpretation of inscribed documents stresses not democratic accountability but employing them as guidelines for the right performance of civic obligations. It must be concluded that reference to documents and in particular inscriptions in the law courts augmented the argument that opponents had failed to perform the obligations of the citizen with the implication that they had ignored *polis*-sponsored statutes and public documents.

#### 4.1.3. Extra-Statutory Bases of Civic Obligation

Sealey and Ostwald have pursued the idea of the sovereignty of law in fourth-century Athens at great length.<sup>82</sup> Their conclusions have been challenged by those who suggest that sovereignty belonged to

<sup>80</sup> On the importance of wills, deeds, and contracts in Athenian oratory, see D. Cohen (2003).

<sup>81</sup> As Davies (1994: 211) has noted, records of this trierarchy survive in the published accounts of the overseers of naval affairs (*IG II<sup>2</sup>* 1612.314, 1622.615).

<sup>82</sup> Ostwald (1986: 412–96); Sealey (1981–2, 1987); Chankowski (1989: 232–3).

the juries in the law courts,<sup>83</sup> and that the procedures for restraining constitutional innovation were weaker than the power of the assembly,<sup>84</sup> by those who emphasize the role of political experts,<sup>85</sup> and by Ober's contention that the Athenians were capable of maintaining two philosophically contradictory positions: the 'rule of law' and sovereignty of the people.<sup>86</sup> But the case for the sovereignty of the laws has also been weakened by the evolution of approaches to Athenian and Greek law. The present scholarly consensus suggests that upholding a fixed concept of justice or the laws themselves was not the predominant consideration regarding the application of law in Athenian law courts.<sup>87</sup> Law was a tool in the hands of those who were able to manipulate it:<sup>88</sup> Demosthenes, for instance, strengthened his case that Aristocrates' decree awarding inviolability to King Cersobleptes of Thrace was contrary to Athenian laws by reading them to the audience and discussing the implications of their destruction (D. 23.24–99).

Moreover, some scholars have pursued the investigation of the interplay of law and social values: Cohen, for instance, has argued that statutes were expressions of already existing social values.<sup>89</sup> Herman, moving in a different direction, has made a case for the replacement, in the fourth-century law courts, of traditional 'tribal' patterns related to revenge, with a 'civic' code.<sup>90</sup> *Pace* Herman, the notion that parameters of behaviour based on law could be cooperative

<sup>83</sup> Hansen is the main advocate of the idea that the law courts were the sovereign body in Athens, though the position has had other advocates such as Ruschenbusch (1957) and goes back to Meier and Schoemann (1824: 25).

<sup>84</sup> Sundahl (2003) suggests that the Athenian democracy of the fourth century was no less radical than that of the fifth century and that the assembly was still the sovereign body in that period.

<sup>85</sup> Rhodes (1972a: 208–23) has emphasized the role of the council in running Athens, but does not suggest that it was a sovereign body but rather an essential adjunct; he has also stressed the formal and informal powers of politicians (Rhodes 2000). Dawson (2006: 95) emphasizes the power of the council in the fifth century.

<sup>86</sup> Ober (1989a: 144–7, 299–300).

<sup>87</sup> Foxhall and Lewis (1996). Christ has suggested that even litigants paid little attention to the letter of the law (M.R. Christ 1998: 193–224).

<sup>88</sup> On Lysias' manipulation of the law, see Bateman (1958).

<sup>89</sup> D. Cohen (1991, 1995a).

<sup>90</sup> A restatement of his position can be found at Herman (2000), a reply to the objections of W. Harris (1997).

with or even derivative of those based on values outside law is an important one for understanding the negotiation of civic obligation. Laws could derive from, create, and reinforce social differences and hierarchies, and do not necessarily stand in direct opposition to extra-legal parameters.<sup>91</sup> Correspondingly, the non-comprehensive nature of the Athenian set of laws, the difficulty of the process of changing them,<sup>92</sup> their 'open texture,' which deprived the juries of definitions that would help guide their decisions,<sup>93</sup> and their occasional obscurity of meaning meant that activity in the law courts necessitated the introduction of parameters other than those of law. Therefore, it might be expected that ideas about civic obligation could run concurrently with, derivatively of, and even independently of the word of the law.

In some cases, it appears that the laws of Athens did not explicitly enforce the obligation which the plaintiff was accusing the defendant of having avoided, or the orator simply chose to explain his prosecution in terms more elaborate than straightforward citation of a law. On such occasions, the plaintiff might even reverse the relationship of citizens and statutes, emphasizing that a jury, the *demos*, or a litigant was responsible not just for defending the laws but also for statutory innovation, telling the jury that they had to act as lawmakers, or decide on justice themselves, independently of law (Lycurg. 1.9; Lys. 14.4, 15.9; D. 20.118). Indeed, it was feasible to suggest that the jury should decide on what is just in cases that were not covered by the laws (D. 39.40). For the defendant, it was expedient to present one's own behaviour as supererogatory and not purely the result of mere submission to a law code: this is the claim that Apollodorus made when insisting that he had served as trierarch beyond his appointed time (D. 50).

<sup>91</sup> This position mirrors the 'permeable' and 'productive' discourses of law outlined by Golden: see n. 53.

<sup>92</sup> Demosthenes was exaggerating for purposes of persuasion when he compared Locrian legislative conservatism with Athenian innovation at D. 24.139–41. On the conservative nature of the Athenian law code, see Boegehold (1996); for the argument that conservatism and change coexisted in the courts, see Volonaki (2000).

<sup>93</sup> E. Harris (2000), on the 'open texture' nature of Athenian laws; Ruschenbusch (1957: 257–74) suggested that the vague wording of Athenian laws empowered the courts with sovereignty. For the idea that choice of legal procedure was open, see Osborne (1985*a*).

#### 4.1.4. Piety

Piety as a basis of civic obligation has particular interest in this period of history given that, as Mari has noted, it is possible to observe an increased tendency among orators in the last third of the fourth century to conceive of crimes against the *polis* as ethical, and accordingly as religious, crimes.<sup>94</sup> This connection is most clearly expressed in Lycurgus' prosecution of Leocrates, where the abandonment of the city is presented simultaneously as betrayal, the destruction of democracy, and impiety (*prodosia*, *katalusis tou demou*, and *asebeia*: 147).

Lycurgus emphasizes the importance of piety in his construction of civic obligation most strikingly in his discussion of the power of oath: 'The power which keeps our democracy together is oath. For there are three things from which the constitution is built up: the magistrate, the juror and the individual. Accordingly each of these gives this pledge, as is fitting' (Lycurg. 1.79). Lycurgus quoted the ephobic oath, in which the swearer promised not to dishonour his arms, nor to abandon his comrade, to defend sacred and profane things, to make his city bigger and better if at all possible, and to respect and defend the existing and future ordinances of the city. At the time of Lycurgus' speech, all Athenian citizens who had fulfilled ephobic service were bound by oath to these terms. Lycurgus therefore aimed to remind the jurors that Leocrates has broken the military obligation to defend the city, if he in fact had taken the oath (Lycurg. 1.76–7). Lycurgus' emphasis on the significance of oath coincides in terms of its intention with the nearly contemporaneous decision of Dio, priest of the cult Ares and Athena Areia at Acharnai, to dedicate a *stele* recording the ephobic oath at Acharnai (RO 88).<sup>95</sup>

Lycurgus was not alone in his deployment of oath: some reminder of the jurors' oath is mentioned in almost half of the preserved law court speeches:<sup>96</sup> the dikastic oath was a prioritized basis of obligation in the Athenian law courts. By reminding the jury of the oath, as

<sup>94</sup> Mari (2003), drawing extensively on the speech of Lycurgus.

<sup>95</sup> Conomis (1958b: 82–3) suggests that the version quoted by Lycurgus was adapted or originated from another source. For more discussion, see Chs. 4.4.4, 5.2.1, 5.5.3.

<sup>96</sup> Johnstone (1999: 37). On the power of the oath as a religious and moral mechanism for guaranteeing a given statement, see Burkert (1985: 250–4); on the



well as supporting the claims of law, the orator invoked their identity as a community, and their adherence to justice. Other parties involved in jurisdiction, such as arbitrators and witnesses, would also swear an oath ([Arist.] *Ath. Pol.* 55.5). Someone launching a *graphe paranomon* against an unconstitutional proposal would swear an oath (D. 18.103), while those bringing a charge of homicide to the Areopagus would swear an oath over the entrails of a boar, ram, and bull slaughtered by particular magistrates on designated days (D. 23.67–9).

Council members swore an oath which always included the pledge to counsel according to the laws and the best things for the Athenians.<sup>97</sup> Oaths were taken by other magistrates, and it is likely that the wording of these oaths would depend on the office concerned. One such oath is that taken by the *gerairai*, the officials who were appointed by the archon basileus, and is cited by Apollodorus in contrast to Neaira's daughter, who is made impure by her non-Athenian parentage: 'I live a holy life and am pure and unstained by all else that pollutes and by commerce with man, and I will celebrate the feast of the wine god and Iobacchic feast in honour of Dionysus in accordance with custom and at the appointed times' (D. 59.78). Quotation of this oath helps Apollodorus to support the argument that piety to the gods dictates that it is the obligation of the jury to condemn Neaira.

Takers of oaths would swear upon themselves varying punishments for perjury,<sup>98</sup> but destruction of the perjurer and family were probably standard (D. 23.68–9; And. 1.98). The frequency of oratorical employment of oaths suggests that it was the most potent way in which piety was used as a foundation of the obligations of the citizen. However, another regular religious assurance of civic obligation enacted in a public context was the curse the herald recited before each meeting of the assembly or council. There is no record of the text of the curse, but mentions of it in oratory and comedy show that it was directed against bribe-takers, those who deceived the assembly or council by saying and thinking things contrary to Athenian interests, and those who plotted against the Athenians or planned to set up a tyranny (D. 18.282, 19.70–1, 23.97; Din. 1.47, 2.16; Ar. *Th.* 331–51).

significance of oaths and oath-challenges in forensic strategy, see Gagarin (1997*b*); on the role of curses in the law courts, see Faraone (1999).

<sup>97</sup> Rhodes (1972*a*: 194).

<sup>98</sup> Burkert (1985: 252–3).

The Athenians looked towards religion and piety in the negotiation of specific obligations. Oracles appear in a number of roles. In his speech *Against Meidias*, Demosthenes read out the oracles that prescribed the sacrifices and practices owed to Dionysus (D. 21.52–3), and quotation of them allowed him to eulogize his performance of the *choregia* as a religious duty (D. 21.56). Demosthenes in the speech *On the Navy-Boards* opens up the possibility that oracle-mongers might have played a role in motivating the payment of emergency taxes when he told the assembly that not even their warnings would inspire the Athenians to make contributions (D. 14.25). The decree about the *hiera orgas* ultimately refers authority to the decision of the Delphic oracle (RO 58.48–50), a strategy that would justify their decision in the face of Megarian opposition.<sup>99</sup> The advice of *exegetai* could be held to determine obligations or guide interpretation of the law (D. 43.66, 47.68–9).

It is possible also to conceive of inscriptional publication as providing a short cut to bestowing divine sanction upon laws and decrees. The religious element of inscriptional publication was manifested and perpetuated by text, decoration, and place of publication. The word *theoi* ('the gods') appears as a superscript frequently on laws and non-honorary decrees (e.g. Schwenk 3, 17; *IG II*<sup>2</sup> 140; RO 26). This invocation may have had its origins as an apotropaic curse on anyone who destroyed the inscription,<sup>100</sup> and was intended to bestow divine protection on the stone.<sup>101</sup> The declaration, as a superscript or within the prescript, of *agathe tuche* ('with good fortune'), occurring between 360 and 318, may have played a similar role, as an invocation of good luck grounded by a reference to the cult promoted by Lycurgus (RO 22.7–8; *Ag.* xvi. 73.5; Schwenk 6.5–6).<sup>102</sup>

It has been recognized that in the fifth and fourth centuries the Athenians set up the majority of their laws and decrees on the Acropolis.<sup>103</sup> Osborne related this to its religious significance,

<sup>99</sup> For discussion of the Athenian strategy, see J. McDonald (1996); Scafuro (2003); Rhodes and Osborne (2003: 276–81).

<sup>100</sup> Pounder (1984); for extended discussion, see Pounder (1975).

<sup>101</sup> Henry (1977: xi) comments that the significance of the term 'is not completely evident, but it clearly implies a hoped-for divine sanction for the business in hand'.

<sup>102</sup> On the cult, see R. C. T. Parker (1996: 231–2, 243, 244; 2005: 421–2, 456); Tracy (1994: 241–4).

<sup>103</sup> Liddel (2003).

suggesting that 'by inscribing them and erecting the *stelai* on the Acropolis, political decisions are taken from the world of debate, from the political world of the Pnyx and the agora, and replaced before the eyes of the gods, as records of human achievements inviting protection'.<sup>104</sup> The impression of religious protection could be augmented by the addition of a frieze above the text of the legislation. Lawton has postulated that 'figures . . . translate the legality of the documents into the familiar and authoritative idiom of votives and implies that the conditions, agreements, and honours contained in the documents are divinely inspired and sanctioned'.<sup>105</sup> The *stèle* of the anti-tyranny legislation of Euclates preserves the only extant frieze on a law.<sup>106</sup> This represents the interaction of two personifications: *Demokratia* crowning *Demos*. Such an illustration introduces a theistic interpretation of the substantive content of a law prescribing activity to be carried out in the name of the Athenian people and her democracy.<sup>107</sup> Publication on stone, it seems, would have augmented the religious authority of a piece of legislation through divine sanction, and contributed towards public esteem of the regulations contained on the stone. As will become clear (4.3), the dedication of inscribed objects recording the fulfilment of obligations was another way in which virtuous public behaviour was construed as piety.

#### 4.1.5. 'Sharing' in the Construction of Obligation

In terms of both interpersonal relationships and relations with the state, the male citizens of Athens were presented in fourth-century oratory as part of a communal society within which collective practices were integrated into a conception of public life. Cultural activities, such as dining in a public context or participation in shared sacrifice, were as significant as their political equivalent.<sup>108</sup> Indeed, both were symptomatic of the privileges, rights, or obligations of a citizen. In historiography and oratory the communal aspect of both

<sup>104</sup> R. G. Osborne (1999: 347).      <sup>105</sup> Lawton (1995: 29).

<sup>106</sup> The grain tax law is capped by an irregularly contoured moulding which may have carried a painting representing heaps or sacks of grain: see Stroud (1998: 2).

<sup>107</sup> Lawton (1995: 100); for an exploration of the symbolic associations surrounding the sculpture and the text of the law, see Blanshard (2004a). See also Ch. 4.1.2.

<sup>108</sup> Schmitt-Pantel (1990: 209; 1992: 249–52).

religious and political activity was described with words generally prefixed with the preposition *meta* ('with'), translating as 'sharing in' or 'partaking in', to describe both political and religious participation<sup>109</sup> and the state of citizenship (Lys. 6.48; Is. 3.37; [Arist.] *Ath. Pol.* 26.4).<sup>110</sup> The same language appears in public documents: an honorary decree of the deme of Lamptraia honoured Philokedes of Acharnai for contributing to sacrifices and participating in public affairs (*IG II<sup>2</sup>* 1204.3–10).

Certain privileges could be presented as rewards for sharing in the obligations of civic life: Apollodorus criticized his enemy Stephanus for removing the right of free speech (*parrhesia*) from those who 'participated in the city (*metechontas tes poleos*)', in this case a tax-collector whom he had prosecuted for avoiding military service (D. 59.28). When exhorting the supporters of the Thirty at Eleusis in 404, Critias urged that 'just as you share in the privileges, so you should share in the dangers' (X. *HG* 2.4.9);<sup>111</sup> the democrats made use of a similar rhetoric of sharing (X. *HG* 2.4.20). The use of the verb *metadidomi* ('to give a share in') by Hyperides to describe the bestowal of citizenship suggests that the award of citizenship could be perceived as a grant in shared participation (Hyp. *Ath.* 32).<sup>112</sup>

Ostwald has recently suggested that citizenship, as it is conceived of by Aristotle in the *Politics* (1276<sup>b</sup>), is not concerned so much with rights, but rather with the idea of *methexis*, a 'sharing' in the constitution.<sup>113</sup> He suggests that this notion is useful because it emphasizes the participatory nature of citizenship as well as the reciprocal exchange between the duties and the privileges of citizenship. As Demosthenes claims in his case against Meidias, what made citizens so ready to perform with *philotimia* (honourable zeal) and to spend

<sup>109</sup> [Arist.] *Ath. Pol.* 7.4, 8.5, 26.3, 42.1; [X.] *Ath. Pol.* 1.2–3; D. 18.236, 21.188, 51.19, 57.3. For the employment of other *meta*-formulae, see Bordes (1982: 491–2).

<sup>110</sup> For this conception of citizenship, see Ostwald (1996); Welter (1993: 14, 25).

<sup>111</sup> *δεῖ οὖν ὑμᾶς, ὥσπερ καὶ τιμῶν μετέχετε, οὕτω καὶ τῶν κινδύνων μετέχειν.*

<sup>112</sup> Whitehead (2000: 342) suggests this 'is not documentary terminology, merely Hyperides' own gloss', but points to parallels at Lys. 25.3 and Arist. *Pol.* 1306<sup>a</sup>25–6. Another parallel is at D. 23.65: 'it was we, men of Athens, who made Charidemus a citizen, and by that gift bestowed upon him a share (*metedokamen*) in our civil and religious observances, in our legal rights, and in everything in which we ourselves participate (*metestin*)'.

<sup>113</sup> Ostwald (1996).

their money on public interests is that each one has the privilege of participating (*meteinaí*) in democracy (21.67).<sup>114</sup> The fact that such terminology was used in the language of family membership illustrates the parallel conceptions of involvement in the *polis* and involvement in the *oikos*.<sup>115</sup>

The deployment of words using the *meta-* prefix in Lycurgus' speech *Against Leocrates* provides some insight into how the notion of sharing in the city was employed in the construction of civic obligation. In contrast to the fighters at Chaironea and even their wives and children, Leocrates refused to share in the danger facing the city at this time (Lycurg. 1.48, 141). Indeed, the only thing in which he participated was the 2 per cent tax collection (19, 48).<sup>116</sup> He shared his escape only with his possessions and his mistress when he fled Athens (17). Rather than going out to meet the enemy, like most of his compatriots, Leocrates chose to 'share in' the danger of standing trial in front of his fellow citizens (130). Furthermore, his supporters are accused not of compliance, but of participating (138) in the crimes.

In the same speech, forms of the verb *meteimi* ('I partake') are used also to refer to participation in privileges. Lycurgus thinks that it is wrong for Leocrates to participate in the public rites (5), religious sacrifices, the *agora*, or the laws and constitution (142). Leocrates is one of those citizens who is happy to share in the good things granted by the city, but refuses to help it in a time of need. Such men as these, Lycurgus suggests, deserve death because they have broken the code of reciprocity between citizen and *polis*: 'such men are bad, whether as citizens, guests, or as personal friends; for they will share in the advantages offered by the state (οἱ τῶν μὲν ἀγαθῶν τῶν τῆς πόλεως μεθέξουσιν) but will not consent to assist it too, in times of difficulty' (133). Such a system is made explicit also by the speaker of Lysias' speech *Against Philon*. Here, the speaker tells the audience that citizens who have their hearts set on the interests of the *polis* should be members of the *boule* since only these 'consider themselves obliged to share in her calamities as they also share in her advantages

<sup>114</sup> By way of indirect contrast, a criticism made of the Macedonian state was its inability to share in the king's *philotimia* (D. 2.16).

<sup>115</sup> C. B. Patterson (1998: 177, 181). On this parallelism, see Ch. 4.1.6.

<sup>116</sup> This was known as the *pentekoste* (fiftieth) and was levied upon all imports and exports: see And. 1.133; D. 21.133, 166; 35.29–30; 59.27.

(μετέχειν τὸ μέρος τῶν δεινῶν, ὥσπερ καὶ τῶν ἀγαθῶν μετέχουσι)' (Lys. 31.5; cf. 7). In this way, Demosthenes, Lysias, and Lycurgus suggest that participation is based on a notion of reciprocity between the individual and the state. The citizen, they argue, is obliged to share in the dangers which the city undergoes in wartime in return for advantages that the city bestows.

Orators grounded civic obligation also by drawing analogies from popular understandings of relationships between individuals.<sup>117</sup> Indeed, the relationship of neutral reciprocity intimated by the use of *meta-* terms was elaborated in one way by comparing the citizen–*polis* relationship to the parent–son relationship and in another way by comparing the obligations of the citizen to the *polis* to those of the contributor to shared meals.

#### 4.1.6. Reciprocity between Citizen and *polis*

Nielsen has noted a tendency in documentary and literary sources across the Greek world in the classical and Hellenistic periods to refer to the *polis*, more so than any other association, as a *patris*, or fatherland.<sup>118</sup> *Patris*-terminology was used to evoke several kinds of civic obligation to the city: hoplites were said to encounter danger, defend, make war, or bear their arms for the *patris*; deserters were described as traitors to their *patris*; and political activity was said to be conducted on behalf of the *patris*. As for the privileges of citizenship, these were often framed in the same terms: someone was said to be 'given a share' in the *patris*, men are described as citizens of their *patris*, the *patris* provided for the war orphans, and the *patris* was said to grant public burial to its war dead.<sup>119</sup> The term *patris* evoked the idea that the city acted as a father (*pater*) to its citizens.<sup>120</sup> The appearance of the

<sup>117</sup> Farrar (1996: 122).

<sup>118</sup> Nielsen (2004: 74) suggests that 'the term *patris* may be said to function almost as an emotional synonym of *polis*. So, to a Greek the *patris* was his *polis*, and for his *polis* he was expected to lay down his life.'

<sup>119</sup> Nielsen (2004: 72–4). On Athenian provision for orphans, see Stroud (1971: 288–91); Hornblower (1991: 315).

<sup>120</sup> Strauss investigates the literal connection between *patrios* and *pater*, suggesting that 'any connotation of "father" in a term of political discourse is likely to have been strong and evocative' (1993: 60; cf. 191).

analogy in oratory is highly relevant to understanding the significance and nature of the idea of reciprocity in the negotiation of obligations in fourth-century Athens.<sup>121</sup>

Analogous comparison between the parent–child and citizen–*polis* relationship was used in the Athenian law courts chiefly to express the notion of loyalty to the Athenian *polis* which would in turn set in relief the defendant's neglect of duties. Lysias, in his prosecution of Agoratos, who claimed to be an honorary citizen of Athens, told his audience, 'he deserves more deaths than one: for the same man who says that the people have made him one of them is found to have injured the people whom he himself calls father' (Lys. 13.91).<sup>122</sup> To injure one's homeland, whether natural or adopted, constitutes behaviour as despicable as injuring one's parent.

The authoritarian strand of this analogy is enunciated most famously in Plato's *Crito* and equally vividly by Lycurgus. The idea, known in fifth-century drama, that citizens owe to the *polis* the cost of their nurture, which they might repay by giving their life in its defence,<sup>123</sup> is employed in the speech of the Laws in Plato's *Crito* to negotiate the obligation of obedience to the laws of the city. The Laws argue that Socrates has a responsibility to obey their commands, given that it was only through them that Socrates' mother and father begat him (Pl. *Cri.* 50d). Furthermore, Socrates is represented, in the most authoritarian part of the dialogue, as offspring and slave of the Laws (50e).<sup>124</sup> The parent–offspring relationship is presented as one

<sup>121</sup> For a general study of reciprocity in ancient Greece, see Gill *et al.* (1998); for particular reference to reciprocity in Attic oratory, see Millett (1998a); in the Periclean funeral speech, see Monoson (1994b).

<sup>122</sup> For more references to the debt to the fatherland in Greek literature, see Blundell (1989: 44).

<sup>123</sup> An extension of the idea that land provides nourishment and parenting for every citizen is found in Euripides (*Heraclid.* 826–7; cf. *Isoc.* 7.74). In Sophocles' *OT* (322–3), Oedipus taunted Teiresias by saying that he is hostile to the city that nurtured him. The idea that the earth was a parent is also known, and should be closely connected to the idea of autochthony (Aesch. *Seven* 477; *Choephoroi* 66–70; D. 60.4), and the idea that a reciprocal debt was owed (Ar. *Lysis.* 640). For discussion of the device in Aeschylus' *Seven against Thebes*, see Cameron (1971: 93). On autochthony and its link to democracy, see Loraux (1986: 193–4); Saxonhouse (1996); Rosivach (1987).

<sup>124</sup> Different readings of this dialogue emphasize this passage more or less. Kraut, for instance, underplays the significance of the passage in his liberal reading of the work (Kraut 1984: 103–10, 161–71); cf. Penner (1998: 155–66); F. Rosen (1998);

which precludes reciprocity of a negative sense:<sup>125</sup> violence by the parent does not justify a return of violence by the offspring (50e–51a). The Laws abandon the metaphor at the point at which their ideology becomes less authoritarian. They argue that Socrates might persuade them that they are wrong (51b) and present the possibility that Socrates could have withdrawn from the relationship (51d). So the parent–offspring analogy appears to have been employed to support an authoritarian ideology of the rule of law and one that implies the fulfilment of duties by the offspring.

Lycurgus uses the analogy in a comparably authoritarian sense, but does not admit the get-out clause that the Laws grant Socrates. At section 53, Lycurgus argues that, by fleeing the country in the time of danger, Leocrates has failed to repay his upbringing (*ta tropheia*) to his *patris*, suggesting that reciprocity and mutual benefit were characteristics of the citizen–*polis* relationship. In a similar turn of phrase, Lycurgus talks about the jurors owing a debt of truth and justice to their *patris* (20). It seems that Lycurgus uses the analogy to ground a feeling of obligation to help and care for one's homeland and for the jurors to do their service in an appropriate manner. The relationship is portrayed as one between debtor and creditor, in which the citizen takes on the subordinate role of the child. For Lycurgus, a man cannot obtain a new land towards which he will feel the same loyalty as that which he feels towards his homeland (Lycurg. 1.47–8; cf. 21). Lycurgus' use of the metaphor is intended to justify the obligation of the citizen to risk his life on behalf of his country, and there is no suggestion that the relationship was entered into voluntarily. Using a different metaphor, Lycurgus claimed to be working on behalf of those who have paid their *eranos* (contribution) to the city. By this he referred to those who fought at the battle of Chaironea in 338 (143).<sup>126</sup> However, Leocrates has neither died nor has he fought at Chaironea, so the city owes him nothing. The point that perhaps was

Brickhouse and Smith (1998). Elsewhere, Plato regarded obligation to one's parents as the most important of all debts to be repaid (*apodidonai*: Pl. *Laws* 717c).

<sup>125</sup> For the argument that positive reciprocity was more important than negative reciprocity in Greek ethics, see Herman (1998).

<sup>126</sup> Compare Thucydides' statement in Pericles' funeral speech that those who have paid the *kallistos eranos* can expect praise in return (Th. 2.43.1 with the comments of Hornblower (*Commentary* i. 311–12) and Monoson 1994b).



being made is that citizens are members of the *eranos* group of the city and are therefore obliged to obey laws, fight for their country, and participate in the affairs of the city.

In the Fourth Philippic, Demosthenes evoked a reciprocal relationship between citizen and *polis* in order to justify his demand that the people contribute financially to the war fund:

I suppose the contribution (*eranos*) assessed by both authorities, by nature and by law, ought (*dei*) to be brought honestly and paid cheerfully to parents. Therefore, just as each one of us has a parent, so ought (*dei*) we to regard the collective citizens (*tous sumpantas*) as the common parents of the whole state (*sumpases tes poleos koinon*)... and it is our obligation (*prosekei*) to look elsewhere for means to save any of their wants from being overlooked. (D. 10.40–1)

In this way, Demosthenes made the collective citizens the object of the analogy: they became the body towards which repayment was owed. The term *eranos* requires explanation: it was originally used to denote a meal towards which a group of participants contributed a share (Hom. *Od.* 1.226). By the end of the fifth century, as Millett explains, ‘the term had evolved to include a credit system, common in Athens, whereby contributors lent out small sums to help out a common acquaintance in need, and in so doing perhaps formed an association.’<sup>127</sup> The making of such a loan was said by the speaker of Lysias’ *For Polystratus* to be ‘the best proof of a man’s friends’ (Lys. 20.12).<sup>128</sup> In a forensic context, Demosthenes used another metaphorical reference to the term to justify obedience to the law, which he claims inspires political participation:

Since then it is admitted that the laws, after the gods, preserve the state, it is the duty of all of you to act just as if you were making an *eranos* to your club. If a man obeys the laws, respect and commend him for paying his contribution in full to his fatherland; if he disobeys, punish him. For everything done at the bidding of the laws is an *eranos* made to the state and community. Whoever leaves it unpaid, men of Athens, is depriving you of

<sup>127</sup> Millett (1991: 155).

<sup>128</sup> The technical use of the term is known in fourth-century oratory: Lycurgus says that Leocrates paid off his personal *eranos* debts before leaving the country (Lycurg. 1.22; cf. D. 27.25, 53.11, 59.30–2; Hyp. *Ath.* 19, with discussion by MacDowell 1990: 322).

many great, honourable, and glorious benefits, which he is destroying to the best of his ability. (25.21–2)

In this passage, obedience to the laws and political participation are said to be motivated by the desire of the citizen to donate, and, in return, the contributor might expect respect and commendation.

Another application of the *eranos* metaphor highlights the idea that although participation was voluntary, once a citizen had participated, they became embedded in a network of reciprocity. Although one could choose whether to join an *eranos* group, once one became a member, there was reciprocal obligation to pay a contribution. Accordingly, in his fifth letter Demosthenes demanded *charis* in return for his *eranos* of mastering political oratory (*Ep.* 5.6). His *eranos* of political participation was supererogatory but still obliged the *polis* and *demos* to make a return of gratitude.

An extension of this idea is the concept of citizens as consensual contributors to the well-being of the city. As Bakewell has recently pointed out on the basis of an analysis of Lysias speeches 12 and 31, the orators sometimes conceived of the group consensually contributing to the good of society as *hoi epithumountes* (the spirited ones), participants who were affectionately attached to Athens and were ready to place its interests above their own interests.<sup>129</sup> The measure of the *epithumia* (spirit) of a citizen or a metic could be used to gauge his suitability to retain or be awarded citizenship (*Lys.* 12.45; *D.* 23.126). Lysias claimed that the only citizens who had their hearts set (*epithumountes*) on acting as councillors justly did so, as such men consider themselves obliged to share (*metechein*) in both the calamities as well as the advantages of life in the city (*Lys.* 31.5).

This investigation of analogy, therefore, has revealed two conceptions of civic obligation. Participation and supererogatory performance of civic obligations could be presented as a public-spirited and voluntary contribution to the reciprocal exchange-relationship between individual and *polis*. However, it was equally feasible to argue that, once one had partaken in the privileges of democratic citizenship, one was obliged to return the *eranos* by way of consenting to the fulfilment of obligations and obedience to the laws.

<sup>129</sup> Bakewell (1999: 19). Bakewell develops the idea of participants in political processes as forming a 'consent group'.

#### 4.1.7. Emulation of Historical and Mythological Example

One recent study of forensic rhetoric has suggested that speakers in the law courts combined mythological, historical, and contemporary examples to considerable effect.<sup>130</sup> Indeed, the fact that speakers drew from famous historical or mythological examples in trials concerning the behaviour of individuals is a good indicator of the seriousness in which were held the implications of every citizen's performance of obligations. Historical and mythological examples were employed in the negotiation of obligations in a number of different modes. One was to argue that particular behaviour was in tune with the spirit of the Athenian *polis*. On the most abstract level, Demosthenes claimed that custom dictated that it was his duty (*dei*) to launch a prosecution of Aristogeiton (D. 25.2). In his prosecution of Androtion he claimed that it was necessary (*dei*) for the individual acting on the city's behalf to act in the spirit of that city (D. 22.64; cf. 20.13). Appeals to custom were common in the setting out of religious obligations. The law concerning the Mysteries orders that the *epimeletai* are to oversee the festival 'according to the ancestral custom' (*kata ta patria*, Ag. xvi. 56 A 30). But historical and mythological examples were sometimes cited by orators with a higher level of specificity in order to set a standard of civic behaviour that is to be emulated or avoided.

Historical examples were employed in symbouleutic oratory to rouse, summon to service, or admonish the citizen-body.<sup>131</sup> The historical example was most commonly used in forensic speeches for the purpose of comparing the virtuous acts of ancestors with the bad behaviour of the man on trial,<sup>132</sup> or to urge the jury to make a verdict in keeping with what the speaker claimed to be the traditions and principles of the Athenian *polis*. Demosthenes compared the virtuous legislation of Solon with the illegal proposal of Androtion (D. 22.25), and contrasted Meidias' behaviour with Alcibiades' political skills, Olympic victories, and patriotism in battle (D. 21.144–7).

<sup>130</sup> Lanni (2004), suggesting that these amounted to a persuasive but not binding concept of precedent.

<sup>131</sup> Wilson (1996: 324); Worthington (1996); Piepenbrink (2001: 125).

<sup>132</sup> On the use of juxtaposition in the orators' use of history, see Nouhaud (1982: 67–70).

Lycurgus uses myths and history in a similar way, in order to ground the obligation of wartime patriotism as well as the obligation of the jury to prosecute Leocrates. The historical examples he uses do not pay much attention to historical accuracy: some were based on apocryphal documents fabricated probably in the 340s. At this time, some of these examples were set up on stone or bronze as examples of patriotic behaviour,<sup>133</sup> and there is nothing to indicate that they were intended to be read as factual accounts of history. As Thomas has pointed out, ‘we must remember that history was not taught in its own right... transmission was affected by rhetorical needs and by the patriotic desire for admirable exempla... like any other oral traditions’.<sup>134</sup> Indeed, Lycurgus prefaced the story of the Place of the Pious, warning the audience that the tale is rather like a myth (*muthodesteron*)<sup>135</sup> but was still worth hearing (Lycurg. 1.95).

Historical and mythical examples are included by Lycurgus for two reasons: to inspire the audience with the feeling that they have an obligation to behave in a patriotic way by reminding them of their ancestors’ readiness to sacrifice their lives on behalf of the country, and to remind them that they should emulate the harshness of their ancestors’ punishment of treason. These factors are to be contrasted with Leocrates’ behaviour to stipulate a verdict of death. Because they play the same functional role in the speech, it is fitting to investigate his use of mythological and historical examples simultaneously.<sup>136</sup>

<sup>133</sup> See Ch. 4.1.2.

<sup>134</sup> Thomas (1989: 201); Pearson (1941: 219–21) argued that the inaccuracy of orators’ discussion of history would not have been detected by audiences who lacked accurate historical knowledge. This purported ignorance has, however, been disputed by Harding (1987b: 35–6). On problems in Lycurgus’ accounts of historical events, see Ostwald (1955: 115 n. 61); Burt (1962: 65, 67, 109, 115); Hignett (1963: 413–14).

<sup>135</sup> If we agree with Hornblower (1995: 52) that Lycurgus ‘knew his Thucydides’, then we might envisage this to be a reaction to Thucydides’ claim that his history omitted the mythological (Th. 1.22.4; cf. Flory 1990). For alternative explanations of Lycurgus’ term, see Gotteland (2001: 58).

<sup>136</sup> Perlman (1961) has noted that orators were most likely to draw from episodes concerning the Pisistratids, Persian wars, and mythology. Worthington (1994: 113) suggests, against Pearson (1941), that ‘to a large extent mythological events may have been deemed less useful than more recent history for the conditions of the later fifth and fourth centuries’, and that the history of Athens’s fifth-century empire would have been useful for fourth-century propaganda purposes. But history and mythology appear to have had equal weight in the grounding of civic obligations.

## 4.1.7.1. Athenian Patriotism

Lycurgus' examples aim to ignite Athenian patriotism by recalling the virtuous conduct of Athenians on behalf of the Greeks. The victory of the Athenians at Marathon (Lycurg. 1.104, 109), the description of Salamis (70), and the quotation of the Plataea oath (81)<sup>137</sup> are contrasted with Leocrates' failure to uphold the reputation of the Athenians among the Greeks: he has neglected the Athenian virtues of piety, reverence for ancestry, and ambition for the country (*πρὸς τὴν πατρίδα φιλοτίμως*), as well as neglecting customs and sacred traditions (15). Lycurgus assimilates Panhellenic virtues with Athenian virtues, claiming that Tyrtaeus was an Athenian (106),<sup>138</sup> and claiming that the Athenians were inspired by the poetry of Homer at Marathon (103–4). In this way, Lycurgus promotes the view that Athens's virtue has been employed on behalf of all of the Greeks, giving Athenian self-sacrifice a special moral value.

Lycurgus is interested in themes of self-sacrifice, and he puts forward several mythical examples. Having quoted the ephebic oath, Lycurgus relates the story of Codrus, the king of Athens who died on behalf of his country in a mythical war against the Peloponnesians (84–8).<sup>139</sup> The story tells not only of Codrus' heroic death, but also of the Athenians remaining resolute inside the city walls while the Peloponnesians invaded Attica (85). Those who defend their city, Lycurgus concludes, deserve to share (*metechein*) in it after death; traitors like Leocrates are to be cast outside the borders (89). Lycurgus goes on to quote the story of Queen Praxithea's sacrifice of her daughter on behalf of Athens from Euripides' *Erechtheus* (100–1), the moral of which is, if the women of Athens act so bravely, so should

<sup>137</sup> Siewert (1972) argues that Lycurgus used an original document; on the traditions of the oath, see Meiggs (1972: 504–7), and Theopompus' (*FGrH* 115 F 153) claim that it was an Athenian forgery. This document was inscribed in the late fourth century on the same inscription as the ephebic oath: RO 88.

<sup>138</sup> Plato's *Laws* (629a–b) provides the earliest testimonium for the claim that Tyrtaeus was an Athenian. For other testimonia to this, see Gerber (1999: 27–33); cf. Powell (1994: 311); Fisher (1998: 362–8).

<sup>139</sup> For the possibility that the Codrus story grew in importance in the late fourth century, see R. C. T. Parker (1996: 251); Sullivan (2002a: 166). See also [Arist.] *Ath. Pol.* 3.3.

the men (101).<sup>140</sup> Lycurgus at the same time does not degrade his contemporaries: the Athenians are still ready to die on behalf of their country, as his mention of the war dead testifies (45, 142).

Reference to the recent trial of Autolycus (53), as well as the general Callistratus, who fled Athens after being condemned to death (93), is used to assert the closely related obligation not to leave the city in wartime. Lycurgus linked the obligation of care and respect for one's parents with that of patriotism in warfare. Accordingly, the obligations of offspring towards their parents are allegorized in the myth of the Place of the Pious (95–7), the story of a youth who rescued his father from a stream of lava and was miraculously saved by the gods.<sup>141</sup> In this way, Lycurgus contrasted an ideal of patriotism and readiness to lay down one's life for the *polis* and one's father with Leocrates' neglect of his obligations to the city and his family.

#### 4.1.7.2. *Harsh Treatment of Traitors*

The Athenians perceived themselves to be the most mild of city-states in their use of punishment (D. 20.109, 165; 25.87–9; Is. fr. 31 Thalheim).<sup>142</sup> However, when it came to the treatment of offenders against the *polis* or those who had shirked their duties, the Athenians took pride in their strictness (D. 24.192–3). Lycurgus' speech, in order to urge the punishment of Leocrates, emphasizes Athenian severity: 'if I am unable to show you what your attitude towards such men should be (*dei*), remember your ancestors and the methods of punishment which they employed against them' (111).

The first example put before the Athenians was that of Autolycus, who had recently been condemned for having sent his wife and children away during wartime (53). Later in the speech Lycurgus gives examples of what the Athenians have done to traitors in the past. He gives an account of the treatment of those who were involved

<sup>140</sup> On the shared theme of mythical *polypragmosune* in drama and rhetoric, see Brock (1998). On the wider implications of the Erichtheus myth and possible references to it on the frieze of the Parthenon, see Connelly (1996). On the myth in Lycurgus' speech, see Sullivan (2002a: 171–2). For a discussion of the oratorical exploitation of tragic motifs, see Bers (1994); Wilson (1996).

<sup>141</sup> On this story, see Paus. 10.28.2; Sullivan (2002a: 171).

<sup>142</sup> On Athenian *philanthropia*, see Dover (1974: 201–5). The Athenians also had an altar to pity (*eleos*): Paus. 1.17.1.

in the revolution of 400 in 411: Phrynichus' *eisangelia* took place posthumously, and when he was found guilty, he was exhumed and his bones removed from Athens. His fellow conspirators were treated in the same way, Lycurgus suggests, perhaps implying that Leocrates' supporters might be dealt with similarly (112–14). Lycurgus goes on to relate the story of Hipparchus, whose name was inscribed on a list of traitors, after he failed to attend his own trial (117–19).<sup>143</sup> After this, Lycurgus relates how men who defected to the Spartans at Decelea were executed: if the Athenians punished men who merely changed places in Attica, Lycurgus argues, how can Leocrates not be treated severely (121)? The argument is reiterated with an example of a man who was stoned to death for attempting to speak treason (122),<sup>144</sup> analogous to the collective punishment that Lycurgus is urging his audience to re-enact.

Lycurgus' ostentation of mythological and historical examples aimed to inspire the jury into improving the citizens (67), while enabling his assumption of the roles of educator,<sup>145</sup> adviser (cf. 111, 124), and chief promoter of the citizens' performance of obligations. In particular, the obligations concerned are those of self-sacrifice in battle and the obligation of the jury to treat traitors harshly. Lycurgus is the orator who makes most extensive use of historical example to this end, but his application reflects a wider tendency among the orators in general.

#### 4.1.8. 'Value-Terms' as Models of Practice

Aristotle, for whom rhetoric was an offshoot of ethics (*Rh.* 1356<sup>a</sup>26), listed the chief subjects of rhetoric: for symboleutic oratory, the

<sup>143</sup> On the identification of this man, see Develin (1983: 112). On other bronze *damnationes*, see Davies (1996a: 34).

<sup>144</sup> Burt (1962: 109) suggests that Lycurgus alludes to the stoning of Lycidas (*Hdt.* 9.5; cf. *Plu. Arist.* 10). On the punishment of stoning, see Allen (2000a); Sullivan (2002a: 148).

<sup>145</sup> As Too (1995: 57) has suggested, 'myths can increase the authority of the work in which they occur, and can provide an author with a license beyond his social position'. Gotteland (2001) stresses the role of historical example in empowering the orators as educators. Ober (1989a: 179), on the other hand, suggests that 'the orator must avoid taking on the appearance of a well-educated man giving lessons in culture to the ignorant masses'.

profitable and the harmful (*to sumpheron* and *to blaberon*); for forensic oratory, the just and the unjust (*to dikaion* and *to adikon*); for epideictic oratory, the good and the shameful (*to kalon* and *to aischron*: 1358<sup>b</sup>20–9). As was noted above (Chapter 3.4), Aristotle's distinctions between the types of oratory are more clearly stated than those that appear in the surviving corpus of Attic oratory. Indeed, with the possible exception of *to blaberon*, all of the terms appear regularly in the surviving corpus of forensic oratory. The orators employed these values in their grounding of civic obligation by matching them with right performance of civic activities, or their neglect. The attachment of value-terms to certain actions would make such actions seem virtuous, acceptable, unacceptable, or downright scandalous. Naturally, several other value-terms were used in oratory to a similar end; the emphasis here will be on the uses of *to aischron*, *to dikaion*, and *to sumpheron* in constructions of civic obligation.

The concept of the shameful (*to aischron*) and its cognates play a part in Lycurgus' denouncement of Leocrates' evasion of civic obligations.<sup>146</sup> Leocrates is never himself described as disgraceful: it is his actions that are most shameful (*aischiston*: 68), and it is shameful to allow Leocrates to push into the *agora* when he has behaved so reproachably (5).<sup>147</sup> In this way, Lycurgus brands Leocrates' behaviour, or indeed an acquittal of Leocrates, as shameful to the city of Athens, evoking sentiments equivalent to the ephebe's promise not to put his sacred arms to shame (77).<sup>148</sup> Leocrates is unaffected by the normal limits of shame: he feels no shame in fleeing the walls, at Athens's devastation, or at leaving the borders of his land; nor do his supporters feel any shame (17, 18, 21, 45, 63, 74). Thus Lycurgus enunciates the importance of feeling shame for reprehensible actions.

It was important also to avoid shameful behaviour. In Antiphon's *Tetralogies*, the speaker, after listing his *eisphorai*, trierarchies, choregic services, loans, and guarantees to friends, mentioning his

<sup>146</sup> For the range of meanings attached to *aischron*, see Adkins (1960: 179); Dover (1974: 69–74); Cairns (1993: 57–60). For the idea that shame could serve as the foundation of exhortation to courage, see Balot (2004b: 415–23).

<sup>147</sup> On the religious delimitation of the *agora*, see de Ste Croix (1972: 397–8); on its wider civic connotations, see Millett (1998b).

<sup>148</sup> οὐκ αἰσχυνῶ τὰ ἱερά ὄπλα.



application to work rather than vexatious litigation, and his piety, tells the audience that with such a character he cannot be suspected of having done anything impious (*anosion*) or shameful (*aischron*, Antiph. 2, 1.β.12).<sup>149</sup> Thus fulfilment of what he conceives to be his obligations represents an avoidance of impious or shameful behaviour.

Elsewhere the avoidance of shame was linked with a respect for one's parents or relatives (D. 25.24; Lys. 32.1; Is. 1.39), coming to the aid of the laws (Aeschin. 1.2), or bringing a case to court (Is. 1.5). The employment of a value-term, apparently unrelated to the practice of law, on behalf of civic obligations indicates one way in which the Athenian law courts provided a setting in which moralistic ideals of behaviour might be employed to delineate ideals of publicly acceptable behaviour. Put another way, the ideal of avoiding shameful behaviour was used to support ideas of civic obligation.

The notion of usefulness to Athens was central to persuasion at the assembly and was also encoded in legal procedure. *To sumpheron*, alongside its synonyms *to ophelimon* and *to epitedeion*, was used in Attic oratory to describe activity deemed beneficial for the whole community. Demosthenes, in his symbouleutic oratory, framed as expedient those policies that would necessitate the fulfilment of duties by citizens (D. 9.4–5, 10.17, 15.13).<sup>150</sup> The procedure for prosecutions directed against recently passed laws, known as *graphe nomon me epitedeion thenai*, reflected the ideology that laws, as well as being in consonance with the rest of the Athenian law code, must also be useful (*epitedeios*) to Athens (D. 24.33; cf. D. 20.1–23). Lycurgus employed the notion in his grounding of military obligations, suggesting that no one would act against the interests (*to sumpheron*) of the city, were the Athenians to adopt the Spartan law about the punishment of those who refuse to take up arms in wartime (130). Earlier on he had already depicted the jury as working for the benefit of the *demos* and the city (2), and had claimed that the trial is for *to sumpheron* of the city (29; cf. 140). Accordingly, the jury is obliged to vote for the prosecution of Leocrates if it is to advocate the interests of the city.

<sup>149</sup> Τοιούτου δὲ ὄντος μου μηδὲν ἀνόσιον μηδ' αἰσχρὸν καταγνώτε.

<sup>150</sup> Yatromanolaki (1997, 2000).

The orators set expediency not in opposition to *to dikaion*, but rather as complementary to it (Antiph. 2, 1.a.9; Lys. 19.64; Isoc. 18.68).<sup>151</sup> Lycurgus was keen to show that he intended to work in accordance with *to dikaion*, by claiming it was the first consideration of both him and the jury (1, 10, 12).<sup>152</sup> The concern for acting on behalf of justice was probably the most commonly found justification for civic action of any kind in fourth-century oratory.<sup>153</sup> Furthermore, the closeness of justice and civic obligations suggests that *ta dikaia* could serve as a byword for privileges or duties of various kinds (D. 10.35, 15.25; Lys. 25.34), such as the trierarchy (D. 18.104) or public speech (Aeschin. 1.196).

Thus far the values of piety, of participation as sharing in the city, reciprocity, consensual contribution, emulation of the past, and discussion of shame, expediency, and justice have emerged as important bases for justifying the obligations of the citizen. It is now necessary to look at the kinds of argumentation that the orators used in their constructions of obligations. At first these appear to be purely rhetorical tropes, with little to do with the values of the *polis*, but it will emerge that these too reveal ideas that underlay the obligations of the Athenian citizen. The first to be examined are arguments based on notions of consequence, amplification, and generalization, starting with those posed with reference to a purported ‘domino effect’, which suggested that the evasion of obligations by individual citizens would pose a threat to the whole city.

#### 4.1.9. Arguments from Amplification, Consequence, and Generalization

The domino effect device, reliant upon amplification of a crime and its consequences, consists of the argument that, by breaking an

<sup>151</sup> This congruency has been noted by Halliwell (1996: 183) and Yatromanolaki (1997: 22; 2000). Kennedy (1959; 1963: 131), on the other hand, argued that in fifth-century literature, justice and expediency were frequently set in opposition to one another; cf. Heath (1990: 393).

<sup>152</sup> On *to dikaion* in fourth-century oratory, see Heath (1990: 392–6); on Athenian democracy generally, see Nakategawa (1995).

<sup>153</sup> M. R. Christ (1998: 194–6); Johnstone (1999: 41–2).

accepted code of behaviour, the offender committed a deed either akin to disobeying all laws, or one that would lead to the destruction of civic institutions.<sup>154</sup> Either way, the offender had committed a serious act against the interests of the whole *polis*. In Lysias' speeches made against alleged members of the oligarchic regimes at the end of the fifth century, the device consists of the charge that, by involvement in the regime of the Thirty, the accused 'was author of all the city's troubles' (13.33, 14.35), or the claim that disobedience of one man made the laws, assembly, and election of generals superfluous (14.11). By his mismanagement of the sacred calendar, Nicomachus was presented as having offended both the sacred and secular code of duties (Lys. 30.25). Lycurgus uses the device: by absolving Leocrates, the jury would be guilty of condemning his country to death and slavery (149; cf. Hyp. Ath. 29; Phil. 8); Leocrates, it is claimed, betrayed the whole city (59; cf. Lys. 31.26). The argument was advanced to its logical conclusion by his claim that Leocrates is responsible for all crimes (78). Accordingly, Lycurgus attempts to communicate the idea that condemning the accused would uphold the laws of the city of Athens. Leocrates' behaviour is a threat to the city and community, since his crime, however private or limited it might seem, threatens everyone. Furthermore, the plaintiff might threaten the listener with implication of guilt (Lys. 28.9) or the spread of wickedness throughout Athens if they failed to prosecute (Din. 2.3–4).<sup>155</sup> It was insisted that a wrong judgment would lead to unbridled wrongdoing, or a collapse of moral codes (D. 59.112; Aeschin. 3.177).<sup>156</sup> In this way the plaintiff suggested that a wrong verdict might unleash a domino effect that would invalidate all the laws, if descendants were to imitate the accused (Lycurg. 1.110).

The inverse of the domino effect argument was the idea that the *demos* might hold up an exemplary model by establishing a correct verdict (Lycurg. 1.150), and by doing so would perform duties in a

<sup>154</sup> This chain of argument has been noted as a kind of amplification (*auxesis*) by Whitehead (2000: 129–30), and also by Dover, who writes: 'it is the general practice of rhetoric to predicate of a whole the good or ill that belongs to one of its parts' (*HCT* iv. 236).

<sup>155</sup> Too (1995: 26) collects oratorical instances of the contagion of guilt.

<sup>156</sup> Carey (1994: 32).

way that the younger generation should emulate (cf. 7, 9, 27).<sup>157</sup> Punishment, Lycurgus argues, was a necessary preventative measure to discourage future generations from imitating Leocrates (20, 110).<sup>158</sup> The jury was often praised for this ability: 'they who punish those who wrong them prevent the rest of the citizens being wronged' (Is. fr. 32 Thalheim). In this way, the prosecutor, by concerning himself with such a threatening crime, could easily justify his intervention on behalf of the city.

A closely related amplificatory device was generalization, an argument suggesting that affairs should be regarded as if all citizens had acted in the same way as the defendant. Talking about evasion of military duty, Lysias argues that, if everyone acted in the same way as Alcibiades the Younger, then there would be no one left to be led by the generals (Lys. 14.21). Lycurgus generalizes the consequences of Leocrates' behaviour by claiming that the safety of the city relies upon the performance of that one man (64). Every man was needed, since the defence of the city relied on men rather than Athens's material defences (47). Generalization is used to cover a potentially weak line in Lycurgus' argumentation. Realizing that Leocrates did not have a post in the dockyards, on the gates, or in the camps, and so is not technically guilty of desertion (59–60), Lycurgus pointed out that had the men with specific duties neglected them, the city would have been enslaved but not deserted, while had everyone acted like Leocrates, the city would have been deserted. Leocrates' abandonment of the country meant that it was completely abandoned to the enemy (132) and left as a sheep run (145; cf. fr. 14 Conomis). The argument from generalization was used to ground both collective and individual duties: as well as its use to justify obligations such as the military duty to stand firm in battle or the payment of public debts (D. 3.17–18, 24.96–8), generalization was sometimes cited in order to justify obedience to the law:

If neither young nor old should do his duty (*ta prosekonta*), but each man, banishing all discipline from his life, should regard his own wish as law, as authority, as all in all—if, I say, we should act like this, could the government

<sup>157</sup> Ober (1989a: 160–3; 2001: 181).

<sup>158</sup> For the numerous references in oratory to punishment as a deterrent, see Allen (1996: 78; 2000b: 20 n. 21).

continue to be carried on? What? Would the laws be any longer valid? What violence, insolence and lawlessness there would be throughout the city every day! What scurrility instead of our present decency of language and behaviour! (D. 25.26)

A similar method was used by Aristotles, the proposer of the decree containing the charter of the Second Athenian Confederacy, amplifying the crime of doing anything contrary to the legislation on the *stele*: 'if anyone proposes or puts to the vote, whether official or private citizen, contrary to this decree that any of the things stated in this decree ought to be undone... he shall be judged by the Athenians and the allies for breaking up the alliance' (RO 22.51–9).<sup>159</sup> Thus any offence of anyone against anything written in the charter could be conceived of as an effort to destroy the league.

Closely related to generalization is the synecdochical argument, noted by Dover,<sup>160</sup> that, were one unwilling to fulfil private duties to one's family or unwilling to adhere to high standards in one's private life (see Chapter 5.1), one would be reluctant to uphold one's duties to the *polis*. Conversely, it was easy to construe the breaking of an oath to be an offence against the city, community, and individual citizens: Dinarchus argued that Philocles, who broke his oath as *strategos epi ten Mounichian* (general for Mounichia), by taking bribes, offended against Athens, the jurors, and their families, and would be ready to sell the strategic location of Mounichia at a price (Din. 3.2, 10).

The domino effect, argument from generalization, and synecdoche tendentiously suggested the universality of each individual's actions, exaggerating the individual's power to do great harm to the *polis*. The argument seemed particularly coherent in cases where what might be seen as a miscarriage of justice was carried out by a public official or in a public place (D. 21.31–4, 45; 47.48).<sup>161</sup> The claim of universality of

<sup>159</sup> D. Lewis (1974: 88–9) described this formula as an 'entrenchment clause'; cf. Rhodes with Lewis (1997: 524–5).

<sup>160</sup> Dover (1974: 41, 298–9, 302; 1978: 20).

<sup>161</sup> The devices are also important in the Laws' argument to Socrates in the *Crito*. By running away from prison, and thus breaking the law which says that all the courts' decisions be valid, he would invalidate the whole law code 'for your [i.e. Socrates'] portion' (*to son meros*: 50a8–b2, 54c8; cf. 50d1, 52c9, 51a5). It is necessary to note the similarity in Lycurgus' use of language: in section 17 he argues that, by abandoning the walls, he left them 'for his own portion' (*to kath' auton meros*) undefended (Lycurg. 1.17; cf. 26, 45, 78, 97, 144, 147; cf. Lys. fr. 9b Todd; Isoc. 20.8). Generalization was

actions was related to the idea that the individual had put his own personal interests before those of the city and had therefore failed in his obligations (Lys. 28.1, 31.6–9; Lycurg. 1.18). The usual reply to the argument must have been that the accused party was a mere *idiotes* (private citizen) (Lycurg. 1.31; Hyp. *Eux.* 30),<sup>162</sup> or that the crime was in fact a trivial one (Lycurg. 1.63; Arist. *Rh. Al.* 1427<sup>a</sup>30). The argument exemplifies clearly the orators' tendency to assimilate public and private behaviour, which has serious implications for understanding the nature of individual liberty: it suggests that, in the discourse of Attic oratory, there was some dispute about the degree to which public and private behaviour should be assimilated.

#### 4.1.10. The Evocation of Emotion and Imagery

In contrast to modern courts, in the Athenian courts pleas based upon pity and rage were admissible and commonplace in litigants' speeches.<sup>163</sup> While, as Harris and Rademaker have argued at length, the position of self-restraint was one frequently advocated by the orators,<sup>164</sup> it was also feasible to harness the anger of the audience in ways that would affect their performance of obligations. Lycurgus told the jurors that Leocrates' advocates 'deserve to feel your anger in its fullest violence' in an attempt to drive them towards punishment of a defendant (Lycurg. 1.138),<sup>165</sup> and Demosthenes, despite having restrained himself from physical retaliation to Meidias' punch (D. 21.176), told the jury that they should feel rage at Meidias' impiety for his 'complete destruction of sacred things' (D. 21.147).<sup>166</sup> Indeed, the work of Herman has emphasized the significance of the rhetoric of revenge in the law courts, suggesting that it supplanted the code of revenge outside the courts.<sup>167</sup>

applied at 50b3–5 where Plato imagined a scenario in which all men disobeyed legal judgments.

<sup>162</sup> On the Athenian *idiotes*, see Rubinstein (1998).

<sup>163</sup> For the application of pity and anger in forensic oratory, see Allen (2000b: 24 n. 30); Konstan (2000b). Tzanetou (2005) emphasizes the ways in which themes of pity and Athenian generosity were used to justify Athenian interventionism.

<sup>164</sup> W. Harris (2001); Rademaker (2005: 233–50).

<sup>165</sup> W. Harris (2001: 62–3). <sup>166</sup> W. Harris (2001: 188–9).

<sup>167</sup> Herman (1994, 1995, 2000).

The other important emotional plea, pity, was used to make vivid to the audience the consequences of condemning an innocent person.<sup>168</sup> As Allen has observed, Lycurgus attempted to harness the pity of the audience on behalf of the city in his effort to persuade them to prosecute Leocrates.<sup>169</sup> Thus Lycurgus presents the wretched condition of the city when Leocrates abandoned it:

Free women could be seen crouching at the doors in terror inquiring for the safety of their husbands, fathers or brothers, offering a spectacle degrading to themselves and the city. The men who had outlived their strength and were advanced in life, exempt by law from service on the field, could be seen throughout the city, now on the threshold of the grave, wretchedly scurrying with their cloaks pinned double round them. Many sufferings were visited upon the city; every citizen had felt misfortune at its worst. (40–1)

Claims to the pity of the audience for the condition of the city in Lycurgus and other orators are dominated by visual imagery. The city, Lycurgus claims, would be helpless without the protection of its citizens, and he pleads on behalf of its countryside, trees, harbours, dockyards, walls, sanctuaries, and temples for the protection of the jury (150).

Sentimental appeals to past Athenian glories and performance of obligations could be communicated by reference to the buildings of Athens: Aeschines called on the audience to cast their gaze on the Propylaia and to remember the battle of Salamis (Aeschin. 2.74) or monuments at the *agora*, taking his audience on an imaginary tour of that area (3.183–90).<sup>170</sup> Lycurgus attempted to work up the sympathy of the jurors for the city by recounting the famous buildings and material possessions of Athens in stark contrast to Leocrates' abandonment of the city. These arguments resonated with the state-sponsored rebuilding of the city in the period after the Social War, which by 330 had turned its attention to civilian rather than military installations.<sup>171</sup> Works such as the reconstruction of the Pnyx and the Theatre of Dionysus, and the construction of a Panathenaic stadium, developed structures that would serve as settings for the exercise and

<sup>168</sup> Konstan (2000*b*). <sup>169</sup> Allen (2000*b*: 22–8).

<sup>170</sup> For discussion of other references to the buildings of Athens, see Nouhaud (1982: 225–6); Johnstone (1996: 102); Millett (1998*b*: 204–5).

<sup>171</sup> Faraguna (1992: 258–9). See also Ch. 3.6, 7.

discussion of the obligations of the citizen to the state. In contrast to the ideal Athenian citizen, Leocrates feels unashamed in the face of the walls, he is untouched by pity for the city's harbours, has no fear in the face of the temples of Zeus Soter and Athena Soteira (17).<sup>172</sup> Leocrates, for his part, deserted the ships, the guard-posts of the walls, the city, and the countryside (38). Furthermore, intent on breaking all codes of reciprocity, he is set to appeal to the laws, walls, temples, altars, and precincts that he has betrayed (143). The use of visual imagery to evoke a sense of obligation towards the material possessions of Athens is necessary so that Lycurgus might overcome the counter-argument that Leocrates was not allocated a specific post in the war (59). Thus Leocrates breached the civic obligation to protect the material possessions of Athens.

The military installations of Athens were valuable for Athenian estimates of her own strength, and Lycurgus played on the possibility that Leocrates' assaults on these would invigorate the audience, claiming that he had betrayed the walls (17, 38) and the dockyards and harbours (17, 59, 150). The effectiveness of the device relied on the collective memory of the destruction of the walls in 404/3,<sup>173</sup> the association of walls and the *polis*, and the reliance of Athens and Attica on its walls;<sup>174</sup> with this in mind, Lycurgus reminded the jury of the demolition of 404/3 (61). Indeed, there were related concerns for Athens's military installations in the 330s: a certain Antiphon had recently been condemned for allegedly promising to burn the dockyards for Philip (D. 18.132; Din. 1.63).<sup>175</sup>

Lycurgus' mention of buildings sometimes aimed at more than the arousal of emotion, perhaps pointing to impiety. The hypothetical example of someone entering the Metroon with the purpose of erasing a law (Lycurg. 1.66) had a twofold effect. It must have evoked

<sup>172</sup> On the promotion of these cults, see Ch. 3.7.

<sup>173</sup> Lysias equated the man who was ready to take bribes with the one who surrendered the walls and ships and helped to establish the Spartan-backed oligarchy (Lys. 28.11).

<sup>174</sup> On the association of walls and the *polis*, see Camp (2000). On the reliance of the defence of Attica on walls in the fourth century, see Ober (1985: 51–100); cf. Harding (1988) and Ober (1989*b*). For the fifth-century associations between democracy and long walls, see Walker (1957); Boersma (1970); Garland (1974: 49).

<sup>175</sup> For an analysis of the significance of sea-power in Attic oratory, see Ober (1978).



the responsibility to protect the laws, but, as Boegehold pointed out, entering the Metroon would not have been the most effective way of erasing a law, since laws were also exhibited publicly on *stelai*.<sup>176</sup> The intrusion would have been also a religious crime, given its status as a sanctuary of Demeter (D. 19.129). Lycurgus' discussion of Leocrates' entrance to the *agora* is yet more revealing. Lycurgus says that it is shameful (*aischron*) to allow Leocrates to push (*emballein*) into the *agora* and to share in the cults and the sacrifices of the Athenians when he has behaved so reproachably (*oneidos*: 5) and shamelessly (*anaidos*: 142). The *agora* was a location that demanded specific standards of behaviour: it was designated sacred land to the extent that men under conviction for various crimes including treason were excluded from it.<sup>177</sup> Its sacred aspect was one that appears to have been reinforced in the Lycurgan period given the reconstruction of the Eleusinion, the temple of Apollo Patroos, and the renewal of the base of the monument of Eponymous Heroes.<sup>178</sup> The shamefulness of Leocrates' encroachment into this space highlights his failure to carry out his civic obligations of piety and also reminds the jury of their duty to protect such sacred spaces.

#### 4.1.11. Oratorical *Fiat* and the Language of Obligation

It is quite clear that in some contexts, in particular symbouleutic oratory, orators avoided engagement in an ideological negotiation of obligation, but simply stated that an obligation was a necessity, and expressed this using suitable vocabulary. Those who did so attested to the exercitive power of oratorical insistence.<sup>179</sup> Terms such as *ta deonta* ('the necessary things': D. 18.246) were used by the orators to denote what they deemed as civic obligations; impersonal verbs

<sup>176</sup> Boegehold (1996: 206–7), noting the refinement of the argument. The argument may have been made more compelling by the possibility that the Metroon was visible from the law courts: Boegehold (1996: 205).

<sup>177</sup> De Ste Croix (1972: 397–8); Millett (1998b: 220–6).

<sup>178</sup> See Ch. 3.7.

<sup>179</sup> The 'exercitive' is defined by J. Austin (1975: 155) as an advisory or exhortatory kind of speech-act which 'is the giving of a decision in favour or against a certain course of action, or advocacy of it. It is a decision that something is to be so, as distinct from a judgement that it is so . . . its consequences may be that others are "compelled" or "allowed" to do certain acts.'

meaning 'it is necessary' (*dei*, *prosekei*, *chrei*, and verb + *teon*)<sup>180</sup> were used to convey the obligatory nature of a given action. It has been suggested that in some contexts *chre*, which referred to ethical, internalized motivation, had a more moral meaning than *dei*, which referred to external constraint or force.<sup>181</sup> In oratory, there seems to be no hard-and-fast rule: *ta deonta* was a term used by Demosthenes in the assembly to describe duties that had to be fulfilled owing to certain contingencies (D. 1.6, 2.3, 3.3, 4.2, 6.1, 9.5, 10.24), but could also refer to the normative abstract duties of the citizens (D. 18.247).

A distinction in the oratorical employment of *dei* and *chre* is hardly visible even in individual speeches: this is suggested by an examination of the terms used to negotiate obligations of the citizen in Demosthenes 51, given probably in the 350s and often attributed to Apollodorus. The speaker argues to the council that he has fulfilled the duties of a trierarch more virtuously than others and deserves to be crowned accordingly: 'surely it would have been right and proper (*chren kai dikaion*), men of Athens, for those who believe that they ought (*dei*) to take a crown from you, to show that they are worthy of it and not speak ill of me' (D. 51.3). Here, *chre* is used in order to delineate the general rule that it was just to give the crown to those who show themselves worthy of it. *Dei*, meanwhile, is used to refer to those who believe themselves to be owed the trierarchic crown, a more disputable and short-term position. Elsewhere the distinction appears to be sustained: *chre* is used to ground the claim that the Athenians should feel indignation when their possessions are not being secured by those in positions of power (D. 51.10). *Dei* is used to refer to the rectitude of the speaker being crowned (51.1), the granting of *charis* to those who do their duty (2, 17), the obligation of the state to provide equipment to trierarchs (5), the obligation of the people to seek justice in this case (8), and the award of the crown to those trierarchs who have their proper crew on board (17). However, towards the end of the speech, the distinction disappears, and *dei* is used to refer to the generalized duty of speaking against those

<sup>180</sup> For discussion of scholarship on these terms, see Schein (1998: 294–5).

<sup>181</sup> Benardete (1965: 293); Urmson (1990: 38). Schein's (1998: 295) formulation of the distinction is that *dei* originally referred to an external constraint or force, and *chre* to subjective internal needs and restraints, but suggests that this division broke down towards the end of the fifth century.

demagogues who disregard the interest of Athens (20). In this speech, therefore, while *dei* and *ta deonta* appear to be used more frequently to refer to short-term and contestable obligations and things made appropriate by certain contingencies, and while *chre* refers to general rules, there appears to be no firm distinction between the two. The employment of *dei* to describe abstract duties in the Fourth Philippic (above, 4.1.6) suggests that the distinction was not absolute.

The modes of argumentation thus far encountered (1.9–11) may in themselves be regarded as an expression of values that lay behind the justification of civic obligation. Thus, not only can it be concluded that regulatory law, piety, the idea of participation as ‘sharing’, reciprocity, and emulation of historical example were values central to the negotiation of obligations in Attic oratory, but it also appears that emotional appeals, the high estimation of the significance of the behaviour of every citizen, and oratorical authority were significant too. Having observed the employment of prescriptive statutes, values, and modes of argumentation in the justification of civic obligations, it is now necessary to outline how, by way of a competitive honorific system, the Athenians encouraged the competitive fulfilment of obligations.

## 4.2. HONORARY DECREES AS PARAMETERS OF CIVIC OBLIGATION

### 4.2.1. Introduction

So far, it has emerged that, for the most part, the obligations of the Athenian citizen were not set out as a set of commands but were negotiated by reference to statutes, values, and methods of oratorical persuasion. The evidence of honorary decrees preserved on stone inscriptions and in literary testimonia suggests the existence of an honorific system reliant upon a deliberate and prominent system of public reward. This served to promote the obligations of the Athenian citizen by the setting of examples and the encouragement of competitive emulation. Through an examination of the text and

context of Athenian honorary decrees (4.2) and lists (4.3), this chapter will investigate the ideas and claims that lay behind this ideology of competitive emulation. Inscribed dedications set up by individuals in commemoration of the virtuous fulfilment of civic obligations will be investigated as an attempt to detect one aspect of the response of Athenian citizens to this system (4.4).

The Athenian *demos* appears to have begun inscribing honorary decrees for its citizens with regularity from the 340s: in this period the first such decree extant on stone is a decree for a magistrate who held an unknown office in 347/6 (*IG II<sup>2</sup> 215*).<sup>182</sup> However, it is clear that the *demos* passed honours for groups of *prytaneis* in earlier periods without inscribing them: it appears to have been left for the *prytaneis* themselves to inscribe the record of the decree as dedications.<sup>183</sup> The only fifth-century epigraphically attested honours are those for the sons of Pericles of 440–432, which survive only as a rider to another decree (*IG I<sup>3</sup> 49.16–19*),<sup>184</sup> and the reward for those who captured Phyle in 403/2 (*SEG xxxviii. 45*). It is likely that some significant awards for men, and women, of public prominence were passed even before the fourth century, though these honours may not have been inscribed.<sup>185</sup> In the early fourth century the Athenians honoured military commanders,<sup>186</sup> and envoys,<sup>187</sup> while the Athenian tribes inscribed honorific decrees (*IG II<sup>2</sup> 1138–53*). If we can identify the inscriptional publication of honorary decrees as a significant part of the negotiation of civic obligation, we might consider the tendency to inscribe such honorary decrees with growing regularity as part of the promotion of the performance of obligations characteristic of the period after the Social War.

Several episodes recorded in Attic oratory from the second half of the fourth century attest to the very high importance placed on the system of competitive honouring in that period. Lycophrone, as part of his effort to endear himself to the jury in his defence speech

<sup>182</sup> Lambert (2004).

<sup>183</sup> The tribal contingents of fifty on the Athenian *boule* took it in turn to act as an executive committee, and were known in that capacity as *prytaneis* (councillors).

<sup>184</sup> *IG I<sup>3</sup> 131* has been interpreted as a set of fifth-century directives regulating honorary maintenance, which remained in effect until around 330: Osborne (1981).

<sup>185</sup> See Ch. 5.2.3, 5.8. <sup>186</sup> See Ch. 4.2.3.

<sup>187</sup> As Lambert (2004: 86 n. 5) points out, honours for envoys are mentioned in inscribed non-honorific decrees.

against a prosecution by *eisangelia*, boasts that he was crowned by the cavalry corps and by his colleagues in office, and three times by the citizen-body in both Hephaestia and Myrine (Hyp. Lyc. 16, 18; cf. Aeschin. 2.169). Indeed, several major political prosecutions, several of them involving Demosthenes, suggest that there was much contention about the correct working of the honorific system.<sup>188</sup> Hyperides alleged that Demades and Demosthenes made at least 60 talents by taking bribes ‘from proxenies and decrees’ (Hyp. Dem. col. 25). It seems to have been common for Athenian politicians to attack rivals on the pretext that they had proposed unsuitable or unconstitutional honorary decrees.<sup>189</sup> The reward of an honorary decree might also be linked to citizen status: Euxitheus, in a speech made in support of his claim to citizenship, complained that his rivals had chiselled out an honorary decree bestowed by his fellow demesmen (D. 57.64). We might surmise that the honorary system was closely guarded in the courts and in the council and assembly too: Demosthenes prosecuted Androtion for breaking the law which stated that, were the council to fail to build triremes in their allocated time, they should not request a crowning (D. 22.8, 11, 17–18).

Over half of the attested cases of *graphe paranomon* (prosecution for making an illegal proposal) concern honorary decrees.<sup>190</sup> The majority of Athenian decrees of the period 410–317 surviving on stone are honorary decrees for non-citizens.<sup>191</sup> Recently scholars of both Greek and Roman history have connected the frequency of epigraphical output with the tendency of *poleis* or other organizations to encourage competitive euergetism.<sup>192</sup> Following this line of thought, it can be argued that the Athenian epigraphical habit was

<sup>188</sup> Aeschin. 3; D. 18, 20, 22, 23, 51; Hyp. Phil.; Hyp. fr. Jensen 14.79.

<sup>189</sup> Hansen (1974: 22–7). <sup>190</sup> Hansen (1974: 62); Johnstone (1999: 40).

<sup>191</sup> Of the 488 state decrees preserved on stone counted by Hansen (1987a: 110) of the period 403–322 (of which 100 are too fragmentary to discern their contents), 288 are honorary decrees or awards of citizenship. Hansen (1987a: 111) counts 68 decrees referred to in other inscriptions, of which 19 are honorary; he counts 219 in literary sources, of which 60 are honorary. Note that the total of stone decrees to be published in the forthcoming edition of Athenian state decrees is likely to be much higher: Lambert (2005: 130 n. 31) has stated that ‘there are about 800 inscribed state decrees of the 4th century’.

<sup>192</sup> For this interpretation of the epigraphical habit of Hellenistic Rhodes, see Gabrielsen (2001: 219); on the building inscriptions of Republican Italy, see Pobjoy (2000).

heavily preoccupied with the encouragement of the public-spirited behaviour of both citizens and non-citizens.

The orators attest to the attention paid to honorary decrees set up on stone. Demosthenes appears to have repeated verbatim the motivation formulae of the decree in honour and for a statue of Conon in his discussion of that general: 'since Conon freed the allies of Athens' (D. 20.69).<sup>193</sup> Aeschines quoted the epigram recording the crowning and decree in honour of those who fought at Phyle as an example of those types of people who, in contrast to Demosthenes, actually deserved honours but did not strive to get their names inscribed (Aeschin. 3.187–90), with apparent accuracy too (*SEG* xxviii. 45). The speaker of Lysias 13, a prosecution of Agoratus for crimes committed at the time of the Thirty, makes detailed reference to the text of the decree bestowing citizenship on the assassins of Phrynichus in his attempt to nullify Agoratus' claims to have been made an Athenian citizen (Lys. 13.72; cf. ML 85.15–16, 25–30).

The principles and values suggested in the motivations expressed on honorific inscriptions say a lot about the ideas behind civic obligations (4.2.2), as do the kinds of behaviour being rewarded (4.2.3) and obligations entailed in honours for non-Athenians (4.2.4). Honorary decrees played honorific, protreptic, and historical roles in relation to civic obligation. The publication of an honorary decree on stone represented a privilege for the honorand, was a monument of one orator's successful proposal at the assembly, served as a reciprocal response ostensibly on behalf of the *polis* towards a public-spirited individual, and recorded the fulfilment of obligations or supererogatory acts. They were sometimes set out with an explicitly declared intention of inspiring other individuals to a similarly virtuous fulfilment of civic obligations. Discussion of the honorific habit in fifth- and fourth-century literature reinforces this interpretation. The idea that praise (*epainos*) highlighted a paradigm of virtuous action is expressed by Isocrates in his encomium for Evagoras of Salamis, which he presents as necessary so that 'the youth might strive with more *philotimia* towards *arete*, knowing that they, rather than those inferior to them, would be praised' (Isoc. 9.5). In this way, Isocrates

<sup>193</sup> ἐπειδὴ Κόνων φησὶν ἠλευθέρωσε τοὺς Ἀθηναίων συμμαχούς. See West (1995: 244).

suggests that the bestowal of praise encourages the young to behave with *arete*. Thucydides gives the reader an interesting turn on the matter: for him, praise of another is palatable only if the listener believes emulation is possible (Th. 2.35.2). Lyscurgus also expressed faith in the power of exempla, telling his audience that they punished criminals for paradigmatic purposes (Lyscurg. 1.10), and contrasted this with what he claimed to be the uniquely Athenian employment of the honorific system to praise appropriately good men (51; cf. D. 20.114).

In the fourth century the honorific system appears to have gained momentum by encouraging generous benefactions from non-Athenians. Indeed, in the mid-fourth century Xenophon suggested that the temptation of having one's name engraved publicly (*anagraphesesthai*) would encourage foreigners to make donations to Athens. Accordingly, he recommended that the Athenians should make use of this policy in order to raise their revenues: 'if their names were to be recorded in the roll of benefactors for all time, many foreigners would also subscribe, and a certain number of states would be attracted by the prospect of enrolment. I believe that even kings and despots and oriental governors would desire to share in this reward' (X. *Vect.* 3.11). Certainly the erection of an honorary inscription itself acted as an honour, and the stone copy may sometimes have been the only record of the honour.<sup>194</sup>

The apparently growing number of honorary decrees for citizens in the fourth century indicates that this system was applied also to Athenians. This was reflected in the oratorically expressed concern at inflation in awards or the growing propensity of the Athenians to honour their own citizens (Aeschin. 3.177–80; D. 23.196, 203). Indeed, Osborne has suggested that a law was passed in the Lyscurgan period regulating awards given to different categories of benefactors.<sup>195</sup> This investigation of honorary decrees will concentrate primarily on those awards granted to Athenians, but will consider also the significance of the awards for non-citizens: the setting up of honours for non-Athenians on stone inscriptions in Athens suggests

<sup>194</sup> As M. J. Osborne (1981–3: iv. 169–70) points out, this is suggested by the fact that preserved honorific decrees rarely specify a record other than the one on the stone. For archival copies of diplomatic documents, see Lalonde (1971: 26–33).

<sup>195</sup> M. J. Osborne (1981: 161–5).

that publicity for such rewards was directed towards both Athenians and non-Athenians.

#### 4.2.2. Stated Intentions of Honorary Decrees

It is possible to gain some insight into the principles upon which the Athenians justified civic obligations by investigating the declared intentions behind the inscription of honorary decrees, as well as their oral and physical contexts. The hortatory intentions of honorary decrees of Athens provide three principles for the justification of the bestowal of praise and honours: the encouragement of others to emulate the good behaviour of the honorand (4.2.2.1), a concern for the image of the *demos* and the city of Athens (4.2.2.2), and altruistic reward of the honorand sometimes expressed as a concern for making a reciprocal return (4.2.2.3). These sentiments appear in the motivation clause and relate to what is known as the ‘hortatory intention’ of a decree (see Chapter 4.1.1).<sup>196</sup> Accordingly, they shine light on the workings of the ideologies of competition, reciprocity, and altruism, upon which the obligations of the citizen were grounded. The importance of physical and oral dissemination of honorary decrees will be investigated in 4.2.2.4.

##### 4.2.2.1. Competitive Emulation

Demosthenes’ speech *Against Leptines* was made in support of Demosthenes’ *graphe nomon me epitedeion theinai* directed at Leptines’ proposal to reverse all immunities from fiscal burdens awarded to *euergetai* (benefactors) (D. 20).<sup>197</sup> Demosthenes identified the competitive fulfilment of civic obligations with citizenship and liberty, telling the court that the *eleutheria* of the Athenian *demos* was guarded by the rivalry (*hamilla*) with which good citizens competed for awards offered by the people (D. 20.108).<sup>198</sup> He also advised

<sup>196</sup> Larfeld (1902–7: ii. 763–7 (on state decrees), 835–6 (on non-state decrees)); Rhodes with Lewis (1997: 5) classify the hortatory intention as the second part of the motivation clause. For a collection of Athenian hortatory clauses, see Henry (1996).

<sup>197</sup> On this speech, see now Kremmydas (2005).

<sup>198</sup> For the idea that the condition of liberty inspired a competition of patriotism, see D. 18.320.



against Leptines' repeal of the award of exemptions: 'the result of rewarding too many citizens is to encourage many to do you good service, but the result of rewarding no one at all, even if deserving, is to discourage emulation in all' (D. 20.5).<sup>199</sup> The speech was made in the aftermath of the Social War, when the Athenians were desperate to improve the conditions of public finance.<sup>200</sup> Already in 356/5 Androton, controversially, had gone about collecting arrears of *eisphora*.<sup>201</sup> The disagreement between Leptines and Demosthenes lay in an ostensible difference in their views about the best way to increase public revenue: Leptines believed this lay in the abolition of exemptions awarded to honorands, a policy that Demosthenes thought would damage the spirit of competitive emulation perpetuated by the system of public honouring (D. 20.18–27).

The principle of competitive emulation urged that other Athenians, or other potential *euergetai*, might recognize the value of public honour and would attempt to emulate the deeds of the honorand, thus filling Athens with *euergetai* and public-spirited citizens ready to fulfil obligations to a supererogatory level. Supererogatory performance of obligations led to an honorand's behaviour being described as exhibiting *philotimia* (love of honour).<sup>202</sup> The word and its cognates appeared on honorary decrees from the 340s onwards, and was applied to the actions of both citizens and non-citizens.<sup>203</sup> As Whitehead argued, the term carries connotations of competition, providing 'an example to be emulated by others'.<sup>204</sup> An implicit degree of competitive emulation is encountered, for instance, in a decree for Pytheas of Alopeke, who was a superintendent of the springs at Oropos in 333/2.<sup>205</sup> The award of a crown of gold to him was justified 'so that also others who are ever elected as [overseer] of the springs might act

<sup>199</sup> Kremmydas (2005: 95) has suggested that Demosthenes intentionally underestimated the number of citizens with exemption (cf. D. 20.21). On awards of exemption (*ateleia*), see Henry (1983: 141–6).

<sup>200</sup> See Ch. 3.6, 7. <sup>201</sup> Harding (1976: 193).

<sup>202</sup> Whitehead (1983, 1993).

<sup>203</sup> Whitehead (1983: 67–8). The language of *philotimia* appeared also in Attic oratory: Seager (1973: 23–4); Dover (1974: 233).

<sup>204</sup> Whitehead (1983: 68).

<sup>205</sup> On the high esteem in which overseers of the springs were held, see Dillon (1996).

with *philotimia* towards the *demos*' (IG II<sup>2</sup> 338.21–4).<sup>206</sup> The objective of Cephisophon's decree rewarding the first three trierarchs to bring their ships, equipped for sailing, to the jetty in the month of Mounichion seems to be to display a victor's *philotimia*. The spending of 200 *drachmai* on the crowning and the announcement of the victorious party at the Thargelia was justified 'so that the *philotimia* towards the *demos* might be clear to the trierarchs' (RO 100.201–4). The promotion of a spirit of *philotimia* between trierarchs was in itself an attempt at the encouragement of more zealous fulfilment of the *trierarchia*. Accordingly, these decrees reveal an intention to encourage other citizens to behaviour, in the fulfilment of public offices, which would rival the *philotimia* of the honorands. The hortatory intention of competition was used in decrees for foreign benefactors: a citizenship decree for Ainetos of Rhodes of 319/18 holds out that the *prytaneis* will elect him to a phratry 'so that everyone else might act with *philotimia* to do the good that each one is able towards the *demos*' (Ag. xvi. 101.40–2).

#### 4.2.2.2. Promotion of Athenian Reputation

Demosthenes aired the Athenian concern for their reputation as a donor of honorary decrees when he declared, 'the inscriptions are a memorial of your national character (τοῦ τῆς πόλεως ἡθους μνημεῖον) ... they stand as examples for those who wish to do good to you, so that the city treats well those who have thus treated it' (D. 20.64). Demosthenes argued that because they knew that the Athenians were reciprocally generous, benefactors like Leucon were always ready to extend their donations to the Athenians. Furthermore, he argued that Leptines' law proposing the elimination of *ateleia* would destroy this notion and would make Athens less trustworthy (20.36–8, 64–6).<sup>207</sup>

The argument that the system of public honours encourages good behaviour and fulfilment of obligations through the propagation of the knowledge that the *demos* will respond with gratitude is

<sup>206</sup> For a comparable example, see IG II<sup>2</sup> 330.20–3.

<sup>207</sup> For fifth-century manifestations of the idea that the Athenians were particularly generous, see Mills (1997: 63–5); for Plutarch's view of the humanity of the Athenians, see Pl. *Aristid.* 27.4, an example put to the same ends at D. 20.115–19.

manifested in the inscriptional evidence. The justification for expenditure on a crown is given in a fragmentary honorary decree for a Milesian as: ‘so that everyone might know that the *demos* honours those who do good deeds’ (*SEG* xl. 79.13–15). The method was more commonly used on decrees for non-Athenians in the fourth century, with the hope that the good will of the Athenians would be publicized through epigraphical publication. Most explicit about the reasons for honouring someone was the decree for Heraclides of Samos (RO 95). After having already attempted to encourage competitive *philotimia*, ‘so that others, knowing this, might act with *philotimia*, because the *boule* honours and crowns those who act with *philotimia*’ (RO 95.63–5), it goes on to direct itself explicitly to future voluntary benefactors, ‘so that others might readily want to act as benefactors to the *boule* and *demos* seeing those who act with *philotimia*’ (RO 95.75–7).<sup>208</sup> It is feasible that the Athenian concern for the publication of their decrees was closely related to the advertisement of the national reputation for repaying benefactors or public-spirited behaviour, and for the promotion of a feeling of competitive emulation, rather than a benign concern for democratic accountability.<sup>209</sup> While ostensibly aimed at non-Athenian benefactors, the fact that these decrees were usually set up in Athens suggests that the intended audience consisted also of Athenian citizens.<sup>210</sup>

#### 4.2.2.3. *Altruistic Reward*

According to one reading of the first century, the Athenians did conceive of the altruistic value of honorary decrees: Cornelius Nepos says that the honorary crown for Thrasybulus inspired no envy (*invidia*) but was a token of love (*amor*) from the people (Nep. *Thras.* 3.4.1).<sup>211</sup> Just as individual Athenians could conceive of performance of public services in the hope of winning *philotimia* as a sign of a

<sup>208</sup> For other examples, see Schwenk 12.19–22; *IG* II<sup>2</sup> 233.18–24, 423.1–4, 448.81–5; *SEG* xvi. 51.2–5.

<sup>209</sup> The democratic interpretation is the one towards which Hedrick inclines (1999: 504).

<sup>210</sup> They were sometimes also set up at locations outside Athens: see Ch. 4.2.2.3.

<sup>211</sup> Analysis of the derivation of this passage is hard because the sources for Nepos’ *Life of Thrasybulus* are unknown: Buck (1998: 20). For a challenge to the idea that he relied upon epitomes and biographies, see Titchener (2003: 88–90).

greedy and self-seeking careerist (Lys. 14.21, 35, 43),<sup>212</sup> it is likely that they could conceive of the value of publicizing generosity in state enactment of public honours as a disinterested act, rather than necessarily as an attempt to propagate competitive emulation. Furthermore, in the light of Konstan's interpretation of the subject, that 'altruism is not... a question about the behaviour but rather about the interpretation of behaviour',<sup>213</sup> the Athenian desire to advertise their own altruism suggests that, while the system of public reward may ultimately have had state-interested motives, these could nevertheless anticipate that some might perceive an ostensibly disinterested altruism.

Reading altruism into the Athenian system of public honours does not challenge the contemporary scholarly tendency to see Greek ethical ideas in terms of reciprocal exchange.<sup>214</sup> Athenian altruism was based sometimes on the claim that they were making a reciprocal return for a favour done to the city. Theozotides' decree concerns the maintenance of orphans of Athenians who died violently while coming to the aid of democracy during the oligarchic regimes of 411 and 404/3 (*SEG* xxviii. 46).<sup>215</sup> The decree does not justify itself with hortatory language, but makes use of the language of reciprocity: the decree states that the orphans are to be 'repaid' with a dole of an obol per day (*SEG* xxviii. 46.9–11; cf. *IG* I<sup>3</sup> 182.7; Lycurg. 1.53). This repayment denoted a return made by the state for the fathers' lives towards the orphans and their families.

The expressed intention to reciprocate for a favour, however, most frequently constituted an element of the Athenian desire to advertise their generosity. A decree of 343/2 praised Phanodemus and included the provision that the secretary of the *prytaneis* is to publish (*anagrapσαι*) the decree and to set it up on the Acropolis, 'so that also all the others might know that the *demos* and the *boule* repays *charis* to those who always speak and do the best things on behalf of the *demos*

<sup>212</sup> Dover (1974: 233).

<sup>213</sup> Konstan (2000a: 2). Konstan's paper concerns the intellectual and cultural environment in which there arose the conflict between altruism and egoism.

<sup>214</sup> Seaford (1998: 1); Gill (1998: 307, 314); Konstan (2000a: 4–5); such a notion pervades Herman (1987, 1998); Blundell (1989); von Reden (1995); Mitchell (1997); Allen (2000a).

<sup>215</sup> For discussion of this decree, see Stroud (1971: 280–301).

and *boule*' (IG II<sup>2</sup> 223 a 13–14).<sup>216</sup> A fragmentary decree proposes a similar motivation, this time in order to justify the publication and expenditure of 30 *drachmai* on the publication, 'so that everyone in the future might act with *philotimia* knowing that the *demos* returns *charis* to those who act with *philotimia* to her' (SEG xl. 70.7–10). The bestowal of a crown on some *bouleutai* who had paid towards an *epidosis* (contribution) on behalf of an *anathema* (dedication) was justified by advertisement of the *boule*'s sense of reciprocity in 338/7, 'so that also others might act with *philotimia* towards the *boule* knowing that the *boule* will pay back *charis*' (Ag. xv. 49.52–5). The notion of reciprocity also occurs in decrees for foreign benefactors.<sup>217</sup> As Herman points out, rewards of reciprocal gifts were 'meant to symbolise the establishment of obligations which, ideally, would last for ever',<sup>218</sup> thus inspiring further good deeds by the honorand. This equal reciprocity between honorand and the Athenian *polis* can be distinguished from the unequal reciprocity expressed through the parent–child analogy (4.1.6): in the publication of honorary decrees, the Athenians appear to have shifted the balance towards the honorand.

On the whole, therefore, the ostensible statements of reciprocity and altruism were expressed as part of the Athenian desire to inculcate competition in the performance of obligations by advertising her generosity. The benefit of the city of Athens appears to have been the major concern of honorific motivation. As Gauthier concludes, honorands can win profile but only within the framework of the *polis* and so long as the *demos* is the party that ultimately benefits from the exchange.<sup>219</sup> The encouragement of competitive emulation seems to be the underlying factor behind the system of public honouring.

#### 4.2.2.4. Physical and Oral Dissemination of Honorific Decrees

The name of the commender (*ho epainetes*) is written first in the writings of the politician... he says 'the council resolves' or 'the people', or both, and

<sup>216</sup> Cf. IG I<sup>3</sup> 182.5–7; II<sup>2</sup> 183.5–9 = 517.5–9 of 353/2. For more discussion of this decree, see Ch. 5.2.3.

<sup>217</sup> IG II<sup>2</sup> 222 = *Nat. D.* 22.11–16; IG II<sup>2</sup> 391.10–12, 392.1–3; IG II<sup>2</sup> 448 = *Nat. D.* 38; cf. IG II<sup>2</sup> 173.4–6, 196.11–14, 269.9–12, 360.62–5, 425.9–14. Notions of reciprocity are detectable in other aspects of Athens's relations with other *poleis* in the fourth century (Mitchell 1997: 17, 164–5, 176).

<sup>218</sup> Herman (1987: 61).

<sup>219</sup> Gauthier (1985: 77–89, 124–8).

X proposed, mentioning his own name with dignity and praise, then after that he goes on, displaying his own wisdom to his commenders, and sometimes making a very long composition. Does it appear to you that a thing of this sort is anything else than a written speech? (Pl. *Phdr.* 258a–b)

*Phaedrus* is a dialogue in which the Platonic Socrates condemns the authoritative and immutable nature of the written word. In this passage he identifies the written words of an honorary decree as a manifestation of a conventional speech of a politician, a genre of which he heavily disapproves. This discussion is interesting not just because it highlights the political capital to be gained in successfully proposing a decree (see Chapter 5.2.2), but also because of Plato's observation that, on an honorary decree, inscribed words and spoken words coincide.

In practice, the announcement of an honorary decree was taken so seriously that it formed one of the points upon which Aeschines brought a *graphe paranomon* against Ctesiphon. Aeschines objected to Ctesiphon's having decreed that Demosthenes' crown be proclaimed in the Theatre of Dionysus at the tragedies. Aeschines accused Demosthenes of having broken the law permitting *anarrisis* (announcement) before only the *boule* or *ecclesia*, and argued that another law, allowing for announcement at the time of the tragedies in the theatre, if the assembly approved (Aeschin. 3.32–6, 204), applied only to crowns that were gifts of foreigners (Aeschin. 3.46–7).<sup>220</sup> Aeschines argued that an announcement at the theatre at the time of the tragedies was inappropriate, compared to the former practice of the presentation of war orphans clad in hoplite armour (Aeschin. 3.153–4).

Demosthenes insisted on the validity of a law granting permission for the announcement at the theatre (D. 18.120–1). Despite the fact that deme decrees could be proclaimed probably in a deme's theatre (*IG II<sup>2</sup>* 1189.10; *SEG* xxii. 117.9), in the period before the trial of Ctesiphon in 330, despite Demosthenes' claim that he had been crowned previously in the theatre (D. 18.83), proclamation at the theatre of honorary decrees bestowed by the *demos* seems to have

<sup>220</sup> E. Harris has suggested that the legal basis of Aeschines' case was very weak and that his case is based on a tendentious misreading of the laws on crowning (Harris 1994b).

been restricted, for the most part, to non-Athenians.<sup>221</sup> In support of the announcement of the crowning at the Dionysia, Demosthenes postulated that the audience, including non-Athenians, who heard the proclamation of an honorary decree would be inspired to treat the city well (18.120), and that the applause of the moment that they gave was not just for the honorand, but for the party giving the honours, the Athenians.

It is possible that the *On the Crown* trial was an expression of a broader contest about the significance of the place at which honorary decrees were declared. If Ctesiphon perceived that some extra capital might be grafted from an announcement in a public place such as the Theatre of Dionysus, then this would be one way by which the Athenians might boost the desirability of an honour without the financially astute Lycurgan administration spending any more money. An honorary decree of 328/7 for Androkles, a priest of Asklepios, records that his good behaviour was announced, probably at the *ecclesia* (Schwenk 54.17–19). The announcement of crowned trierarchs was to be carried out by the herald at the Thargelia (RO 100.195–9). Accordingly, we might suggest at this point that the declaration of an honour at a given time might have been perceived as contributing to the part that they played in the grounding of competitive emulation, as well as making them accessible to those who did not read inscriptions.

Like all inscriptions, we should regard honorary decrees on stone as objects, and should therefore take into account the physical contribution of the stone and the significance of its place of publication. Above (4.1.2) it was suggested that the publication on stone of prescriptive ordinances was directed by the desire to give ordinances religious backing, or to make their directives accessible to

<sup>221</sup> For this assertion, see Gwatkin (1957: 139–40 with n. 57); Yunis (2001: 179–80). Proclamation of honours to non-Athenians: *IG* I<sup>3</sup> 102.12–14, 125.23–7; II<sup>1</sup> 328 (apocryphal); II<sup>2</sup> 448.25–6; *SEG* xxxii. 38 fr. b 11–14; *SEG* xxi. 341.9–10; for more examples, see Henry (1983: 28–36). The evidence for announcements is collected by Mette (1977: 94–102). Demosthenes' claim, and the document of the decree of Aristonicus for Demosthenes, which appears in some versions of Demosthenes' speech at 18.84, is not absolutely firm evidence for announcement at the theatre (on the status of such documents, see Ch. 4.1.1). If, however, they are to be trusted, the proclamation at the theatre of honours for Demosthenes may be related to the fact that the award was made apparently in response to Demosthenes' aid for the allies. This would be in line also with other documents purporting to present honorary decrees for other Athenian commanders which were to be announced at the Dionysia (D. 18.115–16).

those affected by them. When we come to honorary decrees, we can interpret the Athenian publication habit in other ways. Demosthenes' speech *Against Leptines* states that copies of the honorary decree for Leucon were set up at Piraeus, in the Bosphorus, and at Hieron (D. 20.36). While it was usual to set up decrees for benefactors in Athens, multiple copies were occasionally, either on the command of the Athenians or at the request of the recipient of the honours, set up in the home city of the honorand.<sup>222</sup> Accordingly, they were set up both at places where the Athenian readiness to reward her benefactors would be publicized to other potential Athenian and non-Athenian benefactors.

Indeed, the vast majority of honorary decrees for citizens before 336 were set up on the Acropolis alone.<sup>223</sup> Setting up an honorary decree in a place that was the heart of the city, not only physically but spiritually as the birthplace of Erichthonius, the autochthonous first Athenian citizen,<sup>224</sup> would have given it a conspicuous capital that elaborated the honour of having an inscription set up on stone. The centrality of the Acropolis to Athens was reasserted in the procession of the Great Panathenaia to the Acropolis.<sup>225</sup> The sanctity of the Acropolis was exploited by citizens and others who used it as a place to make solemn pledges or exchange contracts (And. 1.42, 76; Isoc. 17.18, 20). While the Acropolis might not have been an everyday thoroughfare,<sup>226</sup> such occasions would give a chance for Athenians and non-Athenians to notice the honorary decrees set up there.

However, over the period of Lycurgus' ascendancy, the placement of honorary decrees of the city of Athens for citizens in locations other than the Acropolis grew in popularity.<sup>227</sup> For instance, the honorary decree for Androkles, who had been allotted the priesthood of Asklepios, was set up in the Asklepieion (Schwenk 54.28–9), and a decree for two doctors was set up in the same place (Schwenk 14.11–12). Another inscription with a place of publication with direct relevance

<sup>222</sup> See Lalonde (1971: 53, 74–5), suggesting also that it was more usual for the publication of honorary decrees to be financed by the honorands; Liddel (2003: 93), collecting the late fifth- and fourth-century examples.

<sup>223</sup> Liddel (2003).

<sup>224</sup> Loraux (1983: 6–15).

<sup>225</sup> De Polignac (1984).

<sup>226</sup> R. G. Osborne (1999: 346–7).

<sup>227</sup> Decrees of associations other than the *polis* were always set up at the locations specific to the content of the decree or at a shrine of that organization. For some account of these places of publication, see N. F. Jones (1995; 1999: 89–91).



to its honorand, at the Theatre of Dionysus in Athens, is an honorary decree for priests and *hieropoioi* of Dionysus (*IG II<sup>2</sup>* 410.39).<sup>228</sup> The erection of an honorary decree in a place pertinent to the services being honoured would directly address those who might be involved in that aspect of civic behaviour, and therefore contributed to the process of dissemination and the encouragement of high standards of the performance of civic obligations.<sup>229</sup>

The physical aspect of honorary decrees that would have drawn most attention to them were the reliefs that sometimes head them. More extant document reliefs are known on honorary decrees than on any other kind of document.<sup>230</sup> However, while reliefs appear commonly on decrees for non-Athenians, there exist no reliefs together with inscriptions detailing honours for Athenians dating to the period 410–317, and they are rare even after that date (Lawton 62 of 118/17). There are, however, some reliefs whose lost texts may have formed part of honorary inscriptions for citizens. One example is a relief from the second half of the fourth century, depicting a small, apparently female figure being crowned by the Nike held by Athena (Lawton 164). The honorand's left hand holds a key, perhaps indicating that she is a priestess. The other very fragmentary state honorary decrees for Athenian citizens from this period containing reliefs concern specifically religious offices or priesthoods (cf. Lawton 91, 98, 153). The inclusion of such reliefs on honorary decrees would have focused attention onto the particular office held by the honorand, and may have contributed to the spirit of emulation more usually explicitly formulated in the text of the decree.

#### 4.2.3. Honours for Virtuous Behaviour

Parts of the decree of Ctesiphon for the crowning of Demosthenes seem to have been directly quoted in Aeschines' speech made against the award. They state that he was crowned 'for the sake of *arete*

<sup>228</sup> Lambert (2003) suggests that it is likely that the decree originally was to be set up at the theatre in the Piraeus.

<sup>229</sup> For the idea that the publication of decrees on stone is a manifestation of communication within a community, see Calabi Limentani (1984); for communication within the community and beyond, see S. Lewis (1996: 125–53).

<sup>230</sup> Lawton (1995: 5).

(virtue) and *andragathia* (manly goodness), most of all, because he continues speaking and doing his best for the *demos*' (Aeschin. 3.49), but also because 'he built the ditch around the walls well' (Aeschin. 3.236; D. 18.248). A reconstructed version of Ctesiphon's decree is inserted into the text of Demosthenes' defence, and includes details of Demosthenes' donations made from his own property when he held offices (D. 18.118). This document gives more explanation for the crowning than most contemporary decrees surviving on stone.<sup>231</sup> What is important to notice is that Demosthenes was being praised not specifically for his performance of duties as a wall-builder or as administrator of the Theoric fund, but for a long period of public service, an award comparable only to later decrees like that made for Callias of Sphettus of 270–269 (*SEG* xxviii. 60). Ctesiphon's decree, like Demosthenes' career, was perhaps exceptional at its time.

To investigate the kind of behaviour that was ostensibly being rewarded in honorary decrees is to investigate simultaneously what constituted the types of good behaviour being rewarded and set up as *paradeigmata* (examples), and in turn the substance of the civic obligations being encouraged. There are difficulties with this line of investigation because details of the *euergesiai* (good deeds) published on stone were usually minimal until the period after 318/17, when the republished and amended honorary decree for Euphron of Sicyon gave a detailed account of the honorand's deeds (*IG* II<sup>2</sup> 448.35–88).<sup>232</sup> Frequently, the description of *euergesiai* is formulaic, and seems to adhere to Aristotle's definition of *epainos* (praise) as a general statement of distinction, to be distinguished from *egkomion* (panegyric), the recital of a particular exploit (Arist. *EE* 1219<sup>b</sup> 15–18). There was some development away from the simple formula 'because he is a good man' to the Athenians' formula after the 360s, with the attribution of cardinal virtues to the behaviour of honorands.<sup>233</sup> Whitehead's study of these delineates the existence of ten 'cardinal virtues' which had emerged by the end of the fourth century: *andragathia*

<sup>231</sup> On the status of such documents, see Ch. 4.1.1.

<sup>232</sup> Honorary decrees of the third century contain more detail of the honorand's good deeds: see, for instance, the decree of 270/69 for Callias of Sphettus (*SEG* xxviii. 60); for general discussion of this tendency, see K. Rosen (1997).

<sup>233</sup> Whitehead (1983: 61). For discussion of *aner agathos* (good man) in inscriptions, see Gerlach (1932: 7–14); Veligianni-Terzi (1997: 193–5, 247–54, 279–80).

(manly virtue),<sup>234</sup> *arete* (virtue),<sup>235</sup> *dikaiousune* (honesty), *epimeleia* (diligence), *eunoia* (good will), *eusebeia* (piety), *eutaxia* (orderliness), *philotimia* (ambition), *prothumia* (zeal), and *sophrosune* (moderation):<sup>236</sup> such a set of virtues combines traditional virtues such as bravery, piety, and moderation with recognition of the value of performing virtuously on behalf of the city's interests.

Honorary decrees for citizens in this period are often connected to the holding of a particular office, and in particular offices with cult significance.<sup>237</sup> A decree recorded in a bouletic dedication of 343/2 praises the *boule* of the previous year for speaking and doing the best things and not taking bribes (*IG II<sup>2</sup> 223 A 5*),<sup>238</sup> and the same dedication records a decree of the council in recognition of Eudoxos' just carrying out of their orders (C 10).<sup>239</sup> An honorary decree of 335/4 for a *hieropoios* describes him as having held his office 'well and according to the laws' (Schwenk 18 a 8). In none of the decrees is there any explicit indication that the honorands have carried out much more than the duties of their office grounded in oaths: the difference between the fulfilment of duties and supererogation appears to be blurred. For metics, too, honours were justified by expressions of the mere fulfilment of duties attached to their positions as metics. A decree of the late fourth century praises a metic for contributing to the *eisphora* that the law laid down and marching out with the Athenian army 'well and with honourable ambition' (*IG II<sup>2</sup> 421.8–12*).<sup>240</sup>

<sup>234</sup> For the rhetoric of manliness and courage in the orators, see Roisman (2003). For the idea that courage was a virtue developed into a rhetoric which allowed citizens to perform their duties, see Balot (2004a, b).

<sup>235</sup> On the *polis*-concept of *arete*, see Finkelberg (2002).

<sup>236</sup> Whitehead (1993: 37–76); for a detailed survey of these and other virtues appearing in honorary decrees, see Veligianni-Terzi (1997: 285–306).

<sup>237</sup> Lambert (2004: 105–6).

<sup>238</sup> On not taking bribes as a virtue, see Whitehead (1983: 66 with n. 34); Veligianni-Terzi (1997: 285). For discussion of Athenian legislation against bribery, see C. Taylor (2001a, b). Herman (1987: 77–9) interprets the term as abstinence from gift-exchange, and envisages it as implying that the honorand had shown more regard for communal rules than for personal obligations. On rewards for 'speaking and doing the best things', see Ch. 5.2.3.

<sup>239</sup> For more discussion of this document, see Ch. 4.2.3.

<sup>240</sup> Another inscription praises an honorand for *eisphora*-contribution made 'well and eagerly': *IG II<sup>2</sup> 505.14–16*.

In the 330s we encounter some, albeit limited, detail of the virtues of the honorand when in office. The priests and *hieropoioi* of Dionysus were honoured because ‘they sacrificed to Dionysus and the other gods to whom it was fitting to sacrifice on behalf of the *boule* and *demos*... for the health and the safety of the *boule* and *demos*’ (IG II<sup>2</sup> 410.4–5, 14). The decree goes on to specify that they have managed well the maintenance of rites and sacrifices (24–5). Pytheas was honoured because he oversaw well and with *philotimia* the building of a new spring at the sanctuary of Ammon and the construction of a well at the Amphiareion (IG II<sup>2</sup> 338.12–17). Another decree from Oropos of 332/1 is for Phanodemus, an expert in culture and history, who seems to have been a sole *nomothetes* (legislator) (Schwenk 41).<sup>241</sup> This decree states that Phanodemus is being honoured for acting well and with *philotimia* as the lawgiver at the Amphiareion and for having sacrificed so that the festival might go as well as possible, and also for his repairs to the sanctuary (11–17). What is notable is that such awards were made for actions very closely identified with the particular offices held by those individuals.

Awards were, however, sometimes made for explicitly supererogatory fulfilment of an office. The speaker of Demosthenes 51, disputing the award of a trierarchic crown, illustrates the esteem of the reward made for the one who was the first to have his ship ready for service, as well as the competitive *philotimia* of those who performed this obligation.<sup>242</sup> In 328/7 a priest of Asklepios was honoured for doing things which the laws directed well and piously and for arranging the good adornment (*eukosmia*) of the Theatre of Dionysus (IG II<sup>2</sup> 354.12–17).

There exist some rewards for citizens for exceptional behaviour: they were made for helping to restore the democracy in 403/2. Such action does represent fulfilment of a statutory obligation if we believe in the authenticity of Solon’s law about taking sides during *stasis* ([Arist.] *Ath. Pol.* 8.5).<sup>243</sup> But when we consider that the awards are for those citizens—or their offspring—who actually gave their lives for democracy, they should be placed in the category of

<sup>241</sup> On Phanodemus, see Humphreys (2004: 83–4, 102–4, 111–14).

<sup>242</sup> This sentiment is reminiscent of that behind Cephisophon’s decree (RO 100.170–204).

<sup>243</sup> On the invention of this law in the late fifth century, see David (1984).

honours for deeds of supererogation. Two examples concern citizens: the catalogue, epigram, and decree in honour of those citizens who captured Phyle (*SEG* xxviii. 45; Aeschin. 3.187–90); and Theozotides' law concerning directing the public maintenance of the orphans of those Athenians who died fighting for the democracy, which was not an honorary decree but was honorific in intention (*SEG* xxviii. 46). The decree for Neoptolemus, rewarding him with a crown and a statue for gilding the altar of Apollo in the *agora* in accordance with a divine prophecy ([Plu.] *Moralia* 843f), should be dated to the 330s, and might be indicative of the growing significance of private wealth in attaining public honorific recognition. Where honorary decrees concern specific actions, the hortatory clause is absent, suggesting that such action is considered inimitable.

Performance of military obligations appears to have provoked public reward from an early date: Gauthier has pointed out that in the fourth century the highest honours (*megistai timai*) for Athenian citizens were restricted to victorious generals.<sup>244</sup> The public reward of generals is likely to have taken place in the fifth century: Cleon was granted *sitesis* (upkeep) and *prohedria* (front seats) probably in recognition of his success at Pylos (*Ar. Eq.* 702–4; cf. 280–1, 709, 766, 1404). In the fourth century military supererogation sometimes was thought to merit an honorary statue: Demosthenes alluded to rewards of the great generalships of Conon, Iphicrates, Chabrias, and Timotheus (*D.* 13.21–2; 20.69–70, 75–86; 23.196–8; Aeschin. 3.243),<sup>245</sup> and Lycurgus boasted that the Athenians honoured their generals with statues (*Lycurg.* 1.51).

Honours granted to non-Athenians were usually presented as returns for helping the Athenians preserve their grain supply, or for supererogatory military aid. Details of specific services were sometimes included in decrees: these include helping the Athenian navy get to Pydna and providing them with wood and oars (*IG* I<sup>3</sup> 117.24–37; cf. *IG* I<sup>3</sup> 182), or helping Athenians after the Sicilian disaster

<sup>244</sup> Gauthier (1985: 95–104); cf. Kralli (1999: 139–41).

<sup>245</sup> For the remains of Chabrias' monument in the Athenian *agora*, see Burnett and Edmonson (1961). Some, but not all, statues were dedications: see Welsh (1903–4). On the award of statues, see Thompson and Wycherley (1972: 155–8) and Camp (1986: 163, 181).

(*IG I*<sup>3</sup> 125.6–16 with D. 20.42), the giving of rations (*IG II*<sup>2</sup> 398 A 8) and the donation or promise of aid or other things useful in war (*Ag. xvi.* 104.16–19; *IG II*<sup>2</sup> 17.3–5; 276.6–9, 15–18; 374.9; Schwenk 48.12–14, 68.5–13; *IG II*<sup>2</sup> 391.5–6), the reception of exiles (*IG II*<sup>2</sup> 109.18–21), and funding the ransom of captives (*IG II*<sup>2</sup> 284.10–12). Indeed, a survey of proxeny awards from the Greek world concluded that the principal motives of the awards concerned the freeing of prisoners, reorganization, military aid and protection, just behaviour of garrisons, financial services and help with the grain supply, and intervention in *stasis*.<sup>246</sup> Given the scarcity of honours for Athenian citizens in the fifth century, and the similarity in the kinds of behaviour recognized by honorary decrees for both citizens and non-citizens, it appears to be the case that it was only after the Athenians had ascertained the virtues of a good man in the light of the *euergesiai* of the foreign benefactor, that they were able to apply this system to the citizen.

The conditions that were tied to honouring for citizens are also revealing of a specific obligation of magistrates. In the 340s and 330s honorary decrees for citizens add the provision that the award of an honour was dependent on the honorand having successfully passed the *euthuna* of office.<sup>247</sup> Aeschines prosecuted Demosthenes on the basis of the law which forbade those *hypeuthunoi* (subject to audit) from being crowned for the office concerned (*Aeschin.* 3.9–12). This obligation of office was therefore a duty reinforced rather than rewarded by the institution of an honorary decree. Lycurgus, even at the end of his life, was ready to show his devotion to this obligation, ordering that he be carried into the *bouleuterion* (council house) so that he might give *euthuna* ([*Plu.*] *Moralia* 842f). Accordingly, the statutory regulation of the honorific system appears to have reinforced obligations. It is clear also that the effect of rewards for non-citizens bestowed a new set of duties on the honorand.

<sup>246</sup> A recent survey of proxeny awards from around the Greek world concluded that the principal motives of the awards covered the freeing of prisoners, reorganization, military aid, and protection, just behaviour of garrisons, financial services, assistance with the grain supply, and intervention in *stasis*: Marek (1984: 341–2).

<sup>247</sup> *IG II*<sup>2</sup> 223 A 13, B 13, C 13; 330.42; 338.18–19; 354.21–2; 410.22; 415.27; *Ag. xv.* 49.51–2.

## 4.2.4. Duties of the Honorand

The bestowal of *proxenos* status was sometimes made with the express intention of encouraging assistance with the grain supply of Athens,<sup>248</sup> and would bring a new set of obligations towards the city making the award.<sup>249</sup> However, only the grant of citizenship marked the integration of a non-Athenian into the group of citizens,<sup>250</sup> and accordingly into the system of civic obligations. Consequently, in the terms conceived by Demosthenes, the grant of citizenship would be followed by the honorand settling in Athens and sharing in the advantages towards which he aspired: ‘Everyone who desires to become an Athenian citizen, because he has fallen in love with our customs and laws, will make his home in our midst, as soon as he receives our franchise, and will enjoy his share in the advantages he coveted (καὶ μετέχειν ὧν ἐπεθύμησαν)’ (D. 23.126). Such idyllic participation in the affairs of the city would not always have been forthcoming from the honorary citizen. While grants of *enktesis* (the right of land-ownership) were often responses to the presence of a community of non-Athenians in Athens or merchants making use of Athenian territory (RO 77, 91),<sup>251</sup> an award of citizenship provided a token offering without suggesting that any of the perquisites of honorary citizenship be used or residency taken up. There were of course notably prominent naturalized citizens, such as Pasion and his son Apollodorus,<sup>252</sup> who were heavily involved in the performance of obligations. Simply, some honorary citizens did, and others did not, use the perquisites on offer.<sup>253</sup> Demosthenes’ statement illustrates rather the perception of Athenian citizenship as linked to participation. The term used to denote the bestowal of citizenship before 229 was ‘to be an Athenian,’<sup>254</sup> which indicates that the Athenians aimed at the incorporation of the individual into the behaviour patterns of an Athenian citizen.<sup>255</sup> This incorporation was manifested in the

<sup>248</sup> IG II<sup>2</sup> 407.7–8; cf. IG II<sup>2</sup> 226.42–4, 416.10–11.

<sup>249</sup> Herman (1987: 118–28). On the life of Apollodorus, see Trevett (1992).

<sup>250</sup> Herman (1987: 140–1).

<sup>251</sup> Henry (1983: 204–33). The grant for Akarnanian exiles, for instance, was valid only while they were resident in Athens (RO 77.25–6).

<sup>252</sup> M. J. Osborne (1981–3: iv. 139).

<sup>253</sup> M. J. Osborne (1981–3: iv. 186–9).

<sup>254</sup> εἶναι αὐτὸν Ἀθηναῖον.

<sup>255</sup> Henry (1983: 63).

imposition on the honorary citizen of the duties and privileges normally reserved for citizens.

Citizenship decrees and other honorary decrees frequently included the granting of liability to obligations normally reserved for citizens. This included the 'award' of paying the *eisphora* along with citizens.<sup>256</sup> This may have represented a symbolic privilege, or possibly a practical privilege in a reduction of the amount of *eisphora* that the honorand was liable to pay.<sup>257</sup> This was accompanied usually (though there are exceptions: RO 77)<sup>258</sup> by the right to march with the Athenians in the army (IG II<sup>2</sup> 37.5),<sup>259</sup> or even the bestowal of the 'privilege' of giving and receiving justice on a par with Athenians (RO 77.26–7).<sup>260</sup> The fact that such rewards were couched in neutral language, avoiding the imperative language of compulsion, is revealing of the nature of Athenian obligation: compulsion was displaced by the guise of participation as a privilege.<sup>261</sup> The award of *isoteleia* ('equality of obligations') would allow a non-Athenian equality in terms of both taxation and military service and was considered to be a privilege for a non-citizen (RO 4.9; IG II<sup>2</sup> 7862–81);<sup>262</sup> indeed, exemption from the metic tax was a privilege rewarded to loyal Achaeanians in 338/7 (RO 77.26).<sup>263</sup>

However, the *eisphora* could be construed as a burdensome obligation for non-Athenians, and exemption from it was used as an award for favoured merchants. In the 370s the Athenians honoured Strato the king of Sidon (RO 21). A certain Menexenos added a rider exempting the Sidonians resident at Athens for purposes of trade from paying *eisphora*, *metoikion* (metic tax), and *choregia*

<sup>256</sup> IG II<sup>2</sup> 218.33–4, RO 77.27; IG II<sup>2</sup> 287.3–7, 351.31–2, 360.20–1, Schwenk 48.30–2, 68.19–21; IG II<sup>2</sup> 505.54–5, 516.1–3, 540 + SEG xxiv. 117.6; IG II<sup>2</sup> 545.13–15; Ag. vii. 102.14–16.

<sup>257</sup> De Ste Croix (1953: 32 n. 5); Whitehead (1977: 78–80).

<sup>258</sup> Henry (1983: 258 n. 68).

<sup>259</sup> For a list of examples of these two awards, see Henry (1983: 249–50).

<sup>260</sup> *διδόναι δίκαι[s] και λαμβάνειν*. Cf. SEG xxxvi. 149.6.

<sup>261</sup> IG II<sup>2</sup> 287.2–7: *δ[εδόσθαι] αὐτοῖς ἰσοτέ[λε]ϊαν οἰκο[ῦσαν Ἀ]θηγησων [κ]αὶ τ[ὰς] εἰσφορὰς εἰσφ[έρειν] καὶ τὰ τέλη τελεῖν καθάπ[ερ] Ἀθηναῖοι, καὶ τὰς στρατείας|στρατ[εύ]εσθαι μετὰ Ἀθηναίων*: 'to grant to those living in Athens *isoteleia* and they are to contribute to the *eisphora* and pay taxes as Athenians and to march in the army with Athenians'.

<sup>262</sup> Whitehead (1977: 11–13).

<sup>263</sup> On gradations of the honour of *ateleia*, see Henry (1983: 141–6).



(RO 21.30–6). Xenophon too presented the right to march with the Athenian army as burdensome for the metics, and suggested that they should not be forced into this service (X. *Vect.* 2.2, 5). In this way, therefore, the participation alongside the Athenian citizen was construed alternatively as a burdensome obligation and as a privilege.

On the whole, with the exception of exclusion from certain priest-hoods and archonships (D. 59.92),<sup>264</sup> and possibly exclusion from the *ecclesia* until after the discussion of sacred matters had taken place (*meta ta hiera*: IG II<sup>2</sup> 74.7–9; RO 33.30–8), honorary citizens could participate in most areas of civic life. The allocation of military and *eisphora*-paying obligations served to make honorary citizenship more symbolically akin to normal citizenship. Honorary citizenship, like citizenship by birth, was perceived in terms of both privileges and obligations: in short, as participation.

### 4.3. LISTS AND CIVIC OBLIGATION

#### 4.3.1. Introduction

The fact that lists appear to have been the kind of public document published most prolifically on a permanent medium in fourth-century Athens justifies a consideration of their place in the grounding of civic obligation. The Athenians published stone lists of individuals who had performed civic duties, featuring archons (IG I<sup>3</sup> 1031; SEG xxxix. 28),<sup>265</sup> councillors and *prytaneis* (Ag. xv. *passim*), ephebes,<sup>266</sup> and victorious *choregoi* (IG II<sup>2</sup> 2318).<sup>267</sup> Other kinds of list, such as those recording the transfer (*paradosis*) to public accounts of materials, records of public works, loan records, dedications, and

<sup>264</sup> M. J. Osborne (1981–3: iv. 139, 173–6).

<sup>265</sup> On the list of archons published at the end of the fifth century, see Cadoux (1948: 77–9).

<sup>266</sup> Reinmuth (1971*b*); Rhodes with Lewis (2003: 452–7).

<sup>267</sup> This is a list of victorious sponsors of the choruses in the Dionysiac competitions, inscribed probably on a small building possibly in the 340s: see Capps (1943); Pickard-Cambridge (1968: 101–4). Extant fragments go as late as 329/8. For other recently published lists of names from the Athenian *agora*, see Walbank (1994: 169–209); cf. IG II<sup>2</sup> 2364–2489. The most complete discussion of the known kinds of inscribed lists from the ancient Greek world is still Larfeld (1902–7: ii. 911–28).

temple inventories, also mentioned individuals who had performed obligations.<sup>268</sup> It appears to be the case that the Athenians became more prolific in their publication of lists in the period after the Social War, when there appear new kinds of inventories, such as that of bronze objects on the Acropolis.<sup>269</sup> Epigraphically extant and oratorically attested lists of individuals, and magistrates' accounts mentioning individuals, suggest that the erection of lists on stone played an important role in inserting into the public memory a record of individuals' fulfilment of public services.<sup>270</sup> While accounts and records were not expressly intended as monuments to fulfilled civic obligations, they did form a kind of indirect documentation that could feasibly be interpreted as a record of supererogation or public-spirited activity.<sup>271</sup>

On the one hand, lists, in particular those that feature names, have a potentially high level of accessibility, given that a name can be read by those who have a minimum level of literacy. This may explain the fact that lists are a frequently referenced type of public document in legal cases.<sup>272</sup> However, the apparently haphazard system with which many lists were organized, along with their often small and indistinct lettering, has led some scholars to suggest that many lists were intended to be symbolic records of duties performed by or on behalf of the *polis*, rather than aids to systematic consultation.<sup>273</sup> The degree of legibility and coherence of each type of list might suggest the frequency and ease of consultation, but in most cases publication on stone probably allowed for both consultation and symbolism.

The surviving evidence for lists is a heterogeneous body of material (IG II<sup>2</sup> 1696–1834, 1960–2291, 2364–2489). Some appear to have been published on stone with or without prescripts,<sup>274</sup> while others

<sup>268</sup> Accounts and temple inventories: see Davies (1994: 207); D. Harris (1995); Linders (1988, 1992).

<sup>269</sup> D. Harris (1992).

<sup>270</sup> Goody (1977: 80, 130) distinguished three kinds of list, two of which are relevant to a study of ancient Athens: the retrospective list consisting of persons who have been involved in some kind of situation, and the list as a guide to future action, such as a shopping list or roll list of individuals who ought to carry out a task. A third category was the inventory of concepts: Goody (1977: 80, 130).

<sup>271</sup> For discussion of accounts as 'indirect documentation', see Gschnitzer (1999).

<sup>272</sup> Thomas (1989: 66).

<sup>273</sup> Bodel (2001: 19–20); D. Harris (1994); Davies (1994).

<sup>274</sup> Dow (1983).

were incorporated into decrees. They were published by the city, or in some cases were published as joint dedications made to a deity by a group.<sup>275</sup> For the most part, this section will concentrate on the epigraphical evidence for lists set up on stone *stelai*, but will make use also of the orators' discussion of lists published on non-permanent media. It will emerge that the publication on stone of lists was a habit more frequently geared to recording obligations already fulfilled by citizens rather than listing those citizens liable to particular obligations. Accordingly, as in the case of honorary decrees, lists published on stone contributed towards the negotiation of the obligations of the Athenian citizen primarily by way of encouragement. In 4.3.2 I will examine the evidence for the creation of lists of those liable to a particular obligation, and 4.3.3 will look at the importance of inscribed accounts to civic obligation through the case of the *tabulae curatorum navalium* (accounts of the naval overseers) and inventories of dedicants and dedications (4.3.4). In 4.3.5 I will investigate the evidence for the composition of lists designed to reward the fulfilment of public services. As some of these lists were inscribed as dedications, it is necessary to examine lists set up as dedications (4.3.6) before going on to look at dedications (4.4) set up by individuals on the fulfilment of office.

### 4.3.2. Lists of those Liable to Obligations

It is unlikely that there existed in ancient Athens a central list of living citizens; it is also unlikely that there was any list (*katalogos*) of citizens liable for enrolment for military service in fourth-century Athens.<sup>276</sup> Conscription worked by the composition at short notice of *katalogoi* based upon the minute book kept in each deme by the demarchs, known as the *lexiarchikon grammateion*.<sup>277</sup> This was

<sup>275</sup> Rives (2001: 121).

<sup>276</sup> Hansen (1985b: 83–9); M. R. Christ (2001: 400). For the view that such a permanent list did exist, see L. Burckhardt (1996: 21 n. 31), Fischer (2003: 247–8), suggesting that it was posted at the monument of the Eponymous Heroes in the *agora*, on a *sanis*.

<sup>277</sup> Kahrstedt (1934: 71 n. 2) collects the sources for this roster; see also Whitehead (1986a: 103–9); for the suggestion that it took the shape of a minute book, see R. G. Osborne (1985b: 72–3). For the debate about whether or not *thetes* were included in

probably the only comprehensive roster of citizens liable to obligations: the revision of these documents (*diapsephisis*) that took place in 346 (Aeschin. 1.77; *FGrH* 324 F52, 328 F52)—probably the first time that this had happened since the mid-fifth century<sup>278</sup>—must be seen as part of the attempts in the period after the Social War to reinforce the workings of civic obligation. It is likely that being registered in this list of names, like the list of those eligible to attend the assembly (the *pinax ekklesiastikos*), may have been used as a definitive proof of citizenship (Is. 7.1; D. 44.35).<sup>279</sup>

Military conscription by age class was introduced in the period 386–366.<sup>280</sup> It might have been around the same time that the practice began of setting up inscribed bronze *stelai*, each corresponding to one year class, in front of the *bouleuterion*, listing men who had been enrolled for ephebic service ([Arist.] *Ath. Pol.* 53.4–5).<sup>281</sup> The list would have ensured that citizens who had served for forty-two years were no longer liable to conscription.<sup>282</sup> It cannot, however, be assumed that this document constituted a register of those liable to civic obligations: such a list would go out of date very quickly owing to migration and mortality,<sup>283</sup> and would be a useful document for the basis of conscription only if it were updated regularly. The account in [Aristotle]’s *Athenaion Politeia* does not suggest that this was the case. The insertion of an individual’s name into the list indicated the integration of the ephebe into the *polis* as a military institution, and acted as a record of their having taken the ephebic oath. It would act also as a conspicuous display of Athenian strength, an exaggerated one if the list were not updated to record

the list, see Hansen (1985*b*: 85); Whitehead (1996*a*: 35); Raaflaub (1996: 156); Ruzé (1997: 399–401). Jameson (1963: 399) argues that it consisted of landowners.

<sup>278</sup> Whitehead (1986*a*: 99–109).

<sup>279</sup> On the *pinax ekklesiastikos*, see Hansen (1985*b*: 14–15).

<sup>280</sup> As M. R. Christ (2001) argues, it probably replaced conscription by lists for each of the ten tribes composed for each expedition; see Ch. 5.1. M. R. Christ (2001: 400–1) takes Hansen’s view that there was never any central *katalogos* of citizens who were liable for military service (Andrewes 1981: 2; Hansen 1985*b*: 83–9); others, however, believe in the existence of a central catalogue: Dover (*HCT* iv. 264); L. Burckhardt (1996: 21 n. 31).

<sup>281</sup> Davies (1994: 206 n. 18) suggests that they were bronze plates attached to wooden or stone boards. For references to the limestone bases for triangular bronze *stelai* found near the *bouleuterion*, see Rhodes (1981: 594).

<sup>282</sup> Rhodes (1981: 593).

<sup>283</sup> Hansen (1985*b*: 15).

the casualties of war and illness. Furthermore, given the religious significance of bronze,<sup>284</sup> it might be the case that this publication might have constituted an attempt to imply some religious tutelage over the lists and more broadly on citizenship. Therefore, it appears that the bronze *stelai* may have served a broader purpose than the enforcement of conscription.

Non-permanent lists were issued for the purpose of emergency military conscription: in Apollodorus' speech *Against Polycles*, the speaker recalls a decree ordering the demarchs and *bouleutai* to make up lists of sailors for an expedition (D. 50.6). Conscription of cavalry was made possible by the production of lists: by [Aristotle]'s time, ten *katalogeis* (enrolment officers) were elected to help maintain this list.<sup>285</sup> Those included on this list would have been able to cite their fulfilment of military obligation in the law courts, were it expedient. In the speech *Against Alcibiades II*, the speaker tells the audience that if in fact Alcibiades had enrolled for the cavalry, he should have had his name erased from the hoplite *katalogos* (Lys. 15.5). This could be in response to a defendant's claim that he had been on a list of the *hippeis* (horsemen), which would provide backing to a claim that Alcibiades had indeed fulfilled his military obligations. However, there may have been a negative aspect to appearing on this list: having one's name on the *katalogos* of the *hippeis* could be conceived of as a sign of oligarchic sympathies. In defence of his argument that he was not involved as a cavalryman during the reign of the Thirty, the speaker of *Against Mantitheus* claims that he had requested that his name be struck off that register (Lys. 16.13).

Of all civic obligations, that of paying off debts to the state appears to have been the one most frequently expressly encouraged by the publication of lists. A procedure, *apographe*, offered rewards to citizens who denounced the property of public debtors; the coercive measures on public debtors to repay debts owed to the treasuries of the city consisted of imprisonment combined with insertion of one's name onto a list of debtors,<sup>286</sup> together with *atimia*

<sup>284</sup> Burkert (1992: 30 n. 21).

<sup>285</sup> Rhodes (1981: 566–7); Bugh (1988: 53–5, 169–73).

<sup>286</sup> *Apographe*: see R. G. Osborne (1985a: 44–7). Imprisonment was probably only imposed against criminal debtors who had refused to pay summative penalties: Harrison (1968–71: ii. 243–4).

(disenfranchisement) or more specifically the removal of the right to sit on a jury and other privileges (D. 24.50; cf. D. 22.33; 25.74, 94). This was followed, after eight prytanies of indebtedness, by the doubling of the fine and sale of their property (D. 24.39–40; And. 1.73).<sup>287</sup> The inscription of a name on a list of debtors and limitation of participation constitutes a vital part of the attempt to gain control over an individual who had violated norms. Sale of property, on the other hand, constitutes a punishment recognizing that the wrongdoer could not be brought back into line, an admission that civic obligations could not be enforced on that individual. Thus the inclusion of a name on a list demarcated the wrongdoer as *atimos* (disenfranchised) and prescribed him for possible future punishment if he failed to repair his omission of the civic obligation to repay a debt to the state: encouragement came before punishment.

The centrality of lists of state debtors to oratorical discussions of public debtors suggests their significance to the indictment of defaulters (D. 25.4, 99; 27.38; 58.19–20, 51–2), and also attest to a concern for updating them. Demosthenes refers to the practice of erasing the amounts paid and the names of those who had paid in full (D. 58.50–2). The decree of Patrocleides absolving debtors included a regulation that public records of debtors be abolished (And. 1.79). That debtors were recorded publicly on the Acropolis, probably on a non-permanent medium from which names of paid-up debtors could be expunged ([Arist.] *Ath. Pol.* 47.5), attests to the gravity with which they were regarded (D. 25.69–70, 58.48). There is no epigraphical evidence to suggest that state debtors were comprehensively listed on stone,<sup>288</sup> and, as instruments of encouragement, most such lists were probably published on non-permanent media. The most

<sup>287</sup> There is debate as to whether a state debtor became disenfranchised as soon as he fell into debt or only after eight months: see Harrison (1968–71: ii. 173–6); cf. Todd (1993: 144).

<sup>288</sup> Klaffenbach (1960: 22–3); Boegehold (1972: 26–7). For a possible exception, see *IG II<sup>2</sup>* 1928–32 + *SEG* xxxii. 171 + *SEG* xlv. 85: these documents consist of lists of names with patronymic and tribal affiliation followed by ‘instead of X’. This suggests that they were connected with the resolution of disputes (*diadikasia*) arising between individuals about liability to particular financial obligations, perhaps the war tax, as Davies (1981: 142–50) suggests, or the trierarchy, as Rhodes (1982: 11–14) and Clark (1990: 66–7) suggest. However, they have most recently been connected with an attempt, completed by 378/7, to collect public debts, as Gabrielsen suggests (1987b: 39–51; 1994: 71).

considerable remains of the stone record of debtors survive on the accounts of the naval *epimeletai*.

### 4.3.3. Lists as Instruments of Encouragement: The Accounts of the Naval *Epimeletai*

A major concern for the Athenians in the fifth and fourth centuries was the funding of their navy through the trierarchy (see Chapter 5.4.2). The erection on stone at Piraeus and Athens and updating of the accounts of the naval *epimeletai*, annually by the mid-fourth century, indicates the great public concern for her navy and the problems of organization that it brought (*IG II*<sup>2</sup> 1604–32).<sup>289</sup> Fragments of fifth-century lists survive (*IG I*<sup>3</sup> 498–500); the oldest surviving fourth-century list has been dated to 379/8,<sup>290</sup> shortly before sweeping financial reforms, the creation of *eisphora* symmories, and the resumption of large-scale naval activity in 378/7 (Polyb. 2.62.6 ff.; *FGrH* 328 F 41). The resumption of these lists could well reflect a contemporary reorganization of the trierarchic system.

The accounts, as receipts of the *paradosis* (handing over) of the accounts of the *epimeletai* at the end of their term, recorded the ships and equipment that one office handed over to the next. The lists provided inventories of naval material in the docks and recorded the transactions between naval authorities and the trierarchs, and indicated the probity of the outgoing *epimeletai*, as well as their fulfilment of obligations as outgoing magistrates about to undergo *euthuna*. For instance, the list of 342/1 records that a certain Apemon of Phyle, an *epimeletes ton neorion* (overseer of the shipsheds), had paid a debt of 50 *drachmai* at the *bouleuterion* (*IG II*<sup>2</sup> 1622.520–30). Elsewhere the naval *epimeletai* collected debts owed to the *dikasteria* (*IG II*<sup>2</sup> 1628.624–5, 1629.1103). As they detailed the conditions of the

<sup>289</sup> For the most recent fragments from Athens, see Gabrielsen (1999). Most of the lists were discovered in 1834 during the excavation of a late Roman or Byzantine portico on the south side of the Kantharos harbour in the Piraeus. New fragments have been discovered in the Athenian *agora*: see Laing (1968: 244–54); Shear (1995: 179–224). Given that they join on to *IG II*<sup>2</sup> 1628 and 1630, and were discovered in disturbed contexts, it is possible that they were moved there from an original place of publication in the Piraeus, as Shear (1995: 180) suggests.

<sup>290</sup> Clark (1990: 65). Gabrielsen (1992: 69–74) prefers 378/7.

ships in the yards and the trierarchs responsible for returning them in that condition, they served also as records and checks of obligations performed and debts owed by the trierarchs concerned.

However indistinct the organization of the lists might seem to the modern eye,<sup>291</sup> they appear to have been perused by the orators. The speaker of Demosthenes 47 refers to a *stele* containing names of naval debtors (D. 47.22), Demochares and Theophemos, urging these debtors to pay what they actually owed (47.23).<sup>292</sup> Elsewhere, Demosthenes talks about debts 'from the *diagramma*' when discussing the reorganization of naval gear owed by trierarchs (D. 14.21). *Diagrammata* can be identified as the lists of the naval *epimeletai*.<sup>293</sup> In this way, it is clear that the lists of the naval *epimeletai* helped to ground the obligation of the repayment of debts through encouragement. Defaulting trierarchs were likely to appear more frequently on the lists than trierarchs who had promptly discharged their liabilities right after expiry of their term.

The accounts appear to have evolved over time towards a focus on the obligations of the individual trierarchs. Lists of the naval *epimeletai* of the fifth century (*IG* I<sup>3</sup> 498–500) and the 370s<sup>294</sup> were drawn up by ship. In Davies's words, 'the book-keeping units were not the trierarchs, or the expeditions and sorties, or even the individual categories of ship's equipment, but the hulls'.<sup>295</sup> Accordingly, in the accounts of the 370s, the name of the trireme and the gear concerned were listed first; this was followed by the name of the trierarch

<sup>291</sup> On the difficulty of reading such lists, see Boeckh (1840: xv); Clark (1993: 124).

<sup>292</sup> See Ch. 4.1.2.

<sup>293</sup> In *IG* II<sup>2</sup> 1629.509–14, Charimnestos, the heir (*kleromenos*) of Charias of Kydathenaion, is recorded as having returned the gear that he owed from the *diagramma*. Charias' debts are mentioned elsewhere in the lists: *IG* II<sup>2</sup> 1628a54–62, 1632.58–61. Given, as Harrison (1968–71: i. 124) argued, that Charimnestos' debts are probably those he inherited from his father, it may be concluded that the lists of naval *epimeletai* are the *diagrammata* themselves. However, note that according to the interpretation of Wilhelm (1909: 247), *diagramma* could also refer to a non-permanent means of recording. The other reference to *diagramma* is that in Hyperides' speech *Against Epikles*. Confirming the relationship between these documents and civic obligation, Harpokration says that the *diagrammata* are arrangements by symmetries of how much it is necessary (*dei*) for each man to pay (Harp. s.v. *diagramma*).

<sup>294</sup> *IG* II<sup>2</sup> 1604 is dated to before 378/7 by Clark (1990: 65) and Gabrielsen (1992: 69–74); 1606 is dated to 375/4 at *SEG* xxxv. 115; 1607/8 to 373/2 by Davies (1969: 325); 1605 and 1610 to the 370s or early 360s by Davies (1969: 311 n. 12).

<sup>295</sup> Davies (1969: 311).



(*IG* II<sup>2</sup> 1604, 1606, and 1607/8). The entries on the list of 366/5<sup>296</sup> name the ship, followed by the trierarch, with the statement that they did not take equipment in the period of office of the *epimeletai* concerned (e.g. *IG* II<sup>2</sup> 1609.91–3). These lists appear to emphasize the record of the transactions between the trierarch and the naval *epimeletai* and at the same time serve as an inventory of naval equipment.

However, the accounts of the period 360–340 stress the trierarchs: the lists are broken up into sections listing debtors introduced with the rubric ‘they owe’.<sup>297</sup> This trend continued through the 330s: one account lists money paid by trierarchs in lieu of equipment (*IG* II<sup>2</sup> 1624.40–101), and those trierarchs who still possessed equipment (105–29). The accounts of 333/2 begin with the resolution that Euxenippos would repay a new hull to the shipsheds, having destroyed the old one (*IG* II<sup>2</sup> 1623.6–13). However, there is no significant pattern in the lists of the 330s, and lists of debts do appear to have been listed also by trireme.<sup>298</sup> The lists of the 320s, which record the handing over of debts to the incumbent board (*IG* II<sup>2</sup> 1631.517), were haphazardly divided between listing the equipment that was being handed over by one board of *epimeletai* to the next and listing which trierarchs had public debts. One study of the Athenian navy has suggested that the casually arranged lists of the 320s reflect a frenetic attempt to publish complete records of transactions combined with a lack of concern for ease of reference,<sup>299</sup> perhaps a manifestation of the effort to contribute to the improvement of public finances by the collection of naval debts.

Although the lists appear to have been intended as records of the accounts of the *epimeletai*, the lists constitute the only major listing of public debtors on stone, while also recording the return of owed naval equipment. Accordingly, they contributed to the pressure on the trierarch to repay debts, but at the same time repayment, and upright

<sup>296</sup> Davies (1969: 330); cf. Brun (1985: 307–17); Gabrielsen (1989: 99 n. 20).

<sup>297</sup> οἷδε ἀφείλουσιν: 1618.79; cf. *IG* II<sup>2</sup> 1615, 1617, and 1619.

<sup>298</sup> In *IG* II<sup>2</sup> 1623.82, with a trireme called *Summachia*, the lists switch to recording debts of trierarchs by trireme. The reverse side of the inscription lists a number of men who had given sureties for their debts (161–99). *IG* II<sup>2</sup> 1625 of 330 seems to be a list of debtors by trierarch; 1626 of the same date is a list of debts by trireme.

<sup>299</sup> Clark (1993: 123–4).

practice as a trierarch, was rewarded by the practice of inscribing on the lists the return of property and payment of debts,<sup>300</sup> perhaps suggesting that the lists had something of an honorary function. However, their size and lack of obvious organization would have made legibility very difficult for the reader, and if inclusion on such a list could denote any honour in return for service as a trierarch, it was an obscure one.

#### 4.3.4. Lists of Dedicants and Dedications

It is possible that other lists, like those of the naval *epimeletai*, which primarily functioned as the rendering of financial accounts by magistrates, served to encourage or reward the performance of obligations. Dedication is one such activity. Dedications to deities were recorded, often with the name of their dedicants, on stone inventories displayed and updated by temple officials and other treasurers (*IG II*<sup>2</sup> 1370–1552). While such inventories served ostensibly as records proving the accountability of temple officials, those lists that recorded dedicants and their dedications also acted as a public record of that activity: dedication to a *polis*-deity might be seen as a public service. In the Lycurgan era, the Athenians published on stone records of the 1 per cent tax (*hekatoste*) paid on the proceeds of certain land sales in Attica destined probably for the treasurer of Athena and the Other Gods, now collectively known as the *rationes centesimarum*. Though their ostensible purpose was to record the payment of the tithe, these lists would record the buyers of public land, which might in some contexts have been construed as a service to the city.<sup>301</sup>

In cases where the Athenian *demos* appears to have been responsible for displaying a public record of dedicants dedicating a standard tithe (as it may have been in the case of certain liturgists),<sup>302</sup> lists of dedicants were equivalent to honorary lists. One dedicatory practice that appears to have been recorded on stone inventories during the Lycurgan period is that recorded in the lists of silver bowls, the

<sup>300</sup> *IG II*<sup>2</sup> 1622.379–97, 444–77; 1631.350–403; Davies (1969: 325–7); Gabrielsen (1989: 93–9).

<sup>301</sup> See Ch. 5.4.4.

<sup>302</sup> See Ch. 4.4.3.

so-called *phialai exeleutherikai* inscriptions (*IG II<sup>2</sup> 1553–78*).<sup>303</sup> One interpretation of these inscriptions, dated to the 320s, is that they record the dedication to Athena of silver bowls worth 100 *drachmai* each by former slaves in commemoration of their acquittal in a legal process known as *dike apostasiou*. This process appears to have been brought by a citizen against a former slave who defaulted on obligations to his former master. Acquittal would terminate the master's remaining rights over his former slave and the latter's obligations to the former.<sup>304</sup> On acquittal, the dedication of the *phiale* (silver bowl) appears to have signalled the transfer of the former slave's obligations from his former master to the Athenian *demos*: moreover, dedications of such *phialai* would set in store a valuable financial reserve for the city.<sup>305</sup> The recording of this dedication on a stone list cemented the commemorative aspect of the act, even if the *demos* decided to melt the bowls for money-raising purposes.

#### 4.3.5. Honorary Lists

The accounts of the naval *epimeletai* provided a record of those who had completed a trierarchic service untainted and an exhortation of others to pay naval debts. The practice of inscribing the names of magistrates or ambassadors selected for a specific duty at the end of decrees (*IG II<sup>2</sup> 41.16–25*; *RO 22.72–7, 58.75–84*) might similarly be interpreted as an instrument of coercion or encouragement. However, at other times the function of lists is clearly to provide an honour to a group of people. The practice of holding a levy of funds by *epidosis* is one known from across the Greek world. The practice of recording on stone the amount pledged or actually handed over by a citizen, or simply listing that a citizen had donated to an *epidosis*, is similarly a pan-Hellenic institution.<sup>306</sup> Such lists could be headed by a decree instituting the levy, or merely with a heading stating

<sup>303</sup> D. Lewis (1959a, 1968). For discussion of the naming of non-citizen women on these lists, see Todd (1997).

<sup>304</sup> Tod (1901–2: 197–230, esp. 199–202); Todd (1993: 191); Zelnick-Abramovitz (2005: 282–90).

<sup>305</sup> Tod (1901–2: 201).

<sup>306</sup> For a general study of the institution in the Greek world, see Migeotte (1992); in classical Athens, see Migeotte (1983).

the purpose for the levy. A dedicated *stele* of 328/7 lists twenty-one *bouleutai* and others who donated towards an *epidosis* at Oropos for a dedication (Ag. xv. 49). The list is followed by a decree of a certain Kallisthenes son of Char<o>pidos of Trinemeia to praise the first three donors on the list for their *philotimia* towards the *boule*. The crowning was justified on the basis that others acting with *philotimia* will see that the *boule* pays back *charis* to those who act as *euergetai* (Ag. xv. 49.52–5).<sup>307</sup> The men listed must have all made a donation towards some offering at the Amphiareion and were rewarded with the inscription. Another inscription lists men who were chosen by the men of the deme Halai who were honoured and crowned by the demesmen for making a statue of Aphrodite (IG II<sup>2</sup> 2820). *Epidosis* lists should be regarded as playing intrinsically the same function as honorary decrees for supererogatory service, as a reward for those who have made a donation to a levy, and by their example setting the non-institutional obligation of donations by wealthy citizens.

Other types of honorary list are known such as a list of naturalized Plataeans (D. 59.105), and a list of Boeotians granted refuge in Athens (IG II<sup>2</sup> 37 + add. IG II<sup>2</sup> p. 656). Lists of names of honorees were made up for those who captured Phyle (SEG xxviii. 45), those enfranchised after Phyle (RO 4), and those orphans decreed by Theozotides to receive state *trophe*.<sup>308</sup> A list of choregic victors was publicly inscribed, probably on a monument at the *agora*.<sup>309</sup> A unique stone list which appears to have listed the entire complement of eight triremes for probably honorific purposes also exists (IG I<sup>3</sup> 1032).<sup>310</sup> Casualty lists from battles may be interpreted as a species of honorary decree, recording those who had committed the ultimate act of supererogation by giving their life in battle; however, fewer of these survive from the fourth century than the fifth (Paus. 1.29.6, 8, 11).<sup>311</sup> Such lists can be regarded as fulfilling the same function as

<sup>307</sup> See Ch. 4.2.2.3.                      <sup>308</sup> Stroud (1971).

<sup>309</sup> Pickard-Cambridge (1968: 101–2).

<sup>310</sup> For discussion and interpretation, see Graham (1992: 263–5; 1998); Strauss (2000: 272). For a new catalogue of naval personnel, see Bardani (2004).

<sup>311</sup> Fourth-century lists: IG II<sup>2</sup> 5221, 5222; Ag. xvii. 24, 25 = SEG xxi. 825 with Pritchett (1971–85: iv. 139–40). Lewis (2000–3) suggested that a great number of fourth-century lists have been lost and that owing to a change in form, many of them may not have been recognized as casualty lists: fourth-century lists are mentioned by Pausanias (Paus. 1.29.6, 8, 11).

*epidosis* lists: recording a deed and providing an honour, and at the same time encouraging the fulfilment of supererogatory deeds.

#### 4.3.6. Honorary Lists as Dedications

Members of the Athenian council, *bouleutai*, sometimes made dedications on behalf of the *boule* or the *prytaneis* of the *boule*, to record their being crowned by the *demos* of the Athenians (IG II<sup>2</sup> 2790; SEG xxxii. 238; IG II<sup>2</sup> 2792). The practice of the *polis* inscribing honorary decrees for *prytaneis* seems to have become regular only after the overthrow of Demetrios of Phaleron in 308/7 (Ag. xv. 58). In the fifth and fourth centuries *prytaneis* of a tribe that had been granted an honorary decree for being victorious, probably the one that was deemed by vote to have served best in the interests of the state during its term of office,<sup>312</sup> regularly made a dedication recording this, together with a list of the names of *prytaneis*. The earliest extant example of this practice dates from 408/7, with the title ‘the Athenian prytaneis of the Erechtheid tribe set this up having been victorious in the archonship of Euctemon’ (Ag. xv. 1 of 408/7). From 348/7 to c.321 decrees bestowing these awards were inscribed as dedications: these were sometimes, but not always (Ag. xv. 2, 3, 4, 5, 27, 28, 30, 35, 37), followed by a list of names of the *prytaneis*.

Some dedications record decrees for the crowning of the *prytaneis* by the *boule* and *demos* ‘for the sake of their virtue and justice’ (Ag. xv. 32.1–3, 38.1–3, 44.1–3, 492 b 1–2). The first surviving list (Ag. xv. 1) featured probably only thirty-seven of the *prytaneis* of Erechtheis for that year: it is likely that only those funding the dedication inscribed their names on the list (cf. Ag. xv. 49, 493). There is no overlap in the evidence of honorary decrees and that of dedications: this kind of dedication was set up perhaps because there was no regular practice of the city inscribing this decree on stone.<sup>313</sup> Accordingly, it seems not that the state was making inscriptions to commemorate its awards, but that the individuals honoured saw a value in recording their

<sup>312</sup> Meritt and Traill (1974: 2).

<sup>313</sup> For those honorary decrees which survive as dedications by the honorands, see Veligianni-Terzi (1997: 156–62).

honours as dedications. Dedication appears to have been the citizens' response to the honorific system.

But dedication did not have to be justified by supererogatory service or an honorary decree. Prytany officials also set up lists of themselves without mentioning an honorary decree (e.g. Ag. xv. 17, 36, 494). Sometimes rosters of the whole *boule* were set up without an honorary decree (Ag. xv. 20, 21, 42, 43, 46, 56). Accordingly, it cannot be proved that all these lists honour any specific action, such as shipbuilding.<sup>314</sup> Rather, they may constitute simply a list of all those involved in a *boule* or a board of *prytaneis*: participation in itself was perhaps seen as worthy of commemoration. This is at odds with the oratorical evidence, which rarely presents bouletic service as a public-spirited service (see Chapter 5.2.3).

Decrees voting honours to ephebes and their supervisors were recorded as dedications by the tribe of the ephebes. The reorganization of the ephebic service that took place in the mid-330s (Harp. s.v. Epicrates) appears to have inspired the writing up of lists of ephebes and their honorary decrees on dedications: eight lists survive from the period 333–329.<sup>315</sup> The first decree of this series is a dedication (*anathema*) of the ephebes and *sophronistes* of the tribe of Kekropis who were enrolled in 334. This consists of a list of ephebes of that tribe and an honorary decree of the tribe, beneath which decrees of the council, the Eleusinians, and the deme Athmonon were inscribed (RO 89). Not only does the inscription honour the ephebes with a list, but the decrees commend their obedience to the laws (RO 89.28–9), their praiseworthy love of honour (RO 89.37, 46, 56), and their good discipline (RO 89.27, 38–9, 53); their *sophronistes* (moderator) is mentioned too (RO 89.53–5). The inscription was set up as a dedication in the sanctuary of Cecrops (RO 89.35). As a dedication, the inscription served to show the piety of the ephebes as well as the honours they had been awarded. The text of the decree indicates that it works in exactly the same way as any other honorary decree, with the honours given because 'the ephebes... show

<sup>314</sup> Charitonides (1961: 53–4) argues that Ag. xv. 42 was set up in honour of those who built ships in 336/5, but this interpretation has been challenged by Develin (1989: 364).

<sup>315</sup> Rhodes and Osborne (2003: 453).

good discipline and do all that the laws ordain that they should' (RO 89.26–8).

Similarly, those who fulfilled the duty, compulsory for possibly all citizens who had reached their sixtieth year,<sup>316</sup> of serving as a *diaitetes* (arbitrator: [Arist.] *Ath. Pol.* 53.4) appeared on honorary lists preserved as dedications set up by that group. The epigraphical evidence for *diaitetai* begins in 371/0 with a dedicatory inscription set up by a group of *diaitetai* to commemorate the fact that they had been honoured by the people (*SEG* xxxiv. 63). The activity for which they are honoured is less certain, and is heavily restored: 'judging the cases from the contracts justly' is a possibility (*SEG* xxxiv. 63.3).<sup>317</sup> One catalogue from the first half of the century is known (*IG* II<sup>2</sup> 1927; *SEG* xxxii. 170), another from the second half (*IG* II<sup>2</sup> 2393), and three others from 330/29 and 329/8 (*IG* II<sup>2</sup> 1924 + 2409 + *SEG* xxxvii. 124; *IG* II<sup>2</sup> 1925, 1926).<sup>318</sup> The last three of these take the form of lists inscribed by tribe, and thereafter by topographical location of deme,<sup>319</sup> headed with the title that the men are being honoured, having been crowned by the people. While the remains of these lists are fragmentary, Ruschenbusch has attempted to reconstruct the monument of which *IG* II<sup>2</sup> 1927 is a fragment.<sup>320</sup> He envisages a monument consisting of three blocks inscribed with lists, the shorter middle block topped with a dedicatory inscription. It may be assumed that this monument was set up by the *diaitetai* themselves, who were eager to commemorate their own service. As with the ephebic and bouleutic lists, lists of *diaitetai* recorded honours passed in recognition of the fulfilment of an obligation, perhaps with supererogation, which was compulsory.

#### 4.3.7. Coercion or Encouragement?

This investigation of lists and accounts set up by the city suggests that the only civic obligation coerced by means of the composition

<sup>316</sup> On this obligation, see Ch. 5.3.2.

<sup>317</sup> [ἐπεὶ τὰς] δ[ί]κας τὰς ἀπὸ συμ]βολ[α]ίων [δικαίως διήμτησαν].

<sup>318</sup> See Matthaiou and Koumanoudes (1987); Dow (1983: 98) for other possible lists.

<sup>319</sup> Traill (1986: 115–16).

<sup>320</sup> Ruschenbusch (1982a: 272–4).

of a list on stone was the repayment of public debts. Military levies appear to have relied on the production of catalogues set out on non-permanent media. The setting up of lists of citizens obliged to perform certain duties was an interventionist institutional means of grounding civic obligation; the fact is, however, that the grounding of civic obligation in Athens did not always rely so heavily on such severely institutional methods.

Just as the Athenians appear to have been reluctant to rely absolutely on prescriptive statutes for the negotiation of civic obligations, it may be the case that the Athenians were hesitant, except in the case of lists of state debtors, to set up stone lists of those obliged to perform a certain duty. Such a hesitancy may have its roots in an association of publicly inscribed lists (*katalogoi*) with those limited pools of citizens granted rights and duties at the time of the undemocratic regimes at the end of the fifth century.<sup>321</sup> The *Athenaion Politeia* says that in 411 ten men from each tribe were selected to draw up a *katalogos* of the Five Thousand ([Arist.] *Ath. Pol.* 29.5). Under the constitution of the Four Hundred, these were the only men with the rights of citizens.<sup>322</sup> Polystratus, a *katalogeus* (enrolment officer), was prosecuted probably in 410 for his role in drawing up the list. The speaker of his defence claims that he only reluctantly did this under coercion, and even then he proceeded to make an inflated list of 9,000 (Lys. 20.13–14). The Thirty, during their rule of the city, further blackened the notion of the *katalogos* by drawing up a list of 3,000 citizens who could not be put to death or had citizen rights (X. *HG* 2.3.51, 52; 2.4.1; [Arist.] *Ath. Pol.* 36.2).<sup>323</sup>

<sup>321</sup> On the association of oligarchy with rigidly defined pools of citizens with rights, see Brock (1989).

<sup>322</sup> De Ste Croix (1956: 1–23) argued that the Five Thousand was the group to which holding office was limited, while all other citizens were restored their citizen rights. Rhodes (1972b: 114–27) seems to have successfully countered this argument, holding the traditional view that the Five Thousand were the only ones eligible to basic citizen rights. For the view that the list may never have been published, see Rhodes (1972b: 117); Th. 8.92.11, 93.2. Contrast, however, the implication of Lysias that the list was published: Lys. 30.8.

<sup>323</sup> There are testimonia for two further *katalogoi* related to this regime: the Thirty drew up a *katalogos* of those who were suspected of opposing their violence (Lys. 25.16), and there was a *katalogos* of those serving as soldiers with Lysander (Lys. fr. 9c Todd); cf. Isoc. 18.16, 21.2.



If the setting up of a name on a permanent stone list constituted an honour, then lists most frequently performed a paradigmatic function in the negotiation of civic obligation. The display of names can be treated as honorary in the same way as the setting up of an honorary decree, but was a more egalitarian transaction than the honouring of one individual. It should not be assumed that participation in a group, and, accordingly, being honoured in a group, was any less valuable, in the context of Athenian participatory democracy, than being honoured personally with an honorary decree. The Athenian use of lists demonstrates the tendency for inscriptions to commemorate participation, and to encourage rather than coerce the fulfilment even of compulsory civic obligations. The tendency by corporate groups to inscribe on stone and dedicate lists of their own members and honours they were granted by larger groups suggests that there was a desire on the part of participants in public activities to record their activity and in so doing to make public their exercise of civic obligations. Lists of councillors, ephebes, and *daitetai* are only one kind of dedication that has relevance to public activity. The practice of dedication, interpreted as the civic response to the honorific system, contributes to understanding of the negotiation of civic obligation. Dedication was a religious practice, but one in this context which served the purpose of demonstrating to the gods the fulfilment of civic obligations: accordingly, the practice of dedication illustrates the inseparability of the performance of obligations and *polis* religion.

#### 4.4. DEDICATIONS AND CIVIC OBLIGATION

A wide range of objects were habitually dedicated in Greek sanctuaries. These included painted or sculptured reliefs, weapons, tithes or first fruits, stone *stelai*, statues, and a range of domestic appliances.<sup>324</sup> Dedicatory reliefs appear to have most frequently portrayed

<sup>324</sup> For general studies of the practice of dedication and discussion of the material remains of dedications, see Rouse (1902); van Straten (1981, 2000); Comella (2002). On fifth-century dedications from the Acropolis, see Raubitschek (1949); for painted plaques from the Athenian Acropolis, see Schulze (2004). Inscribed dedications are commonly published in standard regional epigraphical corpora. Statues: see Keesling (2003).

mythological scenes, scenes of ritual significance (such as sacrifice, ritual choreography, encounters between humans and gods, ritual healing), and, less frequently, commemorated athletic or equestrian success or military heroism. Dedications were clearly revered: even when objects placed in a sanctuary were melted down for reasons of space, their existence was sometimes archived on stone lists.<sup>325</sup> Inscribing a dedication could add a personal voice to a dedication by recording the identity of the dedicant and identifying them with the pious and public-spirited performance of dedication. The inscribed dedications published in the second volume of the corpus of Attic inscriptions include those made by the *boule*, *demos*, and non-Athenians (*IG II<sup>2</sup>* 2789–2810), and dedications to deities and heroes (4318–4959). Less prolific, but more interesting for our purposes, was the practice of dedication in explicit relation to office-holding: there exist dedications made by magistrates of the *polis*, tribe, and deme (2811–31), dedications made by members or officials of cult groups (2932–64), dedications made by soldiers, sailors, and ephebes (2965–3016), and agonistic dedications made by sponsors of Athenian festivals (*choregoi*, gymnasiarchs, and *agonothetai*: 3017–3170).

Dedication has a great deal of relevance to a study of civic obligation in ancient Athens because, while it was often performed as a pious or public-spirited act in its own right (see Chapter 5.8), it was often carried out in commemoration of the virtuous performance of other civic obligations, presupposing an audience of both the gods and anyone human who viewed the object at the sanctuary.<sup>326</sup>

#### 4.4.1. Dedication after Office

Dedication, in fourth-century Athens, was used to commemorate a range of civic activities, and in particular office-holding.<sup>327</sup> *Stelai*, sculptured reliefs, and statue bases were often inscribed with the name and office of the dedicant and a dedicatory formula,<sup>328</sup> and sometimes recorded a decree passed by an institution in honour of

<sup>325</sup> Linders (1989). <sup>326</sup> Keesling (2003: 199).

<sup>327</sup> Rouse (1902: 259–73).

<sup>328</sup> Guarducci (1969: 124); McLean (2002: 246–59). Not all honorific statues were dedicated, as Welsh (1903–4) pointed out.

the dedicant. Dedication after office-holding was a practice with a history that went back at least as far as the late sixth century, to which period is dated the dedication of the archon Pisistratus of c.521 (ML 11); the practice of named individuals (male and female) making dedications to Aphrodite was known in fourth-century Athens (*IG II<sup>2</sup>* 4574–85),<sup>329</sup> and may have been an Athenian manifestation of the tendency known across the Greek world in the classical and Hellenistic periods for officials, during or at the termination of their office, to set up statues, in locations connected to the offices of the magistrates, to Aphrodite as protectress of officials.<sup>330</sup> It might be the case that dedication was particularly common after offices had been performed with distinction: Harpokration claims, and Demosthenes suggests, that the board of archons dedicated an inscribed herm in the Street of the Herms if they had performed well (Harp. s.v. *Hermai*; D. 20.112). The law, quoted by Aeschines, that dedication was not permitted for those magistrates who were still subject to *euthuna* (Aeschin. 3.21) is revealing: it suggests that dedication by a former magistrate would normally serve as an indication of their accountability and proper fulfilment of their office. For some, however, dedication was a punishment: archons swore to carry out their duties according to the laws and to refuse bribes on pain of dedicating a golden statue ([Arist.] *Ath. Pol.* 7.4, 55.5).

#### 4.4.2. Dedication, Legislation, and Supererogation

As a practice, dedication lent itself to voicing the supererogatory performance of civic obligations by both individual Athenians and the Athenians collectively: the accumulation of dedications in sanctuaries would serve as an indication of the piety and wealth of the city as well as an indication of the piety and virtue of its citizens.<sup>331</sup> The potential capital for individuals and the *polis* offered by dedication is particularly clear in the case of those dedications made in commemoration of military endeavours. Spoils of battle were frequently dedicated in temples and treasuries across Greece by fighting

<sup>329</sup> Wallensten (2003: 209–11).

<sup>330</sup> This practice has been closely scrutinized by Wallensten (2003).

<sup>331</sup> Linders (1987).

groups and individuals,<sup>332</sup> and would have amplified the fame of zealous performance on the battlefield. The general Conon was said to have dedicated offerings to the value of 5,000 staters in offerings to Athena and Apollo at Delphi (Lys. 19.39); Demosthenes associated his generalships with patriotic dedications, made to emphasize the glory not only of his individual performance but of the whole city (D. 20.69), and claimed that his dedication of crowns bestowed by allied states were ‘tokens of emulation and *philotimia*’ (D. 22.72–3; cf. D. 24.179–80). Conon’s name is indeed preserved on the inventories of the treasurers of Athena for 368/7 as a dedicant of gold crowns (IG II<sup>2</sup> 1425.284), probably those awarded by Athens’s allies. The Athenians appear to have ensured that crowns awarded by other communities were displayed as monuments to Athenian greatness and as enticements to good performance: it appears to have been a statutory requirement that Athenians dedicate all crowns awarded in the theatre to Athena (Aeschin. 3.46): but, as Aeschines claims, all crowns bestowed in that location were ones that were donations of non-Athenians.

By attacking Androtion’s manufacture of processional vessels from melted-down dedications,<sup>333</sup> Demosthenes championed the significance of dedicated crowns. Androtion, Demosthenes relates, melted down these crowns and recast them as *phialai* inscribed with his own name, and in turn dedicated them in the temples. Demosthenes argues that Androtion should not be allowed to display his own name in a religious context when the laws prohibit men like him, who are accused of prostituting themselves, from entering sacred places. As well as depriving the goddess of the crowns, he has extinguished the spirit of emulation (*philotimia*) that arose from them and has deprived the donors of their glory (D. 24.181–2). In this passage Demosthenes reveals also the value placed on dedication as a public practice which encouraged competitive emulation. The

<sup>332</sup> Jackson (1991).

<sup>333</sup> Androtion’s *psephisma* concerning the processional vessels is referred to in a decree dated to 365/4 (SEG xiv. 47), and Philochorus also refers to Androtion’s creation of sacred vessels: *FGrH* 328 F 181. Androtion’s melting of the crowns should be dated between 368/7 and 365/4 according to Harding (1976: 191–2). Harding dissociates the melting of the cups from attempts to raise public finances, but claims rather that it reveals Androtion’s concern for ceremony.

Athenians encouraged their honorands to make dedications sometimes by granting them finances for dedication and sacrifice.<sup>334</sup>

The Athenians found that some of their foreign benefactors collaborated in the promotion of euergetism within the city of Athens: the decree in honour of Spartocus and his brothers of 347/6 suggests that they offered to dedicate their crowns on the Acropolis (RO 64.33–9). It appears to have been the case that a group of Athenian citizens crowned for making supererogatory financial dedications in the 330s were allowed to dedicate their crowns: Demosthenes himself paid tribute to Nausicles, Neoptolemus, and Charidemus (D. 18.114), who dedicated their crowns to Athena (*IG II<sup>2</sup>* 1496.28–30, 42–6, 49–51). By way of regulating the dedication of honorary crowns, the Athenians appear to have ensured that the Athenian honorary system and dedicatory habit combined to contribute to the promotion of a spirit of emulation in the performance of civic obligations. But perhaps the most spectacular use of dedication to express the supererogatory performance of civic obligations was in the use of dedication by liturgists.

#### 4.4.3. Liturgists as Dedicants

Just as they regulated dedications by office-holders and honorands, the Athenians appear to have regulated the dedication of certain sponsors of financial expenditure. On the basis of an inscription recording the dedications of *phialai* after the fulfilment of a liturgy preceded by a fragmentary regulation (*IG II<sup>2</sup>* 417 of 333/2 or 332/1) and a similar list followed by a fragmentary regulation (*SEG* xxv. 177.46–51 of 331/0), Lewis postulated the existence of a law dating to around 333 introducing the regulation that liturgists for the *eutaxia* (a festival including a drill competition) should dedicate *phialai* on the Acropolis.<sup>335</sup> The earlier text granted permission for the names of the dedicants to be written up (*IG II<sup>2</sup>* 417.1), probably on the *phiale* or the *stele*.<sup>336</sup> This is followed by a list of names with the weight of the *phialai* dedicated. Although Lewis related the list to

<sup>334</sup> Lambert (2005: 128 with n. 12).

<sup>335</sup> D. Lewis (1968: 376); Lambert (2001a: 54–5).

<sup>336</sup> Lambert (2001a: 53).

the *eutaxia* liturgy, it could potentially be related to other obligations; indeed, Lambert suggested that the list is to be associated with the *proeisphora* or trierarchy.<sup>337</sup> Lycurgus may have converted the dedicatory act, originally an act of supererogation, conspicuous display, or indeed a privilege, into a statutory obligation. This seems later to have been extended to the demes: a decree of Acharnai of 315/14 records the dedication by the treasurer of a *phiale* to the value of 100 *drachmai* ‘according to law’, probably representing a financial surplus.<sup>338</sup>

In the second half of the fourth century the practice was at its most conspicuous in the setting up of bases for the dedication of prize tripods by victorious *choregoi*, most frequently in the dithyrambic contests, a practice that grew to its most ostentatious in Athens at the time of the oligarchic regime of 322–319.<sup>339</sup> The dedication of a tripod alone would have communicated piety and performance on behalf of the *polis*,<sup>340</sup> and this effect would have been augmented with an ostentatious base. Many such bases, recording their victories, have been found in Athens dating to the fifth and fourth centuries (*IG* I<sup>3</sup> 957; II<sup>2</sup> 3017–72).<sup>341</sup> There was probably no statutory regulation to ensure dedication of the tripod,<sup>342</sup> but doing so guaranteed preservation of a record of the *choregos*’ adherence to supererogatory standards of civic obligation. Such an interpretation is supported by the boasts of the dedications of tripods encountered in Attic oratory. The speaker of Demosthenes 42 says that his rival’s forefathers were able to afford to set up tripods in honour of choregic victories in the Dionysia, and tells the audience that he does not begrudge this as it is the duty of the wealthy to render services to the state (D. 42.22). The speaker of Isaeus’ speech *Against Dicaeogenes* also talks about his forefathers’ tripod dedications as a ‘memorial of their virtue’

<sup>337</sup> Lambert (2001a: 59); cf. Humphreys (2004: 115–18).

<sup>338</sup> Steinhauer (1992 = *SEG* xliii. 26 A 7–9). Steinhauer (1992: 184–6) suggests that this was a duty of the treasurer.

<sup>339</sup> Wilson (2000: 225–6). For more discussion, see Ch. 5.4.3.1.

<sup>340</sup> For a general study of the significance of tripods, see Papalexandrou (2005).

<sup>341</sup> For a new substantial base from the 370s, see Matthaïou (1990–1: 53–8). For an archaeological study of the street of the tripods, see Choremi-Spetsieri (1994).

<sup>342</sup> Matthaïou (1994: 187); Wilson (2000: 207).

(Is. 5.41),<sup>343</sup> and another speaker talks of tripods as a ‘memorial of a respectable ambition’ (Is. 7.40).<sup>344</sup>

Sponsors of a number of Athenian contests appear to have commemorated their successes: gymnasiarchs commemorated their successes in tribal competitions with dedications (*IG II<sup>2</sup>* 3017–24). In 366/5 Atarbos, a victorious *choregos* in the contest of youth *pyrrhichistai* (armed dancers) at the Lesser Panathenaia, dedicated, on the Acropolis, a base decorated with a relief of *pyrrhichistai* which supported a stone pillar, perhaps, as Shear suggests, the mount for a Panathenaic prize amphora, and added his name and that of the eponymous archon (*IG II<sup>2</sup>* 3025 b).<sup>345</sup> It was set up probably close to its findspot: beneath the Propylaea on the west slope of the Acropolis, a location visible from the Panathenaic Way, to participants in the parade. Shortly after, he won a victory in the men’s dithyramb at another contest, and took full advantage of this to boost his individual profile. Shear has suggested that he changed the design of the monument, adding an inscription to the old block, ‘having won [with *pyrrhichistai*]’, and adding a new block decorated with a sculpture of the cyclic chorus with the phrase ‘[having] won [with a men’s chorus]’ (*IG II<sup>2</sup>* 3025 a); the reworked monument appears to have supported three bronze statues; it has been suggested that one of these was Atarbos himself.<sup>346</sup>

The details of the reconstruction of the monument are uncertain, but the intention of Atarbos to make the most of his glory by way of dedication is uncontroversial. That a *choregos* of the *pyrrhichistai* would aim to raise his profile by his success in those contests is confirmed by the boasts of the speaker of Lysias 21, who claimed to have produced a chorus of beardless pyrrhic dancers at the Lesser Panathenaia. Indeed, his sons, at some time towards the middle of the second half of the fourth century, made dedications to commemorate their victories in choregic contests (*SEG xxx.* 126–8). Furthermore, Atarbos himself raised his profile through the purchase of public property,<sup>347</sup> verification that, in all likelihood, Atarbos would have

<sup>343</sup> *μνημεῖα τῆς αὐτῶν ἀρετῆς.*

<sup>344</sup> *μνημεῖα τῆς ἐκείνου φιλοτιμίας.*

<sup>345</sup> Shear (2003).

<sup>346</sup> Wilson (2000: 39); Shear (2003: 174).

<sup>347</sup> For more discussion, see Ch. 5.4.4.

erected the monument in an attempt to promote his own public profile.

Dedications commemorating victories of *choregoi* in the Thargelia contests are also preserved (*IG II<sup>2</sup>* 3063–72). The most famous of all choregic tripod bases, however, were the monuments which supported the tripods awarded to victorious *choregoi* in the dithyrambic contests of the Dionysia (*IG II<sup>2</sup>* 3027–62), and of these the best known are those of Nicias, Lysicrates, and Thrasyllus (*IG II<sup>2</sup>* 3055, 3042, 3056). Townsend's reading of the monuments of Nicias and Thrasyllus has suggested that they recalled the fifth-century buildings of the Acropolis, whereas the monument of Lysicrates displays similarities with Macedonian architecture of the period, most strikingly the Philippeion, a monument at Olympia celebrating Philip's victory at Chaironea.<sup>348</sup> Thus, through architectural symbolism, the *choregoi* presented themselves as contributors to Athens and as victors, as Townsend has suggested, on the scale of a Macedonian king.

Dedication by liturgists, in some quarters, therefore, appears to have been regulated by the Athenian *polis*. But the most spectacular evidence of choregic dedications suggests that dedication of victory tripods was moved by the competitive desire to display success and supererogatory expenditure.

#### 4.4.4. Religion and Dedication

Dedication was a religious activity, and will be considered later as part of the religious obligations of the citizen (5.8). Van Straten has suggested that dedications purported to be expressions of gratitude, prayers for future emoluments, the fulfilment of vows, as well as the wish to honour the deities.<sup>349</sup> It will emerge later that the civic obligations of women were concentrated primarily in the sphere of religion and the procreation of children. Where women were depicted on votives, they were almost always portrayed with their family or children.<sup>350</sup> Dedication might have acted as an acceptable way for

<sup>348</sup> Townsend (2003: 96–9).

<sup>349</sup> Van Straten (1981: 70–5).

<sup>350</sup> Van Straten (2000: 222).



women to develop a profile for themselves and their families.<sup>351</sup> A spectacular example of a family boosting its own profile through the activity of a female member is the dedication of a statue of Chairippe, priestess of Demeter, set up by her brothers and signed by the sculptor Praxiteles, probably at the City Eleusinion (*SEG* li. 215). For other citizen women, the act of dedication was simply one of the acts in which they might be said to participate in the religious life of the city on a par with men.<sup>352</sup>

Male religious officials, too, both performed and commemorated energetic service by way of dedication. One of the best-preserved inscribed dedications of the fourth century was made by Dio, priest of Ares and Athena Areia at Acharnai, of a marble *stèle* which contained an inscribed version of the Athenian ephebic oath and the oath of Plataea, supposedly sworn by the Athenians ‘when they were about to fight against the barbarians’ (RO 88.21–2). The pediment above the inscription contained a relief containing a large round shield with helmet, greaves, cuirass, and mantle. By publishing an oath purported to represent the words spoken by Athenians before going into battle against the Persians, and the oath taken by Athenians when they embarked upon their first considerable civic obligation as ephebes, the monument embraced both the past and the future of civic obligation.<sup>353</sup> Indeed, the dedication of such an inscription is perhaps the best extant example from fourth-century Athens of a gesture of civic-themed ostentatious piety performed through the act of dedication.

#### 4.4.5. Dedication and Commemoration

The act of dedication was used to record the supererogatory performance of an obligation. As an advertisement of public-spiritedness and piety, it indicates the existence of a public response of individuals to the social pressure to perform civic obligations. It was a response

<sup>351</sup> Dillon (2002: 72) observes that dedications often reflected the domestic elements of women’s life; Kron (1996: 181) has pointed out that mass-produced personal adornments were the most common women’s dedication. Women were also known to dedicate *phialai*, on which practice, D. Harris (1995: 236).

<sup>352</sup> D. Harris (1995: 237).

<sup>353</sup> For more discussion of this document, see Chs. 4.1.4, 5.2.1, 5.5.3.

which in turn augmented the social pressure to the virtuous performance of civic obligations. It has been acknowledged that there does seem to have been considerable state intervention to ensure that dedication was carried out in a way that was most harmonious with the concern of the *polis* to encourage virtuous performance of obligations.

As well as constituting a religious practice and a symbol of piety, or gratitude to the gods, dedicating an object that was closely related to one's office expressed a desire to be associated with fulfilling that office for posterity. This desire, which might be seen as a response to the Athenian system promoting civic obligations, can also be detected in the burial habits of ancient Athens. The funerary monuments of fighters such as Dexileos and Democleides may be interpreted as statements of individual or status distinction,<sup>354</sup> but they may also be considered as expressions of fulfilled military obligations. Military themes are well known in fourth-century Athenian funerary sculpture (*CAT* vi. 169–71). As will become clear (5.1), funerary sculpture also provided a medium for the expression of fulfilled domestic obligations. One less conspicuous burial practice may also provide access to another funerary expression of performed obligations. The practice of burying deceased jurors with the *pinakion* (dikastic token) that they were using when they died suggests that the desire to identify the individual as a citizen by reference to service to the *polis* was as strong in death as it was in life.<sup>355</sup> Such forms of funerary commemoration, like the act of dedication, may be considered as the popular response to the honorific system that promoted virtuous fulfilment of civic obligations.

#### 4.5. CONCLUSION

I have discussed how statutes, *polis*-, and religious values, modes of oratorical argumentation, and honorific devices contributed to the negotiation of civic obligations, together with the dedicatory

<sup>354</sup> Democleides, an infantryman who died at sea: Strauss (2000); Dexileos, a cavalryman killed in the early fourth century: RO 7; Low (2002).

<sup>355</sup> Kroll (1972: 9).

and funerary response to their promotion. Civic obligations were negotiated by the orators in terms of legislation and procedure, piety, reciprocity, the notion of participation as sharing, consensual contribution, emulation of the past, values such as shame, justice, and profit, and were grounded in terms of consequence, amplification and generalization, emotion, and oratorical insistence. Lycurgus' speech employs several of the modes of negotiation of civic obligation encountered in Attic oratory, and Lycurgus appears to be a particularly adept negotiator of the obligations of the citizen. The agonal context of Attic oratory meant that supererogatory performance of obligations was posited in a competitive context, and this same atmosphere of competition has also been noted in our investigation of honorary decrees. Honorary decrees established paradigms of civic obligation along the lines of reciprocity, competitive emulation, and publicity of the good nature of the Athenians. The Athenians drew attention to honorary decrees through oral announcement, their placement, and their decoration. The types of obligation most prominent among those idealized in honorary decrees were related to the military concerns of Athens and the (sometimes supererogatory) fulfilment of offices. The fulfilment of institutionally required obligations is sometimes presented as supererogatory in oratorical and documentary presentations.

Privileges granted to honorary citizens sometimes consist of phenomena that have been identified as obligations, and the award of honorary citizenship might be seen as admission to participate in the affairs of the city to almost the same extent as any other citizen. The obligation of *euthuna* for outgoing magistrates was reinforced in honorary decrees for citizens. It has emerged that the epigraphic means of publication helped to support and publicize a system of public reward that contributed to the negotiation of civic obligations and functioned alongside prescriptive statutes. Supererogation was rewarded by both honorary decrees and insertion of that citizen's name onto a list. Fulfilment of compulsory services, such as acting as an arbitrator, councillor, or ephebe, could be rewarded by a crowning but was also commemorated on stone inscriptions set up as dedications by the honorands themselves. The system of public honouring, therefore, appears to have aimed at encouraging the taking up of magistracies and the supererogatory fulfilment of obligations

by magistrates. Therefore, by way of encouragement, the Athenian *demos* lured the individual towards participation in the public affairs of the city. The Athenians seem to have been unconcerned with the idea that obligations got in the way of their liberty. Moreover, that Athenians wanted to display and record ostentatiously their virtuous fulfilment of obligations is attested by the practice of dedication.

Accordingly, it has emerged that the obligations of the individual to the *polis* were negotiated not so much on the basis of coerced obedience to the laws of the *polis* but rather through encouraging the competitive fulfilment of obligations as part of a reciprocal exchange between the citizen and the state. Inscriptions and Attic oratory suggest that discussion in the Athenian *ecclesia* and law courts must have frequently focused on the promotion of the obligations of the citizen in ways other than the passing of coercive legislation. It appears, therefore, that the discourse of civic obligation was framed not as an explicit bargain between an absolute liberty of living as one pleases and the obligations of citizenship, but rather through the tacit identification of those ideas used to negotiate civic obligations with norms of citizenship. It should be noted that this does not necessarily constitute an ideological veil for compulsion: not only was it ideologically undesirable, it was also simply difficult for the Athenians to coerce their citizens. The main regulation of civic obligations and the principal coercive force in Athens was the social compulsion of expectation. The substance of these obligations can be realized only by examining how the performance of the obligations worked in fourth-century Athens, which is the subject of Chapter 5. What will emerge is that the Athenians attempted to present their performance of civic obligations not just as obedience to the law but as supererogatory donations to the *polis*, and not as encroachments on their own liberty but indeed as vital to the preservation of the liberty of the *polis*.

## The Performance and Presentation of Obligations

This chapter investigates the statutory demands, performance, and oratorical and epigraphical accounts of the obligations negotiated along the lines discussed in Chapter 4. The intention is to determine the areas of life in which these obligations were situated, how they were performed, and how accounts of performance were employed by orators and in inscriptions. Chapter 6 will determine what connotations they have for an interpretation of liberty in ancient Athens. This chapter will examine each type of obligation in turn, by demonstrating the performance and presentation of that obligation in Attic oratory and inscribed documents, where appropriate with particular reference to the speech *Against Leocrates*. As the question of institutional compulsion is central to understanding the nature of the relation between civic obligation and individual liberty, each section will also discuss the question of whether the obligations under examination were grounded in the statutes or judicial procedures of the *polis*, and whether that institutional compulsion was either emphasized, or ignored, in order to make room for claims of supererogatory performance. Finally, it compares the nature of each broad area of obligation to its presentation in the theoretical universe of Rawls.

The aim of this book, to ascertain the relationship between obligation and liberty in ancient Athens, directs the order in which the obligations are approached. It seems appropriate to begin with those obligations dealt with directly in Rawls's work. A liberal interpretation of liberty regards the most serious encroachment to negative liberty as state regulation of private life, that is, activities within the

home or with bearing on personal relationships. Accordingly, this investigation will open with the domestic obligations of the Athenian citizen that were couched in a public context (5.1), coming next to a broadly conceived interpretation of political obligation in Athens (5.2). Athenian conceptions of political, judicial, and financial obligations direct the order of the following sections (5.3–4). After dealing with the military obligations of the Athenian citizen (5.5), the focus will be on obligations unfamiliar to a Rawlsian universe: providing grain for the city (5.6), not leaving the city in a time of crisis (5.7), and religious obligations (5.8).

## 5.1. THE CIVIC OBLIGATIONS OF DOMESTIC LIFE

### 5.1.1. Conflicting Ideologies of Domestic Life

Contradictory strands of Athenian *polis*-ideology influenced the extent to which law and social pressure regulated private life in ancient Athens. One line of reasoning argued that limits of *polis*-intervention should be restricted and stressed the separation of public and private spheres; the other tended to equate private with public behaviour and suggested that the obligations of the citizen in personal relations were indeed a concern of the *polis*. The former position is taken by Demosthenes in two forensic orations. He made a case against Timocrates' law proposing that any debtor to the state should remain at liberty until the ninth prytany of the year by claiming that the proposer was introducing mildness (*praotes*) apt to private affairs into the set of laws that should be used to intimidate politicians (*politeuomenoi*):

There are two sorts of problems, men of Athens, with which the laws of all *poleis* are concerned. First, what are the principles under which we associate with one another, have dealings with one another, define the obligations (*ἂ χρῆ ποιεῖν*) of private life, and in general, order our social relations? Secondly, what are the duties that every man among us owes to the commonwealth, if he chooses to take part in public life (*ἂν πολιτεύεσθαι βούληται*) and professes any concern for the *polis*? Now it is to the advantage of the common people that laws of the former category, laws of private intercourse, shall be distinguished by mildness and humanity. On the other hand it is to

your common advantage that laws of the second class, the laws that govern our relations to the public, shall be trenchant and peremptory, because, if they are so, politicians will not do so much harm to the public interests. (D. 24.192–3)

This passage has been used to illustrate a normative distinction between public and private law.<sup>1</sup> But the passage is better read as an extemporary claim made to reconcile Demosthenes' demand of the jurors, that they treat Timocrates' crimes with the utmost severity, with his praise of Athenian leniency. Again, in the speech *Against Androktion*, Demosthenes criticized his opponent for exerting force in extracting *eisphora* by passing decrees allowing the Eleven access to private houses (49–57), adding that the difference between democracy and oligarchy was that everything in a democracy was milder (*praotera*: 51).<sup>2</sup> Other passages in forensic oratory suggest that intrusion into the house of another citizen could be treated as aggressive intrusion (Lys. 3.6; D. 47.54–6), and recent interpretations of the arrangement of domestic space in fourth-century Greece have suggested that the layout of homes was designed to protect this privacy.<sup>3</sup> While the physical ordering of the home might have placed its confines beyond the reach of outsiders, creating a division between the public and private spheres of life, it was certainly the case that relations between family members and friends were considered matters that were to be regulated in public: in this way, a conception of a 'domestic–public' behaviour emerges in Attic oratory as one which carried considerable civic obligations.<sup>4</sup> The strand of ideology critical of *polis*-intervention in domestic affairs appears to be less prevalent.

<sup>1</sup> Maridikis (1950: 159); Bauman (2000: 13, 23).

<sup>2</sup> Antiphon attacked Demosthenes for breaking into homes and attacking citizens 'without decree' (D. 18.132).

<sup>3</sup> Jameson (1990: 195) suggests that the arrangement of private houses exhibits the democratization of aristocratic values of privacy; Nevett (1994, 1998) suggests that the segregation was aimed at separating women from men from outside their families.

<sup>4</sup> Pomeroy (1975: 18–19); Strauss (1993: 187, 191). In a study of the significance of friendship and reciprocity for Greek interstate relations, Mitchell (1997: 190) has suggested that '*polis* ideology dictated that both friends and state be served by the simple fact that to help one generally meant helping the other, for *polis* ideology dictated many kinds of relationship, not all of which were consistent with each other all the time'. Herman (1987), however, has stressed the potential conflicts between loyalty to one's community and loyalty to friends from outside that community.

### 5.1.2. The ‘Domestic–Public’ Sphere

Towards the beginning of his speech against Leocrates, Lycurgus claimed, ostensibly in passing, that Leocrates fled the city of Athens with his mistress (Lycurg. 1.17). Such an act does not seem to have taken place in direct contravention to law: Lycurgus included this detail in his speech with the intention of further blackening Leocrates’ reputation, setting him out to be a citizen whose indifference to domestic norms matches his indifference to the fate of the city of Athens.<sup>5</sup> Elsewhere Lycurgus abolished the barrier against the domestic sphere by his assimilation of public and domestic *eunoia*—loyalty to one’s parents and to one’s country. Idealizing the motivation of those who died at Chaironea as *charis* towards the *polis*, he told the jury, ‘they held it as a disgrace to see the land that reared them wasted. And they were right: men do not hold their foster parents so dear as their own fathers, and so towards countries which are not their own but which have been adopted during their lifetime they feel a weaker loyalty’ (47–8). Leocrates’ abandonment of his country is framed as an abandonment of his parents. Lycurgus juxtaposes Leocrates’ abandonment of his parents with a story of the ‘Place of the Pious’, an account of a son sacrificing his life for his father (96–7). The implication is that Leocrates has neglected the graves of his parents, since he says that his father is dead (136). Three times in the speech (25, 38, 56), Lycurgus complains that Leocrates has removed his *patroia hiera* (sacred ancestral things: see Chapter 5.8) from Athens. Lycurgus alleges also that Leocrates has abandoned a statue of his father dedicated at the temple of Zeus Soter so that it now stands as a memorial to a man who fathered a son who abandoned his country (136). Lycurgus’ charges against Leocrates’ domestic conduct exhibit three significant factors: an assimilation of public and domestic interests, a focus on cult activity as the substance of obligation towards one’s family, and the emphasis not on legislation or procedure but on reciprocal *charis* as the foundation of obligations to one’s country and ancestors.

Lycurgus’ remarks on Leocrates’ omission of domestic obligations were a manifestation of a broader tendency to associate or even

<sup>5</sup> Sullivan (2002a: 82) suggests that Lycurgus’ implication is that she was not an Athenian citizen.



assimilate public and private interests. Later that same year Aeschines claimed that Demosthenes had gone against custom (*parenomei*) by making thanks offerings at the news of the death of Philip in spite of the fact that his daughter had died only seven days before (Aeschin. 3.77). The implications of this were as follows:

The man who hates his child is a bad father and could never become a safe guide to the people; the man who does not cherish the persons who are nearest and dearest to him, will never care much about you, who are not his kinsmen; the man who is wicked in his private relations would never be found trustworthy in public affairs. (Aeschin. 3.78)<sup>6</sup>

Aeschines seems to have been particularly partial to this synecdochical argument, which resurfaces in his speech against Timarchus, by reference to a law which he attributes to Solon. The man who beats his parents, or fails to provide a home for them to support them, or who sells his own body, or squanders his own patrimony or inheritance should not be allowed to speak in the assembly, 'because if a man is mean toward those whom he ought to honour as the gods, how, pray, he asks, will such a man treat the members of another household, and how will he treat the whole city?' (Aeschin. 1.28); meanwhile, 'the man who has made traffic of the shame of his own body, he [the lawgiver] thought would be ready to sell the common interests of the city also' (Aeschin. 1.29).<sup>7</sup>

According to Aeschines, therefore, the obligations of the citizen to his offspring, parents, and kinsmen, and even to his own body, might be treated as equivalents to his treatment of the rest of society. Aeschines was taking advantage of the close association of private and public activity which dictated that outrageous private activity could be held to constitute bad citizenship and ineligibility to partake in political life. Indeed, the performance of a varied range of domestic and personal obligations could be construed as a service worthy of

<sup>6</sup> For discussion of the social significance in Greece of relations between parents and children, see Raepsaet and Charlier (1971); on the dynamics of harmony and conflict between parent and offspring, see Cox (1998: 68–104).

<sup>7</sup> E. E. Cohen (2000*b*) has argued that Athenian legislation against the citizen as a prostitute should be seen as part of the general objection to all profit-making activity. For the idea that it undermined the normative citizen ethics of self-mastery and commodity exchange, see Davidson (2001); for references to earlier discussions of Greek regulation of prostitution, see Arnaoutoglou (1998*b*: 66–7).

*charis*: dowries to one's siblings could be presented in this way (e.g. Lys. 16.10), as could helping fellow citizens with dowries, ransoms, or funeral expenses (Lys. 19.59; D. 18.268).<sup>8</sup> Pleas made on the basis of the relationship of one's domestic and public obligations do, however, employ different spins: boasts of performing services to the state to the detriment of one's family or friends (Lys. 21.23, 24; D. 50.60–4) and the idea that the fatherland as a parent should outweigh the closest family obligations (Lys. 2.70; X. *HG* 1.7.21; Lycurg. 1.99–101) coexist in the corpus of Attic oratory with the claim that obligations to one's family should be treated on a par with those to the *polis* (And. 1.19, 56).<sup>9</sup>

The idea that the citizen who maintained good personal relationships was one who was likely to be public-spirited towards the city extended beyond the bounds of the family: speakers talked about the intimacy of their friendships (D. 53.4), and boasted of making loans to friends as part of their portrayal of generosity (Antiphon 2.1.β.9; D. 21.101, 184). To be a good friend to one's fellow citizens was part of being a good citizen.<sup>10</sup>

### 5.1.3. Treatment and Burial of Parents

Good treatment of parents, dealt with in the law that Aeschines attributed to Solon, seems to have been an obligation with particular rhetorical impact. Those who maltreated their parents were classified alongside traitors and those who entered the *agora* with polluted hands as the worst sort of offenders (D. 24.60; Hyp. *Eux.* 6).<sup>11</sup> The allegation of bad treatment or the boast of good treatment of one's parents emerged regularly as a *topos* in forensic oratory as part of character portrayal (And. 1.59; Din. 2.8, 18; cf. D. *Ep.* 4.11).

Certain familial obligations were presented as compulsory in the preservation of citizen status or to avoid annulment of certain privileges or rights usually bestowed on citizens. In the *dokimasia*, the

<sup>8</sup> For the obligation of a relative either to marry or to provide a dowry for an unmarried heiress, see D. 43.54 and Ch. 5.1.6.

<sup>9</sup> Blundell (1989: 44).

<sup>10</sup> For the idea that friendship was a significant part of the idea of reciprocity in the *Eudemian Ethics* of Aristotle, see Schofield (1998).

<sup>11</sup> Dover (1974: 273–4).

preliminary scrutiny of officials, they were asked about their treatment of parents, the existence and whereabouts of their shrines of Apollo Patroos and Zeus Herkeios, and the location of the family tomb as well as the performance of financial and military obligations.<sup>12</sup> Someone who neglected his parents was liable to arrest by the Eleven or prosecution by anyone eligible (D. 24.105) and would be liable to a fine (D. 24.60, 102). Indeed, there existed two kinds of proceedings that could be brought against those who had maltreated parents: the *graphe kakoseos goneon* ([Arist.] *Ath. Pol.* 56.6) and *eisangelia*, but there are no extant examples.<sup>13</sup> The option to use the former procedure would have been open to Lycurgus. It is plausible to suggest that Lycurgus, by understating the institutional basis of the obligation, suggested that such duties were natural and did not require procedural intervention or support. Or, alternatively, he may have considered such a process to lack the gravitas implied by prosecution under the *eisangelia* law. Aeschines, on the other hand, emphasized that treatment of one's parents was regulated by a law attributed to Solon. In the case against Timarchus, he emphasized that the law was conditional on the father providing his son with a profession; moreover, they were inapplicable had he failed to do so or prostituted him (Aeschin. 1.13). What Aeschines and Lycurgus have in common is that they frame the obligation reciprocally, as a return of *charis* (gratitude) to the city.

It appears that the obligation to carry out burial and appropriate burial rites for one's parents stood regardless of the parents' treatment of their offspring (Aeschin. 1.13).<sup>14</sup> Alongside *gerotrophia* (care for the elderly) and the fulfilment of rites on behalf of the deceased, concern for burial rites provided an acceptable motivation for a childless citizen to adopt (Is. 2.10, 36, 46; 7.30).<sup>15</sup> Burial, like good will and love for one's parents (D. 25.65), did not have to be justified by reciprocal obligation, but appears to have been a moral obligation.

<sup>12</sup> On the *dokimasia*, see Ch. 4.1.1.

<sup>13</sup> For discussion of procedure for prosecution for maltreatment of parents, see Harrison (1968–71: i. 117–18); MacDowell (1978: 92); Todd (1993: 107–8, 114 n. 10); Avotins (2004). On the ethics of treating the elderly, see B. Richardson (1933: 48–58); Finley (1989). On parental affection, see Raepsaet and Charlier (1971).

<sup>14</sup> For the ritual of burial, see Garland (1985: 21–37); Burkert (1985: 190–4).

<sup>15</sup> Rubinstein (1993: 93).

Such an obligation might be seen as something more like what Rawls called a 'duty', unconditional on any other circumstance and requiring no further justification, though it was not distinguished in this way by the ancient sources. Indeed, burial in Attica was construed also as a privilege which was forbidden to those guilty of impiety (X. *HG* 1.7.22; Lys. 12.96; Hyp. *Eux.* 18, *Lyc.* 20) or those convicted of betrayal.<sup>16</sup>

The allegation that someone had failed to provide a proper burial for a mother or father was a common one both in public cases (Lys. 31.20–3; D. 25.54; Din. 2.8, 18) and in inheritance cases (Is. 4.18–20; D. 43.59). While the demarch was responsible for ensuring that the body was buried if the family was unable to carry out the appropriate acts (D. 43.57–8),<sup>17</sup> and the *astynomoi* were responsible for clearing bodies of those who dropped dead on the streets ([Arist.] *Ath. Pol.* 50.2), it was deemed shameful to leave a burial and the fulfilment of funerary rites of a parent to non-relations (Is. 4.19; 9.4, 32). Accordingly, fulfilment of burial rites for deceased relatives was essential in making a valid inheritance claim (D. 43.65; Is. 4.26, 19). Naturally, speakers in cases concerning inheritance would frequently present themselves as having conformed with burial laws, as having cared for, or having lived in harmony with, their parents in old age (Is. 1.39; 7.34; 8.21–4, 32): these claims suggest that sometimes there was competition between relatives to carry out burials.<sup>18</sup>

In addition to the act of burial, there seems to have been some oratorical value attached to continuing the rites attached to dead parents by both men and women. This is why Lycurgus remarks on Leocrates' failure to look after the graves of his ancestors (Lycurg. 1.8, 97). Activities related to these shrines must have been carried out at the annual festival of the dead, the *genesia*,<sup>19</sup> and at a night-long festival held in the honour of the dead, the *nemesia*, which could include lavish expenditure: the speaker of Demosthenes' *Against Spoudias* claims that his wife spent 100 *drachmai* of silver on her father's behalf at this ceremony (D. 41.11). Other private hereditary cults were carried out by the eldest son of the deceased

<sup>16</sup> Baynham (2003: 28). On motivations for childbearing, see Raepsaet (1971).

<sup>17</sup> Whitehead (1986a: 137–8).

<sup>18</sup> Humphreys (1980: 98).

<sup>19</sup> On the *genesia*, see Jacoby (1944a: 66–7); Georgoudi (1988); Rubinstein (1993: 75); R. C. T. Parker (2005: 27–8).

or by the heir to their estate; close relatives were expected to make visits to the tomb, which might include scenes depicted on funerary *lekythoi* (oil flasks) such as decorating the funerary *stele*, pouring libations,<sup>20</sup> or making burnt offerings.<sup>21</sup> Lysias implies that a thirty-day period of mourning would be expected from a female citizen for relatives (Lys. 1.14), and Aeschines implies that it might have been considered decorous for men to observe political quietness during a period of bereavement (Aeschin. 3.77). While piety to one's ancestors' graves may not have constituted a statutory obligation, it would have publicized the virtuousness of one's ancestors,<sup>22</sup> and discussion of tomb visits in oratorical contexts certainly suggests that it constituted virtuous behaviour. Isaeus implies that it was the duty of a man's legitimate wife and children to attend his tomb and perform rites (Is. 6.64–5).

#### 5.1.4. Commemoration as Display

Sumptuary legislation and social pressures limited the scale of ritual and physical funerary commemoration,<sup>23</sup> but it is likely that the physical commemoration was to some extent inspired by the compulsion not of legislation but of social pressure. The erection of inscriptions and *naiskoi* (shrines) bearing epitaphs may have constituted one stage of the funeral rites.<sup>24</sup> Meyer has suggested that the erection of a funeral marker with an epitaph constituted an essential part of

<sup>20</sup> Garland (1985: 113–18); Oakley (2004: 145–214).

<sup>21</sup> R. C. T. Parker (2005: 29). For more on practices related to the cult of the dead, see Kurtz and Boardman (1971: 147–8); Humphreys (1980: 98–101); R. C. T. Parker (1983: 32–73); Burkert (1985: 48–9, 190–4); Antonaccio (1995: 248–9).

<sup>22</sup> Rubinstein (1993: 73–4) casts doubt on the prevalence of obligations to the dead after the thirty days' mourning was over. Humphreys (1980: 123) asserts that 'paying visits to tombs was not a pious duty, but a way of reminding contemporaries of the glory of one's own family'.

<sup>23</sup> Legislation: see D. 43.62; Cicero, *Leg.* 2.64–6; Sourvinou-Inwood (1995: 439–41); Garland (1989); Small (1995); Arnaoutoglou (1998b: 142–5); C. B. Patterson (2002: 96–100). Funerary legislation was attributed to Solon: see also Plu. *Sol.* 21; Ruschenbusch (1966, fr. 109). For moral outrage at over-expenditure on grave markers as an infringement of egalitarian ethics, see D. 45.79; Morris (1992: 138; 1994).

<sup>24</sup> Stears (2000: 217).

citizenship.<sup>25</sup> While it is unlikely that all Athenians would have been able to afford physical commemoration,<sup>26</sup> investing in a marker of some sort would have signified an appropriate fulfilment of funerary rites. The increasingly elaborate funerary monuments of the mid- to late fourth century BC,<sup>27</sup> and the archaeological evidence for family *periboloi* (funerary enclosures), attest to a concern for demonstrating the strength of family tradition and the fulfilment of domestic obligations.<sup>28</sup> In Attica such tombs could also be common to one's immediate or extended *oikos* (family) or *genos* (clan), and for the most part encompassed up to three generations.<sup>29</sup>

Excavations of the cemetery at the garrison deme of Rhamnous in north-east Attica show how ostentatious tombs adorned with *stelai* and *naiskoi* might advertise the coherence of a family group. Of particular note is the *peribolos* of the family of Diogeiton, son of Callias of Rhamnous (*I Rhamnous* 242–8; *T Rhamnous* 259–64),<sup>30</sup> who lived probably in the second half of the fourth century BC, and whose *peribolos* was used by three generations after him. Among other features, the arrangement featured a *stèle* listing the names of Diogeiton, his wife, son, daughter-in-law, grandson, another relative, and a great-grandson (*I Rhamnous* 243). To the left of the *stèle* were two *naiskoi*, depicting family members.

The oratorical evidence supports an interpretation of such a monument, at least in a *genos* context, as an expression of praiseworthy supererogation. Burial of one's family members in a *genos* tomb was presented as a part of a citizenship claim of even a poor citizen (D. 57.28, 70), and could feasibly also be deployed as part of a wider attempt to stress the vitality of family tradition, solidarity, and piety towards the dead. For reasons of space and innovation, branches of families may have founded their own funerary enclosures, which would accrue the capital of family tradition over time (D. 43.79).

<sup>25</sup> E. A. Meyer (1993), following the results of a Danish research team, which suggested that funerary monuments were inexpensive enough to be within the reach of even the poorest citizens: see Nielsen *et al.* (1989).

<sup>26</sup> G. J. Oliver (2000a: 60–3), arguing that poor citizens were not universally represented among fourth-century grave inscriptions challenging the conclusions of Nielsen *et al.* (1989).

<sup>27</sup> Stears (2000, esp. 207).

<sup>28</sup> Humphreys (1980: 112–21); Garland (1982: 132).

<sup>29</sup> Humphreys (1980); Garland (1982). <sup>30</sup> Pomeroy (1997: 135–9).

Less frequently, orators boasted of expenditure on burial in speeches concerning the family and inheritance (Lys. 32.21; D. 40.52). But most striking for the association of domestic obligations and the idea of liberty is Aeschines' association of the possession of family shrines and tombs with being free (*eleutheros*), lawful marriage, and Athenian patriotism (Aeschin. 2.23).

The speaker of the speech *On the Estate of Philoctemon* challenged his opponent to prove the legitimacy of Euctemon's children, demanding that 'we must know where she [Euctemon's wife] is buried and in what sort of tomb, and who has ever seen Euctemon performing the customary rites over her, and whether her sons still go to offer sacrifices and libations, and who of the citizens or of the slaves of Euctemon has ever seen these rites being performed' (Is. 6.64–5). That male citizens found the existence of female relatives' tombs potentially useful in claiming inheritance, or disputing or verifying legitimacy, may have had implications for the ways in which they were commemorated. Stears has concluded that funerary monuments for female citizens portrayed them for the most part in domestic scenes, as wool workers, child-raising, and interacting with family members and slaves, and reflected their stereotyped domestic roles.<sup>31</sup> Osborne has suggested that males would secure their own claims to citizen status by the erection of funerary monuments, often within the family *peribolos*, for their wives and mothers, depicting them in scenes of domestic normality.<sup>32</sup> While markers for individual males could highlight other aspects of civic prowess (see Chapter 5.5),<sup>33</sup> from the second half of the fourth century 'family group' grave markers for women and men appear to emphasize marital relationships:<sup>34</sup> the clearest example of this is that of the *stèle* of Damasistrate depicting an encounter between the deceased woman and a bearded male relative, in all likelihood her husband, and two other, younger figures (*IG II<sup>2</sup> 11037; CAT iv. 430*). To depict the female deceased in a familial context is revealing of an attempt to stress that woman's, and by implication her immediate male relatives', conformity to norms of

<sup>31</sup> Stears (1995).      <sup>32</sup> R. G. Osborne (1997a, c: 32).

<sup>33</sup> In a survey of private funerary sculpture from Athens, Bergemann (1997) has highlighted the *polis*-mindedness of the iconography.

<sup>34</sup> Leader (1997: 694–8).

family life while in itself representing an ostentatious performance of the rituals of burial by her family.

However, burials did not necessarily have to be marked by an epitaph of any kind: there appears to have been no legislation ruling that burials were marked. It is probable that markers would be set up both as a response to emotional necessity and, where possible, to mark the performance of the civic obligation of fulfilling relatives' funerary rites. It appears to be the case that the erection of a marker became socially obligatory, and competitive expenditure arose independently of state ordinances.

### 5.1.5. Public Burial

The treatment of the dead assumed relevance also in the public sphere. Leocrates is accused not only of having abandoned his own parents' graves, but also of having deprived the elderly of a grave in their homeland and betraying the graves of the younger men who died at Chaironea (Lycurg. 1.144). He did not help to collect the bodies of the war dead or 'attend the funeral of those who died at Chaironea for the freedom and safety of our people' and failed to feel ashamed before their graves on his return to Athens (45). He deprived the dead of their ancestral rites (*ta patria nomima*) (59), and failed to share in the grief (*συμπενθήσαι*) of the country (43).

At the end of the *epitaphioi logoi*, there is an exhortation to partake in the public lament (Hyp. Ep. 41; Lys. 2.81; D. 60.37; cf. Th. 2.46.6), an obligation which was incumbent on citizen women.<sup>35</sup> The role of leading the mourning by making the funeral speech in praise of the dead was given to a prominent orator or politician (Th. 2.34.6). In his speech *On the Crown*, Demosthenes makes much of the fact that he was chosen by the people to give the speech, as someone who would 'express the mourning of his soul' (D. 18.285–7), and that his house was chosen as a venue of the funeral feast for the dead (D. 18.288). In the same way that Lycurgus' speech mourns the dead of Chaironea (Lycurg. 1.39–51),<sup>36</sup> Demosthenes cited the epitaph inscribed by the Athenians upon the monument for the dead (D. 18.289). Aeschines,

<sup>35</sup> Humphreys (1980: 100).

<sup>36</sup> Maas (1928).



suggests Demosthenes, has failed in the duties of the politician to mourn, shedding no tears and going on without a shred of emotion in his heart (D. 18.291). While burial at public expense was normally reserved for those who had died fighting for the Athenians, it could be granted to statesmen like Lycurgus as a recognition of their work on behalf of the city ([Plu.] *Moralia* 842e), and was also granted to Aristides (Plu. *Arist.* 27.1). Burial, therefore, could be construed in isolation from the child–parent relationship, as an aspect of the bond between the citizen and the state, and as an obligation the performance of which had public as well as domestic connotations.

The obligation of burial exhibits the encounter of Athenian private and public institutions, and the ostentatious fulfilment of private and civic obligations. It appears that, in practice, the performance of funerary obligations was frequently subject to the compulsion of social pressures. There were other domestic obligations that emerge in a public context: this is suggested by Lycurgus' claim that Leocrates left Athens with his mistress (Lycurg. 1.17).

### 5.1.6. Sustaining the *Oikos* and Athenian Bloodline

While there was no law against bachelordom or celibacy,<sup>37</sup> the speaker of Demosthenes' *Against Olympiodorus* added the detail that the defendant had never married an Athenian woman or fathered children in accordance with the laws, that he lives with a *hetaira* (prostitute) whose freedom he had purchased, and that 'it is she who is the ruin of us all and who drives the man on to a higher pitch of madness' (D. 48.53). There was probably no law against non-procreation: Dinarchus' statement that 'the laws demand that the orator or general who expects to get the people's confidence shall beget children according to the laws (*παιδοποιεῖσθαι κατὰ τοὺς νόμους*)' (Din. 1.71), rather than indicating that the *rhetor* (orator) or *strategos* (general) was obliged to have children,<sup>38</sup> surely refers to the citizenship law, passed by Pericles and re-enacted in the fourth century, possibly in

<sup>37</sup> Harrison (1968–71: i. 19 with n. 1).

<sup>38</sup> Brock's (2006: 8) reading of Dinarchus is that fatherhood was an obligation for orators and generals, pointing to [Aristotle]'s reference to the ordinance of Draco's constitution stating that generals and horsemen were drawn from those who owned

369/8,<sup>39</sup> which stated that children born of parents who were not both Athenian would not be citizens.<sup>40</sup> Demosthenes' point was that Olympiodorus, by not procreating in an apt way, has not helped preserve the *polis* of Athens. This is the closest Attic oratory comes to the construal of *teknopoiia* ('the making of children') as a public service.<sup>41</sup> With the exception of the law attributed to Solon urging a father to pass on a profession to his son (Aeschin. 1.13), there is no evidence that the parent was under obligation to treat offspring in any particular way.<sup>42</sup>

The idea that marriage was consummated primarily with the intention of procreation and providing the *oikos* with suitable heirs (Is. 6.24–6; cf. D. 59.122) meant that any threat to the institution of marriage could be construed more widely as a threat to the Athenian bloodline. Slanders of seduction, adultery, and habitation with *het-airai* abound in oratory (And. 4.14; D. 25.56–8, 45.74, 48.53; Lycurg. fr. 91 Conomis). An extreme case is Lycurgus' *eisangelia* against Lycophron for adultery (*moicheia*). Lycurgus argued that the consequence of Lycophron's adultery was to make the women of Athens grow old unmarried in their homes and live with unsuitable men (Hyp. *Lyc.* 12). There was a type of lawsuit against adultery, the *graphe moicheias*,<sup>43</sup> but Lycurgus, to justify his charge of treason, has evidently relied on the idea that Lycophron has done damage to the city of Athens through his adultery. Euphiletos, speaker of Lysias 1, defending his killing of an adulterer, justified his behaviour

at least 100 minae of property and had legitimate sons of 10 years or over ([Arist.] *Ath. Pol.* 4.2; cf. also ML 23.20–3).

<sup>39</sup> On the fifth-century citizenship law, see [Arist.] *Ath. Pol.* 26.4; Plu. *Per.* 37.3; for its re-enactment, see *FGrH* 77 F 2; Athen. 577b–c; Harrison (1968–71: i. 19 n. 1); Rhodes (1981: 114); for the date of 369/8, see Whitehead (1986b: 110); Patterson (1981); Worthington (1992: 235–6).

<sup>40</sup> Rhodes (1981: 114); Worthington (1992: 235–6).

<sup>41</sup> Cartledge (1981: 95 n. 70). On the public and private motivations for childbearing and -raising in fifth- and fourth-century Athens, see Raepsaet (1971), who makes particular reference to patriotic motivations (1971: 104–6); cf. Lys. 21.24.

<sup>42</sup> Harrison (1968–71: i. 70–8); MacDowell (1978: 91).

<sup>43</sup> For discussion of those offences against which this procedure was directed, see Harrison (1968–71: i. 35–71); D. Cohen (1990; 1991: 98–109); Omitowaju (2002: 72–115). For the argument that adultery was a worse crime than rape, see Carey (1995b); for reference to discussion of the punishments for adultery, see Arnaoutoglou (1998b: 24).

with the argument that adulterers corrupt the loyalties of married women, control others' *oikoi*, and throw doubt on the paternity of their victims' children (Lys. 1.33).

Conversely, devotion to one's wife was something to boast about (D. 50.61),<sup>44</sup> as was the proper marriage of one's parents (D. 40.19, 57.69). Isaeus talks about the exemplary behaviour of Ciron, who provided a wedding feast at the time of his marriage, inviting his relatives and three friends, and gave a wedding feast to his phratry according to its laws (Is. 8.18).

Details of adultery and running off with *hetairai* are included in order to appeal to the obligation of the Athenian citizen to preserve his *oikos* and in doing so to preserve the city of Athens. In the speech *Against Neaira*, Apollodorus presents Neaira's infiltration into Stephanus' *oikos* as a threat to or a violation of the collective identity of all Athenian *oikoi*: Stephanus brought the Athenians within reach of losing their country by marrying a non-Athenian.<sup>45</sup> Apollodorus quotes two laws which forbade citizen males from marrying non-citizens (D. 59.16, 52): it is likely that laws regulating marriage were tightened at some point before 340 BC.<sup>46</sup> Multiple marriages could be criticized (D. 36.45), but were acceptable (D. 59.122). Marriage might be considered also as a socially constructed civic obligation of the citizen woman: as Glazebrook points out,<sup>47</sup> Apollodorus avoids verbs commonly used to describe the relationship between husband and wife when describing Neaira's relationships with men: he tries to emphasize that she falls outside the social norm of marriage.

Other laws encouraged the preservation of endangered *oikoi*. Demosthenes quotes a law obliging closest kinsmen to marry or provide a dowry for unmarried heiresses (D. 43.51–4).<sup>48</sup> The same speaker quotes a law about archons taking charge of *oikoi* that were in danger of extinction (D. 43.75). Indeed, adoption, as a means of preserving an *oikos* and consequently the ostensible Athenian bloodline,

<sup>44</sup> Schaps (1979: 75); Millender (1999: 356). <sup>45</sup> C. B. Patterson (1994: 200).

<sup>46</sup> Just (1989: 62). <sup>47</sup> Glazebrook (2005: 169).

<sup>48</sup> For references to discussion of this law and other legislation about heiresses, see Arnaoutoglou (1998b: 10–11); for reference to Solonian legislation about heiresses, see Ruschenbusch (1988). For discussion of the procedures protecting heiresses, orphans, and parents, see Avotins (2004).

could feasibly be conceived of as a service to the community (Is. 7.30).<sup>49</sup>

The social labour of the procreation of children was one with which the female half of the population of Athens were especially burdened; the Rawlsian concern that this undermines equality of the citizens was not a concern to the Athenians. Indeed, some scholars have identified this role as the essence of female citizenship.<sup>50</sup> The production of legitimate children was so seriously expected of a female citizen that Isaeus took a woman's childlessness as an indication that she was a prostitute (Is. 3.15).<sup>51</sup> Despite the fact that women do not appear as speakers and probably did not normally physically appear in court,<sup>52</sup> Attic oratory gives us some idea of what were the publicly expected domestic obligations of the citizen woman: to bring in dowries, to avoid adultery, and to produce legitimate children. Just as a citizen brought in the *eisphora* to the war fund of the city, a female citizen married in accordance with the laws brought in a dowry (*ἔπενεγκαμένη προῖκα*) to an *oikos* (D. 40.19). A woman who had committed adultery was not permitted to participate in public sacrifices lest she corrupt other innocent women (Aeschin. 1.183; D. 59.87).

In the evidence for the civic obligations of women outside Attic oratory, the vocabulary of obligation is reminiscent of the words used to describe civic participation and obligations: the Chorus Leader in the *Lysistrata* insists that she shares (*meteimi*) in common affairs by contributing (*eispherein*) men to it (648–57). In Aristophanes' *Thesmophoriazusae*, the Chorus Leader conceives of the rectitude of women being given some honour or *prohedria* (front seats) in return for having been the mother of a *euergetes* (832–9). Accordingly, the obligation of citizen women to procreate was as much their responsibility as it was their partner's: the explicit orientation of women's funerary sculpture towards domesticity,<sup>53</sup> and implicit allusions to marriage,<sup>54</sup> suggest this too. A small number of funerary monuments show women in childbirth, and suggest that they commemorate mothers who died in that process, making the ultimate sacrifice for the *polis*.<sup>55</sup>

<sup>49</sup> Rubinstein (1993: 93, 113–16). <sup>50</sup> Just (1989: 24); Sealey (1990: 19).

<sup>51</sup> Ogden (1996: 100–6). <sup>52</sup> Gagarin (1998). <sup>53</sup> Stears (1995).

<sup>54</sup> Leader (1997). <sup>55</sup> Vedder (1988).

Inscribed dedications offer a good measure of the desire to show the emphatic performance of an obligation. Women's dedications, when of sufficient substance to convey a message about the dedicant, relate to either priesthoods, health, fertility, parenthood, or children, or a combination of these activities.<sup>56</sup> This is clearly exemplified in a votive relief depicting one Xenokrateia commending her small son to the river god Kephissos, a deity connected with the care of children, who bends down towards the boy (*IG II<sup>2</sup> 4548*; cf. *CEG 2.744*). The inscription tells us that Xenokrateia had instituted a shrine to Kephissos and the gods who shared his altar, and dedicated the votive relief as a gift for the upbringing and education of her son. In such a way, a woman was able to express in a public context the performance of an ostensibly domestic obligation by making a dedication for the well-being of her child.<sup>57</sup> But women were not alone in the ostentatious proclamation of the performance of familial obligations by means of dedication: just as families sacrificed and worshipped in groups, both men and women made dedications depicting, or mentioning in an inscribed text, a spouse and/or children, and siblings too made joint dedications.<sup>58</sup> Another dedicatory phenomenon, which proclaimed family values and religious piety simultaneously, was for family members to set up, at the sanctuaries of Nemesis at Rhamnous, Amphiarus at Oropos, and other locations, statues of other individual family members: this practice is attested by surviving fourth-century bases.<sup>59</sup>

Preservation of the bloodline was regarded as important because Athenian parentage was the criterion upon which citizenship was judged.<sup>60</sup> It was ensured by a series of obligations affecting the personal life of the citizen. This could be expressed in several ways, as an obligation to bear legitimate children, the obligation to marry

<sup>56</sup> Kron (1996). <sup>57</sup> R. C. T. Parker (2005: 40, 428–9).

<sup>58</sup> R. C. T. Parker (2005: 37–49).

<sup>59</sup> Other examples are known. *I Rhamnous 123*: a mother sets up a statue of a son at the temple of Nemesis at Rhamnous; *IG II<sup>2</sup> 4857*: three brothers set up a statue of their mother 'to the god'; *SEG xvii. 84*: a son sets up a statue of his mother and father to Demeter and Kore; *SEG xvii. 85*: a statue of Archippe, daughter of Kleogenes of Aixone, was dedicated by her mother, Archippe, wife or daughter of Kouphagoras of Aixone; *I Orop 341*: a son sets up a statue of his father; *I Orop 365*: a daughter sets up a statue of a father.

<sup>60</sup> Davies (1977).

within the Athenian citizen group, or at the very least, to take care lest one's *oikos* be threatened with extinction. While the Athenian *demos* did not go so far as to pass honorary decrees for exemplary domestic behaviour, it is evident that the Athenians conceived publicly of an obligation of citizens to preserve the *oikoi* and the purity of the Athenian bloodline. Domestic obligations were more frequently grounded in social norms and pressures as well as in legislation: indeed, it has been suggested that the latter on its own would have proved ineffective.<sup>61</sup> What has emerged here is the tendency for good behaviour in one's domestic affairs, and relations with other human beings, to be conceived in themselves as a public service. Private life was not held in opposition to public life, but virtuous performance of the obligations of private life was connected closely to good practice in public life. Accordingly, Leocrates' non-observation of the dead at Chaironea is in line with his neglect of his obligations to his family. This meant that the Athenians were able to consider the obligations of domestic life as the kind of behaviour that upheld the *polis*, rather than as an infringement of individual liberty. It may be concluded here that the strain of ideology emphasizing the unanimity of domestic and public obligations was stronger than the line of thought rejecting external intervention, and that the Athenian citizen faced considerable domestic obligations.

### 5.1.7. Rawls and Domestic Obligations

Rawls regards the family as an association whose members, like any other association (for instance, churches, universities, unions, companies), possess rights and duties. In *A Theory of Justice*, these are conceived of as family values: standards of conduct and the virtues of a good son or daughter are to be explained or conveyed in approvals or disapprovals expressed by parents (*TJ* 409). No particular form of the family (monogamous, heterosexual, or otherwise) is required (*Restatement*, 163), but the prescribed function of the family is to be the basis of orderly production and reproduction of society and

<sup>61</sup> Roy (1999).

culture, to ensure the education of children and the development of a sense of justice, and to encourage equality of opportunity (*Law*, 157–8). Rawls stresses that the exact details of the conception of justice or fairness according to which parents raise their children are outside the bounds of his exegesis to prescribe, envisaging the existence of laws to prohibit abuse and neglect by parents, but asserting that ‘at some point society has to rely on the natural affection and goodwill of the mature family members’ (*Law*, 160).

Rawls envisages that the family plays a role in asserting equality—by minimizing the significance of the inevitably gendered division of labour in the bearing, nurturing, and caring for children—and suggests the facility of a law stating that a wife’s work in raising children should entitle her to an equal share of her husband’s income during their marriage (*Law*, 159, 162–3).

The nature of Rawlsian domestic obligations is heavily influenced by his concern for sexual equality,<sup>62</sup> and the extent of state intervention is limited by his concern for individual liberty. No such concern appears to have restricted the encroachment of the public into the private sphere in Athens, meaning that the domestic obligations of the Athenian citizen were more publicly regulated than those in Rawls’s society. What the two do share is the idea that the family is the basis for the reproduction of societal values, which uphold the frameworks that themselves secure liberty.

## 5.2. POLITICAL OBLIGATIONS

It is undisputed that the Athenians, for the working of the administration of their city, required active popular participation in assemblies, councils, and magistracies. This can be reasonably deduced on the basis of a number of observations made by Mogens Hansen. From the fifth century, for certain types of decree to be passed at the assembly, the Athenians required a quorum of 6,000 votes.<sup>63</sup> It is likely that a substantial number of Athenian citizens proposed decrees at

<sup>62</sup> Some, such as Pateman (1989), and Okin (1989), think he has failed in this objective.

<sup>63</sup> Hansen (1983: 26; 1987a: 17).

the assembly and in the council.<sup>64</sup> From a citizen-body of 25,000–30,000,<sup>65</sup> the Athenians every year needed 500 new *bouleutai* (councillors), none of whom must have served more than once previously on the council, and probably 700 citizens to act as magistrates.<sup>66</sup>

This section will investigate the ways in which participation was conceptualized as an obligation in Athenian discourse and democratic institutions. ‘Participation’ refers to attendance or deliberation at the assembly, activity and deliberation in the council, and the holding of offices. This chapter is chiefly concerned with the second and third meanings of the term ‘political obligation’:<sup>67</sup> the obligation of the citizen to deliberate and the required behaviour of citizens engaged at a high level of political activity. It is plausible to conceive of a notion of political obligation that applied to two distinct kinds of political activity, one related to popular participation and the other applying to the *symbolouloi*, the chief advisers at the Athenian assembly. These two interpretations of the nature of political obligation emerge in one of the most famous political contests of antiquity, the *On the Crown* trial. The evidence for political activity as an institutional obligation is scanty; the obligation to political activity is one that emerges chiefly in the rhetoric of oratory and honorific decrees.

This section will be made up of three separate inroads into the question of political obligation: firstly (5.2.1), investigating the possibilities for identifying the statutory basis of political obligation; secondly (5.2.2), the evidence for constructions of political obligation as the sphere of both the *demos* and the individual politician; and thirdly (5.2.3), the notion that the honorary system established the social obligation to political activity. The notion of political obligation in fourth-century Greece is one that is not restricted to democratic modes of politics (5.2.4). Lycurgus was largely uninterested in the question of specifically political obligation in his prosecution of Leocrates: it is unlikely that Leocrates was politically active at a high level; Demosthenes’ and Aeschines’ speeches concerning Ctesiphon’s

<sup>64</sup> Hansen (1989e: 93–127) suggests that ‘no fewer than 700–1400 citizens were probably active as proposers of decrees in the *ecclesia* in the period 355–22’.

<sup>65</sup> This is the estimate for the fourth-century population of Athens by Hansen (1985b: 64–9).

<sup>66</sup> On the number of magistracies in fourth-century Athens, see Hansen (1980b).

<sup>67</sup> For definition of ‘political obligation’, see Ch. 1.7.



honorary decree for Demosthenes' political career, made in the same year as the prosecution of Leocrates, are more useful for this stage of our investigation.

### 5.2.1. Institutional Pressures

The Athenian sources are notoriously ambiguous when it comes to the question of the institutional basis of political obligation.<sup>68</sup> It is unclear whether the system of sortition used in the fifth and fourth centuries to allocate both magistrates and councillors to their offices was based on a lottery of all eligible citizens or of those who had voluntarily come forward themselves as candidates. Moreover, the extent to which conscription would have been used in the case of there being too few volunteers is also uncertain.<sup>69</sup> The evidence for the employment of coercion to attend the assembly is weak: a reference in a lexicographer suggests that the fines imposed by six officials known as *lexiarchoi* and their thirty assistants on 'absentees from the assembly' were imposed probably only on those who in the fourth century were fraudulently claiming the payment for attending the assembly (Poll. 8.104);<sup>70</sup> Dikaiopolis, in Aristophanes' comedy *Acharnians*, observed officials driving citizens from the *agora* to the Pnyx with a rope covered in red paint (Ar. *Ach.* 21–2): an ancient commentator claims that those who were coloured by the paint were liable to be fined ( $\Sigma$  to Ar. *Ach.* 22). Hansen interprets this as a way of stimulating people to attend the assembly; Sinclair has suggested that the device was used to ensure punctual, not compulsory, attendance (Ar. *Ach.* 19–24).<sup>71</sup> Even if, with Hansen, the device is taken seriously, the effect of this kind of compulsion would have been rather arbitrary. The ambiguity about statutory compulsion to political activity arises partly owing to the fact that Athenian laws rarely substantively lay out the political obligations of the citizen, but in all likelihood represent a lack of institutional compulsion.

<sup>68</sup> For collections of the ancient testimonia, see Hermann (1889: 471); Gilbert (1895: 289); Kahrstedt (1934: 130–1).

<sup>69</sup> See nn. 78–9. <sup>70</sup> Gilbert (1895: 289).

<sup>71</sup> Sinclair (1988a: 116–17); Hansen (1999: 150).

The political obligation to uphold the laws and democracy of Athens appears to have been couched in oaths taken by Athenian citizens: these are the only vaguely political obligations in which Lycurgus is interested in the speech against Leocrates. The ephebic oath contained a pledge to political obligation in the sense of obeying current laws, to those magistrates who act reasonably, and disobeying anyone who overthrows the current constitution: 'I shall be obedient to whoever exercise power reasonably on any occasion and to the laws currently in force (*thesmoi idroumenoi*) and any reasonably put into force in future. If anyone destroys these I shall not give them allegiance both as far as is in my own power and in union with all' (RO 88.11–16; cf. Lycurg. 1.77).<sup>72</sup> The decree of Demophantus cited by both Andocides and Lycurgus contained an oath that was taken by perhaps all Athenian citizens at least in the years 410 to 404, and probably reaffirmed already existing legislation,<sup>73</sup> suggesting that the Athenian citizen was obliged to unseat someone who made himself tyrant or overthrew democracy: 'If it be in my power, I will slay by word and deed, by my vote and my hand, whosoever shall suppress the democracy at Athens, whosoever shall attempt to become tyrant or shall help to install a tyrant' (And. 1.96; cf. Lycurg. 1.127; D. 20.159). It appears that the political duty of tyrannicide, which in the Athenian imagination would have been connected to the political mythology surrounding Harmodius and Aristogeiton,<sup>74</sup> was relatively uncontroversial, and the sentiments expressed here can be compared with those of Eucrates' anti-tyranny law of 336, absolving from guilt the hypothetical tyrannicide and obliging Areopagites not to collaborate with an undemocratic regime (RO 79).<sup>75</sup>

<sup>72</sup> On this oath and its inscription, see Ch. 4.1.4, 4.4.4.

<sup>73</sup> For the argument that in 410 Demophantus' decree revived an existing law and proposed that the Athenians should take an oath to observe it and that it lapsed in 403, see Ostwald (1955: 106–15). For Solon's law against tyranny, see [Arist.] *Ath. Pol.* 8.4, 16.10; Plu. *Sol.* 19.3. For other Greek anti-tyranny laws, see Arnaoutoglou (1998b: 76–7); *BCH* 125 (2001), 198–238; 126 (2002), 143–204. For the idea that the republication of Draco's law on homicide may be connected to anti-tyrannical sentiment, see Gallia (2004).

<sup>74</sup> On the privileged position of the tyrannicides in Athenian ideology, see M. Taylor (1991); Ober (2003).

<sup>75</sup> Ostwald (1955) has suggested that the Athenians had both weak laws which aimed to bring revolutionaries to trial and strong laws that condoned action against them.

This amounts to evidence for the political obligation to defend democracy and to obey Athenian laws. It is hardly evidence for an obligation to political deliberation or participation of any kind. Now it is necessary to turn to the question of the institutional nature of participation at the council and other offices. The 500 members of the council were chosen every year by lot probably in the demes ([Arist.] *Ath. Pol.* 43.1; D. 39.10), probably from volunteers (Lys. 31.32–3; Isoc. 15.149–50).<sup>76</sup> Its members were, in the fourth century, paid 5 obols per day, with an extra obol for subsistence and a larger allowance for the chairman (*epistates*).<sup>77</sup> It is probable that institutional pressure, probably on a deme level, was used in the likely circumstance of there being too few volunteers.<sup>78</sup>

Rarely do orators present bouleutic service as the exercise of a public-spirited deed. The speaker of Antiphon's *On the Choreutes* gives the most elaborate oratorical statement of bouleutic service, but this is made to direct attention to the failure of his opponents to register a charge while the defendant was offering sacrifices and prayers on behalf of the people, giving advice on the most important public matters, and serving as *epistates* (chairman) of the *prytaneis* (Antiph. 6.45). In a *dokimasia* for a *bouleutes*, it was presented as a privilege (Lys. 31.24, 33; 6.33). However, the ideology of the *apragmon* (quietist) occurs with reference to bouleutic service: in a speech that boasts of financial outlay, the speaker of Lysias 19 states his non-involvement in bouleutic service in order to support his claim of being a non-litigious citizen (19.55). Rather different is the quietism of Socrates, who says that he has never held a magistracy (Pl. *Ap.* 31c–d), while boasting of being the only member of the *prytaneis* (executive of the council) who voted against the unconstitutional proposal that the men who were lost at Arginusae be tried all together (32a–b).

<sup>76</sup> R. G. Osborne (1985*b*: 81).      <sup>77</sup> Rhodes (1972*a*: 13).

<sup>78</sup> This is the standard view, held by Staveley (1972: 39–40, 51); Rhodes (1981: 511–12); Whitehead (1986*a*: 267, 319–24); Sinclair (1988*a*: 111); however, Hansen (1999: 248–9) suggests that in cases when demes could not come up with adequate volunteers, one deme's representation was transferred to another. Ruschenbusch (1979*b*) argues that the citizen population of Attica in the fourth century was not substantial enough to rely upon volunteers to fill the council and all who were eligible were automatically treated as candidates; his arguments were challenged by Rhodes (1982: 193–4).

Socrates is unlikely to have put his name forward;<sup>79</sup> what this passage suggests is that even the citizen who conceived of himself as politically uninvolved would be drawn into making ethical decisions about the nature of political obligation were he to end up serving as a councillor.

So far, therefore, the evidence for political obligation is extremely limited. As for magistrates other than *bouleutai*, there is little evidence for compulsion to hold office. Of the sortitive offices listed by the author of the *Athenian Constitution* ([Arist.] *Ath. Pol.* 50–5), some were allocated in the tribes, others by sortition carried out by either the *thesmothetai* (junior archons) in the shrine of Theseus or from within the tribes (Aeschin. 3.13; [Arist.] *Ath. Pol.* 47–8). As with the *bouleutai*, it is not known whether or not these offices were allocated from groups of volunteers.<sup>80</sup> Demosthenes' portrait of 'some market-clerk or street inspector or juryman—some poor, unskilled man, without experience, and appointed to his office by lot found guilty of peculation at the audits' (D. 24.112) suggests that magistrates, like jurors, could be plucked from outside the ranks of volunteers. Some officers were allocated from members of the council, as were the ten auditors and the examiner of accounts ([Arist.] *Ath. Pol.* 48.3–4). The non-sortitive offices, elected by *cheirotomia* (the raising of hands) in the assembly,<sup>81</sup> included the generalship, the hipparch, taxiarch, phylarch, and treasurer for the triremes Paralus and Ammon ([Arist.] *Ath. Pol.* 61; Aeschin. 3.13), naval architects ([Arist.] *Ath. Pol.* 46.1), and other financial officials such as the commissioners of the Theoric fund from 354, the military treasurer, the superintendent of springs ([Arist.] *Ath. Pol.* 43.1), probably also the chief financial official (*ho epi tei dioikesei*),<sup>82</sup> and ephobic officials (42.2), and also those who were needed in extraordinary circumstances: the *sitones* and commissioners of public works (D. 18.248; Aeschin. 3.27).<sup>83</sup> It is likely that voluntary candidacy was the norm for these, as is implied by

<sup>79</sup> Whitehead uses this episode as the basis of his claim that compulsion might be called into play were it needed (Whitehead 1986a: 321).

<sup>80</sup> See nn. 78–9, *mutatis mutandis*, on bouletic selection. Hansen (1999: 233), on the basis of the fact that the Athenians sometimes did not fill the boards of their magistracies, suggests that they did not resort to compulsion if there were too few volunteers.

<sup>81</sup> On the method of voting in the assembly, see Hansen (1983: 103–21).

<sup>82</sup> On this office, see Rhodes (1981: 516).

<sup>83</sup> On the *sitones*, see Ch. 5.6.

Demosthenes' pride in being elected *sitones* (D. 18.248). Envoys and those chosen for specific purposes were elected (D. 24.112; Aeschin. 2.95), or 'chosen' by the assembly (RO 22.72–5), sometimes 'from all' the Athenians (RO 58.6, 95.38), from those present at the assembly (RO 26.36–7), or from members of the *boule* (RO 58.6). The only pressure to partake in such office-holding was, in all likelihood, social.

Only occasionally is there a hint of compulsion in the sources for Athenian office-holding. There existed in fifth- and fourth-century Athens the right for a citizen selected for office to decline service by swearing an oath of exemption, the *exomosia* (disclaimer) (Aeschin. 2.94–5; D. 19.129).<sup>84</sup> This appears to have been prohibited on three fifth-century Athenian inscriptions concerning the election of superintendents at Eleusis, over-50-year-olds who were elected ambassadors to Miletus and *choregoi* in an Attic deme (IG I<sup>3</sup> 32.14; 21.5; 254 B 10, 14). To these testimonia should be added Aeschines' claim that men elected by the *ecclesia* were not permitted to withdraw from office before the *boule* (Aeschin. 2.95). There is no way to conclude other than by recognizing that there exists ambiguity about the extent to which the Athenians used coercion to fill their magistracies. It is far easier to find the third sense of obligation: the heightened obligations of the citizen in office (cf. 4.1.1).

The obligations of certain individual magistracies are listed by the *Athenaion Politeia* ([Arist.] *Ath. Pol.* 54–62), but there seems little reason to recount them here. In theory, the obligations of the magistrate to handle public money in an honest way and to behave in other respects fairly would be tested in the *euthuna* undertaken by magistrates on the expiry of their office.<sup>85</sup> The most substantial speech relating to a *euthuna* case is Demosthenes' *On the Embassy* speech of 343 prosecuting Aeschines for his misconduct as an ambassador to Philip II in 346. In several passages, Demosthenes recounts the duties of the ambassador (*presbus*), which are presented as offering advice to the city, observing the instructions of the *demos*, working with integrity, making the most of opportunities for the city, and providing true and profitable reports on the work of the embassy for

<sup>84</sup> For the employment of *exomosia* in legalistic contexts, see Todd (1990c: 24–5); Carey (1995a).

<sup>85</sup> Todd (1993: 112–13). On the *euthuna*, see Ch. 4.1.1.

the Athenians (D. 19.4–5, 19, 183–4). Such duties would surely apply to any holder of a significant magistracy in Athens.

The orators identified certain types of behaviour with serving as *bouleutes*. Antiphon associated it with deliberation, prayer, and sacrifice on behalf of the city (Antiph. 6.45–6). Lycurgus cites the decree of Hyperides proposing that the *bouleutai* go down armed to Piraeus as an example to show the depth of crisis that Athens faced after Chaironea (Lycurg. 1.36–7). He points out that Hyperides suggested that the *bouleutai* be armed, despite the fact that they were exempted from military service so that they could debate the affairs of the city. In pointing to this motion, he suggests that *bouleutai* were accustomed to serve the city by deliberating and preparing the city rather than fighting. The obligations of *bouleutai* were laid out for them in the bouletic oath which was sworn when they entered office, and were reinforced by the orators' allusions to the oath (Lys. 31.1–2). A composite version of the oath has been reconstructed by Rhodes.<sup>86</sup> It grounded obligation to counsel according to the laws and in the best interest of the city and people; not to 'imprison any Athenian who offered sureties taxed in the same class as himself, except any person found guilty of conspiring to betray the city or to subvert the democracy, or any tax-farmer or his surety or collector being in default', 'to expose any person appointed by lot whom we know to be unsuitable for service on the council'. Such clauses suggest that the obligation on councillors was to behave constitutionally and in the interests of the city, but to avoid excessive interference in the lives of individual citizens. There were other elements added in at different times, concerning the amnesty of 403 (And. 1.90–1), standards (ML 45 §12), and Chalcis (ML 52.3–15), and it was the duty of the *boule* to ensure that new triremes were constructed, precisely what the *boule* members of 356–355 had failed to do (D. 22.17–20). The *boule*, according to the orators, also had the duty to set an example for descendants to follow (D. 51.22). But the level of activity of each individual councillor must have been to a great extent dictated by his own prominence and partiality to political activity, as is suggested by Demosthenes' comments on the existence of passive and active *bouleutai* (D. 22.36–7).

<sup>86</sup> Rhodes (1972a: 194).

There is no scholarly consensus on the question of whether the Athenian methods of allocating offices made office-holding an obligation of the citizen, though it is likely that institutional pressure would have been applied if volunteers were in short supply. It is highly unlikely that attending the assembly was obligatory; in the fourth century serving on the council and attending the assembly were encouraged by payment; the latter was first introduced before 393 and was given probably to the first 6,000 to arrive ([Arist.] *Ath. Pol.* 41.3, 62.1; *Ar. Ec.* 186–8, 289–311, 392).<sup>87</sup> There is little evidence for the payment of magistrates in the fourth century, but it is assumed by some.<sup>88</sup> The Attic orators do not regularly present serving on the council as the discharge of an obligation of political service to the city. This leads to the question of whether the political activity of deliberation at the assembly or political office-holding was construed as an obligation of the good citizen.

### 5.2.2. Constructions of Political Obligations

When thinking about political obligations, it is generally much more fruitful to look at the evidence for social pressure to deliberate and the interpretation of political activity as a virtuous service to the city: in other words, the discourse of political obligation. Demosthenes' explanation of the authority of law (D. 25.16; see Chapter 4.1.1.1) is followed up by the suggestion as to what role it played in the encouragement of political participation:

If any of you cares to inquire what is the motive-power that calls together the Council, draws the people into the assembly, fills the law courts, makes the old officials resign readily to the new, and enables the whole life of the state to be carried on and preserved, he will find that it is the laws and the obedience that all men yield to the laws. (D. 25.20)

<sup>87</sup> Rhodes (1981: 492); for scepticism towards this position, see Gauthier (1983).

<sup>88</sup> For the argument from silence that magistrates were unpaid in the fourth century, see Hansen (1979: 15–19; 1999: 240–2). Gabrielsen (1981: 146–9) and Rhodes (1995: 307) contested some of Hansen's views on this matter. Note, however, Hansen (1971–80) discusses the perquisites that would have been readily available for magistrates.

Demosthenes is not able to point to any statute enforcing political activity, but argues that participation results from the desire of citizens to uphold the laws and to prevent the onset of anarchy. Andocides justified his political involvement by framing himself as a ‘good citizen’: ‘I consider it the duty of the good citizen (*agathos polites*), not to withhold himself from public life for fear of making personal enemies, but to be ready to face danger for the good of the community’ (And. 4.1). Aeschines portrayed attending the assembly as part of a hypothetically praiseworthy openness in life (Aeschin. 1.121). As Worthington pointed out, the preserved symbouleutic preambles of Demosthenes frequently posit the composition of expedient policy as the political responsibility of the political adviser, while placing the burden of responsibility for selecting the right policy on the shoulders of the *demos*.<sup>89</sup> Indeed, the symbouleutic speeches and preambles of Demosthenes give some idea of what kinds of obligation might have been framed at the assembly. Demosthenes tells the assembly-goers that they have the obligation to listen well: ‘It is your duty (*dei*), however, when deliberating (*sumbouleuonton*) on matters of supreme importance and of general concern, to be willing to listen to all your counsellors’ (*Prooem.* 26.1; cf. *Prooem.* 10.1; D. 10.28), and to deliberate sensibly, though not necessarily to speak well: ‘You, the multitude, and especially the oldest among you, while not obliged to speak as well as the cleverest, for this art is for the practised speakers, are yet under obligation to have as much sense as they and even more, for it is long experience and “having seen much” that begets this faculty in us’ (*Prooem.* 45.2).

The political obligation of deliberation and choosing policies could be grounded on the idea that popular discussion gave rise to good counsel, an idea which appears in oratory (D. 1.1, 2.31, 3.15, 8.1, 23.145–6; Aeschin. 1.178),<sup>90</sup> and in book 3 of Aristotle’s *Politics* (1281<sup>a</sup>39–82<sup>b</sup>13). Athenagoras in the debate at Syracuse suggested that the people made an important contribution to decision-making: ‘if the best guardians of property are the rich, and the best counsellors are wise, none can hear and decide so well as the many (*hoi polloi*)’

<sup>89</sup> Worthington (2004); cf. Yunis (1996: 247–57).

<sup>90</sup> Balot (2004a: 240–1).



(Th. 6.39.1).<sup>91</sup> While this theory that political counsel is incumbent on the masses is clearly to be identified as a justification of democracy, political obligation is not exclusively identified with democracy. Indeed, the notion of political obligation is a concept so fluid that its definition appears to have been contested in the case about the crowning of Demosthenes that came to the Athenian courts in 330. In his speech, Demosthenes does not consistently adhere to this high valuation of popular participation.

In 330 Aeschines made his speech supporting a *graphe paranomon* attacking the legality and appropriateness of Ctesiphon's decree to crown Demosthenes. While the dispute was the denouement of a rivalry that emerged in the aftermath of the Peace of Philocrates,<sup>92</sup> it provides considerable insight into two competing ways of thinking about political obligation, and their relationship to democracy.<sup>93</sup>

Aeschines grounds the jury's obligation to obey Athenian democratic institutions by praising procedures such as orderly conduct in the *boule* and *ecclesia*, the rule of law, the *graphe paranomon*, voting, magistracies, *euthuna*, even the public record office.<sup>94</sup> Political obligation lies in the hands of the jury and is a democratic phenomenon:

Tyrannies and oligarchies are administered according to the tempers of their lords (*tois tropois ton ephestekoton*), but democratic states (*hai poleis hai demokratoumenai*) according to their own established laws (*tois nomois tois keimenois*). Let no man forget this, but let each bear distinctly in his mind that when he enters a courtroom to sit as juror in a suit against an illegal motion, on that day he is to cast his vote for or against his own frankness of speech (*parrhesia*). This is why the lawgiver places first in the jurors' oath these words, 'I will vote according to the laws.' For he well knew that if the laws are faithfully upheld for the state, the democracy is also preserved. This

<sup>91</sup> Plato's Protagoras suggests that the Athenians take advice from anyone because everyone shares in political virtue (Pl. *Prot.* 322d–323a). It happens, however, that Protagoras, claiming to be an expert, can charge for his services (327d–328c).

<sup>92</sup> For an account of the rivalry between the pair, see Buckler (2000).

<sup>93</sup> The subject of the role and expertise of the leader in Athenian politics has been deeply probed by modern scholarship: Finley (1962) stressed the structural necessity of leaders; while Rhodes (1996) has investigated the range of bases upon which leaders would win supporters; Kallet-Marx (1994) stressed that leaders made use of financial expertise. Ober (1989a) was concerned with the way in which leaders negotiated their privileged position within the wider community, and Yunis (1996) has explored rhetorical strategies of leadership. On the role of the 'mob', see Karpuk (2000).

<sup>94</sup> D. 18.2, 4, 5, 11, 12, 13, 18–21, 25, 29–30, 37–9, 44–7, 75, 178, 192, 197.

you ought always to remember, and to hate those who make illegal motions, and to hold no such offence as trivial, but every one as serious indeed... as each man of you would be ashamed to desert the post to which he had been assigned in war, so now you should be ashamed to desert the post to which the laws have called you, sentinels, guarding the democracy this day. (Aeschin. 3.6–7)

Thus does Aeschines imply that democracy and frankness of speech require the courageous defence of laws by its citizens:<sup>95</sup> Demosthenes, on the other hand, used the same military metaphor, of guarding the interests of the city, to describe his own political activity (D. 15.32–3, 21.120). Throughout his speech Aeschines emphasizes the political responsibility of the *demos*: the jurors are told to act as *agonothetai* in a contest about *politike arete* (political virtue) (Aeschin. 3.180), and each citizen is to think of himself as possessing the powers of a king (*basileuei*) by virtue of the democratic constitution and the power of the jury's vote (Aeschin. 3.233).<sup>96</sup>

Aeschines accuses Demosthenes of amassing power for himself by undermining the institutions of Athenian democracy: he got himself on the *boule* by intrigue and bribery (Aeschin. 3.62, 73, 125–6, 145–6), passed his decrees by underhand means, ignored the mechanisms of election, and contended that he deserved higher rewards than the generals. Whereas Demosthenes, he claims, passed more resolutions on the Peace than even Philocrates (60), and speaks too much, Aeschines is restrained according to the *metriotes* (moderation) of his life (218), and has acted as volunteer prosecutor when appropriate: 'in oligarchies it is not he who wishes (*ho boulomenos*), but he who is in authority, that addresses the people; whereas in democracies he speaks who wishes, and whenever it seems to him good' (Aeschin. 3.220). Aeschines' mantra is that the best politician for Athens is one who speaks when he chooses and it seems to him to be good to do so: there is little room for the political expert. Indeed when it comes to defining the *demotikos* (friend of the people), the qualities listed are not far removed from those of the average good citizen: to be free-born, have an ancestral legacy of loyalty to the democracy, be *sophron* and *metrios* (temperate and

<sup>95</sup> Balot (2004a: 253).

<sup>96</sup> For Aeschines' views of democracy, see Lane Fox (1994: 143–55).

self-restrained), be a man of good judgement (*kalon dianoian*), an able speaker, and *andreios* (manly) (Aeschin. 3.169–70). Only one of these virtues, skill in speech, really distinguishes the politician from the normatively good citizen.

Aeschines' speech emphasizes the role of the jury and the people as a whole in obeying and defending democratic institutions, and leaves the impression that Demosthenes' hyperactivity endangers democracy. For Aeschines, political obligations belong to the *demos* and the obligation is to defend democracy; there is little role for the euergetist politician or enlightened leader. Aeschines' approach to the question of political obligation leaves Demosthenes with room to distinguish the obligations of the politician from those of the citizen and to leave behind the democratic interpretation proposed by Aeschines. In certain high-profile speeches made before the *On the Crown* trial, Demosthenes was cautious about advocating the role of the people in political decision-making—certainly more cautious than he was in the speech against Aristogeiton, or the symbouleutic preambles encountered above. The speech *On the False Embassy* offers some insight into Demosthenes' attitude to high-level political activity:

No one is commanded or compelled by you to take part in public affairs (*prattein ta koina*); but when someone comes forward, convinced that he has ability, like good and sympathetic people you accept him with good will, not with suspicion, and you elect him and put your own affairs in his hands. If a man succeeds, he'll be honoured and rewarded accordingly. (D. 19.103, trans. MacDowell 2000: 101; cf. 10.70–4 and *Prooem.* 49.3)

The notion of political obligation in this passage differs from that enunciated by Aeschines (Aeschin. 3.220) in that it makes room for the elected political expert to whom hypothetical control of popular affairs is entrusted. Indeed, this interpretation of political obligation as the sphere of the professional politician is one that pervades the reply to Aeschines.

In order to reconcile his career with Ctesiphon's honorary decrees, Demosthenes in the *On the Crown* speech outlines the kind of behaviour deemed appropriate or supererogatory to a *sumboulos*,<sup>97</sup> and relies heavily on his representation of a glittering political career as

<sup>97</sup> Harding (1987*b*); Yunis (1996: 272–3).

the epitome of enlightened political virtue. As Yunis points out, the fact that his policy led Athens to disaster at Chaironea forced him to emphasize the ethics of his behaviour rather than the outcome of his Macedonian policy;<sup>98</sup> however, Demosthenes does not entirely rule out the expedience of his policies at least for the honour of the Athenians.<sup>99</sup> Moreover, working along the lines of the ideology expressed in the hortatory clauses of Athenian honorary decrees (4.2.2), Demosthenes attempted to hold up the honouring of the individual, essentially an inegalitarian transaction, as beneficial for the whole Athenian *polis*.

Demosthenes repeats an almost formulaic appeal to the obligations of the jury, to adhere to their oath and the laws of Athens and to hear the two sides of the case with equal good will (*eunoia*: 18.2, 7–8, 48–9, 249). In other words, he does not rule out the notion of a popular political obligation. But in *On the Crown*, Demosthenes is more interested in the obligations of the *sumboulos* than of the average juror, and he is less partial than Aeschines to panegyrics of Athenian democratic institutions.

As would be expected, he intends to show that he is worthy of honour (D. 18.4), and intends to do this by an examination of his own political activity (D. 18.226); the speech culminates in the list of expeditions sent on the basis of his decrees (305–306) that it was the duty (*dei*) of the *kalos kagathos polite*s (good and noble citizen) to propose (306). His approach, he claims, is founded on a principle of opposition to Aeschines' over-theoretical definition of the *demotikos*, which amounts to an assessment based on a *logos*, but not of 'deeds (*pragmasi*) and policy (*politeumasin*)' (D. 18.122).

<sup>98</sup> Yunis (2000).

<sup>99</sup> Demosthenes claimed that his policies had a host of beneficial consequences for the Athenians: the Athenian alliance with Thebes (D. 18.175–87, 229–31); renewal of war with Philip in 340 which addressed the threat to the grain supply (88, 60–109) and forced Philip out of Euboea (87); increasing the resources of Athens (227, 232–3); fortifying Athens (298–303). The protection of the Propontis won the Athenians a variety of praise—*ta kallista, epainoi, doxai, timai, stephanoi, charites* (80, 86)—and was a success rated highly enough for thank-offerings and processions in Athens (86), brought distinction to the city (*timasthai ten polin*), exhibited to mankind the noble spirit (*kalokagathia*) of Athens and the depravity of Philip (93), and upheld the most honourable Athenian tradition to uphold freedom and salvation across Greece (101, 95, 323). Had the Athenians not faced Philip at Chaironea, their reputation would have been ruined (199–200).

From early on in the speech Demosthenes stresses the agonistic aspect of the contest, determined to show that he is better, and better born, than the accuser (18.10), responding to Aeschines' portrayal of the contest as a boxing match (Aeschin. 3.205–6).<sup>100</sup> By the end of the speech this is sharpened to the extent that he can claim to be the better in terms of *eunoia* (320). His portrait of political obligation is framed by reference to his own conduct, by contrast to Philip and other politicians of Greece, and by contrast to Aeschines' behaviour. By magnifying Aeschines' political significance, Demosthenes is able to portray him as the archetypically badly behaved politician. Aeschines' reticence and reluctance to propose decrees are criticized (139), as is his failure to contribute to upholding Athenian reputation or defence (D. 18.311).

It seems apt to conjecture here that the proposal of decrees, as an aspect of political activity, may have been construed as a political service. Plato argued that the proposal of honorary decrees typified the haughtiness of political activity.<sup>101</sup> Rhodes has seen this as a manifestation of the 'wonderful perversity' of the Platonic Socrates.<sup>102</sup> However, Plato's proposition that the proposing of an honorary decree might win political capital seems less incredible when it is considered that the politicians of the period 307–302 took care that letter-cutters used blank spaces or initial line positioning to give their names prominence.<sup>103</sup> It is possible that there was some political capital in the action of proposing a decree, or it may have formed one of the obligations of a political group (Aeschin. 3.255), though to claim that someone did so for money was a serious criticism (Din. 1.43–4). It is possible, as ancient commentators claim, that one politician, Timarchus, moved more than 100 decrees (*hypothesis* to Aesch. 1.1; Suda s.v. Timarchus).<sup>104</sup>

Furthermore, that legislation written on stone would win particular attention for a politician, and might even be interpreted as

<sup>100</sup> Roisman (2004: 267); Rowe (1968). <sup>101</sup> See Ch. 4.2.2.4.

<sup>102</sup> Rhodes with Lewis (1997: 4 n. 9). <sup>103</sup> Tracy (2000a).

<sup>104</sup> Another highly prolific proposer may have been Aristophon, who, Hansen suggests on the basis of the seventy-five purported prosecutions for making unconstitutional proposals brought against him, may have proposed up to 225 decrees. On Aristophon and the accuracy of this figure, see Oost (1977); Whitehead (1986*b*). The figures for Demosthenes (39), Demades (26), and Lycurgus (11) are more certain: see Hansen (1989*e*: 153).

marking a victory of his persuasive power at the assembly.<sup>105</sup> Indeed, Lycurgus had all his decrees set up in front of the wrestling school constructed under his administration ([Plu.] *Moralia* 843f); posthumously they were inscribed on the Acropolis ([Plu.] *Moralia* 852e) as a tribute to his political career. It is not unreasonable to suggest that the writing up of a detailed and complicated law by a prominent politician, Agyrrhius, proposer of the grain tax law (RO 26), may have been related to his quest for prominence (despite his having been out of the limelight for several years) and his image as an expert drafter of laws related to commerce and tax collection. If such an act of writing something up might be a manifestation of political competition, this might explain the vehemence with which the *anagrapheus* of the sacrificial calendar, Nicomachus, was attacked in 399 (Lys. 30 *passim*). Plato's model, however, addressed itself specifically to honorary decrees. Accordingly, Aeschines' *graphe paranomon* may be interpreted as not only an attack on Demosthenes, but an attack on his supporters and friends too, and their fulfilment of political obligations. Demosthenes' defence emphasizes the position that his decrees were proposed appropriately, and that they are of benefit to the community.

As well as quantity, quality and substance of political activity is important. Demosthenes, in this speech and the speech *On the False Embassy*, demeans Aeschines' service as a secretary or under-secretary (D. 18.127, 209, 261; 19.200, 237, 249), a contempt perhaps founded on a prejudice dictating that serving for pay in a lowly office was incompatible with civic leadership.<sup>106</sup> Aeschines has also failed to uphold the proper sort of relations with foreign potentates, sustaining not friendship with, but servitude towards, Philip (284). Moreover, Aeschines neglected what Demosthenes construes as the obligation to prosecute Demosthenes at the appropriate time (18.13, 278), in other words as soon as the decree was proposed.

<sup>105</sup> Marc (1998).

<sup>106</sup> Yunis (2001: 257). The opponents of Nicomachus exploited the prejudice against secretaries, and claimed that such men aimed to avoid military service (Lys. 30.26; cf. Ar. *Ranae* 1084; see Ch. 4.1.2). Under-secretaries were not always citizens: one freed slave served as a *hupogrammateus* (IG II<sup>2</sup> 1561.30–2). For Aeschines' career as a secretary, see E. Harris (1995: 29–30).

Demosthenes' speech is focused on justifying his own political activity. He claims that Athens's glorious past makes it the duty (*proseke*) of the Athenians to lead the Greek opposition to Philip (D. 18.66, 71–2, 95), and this made it appropriate for him to take up Hellenic affairs as an area of expertise (59). Political obligations consisted also of offering advice, making speeches, laws, and decrees, and acting as a diplomat (320), and the aim of these was summarized in his description of what constituted the responsibilities of the orator:

To discern the trend of events at the outset, for forecasting results, for warning others. That I have always done. Further, he ought to reduce to a minimum those delays and hesitations, those fits of ignorance and quarrelsomeness, which are the natural and inevitable failings of free states, and to promote unanimity and friendliness and whatever impels a man to do his duty (*ta deonta*). (D. 18.246)

Such themes would have been familiar to the audience of Demosthenes' symbolaeutic oratory. Demosthenes conceives of the obligations of the politician to be many-sided, and to consist of more than deliberation and ambassadorial exercises. A politician is not there just to formulate policy or to act as a litigious *ho boulomenos* (D. 18.123); political duty extended to the holding of financial offices. He mentions in passing that he was a 'volunteer' trierarch (18.99), made voluntary donations as a Commissioner for the Walls (18.112–15, 298–300), ransomed captives and provided dowries (18.268), and was appointed *sitones* (grain purchaser), and he ranks himself among the financial benefactors of the day (18.114). Still further, Demosthenes even spearheaded what he presents as a bravely egalitarian reorganization of Athenian naval finances.

Demosthenes suggests that he is qualified to be a statesman because behind his firmness and resolve (18.21, 109) there was a combination of experience, readiness to toil, intelligence, and awareness of external necessity (69). The *locus classicus* for this idea is his account of his intervention after Elatea had fallen to Philip: 'The call of the crisis on that momentous day was not only for the wealthy patriot but for the man who from first to last had closely watched the sequence of events, and had rightly fathomed the purposes and the desires of Philip' (D. 18.172). In this passage Demosthenes presents himself as a supererogatory donor of a wealth of experience inspired not only by

political understanding but also by a broad knowledge of Athenian history.

But there is an inegalitarian flavour to his claims to be a superior formulator of policy: he boasts that he attended the best schools (257, 265), and to this might be added his claims of a high natural capacity for political activity. Indeed, the ability to select policy comes from a combination of experience and *dianoia* (temper). *Dianoia* is said to be manifested in the *prohairesis* (policy) of a *sumboulos* (18.192). Moreover, nature (*physis*) appears to be the foundation of the kind of policy that is essential for the *metrios polites*:

There are two traits that mark the disposition of the moderate citizen (*metrios polites*): that is a description which I apply to myself without offence. When in power, the constant aim of his policy (*prohairesis*) should be the honour and the ascendancy of his country; and on every occasion and in all business he should preserve his loyalty. That virtue depends upon his natural position: ability and success depend upon other considerations. (18.321)

By this point, it is clear that Demosthenes has attempted to transform the ideal citizen from Aeschines' *sophron* and *metrios* individual to the patriotic and talented statesman.

On the whole, democratic ideas are less conspicuous in Demosthenes' reply than they were in Aeschines' speech. Where he does appear to embrace democratic ideology, he does so with the purpose of expressing his own proximity to the interests of the people. He claims that his oratorical skill has always been exercised on public concerns and for the advantage of the *demos* (D. 18.277), and that he has supported the policy of the people and shares the same friends and enemies as the people (D. 18.280).

Demosthenes follows the practice common in his symbouleutic preambles of launching attacks on the *demos* for preferring the entertainment of invective to a patriotic attitude (138). But his claim to have received unilateral acceptance and praise of his policy after the fall of Elatea is both unconvincing and fundamentally undemocratic (179).<sup>107</sup> Moreover, echoing his complaints to the *ecclesia* about the difficulties of countering Philip's foreign policy in a democratic situation (D. 2.23, 3.14–15, 8.32–4), at one point in the speech *On the*

<sup>107</sup> On the aristocratic pretensions of fourth-century politicians, see Ober (1989a: 280–92).



*Crown* he hints at the possibility that Philip's autocratic government possesses certain advantages when it comes to decision-making:

He was the despotic commander (*autokrator*) of his adherents: and in war that is the most important of all advantages. . . . He did whatever he chose, without giving notice by publishing decrees, or deliberating in public, without fear of prosecution by informers or indictment by illegal measures. He was responsible to nobody: he was the absolute autocrat (*despotes*), commander (*hegemon*), and master (*kurios*) of everybody and everything. And I, his chosen adversary, of what was I master? Of nothing at all! Public speaking was my only privilege: and that you permitted to Philip's hired servants on the same terms as me. (D. 18.235–6)

It has emerged that, in the speech *On the Crown*, Demosthenes proposes an interpretation of political obligation that diverges from that outlined by Aeschines and also that frequently offered by Demosthenes himself in his symbouleutic speeches, inasmuch as political obligation, construed as giving advice to the assembly, is placed firmly on the shoulders of the euergetist politician rather than the masses. In other speeches, too, Demosthenes discussed political virtues of the statesman, including truthfulness (D. 19.184; Aeschin. 2.95), recommending the safest method of defence (D. 9.6), speaking in the best interest of the citizens (D. 4.51, 8.69–70), speaking on public matters but not private ones (D. 32.32), and guarding the constitution (D. 15.32, 21.120; cf. Aeschin. 3.7).<sup>108</sup> The presentation of political activity as a virtuous action or as the fulfilment of a civic obligation acted as a defence mechanism against the considerable criticism that politicians faced for meddling in public life. It is no surprise that boasts of political involvement as acts of supererogation were restricted to those orators who, like Demosthenes, were also active politicians. When trying to explain why the text of Demosthenes 18, a speech of such artistry and intensity (or desperation) was circulated, it might be feasible to consider it to be a monument to Demosthenic political statesmanship set out as a challenge to the political ascendancy of Lysurgus. Perhaps it helped him later in his career, when, hoping for a recall from exile, he demanded reciprocal *charis* in return for having acted as a politician (*Ep.* 2.3–4, 26). The success of the speech as well as its publication might indeed reflect the erosion of the value

<sup>108</sup> Radicke (1995: 159).

of democratic popular contribution to deliberation. Indeed, the possibility that Demosthenes conceives of himself as an absolute leader of the Athenians is suggested by his comparing himself to Philip of Macedon at one point in the speech: in his person, he concluded, Athens remained undefeated (D. 18.247).

This section so far has dealt with oratory as a source for idealistic political discourse. It is hard to discern the extent to which the ideals proposed by the orators reflected political developments. Contemporary developments in political institutions suggest that the nature of political obligation and participation was a topic of discussion. In the period before 355 the Athenians appear to have convened the assembly at least ten times per year. In 355 this was fixed at thirty per year, and probably around 350 the number of standard annual meetings of the assembly was raised from thirty to forty.<sup>109</sup> Within twenty years the capacity of the Pnyx was enlarged (its capacity is disputed, and calculations range between 13,000 and 24,100),<sup>110</sup> and became a structure with a circular retaining wall of 5.35 metres in height that might have been overlooked by a Panathenaic race track.<sup>111</sup> The magnitude of this structure may reflect discussion of political participation, the high numbers already attending, an attempt to encourage participation, or alternatively an attempt by a commanding elite to create an impression of widespread political engagement.

Aristotle suggested that the way to encourage participation in a democracy was to reward those who show up (*Pol.* 1297<sup>a</sup>35–8, and 1298<sup>b</sup>17–26), and indeed the rise in the *ekklesiastikon* (assembly-goer's payment) to as much as 1<sup>1</sup>/<sub>2</sub> *drachmai* by the time of Aristotle might reflect a genuine effort to boost participation ([Arist.]

<sup>109</sup> This follows Hansen (1983: 48–72; 1987: 23–4; 1989e: 177–92). E. Harris (1986, 1991) champions the traditional view that there could be additional meetings.

<sup>110</sup> For the controversy on the capacity of the auditorium of the Pnyx, see Stanton (1996: 17–20); Hansen (1996c).

<sup>111</sup> Height: Camp (1996: 41); Johnstone (1996: 97–127); track and stadium: Romano (1996). For the arguments dating Pnyx III to the 330s, see Forsén (1993, 1996); Rotroff (1996); Camp (1996). Hansen (1996c: 23) has withdrawn his arguments for a Hadrianic date. M. Richardson (2003) suggests, on the basis of the place of publication of the law against tyranny, that the completion of the rebuilding can be dated to the ninth prytany of 337/6, and suggests therefore that reconstruction began before the defeat at Chaironea.

*Ath. Pol.* 62.2). Moreover, at no point in the fourth century was non-attendance at the *ecclesia* ever conceived of as an aspect of virtuous quietism, *apragmosune*, suggesting that as an activity it was closely associated with democratic citizenship.

On the basis of an analysis of the literary and epigraphical testimonia for decrees, Hansen has suggested that 700–1,400 citizens were active as proposers of decrees in the assembly in the period 355–322.<sup>112</sup> According to Rhodes's calculations, the proportion of decrees preserving enactment formulae extant on stone for the period 403/2 to 322/1 are roughly evenly divided between the probouleumatic (which followed closely the directives of a proposal in the council) and non-probouleumatic.<sup>113</sup> The comparatively higher figure of non-probouleumatic decrees attested epigraphically for the period 355–322 suggests that there was an increased rate of assembly activity in the period after the Social War.<sup>114</sup> This figure attests to the vitality of the assembly, and the fact that non-probouleumatic decrees were moved by a less marked range of proposers than were probouleumatic ones does not detract from the observation that political activity was carried out by prolific and non-prolific proposers.<sup>115</sup>

All this is out of tune with Demosthenes' interpretation of political activity. Nevertheless, literary developments suggest a growing valuation of the importance of political expertise. Around 350<sup>116</sup> research under the auspices of Aristotle began on a history of the Athenian

<sup>112</sup> Hansen (1989e: 123).

<sup>113</sup> Rhodes (1972a: 79). On the distinction between probouleumatic and non-probouleumatic decrees, see 4.1.1.

<sup>114</sup> These totals are calculated on the basis of the tables in Rhodes (1972a: 246–66). Rhodes says that the proportionately higher number of non-probouleumatic decrees in the period 321/0–263/2 suggests that 'until Athens learned to live with her humiliation the *demos* tried to make frantic activity a substitute for effective action' (Rhodes 1972a: 79). Indeed, Byrne maintains that the proportionately lower number of non-probouleumatic decrees in the period 286–261 suggests that democratic activity in that period was less vibrant (Byrne 2004: 325). On the process of *probouleusis*, see also de Laix (1973).

<sup>115</sup> Hansen (1989e: 121) notices that non-probouleumatic decrees exhibit 'a good rotation of proposers, but [one] less marked'.

<sup>116</sup> Jaeger (1923: 300–1). On the date of the final version, and for potential insertions and revisions, see Rhodes (1981: 51–8). Keaney (1992) pursues the line that the investigation of a constitution was a novel idea.

constitution (the *Athenaion Politeia*), the first half of which emphasizes the role of the individual in Athenian constitutional development. At the end of the *Nicomachean Ethics*, Aristotle suggests that those who aspire to a scientific understanding of politics require the expertise that comes through critical study of constitutions and laws (*EN* 1130<sup>b</sup>30–1131<sup>b</sup>24), in other words the kind of substance that is encountered in the *Athenaion Politeia*. Perhaps at around the same time Aristotle wrote the passages in book 3 of the *Politics* that distinguished between good men, good citizens, and good rulers (*Pol.* 1276<sup>b</sup>14–1277<sup>b</sup>32).

Moreover, scholars working from a number of different perspectives have identified the period between the Social War and the Lamian War as one in which the Athenians rethought aspects of political participation, and others have suggested that political life may have become more dominated by an elite in this period.<sup>117</sup> This appears to have been reflected in the increased tendency of the Athenians to reward publicly those who were politically active. Kralli has identified the period as one in which the Athenians start to award *megistai timai* to her leading citizens,<sup>118</sup> and Lambert has observed the increased tendency of the Athenians, from the late 340s onwards, to publish on stone inscriptions honours for magistrates, in particular secretaries, councillors, and religious officials:<sup>119</sup> this included both those chosen by lot and those elected by *cheirotomia*. Quass has argued that the ideology that acknowledged political success was personal merit emerged in the last third of the fourth century.<sup>120</sup>

This might appear to suggest that in the period after the Social War, popular disengagement with politics led to the transformation of the notion of political obligation to one which emphasized professional political activity. In tune with such an interpretation is the resurgence of the Areopagus in the period after the Social War,<sup>121</sup> a body made up of experts at least in the sense that they had experience of holding the archonship. Perhaps popular disengagement might be used to explain why Demosthenes won the *On the Crown* contest, being acquitted by

<sup>117</sup> See Ch. 3.6. <sup>118</sup> Kralli (1999). <sup>119</sup> Lambert (2004: 88–9).

<sup>120</sup> Quass (1992: 424).

<sup>121</sup> Rhodes (1979–80: 319–20; 1995: 311–14); Wallace (2000); Sullivan (2003: 130–4); Rhodes and Osborne (2003: 390).

more than four-fifths of the jurors. Such a speculation would not be distant from the impression of fourth-century politicians as divided between military specialists and political professionals.<sup>122</sup> But this is not in tune with the institutional developments that appear to have promoted political participation in the same period, or the apparent vitality of the assembly. There coexisted conceivably contradictory strands of the *polis*-attitude towards political participation. This is supported by the coexistence of honorary decrees for political activity both expert and non-expert. The evidence for fourth-century honouring in Athens indicates that political activity was held up as a virtuous activity, and an obligation only inasmuch as social pressure might be held to create compulsion.

### 5.2.3. Honours, Dedications, and Political Obligation

Demosthenes presented his political career in the years up to Chaironea as a justification for the honorary decree of Ctesiphon. Demosthenes might have been the first politician to justify his crowning in terms of his whole political career. He claimed that the Athenians had frequently crowned him (D. 18.83, 120, 222, 257). However, it appears likely that the Athenians publicly rewarded the services of the most important politicians even before the fourth century: Pausanias, writing in the second century AD, remarked on the statues of Solon, Callias, famed as the maker of the Peace of Callias, as well as those of Demosthenes and Lycurgus (Paus. 1.8.3, 1.16.1). The statue of Lycurgus was set up in 307–306 ([Plu.] *Moralia* 843c, 852e) and that of Demosthenes in 280–279 ([Plu.] *Moralia* 847e, 851d). Pausanias also noted the graves of Ephialtes and Lycurgus (Paus. 1.29.15): Lycurgus, according to one biographer, was rewarded with a public burial ([Plu.] *Moralia* 843e). Office-holders appear to have been honoured in the tribes and demes of Attica from the first half of the fourth century (*IG II*<sup>2</sup> 1148; cf. *IG II*<sup>2</sup> 1194, 1197, 1205).

<sup>122</sup> Davies (1981: 124–30); cf. Tritle (1992, 1999). Perlman (1963: 355; 1967) views politicians in the fourth century as a ‘socially monolithic class’. This is an elaboration of Aristotle’s statement in the *Politics* that at his own time orators were the leading politicians, whereas in the past the generals had been the leaders (1305<sup>a</sup>7–15).

Demosthenes, it should be noted, appears to have been rewarded for specifically ‘doing and speaking the best things for the Athenians’ (Aeschin. 3.49–50, 101, 237; D. 18.54),<sup>123</sup> a pointer to his deliberative contribution to Athenian politics. The earliest epigraphical evidence for honours being passed in recognition of this kind of contribution comes from decrees of the demes of Attica: that of the deme of Melite for Neoptolemus in around 330 (*SEG* xxii. 116.8–10), and that of Eleusis for the hierophant Hierocleides in the mid-fourth century (*IG* II<sup>2</sup> 1188.6–9), and that of Eitea for Hippocles in 332/1 (Schwenk 42.5–9). What all this suggests is that political activity, and in particular deliberation, by the last third of the fourth century, appears to have been recognized as the kind of activity that was to be encouraged through the honorific system. This is supported by the evidence for honours passed for Athenian councillors.

Serving on the *boule* seems to have been a relatively easy way for the citizen to win civic honours, at least in a corporate capacity as a member of the *boule* or of a group of tribal *prytaneis*. As long as a *boule* fulfilled its regular duties, it would be crowned at the expiry of its office according to law (D. 22.5); if the *demos* were not to make this reward, it would be read as a clear sign of resentment (Aeschin. 1.112). In 355 Euctemon and Diodorus accused their rival Androtion of unconstitutionally and inappropriately proposing the crowning of the *boule* on expiry of their office. Androtion had proposed the honours in the assembly without a *probouleuma*, and the *boule* had failed to build any new triremes (D. 22.5–6, 16). Accordingly, it appears that the *boule* could be held to their duties if circumstances led an individual to demand that their crowning be conditional on their fulfilment. Indeed, in the fifth and fourth centuries the bouletic *prytaneis* of a tribe that had been honoured for being the most successful of that year frequently made a dedication recording this together with a list of their names.<sup>124</sup> The fact that the decrees were inscribed by the *prytaneis* as dedications suggests that the *polis* was not making inscriptions to commemorate its awards, but that the individuals honoured saw a value in recording their honours as dedications. The

<sup>123</sup> διατελεῖ καὶ λέγων καὶ πράττων τὰ ἄριστα τῷ δήμῳ.

<sup>124</sup> See Ch. 4.3.5.

presidents (*proedroi*) of each meeting of the council or assembly were also apparently honoured if they had performed well and within the law (Hyp. Phil. 4–5).<sup>125</sup>

This desire is also manifest in the habit of Athenian citizens to commemorate their own political activity by making dedications probably at the expiry of their offices. These showed that they had fulfilled the demands of office, and acted as a sign that offices held were completed with probity and deserved some sort of commemoration. A number of bases survive recording dedications: in 394/3 an archon, *paredros*, and *grammateus* set up a statue base (IG II<sup>2</sup> 2811), and were followed in the fourth century by other *paredroi* (SEG xviii. 63, xix. 189), the *thesmothetai* (IG II<sup>2</sup> 2836, 2837, 2843; SEG xlv. 132–3), the *agoranomoi* (IG II<sup>2</sup> 2823), *epimeletai* of the Eleusinian Mysteries (IG II<sup>2</sup> 2840, 2841), and other boards of magistrates (SEG xxxii. 241 = IG II<sup>2</sup> 2814) probably after their *euthuna* (Aeschin. 3.21). One archon basileus, in the early fourth century, dedicated a stone herm recording the victorious *choregoi* in the Lenaia of his archonship, and by doing so appropriated the glory of their victories (SEG xxxii. 239).<sup>126</sup> From the 350s there exist dedications by other officials stating that they had been crowned by *boule* and *demos*: treasurers (IG II<sup>2</sup> 2822, 2824), *hieropoioi* (IG II<sup>2</sup> 2832, 2838; Ag. xv. 38.82–7), and the taxiarchs of 356/5 (SEG xxi. 668). Other officials related to the *boule* were honoured, such as the treasurer of the *boule* (Ag. xv. 53) or tribe (Ag. xv. 38.74–7), and the *syllogeis* of the *demos* (Ag. xv. 38.78–81; IG II<sup>2</sup> 2821).

One underrated document for interpreting how the competitive fulfilment of political obligations was promoted through the honorary habit is an inscribed base published as IG II<sup>2</sup> 223. This object is a dedication to Hephaistos made by the Athenian council which records five decrees. The top surface contains cuttings, probably for a statue.

<sup>125</sup> Whitehead (2000: 54) suggests, on the basis of the fact that this is the only certain instance of *proedroi* as honorands, that it would be surprising if ‘commending the civic virtues of men whose period of office was measured in hours was at all common’.

<sup>126</sup> Wilson (2000: 30–1).

The first decree, on face A, says that the council, in the archonship of Pythodotos of 343/2, resolved 'to make a judgment (*krisis*)<sup>127</sup> of those speaking on the Council in the ninth prytany and honour the man who seemed to it to have spoken and to have acted best and incorruptibly on behalf of the boule and the demos throughout the year' (A lines 4–5). Phanodemus was chosen, and consequently the council has resolved to crown him and sent a *probouleuma* to the assembly to this effect. The honorary language is familiar, but the competition between speakers is the first such attested; the fact that Phanodemus, an expert in cult activity, won the reward supports the notion of political merit as the preserve of the elite.

However, Phanodemus' decree, recorded on the left side of face B, itself suggests a broader notion of political obligation: as well as providing that there was to be a statue to Hephaistos and Athena Hephaistia it decreed that the names of the councillors with patronymic and demotic were to be recorded (B lines 3–5), while an honorary decree for the council was to be inscribed because they had managed public order well at the festival of Dionysus in the city. Face B contains other decrees which reiterate this impression of a concern for the activities of both proposers and *bouleutai*. Perhaps this may be viewed as the result of an underhand deal struck between Phanodemus and the *boule* for both parties to win honours; but it might also reflect a deeper recognition of the room in Athens for expert and non-expert political activity.

By conceiving of political obligation, in a looser sense of the term, as political activity promoted by the honorary habit and incitement to virtuous activity, the impression is that political obligation can refer to both expert activity and popular participation at the council. According to this reading of *IG II<sup>2</sup> 223*, the two distinct types of political obligation appear to be functioning in harmony, whereas in the cases put forward by Aeschines and Demosthenes they were set against each other.

<sup>127</sup> For the *krisis* (judgment) as a power of the assembly in its pre-355 judicial capacities, see Hansen (1999: 158–9).



### 5.2.4. Political Obligations and Democracy

From this discussion of political obligation it may be concluded that the privilege of political contribution was sometimes represented as an obligation in the contest of self-justification by prominent politicians; however, as regards *boule* service, the pressure, if at all present, was institutional rather than oratorical. The dedications are a sure indication that, as well as whatever constitutional encouragement or compulsion existed, there were potential rewards for the fulfilment of political offices and discharging them well. Two distinct readings of political obligation emerged in the *On the Crown* affair: one strand emphasizes popular participation; the other strand, which is notably stronger, emphasizes the obligations that fall on the shoulders of talented political professionals. The fact that these two portraits emerge in one court case suggests that different modes of political thought could be brought to popular attention, or emerge of their own accord, in the context of the fourth-century law courts. The decision of the jury to vote for Ctesiphon's acquittal might suggest that Demosthenes' interpretation of political obligation was more convincing, but on the other hand it might reflect simply that Demosthenes made a good case for his own honours. Indeed, the coexistence of the praise of popular and professional political activity on the inscribed dedication to Hephaistos dissuades me from suggesting that political obligation was completely dominated by a professional ethic by this period. Rather than discerning change from one kind of obligation to another, it is more feasible to conclude that there coexisted different strands of *polis*-ideology.

Finally, it is necessary to engage with the observation that, whereas Aeschines' interpretation of political obligation is distinctly democratic, Demosthenes' reading has little to do with democracy. In terms of the qualities of the statesman, Demosthenes' speech appears to set the template for the honorary decrees awarded to Hellenistic Athenian politicians like Callias (*SEG* xxviii. 60), Eurykleides, and Mikion (*IG* II<sup>2</sup> 834). But comparable sentiments about political obligation of the talented individual can be detected in non-democratic writers of the earlier fourth century. In book 4 of the *Republic*, Plato was adamant that political decision-making required expertise (Pl. *R.* 4. 427e–429a). Isocrates in the *Areopagitikos* claimed

that the ideal Athenian state at the time of Solon and Cleisthenes filled office not by lot from all the citizens, but by selecting the best and ablest for each office (22). Chapters 6 and 7 of book 3 of Xenophon's *Memorabilia* concern the requirements of a good politician. Xenophon's ideal (X. *Mem.* 3.6) *prostates tes poleos* (protector of the city) will try to improve the finances of his country,<sup>128</sup> will understand its strengths and weaknesses, and will pay attention to the defence of its territory and food supply: all aspects of expertise claimed by Demosthenes. Socrates suggests that someone capable of handling the affairs of the city is 'bound as a citizen' to take part, and urges: 'Don't neglect public affairs (*ta tes poleos*) if you can improve them in any way' (X. *Mem.* 1.7.9). It is clear that Demosthenes' argument was not new, but the presentation of this idea with such intensity in a democratic context was daring and possibly novel.

Does the verdict of the *On the Crown* trial indicate whether the Athenians put political liberty before individual liberty? The answer is paradoxical: both Aeschines and Demosthenes emphasize that the individual is free to choose whether to give advice at the assembly (Aeschin. 3.220; D. 19.103), but at the same time Aeschines insists that the people have the duty to defend democracy, while Demosthenes argues that as a *sumboulos* he had the duty to offer advice that would contribute to the security and freedom of the Athenian *polis*. Demosthenes of course was not concerned with his own personal freedom: his task was to present himself as a benefactor of the Athenians worthy of crowning. The Rawlsian analysis of political participation provides an appropriate reference. Earlier (2.9.1), it emerged that for Rawls, because he does not conceive of political activity as the chief end of every human life, political activity is not a duty in the strong sense for the average citizen, though all citizens must have the right to engage in political activity, and participation is a good for individual and community alike. Political activity carries with it burdensome obligations. Moreover, political liberty exists not as a separate liberty, but for the sake of upholding other liberties. Demosthenes, who presents his duty as upholding the liberty of the

<sup>128</sup> On the *prostates* as 'protector', see Connor (1971: 110–15).

Athenians,<sup>129</sup> would agree. We can conclude by translating into the language of liberty the equation that says that political participation of the individual led to a growth in his obligations: an increase in liberty positively construed led to a proportionate drop in the amount of liberty negatively construed. But that was a sacrifice that the *sumbouloi* of Athens were willing to make.

The existence of a separate 'political' sphere is controversial: this study of Demosthenes' defence has suggested that it is impossible to conceive of the political aspects of civic obligation in isolation from those categories that may also be classed as judicial, financial, or litigious. At this point it seems apt to turn to the question of how, if at all, judicial activity was construed as an obligation in Athens.

### 5.3. LITIGIOUS OBLIGATIONS

Judicial activity formed a central part of Athenian political life and was identified as an integral element of Athenian citizenship: Lysias' speaker against Panceleon claims that the defendant's reluctance to go to litigation to vindicate himself is a suggestion of his servile status (Lys. 23.12). Moreover, recent scholarship has recognized the close association of Athenian political and litigious activity:<sup>130</sup> there was no notion that the judicial and political powers of government should be kept separate. In Athens judicial activity came in several forms: acting as a prosecutor, facing a prosecution as a defendant, acting as a *sunegoros* (advocate), as a juror, or as an arbitrator.

#### 5.3.1. Prosecution

The idea that it was the obligation of a citizen to prosecute as a volunteer (*ho boulomenos*) was one developed by plaintiffs in the law courts to justify their own litigiousness. Lycurgus claimed that he was performing an important structural role by defending the laws: 'the law exists to lay down what must not be done (*ἅ μὴ δεῖ πράττειν*),

<sup>129</sup> Hansen (1974: 57) collects the following references: D. 18.46, 65, 68, 99, 100, 177, 205, 208, 296, 297, 305.

<sup>130</sup> Ober (1989a); M. R. Christ (1998); Johnstone (1999).

the accuser exists to report those liable to penalties under the law, and the juryman to punish all whom those two agencies have brought to his attention. And thus both the law and the jury's vote are powerless without the accuser who will hand over transgressors to them' (Lycurg. 1.4). Lycurgus' publicly minded prosecution and eschewing of private interests is extreme but not unique (Lys. 22.3–4, 31.2).<sup>131</sup> Certainly, other politicians talked about their litigious activity as if it were the performance of a public service. Demosthenes went further in conceiving of the prosecution of transgressors of the law as a political duty, asking why Androtion had never appeared as a prosecutor in thirty years of public life (D. 22.66), Hyperides was proud enough of his judicial activity to list those men he had prosecuted (Hyp. *Eux.* 28), and Aeschines saw his prosecution speech as a fulfilment of the duties (*ta dikaia*) of citizenship (Aeschin. 1.196). Dinarchus attacked Demosthenes for not using the process of *graphe paranomon*, despite the fact that Demades had proposed illegal measures, and that it was the duty of a democratic orator to hate those who threaten the city by speech or legislation (Din. 1.100–1).<sup>132</sup>

Plaintiffs, even in cases where they were prosecuting a wrong they themselves had suffered, could claim that they were prosecuting as a response to popular demand or to uphold justice or the constitution (D. 21.1–3, 120; 22.1). The claim that prosecution constituted an obligation or virtuous activity was made by orators in the law courts in order to defend themselves from being branded a *sykophantes* (vexatious prosecutor), the label attached to someone perceived as partaking in vexatious litigation for the sake of personal profit or self-promotion.<sup>133</sup> The speaker of Demosthenes' *Against Theocrines* captures an exchange of views between those making and those denying the charge of sycophant. The speaker attacks those who 'do not speak in the assembly, but get money from indicting those who speak there' (D. 58.62), and connects his rival's supporters with those who

<sup>131</sup> Allen (2000b: 27) argues that Lycurgus' personal voice has disappeared by the end of the speech.

<sup>132</sup> For references to similar appeals, see Worthington (1992: 270–1).

<sup>133</sup> R. G. Osborne (1990a: 93) suggested that in reality the sycophant was not historically distinct from the volunteer prosecutor (*ho boulomenos*): the former was simply a derogatory description of the latter. In the same volume, Harvey (1990) counter-argued that sycophants were distinct as abusers of the system. M. R. Christ (1998) inclines towards Osborne's view.

make a living by pettifoggery (58.63). He disputes the feasibility of his enemies' claim that such indictments safeguard democracy and punish wrongdoers (D. 58.63–4).

The most recent assessments of the evidence have argued that injured parties or rival politicians prevailed among the prosecutors, and that on the whole Athenian assumptions and prejudices discouraged third-party prosecutions.<sup>134</sup> Indeed, acting as a *sunegoros* in a private action was justified usually in terms of solidarity with the parties concerned rather than on behalf of the community,<sup>135</sup> though *sunegoroi* in public actions would claim to the jury that they were acting out of public-spiritedness.<sup>136</sup> Of course, personal enmity was a major and openly acknowledged cause of public prosecutions.<sup>137</sup> Accordingly, a collectivist ideology of volunteer prosecution as a civic obligation should be recognized but not overemphasized.

The claim that prosecution was a service to the state was necessary because prominent orators were not able to use the other claim made to avoid the charge of vexatious litigation: that of *apragmosune* (quietism) whereby obscure litigants argued that they were unused to litigation and had never previously visited the law courts (Lys. 19.55; Is. 1.1). Naturally, litigants under prosecution had been summoned to court and would at least profess to *apragmosune*,<sup>138</sup> and in some cases attached it to the virtue of discreet or moderate lifestyle (Is. 1.1; D. 42.12).<sup>139</sup> Whether a litigant pursued the claim that citizens were obliged either to litigious *polypragmosune* (public-spirited activity) or *apragmosune*, therefore, was determined by that litigant's prominence or political aspirations.

<sup>134</sup> R. G. Osborne (1985a: 51); M. R. Christ (1998: 122, 159).

<sup>135</sup> Rubinstein (2000: 230–1). <sup>136</sup> Rubinstein (2000: 179, 140–1).

<sup>137</sup> Hunter (1994: 127, 228 n. 21); D. Cohen (1995a: 101–6); Rhodes (1998); Todd (1998).

<sup>138</sup> For more examples, see Nestle (1926); Ehrenberg (1947: 59); Dover (1974: 188–90); Lateiner (1982: 1–12); L. Carter (1986: 99–130); Piepenbrink (2001: 136 n. 213). The most recent assessments have rejected the idea that there existed a tangible body of *apragmones*, and have interpreted the concept instead as a rhetorical trope: see Ober (1989a: 175 n. 37); Todd (1990: 164); R. G. Osborne (1990a: 99 n. 47).

<sup>139</sup> Whitehead (2000: 197).

### 5.3.2. Jury Service

It seems unlikely that there existed any obligation to carry out jury service. Juries and *nomothetai* were selected by lot, probably from a pool of 6,000 volunteers, who themselves had been selected from a larger pool of volunteers ([Arist.] *Ath. Pol.* 27.4).<sup>140</sup> In all likelihood, payment (3 obols per day from the 420s: *Ar. Eq.* 51) was a successful enticement to volunteer.<sup>141</sup> Once a citizen had volunteered to be part of the pool of 6,000 whence the juries were drawn, he would be obliged to accept the verdict of the assignation. Orators would frequently allocate rhetorical duties to the jury en masse, and these were usually related to the duty to scrutinize the subject on behalf of the city or to restrain law-breakers (D. 21.37, 26.1). Importantly, however, in extant oratory there are no boasts of having served as a juror. Nor was serving as a juror, or in any other litigious capacity, thought worthy of depiction on a funerary relief, or particular reference on a grave epigram: the adjective ‘just’ (*dikaios*) and its cognates appear on fourth-century grave markers for both men and women and therefore are unlikely to refer to acting with justice in specifically dikastic or litigious situations (*IG* II<sup>2</sup> 5501, 6475, 8464, 9112). However, some Athenian citizens appear to have thought of their service on the juries as central to their civic identity: a high proportion of surviving bronze allotment plates, used to allocate the jurors to specific trials or even offices,<sup>142</sup> were found in the graves of their last owners:<sup>143</sup> that they were such prized possessions is symbolic of the closeness of individuals to their dikastic activities.

The association of justice and citizenship is exhibited by the institutional obligation encountered at the end of every citizen’s military

<sup>140</sup> Hansen (1999: 181–3). Kroll (1972: 69–90) has suggested that the frequent recycling of the small bronze jurors’ allotment plates suggests that there was considerable competition for places.

<sup>141</sup> For the argument that jury and assembly pay was enough to allow citizens to support themselves and dependants, and allowed Athenians the leisure to serve in this way, see Markle (1985). Todd (1990a) disputes this, suggesting that the system tended to encourage farmers and peasants to volunteer, rather than urban dwellers.

<sup>142</sup> For a detailed account of how allotment worked, see Dow (2004). For the suggestion that these bronze *pinakia* may also have been used in allotments to the council and magistracies, see Lang (1995: 59).

<sup>143</sup> Kroll (1972: 9). For those found in the *agora*, see Lang (1995: 59–66).

career: from 399/8<sup>144</sup> Athenian citizens in their sixtieth year were obliged to serve as a *diaitetes* (arbitrator: [Arist.] *Ath. Pol.* 53.4), a service they could be exempted from only by illness (Poll. 8.55).<sup>145</sup> This obligation took place in the first year that the citizen was no longer liable to be called up for military service, and in some ways served as a signal of the geriatric's retreat from the military sphere of citizenship. Good service as a *diaitetes* might have provided a late chance for an individual to gain a good reputation, as the 'poor and inexperienced (*apragmon*), but in other respects altogether good', Strato won (D. 21.83). *Diaitetai* made joint dedications commemorating honours passed in recognition of just activity.<sup>146</sup>

### 5.3.3. The Obligations of Litigants

So much for the limited and contextually dictated obligation to get involved in litigation. Once a citizen had begun a prosecution, he was obliged, under threat of a fine, not to withdraw the prosecution ([Arist.] *Ath. Pol.* 53.4). Oath was the means by which obligation was developed. Before speeches were made, it seems likely that both sides swore an affidavit which bound them to telling the truth.<sup>147</sup> Witnesses were obliged to come to court under threat of a 1,000 *drachmai* fine (Aeschin. 1.46, 2.68), though they could avoid giving evidence if they pleaded ignorance and swore an oath of *exomosia* (Lys. 1.20; Is. 9.18–19; D. 19.176, 59.28). They also took oaths to guarantee the truth of their statements (Lys. 4.4).

More important for the development of obligation was the oath taken by the jurors. The obligations of the juror were set by the oath that was taken annually at the start of the year when the 6,000 jurors had been nominated.<sup>148</sup> It was common for orators to refer to the oath in order to remind the jury of their obligation to abide by it

<sup>144</sup> Rhodes (1981: 388).

<sup>145</sup> Ruschenbusch's argument (1982a: 272–3; 1982b: 38–40) that the duty applied to all citizens (including *thetes*) has been contested by Sekunda, who suggests, on the basis of dedicated lists of *diaitetai*, that there were many exemptions: see Sekunda (1992: 344); cf. D. Lewis (1955: 28).

<sup>146</sup> See Ch. 4.3.6.

<sup>147</sup> Bonner and Smith (1930–8: ii. 167).

<sup>148</sup> Bonner and Smith (1930–8: ii. 156).

(e.g. Hyp. Eux. 40; Lys. 14.22).<sup>149</sup> In mid-speech, in order to reinforce his interpretation of the authority of the court, Demosthenes claims to quote the oath in full (D. 24.149–51). This ‘document’ in Demosthenes 24, as interpreted by Bonner and Smith,<sup>150</sup> represents a collection of different elements of the juror’s oath that were in use at different times, and might be seen as a representation of the multifarious obligations laid on the juror. In the oath, the juror swore to abide by certain familiar political obligations, promising to vote according to the laws and decrees of Athens, not to vote for tyranny and oligarchy, and not to collaborate with anyone subverting the Athenian constitution. The jurors also swore to protect certain perquisites of citizenship, promising not to allow private debts to be cancelled, nor to redistribute the property of Athenian citizens, nor unconstitutionally to expel residents of Athens. They swore to uphold the constitution by not restoring exiles or those condemned to death, nor to confirm the appointment of magistrates ineligible for office, and swore to give hearing impartially and not to take bribes.

From this, it may be concluded that there did exist a rhetoric of obligation to act as *ho boulomenos*, but only for the aspiring or prominent orator. If a citizen was inexperienced in public life, the discourse was more likely to be that of *apragmosune*, in which case there was no obligation to act as a litigant. Moreover, the fact that litigants rarely include accounts of volunteer prosecutions in their lists of benefactions suggests that the rhetoric of obligation surrounding judicial activity was primarily a mechanism of defence against accusations of sycophancy. Rawls implies no obligation on citizens to participate in the judicial processes of their state. His philosophy contains no discussion of the obligations of those litigiously involved; it might be feasible that they would fall under the heading of Rawls’s general duty of the citizen to share a sense or sentiment of justice (*TJ* 420, 435).

<sup>149</sup> Johnstone (1999: 33–42, 60–2); Worthington (1992: 137–8).

<sup>150</sup> Bonner and Smith (1930–8: ii. 153–5). As Johnstone (1999: 35, 147 n. 63) has pointed out, reconstruction of an authentic text of the oath is problematic given that it is likely that the content of the oath was open to contention even in the fourth century. Hansen (1983: 161 n. 1) claims the document is authentic, but notes the reservations of Drerup (1898: 256–64).



#### 5.4. THE FINANCIAL OBLIGATIONS OF THE ATHENIAN CITIZEN

Aristotle appears to have associated with tyrannical government the idea of a direct, regular tax levied by the state:<sup>151</sup> the author of the *Athenaion Politeia* claimed that Pisistratus levied a tax of 10 per cent on all agricultural produce ([Arist.] *Ath. Pol.* 16.4); in the *Politics* Aristotle noted that Dionysius of Syracuse preserved his tyranny through taxation (*Arist. Pol.* 1313<sup>b</sup>20–30). However, fourth-century Athenians performed a range of financial obligations. Taxation on commercial activity existed in the shape of a 2 per cent tax levied on the value of goods entering and leaving the harbour at Piraeus.<sup>152</sup> Another form of financial obligation were the tithes on agricultural produce customarily offered to the gods: one inscription of the 420s suggests that all Athenian farmers were expected to set aside the *aparche* (first fruits) of not less than 1/600th of their barley and 1/1200th of their wheat to be collected and delivered to the sanctuary at Eleusis (ML 73); an account of 329/8 BC records the amounts of grain dedicated (*IG II<sup>2</sup> 1672*). Certain Athenians and corporate groups who purchased land in the 340s paid a 1 per cent tax to Athena's treasury.<sup>153</sup> Athenian citizens were liable to pay the *eisphora*, initially an emergency levy, but this was thought of as a tax on property rather than the person.<sup>154</sup> Metics contributed the *metoikion* (metic tax), a poll tax, at a fixed rate.<sup>155</sup> The finances of the Athenian *polis* were heavily reliant on the willingness of the wealthy to make donations, known as liturgies, to a range of causes designated to represent the public interest. Financial obligations were construed as a central aspect of citizenship.

The performance of these financial obligations, which allowed citizens considerable scope to demonstrate generosity to the city, are the subject of this section. Emphasis will be on discussion of the performance and epigraphical and oratorical presentation of financial obligations, rather than on investigating the peculiarities

<sup>151</sup> This observation is made by Veyne (1990: 76–7); Todd (1993: 184).

<sup>152</sup> Hansen (1999: 260–1). <sup>153</sup> Lambert (1997).

<sup>154</sup> Harrison (1968–71: ii. 172 n. 12). <sup>155</sup> Whitehead (1977: 75–7).

of the Athenian taxation and liturgical systems; the main kinds of financial obligation will be discussed in turn, looking at non-military liturgies, the trierarchy, the *eisphora*, *epidosis* (voluntary donation), and tax-farming. The performance of financial obligations was frequently boasted of by defendants, and, less frequently, the subject was mentioned by plaintiffs.<sup>156</sup> Lycurgus largely omitted the subject of liturgical payment from his speech, perhaps because Leocrates had performed all the liturgies to which, as a member of the liturgical class (Lycurg. 1.19, 58), he was liable: had Leocrates defaulted, it seems likely that Lycurgus would have reminded the jury.

In classical Athens the term 'liturgy' could be used metaphorically to describe something that was a contribution to the state performed in response to a largely moral feeling of obligation: Lysias described the maintenance of a *kosmios* and *sophron* lifestyle as 'the most onerous of liturgies' (Lys. 21.19; Is. fr. 30 Thalheim).<sup>157</sup> The primary interest of this section, however, is with the original meaning of the term, referring to financial expenditure of the citizen on behalf of the state. Unlike a regular tax, only citizens with substantial wealth were liable to liturgies; another difference is that citizens were not liable to payment of liturgies in successive years: exemption after a period of service lasted for one or two years.<sup>158</sup> The oratorical discussion of financial obligations often concerned specific liturgies or payments. Demosthenes, in the second speech *Against Aphobus*, pleaded with his audience in general but direct terms: 'if I recover my property through your aid, I shall naturally be ready to undertake public services, being grateful to you for rightfully restoring to me my estate; while this fellow, if you make him master of my goods, will do nothing of the kind' (D. 28.24). The success of Demosthenes' plea relies upon the audience's reception of the claim that he will be inspired to perform liturgies through a sense of reciprocity, and in this he captures the essence of many of the accounts of financial obligations that are encountered in Attic oratory.

<sup>156</sup> Davies (1981: 82–5); Rubinstein (2000: 214).

<sup>157</sup> See N. Lewis (1961, 1965). <sup>158</sup> Gabrielsen (1994: 78).

### 5.4.1. Non-Military Liturgies

In the fourth century there were around a hundred annual non-military liturgies funding festivals, athletic and musical training, the public provision of feasts, the leadership of sacred embassies, and the organization of processions and festivals.<sup>159</sup> When the existence of deme and tribal liturgies are considered, the figure is probably much higher,<sup>160</sup> though such liturgies would generally require a smaller investment on the part of the sponsor. Metics appear to have fulfilled non-military liturgies, though possibly their involvement in choregic activity was limited to those festivals at which there were no foreign visitors such as the Lenaia (*SEG* xxxii. 239).<sup>161</sup> A wide range of public occasions offered the chance to display one's generosity: Demosthenes provided entertainment (*hestiasis*) for Philip's ambassadors, thinking it his duty to outdo their hospitality (D. 19.234–6). But the best oratorically and epigraphically attested form of public expenditure not related to Athens's military strength are those related to the funding of choruses who would participate in festivals, the *choregia*.<sup>162</sup>

Of all the Athenian festivals, most is known about the appointment of *choregoi* for the Great Dionysia, the festival held every March in the city of Athens. At this festival the performances of tragedy, satyr-play, comedy, and dithyramb required trained choruses, and the *choregos* was responsible for the recruitment, training, maintenance, and providing costumes for the members of the chorus for competitive performances put on by each of the ten tribes.<sup>163</sup>

#### 5.4.1.1. *The Choregia: Institutions and Social Pressure*

There is no evidence for anyone being prosecuted for avoiding nomination as *choregos*, and there existed probably no permanent *katalogos* of men liable to carry out the funding.<sup>164</sup> It is unlikely, moreover, that there was any law stating that a man owning a certain amount

<sup>159</sup> Davies (1967: 40). <sup>160</sup> Whitehead (1986a: 152).

<sup>161</sup> Whitehead (1977: 80–1). <sup>162</sup> Wilson (2000).

<sup>163</sup> Wilson (2000: 50–104). For an analysis of how voting worked at the Athenian dramatic competitions, see Marshall and van Willigenburg (2004).

<sup>164</sup> Davies (1981: 24). The suggestion of Rhodes (1982: 13), however, that a list of 1,000 property owners liable to the trierarchy or other liturgies was produced in the

of property or wealth had to fulfil choregic duties: pressure would probably have been social.<sup>165</sup> Davies's assessment of the Athenian propertied classes suggests that 'men whose property was worth less than 3 talents were free from liturgical obligations, while men whose property was worth over 4 talents were very unlikely to escape such obligations'.<sup>166</sup>

Responsibility for bearing the *choregia*, like that for any other liturgy, could be decided in the law courts by the challenge of *antidosis* (exchange): one citizen selected for a liturgy could claim that another citizen, owing to his greater wealth, would more justly be liable to such expenses, and could demand that the other citizen take up this responsibility or else accept an exchange of property.<sup>167</sup> A legal hearing (*diadikasia*) would decide the outcome of the challenge.

Selection of *choregoi* appears to have been in the hands of *polis* and tribal officials. The eponymous archon appointed three of the wealthiest citizens to be the *choregoi* for the tragedies at the Great Dionysia, and until the 340s also the five *choregoi* for the comedies ([Arist.] *Ath. Pol.* 56). The *choregos* for the dithyramb was appointed by the tribes; from the 340s the *choregoi* for the comedies were appointed by the tribes ([Arist.] *Ath. Pol.* 56). The officials' knowledge of who was wealthiest would have been determined to a large degree by the extent to which those citizens chose to display or publicize their wealth. Indeed, the competitive nature of this liturgy might have meant that those citizens who were partial to ostentatious expenditure would have been the ones who would fulfil the duty in the most appropriate manner. Social pressures could be exerted on the level of tribes: members of a tribe could nominate another citizen to carry out such duties (D. 39.7; And. 1.132). Demosthenes claimed that he had received cheers and applause from the Athenians for volunteering to act as *choregos* for the tribe of Pandionis after it had failed to appoint one (D. 21.13–14). Conversely, he claimed that the *choregia* of his rival Meidias was carried out only after a challenge to *antidosis*, and therefore deserved no credit (D. 21.156). The funding of smaller

380s remains the best reconstruction of the workings of the liturgical system before the 370s.

<sup>165</sup> Wilson (2000: 54); cf. Davies (1981: 25).

<sup>166</sup> Davies (1971: xxiv).

<sup>167</sup> On the importance of the *antidosis* procedure in motivating the fulfilment of financial obligations, see Gabrielsen (1987a); M. R. Christ (1990).

liturgies was probably allocated, with the possibility of social pressure or coercion, by the demes or other associations: Isaeus talked about force within the demes being used to encourage wealthy husbands to sponsor the Thesmophoria (Is. 3.80).

The emphasis in the oratorical presentation, however, was not on the institutional foundations of the *choregia*: the fact that specific details about liturgies could be included in oratorical reminiscences means that the speakers were stressing the quality of their *choregia* rather than the fact that it was merely a reaction to institutional pressures. Speakers presented the fulfilment of their duties as if they were carrying out supererogatory deeds of euergetism.

#### 5.4.1.2. Choregoi as Euergetai

Success in the dramatic competitions was a sure way for a *choregos* to win profile in the city. Victorious *choregoi* were commemorated in the decrees of the Attic tribes: a decree of the Pandionian tribe from the 390s honoured Nicias of Kydathenaion for his victories in the boys' chorus at the Dionysia and at the men's chorus at the Thargelia (IG II<sup>2</sup> 1138); the decree goes on to explain that others who are victorious in the choruses at the Dionysia, Thargelia, Promethia, or Hephaistia are to be written up on the *stele*, and there follows a list of that year's victors (IG II<sup>2</sup> 1138.9–14).<sup>168</sup> Such inscriptions would attest to the *philotimia* of the *choregos* as well as the success of the tribe. Allusions in forensic oratory to choregic contribution bereft of details of success or magnificence only occur in speeches made on behalf of metics (Antiph. 5.77; Lys. 12.20).<sup>169</sup> Usually, choregic services were mentioned with the intention of giving details of supererogatory service, and this obligation does seem to have offered considerable scope for ostentation: in a defence speech against a charge of taking bribes, Lysias stresses his client's zeal, emphasizing the amount and range of choregic, trierarchic, and other contributions over a number of years, boasts of his high success rate in the teams he sponsored, and the fact

<sup>168</sup> For other documents from the tribes, see IG II<sup>2</sup> 1139, 1147, 1157, 1158.

<sup>169</sup> It is possible that allusions were made in symbouleutic oratory, as is suggested by the *praeteritio* of D. 8.70 or the reference made in Demosthenes' second letter to the assembly (12).

that his contributions were far beyond what was demanded by the law:

Appointed to produce tragic drama, I spent thirty minae and two months later, at the Thargelia, two thousand *drachmai*, when I won a victory with a male chorus; in the archonship of Glauippus, at the Great Panathenaia, eight hundred *drachmai* on pyrrhic dancers. Besides, I won a victory with a male chorus at the Dionysia under the same archon, and spent on it, including the dedication of the tripod, five thousand *drachmai*; then, in the time of Diocles, three hundred on a cyclic chorus at the Little Panathenaia. In the meantime, for seven years I equipped warships, at a cost of six talents. Although I have borne all these expenses, and have faced daily peril in your service abroad, I have nevertheless made contributions—one of thirty minae and another of four thousand *drachmai* to the *eisphora*. As soon as I returned to these shores, in the archonship of Alexias, I was gymnasiarch for the Promethea, and won a victory after spending twelve minae. Then, later, I was appointed to produce a chorus of children, and spent more than fifteen minae. In the archonship of Eucleides I produced comic drama for Cephisodorus and won a victory, spending on it, with the dedication of equipment, sixteen minae; and at the Little Panathenaia I produced a chorus of beardless pyrrhic dancers, and spent seven minae. I have won a victory with a warship in the race at Sunium, spending fifteen minae; and besides I had the conduct of sacred missions and ceremonial processions and other duties of that sort, for which my expenses have come to more than thirty minae. Of these sums that I have enumerated, had I chosen to limit my public services to the letter of the law, I should not have spent one quarter. (Lys. 21.1–5)

This passage is the most spectacular catalogue of liturgical expenditure in extant Attic oratory, and sets out both choregic, gymnasiarchic,<sup>170</sup> and trierarchic expenditure. The list emphasizes the amount of money spent on public services, the frequency of sponsorship, the range of different festivals and types of chorus sponsored, the successes of the choruses sponsored, and the dedication of the prize tripods.<sup>171</sup> Highly significant is the emphasis on these services as supererogation, the performance of expenditure well beyond statutory requirements. Demosthenes boasts of fitting himself with a

<sup>170</sup> For the duties of the gymnasiarch, see Sekunda (1990: 157–8). Training in the gymnasium could be presented as a public service: Aeschin. 2.149; cf. Fisher (1998; 2001: 18–19, 60–1).

<sup>171</sup> See Ch. 4.4.3.

golden crown and gold-embroidered robe at the Dionysia (D. 21.22, 154–72); the speaker of Antiphon's *On the Choreutes* talks about how he fitted out a training room in the most appropriate part of his house and recruited the best chorus (Antiph. 6.11). Alternatively, opponents would denigrate their rivals' choregic performance: Isaeus dismisses the significance of his opponent's *choregiai*, claiming that he came last two out of three times (Is. 5.36), in order to show the paltriness of his donations.

#### 5.4.1.3. *The Oratorical Value of Choregia*

Completion of the duties of the *choregos* and victory in the competitions could be presented as the fulfilment of a sacred duty: Demosthenes stresses that he was in the service of Dionysus in order to amplify the magnitude of Meidias' assault on him (D. 21.126; cf. D. 56). This interpretation, while potentially contentious (see Chapter 5.8), is supported by the fact that the victorious *choregoi* in the dithyramb dedicated the prize tripods on increasingly ostentatious monuments in the second half of the fourth century.<sup>172</sup> Choregic activity bestowed the virtue also of concern for the publicity of the good image of the Athenians: meanwhile, citizens also boasted of their involvement in inter-state festivals, sacred missions, or ceremonial processions (And. 1.132, 4.26–8; Isoc. 16.25, 32–4; Lys. 19.63, 21.5). Choregic success, while not an athletic or sporting achievement in itself, carried the same connotations of glory as did success in athletic or equestrian contests until the late fifth century.<sup>173</sup> Alcibiades famously claimed to have won honour for the Athenians by the success of his horses in the competitions at the Olympic games (Th. 6.16), and the speaker of Demosthenes' *Against Theocrines* echoes the political appropriation of sporting success by mentioning that his

<sup>172</sup> See Ch. 4.4.3.

<sup>173</sup> On the decreasing correlation of participation in gymnastic contests and political leadership by the mid-fifth century, see Kyle (1987: 161); there is no firm pattern of overlap between fourth-century gymnastic victors and political leadership: Kyle (1987: 166). Davies (1981: 103) suggests that success in equestrian contests lost its political significance in the fourth century; Golden (1998: 169–75) casts some doubt, pointing to Chabrias, Timocrates, and Demades as fourth-century politicians who had won Olympic or Pythian chariot victories. For Demosthenes' view of himself as a pankratiser, see Ochs (1997).

father won a crown on behalf of the city on the basis of his victory in the foot-race at Olympia (D. 58.66; cf. Lys. 19.63). By the fourth century it appears to be the case that sporting prowess was most highly valued within the context of ephebic activity.<sup>174</sup>

But there were limits to the oratorical value of choregic expenditure: with the exception of Antiphon's boast made in the context of a dispute about a poisoned member of the chorus, and Demosthenes' speech *Against Meidias*, made in the context of Meidias' assault on Demosthenes at the Theatre of Dionysus, all such boasts of choregic performance by citizens were accompanied by a flaunting of military liturgies elsewhere in the speech: choregic liturgies appear to have been the least impressive in oratory. Lycurgus dismisses the liturgical habits of Leocrates' supporting speakers:

Horsebreeding, a handsome payment for a chorus, and other expensive gestures, do not entitle a man to any such recognition from you, since for these acts he alone is crowned, conferring no benefit on others. To earn your gratitude he must, instead, have been distinguished as a trierarch, or built walls to protect his city, or subscribed generously from his own property for the public safety. (Lycurg. 1.139)

The donations of Leocrates' supporters are presented as for the advancement of their own families and comparatively unpatriotic.

Demosthenes denigrates the social value of the non-military liturgies, when arguing for the reversal of Leptines' law invalidating certain types of *ateleia* (exemption from taxation). He reminded his audience that no citizens were exempt from *eisphorai* or *trierarchia* payments, and that Leptines' law increases only the number of those liable to pay for other liturgies from which there was exemption (D. 20.18–26). Demosthenes' criticism of expenditure of choregic funds might be associated with his policy of diverting the Theoric fund, which made money available to subsidize theatre tickets, for military purposes (D. 13.2–3; cf. D. 1.19).<sup>175</sup> Elsewhere Demosthenes compares investment in festival organization unfavourably with military preparation (D. 4.34–6).

Demosthenes was not alone: Aeschines told the audience that Demosthenes' *choregiai* were performed only for his own pleasure

<sup>174</sup> See Ch. 5.5.3.

<sup>175</sup> Trevett (1992: 140–5); cf. E. Harris (1996), dating Demosthenes' policy to 339.



(Aeschin. 3.240). So, as the *choregia* was an easy target for criticism, the Attic orators valued it less highly than military liturgies. Liturgies appear to have carried more value if they were associated with military virtue: in contrast to the *choregos*, the gymnasiarch, who functioned as the trainer of the team of ephebic torch-bearers,<sup>176</sup> was associated with the ephebic service and the training of citizens in both civic and military virtues. The Athenians appear to have regarded the maintenance of a large fleet of triremes to be central to their strength and inter-state profile in the fourth century: even in the 320s, when they lacked the manpower to row a large navy, they laid out more hulls than they were able to man.<sup>177</sup> This meant that the most significant financial liturgy associated with the military organization of Athens was the trierarchy.

## 5.4.2. The Trierarchy

### 5.4.2.1. *Legislation and Dispute*

The trierarchy was the liturgy with which the Athenians in the fourth century funded their fleet: in the fifth and fourth centuries this was a major concern of the city.<sup>178</sup> Unlike the festival liturgies, this military liturgy was not performed by metics, though the command of a trireme could be farmed out to a metic (D. 21.163). A trierarch was commander and to a large extent financial sponsor of a trireme, the most highly valued kind of fighting ship in the Athenian navy of this period. Those trierarchs responsible for taking the ships to sea were appointed probably by the generals or by lot from those deemed rich enough to afford the financial burdens involved.<sup>179</sup> Trierarchs were responsible for ensuring the maintenance of ships, their equipment, and their crew, a set of obligations that would incur significant financial obligations.

Efforts to trace the institutional development of the trierarchy have been inconclusive. The standard view is that, over the course of the

<sup>176</sup> Reinmuth (1971*b*: 3–4); Sekunda (1990: 157). <sup>177</sup> Morrison (1987).

<sup>178</sup> Cawkwell (1984); Clark (1993); Gabrielsen (1994). For a summary of the fifth-century situation, see Hornblower, *Commentary*, i. 280; Gabrielsen (1994: 19–39).

<sup>179</sup> Appointment by generals: Hamel (1998*a*: 28–9); by lot: Gabrielsen (1994: 80–4).

fourth century, legislation divided the financial responsibility for the fleet between groups of payers.<sup>180</sup> Periandros' law of 358/7 organized the funding of the trierarchy so that each year there would be 1,200 *synteleis* (co-contributors) who would be liable to pay towards the funding of the fleet (D. 21.155, 14.16–17),<sup>181</sup> and from which group trierarchs of individual vessels would be selected. In 354 Demosthenes argued that this system was inadequate since too many of the 1,200 were exempt from trierarchic service, and suggested that the pool be extended to 2,000 *synteleis*. This, he suggested, would leave 1,200 citizens remaining even after heiresses (widows or daughters who were without brothers or fathers or male relatives of suitable age to marry), orphans, cleruchs, joint holders of estates, and the disabled were excluded (D. 14.16–17). His proposals do not appear to have been accepted by the Athenian assembly. Finally, Demosthenes' reform of 340 concentrated the burden of financial contribution on whomsoever was deemed to be among the richest 300 of the *synteleis* (D. 18.104).<sup>182</sup>

Gabrielsen has concluded that 'men entered the trierarchic class—either voluntarily or compulsorily—by being notoriously wealthy'.<sup>183</sup> This judgement suggests that there was a degree of voluntarism in entering the lists of contributors. Were a citizen able to conceal his wealth, avoiding the trierarchy would be possible. But such evasion would surely impede the possibility of a political career. Indeed, oratorical evidence suggests that litigation played an important part in enforcing the fulfilment of trierarchies and in ensuring that they were performed well.

There are no extant speeches disputing qualification for trierarchic service but reports in other speeches suggest that *antidosis* was applied to the *trierarchia*: Demosthenes paid the expenses of a trierarchy after a successful *antidosis* challenge by Thrasylochus, the brother

<sup>180</sup> Gabrielsen (1994: 220). There appears to have been a reorganization of the system by which the Athenians funded their navy in 378/7: the oldest debts recorded in the accounts of the overseers of the Athenian navy are from this date (*IG II<sup>2</sup>* 1622.406–11, 493–6). On the funding of the navy from the time of the revival of Athenian naval power in the early fourth century to this date, see Rhodes (1982: 11–14).

<sup>181</sup> Gabrielsen (1994: 182–99).

<sup>182</sup> Gabrielsen (1994: 212).

<sup>183</sup> Gabrielsen (1994: 221), casting doubt on Davies's theory that there existed centrally kept registers of those who were liable to payment of the trierarchy; for the suggestion that such lists were kept in the demes, see Stanley (1993: 29–30).

of Meidias (D. 21.78–80). The processes of *antidosis* and *diadikasia* made performance of the *trierarchia* a social obligation: it also submitted the rich to a popular scrutiny of the uses of their wealth, and might be considered a vital part of the process by which the poor accepted the existence of a wealthy elite.<sup>184</sup> Demosthenes presented his defeat in an *antidosis* challenge as ancient history (80), but as typical of the brutality of Meidias' family towards a young man who was 'quite alone in the world and did not want to lose the property that was still in the hands of my guardians' (D. 21.80). Opponents would accuse each other of trying to avoid payment (Lys. 21.12; D. 51.7): there was some pressure to accept trierarchic service without dispute, and so a successful *antidosis* challenge would win exemption, but not credit with the people. There existed other ways of denigrating an opponent's performance of trierarchic service. Demosthenes criticized Meidias for farming out the command of his ship to a metic (D. 21.163), though this appears to have been a legal practice.<sup>185</sup> The pressure of publicity was also used to encourage correct performance of trierarchic duties: the threat of being inscribed as a debtor for not returning equipment in working order would have encouraged efficient performance of trierarchic obligations.<sup>186</sup>

#### 5.4.2.2. *Trierarchic Euergetism*

Even minimalist presentations of trierarchic service in the law courts consisted of statements of carrying out the service 'as it was laid on us' (D. 54.44). But orators sometimes elaborated on their trierarchic performance in order to show their public-spiritedness. This took on different aspects. Demosthenes, among others, boasted that he was a voluntary trierarch (*ethelon*: D. 18.99, 45.85; cf. 28.24; Lys. 21.13, 29.4).<sup>187</sup> Such oratorical presentations sometimes reflected real euergetic behaviour: the accounts of the naval *epimeletai* record that Hyperides had sailed the triremes that were contributed voluntarily (IG II<sup>2</sup> 1628.436–52, 1629.957–75).

<sup>184</sup> Ober (1989a: 226).

<sup>185</sup> Hamel (1998b: 395–7).

<sup>186</sup> See Ch. 4.3.3.

<sup>187</sup> On the date of Demosthenes' voluntary trierarchy, see Wankel (1988); on volunteers and the rewards for them, see Gabrielsen (1994: 199–206).

We hear most boasts about the financial aspect of this obligation in Athenian oratory. Competitive outlay was an important motivational factor in the fulfilment of this obligation: the speaker of *Lysias* 21 boasts that his considerable outlay meant that his was the best in the whole fleet, and his crew and oarsmen the best in Greece (*Lys.* 21.5–6, 8, 10). Apollodorus, son of a naturalized citizen, made the most ostentatious of oratorical presentations of liturgical services:<sup>188</sup> in the first speech *Against Stephanus* he himself acknowledged that he invested as much as possible in order to win distinction, contrasting his performances with the statutory obligation to contribute as the laws demand (*D.* 45.78). His speech against Polycles contains the most detailed account of supererogatory trierarchic service (*D.* 50). Apollodorus prosecuted Polycles for his failure to relieve him as trierarch until five months and six days beyond his term of service, and sets out at length his services to the Athenians. Apollodorus presents his trierarchic performance as outclassing his rivals:

Having mortgaged my property and borrowed money, I was the first to man my ship, hiring the best sailors possible by giving to each man large bonuses and advance payments. More than that, I furnished the ship with equipment wholly my own, taking nothing from the public stores, and I made everything as beautiful and magnificent as possible, outdoing all the other trierarchs. As for rowers, I hired the best that could be had. (*D.* 50.7)

It is no coincidence that Apollodorus connects his role as trierarch with guarding the grain transport route used by the Athenians (17, 21, 58): his trierarchy began at a time when grain was scarce and expensive (50.6). He also reveals a debate held with Polycles about the value of supererogatory trierarchic expenditure: Polycles claims that the extravagance of Apollodorus has corrupted the crew and made the troops and other trierarchs partial to unruly behaviour (*D.* 50.35–6). Other orators boasted of using or purchasing their own equipment (*D.* 47.23, 51.5) or providing their own crews (*D.* 45.85, 21.154), or the best rowers and highest wages (*D.* 51.5–6).<sup>189</sup>

The possibility of leasing out the trierarchy to another meant that some could claim to have performed this service without ever

<sup>188</sup> Ballin (1978: 6); Trevett (1992: 39–40, 172–4).

<sup>189</sup> For contributions of equipment, see Gabrielsen (1993).

boarding a ship (D. 50.59, 51.11).<sup>190</sup> Trierarchic *philotimia* was not limited to financial outlay but extended to military valour: the speaker of Lysias 21 claimed that he saved his own vessel and that of Nausimachos of Phaleron in the fight at Aegospotami (Lys. 21.9); the speaker of a defence against a charge of subverting the democracy claimed that ‘I have equipped a warship five times and fought in four sea-battles’ (Lys. 25.12); and Lysias claimed in *Against Eratosthenes* that orators typically claim to have ‘taken many vessels of the enemy while acting as trierarchs’ (Lys. 12.38).

Trierarchic outlay and efficiency was an aspect of civic obligation the performance of which was promoted by the honorific system of the Athenians.<sup>191</sup> The council and people were responsible for rewarding trierarchs they considered worthy, as a dedicated list set up in the 350s ‘by those who sailed to the Hellespont with Chares’ suggests (*IG II<sup>2</sup>* 1953), and the council seems to have punished those who were inefficient (D. 51.4), or were to blame for defeats (D. 51.8). Additionally, the *boule* was charged with the responsibility of providing new triremes: if it failed to do so, it was forbidden from requesting its customary crown (D. 22.8). A combination of statutory requirement, honorific encouragement, and euergetism appears to have inspired performance of the obligation of trierarchy in ancient Athens.

### 5.4.3. *Eisphora*

#### 5.4.3.1. *The Institutions of the Obligation*

The *eisphora* was an extraordinary war tax for metics and citizens, and is thought to have been levied at times of crisis by decree of the Athenian *ecclesia* (D. 1.20).<sup>192</sup> Until the second half of the fourth century the amount to be raised by the tax was fixed at the assembly (D. 14.27–8), but the amount of the levy may have become more regularized over time: it has been suggested that by 347/6 it had become an annual regular levy of 10 talents.<sup>193</sup> It was not a liturgy: payment in one year did not confer exemption upon the payer for the next year.

<sup>190</sup> On hiring out the service, see Hamel (1998b: 395–7).

<sup>191</sup> See Ch. 4.2.2.1.

<sup>192</sup> For the dates of known levies, see de Ste Croix (1953: 50–3).

<sup>193</sup> Hansen (1999: 112).

The centrality of contribution to this levy to the Athenian conception of citizenship is suggested by the fact that honorary decrees for non-Athenians frequently included the granting of liability to pay the *eisphora* along with citizens (4.2.4). Indeed, the liability of metics to the *eisphora* reflected their partial integration into the system of civic obligation.<sup>194</sup> There was no regular exemption from the tax (D. 20.18), although there was a reward for celebrity non-Athenians, of exemption from the *metoikion* and the *eisphora* (RO 21.35–6). Estimates of the numbers of *eisphora* payers have varied between 1,000 and 6,000,<sup>195</sup> but this must have depended on the amount being raised in that particular levy. Liability to contribution to the *eisphora* depended on the value of one's both movable and immovable property, perhaps excluding mining concessions leased from the state (D. 42.18).<sup>196</sup> The amount paid by each contributor varied, but was probably something upwards of 0.25 per cent of the assessed value of their property.<sup>197</sup> A passage from a symbouleutic speech of Demosthenes suggests that the amount to be levied was subject to debate, at least in the mid-350s: 'For consider: will anyone propose a tax of one per cent now? Then we get sixty talents. Or double it and make it two per cent? Still only a hundred and twenty talents' (D. 14.25). The amount contributed by individuals would have been determined by some element of self-assessment.<sup>198</sup> Indeed, Philochorus suggests that contributions appear to have been made, from 378 (*FGrH* 328 F 41), through the agency of the boards of contributors (*symmories*).<sup>199</sup> It is not known according to what means *eisphora* was levied after 340.<sup>200</sup>

Liability to this duty was not restricted to any particular economic class (D. 2.30–1), and it is likely that the *eisphora* would have been paid by some outside those commonly perceived as the economic elite. In the law courts, however, the levy functioned like the liturgies

<sup>194</sup> De Ste Croix (1953: 32 n. 5).

<sup>195</sup> 6,000 with 1,000 metics: de Ste Croix (1953: 33); 6,000: A. Jones (1957: 29); 1,000–1,200: Davies (1981: 141); 3,000–3,500: Hansen (1990a: 353).

<sup>196</sup> De Ste Croix (1953: 33); Stanley (1993).

<sup>197</sup> De Ste Croix (1953: 69).

<sup>198</sup> Brun (1983: 72).

<sup>199</sup> The introduction of *symmories* was probably spurred on by a reform of the system in 378: see de Ste Croix (1953: 31, 56–62); Thomsen (1964: 104–18). Davies (1981: 145–6) suggested that before the 370s *eisphora* was levied through the *demes*.

<sup>200</sup> MacDowell (1986: 449).

encountered already. The accusation of concealment of property to avoid contributing was a common one (D. 28.7, 45.66; Din. 1.69–70), and Demosthenes at the assembly raised the suggestion that some men were refusing to declare their wealth (D. 14.25). Concealment was outlawed under threat of confiscation.<sup>201</sup> There is extant one speech relating to an *antidosis* about the *proeisphora* (advance payment of *eisphora*) payment, and also a series of early Demosthenic speeches disputing the *eisphora* payment on his father's estate (D. 42, 27–9). The onset of the process of *antidosis*, and fear of having to undergo such an embarrassing public ordeal, would have encouraged wealthy citizens to make a contribution to this levy.

#### 5.4.3.2. *The Eisphora as Euergetism*

The evidence of oratory suggests that contributors to *eisphora* levies could claim the kind of euergetic profile characteristic of liturgy payers:<sup>202</sup> the speaker of Isaeus 7 boasted that his client was always first to make the donation (Is. 7.39–40); elsewhere defendants boasted how they had voluntarily revealed their taxable property (D. 28.4; Lys. 20.23; cf. Isoc. 7.35). In order to distinguish themselves from the other *eisphora* payers, orators often told the audience that they had paid a particularly generous *eisphora* donation: there are boasts of 4,000 and 3,000 *drachmai* (Lys. 21.3, 19.43).<sup>203</sup> Isaeus boasted of a client being numbered among the 300 who pay the highest *eisphora* (Is. 6.60; cf. D. 21.157). It seems from Demosthenes' speech on his inheritance that the amount donated was struck as a bargain between contributor and symmory: 'in the symmory they agreed on my behalf to a tax of five hundred *drachmai* on every twenty-five *minai*—a tax equal to that paid by Timotheus son of Conon, and those possessing the largest fortunes' (D. 27.7). Such an arrangement left plenty of chance for a rich man to distinguish himself by agreeing to make a large donation. Like the *trierarchia*, the *eisphora* was a compulsory payment, but could be presented in the orators as an act of voluntary euergetism in return for which the *demos* owed them a favour: acts or boasts of supererogation could hide the institutional nature of the obligation.

<sup>201</sup> Davies (1981: 88 n. 3).

<sup>202</sup> Brun (1983: 17).

<sup>203</sup> Boasts of an undisclosed sum: Lys. 7.31, 12.20, 17.7, 19.29, 19.57, 20.23, 30.26; Is. 4.27, 6.60–1; D. 47.54, 50.8–9; of 'large' sums, see de Ste Croix (1953: 96 n. 152).

#### 5.4.4. *Epidosis*

The method of fundraising known as *epidosis* (donation) was used occasionally, most often in times of war at Athens. The procedure was simple: the council might decide that an appeal would be made to citizens for donations,<sup>204</sup> or any citizen at the assembly could propose extemporaneously that there might be an *epidosis* (Plu. *Phoc.* 1.2); the assembly voted on this and sometimes decided the amount of the donations; promises of donations were then made by certain citizens, while others left the assembly (Thphr. *Char.* 22.2–3).<sup>205</sup> All promises were voluntary, but were obviously subject to great social pressure and rhetoric claiming that the donation was necessary. Demosthenes criticized Meidias for not donating towards the first two *epidoseis* at Athens, and then making a donation to the third one only when alarmed at the prospect of his own expedition to Tamynae (D. 21.161–2). There exists no prosecution for not promising an *epidosis* payment. However, social pressure made *epidosis* an obligation: Dicaeogenes, Isaeus says, promised a donation only when he was prompted to by another citizen (Is. 5.37–8). Even worse was his failure to pay the pledged amount: Isaeus wanted to portray Dicaeogenes as both dishonest and unpatriotic. Dicaeogenes' failure to pay resulted in his being inscribed on a list of defaulters set up in front of the Eponymous Heroes in the Athenian *agora*. Migeotte suggested that non-payers, like generals who had promised something but had failed to deliver, risked indictment.<sup>206</sup>

Donation to an *epidosis* represented involvement in a mass movement of patriotic volunteers (Is. 5.38), but for the citizen desirous to glorify his own individual contribution, it represented a deed of euergetism. Demosthenes' claim that he donated towards the first ever *epidosis*, for the expedition to Euboea in 357 (D. 21.161), seems to be a distortion when the *epidosis* described by Isaeus in 392 is considered (Is. 5.37–8). But this claim of primacy perhaps indicates that this *epidosis* was the first to represent a mass effort of the citizens at the *ecclesia*, rather than a donation concentrated on the gift of one individual.<sup>207</sup>

<sup>204</sup> Rhodes (1972a: 98).

<sup>205</sup> Migeotte (1992: 310–20, 322–3).

<sup>206</sup> Migeotte (1983: 138); cf. E. Harris (1994a: 106).

<sup>207</sup> Migeotte (1983: 147); Gabrielsen (1994: 203).



As with liturgies, orators were partial to criticizing an individual for not donating (D. 18.312, 21.161) or otherwise boasting of their own donations (D. 18.113). Therefore contribution to *epidosis* was potentially an important part of laying a successful foundation in public life. The fact that lists of names of donors were sometimes inscribed must have added to this effect (e.g. Ag. xv. 49).

The term *epidosis* is used in the epigraphical and oratorical sources to refer to a donation to a public cause made by a citizen or non-citizen. As was noted above, non-Athenians were rewarded for a range of donations from the early fourth century. Eudemus of Plataea was honoured in a decree of Lycurgus for supplying draught animals for the construction of a theatre and Panathenaic stadium (RO 94) in 330/29, and Pasion's donation of 1,000 shields to the Athenians represented the same phenomenon (D. 45.85). Wealthy citizens also appear to have made donations in return for public honours: Neoptolemus was crowned with a statue by a decree of Lycurgus after he had promised to gild the altar of Apollo ([Plu.] *Moralia* 843f); Xenocles of Sphettos, as Supervisor of the Mysteries and the Sanctuary at Eleusis, was honoured for building a bridge in 321/0 (*IG* II<sup>2</sup> 1191). Such donations are by no means a late phenomenon: Andocides boasted of his importation of oars (And. 2.11); it might be the case that Pericles and his sons, in the 430s, had offered to subsidize work on the Athenian water supply (*IG* I<sup>3</sup> 49.13–16; Plu. *Per.* 14.1–2).<sup>208</sup>

Other economic activities of the wealthy, such as the purchase of public lands in the Lycurgan period, may have been interpreted as public services, although no records of this attitude survive in the extant oratory. There do, however, survive stone accounts recording the 1 per cent tax on sales of public land given to Athena's treasury. Some 18 per cent of the buyers recorded in these lists were certainly or probably rich enough to be included in what Davies has termed the Athenian liturgical class, and a further 21 per cent possibly were.<sup>209</sup> One buyer mentioned was Atarbos, son of Lys[istratos of Thor(ikos)] (Lambert F8A, 35, 37; *APF* 2679), who bought two *choria* (pieces of land) sold probably by the deme of Thorikos. He was also a victorious *choregos* with *pyrrhichistai* at the Panathenaia of 366/5 (see Chapter 4.4.3). This man was perhaps attempting to raise his

<sup>208</sup> Dillon (1996).

<sup>209</sup> Lambert (1997: 244).

profile by both the performance of liturgies and the buying of public land. Indeed, Lambert has argued that a factor contributing to the dominance of the liturgical class is that the practice of buying public land in response to state efforts to sell off land was recorded as part of the 'liturgical ethos' of Athenian society: one might be expected to take on undesirable properties, but in return one might also expect the acquisition of some status.<sup>210</sup> This statement is in part supported by two decrees, of the deme of Piraeus and of Eleusis, which both bestow honours in return for the buying of public land (Ag. xix. L 13; Schwenk 43). It is, of course, impossible to tell how desirable these properties were. The practice of taking land on lease may have been interpreted alternatively as a public service or a privilege.<sup>211</sup> It may be the case that the purchase of mining leases would have earned a similar form of prominence in the city, as the speaker of Demosthenes' second speech *Against Aphobus* suggests (D. 40.52).<sup>212</sup>

Also, the practice of individuals lending money to building projects would have been another way of earning *charis* with the *demos* (*I Orop.* 302; [Plu.] *Moralia* 841d, 852b). As the Athenian economy developed towards a cash-based model over the Lycurgan period, it seems to have been the case that there arose more leeway for presenting different kinds of economic activity as public services.<sup>213</sup>

#### 5.4.5. Tax-Farming

A further opportunity for the public use of wealth was offered by the opportunities for the collection of public taxes. The richest citizens in Athens had the opportunity to bid for the right to collect tax from those liable. In the case of the *eisphora* levy, it appears that the Athenians applied coercion, selecting 300 individuals from their richest citizens to act as *proeispherontes*.<sup>214</sup> The unknown speaker of Demosthenes' speech *Against Phaenippus* resorted to the *antidosis* procedure in order to show himself not eligible to be part of this

<sup>210</sup> R. G. Osborne (1985b: 56–9); Lambert (1997: 246).

<sup>211</sup> R. G. Osborne (1985b: 56–9; 1988: 288–9, 292); Shipton (2000: 48–9, 90–1). For the procedure of leasing, see [Arist.] *Ath. Pol.* 47.

<sup>212</sup> Shipton (2000). <sup>213</sup> Burke (1992); Hakkarainen (1997).

<sup>214</sup> De Ste Croix (1953: 56–62); Wallace (1989b).

300 (D. 42). However, that this would have allowed the very rich to differentiate themselves from the other payers of the *eisphora* is clear. Apollodorus boasted of his preliminary advancement of the *eisphora* levy and claimed that he had never recovered the money from the Athenians (D. 50.8–9).

Oratorical discussion of tax-farming suggests that there was considerable suspicion attached to those who carried it out. Demosthenes parodied Meidias for his ‘tasteless and tactless boasts’ that he had advanced the *proeisphora* (D. 21.153, 166). Andocides suggests that Agyrrhius excessively exploited his advancement of the 2 per cent tax on imports and exports at Piraeus by purchasing its collection rights for only 30 talents; Andocides, on the other hand, outbid them the next year and purchased the right for 36 talents, claiming that ‘I stopped Agyrrhius and his friends from sharing six talents which belonged to you’ (And. 1.133–4). The reputation that tax-farmers had for selfishness, corruption, and extortion meant that Lycurgus uses Leocrates’ involvement in the collection of tax to his detriment, telling the audience that Leocrates had been prosecuted by Phyrminus for harming the collection of the tax (Lycurg. 1.19, 58; cf. D. 59.27).<sup>215</sup> It might be presumed that desire for euergetic profile as well as the temptation of profit through extortion would have been an enticement for the wealthy to bid for the collection of taxes, and it is possible also that exemption from military service awarded to tax-farmers might have made the role more attractive. In the case of the collection of the grain tax from the islands in the shape of grain, this might have offered the collector an advantageous association with the safeguarding of the Athenian grain supply (RO 26).

It may be concluded, at this stage, that a citizen of a certain financial status would have the obligation to pay liturgies and *eisphora* both by law and by social pressure. The ambitious politician, or even the unambitious individual who wanted to have some credit with the people upon which to draw, would have to present these payments as the generous and zealous deeds of a euergetist, and as made voluntarily rather than out of necessity (Lys 19.56; D. 21.16), while opponents

<sup>215</sup> For the notion that tax collection was treated as a disreputable activity in ancient literature, see Youtie (1967). On the method of auctioning the taxes, and the chances it gave for making profit, see R. G. Osborne (2000).

would claim that their payments were made through compulsion (Is. 5.36–8). But it is necessary to distinguish between genuinely voluntary euergetism and obedience to the law being represented as euergetism. The orators, keen to represent themselves as benefactors of the city, blurred this distinction, and were ready to represent even the payment of war taxes as a deed that would give them credit in the law courts.

In this way, euergetism, while it became more politically significant in the period after the Social War,<sup>216</sup> appears to have been an important feature of Attic oratory from the time of Antiphon onwards, and resulted in an overlap between the political and economic elite. This was one way in which the Athenians reconciled the existence of wealthy citizens with their egalitarian democracy: riches were acceptable if they were openly held, and utilized for the public good. In essence there was no isolated idea of financial obligations: they consisted of elements ‘embedded’ in social values.<sup>217</sup> The financial obligations of the Athenian citizen were primarily related to the obligations of warfare, but also to those of cult and safeguarding the grain supply, although, as has been noted, those related to Athens’s military strength held more oratorical clout. They were probably tightened over the Lycurgan period: Lycurgus is famous for having increased the public revenue and it is likely that he oversaw a tightening up of *eisphora* collection,<sup>218</sup> but this tightening up was not unique to that era: Androtion is known to have headed a group collecting arrears of *eisphora* at the time of the Social War in 356/5.<sup>219</sup>

How far do the financial obligations of the Athenian citizen correspond to those in a Rawlsian society? In an ideal Rawlsian state, taxation on inheritance, expenditure, consumption, gifts, and, where necessary, income exists in order both to correct the distribution of wealth to prevent financial inequality from upsetting the balance of power, and also to raise the revenues required by the state for various purposes ranging from the maintenance of a military force to the institutions of social welfare (*TJ* 242–8; *Restatement*, 160–2).

<sup>216</sup> Hakkarainen (1997); see Ch. 3.6–7.

<sup>217</sup> On the ways in which the Athenian economy was embedded in social and cultural values, see Burke (1992); Morris (1994: 359); Meikle (1995); von Reden (1995).

<sup>218</sup> Lambert (1997: 286).

<sup>219</sup> Harding (1976: 193 n. 52; 1994: 21).

Taxation is an institution that contributes towards distributive justice, and is designed so as to be least inimical to the fair value of political liberties. The Rawlsian notion of an expenditure tax or an inheritance tax that contributes to the redistribution of wealth and evens out the inequalities attached to the uneven distribution of wealth is foreign to the ancient Athenian *polis*. Certainly, the Athenian sources have a rather different emphasis, stressing the competitive and euergetic nature of the payment of taxes. Neither system envisages an equalization of wealth, but it is clear that Rawls is more interested in preventing an accumulation of wealth leading to accumulation of political capital. But what the two systems clearly have in common is their conviction that their system of financial obligations avoids infringement and indeed contributes to the sustenance of individual liberty by upholding the interests of the community.

## 5.5. MILITARY OBLIGATIONS

### 5.5.1. Institutions of Military Obligations

The ideological link between hoplite service and the idea of citizenship expressed in oratory and Greek historiography has long been recognized.<sup>220</sup> In honorific decrees, the association of citizenship with service as an infantryman is suggested by the existence of the reward of equality in military obligations ‘to march with the Athenians in the army’.<sup>221</sup> It has been suggested that the top three Solonian property-owning bands that traditionally gave the Athenians their hoplite army constituted up to half of the citizen-body.<sup>222</sup> There has been controversy about whether members of the lowest Athenian economic class, the *thetes*, were liable to conscription as hoplites.<sup>223</sup> As van Wees has argued, given the insignificance of Solonic class divisions in the fourth

<sup>220</sup> Nilssen (1929); Vidal-Naquet (1968*a*); L. Burckhardt (1996); Hunt (1998: 115, 218–21).

<sup>221</sup> See Ch. 4.2.4.

<sup>222</sup> For an overview of the debates about the proportion of citizens who served as hoplites, see Pritchard (2004: 209–10 with n. 8).

<sup>223</sup> That the lowest classes were conscripted only in emergencies, de Ste Croix (1981: 207). Hansen suggests they were liable to service (Hansen 1985*b*: 48–9, 88–9); Rhodes (1981: 503) implies that they were not.

century,<sup>224</sup> it is feasible that both rich and poor citizens would have been liable to the obligation. The fact that at the time of Lycurgus ephebes were presented with a shield and spear at the end of their first year of service ([Arist.] *Ath. Pol.* 42.4) suggests that the question of whether the poorest citizens acted as hoplites in the second half of the fourth century depends on whether they served as ephebes.<sup>225</sup> Indeed, in fourth-century symbouleutic speeches, the emphasis in exhortation lay with a concern for providing forces of citizen status rather than with providing forces of a particular sociopolitical background.<sup>226</sup> The identification of the ideal citizen with the hoplite may have enticed even a poor citizen, if they were able to obtain the required equipment by some means,<sup>227</sup> to volunteer as a hoplite. The fact that military service was paid in Athens rules out the idea that anyone could be too poor to serve in any capacity.<sup>228</sup>

The levying of hoplite forces appears to have been heavily reliant upon the kind of assembly place exhortation preserved in Demosthenes' *Olynthiacs* and *Philippics*. The process of enrolment of a citizen into a hoplite force could begin only after an orator had convinced the *demos* of the necessity of service at a given moment: having emphasized the seriousness of Philip's threat to the Greek world, Demosthenes claimed 'it is the duty of you all to grasp the significance of these facts, and to send out an expedition that will thrust the war back into Macedonia' (D. 1.28). The *demos* decided how many men were to be called up, and what proportion of these were to be citizens (D. 4.20–4; 36–7). Conscription was carried out by the production of a catalogue of those eligible for that particular expedition (Lys. 9.15, 14.6),<sup>229</sup> which after 386–366 consisted of groups arranged by age class.<sup>230</sup> These lists were probably made up for ad hoc purposes from the *lexiarchikon grammateion* held by the demarchs.<sup>231</sup>

<sup>224</sup> Van Wees (2001: 59).

<sup>225</sup> L. Burckhardt (1996: 51). For the debate about ephebes, see Ch. 5.5.3.

<sup>226</sup> L. Burckhardt (1996) suggests that the orators exaggerate the growing proportion of mercenary soldiers in Athens's fighting forces.

<sup>227</sup> On state provision of a shield and spear to its ephebes, see Rhodes (1981: 503); L. Burckhardt (1996: 51).

<sup>228</sup> Discussion of pay for military service: Pritchett (1971–85: i. 3–29).

<sup>229</sup> On the *katalogos* as a temporary list, see Ch. 4.3.2.

<sup>230</sup> M. R. Christ (2001: 412–16). Hansen (1985b: 88–9) suggests that the change took place in the 340s.

<sup>231</sup> See Ch. 4.3.2.

There are contradictory indications about the extent to which serving as a cavalryman constituted the performance of military obligations. Notably, while the outlay must have been financially burdensome,<sup>232</sup> in the eyes of the speaker of Lysias 14, prosecuting a cavalryman for not presenting himself in the ranks of the infantry, it did not necessarily represent a fulfilment of the military obligations of a citizen (Lys. 14.7–8, 11). Indeed, Mantitheus claims that when the Athenians went to the relief of Haliartus, despite being enrolled for service in the cavalry, he entered the ranks of the foot soldiers, ‘thinking it shameful (*aischron*) to take the field’ with the cavalry, who faced less danger (Lys. 16.13). The fact that many wealthy men omit mention of cavalry service in their list of good deeds is an indication of hostility to the cavalry in the aftermath of the oligarchic revolutions of 411 and 404 and general democratic hostility to wealth.<sup>233</sup> However, cavalry service did imply fulfilment of obligations to another speaker, who complained that Andocides had never gone on an expedition from the city ‘either in the cavalry or in the infantry, either as a ship’s captain or as a marine, either before our disaster or after our disaster, though he is more than forty years old’ (Lys. 6.46). That cavalrymen functioned as a corporate group in their own right and took pride in their performance is suggested by a dedication (*IG II<sup>2</sup> 2965*), by their production of casualty lists (*IG II<sup>2</sup> 5222*),<sup>234</sup> and by grave monuments that displayed the glory of cavalry fighting.<sup>235</sup> Hyperides’ Lycophron is the best example of a cavalryman who emphasized his achievements as a horseman as part of his defence of his own character: ‘I have always been a keen horsebreeder, consistently overtaxing my strength and resources. I have been crowned for bravery by all the other cavalrymen and by my colleagues in office’ (Hyp. *Lyc.* 16), before going on to boast of his activity as leader of the cavalry at Lemnos.

Whereas the state appears to have been responsible for the recruitment of rowers in the fifth century (Th. 8.24.2; *IG I<sup>3</sup> 60*),<sup>236</sup> in the

<sup>232</sup> Bugh (1988: 153).

<sup>233</sup> Spence (1993: 222). For hostility to horse-rearing, see D. 42.24; Lycurg. 1.139; Wyse (1904: 471–3); for boasts of the same, see Hyp. *Lycurg.* 16–17; Isoc. 16.33.

<sup>234</sup> Paralama and Stampolidis (2000: 396–9).

<sup>235</sup> For the example of Dexileos, see Low (2002).

<sup>236</sup> Gabrielsen (1994: 106).

fourth century, before Periandros' law of 358/7, the recruitment of rowers seems to have been carried out by trierarchs hiring men from a list produced probably on the basis of the *lexiarchikon grammateion* (D. 50.6–7). Demosthenes, in his speech *Against Meidias*, indicates that the legislation made the city responsible for providing the crew and furnishing the tackle (D. 21.154–5). There is evidence of state responsibility (but also incompetence) after the law was introduced (D. 4.37). However, there is also evidence of the state providing empty ships after the law was enacted (D. 3.5, 4.43).<sup>237</sup> As Cawkwell suggested,<sup>238</sup> Periandros' law probably made some change to the institutions surrounding the provision of crews, but there is no evidence that the proposer envisaged any form of regular conscription for rowers. Only in emergencies do triremes appear to have been manned by conscription by age class (D. 3.4; Aeschin. 2.133). The lack of any evidence for the prosecution of rowers neglecting their obligations or abandoning the ranks reinforces this view,<sup>239</sup> though it is also a reflection of the socio-economic biases of the extant evidence. Moreover, the absence of any appeals for *charis* on the basis of good service as a rower, the rarity of nautical themes in the iconography of private burials, and the absence of oarsmen from the surviving corpus of funerary sculpture and their possible absence from casualty lists also suggest the relatively low valuation of rowing as a public service.<sup>240</sup> The primary motivation of rowing a ship, therefore, is more likely to have been the offer of remuneration than the performance of civic obligations.<sup>241</sup> There is evidence to suggest that non-citizens and slaves were employed as rowers.<sup>242</sup> Out of the three main kinds of military service, therefore, it appears that only hoplite activity would be universally accepted as a full disbursement of civic obligations.

<sup>237</sup> MacDowell (1986: 438 n. 3).

<sup>238</sup> Cawkwell (1984: 343).

<sup>239</sup> Hamel (1998*b*: 396–7).

<sup>240</sup> Strauss (2000: 262–5).

<sup>241</sup> However, for the case making connections between Athenian civic ideology and the rowers of the triremes, see van Wees (1995); Strauss (1996); Ober (1999: 16–17). For the idea that the Athenians valued both their rowers and their hoplites, see Pritchard (1998*a, b*).

<sup>242</sup> Graham (1998); Jordan (2000) suggests that the employment of slaves as rowers was the norm; Hunt (1998: 88, 176) emphasizes the large numbers of slaves in the Athenian navy and the fact that slaves were rarely used in any section of the army.



The obligation of infantry service was laid down by laws and *psephismata* of the *ecclesia* and legal processes. The citizen who avoided service or deserted the battlefield was threatened with disenfranchisement (And. 1.74; Aeschin. 3.176). Charges of abandoning the ranks or avoiding military service were brought under the *graphe lipotaxiou* or *astrateias* (Lys. 14, 15; D. 59.27), and such allegations could be introduced as additional material into an indictment to blacken the name of an opponent in unrelated cases (Aeschin. 2.148).<sup>243</sup> Performing military service was vital to anyone who wanted a public life, given that the *dokimasia* asked the citizen whether he had carried out military service ([Arist.] *Ath. Pol.* 49.2; Aeschin. 1.29; Din. 2.17–19). Furthermore, the shirker lived under threat of prosecution, or reduced his chances in other litigation: the speaker of Lysias' *Against Andocides* tells the audience about Andocides' failure to go on expeditions outside the city (Lys. 6.46; cf. Lys. 1.4, 12.42, 30.26). Even the *apragmon* arbitrator Straton was said to have done his military duties (D. 21.95). The news that someone had fulfilled their military obligations was spread probably by reputation (Lys. 20.22–3), a presentation of military duty as a sign of being friendly to the people: 'That he was a friend of the people, I shall prove to you. First of all, how many were the campaigns in which he served without once shirking his duty can be told, from personal knowledge, by his fellow townsmen.'

Lycurgus' speech portrays Athenian military obligation in the shades of patriotic voluntarism, giving no explicit mention of the call-up of all citizens under fifty years which took place before the battle of Chaironea. The patriotism of the Chaironea dead is contrasted with Leocrates' behaviour: 'surely there was no one whose hatred of the people or of Athens was so intense that he could have endured to remain outside the army' (Lycurg. 1.39). Similarly, Diodorus' description of the Athenian youth eagerly coming to service at Chaironea idealizes patriotic voluntarism (D.S. 16.85.2), perhaps deriving from a similarly patriotic source. Lycurgus says that Leocrates has failed to present himself for enrolment by the generals (147). Leocrates therefore had no particular post in the war (59). In this way, Lycurgus

<sup>243</sup> For other processes against military offences, see Harrison (1968–71: ii. 32). On *lipotaxion*, see Hamel (1998b).

presents Leocrates as having avoided the institutional obligation of presenting himself for enrolment (*astrateia*), but also accuses him of avoiding the moral obligation of fighting for Athens by accusing him of desertion (*lipotaxia*: 147).

### 5.5.2. Supererogatory Military Obligation

Litigation ensured that socially exerted obligations of military service were discussed in the public sphere: more was expected than the laws and decrees of the city demanded. The speaker of Lysias 9, by complaining when he was called up for consecutive years, broke the tacit obligation of not complaining about additional military duties and was insulted and fined (Lys. 9.4–7). Individuals might have distinguished themselves by pointing to activity as a *strategos* (D. 21.148), or even taking pride in the fame of their general: Aeschines boasted of having served alongside the famous general Phocion as part of a group of *epilektoi* (chosen soldiers), for his victory, and the award of a wreath (Aeschin. 2.168–9; cf. Aeschin. 3.87–8; Is. 5.42). In the fourth century it was common for soldiers to make dedications honouring their generals (*IG II<sup>2</sup>* 2968–9, 2972–3; *SEG* xix. 204, xxxv. 152–3, xli. 136, 149–50). The achievements of an expedition were also brought into the law courts, as Demosthenes reminded his audience: ‘For I know that there are many men who have done you great and useful service—though not after the style of Meidias! Some have won naval victories, others have captured cities, others have set up many glorious trophies to the credit of the state’ (D. 21.169). One Demosthenic speaker boasts that the uncle of his grandfather performed many glorious deeds in the overthrow of the Thirty Tyrants, helping to destroy the fortress raised against the democrats and helping the democrats return to Athens (D. 58.67). Such zeal in military service was regularly expressed in order to win the audience’s approval in cases unrelated to military matters, such as in a reply to a charge of taking bribes (Lys. 21.24; cf. Is. 6.9, 12.38, 16.17–18).<sup>244</sup> Opponents in the courts would denigrate each other’s military service (Lys. 3.45; Din. 1.12; Aeschin. 3.175; D. 21.133, 148, 166; 39.16).

<sup>244</sup> For other boasts of personal courage, see Seager (1973: 23). For Athenian and democratic models of courage, see Balot (2004a, b).

The fact that trials about cowardice took place in front of a council of one's fellow soldiers must have acted as an incentive to zealous behaviour on the battlefield as well as an audience for its presentation (Lys. 14.5).<sup>245</sup>

There was significant public recognition of virtuous military leadership in the fifth century and from early on in the fourth century.<sup>246</sup> The ultimate fulfilment of one's military duty was death on the battlefield, and for the massed ranks of infantry must have been the only way to secure public recognition. One even might think of it as an act of supererogation: dying for one's *patrios* was held up in a range of literary genres as a noble death.<sup>247</sup> Probably the most common form of public burial in fifth- and fourth-century Athens was the mass burial of soldiers. This took place probably at a public burial-ground (*demosion sema*), and was described by Thucydides as an ancestral custom (*patrios nomos*) (Th. 2.24), though the origins of the custom have been disputed.<sup>248</sup> The burial was accompanied by funeral games under the supervision of the polemarch ([Arist.] *Ath. Pol.* 58.1) and a speech (*epitaphios logos*). The public commission and erection of casualty lists, beginning perhaps in 465/4 (*Ag.* xviii. 1; cf. *SEG* xlix. 370 N), also attests to the public recognition of the war dead (*Ag.* xviii. 1–25). The inscriptions recorded the deceased by tribe, without demotic or patronymic, emphasizing their sacrifice to their *polis* above all other institutions, and in cases where they were crowned with a relief, this would have depicted fighters in combat.<sup>249</sup> Death on the battlefield might in the right circumstances secure some recognition of one's family: the children of the war dead were maintained at public expense ([Arist.] *Ath. Pol.* 24.3).<sup>250</sup> At their coming of age, they were given a panoply and were presented to the Athenians at the Dionysia, with a herald announcing the names and patronymics

<sup>245</sup> On charges for cowardice, see Hamel (1998*b*: 376–9); Cartledge (1998*b*); Hanson (2000: 220).

<sup>246</sup> See Ch. 4.2.3. <sup>247</sup> Nielsen (2004: 65–8).

<sup>248</sup> Jacoby (1944*b*) argued that the practice was introduced in 464; for a review of other opinions, see *HCT* ii. 98; Hornblower, *Commentary*, i. 292–3.

<sup>249</sup> The evidence for the iconography of reliefs on casualty lists is limited, but the indications are that, where present, it depicted the appropriate type of fighter in combat. For references, see Low (2002: 104 n. 11); for an example of a relief depicting cavalrymen in action, see Paralama and Stampolidis (2001: 596–7).

<sup>250</sup> Stroud (1971).

of the sons, and adding that their fathers had died on behalf of the *patris* as *agathoi* men (Lys. fr. 10b Todd 30).

Public commemoration was not the only way in which citizens were commemorated for their deeds in war: private funerary commemoration also recognized the value of military valour. While the iconography and epigraphy of *periboloi* (family funerary enclosures) emphasize the male citizen's relationship with his family, single *stelai* depicting men only tend to emphasize their civic roles, and in particular their martial prowess.<sup>251</sup> Clairmont's catalogue of classical Athenian tombstones contains 211 stones which depict warriors, both cavalymen and infantrymen (*CAT* vi. 169–70). Such monuments, making a covert or explicit reference to the military endeavour of the deceased, would, by way of patronymic or location in a family *peribolos*, grant the kudos of military supererogation to the family of the deceased.

In addition to funerary commemoration, successful campaigns might be marked by the act of dedication. The spoils of battle would frequently have been dedicated at treasuries and temples throughout Greece:<sup>252</sup> the speaker of *Against Eubulides* claims that his enemies had stolen the shields which he had dedicated to Athena (D. 57.64). In Athens dedications commemorating victory in battle were sometimes inscribed: on the return home from the victory at Eion on the river Strymon in 476 BC, the people granted the soldiers permission to dedicate three inscribed Herms (Aeschin. 3.183–5; Plu. *Cim.* 7);<sup>253</sup> the same source records that Archinus of Koile made dedications and sacrifices to commemorate the return of the democratic forces from Phyle (Aeschin. 3.187–90; *SEG* xxviii. 45). Dedication could also commemorate the exertion of individuals. The efforts of the late fifth-century hipparch Pythodorus were commemorated in his dedication of a votive relief depicting a cavalryman bearing down on infantry (*IG* I<sup>3</sup> 999).

From this it may be concluded that hoplite service was largely a compulsory, institutional duty, which could be presented as something performed with supererogation worthy of *charis*. It carried

<sup>251</sup> Leader (1997); Bergemann (1997: 45, 63–5, 79–80).

<sup>252</sup> Jackson (1991).

<sup>253</sup> For extensive commentary on the reception of the verses, see Jacoby (1945: 185–211).

more persuasive capital than other forms of military activity. The fact that boasts about military service occur in forensic contexts unconcerned with the military sphere reflects its centrality to Athenian citizenship.<sup>254</sup> This will become more obvious after an investigation of the ephebic service, a two-year military cadetship which served as a gateway to full citizenship.<sup>255</sup>

### 5.5.3. Ephebic Service in Lycurgan Athens

The duties of ephebic service, by the end of the 330s, constituted a detailed regulation of every part of life and included educational, military, and religious elements.<sup>256</sup> [Aristotle]'s account in the *Athenaion Politeia* gives us an impression of how significant it was to citizenship: those who had been found by their deme to be eligible for citizenship were registered onto the *lexiarchikon grammateion*; they were inspected by the *boule* ([Arist.] *Ath. Pol.* 42.1–2), and swore the oath (Lycurg. 1.76). Under the scrutiny of officials, they were guided around the shrines of Attica and garrisons of Piraeus (42.2). They were trained in athletics and in the skill of fighting with hoplite weapons, the bow, the javelin, and the use of the catapult (42.3). They demonstrated their skills to the people at the assembly in the theatre (42.4). A second year was spent in the garrisons in Attica (42.5).<sup>257</sup> For most of this period of time they were removed from their families, and were exempt from liturgies and court cases, with the exception of cases concerning estates, heiresses, or inherited priesthoods (42.5). This may be seen as an induction to citizenship, which stressed its military and religious aspects.<sup>258</sup>

There was reinforcement of the ephebic institution in the years after Chaironea:<sup>259</sup> a law of Epicrates on the *ephebeia* is dated to

<sup>254</sup> Bekker-Nielsen (2001: 15).

<sup>255</sup> The exact age at which service commenced is contended: de Marcellus (1994: 21–3) collects references to this debate, following Rhodes's (1981: 498) argument that ephebes were enrolled when they were 18.

<sup>256</sup> R. C. T. Parker (1996: 253–5); Humphreys (2004: 86–93).

<sup>257</sup> For a more detailed discussion of ephebic duties, see de Marcellus (1994: 8–23).

<sup>258</sup> Schwenk (1985: 126); de Marcellus (1994: 155).

<sup>259</sup> Mitchel (1970: 38); Rhodes (1981: 493–510); Humphreys (2004: 86–9, 120).

335/4 (Lycurg. fr. 20 Conomis);<sup>260</sup> the extent of this reform, however, is debated. Reinmuth has suggested that the ephebic institution was tightened in this period but had existed earlier in the fourth century: this is suggested by Aeschines' claim that he spent two years on the borders of Attica after being registered as a citizen (Aeschin. 2.167).<sup>261</sup> An earlier date for the institution is supported by the possibility that echoes of the language of the oath can be found in fifth-century literature.<sup>262</sup> De Marcellus, however, has suggested that there was no pre-Lycurgan ephebic institution and that the term ephebe, before the 330s, was used to refer to a citizen being initiated and that the institution was created in 335/4.<sup>263</sup> He suggests that the tradition of the *ephebeia* was an invented tradition which suited the ideological context of Lycurgan Athens.<sup>264</sup> There are no grounds for certainty; it is possible, however, that the reform extended an earlier shorter period of service to two years, added educational aspects,<sup>265</sup> and made the service compulsory for all Athenian citizens, with the possible exception of the *thetes* and the unfit.<sup>266</sup> It is likely that the law of

<sup>260</sup> Rhodes (1981: 494).

<sup>261</sup> The case would be supported by Reinmuth's dating to 361/0 of a fragmentary ephebic dedication (Reinmuth 1). However, the fragment has since been dated to the 330s: Mitchel (1975); Lewis (1973) also cast doubt on Reinmuth's hypothesis.

<sup>262</sup> Reinmuth (1971*b*: 136–8); Siewert (1977: 111), argued that the oath contained fifth-century elements and suggested that its origins pre-dated the Solonian reforms. De Marcellus (1994: 43–8, 123) suggests that Siewert has been misled by deliberate archaisms in the oath. For other treatments of the *ephebeia* as an ancient institution, see Pélékidis (1962: 71–9); Vidal-Naquet (1968*b*: 151–74)—stressing the ritual significance of the service; Winkler (1990*b*)—suggesting that fifth-century tragedy was performed by ephebes and was composed with them in mind.

<sup>263</sup> De Marcellus (1994: 24–49; 136–55). <sup>264</sup> De Marcellus (1994: 161–8).

<sup>265</sup> Reinmuth (1971*b*: 129–30), suggesting that the legislation would have transformed the institution from a military to an educational one and introduced officials known as *sophonistai* (moderators). For the idea that the reform of the *ephebeia* was inspired by developments in moral conventions and educational theory, see de Marcellus (1994: 85–122).

<sup>266</sup> For the view that Epicrates' law opened the service to all citizen classes, without implication of compulsion, see Sekunda (1992: 330); Habicht (1997: 16); de Marcellus (1994: 213–24). For the view that it was compulsory for all citizens apart from *thetes* and the unfit, see Rhodes (1981: 503; 1982: 197); Rhodes and Osborne (2003: 454). For the view against the idea that it was compulsory for all citizens, see Reinmuth (1971*b*: 127); Ruschenbusch (1979*a*: 173–6). Hansen (1988: 190–3) has argued that fluctuating figures of ephebes in the Athenian tribe of Kekropis suggest that the service was not compulsory.

Epicrates was part of a plan to make Athens a militarily stronger city, and was a response to developments in warfare.<sup>267</sup>

Change is also visible in the commemoration of ephebic activity. From 333/2 it became common for the ephebes of a particular tribe to list their names, honours passed in recognition of them, and their officials for their good order (*eutaxia*), orderliness (*kosmiotes*), and for doing things as the laws command them (RO 89). Dedications detail victories in the torch-races (Reinmuth 6, 13) or the drill competition known as the *eutaxia* (IG II<sup>2</sup> 1156.40, 58).<sup>268</sup> Such dedications are indicative of the athletic competition close to the heart of ephebic service and also a patriotic statement of devotion to civic obligations characteristic of the Lycurgan period, and might be regarded in the same way as the copy of the ephebic oath inscribed on a decorated stone dedication together with the spurious 'oath of Plataea' which was set up by the priest of the cult of Ares and Athena Areia at Acharnai probably in the Lycurgan period (RO 88).

The quotation of oaths was one way in which the orators grounded obligation. The obligations of the ephebe were spelt out in the oath that they took. As was made clear earlier, the oath grounded the political obligation of obedience to the established laws and disobedience to a usurper,<sup>269</sup> but it also grounded the military obligations of the citizen:

I shall not bring shame (*οὐκ ἀίσχυνῶ*) upon the sacred weapons nor shall I desert the man beside me, wherever I stand in the line. I shall fight in defence of things sacred and profane and I shall not hand the fatherland (*patris*) on lessened, but greater and better both as far as I am able and with all. (RO 88.6–11)

This oath, which grounded the obligation to fight in the defence of community, to defend the city and the religion of the state, and to augment the territory of the *polis*, was taken when he was enrolled onto the deme register probably after ephebic service.<sup>270</sup> In this way,

<sup>267</sup> Rhodes (1981: 494–5); de Marcellus (1994: 50, 59–84); M. R. Christ (2001: 416).

<sup>268</sup> Humphreys (2004: 115). For extensive discussion of *eutaxia* in an ephebic context, see de Marcellus (1994: 149–54).

<sup>269</sup> See Chs. 4.1.4, 4.4.4, 5.2.1.

<sup>270</sup> Rhodes (1981: 495).

every Athenian citizen was bound to the civic and military duties mentioned in the oath, at least from the time of the law of Epicrates. Thus the *ephebeia* might be seen as an institution in which the citizen would be taught certain obligations of citizenship.<sup>271</sup>

By citation of this oath, Lycurgus can claim that Leocrates has failed in his obligations to the city, 'if he has sworn this oath' (76). If he has not taken the oath, Leocrates, the audience is told, 'plays tricks in the hope of avoiding his duty'. Of the other orators, only Aeschines mentions his ephebic service, in order to reinforce a portrait of himself as a good soldier (Aeschin. 2.167; cf. Aeschin. 1.49). Taking the ephebic oath and ephebic service constituted a duty not usually regarded by the orators as worthy of mention perhaps because it was taken by the majority of speakers in court in their distant youth.

What emerges here is the fact that the military obligations of the Athenian citizen were closely linked to other paradigms of citizenship. The impression of military obligation, in its centrality to civic identity, in this sense, is far removed from the impression given by the short encounters with military obligation and conscription in the works of Rawls. In a Rawlsian universe, compulsory military service is considered to be 'a drastic interference with the basic liberties of equal citizenship', and cannot be justified by anything less than a threat to national security, and conscription is permissible only if it be for the defence of the liberty of citizens of the society concerned or others (*TJ* 333–4). Wars for national glory, or territorial or economic gain, are deemed unjust (*TJ* 333). Unlike Rawls, no Athenian sources consider military obligations to be an infringement of civic liberties. However, what is common to Rawls and the Athenians is the close identification of liberty and fighting: for Rawls, the only situation that could justify conscription is the defence of liberty;<sup>272</sup> for the Athenian sources, the performance of military obligations is necessary and offers heroic status because it sustains and supports the well-being of the Athenian *polis*, and nurtures the liberty of its citizens. The fact that Athenians and other Greeks also justified going to war on the basis of 'freedom' attests to another coincidence between the Rawlsian and Greek justification of military action.<sup>273</sup>

<sup>271</sup> Ober (2001: 176, 203–4).

<sup>272</sup> See Ch. 2.9.1.

<sup>273</sup> See Ch. 1.3.2.



## 5.6. FEEDING THE CITY

When Lycurgus accused Leocrates of diverting corn from Athens and shipping corn illegally to Corinth (Lycurg. 1.18, 26–7), he hoped to exasperate his audience. Securing the grain supply was a constant pre-occupation of the Athenians, being a subject of discussion during the main assembly of each prytany ([Arist.] *Ath. Pol.* 43.4). It is likely that maintaining the grain supply of the city was a concern throughout the fifth and fourth centuries.<sup>274</sup> There is evidence to suggest that major grain shortages, particularly in 335/4 and 330/29, had forced the Athenians to think carefully about securing their grain supply (RO 95, 96).<sup>275</sup> It was uncontroversial that the citizen, in particular the wealthy and the prominent, should have an important role in securing the food supply, making it available to the people at the right price, and this idea seems to have taken priority over the tendency to dissociate the ideal citizen from activity related to trade (Arist. *EE* 1215<sup>a</sup>27–31).<sup>276</sup>

The speaker of Isocrates' *Against Callimachus* presented the diverting of grain, in contravention of Lysander's edict, to Athens in 404 as an act of *euergesia* (Isoc. 18.61; cf. D. 34.38). Anyone in the position of being able to have an effect upon the supply of grain to Athens was expected to do their best to direct it towards Athens and make it available to the Athenians (Lycurg. 1.18, 26–7; cf. Lys. 6.49; 22; D. 18.301; And. 2.19–22). The provision of grain in times of need would be a way to win *philotimia*.<sup>277</sup> There was also institutional backing for this obligation, in the shape of a law against any Athenian resident transporting corn to places other than the Athenian market (D. 34.37, 35.50–1; [Arist.] *Ath. Pol.* 51.4).<sup>278</sup>

<sup>274</sup> For the definitive case that Attica was not agriculturally self-sufficient from the mid-fifth century onwards, see Garnsey (1988: 89–164). For discussion of legislation from other Greek states securing the availability of grain, see Arnautoglou (1998b: 48–52).

<sup>275</sup> Garnsey (1988: 154–62); Tracy (1995: 30–5). The inscribed list of recipients of grain from Cyrene suggests that Athens received the largest amount (RO 96.5).

<sup>276</sup> Seager (1966); Whitehead (1977: 116–21); Austin and Vidal-Naquet (1977: 11–18); with reference to profit-making and prostitution, see E. E. Cohen (2000b). For attitudes to maritime traders, who were for the most part not Athenians, see Reed (2003: 43–61).

<sup>277</sup> Rosivach (2000: 36).

<sup>278</sup> On the role of the *sitophylakes* (grain guardians) in Athens, see Gauthier (1981).

In the aftermath of the Social War the Athenians started to elect an individual to take charge of the grain supply, the *sitones* (grain purchaser: D. 20.33–4),<sup>279</sup> and Demosthenes boasted of holding this position sometime before 330 (D. 18.248; cf. [Plu.] *Moralia* 845f). As *sitones*, Demosthenes was responsible for the securing, purchasing, and transportation of grain to the domestic market.<sup>280</sup> Demosthenes' appointment to the office was probably related to his donation of 1 talent towards the fund for the food supply ([Plu.] *Moralia* 851b) and his diplomacy with the kings of the Bosphorus.<sup>281</sup> But Demosthenes was not the first to present a contribution to the grain supply as euergetic behaviour. Indeed, there was a heritage connecting the securing of the grain supply to good citizenship or, in the case of non-Athenians, good will to the Athenian *demos*.

From the fifth century the Athenians regularly honoured foreign benefactors for assisting their food supply.<sup>282</sup> Foreign benefactors could be honoured for actually making or promising to make donations to *epidoseis* in times of corn shortage (RO 95.9–12; Schwenk 67.10–12; *IG* II<sup>2</sup> 363.9–11), or for selling grain at a fair price (RO 9.10–11) and by 330, it seems likely that an Athenian citizen could be honoured for activities related to securing the grain supply.<sup>283</sup> In 328/7 Demades proposed a decree ensuring that if a trierarch contributed to the grain fund, fines for late payment of trierarchic debts would be reduced. The donors to this fund are preserved on the accounts of the naval *epimeletai* (*IG* II<sup>2</sup> 1628.339–452; 1629.859–975; 1631.8–10, 60–85). The discovery and subsequent publication of the inscribed grain tax law in 1998 has illuminated another activity which could win the Athenian politician credit. As was noted above (4.1.1), its text commences with a statement of its intention: 'so that there may be grain for the people in the public domain (*en toi koinoi*)' (RO 26): its proposer, Agyrrhius, would gain from the implied association of his policies with securing grain for Athens. His law arranged for the

<sup>279</sup> For earlier attestation of the office, see Develin (1989: 276). The appointment of a single grain purchaser is to be distinguished from the board of commissioners appointed annually in the 270s: G. J. Oliver (1995: 203, 258 n. 159, 270–1).

<sup>280</sup> Finley (1973: 170).

<sup>281</sup> Burstein (1978).

<sup>282</sup> *IG* II<sup>2</sup> 283.2; cf. *IG* I<sup>3</sup> 30.6; II<sup>2</sup> 212.15, 342.4, 400.4, 423.13–14, 398.11–13.

<sup>283</sup> Tracy (1995: 31–4); for more inscriptions honouring non-citizens for helping the Athenians with the grain supply, see G. J. Oliver (1995: 307–14).

collection of an  $8\frac{1}{3}$  per cent tax, probably on produce on the islands of Lemnos, Imbros, and Skyros,<sup>284</sup> in terms of grain. The collection of this tax was to be auctioned out to bidders who would compete for the right to collect this grain. The buyer would be responsible for conveying the grain to the city via Piraeus, and the city would store the grain at the Aiakeion and make the grain available for sale at the *agora*, at a price fixed by the assembly (RO 26.9–15, 40–4). Monies raised from the sale of grain would be dedicated to the *stratitikon* (military fund: RO 26.54). The purchaser of the grain tax would doubtless be attracted by the possibility of making a financial profit: they would be able to cream off whatever grain they extracted from the islanders beyond the amount that they had bid. But another reason for purchasing the grain was potentially euergetic: the purchaser would hope to be remembered in Athens for assuring for the Athenians the desirable grain of these islands at an affordable price.

We should also note that there was some, though limited, public recognition of food suppliers within Athens and those further down the chain of food production. A decree of around 330 from the deme of Ikarion honouring its demarch mentions that ‘good crops were produced over the entire countryside’ (*SEG* xxii. 117.3). However, despite the alleged agrarian or peasant roots of Athenian society and the closeness of the fighting group to the farming group, agricultural labour does not seem to have been politically recognized as an activity that contributed to the well-being of the *polis*. In the third century, however, when there was an external threat to the internal contingency of Attica’s food supply,<sup>285</sup> honorary decrees were passed by the demes of Attica recognizing the efforts of individuals in bringing in the crops from the countryside, or ensuring that the harvest be same for the farmers (*IG* II<sup>2</sup> 1299; *SEG* xxiv. 154, 155). But in the fourth century the concern was with providing grain from outside Attica and ensuring that it was available to the people at the right price.

The obligation of feeding Athens was one that would apply to the wealthy and the political class of Athens, and it emerged as a prominent obligation when the Athenians were most in need of assistance with their grain supply. But the existence of laws protecting the grain supply of Athens means that Lycurgus is able to highlight Leocrates’

<sup>284</sup> Rhodes and Osborne (2003: 124).

<sup>285</sup> G. J. Oliver (1995).

neglect of the Athenian food supply. It comes as no surprise that a Western liberal discussion of an ideal society, such as Rawls's, bears no such obligation to securing the food supply of his ideal state. It might be possible to equate the ancient obligation of feeding the city with the duty of the citizen in the Rawlsian system to support and further institutions that secure justice (*TJ* 293–301).

### 5.7. LEAVING THE CITY: A 'NEGATIVE OBLIGATION'

A comprehensive survey of the 'negative' obligations of the Athenian citizen would include those activities or deeds that the Athenian citizen was obliged not to partake in. A considerable number of negative obligations emerged earlier as statutory requirements of Athenian legislation.<sup>286</sup> The formulation of a concept of civic obligation, however, does not require such a survey, which would have to take into account commonplaces such as the obligation not to murder or steal, and, most importantly, non-violation of the law. Therefore, it is necessary to stress one obligation construed in a 'negative' sense by the orators: that of not leaving the city during a time of crisis.

To become disconnected from one's *polis*, in exile, in warfare, or in death, was a source of despair in Greek literature,<sup>287</sup> and a similar reaction was expected from the ideal citizen in oratory. It was suggested earlier that Leocrates may have been prosecuted in relation to, but without specific reference to, a decree banning people from leaving the city (Lycurg. 1.53).<sup>288</sup> The Areopagus appears to have been charged with prosecuting those who abandoned the city at this time.<sup>289</sup> However, Lycurgus seems to have attempted prosecution of Leocrates without specific reference to the decree in his speech. This was because the obligation not to leave the city during wartime was not reliant upon a decree or law. Lycurgus is aware of the objection that the act of leaving Attica was not in itself a *de facto* offence (Leocrates may have left the city before the decree came into effect),

<sup>286</sup> See Ch. 4.1.

<sup>287</sup> Nielsen (2004: 52). Even internal displacement from the country to the city was a source of despair: see *Ar. Ach.* 27–36; *And. fr.* III.1 Maidment.

<sup>288</sup> See Chs. 3.7, 4.1.2.

<sup>289</sup> Wallace (2000).

but has already provided for that, pointing to Leocrates' surreptitious method of leaving the city, the fact that he moved with his mistress and then spent five years working as a merchant in Megara, increasing his wealth. The fact that he went to Megara, a place known for its prostitutes, may have militated against Leocrates.<sup>290</sup> Still, he was reliant on the idea that remaining in the city in wartime was a duty.

Scholarship in the second half of the twentieth century stressed the importance of the freedom of citizens to travel as one of the key factors in the development of Greek and, more generally, Mediterranean society.<sup>291</sup> There were other restrictions on movement in fourth-century Athens: the rural population was brought into the city in 346 (Aeschin. 2.139; D. 18.38–9), 335 (D.S. 17.4.6; Arr. *An.* 1.10.2), and 322 ([Demades] *On the Twelve Years* 14). As Aeschines pointed out, the Athenians forbade outgoing magistrates, who were still to undergo examination of their accounts (*euthuna*), from leaving the city (Aeschin. 3.21): this is because they 'may make profit of the public money or the public acts, and then run away'. The Athenians appear to have had a law which forbade metics from living away from the city during wartime (Hyp. *Ath.* 33; cf. Hyp. *Ath.* 28–9).<sup>292</sup>

The connection between remaining in the city and good citizenship emerges several times in Attic oratory. Polyainos, the speaker of Lysias 9, makes the connection when he tells the audience that were he fined he would no longer wish to remain a citizen (*polites*) and would leave Athens for another city (Lys. 9.21);<sup>293</sup> others claimed that they had lived in the city for the whole duration of their life (Is. 4.27; Hyp. *Lyc.* 16; D. 18.10).<sup>294</sup> Furthermore, the obligation not to leave the city outside times of emergency was talked of as a public service: Andocides, replying to the question why he returned to Athens to face trial, replied that he 'would never consent to a life abroad that cut me off from my country, whatever the advantages attached to it; and although conditions in Athens may be what my enemies allege, I

<sup>290</sup> Kapparis (1999: 241–4).

<sup>291</sup> Constant (1988: 314–15); Gomme (1962); Hansen (2000: 143); for the Mediterranean perspective, see Braudel (1972: ii. 1239); Purcell (1990).

<sup>292</sup> Whitehead (2000: 335).

<sup>293</sup> For the argument that this speaker is a citizen, see MacDowell (1994: 194).

<sup>294</sup> For the idea that Socrates' remaining in Athens all of his life was an indication that he was satisfied with the city and its laws, see Pl. *Crito* 53a.

would far sooner be a citizen of hers than of any other state which may appear to me to be just now at the height of prosperity' (And. 1.5; cf. And. 2.10). Living outside the city was definitely liable to reproach on a par with military desertion (Hyp. *Dem.* col. 16b Jensen, *Ath.* 29–30, *Eux.* 2; Lys. 6.6, 44–5; Aeschin. 3.159, 253).

The obligation to stay in the city was challenged at times of emergency: after the democratic restoration, the reputation of remaining in the city at the period of the Thirty left the citizen liable to reproach.<sup>295</sup> It appears to be the case that what was important was living and functioning within a physical community that was recognizable as that of the Athenians: Dinarchus expressed this when he stressed Demosthenes' disharmony with the movement of his fellow citizens: 'on the field of battle he is a stay-at-home, when others stay at home he is an ambassador, among ambassadors he is a runaway' (Din. 1.82).

While the individual was usually free to travel to another city, and there was a high degree of mobility between the Greek *poleis*, the individual who left the city at a time of crisis would run the risk of losing his civic rights. As citizenship was the most significant manifestation of freedom, the citizen should not be seen as free to leave the city as he pleased in times of crisis. It is difficult to see how such an obligation would not be an infringement to the liberty of Rawls's ideal society, which otherwise advocates freedom of movement. But then again, it is important to recognize that in Athens such an obligation was binding only as a temporary crisis measure and as a restriction on outgoing magistrates. It is likely that, as in the case of Leocrates, the restriction could be passed off as an act that would contribute to the destruction of liberty, an argument that, in all likelihood, would bring over all but the most libertarian of Rawlsians.

<sup>295</sup> After the tyrants' execution of Theramenes, citizens who were not included on the list of the 3,000 who enjoyed full citizen rights were banned from entering Athens (X. *HG* 2.4.1; D.S. 14.5.7, 32.4; Justin 5.9; Lys. 12.95, 15.22; Cloché 1911: 63–76; Krentz 1982: 83). Accordingly, it was those who had remained in the city who became liable to criticism after the democratic restoration (Lys. fr. 9 Todd; cf. Lys. 16.3; cf. 25.2–3, 13–14). While Philon was apparently charged with having left the city (Lys. 31.26), most of the speech made against him concerns his having avoided travelling with the faction that fought on behalf of democracy (Lys. 31.13, 17–19, 27). For comparison of Lysias 31 and Lycurgus 1, see Whitehead (2006).

## 5.8. RELIGIOUS OBLIGATIONS

Athenian citizens participated in cult practices through the medium of corporations ranging from hereditary groups such as the phratry or *genos*, to voluntary associations of worshippers,<sup>296</sup> but also through the institutions of *polis*-religion.<sup>297</sup> The respect for *ta hiera* (sacred things) which was taken for granted in Attic oratory and legislation, often alongside *ta hosia* (secular things), referred to both acts of cult and the piety of individual citizens (Lycurg. 1.77; Lys. 30.25; D. 43.51, 59.104; Is. 6.47).<sup>298</sup> Citizens were, as is clear from the speeches about the profanation of the Mysteries and mutilation of the *hermai*, obliged not to behave in a way that could be construed as sacrilegious (And. 1 *passim*; cf. Lys. 5, 6).<sup>299</sup> The ephebic oath bound ephebes to honour the ancestral religion (*hiera ta patria*) (RO 88.16). The institutions of the city regulated those religious practices that took place in both the public and the domestic spheres. Religious obligations appear to have taken four forms: they are related to the maintenance and dedication of cult objects, participation in religious activity, the duties of religious personnel, and the avoidance of impious behaviour.

The fourth-century sources present *hiera patroia* (sacred ancestral things) as cult objects that are central to citizenship. These could be objects sacred to 'ancestral deities', possibly to any of the gods, all of whom could be viewed as 'ancestral':<sup>300</sup> Lycurgus tells his audience that Leocrates has removed his *hiera patroia* from the city (25, 38, 56), and is also guilty of impiety 'because he has done all in his power to have the sacred precincts ravaged and the temples destroyed' (147). While Lycurgus might have implied the evacuation of small objects set up for the household deities, such as jars of Zeus Ktesios, a pillar for Apollo Aguieus, or an altar for Zeus Herkeios,<sup>301</sup> other references to *hiera patroia* suggest that they might

<sup>296</sup> N. F. Jones (1999).

<sup>297</sup> For religion as a *polis* phenomenon, see Aleshire (1994); Jameson (1998); Sourvinou-Inwood (2000); R. C. T. Parker (1996, 2005).

<sup>298</sup> Wyse (1904: 535); Connor (1988: 168–70, 172–3); Ogden (1996: 98–100).

<sup>299</sup> However, testimonia for the *graphe asebeias* are limited (Hansen 1996b: 159–62).

<sup>300</sup> R. C. T. Parker (2005: 20–2).

<sup>301</sup> R. C. T. Parker (2005: 16–19).

be identified with larger objects such as tombs. Aeschines associated possession of ancestral objects and tombs with free citizenship and patriotism:

We, who have sacred things (*hiera*) and tombs (*taphoi*) of our ancestors in our native land (*patris*), and such life and intercourse with you as belong to free men (*eleutheroi*), and lawful marriage, with its offspring and connections, we while at Athens were worthy of your confidence, or you would never have chosen us, but when we had come to Macedonia we all at once turned traitors. (Aeschin. 2.23)

Dinarchus' report of the details of the *dokimasia* (preliminary scrutiny) of public officials says that the process, among other things, inquires as to whether they had *hiera patroia* (Din. 2.17).<sup>302</sup> The *hiera patroia* referred to in Dinarchus' version might be identified as family tombs given that the Aristotelian *Constitution of the Athenians* version of the scrutiny interrogated the citizen about the existence of shrines of Apollo Patroos and Zeus Herkeios, and the location of these, and the existence and location of tombs (*eria*: [Arist.] *Ath. Pol.* 55.3). Lycurgus' open-ended reference to *hiera patroia*, therefore, appears to have very serious connotations, and suggests that by their affirmation in such public contexts, domestic religious practices were construed as an expression of *polis*-religion and their upkeep was a serious obligation of the citizen.

We have already encountered the practice of dedication as a way of commemorating the virtuous fulfilment of a range of civic obligations. Dedication was a means by which participation in civic life could be associated with pious activity. The act of dedication was also a performance of religious piety in its own right, and was one that assured instant publicity for the dedicant. As was noted earlier, dedications to deities were recorded, often with the name of their dedicants, on stone inventories kept by temple officials and other treasurers (*IG II<sup>2</sup>* 1370–1552): perhaps the detailed knowledge offered by such public records enabled Lycurgus to make the point that Leocrates had abandoned a statue of his father in the temple of Zeus Soter, and, in so doing, 'he turned that statue, which his father erected as a memorial of his own uprightness, into an object of reproach,

<sup>302</sup> On *dokimasia*, see Ch. 4.1.



since it stands as a memorial to a man now famed as father of a son like this' (Lycurg. 1.136). To abandon such a dedication, Lycurgus suggests, is punishable by death (Lycurg. 1.137). Such a statue was dedicated by his father probably because he wanted to commemorate his own piety.<sup>303</sup>

It is likely that religious personnel and their families were the class of citizens who most frequently made dedications,<sup>304</sup> but dedication was frequently carried out by office-holders or victorious *choregoi*. As was suggested above, the dedicatory habit may have been stimulated by the intensification of honorific tendencies on the part of *polis*-institutions. Priests and other religious officials—examples survive of *pythaistai* (members of sacred missions), *hieropoioi* (overseers of sacred rites), and the *epimeletai* (overseers) of the Eleusinian Mysteries—made dedications, sometimes of statue bases, to commemorate their offices, and sometimes honours granted to them in recognition of their performance (IG II<sup>2</sup> 2815–17, 2828, 2832, 2838, 2840, 2841, 2932). Paintings of Lycurgus' *genos* (clan) of the Eteoboutadai were dedicated on the walls of the Erechtheion, and there were wooden statues of Lycurgus and his sons ([Plu.] *Moralia* 843e–f).

Dedication was also a public-spirited performance in its own right: orators treat it as a public-spirited activity that was performed competitively. Isaeus' speech *On the Estate of Dicaeogenes* contains the most extensive account of dedicatory performances extant in Attic oratory. Whereas Dicaeogenes' forefathers had set up in temples tripods they were awarded for choregic victories and had dedicated on the Acropolis the first fruits of their wealth and had adorned the shrine with bronze and marble statues (Is. 5.41–2), Isaeus complained that Dicaeogenes, who he claims has abused his father's estate, failed to set up on the Acropolis the dedications upon which his father, killed at Spartolus in 429, had spent 3 talents: 'they are still knocking about in the sculptor's workshop; and thus, while you yourself claimed the possession of money to which you had no title, you never rendered up to the gods statues which were theirs by right' (Is. 5.44).

<sup>303</sup> As Burkert (1985: 93) points out, such an act of dedication transformed piety into ostentation.

<sup>304</sup> Rouse (1902: 263).

Such dedications had much to do with demonstrating supererogatory performance of financial obligations, but they also displayed the piety of the dedicant.<sup>305</sup>

There is no evidence for any Athenian citizen being prosecuted solely on a charge of non-participation in religious offices, cult activity, or sacrifices.<sup>306</sup> It is well established that participation on all levels in civic festivals, processions, and shared sacrifices were central events in the Athenian citizen's life and indeed served to reinforce ideas about the individual's contribution to the city *qua* citizen.<sup>307</sup> Participation in religious office-holding could be construed as a perquisite for citizens: this is the impression Demosthenes gives when talking about his acting as *hieropoios* for the *boule*, conducting the inauguration of victims on behalf of the city, and serving as head of the sacred embassy to the Nemean games and *hieropoios* for the *semnai theai* (D. 21.114–15; cf. D. 23.40, 22.78). Indeed, the prosecution speech against Neaira was reliant on the assumption that certain cult practices should be reserved for citizens and that the infiltration of non-Athenians would undermine the Athenian reputation for piety (D. 59.75–7). Virtuous fulfilment of religious office-holding was rewarded publicly: from the 340s decrees of the *polis* bestowed honours on the holders of religious offices,<sup>308</sup> following a practice already taking place in the early fourth century in the Attic tribes (e.g. *IG II*<sup>2</sup> 1140, 1146). But it appears to be participation in cults performed on a domestic level or with specific relations to the family that are most frequently construed as socially obligatory for citizens.

Participation, particularly in cults related to the family, could be associated with good citizenship. Introduction into a phratry or the keeping of the household cults of Apollo and Zeus could be cited as evidence of citizenship (D. 57.46–7, 54, 67) and membership was

<sup>305</sup> Reisch (1890: 85–6) suggested that the display and dedication of tripods awarded to victorious *choregoi* was obligatory for religious reasons. Recent scholars have been less certain that dedication was obligatory: see Matthaïou (1994: 187); Wilson (2000: 207).

<sup>306</sup> Kahrstedt (1934: 131).

<sup>307</sup> Maurizio (1998: 37); Connor (1987, 1996a, b).

<sup>308</sup> Lambert (2004: 105–6). For a fragmentary relief which may be from an honorific decree for a priestess of Athena from the first quarter of the fourth century, see Lawton 91.

probably a social or legal requirement of non-naturalized citizens.<sup>309</sup> Aeschines pointed to his father's participation in a phratry as his proof of citizenship, an argument strengthened by the boast that his phratry used the same altar as the Eteoboutadai *genos* (Aeschin. 2.147). Bastards, on the other hand, were excluded from certain family cults (Is. 6.47).<sup>310</sup> Litigants would sometimes boast of involvement in the Thesmophoria, a festival restricted probably to married citizen women,<sup>311</sup> in order to establish themselves as well born or properly married. In attempting to prove Ciron's daughter's good birth, the speaker claims that the wives of the demesmen chose his mother to preside at the Thesmophoria (Is. 8.19); meanwhile, the failure of a wealthy man to entertain the wives of fellow demesmen at the Thesmophoria feast was used to show that Pyrrhus was not married into the family concerned (Is. 3.80).

Participation, however, was never presented as an onerous burden, although expenditure on festivities related to cult was frequently presented as a public service. Contributions to public sacrifices were presented by Demosthenes as euergetic behaviour: they were repeated in his quotation of his honorary decree (D. 18.118). The dedication of victory tripods could be construed as an obligation of piety (above 4.4.3). The practice of setting up tripods, the prizes for choregic victories, on elaborate bases was one frequently mentioned in oratory (Lys. 26.4; Is. 7.40; cf. Is. 5.41, 44; D. 42.22), and suggests that the congruity of piety and ostentatious display was frequently made manifest. Additionally, aspects of the performance of the *choregia* could be construed as an expression of piety: Demosthenes claimed that as a crowned *choregos* he was doing a public service to Dionysus (D. 21.56, 126), and the fact that the guidance of the oracles at Delphi and Dodona directed the performance of the festivities at the Dionysia meant that anyone who interfered with their performance was guilty of impiety (D. 21.51–5). Demosthenes, however, claimed

<sup>309</sup> 'Even if there was no law that explicitly required Athenians to be phratry members, a point on which we cannot be certain, as a matter not only of social normality but also of legal implication and contemporary concept, every Athenian citizen was a phratry member' (Lambert 1998: 57).

<sup>310</sup> Ogden (1996: 126–7) suggests that the legitimacy of Athenian citizens would have been probed at many stages of a citizen's life at the level of the phratry and deme. On what difference illegitimacy would make to one's civic obligations, see Ch. 6.1.

<sup>311</sup> Detienne (1977: 78).

that religious duties were quite separate from choregic liturgies in his attack on Leptines' abolition of exemption. Demosthenes suggests that Leptines will claim that liturgies (like the *choregia* and *gymnasarchia* and public feasting) were religious duties, and that it is monstrous that anyone should be exempt from the dues of religion (*τῶν ἱερῶν ἀτελής*) (D. 20.125–6). Demosthenes claimed that the pre-Leptines law on immunity arranged for the award of immunity, but not from religious duties (*ta hiera*, D. 20.128), and that the immunity granted was from the regularly recurring duties like the *choregia*, the *gymnasarchia*, and public feasting (D. 20.130; cf. D. 20.21). What this suggests is that there was considerable contention as to whether the *choregia* should be considered as the performance of a religious obligation.

The epigraphical and oratorical record also indicates that maintenance and regulation of sacrifices and processions was a major area of state intervention and must have produced multifarious obligations specific to certain offices.<sup>312</sup> Accordingly, Nicomachus' apparent tampering with the sacred calendar of the Athenians resulted in a public trial, and the speech made against him suggested that there was public concern for the right fulfilment of traditional sacrifices (Lys. 30.17–20). Religious officials were prosecuted for non-fulfilment of duties (D. 59.116),<sup>313</sup> and were subject to examination of accounts like any other magistrate in Athens (Aeschin. 3.18).

Directives concerning religious activity were sometimes laid out in the inscriptions of the city. Throughout the fifth and fourth centuries, the Athenians appear to have been keen on writing up on stone 'sacred calendars', which recorded sacrifices which the officials of the *polis* were due to make to the gods and heroes of Attica (Lys. 30.19–20).<sup>314</sup> While the publication on stone of laws on sacred land and property and on religious matters was known throughout the fourth century, the Athenians appear to have intensified publication

<sup>312</sup> On state intervention in cult practice, see Ostwald (1986: 169–71); Aleshire (1994); Jameson (1998).

<sup>313</sup> For devices used to ensure priests perform duties, see Feaver (1957: 144–6); D. 59.73.

<sup>314</sup> The latest edition of the late fifth-century sacrificial calendar is Lambert (2002*b*).

of regulations for specific festivals in the 340s.<sup>315</sup> From this period, inscribed laws and decrees often laid out the duties of magistrates regarding cult activity, and the inscription concerning the Little Panathenaia gives precise details about the sacrificial duties of the *hieropoioi* (RO 81.12–17, 34–5). The inscription recording the decree or law about the truce related to the Mysteries contains regulations about *dokimasia* for the heralds, hierophants, the truce for the Mysteries, *manteia* (oracular consultation), and the *thesmothetai*. It concerns regulations for sending out of *spondophoroi*, and the herald's announcement of the truce (Ag. xvi. 56 a 22–3). The *epimeletai* were to oversee the festival to the two goddesses (a 29–30); the Athenian *demos* was to choose two of these *epimeletai* from the Athenians of over 30 years of age and one from each of the Kerykes and Eumolpidai (31). There was to be a punishment for those *epimeletai* who had demonstrated *akosmia* (disorder) (32). Punishments or fines were to be recorded and the money was to belong to the goddesses. Given that those selected to be *epistatai* (overseers) of the Eleusinian Mysteries were not permitted to refuse office in the fifth century (IG I<sup>3</sup> 32.7, 14), it is possible that other religious offices might have been allotted without prior voluntarism in the fourth century. However, the epigraphical evidence gives no other information about compulsory religious office-holding.

The obligations discussed in decrees and laws concerning religious behaviour could concern the religious duties of the city as a whole. In the decree concerning the giving of *aparchai* (first fruits) to Demeter and Kore (IG II<sup>2</sup> 140), the *demos* was responsible for measuring the grain (10–13). The *boule* was to send the *aparchai* and to ensure that all the sacrifices were made (13–18). The decree relating to the dispute about the sacred *orgas* stipulates that the hierophant, *dadouchos*, and the families of the Kerykes and Eumolpidai, and anyone who wants among the rest of the Athenians, should help to set the boundaries of the sacred *orgas* (RO 58.12–15); furthermore, it demands that those ordained to do so by the law, the Areopagus, the *strategos epi ten phylaken tes choras* (general for the guard of the country), the *peripolarchoi* (patrol commanders), the demarchs, the *boule*, and those of the Athenians who want to, should take care of the sacred

<sup>315</sup> Lambert (2005: 131).

*orgas* in whatever way they know how (RO 58.16–23). Such were the regulations set out for religious officials in a few statutes preserved on stone; they give some impression of the vast range of duties to which such officers must have been liable.

Finally, it is worth commenting that religious activity constitutes an aspect of civic obligation to which the female citizens of Attica were particularly liable. There is little sense of this in Attic oratory, where female relatives' participation in the Thesmophoria could be capitalized by male litigants. But inscribed dedications made by women are indicative of an ostentatious fulfilment of the duties of piety: witness the *plynes* (washers) who made a sculpted dedication to the Nymphs and all the gods in the middle of the fourth century (IG II<sup>2</sup> 2934).

There is some limited fourth-century evidence for the practice of setting up statues of late priestesses, though, with the exception of the statue for the priestess of Demeter set up by her brothers (*SEG* li. 215), there is little indication of the historical context of these bases or who was responsible for setting them up (IG II<sup>2</sup> 3453, 3455). The evidence of funerary sculpture also gives some insight into the ostentation of women's religious activity, even though only on a small number of monuments is there any attempt to show detail of engagement with cult activity (*CAT* vi. 147–8).<sup>316</sup> The most striking example of this are the funeral memorials of the first priestess of Athena Nike. A marble *lekythos* (oil jar) with relief was found in 1873 in an area near the Diochares Gate of the city, an area assumed to be an ancient cemetery (IG I<sup>3</sup> 1330).<sup>317</sup> The relief depicts a woman, labelled with the name Myrrhine, led off by Hermes past three figures gathered around a funeral *stele*. The other figures look towards the youthful and idealized figure of Myrrhine, who stands taller than the other mortals. Myrrhine has been identified as the first priestess of Athena Nike, a prominent official in her own right. However, the prominence of an old man, dressed in what Rahn calls 'the typical garb of an eminent Athenian citizen', perhaps a male relative of Myrrhine, should also be noted (Rahn 1986: 197). In addition to the marble *lekythos*, a grave *stele* of probably the same priestess was discovered near the modern

<sup>316</sup> Stears (1995: 123); Bergemann (1997: 45).

<sup>317</sup> Rahn (1986).

Attic village of Zographo, at the northern tip of Mount Hymettos.<sup>318</sup> The *stele* makes a declaration of Myrrhine's public service in tending the temple of Athena Nike. 'This distinguished grave is for Callimachus' daughter, who first tended the temple of Nike. Her name was a friend of repute; she was called Myrrhine truly by the luck of the gods. She was the first to keep the shrine of Athena Nike. Fair-fated Myrrhine, picked by lot from all'.<sup>319</sup> The role of fortune and the gods is emphasized in the inscription, but the appearance of her father in the first line suggests her family's appropriation of the social capital accumulated by a female member's fulfilment of an office.

The Athenian sphere of religious obligations suggests a huge gulf between the Athenian world of obligations and those of Rawlsian theory. Rawls's distinction between religious and political morality is particularly foreign to Athens. Moreover, his pluralistic concern for religious freedom results in the absence of advocacy for a specific form of religion in the just society: the obligations of *polis*-religion are distant from this model.

<sup>318</sup> It is possible that the *lekythos* was a public monument set up by the Athenians to commemorate the priestess, or that it was set up by her family: Rahn (1986: 206–7).

<sup>319</sup> Translation adapted from Mark (1993: 112). Καλλιμάχο θυγατρὸς τηλαυγέ|ς μνήμα, | ἧ πρώτη | Νίκης ἀμφεπόλ|ευσε νεών. | εὐλογίαι δ' ὄνομ' ἔσχ|ε συνέμπορον, ὡ|ς ἀπὸ θείας | Μυρ|ρίν<η ἐ>κλήθη συ|ντυχίας· ἐτύμω|ς; | πρώτε Ἀθηναί|ας Νίκας ἔδος ἀ|μφεπόλευσεν | ἐ|κ πάντων κλήρω|ι, Μυρρίνη εὐτυ|χίαι.

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## Conclusion

This concluding chapter will draw together the implications of the ancient evidence for the negotiation and performance of civic obligation and their relation to individual liberty, pointing out along the way resemblances to, and departures from, the Rawlsian world (6.1); there follows a section discussing how the situation in ancient Athens compares to the Rawlsian system of liberty and obligation which emerged in Chapter 2 (6.2); finally, the possibility that this system of liberty and obligation represents a framework for thinking about the Greek *poleis* beyond fourth-century democratic Athens will be raised (6.3).

### 6.1. ATHENIAN CIVIC OBLIGATION AND LIBERTY

Chapter 5 identified those acts of public and private behaviour that were construed, in public contexts (primarily epigraphical and oratorical), to be beneficial, and the neglect of which was perceived to be deleterious, to Athens and the Athenian *demos*. These constituted the obligations of the citizen as a participant in the *polis* of ancient Athens.

Through values such as reciprocity, necessity, participation, sharing, and consensual contribution, by devices such as the ‘domino effect’ and generalization, through ideas such as shame and emotion, through legislation, through historical examples and documentary evidence, and by fiat, orators and proposers of decrees and laws negotiated the obligations of the citizen-body in the law



courts and in the *ecclesia*; the display of legislation and transactions of the *polis* in public places also contributed to this process. Citizens played a part in this process of negotiation by demonstrating their own performance of public roles in dedications and grave monuments.

It has proved difficult to determine which obligations were institutional, that is to say, grounded in statutes and procedures, because of the tendency of Lycurgus, like other orators, to emphasize factors grounding obligations other than legislation. He portrayed military service, for instance, as the consequence of patriotic voluntarism. Accordingly, Leocrates is portrayed as being oblivious to both the institutional and social demands of life within the *polis* or even his own *oikos*. In defence speeches the Attic orators aimed, with reference to the performance of civic obligations, to present themselves or their clients as having performed their civic obligations often with supererogation. The orators presented their performance of obligations not so much as the result of blind submission to the demands of law but rather as a consensual reaction, sometimes supererogatory, to socially demanded norms. This putative flexibility of obligations thus vindicates the decision to talk, in most cases, about the 'performance' rather than the 'fulfilment' of obligations.

What has emerged perhaps most clearly from this study is the centrality of performing 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*. The role of laws, decrees, and inscriptions was not only to command citizens to fulfil obligations, but also to guide them in the general direction of acceptable civic behaviour. This observation is reinforced by the fact that paradigms of civic obligation were justified and encouraged in honorary decrees and other inscriptions of the Athenian *demos* using expressions of reciprocity and competitive emulation, and by publicizing the good nature of the Athenians. Athenian citizens commemorated their own performance of obligations and participation in civic activity by making dedications that recorded their activity, while families of Athenian citizens sometimes commemorated their performance of obligations in the epigraphy and iconography of their burial markers.

The system of obligation in the Attic orators concerned both public and private behaviour: the publicly perceived close relation of domestic and public obligations meant that the city policed family relationships through regulation of burial and production of offspring. The incursion of the state into the family life of prominent citizens is well exemplified by the *dokimasia* process.<sup>1</sup> For an ambitious citizen, the exclusion from office that followed failure at the *dokimasia* made certain standards of behaviour imperative: in a direct democracy, annulment of the right to office was tantamount to the removal of an important part of one's civic rights. In this way the institutions of the Athenian *polis* made familial obligations important in a public context, especially for the politically ambitious man. The conflation of public with domestic and personal obligations meant that public and personal morality were blurred, and any conception of individual liberty outside that closely connected with citizenship was displaced or rendered insignificant.

The obligations of the Athenian citizen were unevenly enforced: some by law, others by social pressure. Outside the obligations of military service and, in certain circumstances, serving on the *boule*, what one was obliged by institutions and social pressure to do was dictated by one's status, wealth, gender, and ambition: as a rich man, Demosthenes found himself obliged to contribute to *epidoseis*, the trierarchy, and the *choregia*. As a prominent politician, he felt the obligation to propose decrees in the assembly and to give advice where it was expedient. Leocrates, as a citizen and merchant, incurred on himself the obligation to contribute towards the safeguarding of the Athenian grain supply; Lycurgus, as the self-styled chief inquisitor of the Athenians, earned himself the obligation to bring shirkers to court.

Even the 'quiet Athenian', in order to avoid the risk of being prosecuted for avoidance of obligations, would have been obliged to obey the ordinances of Athens, present himself for military and ephobic service if and when called upon to do so, pay the *eisphora* and carry out the *trierarchia* as relevant to his wealth band, care for his parents in old age and perform burial rites for close relatives, uphold the pure Athenian bloodline of his family, carry out bouletic

<sup>1</sup> On *dokimasia*, see Ch. 4.1.

service when called upon, not behave in a way that could be seen as impious, and toe the general line of the policy of the Athenian *demos*.

Similarly, the politically active Athenian, because of the scrutiny that his life was under, would have to observe these as well as more specific obligations attached to his position. The politician would present himself as liable for further financial obligations, giving political advice, acting as *ho boulomenos* to uphold justice and the laws, attending public burials, and helping the city of Athens safeguard grain supplies; a sphere of obligations related to upholding the international reputation of the Athenians has also emerged.<sup>2</sup> On the whole, the obligations of the Athenian citizen are a reflection of the main concerns expressed by the Athenian *polis* for its survival as an entity: burial of the dead, public finances, the upkeep of the armed forces, the functioning of the political system and justice, the securing of the grain supply, piety, and civil obedience. The orators' and proposers' system of obligation relied on an idea of reciprocity between the citizen and the *polis*: increased involvement and privilege necessarily led to increased obligation. The citizen who was empowered in certain ways became obligated in certain ways.

While Rawls recognizes that the elite are more likely to bear significant obligations than the rest of society, the precise significance of class, status, and gender in ancient Athens is a factor that the Rawlsian model has been unable to account for. Although Demosthenes urged the Athenians at the assembly to forget their socio-economic differences when distributing the burden of obligations (2.30), it is the case that socio-economic position would have made a great difference to the obligations of the Athenian citizen. Whether or not *thetes* were liable to conscription is unclear.<sup>3</sup> Such problems are unlikely to be resolved for certain. Accordingly, it is necessary to envisage *thetes* as located on the fringes of the citizen-body, possibly liable to military conscription, and with the opportunity of volunteering for action, but with greater prospect than other citizen classes of avoiding it. Todd has pointed out that there are extant only very few orations that are made by speakers who assume identities that exclude them

<sup>2</sup> See Chs. 4.1.7.1, 4.2.2.2, 5.2.2.

<sup>3</sup> See Ch. 5.1.1.

completely from any kind of social elite (Lys. 24; D. 55).<sup>4</sup> Though, at one point, the lame speaker of Lysias 24 actually mocks the idea that his accuser might challenge him to an *antidosis* about the *choregia* (Lys. 24.9), even these individuals mention their fulfilment of civic obligations: the peasant son of Teisias makes a reference to the family tombs on his land (D. 55.15). The lame speaker still claims that he is a better citizen than his opponent (Lys. 24.1–3), making a reference to his support of his mother until her death (Lys. 24.6), and reminding the audience that he left the city with the democrats for Chalcis in 404 (Lys. 24.25). Given that they would not have been liable to financial obligations, the duties of the poorest citizens may, on the whole, have had less public impact. As for the obligations of privately owned slaves, they fall outside the sphere of civic obligation, as they would have been concentrated around service and obedience to their masters.<sup>5</sup> The obligations of the publicly owned slave would have been rather different, and entirely oriented to the service of the city.<sup>6</sup>

Female citizens in Athens lacked the most basic political and litigious rights. As citizens, they were most heavily obligated in respect of the social labour of childbearing and religious activity.<sup>7</sup> Of course, involvement in religion would vary according to the social status of the women concerned. Similarly, women's familial obligations and opportunities would have been determined by social status: famously, Apollodorus, linking the role of women to their relations with men, makes it the duty of (citizen) wives to bear children and look after the home, while *pallakai* were for tending of the body, and *hetairai* for pleasure ([D.] 59.122).<sup>8</sup> While men would perform liturgies on behalf of their wives (Is. 3.80), it is possible in theory that the names of rich heiresses could appear in the lists of the 1,200 contributors

<sup>4</sup> The son of Aristodemus claimed his plaintiff father was poor (D. 44.7), but the poverty of this family was relative; cf. *APF* 5638. On the disproportionately high representation of the wealthy in litigation, see M. R. Christ (1998: 33) and Rubinstein (2000: 77); in politics, see Williams (1982: 52–96) and Sinclair (1988*b*). The speaker of Isocrates' 20 (*Against Lochites*) also claimed to be a poor man (Isoc. 20.19).

<sup>5</sup> On the economic obligations of a wealthy slave, see E. E. Cohen (1988).

<sup>6</sup> Hunter (2000*b*: 11–12).

<sup>7</sup> For treatment of women as citizens, see Mossé (1985); Katz (1999); C. B. Patterson (1986); Blok (2005). For the idea that female citizenship was restricted, see Loraux (1983).

<sup>8</sup> Kapparis (1999: 422–4).

to the trierarchic fund, which posed problems for the allocation of the *trierarchia*.<sup>9</sup> Still, there is no positive evidence to point to women paying liturgies or the *eisphora* in their own name,<sup>10</sup> and there is a heavy presumption against the possibility. It goes without saying that, for the most part, Rawls advocates equality of duties for the two sexes, and so his theory cannot contribute to an understanding of women's obligations as they were in ancient Athens.

The *polis*, as a community consisting primarily of male citizens, excluded other status groups from many of its privileges and obligations. Outside the citizen-body there may have existed non-citizen residents of Attica, who were sometimes described as *astoi* but not *xenoi*:<sup>11</sup> they might have participated as much or as little as they were inclined. One group of them, *nothoi* (bastards), probably would have had to serve in the army, though it is likely that Pericles' citizenship law and its re-enactment in 403/2 reinforced the exclusion of *nothoi* from most kinds of participation.<sup>12</sup> Those who were disenfranchised as a punishment were excluded from the rights of citizenship by the withdrawal of the right to speak in the assembly or serve on the council, and loss of the right to prosecute or to enter the *agora* (And. 1.73–6).<sup>13</sup> The status group of the individual dictated their liability to civic obligations. Obviously, metics would be expected to adhere to the laws of Athens (Hyp. *Ath.* 13–14), and certain laws would apply exclusively to metics (Hyp. *Ath.* 29, 33). A metic would be obliged to pay the *metoikion*;<sup>14</sup> would share in the civic obligations of the *choregia*, which could provide him with a source of public honour (Lys. 12.20);<sup>15</sup> would pay *eisphora* at probably a higher rate unless granted

<sup>9</sup> See Ch. 5.4.2.1. <sup>10</sup> Schaps (1979: 117 n. 105); cf. de Ste Croix (1970).

<sup>11</sup> E. E. Cohen (1997: 80–1; 2000a); Lotze (2000: 283–309); Blok (2005: 15–22). R. G. Osborne (2002) points out that the evidence for *astoi* (locals) who were not citizens is extremely slim.

<sup>12</sup> Ogden (1996: 166–208); Whitehead (1986c); C. B. Patterson (1990: 63–5); Davies (2000: 217).

<sup>13</sup> Harrison (1968–71: ii. 169–76) suggests that there coexisted two forms of disenfranchisement (*atimia*). One took the form of outlawry, exile, and extension of sanctions to one's family; the other amounted to annulment of political and religious rights and privileges. MacDowell (1978: 73–5) suggests that the second form evolved from the first.

<sup>14</sup> Whitehead (1977: 75); Todd (1993: 113–14).

<sup>15</sup> Whitehead (1977: 80–2); cf. C. B. Patterson (2000: 95–6).

the privilege of paying it alongside citizens.<sup>16</sup> He would have taken part in expeditions with the army, most probably in separate units,<sup>17</sup> although it is unlikely he would be eligible to perform the trierarchy,<sup>18</sup> while his access to legal processes was severely restricted.<sup>19</sup>

Largely, the degree of participation of a metic was down to his own choice and inclination, although paying *eisphora* and marching with the Athenian army were honours designed to give the impression of further integration into the citizen-body. However, the fact that they were, unlike *thetes*, integrated into the main part of the Panathenaic procession suggests that the Athenians, in the fifth century at least, emphasized their contribution.<sup>20</sup> However, the Athenians retained a strict distinction in terms of obligation and participation between citizens and slaves, metics, debtors, and the disenfranchised. The strong desire to distinguish between the status groups of citizen and slave and the Athenian association of citizenship and military obligation explains the rejection of Hyperides' proposal, made in the aftermath of Chaironea, suggesting that these groups be enfranchised for the purposes of military service.<sup>21</sup> Of course, Rawls's theory cannot account for the presence of the Athenian metic or slaves, or the fluctuation of obligations according to one's status group.

Of all obligations, the military obligations of the Athenian citizen were most highly prioritized: indeed, the majority of the financial obligations of the Athenian citizen were closely related to the military functions of the Athenian citizen. The military obligation of ephebic service acted as an introduction of the citizen into the sphere of civic obligation, while the end of liability to military service was marked by the addition of the service of arbitration. Such a hierarchy of civic obligations is alien to Rawls's interpretation of a just society.

Over the course of the fourth century there were several points at which there were attempts to tighten up the institutional obligations of the Athenian citizen, or at least to define more exactly those groups of citizens eligible to that particular obligation. There were

<sup>16</sup> Whitehead (1977: 78–80); de Ste Croix (1953: 32 n. 5); Brun (1983: 17).

<sup>17</sup> Whitehead (1977: 82–6).

<sup>18</sup> Clark (1990: 65–6); cf. Whitehead (1977: 80–2); Todd (1997: 115); C. B. Patterson (2000: 95–6 n. 7).

<sup>19</sup> C. B. Patterson (2000).

<sup>20</sup> Maurizio (1998: 299).

<sup>21</sup> See Ch. 3.6.

reforms on the collection of *eisphora* tax in 378,<sup>22</sup> the introduction of conscription by age class in the period 386–366,<sup>23</sup> the reorganization of the trierarchy in 378/7, 358/7, and 340,<sup>24</sup> the introduction of compulsory *diatetai* service in 399/8,<sup>25</sup> the reorganization of ephebic service in 335/4,<sup>26</sup> and the growing frequency of epigraphical publication over the Lycurgan period.<sup>27</sup> For the most part, these reforms should be seen as efforts to tighten up the definition according to which citizens were liable to specific obligations, rather than efforts at an ideological equalization of the duties. These seem to have taken place after the restoration of democracy, around the time of the foundation of the Second Athenian Confederacy, and then again in the period of, and immediately after, the Social War. However, the emphasis of our conclusion is on the workings of obligation in the latter period, because it is from this era that there survive a considerable body of speeches with implications for understanding the relationship of obligation and liberty, while the epigraphical evidence is also most fruitful for this period. It is worth remarking that Rawls's theory, as a philosophical work outlining a 'realistic utopia' based on a hypothetical social contract, was never intended to account for historical change, and any change in the encouragement of obligations detected in this work is derived separately from Rawlsian interpretation.

But the aim of this book remains to move towards an analysis of liberty based upon a survey of the obligations of the Athenian citizen. In the light of this considerable evidence for a strong association between citizenship and civic obligation, it is possible to think about the implications for an analysis of the nature of Athenian liberty. On this front, there are four conclusions to be drawn, and the coincidence of these with my summary of the Rawlsian exposition should be noted.<sup>28</sup>

In the first place, the *polis* was the organization that was held to maintain the liberty of the individual. This investigation has illustrated that participation and obligations were conceived as a central part of citizenship. Many of the activities that have emerged as obligations were restricted to the free (that is to say, the male, properly

<sup>22</sup> See Ch. 5.3.1.

<sup>25</sup> See Ch. 5.3.2.

<sup>28</sup> See Ch. 2.14.

<sup>23</sup> See Ch. 5.5.1.

<sup>26</sup> See Ch. 5.5.3.

<sup>24</sup> See Ch. 5.4.2.1.

<sup>27</sup> See Ch. 3.3.

parented, Athenian) citizen, and some of them can be construed also as rights. Possession of citizenship of the Athenian *polis* constituted the most important expression of one's liberty. Liberties such as the freedom of speech carried with them obligations, and such obligations became heavier and more closely scrutinized for those involved more deeply in public life. Secondly, the performance of civic obligations was held to be the kind of activity that upheld the liberty of the citizen-body: this was clearest in the discussion of military obligations. Thirdly, obligations did not impinge upon the liberty of the obligation performer. As was stated above (Chapter 1), the interpretation of liberty as of living as one likes, independently of law and obligations, is acknowledged, but strongly disapproved of. No orator ever addressed the possibility that the performance, fulfilment, or even enforcement of civic obligations might stand in the way of freedom: this was outside the discourse of Athenian democracy. The rule of law and existence of obligations would only have appeared as impediments to liberty had it been possible to contest publicly the rectitude of their existence at the *ecclesia* and law court. Fourthly, it is necessary to stress the prominence to claims at euergetic behaviour implied in inscriptions and oratory. Athenian citizens regularly appear to have advertised themselves as being not coerced, but inspired to carry out their obligations and uphold liberty; moreover, the Athenians appear to have overcome the tensions resulting from gaps in the economic condition of citizens by encouraging the wealthy to make public-spirited financial donations. The performance of duties in a way that safeguarded the *polis* was inspired by the desire to uphold liberty. The idea that freedom is at least partly constituted by fulfilling one's obligations has not emerged explicitly, but implicitly, through the equation that says that living in a *polis*, a lifestyle that bestowed obligations, was the best way to be free.

## 6.2. RAWLS AND ATHENS REVISITED

Having already observed some preliminary coincidences and differences in our portrait of Athens and that of Rawls, and some major general coincidences in the shape of the four-point scheme



outlined above, it is now necessary to discuss those aspects of this interpretation of Athenian liberty that might be considered Rawlsian and those that might be considered distant from Rawls's theories. The most important debate in political thought addressed by Rawls's theory of justice is of more direct relevance to this book: this is his attempt to adjudicate between ancient and modern ideas of liberty. The idea of liberty formulated by Rawls adjudicates between the political and individual distinction that has been prevalent in considerations of Greek liberty since Constant, and also allows for the coexistence of both positive and negative liberties. His interpretations of liberty have resonance with those located in Athens. The four-point scheme of the compatibility of liberty and obligation worked out for Rawls (Chapter 2.14) and for Athens (Chapter 6.1) shows that there are four major areas of compatibility: the idea that obligations, construed as citizenship, come close to being the substance of citizenship; the idea that obligations defend liberty; the idea that obligations are not incompatible with liberty; and the idea that the privilege of liberty or citizenship inspires or encourages citizens to perform civic obligations virtuously. Such compatibilities suggest that Rawls's idea of liberty is a more appropriate starting point for an analysis of the functioning of liberty in Athens than the dichotomized system dominant in analyses of Athenian liberty since Constant.

Certain aspects of Rawls's liberty are distant from Athens: for instance, the freedom of movement and association insisted upon by a theorist who advocates an open society<sup>29</sup> do not appear to be explicitly valued in Athens. On the whole, Rawls is more interested in liberties that value the individual's freedom of choice than are the Athenian sources. However, there are some aspects of liberty that are common to Athens and Rawls that fall outside the sphere of civic obligation: the Rawlsian notion of freedom from forced work obviously is compatible with the Athenian contrast of slavery with the situation of the citizen. Rawls's idea that political liberties exist for the defence of other liberties has resonance with Demosthenes' claims about the intentions of his policy.<sup>30</sup> There are also compatibilities outside the sphere of liberty and on the level of duty and participation.

<sup>29</sup> See Ch. 2.8.1.

<sup>30</sup> See Ch. 5.2.

Rawls's framework of 'requirements' emphasized the duty to uphold justice by supporting and furthering just institutions (TJ 293–301). The ancient Greek *polis* was regarded by its citizens as a just institution that preserved its citizens' liberty; in return for this, its citizens were obliged to comply and to perform a share in the *polis*; the direct participatory nature of Athenian democracy meant that the citizen was responsible for the establishment and enforcement of justice. An emphasis on participation, not necessarily on the level of politics but rather on the level of partaking in social life, is manifest in both Rawls and the ancient sources. For Rawls, the fact that all humans possess rationality, which qualifies them to partake in societal affairs; for the Athenians, the qualification was membership of the citizen-body, and citizens are necessarily rational beings, given that they have the right to take part in political and judicial deliberation. The rhetoric that Rawls uses, demanding that even citizens participating in society at the lowest level must act with the same responsibility as if they were participating at a high level, is reminiscent of the amplificatory tendency of Attic oratory. Moreover, Rawls's repugnance for the 'free-rider' who rejects all aspects of participation is reminiscent of Lycurgus' character assassination in the prosecution of Leocrates, the ultimate defaulter of the duties owed to the *polis*. The notion that, even if not everyone takes part in politics, then they must at least envisage their decisions as carrying the weight as if they did, is a thought experiment common to the ancient evidence and the Rawlsian world that bears considerable rhetorical clout. For Rawls, there exists a notion of political obligation which, being concentrated upon those members of society who are politically active, is notably less widespread than the natural duties. In Athens, similarly, on the basis of the *On the Crown* trial speeches, there was a limited political obligation for the non-specialist, with political obligations most incumbent upon those who participated at the highest level. But one striking difference is that it is unlikely that, in the fourth century, the Athenians conceived of a sphere of political obligation that was removed from the other obligations of the citizen: at a high level, political performance, as the career of Demosthenes makes clear, was tied up with appropriate performance of judicial, financial, and religious duties.

Closely related to the conception of expertise is a significant difference between the Rawlsian universe and ancient Athens: the description of the 'requirements'. While the ancient Athenian sources do not contain a terminological equivalent of Rawlsian distinction between natural duties and obligations as appears in *A Theory of Justice*, there is still some part of that distinction latent in Athens in terms of political obligation. Political obligations increase according to one's level of involvement.<sup>31</sup> In Rawlsian terms, Athenian political obligation would be an obligation by virtue of its being largely a self-inflicted requirement, and most other obligations would in fact be duties.

One major, but ultimately superficial, difference between the two is the gap in description of duties. The sources for fourth-century Athens have enabled the creation of a detailed picture of the substance of many of the duties of the Athenian citizen. Rawls, on the other hand, writing as a philosopher, tends to describe duties in the abstract: the most important duty is that of upholding and furthering just institutions. The Athenians did not conceive of such a duty in abstract terms, but, in fact, this was the principle that underlay civic obligations: upholding and furthering the just institution that was the *polis*. For instance, the obligation of the Athenian citizen to contribute to the securing of the grain supply of his city might be regarded as part of the obligation to uphold the *polis*. Moreover, though Rawls talks about the family as an association which incurs obligations on its members (*TJ* 409), he says nothing about what the substance of such obligations might be. There are other Rawlsian duties, chiefly those towards other citizens such as the duty to help others in need, the duty not to harm or injure another, and the duty not to cause unnecessary suffering (*TJ* 98). These duties are owed towards one's fellow members of a community, and in an Athenian context are construed as being an important aspect of the citizen's duty to the wider community.

While most of Rawls's discussion of obligations takes place in the abstract, he does talk about the financial and military obligations of the citizen. He highlights taxation and military duties as types of duty that have to be enforced, mirroring the Athenian evidence, which flags financial obligations and military service as two of the duties

<sup>31</sup> See Ch. 5.2.

most closely attached to Athenian citizenship. Indeed, the Athenians might have shared Rawls's scepticism about the appropriateness for a citizen of taxation on income. However, there is significant discrepancy between Athens and Rawls's idea of a just society in the prominence and the negotiation of these obligations: Rawls considers that military service comes close to impinging on liberty.<sup>32</sup> This is avoided, however, by the rule that conscription is justified only into an army that fights on behalf of liberty.

In both Rawls and Athens, duties and obligations can be demanded by coercive processes but also by a range of social pressures, and they are seen as a response to the benefits of living in society. The relationship of duties and rights to law deserves comment. Rawls thinks of law as essential in protecting the rights of the individual, and laws are responsible for directing some but not all requirements. For Rawls, a legal system is a coercive order of public rules that is addressed to rational persons for the purpose of regulating their conduct and providing a framework for social cooperation. They are the basis for claims and assumptions that citizens make about their own duties and obligations and also each other's behaviour. If these assumptions are uncertain, then so are men's liberties (*TJ* 207). Liberty is similarly endangered if the following principles are violated: that there is no crime without law, that laws must be sufficiently publicized and promulgated, and that there should exist no laws directed against named individuals (*TJ* 209). All these are points that are well known to anyone familiar with Athenian law. However, allowance is made by Rawls, in a non-ideal society, for the notion of civil disobedience to unjust laws. This is a tenet that might or might not be seen as reflective of the *polis*-attitude towards unjust legislation. The existence of the *graphe paranomon*, and the supposed service that a citizen provided by bringing a prosecution against an unjust law, might be held up as a parallel.

There are, it must be noted, considerable discrepancies between Athens and Rawls. Rawls's insistence on equality of liberty for all citizens is absent from Athens, and, in general, his interest in equality (though as a value surrendering priority to liberty) is absent from the Athenian discourse of liberty and obligation. Rawls's insistence

<sup>32</sup> See Ch. 2.9.1.

in *Political Liberalism* that it is possible to separate political morality from any other kind of morality is also far removed from the Athens of Demosthenes. There were considerable differences in the negotiation of obligations: the Athenian sources elaborate in more detail the justification of obligations; while Rawls's theory does mention different bases upon which obligations might be made legitimate,<sup>33</sup> his stress is on duties as natural requirements that are just because they were accepted at the original position.

In terms of substance, the Athenian sources provide no clear distinction between duties and obligation. Furthermore, while Rawls is interested in ensuring a gender equality foreign to ancient Athens, he was not interested in creating a separate sphere of women's duties. Perhaps most importantly, however, *polis*-religion does indeed seem to have conferred a sphere of religious obligations, many of them statutory, and could be conceived as the starting point of other duties. While he tolerates religion in forms that do not threaten liberty or justice, Rawls objects to the idea that religious beliefs might provide a basis for ethics and justice, or indeed that there could be a state religion that charged citizens with duties and requirements (*Law*, 149–50). He generally takes the line of de Tocqueville that the separation of church and state contributes to the strength of a democracy (*Law*, 167). Rawls's theory is not alone in leaving a gap where *polis*-religion existed in ancient Athens: the same absence is striking also in the Athens of George Grote's *History of Greece*.

Having used Rawlsian theory as a springboard for an interpretation of the relationship between civic obligation and individual liberty in ancient Athens, differences and similarities have emerged between the ancient example and the impression of liberty in the work of Rawls. The similarities are clear in the general scheme of obligation and liberty, but the differences emerge when more focus is lent to the workings of civic obligation and the details of *polis*-life. So far this chapter has summarized the substantive conclusions of this study and has highlighted the interface with the Rawlsian world. What has emerged is that the scheme of liberty and obligation exhibits

<sup>33</sup> See Ch. 2.9.1 and the criticisms of Klosko (2005) at Ch. 2.10.

compatibility in the modern models and the ancient example; the details exhibit differences and serve to highlight important differences between ancient and modern ideas about liberty and obligation. It remains to ask whether this scheme is one that might work in Greek *poleis* beyond Athens.

### 6.3. ARISTOTLE AND THE *POLEIS* OF OBLIGATION

*Civic Obligation and Individual Liberty* has proceeded by examining exclusively Athenian sources, and has applied the analysis of obligation and liberty to the Athenian example alone. The dearth of non-Attic oratorical evidence prevents the creation of a comparably detailed picture of the negotiation of civic obligation and individual liberty for other Greek cities and organizations. But this does not necessarily mean that Constant was right to suggest that Athenian liberty was exceptional in the ancient world.<sup>34</sup> Indeed, mainly epigraphical evidence does suggest the existence of a wide range of civic obligations outside Athens in the fourth century and beyond. The fifth-century Athenians imposed political (ML 40), religious (ML 49), and financial (ML 50) obligations on the *poleis* subject to the Athenian empire, and the fourth-century Athenians imposed religious obligations on those cities they regarded as their colonies (RO 29). Outside the direct Athenian sphere of influence, a late fourth-century law from Delphi prohibits maltreatment of parents (Arnaoutoglou 22); a law from Eretria of the 330s or 340s suggests appropriate behaviour in the case of a tyranny or oligarchy being established in that city;<sup>35</sup> a tradition recalled by Plutarch remembered that childbirth was held to be a euergetic activity on a par with that of military service in Sparta (Plu. *Lyc.* 27; *IG V* 701–10, 713–14); there is ample evidence that institutions like the *gymnasarchia* and the ephebic institution prospered in the cities of the Hellenistic world (Arnaoutoglou 98; *SEG* xxxiv. 602). A contribution known as *eisphora* existed in the cities of the Boeotian and Achaean confederacies (*Hell. Oxy.* 19.4; *Plb.* 4.60.4), while there is real evidence that individual financiers became a more important

<sup>34</sup> See Ch. 1.1.

<sup>35</sup> *BCH* 125 (2001), 198–238; 126 (2002), 143–204.

part of the institutions of the city in the Hellenistic world;<sup>36</sup> and the naval aristocracy of Hellenistic Rhodes appears to have taken seriously naval obligations in a way that surpassed the fourth-century Athenians.<sup>37</sup> The existence of monumental political meeting places in cities around the Greek world also suggests a shared emphasis on the political participation of the citizens;<sup>38</sup> dedications of choregic liturgists, and evidence for that and other liturgical operations, are known from outside Athens (*IG XI 105–33* from Delos).<sup>39</sup> Indeed, dedication after office was a practice that was prevalent across Greece from the sixth century onwards (*IG IX 707–10*).<sup>40</sup> The existence of the hortatory intention on honorary decrees deriving from other cities also attests to institutionalized attempts to return *charis* to those performing obligations with supererogation.<sup>41</sup>

Such evidence certainly suggests that outside Athens *polis*-institutions were concerned with negotiating, enforcing, and encouraging their citizens' fulfilment of obligations, and that their citizens were interested in demonstrating the performance of those obligations. Perhaps, therefore, it is possible that the compatibility of liberty and obligations may also be worked out in other fourth-century Greek *poleis*. It is possible that demography, the extent and nature of citizenship, subjection by external forces, or constitutional form alter the nature of obligation across the Greek world. Moreover, the sources for the workings of *poleis* other than Athens contain no discussion of the nature of *eleutheria* on the level of that provided by the Attic orators. This means that, while there is much evidence for how obligations were negotiated and performed outside Athens, there is little evidence for the relationship of those obligations to an idea of liberty.

However, another way of deciding whether this framework may be applied to cities beyond democratic Athens is to look at the place of civic obligation and liberty in a contemporary analysis of the *polis*, Aristotle's *Politics*. This work contains analysis of the substance and significance of the *polis* as a form of organization, description and criticism of constitutional forms both real and ideal, analysis of

<sup>36</sup> Gauthier (1985); Veyne (1990); Migeotte (1992).

<sup>37</sup> Gabrielsen (1997).

<sup>38</sup> W. McDonald (1943); Hansen and Fischer-Hansen (1994).

<sup>39</sup> Wilson (2000: 279–302).

<sup>40</sup> Rouse (1902: 259–73); Wallensten (2003).

<sup>41</sup> Larfeld (1902–7: i. 504–8).

political change, and some discussion of the role of the male citizen and his relation to the *polis*. Given its diversity of content, it is necessary to be aware of the difficulties in establishing the degree to which his descriptions of abstract constitutional forms are reflections of contemporary *poleis*: the question of whether his description of democracy is in fact an analysis of the Athenian democracy has been contested.<sup>42</sup> His analyses of democracy, oligarchy, and other constitutional forms combine empiricism with abstraction.

Firstly, it is necessary to decide whether Aristotle's idea of freedom, a condition which he most closely identifies with democracy, precludes the existence of obligations. This will form the basis of an investigation of whether Aristotle locates a concept of obligation in the *polis* more generally.

In his discussion of the postulates, ethical character, and aims of democracy, he writes:

A fundamental principle (*hypothesis*) of the democratic form of constitution is liberty (*eleutheria*): that is what is usually asserted, implying that only under this constitution do men participate in liberty, for they assert this as the aim of every democracy. But one factor of liberty is to govern and be governed in turn... this is one mark (*semeion*) which all democrats set down as a principle of the constitution. Another one is for a man to live as he likes; for they say that this is the function of liberty inasmuch as to live not as one likes is the life of a man that is a slave. This is the second principle of democracy, and from it has come the claim not to be governed, preferably not by anybody, or failing that, to govern and be governed in turns. (1317<sup>a</sup>40–<sup>b</sup>2, <sup>b</sup>10–16)

The first *semeion* of freedom is clearly compatible with the interpretation of this work: it relates to the rights of the Athenian citizen to partake in the magistracies and the Athenian assembly. The second *semeion*, of freedom as living as one pleases, taken at face value, resembles Isocrates' or Plato's interpretation of democratic liberty as a condition that precludes the fulfilment of civic obligations.<sup>43</sup> Newman argued that Aristotle intended it to represent a characteristic of the extreme Athenian democracy of the fifth century,<sup>44</sup> and more recently Lintott suggested that the idea represents a caricature and

<sup>42</sup> Hansen (1974: 14; 1998: 104); Strauss (1991: 218).

<sup>43</sup> See Ch. 1.4.

<sup>44</sup> Newman (1887–1902: iv. 496).



cannot be predicated of any kind of government.<sup>45</sup> Others, however, have pursued lines that do not interpret it as an attack on democratic liberty.

Two scholars have emphasized the strain of positive liberty implicit in the passage. Mulgan has argued that freedom for Aristotle is a question of independent value, and of being treated as an end and not as a means.<sup>46</sup> Bagionas stresses that Aristotle's liberty to live as one likes pointedly emphasizes the contrast with the life of a slave, that is, living in accordance with the desires of a despot or, alternatively, acting without plan or purpose:<sup>47</sup> therefore, democracy and the liberty of democracy could be seen as the most suitable conditions for a citizen free by nature. Another way of viewing the passage, as Rosler has pointed out, is to consider that Aristotle conceives of more than one kind of 'living as one wishes': it would mean anarchy to an extreme democrat, but living virtuously, reasonably, and within the confines of a constitution to a rational being.<sup>48</sup> Moreover, it is conceivable that he would approve of the latter, and that he conceives of it as compatible with a moderate democracy.<sup>49</sup>

Aristotle maintains that to live as one pleases is a popular view of the realization of freedom (*Pol.* 1317<sup>b</sup>10–11). Earlier in his work he had suggested that working from the dichotomy of slavery and doing whatever one wishes leads to a bad definition of liberty: 'for one should not think it slavery to live in harmony with the constitution, but safety' (*Pol.* 1310<sup>a</sup>34–6; cf. *Pol.* 1319<sup>b</sup>30). Moreover, for Aristotle, a *semeion* does not constitute a necessary condition, but is rather a sign from which general probabilities might be deduced, which might be fallible (*Arist. Rh.* 1357<sup>b</sup>21–2). Therefore, the right of individuals to live as they liked may not be a necessary condition for democratic liberty. Finally, Aristotle says that while this second feature of liberty can lead to the claim not to be governed, failing that it can be reduced to the principle 'to govern and be governed in turns' (*Pol.* 1317<sup>b</sup>16):

<sup>45</sup> Lintott (1992: 122 with n. 18).

<sup>46</sup> Mulgan (1970: 106–7).

<sup>47</sup> Bagionas (2003: 125–34).

<sup>48</sup> Rosler (2005: 150–67).

<sup>49</sup> For Aristotle's attitudes towards democracy, see Barnes (1990); Strauss (1991); Lintott (1992). For the view that Aristotle is sympathetic to democracy, see Ober (1994). Bates (2003) takes the view that Aristotle thinks of democracy as the best possible form of government, and does so because he admires both the superior capacity of the many to judge well, and the rule of law.

thus it emerges that the second feature of liberty can be reduced to something resembling the first. Clearly, Aristotle is more interested in liberty as ruling in turn than in as living as one likes. That democratic freedom might be envisaged as participation in ruling is clear from what he says at the opening of his discussion of democratic liberty at *Politics* 1317<sup>a</sup>41–2: only in a democracy do men participate in freedom. Because this freedom emerges as ‘ruling and ruling in turn’, it seems highly likely that Aristotle’s definition of democratic liberty, as participation in the magistracies of the *polis*, does not preclude our interpretation of liberty and civic obligation. But, beyond his interpretation of democratic liberty, does our analysis of civic obligation share any common ground with Aristotelian analyses of the *polis*?

Aristotle views the *polis*, his ultimate political form, as a *koinonia*, a community, which is formed with a view to some good (*Pol.* 1252<sup>a</sup>1–6), and ensures the good life and the performance of noble actions (1280<sup>b</sup>39–1281<sup>a</sup>4). Such an idea was implicit in the evidence gathered in Chapter 4 for the negotiation of obligations, where an important underlying assumption is that the sustenance and the well-being of the *polis* can justify the obligations of citizens.

Aristotle’s assessment of worthwhile human action is restricted to that which is carried out exclusively within the bounds of the *polis*. Famously, for Aristotle man is a ‘*polis animal*’ (*politikon zoon*) (1253<sup>a</sup>1–3), whose nature is most suited to dwelling and functioning within a *polis*. The happiness of the *polis* can be identified with that of each individual (1324<sup>a</sup>5–13, 1325<sup>b</sup>30–2), probably because the *polis* is the organism that offers opportunities for individuals to carry out virtuous behaviour: it is taken for granted that the best life is the one that provides sufficient means for taking part in virtuous actions (1323<sup>b</sup>40–1324<sup>a</sup>1). It follows, therefore, that the chief opportunities for carrying out such virtuous actions are those activities that are restricted to citizens, such as holding office, participating in the assembly, and judgment in litigation (1275<sup>a</sup>22–3, <sup>b</sup>19). The key value for assessing the potential contribution of the individual to the city is their civic virtue (*politike arete*): ‘those who contribute most to such fellowship have a larger part in the state than those who are their equals or superiors in freedom and birth but not their equals in civic virtue’ (1281<sup>a</sup>4–7). It is logical to assume, therefore, that those who have the most civic virtue are the ones who have the right to play

the biggest part in public life. But, converted into less abstract terms, what might be the exact substance of this contribution? It should be identified as contribution to deliberation, either through attendance at the assembly, jury service, or office-holding, given Aristotle's high valuation of mass deliberation about laws and justice (1287<sup>b</sup>22–5). Moreover, this is reinforced by his assertion in book 3 that the good citizen of any constitution is someone who has the ability to rule and be ruled in turn (1277<sup>a</sup>20–5). Aristotle, in the *Politics*, is reluctant to discuss the quietist citizen who has nothing to contribute to the governance of the *polis*.

At the start of book 7, Aristotle poses the question of whether the life of active citizenship and political activity (*to dia tou sumpoliteuesthai kai koinonein poleos*) is better than the life of a *xenos* (foreigner) and detachment from political partnership (*ho xenikos kai tes politikēs koinonias apolelumenos*: 1324<sup>a</sup>15–17). This question is posed as a side issue (*parergon*) to his search for the best constitution and organization of the *polis*, and is never directly answered. Indeed, Aristotle's investigation segues into discussion of whether an active or a philosophical life of contemplation is better (27–9). He concludes that, if happiness is doing good things, the active life is the best for the whole state and each man individually (1325<sup>b</sup>14–16), but recognizes that philosophy might be pursued both for the sake of objects that arise and also for their own sake (<sup>b</sup>16–21). By nominating the philosophical life as the paradigm of the life of political non-activity, Aristotle avoids assessing the value of the non-philosophical citizen quietist or outsider, though he is dismissive in his ethical works of what he considers the life of enjoyment (*NE* 1095<sup>b</sup>14–19; *EE* 1215<sup>a</sup>27–31).

It is clear, therefore, that political activity is a good activity, but in what sense, if any, does Aristotle advocate participation as an obligation? He recognizes that office-holding is something that men aspire to: it is equated with honour (1281<sup>a</sup>29–31), which, like other honours, is aspired to by members of the *polis* (1259<sup>b</sup>7–8), and that inequality of political rights, he claims in a criticism of Hippodamus' constitution, is a cause of dissension (1268<sup>b</sup>20–5). Two passages strongly suggest that Aristotle believes that the holding of significant *polis* magistracies should be reserved, and indeed obligatory, for talented citizens. In his analysis of the Spartan *gerousia*, he labels

high office-holding as a duty that ought (*dei*) to be carried out by those who are worthy of it rather than those who desire it out of ambition (1271<sup>a</sup>11–18). His praise of the middle class as the group least likely to shun or excessively to covet office (1295<sup>b</sup>12–13) is the second clear indication of his opinion that office-holding should not be a question of individual volition, but is something that those who are capable should be obliged to carry out. As for the obligations of office-holders, they are to have loyalty to the constitution, ability to fulfil their duties, virtue, and justice (1309<sup>a</sup>33–9). All this is reminiscent of the kind of civic obligation to political activity implied in Demosthenes' speech *On the Crown* (see Chapter 5.2).

The extent to which Aristotle is concerned with mass political participation is ambiguous. He claims the necessity of all citizens to share equally in the government, so that the citizen-body is to be friendly towards the constitution (1268<sup>a</sup>23–5, 1268<sup>a</sup>39–40). As for attendance at the assembly, he is critical of Plato's *Laws*, which makes it compulsory for the rich to attend the assembly, and vote and fulfil political functions while allowing the rest of the population to live as they like, as an oligarchic form of constitution (1266<sup>a</sup>9–12). He claims that some governments threaten fines for those who do not attend the assembly (1297<sup>a</sup>17–18), or those who do not serve on the law courts when asked to do so (1298<sup>b</sup>16–18), but he dismisses fining the rich alone as a device peculiar to an oligarchic regime (1297<sup>a</sup>32–5). However, this can be balanced by offering the poor *misthos*: he claims that a just blend of oligarchy and democracy would combine a fine for non-attendance on the rich with payment for the poor citizens to attend the assembly and to man the law courts (1297<sup>a</sup>40–2). Certainly, he values the potential of popular participation to unleash good decisions (1281<sup>a</sup>39–1382<sup>b</sup>15), but elsewhere Aristotle's enthusiasm for popular participation appears to be guarded: the ideal democracy is one where the masses don't have time to attend the assembly (1318<sup>b</sup>9–16).

His reluctance to advocate mass political participation unreservedly is also reflected in his views on the division of obligations within the ideal constitution. In discussing what kinds of individual are indispensable to the *polis* with the best constitution, he considers that farmers, priests, craftsmen, the military class, the wealthy, and judges are all necessary for the right functioning of the *polis*

(1328<sup>b</sup>19–23). Contradicting his own criticism of the constitution of Hippodamus, he suggests, for his ideal constitution, a separation of the citizen-body between a political (*to bouleutikon*) and military (*to hoplitikon*) class, as is his suggestion that a priestly class made up of those who are retired from the military or bouleutic class does not resemble Athens (1329<sup>a</sup>30–4). At first sight, this would appear to be a very different arrangement from the comparatively homogeneous Athenian fourth-century citizen-body, where the majority of citizens in all likelihood served as *bouleutai* at one point in their life.<sup>50</sup> But it has already emerged that political ambition and socio-economic status made a difference to the kinds and extent of obligations faced by an Athenian citizen, that in the second half of the fourth century the Athenians attempted to develop a firmer idea of the constitution of at least a trierarchic class,<sup>51</sup> and that Demosthenes presented himself as a politician worthy of office-holding on the basis of his claimed skills and expertise.

What makes the Aristotelian impression of civic obligation different from that developed in this work is that, while Aristotle is concerned with the obligation of the virtuous citizen to deliberation, whether it be as a magistrate, assembly-goer, or *bouleutes*, he says little about any other kinds of obligation: his only mention of financial obligations is that it is necessary to be sparing of the wealthy by not forcing them to fund the *choregia* or *lampadarchia* (equipping the torch-race) (1309<sup>a</sup>14–25), and, in Aristotle's best constitution, the burden of religious and military duties lies with a non-political class. Furthermore, Aristotle has little to say about what justifications are to be used in the negotiation of obligations. He appears to think of law as the chief and appropriate regulatory factor in the functioning of the *polis* (1292<sup>a</sup>1–5). While noting that customary law is likely to be less prone to error than written law (1287<sup>b</sup>5–8), he has nothing to say about other bases of the relationship between the individual and the state.

Aristotle's democratic liberty bears a strong relation to the interpretation of liberty proposed in this book. However, even the non-democratic political forms he analyses do appear to exhibit some important features of civic obligation. His decision to identify the

<sup>50</sup> See Ch. 5.2.

<sup>51</sup> See Ch. 5.5.

interests of the individual with those of the *polis* creates an adequate basis for a reconciliation of individual liberty and fulfilment of civic obligation. It is clear that, for Aristotle, obligations should exist for those who are capable of fulfilling them with virtue, and in a way beneficial for the *polis*. His claim that oligarchic states impose fines for non-attendance of the assembly has interesting implications for how obligation worked differently in *poleis* with a more restricted citizen-body: the Athenian oligarchs of 411 proposed, but probably never imposed, a fine of 1 *drachma* per day on those *bouleutai* who failed, without having been granted leave of absence, to come to the *bouleuterion* on time ([Arist.] *Ath. Pol.* 29.5). [Aristotle] believed that, at the time of Draco, the Athenians fixed their *bouleutai* for not attending the *boule* or *ecclesia* ([Arist.] *Ath. Pol.* 4.3).

Aristotle's *Politics* and other non-Athenian evidence suggests that, while civic obligations exist in a wide range of Greek *poleis*, they function in different ways, with different degrees and types of compulsion being applied, and with divisions of the citizen-body distinct from the relatively homogeneous citizen-body that existed in Athens. It may be the case that the system of obligation and liberty uncovered over the course of this book was common to ancient Greek *poleis*, but that it was negotiated and performed in diverse ways. The tendency to view obligations and liberty as compatible, elaborately enunciated in Rawls's exposition of a just society, has formed the basis of an analysis of the relationship between citizens and the citizen-body in the democratic, but in many ways illiberal, *polis* of Athens. The close relation of obligation and liberty enunciated in fourth-century oratory and inscriptions may even be held to suggest that the ancient Athenian concept of citizenship was in some ways closer to Rawlsian idealism than that which exists in modern political society: a proximity that was not, of course, perceived by Rawls himself. It may be the case that such an idea may yet provide a basis for interpretations of rights- and duty-bearing organizations even further removed from those envisaged by modern liberal political thought.

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