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Authorship & Ownership: Towards a Prehistory of Intellectual Property in Ancient Greece

DISSERTATION

submitted in partial satisfaction of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

in Classics

by

Christopher Ross Edmonston

Dissertation Committee:
Professor James I. Porter, co-Chair
Professor Anthony T. Edwards, co-Chair
Professor Maria C. Pantelia

2018

DEDICATION

To

my parents and grandparents

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CURRICULUM VITAE

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ABSTRACT

Authorship & Ownership: Towards a Prehistory of Intellectual Property in Ancient Greece

By

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Doctor of Philosophy in Classics

University of California, Irvine, 2018

Profs. James I. Porter and Anthony T. Edwards, co-Chairs

Legal scholarship's frequent recourse to the Sybaritic culinary patent (according to Phylarchus' account in Athenaeus) as the oldest example of monopoly privilege for the practice of an invention suggests consideration of ancient authorship under the rubric of intellectual property (IP). Beginning from a review of the principles of IP law and its modern jurisprudence as already fruitfully applied to Roman culture, discussion is here extended to ancient Greek materials, especially archaic literature. With proper caution against teleological pitfalls, modern IP doctrine is construed not as a monolithic whole, but a diffuse array of independent principles, reflecting the operation of universal principles of human creative expression, its variants identifiable at any stage of human history. Proceeding chronologically, Homer, the prototypical author, more artificial attractor of attribution than orthonymic individual in his own right, is construed as a primordial instance of IP, attribution representing a necessary prerequisite to plagiaristic misappropriation or pseudepigraphic forgery. Hesiod, like Archilochus, taken as a further evolutionary step, is evaluated as prototypical Greek authorial ego, personality through authorial self-assertion. Theognis' sphragis (whether or not original to its nominal author) is

treated as a natural progression along these lines, an overt reference to the Hesiodic signature, but also anticipating techniques of secure literary fixation more fully developed in acrostic and similar technopaegnic forms. Whereas the rigors of stoichedon epigraphic style deserve consideration in this context, its resistance to malicious distortion is here denied. In contrast to these formal methods, Heraclitus' alleged temple-dedication of his book is examined as an attempt at publicity as well as physically secure archiving, with parallels most fully developed as a later literary topos of pseudepigraphic authentication. Appreciation of the contributions of early cataloging, indexing, and excerpting to articulation and value of literary works as properties, consideration is given to the Sybaritic culinary patent as the fictional construct of a literary genre which treated Sybaris as the epitome of hybristic luxury, the fable of its doom styled as the inevitable result of moral failings exceeding all mechanisms of sumptuary restraint.

INTRODUCTION

Significant modern scholarship on IP in ancient, Medieval culture generally

Intellectual property (IP) historiography¹ by scholars of modern/contemporary law has often incorporated ancient prehistory into general surveys,² touching on particular facets of Greek³ and/or Roman⁴ culture (in the latter case, focused especially on patronage and plagiarism).⁵ In the Medieval period⁶ the anecdotal Columba versus Finnian dispute serves as something of a foundational legend in copyright historiography,⁷ while STEM-oriented research has focused on the roles of secrecy and priority/attribution in knowledge transmission and innovation, the evolution of guild craftsmanship, and mechanisms for allocation of commercial

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- 1 On copyright, cf. Bowrey 1996, Kretschmer et al. 2010, 2013; interdisciplinarity: Yen 1992; on trends within IP studies more generally: Golden et al. 2014.
 - 2 Pic 1828; Clément 1867; Bowker 1886:4, 1912:8-9; Matthews 1890:585-587; Hutchison J 1895; Gairal 1900:21-58; Pouillet 1908:1-4 (I.1); Masterson 1940:620-623; Frumkin 1947a:21-22, 43nn4-9, 1947b:47; Gieseke 1957:15-17 (A.I.1-2), 1995:1-3 (I.1); Wittenberg 1957:14-18; Bappert 1962:11-50; Bubgee BW 1967:12-13; Dock 1974; Ladas 1975 [I]:3-4 (I.2) (trademark); Streibich 1975:2-10; Movsessian/Seifert 1982:61-63 (I.1); Seifert 1989:19-37, 1992; Bettig 1992:132-136, 1996:11-14; Daramaras 1996:13-19 (2.1); Azmi et al. 1997:132-135; Asscher M 1998:87-88; Joffrain 2001:743-746 (II.B.1); Hesse 2002; Gasaway 2010:241-243; Frosio 2014 (Homer, Virgil), 2015a,b.
 - 3 Caillemer 1868a,c; Gairal 1900:29-43; Koutsouradis 1992:6-11 (II.1), Kotsiris 1992:10-13 (II.3)(Homer, Plato, Aristotle); Frohne 1987 & 2004b:399-401 (Theognis), 1995 & 2004a (Plato); May 2002:4-6 ~ May/Sell 2006:45-47.
 - 4 Jordao 1862; Breulier 1862; Ancillon de Jouy 1880; Malapert 1881:3-6 (§2-3); Gairal 1900:43-58; Mostert 1987; Frohne 2000 (Seneca), 2004b:401-402 (Cicero); Schickert 2005 (cf. Frohne 2005); May 2002:6-8~May/Sell 2006:47-49; de la Durantaye 2006, 2007.
 - 5 Frohne 1987:41-44 (Martial), cf. 1988; Biagioli 2012:455, 2014 (esp. pp. 70-74).
 - 6 Bappert 1962:53-92; Ladas 1975 [I]:4-5 (I.3) (trademark); Movsessian/Seifert 1982:63-64 (I.2); Seifert 1989:40-47; Azmi et al. 1997:135-141; Gieseke 2000; May 2002:8-11~May/Sell 2006:49-52; Adeney 2006:11 (1.04-1.06).
 - 7 Putnam 1896b:45-50; SciAm 76.4 1897; Birrell 1899:41-42; Bowker 1912:9; CHR 22.3 1936:354; Masterson 1940:624 w/ n8; Wittenberg 1957:18-19; Meldau 1959; Bullough 1964:112n2; Bugbee 1967:167n18; Morris J 1973:172; Streibich 1975:10-12; Wittenberg 1978:7; Wincor/Mandell 1980:3; Hunter 1986:269-270; Lathrop 1986:410n4; Lacey 1989:1541; Stearns 1992:535 w/ n118; Nimmer 1998:228; May 2000:129; Dallon 2004:373-377; Yu 2006:4-5n14.

privileges prior to the birth of modern patent systems.⁸ IP-related Hebrew/Jewish legal studies⁹ forms its own distinct branch of this ancient/Medieval prehistory. Legal historians (particularly of Roman civil law) more centrally occupied with classical languages and materials represent the most obvious juridic-philological middle ground bridging antiquity and the present¹⁰ (following in the significant footsteps of Kohler,¹¹ Visky¹² has been particularly influential, notably in the work of Eggert and Choe).¹³

Though now somewhat dated, the early influence of publisher George H. Putnam¹⁴ on subsequent—especially English-language—legal scholarship as a source for historical material deserves special notice. Not himself a lawyer, he is distinguished less for the classical education so typical of his time than for his stature in the publishing world combined with active engagement in the cause of authors’ rights and international copyright reform and harmonization.¹⁵ Though not necessarily all the original discovery of Putnam’s own direct

8 Long PO 1991, 2000, 2001, 2002; Long/Roland 1994; David 1993, 2008, 2014; Spanos 2010, 2014.

9 Wittenberg 1957:19-21; Hazan 1970; Silverstein 1973, 1974; Streibich 1975:13-15; Katz 1993; Petuchowski SJ 1994; Stern S 1994; Kozinets 1995; Nimmer 1998, 2008/9, 2010; Dallon 2004:372-373; Netanel 2007, 2016; Netanel/Nimmer 2011; Ungar 2011; Kwall 2011, 2012a,b, 2013, 2016; Stern J 2013; Treiger-Bar-Am 2015, 2016.

10 Dock 1963:7-52; Epstein 1997:244-251; VerSteege 2000; Madero 2004/2010; Pottage/Sherman 2013; cf. Putnam [1884] 1896c:357-358, Dallon 2004:369-372.

11 Kohler 1880, 1884, 1910.

12 Visky 1961 (1977:104-124 = 1987), 1968, 1970/1977; cf. Hamza 1984, 2016; Pólay 1985.

13 Eggert 1999, Choe 2010.

14 In particular Putnam 1896a,b, 1879. For Putnam’s biography, see his memoirs in Putnam 1914, 1915; for a brief sketch cf. Dick/Homans 1915 [n.p.] s.v. “Putnam, George Haven.”

15 At the age of nine or ten Putnam’s discovery of Layard’s *Nineveh and Babylon* (his father was publisher of the American edition) stirred a lasting interest in antiquity (Putnam 1914:61-62, noting a life-long attention to developments in Mesopotamian archaeology), and by age 13 he had received sufficient education in the classical languages that he was already a tutor in Greek and Latin to his fellow pupils at John MacMullen’s school in New York City (which assured him of the school’s financial assistance: Putnam 1914:70-71). For six months (winter 1859) preparatory to university studies he attended Columbia Grammar School, owned and directed by Columbia University Greek professor Charles Anthon, where, he later recalled, “my ambition kept me in Greek and Latin either at the head or number two” in his class, making a strong impression on Anthon (Putnam 1914:72-73, 75, 88). His interaction as a student in 1861 with renowned Göttingen orientalist Heinrich Ewald, however, was insignificant, followed up by attendance of only one lecture (Putnam 1914:173-175). Though he would eventually lament losing further grounding in Latin when Civil War service interrupted his studies (Putnam 1914:439), Putnam’s expertise in ancient to pre-modern literary history was later abundantly demonstrated by several publications, particularly *Authors and Their Public in Ancient Times* (Putnam 1896a),

reading of classical authors,¹⁶ the sources which have proven most resonant in subsequent discussion of the ancient precursors of or counterexamples to modern IP seem to owe a disproportionate debt to their citation in *Authors and Their Public in Ancient Times* (1893) and the first volume of *Books and Their Makers During the Middle Ages* (1896), which in turn certainly owe a degree of their success to their author being such a well positioned publicist.¹⁷

On the other side of the hypothetical dividing line between ancient studies and modern law, ancient historians and philologists have also taken an overt interest in IP.¹⁸ Even where not expressly concerned with modern IP doctrine, scholars of antiquity have naturally attended IP-related subject matter and issues surrounding authorship and patronage, to such an extent that a bibliography of research where IP forms no explicit point of reference would be prohibitively

Books and Their Makers During the Middle Ages (Putnam 1896b, 1897), and *The Censorship of the Church of Rome and its influence upon the production and distribution of literature* (Putnam 1906-1907). His second wife, Emily James Smith (by the time of her marriage 27 April 1899 at the age of 34 already five years into her deanship at Barnard College), was, moreover, a Cambridge-educated Greek scholar. Perhaps, as a judge's daughter, she also brought to the marriage some connection to the law, but both indirectly through his father, George Palmer Putnam (who had revived the International Copyright Association in 1866: Seville 2006:31, cf. Clark 1960), as well as directly through his own professional engagements, George H. Putnam was already deeply involved in contemporary intellectual property politics. Not only did he helm George P.'s publishing enterprise from the latter's death in 1872 (for the father's biography, see Putnam 1912), but in 1887 he helped reorganize the American Publishers' Copyright League (first established by his father some 16 years prior: Putnam 1914:61, Seville 2006:30), serving as its secretary from that year. His publications *International Copyright* (Putnam 1879), *Authors and Publishers* (Putnam GH/JB 1883, the seventh edition of which appeared in 1897), and *The Question of Copyright* (Putnam 1891, second edition in 1896) must be viewed in light of this activism. Putnam thus occupied a position in the U.S. approximately equivalent to that of Paul Delalain in France (cf. Bellido 2014, esp. on the genesis and influence of Lyon-Caen/Delalain 1889). See further Anderson 2007 on 19th century American copyright culture.

16 In the Nov. 1893 preface to the first edition (at Putnam 1896b:xv), Putnam expresses particular indebtedness to Géraud 1840, Clément 1867, Schmitz 1876, Birt 1882, Haenny 1885, and Simcox 1883. In addition to these, the 15 June 1896 preface to the third edition (at Putnam 1896b:iv) further acknowledges Meineke 1857 and Müller J 1868 (the first volume of which is prefaced by a chapter on “Das griechische Drama in seiner Entstehung, Entwicklung und Eigenthümlichkeit”).

17 Something of the resonance of Putnam's contribution may be gleaned from a note by Streibich: “The author [sc. Streibich] would like to acknowledge the tremendous scholastic contribution of George Haven Putnam to the preservation of the development of the history of literary property throughout the ancient and medieval periods. He was in a large part responsible for the passage of the Copyright Act of 1909, and vigorously opposed all attempts at literary censorship.” (Streibich 1975:2n8, citing Putnam 1896a).

18 Schmitz 1876; Birt 1882, 1907, 1913; Dziatzko 1892, 1894, 1896b, 1900; Adam 1906; Peter 1911; Ziegler 1950; Speyer 1971; Mülke 2008; Aragione 2010; Martínez 2011.

broad and unhelpful. Restricting scope to studies with an explicitly IP-oriented approach, note that, though Greek IP has not been neglected,¹⁹ Roman-centered scholarship²⁰ (again, especially concentrated on plagiarism²¹ and patronage²²) has been more prolific, arguably benefiting from the richer surviving source material of a later, more sophisticated (commercialized) book culture.²³ A summary of the results of this prior scholarship on Roman IP-related issues may help to establish the validity of inquiry into ancient IP prehistory.

Prior scholarship on IP in Roman literary and legal history

Perhaps the most intuitive approach to proprietary attitudes in Roman literary pursuits (as in the arts generally) lies in the examination of patronage (where Maecenas has ever served as an archetype of sorts)²⁴ and (especially, in contrast to) literary professionalism. A differential (ranked) valuation of genres has been identified as suggestive:²⁵ the prose literary genres (in particular: history,²⁶ philosophy, and rhetoric) classed among the so-called *artes liberales*,²⁷ being the unremunerated domain of free citizens of higher social status,²⁸ were not viewed with the same regard as poetry, particularly as generally practiced by lower social status (cf. *Cat. Carm. de mor.* 2 Jordan 1860:83 ap. Gell. *NA* 11.2)²⁹ individuals, i.e. non-citizen or freedmen

19 Gudeman 1894a; Stemplinger 1912; Chroust 1961; Olcott 2002 (plagiarism); Selle 2008b.

20 Putnam [1884] 1896c:355-357.

21 Gudeman 1894b; Kroll [1924] 1964:139-184 (VII); Seo 2009 (Martial); Olcott/Guldiken 2011 (Guldiken being a lawyer in private practice); Silk 2012.

22 E.g. Gold 1982.

23 Ploman/Hamilton 1980:7, Sell/May 2001:497n8.

24 Visky 1977:118; Seifert 1989:33-37 (Ch. 3), Eggert 1999:209-210, Bowditch 2001.

25 Visky 1977:108.

26 Eggert 1999:207 w/n 199 (noting Pompilius Andronicus as exceptional; cf. Kohler 1880:325).

27 Visky 1968, 1970, 1977. The plight of Roman educators in private service in these various fields is sent up in Lucian's *De mercede conductis*.

28 Visky 1977:119, 123; Eggert 1999:200, 207-208.

29 Visky 1977:119n45.

professionals (satire occupying something of a middle ground: Lucilius an equestrian, Horace and Juvenal the sons of freedmen)³⁰ who sang for their supper.³¹

Despite the absence of anything approximating an innovation economy (and the ideology of technological progress that goes with it), natural impulses toward confidential information management (cf. e.g. Tac. *Ann.* 1.6 for strategic-political concerns, or *Laud. Tur.* 1.4-5 ed. Flach 1991 for the private-domestic sphere) found expression in some form of trade secret law regulating industrial commerce.³² The slow pace (or even total lack) of technological innovation (“progress”) in antiquity is often ascribed to the abundance of cheap slave labor (pursuit of efficiency presenting no direct spur to inventors, let alone to elaboration of any intellectual concepts, economic policy, or legalistic framework aimed at systematic stimulus of technological authorship). According to Visky, neither the absence of printing technology nor Roman attitudes toward manual labor *per se* provide sufficient explanation, which must be sought rather in the legal status of practitioners of *artes liberales*.³³ These could not be exercised on the basis of labor contracts (in Roman law regulated by the principle of rent: *locatio-conductio*),³⁴ and only later in the Empire could some crafts recover compensation through *extraordinaria conductio*.³⁵ Perhaps most importantly, patrons on whose favor (lower status) poets relied will have had no interest in the development of authors’ rights.³⁶

If a *collegium poetarum* did exist it would have consisted of professionals (rather than beneficiaries of elite patronage such as Horace).³⁷ Poets received no state-sanctioned privileges

30 Eggert 1999:201-202.

31 Visky 1977:119, 123.

32 Schiller 1930; cf. Klein HD 1960:437 (437n1 citing Schiller 1930:838n5).

33 Visky 1977:121-123.

34 Visky 1977:122.

35 Visky 1977:122.

36 Visky 1977:123.

37 Sihler 1905:17 (cited at Visky 1977:119n46).

like teachers or doctors (C. 10.53.3 Imp. Philippus A. et Philippus C. Ulpiano).³⁸ Elite authors sought their reward in fame/immortality (cf. Hor. *Ep.* 2.2.51.7: driven to poetry by poverty;³⁹ *Carm.* 4.8, *Ep.* 2.3 *De art. poet.* 345;⁴⁰ Mart. 10.74.7⁴¹). While book-dealer/publishers (who perhaps were also among the merchants' organizations; cf. Plin. *Ep.* 10.33-34⁴²) gained financially from their distribution of copies (cf. Hor. *Ep.* 2.3 *De art. poet.* 345-346),⁴³ other than some indicators in the case of theatrical MSS, the authors' *honorarium* (cf. Gell. *NA* 18.5.11)⁴⁴ from bookdealer/publishers is not precisely known (not in legal, very seldom in literary sources):⁴⁵ estimates range from quite high (Mart. 13.3.1-2, Gell. *NA* 2.3, Suet. *De gram.* ed. Roth p. 260, Plin. *Epist.* 3.6)⁴⁶ to very small, or non-existent.⁴⁷ It is an open question to what extent, if at all, payments to authors (Mart. 11.108⁴⁸; Juv. 7.104 *quis dabit historico quantum daret acta legenti?*⁴⁹; Hor. *Carm.* 4.8.11-12 *pretium muneris*⁵⁰) by book-dealers/publishers in exchange for MSS⁵¹ were regulated by contractual obligations or customary norms and expectations. In terms of de facto rights, purchase of a MS conferred on bookseller-publishers:

38 Visky 1977:119 w/ n47.

39 Visky 1977:118n42.

40 Visky 1977:118n43.

41 Visky 1977:118n44.

42 Visky 1977:120n52.

43 Visky 1977:115, 118.

44 Visky 1977:120 w/ nn49-50. Visky rejects "honorarium" in favor of a *Kaufpreis* or *Pachtzins*, as in the *Kauf* or *Pacht* of moveable goods.

45 Visky 1977:118.

46 Visky 1977:119.

47 Dziatzko 1896a:2596-2597 (cited at Visky 1977:120 w/ n50).

48 Visky 1977:108n9.

49 An historian (i.e. serious author-intellectual) reading his own work gets as much as or less than a slave paid to read aloud current affairs from a tabloid (cf. Juv. 2.136); Visky 1977:108n9 (cit. sic: "VII. 4.").

50 Visky 1977:108n11.

51 Visky 1977:108.

1) a property right,⁵² 2) right to make copies,⁵³ 3) right of exploitation⁵⁴ (e.g. to stage/produce a dramatic work).⁵⁵ In practice, booksellers/publishers enjoyed merely first-mover advantage (exclusive first-reproduction, first-publication, hence they will have covered all their costs (aimed at maximum profit)⁵⁶ with a first edition in as high a number of copies as possible—buyers being able to both re-sell (cf. first-sale doctrine) *and* reproduce any MSS they purchased.

Authors could not confer such “rights” (which did not formally exist, and are correspondingly not attested by any relevant extant case law), they were simply co-extensive with possession.⁵⁷ Moreover, there was no right of access in the modern sense: such a right was not retained by the author who parted with his MS, but traveled with the MS (Sym. *Epist.* 1.31 (25))⁵⁸ (in the case of a theatrical work, there were no safeguards other than storage/archiving, *Aufbewahrung*,—by the aedile’s office, Visky supposes⁵⁹). Possibly an author’s consent might have been required for bookseller/publisher A to pass-along a MS to bookseller/publisher B to publish instead (cf. Cic. *Att.* 13.21).⁶⁰ Booksellers/publishers were, moreover, obliged (however informally) to keep an author’s deadline for publication (Cic. *Att.* 13.21.4, 14.17.6; Mart. 1.3.12; Plin. *Ep.* 1.2.1, 1.2.5, 1.8.3),⁶¹ and failure to perform a dramatic work may also have entitled an author (or owner of a dramatic MS) to re-sell the work to another producer.⁶² Authors who were

52 L. *dominium, mancipium* (cf. also *res*, with appropriate qualification: *nullius, communis*, etc.); Ger. *Eigentumsrecht*. Citation of German-language terminology should be understood throughout as referring to the Roman IP scholarship of Kohler, Visky, Eggert, Choe, and others.

53 L. *transcribere* (*transcriptum* = *apographum/ἀπόγραφον*), *multiplicare/multiplicem reddere*; Ger. *Verfertigung von Abschriften, Vervielfältigung*.

54 Ger. *Verwertung, Ausbeutung des Vermögenswertes*.

55 Visky 1977:113, 117.

56 Visky 1977:117.

57 Visky 1977:115-117.

58 Visky 1977:114.

59 Visky 1977:118.

60 Visky 1977:117n39. On Atticus’ status as “publisher,” cf. Dortmund 2001.

61 Visky 1977:111n18.

62 Cf. Visky 1977:110 w/ n16.

occasionally pushed by publishers into premature publication (Mart. 11.108: author rushed to turn-in MS, perhaps prematurely⁶³; Quint. *Inst. or.* pr. 1: Tryphon pushed Quintilian to publish his *Institutio*, suggestive of author-publisher contract⁶⁴) may have viewed premature (unauthorized) publication as a diminution of their rights (Quint. *Inst. or.* 1.pr.7):⁶⁵ not a violation of their person (personality, *Persönlichkeit*), but of their right to first publication⁶⁶ of their property (*Vermögen*),⁶⁷ potentially even with financial implications. Authors were particular in choosing their publisher out of concern for error-free reproduction.⁶⁸ Publishers were expected to not alter an author's text⁶⁹ nor to distort his/her name (*Persönlichkeitsrecht* as a form of, or rather than, *Urheberrecht*),⁷⁰ and it belonged to an author's personality right to withhold his/her name until publication (Ter. *Hecyr.* prol. I 5-7; Ov. *Ep. ex Pont.* 4.16.37-40).⁷¹

The literary commerce of Roman theatrical production (the domain of low-status professionals)⁷² has proven an especially attractive object of IP-like analysis.⁷³ As already remarked above regarding bookdealers' and authors in other genres, there will have been a one-time payment to the dramatic author for his MS (e.g. Plautus: Hor. *Ep.* 2.1.170-176;⁷⁴ Terence:

63 Visky 1977:108n9.

64 Visky 1977:111 w/ n19 (citing Lafaye).

65 Visky 1977:111n21.

66 Referred to in modern moral rights theory also by the French term *divulgation*; cf. L. *editio princeps*, Ger. *Erstausgabe*.

67 Visky 1977:111 w/ n22 (citing Kohler).

68 Visky 1977:117.

69 Visky 1977:120.

70 Visky 1977:120 w/ n51.

71 Visky 1977:111 w/ n17.

72 The reality was certainly always nuanced, e.g. in the case of Statius, of libertine extraction, despite imperial favor and elite patronage (acknowledged in each of the books of his *Silvae*; cf. Nauta 2002 ch. 4) was supposedly nevertheless financially dependent on sale of his *Agave* pantomime for the dancer Paris, a favorite of Domitian (Juv. 7.82-87) (Martin D 1939:461, Visky 1977:109n12, Conte 1994:403).

73 Eggert 1999:200-201.

74 Visky 1977:109n11.

Ter. *Eun.* prol. 19-21,⁷⁵ *Hec.* 48-49,⁷⁶ Suet. ed. Roth 1891:292-293 re *Andria & Eun.*,⁷⁷ Donatus arg. ad *Eun.* ed. Klotz 1838 [I]:218: 8,000 sesterces).⁷⁸ In such cases, payment was made (underwritten) by the *aedilis* (*praetor* according to Ov. *Trist.* 2.505ff.)⁷⁹ as *curator ludorum*, but negotiated by the *dominus gregis* (theater director),⁸⁰ who chose the play and set the price (Ter. *Heaut.* prol. V 43-45),⁸¹ which payment he refunded to the responsible official (*curator ludorum*)—motive to stage the play as often as possible.⁸² With the one-time payment the author's rights in the work (whatever they may have been) were exhausted (similar to exhaustion inherent in modern first-sale doctrine or work-for-hire⁸³) and the *dominus gregis* was free to copy the MS and stage⁸⁴ the play as often as he desired.⁸⁵ If not performed, the play could potentially be resold (again, consider first-sale doctrine) (Ter. *Hecyr.* prol. I 5-7; Ov. *Eleg. ex Pont.* 4.16.37-40)⁸⁶—not just by the *dominus gregis*, but by the author himself disappointed in non-performance of his work.⁸⁷

Roman antiquity had lower standards of originality⁸⁸ than our modern tastes demand (if not much lower than current law requires of copyrighted works). In terms of IP prehistory,

75 Visky 1977:109n12, 110n13.

76 Visky 1977:109n12.

77 Visky 1977:109n12.

78 Visky 1977:109n12.

79 Visky 1977:110n13.

80 Visky 1977:109-110.

81 Visky 1977:110n14.

82 Visky 1977:110.

83 Cf. Groschler 2005 with reference to Roman law on the latter (*Vorführungsrecht*).

84 Visky 1977:117.

85 Visky 1977:109-110.

86 Visky 1977:110n16.

87 Cf. *supra* regarding the publisher's obligation to keep the author's deadline for publication.

88 Kroll 1924 ch. 1.

than theft in the modern sense. From a practical stand point, then as now an attempt at plagiarism will have been most likely to succeed prior to authorial first publication,⁹⁸ that is, before a work had become well know in association with another name.

Plagiarism, if anything, might have represented a form of personal injury (*persönliche Rechte/Beeinträchtigung*) rather than property damage (*vermögensrechtliche Beeinträchtigung*), hence fits the legal framework of *iniuria*⁹⁹ (for the *iniuria*-relevant *Begriffskreis* Visky cites D. 47.10.1.pr., 47.10.15.26¹⁰⁰). If Visky is right to see the problem of literary plagiarism as potentially common in Rome,¹⁰¹ it is all the more telling that the legal record shows no trace (cf. D. 47.10 *de iniuriis et famosis libellis*)¹⁰² of an IP-related application of the *actio iniuriarum* (which in fact may not have been capable of providing any relevant protection).¹⁰³ Eggert finds that plagiarism did not fit the legal framework of *iniuria*.¹⁰⁴ With a view to passing-off apropos maker's marks, seals, designations of origin, etc.,¹⁰⁵ it is reasonable to question the extent to which commercial fraud at least may have been enforceable with the *iniuria* framework. It is worth noting that while “no ancient legal system knew the concept ‘unfair competition,’” Schiller (who even “doubt[s] the necessity of the existence of the concept in modern law”) suggests a problem's conceptualization is not practically dependent on its elaboration as a discrete category of formal law, where a diffuse array of legal apparatus may address an issue

98 Visky 1977:112 (implying [physical] theft).

99 Visky 1977:115.

100 Visky 1977:115n34.

101 Visky 1977:112.

102 Visky 1977:115n55.

103 Visky 1977:115, 117, 123 (cf. p. 112: “Das Plagiat, d. h. das Hinstellen eines fremden Werkes als eigenes—mit einem modernen Ausdruck: die Verletzung des Urheberrechts [...]”).

104 Eggert 1999:215.

105 Cf. Schiller 1930:844-845.

just as well as a distinct, ad hoc and self-contained doctrinal or regulatory framework.¹⁰⁶ This attitude can be extrapolated to a wide variety of issues in antiquity.

The Latin *res*,¹⁰⁷ as a legal concept, evolved as an abstraction to absorb a broad range of previously unexpected objects of property rights:¹⁰⁸ *res nullius* (property of none),¹⁰⁹ *res communes*,¹¹⁰ *res publicae*,¹¹¹ *res universitatis*,¹¹² *res divini juris*. Indeed, the Roman legal concept of intangibles,¹¹³ *res incorporales*,¹¹⁴ has a long philosophical pedigree (cf. Cic. *Nat. De.* 1.30: *asomaton ... intellegi non potest*). These abstractions are worth bearing in mind while examining several passages from Roman law and letters which further suggest the usefulness of the otherwise entirely modern concept of intellectual property (IP) (Ger. *geistiges Eigentum*, GE) as a terminus technicus¹¹⁵ (inclusive of, or distinct from, moral rights)¹¹⁶ in application to (Roman) antiquity. Distinction between (underlying) work (UW) (*Geistesprodukt = Werk*) and copy (manuscript, MS) (Ger. *Manuskript = Werkstück*)¹¹⁷ (UW as practically identical with its primary expression in an authorial MS, or at least they travel together, are co-terminous¹¹⁸), and between authorship, ownership and possession are implicit in Seneca (*Sen. De ben.* 7.6.1):¹¹⁹

In omnibus istis, quae modo rettuli, uterque eiusdem rei dominus est. Quo modo? Quia alter rei dominus est, alter usus. Libros dicimus esse Ciceronis; eosdem Dorus librarius suos vocat, et utrumque verum est. Alter illos tamquam auctor sibi, alter tamquam

106 Schiller 1930:837n3 (citing Nims 1929:14).

107 Borkowski/du Plessis 2015:156.

108 Hughes 1998:82n2; cf. Moore 1997b:3 (“res” as equivalent to “abstract idea”).

109 Borkowski/du Plessis 2015:157 (6.1.2.4), cf. 203-204 (7.2.5.1).

110 Borkowski/du Plessis 2015:156 (6.1.2.1).

111 Borkowski/du Plessis 2015:156-157 (6.1.2.2).

112 Borkowski/du Plessis 2015:157 (6.1.2.3).

113 Kaser 1971:376-377; cf. Frier/Kehoe 2007:136 (“the fairly well developed Roman law of intangible property”).

114 Pottage/Sherman 2013:13ff., Borkowski/du Plessis 2015:156 (6.1.1).

115 Eggert 1999:187, cf. 183 on methodology.

116 Eggert 1999:185.

117 Eggert 1999:184, 187, 192-195 (A.III.2).

118 Visky 1977:113.

119 Visky [1961] 1987:18; Visky 1977:105, 111n23; Eggert 1999:189-190 w/ 189n23, 193 w/ n31; Choe 2010:20.

emptor adserit; ac recte utriusque dicuntur esse, utriusque enim sunt, sed non eodem modo. Sic potest Titus Livius a Doris accipere aut emere libros suos.

In all the cases I have adduced, there are two owners of the same thing. How can that be? One of them owns the thing and the other owns the use of the thing. We say that some books are Cicero's; Doris the bookseller says that the same books are his own, and both claims are true. One claims the books on the grounds that he wrote them, the other on the grounds that he bought them. And it is right to say that the books belong to both, for they do belong to both, just not in the same way. This is how Livy can receive as a present or even buy from Doris his own books. (trans. Griffin/Inwood)

Cicero writes (his) books, Doris sells books (Doris's property) authored by Cicero, T. Livius can buy his own books (that he himself has written)¹²⁰ (see also D. 47.2.14.17 Ulpian on ownership of a letter in transit).¹²¹ Following Seneca (and approving Dziatzko's appraisal of Roman poetry as inherently its composer's GE¹²²), Visky considers an author's non-legal, "spiritual" ownership in an UW as persisting post-alienation¹²³—thus it is hard to accept at face value the formulation that authors were just paid for their MSS and not their intellectual produce (*geistiges Produkt*) per se.

Such considerations must begin from material and production costs. Firstly, it is held that (unwritten) ancient papyrus/parchment was viewed as more valuable than its lettering,¹²⁴ perhaps because significantly more expensive than today's paper;¹²⁵ and yet, perhaps surprisingly, the ancient manual copying process has been presented as highly efficient.¹²⁶ Thus, according to one view, high material costs might be seen as offset by low labor costs (whether due to speed or slave-exploitation). More relevant to IP matters is the conceptual separability of work from

120 Kohler 1880:325; Visky [1961] 1987:18, 1977:105 (w/ n3 citing Kohler 1880:325, Dziatzko 1894:571), 111n23 (cf. 113, 114); Eggert 1999:189-190 w/ 189n23, 193 w/ n31; Choe 2010:20.

121 Choe 2010:19n84.

122 Dziatzko 1894:565 quoted at Visky 1977:114n33.

123 Visky 1977:114.

124 Visky 1977:107.

125 Eggert 1999:194.

126 Visky 1977:104; Eggert 1999:203.

substrate¹²⁷ (here sticking to a highly literate literary culture, without consideration of e.g. the oral-performative recycling of preliterate song). The most fundamental relevant concept in Roman law is *accessio* (“accession,” *Zuwachs*)¹²⁸ (cf. D. 41.2.3.21¹²⁹ on restitution/reparation); related to *accessio*, *specificatio* (“specification,” *Verarbeitung*)¹³⁰ generates a *nova res*.¹³¹ Thus, according to Ulpian written pages (up to completed book rolls/codices) are legally distinct from (conceivably because more valuable than) blank rolls/pages (D. 32.76 Ulpianus libro II ad edictum), whereby he does not mean to suggest that the literary work instantiated in an inscribed roll/codex represents a legally distinct object.¹³² Yet, jurisprudence held that ownership of writing (letters/inscription) followed its substrate (papyrus/parchment), i.e. writing was a form of *accessio* (D. 6.1.23.3 Paulus¹³³; Gaius *Inst. comm.* 2.77¹³⁴ ~ D. 41.1.9.1 *libro II rerum cottidianarum sive aureorum* (Gaius)¹³⁵ ~ I. 2.1.33¹³⁶—the latter three passages relevant to claims of bad faith/fraud (*exceptio doli, sc. mali*), where the owner of the papyrus/parchment refuses to compensate the scribe for his labor/expenses.¹³⁷ Further views held that ownership of writing as well as painting (*tabula picta*) followed its substrate (D. 6.1.23.3 *libro XXI ad*

127 Eggert 1999:194 (Schriftstück als unteilbarer Gegenstand), 195 (Papier mit der Beschriftung eine neue, einheitliche Sache wird), 198 (Abgrenzbarkeit).

128 Visky 1977:105, Merges 2011:323-324n39 (citing Merrill 2009), Borkowski/du Plessis 2015:198-203 (7.2.4). Stewart 2006 (*Collins Dictionary of Law*, 3rd edn.) s.v. “ACCESSION, property,” defines accession as “The ownership of a thing, whether it be real or personal, movable or immovable, carries with it the right to all that the thing produces, and to all that becomes united to it, either naturally or artificially; this is called the right of accession.”

129 Merges 2011:396n42 (citing Tully 1980:118).

130 Visky 1977:105, Borkowski/du Plessis 2015:203-205 (7.2.5).

131 Granstrand 2003:22 (Table 4 w/ n12; citing Borkowski 1994), Merges 2011:324n39 (citing Nicholas 1962:136-138, Merrill 2009; in its application to IP citing Keyt 1988, VerSteeg 2000), Borkowski/du Plessis 2015:204 (7.2.5.2 re *nova species*; quoting D. 41.1.7.7 Gaius *Common Matter, or Golden Things* 2).

132 Visky [1961] 1987:26, 1977:113-114 (cf. exempla at pp. 105-107; contra (114n30) Dziatzko 1894:563); Eggert 1999:195.

133 Visky [1961] 1987:20, 1977:107; Choe 2010:21n88.

134 Visky [1961] 1987:19, 1977:106; Eggert 1999:193n32; Choe 2010:16-17n74.

135 Visky [1961] 1987:9, 1977:106; Eggert 1999:193 w/ n32.

136 Visky [1961] 1987:20n7, 1977:106-107n5; Choe 2010:16-17.

137 Visky 1977:106-107.

edictum (Paulus)).¹³⁸ Yet, there held also the contradictory view that ownership of painting does not (on the principle that painting is high added-value) follow its substrate, i.e. that ownership of substrate followed that of the painting made thereupon¹³⁹ (D. 41.1.9.1 *libro II rerum cottidianarum* (Gaius)¹⁴⁰; I. 2.1.34 Gaius¹⁴¹; Gaius *Inst. comm.* 2.78, textually suspect (contra Paulus; G. supported by Justinian)¹⁴²).

Columba v. Finnian as the first copyright case

Widely cited (though almost always in desultory fashion) as the first copyright dispute (notably, unsatisfactorily settled), the famous conflict between St. Columba and his mentor Finnian illustrates (whether for the early Medieval Christian Ireland of the 6th c. CE or for the subsequent centuries of the tale's hagiographic elaboration) several of the above issues addressed within Roman law. According to our sources, difficulty of access to a particular psalter inspires Columba (with divine aid) to a furtive act of nocturnal copying, construed and prosecuted as misappropriation by Finnian before king Diarmait at Tara, who renders the famous verdict "to each cow her calf,"¹⁴³ thus supporting the claims of the original's proprietors (the monastic library under Finnian's care) to Columba's copy as well their own. Just as it seems free from the direct influence of any Roman legal and literary principles (including in contemporary application of the *Corpus Juris Civilis*), rather than attesting to any formal ancient (Celtic) IP law the incident illustrates the potential of traditional legalism and informal analogy.

138 Visky [1961] 1987:20, 1977:107; Eggert 1999:194; Choe 2010:21n88.

139 Blackstone 1767:406 (cited at Hunter 1986:269n6); Putnam 1896a; Bugbee 1967:16; Nardi E 1991; Madero 2001, 2004, 2010; Leesen 2006; Behrends 2008; Pottage/Sherman 2013:13ff.

140 Visky 1977:107.

141 Masterson 1940:623 w/ n7; Choe 2010:21.

142 Visky [1961] 1987:21, 1977:107 w/ n7; Choe 2010:21n88, 23n92.

143 "le gach boin a boinin, 7 le gach leabhar a leabhran" = *buculus est matris, libri suus esto libellus* (cf. *partus sequitur ventrem*) (*Betha* 11.139, 14.168, etc.).

Columba's defense at Tara, and the tradition's condemnation of the verdict as false (perhaps even serving as pretext for warfare), will likely still meet with a sympathetic ear today. Though escalation to military conflict is admittedly an extreme outcome (here the sources confound several separate threads, so that the "copyright" dispute need not have been decisive or even consequential), we are nowadays familiar with protestations against proprietary overreach (such as term-extension) on the one hand or prolific pirating and illicit distribution (often a business model of the internet). Columba asserted a right of access and of a right to copy (as if against a charge of theft). He suggested that the copying served to ease pursuit of his own later reference (time-shifting) and the further distribution and communication to others rather than his own selfish (commercial) interest. Columba presumed literary objects were not diminished by copying, thus anticipating Jefferson's famous taper metaphor (*infra*). Columba further appealed to his own labor ("sweat-of-the-brow," in current IP parlance) as well as a claim of serving the greater good in helping others, a moral high-ground. On a basic reading, the verdict establishes a literal copy-right (right to control the making/disposition of copies), but not an author's reproduction right in his/her own original work. We may wish to consider the operative principle in Diarmait's verdict to be an extension of Roman jurisprudence on labor-added-value (labor-mixing) in determinations of ownership (*specificatio*). On a more theoretical level, the verdict brings to mind a transitive principle of ownership of a property's secondary products in the Roman law of accession.

The episode is worth dwelling on precisely because it is seldom elaborated, its fleeting acknowledgement as early precedent in copyright history suggesting an anecdote of little inherent value other than as a widely acknowledged ancient topos deserving an obligatory nod

prefatory to other better documented and more pressing contemporary matters. Moreover, further elements of Columba's extended vita are worth citing as a bridge to the first and earliest author treated below, Homer. The very same issue of access central to Columba's daring scribal appropriation, so appropriate to his own time and its monastic culture (where manuscripts represented valuable singular physical artefacts), is paralleled by one (albeit simplistic) view (addressed below) of the early Homeric textual history suggesting a closely guarded bardic MS, accessible only to its proprietor, the poet/performer, and (for teaching purposes and ultimately as an inheritance) to his apprentice(s), or to a rhapsodic guild-like community. (Of several other potential ancient examples of closely guarded texts, two similar instances of access addressed below are Heraclitus' deposit of his book in the temple of Artemis at Ephesus and the use of the Athenian *Mētrōon* for the archiving of legal records.)

The major consequence of the judgment at Tara (and the ensuing hostilities) was Columba's decisive transformation into an exiled missionary, ending the first part of his life (despite the Christian hagiographic coloring, not out-of-place in ancient biography of pagan literary figures) with its elements of wandering poetry. Become a man of influence within the monastic system, Columba in one instance is able to mitigate the threatened total exile of the bardic order, thus gaining their favor. Columba's own occasional engagement as an oral as well as a literate poet and monastic copyist makes him a symbol of poetic performance as well as manuscript tradition. Some verses and titles are preserved as original to Columba himself, in addition to a tradition of later poems composed in Columba's voice but devoid of pseudographic pretense. In addition to the many testimonia to his scribal pursuits, however, the most important surviving MS purportedly from his own hand is the very text in dispute at Tara, preserved in the

Cathac reliquary. Regardless the authenticity of the surviving artefact, the tale of Columba's illicit copying suggests themes of pseudepigraphic fiction (a narrative device treated below in the chapter on Heraclitus), artefacts and narrative alike contrived to authenticate one another.

Sybaritic culinary monopoly as the first patent

Just as Columba's and Finnian's dispute over access- and copying-rights has been claimed as the first copyright litigation, so too has the Sybaritic culinary monopoly attested in Athenaeus come to hold a place of honor as the world's first patent right. French *archéologue* Lenormant¹⁴⁴ deserves priority over German *Althistoriker* Cichorius¹⁴⁵ for recognition of the Sybaritic culinary monopoly as antecedent of modern IP patent (monopoly-based IP granted as incentive to private innovation in the public interest).¹⁴⁶ Within the archaeological literature, Bullitt¹⁴⁷ draws attention to Lenormant, but not specifically regarding "patents." Otherwise, inclusion of the Sybaris case within the history of intellectual property is restricted to references in specialist legal journals or IP monographs which do not name any precedent for the reference to antiquity, pointing to Cichorius or some later authority.¹⁴⁸ The Sybaris case (in Phylarchus' account as preserved by Athenaeus) is not only the first mention of a monopoly patent, but the only one, including for Roman history, until Middle Ages.¹⁴⁹ The idea of a monopoly patent for invention in its Sybaritic form is the discovery, I believe, of a literary genre thematizing

144 Lenormant 1881 [I]:285 cited at Frumkin 1947b:47n2 & Tabouis 1958:93n3.

145 Cichorius 1922.

146 Note again the long-standing French-language legal-scholarly interest in the topic of ancient literary property, evidenced by the above-cited studies Pic 1828, Breulier 1862 (responding to Jordao 1862), Clément 1867, Caillemer 1868, Ponsonailhe 1879, Ancillon de Jouy 1880, cf. Morillot 1878, Malapert 1881:3-6 (§2-3).

147 Bullitt 1969.

148 E.g. Ewing 1937 citing Bissing (presumably *privatim*).

149 Cf. Mittelstaedt 1997:16: "There is evidence that the ancient Greeks made limited use of patents to encourage innovation (Klitzke 1964). The Romans did not use patents and, as a means of stimulating innovation, they were not used in Europe until the late Middle Ages."

gratuitous luxury and sumptuary display. It should not for this reason be dismissed as of any less validity as an innovation in western intellectual history. As preserved in Athenaeus' Phylarchus excerpts, it may rightly be accounted as anecdotal.¹⁵⁰ Yet, it is my contention that rhetoric¹⁵¹ and fictionality (commodity fictions, narratives, stories as normative rationales), particularly in the not always just-so stories used to rationalize and justify various theories or implementations of IP,¹⁵² have played no small role (along with the commercial or national/political self-interest they sometimes serve) in shaping the history of IP doctrine and its current manifestations (as William W. Fisher has observed regarding the implications of use of the term "intellectual property," "legal discourse has power"¹⁵³). The WIPO's project of "socialization," "norm-building," and "promotion"¹⁵⁴ is a case in point, and I wish to argue that (as observed below¹⁵⁵ with respect to Hippodamus and Phaleas) the boundaries to utopian thought (conceived in the broadest possible terms) be loosely drawn in the history of ideas, fully independent of efforts toward elaboration of e.g. formal law and its enforcement. Thus, the distinction between "innovation" *pur* and "conceptual innovation" is for my project of minimal import.¹⁵⁶ Thus, in part, I seek notions central to (future) IP theory and practice in the ancient history of sumptuary consumption, display and regulation, as part of utopian and fictional literary tradition.

150 E.g. Niemann 2008:10 w/ n26.

151 Emphasized in the title of Reyman 2010 (cf. esp. pp. 26ff.); cf. Kevelson 1992 ("Property as Rhetoric in Law").

152 Note e.g. the language of May/Sell 2006:18 (quoting David 2001:14), May 2007:10-13.

153 Fisher 1999.

154 May 2007:35; cf. David 2001:14.

155 Citing Winiarczyk 2011 on Hellenistic utopias.

156 Note Hartmann 2013:37 (on Hercules' dedication to Aphrodite as identified at [Arist.] *Mir. ausc.* 843b-844a; cf. Hdt. 5.59-61): "One could object, of course, that all this is utter invention, and it may very well be. Nonetheless, I cannot see why the ancient Greeks should not have been able to attempt comparison of letter-forms in practice, if they could invent stories about themselves doing so." Cf. Godin/Lucier 2012 on innovation versus conceptual innovation in ancient Greece, and Godin 2010 on (technological) "innovation without the word").

It is presumed in what follows that it is not necessary, and is in fact methodically suspect, to insist that ancient roots/cognates of modern technical or colloquial terms behave as our modern (e.g. English, French, German) languages (and contemporary cultural references) might lead us to expect. Nor are ancient analogs to modern legal codes and jurisprudence to be expected. Nevertheless, certain practices or conceptual distinctions, including those deriving from modern jurisprudence, might well be identified. Such a useful distinction as that between satire and parody (as established by/enshrined in *Campbell v. Acuff-Rose*), distinguishing between those cases where a writer/performer/artist appropriates a predecessor's *ipsissima verba* or distinctive style to critique that very person or the very work from which elements were borrowed (parody) versus those cases where the source of the borrowing is at most indirectly (or even not at all) related to the goal or object of the new expression (as might be the case, but is not a necessary element of, satire). Analysis can be fruitfully pursued along these lines without danger of confounding the history of *παρωδία* or *satura* as distinct genres and/or as technical termini in the history of ancient languages and literatures. Similarly, forgery or pseudepigraphy (and the related legal—trademark/misrepresentation—concept of passing-off) and plagiarism (and the related legal notion of reverse passing-off) may be usefully employed as analytical tools. This very distinction (between plagiarism and forgery, or pseudepigraphy) may well be investigated as to whether, when, where it will have obtained or been observed in ancient literature, art and law. The two phenomena need not be logically related as modern usage might suggest, nor need they share a common origin or motivation.

Whereas there need be no expectation of fruitfully identifying in antiquity elements of a modern intellectual property apparatus (born, as it was, out of movable-type, Enlightenment

print culture), there are nevertheless underlying principles beyond the narrow scope of our statutory strictures and economic regulations which can be found to operate across a broad range of societies at various stages of economic development and literary sophistication. In particular, the attempt will be made throughout the subsequent investigation to identify IP-like characteristics of ancient Greek literary culture, beginning in the Archaic Period, by appeal to predominantly normative tendencies (rather than explicit formalized legislative constraints) as guiding creative industry and the consumption of its produce. This approach seeks to qualify if not quantify authorship as well as readership (auditor-, viewership, etc.) as modes of competitive display in the socially production and consumption of scarce literary goods as marks of distinction and self-definition.

Further ancient precedent to modern IP

The Sybaritic system provides for a (a) *monopoly* privilege (or otherwise construed exclusive right) of (b) *limited term*, granted as (c) *incentive* to (d) *innovation* (*idion heuroi ... kai peritton*) in (e) some *good or service* (in the Sybaris case, luxury consumables). These elements alone are clearly sufficient ingredients of a modern IP system. Yet, one could cite further modern IP components not (explicitly) addressed in the Sybaris sources (where, perhaps, they nevertheless hide implicit or inchoate). Such might include (i) a concern for *public welfare* as the system's teleological impulse. In particular, this might be construed (as in U.S. Const. I.8.8) in terms of the pursuit of (ii) *progress*, the appropriate definition of and metric for which might be far from clear or uncontroversial (a vague formulation might suggest that the public interest be served through the promotion of progress as measured by some quantitative or qualitative

increase in creative expression and novel technologies or processes). There might arise a reasoned consideration of the appropriate (iii) *locus of planning* in determination of awards. The latter might address the question as to (iii_a) how or who (individual or collective, laity or experts) determines which innovation is most worthy of reward, or (iii_b) whether limitation or direction be given to its use (cf. Thamus to Theuth at Pl. *Phdr.* 274e7-9: ἄλλος μὲν τεκεῖν δυνατὸς τὰ τέχνης, ἄλλος δὲ κρίναι τίν' ἔχει μοῖραν βλάβης τε καὶ ὠφελίας τοῖς μέλλουσι χρῆσθαι). The (iv) *award* itself, in the Sybaris instance, is the one-year exclusive right to practice the invention, i.e. offer the new dish to the public, but other systems might provide for a one-time prize of high monetary or equivalent value, or rather of some prestige-value not quantifiable in monetary terms, or some other privileged office or public honor (such as free meals enjoyed by Olympic victors), etc. There is further missing from Athenaeus' Sybaris discussion any express formulation of the monopoly grant as a form of (v) *property*, with all of this muddy term's vague implications for our present attitude toward IP (rights, ideas and/or their physical expressions as property). Still today (though especially in the pre-digital era), IP policy serves an (vi) *immigration* function wherever a perceived opportunity (in the form of IP rights) to maximize personal material wellbeing attracts gifted or highly trained human capital. In the American system the reward is meant to serve not simply as an inducement to innovation, but also to the innovation's (vii) *disclosure*, where it might otherwise remain secret, whether purely in the service of merely private interests or totally unexploited (cf. Thgn. 769-772: ἄγγελον / ... περισσόν ... σοφίης μὴ φθονερόν ... / ... τὰ μὲν μῶσθαι, τὰ δὲ δεικνύεν, ἄλλα δὲ ποιεῖν / τί σφω χρήσεται μῶνος ἐπιστάμενος;).¹⁵⁷ Especially prior to full implementation of the Berne Convention, various IP systems also demanded (as a condition on enjoying their

¹⁵⁷ Cf. Dorati 2015 on mental access and disclosure in Herodotus.

exclusive rights) compliance with certain (viii) *formalities*, managed by a central authority, such as deposit (e.g. with Library of Congress), registration (e.g. through the Copyright Office), etc. Furthermore, Athenaeus, Phylarchus or their sources did not express an interest in (ix) *fixation* (some manner of fixed literary expression, necessary to certain formalities) of the recipes implicated in the Sybaris patent scheme.¹⁵⁸ In addition to the total absence (the Sybaris example aside) of formal IP systems in Archaic Greece (as in the rest of the ancient world), the strongly performance-based oral culture further complicates the conceptualization of ancient (x) *plagiarism, forgery (pseudepigraphy)*, and other forms of impersonation and (fair or unfair) competition through imitative substitution¹⁵⁹ (with ramifications for perceived rarity/scarcity of goods, intellectual or otherwise).

With these concepts from modern IP in mind, consider some indications of their ancient anticipation (however disparate and unrelated to our later legal systems) in some examples (treated in greater detail further below) culled, for starters, from Aristotle's *Politics*. When Aristotle coins the term monopoly, he illustrates the concept with an anecdote about Thales making use of his celebrated astronomical genius (teaching a lesson here about the potential utility of cultivating *sophia* and intellectual specialization) to anticipate a bountiful olive

158 A recipe suggests, but of course does not require fixation; one could be improvised, then memorized (or forgotten). Nadeau 2015:58n9 (citing Notaker 2012:134) presumes culinary knowledge in Greece and Rome was transmitted orally and through hands-on practice. Current U.S. patent law entails mandatory disclosure, and copyright inheres upon fixation, providing exclusive control over publication/distribution—without which a recipe might remain a (trade) secret which a competitor would have to reverse-engineer from the finished product. (Are we to imagine Phylarchus' inventive chef to have disclosed his recipe freely—perhaps even bragging—without fear, thanks to some legal protection?) To the extent ancient cookery found literary expression, this was less in the form of anthologies of recipes so much as studies of the food preparation process (wherefore Nadeau 2015:58n1 ventures the term “cookery books”). Cf. Wilkins/Hill 2006:2: “Actual recipes can be conjured out of some texts but not many. Cooks were unlikely to be avid readers and collectors of cookbooks, if they could read at all. [...] Mostly though, we have to work on descriptions of the food by those who ate it rather than anyone who expected us to cook it.”

159 On a Sybaris-appropriate culinary note, cf. Welles O 1974 (at ca. min. 37): “lots of oysters, only a few pearls. Rarity—the chief cause and encouragement of fakery and phoniness in everything, even what we're given to eat—an awful lot of forgery's committed these days in the kitchen.”

harvest. He quickly rents early in the year, at out of season low rates, all the available olive presses, thus cornering the market and ensures great profit for himself. Here, we find no reward for creative expression, but certainly for intellectual activity of some special caliber. Aristotle expands on the principle through another example, that of an iron monopoly at Syracuse, then under the rule of Dionysius. This instance is less intellectual than the Thales scenario, but illustrative of potential for conflict between (tyrannical) state- and private monopoly (Arist. *Pol.* 1.11.11-12 1259a23-33), raising questions of central planning and public resource allocation. Notably, in both cases we are dealing with commodities (as opposed to incorporeal intellectual goods).

A little later, in Book 2, Aristotle rehearses the utopian schemes of several different political theorists. If Athenaeus' Phylarchus gives evidence of incentivized innovation in (culinary) practice at Sybaris, Aristotle's Hippodamus provides evidence for a theory of incentivized innovation in legal authorship. A progressivist utopian (like Phaleas of Calcidon treated by Aristotle immediately before), Hippodamus is presented as the first political theorist without practical experience of governance—and as an attention-seeking eccentric, qualities which Aristotle does not seem to approve, but which might not be inessential to the character of an innovator (or rather, he has also been characterized, that of an egalitarian elitist). He is most widely remembered for his contribution to (if not wholesale invention of) orthogonal town planning with which his name has become practically synonymous. Hippodamus also sought greater equity in jurors' interpretation of the law through introduction of qualified verdicts, substituting writing tablets for the traditional voting-pebble. For present purposes, however, most noteworthy is his scheme of incentivizing legal innovation (the introduction of new laws

which might serve the public interest: *tēi polei sumpheron*) through promise of a reward. In contrast to the Sybaris patent we find this example of innovation incentive lacks a monopoly privilege for the private practice of the novel idea, an understanding that the idea can be practiced to one's own benefit (or rather: the benefit resultant from the law itself might be public, but the reward for its introduction will indeed be private), and a time-limit on the exclusive right to practice it. Perhaps more interesting than Hippodamus' proposal is Aristotle's critical response. For one thing, that it is legal innovation rather than innovation in the public interest more broadly conceived arises only from Aristotle's critique (lacking Hippodamus' own writing in anything beyond the merest fragments and paraphrases, of which Aristotle is the chief source, means we have no control for Aristotle's claims), as the language of Aristotle's preliminary synopsis of Hippodamus' theories is less qualified. Moreover, Aristotle rejects (his limited version of) Hippodamus' proposal as 1) concealing a dangerous potential for fostering false accusations of as well as actual subversion, and as 2) through abandonment of accustomed law in favor of something new, likely (maybe even necessarily) doing harm to "the common good" (*koinon agathon*) supposedly being served. Both challenges reflect a lack of an appropriate public-benefit heuristic (even the requisite metrics and statistical record keeping which might inform it), but instead of pursuing such questions Aristotle raises very basic and more interesting questions about the very nature of, and possibility for, progress in the arts, as in human behavior and culture generally, before dismissing the notion of progress as inappropriate to the law. Regardless, both Hippodamus and his critic illustrate the understanding of the motive and conditioning power of law over human behavior.

The conservatism of Zaleucus and Charondas, to cite a further example (singular, as the two are sometimes conflated and interchanged in ancient sources) from Aristotle, are diametrically opposed to the later Hippodamus (who was reacting against precisely such voices as theirs) in their stance on (particularly legal) change (progress). Certainly, Charondas' pursuit of mandated citizen-literacy by a provision for state-sponsored teachers, modeled on pre-existing system of state-sponsored health care for the sick, resembles the spirit of Hippodamus' self-proclaimed innovation of public support for war-orphans. Yet, just as Zaleucus' and Charondas' contribution to legal standardization (stipulating penalties within the laws themselves) is at odds with Hippodamus' search for equity in qualified verdicts, so too their attempt to actively restrict changes to the law, supposedly by requiring a new law's proposer to argue its merits with his neck in a noose, under penalty of death should it not receive sufficient votes. Again, at odds with Hippodamus' eccentric flair, they showed a strong interest in the regulation of sumptuary displays. Their use to this end of so-called "imperfect" laws which precisely permit only the deprecated behavior and no other, but under such terms as to render it impossible in the face of inevitable public shaming, is quite clever and an interesting confluence of legalism and extra-legal normative social pressure (the latter element generally being of more interest to my investigation into analogs of modern IP concepts and phenomena in a world where, should they exist at all, will have been only informally operative or controlled).

In a last of the several examples which, in addition to the Sybaris patent, immediately suggest themselves as harboring self-evident IP-like components, I mention Xenophanes' contribution to the conceptualization of progress together with his arguments in favor of rewarding intellectual virtues (*sophiē*) similar to (even instead of) the allocation of the standard

prizes at pan-Hellenic athletic contests. Solon had tried to limit such rewards at Athens, one of his several sumptuary strictures aimed at not just accumulations of wealth but also its more symbolic features accruing to prominent individuals and treated in terms of cost/benefit as a matter of public concern. Here too the question arises as to who is qualified to determine those most deserving of public subvention, for which set of skills or virtues, for which public service. Xenophanes' progressive fragment (21 B 18 DK: not everything is revealed from the start by the gods; discovery of the better is rather the result of perpetual searching), more than just a note on life-long learning (cf. Solon fr. 18 W), echoes the competitive zeal personified by Hesiod's good *Eris* (Hes. *Op.* 11-26), its steady quest for hidden means of support a penalty divinely imposed on mortals as recompense for the transgressions of the prototypical culture-hero and *prōtos heuretēs* Prometheus (*Op.* 42ff.). We find here in Hesiod and Xenophanes precursors to the humanism of Sophocles' "Ode to Man" (Soph. *Antig.* 332-371) as well as variants on the "secrets of nature" theme inspired especially by Heraclitus (cf. 22 B 123 DK) and so influential in the intellectual history of western science. Progress is not a necessary objective of IP policy. To the extent the notion of intellectual property is anchored in some definition of (or itself even comes to define) "progress," it is often as an expression of concern for public welfare as an outcome of the incentivized competitive pursuit of novelty in a variety of forms. It should be counted a truism that the rhetoric on which public policy is predicated and through which it seeks to justify itself is often out of step with hidden intent and manifest reality. The rhetoric of IP, its philosophical claims and potentially fanciful narratives, is unexceptional in being for all that of no less consequence than its statutory expression.

On the applicability of modern IP doctrine to ancient research

The above considerations regarding progress touch on a central element of modern IP doctrine. The U.S. Constitution empowers Congress “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”¹⁶⁰ This provision, it is well known, adapts a principle enshrined in the English Statute of Anne (1710), which refers to itself as “An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned.” More venerable and closer to home (though well within Magna Carta tradition) is the 1641 Massachusetts “Body of Liberties” (§9),¹⁶¹ which provides that “No monopolies shall be granted or allowed amongst us, but of such new Inventions that are profitable to the Countrie, and that for a short time.” The shared instrumentalist assumption is that an exceptional grant of temporary, exclusive rights is effective stimulus to the research, development and public distribution of creative goods; that creators’ self-interest can be harnessed in such a way for the public good.¹⁶²

Ideologies of “progress” in (Greek) antiquity may be characterized for the purposes of our discussion firstly independent of any relation to IP (ancient or otherwise). Indeed, as a

160 Art. I § 8 cl. 8.

161 Passed October 1641 = Acts of 1660, p. 62 = Acts of 1672, p. 119; quoted per Whitmore 1890:34/35.

162 The Constitutional provision, though most often referred to as the “Copyright Clause,” the “Patent Clause,” or (more comprehensively) the “Copyright & Patent Clause” or “Intellectual Property Clause,” is thus also widely known as the “Progress Clause” as well as the “Monopoly Clause” or “Exclusive Rights Clause”. Cf. Bugbee 1967:129 (noting the clause itself as containing “no reference to ‘property itself’ ([n]or to patents or copyrights as such’”)), Walterscheid 2001:765n1 (suggesting that “[a] more correct description of the clause, at least in the context of the times, would be the ‘science and useful arts’ clause, because the term ‘intellectual property’ was unknown in the eighteenth century”), Heald/Sherry 2000:1120n2 (embracing the term “Intellectual Property Clause” over reference to “disjunct Patent or Copyright Clauses, even though the term ‘intellectual property’ was probably not known to the framers”), Loren/Miller 2013:118 (*inter alia* offering a variety of the above alternative designations).

central component of some definitions of History itself¹⁶³ “progress” may be something of a transcendent entity. It can be characterized for our purposes by appeal to a variety of sometimes interrelated factors. *Directionality* (teleology): whether time itself or the trajectory of human culture/civilization happens to be conceived of as linear or cyclical; the cyclical view in antiquity, it has been suggested, entailed a necessary narrative of decline/decay by adherence to analogy to biological life-cycle;¹⁶⁴ though pagan and Judeo-Christian antiquity may have shared a common moral condemnation of excess consumption,¹⁶⁵ (Judeo-)Christian millennial eschatology (according to some) supplanted a previously cyclic view of history widespread in pagan antiquity.¹⁶⁶ *Agency*: Blumenberg, rejecting (while coining the term) the “secularization thesis” (that “progressive ideology represents a secularized version of the Christian millennium”),¹⁶⁷ credits the 17th c. CE and the scientific enlightenment with starting a new era of progress, unhinged from Judeo-Christian eschatology, which credits man’s achievement of “a better life ‘by the exertion of his own powers’ instead of counting on divine grace.”¹⁶⁸ (Aggregate) *quantity* and its limits (finitude): irrespective of whether this trajectory is temporally finite or infinite: whether human progress (scientific/cultural achievement however measured) is finite or (in principle) unlimited. Derclaye¹⁶⁹ too categorically assumes a doctrine of infinite perfectibility and growth within the modern liberal “progressive” ideology; in part, the finitude of human perfectibility and accomplishment may depend on the possibility of its reversibility,¹⁷⁰ which in turn need not imply a cyclical fluctuation but merely a temporary set-

163 Lasch 1991:45, citing Blumenberg 1966.

164 Lasch 1991:54.

165 Derclaye 2012:509-510.

166 Lasch 1991:41.

167 Cf. Derclaye 2012:510n83, 512 w/ n101.

168 Lasch 1991:44-45, citing Blumenberg 1966.

169 Derclaye 2012.

170 Lasch 1991:44, citing Blumenberg 1966.

back. Note that “ancient [i.e. early modern] patents for inventions did not possess great economic importance”;¹⁷¹ further noteworthy that in the early history of invention/import patenting limits on consumption of natural resources/raw materials (and restraint of trade) was a greater concern to the sovereign. In the case of “[s]ome [...] ancient grants,” Frumkin observes:¹⁷²

Frequently the privileges aimed, not at the encouragement of an industry but, on the contrary, at its restriction. Such was the case in the French glass patents; and the reason for that was the fear that too many works would lead to the destruction of forests, as wood and charcoal were the main kinds of fuel used. Even when later, ‘seacoal’ began to replace charcoal, laws in Elizabethan England restricted the iron industry for the same reason.

Ecological analyses of IP as (non-)rivalrous, (non-)excludable goods are of course by now standard.¹⁷³ It should at any rate be apparent that IP can be integrated within the rhetoric of consumption (analogous to physical consumer goods). Situating ancient IP within the history of competitive consumption and display and sumptuary regulation is appropriate to this established mode of inquiry. *Quality* (taste/style/fashion): whereas quantity of “progress” is one way in which it is most easily assimilated to discussion of sumptuary aspects of ancient IP, quality too can and must be examined, and here too we may rely on scholarly precedent where analyses of progress as well as of luxury cover complementary ground in their respective examination of ancient sources.

The proper measure of “progress” in the fashion industries, even more mysteriously so in aesthetics (e.g. the “fine arts”) generally, is a well-known and unsolved problem.¹⁷⁴ Derclaye

171 Frumkin 1947b:54.

172 Frumkin 1947b:48; cf. 54 noting a 1560 Austrian patent for “a method of saving fuel” issued under the Hapsburg Ferdinand I.

173 Cf. White R 1996 on “Progress and the Environment”; Lessig 2001, 2006, and Boyle 2008 re the “public domain” and IP “commons”.

174 Raustiala/Sprigman 2012; Beebe 2014.

argues that, in contrast to patentable subject matter (*propriété industrielle*), “progress” with respect to copyright works (*propriété littéraire/artistique*) cannot be based on an equivalent conception of “qualitative improvement”: “Later works cannot be better than previous works, they can only be different.”¹⁷⁵ Hence, other definitions of progress for such matter have been suggested: “‘spread’ (i.e. physical movement) or ‘dissemination’,”¹⁷⁶ “qualitative material improvement, quantitative material improvement, or social improvement: in other words, the Enlightenment idea of progress,”¹⁷⁷ or “both dissemination and improvement.”¹⁷⁸

The foregoing considerations are reminiscent of distinctions between invention, improvement, and importation patents in the historical evolution of the modern patent system. Thus, mobility and diffusion must be considered when attempting to quantify the ancient IP economy. Innovation may be cumulative, additive or incremental, while authorship (agency) may be individual, joint, or collective. This is particularly clear in a literary context, given that: bibliographic data (where available) can in theory be statistically mined (increasingly, digitally) such that at least the quantity, if not also quality, of literary output for ancient Greece might serve as a gross measure of IP productivity (appealing here to economic terminology perhaps too dismal to be entirely adequate to the spirit of the task); individual texts can be analyzed for internally self-similarity (i.e. redundancy, recursiveness) as some measure of “creativity” (or even “nuance”); two or more texts can in theory be compared to ascertain the extent to which they are similar or even identical (in part or in whole), again as some measure of creativity (originality, novelty) and influence (acknowledged or tacit).

175 Derclaye 2012:503 citing (503n49) Bury [1920] 1928:89, Pollack 2001:791.

176 Derclaye 2012:502n43 citing Pollack 2001:755, 809.

177 Derclaye 2012:503n44 citing Birnhack 2001:16-17, 36, 58; Chon 1993:116, 139; Moore 2003:603; Walterscheid 1994:32, 34.

178 Derclaye 2012:503n45 citing Hatch/Lee 2002:3, 8.

Discussion continues in a roughly chronological order in an attempt to develop the above themes, with particular attention given to the evolution of authorial performance and authorial identity in the transition from oral to literate composition, and to the stabilization of literary works and concerns for their proper identification, attribution, and distribution (or sequestration). Independent of formal regulation, over time certain texts (stable, discrete works of authorship) will become increasingly perceived as authoritative points of reference (become canonical), and genres will tend to proliferate and crystallize (become more stable and distinct). Further, individual texts can in theory be analyzed for the extent to which they are internally self-similar (redundant, recursive, etc.), as some measure of “creativity” (perhaps merely in terms of rhetorical nuance); two or more texts can be compared to ascertain the extent to which they are (in part or whole) similar or identical, again as some measure of creativity (original or novel) and influence (acknowledged or tacit). Without prejudging any particular historical instance, we can imagine that certain qualities of physical fixation, formatting, orthography, and so on, may be relied upon, individually or cumulatively, to determine proprietary claims in literary works. Such works in turn might result from a singular authorial moment or instead from incremental, serial (cumulative, additive) innovation, the type of social authorship which defines the subject matter of modern improvement patents, or is otherwise found in joint- or collective-works (whereby the authors may not always be found to have willingly or knowingly collaborated).

It is argued that whereas fixed texts can be sequestered as a means to secure a monopoly on their exploitation, oral texts, to the extent they are relatively stable (mentally fixed, if only as a set of generative-improvisational rules), though they can be just as well (if not even more

securely) concealed within the confines of the performer’s mind, will be (no less than any other text) exposed to appropriative opportunists at the time of performance. The same holds for relatively less stable unwritten texts or oral-formulaic compositions-in-performance (which might not be said to exist at all—hence, to be not susceptible to appropriation even in principle—until the moment of performance itself). This only tends to put a premium on the quality of the text as charismatic performance rather than material commodity. Conversely, to speak of sequestration of such a text as performance makes sense only as a matter of the degree to which a performer chooses to impart a particular style, to elaborate on a given theme or character, or to indulge in more subtle degrees of interpretive display (e.g. allegory). Though there is no need to identify a distinct category of Greek shamanism along Central Asian prototypical lines,¹⁷⁹ there is enough in the Greek evidence to suggest a similar model for the evolution of IP-like material as quasi-property and its control by informal caste(s) of elites (the selective guilds or in-house traditions of oral bards or magic-charismatic healers: Homeridae, Asclepiadae, and others) performing a ritual remediation of scarcity.

Features of antiquity in contemporary legal scholarship

All areas of specialized inquiry, whether for reasons of tradition (inertia) or convenience (categories not necessarily complementary, instead likely intersecting as often as disjoint),

179 Dillery identifies Abaris, Aristeas, and Epimenides as shamans (Dillery 2005:178). He believes Theopompus of Chios considered not just Epimenides, but also Bacis and Pherecydes of Syrus to have been shamans (Theopompus *FGrH* 115 F 71 = 7 A 1 DK ap. D.L. 1.116-7, 115 F 77 ap. *Σ Ar. Pax* 1071; Dillery 2005:181, 181n54). Herodotus is invoked to further support this characterization of Bacis, whose case (as defended at Hdt. 8.77) is supposed similar to that of the tattooed Epimenides, involving “[a]nxiety about the reliability of an older communication newly performed and applied” (Dillery 2005:224). On Mediterranean seers and shamans, cf. Brown J 1981, but note (selecting from a vast literature) Van Gennep [1903] 2001 and Sidky 2010 on the questionable utility of shamanism as a discrete category of religious analysis. Of further relevance, note the IP-related anthropological studies cited below.

inevitably rely on their own peculiar shorthand. To some (great) extent this will be predicated on scholars' hard-won familiarity with the materials of their chosen field. Yet even within their own disciplinary confines, scholars will differ (due to age, experience, or natural talent) in the extent to which this depth and breadth of knowledge guides them to easy understanding or meaningful insights. Thus, the more immediately daunting (however easily removed) barrier to interdisciplinarity is posed by unaccustomed nomenclature and conventions of citation. Non-jurists will inevitably find consternation in their first attempts at deciphering references to court cases, statutes, codes, regulations and other formal measures in law reviews and court reporters;¹⁸⁰ further, at exclusion from the LexisNexis database (absent institutional access or a personal subscription).¹⁸¹ Though an ability to wield legal (neo-)Latin may yet facilitate mutual understanding among jurists even outside civil law jurisdictions, a more than passing familiarity

180 Cavicchi 2012 is a directory of IP acronyms and abbreviations. For a general introduction to legal citation, see Peter W. Martin's guide (Martin PW 2016), hosted by Cornell's Legal Information Institute at <<https://www.law.cornell.edu/citation/>>. The Columbia/Harvard/UPenn/Yale co-produced *Bluebook: A Uniform System of Citation* (<legalbluebook.com>, as of 2015 in its 20th edition; cf. Salmon 2016:774-796 (III.A.1)), perhaps the most influential citation standard in the United States, has itself become a matter of controversy in ways which resonate with a central theme of ancient legal history, namely the access to law through its written publication. (Note Salmon's emphasis of the goals of "accuracy, brevity, clarity, and efficiency" as more valuable than pursuit of a single, "perfect" citation format.) Certainly, disputes over Harvard's inequitable exploitation of a publishing monopoly behind the backs of its partners at the other three law reviews (cf. Post 2016) or the alleged misappropriation of the *Blue Book* trade name by the public domain competitor *The Indigo Book* (formerly *Baby Blue's Manual of Legal Citation*, aka *BabyBlue*; cf. <<https://law.resource.org/pub/us/code/blue/IndigoBook.html>>) only hint at the potential dangers of proprietary claims to *de facto* public standards (cf. Schoechle 2009). Consider, for example, West Publishing's claim to copyright (variously asserted against Mead Data, Matthew Bender, and HyperLaw) in the citational and editorial peculiarities of its case law reports (cf. Patterson/Joyce 1989, Jarrah 1999; Wyman 1997; Tussey 1998, 1999; Gallacher 2007, 2008), or attempts such as recently in the state of Oregon to use copyright as a means of restricting access to (and unofficial distribution of) state regulatory code and other public legal documents (cf. <<https://public.resource.org/oregon.gov/>>, Malamud 2014, Ford B 2014 (cf. 551 (I.D) & 558-560 (IV.A) re Oregon in particular); further Ghosh 2003a,b, 2004, Crochet 2016, etc.). The attempt is made here, in part, to consider even formal elements of legal and literary publication (e.g. book divisions in the Homeric text; epigraphic conventions and physical constraints on layout and textual integrity of stoichedon documents or of Solon's *axones* and their citation; alphabetic reform coincident with legal re-inscription in the time of Archinus and Nikomachus) in relation to the standardization of literary texts more generally (access to official texts in public spaces/archives; fixation of particular texts and their attributions; accrual of quasi-legal authority through forensic citation; crystallization of genres and technical idioms).

181 <lexisnexis.com>.

(seldom outright fluency) with the classical languages is the primary distinguishing feature of the ancient studies professional.¹⁸² Certainly, (over-)familiarity with ancient sources (whether expressed through display of one's own facility with the languages or through presumption of readers' sufficient competence in a shared vernacular) can also confound through obscurity and omission. In 1957, for example, Wittenberg still felt free in writing for a legal audience to quote Martial and Horace in the original Latin, only partially translating one of four passages and giving explicit (though incomplete) references for only two.¹⁸³ Yet, such expectations of fluency in the ancient languages will already have been well on the decline in the legal profession¹⁸⁴ (and even in the Classics).¹⁸⁵ One encounters few instances of outright lamentation over legal scholars' philological incompetence.¹⁸⁶ Of the occasional typos (which afflict expert and novice, and for that matter lawyer and philologist, alike, as well as their publishers),¹⁸⁷ some may consume marginally more of the beginner's time than others,¹⁸⁸ but are ultimately insignificant.

182 Non-specialists confounded by abbreviations should be advised that scholarship in the Classics and related fields most frequently appeals to the citation conventions of *L'Année philologique* (<http://www.annee-philologique.com/files/sigles_fr.pdf>) and the Liddell-Scott-Jones (LSJ) Greek-English lexicon (cf. <<http://stephanus.tlg.uci.edu/ljsj/>> linking to separate pages of LSJ abbreviations of primary authors, epigraphical publications, papyrological publications, other periodicals, and other miscellaneous abbreviations; similarly, Brill's New Pauly, though accessible only to subscribers: <<http://referenceworks.brillonline.com/browse/brill-s-new-pauly#prelims>>). The *Diccionario Griego-Español* (DGE) Canon Lists (<<http://dge.cchs.csic.es/lst/2lst-int.htm>>) provides perhaps the most comprehensive resource. Cf. Adkins 1976:301n2 for a classicist's advocacy of transliterated Greek (for which Adkins or his editors dispense with accents and other diacritics) even in academic publications as a matter of accessibility to a wider public.

183 Wittenberg 1957:15 (Mart. *Epig.* 6.60.1-2, 13.3.1-4, 1.2.1-4), 16 (Hor. *Epist.* 2.3 *Ars poet.* 345-346).

184 In most cases, harmless, just as the matter is tangential to the authors' true purpose. In an article from 2007, for example, we find a note stating that "'Original' stems from the Latin word 'originem,' meaning beginning or source,"—correct, if non-standard (the form is adduced without quotation or further context).

185 Hugh Lloyd-Jones' and Nigel Wilson's English language preface (Lloyd-Jones/Wilson 1990:v-vi) to their 1990 edition of Sophocles (a startling, though arguably long overdue, departure from the Oxford Classical Texts series' strict use of Latin in the prefatory material to both Greek and Latin texts) is a frequently cited milestone in this trend.

186 Frohne's skewering (Frohne 2005) of Schickert (Schickert 2005)—and her doctoral supervisor(s)—is exceptional in this regard.

187 Cf. Putnam 1896a:iv.

188 E.g. "Genteli" for Bruno Gentili (May/Sell 2006:46,227,244) versus "Herodutus" for Herodotus (May 2000:127,197).

The trending dependence, however, upon secondary and tertiary sources (often limited to a single reference), together with the unchecked reiteration of derivative citations to authors increasingly inaccessible in their original languages,¹⁸⁹ inevitably lead to greater frustration in the pursuit of references based on non-standard page numbering¹⁹⁰ (where book, section, page, and/or line numbers are not simply omitted entirely). The problem is compounded where attempts to trace a reference to an ancient passage run up against the realization that the particular translation cited omits standardized pagination (even as a non-intrusive in-line or marginal apparatus),¹⁹¹ as is so often the case. On the other hand, legal publications occasionally see fit to make overt reference to contemporary philological scholarship. Henriette Mertz's 1950 copyright bibliography compiled for the U.S. Copyright Office¹⁹² cites C.M. Bowra on Virgil's reuse of Ennius in the *Aeneid*¹⁹³ (a topic beloved of commentators since antiquity)¹⁹⁴ as well as Deratani on the Roman orators' reuse of poetic texts¹⁹⁵ (a practice to be discussed below in the earlier Athenian context).

189 Streibich 1975:6 does the reader the favor of quoting Mart. *Epig.* 1.29 both in English and (footnote 34) in Latin, but, though he profusely (almost exclusively) utilizes Putnam (bilingual at Putnam 1896a:209), he fails to acknowledge him as the source of his translation. Moreover, Putnam's citation (209n1) "L. i., ep. 30" becomes in Streibich (6n34) "Martial, *Epigrams*, L. i. 30." Not an insuperable obstacle to further research, yet Streibich has also unwittingly perpetuated Putnam's error (30 instead of 29).

190 The best known standardized citation system for a classical author might be the Stephanus pagination of Plato's dialogues (going back to Henri Estienne's 1578 edition) or the Bekker page numbers (based on Immanuel Bekker's 1831 edition) by which Aristotle is normally cited. The somewhat more straightforward system of Homeric citation by book and line (verse) number will be touched on briefly further below.

191 Masterson 1940:621nn1-2, referencing Plato's *Euthydemus* and *Apology* via the 1914 edition of Church's *The Trial and Death of Socrates*, cites neither Stephanus' nor Church's pages, even though the latter, along with its own page numbering, retains in the margins Stephanus' Arabic numerals (without the Latin alphabetic subdivisions), interspersed with a separate system of section ("Chapter") numbers in Roman majuscules. Rosenblatt 2013:1 w/ n1 quotes David R. Slavitt's English translation of Seneca the Younger's *Trojan Women* in such a way that neither line number (Sen. *Tro.* 334) nor translator (Slavitt) is made apparent (though Slavitt's translation does include marginal line numbers).

192 Mertz 1950:13.

193 Bowra 1929.

194 For an updated survey of the relationship between these texts see Goldschmidt 2013 (with Rossi 2017).

195 Deratani 1929.

History of the term “intellectual property”

As David Vaver observes, “intellectual property as a phrase is not self-defining.”¹⁹⁶ I will be using the term intellectual property (IP) loosely throughout, to refer to various instances of proprietary attitudes or exclusive privileges entertained or enjoyed by creators with respect to their works.¹⁹⁷ In current usage, IP generally encompasses the disparate fields of copyright, patent, trademark, trade secret law and the various objects with which they are concerned. A quick glance at its history tells us something about its meaning.

Though formally resolved in 1967 (Berne Convention Stockholm Act) and brought into being in 1970,¹⁹⁸ the World Intellectual Property Organization (WIPO), or Organisation Mondiale de la Propriété Intellectuelle (OMPI), can trace its origins back to the 19th century. Hence, if, as has been suggested, “intellectual property”¹⁹⁹ as an umbrella term encompassing both industrial property (patents, trademarks, etc.) and literary/artistic works (copyright) first gained traction in the 1950’s,²⁰⁰ marked a significant milestone with the birth of the WIPO,²⁰¹

196 Vaver 2001:1.

197 Cf. similarly Eggert: “das absolute, subjektive Recht des Urhebers an seinem Werk” (Eggert 1999:187).

198 For a brief history of the WIPO and its antecedents, cf. May 2007:15-35 (Ch. 2) & 2009. Note that the WIPO’s founding Deputy Director (from 1970, a post he previously held at BIRPI from 1963), later Director General (1973-1997), Árpád Bogsch, has been described by his successor Kamal Idris as “the crafter, the creator of the modern intellectual property system” <http://www.wipo.int/pressroom/en/prdocs/2004/wipo_pr_2004_389.html>.

199 Rigamonti 2001:12-45 (§ 2) and Hughes 2012a survey some of the history of the term.

200 Bogsch 1992a:249, 1992b:8; Koumantos 1998:39.

201 A Syndicat des Sociétés Littéraires et Artistiques pour la Protection de la Propriété Intellectuelle was formed in 1891 (Hughes 2012a:1306). Although the WIPO’s predecessor, the Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle (BIRPI), formed in 1893 (as a combination of the offices created by the 1883 Paris Convention protecting industrial property and those of the 1886 Berne Convention for literary and artistic works), bears IP in its title, the name as well as the acronym appear to be the unsanctioned mid-to-late 1950’s innovation of director (1953-1963) Jacques Secrétan (cf. Bogsch 1986:3191-320) or his subordinates, whereas the official name was “United International Bureaus for the Protection of Industrial, Literary and Artistic Property” (BIRPILA, in French). Thus, regardless the continuity between the organizations, their titular IP only became official with the birth of the WIPO (Bogsch 1986:308, Ricketson 1987:726 (13.29) w/ n246, Hughes 2012a:1300-1303), a “clever, quiet” rebranding (Hughes 2012a:1334). Note further Lemley 1997:895-896n123: “There were certainly uses of the term in the literature well before this time, especially on the Continent. [...] These uses do not seem to have reflected a unified property-based approach to the separate

and owes its present currency²⁰² largely to the WIPO's activism,²⁰³ it is as the outcome of an engagement stretching back several generations. Identifying the 1860's and 1870's as a period of particularly intense lobbying within and between industrialized nations in favor of international agreements protecting knowledge-based commercial goods (previously a strictly national matter), Christopher May suggests that "intellectual property" emerged as a collective noun only during the last quarter of the 19th century, "having no currency in the previous four hundred years of the history of the laws of patent and copyright."²⁰⁴ From the broad perspective of centuries, the term indeed qualifies as "a recent rhetorical construct."²⁰⁵ Thus, French usage of *propriété intellectuelle* (for literary property) dates at least to 1764,²⁰⁶ and its English equivalent

doctrines of patent, trademark, and copyright, however." (Thus, Vaidhyathan 2001:11-12 misrepresents Lemley's claim; cf. Hughes 2012a:1296 w/ n6.) Because "some believed that 'intellectual property' was coterminous with copyright" (Bogsch 1986:308), it may have taken longer for some regions (i.e. French, Italian and especially Spanish speaking countries) to accept "intellectual property" as a label inclusive of "industrial" intangibles (cf. Hughes 2012a:1303ff.).

202 It seems to have enjoyed a definitive surge as a comprehensive term in the 1980's (Hughes 2012a:1308, 1313); cf. David Vaver's remark that "the phrase [intellectual property] has come into common English language use only within the last two or three decades—a mere twinkling of an eye, so far as legal matters go" (Vaver 2001:1).

203 Scherer 2007b:207-210 (V. Propaganda), van den Belt 2010:191-192 (citing Scherer 2007a:42). Note May's portrayal of the WIPO as a "highly politicized" "agent of socialization" engaged in "*promotional*" activities in pursuit of a "clear political and normative agenda," the traditional narratives used to justify IP forming "a major element" of its "normative arsenal," in contrast to its self-representations as a "merely technical agency" (May 2007:1, 3, 13, 14, 29). Thus, he sees its Traditional Knowledge Division, in line with WIPO's activities generally, "as part of a program to promote intellectual property to groups either unaware of, or hostile to, the use of property rights in the realm of information and knowledge. In this sense, [...] at the heart of most debates and analyses of the WIPO's activities, is the question of the *promotion* of intellectual property. [...] [T]he normalizing of an approach that puts intellectual property into the agenda of discussion [...] is itself, by implication, laying the groundwork for normative change. [...] [The WIPO] has become a much more focussed agency, leaving enforcement to the WTO and now concentrating on socialization and norm-building." (May 2007:34-35).

204 May 2007:120n1 (cf. p. 15), 2009:16n2.

205 May/Sell 2006:18 citing David 2001 (see top of p. 16).

206 Cf. A.M. de Sartine, "Sur l'état de la librairie," at Laboulaye/Guiffrey 1859:48, 49.

is nearly as venerable. While Lysander Spooner²⁰⁷ has been credited²⁰⁸ with the first use of the term in print, it actually predates his 1855 *The Law of Intellectual Property*²⁰⁹ (where neither the term itself nor even its comprehension of both literary/artistic and industrial/technological subject matter are treated as *per se* problematic or novel)²¹⁰ by over 80 years, the earliest use cited by the *Oxford English Dictionary* (OED) dating from 1769.²¹¹ In a highly critical review (immediately preceding one on Blackstone's *Commentaries*) of a work of "physic" (i.e. medicine) from October of that year, *The Monthly Review* chides the author, William Smith, M.D., for teasing readers with the results of his experiments on the mysterious *aer mephiticus* (which Smith had advertised in an interjection, only to withhold the further details under pretense of not wishing to interrupt his main narrative). The reviewer thus objects:²¹²

207 Not an "American librarian" (May/Sell 2006:18), but a well-known *libertarian* in the American individualist anarchist tradition of Josiah Warren and Benjamin Tucker (publisher of many of Spooner's works, which he championed and excerpted in the pages of his journal *Liberty* (1881-1908)). For an overview of Spooner's views on IP, cf. Palmer 1990:821-825 = 2002:46-49, Shone 2010:15-23; for IP debate within 19th century individualism more generally, cf. McElroy 2003:85ff. (Ch. 6). In light of Spooner's strong position in favor of indefinite copyright term (a still contentious matter, e.g. in *Eldred v. Ashcroft*, 537 U.S. 186 (2003)) and familial survivors as natural beneficiaries (cf. Spooner 1855:109-110), it is interesting to note the testamentary situation at the time of his death: "Lysander Spooner left no will. His estate consisted of a stock of printed pamphlets, of which he was the author, and an immense quantity of manuscripts. Many of the latter have never been published, and some of them are of high importance. His legal heirs are people who had no sympathy with or comprehension of his ideas and who regarded him as an outcast,—people manifestly unfit to have the custody of his interests. Consequently I have purchased of them the entire stock of pamphlets and manuscripts at no little risk and expense, and I intend to publish as many of the manuscripts as I can. For this purpose I now open a subscription, and appeal for aid to all who are willing to render it." (Tucker in *Liberty* 4.23 [101] (18 June 1887), p. 4, col. 1; cf. on p. 8 of that issue notice of "The Spooner Memorial Meeting" alongside announcement of "Lysander Spooner's Pamphlets. Sold for the benefit of the Spooner Publication Fund").

208 Dutfield 2003:53, noted at May/Sell 2006:18.

209 Tucker's editorial obituary of Spooner (*Liberty* 4.22 [100] (28 May 1887), pp. 4-5 = Spooner 1992:1-9) took only passing note of this IP treatise (as "the only positively silly work which ever came from Mr. Spooner's pen"; cf. Tucker 1897:127-129, 167, 474, attesting Tucker's generally anti-IP views), yet *Liberty* offered it for sale alongside all his other pamphlets. In fact, Spooner's provocative tract likely deserves most of the credit for prompting the lively debate on IP matters which took place in *Liberty's* pages (see esp. 7.20-24 [176-180], 26 [182] (Jan-Apr 1891)), marked by a notable diversity of opinion in what could just as well have served Tucker as a narrowly doctrinaire platform for his own personal brand of individualist sectarianism (its first issue had announced "at the outset that this journal will be edited to suit its editor, not its readers," 6 Aug 1881, p. 1, col. 1).

210 Banner 2011:24.

211 Hesse 2002:39 cites the *OED* as tracing the term's earliest occurrence to the year 1845.

212 *MonRev* 1769:290.

By the *prism* of Newton, and by the *electrical kite* of Franklyn, we swear we would exchange the *New and General System of Physic*, which cost us fourteen shillings, sewed, for one good experiment on this, or any other subject. — What a niggard this Doctor is of his own, and how profuse he is of other people’s intellectual property! A contrast to the character of Catiline, as given us by Sallust, he is *alieni profusus, sui parcissimus*.²¹³

Thus, Roman literary wit has been associated with the English expression from its earliest attestation. For Stuart Banner, such 18th century usage suggests “something closer to the sum of knowledge possessed by a person or a society.”²¹⁴ Here the reference is to essentially private personal knowledge, whereby the reviewer’s very use of the word “property” is intended as a sarcastic rebuke of the pretended stinginess of an author who had nothing to share or hide to begin with.

The next (more legalistic) usage of the term adduced by the *OED* appears in *The Medical Repository* from the year 1808, in an article entitled “New-England Association in favour of Inventors and Discoverers, and particularly for the Protection of intellectual Property.”²¹⁵ Some forty years later the *OED* finds the term used in Justice Levi Woodbury’s ruling in the 1845 First Circuit case of *Davoll et al. v. Brown*.²¹⁶

a liberal construction is to be given to a patent, and inventors sustained, if practicable, without departure from sound principles. Only thus can ingenuity and perseverance be encouraged to exert themselves in this way usefully to the community; and only in this way can we protect intellectual property, the labors of the mind, productions and

213 “Prodigal of others’ property, most sparing [or, with the reviewer: niggardly] of his own.” The reference is to Sal. Cat. 5.4: *alieni appetens, sui profusus* (“covetous of others’ property, prodigal of his own,” tr. John Selby Watson, modified).

214 Banner 2011:23-24 (cited at Hughes 2012a:1317).

215 MedRep 1808:303 (after a brief rehearsal of U.S. Constitutional and prior Congressional concern for patent legislation, the bulk of the article consists of direct quotation from the charter and other literature of a newly founded Boston society of “inventors and patrons of the useful arts,” together with an announcement of its new journal).

216 *William C. Davoll and others vs. James S. Brown*, 7 F. Cas. 197 (C.C.D. Mass. 1845) (No. 3662), from the First Circuit’s Oct. 1845 term, regarding construction of an 1843 patent specification claiming an improvement in the production of cotton roving. Cf. Woodbury/Minot 1847:53-60 at 57. Cited at Lemley 1997:895-896n123 (also noting the use of *propriété intellectuelle* in Nion 1846, which Hughes 2012a:1306n50 cites as employing the term broadly to encompass industrial as well as literary/artistic property), Banner 2011:24, Hughes 2012a:1318.

interests as much a man's own, and as much the fruit of his honest industry, as the wheat he cultivates, or the flocks he rears.

In that same year Elisha P. Hurlbut's *Essays on Human Rights, and Their Political Guaranties* (New York: Fowlers and Wells) included a chapter on intellectual property which encompassed patentable inventions under an otherwise literary umbrella.²¹⁷ For 19th century England, Hughes endorses the findings of Sherman and Bently that, whereas legal society appealed to "intellectual property" in policy discussions, the term was "not used in a consistent way to designate a meaningfully clear area of law."²¹⁸ This seems to jibe with the contemporary record of U.S. case law. The term made its first Supreme Court appearance in *Mitchell v. Tilghman* (86 U.S. 287 (1873)), in which the Court quotes a letter equating IP litigation with the defense of gentlemanly reputation ("Mr. Tilghman should have the courage to defend his intellectual property, that is to say, his honor").²¹⁹ William Fisher identified only one use of the term "intellectual property" in US federal court reports before 1900, where it does not recur again until two instances in the 1930's, thereafter following a steady rise: six occurrences in reports from the 1940's, ten in the 1950's, and nine in the 1960's, the trend especially takes off in the 1970's (41 instances), 1980's (287) and 1990's (over 800).²²⁰ It is first in this period (the latter half of the 20th century) that it finally supplanted the term "industrial property"²²¹ (which now

217 Hurlbut 1845:198-219 (subsequent Fowlers and Wells editions through 1850 retain the same pagination, with supplementary comment by Combe at pp. 243-245). Cf. Hughes 2012a:1318 w/ n106.

218 Hughes 2012a:1317 w/ n95 citing Sherman/Bently 1999:95. Hughes 2012a:1318 w/ n103 notes Turner T 1849:75 (On Copyright in Design in Art and Manufactures) as using "intellectual property" with the full scope of its present meaning.

219 Hughes 2006:1006-1007, 2012a:1318-1319.

220 Fisher 1999:[n.p.]n105 (based on a Lexis query), followed by May/Sell 2006:18.

221 The OED finds the earliest occurrence of this term (derived from the French *propriété industrielle*) in the 17 March 1884 declaration of UK accession to "The International Convention for the Protection of Industrial Property, concluded at Paris on the 20th March, 1883, and the Protocol relating thereto, signed on the same date" (Hertslet 1890:408). Noting its French origin, Ladas 1975 [I]:1n1 cites, among other international variants, Sp. *propiedad industrial*, It. *proprietà industriale*, and De. *industrielles Eigentum* (rare), *gewerbliches Eigentum* or *gewerblicher Rechtsschutz* (more common).

especially brings to mind the objects of patent and trade secret, perhaps also trademark law, but in the early 20th century will have included copyright)²²² as the predominant expression.²²³

While the amalgam of “intellectual,” “property” and “rights” (IPRs) artificially subsumes under a common banner a variety of disparate objects (copyright, patent, trademark, etc.), the individual elements (I, P, R) are on their own each rife with value-laden connotations. Historically, where distinctions are made between literary and artistic works on the one hand and industrial/technological inventions on the other, it is clear that “intellectual” was at first predominantly more readily associated with the literary and artistic.²²⁴ It has therefore been suggested, first, that application of the “intellectual” label has buttressed the esteem of works otherwise referred to as literary or artistic works (or properties); further, that extension of the intellectual label to include industrial/technological innovations (associated more with mechanical trade craft) within the same category of works as the already culturally more esteemed literary/artistic has served the pursuit of their stronger legal protection; hence, that “intellect” and “property” have helped to cultivate an understanding of creators’ or owners’ (natural) “rights” in all goods which may fall together under such a category.²²⁵ Paul A. David explains the shift by appeal to ambiguous terminology in the service of a potent rhetoric of rights and property:²²⁶

The obvious objective of giving an “intellectual” spin to such items of property is to try to induce some greater resonance with the more culturally valued and hence “protection-worthy” expressions of literary and artistic creativity. But, the main rhetorical coup is achieved by designating the whole incoherent collection “property.” To speak of “property” automatically inhibits thoughts of confiscation by the State, while promoting

222 David 2001:16.

223 May/Sell 2006:18 citing a draft of David 2001.

224 Cf. examples at Hughes 2012a:1319-1320, 1322.

225 Cf. Hughes 2012a:1324, and note Edmond Picard’s preference for discussion of “rights” over (potentially misleading) “property” at Hughes 2012a:1328.

226 David 2001:16 (cf. 15-16), drawing on Vaver 2000; quoted in part at May/Sell 2006:18.

the extension of some people’s “rights” to ownership, even though that may entail the restriction or extinction of others’ ability to exercise common access to the goods in question.

Thus, Movsessian and Seifert characterize *geistiges Eigentum*²²⁷ (GE = IP) as the object of a “theory” developed out of natural rights doctrine to vindicate of the creator/author (*Urheber*), favoring the evolution from publishers’ (*Verleger-*) to authors’ rights (*Autorenschutz*).²²⁸ To the extent present IP debates seem to echo rather than transcend those of the past, Hughes suggests recourse to a core of practical wisdom without pretense of definitive answers. He quotes Eugène Pouillet’s insight from over a century ago, “[t]hat this property is of a special nature, that it has required particular regulation, and that, while having its source in natural law, it has demanded organization different from the organization of ordinary property, that is obvious.”²²⁹ In this vein (and with perhaps slightly greater approval), he further cites the simplicity of matching provisions from the Civil Codes of Chile and El Salvador: “Productions of talent or genius are a

227 The English term is the result of Latin influence shared by the Romance languages (Fr. *propriété intellectuelle*, Sp. *propiedad intelectual*, It. *proprietà intellettuale*), though the German “GE” is obviously linguistically equivalent (Hughes 2012a:1295, cf. 1319n111 citing Van Dyke 1888:14-15); the respective national jurisdictions, however, naturally differ from one another (even amongst the civil law countries) according to the historical peculiarities of their respective legal systems (cf. Dreier 2013:116-118). For a German-language review of the term, cf. Rigamonti 2001.

228 Movsessian/Seifert 1982:68-69 (“Mit der Theorie vom geistigen Eigentum hatte der Urheberrechtsgedanke Anerkennung gefunden”). As to their further assertion of IP’s value as a term of convenience (“Der Begriff ‘geistiges Eigentum’ ist [...] schon wegen seines schlagwortartigen Charakters auch heute nicht zu ersetzen”), contrast Seifert 1996 (“Geistiges Eigentum – Ein unverzichtbarer Begriff”) (cf. Fisher 1999: “Today, it is the standard way for lawyers and law teachers to refer to the field”; Hughes 2012a:1334: IP is “now dominant and ubiquitous as the umbrella name and concept for patents, trademarks, copyrights, neighboring rights, and a variety of other legal tools that protect intangible values”) with the comments at Eggert 1999:187: “Der Begriff des ‘geistigen Eigentum’ ist im deutschen Urheberrecht heute wenig gebräuchlich,” “nach heutigem Verständnis jedenfalls nicht mehr im Sinne einer dogmatischen Theorie, die den Inhalt des Urheberrechts nach den für das Sacheigentum geltenden Grundsätzen bestimmen wollte, gebraucht” (cf. 187n14 citing Rehbinder 1996:62 (8.II.5) as in favor of dispensing with the term “GE” entirely). Yet, note Dreier 2013: “Only recently has the term ‘property’ (‘Eigentum’) been used in German legal literature for exclusive rights in intangible goods as well, in the wake of the [1994] TRIPS Agreement and increasing globalization of trade in intangible goods” (118); “It was only towards the end of the twentieth century that the notion of ‘property’ (‘geistiges Eigentum’) found its way back into the general legal discourse; [...] not as a legal qualifying term, but rather as shorthand for the different statutory exclusive regimes with regard to intangible goods” (121).

229 Pouillet 1908:26-27, at Hughes 2012a:1333 w/ n194.

property of their authors. This type of property shall be governed by special rules.”²³⁰ Praising the provision’s “straightforward, if not profound” and “haiku-like” qualities, Hughes suggests that copyright law’s property-or-not debate should simply be laid to rest.²³¹ Further courage may be mustered from Thomas Dreier’s findings on the element of property as a constituent of IP. He concludes that, as far as exclusive rights in intangible goods are concerned, property “seems not to refer to a precise legal concept, but rather ... an ideologically motivated metaphorical use in the ongoing debate on the propertization of public goods.”²³² Indeed, the term is merely a metaphor used for the most part “by right-holders as a rhetorical, if not ideological, tool in order to justify their demands for an increase in exclusive protection, ... to fend off ... exceptions and limitations, as well as to justify the superiority of the rationale of exclusion over the rationale of access.”²³³

Pottage and Sherman find that “[a]nyone who wants to intervene in the *politics* of intellectual property probably has to work with the old theory that intellectual property is just ‘a temporary state-created monopoly given to encourage further innovation.’”²³⁴ Without necessarily subscribing to their particular conclusions, I too find that a turn to “the *historical or sociological* ‘reality’ of intellectual property rights”²³⁵ need not depend (or wait) on definitive answers to the wide variety of potentially intractable problems which beset current IP doctrine and its legal administration. For the moment, it suffices for my purpose to assert even in the (post-)modern, (post-)industrial era IP vocabulary has had a life and served agendas

230 Arts. 584 (1855) (Chile) & 570 (1859) (El Salvador), at Hughes 2012a:1333-1334.

231 Hughes 2012a:1334.

232 Dreier 2013:130.

233 Dreier 2013:132.

234 Pottage/Sherman 2013:12 quoting Boyle 2008:21 (emphasis added).

235 Pottage/Sherman 2013:12 quoting Boyle 2008:21 (emphasis added).

independently from, as well as in service of, the objects it has been employed to denote and regulate.

When Spooner was basing his maximalist proprietary claims to intellectual works on a facile equation of property with wealth (thus sparing himself the need to argue from problematic analogies of intangibles to tangible real goods),²³⁶ his fellow anarchist Proudhon²³⁷ had already declared that “property is theft!”²³⁸ (*la propriété, c’est le vol!*—for many perhaps their only association with his name,²³⁹ one still occasionally invoked in IP scholarship).²⁴⁰ The slogan’s resonance (the nature, management and desirability of monopolies in immaterial goods posing myriad unresolved problems) not to be lightly dismissed,²⁴¹ some two decades after its original

236 Palmer 1990:821-822 = 2002:47; cf. Hughes 2012a:1325.

237 Spooner 1855 nowhere mentions Proudhon; Alain Laurent does not find occasion to cite Proudhon in his preface to Patricia Chameaureau’s recent French translation (Spooner 2012:ix-xx). According to Symes/Clement 1972:155, “Proudhonism had received its first systematic presentation in America in a French journal, *La Libertaire*, published in New York by a French immigrant, one Joseph Dejacque, on the eve of the Civil War.”

238 Kelly/Smith 1994:13, McKay 2011:87. Benjamin Tucker’s rendering “robbery” has proven less popular. An MIT graduate (Riley 1945:26; Avrich 1988:27, 140), one-time Boston *Daily Globe* editor (Madison 1943:446), and Francophile (not conversant in Russian, even his translations of Chernyshevsky and Tolstoy are based on French editions; Avrich 1988:27-28, 144) who ultimately retired to Monaco (Madison 1943:449, 451; Avrich 1988:143, 147-152, 2005:6, 9-10), Spooner’s booster was also among the foremost American translators and champions of Pierre-Joseph Proudhon (Avrich 1988:140-143), from whom *Liberty* took its subtitle-motto (“Not the daughter but the mother of order”—also on the cover of Tucker’s only book, Tucker 1897). Starting with issue 1.6 (15 Oct 1881), *Liberty* began advertising (as part “Liberty’s Library”) Tucker’s translation of Proudhon’s *Qu’est-ce que la propriété?*, initially “containing as a Frontispiece a fine steel Engraving of the Author.” With 1.8 (12 Nov 1881) *Liberty* began offering an “elegant steel-plate portrait” (doubtless the same image), “suitable to frame and hang, of P.J. Proudhon, the profoundest political philosopher and economist that has ever lived” (starting with 1.17 (18 Mar 1882) alongside a portrait of Bakunin as part of “Liberty’s Portrait Gallery”), advertised as late as 4.7 [85] (31 Jul 1886). With issue 4.15 [93] (12 Feb 1887), *Liberty* announced the “Proudhon Library” (“For the Publication in English of the Entire Works of P.J. Proudhon. Published Monthly”; cf. Avrich 1988:142), and Tucker’s *What Is Property?* translation continued to be advertised as late as 14.9 [371] (May 1903) (it has been kept steadily in print by the anarchist press ever since, e.g. Oakland: AK Press, 2011). Obviously, Tucker was able to reconcile his principled individualism with Bakunin’s communism/collectivism just (or almost) as easily as with Proudhon’s mutualism.

239 Cf. Tucker 1897:391.

240 E.g. Becker 1993:611n9 (cf. 624) formulates what he dubs “Proudhon’s Challenge: Why should I reward you, in the form of recognizing a right to property, for labor I did not ask you to perform?” One might contrast “Locke’s non-theft condition” (so-called at Grunebaum 1990:556, writing under the heading “Ownership as Theft”): “truly I have no property in that, which another can by right take from me, against my consent” (Locke [1689] 1764 II xi § 138).

241 Cf. Hughes 1997:109 w/ 166n7—notwithstanding Marx’s polemics (letter to J.B. Schweitzer, 24 Jan 1865, at Marx 1936:166) and widely shared objections to Proudhon’s general style (cf. Thomas P 1980:187-188). It is as

formulation French debate had reduced the IP problem to Proudhon's original question: *qu'est-ce que la propriété?*²⁴²

Pottage and Sherman deny immateriality altogether (therefore too the tangible/intangible dichotomy) by looking back to Roman and Medieval law as a basis for their conclusion that “far from being the poor relation of ‘true’ property rights, the making of intellectual property rights exemplifies what is involved in the emergence and maintenance of property rights in even the most material of things.”²⁴³ As for the undeniably immaterial objects of the variously asserted authorial rights subsumed under the IP banner, however, it is worth reverting to Thomas Jefferson's famous letter to Isaac McPherson (Monticello, 13 Aug 1813), speaking to some of the core qualities of public goods:²⁴⁴

Stable ownership is the gift of social law, and is given late in the progress of society. It would be curious then, if an idea, the fugitive fermentation of an individual brain, could, of natural right, be claimed in exclusive and stable property. If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea, which an individual may exclusively possess as long as he keeps it to himself but the moment it is divulged, it forces itself into the possession of every one, and the receiver cannot dispossess himself of it.²⁴⁵ Its peculiar character, too, is that no

obtuse to fault the pithy slogan as invalidated by a fatal *petitio principii* (Avineri 1968:83; cf. Thomas P 1980:188-189) as it would be to criticize Proudhon's appropriation of the Twelve Tables' rule *adversus hostem aeterna auctoritas esto* (XII Tab. 3.7 Warmington ap. Cic. *De off.* 1.12.37, the epigrammatic motto of Proudhon 1840) for ignoring Cicero's interest in a semantic equivalence between archaic *hostis* and contemporary *peregrinus*. (For *hostis* in 19th century international copyright debate, note its invocation at Van Dyke 1888:15, decrying conflation of foreigner and enemy within a moralizing sermon against “the national sin of literary piracy”). In both cases, Proudhon's intended enemy is perfectly clear.

242 Passy et al. 1859:7, cited at Hughes 2012a:1326. Proudhon disposed of his property problem by appealing to the well established civil law distinction (note too variation in English usage, e.g. Johnson and Blackstone on “occupancy” at Rose M 1993:85, 90)—on which he laid great weight (cf. Tucker 1897:391-392, 474; McKay 2011:47)—between occupancy/possession (“the condition of social life,” in which all have “an equal right”) and property (which, unless “collective and undivided,” signifies “the suicide of society”). In accord with this polarity, Proudhon pursues a reverse Lockeanism to conclude that “labour destroys property,” hence his program to “[s]uppress property while maintaining possession” (Proudhon 1840 at McKay 2011:137). On Proudhon's philosophy of property, see further Zanfarino 1977. On the concept of possession in French IP law, cf. Françon 1998.

243 Pottage/Sherman 2013:15.

244 Jefferson [1813] 1903:333-334.

245 This point about the proliferation of ideas overlaps with the recommendation, made in his letter to Ebenezer Hazard (Jefferson 1791), for high numbers of copies as the best guarantor of a work's survival; see too Judith Sargent Murray's observation (writing under the pseudonym Constantia) that “[l]iterary acquisitions cannot,

one possesses the less, because every other possesses the whole of it. He who receives an idea from me, receives instruction himself without lessening mine;²⁴⁶ as he who lights his taper at mine, receives light without darkening me. That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density in any point, and like the air in which we breathe, move, and have our physical being, incapable of confinement or exclusive appropriation. Inventions then cannot, in nature, be a subject of property. Society may give an exclusive right to the profits arising from them, as an encouragement to men to pursue ideas which may produce utility, but this may or may not be done, according to the will and convenience of the society,

Apposite to David's emphasis on IP's conception as property rights, May and Sell note Mark Rose's observation of "paternity" rhetoric (defining an author's relationship to his work a "duty of parenthood")²⁴⁷ as often analogized or equated by strong-IP protectionists to notions of real property (real estate) ownership.²⁴⁸ I bypass for now the clear inroad to discussion of *paternité* as right of attribution in continental *droit moral* tradition (and relationship to Anglo-American copyright), and its further clear resonance with the equally charged Latin root of plagiarism in Martial.²⁴⁹ For now, with Jefferson in mind and the vagaries of the concept of "scarcity"²⁵⁰ in immaterial proprietary goods, I turn to consider Homeric poetry, originally oral-formulaic creations-in-performance, and ask the extent to which they ever existed as ancient literary "property."

unless the faculties of the mind are deranged, be lost, and while the goods of fortune may be whelmed beneath the contingencies of revolving time, intellectual property still remains." (Murray JS 1798 [I]:69 at Banner 2011:23)

246 Cf. the minister John Clayton's sermon commending to his parishioners mutual instruction through social intercourse, "for intellectual property is improved by circulation" (Clayton 1789:32 at Banner 2011:23); cf. "the ultimate source of intellectual property—the free exchange of ideas" (Barlow [1994] 1997:352).

247 May/Sell 2006:18.

248 Rose M 2002.

249 McGill 2012:74-111 (Ch. 3), cf. 2009:232 ("an individual normatively maintained the conventional right to have his paternity of his texts, that is, the right of authorship, recognized and protected after sending out his poetry, rather than taken by someone else"); cf. Biagioli 2012:454,455, 2014.

250 May/Sell 2006:19.

CHAPTER 1

Homer, the first poet

In light of the sparse ancient evidence regarding the earlier history of the Homeric text, many scholars prefer to dismiss anecdotes surrounding Solon, Pisistratus and Hipparchus, believing instead that it underwent its “first real recension” at the hands of the Alexandrians of the Hellenistic period. Noting the well-known temporal correlation with a sharp decline in “wild” texts ca. 150 BCE, Whitman, for example, suggests the “edition” of Aristarchus as marking a defining text-historical moment, before which “Greece as a whole lacked the concept of an official, canonical text.”²⁵¹ This raises several issues. First, what is precisely “canonical”? The text as an edition in our modern sense, it would seem. Homer’s *Iliad* had become established literary canon (in Nagy’s sense of “scripture”) long before the Alexandrians undertook their text critical efforts. “Canonical text” then means here what one might otherwise term “definitive edition,” wherein the precise readings, word for word, letter for letter, have been conscientiously and meticulously determined, or at least accepted and committed afresh to paper. There could be a distinction, then, between canonical text and canonical work, though it should remain for the moment an open question to what extent this can be or has been true in the case of other canonical texts: to what degree can a work subsist in variant forms and still retain its canonicity? The answer to such questions might hinge to some extent on a further related question prompted by Whitman’s remark quoted above: we may wish to consider whether or not a work can be canonical without being official, or whether perhaps these two notions are rather coextensive

251 Whitman 1958:85.

and mutually dependent. As this latter phrasing suggests, the question is perhaps largely semantic, a matter of how one defines the limits of what counts as “official” and what criteria are applied to discretely identify the relevant certificate authority.

Certainly, a vulgate Homeric text sponsored by the Pisistratid tyranny, no less than by the Ptolemies, would qualify in some sense as official to the extent it was identified with the central political authority, especially if, as some of our sources suggest, the collation of such a text served its performance at the Panathenaea. At any event, a conflation respectively with the civic institutions and the associated representatives of the polis may serve as one useful delimiter of what we might term “official,” as distinct from what might by contrast be identified with a single private individual, family or clan. One form of official recognition which has been frequently cited with respect to the early history of the Homeric text takes us back to the testimonia for a Solonian “recension,” in particular, to the well known passage in the Catalog of Ships (*Il.* 2.557-558; cf. *Plut. Sol.* 10, *Strab.* 9.1.10) which was alleged to have been interpolated by the Athenians themselves in furtherance of their contestation of Salamis against the claims of Megara:

*Αἴας δ' ἐκ Σαλαμῖνος ἄγειν δυοκαίδεκα νῆας,
στήσε δ' ἄγων ἴν' Ἀθηναίων ἴσταντο φάλαγγες.*

(*Il.* 2.557-558 ed. Allen 1931 = *Plut. Sol.* 10.1)

*ἐκ δ' Σαλαμῖνος ἄγειν νέας, ἐκ τε Πολίχνης,
ἐκ τ' Αἰγειρούσσης Νισαίης τε Τριπόδων τε.*

(*Strab.* 9.1.10.22-23 ed. Meineke)

In light of interpretations of these proceedings such as those of Thomas Allen,²⁵² we are faced with a further question respecting the distinction between legal document (e.g. title, will, charter, per Allen’s own language) and literary text. Aside from the problems entailed in making

252 Allen 1921; cf. Murray G [1934] 1960:348-349.

historical and procedural distinctions on the basis of sparse evidence as to what degree these arbitration proceedings are to be equated with forensics and criminal litigation, we approach here also the very bounds of literature (such as may well be irrelevant to the political historian vis-a-vis ancient textual source materials). But in our decision to start from Speyer's fundamental identification (of the advent of intellectual property with the preconditions for its adulteration, i.e. forgery), we require not only some concept of a discrete and stable text. Forgery as a type of fraud entails deceit, in particular (according to Speyer's formulation) willful deceit in pursuit of a perceived benefit. Hence, the search for the determinants of textual stability, or fixity, necessarily depends on a conception of the written word in terms of its literariness: fictive arts may be a tool of fraud but are not to be confused with its ends. Speyer himself, though his approach requires supplementary refinement, insists on an evaluation of authorial intent, which is of course problematic and highly underdetermined as far as the latter day critic is concerned.

According to Speyer's minimal standard, simple awareness of textual origin and identity demonstrates (a potential for) *geistiges Eigentum*:²⁵³ the author of a given work receives explicit nominal attribution independent of the ownership status of its physical embodiment; the preconditions for forgery (ergo intellectual property) are fulfilled.²⁵⁴ Reflecting on performance as an element common to all art rather than just within the artificially circumscribed domain of the so-called performing arts (dance being the most frequently invoked model), forgery scholarship has identified its own minimal standard of authenticity in performance as

253 Speyer 1971. The phrase "geistiges Eigentum," though absent from the index, appears frequently throughout.

254 Cf. Bettig 1996:11, ascribing the absence of authorial claims in early Greece to the inherent instability of oral poetry. Suchman 1989's extreme extension of IP mentality to preliterate oral cultures generally (noted below) will be taken up later when other anthropological studies within the literature on the aesthetics of forgery are also addressed in an attempt to refine our definition of what constitutes a "copy".

achievement (*Leistung*),²⁵⁵ a quality seemingly independent of composer, performer or audience intent. When an individual performs some given feat before an audience (as would have the oral bards of archaic Greece), the act itself is undeniable, all *post hoc* interpretation aside.²⁵⁶ While Speyer provides a suggestion of what to look for, we have already conceded a necessary reliance on indirect inference based mostly on the limited textual evidence itself, so this appreciation of authenticity developed by Dutton and others offers perhaps the simplest approach accommodating to Speyer's vocabulary. For convenience, we might designate this perspective as the theory of authenticity-in-performance, in the manner of Nagy's evolutionary model of Homeric textual transmission, which acknowledges performance as the original context for authorship (composition-in-performance) and publication (diffusion-in-performance). Achievement is not just an artifact as final product, but the product of an act of performance which inheres in the product. In the case of live performance, of course, they are identical (not only artefact as fixed performance, but performance as product—they are coterminous). The evolution of authorial identity not just as performer, however, but as creator independent of a given performance of an underlying stable work, we establish as a working hypothesis, proceeds apace with the eventual fixation and distribution of said work as a written document (literal textuality) in multiple copies. Distinct from performance-authenticated authorship, the text-in-fixation is determined by its degree of intra-performance invariability.²⁵⁷

Following for the moment this identification of intellectual property with the earliest preconditions for forgery, it is reasonable to seek a coeval conceptualization of truth which

255 Dutton 1979; cf. Nagy 1992 [TAPA]:28.

256 For a potential exception/qualification, cf. e.g. Corrado 1990 and Schopp 1991 on insanity and the legal defense of automatism.

257 Nagy 1992 [TAPA]:28.

might distinguish fraudulence from authenticity with respect to the oral text. The oral text is in this respect to be ever compared to, as it coexists and evolves with, its written avatar (whether the example at hand be the Homeric text in performance or the text of legal documents (laws) in forensic citation). But the context for evaluating this truth is the text's oral performance. The performer may not overtly attest to the authenticity of his song, but the circumstances and manner of its performance just as well as its verbal content form the basis for assessing its truth-value. While suppositions as to the performer's intentionality may be susceptible to error (intentional fallacy), it is less dangerous to refer to the singer of an oral poem *qua* agent (actor) of a performance for the purpose of attribution: regardless the polyphony of voices amalgamated within a tradition, a performer may be identified (in a most basic sense, without even a name) by his immediate audience members at the time of performance, and his performance can be identified (associated) with him even without a title designating the matter performed as a particularly discrete stable work.

At the earliest historical stages, presumably, the occasion of poetic performance (sans erudite literary text) was unburdened by any such conceptual problems. As Bertolín Cebrián claims, "Characteristic of early literature is its association with a social occasion for the representation ...; there were no funerary laments unless someone died, no wedding songs, unless someone married."²⁵⁸ Bertolín Cebrián's entire thesis asserts as the motive force behind the narrative elaboration of the epic genre a historical (migratory/colonizing) separation from the traditional local funerary cult sites of its first inception: epic evolved from primitive Greek funerary performance cultivated in the diaspora, the narrative element nurtured by removal from song's immediate object of reference (as well as by appropriation by male practitioners from

²⁵⁸ Bertolín Cebrián 2006:9.

originally female lamentation-singers). The merits of his thesis aside (the relevance of funerary lament as a general phenomenon will become more apparent when I return to the social context of Solonian poetry below), these suppositions raise a fundamental issue to the appreciation of literature with respect to textual fixity: a physically verifiable external referent as a metric of authenticity and provenance can be of equal relevance to inscription and to sung oral text. This geographic (spatial) element of displacement can be better illustrated in the converse by reference to Peter Bing's formulation of the *Ergänzungsspiel*.²⁵⁹ With this term, Bing means to convey both "playfulness and the endeavor to make a thing whole (*ganz*)," for which he finds no suitable English equivalent encompassing the "self-conscious manipulation of and (above all) play with supplementation that is crucial both to creation and reception of many epigrams in the Hellenistic period."²⁶⁰ Citing Demetr. *De eloc.* 222 (w/ Theophr. fr. 696 Fortenbaugh), Bing identifies *Ergänzungsspiel* as "a strategy from rhetoric [which] came to be applied in poetry, precisely in the imaginative space opened up for the reader by epigram's shift from monument to scroll."²⁶¹ This game, which can be either "played in the poem" or "performed by the reader,"²⁶² thus involves imaginatively supplementing the purely literary epigrammatic text on the basis of a hyper-conscious conceit of reference to an original, yet non-existent physical object upon which it was inscribed. This is reminiscent of a distinction made in discussions of allegory (cf. Quint. *Inst. or.* 8.6.47) between *allegoria tota* and *allegoria apertis permixta*, or between *allegoria*, *allegoresis*, and symbol.

Bing's treatment of Callim. *Epigr.* 33 Pf = 21 GP (AP 6.347)

259 Bing 2009:85-105, cf. Collins 2004 for a different kind of supplementation. Note in what follows the potential relevance to literary interpretation in terms of allegory (interpretive supplementation) as well as with respect to origination in competition (games whether solitary or collective interacting with the text).

260 Bing 2009:86 n. 2.

261 Bing 2009:90 w/ n. 13.

262 Bing 2009:99.

Ἄρτεμι, τὴν τόδ' ἄγαλμα Φιληρατὶς εἵσατο τῆδε·
ἀλλὰ σὺ μὲν δέξαι, πότνια, τὴν δὲ σάω.

Artemis, to thee Phileratis set up this image here.
Do thou accept it, Lady, and keep her safe. (tr. Mair)

presents the hazards of interpretation thusly:

This poem is so straightforward, so modest and plain, that it initially makes us unsure of our critical faculties. Why do we even dignify it with our attention? Would we do so if it had not come down to us under the name of the great Callimachus? The feeling is like that which one sometimes has in museums when one drifts by a painting without giving it a thought (for it is not particularly striking), then suddenly notices out of the corner of one's eye that it is labeled 'Rembrandt,' whereupon one snaps to attention, examines it with care and interest, and might go so far as to call it a masterpiece. On honest reflection, however, it is hard to shake the feeling that one has been a victim of—indeed, perhaps has helped perpetuate—a swindle.²⁶³

Bing's answer to this conundrum is unsatisfactory. Noting the verbatim conventionality of 33 Pf, he asks "How, one wonders, can we distinguish the poem from any inscribed dedication that might be found in a public setting?" Yet, he attempts to style it as "dislocated" and "unmoored" by a false analogy: he contrasts 33 Pf, which is in the style of a dedicatory inscription (hence its goddess-addressee), with *CEG* 1.28 (83 FH = *GVI* 1225, a 6th century Attic verse inscription) and the Midas inscription, both of which are epitaphs (which speak to the reader). He quotes *CEG* 1.28 as displaying a "rare explicitness" in its attempt "to engage and involve the reader's thoughts"²⁶⁴—yet this "rare explicitness" is precisely here explicit, whereas he has had to read it into 33 Pf, written in a form where one wouldn't expect appeal to reader-collaboration, and which he speculates²⁶⁵ could just as well have served as an actual inscription on an actual object, commissioned from Callimachus. Yet, thanks to the pre-existing ascription to Callimachus, Bing allows himself some further conclusions: "I think we must reckon with the likelihood that so powerful an exponent of book poetry as Callimachus would at the same time have contemplated

263 Bing 2009:91.

264 Bing 2009:92.

265 Bing 2009:91.

his poem's place in a book"²⁶⁶—in which the couplet becomes “dislocated” and “unmoored”. He quotes Richard Hunter regarding literary epigram as requiring speculation and intellectual reconstruction on the reader's part: “the demand for concision makes ‘narrative silences’ an almost constitutive part of the genre.”²⁶⁷ Bing concedes that in “supplementing” the 33 Pf epigram with his own background story he has “spun out a ... tale, which readers may or may not find plausible,” but, he says, those “who do not indulge in such play (perhaps constructing tales more plausible than mine) are missing out on the fun [..., as] *Ergänzungsspiel* constitutes [...] the aesthetic pleasure of reading the poem”.²⁶⁸ He identifies in this game itself, rather than anywhere in the text under discussion the locus of “the specifically ‘Callimachean’ quality of the piece”.²⁶⁹ The critical historian, on the other hand, will ask to what extent the author or commissioner (Phileratis) intended such a game at all, or wished to invite any reader or by-passer to such collaboration. As Bing points out,²⁷⁰ any physical inscription in situ will have been readily comprehensible. In noting the verses’ “private quality” (dialogue between Phileratis and Artemis) but also Barthes’ “plural text,” Bing coins the convenient term “Acontius effect” (after Callim. fr. 67, Dieg. Z I w/ Pf. ad loc.; cf. Aristaenet. 1.10 for the relevant oath).²⁷¹

Nagy's entire concept of the Homeric text emphatically depends on the extremely long-lived tradition of its oral performance. If our primary object is the literary work, the indefinite temporal boundary between literacy and orality for archaic Greece should not in itself pose an obstacle to inquiry: “oral literature” and the “oral text” are reasonable labels for the creative

266 Bing 2009:93.

267 Bing 2009:95n.26.

268 Bing 2009:95.

269 Bing 2009:95.

270 Bing 2009:88, 93.

271 Bing 2009:93-94; n. 22 suggests that increase in silent reading correlates with decline in reader's obligation/commitment to lending his voice to the text. Cf. Dietzler 1933.

verbal expression which has not yet necessarily achieved its final or even first written fixation. Such a text, moreover, need not be rigidly traditional to the point of being strictly invariant. The Yugoslav evidence for preliterate oral poetry gathered by Parry and Lord has taught an appreciation for the subjectivity of precision in performance, which will have varied according to the degree of bardic intervention in his traditional text (this variation itself forming part of the tradition). Yet the unwritten song merits this textual appellation precisely by virtue of its relative degree of fixity of form: even if not fixed in a tangible medium of expression (in the language of modern copyright law), a song relatively invariant over multiple performances still attains its own unique identity. At the extreme margins, an oral poem will be either entirely novel or a verbatim recitation of a previous performance. However, the degree to which a song can be uniquely identified, along with the individual qualities forming the basis of such identification, need not overlap with the metrics of the song's traditional character. This complicates questions of textual identity (self-similarity), hence complicating the question of what constitutes a copy, which cannot be immediately resolved. A further element of textual identity, moreover, potentially independent of textual variation and traditional character, lies in a given work's attribution, itself not necessarily entirely distinct from its title.

The oral poet as un-mediated performer may be accorded attribution for his work, based on the identification of agent (e.g. poet-performer's name(s)) and work (e.g. title)—shaped by some mutual feedback to the extent the one defines the other. Further complication arises when we begin to distinguish between performer ("singer") and composer ("poet"), exemplified by the Classical distinction between *rhapsodos* and *aoidos*. Though this particular pair of terms

represents a likely false dichotomy for the archaic period,²⁷² Ford notes one postulated moment at the earliest stages of choral lyric for a *de facto* divergence of singers and poets: in contrast to Homeric rhapsody the choral lyric performance was predetermined by a ready-made (made-to-order) text.²⁷³ Further illustrating the importance of performative context to our discussion, the model of this particular genre (group of genres) helps elaborate a theoretical spectrum of attribution defined in two dimensions: synchronic attribution (authorship of the performance) and diachronic attribution (aggregate or cumulative author-identities associated with traditional material, over multiple performances). Without insisting on causal relation, the (potential, if not yet actually realized) composer-performer dichotomy can be highlighted by correlating with these two categories the parallel dimensions of synchronic polyphony (plurality, or joint/co-authorship) and diachronic polyphony (a kind of serial authorship), respectively. Authorship and its attributions are hereby construed simultaneously in terms of both the distance between composer and performer (potentially zero, meaning these categories denote one and the same person or collection of persons), on the one hand, and the number of composers and performers, both for a given performance as well as for the sum of performances over the history of a particular work (to the extent we recognize an underlying stable oral text as a common denominator),²⁷⁴ on the other. The distinction between polyphony and attribution, both synchronic and diachronic, becomes more significant the more we distinguish between composer and performer. Synchronically, in terms of a particular performance, depending on the requirements of genre, a single performer (a particular rhapsode performing at a specific place

272 Ford AL 2002:131ff., Nagy 2004 [HTL]:79 (citing Nagy 1996 [HQ]:82-94 for discussion and further references), 82 (faulting West). Ford AL 2002:131 emphasizes that *oidē*, as the creation of the *oidos*, is to be construed actively, singing rather than song, but not simply an object like *poiēma*.

273 Ford AL 2002:135, with n. 13 citing Weil 1884 = 1900:237-244 and Wolf 1795:42 = 1985:72 (ch. 12).

274 Textual identity may be defined for such a purpose simply by its own tradition.

and time) is likely to feel freer to improvise, whereas multiple performers will be more restricted (even without a script) by the very mechanics of group performance. In the case of the dramatic chorus, reliance on a script (which will have determined choreography as well) constrains improvisation, and this reason for their uniformity helps explain why dramatic works (often named after their chorus) were among the first to receive proper titles.

None of these factors necessarily determine the degree to which a composer-performer identifies an oral text as his own. Remember here Bing's Acontius effect: in the act of reading, a reader can be drawn into collaborating with the text; by contrast, to the extent the element of privacy does not inhere in bardic performance it will be distinct from chattel propriety. Ownership must be construed in terms of performance: my text is the one I just sang (self-attribution inheres in, is validated by, and equivalent to performance), in reaction (perhaps even unconsciously) to audience inputs; or in terms of the degree of original contribution or intervention in the (oral) text: I created this from nothing, or adorned, elaborated, expanded or compressed this traditional material as I saw fit, at the extreme transmitting it with exact accuracy, at least according to a subjective sense of its objective form. There may well exist a gap between a performer's and an audience's evaluation of ownership or preferred attribution or identification of the underlying work. Though it might arise spontaneously, through whatever noise favors miscommunication, perhaps such evaluation could be deliberately manipulated by the performer himself. It is in this space between composer-performer and audience, the space of performance-reception, where the potential for deception (if fraud be yet too strong a term) resides.²⁷⁵ The self-evident rudiments of author- and work-identification need not depend on the

²⁷⁵ The precariousness of reconstructing authorial intent and authenticity in this regard are reflected in contentious attempts by editors and commentators to assign problematic verses to their appropriate remove from the "original" author; cf. e.g. Nagy 2004 [HTL]:83.

prior written fixation of the text, but writing is also no prerequisite for the kind of illicit usurpation cited by Frohne as taboo among the Turkish story-tellers (and such norms governing the sharing and repetition of familial- or master-apprentice-proprietary *Erzählgut* would not be expected to leave any trace in the archaeological record).²⁷⁶ Reliance on titles first became widespread as authors (Democritus, the Sophists) began to produce multiple works, but prior to consistent reliance on titles works may have been identified just as readily by addressee or subject matter (including episodics, e.g. “Doloneia”), source (of inspiration), or simply the name of the author him-/herself (this especially where only one work, however loosely defined, will have be particularly identifiable by reference to a single source responsible for no other known work).²⁷⁷ The immediacy of performance anticipates any need for attribution at all, say in the case of a first-time original performance to an audience unfamiliar with, and not expecting, anything resembling the material presented. Accepting the performer’s identity, even merely identifiable individual features, as an audience’s most immediate point of reference, is sufficient basis for accepting Speyer’s somewhat artificial moment of the Homeric author-work identification as the primordial IP prerequisite, a useful theoretical construct, though fraudulent performance will have to be so broadly conceived as to include any and all forms of subverted audience expectations.

Attribution need not imply agency, at least in a subjective sense, if we consider inspiration and source-citation. Penelope Murray, Ford, and others note the inaptness of artisan language for the early Greek *aoidos*, where making (*poiein*) is supposed to suggest a poetic retreat from an earlier divine social and hieratic stature. The crafting of verse in the highly

276 Frohne 1995:53-54. For Turkic story-telling in oral epic form, cf. Reichl 1992, 2000, 2006.

277 Schmalzriedt 1970.

literate conception current from the classical period onwards corresponds to a completed transformation from composition-in-performance to sharp distinction between composer on the one hand and performer on the other. The suggestion that a rising emphasis on the technical stylistic effects wrought by the practiced literary craftsman neatly reflected a corresponding waning (secularization?) in the motive force of inspired song (*enthousiasmos*) is to be rejected. In fact, the “frenzied, ecstatic poet” does not appear until the fifth century, the idea of a “strong opposition of inspiration and technique” developed first by Plato.²⁷⁸ “Enthusiasm,” an archetypal characteristic of the charismatic, first appears in Democritus’ statement *ποιητῆς δὲ ἄσσα μὲν ἀν γράφῃ μετ’ / ἐνθουσιασμοῦ καὶ ἱεροῦ πνεύματος, καλὰ κάρτα ἐστίν* (68 B 18 DK ap. Clem. Alex. *Strom.* 6.18.168.2). Ford’s emphasis on this juxtaposition of *poietes* and *enthousiasmos* as reflecting a parallel and contemporary evolution, whereby the language of enthusiasm arises to accommodate “aspects of poetry that could not be comprehended under the artisanal conception of poetic making,” may be correct, but cannot rest on fr. 18 DK alone. What the fragment does attest to is the authenticating value of an admixture of divinity to poetic speech, already a Homeric motif conventional not only to proemic invocation but also in direct speech, e.g. as Odysseus to the Phaeacean herald in sending a gift of meat to Demodocus at *Od.* 8.479-481:

*πάσι γὰρ ἀνθρώποισιν ἐπιχθονίοισιν ἀοιδοὶ
 τμηῆς ἔμμοροί εἰσι καὶ αἰδοῦς, οὔνεκ’ ἄρα σφέας
 οἴμας Μοῦσ’ ἐδίδαξε, φίλησε δὲ φῦλον ἀοιδῶν.*

“For with all peoples upon the earth singers are entitled to be cherished and to their share of respect, since the Muse has taught them her own way, and since she loves all the company of singers.” (trans. Lattimore)

The separation of the Muses’ honored beneficiaries into a distinct “race” or “tribe” emphasizes the exclusivity of instruction. The doctrine of authorial impersonality acts against sincerity in

²⁷⁸Ford AL 2002:136, citing Murray P 1981.

making of the poet an inaccessible persona.²⁷⁹ To the extent the Muse predominates over the bardic voice as a mere conduit for the vivid (true) first-person report of the Muse, orthonymity whether in literate composition or oral-formulaic composition-in-performance becomes irrelevant. The poetry which attaches to the individual's name may be creative product, but there is no authorial individual beyond the persona. The single unambiguous precondition for proprietary authorship is property, in a subjective sense that may inhere in a genre as much as subsist in the whims of a single practitioner or his audience. An ethical unity of voice and content in the Homeric poems may or may not demonstrate certain uniformity of audience, but it does nothing to contradict it.

The conventional invocation to the Muses functions as a kind of certificate authority, as might a convincing pseudepigraphic attribution, though we are inclined to differentiate the latter as disingenuous. Yet the epic proem does more than just provide a name tag to a song. More than just a titular introit, it defines poet and audience, as well as imbuing song with a timelessness and universality wherein, according to Ford, "the stories subsist with ideal integrity ... are made permanent and are fixed as sequels to the stories of gods."²⁸⁰ The invocation comfortably situates poem (song), audience and performer in a familiar context of traditional conventions of genre, myth and religion; this permanence and integrity in turn contribute to a conception of the sincerity of the performer (1), the integrity of his text (2), and the character of its promised context (3). The presence of the Muses defines the singer (*aoidos*), marking off poet from non-poet just as it distinguishes song (*aoide*) from other forms of reporting (*klea*) on the past,²⁸¹ the genre of Homeric song distinguished from the latter category by the quality of

279 Trilling 1972:8.

280 Ford AL 1992:56.

281 Ford AL 1992:57-58.

vividness lent to the poet by the Muses' unique vision. That the poet is using the Muses to validate his own mastery of his craft is suggested by such an appeal as one finds just before the catalog of ships at *Il.* 2.485-486, where the poet professes only a second-hand knowledge, ascribing omniscience to the Muses as Olympian goddesses:

ὕμεις γὰρ θεαί ἐστε πάρεστε τε ἴστε τε πάντα,
ἡμεῖς δὲ κλέος οἶον ἀκούομεν οὐδέ τι ἴδμεν

For you, who are goddesses, are there, and you know all things,
and we have heard only the rumour of it and know nothing. (trans. Lattimore)

The poet as conduit for the goddesses' testimony certifies his own favor in the act of song. Such a relationship would not seem to be undermined even where the Muses themselves concede a tendency to willful deceit (Hes. *Th.* 27-28, most commonly construed as criticism of Homeric poetry).²⁸² Regardless, a second, distinct source of authenticity/legitimacy might be located in performative vividness, an "especially convincing and absorbing quality" distinct from formal aesthetics ("artistic shaping") and veracity ("factual truth").²⁸³ This quality of validity in immediacy (*enargeia*) under-girds Ford's conception of the inherent unity of Homeric singing, a unity standard for oral poetics distinct from that based on familiar organicist conceptions of style deriving from Aristotle (e.g. *Arist. Poet.* 1459a30-37).²⁸⁴

Thus the tone set by musical mediation supersedes style typifying classical genres of ποίησις. This speaks as well to fidelity in transmission: "Naturally, what the Muse tells to the poets can well be seen as identical to the tradition itself."²⁸⁵ What this meant in practice, however, was that the appeal to the Muses served to legitimate poetic creation on the poet's part, as performance. The generic device of deference to the Muses in the manner of invocation, the

282 Cf. Finkelberg *M* 1998:157 w/ n55.

283 Ford *AL* 1992:57.

284 Ford *AL* 1992:58, contra Parry 1937, Notopoulos 1949, van Gronningen 1958, Lord 1960.

285 Finkelberg *M* 1998:151.

explicit ascription of his song as reported facts and the validity thereof to the patron divinities, motivates Speyer to describe Homeric song as authentic, but not one's own; hence, as performance, not plagiarism.²⁸⁶ The appeal to the Muses is the earliest form of source citation. It is therefore striking at *Il.* 2.594-600 that the very certificate authority of rhapsodic authenticity is portrayed as a merciless bardic adversary, especially given the poet's momentary appeal for assistance in the accurate rendering of the information-rich catalog of ships.

The very earliest example of poetic violation and retribution contains an element of boastful competition, at *Il.* 2.594-600:

<i>καὶ Δώριον, ἔνθά τε Μοῦσαι</i>	
<i>ἀντόμεναι Θάμυριν τὸν Θρήϊκα παῦσαν ἀοιδῆς</i>	595
<i>Οἰχαλίηθεν ἰόντα παρ' Εὐρύτου Οἰχαλιῆος·</i>	
<i>στεῦτο γὰρ εὐχόμενος νικησέμεν εἴ περ ἂν αὐταὶ</i>	
<i>Μοῦσαι ἀείδοιεν κοῦραι Διὸς αἰγιόχοιο·</i>	
<i>αἱ δὲ χολωσάμεναι πηρὸν θέσαν, αὐτὰρ ἀοιδῆν</i>	
<i>θεσπεσίην ἀφέλοντο καὶ ἐκλέλαθον κιθαριστύν</i>	600

and Dorion, where the Muses	
encountering Thamyris the Thracian stopped him from singing	595
as he came from Oichalia and Oichalian Eurytos;	
for he boasted that he would surpass, if the very Muses,	
daughters of Zeus who holds the aegis, were singing against him,	
and these in their anger struck him maimed, and the voice of wonder	
they took away, and made him a singer without memory (trans. West)	600

The competitive speech which Greek epic preserves, the very act of speech itself is a functional struggle to be heard in performance or disputation (relevant to competitive settings of court of law, symposium and rhapsodic contest alike). This brief anecdote about the Thracian singer Thamyris might be seen as also strengthening, by its punitive example, the Muses' and hence the poet's authority as an accurate transmitter of epic vividness. We note here therefore Finkelberg's conclusion about Homeric truth-poetics: the poet wanted to speak the truth and in fact his

²⁸⁶ Speyer 1971:14.

standard was in terms of items properly ordered in catalog-like sequence.²⁸⁷ That the poet himself announces the demanding nature of the catalog of ships in his introductory invocation (*Il.* 2.484-492), itself after a series of metaphors repeating images evoking innumeracy, further magnifies the subsequent list as a lofty measure of veridical virtuosity. Though the goddesses' supernatural status makes the teacher-disciple relationship awkward to analogize to other crafts, one might suggest a parallel in mantic instruction in the story of Polyeidus and the reanimated Glaukos, whom he instructs in prophecy only to revoke his gift by spitting in his mouth (*ps.-Apollo.* *Bib.* 3.3.1-2, *Hyg. Fab.* 136).

Rhapsodic expansion/compression (inherent in the practice of improvised composition-in-performance, serving *inter alia* accommodation of audience feedback, certainly not merely an extravagance of competitive exchange against a poetic aversary) exemplifies the malleability of the hexameter verse system. Interpolation (*empoiein*), whether in the form of substitution or expansion, was the mechanism e.g. of Onomacritus' oracular forgeries (*Hdt.* 7.6.3; cf. *Plut. De pyth. orac.* 407b), an offensive phenomenon when it interferes with a rhetorically polished prose text (*Pl. Phdr.*), but hexameter invites such expansion (vertical variation, adapting Nagy's terminology), as well as selective omission. In terms of textual history, Parrish embraces hexameter transmission at a maximal remove from Plato's vision of a dead, fixed written text: Parrish advocates "the autonomy and the validity of each steady state of the text as it changes in confused unpredictable ways, through patterns which the author may never have foreseen, let alone 'intended.'"²⁸⁸ The stylistic-performative mechanisms of competitive change (respecting the phenomena of parataxis/hypotaxis, stychomythia, relative clause enjambment, aporia,

287 Finkelberg M 1998:130-131.

288 Parrish 1988:344-45, 349, quoted at Schulze 1998:27.

hypophora, priamel, amoibaic capping, riddling, etc.) will be dealt with in further depth as I continue discussion of Hesiodic poetry, the Homeric-Hesiodic *certamen*, as well as the sympotic culture of Theognidean elegiac and skolion. For the moment, I return to Nagy's model for the evolutionary process of the Homeric text, which depends on the interaction of the three components composition, performance and diffusion. Of these three, composition and performance depend on modern comparative studies of oral poets from a variety of cultures and language groups, whereas only diffusion is elucidated more or less strictly on the basis of Greek evidence (the internal evidence of the Homeric poems). Though the latter involves comprehensive analysis not privileging any one feature of the poems, for the moment let us consider the stability of this text and the nature of its fixity in light of the above discussion, before considering more closely issues of property in relation to its eventual physical manuscript form.

What factors control the formation of such a traditional oral text? “[I]n every part of the text is traditional material that can only be the collective work of ages and in every part are touches that can only be from the hand of a great master. We are beginning to suspect that the two cannot be neatly separated.”²⁸⁹ Taplin freely acknowledges, yet sees no way around, the “blatant ... hermeneutic circularity” of deducing a high fidelity of transmission from the high poetic quality of a text already equipped with the Homeric label.²⁹⁰ Nagy finds precisely such faulty logic in West's appeal to a singular *maximus poeta*, who is only occasionally caught in the act of revising his (decidedly written) fixed text, to whom can be attributed authentic verses based on an impression of their masterful quality, whereas textual problems are foisted upon

289 Calhoun 1933:25, at Greene WC 1951:28.

290 Taplin 1992:42.

epigone followers. Adam Parry was right to apply the Homeric name to the performative agent at the moment of dictation/transcription and, as West does after him, pursue an interest in the written text we have received as the product of a one-time dictation.²⁹¹ Homer is merely the convenient label which attached itself to the text, and his text is no less a unique artefact for being the result of a tradition as well as of a momentary act of transcription, indeed, as I have argued this the only measure of sincerity (authenticity) it will bear.

CHAPTER 2

Hesiod, the first authorial *ego*

It is important to be on guard against “the pernicious influence of labels,”²⁹² it has been cautioned, lest Hesiod²⁹³ suffer too much pigeon-holing as a one-sided georgic-didactic genre-poet.²⁹⁴ So often, where remembered, runner-up to Homer in modern popular imagination, Hesiod enjoyed an ancient tradition of occasional primacy over his now more widely known fellow poet, in terms of chronology (Ephorus *FGrH* 70 F 1 portrays Homer and Hesiod as cousins; cf. Gell. *NA* 3.11.1-5 citing L. Accius & Ephorus; note Heracl. Pont. *Περὶ τῆς Ὀμήρου καὶ Ἡσιόδου ἡλικίας α'β'* ap. D.L. 5.87) as well as subject matter (cf. Simon. Gen. *FGrH* 8 F 6

291 Introductory comments at Parry M 1971:lx-lxi, esp. lxi n111 = 1989:262 n111; cf. Parry AM 1966 = 1989:104-140 (asserting that, absent any evidence that “Homer” was himself an oral poet, Milman Parry only ever asserted that he was merely an author of poetry in the oral-formulaic style, though part of a likely uninterrupted oral tradition, hence that the text we have is not necessarily akin to a tape-recording of a genuine performance).

292 West ML 1978:v. For further representations of Orpheus, Musaeus, Homer, and Hesiod as educators in (technical) arts, see e.g. Pl. *Ion*, Xen. *Symp.* 3.5-6, 4.6-7.

293 For an overview of Hesiodic poetry and its scholarship, cf. e.g. Nagy at Luce 1982:43-73, Nelson 2005, and the introductions to West ML 1966 (*Theogony*), 1978 (*Works and Days*).

294 Aristophanes allows his Aeschylus practically to do just that to Orpheus, Musaeus, Hesiod and Homer at *Ran.* 1030-1036. Cf. prefatory comments at West ML 1978:v; for Hesiod as didactic poet, see further also Toohey 1996:20-48 (Ch. 2).

ap. *Gnomol. Vat.* 1144). Some authorities skirted the contentious topic altogether as irresolvable despite their best research (Paus. 9.30.3: *πολυπραγμονήσαντι ἐς τὸ ἀκριβέστατον οὐ μοι γράφειν ἠδὲν ἦν*), others managed at least to disentangle their respective *vitae* (cf. e.g. Strab. 13.3.6 discounting Cyme as a common mother city of both poets: the city of origin of Hesiod’s father, but hardly credible in Homer’s case), which tradition was ever eager to intertwine.

For present purposes, whatever degree of primacy conceded to Homer, Hesiod must be acknowledged as Greek literature’s first authorial *ego*,²⁹⁵ in part because of the use of the poet’s own name (*sphragis*)²⁹⁶ as poetic pupil of the Muses at *Th.* 22 (*αἶ νύ ποθ’ Ἡσίοδον καλήν ἐδίδαξαν ἀοιδήν*),²⁹⁷ in part because of multiple “confessional”²⁹⁸ passages (of self-identification/-representation) in the *Works and Days* (e.g. *Op.* 37-39, 633-640, 649-662). Explicit use of the first-person pronoun in the latter work occurs in the poet’s declarations of his personal outlook, as at *Op.* 270-271 (*νῦν δὲ ἐγὼ μῆτ’ αὐτὸς ἐν ἀνθρώποισι δίκαιος / εἶην μῆτ’ ἐμὸς υἱός*), and in situating the poet (and lamenting his place) in his scheme of human generations at 174 (*μηκέτ’ ἔπειτ’ ὄφελλον ἐγὼ πέμπτοισι μετεῖναι*); in restricting scope to the poet’s own personal experience, as in relation to his poetic victory at 654, his tripod-dedication at 658 and his rejection of sea-faring at 682 (*οὔ μιν ἔγωγε*); and several times (as might be

295 Lamberton 1988:492 (in contrast to the “scrupulous anonymity” of the Homeric corpus, and the obscurity of the semi-mythic Orpheus and Musaeus, “[o]nly Hesiod advertises his own identity, organizing his traditional lore around a personality and a series of autobiographical anecdotes so idiosyncratic that it is difficult to read them as purely conventional.”). Cf. generally Stemplinger 1912:173-174; Bowra 1952:31-36, Schwartz J 1960 (*pseudohesiodea*), von Fritz 1962, Nicolai 1964:15-16, Blusch 1970 (focused on *Works and Days*; cf. Verdenius 1977), Østerud 1976, Griffith 1983, Stein 1990:6-54 (Ch. 1), Nagy at *Ramus* 21.2 (1992) 119-130, Miller PA 1994:2, Blaise 1996, Pucci P 1996 (*WD*), Scodel 2001 (Hesiod, Pindar), Stoddard 2004 (*Hes. Th.*), Rösler 2005:36-38, Haubold 2010, Kivilo 2010:7-61; Boterf 2017:84-85, Bakker 2017:99; cf. Ritoók 1969, Steinrück 1992; Arweiler/Möller 2008, Gill C 2009.

296 E.g. Gärtner 2006 (picking out Hes. *Th.* 22-25).

297 The “first attested identification of an author in Greek literature” (Nagy at *Ramus* 21.2 (1992) 119).

298 Lamberton 1988:491.

expected) in relation to the poet's interlocutor Perses²⁹⁹ at 10 (ἐγὼ δέ κε Πέρση), 106 (εἰ δ' ἐθέλεις, ἕτερόν τοι ἐγὼ λόγον ἐκκορυφώσω), 286 (σοὶ δ' ἐγὼ ἐσθλὰ νοέων ἐρέω, μέγα νήπιε Πέρση), and 396-7 (νῦν ἐπ' ἔμ' ἦλθες· ἐγὼ δέ τοι οὐκ ἐπιδώσω / οὐδ' ἐπιμετρήσω· ἐργάζευ, νήπιε Πέρση), to which can be further related use in indirect speech in the hawk-nightingale fable (with its implications for the poet's self-perception, personalized message to Perses, and presentation of Zeus' theodicy) at 208 (τῇ δ' εἰς ἧ σ' ἂν ἐγὼ περ ἄγω καὶ ἀοιδὸν ἐοῦσαν). The only other instance in indirect speech, by Zeus at *Op.* 57, seems less directly relevant, as too the only overt occurrence of the first-person pronoun in the *Theogony*, in indirect speech by Kronos at *Th.* 170 (μητέρα, ἐγὼ κεν τοῦτό γ' ὑποσχόμενος τελέσαιμι).

Hesiod attracted his own iconography (Paus. 9.26.2, 9.27.5, 9.30.3; Christodorus *Ek.* 38-40; Monnus mosaic Rheinisches Landesmuseum Trier, inv. 10703-10724; ps.-Seneca Museo Archeologico Nazionale di Napoli, inv. 5616),³⁰⁰ but Homer did as well, and such can hardly be construed as particularly personal in a non-fictional sense, in a time when literary biography so regularly drew its character-portraits from incidentals of the subject's own works. Homer, famous for his anonymity, did somewhat anticipate Hesiod's individuality, in the person of his Odysseus, who, prefatory to the story of his wanderings (as a less desirable alternative to bardic song: *Od.* 9.3-11), identifies himself by personal name, patronymic, and dwelling (*Od.* 9.19-21, cf. 9.504-505), including a boast of universal fame. Nonetheless, Hesiod's personalized boast at *Th.* 22 is the earliest authorial claim to intellectual prestige, and it served as a genre-transcending model to subsequent authors.³⁰¹ The *Works and Days*, however, seems the more personal of the two major works credited to the name, and this quality might explain in part

²⁹⁹ West *ML* 1978:33-40.

³⁰⁰ Von Heinze 1983, Wallis *Wm* 2015.

³⁰¹ Lloyd/Sivin 2002:155-156.

why, in antiquity (see below), the one work explicitly advertising the poet's name was the more suspect as a forgery. From Hesiod down to Hecataeus, author-name (supplemented by: name of addressee; claim to validity or an authoritative source) is sufficient to identify a work, book-titles not yet a necessity.³⁰² *Erga kai Hēmerai* was thus (so West) “picked out by [book-]sellers,” advertising (as with *Scutum*) the work's most valuable (marketable) contents.³⁰³

Archilochus,³⁰⁴ of course, must here be acknowledged as the first lyric (that is, non-epic) *ego* (fr. 1 W: εἰμὶ δ' ἐγώ; cf. Pind. *P.* 2.55-56, and as part of a canonical triad with Homer and Hesiod at Pl. *Ion* 531a),³⁰⁵ but also not to be forgotten are these poets' roles in shaping collective identity no less than their own. Strabo (8.6.6), for example, suggests a distinction between Homer on the one hand and Hesiod and Archilochus on the other with respect to the conceptualization of the Greek ethnic identity, citing Thuc. 1.3 for Homer's ignorance of a collective term for barbarians as non-Greeks in contradistinction to Greeks/Hellenes, and Apollodorus as in turn citing Hom. *Il.* 2.684 (Μυρμιδόνες δὲ καλεῦντο καὶ Ἕλληνες καὶ Ἀχαιοί) for the observation that “Hellenes” referred originally merely to a Thessalian folk, as opposed to “Panhellenes” at Hes. *Cat. mul.* fr. 130 MW = 78 Most 2007:152 (περὶ τῶν Προιτίδων λέγοντα ὡς Πανέλληνες ἐμνήστειον αὐτάς) and Archil. fr. 102 W ap. Strab. 8.6.6 C.370 (Πανελλήνων οἰζὺς ἐς Θάσον συνέδραμεν). Attesting to Homer's use of such collective terms, however, Strabo finds others citing Hom. *Il.* 2.867 (Καρῶν ... βαρβαροφώνων) as well as *Od.* 1.344 (κλέος εὐρὺ καθ' Ἑλλάδα καὶ μέσον Ἄργος) and 15.80 (εἰ δ' ἐθέλεις τραφθῆναι ἀν' Ἑλλάδα καὶ μέσον

302 Schmalzriedt 1970, Huby 1973:206-207, Calame 2004a:20 (Thuc.), 20-21 (Hdt.), 21-23 (Hecataeus); cf. Diels 1887:436n1 preferring the term “title” to *prooemion* describing the first sentence(s) as sufficient identifier of prose works.

303 West ML 1978:136 (citing ancient testimonia valuing *Op.*'s utilitarian wisdom).

304 Tarditi 1956, Müller CW 1985, Clay D 2004, Kivilo 2010:87-119.

305 Tsagarakis 1977:15-22, 30-47; Stein 1990:55-90 (Ch. 2.1); Jarcho 1990; Slings 1990:1-30, 61-62; Calame 2014; Swift 2017.

Ἄργος). The most salient manufactured identity, it is assumed here, is that established in performance among the hearers gathered together (perhaps “panhellenically,” depending on the occasion), including and especially at those several performances by a multitude of different performers, distributed in space and time throughout the Greek-speaking world, of what were to become the most canonical of works.

A key part of Hesiod’s poetic identity, his claim to authority, and a most influential thread in his biographic tradition is his primary moment of inspiration (*Dichterweihe*) (*Th.* 22-34, cf. *Op.* 659, 662, and in later tradition, e.g. at *Anth. Pal.* 9.64).³⁰⁶ One of the passage’s most striking features, the Muses’ boast of fluency in the ways of truth and lies,³⁰⁷ firmly establishes their superiority over their mortal poetic servants, if not thereby undermining the poet’s own credibility, then just the opposite, making it depend entirely on a supreme authority. The passage provides a suggestive focal point for later elaborations of fictionality, and, with its potential for deceit, fictionality may be thus related to (literary) authenticity and forgery, the intersection of persona and truth in the morally caustic civic harangue of the *Works and Days* lending itself well to a Kantian personality approach to the poetic voice.³⁰⁸ The Hesiodic pseudepigraphic tradition (see works listed at Paus. 9.31.3-5, and the questions of authenticity and false attribution addressed at e.g. Ael. *Var. hist.* 12.36)³⁰⁹ just as much as the similar (derivative, imitative)

306 Latte 1946, Kambylis 1965; Murray P 1981, 2004; Collins 1999; on the *Theogony* prooemium generally, cf. further Ellger 1871, von Gimborn 1893, Friedländer 1914, Méautis 1939, von Fritz [1956] 1966, Walcot 1957, Minton 1970, Verdenius 1972, Arrighetti 1976:258-262, Clay JS 1988, Rudhardt 1996, Hainsworth 1999, Johnson 2006.

307 Verdenius 1972:234-235,253-254; Stroh 1976; Neitzel 1980; Puelma 1989; Bowie 1993; Feeney 1993; Katz/Volk 2000; Stoddard 2005; Heiden 2007; Rodríguez Alfageme 2014, 2017; cf. Boeder 1959 (*logos, alētheia*), Krischer 1965 (*etymos, alēthēs*), Heitsch 1966a (Xenoph.), Walcot 1977 (Odysseus), Belfiore 1985 (on Plato’s reading of Hes. *Th.* 27), Wheeldon 1989 (historiography), Gill C 1993 (Plato), Lincoln 1997 (*mythos* vs. *logos*), Bollansée 1999 (fact/fiction, falsehood/truth), Mourelatos 2008:63-67 (Parmenides), Lefkowitz 1991, D’Alessio 1994, Scodel 2001 & Park 2013 (Pindar); Otto [1955] 1971 (Muses and poetry).

308 Borghi 2011 (accommodating copyright to truth on a Kantian model).

309 Schwartz J 1960, Vian 1961, Pfeiffer 1968:144, 177-178, Most 2006:lix.

passages based on his style found in later authors³¹⁰ attest to his wide influence (another aspect of the reception of his individualized persona). Some of the already ancient suspicions of forgery and interpolation within the Hesiodic corpus³¹¹ encompass the passages on poetic inspiration just cited as well as Hesiod's testimonia to poetic competition.

Competition (one of the fundamental market forces manipulated in any utilitarian IP system, not out of place in the Lockean, also not out of place in a continental personality-based regime, where *kleos*, or the demands of democracy or personal development, might just as powerfully activate speech) is a multifaceted theme in Hesiod. More overt than in the distant mythological themes (of the *Theogony* in particular) is its legalistic³¹² manifestation in Hesiod's dispute with his brother Perses.³¹³ Formal and informal qualities are expressed in a vocabulary (not altogether technical) of *aidōs*, *dikē*, *nomos*, *thēmis*, e.g. at *Op.* 9 (δίκη δ' ἔθνε θέμιστας), 192-3 (δίκη δ' ἐν χερσὶ· καὶ αἰδῶς οὐκ ἔσται), 221 (σκολιῆς δὲ δίκης κρίνωσι θέμιστας), 275-280 (Zeus-willed νόμος for humans: δίκη over βίη), cf. Hes. *Th.* 85-86 (διακρίνοντα θέμιστας / ἰθείησι δίκησιν), Hom. *Il.* 16.387-388 (σκολιάς κρίνωσι θέμιστας, / ἐκ δὲ δίκην ἐλάσωσι), *Od.* 9.215 (οὔτε δίκας εὔ εἰδότα οὔτε θέμιστας).³¹⁴ In Homer, the trial scene on Achilles' shield (Hom. *Il.* 18.497-508)³¹⁵ also treats the theme of *neikos* (Hom. *Il.* 18.497-498: νεῖκος/ὠρώρει, δύο δ' ἄνδρες ἐνείκειον εἵνεκα ποιηῆς), arbitrated (501: ἐπὶ ἱστορι πεῖραρ ἐλέσθαι) in the *agora* by elders supported in their authority by heralds, their scepters, and a sacred seating-space (503-

310 Rzach 1902 (upper register of apparatus, devoted to poetarum imitationes et loci similes, cf. ad locc. passim), West ML 1969.

311 Cf. Solmsen 1982 on the early history of the corpus, West ML 1966:48-72 & 1978b:60-86 on the transmission of *Th.* & *Op.*, respectively.

312 On Hesiod and the law, cf. Bonner 1912; Walcot 1963; Havelock 1978a:193-217 (Ch. 11); Bongert 1982; Gagarin 1992; Nótári 2006; Cerri [2013] 2015 (rhapsode-judges in Hesiod and Homer); cf. further Nagy at Irani/Silver 1995:61-68.

313 Gagarin 1974b, Jones NF 1984, Schmidt JU 1986, Rousseau 1996.

314 Rodgers 1971:289-293; Gagarin 1973, 1974a; Dickie 1978; Sihvola 1989:49-61; Beall 2006.

315 Cf. Hofmeister 1880, Pflüger 1942, Hommel 1969, Andersen 1976:11-16, Westbrook 1992.

505: ... ἐπὶ ξεστοῖσι λίθοις ἱερῶ ἐνὶ κύκλῳ, / σκῆπτρα δὲ κηρύκων ἐν χέρσ'...), resulting in a prize (507: δύω χρυσοῖο τάλαντα) awarded to the best judge (508: ὅς ... δίκην ἰθύντατα)—a determination not necessarily made by popular acclamation, though it does at least lend its support to the respective disputants (502: λαοὶ δ' ἀμφοτέροισιν ἐπήπνον ἀμφὶς ἀρωγοί).

If the legalistic framework is the most immediate competition (brotherly strife), the most attractive to historians of poetic performance is the reference to Amphidamas' funeral games (Hes. *Op.* 654-659;³¹⁶ cf. fr. 357 MW³¹⁷) as occasion for poetic contest. Other notable representations of musical-poetic competition include Calchas vs. Mopsus at Claros in the *Melampodia* (Hes. fr. 278 MW), Arctinus vs. Lesches (Phaenias fr. 33 Wehrli), Aeschylus vs. Euripides in Aristophanes' *Frogs* (Ar. *Ran.* 830ff.), Theocritus' Lychidas vs. Simichidas (*Id.* 7), etc. (cf. Paus. 10.7.2ff. on musical victors at the Pythian games, and consider the variety of rewards even at formally regulated affairs, e.g. ἀγῶνες θεματικοί offering prizes, crowns of honor at ἀγῶνες στεφανῖται, etc.).³¹⁸ Hesiod's Euboean sojourn was developed accordingly into a contest between Homer and himself (cf. Procl. *Vit. Hom.* 6) through *Certamen* tradition³¹⁹ based (as originally proposed by Nietzsche)³²⁰ largely on Alcidas' (1st ½ 4th c. BCE)

316 West ML 1967:440, 1978:319 (ad vv. 650-662), 321 (ad v. 656: “no one will suppose Hesiod's Amphidamas to be a fiction”).

317 West ML 1967:440, Kōiv 2011:358.

318 Generally: von Scheliha 1987; Griffith 1990; Collins 2004; Rotstein 2004, 2012; on choral/lyric contests, cf. Gzella 1969/70a,b, Henderson WJ 1989 (incl. Pindar, Aristophanes); on Aristophanes and comedic contests, cf. Henderson JJ 1990, Biles 2011; on dramatic contests generally, cf. Pickard-Cambridge 1968:95-99, Blume 2006; ancient literary contests/prizes generally, cf. Wright M 2009, on Greece in particular: Paulsen 2006, Rome: Schmidt PL 2006.

319 Bassino 2012 reviews all the papyrological evidence for the *Certamen*, the primary witnesses for which are: Flinders Petrie *PLit.Lond.* 191 [3rd c. BCE] (cf. Mahaffy 1891:13, 70, pl. XXV; Allen 1912:225); *P.Gr.Pap.Soc.* M2 [2nd c. BCE] (Mandilaras 1992); *P.Mich.* 2754 [2nd/3rd c. CE] (Winter 1925; cf. Körte 1927, Kirk 1950, Dodds 1952, West ML 1967:434-438, Renehan 1971, Koniaris 1971); *Cod. Laur. gr.* 56.1 [14th c. CE] (Nietzsche 1871).

320 Nietzsche 1870, 1872 KGW II.1:271-337, 1873 (cf. Vogt 1962); Richardson NJ 1981, Kawasaki 1985, O'Sullivan 1992:63-105 (Ch. 3).

*Museion*³²¹—which, by virtue of its success, ultimately displaced and obscured its original inspiration (Hes. *Op.* 654-659) as source of the tradition.³²² The *Contest* generally informs Hesiod’s relationship to and distinction from Homer.³²³ Of particular interest is its theme of appropriate reward to the victor, in this case less as prize-incentive than as moral and political construction of poetic value: note Panedes’ rationale favoring Hesiod (*Cert.* 12-13.176-210 Allen 1912:232-233; cf. Paus. 9.31.3, Gell. *NA* 3.11.3),³²⁴ which has much in common with concerns expressed in the Aeschylus-Euripides contest in Ar. *Ran.* (based on weight of words recited into balanced scale-pans, 1365ff., versus quality of political advice, 1419ff.).³²⁵

Anciently, suspicion was cast on Hesiod’s entire funeral games narrative as a spurious intrusion (Plut. ap. Procl. Σ Hes. *Op.* 648 Gaisford 1823 [II]:367.17-368.10 = 650-662 Pertusi 1955).³²⁶ While it is fairly certain that Plutarch accepted Hes. *Op.* 633-640 on the father’s seafaring (authenticity of which, despite its seeming irrelevance in context, was not challenged until recently) as well as *Op.* 663ff. as original to Hesiod, it is unclear how much of the “frivolous” (πάντα οὖν ταῦτα ληρώδη)³²⁷ intervening material (Hes. *Op.* 641-662) Plutarch wished to excise as interpolation (Plut. *Com. Hes.* fr. 62 Bernardakis 1896:82.3-15 ἐμβεβλήσθαι φησιν ὁ Πλούταρχος, cf. n. ad l. 3 cit. Procl. ad Hes. *Op.* 650).³²⁸ Sandbach has supposed Hes. *Op.* 654-662, Bernardakis 650-662, and Lambertson 646-662.³²⁹ Further, a note that ἀθετοῦνται

321 *P.Mich.* 2754 (Ἰδαμαντος ἢ περὶ Ὀμήρου); *Cert.* 7.78-79 Allen 1912:228 ap. Stob. 120.3 Meineke = 4.52.22 Wachsmuth/Hense 1912 [IV.2]:1079 (ἐκ τοῦ Ἀλκιδάμαντος Μουσειῶν), though at Stob. 4.52.30 Wachsmuth/Hense 1912 [IV.2]:1081-2 attributed to Theognis (Thgn. 425/7; cf. *Cert.* 9.107-108 Allen 1912:229 ~ Ar. *Pax* 1282-1283); *Cert.* 14.240 Allen 1912:234 (ὡς φησιν Ἀλκιδάμας ἐν Μουσειῶν).

322 West ML 1967:440, 1978:319 (ad vv. 650-662).

323 Cf. e.g. Rosen 1997, Kelly 2008:193-199.

324 Heldmann 1982.

325 Landesman 1965, Rosen 2004; cf. O’Sullivan 1992 (esp. chs. 1 & 4).

326 Lambertson 1988:501.

327 Lambertson considers the lines to be an “amusing passage” (Lambertson 1988:500).

328 Cf. West ML 1978:67 re Plutarch: “650(?)–62 (a passage apparently already suspected by others).”

329 Lambertson 1988:500n29, 503n36 (citing Nagy at Luce 1982:50).

δέκα στίχοι διὰ τὸ νεώτερον τῆς ἱστορίας (or: τὸ τῆς ἱστορίας νεώτερον) intruding on the Proclus text (in only one of the seven MSS containing his lemma on Hes. *Op.* 650) suggests that at least one Alexandrian scholar had athetized 651-660.³³⁰ Note that Plutarch was not only author of a commentary on the *Works and Days* (preserved fragmentarily, via Proclus' own *Works and Days* commentary, in the Hesiod scholia)³³¹ and possibly of a now-lost Ἡσιόδου βίος (Lamprias Catalogue no. 35),³³² but was also an educated local (native of Chaironeia).³³³ The dramatic setting at Plut. *Mor.* IX.50 Ἐρωτικός (*Amatorius*) (748f ἐν Ἑλικῶνι παρὰ ταῖς Μούσαις ... τὰ Ἐρωτίδια Θεσπιέων ἀγόντων' ... ἀγῶνα πενταετηρικὸν ὥσπερ καὶ ταῖς Μούσαις καὶ τῶ Ἐρωτι, 749b-c with further description) suggests Plutarch was in fact directly familiar with the shrine to the Heliconian Muses and its environs at Thespieae.³³⁴ Hesiod's Ascra, according to Strabo, lay about 40 *stadia* distant from (still within the territory of, somewhat higher up on Mt. Helicon than) Thespieae (Strab. 9.2.25). Thespieae itself (where Pausanias noted a bronze statue of Hesiod at the precinct of Black Aphrodite (Paus. 9.27.5 Ἀφροδίτης Μελαινίδος ἱερὸν καὶ θέατρον τε καὶ ἀγορὰ θέας ἄξια· ἐνταῦθα Ἡσίοδος ἀνάκειται χαλκοῦς, not far from a small temple to the Muses ναὸς Μουσῶν ... οὐ μέγας) was situated at the foot of Mt. Helicon (Paus. 9.26.6), on its slope the grove of the Muses (Paus. 9.29.5 τὸ ἄλλος ... τῶν Μουσῶν; Strab.

330 Pertusi 1955:205-206, West ML 1978:319 ad Hes. *Op.* 650-662, Lambertson 1988:501 w/ n30.

331 Cf. Bernardakis 1896 [VII]:51-98 (cap. XI).

332 West ML 1978:67-69 (cf. references at 67n6), Lambertson 1988:493 w/ n7; on the Lamprias Catalogue, cf. Treu 1873, Sandbach 1969:3-7 (editorial introduction), 8-29 (English translation facing Greek text based on MSS Neapol. III.B29 fol. 246v-247, Marc. 863 (olim 481) fol. 123, Paris. 1678 fol. 148), cf. 81.

333 “[A]n extraordinarily educated and articulate local,” “an exceptionally educated and sophisticated local informant” (Lamberton 1988:491, 504)—two characteristics which, it must be said, are often just as likely to compromise as to fortify empirical reasoning. Lambertson’s overall argument is that, regardless of the “large stake” Plutarch had “in the historicity of these illustrious figures from the dim past [sc. the earliest speakers of Greek poetry—from Homer and Hesiod to Archilochus and Theognis], [...] some elements of the ‘confessional’ Hesiod did not correspond to any historical reality. Rather, they were elaborations that served the interests of the institution that had taken possession of Hesiod and his poetry—the Festival of the Muses sponsored by the people of Thespiæ in central Boeotia” (Lamberton 1988:493), suggesting that it was first the Thespieæan Mouseia which gave rise to the highly confessional, individuated Ascran persona.

334 Lambertson 1988:502 w/ n34.

9.2.25 τό τε τῶν Μουσῶν ἱερὸν), where the Musaea [Μουσεῖα] festival was celebrated (Paus. 9.31.3). 20 *stadia* higher up still (Paus. 9.31.3 ἐπαναβάντι δὲ στάδια ἀπὸ τοῦ ἄλλους τούτου ὡς εἴκοσιν) was located the Hippocrene spring.

The prize tripod (displayed at the shrine of the Muses at Thespieae) (Paus. 9.31.3 ἐν δὲ τῷ Ἑλικῶνι καὶ ἄλλοι τρίποδες κεῖνται καὶ ἀρχαιότατος, ὃν ἐν Χαλκίδι λαβεῖν τῇ ἐπ’ Εὐρύπω λέγουσιν Ἡσίοδον νικήσαντα ᾠδῆ. περιοικοῦσι δὲ καὶ ἄνδρες τὸ ἄλλος, καὶ ἐορτὴν τε ἐνταῦθα οἱ Θεσπιεῖς καὶ ἀγῶνα ἄγουσι Μουσεῖα κτλ) may itself be regarded as a fake object, bearing a pseudepigraphic text (*Cert.* 13.213-214 Allen 1912:233 Ἡσίοδος Μούσαις Ἑλικωνίσι τόνδ’ ἀνέθηκεν / ὕμνω νικήσας ἐν Χαλκίδι θεῖον Ὅμηρον, *Anth. Pal.* 7.53; cf. *Procl. Σ Hes. Op.* 657 «ὕμνω νικήσαντι» ἄλλοι γράφουσιν· ὕμνω νικήσαντ’ ἐν Χαλκίδι θεῖον Ὅμηρον, Varro ap. Gell. *NA* 3.11.3) suggested by *Op.* 656-9 (657-8: νικήσαντα φέρειν τρίποδ’ ... ἀνέθηκα).³³⁵ A notable, but hard to precisely interpret exception to the absence of archaeological remains for pre-Hellenistic Ascra and the Valley of the Muses is a 10-letter archaic inscription ---ει τῷ ἙλιϞῶν[ιῶ (“to some nameless Heliconian deity”)³³⁶ on a bronze cauldron rim-fragment (*Mus. Nat. Athens* 10.850) discovered at Krio-Pegadi (identified with Hesiod’s Hippocrene).³³⁷ If, indulging the doubts reflected by Plutarch, *Hes. Op.* 646-662 (or some portion thereof) is called into question, not only are the Heliconian Muses lost along with the intertextual associations with Hesiod’s poetic identity (*Op.* 650-662, esp. 656-657 supposedly referring to *Th.*³³⁸ as the work victoriously performed at Amphidamas’ funeral games; 658-659 acknowledging the

³³⁵ West ML 1978:321 ad *Hes. Op.* 657 (noting *GDI* 5786 [Τερψικλῆς τῶι Δι Ναΐωι ράψωιδος ἀνέθηκε], in Ionian alphabet, on a 5th c. BCE tripod found at Dodona); Lambertson 1988:501-502.

³³⁶ Lambertson 1988:496-497 w/ n23.

³³⁷ Plassart 1926:385-387 (drawing attention to *Hes. Th.* 1ff. [1: Ἑλικωνιάδων, 7: Ἑλικῶνι] as suggesting Zeus, before citing other possible divinities), Wallace PW 1974:16-18; on the Valley of the Muses, cf. further Robinson BA 2012.

³³⁸ Thus, West ML 1966:44ff. (following Wade-Gery).

Heliconian Muses of *Th.* 1ff., locating the site and agents of Hesiod’s poetic calling/initiation more fully related at *Th.* 22-34),³³⁹ but also the tripod (of which Plutarch will have been aware) will needs be a later fiction aimed at authenticating the shrine at the grove of the Muses³⁴⁰ (“an *aition*, inserted sometime, by someone, to explain that hoax”).³⁴¹ Note that, just as there is no evidence for the Thespieean Mouseia before the 3rd c. BCE,³⁴² neither is there any (other than the indirect tradition of occasional quotation) for the history of the Hesiodic corpus before the Hellenistic period.³⁴³ Such losses to our picture of Hesiod were further encouraged by the Thespieaeans through their local tradition crediting him only with the *Works and Days*,³⁴⁴ and of that text discounting its proem (*Op.* 1-10) addressed to the locally relevant Muses and Zeus (the very object of the song) and announcing the poet’s intention to counsel Perses (first mentioned here, at v. 10), a deletion embodied (presumably, though this is nowhere explicit)³⁴⁵ in another locally shown artefact, a lead text³⁴⁶ (seen by Pausanias at Hippocrene). Unlike the tripod

339 Cf. West ML 1966:152 ad *Th.* 1 (Ἑλικωνιάδων), 1978b:68, 319. The Muses’ Pierian associations are explicit at *Op.* 1, *Th.* 53, *Sc.* 206, *Cat. mul.* fr. 7 MW, their Heliconian associations at *Th.* 1-2, 7, 23, *Op.* 658. There is a pleasing, but surely accidentally proximate parechesis in Aphrodite’s epithetical ἐλικοβλέφαρόν at *Th.* 16, no different from the formulaic ἐλικῶπις occurring at *Th.* 298 & 307 (of the maiden half of Echidna’s face) and 998 (of Medea). Helicon appears otherwise only at *Op.* 639 (as the site of Hesiod’s father’s settlement, Ascra).

340 Lamberton 1988:502.

341 Lamberton 1988:504.

342 Lamberton 1988:496-497. Cf. Edwards AT 2004:76: “The Mouseion of Helicon shows unbroken cult activity from late in the eighth century B.C. till into the fourth century a.d., occupying a site approximately six kilometers from Thespieae and two from Ascra [here citing Schachter 1986:147-179]. While Hesiod claims a close personal connection with the Muses of Helicon and his is the first known votive offering to them, the sanctuary is associated with Thespieae, whose possession it was from the fourth century b.c. at the latest.”

343 Lamberton 1988:498.

344 Note elsewhere Pausanias’ lack of confidence in the authenticity of *Th.* (Paus. 8.18.1 Ἡσίοδος μὲν ἐν Θεογονίᾳ πεποίηκεν—Ἡσίοδου γὰρ δὴ ἔπη τὴν Θεογονίαν εἰσὶν οἱ νομίζουσι; 9.27.2 Ἡσίοδου δὲ ἢ τὸν Ἡσίοδου Θεογονίαν ἐσπούησαντα (“Hesiod, or he who fathered the *Theogony* on him,” tr. J.G. Frazer); 9.35.5 Ἡσίοδος δὲ ἐν Θεογονίᾳ—προσιέσθω δὲ ὄτω φίλον τὴν Θεογονίαν); cf. falsification/interpolation at e.g. Paus. 2.26.7, dismissing the story of Arsinoe as mother of Asclepius as the fabrication of Hesiod or one of his interpolators: Ἡσίοδου ἢ τῶν τινα ἐμπεποιηκότων ἐς τὰ Ἡσίοδου τὰ ἔπη συνθέντα ἐς τὴν Μεσσηνίων χάριω (“a fiction invented by Hesiod, or by one of Hesiod’s interpolators, just to please the Messenians,” tr. W.H.S. Jones/H.A. Ormerod).

345 Cf. Lamberton 1988:502.

346 Davison 1962:151.

inscription, it is not explicitly said to be by Hesiod’s own hand or even of his time, though old (τὰ πολλὰ ὑπὸ τοῦ χρόνου λελυμασμένον)—perhaps artificially aged for authenticating effect (there is no explicit indication that the latter was aimed at by means of outmoded orthography) (Paus. 9.31.4 μοι μόλυβδον ἐδείκνυσαν, ἔνθα ἡ πηγὴ, τὰ πολλὰ ὑπὸ τοῦ χρόνου λελυμασμένον· ἐγγέγραπται δὲ αὐτῷ τὰ Ἔργα; cf. Hes. T 49 Most = Σ Hes. *Op.* prolegomena A.c p. 2.7-12 Pertusi, 50 Most = Vita Chigiana Dionys. Perieget. 72.58-60 Kassel). The tradition, and perhaps the tablet, championed a hardly self-serving omission—a fact which lends the Thespiean text some extra credibility.³⁴⁷ Interesting is nevertheless the resulting emphasis on—even authentication of—the *Erides*, with which the poem thus truncated must begin.

Hesiod’s presentation of the two *Erides* (Hes. *Op.* 11-26)³⁴⁸ commends (τὴν μὲν κεν ἐπαινήσειε νοήσας) zealous (competitive) imitation (εἰς ἕτερον γὰρ τίς τε ἴδεν // ζηλοῖ // φθονέει) of one’s neighbors or peers, invoking specialized trades (κεραμεύς, τέκτων, πτωχός, αἰδός).³⁴⁹ Eumaios’ comparable list of *demioergoi* at *Od.* 17.381-387 (384-385: *mantis, iētēr, tektōn, aoidos*), decidedly excludes beggars (387: *ptōchos*), Hesiod’s perhaps most surprising category. Similar professional competition is otherwise, however, materially attested, e.g. in the Attic Bakkhios epitaph (*IG II² 6320*) commemorating victory in a potters’ contest³⁵⁰ and in the

347 The locals “did not serve their own interests [...]. They seem to have clung to a purist position at their own expense—who knows?—it may even have contained some shred of historical truth” (Lamberton 1988:502)—which is perhaps precisely the authenticating reverse-psychology at play here: “What better testimony to support the idea that for once Pausanias was shown a genuine heirloom, displayed without ulterior motive?” (Lamberton 1988:502).

348 Cf. West ML 1978:142 ad *Op.* 11-46; Gagarin 1990; Nagler 1992; Zarecki 2007 (Pandora in relation to the Good Strife).

349 Discussion of division of labor, specialization, and professional envy/zealous emulation is the occasion for Plutarch’s quotation of Pind. *I.* 1.48 (μηλοβότα τ’ ἀρότα τ’ ὀρνιθολόχῳ τε καὶ ὄν πόντος τρέφει) at *Mor.* 6.33.473a6-7 (*De tranq. anim.* 13) (μηλοβότα τ’ ἀρότα τ’ ὀρνιθολόχῳ τε καὶ ὄν πόντος τρέφει), just prior to quoting Hes. *Op.* 25 at 473a11.

350 Glotz 1920:332 = 1965:277; Beazley 1943:456-457; Neer 1998:69 (as open-market [*agora*] rather than festival-oriented contest, “presumably for the lucrative contract for manufacturing Panathenaic amphorae”).

depiction of apprentice vase-painters in competition on a red-figure *hydria* found at Ruvo,³⁵¹ while an epitaph for Mannes the Phrygian (*IG I² 1084*) preserves the comparative self-praise of a preeminent woodcutter.³⁵² Regardless of craft or status, envy (cf. Arist. *Rhet.* 2.10.6 1388a17 on *phthonos*) is clearly for Hesiod a universal motivator of (skilled, artistic) labor, a healthy form of competition.³⁵³ The other (second-born) *Eris*, however, is harsh, oppressive, engendering conflicts, honored by men not by choice but of necessity, by divine design (*Op.* 13-16: ἡ δ' ἐπιμωμητὴ κτλ; the *Theogony's* singular *Eris* and her children are a bane to humanity: *Th.* 225-232). Yet, Hesiod (hardly seriously) endorses this covetous strife too on the precondition one has provided for one's own immediate needs (*Op.* 30-34). We can discern here in a most generalized sense the boundary between righteous self-sufficiency and superfluous luxury. The morality underpinning Hesiod's labor and emulation is further emphasized by *Op.* 286-292 West (where access to *Κακότης* is stated to be easy, whereas the road to *Ἀρετή* is long, steep, and rough, requires sweat), which seemed to Xenophon (*Mem.* 2.1.20ff., note 21.5-6: ... εἴτε τὴν δι' ἀρετῆς ὁδὸν ... εἴτε τὴν διὰ κακίας) parallel or antecedent to Epicharmus' fr. 287 *CGF* I.1 (1899):143 = 23 B 36 DK (τῶν πόνων πωλοῦσιν ἡμῶν πάντα τὰγάθ' οἱ θεοί) and 288 *CGF* = 37 DK (ὦ πονηρέ, μὴ τὰ μαλακὰ μῶσο, μὴ τὰ σκλήρ' ἔχῃς), and Prodicus' Choice of Heracles (*Horai*, fr. 2 Diels). Emulation, like envy, jealousy, and resentment, may represent the inevitable consequence of prosperity, but their prominent role in Hesiod place him at the influential start of a long tradition in which relationships between such concepts, and their moral import, received continued elaboration. The envy of craftsmanly skill or inventive cunning (*phthonos* vs. *sophia*)

351 Saglio/Pottier 1896 s.v. *Figlinum/Fictile opus* (II. Vases) at p. 1127 fig. 3041, Glotz 1920:331 fig. 43 = 1965:277 fig. 43.

352 Later 5th c. BCE; cf. Wilhelm 1909:36; Austin 1938:65 (an "eccentric memorial").

353 Nussbaum 1960, Welles CB 1967, Bongert 1982, Edwards AT 2004:49,53-54,85.

is similarly negative in Xenophon’s (Xen. *Mem.* 4.2.33) recollection of Minos enslaving Daedalus (διὰ τὴν σοφίαν) and Odysseus killing Palamedes (διὰ σοφίαν φθονηθείς) as analogous to the Persian king’s compulsion of “many others” into his service (διὰ τὴν σοφίαν). In Plato, we find a systematic march from success to competitive zeal to destructive envy (*zeloun* → *phthonein*) at Pl. *Menex.* 242a4-5 (ὁ δὲ φιλεῖ ἐκ τῶν ἀνθρώπων τοῖς εὖ πράττουσι προσπίπτει, πρῶτον μὲν ζήλος, ἀπὸ ζήλου δὲ φθόνος), a consequence of “the principle of ‘degree’ or ‘hierarchy’.”³⁵⁴ The emulation of models was nonetheless ever approvingly applied to literary ambition in stylistic manuals (e.g. Longinus, 13.2: *μεγάλων συγγραφέων μίμησις καὶ ζήλος*,³⁵⁵ discussing Plato’s debt to Homer: 13.4) and philosophical tracts (cf. Max. Tyr. 1.9c Hobein 1910:15: *ὅτι μὲν πένης ἦν ὁ Σωκράτης, ὁ πένης εὐθὺς μιμήσεται τὸν Σωκράτην*, cited by West, further juxtaposition of *zelo-/mim-* at Max. Tyr. 1.4e Hobein 1910:7-8, 1.7 Hobein 1910:11f. in an extended contrast between intellectual and athletic emulation, calling to mind the Xenophanes’ dire antagonism).

A further noteworthy quality to Hesiodic *eris* is its intertextuality.³⁵⁶ *Op.* 11-26 (*οὐκ ἄρα μούνον ἔην Ἐρίδων γένος*) innovates on the basis of his own creation by “correcting” *Th.* 225-226, emending sg. *Eris* to two *Erides*.³⁵⁷ Similarly, *Op.* 804 depends on, i.e. directly alludes to,³⁵⁸ *Th.* 226-232, and in light of such examples we might consider the supposed sequential dependency/segues of *Th.* → *Cat. mul.*, *Op.* → *Ornithomant.* ~ *Iliad* → *Aethiopsis*. We also find a verbatim doublet between the two poems at Hes. *Th.* 571-573 = *Op.* 70-72 which prompted Origenes (or his scholarly authorities) to omit the latter occurrence (suggesting priority of the

354 Arieti/Barrus 2010:84n188 ad Pl. *Prot.* 343a (*ζηλωταί*).

355 Cf. Stemplinger 1912:121-167 (II.III: Literarische *μίμησις*).

356 The explicit focus of Lämmle 2016:25-29, cf. Nagler 1992.

357 West ML 1978:142 (“There is not afterall only one Eris”) ad vv. 11-46.

358 West ML 1978:360.

Theogony): the later work (*WD*) thus depends (per this local tradition) stylistically as well as thematically on its immediate continuation of and commentary on a passage in a previous work (*Th.*) perceived as extensible and inviting elaboration. Genealogy naturally depends on “building on inherited material,”³⁵⁹ something which comes with a certain degree of pretense to historicity, if not historical accuracy.³⁶⁰ One wonders how widely shared (and how generally reasonable) were the set of assumptions (of a certain economy of letters) underlying Accius’ demonstration (L. Accius *Didascalica* lib. 1 ap. Gell. *NA* 3.11.3, condemned by Gellius as *levibus admodum argumentis*) that Hesiod must have been prior to Homer because the latter would not have left the identity of Peleus unexplained (*Il.* 1.1) unless it had not been already addressed by Hesiod (Hes. fr. 102 Rzsch = 224 MW).

More interestingly, however, from a doctrinal standpoint, is the interrelation of the *Erides* with Hesiod’s Prometheus (*Th.* 510-616,³⁶¹ *Op.* 42-105)³⁶² (and Pandora).³⁶³ Though no less intertextual, we need not impose too high a standard of consistency and systematics on Hesiod when comparing/contrasting the characterization of Prometheus in his two major works.³⁶⁴ Of more general import is Prometheus the model cultural hero and benefactor (e.g. *pyrophoros*)³⁶⁵ as (in later treatments at [Aesch.] *P.V.*,³⁶⁶ Pl. *Protag.* 320c-322a, etc.) *πρῶτος εὔρετης*, *sophos*, and craftsman/artisan. Athena and Hephaistos, who both play a role in the

359 West ML 1985:125.

360 van Groningen 1953:47-61.

361 Wehrli 1956 = Heitsch 1966b:411-418, Schmidt JU 1988.

362 Schwartz E [1915] 1956:42-62, Kraus 1957, Heitsch 1963, reprints at 1966b:327-435; Verdenius 1971, 1977:302; Corey 2015:233-238; for an overview of Prometheus’ Greek literary tradition, cf. Aly 1913, Pucci P 2005 (Hesiod to Plato).

363 von Fritz [1947] 1966, Lendle 1957, Kühn 1959, Musäus 2004.

364 Cf. Corey 2015:233 (“The two accounts are complimentary [*sic*] even though their functions are different within each poem. ... [A]lthough each poem contains a version of the Prometheus myth, neither is complete without the other. ... I piece together the fullest version of the myth by combining material from the two sources.”).

365 Bees 1999.

366 Benardete 1964, Conacher 1977, Leclerc 1994:69-75.

Pandora story, play a somewhat comparable role in other authors (Solon fr. 13.49-50 W: Ἄθηναίης τε καὶ Ἡφαίστου πολυτέχνεω / ἔργα δαεὶς χειροῖν ξυλλέγεται βίον), but so too might e.g. Sisyphus, a popular symbolic figure of craft-cunning (Alc. fr. 38.6-7 [B6] Lobel/Page [1955] 1963:128: ἀνδῶν πλείστα νοησάμενος / ... πολυῦδρις; Thgn. 702-3:³⁶⁷ πλείονα δ' εἰδείης // πολυιδρήσι λόγοις). Prometheus, however, proximate to Hesiod's doctrine of the (three, four, or five) Ages/Races of Man (*Op.* 106-201; cf. Dan. 2.25ff.),³⁶⁸ links cunning, invention, and deceit with Hesiod's conception of (linear, or cyclic)³⁶⁹ progress (or rather decay/decline).³⁷⁰ Hesiod's *Erides* function as socio-economic principles/forces; his notion of competitive zeal can be related to e.g. Empedocles' more cosmogonic (though nonetheless anthropomorphic) *neikos* (note Ἐρίδεσσι at Emped. 31 B 20.4 DK).³⁷¹ Though the notion of "progress" at this stage might be no monolithic construction, many elements sociological, physical, and theological supply pieces of its puzzle. Hesiod must be seen as one of this tradition's earliest and most influential contributors.

At the risk of some repetition, consider the theme of *eris/neikos* again from a musical-poetic perspective. An essential feature of oral poetry is its improvisational (*σχεδιάζειν*) character, "the spontaneous recomposition of traditional material (diction, formulae, etc.), rearranged in a novel way."³⁷² Regardless the structuring force of traditional vocabulary and formulae, the connoisseur's intuitive sense of oral authenticity, i.e. of the degree of oral performance inherent in a fixed text, depends in part on an appreciation for its origin in

367 Henderson WJ 1983.

368 Cf. Bamberger 1966, Gatz 1967, Fontenrose 1974, West ML 1978:172-177, Smith P 1980, Hofinger 1981, Querbach 1985, Sihvola 1989:7-67, Ballabriga 1998, Most 1998; cf. Schwabl 1984 and Fritz V 1990 on such eras in relation to ancient historiography.

369 Koenen 1994.

370 Zanker 2013.

371 On Empedocles, cf. *infra* re Greek notions of progress apropos Xenophanes 21 B 18 DK.

372 Collins 2001:130n7.

momentary improvisation (in contrast to literate scribal composition). With respect to the Hesiodic corpus, fame attracted other works of some affinity to those recognized as most identifiably original, thereby ensuring their survival,³⁷³ transmission dependent on their fixed written expression. Systematic oral poetic analysis may be exemplified by Peabody's five-factor test (phonemic; formulaic, lexical; enjambment, phraseological/syntactic periods; thematic; song)—extrapolated from the Parry/Lord three-factor test (formulaic; enjambment; thematic)—inferring orality from regularities in the compositional process. In fact, this particular multi-factor test (as Peabody tacitly concedes)³⁷⁴ can only disprove orality, whereas its positive results can only be suggestive, not determinative (necessary, but ultimately insufficient proof). Any such metrics must be met with a caution reflected in Adam Parry's summary of his father's views on Homeric authorship: the poet was not demonstrably oral, but certainly working with a stylistic economy created by and typical of a pre-literate tradition of oral versification.³⁷⁵ (Review of the supplemented array of Speyer's *Schützmittel* and their efficacy against forgery suggests a similar lesson: the anciently available means of textual authentication were neither sophisticated nor certain, and could not be turned to the service of literary fraud with any predictable outcome other than a certain appearance of authenticity.) For Peabody, acceptance of Greek heroic poetry as resulting from a process of rapid, facile oral composition encounters subconscious resistance from literate suppositions:

We tend to think of form as something real but nonmaterial. In countless unsuspected ways, the strands of dualism and categorial abstraction that our culture has nourished since Plato's time generate and reinforce a sensibility in us that form and matter are separate modes of being.³⁷⁶

373 Most 2006:lix.

374 Peabody 1975:3.

375 Parry AM [1969] 1972:1 = 1989b:301.

376 Peabody 1975:5.

Yet, it is important for any conception of literary property to distinguish a work's (1) ideas (semantic content or message(s)) from the underlying work (UW) as an (2) ideal (an abstraction potentially instantiated, or fixed, in, but distinct from, any given physical exemplar, i.e. copy) and its (3) fixation (paradigmatically, in a material expression, i.e. the work's actual physical exemplar(s), or copies). Distinction between (1), on the one hand, and (2) and (3), on the other, may be aided by an otherwise arbitrary example drawn from modern English law:

An individual's signature may be protected under law as an artistic work. If so, the unauthorised reproduction of the signature will infringe copyright. The name itself will *not* be protected by copyright; it is the *appearance* of the signature which is protected.³⁷⁷

Homer (or any performer) was certainly individually present in his *epea* to the extent the reflexive personal pronoun occasionally occurs, often, as in the Homeric hymns, when addressing the Muses. Hesiod's personal identification at *Th.* 22 (whether orthonymous or not), however, along with additional biographical data (e.g. *Op.* 633-640, 649-662) not contradicted by the *Theogony*'s claims, make explicit authorial attribution all the more inevitable. Attribution, in turn, the more rich the personal profile, facilitates *post hoc* claims of descent and affiliation.

Cert. 1.1-8 Allen 1912 [V]:225-226 relates that

“Ὀμηρον καὶ Ἡσίοδον τοὺς θειοτάτους ποιητὰς πάντες ἄνθρωποι πολίτας ἰδίου εὐχονται λέγεσθαι. ἀλλ’ Ἡσίοδος μὲν τὴν ἰδίαν ὀνομάσας πατρίδα πάντας τῆς φιλονεικίας ἀπήλλαξεν εἰπὼν ὡς ὁ πατήρ αὐτοῦ

εἶσατο δ’ ἄγχ’ Ἑλικῶνος οἰζυρῇ ἐνὶ κόμῃ (5)
Ἄσκρι, χεῖμα κακῇ, θέρει ἀργαλέῃ, οὐδέ ποτ’ ἐσθλή.

“Ὀμηρον δὲ πᾶσαι ὡς εἰπεῖν αἱ πόλεις καὶ οἱ ἔποικοι αὐτῶν παρ’ ἑαυτοῖς γεγενῆσθαι λέγουσιν.

377 Spilsbury 2000:439 (emphasis in original), noting (440) a certain necessary degree of distinctiveness beyond the purely rudimentary as well as the lack of protection in personal names, citing *Du Boulay v. Du Boulay* (1869) LR 2, PC (denying “the absolute right of a person to a particular name to the extent of entitling him to prevent the assumption of that name by a stranger”); *Tavener Rutledge v Trexapalm* [1977] RPC 275 (denying copyright in the fictional character name “Kojak”); *Burberrys v Cording* (1909) 26 RPC 693 (denying copyright in the real surname “Burberry”).

Homer and Hesiod are the most inspired of poets, and all mankind would like to have them reckoned as their own fellow-citizens. Hesiod at least, by naming his own homeland, precluded any rivalry: he said that his father

settled near Helicon in a miserable village, (5)
Ascra, bad in winter, cold in summer, good at no time.

With Homer, on the other hand, practically all cities and their inhabitants claim that he was born among them. (tr. West)³⁷⁸

These lines are interesting for their testimony to the workings of literary fame in antiquity, the role of the *polis* in defining and asserting its claims, and the constraints which the text itself (the poet him-/herself) can impose on at least some aspects of its afterlife. Here may be an appropriate moment to qualify the strength of text-internal (self-referential) attribution. Let the Proklos funerary inscription exemplify a manner of recycling in its appropriation of the literary Midas epitaph³⁷⁹

*χαλκῆ παρθένος εἰμί, Μίδεω δ' ἐπὶ σήματι κείμεαι·
ἔστ' ἂν ὕδωρ τε ρέη καὶ δένδρεα μακρὰ τεθήλη,
ἠελίος τ' ἀνίων λάμπη, λαμπρά τε σελήνη,
καὶ ποταμοὶ γε ρέωσιν ἀνακλύζῃ δὲ θάλασσα,
αὐτοῦ τῆδε μένουσα πολυκλαύτου ἐπὶ τύμβου
ἀγγελέω παριοῦσι Μίδης ὅτι τῆδε τεθάπται.*

I am a bronze maiden, and I lie atop the grave of Midas.
As long as water flows and trees grow tall,
the shining sun rises and the moon shines,
the rivers flow and the sea stirs,
I will remain right here atop the much bewailed tomb,
announcing to passersby that Midas is buried here.

which recurs in the actual grave marker thusly:³⁸⁰

*φαιδρότατον βωμὸν στῆσαι σημάντορα τύμβου,
εὔτ' ἂν ὕδωρ τε ρέει κὲ δένδρεα μακρὰ τεθήλη,
κὲ ποτ[α]μο[ι] ναίουσιν, ἀνα[β]ρύζῃ δὲ θά[λασ]σα.
αὐτῶ τῶδε μενω πολυκλαύτῳ ἐπὶ τύν[β]ῳ.
ἀγγέλλω παριοῦ[σ] ὅτι Πρόκλος ὦδε τέθ[απτ]αι.*

...erected the brightest altar as an identifier of the tomb,
while water flows and trees grow tall,

378 West ML 2003 [LCL496]:319.

379 Vit. *Herod.* 135-40 (Allen 1912:198-9), D.L. 1.89. The Midas and Proklos epitaphs are treated again more fully further below.

380 Souter 1896:420; cf. Peek GVI 1945.

Aesthetic appreciation (i.e. of items (1) and (2), above) begins most naturally from the physical exemplar (3) of the fixed text. In an improvisational genre, the stability of this material fixation is somehow at odds with the spontaneity of the original moment of composition, but for the moment I presume this duality to be intuitive and unproblematic: the distinction between performance and material fixation is an obvious one from the perspective of preservation, transmission, palaeography, codicology, etc. The centrality of the improvisational element to live competitive versification (e.g. Hes. fr. 357 MW, *Op.* 654-659) in ancient Greek hexameter (elegiac will be treated below) is caricatured in the *Contest of Homer and Hesiod (Certamen)*, which elaborates a pre-existing theme in the service of Alcidamas' predilection for improvisation,³⁸⁴ just as in imitation thereof³⁸⁵ tragic meters are staged as a competitive (semi-)improvisational medium in Aristophanes' *Frogs*. But signs of improvisation in the epic poems themselves need not be so overt as a demonstration of their performance in competition. More fundamental to my aims, though directly related, is a demonstration of the inherent malleability of the epic form.

Amongst other aged epigraphic remains, such as the crumbling remnants of Solon's *axones* still supposedly viewable in the Athens of his day (cf. Paus. 1.18.3; cf. Plut. *Vit. Sol.* 25.1, 25.3, and Polemon fr. 48 quoting Harpocration s.v. Ἰαξοῦ), Pausanias (9.31.4) attests to a copy of Hesiod's *Works and Days* on a time-worn lead tablet (Pausanias 9.31.4-5 continues with a list of Hesiod's works) on display at the *Hippokrene* on Mt. Helicon.³⁸⁶ Like the many other points of interest in the area attaching to the Hesiodic name, however, one is justified in

384 Furlley 2006.

385 Cf. Rosen 2004.

386 Cf. Davison 1962:151 ("library edition"). Lamberton 1988:502 notes that the locals at Hippocrene "did not serve their own interests when they said Hesiod wrote [*Works and Days*], and no other [poem]. [...] They seem to have clung to a purist position at their own expense—who knows?—it may even have contained some shred of historical truth."

suspecting the authenticity of such artefacts. The lead tablet would not have been the only physical remnant of ostensibly Hesiodic authorship: Aulus Gellius 3.11.3 records a note by Varro citing an epigram on the tripod dedicated by Hesiod on same mountain. Pausanias (9.31.3) states that of all the tripods on Helicon, the oldest is the one dedicated by Hesiod, who, in agreement with the testimony in the *Op.*, had won it in Chalcis as a prize in poetic competition. This of course derives from Hesiod’s own account (*Op.* 654-659) of his victory in Chalcis at the funeral games of Amphidamas, where he claims to have won a tripod which he subsequently dedicated to the Heliconian Muses. Any such epigram, however, is not earlier attested, thus leaving greater room than in the case of the leaden *Op.* for invention. Yet even the seeming certainty of metal inscription is thwarted by what Pausanias refers to as a “local tradition” of the Heliconian Boeotians that the *Op.*’s preliminary verses up to the *Erides* passage are not genuine, and are hence omitted (conceivably including from the tablet, though this is not specified). In addition, these locals, Pausanias tells us, deny the authenticity of the *Theogony*, i.e. only acknowledging *Op.* as Hesiodic, notwithstanding perennial suspicions that ἔνθα μέ φημι / ὕμνω νικήσαντα φέρειν τρίποδ’ ὠτώεντα (*Op.* 656-657) is a reference precisely to the *Theogony*—just as the handling of the two *Erides* at *Op.* 11ff. presumably refers to and corrects the same author’s previous treatment of *Eris* in the *Theogony* (225-226).

In addition to the Heliconian tripod (Paus. 9.31.3) and lead tablet *Works and Days* (Paus. 9.31.4-5) as exemplary forged textual artefacts, we find a further Hesiodic example of overt textual manipulation pretending to faithful preservation of the original. According to Clement of Alexandria (*Strom.* 6.26.7),

τὰ δὲ Ἡσιόδου μετήλλαξαν εἰς πεζὸν λόγον καὶ ὡς ἴδια ἐξήνεγκαν Εὐμηλὸς τε καὶ Ἀκουσίλαος οἱ ἱστοριογράφοι.

... Hesiod's poetry was turned into prose and brought out as their own work by the historians Eumelus and Acusilaus. (tr. West)³⁸⁷

One might consider such an adaptation of poetry into prose as a distinct work similar to translation between languages, with limited pretense of precise recreation of the author's original diction (ignoring here the clearly graver offense of plagiarism). Plutarch's narrative of Cato's embassy to Antiochus III (*Vit. Cat.* 12.4-5) supplies a cautionary (late) example of (perhaps tendentiously distended) translation from Latin to Greek. A more apposite example might be Allen's papyrus 53 (*Pap. Hieronymi Vitelli*, 1st c. CE; *Il.* 1.484-494) wherein the Chryseis episode of *Il.* 1.486ff. is rendered in the words of *h.Apol.* 503ff. In the print world, fixed objective physical expression such as the transformation of language Clement describes would offend against an authorial intent objectively documented by a wide distribution of identical copies to which layman and expert alike might readily refer. In the improvisational world of Greek hexameter, however, one might not presuppose any proprietary claim to attribution or exclusive right of performance and *verbatim* integrity of the work (let alone written transcription and distribution) as meaningful component of authorial intent.³⁸⁸ Clement's late testimonium, however, is hard to credit. Nevertheless, it does pose further questions of relevance to the fixed form of Greek poetry in the pre-Alexandrian era. Prosification disregards

387 West ML 2003 [LCL496]:220/221.

388 Cf. Wright J 1996, Janko 1998:4. In this context, note Latacz 2006 (VI. Transmission): "With the transfer of a part of the traditional oral hexametric narrative tradition into the written tradition in the form of the two great epics, the Iliad and the Odyssey, the period of free improvisation had in principle ended. Consequently, the former aoidoi (i.e. artists of improvisation) now became rhapsodes (i.e. reciters of the Iliad and the Odyssey). As the autograph of the author did not have to be reproduced word for word because of the absence of copyright, the rhapsodes could undertake modifications depending on the circumstances of the recitation and their ambition for self-portrayal (additions, omissions, etc.). The general coherence of both plots suggests, however, that such modifications were limited to only a few passages and mostly to single verses or variants of formulas. The 10th book of the Iliad, the Doloneia, is an exception." Here "copyright" is a poor translation of *Urheberrecht* (in the German version), which specifically is intended to suggest the moral right of integrity of the work. (Note too arguments dismissing this distinction between the "creative" aoidos and the "reduplicating" rhapsode, e.g. at Nagy 1990 [GMP]:42 citing Ford AL 1988; quoted at Nagy 1995:179n122.)

stichometrics, for example, and eliminates the visible expression of colometry on the page. In early writing of many Greek lyric forms this would make no difference, down to the early experiments of the Lille Stesichorus,³⁸⁹ Aristophanes of Byzantium, etc., but with hexameter verse, even before the nearly as regular though less rigorously subdivided dramatic texts, early exempla such as the Nestor's cup from Ischia display a tendency toward stichic line division. Hence, whether in the tradition of the Heliconian Boeotians reported by Pausanias or such scholarly efforts as Peabody's tiered multi-factor orality tests, a certain sense of discrete compositional units in Hesiod is clear. The (not always meaningfully discrete) additive modularity of oral hexameter poetry facilitates its practice as a collective endeavor. Aulus Gellius (3.11.4-5) reports:

Accius autem in primo didascalico levibus admodum argumentis utitur, per quae ostendi putat Hesiodum natu priorem: "quod Homerus," inquit "cum in principio carminis Achillem esse filium Pelei diceret, quis esset Peleus, non addidit; quam rem procul" inquit "dubio dixisset, nisi ab Hesiodo iam dictum videret. De Cyclope itidem," inquit "vel maxime quod unoculus fuit, rem tam insignem non praeterisset, nisi aequae prioris Hesiodi carminibus involgatum esset."

Accius, on the contrary, in the first book of his *Didascalica*, makes use of very weak arguments in his attempt to show that Hesiod was the elder: "Because Homer," he writes, "when he says at the beginning of his poem that Achilles was the son of Peleus, does not inform us who Peleus was; and this he unquestionably would have done, if he did not know that the information had already been given by Hesiod. Again, in the case of Cyclops," says Accius, "he would not have failed to note such a striking characteristic and to make particular mention of the fact that he was one-eyed, were it not that this was equally well known from the poems of his predecessor Hesiod." (tr. Rolfe)

Gellius is rightly dismissive (*levibus admodum argumentis*) of such reasoning as a demonstration of priority.³⁹⁰ In a way, deliberate omission represents the flip side to

³⁸⁹ Haslam 1974, 1978.

³⁹⁰ Not that Accius' is here entirely unreasonable: a later author might well both presume as his own the foundation laid by a literary predecessor while calculatedly avoiding treatment of that same material. This presents, however, an array of further possibilities and explanations, such as a relationship of ideological agreement or disciple's deference, or a fear of competing with widely accepted dogma or superior style. Yet, the existence of competing traditions (whether epichoric polymorphism in heroic genealogies or such alternative traditions as Helen's *eidolon*) hardly requires the presumption of calculated distortion (forgery). At any rate, poets will at times attempt to compete with (correct/refute) predecessors as well as contemporaries.

interpolation, such as the ancients also suspected within the Hesiodic corpus (from among numerous potential Homeric exempla recall the contentious Salamis passage in the Iliadic *Catalog of Ships*): at Paus. 2.26.7 we find the suggestion Ἡσίοδον ἢ τῶν τινα ἐμπεποιηκότων ἐς τὰ Ἡσίοδου τὰ ἔπη συνθέντα ἐς τὴν Μεσσηνίων χάριν (Pausanias' explanation for a version of Aesop's parentage he finds refuted by the Delphic response to Apollophanes of Arcadia, 276 PW = Q226 Font.). A less nefarious performer nevertheless concerned to hide the seams of his handiwork may seek distinction in competition, if not by capping his rival's offering in elaboration of a common theme, then by deliberately pursuing an untrammelled path with unexploited potential for invention. Modularity at the thematic level is reflected in the common practice of referring to segments of epic works not according to (Alexandrian) notions of book divisions but rather by discrete scenes. Like the *διάπειρα* of *Iliad* Book 2 or the *Δολώνεια* of Book 10, Strabo 7.3.9.16-18 (quoting Ephorus *FGH* 70 F 42) offers a title which, it is supposed, designates a discrete episode within the *Ehoiai* rather than an entirely separate work:³⁹¹

Ἡσίοδον δ' ἐν τῇ καλουμένῃ γῆς περιόδῳ τὸν Φινέα ὑπὸ τῶν Ἄρπυιῶν ἄγεσθαι
 „γλακτοφάγων / εἰς γαῖαν ἀπήναις οἰκί' ἐχόντων.“ (Hes. fr. 62 H = 151 MW)

Hesiod in the so-called *Journey Around the World* says that Phineas was driven by the Harpies “to the land of the Milk-Eaters who use wagons as houses” (tr. Most)

The promiscuity of such elements and their subcomponents, not necessarily clearly discrete or complete in every instance, can be seen e.g. in *Theogony* ca. vv. 963-1020/2 and *Scut.* 1-45, both corresponding to parts of the *Catalog of Women*. Established epic diction in the sense of script or scripture in Nagy's parlance (where one might otherwise tend to regard such language as favorable to stable authorial attribution) is often described as “fossilized”³⁹² or “frozen,”³⁹³ but as

391 Most 2007:169n33.

392 West S 1967:18; Morris I 1986:83.

393 Morris I 1986:127.

we see from the cross-contamination of the Theognidean, Solonian and Tyrtaean corpora, such passages as the beginning and end of the *Theogony*, the start of the *Scutum*, could acquire the last-in-first-out, push-pop mechanics of an abstract data stack: quanta to be sorted according to editorial whim and convenience. The transition at the end of the *Theogony*, commonly explained as the addition of a later editorial hand or rhapsodic voice, is not unlike a reading supplied by the T scholia on *Il.* 24.804: instead of Ὠς οἳ γ' ἀμφίεπον τάφον Ἑκτορος ἵπποδάμοιο some MSS read Ὠς οἳ γ' ἀμφίεπον τάφον Ἑκτορος· ἦλθε δ' Ἀμαζών, / Ἄρηος θυγάτηρ μεγαλήτορος ἀνδροφόνου, i.e. the song continues into the *Aethiopsis*.³⁹⁴ Recall again the local tradition cited above which Pausanias reports as deprecating the introductory verses of *Works and Days* up to 11ff., treating the two *Erides* as a corrective commentary elaborating upon *Th.* 225-226.

Elaboration and qualification of these kinds reflect the generally contentious nature of early epic which thrived on disagreement in competitive performance as much as it evolved from the occasional collision of contradictory local traditions in pan-Hellenic settings, themselves products of sometimes arbitrary invention (e.g. Σ *Soph. Trach.* 266 citing Creophylus' *Capture of Oichalia* fr. 3 West).³⁹⁵ Herodotus' self-identification as claim to his own work in his prologue, his recounting of others' contrary accounts and his sense of truth in reporting over the traditional matter of epic, are all prefigured in Hesiod.³⁹⁶ Such malleability of the Hesiodic text (as in epic hexameter generally), can be illustrated by functionally similar epexegetical devices such as the use of simple relative clauses, reflecting mechanically a temporal quality noted by Aristotle as unique to epic (*Poet.* 5.1449b: "epic is unlimited in time

394 Cf. Murray G [1934] 1960:288n1.

395 West ML 2003 [LCL496]:176/177.

396 Lenz 1980:268-280, 282-299.

span and is distinctive in this respect,” tr. Halliwell), vis-a-vis tragedy, which is supposed to take place all within the span of a day (though earlier tragedy and epic supposedly followed the same practice in this regard). As can be seen from such relative-clause-dependent passages as *Op.* 301, 319, 326 (Echidna, Ceto, Hydra, Chimaera?), however, the syntactic referent can maintain a certain degree of ambiguity. One might expect such ambiguity, as with passages such as Hesiod’s Hawk and Nightingale (*Op.* 202-12), is more an artefact of our ignorance rather than deriving from Hesiodic intent. The degree of allegorical/metaphorical indeterminacy need not rise to the level of Euthyphro’s reading of the Hesiodic Cronus-castration in order to lay claim to an original multivalence. Hesiod’s hawk/nightingale *αἶνος* functions as a “story with a moral” (i.e. to accomplish a desired end/elicit a favor, such as *Od.* 14.508),³⁹⁷ rather than merely as a “story” (as at *Il.* 23.652): “The story has been effective (cf. *Od.* 14.508-9), and this is more important than its literal truth.”³⁹⁸

CHAPTER 3

Constraints on textual manipulation

The first copyright(?): Theognis’ sphragis

As the earliest evidence for the concept of plagiarism in Western thought,³⁹⁹ Theognis’ *sphrēgis* poem⁴⁰⁰ has long been regarded as one of Archaic Greek poetry’s most important

397 Cf. Walcot 1992:60.

398 Walcot 1992:60.

399 Selle 2008a:321.

400 Though the precise number of lines properly constituting the “seal poem” as a unitary, discrete whole is an unsettled problem in Theognis scholarship, I will in what follows pursue a reading which regards 19-38 as a

authorial declarations and at the same time one of its most enigmatic. What exactly is the nature of this seal, and how is it to achieve its stated purpose? In a corpus rife with borrowings, repetitions, interpolations⁴⁰¹ and apparent chronological inconsistencies,⁴⁰² the seal stands out as a distinctly authentic programmatic statement on the part of the supposed original poet at the heart of the collection. It is in these verses, and nowhere else, that Theognis names himself, and it is here that he makes the first of some 80 addresses to Kyrnos,⁴⁰³ the favored recipient of his teaching. While some have gone so far as to suggest that these are pseudonyms (and Theognis' very existence has been called into question),⁴⁰⁴ they are commonly construed, separately or together, as themselves metaphorically/nominally constituting the elusive seal. Moreover, and bound inextricably to any notion of its textual or physical substance, the seal's function has been read both literally and figuratively, variously as a designation of origin or certificate of authenticity, a declaration of ownership or poetic authority, or a lock-and-key which excludes would-be thieves while admitting only an elite audience of the author's political and social peers. It is my contention that Theognis' seal deserves its status as an archetypal expression of intellectual property at its earliest evolutionary stage, and recognition as an effective verbal technology of authorial self-preservation because of both its combination of overlapping textual components as well as the poet's express dependence on a concomitant oral culture.

coherent unit, similar to (most recently) Hubbard 2007:207-212, and Faraone 2008:57-59; others have preferred to examine 19-26 (Selle 2008a:292; Bakker 2016:207), 19-28 (Bakker 2017:105-105) or 19-30.

401 Cf. Young 1964; Hudson-Williams begins his first chapter ("History and Chronology") with an investigation of the *σφραγίς*, under the premise that any discussion of the author's life, date and political milieu is contingent on first discovering "some test which will enable us to distinguish authentic poems of Theognis" from those of other poets in the *Theognidea*.

402 Cf. Hubbard 2007:195-198; for "an interesting but very fanciful" (Hudson-Williams) chronological rearrangement of the corpus based on the author's inferred biography, cf. [Frere] 1842 (*passim*).

403 His name appears throughout the *Theognidea* only in the vocative (inherently "indexical," Bakker 2017:105, 109 emphasizes), as *Κύρνε* (76 times) or as the patronymic *Πολυπαίδη* (9 times).

404 Cf. Selle 2008a:20-21, 381-389.

Our earliest evidence for “σφραγίς” as a formal literary term of art is found in Pollux (*Onomasticon* 4.66.7-9) (2nd c. CE), where he lists (without elaboration) the names of the seven divisions (credited to Terpander) as proper to kitharodic *nomos*: *μέρη δὲ τοῦ κιθαρῳδικοῦ νόμου, Τερπάνδρου καταναίμαντος, ἑπτὰ· ἀρχά, μεταρχά, κατατροπά, μετακατατροπά, ὀμφαλός, σφραγίς, ἐπίλογος*. Wilamowitz⁴⁰⁵ pointed out that Timotheus’ *Persae* (cf. 215-248, esp. 237-248) provided an example of just such a “seal”: immediately prior to a closing “epilog” to Apollo, and immediately after invoking Terpander, the poet identifies himself by name and city as the author of the song (thereby also satisfying the expectation set by Theognidean precedent). *Σφραγίς* has therefore become a generic label for any poet’s personal “signature”—that part of a poem into which the author has woven his own name, or at least some element of personal self-description. In Horace’s 20th epistle, for example, we find that, distinct from the literal “lock and seal” imagery of line 3, there is a another layer to the authorial identification. Like the Theognidean *sphragis*, where everyone who speaks his name (recites his “seal”) recognizes the poet’s verse as authentic, Horace enlists a third party in his self-identification: but it is his own poetry book (and addressee) which, in fact, proclaims him as its author. An arguably more abstract conceit, but no less than is the case with Hesiod’s *Perses* or Theognis’ *Cyrnus* the reader-listener is enrolled in a discussion, if not altogether private, certainly not properly her or his own.

Some earlier parallels to the Theognidean seal help to further contextualize the author’s proprietary claim. The poets of Greek wisdom literature are simple and direct: Phocylides may preface his words with “καὶ τόδε Φωκυλίδου/Φωκυλίδεω,” Demodocus with “καὶ τόδε

405 Wilamowitz 1903:99-100.

Δημοδόκου.”⁴⁰⁶ A similar signature was inscribed by Hipparchus on his Attic herms, with such sayings as “*μνήμα τὸδ’ Ἰππάρχου· στείχε δίκαια φρονῶν*” and “*μνήμα τὸδ’ Ἰππάρχου· μὴ φίλον ἔξαπάτα*”.⁴⁰⁷ Here the medium (*IG I² 837*; cf. *CEG 304*) lends perhaps an aura of greater permanence, physical insurance against decay or corruption. A further example of poetic self-identification can be found in the Homeric Hymn to Delian Apollo:

ὦ κοῦραι, τίς δ’ ὕμιν ἀνὴρ ἥδιστος ἀοιδῶν
 ἐνθάδε πωλείται, καὶ τέω τέρπεσθε μάλιστα; 170
 ὑμεῖς δ’ εὖ μάλα πᾶσαι ὑποκρίνασθ’ ἀμφ’ ἡμέων.⁴⁰⁸
 τυφλὸς ἀνὴρ, οἰκεῖ δὲ Χίῳ ἐν παιπαλοέσση,
 τοῦ πᾶσαι μετόπισθεν ἀριστεύουσιν ἀοιδαί.⁴⁰⁹

Maidens, what man is sweetest to you of the singers
 who come here, and in whom do you most delight? 170
 But you well answer about us:
 “He is a blind man, and lives in rocky Chios,
 all of whose songs are ever of the highest class.”

Again like Theognis, the poet manages to induce a third party to identify him (though falling—no doubt intentionally—short of overt naming). Hesiod, however, provides the earliest such passage and he is therefore acknowledged as the first historical author-as-individual in Western literature. In addition to autobiographical details included in his *Works and Days*, Hesiod names himself in his *Theogony* at line 22 just before asserting the particular grace and authority he has been granted by the Muses:

αἶ νύ ποθ’ Ἡσίοδον καλὴν ἐδίδαξαν ἀοιδίην,
 ἄρνας ποιμαίνονθ’ Ἑλικῶνος ὑπο ζαθέοιο. 23
 τόνδε δέ με πρότιστα θεαὶ πρὸς μῦθον ἔειπον,
 Μοῦσαι Ὀλυμπιάδες, κοῦραι Διὸς αἰγιόχοιο.⁴¹⁰

They once taught Hesiod beautiful song
 as he was tending his sheep beneath divine Helicon. 23
 And to me first of all they addressed this speech,

406 Phocylides (ed. Diehl), *passim*; Demodocus *Anth. Gr.* 11.235 Beckby.

407 Pl. *Hipparch.* 229a3, b1.

408 Ed. Allen et al. read ἀφήμωσ.

409 Ed. Allen et al. 1936:20-42.

410 Per West ML 1966:111-149.

Odisti clavis et grata sigilla pudico,
 paucis ostendi gemis et communia laudas,
 non ita nutritus. Fuge quo descendere gestis; 5
 non erit emisso reditus tibi: “Quid miser egi?
 Quid volui?” dices, ubi quid te laeserit; et scis
 in breve te cogi, cum plenus languet amator.
 Quodsi non odio peccantis desipit augur,
 carus eris Romae donec te deserat aetas; 10
 contrectatus ubi manibus sordescere volgi
 coeperis, aut tineas pasces taciturnus inertis
 aut fugies Uticam aut vinctus mitteris Ilerdam.

You gaze, it seems, towards Janus and Vertumnus, O my book! 1
 to be set out on display, by the pumice of the Socii smoothed.
 You chafe at lock and seal to the modest dear;
 you groan you are shown to only a few, and sigh by all the public to be read,
 you in far other notions trained and bred. Flee to wherever you wish to go, 5
 but, once set forth, you come not back again. “Fool that I was!
 Why did I change my lot?” you’ll cry, when something anguishes you; and
 once your sated admirer gets bored, you’re tossed crumpled into the corner.
 Unless the augur disapproves your errors,
 you will be liked by Rome while in your bloom, 10
 but soon as ever the thumbing of vulgar hands shall your first freshness spoil,
 you will be left to nibbling worms a prey,
 or flee to Utica or sent as wrapping to Ilerda.

A conceit which allows the poet to distance himself from his own ambition, the anthropomorphized document is endowed with a will of its own, unheeding the author’s voice and in its haste exposed to unforeseen harm. Perhaps echoing Homer’s frequent exclamation *ποῖόν σε ἔπος φύγεν ἕρκος ὀδόντων* (e.g. *Il.* 4.350), the poet laments (6: “non erit emisso reditus tibi”) the finality of the act of surrendering his draft for public distribution. No longer free to revise or amend his text, he must also accept as a further necessary condition of publication his inability to prohibit critical assault (or distortion/mutilation, inadvertent or otherwise, depending on our interpretation of “ubi quid te laeserit” in line 7), the displeasure of fickle fashion (8: cum plenus languet amator), or the ravages of time (12: tineas pasces taciturnus inertis; the book is beset by “balba senectus” later at line 18). The latter two dangers are combined in the “donec te deserat aetas” of line 10.

While it is still trapped in the singular form of his own personal manuscript (we could just as well imagine a mental representation as a physical object),⁴¹⁵ the author may confidently give recital of his work to an audience of his choosing (“paucis ostendi...” line 4). Hence, Horace’s book is trained only in private, not public recitation⁴¹⁶ (“non ita nutritus” line 5). Yet, by some innate property of its finished written form, the book now forces its way into public view of its own accord (“spectare uideris, / scilicet ut prostes,” “communia laudas,” “fuge quo descendere gestis” ll.1-2, 4, 5). The author cannot control his book. Though Horace emphasizes its physicality as if it were a singular personality, a sole autograph exemplar, the reference to commercial reproduction is clear. The Socii were among the leading book dealers in Rome, and the availability of Horace’s book for sale in their shop⁴¹⁷ implies its multiple reproduction for a commerce. This transformation from original manuscript into multiple derivative progeny represents the poem’s transition from real into intellectual (or spiritual) property, as it is no longer identifiable with any particular physical body; access to the work thus no longer depends necessarily on access to the author’s (autograph or dictated) manuscript.

At the same time as he ascribes to the book (which with the close of his admonitory valediction now escapes his hands) an immodest yearning for public exposure, Horace invokes (quite consciously, we may assume), through his imagery of lock and seal (“clavis et ... sigilla” line 3), the famous Theognidean prototype (*sigillum* = *σφραγίς*). The allusion is natural. Though the publishing industry of Horace’s Rome did not exist on any comparable scale in Greece during Theognis’ supposed *floruit*, we have in both instances an act of publication (to the extent

415 A physical, rather than mental (cf. Steiner 1994, Small 1997), wax tablet.

416 Cf. Shuckburgh 1888:124 ad l. 5 (“Though I never accustomed you to such publicity by reciting you in public”).

417 On Roman book vendors, cf. Starr 1987.

the externalization of an intellectual work in the presence of an audience is necessary to the notion of “making public”), and the seal of Theognis has come to represent the archetypal moment of publication anxiety: whatever it is and however it functions, this *sphragis* reflects an attempt by the poet to exert a lasting control on a literary work now exposed to appropriation or alteration by an unknown public.

It is a legal-historiographical commonplace that “[t]he development of the printing press played a key role in the emergence of intellectual property theory,”⁴¹⁸ even that “print technology would seem to be a necessary precondition [for the] legal and cultural assumption that an author should own the expression of his or her ideas.”⁴¹⁹ While it is not my intent to challenge this (intuitively sensible) rationale, I would like to qualify its potential temporal constraints on the study of IP history⁴²⁰ by way of a discussion of the role of fixation in copyright theory. Consider the notion that “[t]he printing press made it possible both to fix a text more precisely than ever before and to produce many identical copies.”⁴²¹ The printing press clearly did establish a mode of reliably accurate long-format textual mass-reproduction, but the relationship of the two phenomena of fixation and replication requires further elaboration. Aside from the (impossibly idealistic) case of immutably fixed expression (where a single unique copy is sufficient for the indefinite preservation of a work of authorship), fixedness may be conceived of as a partly quantitative and partly qualitative function of mass reproduction: the invariability of the reproduced image or text can be reasonably quantified as an inverse relationship between

418 Mitchell 2005:48-49. Important works on the effects of printing on culture include Eisenstein 1979 and Johns 1998.

419 Herrington 2001:x.

420 In fact, the advent of the printing press, no less than the earliest copyright legislation which it occasioned, serves as my convenient dividing line between “history” and “prehistory” in the study of intellectual property concepts.

421 Herrington 2001:x.

the number of copies and the aggregate deviation between them (the precision of fixation rises when copies increase and deviation declines).⁴²² All else being equal, one might expect that fixation as a quantitative metric will roughly correlate with an individual's qualitative (subjective) experience of fixity (we might expect that the more copies of consistent invariability one is exposed to the greater will also be the sensation of their identity, similarity or interchangeability), yet quantum of fixity is logically neither a necessary nor sufficient factor in its perception.

Without immediately delving into all conceivable causes of such disparity between quantifiable fixity and its qualitative (subjective) evaluation, let us further observe that movable type did not per se ensure that one can “fix a text more precisely than ever before.”⁴²³ Rather, it facilitated precision of a certain kind, which can be evaluated from two perspectives. By one definition, precision in fixation will be, once again, a reflex of the quantity of copies created: it is a synonym for invariability between copies, and movable type printing achieved a certain improvement in this manner of precision over previous technology. Yet, as a kind of digital technology (non-electronic, but based on a finite lexicon of discrete, noncontiguous units), it also imposes certain limitations on the range of expression. Consider the options available to a medieval scribe-illuminator as against the range of possible postscript outputs from a plain text ASCII editor such as Microsoft's early Notepad (further, the effort involved in attempts to

422 Arguably, fixation is more meaningful under the further stipulation of a high degree of geographic dispersion of a work's (sufficiently numerous) copies, stored in conditions conducive to long-term preservation—the LOCKSS (“lots of copies keeps stuff safe”) principle, championed already by Thomas Jefferson: “...let us save what remains: not by vaults and locks which fence them from the public eye and use in consigning them to the waste of time, but by such a multiplication of copies, as shall place them beyond the reach of accident” (Jefferson [1791] 1904:127 = 1984:973; cf. <lockss.org>, Reese 2003:605-606, 2012:297-298). Note that the inherent conflict between *preservation* (regardless of whether the goal be short- or long-term) and *access* (which may be the ultimate overriding interest in stimulating authors and publishers and distributors to create and publish and distribute) lessens as the number of copies and their availability rise.

423 Herrington 2001:x.

extend the potential range of such output by means of Unicode, compiled L^AT_EX and XML rendering). Dies or stamps of one kind or another were available in the Aegean since at least the Bronze Age.⁴²⁴ No doubt the original creator of the Phaistos disc would have been hard pressed to create a second version exactly the same as the first, if measured by our standards of precision (an important question to be addressed below is the extent to which we can recover ancient standards of precision and identity in replication of artefacts, textual and otherwise); but such devices as the signet ring, brick stamp and cylinder seal are sufficient evidence of the intentional replication of fixed signifier-devices.

I would suggest on this note that current distinctions between digital and analog,⁴²⁵ between pre- and post-movable-type print creativity and expression, are often deceptive. At the same time, and without wanting to push the analogy too far, I believe that contemporary studies in digital culture (driven by internet-imposed challenges to established business models and their perhaps outmoded legal regimes) address many supposedly novel cultural phenomena shared by traditional oral cultures such as persisted well beyond the advent of alphabetic writing in archaic and classical Greece. In terms of fixation, we might turn to identifying minimal units of expression and the characterization of their recombinant promiscuity (oral heroic verse formulas representing a well-developed topic). Consider, moreover, the essential defining characteristics of texts which are

unstable, and ... constituted through a cooperative relationship between the original author or authors and subsequent readers. ... [W]e should be inclined to understand both verbal and audiovisual texts as collective experiences. We should be increasingly skeptical of claims by individuals and corporations to own texts that are themselves the products of interactions among current and earlier texts, authors, and readers.⁴²⁶

424 Boardman/Wilkins 1970, Younger 1977, Porada 1993, Pullen 1994, Krzyszkowska 2005.

425 Cf. Hardy 2001.

426 Herrington 2001:x.

Harrington is speaking here of the lessons derived from electronic texts composed on a computer screen, but the message instantly rings true of Archaic Greece as well, and in a language already familiar (even with regard to corporate literary proprietorship, though we might pause to consider a redefinition of “audiovisual” texts in the ancient context).

It is not just that the unwritten (though theoretically not therefore any less fixed) oral text is more amenable to appropriation. Rather, the written and the oral text can be appropriated by different means and to different ends (not necessarily mutually exclusive), in “analog” no less than in “digital” cultures (electronic and otherwise). The trick to developing a discourse on the ancient life of immaterial creative (cultural) goods which might be fruitfully compared and contrasted with modern intellectual property analogues is, first and most obviously, to eschew positivistic legal construction in favor of a norms-based approach, where “norms” covers all manner of informal means of social and cultural (self-)regulation. “Formal” legal doctrine need not imply fixed legal expression respecting categories we now identify with “intellectual property” and which we (expectedly) find wanting in Greek no less than Roman antiquity. Heuristics based on informal systems of norms and mores, however, is much easier to apply to antiquity given the evidence, and in fact has already been developed in unrelated anthropological theaters with respect to non-classical cultures, in particular regarding central IP concepts such as originality, authenticity and forgery.⁴²⁷ Case studies of “primitive” (pre-colonial, pre-industrial) Third World IP cultures which have been conducted bear on questions such as have been raised above regarding cross-cultural variation in standards of distinctiveness

⁴²⁷ For anthropological studies touching on intellectual property issues, cf. Malinowski 1922; Lowie 1920, 1928; Seagle 1937, 1941; Hoebel 1954; Wincor 1962; Suchman 1989; Harrison 1992. Related studies more directly bearing on replicas and their authenticity in preindustrial/precolonial societies will be examined in more detail below.

and similarity in the concept of the copy. Hence, arguments for the existence in ancient Greece of a formalized, normative legal regime governing some equivalent of modern copyright or any other subset of current IP law is beside the point. A deeper awareness of our own relationship to intangible goods can easily inform attempts to characterize the economy of ancient letters without obliging us to teleological violence toward our sources.

I believe this economy can be more productively illustrated by examination of the status-signaling, advertising and informational characteristics of symbolic epigraphic devices and instrumenta, but first I return to a poetic invocation of such a device, Theognis' famous "seal" poem:⁴²⁸

Κύρνε, σοφίζομένωι μὲν ἐμοὶ σφρηγῖς ἐπικείσθω	
τοῖσδ' ἔπεσιν, λήσει δ' οὔποτε κλεπτόμενα,	20
οὔδέ τις ἀλλάξει κάκιον τοῦσθλοῦ παρεόντος·	
ὦδε δὲ πᾶς τις ἐρεῖ· 'Θεύγνιδός ἐστιν ἔπη	
τοῦ Μεγαρέως· πάντας δὲ κατ' ἀνθρώπους ὀνομαστός·'	
ἀστοῖσιν δ' οὔπω πᾶσιν ἀδεῖν δύναμαι·	
οὔδεν θανμαστόν, Πολυπαῖδην· οὔδὲ γὰρ ὁ Ζεὺς	25
οὔθ' ὕων πάντεσσι ἀνδάνει οὔτ' ἀνέχων.	
Σοὶ δ' ἐγὼ εὖ φρονέων ὑποθήσομαι, οἷά περ αὐτός,	
Κύρν', ἀπὸ τῶν ἀγαθῶν παῖς ἔτ' ἐὼν ἔμαθον·	
πέπνυσο, μηδ' αἰσχροῖσιν ἐπ' ἔργμασι μηδ' ἀδίκουσιν	30
τιμὰς μηδ' ἀρετὰς ἔλκεο μηδ' ἄφενος.	
ταῦτα μὲν οὔτως ἴσθι· κακοῖσι δὲ μὴ προσομίλει	
ἀνδράσιν, ἀλλ' αἰεὶ τῶν ἀγαθῶν ἔχεο·	
καὶ μετὰ τοῖσιν πῖνε καὶ ἔσθιε, καὶ μετὰ τοῖσιν	
ἕξε, καὶ ἀνδανε τοῖσ', ὧν μεγάλη δύναμις.	
ἐσθλῶν μὲν γὰρ ἅπ' ἐσθλὰ μαθήσεται· ἦν δὲ κακοῖσιν	35
συμμίσγησι, ἀπολείς καὶ τὸν ἐόντα νόον.	
ταῦτα μαθὼν ἀγαθοῖσιν ὀμίλει, καὶ ποτε φήσεις	
εὖ συμβουλεύειν τοῖσι φίλοισιν ἐμέ.	

Cyrnus, as I practice my skill let a seal be set on these verses, but it will never escape notice if they be stolen, 20 nor will anyone take worse in exchange when the good is present, but thus shall every one say: "These are the verses of Theognis the Megarean, whose name is known to all men." But I am unable to please all. No wonder, son of Polypaos: for not even Zeus 25 pleases all, neither when he rains nor when he holds up.

428 Text and translation freely adapted from Young 1971 and Banks 1879, respectively.

But to you will I, rightly minded, give advice,
 Cynus, such as I while yet a boy learned from the good men.
 Be wise, and do not on account of shameful or unjust acts
 draw to thyself honors or distinctions or wealth. 30
 These things know thus, and do not consort with bad
 men, but cleave ever to the good:
 with them eat and drink, sit with them,
 and please them, of whom there is great power.
 For from the good thou shalt learn good, but if with the bad 35
 you should mix, you will lose even the mind you have.
 Learn this, associating with the good, and sometime you will say
 that I counsel my friends well.

—this being the long-form, which Holger Friis Johansen⁴²⁹ considers a complete, unitary work (with a possible irrecoverable lacuna at 30/31). According to Friis Johansen, “Most of the numerous problems connected with the so-called Theognidean corpus are of such a nature that whoever believes himself able to solve them must be classified as intolerably naïve,”⁴³⁰ and my attention to fixation momentarily sidesteps any definitive “solution” to the seal’s enduring hermeneutic enigmas. The phrase “so-called Theognidean corpus” is itself sufficient to suggest the nature of the relevant textual problems: not a poem, but a collection of texts, not necessarily by Theognis, not originally contiguous nor even inter-related. One can easily see, for example, that, reasonable argument aside (e.g. 31 *ταῦτα μὲν* clearly continues a thought), nothing other than the tenor which pervades the corpus as a whole is necessarily common to the verses either side of a line drawn between 30 and 31 (lacuna or no), and in fact 19-30 is more frequently cited as the seal-poem.⁴³¹ One might further abbreviate by means of an incision after line 26 (regardless that *Σοὶ δ’* at 27 seems a natural elaboration picking up on *Πολυπαῖδη* at 25 and *Κύρνε* at 19) and thereby still retain a sensible, self-contained poetic whole.⁴³² This same

429 Friis Johansen 1991.

430 Friis Johansen 1991:5.

431 E.g. Ford AL 1985:82.

432 As at Woodbury 1952:20 = 1991:26.

Ockham's razor can, moreover, be applied after line 23 (δ' at 24 notwithstanding), yielding a single organic unit (19-23), which is the true object of interest in any discussion of the seal anyhow.⁴³³

The passage tells us that the poet's high quality verse is immune to misrepresentation insofar as it is traceable to a well known origin, Theognis of Megara. Many questions can and have been asked: Most bluntly, what exactly is this seal? How is the seal to be applied? How is it to achieve its desired effect? Is the seal sufficient proof against textual misappropriation, or is this an independent quality inherent in the poet's verse? How narrowly can or should we construe the circumstantial participle (*σοφισομένωι*) at 19? Even without definitive answers, it is at a minimum clear that the poet is asserting an exclusive right (however informal) to his verses (perhaps to attribution, or to their performance). Theognis' formulation has in fact been often cited as the West's first expression of the idea of "intellectual property," but this latter concept, even in modern parlance, has repeatedly proven to be no less nebulous than the *σφρηγίς* to which some of its genealogists appeal. To better understand what it means to consider Theognis' authorship as a mode of early Greek literary propriety it will be useful to review what we mean when we talk about a work's fixation and copies in intellectual property law.

While the formalities and subject matter of modern copyright law have been ever in flux since their earliest formulations, and modern statutory language, even limited to that thus far cited, suggests further points of inquiry into some of the above discarded portions of the Theognidean seal, I would like to focus on fixation and flux more narrowly conceived. To what, if anything, does Theognis lay claim? What is the object of his exclusionary impulse and what is its ontological status? One interpretation of the seal identifies it with writing itself, the poem's

⁴³³ Immisch 1933:298 rounds off line 23 with a curt *κτλ*.

written form or expression.⁴³⁴ A modern approach to fixation asks how the Archaic and Classical periods might have conceived a property right in a poetic work, whether in its physical record (expression fixed in one or more exemplars) or in a persistent (stable) though immaterial underlying work (e.g. memorized, or oral-formulaically improvised in a form consistently subjectively recognizable/identifiable); whether as an economic chattel or as the object of moral (personal/author's) rights.

U.S. copyright law is codified in Title 17 of the U.S. Code. Within this title, the notion of “fixation” is first encountered among the terminological definitions of section 101, from which it might help to cite the most salient paragraphs, taking note of a couple key terms (emphasis added):

- “Copies” are material objects ... in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “copies” includes the material object ... in which the work is first fixed. (cf. 17 USC §102(a): ... fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.)
- A work is “fixed” in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. ...
- “Phonorecords” are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “phonorecords” includes the material object in which the sounds are first fixed.
- “Sound recordings” are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

434 Pratt 1995.

Note the stress on the material, tangible, physical nature of “copies” (“phonorecords” being essentially synonymous). As these definitions might suggest, oral communication, or any manner of spontaneous improvisational performance, is alone insufficient to establish copyright (e.g. an improvised dance needs to have been videotaped or rendered, simultaneously or post hoc, in some fixed notation in order to assert a right to its choreography). From these stipulations alone one could almost deduce section 101’s further definition of creation (here along with that for fixation already given):

- A work is “created” when it is fixed in a copy ... for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.
- A work is “fixed” in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. ...

While introducing fixation as an explicit, primary requirement for copyright protection, the 1976 US Copyright Act simultaneously abolished long established formalities such as registration, publication and deposit as further conditions.⁴³⁵ Fixation, thus, is of less import for its own sake than for the purpose of establishing the existence of the underlying work (and priority in its authorship) which may or may not subsist in any number of extraneous copies.

Though fixation was not formally introduced into statute until the 1976 Copyright Act, Douglas Lichtman points out that “no federal copyright statute has ever attempted to protect ... intangible expression.”⁴³⁶ That is to say, fixation (literary work as identifiably stable expression) is simply understood as operative, as a foregone conclusion without which no work otherwise

⁴³⁵ These are still mitigating factors in prosecuting a claim against an infringer; cf. Dunne 1960, and Mazeh 2009 and Lichtman 2003 on the evidentiary value of deposit.

⁴³⁶ Lichtman 2003:719, quoted by Hubanov 2006:113.

exists, and until recently it has remained relatively neglected in contemporary IP discourse as a “simple, threshold requirement”.⁴³⁷ Historically, originality has instead been the main focus of scholarship on copyright prerequisites, and this concept too must be pinned down. First, in contrast to “novelty,” originality according to modern law requires merely independent creation, without the need for priority: your work can coincide substantially, even entirely, with the work of another, as long as you had no recourse to or inspiration from that other work, i.e. substantial similarity, near- or even complete identity may arise by accident, resulting in two independent original works. Whether or not the fruits of your labors be profound or distinct (and jurisprudence has long refrained from normative judgments on taste and style),⁴³⁸ this minimal kind of originality is for copyright doctrine a sufficient measure of creativity. Moreover, such distinctions are clearly tenable independent of modern legal doctrine.

This kind of originality can be differentiated from its use as a synonym for “genuine,” “unadulterated” or “unfalsified.” Mortimer Chambers, for example, agrees that the Themistocles decree from Troezen is of ancient date, but questions its authenticity as unlikely to be “a substantially accurate copy of a decree actually passed in 480.”⁴³⁹ Similarly, Woodhead suggests that in the case of official (*polis*) documentary inscriptions we may permit ourselves the assumption that they present a “genaue und ungeschminkte Darstellung,” i.e. that they make

437 Hubanov 2006:113.

438 The classical statement against judicial art-connoisseurship was made by Justice Holmes in *Bleistein v. Donaldson*: “It would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of pictorial illustrations, outside of the narrowest and most obvious limits. At the one extreme, some works of genius would be sure to miss appreciation. Their very novelty would make them repulsive until the public had learned the new language in which their author spoke. [...] At the other end, copyright would be denied to pictures which appealed to a public less educated than the judge.” (188 U.S. 239 (1903) at 251). Cf. Zimmerman 2006 for a history of *Bleistein*, Farley 2005:815-819 (II.B) on the “Holmesian prescription” in particular, and Yen 1998 for a survey of copyright opinions in relation to aesthetic theory in general.

439 Chambers 1962:306n2.

only factual statements and do not misrepresent themselves.⁴⁴⁰ Deferring for the moment a full discussion of the topic of forgery in antiquity,⁴⁴¹ I simply observe that this sense of authenticity is clearly an important factor determining our response to texts in ancient material culture. As Gerhard Pfohl notes in reference to an epitaph for Corinthians buried on Salamis (*SEG* 10.404 = *IG* I² 927),⁴⁴² “Bedenken wir, daß diese Inschrift so vor uns ist, wie sie einst vor fast 2.500 Jahren von den treuen Kampfgefährten gesetzt wurde: Sie ist auf jede Weise ursprünglich, das ‘Original’”—regardless of the fact that, as Pfohl himself observes,⁴⁴³ it is “heutzutage in schlechtem Zustand” (which might well be part of its appeal). In fact, it show signs of tampering. Elsewhere, he observes that “die Inschriften besitzen ihren besonderen Quellenwert gegenüber dem der Literatur eigenen. Sie ,haben der literarischen Überlieferung gegenüber den Vorzug der Unmittelbarkeit, vor allem dann, wenn man die Schüler an Abgüsse oder gar Originale heranzuführen kann‘.”⁴⁴⁴ This kind of originality, this alluring paedagogical authenticity, doesn’t exist without fixation.

When one entertains the notion of the seal as a metaphor for writing itself, one might naturally imagine a physical document, *in statu nascendi* or as finished product. Without delving into a lengthy discussion of the early Greek book (papyrus roll) trade, we might consider that several of the main formalities of modern copyright law (notice, registration, publication, deposit) find their counterpart in Pratt’s conception of the seal as physical literacy, and even more literally in Immisch’s interpretation⁴⁴⁵ positing an actually sealed original document. For

440 Woodhead 1977:79 (in Pfohl 1977).

441 Speyer 1971 is still the unsurpassed reference point; Ehrman 2013 is a recent overview of the Christian material, though it includes a treatment of pagan exempla (as well as abundant praise for Speyer). For inscriptions possibly falsified in antiquity, cf. e.g. Geffcken 1916:165-167, Preger 1891:ix-xii, nos. 226-287.

442 Pfohl 1968:51, cf. Pfohl 1968:49 quoting *IG* I² 927 as *GG* 4 (Peek 1960:46/47).

443 Pfohl 1968:49; see discussion at <<http://chs.harvard.edu/CHS/article/display/5432>>.

444 Pfohl 1968:93 (quoting J. Holtermann, *Gymnasium* 62 (1955) 232).

445 Immisch 1933.

Immisch⁴⁴⁶ (as for all other such readers), Theognis' ploy (motivated by a very modern commercial interest) ultimately failed in his stated aim to immunize his work against undetectable misappropriation. There is anecdotal evidence for book deposit as a means of publication, though it is unclear how public a display is supposed to have been intended, nor the degree of accessibility desired. Obviously, making-public doesn't by definition require or even imply replication; a single copy is sufficient for archiving or display purposes.

Immisch understood that a single copy, effectively sequestered, could enhance an author's prospects within a performance culture perhaps better than the distribution of copies. Theognis' seal thus represents a self-conscious display of literary withholding, advertising the poetic identity as also the exclusive source of content delivery in performance, a monopolistic charismatics. Gilbert Murray entertains a similar hypothesis about the early epic bards' "traditional books". I refer here to such cases of temple dedication or deposit as the *Certamen Homeri et Hesiodi* (18) reports for the Delian Hymn to Apollo, no less than to such practices as West hypothesizes for epic texts in his *Studies on the Text and Transmission of the Iliad* (following in the tradition of Murray). The seal then bears the further weight of serving as an identification of source as much as a certification of authenticity (which might seem much the same thing). The poet identifies himself as Theognis in only one instance in his entire corpus, at line 22, bound by enjambment to further geographic specification as the Megarian in the immediately subsequent line, which also tells us that he is universally known (*πάντας δὲ κατ' ἀνθρώπους ὀνομαστός*). There is in fact an open question (Hubbard makes contradictory claims) as to whether the poet envisions himself bound for glory (perhaps upon publication of his poetry book) or is rather asserting his pre-existing fame as part of his identity and poetic brand. Sealing

446 Immisch 1933:304.

against theft would seem in conflict with aspirations to universal fame through publication,⁴⁴⁷ which might speak to the interpretation that Theognis considers himself already famous prior to publication. Yet we are not dealing here with the dynamics of Arrow's information paradox.⁴⁴⁸ A quasi-official or authoritative manuscript, perhaps dedicated in a temple for display or archival purposes, even if sealed does not require that its contents be unknown. Though it may not be too much to suppose such a mode of publication (exercising control over a publicly available text similar to archival documents in the Athenian Metroön or legal texts displayed at the Royal Stoa) might be intended to control against divergent readings in circulating oral and derivative written copies, one could just as well imagine the main purpose to be to (physically) bolster the (literary) attribution asserted in Theognis' seal itself.

Physical constraints: Heraclitus' book-dedication

Diogenes Laertius shares the following account of Heraclitus' book (22 A 1 DK ap. D.L. 9.6):

ἀνέθηκε δ' αὐτὸ εἰς τὸ τῆς Ἀρτέμιδος ἱερόν, ὡς μὲν τινες, ἐπιτηδεύσας ἀσαφέστερον γράψαι, ὅπως οἱ δυνάμενοι <μόνοι> προσίοιεν αὐτῷ καὶ μὴ ἐκ τοῦ δημόδους εὐκαταφρόνητον ᾗ.

This book he deposited in the temple of Artemis and, according to some, he deliberately made it the more obscure in order that none but adepts should approach it, and lest familiarity should breed contempt. (trans. Hicks)

With the notion of Theognis' *sphragis* as sealing a physical manuscript still in mind,⁴⁴⁹ let a quick glance toward Heraclitus serve further reflection on theory and practice of literary publication, deposit, display and/or sequestration. Biographical tradition (cf. esp. D.L. 9.1-17)⁴⁵⁰

447 Edmunds 1997:32-33. Presumably, misattribution is here the most relevant threat to the ambitious orthonymic author.

448 Arrow 1962.

449 Immisch 1933, Young 1961:x.

450 For local iconographic tradition cf. Diels/Kranz 1960:144.25-30 (citing Lippold 1911, H. v. Fritze in Diels 1922(II)); Gutzwiller 2016:254-255n8, 256 w/ n12 (re Theodoridas AP 7.479 = HE 16).

such as it is (largely a hostile parody elaborated from writings not necessarily all genuine but anciently circulating under Heraclitus' name) may provide helpful if slight context for his philosophy, e.g. regarding Heraclitus' local political identity (cf. 22 B 121 DK; D.L. 9.2, 9.3).⁴⁵¹ The only real certainties⁴⁵² would seem to be his association with late-6th, early 5th c. BCE Ephesus (cf. Hermippus ap. D.L. 9.4: burial in marketplace), his aristocratic status (Antisthenes' *Diadochai* ap. D.L. 9.6: declined throne in favor of brother),⁴⁵³ and the hostility of his fellow citizens (D.L. 9.15: *καὶ Ἀθηναίων αὐτὸν ὑπερφρονῆσαι, δόξαν ἔχοντα παμπλείστην, καταφρονούμενόν τε ὑπὸ τῶν Ἐφεσίων μᾶλλον τὰ οἰκεία* (preferring Ephesus, though disliked by Ephesians); 22 B 121 DK ap. Strab. 14.1.25 (C. 642), D.L. 9.2: expulsion of Hermodorus—showing Heraclitus, far from a political quietist, as an elitist in the service of a staunch partisanship). Though it may present an impossible task of questionable utility, the attempt might be made to disentangle among the testimonia to his supposed elitism unrelated threads, based variously on character portraits of arrogance or conceitedness, socio-political elitism (contempt for local factional opponents or class-inferiors), or literary/philosophical polemics. Thus, labels such as *μεγαλόφρων* or *ὑπερόπτης* (D.L. 9.1) serve accounts of anti-intellectualism or intellectual-literary polemics directed against other elite intellectuals. Heraclitus, as a youth (an unexceptional biographical trope) marvelously gifted (D.L. 9.5: *θαυμάσιος*), matures into a withdrawn misanthrope (9.3: *τέλος μισανθρωπήσας καὶ ἐκπατήσας ἐν τοῖς ὄρεσι διητᾶτο*),⁴⁵⁴

451 Rohatyn 1973 for brief remarks on Heraclitus' political fragments (which he identifies as 22 B 33, 44, 75, 104, 114, 121, 125a DK).

452 Robinson TM 1987:3, Kirk et al. 1983:182-183.

453 "There is no apparent reason why this information should be fictitious" (Kirk et al. 1983:183 citing DK 22 A 2 ap. Strab. 14 (C. 633) on hereditary kings' privileges at Ephesus). Note Anaxagoras of Clazomenae's similar magnanimity (D.L. 2.6: *οὗτος εὐγενείᾳ καὶ πλούτῳ διαφέρων ἦν, ἀλλὰ καὶ μεγαλοφροσύνη, ὅς γε τὰ πατρῶα τοῖς οἰκείοις παρεχώρησε*), his and others' disregard for wealth (Pl. *Hipp. maj.* 283a).

454 For other examples of the stereotypical of taciturn or reclusive intellectual, cf. e.g. Myson (D.L. 1.108) or Anaxagoras (D.L. 2.6-7).

riddling (*αἰνιγματωδῶς*) and misunderstood; riddling expression is not a necessary accoutrement of, yet accords well with contempt for the rabble,⁴⁵⁵ neither qualities of a necessarily taciturn man (D.L. 9.6: *κοκκυστής, ὀχλολοῖδος, αἰνικτής*). The portrait of an outspoken public moralist parodied by Meleager in *AP* 7.79 (*HE* 121)⁴⁵⁶ makes sense in light of 22 B 1, 14, 17-19, 29 (Clem. Alex. *Strom.* 5.59.5), 34, 49, 104, 107, 108, 121 (re Hermodorus), and 134 DK.⁴⁵⁷ Selection for a limited intended audience through difficult style presumes not keeping silent (cf. *AP* 7.128.2 ap. D.L. 9.16: *οὐχ ὑμῶν ἐπόνουν, τοῖς δ' ἔμ' ἐπισταμένοις*)—whether conceived of as oral or written, such teaching cannot have been based on esotericism by means of physical exclusion. Interesting, if not unprecedented, is the portrait (in his supposed letter to Darius) of austere anti-sumptuary morality which shows him condemning greed and the pursuit of popularity, rejecting satiety (excess) as naturally attracting envy, seeking to avoid ostentatious display or public attention (D.L. 9.14: *ἀπληστίη δὲ καὶ δοξοκοπία προσέχουσι κακῆς ἔνεκα ἀνοίης. ἐγὼ δ' ἀμνηστίην ἔχων πάσης πονηρίας καὶ κόρον φεύγων παντὸς οἰκειούμενον φθόνῳ καὶ διὰ τὸ περιστάσθαι ὑπερηφανίην κτλ*). Heraclitus' condemnation of *hubris* at 22 B 43 DK (D.L. 9.2) and his mural-legal equation at 22 B 44 DK (ap. D.L. 9.2)⁴⁵⁸ make contrast to legislator-intellectuals like Solon and Hippodamus all the more stark when followed by his refusal to reform a bad constitution at the Ephesians' request. Hostility to local political elites (factional opponents) is matched by a literary-polemical stance toward poetic (cf. 22 B 104 DK) and philosophical predecessors and contemporaries: Homer (22 A 22, B 42, 56 DK)⁴⁵⁹ and Hesiod (22 B 40 ap. D.L. 9.1; 57, 106 DK), but also Archilochus, Pythagoras (22 B

455 Guthrie 1962:410-413 (VII.5) treats together Heraclitus' obscurity and his contempt for mankind.

456 Cf. Gutzwiller 2016.

457 Cf. Kirk et al. 1983:211n1.

458 Cf. Viték 2012; 22 B 114 DK ap. Stob. 1.179; contrast the quietist imagery at Pl. *Resp.* 6.496d (*ὑπὸ τειχίου ἀποστάς*).

459 Collins 2004:152-155 (II.12).

40 ap. D.L. 9.1), 81, 129 DK), his sometimes alleged mentor Xenophanes (22 B 40 DK ap. D.L. 9.1), and Hecataeus of Abdera (22 B 40 DK ap. D.L. 9.1).⁴⁶⁰ Such polemics (as much as his epistemological convictions) may have conditioned his autodidactic/self-reliant posturing (22 B 101 DK ap. D.L. 9.5 ἐδιζήσάμην ἐμεωυτόν; AP 7.79 μῦνος ἀνευρώων;⁴⁶¹ cf. [Pl.] *Hipparch.* 228d τῆς σοφίας τῆς αὐτοῦ ... ἦν αὐτὸς ἐξηῦρεν) and critique of πολυμαθία (22 B 40, 129 DK) and ἱστορίη (22 B 35, 129 DK).⁴⁶²

Heraclitus' prose (cf. D.L. 9.16, versus Suda η 472 ποιητικῶς) writing (βιβλίον at D.L. 9.5, 9.16 = AP 9.540.1; σύγγραμμα at Arist. *Rhet.* 1407B16, D.L. 2.22, 9.1, 9.7, 9.11, 9.15; λόγος at D.L. 9.13) (cf. D.L. 9.5-6),⁴⁶³ or at least that which circulated under his name (D.L. 9.5 τὸ δὲ φερόμενον αὐτοῦ), may have been entitled *On Nature* (D.L. 9.5 ἀπὸ τοῦ συνέχοντος “Περὶ φύσεως”; 9.12, 9.13, cf. 9.15), but this is uncertain, being a widely shared designation in Peripatetic bibliography of pre-Socratic natural philosophy (as in Theophr. *Phys. dox.*),⁴⁶⁴ and Diogenes Laertius attests an alternative title “The Muses” (D.L. 9.12: ἐπιγράφουσι δ' αὐτῷ οἱ μὲν Μούσας, οἱ δὲ Περὶ φύσεως, cf. Pl. *Soph.* 242e). Also indeterminate is the work's formal character, seen either as a monolithic unitary composition (22 B 1 DK suggesting a formally planned composition; cf. D.L. 9.5: συνέχοντος, “a continuous treatise,” tr. Hicks, with a suspiciously Stoic tripartite internal division: διήρηται δ' εἰς τρεῖς λόγους)⁴⁶⁵ or rather as a disjointed (cf. Theophr. ap. D.L. 9.6 τὰ μὲν ἡμιτελεῖ, τὰ δ' ἄλλοτε ἄλλως ἔχοντα γράψαι; Dem.

460 Babut 1976, Graham 1997, Granger 2004.

461 Gutzwiller 2016:255-256.

462 Granger 2004 (Heraclitus as a non-*histōr*, critical of *polumathia*); on *historiā/ē*, cf. Nagy 1990 [PH] (*passim*), Fowler 2001 (with reference to literacy).

463 Kahn 1979:3-9, 1983; Robinson TM 1987:3-5; Tejera 1991:491 (w/ notes), Granger 2002, Mouraviev 2013, Akritidou 2013:149-154 (Ch. 3.1); cf. Guthrie 1962:406-408.

464 Schmalzriedt 1970; Huby 1973:207; Kirk et al. 1983:102-103n1; Schibli 1990:2-3n6.

465 Gigon 1935:8.

De eloc. 192),⁴⁶⁶ but no less authorial, aphoristic (cf. D.L. 9.7: ἢ τε βραχύτης καὶ τὸ βάρος τῆς ἐρμηνείας ἀσύγκριτον) book (perhaps the first).⁴⁶⁷ Further open to speculation is whether the book represents rather a posthumous compilation by one or more of his pupils of originally oral *gnomai*.⁴⁶⁸ Regardless, the book became the center around which (D.L. 9.6; notably in Diogenes Laertius' formulation, on account of the book's own reputation, δόξαν) Heraclitus' later following (Ἡρακλειτεῖοι) coalesced (τοσαύτην δὲ δόξαν ἔσχε τὸ σύγγραμμα ὡς καὶ αἰρετιστὰς ἀπ' αὐτοῦ γενέσθαι τοὺς κληθέντας Ἡρακλειτεῖους);⁴⁶⁹ cf. (of the, not necessarily authentic, written works) D.L. 3.8 τῶν τε Ἡρακλειτείων λόγων vs. (of individuals and groups) D.L. 3.6 Κρατύλω τε τῷ Ἡρακλειτεῖω; Pl. *Theaet.* 179d7-8 οἱ γὰρ τοῦ Ἡρακλείτου ἐταῖροι, e3-4

466 Cf. Kahn 1979:7 (“a kind of commonplace book”).

467 Diels 1909:xi-xiv; cf. on gnomonic literature supra, but note also the suggestion that Anaximander was his own excerptor/abbreviator (12 A 1 DK ap. D.L. 2.2: τῶν δὲ ἀρεσκόντων αὐτῷ πεποιήται κεφαλαιώδη τὴν ἔκθεσιν) (On the influence of Anaximander (and Anaximenes) on Heraclitus, cf. Vlastos [1955] 1970:415-429). We can dismiss out of hand accusations of Heraclitus having plagiarized Orpheus (Clem. Alex. *Strom.* 6.2.17, 6.2.27: παρ' Ὀρφέως τὰ πλείστα εἴληφεν).

468 Kirk 1954:7, 9, 45. Consider the Hippocratic treatise *Περὶ τροφῆς* (*De alimento*), identified as a Heraclitean (22 C 1 DK) product in terms of both its application of eternal flux to nutritive metabolism (Diller 1936 classes it as “stoic-pneumatic,” pointing to *Περὶ διαίτης* as comparatively more Heraclitean) as well as its aphoristic style. The latter “a great aid to memory,” Jones notes, “came into vogue at a time when text-books first became necessary” (Jones WHS [1923] 1957:337n1). Did Heraclitus' book (or its phrases), despite its obscurity, lend itself to easy memorization? If so, the virtues of traditional gnomology would seem to be those of the textbooks which may be said to have inherited its style. (Presumably, to the extent text-books relied on aphorism, it will have been precisely in those cases where the subject matter enjoyed the weakest established tradition of metrical rehearsal.)

469 A not uncommon method of collective (self-)identification for acolytes of a prominent individual, whether for students, such as those of Hermagoras of Temnos referred to as οἱ Ἑρμαγόρειοι/*Hermagorei* (e.g. Porphy. *schol. in Hermogenei* *Περὶ στάσεων* Walz 1833[*Rhet. Gr.* IV]:397.15; *schol. min. anon. schol. in Hermogenei* *Περὶ στάσεων* Walz 1833[*Rhet. Gr.* VII.1]:308n22 ad [ἐὰν δὲ ἐν ἔργοις ᾗ] Hermog. *Περὶ στάσεων* Rabe 1913:49.15; Quint. *Inst. or.* 7.4), or οἱ Ἀρειανοί (the followers of Arian), in the case of a religious sect (in e.g. Athanasius, a polemical term sometimes loosely and unfairly applied). For Aristotle, too, in addition to Ἀριστοτελικός we find the form Ἀριστοτέλειος (cf. [ps.]-Herod. *De prosod. cathol.* ed. Lentz GG 3.1 (1867):137 and *De orthographia* ed. Lentz GG 3.2 (1867):439 for this along with similar -ειος forms of several other authors, legendary figures, et al.), which may have been applicable to the philosopher's followers just as it certainly was to an Aristotelian style (Cic. *Ep. ad Att.* 13.19.4: quae autem his temporibus scripsi Ἀριστοτέλειον morem habent etc.) or “logos” (Suda s.v. Ἀριστοτέλης a 3930 Adler: Ἀριστοτέλειος λόγος). See too the later usage by Theodorus II Lascaris (1221/2-1258, reg. 1254-1258 CE) at *De virtute* 15 Paléologou 2007 (ἐν τοῖς περὶ τῶν χρωμάτων ὁ ἀριστοτέλειος παράστησι νοῦς). Interestingly, conjectural errors aside, it was only with the rediscovery and publication of Aristotle's library (especially the esoteric works), Strabo tells us, that the later Peripatos was able to properly philosophize and “aristotelize” (Strab. 13.1.54: φιλοσοφεῖν καὶ Ἀριστοτελιζειν) (Ostwald/Lynch 1994:628).

τούτων τῶν Ἡρακλειτείων ... αὐτοῖς μὲν τοῖς περὶ τὴν Ἔφεσον, with Theodorus' biting caricature of their evasive style of argumentation at 179e-180c; D.L. 2.22 & 9.11 on Euripides as having introduced Socrates to Heraclitus' book; Croton's Κατακολυμβητής (per Seleucus gramm. ap. D.L. 9.12) identifying one Crates as the first to import Heraclitus' book into Greece, D.L. 9.15 on its numerous commentators (πλείστοί τε εἰσι ὅσοι ἐξήγγηται αὐτοῦ τὸ σύγγραμμα).

It is conceivable that 22 B 1 DK ap. Arist. *Rhet.* 1407b16-17 (τοῦ δὲ λόγου τοῦδ' ἐόντος ἀεί)⁴⁷⁰ reflects the opening of Heraclitus' original work. Diels and others have in fact suggested that would have been prefaced (the -δε pointing backwards) by a “seal” (including some form of Ἡράκλειτος ἐγώ)⁴⁷¹ of the sort familiar from Demodocus and Phocylides and from Hipparchus' herms. Analogous self-referential signatures might include Hesiod (*Th.* 22-24: Ἡσίοδον ... τόνδε δέ με), Hecataeus (*FGrH* 1 F 1: Ἐκαταῖος Μιλήσιος ὧδε μῦθειται· τάδε γράφω κτλ), Alcmaeon of Croton (24 B 1 DK ap. D.L. 8.83: Ἀλκμαίων Κροτωνήτης τάδε ἔλεξε κτλ), and Ion of Chios (a conjecture by Diels).⁴⁷² The τοῦ λόγου τοῦδε in the opening of Pythagoras' *Peri phuseos* (at

470 Cf. Mouraviev 1970, Tejera 1991:491-492.

471 Gutzwiller 2016:258, 260, 265.

472 Cf. Kahn 1979:307n59 (considering the evidence in Heraclitus' case insufficient). Diels speaks of Heraclitus as having penned “seine einsamen Selbstgespräche” himself (Diels 1909:xi): “Wenigen Vertrauten wird er seine Notizbücher gezeigt und ingrimmig lachend oder tiefsinnig orakelnd ihnen sein Herz ausgeschüttet haben” (Diels 1909:xii). Yet, Diels notes the “die paradoxen Sätze Heraklits” as unforgettable, in a manner that speaks more to their aphoristic form rather than as elements of a cumulative, coherent total work (“Heraklits Buch,” which he dates to 490 BCE): “die Freunde Heraklits werden [diese Sätze] in treuem Herzen bewahrt oder in Abschriften mitgenommen haben, als sie in den Wirren dieser Zeit vor den Demokraten über das Meer flohen” (Diels 1909:xii), thus accounting for the rapid spread of his influence to S. Italy. As much on the strength of these and later ancient imitators as on Heraclitus' own fragments Diels concludes that his book “wahrscheinlich des systematischen Zusammenhangs entbehre,” his *sententiae* best seen as “Kinder augenblicklicher Stimmungen und Beobachtungen; [...] Notizen, Tagebuchblätter, ὑπομνήματα, die bunt abwechselten” (cf. Kahn 1979:7: “a kind of commonplace book”), following no thread and refusing all philosophical systematization: with a nod to the Hippocratic corpus, Diels sees herein the oldest example “jenes geistreichen Notizenstils, den man [...] ‘aphoristisch’ nennt.” (Diels 1909:xiii) Thus, “Heraklit eröffnet also die Reihe der einsamen Menschen, welche ihre grübelnden, selbstbewußten, weltverachtenden Gedanken in der dafür allein passenden Form des Aphorismus niedergelegt haben.” (Diels 1909:xiv)

D.L. 8.6 as reference of Heraclitus 22 B 129 DK *ἐκλεξάμενος ταύτας τὰς συγγραφὰς ἐποιήσατο ἑαυτοῦ σοφίην, πολυμαθείην, κακοτεχνίην*) further suggests the frequent use of *ὁ λόγος ὅδε* as an introductory formula⁴⁷³ (yet such phrases need not be authorial/authentic; this instance perhaps a forgery⁴⁷⁴). Hipparchus' *μνήμα τόδ' Ἰππάρχου*, referring to its own physical substrate (like a speaking grave inscription), though not necessarily analogous to a literary work referring to itself as a (temple-dedicated) physical object (papyrus roll, engraved lead/bronze plaques, etc.), is also suggestively similar.

Heraclitus' dedication (cf. LSJ A.II.1 *ἀνέθηκε + εἰς*) of his book in the Ephesian Artemis temple (22 A 1 DK ap. D.L. 9.6; cf. Tatian *Or. ad Gr.* 3 (245))⁴⁷⁵ (with which Heraclitus is otherwise associated⁴⁷⁶ (D.L. 9.3) as a place of idle (*μετὰ τῶν παιδῶν ἡστραγάλιζε*) retreat (*ἀναχωρήσας*) from Ephesian politics (*πολιτεύεσθαι*)),⁴⁷⁷ regardless of motive, and unless the act and its object were kept entirely secret, would have elevated the status of Heraclitus' text (cf. Plin. *NH* pr. 19: *multa valde pretiosa ideo videntur, quia sunt templis dicata*). 22 B 95 *ἀμαθίην γὰρ ἄμεινον κρύπτειν* (Plut. *Symp.* 3.pr.1 644F, Stob. *Anth.* 3.18.31 Hense; cf. Plut. *De rect. rat. aud.* 43D, 439D) certainly supports the impression of an author who might wish to display (take credit for) rather than hide his learning.

Ancient temples and sanctuaries certainly could function as a community library/archive (notably the Athenian Acropolis and Metroön, cf. e.g. Athen. 5.53 214e: *τά τ' ἐκ τοῦ Μητροῦ*)

473 Contra Kahn 1979:307n59.

474 Diels/Kranz 1960 [I]:105 (ad 14 B 19 DK ap. D.L. 8.6), 492 (21-22 ad S. 150); cf. Granger 2004:241n17.

475 Schmid/Stählin 1929:746f. w/ n1; Wilamowitz 1932:210n1; Wirbelauer 2004:192n21.

476 Note Epimenides as founder of temples (D.L. 1.112).

477 Cf. advisability of the sage pursuing political disengagement (*μὴ πολιτεύεσθαι*) in Plato (Pl. *Hipp. maj.* 281b ff., *Rep.* 9.592a, *Epist.* 7.331d), Epicureanism (Προσφώνησις 58: *ἐκλυτέον ἑαυτοὺς ἐκ τοῦ περὶ τὰ ἐγκύκλια καὶ πολιτικὰ δεσμωτηρίου*), Stoicism (Chrysippus *SVF* III von Arnim 1903:173.20-22 no. 690 = Stob. *Ecl.* 2.111.3 W, 174.31-32 no. 695 = Sen. *De ot.* 8.1, 175.3-5 no. 697 = D.L. 7.121).

τῶν παλαιῶν ἀντόγραφα ψηφισμάτων)⁴⁷⁸ or museum⁴⁷⁹ facilitating access to and display of cultural goods and public documents. That access to temple infrastructure could generally be regulated in graded degrees is suggested by evidence from e.g. at Delphi (Paus. 10.24.5) and the temple of Despoina in Lycosura in the Peloponnese (*IG* 5.2 514, phot. Ἐφφημ. 1898 pl. 15; 2nd c. BCE).⁴⁸⁰ The record of ancient temple fires⁴⁸¹ suggests the imperfect security of such documentary deposit independent of public access, notably the 192 CE Temple of Peace conflagration which cost Galen part of his library⁴⁸² (on the 356 BCE Ephesus fire see below). Poets' personal shrines may in some instances functioned as (*post mortem*) archives of sorts, e.g. in the case of Hesiod (Paus. 9.31.4,⁴⁸³ cf. Gell. *NA* 3.11.3) or, especially, Archilochus on Paros⁴⁸⁴ where (along with an Ionic capital bearing a re-engraved funerary inscription)⁴⁸⁵ the poet's (religious) poems, publicly declaimed but also fixed in writing by the poet himself,⁴⁸⁶ are

478 Hartmann 2013:41n56 cites Williamson 2005:244.

479 Hartmann 2013:41n56 cites Scheer 1996, Shaya 2005.

480 Austin 1938:116. On Attic sanctuaries, cf. Gawlinski 2015.

481 I reserve for future discussion (though obviously relevant) the testimonia to Hippocrates' supposedly willful arson of the medical library from which he had derived his own knowledge in order to increase his own status while hindering competition (a motif which recurs in the biography of Avicenna many centuries later).

482 Supporting the notion that the general public would not have access to a temple-dedication, Kahn claims that "Ancient temples were regularly used for storing treasure, and were open to private individuals only under exceptional circumstances. There are parallels to the depositing of a book which make the story plausible in Heraclitus' case." (Kahn 1979:303n4). A perhaps inapposite cautionary counter-example to the supposed archival safety of temple storage is Galen's account of losing multiple books in a fire at the Temple of Peace in 192 CE (Galen, *Hipp. Epid.* V 352 15 L = *CMG* VI (5.10.2.2) 495. Though his books may have been in the temple, it is not clear from the language of this passage that they necessarily were, though they were certainly consumed by the same fire which also affected the temple. This section (V 352 14. 15 L) deals with Hippocrates' notion of information one is obliged to know yet should not be made public—a contested reading which Galen claims to have confirmed in some Hippocratic manuscripts, yet finds difficult of definitive interpretation. He concludes by noting that he had composed a certain book relevant to the topic at hand and hopes to reassemble its text from disparate student copies of his own manuscript which was lost in this fire. See the *editio princeps* of Galen's re-discovered *De indolentia* in Boudon-Millot 2007, and the summary account of the fire at Nutton 2009:19-20; cf. Tucci 2008.

483 Davison 1962:151 (speaking of a "library edition").

484 Lasserre/Bonnard 1958:lxviii-lxxxiii, T 11a, 12, 31.

485 Daux 1961:846 w/ 847 fig. 25, Raubitschek 1982:131 w/ n14.

486 Davison 1962:150.

supposed to have preserved. In Pindar’s case, his own home may have been maintained in such a capacity.⁴⁸⁷

Other instances of temple-dedication (however fictive) of written works are attested, whether as a form of publication or of archival preservation. “Literary” exempla include Homer (*Cert.* 18) and Alcman.⁴⁸⁸ Pindar’s *Ol.* 7 (464 BCE, for Diagoras of Rhodes) was supposedly dedicated (inscribed in gold letters) at the Rhodian temple to Athena Lindia⁴⁸⁹ (a practice attested by analogous inscriptions at Delphi).⁴⁹⁰ In oratory, Favorinus (Dio Chrys. 37.47), in a cumbersome conceit, wishes to set up in a temple the “silent statue of his speech” (λόγων ἐμῶν σιγηλὸν εἶδωλον) adjacent that of Hesiod’s goddess Φῆμη (quoting Hes. *Op.* 763-764), to secure it from the wide range of natural (reminiscent of the Midas epitaph) and human threats:

ἐγὼ σε ἀναστήσω παρὰ τῇ θεῶ,⁴⁹¹ ὅθεν οὐδεὶς σε μὴ καθέλη, οὐ σεισμός, οὐκ ἄνεμος, οὐ νιφετός, οὐκ ὄμβρος, οὐ φθόνος, οὐκ ἐχθρός, ἀλλὰ καὶ νῦν σε καταλαμβάνω ἔστηκότα. λάθρα μὲν γὰρ ἤδη τινὰς καὶ ἑτέρους ἔσφηλε καὶ ἐψεύσατο, γνώμη δ’ ἀνδρῶν ἀγαθῶν οὐδένα, ἧ κατ’ ἄνδρα μοι ὀρθὸς ἔστηκας.

I will set you up beside the goddess whence none will ever topple you, not earthquake nor wind nor snow nor cloudburst nor envy nor spite, I can already see you standing before me now. Others have tripped up and deceived others by obscurity before, but none by the opinion of good men, by which you stand upright before me like a man.

More “practical” literature might include the mantic/oracular (e.g. Pythagorean *Sortes Astrampsychi* with ready-made answers kept on site),⁴⁹² and certainly the famous legal corpus (“code”) at Gortyn⁴⁹³ (beginning ca. 600 BCE on the walls and steps of the temple of Apollo Pythios, and presuming the temple’s sanctity as a place of refuge for escaped slaves in 41 IV 8,

487 Davison 1954:194, 1962b:229 w/ n10.

488 Davison 1962:151.

489 Gorgon *FHG* 4.410 = *FGrH* 515 F 18 ap. Σ Pind. *O.* 7 Drachmann [1903] 1964 [I]:195.13-14, cf. Mullen 1982:238n56.

490 Davison 1962:228-229.

491 Compare Agathon’s language in dedicating his speech to Eros at Pl. *Symp.* 197e6-7 (οὗτος [...] ὁ παρ’ ἐμοῦ λόγος [...] τῷ θεῷ ἀνακείσθω).

492 Naether 2010, cf. Clarysse 2011:294 on ticket oracles.

493 Kohler/Ziebarth 1912, Whitley 1997, Effenterre 2000, Lévy E 2000, Davies JK 2005, Greco/Lombardo 2005.

47.31-3, 72 I 42-3).⁴⁹⁴ Among relevant diplomatic documents could be cited the arbitrated settlements of the Hellenistic Achaean League,⁴⁹⁵ and (of largely clerical-administrative character) the Roman *libri lintei* with their record of magistrate names⁴⁹⁶ stored in the Juno Moneta temple (C. Licinius Macer *FRH* 17 F 14, 15; 16 ap. Liv. 4.20.5-7, cf. Liv. 4.7, 13, 23; Fronto *Ep.* ad M. Aurel 4.4.1; Symm. *Ep.* 4.34.3).

Pliny sceptically mentions a letter of Sarpedon, supposedly composed at Troy and dedicated at a temple in Lycia (Pliny *NH* 13.27 = 13.13.88),⁴⁹⁷ an act of preservation of antique documents similar to the later case of Emperor Zenon depositing Barnabas' autograph Gospel of Matthew in St. Stephanus' church at Daphne.⁴⁹⁸ Perhaps in making his literary dedication Heraclitus was seeking a type of safe deposit. Notably, two further instances of (fictive) literary temple-dedication (both stipulating autography) are set in Ephesus. Xenophon of Ephesus has his hero and heroine deposit an account of their adventures in the Ephesian Artemis temple.⁴⁹⁹ Apollonius of Tyre (the *Historia Apollonii* echoing motifs from Greek novels, perhaps even drawing directly from Xenophon's *Ephesiaca*) left behind two copies of his fanciful memoirs, one dedicated at the temple of Artemis in Ephesus, the other deposited in a library.⁵⁰⁰ These cases exemplify fictional pseudepigraphic authentication (pseudo-documentarist appeal to the

494 Davies JK 2005a:323, 325, 326.

495 Errington 2008:105.

496 Roncalli di Montorio 1980, Piccaluga 1994.

497 Cf. Speyer 1971:46, 126.

498 Theodorus Anagnostes, *Hist. eccl.* 2.2 = Migne *PG* 86.1.184, cited at Speyer 1971:69 w/ n8.

499 Xen. *Eph.* 5.15.2 p. 148 Miralles: *εὐθὺς ὡς εἶχον ἐπὶ τὸ ἱερόν τῆς Ἀρτέμιδος ἦσαν καὶ πολλὰ εὐχοντο καὶ θύσαντες ἄλλα τε ἀνέθεσαν ἀναθήματα καὶ δὴ καὶ τὴν γραφὴν τῇ θεῷ ἀνέθεσαν πάντα ὅσα τε ἔπαθον καὶ ὅσα ἔδρασαν* (Kortekaas 2004:81: "set up an inscription in honour of the goddess").

500 *Hist. Apollonii reg. Tyr.* 51 β 3-5 Riese 1893:116 = 26-28 Kortekaas: *casus suos suorumque ipse [sc. Apollonius] descripsit et duo volumina fecit: unum Dianae in templo Ephesiorum, aliud in bibliotheca sua exposuit.* Cf. Speyer 1971:69n4, Kortekaas 2007:904ff., Panayotakis 2012:609-610.

author’s original manuscript)⁵⁰¹ in Greek novel tradition.⁵⁰² The *HA*’s duplicate autography (redundancy)⁵⁰³ and dual public (temple) and private (library) display⁵⁰⁴ is particularly appealing as a protective measure. Klebs cites Heraclitus’ case as (however “geschichtlich begründet”) “[n]atürlich zur Sicherung des Fortbestandes des Werkes, nicht nur Verheimlichung, wie thörichter Weise Einzelne gemeint haben,” “precisely corresponding” to *HA* rec. B 51.26-28 Kort., M. Antony’s will deposited with the Vestals (Plut. *Ant.* 58.3) further evidence to temple deposit of important writings “zur Bewahrung” as widespread practice (*Sitte*).⁵⁰⁵ Accepting an “ancient custom, both in the West-Roman Empire and in the Eastern part, of depositing a valuable work, literary document etc. in a temple (sometimes in duplicate in two places; sometimes visible for those interested, e.g. on the walls),” Kortekaas finds *HA* 51 rec. B 26-28, being an over-used device (τόπος) of a “so-called final σφραγίς ‘assurance formula’ to emphasize ... authenticity,” a barrier to interpretation.⁵⁰⁶ The Ephesian Artemis temple is further notable as the target of Herostratus’ 356 BCE act of arson (Cic. *De nat. de.* 2.27; Strab. 14.1.22; Val. Max. 8.14.ext.5 citing Theopompus) as a completely destructive short-cut to fame for its own sake⁵⁰⁷ (compare, more homicidally, in response to his pupil Pausanias’ question πῶς ἄν τις γένοιτο ἐπιφανέστατος, Hermocrates’ answer εἰ τὸν τὰ μέγιστα πράξαντα ἀνέλοι· τῇ γὰρ περὶ τούτου μνήμη συμπεριληφθήσεσθαι καὶ τὸν τὴν ἀναίρεσιν αὐτοῦ ποιησάμενον (Diod. Sic.

501 Speyer 1971 (Ch. 3b, esp. p. 69 w/ n4).

502 Hansen W 2003, Mheallaigh 2008. Note the *HA* is probably based on a Greek original (cf. Kortekaas 2004:10, 80-82 (VII.2.2.3), 2007:904ff., finding *HA* rec. B reflective of a more original version; Panayotakis 2012:609-610).

503 Kortekaas 2007:905 suggests of an official character (ἀντίγραφον/ἀντιγραγείον, ἀντίτυπον, ἐκσφράγισμα).

504 For “exposuit” (βΜ, posuit π Rerf.) Kortekaas cites *ThLL* 5.2 1760.60-84 “accedente vi ostentandi, in conspectu collocandi”.

505 Klebs 1899:211 w/ n1, cf. 39-40; Kortekaas 2007:905 (citing Oster 1976:34 w/ n98 for further epigraphic evidence of the Artemesium as archive).

506 Kortekaas 2007:904-906 (citing Speyer 1971 esp. 69).

507 Also notable, for its humor, is Winckelmann’s biting invocation of Herostratus (Winckelmann 1762:77) to malign the vainglorious-destructive quality of certain of his contemporaries’ text-critical scholarship.

16.94)—a rationale apparently not original to Mark David Chapman).⁵⁰⁸ Heraclitus is certainly portrayed as having seen no shortcut but virtue (22 B 135 DK: *συντομωτάτην ὁδὸν ἔλεγεν εἰς εὐδοξίαν τὸ γενέσθαι ἀγαθόν*), or even seeking to evade the attentions due to fame (D.L. 9.14: *δοξοκοπίη, ὑπερηφανίην*).

Alternately, Heraclitus' book dedication can be read as deposit to limit⁵⁰⁹ physical access (sequestration), a motif not otherwise widely attested. Acceptance of the supplementary *monoi* seems inessential to an understanding of D.L. 9.6 (*οἱ δυνάμενοι <μόνοι> προσίοιεν αὐτῶ*) as implying exclusion of some majority of the populace (*dēmos*). Perhaps a similar dynamic is at play in Cleomenes' recovery of oracles deposited by the Pisistratids in the Erechtheum (*ἔλιπον ἐν τῷ ἱρῶ*) (Hdt. 5.90.2, cf. 6.57.4).⁵¹⁰ Interpretation of Heraclitus' deposit as burial in the temple's foundation⁵¹¹ invites a search for cases of buried texts. Possible scenarios might be that of burial by way of neglectful storage (such as the fate of Aristotle's library at Skepsis),⁵¹² or of text-burial without intent to recover in funerary context,⁵¹³ whether out of literary enthusiasm (e.g. Cercidas of Megalopolis' will to be buried with *Iliad* books 1 & 2, per Ptolemy Chennus ap. Photius *Bibl.* 190.151a) or religious devotion (e.g. mystery initiates' Orphic tablets, or the Derveni Papyrus⁵¹⁴—cf. col. 4 with Heraclitus' name, his fr. 22 B 3, 94 DK, along with its

508 Cf. BBC 2004.10.15. Cf. e.g. Thgn. 571-572, 665-666 as suggestive that the Archaic period could conceive of fame as neither necessarily determinative of nor necessarily predicated upon virtue.

509 Kahn 1979:303n4.

510 Nagy 1990 [PH]:158-160 (§§25ff.), Dillery 2005:188.

511 Bers 2010:460.

512 One of the most notable ancient testimonia to the testamentary disposition of literary property, a theme treated several times in Diogenes Laertius and first mentioned above in reference to Homeric biographic tradition.

513 Where, aside from the derivative cenotaph memorial form, epitaphs inherently presume an associated non-textual burial (cf. e.g. Bakker 2016:199 on the Mantiklos [*CEG* 326, early 7th c. BCE, Delphi] and Eumares [*CEG* 137, ca. 600 BCE, Methana] epigrams).

514 Funghi 1997; Betegh 2002, 2004:56-73 (ch. 1).

further Heraclitean qualities;⁵¹⁵ note Heraclitus’ rejection of mystery initiation in 22 B 14 DK).⁵¹⁶ With this might be contrasted intentional disposal, such as the deposit of *ostraka* in a “well, cistern, pit, dump, or construction filling”⁵¹⁷ (the result of one or more *ostrakophoriai*), the result perhaps of nothing more profound than simple housekeeping, which might be further contrasted with a trove such as the contents of the Cairo *genizah* (the result of the Jewish obligation to preserve, or rather not profane, any written copies of God’s name).⁵¹⁸

For Bers,⁵¹⁹ Nagy⁵²⁰ and others, Diogenes Laertius suggests the temple-dedication/-deposit ploy is part of Heraclitus’ effort to obscure his doctrines, hidden, as it were, in a *cista mystica* (to take up Nagy’s imagery)⁵²¹ or permanently locked away even from “initiates” (by burial in the temple’s foundation, in Bers’ more idiosyncratic reading).⁵²² Contrary to interpretation of deposit as sequestration, Tatian (*Or. ad Gr.* 3.1 (245)) clearly understands hiding (*κατακρύψαντα*) as a temporary contrivance to imbue the document with greater authority upon subsequent discovery/publication (*μυστηριωδῶς ὅπως ὕστερον ἢ ταύτης ἔκδοσις γένηται*):

τὸν γὰρ Ἡράκλειτον οὐκ ἂν ἀποδεξαίμην, Ἐμαντὸν ἐδιδασχάμην,⁵²³ εἰπόντα, διὰ τὸ αὐτοδίδακτον εἶναι καὶ ὑπερήφανον. Οὐτ’ ἂν ἐπαινέσαιμι κατακρύψαντα τὴν ποίησιν ἐν τῷ τῆς Ἀρτέμιδος ναῶ, μυστηριωδῶς ὅπως ὕστερον ἢ ταύτης ἔκδοσις γένηται. καὶ γὰρ οἷς μέλον ἐστὶ περὶ τούτων,⁵²⁴ φασὶν, Εὐριπίδην τὸν τραγωδοποιὸν κατιόντα, καὶ

515 Cf. Edwards MJ 1991:208 w/ n18, Laks/Most 1997:6, Sider 1997, Betegh 2004 (esp. chs. 9-10).

516 Cf. Pfliegerer 1886, Mouraviev 2007 on Heraclitus and mysteries/initiation.

517 Lang 1990:162.

518 Nimmer 1998:234n89.

519 Bers 2010:460.

520 Nagy 1990 [PH], ch. 6 §§ 29n2, 31n1.

521 Cf. Burkert 1987:7 w/ n31 (citing Demosthenes 18.260 & Theocritus 26.2 re Dionysus); Nagy 1990 [PH], ch. 6 §§ 50-51. Secrecy serves further as added value to a document withheld but advertised.

522 Presumably depends upon an understanding of *ἀνατιθέναι* with *εἰς* + acc.

523 *ἐδιδασχάμην*: cf. 22 B 101 DK = 80 Bywater ap. Plut. *Adv. Colot.* 20.1118c (*ἐδιδασχάμην ἐμωυτόν*), D.L. 9.5 (*ἤκουσέ τ’ οὐδενός, ἀλλ’ αὐτὸν ἔφη διζήσασθαι καὶ μαθεῖν πάντα παρ’ ἑαυτοῦ*), Jul. *Or.* 6.185a (*ὁ μὲν ἐν Δελφοῖς θεὸς τὸ Γνώθι σαυτὸν προαγορεύει, Ἡράκλειτος δὲ ἐδιδασχάμην ἐμωυτόν*).

524 The MS reading *καὶ γὰρ ἔτεσι τριάκοντα περὶ τούτων* seems to suggest Euripides as the (chronologically improbable) key agent in bringing H.’s book to public light.

ἀναγνώσκοντα, διὰ μνήμης κατ' ὀλίγον τὸ Ἡρακλείτου σκότος σπουδαίως παραδεδοκέναί. (ed. Migne PG 6 [1857] col. 810A)

I cannot approve of Heraclitus, who, being self-taught and arrogant, said, "I have explored myself." Nor can I praise him for hiding his poem in the temple of Artemis, in order that it might be published afterwards as a mystery; and those who take an interest in such things say that Euripides the tragic poet came there and read it, and, gradually learning it by heart, carefully handed down to posterity this darkness of Heraclitus. (tr. B.P. Pratten)⁵²⁵

Burial and excavation of artefacts (relics) served anciently as a general method of (spurious) authentication. The oracle regarding Orestes' bones at Tegea bolstering territorial claims (Hdt. 1.67-68) is one notable example. Similar might be the horse's head portending the success of Carthage's foundation (Verg. *Aen.* 1.441-445; cf. treasure at 1.357-359). Elsewhere we find cult statues authenticating divine epiphanies,⁵²⁶ e.g. of Dionysus at Magnesia on Maeander⁵²⁷ (contrast the overtly venal purpose behind the staged excavation substantiating the artificially aged appearance of Michelangelo's *Sleeping Cupid*).⁵²⁸ Similarly, textual artefacts: Alcmena's hieroglyphic *pinax* (Plut. *De gen. Soc.* 5) illustrates ancient palaeographic sensitivity in dating texts (*θαυμαστὰ ὡς παμπάλαια*) as well as the motif of a discovered oracle requiring pious action (cf. Cic. *De div.* 2.85-86). Further similar examples involve palaeographic sophistication (cf. Thuc. 6.54.6-7, Suet. *Aug.* 7.1, Luc. *VH* 1.7,⁵²⁹ *Syll.*³ 827E = *FD* III 4.294 = *AE* 2002.1334a;⁵³⁰ Dion. Hal. *AR* 1.51 (Aeneas' wanderings)), including chronological sensitivity to boustrophedon (Anaximenes of Lampsacus *FGrH* 72 F 13 on Solon's ἄξονες; Paus. 5.17.6 on

525 Roberts/Donaldson 1867:7 (adopted without alteration by J.E. Ryland at Roberts/Donaldson 1885:66). Cf. the Latin version published by Migne: Heraclitum enim minime probaverim, qui cum esset a seipso doctus et arrogans, dicebat: Ego ipse me investigavi. Nec laudaverim quod carmen in templo Dianae occultaverit, ut postea instar mysterii ederetur. Nam quibus ista curae sunt, ii Euripidem tragicum dicunt, cum eo ventitaret et legeret, memoriae paulatim Heracliti tenebras diligenter tradidisse. (PG 6 [1857] col. 810A)

526 Petridou 2015.

527 Kern 1900:139-140 no. 215, Henrichs 1978:123-137; Graf 2004:111-112, cf. 124-127; Burkert 1997b.

528 Radnóti 1999:1-2 ad Vasari G 1568:IV.2.

529 Cf. Mheallaigh 2008:419-422.

530 Hartmann 2013:35 w/ n16, 36 w/ n21.

the chest of Cypselus) and the Attic/Ionic alphabet boundary in Athenian epigraphy supposedly guaranteed by Archinus' 403/2 BCE ("Eukleidean") reform (e.g. Theopomp. *FGrH* 115 F 154, 155 [*Philippika* lib. 25, cf. Craterus *FGrH* 342 F 13] on the Peace of Callias;⁵³¹ Panaetius fr. 131 Van Straaten contra Demetrius of Phaleron on the choregic monument, Aristides). For found texts buried in a funerary context we have the instance of Capys' grave (Suet. *Jul.* 81.1-2),⁵³² or the *lapis niger* associated with Romulus' sepulcher (Dion. Hal. *AR* 1.51) as inspiration for Augustus' *Res Gestae*.⁵³³ Such found texts might validate cultic innovations. Note the initiation of Great Gods in restoring mysteries at Andania coincident with Messene's re-foundation (Paus. 4.26.7-8: ὑδρίαν, ἀνοίξας δὲ εὔρε κασσίτερον ἐληλασμένον ἐς τὸ λεπτότατον: ἐπέιλκτο δὲ ὥσπερ τὰ βιβλία),⁵³⁴ or Alexander's foundation of the Asklepios-Glykon cult at Abonoteichos (Luc. *Alex.* 10).⁵³⁵ This is especially attested for sanctuaries and temples, such as at the Christianization of Delphi (*Tüb. Theos.* 1.5, 1.54 Beatrice = 16, 53 Erbse),⁵³⁶ or in coordinated (later 5th c. CE) propaganda authorizing conversion to Maria Theotokos of pagan temples via discovery of prophecy of Apollo in multiple copies, e.g. at Kyzikos, Ikaria and Athens (Theodot. *Anc. Or. in Sanct. Mar. Dei Genitr.*, PO 19.3, no. 93, 333-334 & ps.-Athanas. *Alex. Interpret. Templ. Athen.*, PG 28, 1428c–1429a; Malalas *Chronogr.* 4.8 Thurn, cf. Ioan. Antioch. *FHG* IV Müller KWL 1851/1868:548; *Tüb. Theos.* 1.54 Beatrice = 53 Erbse; *IG* XII 6.2, 1265).⁵³⁷

531 Hartmann 2013:35.

532 Busine 2012:242.

533 Hartmann 2013:53-54. Note Augustus' autograph testament produced by Tiberius for the senate (Tac. *Ann.* 1.11: sua manu perscripserat Augustus).

534 Busine 2012:242-243.

535 Busine 2012:244.

536 Busine 2012:246, 251.

537 Busine 2012. Cf. ten identical (2nd c. CE) dedications coordinated by Apollo of Ionian Claros (Busine 2005:184-189, 2012:251; Jones CP 2005).

Heraclitus' dedication/deposit story is not discredited by supposing the book a posthumous compilation (around which a following certainly coalesced) of originally oral *gnomai* by one or more of his pupils, as such a deposit could have been effected by doctrinal/political partisans (even for the same purpose(s) as could have motivated Heraclitus himself). Its apocryphal character is nevertheless suggested by similar testimonia of other authors, e.g. Hesiod (Acusilaus *FGrH* 2 T 1 ap. Suda *a* 942 *ἔγραψε δὲ γενεαλογίας ἐκ δέλτων χαλκῶν, ἃς λόγος εὐρεῖν τὸν πατέρα αὐτοῦ ὀρύξαντά τινα τόπον τῆς οἰκίας αὐτοῦ*, cf. T 6 with a genealogical tradition at odds with Hesiod) and Crantor (D.L. 4.25: poems under seal dedicated to Athena of Soloi)⁵³⁸ show Diogenes Laertius' temple-dedication testimony to be a common pseudo-documentary⁵³⁹ authentication device (similar to the invented discovery of buried MSS: the tomb of Dictys on Crete,⁵⁴⁰ or Antonius Diogenes in the tomb of Deinias at Tyre).⁵⁴¹ The "discovery" of Sophron's mimes under Plato's pillow (D.L. 3.18: *ἃ καὶ εὐρεθῆναι ὑπὸ τῆ κεφαλῇ αὐτοῦ*) perhaps suggests revelation of dependence on an original predecessor. It must furthermore be considered that the Ephesian Artemis temple's destruction by fire in 356 BCE could have served as a tempting prop to fabrication of authenticating or pseudepigraphic (re)discovery.⁵⁴²

For means of literary access/exclusion other than, or at least independent of, physical disposition of a manuscript (e.g. via temple dedication), appeal is made to Heraclitus' stylistic obscurantism (D.L. 9.6, though note *λαμπρῶς, σαφῶς* at 9.7: *λαμπρῶς τε ἐνίοτε ἐν τῷ συγγράμματι καὶ σαφῶς ἐκβάλλει, ὥστε καὶ τὸν νωθέστατον ῥαδίως γνῶναι καὶ διάρμα*

538 Kirk 1954:7-8, West ML 2001:6n7.

539 Hansen W 2003.

540 Mheallaigh 2008:406-414.

541 Mheallaigh 2008:415-419.

542 Kirk 1954:8.

ψυχῆς λαβεῖν), acknowledged in his various related nicknames: αἰνικτής (Timon of Phlius ap. D.L. 9.6),⁵⁴³ σκοτεινός ([Arist.] *De mund.* 5.396b20, Strab. 14.25 (642), Suda η 472), *obscurus* (Cic. *De fin.* 2.5.15), *tenebrosus* (Tertul. *De anim.* 2.6, *Adv. Marc.* 2.28.1).⁵⁴⁴ The Darius letter at D.L. 9.13 requests personal instruction (suggested as necessary for understanding of Heraclitus' book by A.P. 9.540.3-4 ap. D.L. 9.16: ὄρφνη καὶ σκότος ἐστὶν ἀλάμπητον· ἦν δὲ σε μύστης / εἰσαγάγη, φανεροῦ λαμπρότερ' ἡελίου, cf. A.P. 7.128) to better understand Heraclitus' *logos* (δυσνόητόν τε καὶ δυσεξήγητον ... τῶν δὲ πλείστων ἐποχὴν ἔχοντα, ὥστε καὶ τοὺς ἐπὶ πλείστον μετεσχηκότας συγγραμμάτων διαπορεύσθαι τῆς ὀρθῆς δοκούσης γεγράφθαι παρὰ σοὶ ἐξηγήσεως).⁵⁴⁵ Various of Heraclitus' own fragments (e.g. 22 B 54, 86, 87, 93, 95 DK) suggest epistemological presuppositions of graded intelligence and incapacity among men conducive to a correspondingly esoteric attitude (consonant with a pretentious style and testimonia to general elitism). Croton's quip (per Seleucus gramm. ap. D.L. 9.12, cf. Suda s.v. Δηλίου κολυμβητοῦ δ 400 Adler) that Heraclitus' work required a Delian diver if one is not to drown in it (Δηλίου τινὸς δεῖσθαι κολυμβητοῦ, ὃς οὐκ ἀποπνιγίσεται ἐν αὐτῷ) suggests as much a joke on Heraclitus' watery imagery (also played on in the biographical tradition of his death by dropsy (D.L. 9.3, Suda s.v. Ἡράκλειτος η 472 Adler: ὑδρωπιάσας),⁵⁴⁶ and elaborated into weepy portraiture by later iconographers) as it does an acknowledgement of the philosopher's

543 Cf. Chitwood 1995 (Heraclitus' riddling style).

544 Davison 1962:152-153 (presuming temple-text publicly accessible); cf. Tsantsanoglou 1997:120 (on the Derveni papyrus).

545 On *logos* in Heraclitus, cf. Hölscher 1952, Verdenius 1966 (H. & Parmenides); on Heraclitean epistolography, cf. Bernays 1869 and the review by HS 1869.

546 Fairweather 1973, Chitwood 2004:59-93 (Ch. 2), cf. Grau Guijarro 2010. There is an interesting coincidence (doubtless of little consequence) with Homeric biographical tradition in so far as in both cases report of the subject's death is not entirely straightforward and is immediately preceded by a misunderstood interaction with youths: τῶν παίδων ... αἰνιγματωδῶς (D.L. 9.3) ~ the riddle of the fisher-boys [παῖδες ἀλιεῖς] of Ios (ps.-Hdt. *vit. Hom.* 35.492-36.509, Suda s.v. Ὀμηρος ο 251 Adler). Heraclitus 22 B 56 DK ap. Hippol. 9.9.6 explicitly quotes from the Homeric incident, whence its influence on Heraclitus' biography.

profundity (though the version ascribed to Socrates at D.L. 2.22 straightforwardly connects the same diver imagery to Heraclitus' supposedly inaccessible style).⁵⁴⁷ The challenge of Heraclitus' style has been ascribed to parataxis/asyndeton defying unambiguous⁵⁴⁸ punctuation (Arist. *Rhet.* 3.5.6 1407b11-18,⁵⁴⁹ Dem. *De eloc.* 192; cf. Suda s.v. Ἡράκλειτος η 472 Adler: ἔγραψε πολλὰ ποιητικῶς). Alternatively, there is the suggestion of obscurity through omission—note Diogenes as finding Heraclitus could have supplied further explanation of certain phenomena (D.L. 9.11: *περὶ δὲ τῆς γῆς οὐδὲν ἀποφαίνεται ποία τίς ἐστιν, ἀλλ' οὐδὲ περὶ τῶν σκαφῶν*). Hicks' translation at D.L. 9.12 of “for one and all alike” (suggesting an ancient understanding of Heraclitus' work as popular in the sense of written for everyone) is hampered by textual uncertainty. Not unrelated to allegorical (Heracl. *gram. Hom. Probl.* 24 approving Heraclitus' supposed allegorism) and esoteric readings of Heraclitus (22 B 95 DK: *κρύπτειν ἀμαθίην κρήσσον ἢ ἐς τὸ μέσον φέρειν*) is interpretation of his fragment on “cryptic nature”/“the secrets of nature” (“*Naturgeheimnisse*”) (22 B 123 DK ap. Themist. *Or.* 5.69: *φύσις ... κρύπτεσθαι φιλεῖ*),⁵⁵⁰ an influential notion in the evolution of western scientism.⁵⁵¹ Diogenes Laertius' temple-dedication passage (D.L. 9.6: *ἀνέθηκε δ' αὐτὸ εἰς τὸ τῆς Ἀρτέμιδος ἱερόν ... ἐπιτηδεύσας ἀσαφέστερον γράψαι, ὅπως οἱ δυνάμενοι <μόνοι> προσίοιεν αὐτῷ καὶ μὴ ἐκ τοῦ δημώδους εὐκαταφρόνητον ἦ*) further suggests, aside from physical “approach” (cf. LSJ s.v. A.1: *πρόσειμι* + Dat.) to the document under discussion, something of the relationship made at Pl. *Hipp. maj.*

547 Cf. Bordoy [n.d.].

548 On Heraclitus' language, cf. Snell B 1926; on its ambiguity in particular, cf. Merlan 1953.

549 Turner EG 1952:13 w/ n5 (as evidence of a general absence of punctuation which must therefore be supplied by the reader, citing further Arist. *Soph. Elench.* 166a35), cf. 13-14 w/ 14n1 (citing Arist. *Soph. Elench.* 177b2 on marginalia noting accentuation to distinguish between otherwise ambiguous words).

550 Hadot 1982, Graham 2003.

551 David 2008:5, 8, 11 (drawing on Thorndike 1950, Eamon 1985, cf. 1994); cf. Schweigger 1843:25 (mystery-initiation in contrast to the anti-esoteric attitude of Socrates & Demonax toward “jede Wahrheit als Gemeingut der Menschheit”).

281b-c between private gain, public/private benefits and reputation (*ἰδία/δημοσία // χρήματα λαμβάνων/ὠφελεῖν, εὐεργετεῖν // μὴ καταφρονήσεσθαι ἀλλ' εὐδοκμήσειν ἐν τοῖς πολλοῖς*; cf. Pl. *Prot.* 318e-319a: τὰ οἰκεία/τὴν αὐτοῦ οἰκίαν // τὰ τῆς πόλεως πράττειν/λέγειν = τὴν πολιτικὴν τέχνην).

Whether or not physical access to the temple (*cella*, archives, treasury) was practically restricted, *ἐπιτηδεύσας ἀσαφέστερον γράψαι* suggests style (hence, level of education) as the intended means of exclusion⁵⁵²—which seems an imperfect prophylactic against (likely more a solicitation of) popular scorn.⁵⁵³ Nevertheless, D.L. 9.6 could be construed as implying a cumulative physical+stylistic exclusion mechanism. Rather than publication via in-temple display or (indiscriminate) distribution of copies (where deliberate obfuscation is one conceivable strategy of audience-selection at a distance),⁵⁵⁴ Heraclitus could have maintained a limited, closed circle of select students; even had Heraclitus himself authored, yet jealously withheld his manuscript, these same students will have retained the master's wisdom in aphoristic form (whether in memory or personal transcripts) and carried it themselves or otherwise transmitted it abroad⁵⁵⁵ (comparable to the notion of Theognis' friends/partisans as posthumously collecting and publishing his gnomic elegies).⁵⁵⁶ But Heraclitus' temple-dedication is not universally so interpreted. Instead of “adepts” it has been suggested that οἱ δυνάμενοι represent political elites,⁵⁵⁷ and powerful people often have (ways of obtaining) privileged access to all sorts of goods. It would be no surprise if Heraclitus (who Diogenes

552 West ML 2001:6n7: “accessible to those intelligent enough to penetrate its obscure style.”

553 Cf. D.L. 3.63: *ὀνόμασι δὲ κέχρηται ποικίλοις πρὸς τὸ μὴ εὐσύνοπτον εἶναι τοῖς ἀμαθέσι τὴν πραγματείαν* (“Plato has employed a variety of terms in order to make his system less intelligible to the ignorant,” tr. Hicks).

554 Davison 1962:153.

555 Diels 1909:xii.

556 Rintelen 1863.

557 Cf. Kirk 1954:8n1.

relates had resigned the kingship in favor of his brother) were found to have kept exclusive company. Certainly, that the book is physically accessible (*προσίοιεν αὐτῶ*) at least to some means that it is accessible; were it not, encoding one's message by means of an obscure style would be unnecessary. It would make more sense, in this case, if the book were widely accessible, because it is easier to imagine the mob rather than the elites being excluded by their own mental or socio-economic (educational) deficiencies. The exclusion cannot be one based entirely (or directly) on class, but on intellect. On the other hand, it is precisely the elites who can best afford an education in subtlety, and Diogenes records Timon's phrase "ὄχλολοιδόρος Ἡράκλειτος" in the very next sentence. The elitist ethos behind such literary sequestration and dedication has much in common with the *Theognidea*, and one might consider the sympotic setting, like the philosopher's inner circle, a happy compromise between textual control and oral divulgation before a restricted audience, one which would appreciate the added value of rarity as a literary attribute. Such rarity, the aestheticized reflex of scarcity⁵⁵⁸ which incites industry (Hes. *Op.* 17-26, 42-48; cf. *Th.* 507-616, *h.Dem.* 305-307, 352-354, 451-453) through envy (cf. D.L. 9.14 ἐγὼ δ' ἀμνηστίην ἔχων πάσης πονηρίας καὶ κόρον φεύγων παντὸς οἰκειούμενον φθόνῳ καὶ διὰ τὸ περιστάσθαι ὑπερηφανίην κτλ.), is not to be excluded from the dynamics of authorial posturing (cf. Hippodamus' *philotimia*).

Regardless, the *right* to keep (relatively) secret presumes (if it is to have any meaning at all) the *ability* to keep (relatively) secret, and not just as a mode of textual self-defense—perhaps the secret teaching was never committed to writing in the first place. If it were, just as with the ancient publishing model in general, which presumes an author availed himself of trustworthy

558 Beebe 2010:814.

friends to reproduce and distribute his texts,⁵⁵⁹ and to wait until the author gives consent for such distribution (a system more clearly discernible and better elaborated in Cicero's day), so too the esoteric who wishes certain of his thoughts, oral teachings, or writings to remain withheld—if he had himself fixed them in writing, he could only be certain for as long as he lived and kept them on his person; friends and colleagues could not be easily constrained posthumously (consider Virgil's unfinished *Aeneid* edited and published against his will by Varius Rufus and Plotius Tucca). Diogenes Laertius offers numerous examples (of uncertain credibility) of inheritance of literary estates and executorship of unpublished literary documents; Xenophon was praised for his supposed posthumous edition of Thucydides because of his choice not to pass-off the work as his own though he had the chance.

However accessible Heraclitus' physical manuscript was, there's no denying his enigmatic style. As noted above, just as style itself can identify an individual, that same style could be cultivated by another in producing a pseudepigraphic work; or it could be adopted in an orthonymic work for no necessary reason at all, perhaps unconsciously or because the adopter simply liked his model's style. Style, then, is no *Schutzmittel* against a "type" forgery, even when the language is thoroughly complex and obscure (comparison apropos 22 B 92 DK ap. Plut. *De Pyth. or.* 6.397a to Aeschylus⁵⁶⁰ underscores inevitability of such parodistic usurpations as Aristophanes' *Frogs* delivers; cf. the pseudepigraphic attribution of *Alexandra* to Lycophron). Heraclitus' suspected but unattested *sphragis* (cf. supra) cannot be evaluated as a guarantor of attribution or textual integrity. Instead, the suggestion is not that style is employed for the sake

559 A dictating author presumably had control over his amanuensis, just as any "publisher" he might chose would oversee the work of slave-copyists; the contrary case of pirated lecture notes (e.g. by an author's own students, or by members of the public, depending on the venue and occasion), will be considered below.

560 Kirk et al. 1983:210n2, cf. 71.

of inimitability (consider Lucian’s successful forgery of Heraclitean maxims⁵⁶¹ suggests an author’s idiosyncratic style—style as *sphragis*—is no barrier to imitation/falsification),⁵⁶² but rather with the intent that the very text itself contain the message but exclude the unworthy reader (text-immanent esotericism). This is not the same as Heraclitus simply withholding his wisdom (though there are hints of this too in Diogenes). This is not far removed from the kind of metaphorically coded speech attributed to Homer by his allegorical interpreters (e.g. the allegorist Heraclitus’ *Homerika problemata*). To a certain extent, this would be the sort of text which the Tübingen school denies to Plato:⁵⁶³ not one that could necessarily come to its own aid,⁵⁶⁴ but certainly one wherein the entire message has been encrypted for the benefit of an audience capable of decrypting it for the plain text hidden within.⁵⁶⁵ The oracle does not resort to secrecy, but communicates in a code which need (and ostensibly can) be interpreted in an allegorical fashion. Similarly, Heraclitus may have cultivated in his personal style an intentional obscurity directed toward a restricted, discriminating audience. As he tells us, ὁ ἀναξ οὐ τὸ μαντεῖόν ἐστι τὸ ἐν Δελφοῖς, οὔτε λέγει οὔτε κρύπτει ἀλλὰ σημαίνει⁵⁶⁶ (22 B 93 DK = Plut. *de Pyth. or.* 21.404d).⁵⁶⁷ “Heraclitus,” says Graham, “loads his words with layers of meaning and

561 Gal. *In Hipp. Epid.* 2.6.29 = *CMG* 5.10.1 p. 402.27 (Jones CP 1986:19), cf. *Vit. Auct.* 14; further: Luc. *Alex.* 53 (Branham 1989:181), *Peregr.* 39f., *Pseud.* 30 (Speyer 1971:134); Deichgräber 1938:29-30n25, Strohmaier 1976:118-120.

562 Note further Pausanias *Heraclitistes* (D.L. 9.15: Πανσανίας ὁ κληθεὶς Ἡρακλειτιστής) as Heraclitus’ “imitator” (tr. Hicks), the Heraclitean imitative tradition collected at 22 C 1-5 DK (Diels/Kranz 1960:182-190; cf. Chroust 1961:223), and ps.-Heraclitus (Attridge 1976) among the authors of *Cynic Epistles* (Capelle 1896, Malherbe 1977, Müseler 1994).

563 Cf. Szlezák 1985, 1999, 2004; Blank 1993; Trabattoni 1994.

564 A higher form of self-authentication than that suggested above for author-encoded stichometry.

565 Cf. B 107; B 17; B 34; B 56 DK. Contrast Gellius *NA* 20.5.7-12, Plut. *Alex.* 7.3, where Aristotle assures Alexander that there is no need for concern that his acroatic lectures be distributed since they are comprehensible only to those who have heard him lecture. According to Walter Burkert (Burkert 1985:251-254, 1987:9, cf. 90-91), revelations of mystery secrets didn’t do any harm for a similar reason: they mean nothing without their ritual context.

566 Nagy 1990 [PH], ch. 6 § 37 (“indicates”), Shell 1978:1 (“gives signs (or symptoms)”).

567 For the characterization of Heraclitus’ style as “Delphic,” cf. Maurizio 2013, Naerebout/Beerden 2013.

complexities that are to be discovered in insights and solved like riddles ..., his *logoi* are designed to be experienced, not just understood, and only those who experience them in their richness will grasp his message.”⁵⁶⁸

The dedicatory act could well have had the additional motive of attaching a certain authority (religious or otherwise) to his text. Doubtless, temple-dedicated inscriptions gain added security from their consecration. Even official political inscriptions appeal to divine apotropaic symbolism in their employment of superimposed ΘEOI headings,⁵⁶⁹ and the aura of the divine and separate, guarded by taboos against transgressing human/super-human boundaries, extends well beyond temple contexts. Yet, neither physical sequestration nor stylistic obscurantism can entirely constrain diffusion in secondary forms such as textual recycling by secondary authors.

Digital analogies might be applied to the fixation of ancient literature in various ways. One might insist expressions conform to “two discrete states—the fixed and the non-fixed,” a distinction which is unambiguous, impervious to subjective interpretation.⁵⁷⁰ Otherwise, fixation must necessarily accommodate the fluidity of attribution in an open literary commons, as well as account for the status of improvisational performative spontaneity and for unilateral derivative re-mixing of pre-existing expression, phenomena which are clearly not unrelated. The *Theognidea* state a desire to give “a common (ξυνὸν) counsel ... to all men” (1007),⁵⁷¹ in this instance a gnomic statement about the universality of youth’s transience and old age’s inevitability (similar to 1017-1022, also partly ascribed to Mimnermus). For the contemporary

568 Graham 2011.

569 Pounder 1975.

570 Hubanov 2006:112 (who argues against this simplistic view).

571 For the quotation of elegy as “common counsel” in legal citation, note Demosthenes’ use of Solon (4W) in *De falsa legatione* (254ff.).

significance of *ξυνόν* in late archaic elegy, we might compare the philosophical sentences of

Heraclitus:

ξυνόν ἐστι πᾶσι τὸ φρονέειν. ξὺν νόῳ λέγοντας ἰσχυρίζεσθαι χρὴ τῷ ξυνῶι πάντων, ὅκωσπερ νόμῳ πόλις, καὶ πολὺ ἰσχυροτέρως. τρέφονται γὰρ πάντες οἱ ἀνθρώπειοι νόμοι ὑπὸ ἐνὸς τοῦ θείου· κρατεῖ γὰρ τοσοῦτον ὀκόσον ἐθέλει καὶ ἐξαρκεῖ πᾶσι καὶ περιγίνεται. (22 B 113/114 DK ap. Stob. 1.179 Meineke)

Thinking is common to all; Men should speak with rational mind and thereby hold strongly to that which is shared in common—as a city holds on to its law, and even more strongly. For all human laws are nourished by the one divine law, which prevails as far as it wishes, suffices for all things, and yet is something more than they are (tr. W. Harris)

διὸ δεῖ ἔπεσθαι τῷ <ξυνῶι, τουτέστι τῷ> κοινῶι· ξυνὸς γὰρ ὁ κοινός. τοῦ λόγου δ' ἐόντος ξυνοῦ ζώουσιν οἱ πολλοὶ ὡς ἰδίαν ἔχοντες φρόνησιν. (22 B 2 DK ap. Sext. Emp. *Adv. math.* 7.133)

We should let ourselves be guided by what is common to all. Yet, although the Logos is common to all, most men live as if each of them had a private intelligence of his own. (tr. W. Harris)

ξυνὸν γὰρ ἀρχὴ καὶ πέρας ἐπὶ κύκλου περιφερείας. (22 B 103 DK ap. Porphyry. ad Hom. *Il.* 14.200, I 190 Schrader)⁵⁷²

In the circumference of the circle the beginning and the end are common. (tr. W. Harris)

ὁ Ἥ. φησι τοῖς ἐγρηγορόσιν ἓνα καὶ κοινὸν κόσμον εἶναι, τῶν δὲ κοιμωμένων ἕκαστον εἰς ἴδιον ἀποστρέφεσθαι. (22 B 89 DK ap. Plut. *Mor.* 2.14.166c = *De superst.* 3)

The waking have one world, in common, whereas each sleeper turns away to a private world of his own. (tr. W. Harris)

That smaller, more manageable anonymous *sententiae* are perfectly amenable to explicit, specific attribution—and modification—is shown by Solon's (20.4 W ap. D.L. 1.60) response to and improvement of (not usurping, but critiquing) a verse by Mimnermus (6 W), suggesting death may come better at 80 years old than Mimnermus' 60. Similarly, Clement *Strom.* 6.2.8.7-8 (mistakenly)⁵⁷³ considers Thgn. 153-4 to be responding (*ἀντικρυς*) to Solon 6.3-4. This sort of (competitive) “correction” or “improvement” over a predecessor is very similar to parody.

572 Note *xunon* here in the sense of “identity”.

573 Bowie 1997:66.

Bowie, citing reference to Stesichorus' *Oresteia* 210 & 212 P at Aristophanes' *Peace* 775ff., 797ff., notes that the "parodic goal involves changes to the text." Parodic changes to received text is further exemplified, with sympotic context, by Aristophanes' *Wasps* 1223-48 where Bdelycleon prompts his father with the beginnings of familiar Attic skolia, which his father however completes in a humorously incorrect manner. Note that such cases rely on the audience's familiarity with the parodied text. While Athenaeus 8.364b is agnostic as to the authorship of the *Hypothekai* of Chiron (εἴτε Φερεκράτης ἐστὶν εἴτε Νικόμαχος ὁ ῥυθμικὸς ἢ ὅστις δῆποτε), he refers to certain lines as a parody of the *Great Ehoiai* of Hesiod (τῶν εἰς Ἡσίοδον ἀναφερομένων Μεγάλων Ἠοίων). Clement of Alexandria (*Strom.* 6.2.8) quotes Solon 5.9 in comparison to Theogn. 153, in such a way as implies Clement understands Theognis to be adapting such pre-existing verse⁵⁷⁴ (vs. e.g. the *Theognidea* verses having been mis-attributed to Theognis). Even absent explicit testimonia providing contrary attribution, Gerber still finds ground for suspicion that Theognis draws on pre-existing hexametric expression to extrapolate semi-novel elegies which merely elaborate the given theme, e.g. at 425-428:

Πάντων μὲν μὴ φῦναι ἐπιχθονίοισιν ἄριστον 425
 μηδ' ἐσιδεῖν ἀγὰς ὀξέος ἠελίου,
 φύντα δ' ὅπως ὄκιστα πύλας Αἴδαο περήσαι
 καὶ κείσθαι πολλὴν γῆν ἐπαμυσάμενον.

The best lot of all for man is never to have been born nor seen the beams of the burning Sun; this failing, to pass the gates of Hades as soon as one may, and lie under a goodly heap of earth. (tr. Edmonds)

In each pentameter Gerber sees a derivative paraphrase of the preceding line.⁵⁷⁵ For change in meter as an element of parody, consider Thgn. 467-469 (addressed to Simonides by Euenus, it is supposed) parodied in Pherecrates' *Cheiron* (153.8-9 K = 162 K-A: μηδένα μήτ' ἀέκοντα μένειν

574 Campbell 1982:344.

575 Gerber 1999:235n1.

κατέρυκε παρ' ἡμῶν / μήθ' εὔδοντ' ἐπέγειρε, Σιμωνίδη κτλ) in hexameter form. Bowie notes that like the other parodied passages above, “these lines are from the opening of a poem—almost invariably the best known part of any literary work, whether prose or poetry.”⁵⁷⁶ Note that the *Theognidea* here is not treated as one cohesive unit, but a collection of otherwise originally independent poems. Presumably verses attributed elsewhere to Tyrtaeus, Mimnermus and Solon are earlier than Theognis. Hudson-Williams, among others, finds reason to believe that, “with the probable exception of Euenus the Parian, and one or two interpolations and additions to incomplete elegies (cf. 253, 1259), it cannot be proved that the collection contains anything later than the age of Theognis himself.”⁵⁷⁷ Van der Valk⁵⁷⁸ is no less conservative in his approach to what at the opposite end of the spectrum has been seen as a purely haphazard anthology. Van der Valk spares no effort in rationalizing seeming contradictions or other occasions for analytical decomposition of the corpus.

Formal constraints: Stoichedon epigraphy and textual corruption

Both physical medium as well as authorial form might contribute to textual integrity. In a chapter on “Inscriptions,” for example, Rudolf Wachter makes the passing assertion⁵⁷⁹ that stoichedon⁵⁸⁰ epigraphy is immune to adulteration by forgery. Yet, were this so obvious, we might have expected some corroborating attestation of an application of the technique in antiquity as proof of authority, accuracy and authenticity (it is conspicuously absent from Wolfgang Speyer’s list⁵⁸¹ of methods of textual certification) (*Beglaubigungsmittel*), or as a

576 Bowie 1997:57.

577 Hudson-Williams 1910:74.

578 Van der Valk 1956.

579 Wachter 2010:54.

580 Cf. Austin 1938 and Osborne MJ 1973 for two standard extended treatments.

581 Cf. Speyer 1971:93.

defense against corruption (*Schutzmittel*). Normally, introductory textbooks present stoichedon as the epitome of Classical aestheticism over legibility, motivated by nothing more than its eye-pleasing graphic impact, pointing out especially the particular advantage such a rigid layout provides in the reconstruction of fragmentary texts.⁵⁸² Conversely, because of this very grid pattern, any changes leave an obvious trace. Hence, presumably, the logical basis for Wachter's claim that a (perhaps the) motivation for the use of stoichedon was its very unfalsifiability.⁵⁸³ Yet there are several possible objections to Wachter's thesis (and he offers no references to earlier proponents of his view). One should first note that the stylistic line separating stoichedon (or "true" stoichedon) from non-stoichedon is rather blurry. An inscription will often show irregularities, deviating from the strict stoichedon pattern after several lines, perhaps taking it up again or becoming completely disjointed. Moreover, a stone's original masons made corrections of their own, sometimes in ugly violation of the stoichedon pattern, and such changes as can be detected in surviving stones can often be most satisfactorily explained palaeographically or otherwise as original to the official contractor or scribe(s).⁵⁸⁴ Pigmentation of the final (hopefully correct) text would make such errors fade into the background, but the same approach could be taken by any would-be forger with a chisel and pigment of his own.

Some stoichedon inscriptions are in fact suspect wholesale forgeries,⁵⁸⁵ but the issue is whether a contemporary could manage undetected to alter a mere portion of the text, perhaps even by just one letter (though the insertion of a reasonably long complete word having a different number of letters than the one to be replaced would be a stronger test). At any rate,

582 E.g. Cook 1987:11, 16; McLean 2002:45.

583 For a non-stoichedon, Roman example of corrections in public records leading to detection of forgery, cf. Cicero, *In Verrem* 2.2.104f.

584 E.g. *IG I² 22* Stoichedon 58; cf. Bradeen/McGregor 1973:31-33.

585 E.g. the Themistocles decree (cf. Hdt. 7.144, 8.40-41, Demosth. 19.303, Plutarch, *Them.* 10); the Oath of Plataea (cf. Theopompus *FGrH* 115 F 153, Theon. *Progym.* 2 (II 67, 22 Sp)).

Wachter's claim implies a conscious perception by those availing themselves of the stoichedon style that it is effective against adulteration. Stoichedon can certainly be decomposed while leaving the constituent parts otherwise intact (e.g. *CEG* 1.10, which is divided by its editor into three separate poems of distichon pairs),⁵⁸⁶ just as stoichedon accounting or treaty lists could be augmented *ad libitum* from the bottom, space providing, or around the edges onto other sides, without necessarily even sustaining the original stoichedon pattern. In fact, this pattern often tends to become looser as the rows progress. It is unusual (as far as I know, unique) in such a cursory treatment as Wachter's to consider the obvious constraints of the stoichedon checker board template as a guard against forgery, especially while at the same time omitting (as he does) its most commonly cited virtue for the working epigraphist: the significant aid it affords in reconstructing text on damaged stones.

Some inscriptions may be so degraded that, barring discovery of supplementary information, there would appear to be no hope of reconstruction.⁵⁸⁷ Help of the proper nature may come in the form of a fragmentary, complementary second copy (complementary redundancy).⁵⁸⁸ Yet, redundancy as a characteristic of literary style or physical fixation as an aid to reconstruction of course can take many forms. Transcriptions have functioned as back-up copies in preserving traces of now vanished stone (Marmor Parium A1) and papyrological (early Herculaneum papyri experiments) texts, to which end photographic reproduction has also enabled alternate avenues of access to sequestered documents (e.g. the Dead Sea Scrolls). Paper squeezes too have preserved documents subsequently willfully destroyed by ill-informed

586 Cf. Obryk 2012:14-15 (full Greek text with German translation).

587 Let non-stoichedon *IG* I³ 492 and 493 exemplify such difficult cases. Stoichedon layout may not be easy to establish definitively in similarly fragmentary cases (such as *IG* I³ 496 and 497), but this is often the case even where the text is complete.

588 E.g. *ML* 26.I (early 5th c. BCE stoichedon, preserved also in a 4th c. BCE copy).

treasure seekers (e.g. King Mesa’s black basalt “Moabite Stone” inscription from Dhibân (ancient Dibon), Jordan, discovered by A.H. Klein in 1868 and bearing on a revolt against the Jewish king attested in 2 Kings 3).⁵⁸⁹ More impressive a mental feat than mere consultation of alternative records (however challenging such labor can be) is reconstruction-wizardry along the lines of Adolf Wilhelm’s⁵⁹⁰ resolution of the highly fragmentary stoichedon *IG I² 946*.⁵⁹¹ This Athenian *stēlē* presents something like the following:

ΚΥΔΟ
ΟΣΥΝΑ
ΡΙΑΟΣΟ
ΑΡΝΑΜΕ

from which Wilhelm derived the complete four line elegiac, per Geffcken:⁵⁹²

[χαίρετε ἀριστῆες, πολέμου μέγα] κῦδο[ς ἔχοντες]
[κῶροι Ἀθηναίων, ἔχσοχοι ἱππ]οσύνα[ι].
[ἦοί ποτε καλλιχόρο περι πατ]ρίδος ὀ[λέσαθ’ ἠέβην],
[πλείστοις ἑλλάνων ἀντία μ]αρνάμε[νοι].

No mere guess, Wilhelm’s restoration is in fact aided by his familiarity with an epigram from the *Anthologia Graeca* (7.254 Beckby), attributed by that collection to Simonides:

Χαίρετ’, ἀριστῆες πολέμου μέγα κῦδος ἔχοντες,
κῶροι Ἀθηναίων ἔξοχοι ἱπποσύνα,
οἳ ποτε καλλιχόρου περι πατρίδος ὠλέσαθ’ ἠβην
πλείστοις Ἑλλάνων ἀντία μαρνάμενοι.

Already Schöne⁵⁹³ reflected on the “ease with which the number of letters in a stoichedon text could be calculated for the purpose of payment,”⁵⁹⁴ a thesis entertained and rejected by Larfeld,⁵⁹⁵ who also dispensed with the notion that the rise of stoichedon can be attributed to the

589 Pfohl 1977:24.

590 Wilhelm 1899 (= Pfohl 1972:290-322), cited by Pfohl 1968:4n1. For another such reconstruction, cf. *IG I² 516*.

591 GVI 14 = GG 9 = Geffcken 1918 no. 85 = Hicks-Hill 29 = Nachmanson, *Histor. att. Inschr.* 7.

592 Geffcken 1916:30 (no. 85): “Nach der Schlacht bei Tanagra. 457 v. Chr.”; similarly at Peek (*GG* 9): “Stele? Athen. Nach 458/7?”

593 Schöne 1872:18ff.

594 Austin 1938:4.

595 Larfeld 1902(I):213.

aid it lends an engraver in avoiding omissions or additions. Such rigid accounting is not inconceivable: though not a precise analogy, we have epigraphic records for the third-century construction of the Apollo temple at Didyma,⁵⁹⁶ where (according to Harder)⁵⁹⁷ each stone was accounted for along with the name of the responsible worker (or generically tagged *ἱερός*, in case of anonymous temple slaves).⁵⁹⁸ The Didyma Apollo temple is complemented with architectural accounting of another sort in the form of the working blueprints recovered on site by Haselberger.⁵⁹⁹ Though of relatively late date for speculation on its relevance to stoichedon origins, its position in Ionian West Asia minor, beyond the Attic epicenter of stoichedon proliferation, should at least remind us of the relative antiquity of Mediterranean accounting generally, whereas such exempla as the Athenian Tribute Lists, a natural first thought, point back to a less comparative, Attic context.

In any event, Austin,⁶⁰⁰ though conceding mere subsidiary factors, approvingly cites Larfeld,⁶⁰¹ Hartel and Hartge as favoring the aesthetic explanation of stoichedon's origins.⁶⁰² In support, Austin points⁶⁰³ to Beazley's fourth category (δ) of "Little Master"⁶⁰⁴ lip cups: those with no figure-decoration, labeled (LP). These include the potter's signatures of Hermogenes:

ΗΕΡΜΟΓΕΝΕΣΕΠΟΙΕΣΕΝ
Ἑρμογένης ἐποίησεν

[Louvre F 88]

596 Thompson 1977:121.

597 Rehm/Harder 1958, cf. Austin citing esp. Harder's no. 27.

598 Cf. Orlandos 1966:93-95 and Siebert 1978:121-122 (cited by Pucci G 2001:143) regarding archaic Greek roof tile and brick stamps explicitly distinguishing between *δημόσιον* and *ἱερόν* (later also *βασιλικόν*), as well as the transformation of such marks and manufacturer names into "true and proper trademarks" in the Hellenistic period (cf. Pucci G 2001:147-151 for the later Roman development of brick stamps into what became "the most elaborate of all *instrumentum*.").

599 Haselberger 1983 *et seqq.*

600 Austin 1938:4-5.

601 Larfeld 1902(I):213.

602 Note the cautionary attitude of Day 2012 (reviewing Butz 2010 on the Hekatompedon inscription) with respect to aesthetic explanations of particular inscriptions.

603 Austin 1938:5.

604 Beazley 1932:180.

the abbreviated Archenedes:

ΑΡΧΕΝΕΙΔΕΣΜΕ

[London 1919.6-20.2]

Ἀρχενίδες με

the more verbose Ergoteles:

ΕΡΓΟΤΕΛΕΣΕΠΟΙΕΣΕΝΗΟΝΕΑΡΧΟ

[Berlin 1758]

Ἐργοτέλης ἐποίησεν ὁ Νεάρχου

as well as double signatures of Neander:

A: ΝΕΑΝΔΡΟΣΜΕΠΟΙΕΣΕΝ

B: ΝΕΑΝΔΡΟΣΕΠΟΙΕΣΕΝ

[Corinth, AJA 1929:536]

and Xenokles:

A: ΧΣΕΝΟΚΛΕΣ:ΕΠΟΙΕΣΕΝ

B: ... ΚΛΕΣ:ΕΠΟΙΕΣΕ[N]

[Conte Faina, 90]

A: ΧΣΕΝΟ[ΚΛ]ΕΣ:Ε[ΠΟΙ]ΕΣΕΝ

B: ΧΣΕΝΟ ...

[Conte Faina, 91]

A: ΧΣΕΝΟΚΛΕΣ

B: ΕΠΟΙΕΣΕΝ

[Vienna, Oest. Mus. 278]

A: ΧΣΕ[ΝΟΚΛΕ]Σ:ΕΠΟΙΕΣ

B: ΧΕΣΝΟΙΚΣΕΠΟ

[New York 06.1021.155]

In the Vienna example, we see a slight opportunity for interpolation where the name is invisible, separated from the functional half of the signature. The New York vase clearly misspells its author's (manufacturer's) name (ξένουξ), indicating a careless hand, perhaps not that of Xenokles himself (unless he was Nikosthenically fastidious in personalizing his wares). Apparently even in such delicate calligraphic work as *dipinto* Little Master inscriptions precision was qualified, as can be seen from another example supplied by Exekias:

A: ΧΣΕΚΙΚΑΣ:ΕΠΟΕΣ

B: ΧΣΕΚΙΑΣ:ΕΠΟΙΕΝ

[Munich 2125]

Note that redundancy in such cases does little to ensure orthographic rigour even as it aids the latter-day reading in reconstructing questionable text: the epigrapher's windfall does not translate into an originally functional compositional or editorial tool such as a Schöne or Wachter might hope to discover. We note that lapicidal accuracy is not necessarily markedly improved merely by virtue of applying a sure hand and fully mature technique, as we find prolific errors even in the finest stoichedon inscriptions (e.g. in the Getty Thorikos calendar).⁶⁰⁵ For Austin,⁶⁰⁶ at any rate, such vase inscriptions offer remarkable evidence that “the decorative value of a row of finely wrought, evenly spaced letters was appreciated” at the time of stoichedon's adoption in the latter half of the sixth century BCE and indeed throughout the Classical era when it enjoyed its most widespread use. Note in particular the suggested relationship between legibility and stichic articulation that such signatures illustrate: contiguous single words or short phrases, unmutilated by line-breaks, are most legible, where length of expression directly correlates with incidence of legibility-compromising line-breaks, forced upon the text by the material dimensions or figurative plan of its substrate.

This applies to longer just as well as shorter texts: regardless any underlying chequer grid, the legibility of the text block rises with a decreasing rectangular height to width ratio. To the extent the intent is not solely the alienating confrontation with purely decorative textuality, the stoichedonesque inscriber of longer texts spanning multiple lines can only attempt to ameliorate this phenomenon by way of syllabic breaks. In the happiest of eventualities, such breaks will coincide with both word- and line-end, but this is contrary to statistical probability and such a strategy means in most instances violating stoichedon stricture for the sake of the

605 G.79.AA.113 (cf. *IG I³* 256 bis, *SEG* 33, 147); this point is made by Bodel 2001:29 ad fig. 1.5.

606 Austin 1938:5n.

increased modicum of legibility availed by even non-word-terminal syllabification. The least legible text then in these terms will be based on a stoichedon chequer of maximal height-to-width ratio, ensuring the highest possible incidence of non-syllabic line breaks. A similarly constrained non-stoichedon inscription would suffer from the same distorting effects but for the slight extra degree of freedom which the absence of a rigid chequer-grid allows for accommodating syllabic and lexical breaks. The evolution of sensitivities to legibility in the epigraphic culture can then be (perhaps only somewhat objectively) indexed by such formalist and orthographic conventions as variation in stoichedon rigour, punctuation, figurative adornment, and syllabic and lexical division within and between lines of otherwise unaccommodating *scriptio continua* texts. We can start from the assumptions of Austin that just as boustrophedon was outmoded by a desire to interlinearly align *hastae* of the pre-Eucleidean (Attic) alphabet (which in theory could have resulted in a right-to-left orthography just as well as the actual event), such vertical alignment achieving its most extreme expression in fully developed stoichedon,⁶⁰⁷ so too was this latter style undermined by its inherent inability to respect morphological sense units and the reader's desire for legibility. In the case of lists and accounting texts (quintessential official documents of the sort where stoichedon otherwise enjoined its more thorough implementation), moreover, we see a further imposition on pure stoichedon in the functional value of rigorous (multi-columnar) layout beyond its mere aesthetic impression.

607 Noteworthy are the few exceptional instances of stoichedon-boustrophedon inscriptions, e.g. *SEG* 41.540a, 44:463[1-3].

Beazley,⁶⁰⁸ respecting the potential aesthetic appeal of ceramic epigraphy, points out a marked *diarthrosis* in a Xenokles signature in Boston, noting by way of analogy Aristotle's application of this term to differentiated particular characteristics within an organic whole distinguishing the male from the (less differentiated) female bodily form. Such comparisons are suggestive for later reflection on the possible relationships between such terms as textual differentiation and textual unity, "organic" or otherwise.⁶⁰⁹ First, returning to Munich 2125 for comparison, we find other exempla of corresponding ("redundant") inscriptions on stone (which also bear on questions regarding the degree to which correspondence of textual articulation to substrate artefact is materially underdetermined), also relative to orientation upon their material substrate (in the Munich case, the corresponding names are on opposite sides of the object, adjacent to the handles). One could generally classify such textual orientation by physical relation to substrate (for portable objects, *kineta/mobilia*) or in terms of geostatic orientation (for static objects, *akineta/immobilia*), conceivably the ultimate in fixation. Such latter items characterized by the spacial fixation of the textual substrate could encompass along a spectrum of their mobility such objects as the *mnemata* of Hipparchus, boundary markers (*horoi*), temples and other inscribed buildings.

In the case of boundary stones, one could imagine the manner in which inscribed elements might function as assertions of identity (whether the reader's, the inscriber's or both), depending on where they lived relative to the inscription, or relative to the terms of a territorial claim on part of the inscriber. Vanderpool reviews⁶¹⁰ inscriptions from the Old Woman's

608 Beazley 1932:181, fig. 13 (Boston 95.18). Comparable is the British Museum Phrynos lip-cup (BM Gr 1867.5-8.962 B 424) depicting the birth of Athena.

609 Of course, the most obvious limitation to the text-immanent control of textual integrity supposedly promised by the stoichedon system, that of post hoc additions (which need not necessarily themselves respect stoichedon style, cf. e.g. ML 26 (Meiggs/Lewis 1969:54-57), a topic to be returned to below.

610 Vanderpool 1970:43-45.

Sheepfold,⁶¹¹ an estate near Marathon belonging to Herodes Atticus’ wife Regilla, viz. the opposite sides of a keystone from an arched gateway:⁶¹²

Ὀμονοίας ἀθανάτ[ου]
 πύλη
 Ἡρώδου ὁ χώρος
 εἰς ὃν εἰσέρχε[ι]

Gateway of Immortal Harmony. The place you enter belongs to Herodes.⁶¹³

mirrored on the opposite side of the stone by

Ὀμονοίας ἀθανάτου
 πύλη
 Ῥηγίλλης ὁ χώρος
 εἰς ὃν εἰσέρχει

Gateway of Immortal Harmony. The place you enter belongs to Regilla.⁶¹⁴

Apparently, Ὀμονοία ἀθάνατος (Immortal Harmony/Concord) was Herodes’ name for the estate.⁶¹⁵ Vanderpool explains that “[a]ncient practice was to place the identifying inscription on its *proper* side.”⁶¹⁶ In support of his hypothesis that “on our gate the Herodes inscription should be outside and the Regilla inside,”⁶¹⁷ Vanderpool cites the arch of Hadrian in Athens, which, on the side towards the Acropolis bears the inscription:⁶¹⁸

αἶδ’ εἶσ’ Ἀθῆναι Θεσέως ἡ πρὶν πόλις. [face A east.1]

“This is the Athens of Theseus, the old city.”

611 The so-called *μάνδρα τῆς γραιῶς* (McCredie 1966:35) or *Μάνδρα τῆς Γρηῶς* (Vanderpool 1970:44; Steinhauer 2009:307).

612 *IG II² 5189*, CIG 537, PH 7502.

613 Vanderpool 1970:43.

614 Vanderpool 1970:44, photo at plate 14a; better, color photo at Steinhauer 2009:307, opposite a reproduction of the composite reconstruction of the entire gateway (w/ flanking statues of Herodes and Regilla) from LeBas 1888; the actual remains of these statues appear in color photographs on pp. 308-309.

615 Vanderpool 1970:45.

616 Vanderpool 1970:44. Compare some less familiar verses from Woody Guthrie’s “This Land is Your Land” (famous for its refrain: “This land was made for you and me”; cf. McLeod 2005:14,24, noting variants presented here in parallel):

As I was walkin’ — I saw a sign there	
And that sign said — no trespassin’	or A sign was painted ‘Private Property’
But on the other side ... it didn’t say nothin’!	but on the backside it didn’t say nothin’.
Now that side was made for you and me!	

617 Vanderpool 1970:44.

618 *IG II² 5185*.

mirrored on the opposite side, facing away from the acropolis, by the notice:

αἶδ' εἶσ' Ἀδριανοῦ καὶ οὐχὶ Θησέως πόλις. [face B west.1]

“This is the city of Hadrian not of Theseus.”

With an even more proprietary tenor is the similar boundary marker at the Corinthian isthmus attested by Strabo 3.5.5:

καὶ ἐπὶ τῷ ἰσθμῷ τῷ Κορινθιακῷ μνημονεύεται στήλη τις ἰδρυμένη πρότερον, ἣν ἔστησαν κοινῇ οἱ τὴν Ἀττικὴν σὺν τῇ Μεγαρίδι κατασχόντες Ἴωνες ἐξελαθέντες ἐκ τῆς Πελοποννήσου καὶ οἱ κατασχόντες τὴν Πελοπόννησον, ἐπιγράφαντες ἐπὶ μὲν τοῦ πρὸς τῇ Μεγαρίδι μέρους „τάδ' οὐχὶ Πελοπόννησος ἀλλ' Ἰωνία,“ ἐκ δὲ θατέρου „τάδ' ἐστὶ Πελοπόννησος οὐκ Ἰωνία.“ (ed. Meineke)

And mention is made of a pillar placed in former times on the Isthmus of Corinth, which was set up in common by those Ionians who, after their expulsion from the Peloponnesus, got possession of Attica together with Megaris, and by the peoples who got possession of the Peloponnesus; they inscribed on the side of the pillar which faced Megaris, “This is not the Peloponnesus, but Ionia,” on the other, “This is the Peloponnesus, not Ionia.” (tr. Jones)

and 9.1.6:

καὶ δὴ καὶ τῶν ὀρίων ἀμφισβητοῦντες πολλάκις οἱ τε Πελοποννήσιοι καὶ Ἴωνες, ἐν οἷς ἦν καὶ ἡ Κρομμωνία, συνέβησαν καὶ στήλην ἔστησαν ἐπὶ τοῦ συνομολογηθέντος τόπου περὶ αὐτὸν τὸν Ἴσθμόν, ἐπιγραφὴν ἔχουσαν ἐπὶ μὲν τοῦ πρὸς τὴν Πελοπόννησον μέρους „τάδ' ἐστὶ Πελοπόννησος οὐκ Ἰωνία,“ ἐπὶ δὲ τοῦ πρὸς Μέγαρα „τάδ' οὐχὶ Πελοπόννησος ἀλλ' Ἰωνία.“ (ed. Meineke)

since the Peloponnesians and Ionians were having frequent disputes about their boundaries, on which, among other places, Crommyonia was situated, they made an agreement and erected a pillar in the place agreed upon, near the Isthmus itself, with an inscription on the side facing the Peloponnesus reading: “This is Peloponnesus, not Ionia,” and on the side facing Megara, “This is not Peloponnesus, but Ionia.” (tr. Jones)

as well as by Plutarch (*Theseus* 25.3), who attributes this marker to Theseus (in a narrative relating class-based discrimination accompanying an Athenian drive to increase territory and populace alike):

Προσκτησάμενος δὲ τῇ Ἀττικῇ τὴν Μεγαρικὴν βεβαίως, τὴν θρυλουμένην ἐν Ἴσθμῷ στήλην ἔστησεν, ἐπιγράφας τὸ διορίζον ἐπίγραμμα τὴν χώραν δυσὶ τριμέτροις, ὧν ἔφραζε τὸ μὲν πρὸς ἑω·
τάδ' οὐχὶ Πελοπόννησος, ἀλλ' Ἰωνία,
τὸ δὲ πρὸς ἐσπέραν·
τάδ' ἐστὶ Πελοπόννησος, οὐκ Ἰωνία.

Having attached the territory of Megara securely to Attica, he set up that famous pillar on the Isthmus, and carved upon it the inscription giving the territorial boundaries. It consisted of two trimeters, of which the one towards the east declared:—

“Here is not Peloponnesus, but Ionia;”

and the one towards the west:—

“Here is the Peloponnesus, not Ionia.” (tr. Perrin)

Wilamowitz⁶¹⁹ believes the “Theseus” inscription a later forgery which arose at a time (Peek suggests maybe 5th c. BCE) “als man wünschte, dass Ionien bis dahin reichte: das ist eben nur in der bezeichneten Epoche der Fall. Man suchte und fand in der Sage die Begründung für den Anspruch, den man erheben wollte.”⁶²⁰ As it happens, Theseus is incidentally otherwise associated with forgery in the Plutarchean life. At *Theseus* 20.3-5 (citing *FHG* IV 371 Παίων ὁ Ἀμαθούσιος), Plutarch relates how the women of Cyprus tried to comfort Ariadne in her abandonment on the island by means of a forged “love letter” (γράμματα πλαστά) from Theseus. Just prior to that, at *Theseus* 20.1-2 (citing Hereas of Megara *FGrH* 486 F 1) relates that Peisistratus deleted a line from Hesiod (fr. 105 Rzsch: Δεινὸς γάρ μιν ἔτειρεν ἔρωσ Πανοπηίδος Αἴγλης) just like he added one to Homer (*Od.* 11.631: Θησέα Πειρίθοόν τε θεῶν ἀριδείκετα τέκνα), in both cases with the aim of flattering the Athenians (χαριζόμενον Ἀθηναίους).⁶²¹ As Pliny’s testimony about the Sarpedon letter already made clear, the ancients had no necessary reservations about the historicity and claims of supposedly ancient inscriptions.⁶²² Similarly, pseudepigraphic attribution to ancient provenance in the oracular

619 Wilamowitz 1875:323 (cf. Peek 1960:1n2 ad Plutarch, *Theseus* 25.4 and Strabo 3.171, 9.392).

620 Wilamowitz 1875:323 (further citing Strab. IX 392 = Soph. fg. 19).

621 Cf. West *ML* 1966:49-50 w/ 50n1 (rejecting Hereas of Megara as satisfactory evidence for a Pisistratean recension of Hesiod).

622 Pfohl 1968:35n3 cites Schmid-Stählin, *Gesch. Griech. Lit.*, I.1, p. 47n1 (“Die Alten glaubten an Inschriften aus vortroischer und troischer Zeit”).

ἡέλιός τ' ἀνιῶν λάμπη, λαμπρά τε σελήνη,
καὶ ποταμοὶ γε ῥέωσιν ἀνακλύζῃ δὲ θάλασσα,
αὐτοῦ τῆδε μένουσα πολυκλαύτου ἐπὶ τύμβου 5
ἀγγελέω παριούσι Μίδης ὅτι τῆδε τεθάπται.⁶³⁰

I am a bronze maiden, and I lie atop the grave of Midas. 1
As long as water flows and trees grow tall,
the shining sun rises and the moon shines,
the rivers flow and the sea stirs,
I will remain right here atop the much bewailed tomb, 5
announcing to passersby that Midas is buried here.

Meter, as an aid to memory and the ear, serves both oral and literate culture by preserving with relative accuracy traditional spoken poetry over time as well as facilitating the ancient habit of reading aloud.⁶³¹ Scodel emphasizes how a fixed stone inscription serves as an intermittent reference text supplementing a local oral memory.⁶³² More so than Hipparchus' herms, the Midas text suggests both physically and verbally a certain permanence (Socrates' witty critique aside). A funerary inscription discovered near the Midas tumulus in Phrygia, however, has substituted the name of the celebrated deceased for that of Midas⁶³³ while appropriating for its own purposes five of the original verses. After identifying the surviving family members who created the monument, the inscription continues (in brackets the line order of the Midas epitaph as above per D.L. 1.89):

φαιδρότατον βωμὸν στῆσαι σημάντορα τύμβου, 7
εὔτ' ἂν ὕδωρ τε ῥέει κὲ δένδρεα μακρὰ τεθήλη, [=2]
κὲ ποτ[α.]μο[ῖ] ναίουσιν, ἀνα[β.]ρύζῃ δὲ θά[λασ]σα. [=4]
αὐτῷ τῷδε μενω πολυκλαύτῳ ἐπὶ τύν[β]ῳ. 10 [=5]

630 Allen 1912:198-9 (*Vita Herodotea* 135-40; line order = D.L. 1.89).

631 Scodel 1992:71.

632 Cf. also Rose HJ 1923:163.

633 Impetus for the Homeric Midas epitaph is ascribed at *Vit. Herod. Hom.* 11 (Allen [1912] 1961:198 1.132; Wilamowitz 1916:7 1.27) to a commission from the late Phrygian king's in-laws (*πενθεράων*, Vasiloudi 2013:121: "Angehörigen"), but a precise personal referent is perhaps unnecessary, given the traditional, recurring name's practically titular function; the most famous (quasi-legendary) individual was the last king of Phrygia (Hdt. 1.14.2-3). Note the marriage of Midas of Phrygia to the daughter of Agamemnon of Kyme recorded in Aristotle's *Constitution of Kyme* (Rose V 1886:379 fr. 611.37); cf. the heroically named Chian king Hektor reported by Ion of Chios (Paus. 7.4.8-10 = *FGrH* 392 F1 = 98 Leurini).

<i>ἀγγέλλω παριοῦ[σ' ὅτι] Πρόκλος ὦδε τέθ[απτ]αι....</i> ⁶³⁴	[~6]
erected the brightest altar as an identifier of the tomb,	7
while water flows and trees grow tall,	[=2]
the rivers run and the sea stirs.	[=4]
I will remain right here atop this much bewailed tomb.	10 [=5]
I announce to those passing by that Proklos is buried here.	[~6]

The word *σημάντωρ* in line 7 of the derivative Proklos epitaph is an interesting substitute for the original bronze maiden. Instead of a statue, the speaker is now literally a “signifier”—a guide or informant identifying the deceased and his family (but morphologically related to *σημαντήρ*, a seal or signet ring). If we take note here of Socrates’ version of the Midas epitaph (Pl. *Phdr.* 264c-d), which substitutes *ὄφρ’ ἂν ὕδωρ* for the *ἔστ’ ἂν ὕδωρ* in line 2, we might detect what is at least a homology in Theognis’s promise to Kyrnos of immortal fame (250-251): “*πᾶσι δ’, ὅσοισι μέμλε, καὶ ἔσσομένοισιν ἀοιδή / ἔσσηι ὁμῶς, ὄφρ’ ἂν γῆ τε καὶ ἠέλιος.*”⁶³⁵ The *ἔσσομένοισιν* clearly refers (not unlike Horace regarding his books future role, and Theognis) to future generations, the funerary atmosphere having already been established less than ten line previous (242-244):

*...καὶ ὅταν δνοφερῆς ὑπὸ κεύθεισι γαίης
βῆις πολυκωκύτους εἰς Αἴδαο δόμους,
οὐδέποτ’ οὐδὲ θανῶν ἀπολείς κλέος, ἀλλὰ μελήσεις
ἄφθιτον ἀνθρώποισ’ αἰὲν ἔχων ὄνομα...*

...and whensoe’er thou comest to the much-lamenting
homes of Hades, beneath earth’s murky vaults,
never, though dead, shall you lose your renown, nor escape notice,
having ever imperishable fame among men...

634 Souter 1896:420; cf. GVI 1945, vv.1-5 (= vv.7-11 here).

635 Cf. Ford AL 2002:102; the Midas epitaph served many generations of later poets, Greek and Latin: cf. Virgil, *Eclogue* 5.74-8 (~1.59-63); *Aeneid* 1.605-10 (Janko 1988); Ovid, *Ars am.* 1.15.9f.; Lucan, *Bel. civ.* 1.89-93; Tibullus, 1.4.65; and Silius, *Pun.* 7.476ff., 8,173ff.

The immortality bestowed by fame is equivalent to the popularity of the poet's verse. The epitaph's popularity is reflected in a relatively large number of early variants, the result of both misquotation from memory as well as via intentional recomposition or expansion.⁶³⁶

Socrates in his recitation did not attribute the epitaph to Homer, perhaps, it is suggested out of regard for the literary sensibilities of his interlocutor.⁶³⁷ Simonides, attributing it to Kleoboulos of Lindos,⁶³⁸ first paraphrases its language (his lines 2-4 correspond closely to lines 2-4 of the epitaph) and then pronounces judgement:

ἅπαντα γὰρ ἐστί θεῶν ἥσσω· λίθον δὲ
καὶ βρότεοι παλάμαι θραύοντι· μωροῦ
φωτὸς ἄδε βούλα.⁶³⁹ 5

For all things are inferior to the gods: even men
shatter stone with their hands: this is the counsel
of a foolish man. 5

Favorinus, as well, dismisses the bronze maiden's "rather shocking"⁶⁴⁰ pretensions to immutability.⁶⁴¹ This conflict between famous words serving as intact living memorial and the physical decay of the written document is the central issue for both Horace and Theognis: despite the Roman taunting his manuscript with its impermanence (ll.10-12, 18), both poets are dependent upon their respective texts to faithfully transmit their message beyond their own lifetimes, whereas both hint at their mortality, Horace appealing to the text itself, Theognis to Kyrnos and his sympotic peers (Theog. 28, cf. 37-38; Hor. *Epist.* 1.20.20-28).

This fame is specifically not limited to Megara, rather the Muses are to convey Kyrnos' name abroad, bestowing a pan-Hellenic fame: "πωτήσηι, κατὰ γῆν πᾶσαν ἀειρόμενος" (237),

636 Wilamowitz 1916:422, Janko 1988:260, Ford AL 2002:101.

637 Cf. Wilamowitz 1903:100, re the sphragis in the Delian hymn wherein the bard would have originally named himself, but the name has since fallen away because it was not Homer, as tradition came to require.

638 Parmentier 1914:394 (per Waltz 1960:119n1) wished to attribute the epitaph to Plato himself.

639 *PMG* 581 Simonides 76 (p. 299); Diehl, XI Simonides 48 (p. 81) = D.L. 1.90.

640 Wade-Gery 1933:77n23.

641 Favorinus [Dio Chrysostom], *Or.* 37.38-9, quoting, and thereby preserving, lines 1, 2, 5 and 6 of the epitaph.

“καθ’ Ἑλλάδα γῆν στρωφόμενος, ἦδ’ ἀνὰ νήσους / ἰχθυόεντα περῶν πόντον ἐπ’ ἀτρύγετον” (246-247).⁶⁴² Such pan-Hellenism is implicit in the poet’s earlier contrast between his universal renown and the disapproval of his fellow citizens: “...πάντας δὲ κατ’ ἀνθρώπους ὀνομαστός.’ / ἀστοῖσιν δ’ οὐπω πᾶσιν ἀδεῖν δύναμαι” (23-24). This antithesis could only serve to emphasize for Kyrnos the value of discretion in the choice of companions (important to the arguments of both Svenbro and Bakker).

In a fragment addressed to Alcibiades, Kritias presents the earliest recycling of Theognis’ σφραγίς. He proclaims his own good service in securing his return, choosing his words in conscious imitation of his aristocratic model⁶⁴³ (fr. 3D ap. Plut. *Alcib.* 33.1 Ziegler):

γνώμην δ’ ἢ σε κατήγαγ’, ἐγὼ ταύτην ἐν ᾧπασιν
εἶπον καὶ γράψας τοῦργον ἔδρασα τόδε.
σφραγίς δ’ ἡμετέρης γλώσσης ἐπὶ τοῖσδεσι κείται.

This is the motion which brought you back, which I spoke
before all, and setting it in writing I did it.
And the seal of our tongue is set upon the following words⁶⁴⁴

Like his model, Kritias, speaking directly to a single addressee, sets a seal on his words, which followed (τοῖσδεσι <ἔπεισι>). The metaphoric value of Theognis maintained its currency well beyond Horace’s time, as we see in *Epig.* 11 (*A.P.* 10.42) of ps.-Lucian, which returns to the tongue-seal imagery: “Ἀρρήτων ἐπέων γλώσση σφραγίς ἐπικείσθω· / κρείσσων γὰρ μύθων ἢ κτεάνων φυλακὴ.” The reference to Theognis is again unambiguous, and it is interesting to note here the clearly expressed distinction between verbal (intellectual) and physical (real) property. Unlike the Kritias fragment, where the tongue features as a subjective genitive governed by σφραγίς, the speaker’s tongue as an objective dative is the recipient of the seal’s activity. Novel

⁶⁴² Hubbard 2007:198.

⁶⁴³ Cf. Hubbard 2007:201 and references in n. 23.

⁶⁴⁴ Pratt 1995:179: “a written version of my speech seals and authorizes these words.”

is the seal's association with silence, here emphatically a virtue.⁶⁴⁵ Not only are these *ἔπη* unwritten, but they shall remain unspoken as well. Despite the transparent borrowing, this seal functions quite differently from that of Theognis; in fact, quite like we would expect a seal to behave. Such silence, however, is not foreign to Theognis (814-819):

Βοῦς μοι ἐπὶ γλώσση κρατερῶι ποδὶ λάξ ἐπιβαίνων
 ἴσχει κωτίλλειν καίπερ ἐπιστάμενον. 815
 Κύρν', ἔμπης δ' ὅ τι μοῖρα παθεῖν, οὐκ ἔσθ' ὑπαλύξαι·
 ὅττι δὲ μοῖρα παθεῖν, οὔτι δέδοικα παθεῖν.
 Ἐς πολὺν ἄρρητον⁶⁴⁶ κακὸν ἤκομεν, ἔνθα μάλιστα,
 Κύρνε, συναμφοτέρους μοῖρα λάβοι θανάτου.

An ox, stamping on my tongue with sturdy foot,
 restrains me from chattering, though I am versed in it. 815
 Kyrnos, still it is impossible to escape from fated suffering;
 but what I am fated to suffer I nowise fear to endure.
 Into a vast unspeakable evil are we come, wherein above all,
 Kyrnos, the fate of death may seize us both together.⁶⁴⁷

Important in both cases is the suggestion that the speaker, though hinting at further information, nonetheless has the ability to withhold as well as reveal his knowledge.

In the *Phaedrus*, Plato's extended assault on book culture and the power of writing, Socrates' complains that the written word, unmindful of context or interlocutor, always signifies the same thing: “ἔν τι σημαίνει (sc. λόγος γεγραμμένος) μόνον ταῦτόν ἀεί” (275d9).⁶⁴⁸ For Socrates, this is a bad thing. Yet for an author at the dawn of literacy, self-conscious of his skill and in search of recognition as well as a means of securing that recognition, writing will present an obvious attraction. Scodel emphasizes the initial appearance of permanence, or a stave

645 This passage is reminiscent of the proverbial ox on the tongue, representing an imposed silence; cf. Aeschylus, *Agamemnon* 36-7: “τὰ δ' ἄλλα σιγῶν βοῦς ἐπὶ γλώσση μέγας / βέβηκεν.” Note, however, the difference between Theognis's avowed self-imposed silence (cf. Theognis 814ff., quoted above) and the externally imposed silence of the household servant, one not entitled to *παρρησία*.

646 Assuming the reading of one (now missing) of the three primary MSS as well as seven others consulted by Welcker; *contra* Young (1971:51), who prints *πολύαρητον*, but in agreement with Hudson-Williams (1910:143 and n. ad loc.).

647 Adapted from Banks 1856:262.

648 Cf. Pratt 1995:175.

against a faltering memory, which early writing would have presented to the illiterate mind. Theognis refrains from committing to written expression (and hence public dissemination) what is better suited to intimate conversation. It is on this basis that Hubbard justifies his unitarian reading of 19-38.⁶⁴⁹ The *σφρηγίς* is divided into two corresponding halves: 19-26 attesting to the poet's written publication, and 27-38 cautioning his addressee that the only guarantee for correct instruction in the very wisdom which the poet is hereby publishing is direct personal association with the same type of good men from whom the poet learned in his youth (27-28, 31-32, 35). Svenbro therefore claims that "Plato's strategy is to be found *in nuce* in Theognis, where the poet declares that the sense of his poetry will not be falsified 'if a worthy man is present when it is recited.'"⁶⁵⁰ Yet nearly all other commentators hold to a textual view of verse 21: no one, Theognis asserts, will accept falsified or inferior poetry, when his certified *σοφίη* is ready to hand for consumption. The persistent notion is that Theognis has contrived some mechanism to render his poem (as the words themselves seem to straightforwardly suggest) impervious to theft or distortion. Though Svenbro seems to attribute a perhaps too sophisticated theory⁶⁵¹ of writing and pedagogy to the Archaic elegist, his emphasis on direct interpersonal communication suits Theognis' political environment, and accords well with Hubbard.

Bakker, taking to heart the environment of civil strife and aristocratic factionalism underlying much of the *Theognidea*, finds that the poet is most concerned with addressing his

649 Hubbard 2007:207-212.

650 Svenbro 1993:216n100; Theognis 21: "οὐδέ τις ἀλλάξει κάκιον τοῦσθλοῦ παρεόντος". Svenbro's interpretation is arguably strengthened by a passage in Aristotle: τὰ τοῦ θεοῦ {...} τελειοτάτη τέχνη καὶ ἐπιστήμη δημιουργηθέντα. „οὐδὲ γὰρ γυνή“ φασί „τοσσόνδε νόου ἐπιδεύεται ἐσθλοῦ, ὥστε χερείον' ἐλέσθαι ἀμεινοτέρων <παρεόντων>.“ Aristot. Cat. 1, treatise 1, frag. 21.17 (ed. V. Rose 1886); Philo, *De aet. mund.* 41.7-8 Cohn/Reiter; Eustathius *ad Odys.*, 1.260.30 Stallbaum. The similarity of this passage to Theognis was first pointed out by David Blank, following Bakker's talk at UCLA, 22 April 2010.

651 Svenbro 1993:216n100 appeals to Szlezák's *Platon und die Schriftlichkeit der Philosophie*.

intended, exclusive audience: the *esthloi*.⁶⁵² A secured line of elite communication is what the true seal is meant to accomplish. For the purposes of appropriation, the derivative poet need not be overly sensitive to meter, for it suffices merely that a bare minimum of the original wording be obscured. An outright plagiarist would naturally be undeterred by any single signature, and could just as well excise as replace it.⁶⁵³ Although Bakker identifies “Κύρνε” as the ostensible seal, the seal is not merely the name. If Theognis simply wished to be identified with his poetry, then any verse speaking to this his favored addressee (however falsifiable) will evoke his particular association with Kyrnos and suggest the author at least as reliably as his personal “signature,” thanks to the quantity of poems marked by the Kyrnos label. Were that all, then the name Kyrnos just as well as the name Theognis are arguably appropriate and successful “seals”. For Bakker, however, “Κύρνε” only truly functions as a “seal” to the extent that it acts as a token of mutual recognition among initiates: it is a watchword that confirms to the *ἐσθλοί* that they are the right audience. The seal, therefore, is ultimately the audience itself, properly constituted. It is with this in mind that Bakker, too, construes *τοῦ ἐσθλοῦ παρεόντος* (21) as referring to the personal presence of such an initiate at an exclusive and inherently political sympotic gathering. But because this language is coded, the seal, though it can be seen (the poet declares its presence out loud), remains nonetheless unrecognized except by those for whom it is intended.

A similar, hypothetical seal was described by Wittgenstein in an unpublished preface.⁶⁵⁴

If a book is written for only few, he says, then only they will understand it. The book therefore automatically excludes the unwanted reader. Yet there is no sense in advertising this intention,

652 Bakker (UCLA 22 April 2010, reconstructed from personal notes).

653 Pratt 1995:176.

654 Wittgenstein 1977:23 (per Szlezák 2003:75-76).

unless your goal is for the uninitiated to admire you from without.⁶⁵⁵ Wittgenstein suggests, therefore, that the only decent thing to do is to use a lock visible only to those who can open it. The uninitiated, then, will not be aggrieved by Theognis' stated seal, as they will be satisfied with their own understanding of it. Moreover, where the book culture of the *Phaedrus* breaks down in the face of Socratic interrogation, the social context of the Theognidean poetry book assures its salvation: in its natural habitat, where each symposiast is by turns both speaker and audience, and each a privileged in-grouping, the book's oral dimension ensures that its text, fixed only to some uncertain degree, is maintained, the character of its guardians held up to inspection.

It has become a trope of Theognis scholarship to comment on the irony⁶⁵⁶ that the work of the first poet to expressly condemn textual corruption and misappropriation has suffered so severely from this very fate, the "genuine" quite indistinguishable amongst interpolations, misattributions, and degenerate variants. I believe Theognis' seal was never intended to ensure against such long-term textual corruption. However, in terms of identification of an underlying work, "Theognis of Megara" transcends mere signature to the extent that a subtly elegant integration into the meter, and the stanzaic structure of the whole, make its extraction or replacement a less than trivial exercise. Whereas the two- or (in the case of elision) one-syllable "Κύρ(ε)" alone cannot achieve this, and its presence in a particular poem (as evidenced by the earliest ancient Theognis quotations) is insufficient guarantee of authenticity, its distribution throughout the corpus is closer to achieving a more modern concept of a distinguishing watermark, or "sub-seal," which at its very least serves as a useful label for the Theognidean

655 For an example of such self-serving self-advertisement in Mesopotamian scribal culture, cf. Lenzi 2013.

656 E.g. Woodbury 1952:22 = 1991:29, Scodel 1992:75; cf. Pratt 1995:171, taking note of the tradition of taking note of the irony.

corpus. This branding functions most effectively, however, in combination with both the unique counterseal of Theognis' personal name and toponym and his personal style, a seal impossible to remove without damaging the text at any given point.

In *De propriis libris*,⁶⁵⁷ Galen testifies to the certificate power of his own authorial personality when he recounts how a patron is warned by a bystander against the purchase of a book being offered under his name. Based on perusal of merely the first two lines this advisor judged, "This is not Galen's style: the title is false." With a philologist's sensitivity to manuscript corruption,⁶⁵⁸ Galen himself takes care to secure his own texts and those of his readers, endorsing for example the use of metrics in pharmacology as a method of locking in prescribed ingredients and quantities (*De antidotis* 14.115):⁶⁵⁹

ταύτας μὲν οὖν τὰς ἀντιδότους τὰς γεγραμμένας πάσας ὁ Ἀνδρόμαχος ἔγραψεν. ἐπεὶ δὲ τὰ διὰ μέτρων γεγραμμένα, καὶ πρὸς ἀκρίβειαν τῶν σταθμῶν τῶν φαρμάκων, καὶ πρὸς μνήμην ἐστὶ χρησιμώτατα, διὰ τοῦτο καὶ τὰς ὑπὸ Δαμοκράτους συγγεγραμμένας ἀξιολόγους ἀντιδότους ἐφεξῆς ὑπέταξα, τὴν ἀρχὴν ἀπὸ τῆς Μιθριδατείου ποιησάμενος.

Stemplinger seems to overreach in citing this passage as evidence supporting his passing assertion that ancient Greek doctors wrote their prescriptions in verse "um ihnen eine σφραγίς aufzudrücken und sie vor Fälschungen zu schützen."⁶⁶⁰ Yet, when the doctor recommends⁶⁶¹ converting any digits (i.e. Greek letter-numerals) in manuscript recipes into words, he confirms, however prosaically, that meter secures and is taking a poet's care for the integrity of his text.

We may situate Theognis, like Galen, in the middle of the Ford-Hubbard spectrum: his unique style provides the basis for judgments as to the authenticity of attributed texts; Theognis himself as an author (authorial voice) assumes authority in the exercise of his σοφίη, both by his

657 *De propriis libris* 19.8-9; cf. Totelin 2009:81f.

658 Totelin 2009:89-92.

659 Vol. 14, p. 115 Kühn 1827.

660 Stemplinger 1912:174n3.

661 Cf. Totelin 2009:82.

free selection among variant oral traditions and by simultaneously assuming the right of personal emendation, which he passes along under his own name-label. The seal then is the stamp of his style inscribed with his name and his addressand's name combined to secure the integrity of the text together with the identification of its author. More importantly, however, is the factor of fame: Theognis' success lies most of all in his ability to achieve the widest and strongest association of his name, first with the verses in which it and Kyrnus' name are integrated, then with the type of traditional verse he employed, which ultimately lent itself to collection into the current corpus.

CHAPTER 4

Exclusive rights and incentives to innovation

Sybaris and patent

After treating Etruscan, then Sicilian luxury, Athenaeus begins his treatment of luxury (*τρυφή*, *truphe*)⁶⁶² among the Sybarites (12.15.5 518c) as if a matter of self-evident common

662 Note occurrences of the term e.g. at 12.16.4 518e (*διὰ τὴν τρυφήν*: “as a result of their addiction to luxury,” tr. Olson), 12.17.10 519c (*μετὰ πάσης τρυφῆς*: “in enormous luxury,” tr. Olson), 12.18.5 519f (*ἐκτρυφήσαι*) [+ 12.18.6 519f: *ποιῆσαι ζῆσαι ὑπὲρ τὸ μέτρον ἐκκελυμένως*), 12.18.21 520b (*οὐδέποτε παύσονται τρυφῶντες*), 12.18.27 520c (*τιμούμενοι πρὸς ἑαυτοὺς τρυφαῖς*), 12.18.28 520c (*πρὸς ἀπάσας τὰς ἄλλας ἡμιλλᾶτο περὶ τρυφῆς*), 12.19.1 520c (*εἰς τηλικούτον δ' ἦσαν τρυφῆς ἐληλακότες*: “they had grown so addicted to luxury,” tr. Olson); 12.20.12-13 521c (*ἐξοκέιλαντες εἰς τρυφήν*: “ran aground on the reef of luxury,” tr. Olson—a phrase recurring at 12.521d, 522a, 523c, 526a, 528b (per Olson's note ad loc.), as well as in a variant substituting *hybris* for *truphe* in treating the fall of Sybaris in 510 BCE at 12.21.2 521d: *οὖν ἐξοκέιλαντες εἰς ὕβριν*); cf. 12.17.6 519c (of the Milesians). Note Aristotle's understanding of wealth (even where evenly distributed in society) and its perverted variant, luxury, as relative to circumstances (Arist. *Pol.* 2.7.7 1266b24-27: *ἀλλ' ἔστι τὴν ἰσότητα μὲν ὑπάρχειν τῆς οὐσίας, ταύτην δ' ἢ λίαν εἶναι πολλήν, ὥστε τρυφᾶν, ἢ λίαν ὀλίγην, ὥστε ζῆν γλίσχρως*).

knowledge (*περὶ δὲ Συβαριτῶν τί δεῖ καὶ λέγειν;*),⁶⁶³ a narrative which proceeds (more-or-less continuously) down to their ultimate destruction at the hands of the Crotonians (12.21.24 522a)—whose own fall (similarly interpreted, no doubt under the influence of his sources, as cosmic-moral retribution for their hybristic decadent excess)⁶⁶⁴ the author narrates in turn, pursuing his theme. Within his review of Sybaritic excess, Athenaeus makes note of a particular institution (if this term may be allowed) which must be of particular interest for any investigation into intellectual property in the ancient world. He first makes the following observation (12.17.18-24 519d-e):

ποιοῦνται δὲ καὶ δημοσίᾳ πολλὰς καὶ πυκνὰς ἐστιᾶσεις καὶ τοὺς λαμπρῶς φιλοτιμηθέντας χρυσοῖς στεφάνοις τιμῶσι καὶ τούτους ἀνακηρύττουσιν ἐν ταῖς δημοσίαις θυσίαις καὶ τοῖς ἀγῶσιν, προσκηρύττοντες οὐκ εὖνοϊαν, ἀλλὰ τὴν εἰς τὰ δεῖπνα χορηγίαν· ἐν οἷς στεφανοῦσθαι καὶ τῶν μαγείρων τοὺς ἄριστα τὰ παρατεθέντα διασκεύασαντας.

They (i.e. the Sybarites) also have large numbers of publicly funded feasts, one after another, and they honor individuals who have particularly distinguished themselves with gold garlands, and announce their names at their public sacrifices and games, advertising not the general good-will they have shown, but their specific contribution to the dinners—at which they also offer garlands to the cooks who prepared the best dish! (tr. Olson)

Though he cites no source, when he returns to the matter a little later he appears to be quoting Phylarchus directly (12.20.17-23 521c-d):

663 For the Sybarites' proverbial decadence, cf. Suda s.v. *Συβαριτικάις* σ 1271 Adler, LSJ s.v. *Συβαριτικός* (and related forms *συβαρίζω/συβριάζω, συβαρισμός/συβριασμός*); Ar. *Pax* 344; Diod. Sic. 8.18-20; Strab. 6.1.13 (263); Ael. *VH* 1.19, 9.24, 12.24; Athen. 6.273b-c; Archyt. ap. Stob. 4.1.138.

664 As sources in the section dealing with Sybaritic decadence (12.15.5 518c-12.21.24 522a) Athenaeus explicitly cites Timaeus (12.15.13-14 = *FHG* I 205 = *FGrH* 566 F 49; 12.17.4 519b = *FHG* I 205 = *FGrH* 566 F 50); Ptolemy (12.16.9-10: *ἐν ὀγδόῳ Ὑπομνημάτων, Commentaries VIII* = *FHG* III 188 = *FGrH* 234 F 8); Eubulus (12.16.17.519a: *ἐν Χάρισιν, Graces* = II 205 K = fr. 114, on pets, e.g. geese, sparrows, monkeys, as self-indulgent preoccupations); Athenodorus (12.16.22.519b = *ἐν τῷ περὶ Σπουδῆς καὶ Παιδιᾶς [On Seriousness and Play], FGrH* 746 F 3, regarding Archytas of Tarentum, A8 Huffmann); the Delphic Oracle (Q122 Fontenrose); Aristotle's *Constitution of Sybaris* (12.19.4-5 520c-d: *τῆς Πολιτείας αὐτῶν*, fr. 533 Rose = 132 Gigon fr. 600.1); Charon of Lampsacus, *Annals* II (12.19.10-11 520d: *ἐν δευτέρῳ Ὀρων, FHG* I 34 = *FGrH* 262 F 1, about the Cardians); Phylarchus (12.20.1-2 521a-b: *ἐν τῇ πέμπτῃ καὶ εἰκοστῇ τῶν Ἱστοριῶν, History XXV* = *FHG* I 347 = *FGrH* 81 F 45); Heraclides of Pontos (12.21.13.521e: *ἐν τῷ περὶ Δικαιοσύνης, On Justice* fr. 49 Wehrli = fr. 22 Schütrumpf). A marginal comment at 12.15.12-13 518d, in MS A suggests a further source in Alciphro's *Περὶ παλαιᾶς τρυφῆς (On the Ancient Addiction to Luxury)*.

εἰ δέ τις τῶν ὀψοποιῶν ἢ μαγείρων ἴδιον εὔροι βρώμα καὶ περιττόν, [τὴν] ἐξουσίαν μὴ εἶναι χρῆσασθαι τούτῳ [ἕτερον] πρὸ ἐνιαυτοῦ ἀλλ' ἄλλ' αὐτῷ τῷ εὐρόντι, τὸν χρόνον τοῦτον ὅπως ὁ πρῶτος εὐρών καὶ τὴν ἐργασίαν ἔχη, πρὸς τὸ τοὺς ἄλλους φιλοπονοῦντας αὐτοὺς ὑπερβάλλεσθαι τοῖς τοιούτοις.

And if one of their chefs or cooks invented an exceptional new dish, no one was permitted to make it for a year except the man who came up with it, in order that the inventor would have the exclusive right to produce it for that period, the goal being to encourage other individuals to work hard to outdo themselves in this area. (tr. Olson)⁶⁶⁵

This latter, once recondite passage in particular has become in recent years ever more widely cited in popular as well as scholarly legal literature as the earliest example of a patent along the lines of a modern intellectual property regime. This currency owes, I believe, in large part to its inclusion on Wikipedia's article on the "History of Patent Law."⁶⁶⁶ The undue prominence of this

665 Casaubon (1600, ad lib. 12, cap. 20, p. 521; ed. Schweighauser, 1804, vol. 6, p. 382) renders the "law" (*lex*) thus: "*Si quis coquus peculiarem et excellentem aliquem cibum invenerit, ne cui alii fas sit eo uti ante annum, nisi ei qui invenerit: ut toto illo tempore auctor eius inventi quaestum inde faciat: quo laborent et alii omni studio sese invicem talibus inventis superare.*" His Latinate predecessors for comparison: Natale Conti (Venice 1556, lib. 12, cap. 6, p. 211, ll. 41-45) translates: "*Si quis obsoniorum artifex aut coquus edulium aliquod dignum invenisset ac magnificum, nulli alii per annum id facere licebat, quo ille, qui primus reperisset, per id tempus quaestus haberet, atque alios laborantes ipsos his omnibus excelleret.*" Jacques Daléchamps (Lyon 1583, p. 388): "*si coquus aut eorum qui obsonia condiunt aliquis privatim cibum lautiozem adinvenisset, nemini licere ante sequentem annum illo uti, sed ipsi tantum qui excogitasset toto anni decursu ut eius conficiendi negotium ipsi daretur, et aliorum eiusdem artis peritorum industriam ac diligentiam gloria et quaestu ille superaret.*"

666 At <https://en.wikipedia.org/wiki/History_of_patent_law>. The article originally followed Stobbs 2000, later Frumkin 1945 in citing Athenaeus; the relevant editorial history is as follows:

2005.06.09: first version written by user "Edcolins" (who derived its essentials from the then existing Patent Law article), merely stating "there is evidence suggesting that something like patents was used among some ancient Greek cities."

2005.09.25: first source cited for patents in ancient Greece is "Gregory A Stobbs, Software Patents," added on (25 September 2005) by user "Edcolins".

2009.03.28: "Edcolins" added citation of "Charles Anthon, A Classical Dictionary: Containing An Account Of The Principal Proper Names Mentioned in Ancient Authors, And Intended To Elucidate All The Important Points Connected With The Geography, History, Biography, Mythology, And Fine Arts Of The Greeks And Romans Together With An Account Of Coins, Weights, And Measures, With Tabular Values Of The Same, Harper & Bros, 1841, page 1273."

2009.08.24: at 02:55, user "Nowa" (who claims to be a US Patent Agent and an inventor) added the name Athenaeus and reference to "M. Frumkin, "The Origin of Patents", Journal of the Patent Office Society, March 1945, Vol. XXVII, No. 3, pp 143 et Seq." At 03:01 & 03:03, the same user ("Nowa") added (under the heading "First Patents") to Wikipedia's Athenaeus article the text: "Athenaeus, described what may be considered the first patents (i.e. exclusive right granted by a government to an inventor to practice his/her invention in exchange for disclosure of the invention). He mentions that in 500 BC, in the Greek city of Sybaris (located in what is now southern Italy), there were annual culinary competitions. The victor was given the exclusive right to prepare his dish for one year." (including the same citation to "M. Frumkin, 'The Origin of Patents', Journal of the Patent Office Society, March 1945, Vol. XXVII, No. 3, pp 143 et Seq.")—this text has remained essentially unchanged, with no addition of further secondary sources.

antiquarian factoid on Wikipedia’s otherwise spare Athenaeus page (thanks to its eager importation from the originating patent law page by one of the latter’s editors), benignly distorting the character and broader significance of the *Deipnosophistai*, arguably reflects the occasional arbitrariness of open source content development; the web of citation and unacknowledged dependence in the academic and popular legal literature touching on such supposed ancient precedents to modern IP speaks to Wikipedia’s preeminence as an information resource.⁶⁶⁷ (The general disinclination of this secondary literature to follow-up on such superficial references to ancient primary sources may also demonstrate modern legal scholarship’s corresponding disinclination to deal directly with ancient evidence,⁶⁶⁸ but this is not entirely the case, as will be made clear below). Raustiala and Sprigman, for example, who cite no earlier scholarly reference to Athenaeus or Phylarchus when they adduce the passage as “[t]he first recorded evidence we have of an IP system,”⁶⁶⁹ incorrectly refer to Sybaris as “the largest of the ancient Greek city-states,” perhaps mis-paraphrasing Wikipedia’s Sybaris article,

2012.05.08: explicit references to Phylarchus (Frumkin only names Athenaeus) first added in edits by user “Omerod” on 8 May 2012.

667 Cavicchi 2012:xiii may be cited as an extreme example of this (as well as of the potential for abuse of permissively licensed digital content), where the following has been tacitly cut-and-pasted, without source-citation, from Wikipedia’s “History of Patent Law” article (itself quoting Anthon 1842:1273 s.v. Sybaris): “In 500 BC, in the Greek city of Sybaris (located in what is now southern Italy), ‘encouragement was held out to all who should discover any new refinement in luxury, the profits arising from which were secured to the inventor by patent for the space of a year.’” Let it be here further noted that Sybaris continues a kind of digital life in contemporary IP scholarship as *Cybaris*®, an *Intellectual Property Law Review* (cf. Port 2010). The journal’s website (<http://mitchellhamline.edu/intellectual-property-institute/cybaris-an-intellectual-property-law-review/>) actually quotes Anthon 1842 (with attribution, but no doubt taking its lead from Wikipedia) in explaining its name (“Why *Cybaris*®? In the ancient Greek city of Sybaris in about 500 B.C., ‘encouragement was held out to all who should discover any new refinement in luxury, the profits arising from which were secured to the inventor by patent for the space of a year’”), along with an image of the obverse and reverse of a Sybaris incuse silver bull (<http://mitchellhamline.edu/intellectual-property-institute/wp-content/uploads/sites/21/2015/12/sybaris-coins.png>). The latter seems to be the first attempt to integrate material culture from the historical Sybaris into contemporary IP discourse.

668 I make no attempt here (as I have already made clear regarding my approach generally) to argue to the contrary that modern systems of intellectual property law need be accounted for through scholarly reference to ancient sources, where doubtless in only the rarest of cases (perhaps none) any direct causal relations to modern developments can be drawn.

669 Footnote at Raustiala/Sprigman 2012:81.

which cites Diodorus reference to “the largest city in Italy.”⁶⁷⁰ Wikipedia, on the other hand, like the Frumkin article which it cites, does not directly quote the language of either of the above Athenaeus passages (but does falsely ascribe Yonge’s translation to his publisher, Henry G. Bohn).⁶⁷¹ Raustiala and Sprigman may rather be following Adam D. Moore⁶⁷² in quoting Charles Burton Gulick’s English translation, even if from different printings. Similarly, Granstrand⁶⁷³ seems to draw on Bugbee⁶⁷⁴ in making his reference to Gulick’s Athenaeus. Bugbee for his part acknowledges Frumkin’s priority in citing Athenaeus, yet Frumkin’s widely cited article in the *Journal of the Patent Office Society* (JPOS) offers no citations and so brings us no further.⁶⁷⁵ Prager seems to have provided the most recent (self-avowedly abbreviated) bibliography of scholarly citations to Athenaeus/Phylarchus as a locus for ancient intellectual property history, giving credit to Cichorius’ 1922 article⁶⁷⁶ for having “discovered” it, since which the passage has been “frequently mentioned.”⁶⁷⁷

670 Cf. Diodorus 12.9, w/ Green 2006:189-191nn43-44, 46 (less expansive at Green 2010:99-100).

671 Yonge 1854.

672 Moore 2001:9-10, cf. 32n2 (citing “Athenaeus, Deipnosophistai. Translated by C. Burton Gulick. New York: G. P. Putman’s Sons, 1927, pp.348-49,” whereas Raustiala/Sprigman 2012:81 cites “Athenaeus, The Deipnosophists, Vol. 5, Charles Burton Gulick, trans. (Harvard University Press, 1927), 348-349”).

673 Granstrand 2003:21n9 citing “Athenaeus in ‘Deipnosophistae’, book XII, p. 521” based on “Charles Burton Gulick’s translation, Vol. I-VII, London/New York 1927-41, in Vol. V, p. 349.”

674 Bugbee 1967:166n5 citing “Athenaeus, The Deipnosophists, trans. by C. Burton Gulick. London, New York, and Cambridge, Mass., 1927-41, V, 348-49.”

675 Frumkin 1945:143 (mentioning neither Phylarchus nor any particular edition or translation of Athenaeus). Again without mentioning Phylarchus, Frumkin 1947b:47n2 cites “Athenaeus in his *Deipnosophistae*, ed. C.D. Yonge, London, 1854, vol. III, p. 835.”

676 Cichorius 1922, promptly reported by Lutter 1922:112. Writing much later in the same journal (GRUR), Zimmermann 1967:173 points for his source not to Lutter (nor to Berkenfeld 1949, also in GRUR), but to Klitzke 1959:617 (in the American JPOS), who himself (like Frumkin before him, also in JPOS) cites no previous scholarly references (Klitzke acknowledges Athenaeus as quoting Phylarchus and cites (617n7) “Athenaeus, ‘The Deipnosophists,’ 3 Bohn’s Classical Library 835 (1854)”). Even earlier in the JPOS, however, Ewing 1937:35 credits knowledge (his alone, or that of a wider public?) of the Sybaritic patent to “My friend and former Chief in the Patent Office, the late Gustav Bissing.” (JPOS 8.5 (Jan 1926), p. 203, remembers a Dr. Gustav Bissing as having risen to the post of “principal examiner” and head of Division 16 before retiring from the Patent Office in 1898 to enter private practice, dying in 1925 at the age of 63.)

677 Prager 1952:114n17, citing: JPOS 14 p. 348 (note on “Ancient Monopolies” at Smith AM 1932:348); JPOS 17 p. 444 (this is Spencer 1935:444, but I cannot find the reference to antiquity); JPOS 19 p. 35 (Ewing 1937:35), 78 (Coe 1937:78-79); JPOS 27 p. 143 (Frumkin 1945:143); Doorman p. 12 (Doorman 1941:12).

Interestingly, Prager is dismissive of Athenaeus' testimony, remarking that "[t]he story was current in classical times but it was merely a popular joke. Even if the story was true, it was not taken seriously in the Greek cities or Hellenistic empires,"⁶⁷⁸ adding "It seems that all this was merely in the spirit of revelry and carousing and that no 'law' was involved."⁶⁷⁹ No doubt taking a cue from Prager, both with respect to the passage's renown as well as its triviality, Bugbee refers to Athenaeus' comments on culinary patent among the Sybarites as "[w]ell-known—but apocryphal."⁶⁸⁰ This appraisal contrasts starkly with several matter-of-fact representations of the Sybaritic culinary patent as straightforward ancient precedent, which might introduce a reference to Athenaeus with such strong claims as "In fact, IP is one of the oldest tools of microeconomic policy"⁶⁸¹ or simply quote the passage without context in a manner which may be nearly as suggestive.⁶⁸² Earlier we find Ewing proclaiming "Here is a Patent System marked by monopoly and enforced in a city which was destroyed five hundred years before the Christian Era."⁶⁸³ In the same year, Patent Commissioner Conway P. Coe credits Phylarchus' testimony that "the rulers of the Greek city of Sybaris issued the first patents for articles of cuisine, if not the first patents for any 'new and useful art or composition of matter.'⁶⁸⁴ It indeed appears that they devised the earliest patent system, anticipating Great Britain's by a matter of twenty-five centuries, and our own by twenty-six." Speaking thus of "the Sybarite patent enactment" as one

678 Prager 1952:114.

679 Prager 1952:114n17 (citing Athen. 519d-e and 521c-d).

680 Bugbee 1967:166n5.

681 Weyl/Tirole 2010:2n3.

682 Weyl/Aftosmis 2010.

683 Ewing 1937:36.

684 This language goes back to the earliest formulations of U.S. patent law, at least as far back as the Patent Act of 1793; cf. Klein DJ 2011:288n2.

among “their laws,” he proclaims from Ecclesiastes (1.9), with a flourish: “There is no new thing under the sun.”⁶⁸⁵

Let the over-saturated Hellenism of felicitous expressions such as Coe’s that “[t]he name ‘Sybarite’ has come to be throughout civilization the synonym for epicure”⁶⁸⁶ serve as encouragement enough to persist in the search for ancient Greek precedents to what seems so quintessentially modern an institution as IP law. Yet, a cautious approach to ancient testimonia is advised.⁶⁸⁷ Even the citations found in legal scholarship to Athenaeus (“book XII, p. 521”⁶⁸⁸ versus “Book XII verse 521 lines c8-d3”⁶⁸⁹) illustrate the obscurity of ancient sources for non-specialists, mediated as they are by translations in a variety of editions.⁶⁹⁰ Dating, as well, compounds confusion, as when Bugbee, who dubs Athenaeus a “third-century (A.D.) author,”⁶⁹¹ is perhaps too literally followed by Weyl and Tirole in dating him to “c. 200-300.”⁶⁹² Bugbee dates the Sybaris of culinary patent anecdote times to “c. 600 BC,”⁶⁹³ and Weyl and Tirole have Athenaeus attesting “IP in Sybaris dating at least to the 7th century BCE.”⁶⁹⁴ Granstrand is either reasonably cautious or unwittingly broad in dating the patenting activity treated by Phylarchus

685 Coe 1937:78-79.

686 Coe 1937:78. Where elsewhere in the legal literature citing ancient precedents to IP the expression “Hellenic Greece” is needlessly redundant, the usage at Bugbee 1967:12 is clearly in contradistinction to “the era after Alexander’s death” and its “Hellenistic states” (for linguistic currency of the distinction, see e.g. the first two volumes of Émile Brehier’s history of philosophy, published in French in 1931/1938, in English in 1963/1965, resp.).

687 Cf. Gorman RJ/VB 2014:7 (“Anyone familiar with the literary sources for the history of archaic Sybaris must recognize that they are unusually rife with fiction”).

688 Granstrand 2003:21n9 (literally correct for the 16th century Casaubon edition).

689 Weyl/Tirole 2010:2n3.

690 Cf. Lenfant 2007:383-385 on Athenaeus’ textual history and citation systems. Fortunately for Athenaeus studies, the Digital Athenaeus project (dir. Monica Berti, Leipzig: <<http://www.dh.uni-leipzig.de/wo/digital-athenaeus/>>, <<http://digitalathenaeus.github.io/>>), with its Casaubon-Kaibel reference converter (<http://www.digitalathenaeus.org/tools/Casaubon-Kaibel_converter/>), points to a more transparent, accessible future.

691 Bugbee 1967:166n5.

692 Weyl/Tirole 2010:3n2.

693 Bugbee 1967:166n5.

694 Weyl/Tirole 2010:3n2.

to “700-500 BC”⁶⁹⁵ (approximately the entire life-span of Sybaris I), while a date of “in about 500 B. C.”⁶⁹⁶ or more simply “500 BC” (adopted by e.g. Foster & Shook, Chu,⁶⁹⁷ and Wikipedia), conveniently round, slightly undershoots the intended mark. Similarly, where the note on “Ancient Monopolies” in the JPOS cites Phylarchus as “a historian of the third century B.C.,”⁶⁹⁸ Choate (who quotes the passage seemingly as it appears in JPOS) is thereby led to cite Phylarchus as “writing in about 300 B.C.”⁶⁹⁹ Foster and Shook cite “a message by the third century Greek historian Phylarchus in the *Banquet of the Learned*,”⁷⁰⁰ followed by Chu who lightly transforms this into “In his work, *Banquet of the Learned*, the Ancient Greek historian Phylarchus described ...,”⁷⁰¹ further confounding Athenaeus’ and Phylarchus’ identities. Given that Athenaeus seems to be following Phylarchus exclusively (at least in part quoting *verbatim* from the latter’s *History*) in 12.20 521a-d (*FHG* I 347 = *FGrH* 81 F 45), the context of the main patent testimonium above, it is worth briefly rehearsing some basic historical and bibliographic facts regarding Sybaris, Phylarchus and Athenaeus, if they are to serve any purpose in constructing a prehistory of intellectual property in antiquity.

Overall, given its paucity of natural harbors and mineral deposits, “[t]he ‘instep’ of Italy had more to offer the farmer than the trader.”⁷⁰² Sybaris was founded by Achaean (Antiochos *FGrH* 555 F 12; ps.-Skymnos 340) and Troezenian (Arist. *Pol.* 5.2.10 1303a29) settlers⁷⁰³ ca.

695 Granstrand 2003:22.

696 Klitzke 1959:617.

697 Foster/Shook 1989:3, followed by Chu 1992:1344n21.

698 Smith AM 1932:348.

699 Choate 1973:5.

700 Foster/Shook 1989:3.

701 Chu 1992:1344n21.

702 Coldstream 1977:238 = 2003:220.

703 The mythographer Antoninus Liberalis (*Met.* 8.7) cites Sybaris as a Locrian foundation, and Solinus (*De mir. mund.* 2.10) as founded by Troezenians and Sagaris, the son of the Oelian Ajax (of Locris); Fischer-Hansen et al. 2004:295 notes the Locrian tradition as “presumably simple aetiology, entirely without historical value.”

720 BCE⁷⁰⁴ (Arist. *Pol.* 5.2.10 1303a30-35, Strab. 6.1.13 (263), Solinus 2.10; cf. Diod. Sic. 8.17), in a plain between the once separate (now confluent)⁷⁰⁵ Krathis (now Crati) and Sybaris (Coscile) Rivers (Diod. Sic. 11.90.3, 12.9.2; Ov. *Met.* 15.315) in modern Calabria on the instep of the Italian boot, facing the Gulf of Tarento.⁷⁰⁶ Some degree of integration of local tribal populations⁷⁰⁷ into its citizenry⁷⁰⁸ conceivably buffered early political and military pressures,

704 Though 720 BCE (ps.-Skymnos of Chios *Periēgēsis* at *GGM* I 211; Sybaris is covered at 337ff. = *GGM* I 210ff.; Coldstream 1977:238 = 2003:221 cites ps.-Skymnos 359-360 for the date) is the date most frequently cited for its founding, Dawson CM 1950:153 dismisses it as fantastical; Cerchiai et al. 2004:114 cites the alternative date of 709/8 BCE (per Eusebius) as more in line with archaeological evidence. Jeffery (LSAG²:251) defers to Callaway 1950:1ff. for discussion of the disputed dating. Osborne R 2009:84 reports the earliest archaeological evidence as falling in the 720's.

705 Hence, How and Wells (ad Hdt. 5.45.3: τὸν ξηρὸν Κρᾶθιν) speak of the Sybaris as a tributary of the Krathi, following the current rather than ancient nomenclature and riparian geomorphology. The map at Ferranti et al. 2011:59 fig. 2 depicts the modern together with the ancient riverbeds and shorelines as well as the current dig sites. Cf. Kleibrink 2001:33.

706 On the history of Sybaris in ancient sources, cf. Kleinschmit 1894, Cessi 1901, Dunbabin 1948:75-83, Callaway 1950 (esp. pp. 1-71), Bérard [1941] 1957:140-151, Tabouis 1958, Bullitt 1967 (collected excerpts from ancient sources in English translation only, for the most part without commentary), 1969:37-68 (Chs. 5-7), 117-130 (Ch. 13: Thuri), del Corno 1993; on the modern archaeological exploration of the site, cf. Callaway 1950:101-104, Rainey/Lerici 1967 (26-36 [Rainey 1967a] rehearses the history of prior excavations; 303-313 [Rainey 1967b] summarizes current findings), Bullitt 1969 (86-96 [Ch. 10] rehearses prior excavations), Rainey 1969a, 1969b, Colburn 1976, Kleibrink 2001, Guzzo 2005. Further useful overviews are Rutter 1970, Cerchiai et al. 2004:114-120, and Liguori 2004; MiBACT 2002 is a popular summary and guidebook. For the West Mediterranean context, see also Pugliese Carratelli 1996, Greco 2006.

707 On the indigenous communities encountered by Greek settlers of South Italy, see Pontrandolfo 2005, Attema et al. 2010 (pursuing a “non-dominant” archaeological history of Bronze and Early Iron Age indigenous colonization of the Sibaritide complementary to already established Greek colonial studies). Carter 1993:352 fig. 13 illustrates the relative positions of 8th c. BCE native settlements and subsequent Greek colonial foundations along the coast from Sybaris to Metapontum. Note Torelli’s caution against constructing an illusory dialectic opposition between an abstracted “Greek culture” and its contrived indigenous counterpart (Torelli 1977, treating religious ideology and class relations between Greeks and indigenous populations in Magna Graecia).

708 Carter presumes the growth of Sybaris depended “at least in part on the ready assimilation into the citizen body of the native populations resident in the countryside,” whether as contracted subalterns or commercially obtained slaves (Carter 1993:361, cf. 365n2; 344, speaking more generally: “[a]s need for a labor force increased, in order to cultivate an expanding territory”—not to mention the colonial need for wives: Carter 1993:356, cf. Van Compernelle 1983, Domínguez Monedero 1991:163). For hostility and integration in the Greek colonization of Italy generally, see further Lomas 1993:27 (w/ references in nn. 45-48), Stein-Hölkeskamp 2006, Hall JM 2013:2293-294; Bottini A 1996 for Lucania. Brown D 1963:41 (“grew mightily, largely by controlling or granting citizenship to members of the native tribes of the interior”), Cerchiai et al. 2004:114 (“widening the parameters under which the right of citizenship could be granted to native communities and settlements, which then, while integrated in the community, still enjoyed distinct levels of autonomy”). Rutter 1970:171 (w/ nn.2-3) cites as examples outside Sybaris: forced integration at Naples when overrun by Samnites at the end of the 5th c. BCE (Strab. 5.4.7 = C.246), Gelon of Syracuse (Diod. 11.72.3) enfranchising (non-Greek) mercenaries, like Dionysius I (Diod. 14.7.4, 14.15.3, 14.78.1-3), who settled them at Syracuse and elsewhere.

though such groups might just as well be subdued by force where expedient,⁷⁰⁹ metallurgists and other artisans being preferentially integrated.⁷¹⁰ Moreover, while there may have been an immigration policy aimed at bolstering the numbers of the initial founding population (Diod. Sic. 12.9.2), Sybaris was “fairly unusual” (relative to other Greek *apoikiai*⁷¹¹ in the region) in that, “alongside the observation of sovereignty over the city’s lands, the Sybarites seemed nonetheless to have encouraged the local population to maintain their villages.”⁷¹² Economically important for its success was its famously fertile *chora* (Soph. *Antig.* 1118, Diod. Sic. 12.9.1-2, Plin. *NH* 18.65, Varro *RR* 1.44.2: *cum centesimo redire solitum*),⁷¹³ enjoying an abundant domestic grain supply from the plain (Athen. 12.519) and wine⁷¹⁴ from the hills (Athen. 12.519d, Pliny *NH* 14.39, 69, Strabo 6.1.14 C.264). Livy mentions silver deposits in the nearby La Sila highland (Liv. 30.19),⁷¹⁵ Rutter suggests the bull emblem on Sybaris’ coinage speaks to the importance of livestock in the local economy.⁷¹⁶ Even more significant⁷¹⁷ was its position on an overland trade route connecting Sybaris (by a two-day journey) to its colonies, Skidros (Scidrus), Laos (Laus) and Poseidonia (Paestum) (Strab. 5.3.13, 6.1.2, 6.1.13), on the Tyrrhenian

709 Hall JM 2004:39 (citing de la Geniére 1978, Osanna 1992:2, 118-120) notes as suggestive of violent conquest within Sybaris’ territory the abandonment of indigenous sites at Francavilla Marittima and Amendolara simultaneous with nearby Greek settlement; Rutter 1970:172 cites fire-damaged bronze objects from Francavilla dating to the last quarter of the 6th c. BCE as potentially stemming from the same catastrophe which wiped-out Sybaris in 510 BCE.

710 Colburn 1976:10. The Western non-Greeks were skilled metalworkers (Dunbabin 1948:42, 173, 190—noted by Shepherd 1999:267 discussing intermarriage in the Western Greek colonies generally).

711 Ps.-Skymnos 340 refers thus to Sybaris.

712 Greco 1996:325.

713 RE 4.1 (1931) s.v. Sybaris [10], col. 1005.

714 Sybaritic/Thuriian wine is not among the many Greek sorts featured in Athenaeus; cf. Brock/Wirtjes 2000.

715 RE 4.1 (1931) s.v. Sybaris [10], col. 1007; Callaway 1950:40. Cf. Kleibrink 2001:33 noting Lenormant’s erroneous supposition (based on the Sybarites’ issues of *stateres*) of ancient silver mining in the Crati and Trionto valleys.

716 Rutter 1970:171, perhaps guided here by Schol. 2 ad Isidore *Orig.* 14.6: “On the coins of Thurii very frequently a bull or a horned cow occurs, but as a symbol of the fertility of the Thuriian field” (trans. Wantuch at Bullitt 1967:23). Cf. also Theoc. *Id.* 5.1, 72-73.

717 RE 4.1 (1931) s.v. Sybaris [10], col. 1006.

Sea to the west,⁷¹⁸ and to its favorite Italian trading partners (Athen. 12.521b), the Etruscans, to the north (for whom the Sybarites may have served as intermediaries in trade with Miletus and the orient).⁷¹⁹ Aside from a sea-purple industry, Sybaris also produced fruit-extract (Plin. *NH* 31.94, Athen. 6.274d).⁷²⁰ Hence, unlike their relatively land-poor⁷²¹ neighbors and trade-rivals at Croton, the Sybarites, who did not enjoy a good natural harbor (Tim. *FGrH* 566 F 50, Athen. 12.519e; cf. Paus. 6.19.9), were not wholly dependent on the sea, though they benefited early on from trade relations with Corinth.⁷²² Thus, in contrast to Athenaeus' caricature of lazy decadence, the Sybarites were "active tradesmen and manufacturers serving as a vital link between the East and the West."⁷²³

718 Rutter 1970:171 takes Sybaris' foundation of its colonies Laus and Scidrus as evidence of a surplus population indicative of prosperity. Cf. Bullitt 1969:69-78 (Ch. 8: Colonies of Sybaris).

719 Trousdale refers to the Sybarites as "voluptuary Greek middlemen at the arch of the Italian boot" (Trousdale 1970:161, reviewing Bullitt 1969), and How and Wells (ad *ἐξευώθησαν* ap. Hdt. 6.21.1) call Sybaris "the *dépôt* to which the wares of Asia and Egypt were brought by Milesian ships [thence] carried overland to [the Sybarite colony] Laus, and there reshipped for Etruria" (the strait of Messina under the control of Chalcis and her allies, hostile to Miletus); similarly, Braun 2004:324-325 (overland route between Sybaris and her colonies allowing Miletus to avoid a strait controlled by hostile Chalcidian colonies Zankle and Rhegion). Cf. RE 4.1 (1931) s.v. Sybaris [10], col. 1007; Brown D 1963:41. Bradeen 1947:234n53 cautions against the danger (illustrated by Hall JM 2013:1-8) of projecting, as if certain and stable, affiliations attested only from later literary tradition onto the more distant past and into different regions. Rutter, emphasizing that such mediating overland trade is a modern inference without support in the ancient literary evidence, suggests if at all it would have been more likely for luxury textiles (Timaeus *FGrH* I 205 F 60 *ap.* Athen. 12.519b) than ceramic wares (Rutter 1970:174-175); cf. Woodhead 1962:60 noting "a short though by no means easy route across to the Tyrrhenian sea at Belvedere Marittima," an insight owing no doubt to the personal efforts of Dunbabin (Bullitt 1969:76); note, however, Ponnelle's observation (Ponnelle 1907:266) that Lenormant "a indiqué le premier le tracé général de cette grande route". Nevertheless, it has been argued that archaeological evidence reaching back to the 8th c. BCE traces "Sybarite influence far inland along the routes offering shortcuts to the Tyrrhenian coast" (Hansen/Nielsen 2004:295 citing de la Genière 1978:344-354); cf. Guzzo 1981. On Achaean settlers in Magna Graecia generally as middle-men (*Zwischenhändler*), Rausch 2004:232n12 cites Ampolo 1994a, 1994b.

720 RE 4.1 (1931) s.v. Sybaris [10], col. 1007; Callaway 1950:32.

721 Though land around Sybaris is supposedly superior, Green 2006:191n46 notes the fertility of Croton's plain (Strab. 6.1.12 (262)), also citing Livy's figure of 12 miles (Livy 24.3: *murum in circuitu patentem duodecim milia passuum*) for Croton's walls as double the circumference of Sybaris (given by Strabo 6.1.13).

722 Colburn 1976:10.

723 Colburn 1976:10.

Colburn suggests the late-7th to mid-6th c. BCE as Sybaris' economic height,⁷²⁴ having “almost collapsed” by the last quarter of the 6th c. BCE.⁷²⁵ Sybaris' ultimate “disappearance”⁷²⁶ in 510 BCE was accordingly (it has been suggested) not the result of sudden military conquest (as e.g. Diod. Sic. 12.10.1 and Strabo 6.1.13 portray)⁷²⁷ so much as gradual collapse in the course of its trade-rivalry with Croton, perhaps in combination with natural catastrophe(s)⁷²⁸ and certainly less spectacular long-term trends (compromising successive settlements at the site in turn).⁷²⁹ Green, at any rate, notes that Sybaris' “vast natural wealth ... made it a prize worth

724 Hdt. 6.127 dates the height of Sybaris' prosperity to the reign of Cleisthenes of Sicyon (*ἡ δὲ Σύβαρις ἤκμαζε τοῦτον τὸν χρόνον μάλιστα*) during the courtship of Agariste, i.e. early 7th c. BCE.

725 Colburn 1976:10-11.

726 Colburn 1976:2; cf. Strab. 6.1.11 (except for Tarentum itself, all the Achaean cities on the Tarantine Gulf had disappeared by his day).

727 Ancient sources for the fall of Sybaris include Hdt. 5.44-45, 6.21; Diod. Sic. 12.9.1-10.3; Strab. 6.1.13 = 263 Casaubon; Athen. 520a-d, 521f-522a. Regarding an element (Diod. Sic. 12.9.4) of Pythagorean mythology (cf. *Ov. Met.* 15.60-478 for Pythagoras at Croton) in the story, cf. García Quintela 2002.

728 It has been imagined that sudden subsidence (Rainey 1969a:263, 1969b:13) gave rise to a coastal lagoon through marine transgression in the form of one or more tidal waves (Raikes 1967, Rainey 1967b:307-308, Colburn 1976:7, 9), an “ingenious catastrophic hypothesis” less widely embraced (though they need not be mutually exclusive) than more “uniformitarian” explanations (Meyerhoff 1967) for the site's ultimate disappearance, let alone for the willful destruction attested in ancient literary tradition—dismissed by Raikes as potentially “legendary nonsense” (261, though note his qualification at 264). Colburn 1976:9 and Cerchiai et al. 2004:118 at any rate suggest a leisurely retreat (no valuables left behind) from the 510 BCE defeat (Croton is supposed to have sacked Sybaris either 70 days [two months] or nine days after the initial battle/siege, depending on the textual interpretation of Strab. 6.1.13 = C.263); cf. Marinatos 1960:193 (here drawing a contrast to the Vesuvian cities of 79 CE) pointing to the potentially rich archaeological remains of Helice, where no survivors are attested due to its very sudden annihilation.

729 Stanley/Bernasconi 2009, while finding no geological confirmation for Strabo's claim (6.1.13 = C.263) that the Crotonians redirected the Crathis (note the dry river bed at Hdt. 5.45.1) to flood captured Sybaris (cf. Rainey 1969a:273), suggests a gradual decline due to primarily natural events effecting its progressive separation from the coast, which diminished shore access and frustrated navigation and trade (cf. Arist. *Pol.* 6.5.3); similarly, Ferranti et al. 2011:58 suggests Strabo's tale possibly reflects “the occurrence of (repeated?) avulsions that concurred to the fading of Sybaris.” On geological questions surrounding local flooding, seismic activity (the vulnerable archaeological site lies directly next to a fault line), and subsidence of the coastal plain (the archaic layers are below current sea-level) and sea-floor, cf. Guerricchio/Melidoro 1975, Cherubini et al. 1994 & 2005, Cucci 2005, Pagliarulo 2006, Stanley/Bernasconi 2009, Ferranti et al. 2011, Cinti et al. 2015. The current burial to a depth of 7-3.5 m of the three successive, partially overlapping ancient settlements—Greek Sybaris (ca. 720-510 BCE), the Athens' led pan-Hellenic resettlement of Thurii (ca. 444-203 BCE), and Roman Copiae (from 194/3 BCE) (Stanley/Bernasconi 2009 speaks of the “Sybaris-Thuri-Copia trilogy”; cf. Guzzo 1970)—illustrates the subsidence of the archaeological area (Cianflone et al. 2015:16007; cf. Rainey 1969a:272 as explaining difficulty in locating the site). Cinti and her colleagues note that “exceptional archaeological stratification has made Sybaris one of the most important Mediterranean archaeological sites of the Archaic and Classical ages” (Cinti et al. 2015:245, citing Greco/Luppino 1999; the relative positions of these settlements is visualized in a color-coded aerial photograph and map at <<http://www.archeocalabria.beniculturali.it/archeovirtualtour/calabriaweb/sibari1.htm>>). Horizontal coastal

anyone's time and trouble."⁷³⁰ Whatever the exact course of events, 510 BCE⁷³¹ marks the *terminus ante quem*⁷³² to what is creditable in the ancient accounts of the first Sybaris (which may be colored by the bias of the "victorious" Crotonian tradition).

Of the over seventy Greek and Roman authors from whom we possess testimonia on Sybaris,⁷³³ our main literary sources (in addition to Athenaeus) are Herodotus (5.44-45, 6.21),⁷³⁴ Diodorus Siculus, Pliny and Strabo,⁷³⁵ Athenaeus himself relying mostly on Phylarchus and Timaeus (*FGrH* 566), a native of Sicily. However playful, Athenaeus' interlocutors take citation seriously (suggesting to the casual reader that the author himself has pursued his references conscientiously).⁷³⁶ Thus, Cynulcus supplies a reference to Phylarchus' *History* bk. 23 at Athen. 13.610d (cf. 15.678f), coming to the aid of Myrtilus who claims to have read the whole work though presently at a loss to locate a passage.⁷³⁷ Again, Ulpian cites Phylarchus (at 2.51 58b-c)

progradation (abetted by alluvial sedimentation and regional uplift) has moved the site ever further inland as the land-sea boundary shifts eastward (ca. 2.5 km since antiquity: Kleibrink 2001:38; whereas the respective settlements would each have been on the shore in their day: Cerchiai et al. 2004:118), locally slowed by a vertical subsidence (abetted by anthropogenic sediment compaction) lowering the site beneath the water table (Cucci 2005, Cinti et al. 2015:246). Yet, it is these very forces, Cucci concludes, which made the location attractive for settlement to begin with: "geology first allowed the creation of Sybaris, then caused its destruction" (Cucci 2005:1017).

730 Green 2006:190n43.

731 Rich 2004a & b consistently give 510 BCE as date of Sybaris' destruction.

732 For Rutter, this is simultaneously the first historical datum we have: "No details of the history of Sybaris are known until the events immediately preceding its destruction by Croton in 510" (Rutter 1970:169). A re-foundation in 453/2 BCE by surviving Sybarites together with fresh colonists from the Achaean homeland was abandoned in 448 BCE (cf. Callaway 1950:1-3 and Green 2006:189-190n43 on the literary sources for dates). The new pan-Hellenic colony of Thurii was founded nearby under Athenian leadership in 444/3 BCE (cf. Colburn 1976:11 accepting archaeological confirmation of the received dating). The Roman colony of Copiae followed in 194/3 BCE (Strab. 6.1.13).

733 Bullitt 1967:2, Rainey 1969a:261, Colburn 1976:2.

734 Herodotus' direct encounter with Sybarite and other Calabrian local traditions as a participant in the Thurii colonization conceivably lends added relevance to the treatment of luxury and excess in his narrative (cf. Lateiner 1982), but the Gormans deny this (cf. Gorman RJ/VB 2014:76-145).

735 Brown D 1963:40.

736 On Athenaeus as reader-scholar and bibliophile-librarian, cf. Jacob 2000 (and in greater depth Jacob 2013); on the reliability of his excerpts, cf. Zepernick 1921; on his use of the historians, cf. Zecchini 1989, Pelling 2000, Lenfant 2007; on Athenaeus' use of particular historiographical sources, cf. Arafat 2000 (Pausanias), Davies JK 2000 (public documents), Walbank 2000 (Polybius), Zecchini 2000 (Harpocration), Schepens 2007 (Phylarchus).

737 Noted by Jacob 2013:39, 73, 78.

in answer to his own challenge (perhaps intentionally difficult)⁷³⁸ for an example of the then current usage of the word *propoma* (*gustatio, apéritif*). In total, Athenaeus quotes Phylarchus 35 times.⁷³⁹ Cichorius was perfectly clear in distinguishing Athenaeus from his sources,⁷⁴⁰ focusing on Phylarchus as the actual authority for the patent scheme at Sybaris, and some later legal scholars in fact cite Phylarchus alone as our source. Coe goes further by citing (without a nod to Athenaeus) the authority of Phylarchus as “a reputable and ancient Greek historian,”⁷⁴¹ but such claims beg for justification. Phylarchus (*FGrH* 81), variously accounted a citizen of Athens or Naucratis (Athen. 2.51.5 58c), or Sicyon, flourished in the second-half of the 3rd century BCE. His *Histories* in 28 books picks up where the *Macedonian Histories* (from the Battle of Leuctra in 371 BCE through the Battle of Corupedium in 281 BCE) of Duris of Samos (d. ca. 260 BCE; *FGrH* 76) and the history (from the death of Alexander the Great in 323 BCE through the death of Pyrrhus in 272 BCE) of Hieronymus of Cardia (late-4th-early-3rd c. BCE; *FGrH* 154) leave off. It became the main authority for the period after Pyrrhus down to the death of the Spartan king Cleomenes in 220/219 BCE. For us, Phylarchus’ historiographical identity is significantly conditioned by harsh critiques from Dionysius of Halicarnassus (*Comp.* 4 = *FGrH* 81 T 4) and Polybius (2.56-63 = *FGrH* 81 F 53-56).⁷⁴² Following in the tradition of Duris, Phylarchus cultivated a “mimetic” (“tragic,” “dramatic,” or “poetic”) historiographic style,⁷⁴³ the gist of which may be gleaned from Duris’ own introductory critique of his predecessors Ephorus and

738 Wilkins 2000:25.

739 Walbank 2000:163 (aside from 70 quotes from the 4th c. BCE Theopompus, from among the other Hellenistic historians Athenaeus quotes 41 times from Poseidonius, 34 from Polybius, and 25 from Duris).

740 This, of course, is not an expectedly straightforward task for the lay-reader.

741 Coe 1937:78.

742 Meister 2006 & 2012, with references, provide most of the basic information reviewed here.

743 Denying the utility of a label such as “tragic history” where no such historiographic school can be clearly defined, Walbank nevertheless confirms for Duris and Phylarchus a bent for “sensational narrative [and] trivial, meretricious or sentimental narrative,” in contrast to Polybius (cf. Walbank 2000:164, with references cited at 556n11).

Theopompus (*FGrH* 76 F 1). Their representation of events, he claims, falls short (τῶν γενομένων πλείστον ἀπελείφθησαν) because their portrayals have no share of *mimēsis* nor arouse any pleasure (*hēdonē*) in the telling (οὔτε γὰρ μιμήσεως μετέλαβον οὔδεμιᾶς οὔτε ἡδονῆς ἐν τῷ φράσαι), concerned as they are with mere writing (αὐτοῦ δὲ τοῦ γράφειν μόνον ἐπεμελήθησαν).⁷⁴⁴ The sort of accusations leveled in antiquity, however, against the approach

which Duris here advocates may be illustrated by a comment in Plutarch (*Plut. Them.* 32.3):

ὁ τε Φύλαρχος, ὥσπερ ἐν τραγωδίᾳ τῇ ἱστορίᾳ μονονοῦ μηχανὴν ἄρας καὶ προαγαγὼν Νεοκλέα τινὰ καὶ Δημόπολιν, υἱοὺς Θεμιστοκλέους, ἀγῶνα βούλεται κινεῖν καὶ πάθος, ὃ οὐδ' ἂν ὁ τυχῶν ἀγνοήσειεν ὅτι πέπλασται.

and there is no man living but knows that Phylarchus simply invents in his history, where he all but uses an actual stage machine, and brings in Neocles and Demopolis as the sons of Themistocles, to incite or move compassion, as if he were writing a tragedy. (tr. Dryden)

Like Hieronymus a “pragmatic” historian, Polybius’ own rejection of Phylarchus’ confounding the goals of proper historiography with the tools of dramatic style—his “sensationalist” (*terateía*)⁷⁴⁵ graphic realism (*enargeia*) transporting the reader through astonishing effects (*ekplēxai kai psukhagogēsthai*) to a state of pity and sympathy (*eleos, sympatheia*)⁷⁴⁶—thus censures not just the latter’s aesthetic proclivities, but a related tendency toward invention and falsification.⁷⁴⁷ Though Polybius’ own pro-Achaean, anti-Spartan political bias colors his critique,⁷⁴⁸ Meister cites Phylarchus’ many “historically questionable” digressions as sufficient evidence that Phylarchus’ reliability/credibility “cannot be rated very highly.”

744 Cited by Lesky 1993:861.

745 Davies JK 2013:325 speaks of “Phylarchus-style horror-journalism.”

746 Lesky 1993:856.

747 Cf. Marincola 2013.

748 Note also *Plut. Arat.* 38.12 impugning Phylarchus’ testimony (where not corroborated by Polybius) due to his prejudicial enthusiasm for Cleomenes. On Phylarchus’ relationship to Spartan politics, cf. Africa 1961. Reviewing the latter work, F.W. Walbank notes that “Phylarchus is interesting as the main source for the social movements at Sparta under Agis and Cleomenes and as a touchstone for the sincerity of Polybius, who censured him violently” (Walbank 1962:315).

Perhaps Phylarchus found a perfect vehicle to further indulge his penchant for inventive narrative in the *Agrapha* ascribed to him in the scholia to Aristides, if indeed that lost work was devoted specifically to mythical subject matter previously untreated.⁷⁴⁹ Closer to our topic, Phylarchus also wrote (according to Suda s.v. Φύλαρχος φ 828 Adler) a *Περὶ εὐρημάτων* (a title and subject matter shared with Theophrastus, Strato of Lampsacus, Ephorus and many others, who systematically pursued the long-standing Greek popular fascination with *prōtoi heuretai* reaching back to motifs of early folktale and popular mythologizing),⁷⁵⁰ suggesting that commentary on such a systematization of innovation as suggested for Sybaris was not beyond his range of interests. Athenaeus, however, was focused not on invention *per se* (I accept the comments of Prager and Bugbee quoted above as bearing a grain of truth), but on rehearsing a fable of inevitable doom resulting from luxury driven to hybristic excess.⁷⁵¹ Indeed, where reward for victory in culinary competition is mentioned (Athen. 519d-e) prior to the much-cited patent provision, the context emphasizes prestige for its own sake rather than as a progressivist utilitarian incentive toward a greater good. Certainly, public attribution is an indispensable component of modern IP, and Wolfgang Speyer has taken the crystalization of the Homeric identity as the foundation on which IP-consciousness first arose among the Greeks, generally understanding early instances of the subversion of attribution through forgery as indirect evidence for the dawning conception of Greek authorship.⁷⁵² Moreover, literary authorship as stimulated by institutional as well as generic norms of competition is early exemplified by the explicit self-assertions of Hesiod's *Works and Days*, and has been well documented across

749 Cf. Meister 1996 citing *FGrH* 81 F 47 ap. Σ^{BD} Ael. Arist. *Panath.* 187.20 Dindorf 1829:320.8-9 (Phylarchus has apparently treated the Gigantomachy).

750 Cf. Kleingünther 1933.

751 Gorman RJ/VB 2007.

752 Speyer 1971.

multiple genres down through the Classical period.⁷⁵³ I would like to move discussion of IP origins beyond authorial identity and prize incentives, including in the form of exclusive privileges such as variously entertained by Xenophanes and Aristotle, which, however, shall now be reviewed more fully than their brief rehearsal in the introduction.

Thales and Aristotle's account of monopoly

The general applicability to Antiquity of multiple disparate modern IP categories and concepts is suggested by multiple further exempla, several illustrating mechanisms implicit in the Sybaritic culinary patent, all defining incentives to innovation (though not necessarily to disclosure), locus of planning⁷⁵⁴ relative to the balance of/conflicts between the public/collective interest (public welfare, “the common good”)⁷⁵⁵ vs. private benefit, and the role of intellectuals (or tropes of their caricature). Particularly interesting is Book 2 of Aristotle's *Politics*, which preserves *inter alia* fragments of relevant biographical *topoi* and utopian schemes (cf. Arist. *Pol.* 2.1-8).⁷⁵⁶

Thales (D.L. 1.22-44)⁷⁵⁷ often appears as one such caricature, an intellectual (Pl. *Theat.* 174A; Ar. *Nub.* 180, *Av.* 1009; Plaut. *Capt.* 274; D.L. 2.2), at times a foreigner (by descent: Hdt. 1.170, D.L. 1.22; cf. Thales as native of Miletus at Strab. 14.1.7 C.635)⁷⁵⁸ and importer of foreign wisdom (from Egypt: 11 A 11 DK; cf. KRS 67-71; but note D.L. 1.33: “Ἑλλήν καὶ οὐ

753 Cf. e.g. Collins 2004.

754 Von Ungern-Sternberg 1998.

755 Morrison 2013.

756 Mumford 1965:275-277, Jackson 2001, Long RT 2005, Hansen MH 2005:197-201, duBois 2006:8-9, Thomason 2016.

757 Dicks 1959, Biondi 2013, O'Grady 2017.

758 Diels 1889, Wöhrle 2014. Note Herda 2013 on the herōon in his honor in the Milesian agora.

βάρβαρος),⁷⁵⁹ though he supposedly never authored a book of his own⁷⁶⁰ (Arist. *Cael.* 294a29, *De an.* 405a19, *Metaph.* 984A2⁷⁶¹). Diogenes Laertius does not account for Thales among those philosophers credited (at D.L. 1.16) with authoring either a single book (Melissus, Parmenides, Anaxagoras) or no book at all (Socrates, Stilpo, Philippus, Menedemus, Pyrrho, Theodorus, Carneades, Bryon; Pythagoras, cf. 22 B 129 DK;⁷⁶² Aristo of Chios); though he cites (D.L. 1.34) Lobon of Argos⁷⁶³ that Thales' writings tallied 200 lines, the fictive epistolary exchange between Thales and Pherecydes (D.L. 1.43-44 Thales to Pherecydes, 1.122 Pherecydes to Thales) includes the explicit statement by Thales that he does not write books (and is based on a general deference to Pherecydes' seniority and concern for the edition and publication of the latter's book).

Among the notable alleged first authors of Greek prose we find similar ambiguity surrounding the Milesian/Phoenician provenance of Cadmus of Miletus (Dion. Hal. *De Thuc.* 23; Strab. 1.2.6; Plin. *NH* 5.31.7; Jos. *Contra Ap.* 1.2; Suidas s.v. Κάδμος κ 21 & 22 Adler = *FGrH* 489 πρώτος κατά τινος συγγραφὴν ἔγραψε καταλογάδην; cf. Suda s.v. Φερεκύδης φ 214 Adler, referring to some who argue Cadmus might have been first prose author), also credited with importing the Phoenician alphabet to Greece. In making the latter claim Suda s.v. Κάδμος κ 22 Adler = *FGrH* 489 problematically equates him with Cadmus the Phoenician (cf. Suidas s.v. Κάδμος κ 21 Adler).⁷⁶⁴ Alternatively, Thales' supposed correspondent (D.L. 1.43-44, 122)

759 Travels abroad in pursuit of foreign wisdom became part of Thales' biography as much as that of other sages, as e.g. together with Solon at D.L. 1.43. On visits to Egypt in Greek biography generally, cf. Lefkowitz 2007.

760 Greene WC 1951:39 (book-authorship "more than doubtful"), 56n66 citing Freeman 1946:50.

761 Granger 2004:238n11.

762 Riedweg 1997.

763 Cf. Farinelli 2000.

764 Bury 1909:14-15 w/ 14-15n1 (Greene WC 1951:39/57n67): Cadmus of Miletus as "one of the earliest prose writers of Ionia" (Bury 1909:14), "a very early prose writer or logographer, but there is no reason to suppose that he was more of a historian than Eumelus or Eugammon" (Bury 1909:15). Cf. Fontana 2014.

Pherecydes of Syros is also credited as the first prose author (D.L. 1.116-122; Suda s.v. Φερεκύδης φ 214 Adler: *πρῶτον δὲ συγγραφὴν ἐξευεγκεῖν πεζῶ λόγῳ τινὲς ἱστοροῦσιν, ἑτέρων τοῦτο εἰς Κάδμον τὸν Μιλήσιον φερόντων*)⁷⁶⁵; Suda s.v. Φερεκύδης φ 216 Adler: Pherecydes of Athens (claims Pherecydes of Athens to be the elder, cf. Strab. 10.5.8 C.487, whom Porphyrios considers the sole inventor of prose: *Πορφύριος δὲ τοῦ προτέρου οὐδένα πρεσβύτερον δέχεται, ἀλλ' ἐκείνον μόνον ἡγείται ἀρχηγὸν συγγραφῆς*). Closer to home, Thales' supposed pupil (Strab. 14.1.7 C.635 *ὁ τούτου μαθητῆς Ἀναξίμανδρος*; Suda s.v. Ἀναξίμανδρος α 1986 Adler *συγγενῆς καὶ μαθητῆς καὶ διάδοχος Θάλητος*)⁷⁶⁶ Anaximander is also credited as the first prose (philosophical) author (Themist. *Or.* 26.317b9-c8 Dindorf 1832:383.9-17; Suda s.v. Ἀναξίμανδρος α 1986 Adler, crediting Anaximander with multiple works).⁷⁶⁷ Thus, we should situate Thales' activity at a transitional period in the transmission of philosophical teaching: whereas Thales will have relied on oral master-disciple instruction, his pupils in the immediately subsequent generation began to feel the need to commit their teachings to fixed written form (with regard to early philosophical books generally, cf. *infra* apropos Heraclitus' book).

The rewards reaped by Thales for his own wisdom is a topic in Seven Sages tradition⁷⁶⁸ (cf. Pl. *Prot.*, D.L. 1.40-42; on terminology/nomenclature of the “Septemvirate of Wise Men,”⁷⁶⁹ cf. D.L. 1.12 *οἱ δὲ σοφοὶ καὶ σοφισταὶ ἐκαλοῦντο· καὶ οὐ μόνον, ἀλλὰ καὶ οἱ ποιηταὶ σοφισταί*; 1.22: T. as first sage,⁷⁷⁰ drawing on Pl. *Prot.* 343a & Demetr. *Phal.* *FGrH* 228 F 1;⁷⁷¹ Hermippus

765 Freeman 1946:38 (Greene WC 1951:39/57n67); Jacoby [1947] 1956:100-143; Schibli 1990 (cf. review in Lamberton 1992); Toye 1997; Fowler 1999; Granger 2007a.

766 For style/subject matter as evidence for personal association (discipleship), cf. the connection between Empedocles and Parmenides/the Pythagoreans established by Theophr. ap. *Simplic.* *In Phys.* 25.19 [31 A 7 DK] (*ζηλωτῆς καὶ πλησιαστής*).

767 Gomperz 1903 [I]:41~1922 [I]:42; Greene WC 1951:39/57n67.

768 Cf. Barkowski 1923; Snell 1938, 1966; Rösler 1991; Tziatzi-Papagianni 1994; Maltomini 2004.

769 Bury 1909:10.

770 Mosshammer 1976:165.

771 Cf. Tell 2014 on continuity, misrepresented by Plato, between early “wisdom” tradition and later “sophists”.

fr. 5-16 Wehrli is testimony to the genre of Seven Sages biography). He is gifted with the Milesian fishermen's tripod, for example, which is given to various Wise Men in succession (per D.L. 1.28 first to Thales, then ὁ δὲ ἄλλω καὶ ἄλλος ἄλλω ἕως Σόλωνος;⁷⁷² cf. Diod. Sic. 9.3.1-3, 9.13.2; D.L. 1.27-28; cf. Aus. *Lud. vii sap.* 163-188⁷⁷³), recurring in one variation as an Argive tripod (Andron of Ephesus *Tripous FHG* 2.347 ap. D.L. 1.30; Phanodicus *FGrH* 397 F 4a ap. D.L. 1.31, 1.82) of Hephaestus' manufacture (D.L. 1.32-33), its intended recipient (as with Eris' golden apple)⁷⁷⁴ sometimes open to interpretation (inscriptively at Diod. Sic. 9.13.2: χαλκοῦν δὲ τρίποδα μόνον ἐπιγραφὴν ἔχοντα τῷ σοφωτάτῳ; orally in Pythia's pronouncement at D.L. 1.28 = *Anth. Plan.* 6.51: ἔκγονε Μιλήτου, τρίποδος πέρι Φοῖβον ἐρωτᾶς· / ὃς σοφίῃ πάντων πρῶτος, τούτου τρίποδ' αὐδῶ.—to whom it is promptly sent, D.L. 1.28: ἀπέστειλεν εἰς Δελφούς, by Solon in witty observation of the god's supremacy in wisdom, σοφία πρῶτον εἶναι τὸν θεόν). In some variants, he is awarded a bowl or cup (φιάλη), e.g. that of Bathycles of Arcadia (φιάλη, willed, again, indeterminately, τῶν σοφῶν ὀνηῖστω—but here with a notably utilitarian valuation) (Maeandrius of Miletus *FGrH* F 18 ap. D.L. 1.28; Callim. *Iamb.* fr. 191.76-77 Pf.) or Croesus (Daemachus *FGrH* 65 F 6, Clearchus fr. 3.70 Wehrli ap. D.L. 1.30), sometimes styled a golden goblet (ποτήριον χρυσοῦν) (Eleusis *FGrH* 55 F 1, Alexo of Myndus *FGrH* 25 F 1, Eudoxus of Cnidus, Euanthes of Miletus *FHG* 3.2 n. ap. D.L. 1.29).

772 We might let the tripod function symbolically as reflecting the shifting sands of membership (D.L. 1.41-42: στασιάζεται δὲ καὶ περὶ τοῦ ἀριθμοῦ αὐτῶν, numbering from the canonical seven to seventeen, depending on the source) as well as attribution in their respective gnomes (D.L. 1.41: διαφωνοῦνται δὲ καὶ αἱ ἀποφάσεις αὐτῶν καὶ ἄλλου ἄλλο φασὶν εἶναι)—about which, see further discussion below.

773 Cazzuffi 2010:16-17, 119-122.

774 Inscribed, in later sources, τῇ καλλίστῃ, or ἡ καλὴ λαβέτω, as in Luc. *Dear. iud.* 7 (cf. 1: ἥτις αὐτῶν ἡ καλλίστη ἐστίν· τοῦ δὲ ἀγῶνος τὸ ἄθλον ἡ νικῶσα λαβέτω τὸ μῆλον.), *Dial. mar.* 7.1; cf. Apollod. *Bibl. Epit.* 3.2 (μῆλον περὶ κάλλους), *P.Oxy.* 3829 ii 9 (2nd c. BCE) (χρυσοῦν μῆλον ... ὑπὲρ οὗ φιλονικίας γενομένης ... ὁ Ζεὺς ἔπαθλον προύθηκεν τῇ καλλίστῃ), Hygin. *Fab.* 92 (ab ianua misit in medium malum, dicit, quae esset formosissima, attolleret); the theme is only hinted at in the earliest sources, e.g. Hom. *Il.* 24.28-30, *Cypria* arg. 1 (νεῖκος περὶ κάλλους), Eur. *Tro.* 924, etc.. Cf. Davies M 2001:35.

As much as these rewards may be construed as inducements to or simply post hoc rewards for wise action, the Sages are just as well known as selfless benefactors. The general representation of Sages as agents of benevolent public service independent of (indifferent to) monetary or other material reward is an image developed partly in response to fee-collecting sophistic professionalism.⁷⁷⁵ Thus, Plato's *Hippias major*, for example, contrasts (281b-283b) abstention from political engagement (*ἀπεχόμενοι τῶν πολιτικῶν πράξεων*) with pursuit of public benefit (*τὰ κοινά, δημοσία ὠφελεῖν/εὐεργετεῖν*) in contrast to private gain (*τὰ ἴδια, ἰδία χρήματα/ἀργύριον λαβεῖν/ἐργάσασθαι, τὸν σοφὸν αὐτὸν αὐτῷ μάλιστα δεῖ σοφὸν εἶναι*) through exploitation of personal wisdom (*ἀπὸ σοφίας*) (cf. Onetor's *εἰ χρηματιεῖται ὁ σοφός* at D.L. 3.9). As a contrast to systems of patronage (subsidy) or (competitive) prizes one also encounters counterexamples of sagacious innovation or skilled craftsmanship under compulsion (slavery or some other form of pure exploitation). Daedalus, for example, having initially fled to Crete as an exile after the murder (out of inventive jealousy: Hygin. *Fab.* 39, 244, cf. 274) of Perdix, is forced into service by Minos because of Daedalus' *sophia* (Xen. *Mem.* 4.2.33), like "many others" similarly in service to the Persian king (*ληφθεῖς ὑπὸ Μίνω διὰ τὴν σοφίαν ἠναγκάζετο ἐκείνῳ δουλεύειν ... ἄλλους δὲ πόσους ... διὰ σοφίαν ἀνασπάστους πρὸς βασιλέα ... δουλεύειν*).

The word monopoly (*μονοπωλία*) is coined by Aristotle (Arist. *Pol.* 1.11.10,12 1259a21,33) in the context of recounting Thales' alleged olive-press monopoly (Arist. *Pol.* 1.11.8-13 1259a7-36 = Thales 11 A 10 DK; Hieronym. *Rhod. fr.* 39 Wehrli² ap. D.L. 1.26 = 11 A 1.26 DK).⁷⁷⁶ This tale (that, based on astrological/meteorological competence, Thales is able to

⁷⁷⁵ Blank 1985, Tell 2009.

⁷⁷⁶ Machlup 1952:185; Rich 1991; cf. Sutherland 1943.

corner the market on olive presses at off-season low prices far in advance of what he rightly predicts will be a high-yield harvest),⁷⁷⁷ Aristotle tells us, is attributed to Thales due to his reputation for wisdom (Arist. *Pol.* 1.11.8 1259a8: ἐκείνω μὲν διὰ τὴν σοφίαν προσάπτουσι), especially befitting his image as a curious astronomical (KRS 74-78; cf. D.L. 1.23 attesting to Xenophanes' and Herodotus' admiration on this point, 1.34 mocked for falling into a ditch; cf. Fl. Philostr. *Vit. Apol.* 8.7.158) savant⁷⁷⁸ (of which his supposed prediction of the 28 May 585 BCE solar eclipse is one of the more notable testimonia).⁷⁷⁹ Note that Plutarch remarks Thales as a merchant (Plut. *Sol.* 2.8: καὶ Θαλῆν δέ φασιν ἐμπορία χρήσασθαι ..., καὶ Πλάτωνι τῆς ἀποδημίας ἐφόδιον ἐλαίου τινὸς ἐν Αἰγύπτῳ διάθεσιν γενέσθαι) as well as exceptional among the Sages for extending his philosophical pursuits beyond the practical/political realm (Plut. *Sol.* 3.6-8: ἐν δὲ τοῖς φυσικοῖς ἀπλοῦς ἐστὶ λίαν καὶ ἀρχαῖος ... καὶ ὅλως ἔοικεν ἢ Θάλεω μόνου σοφία τότε περαιτέρω τῆς χρείας ἐξικέσθαι τῇ θεωρίᾳ· τοῖς δὲ ἄλλοις ἀπὸ τῆς πολιτικῆς ἀρετῆς τοῦνομα τῆς σοφίας ὑπῆρξε). Aristotle says nothing about the olive-press story's historicity, but he clearly does not regard the personality of Thales as essential to its message, which is to illustrate the utility (at least for its practitioner) of specialized learning

777 Note by contrast the non-scientific, proverbial optimism variously attributed to: Epicharmus fr. 233 Kaibel ap. Zenobius 2.43 αἰεὶ γεωργὸς (vel. γεωμόρος) ἐς νέωτα πλούσιος· ἐπὶ τῶν ἐλπίδι μὲν αἰεὶ τρεφομένων ἀπαλλάττεσθαι τῶν δεινῶν, τοῖς αὐτοῖς δὲ πάλιν περιπιπτόντων = Phot. a 421 αἰεὶ γεωργὸς εἰς νέωτα πλούσιος· ἐπὶ τῶν ἐλπίδι μὲν αἰεὶ τρεφομένων ἀπαλλάττεσθαι τῶν δεινῶν, τοῖς αὐτοῖς δὲ πάλιν περιπιπτόντων; Theopompus fr. 1 Demiańczuk = 7 KA ap. Phot. a 563 αἰεὶ γεωργὸς εἰς νέωτα πλούσιος· λέγεται καὶ χωρὶς τοῦ ἰ· «αἰεὶ γεωργός». μέμνηται δὲ τῆς παροιμίας καὶ Θεόπομπος ὁ κωμικὸς ἐν τῇ Εἰρήνῃ ὡς καὶ ἐν Δελφοῖς ἀναγεγραμμένης κτλ; Philemon fr. 82 Kock = 85 KA ap. Stob. 4.16.27 (*Flor.* 57.8) Φιλήμων ἐν Ὑποβολμαίῳ· αἰεὶ γεωργὸς εἰς νέωτα πλούσιος; cf. Suda ss.vv. αἰεὶ γεωργὸς ἐς νέωτα πλούσιος α 608 Adler “A farmer is always rich tomorrow” (tr. Carl Widstrand/SOL), νέωτα ν 241 Adler αἰεὶ γεωργὸς ἐς νέωτα πλούσιος: “A farmer is always rich next year” (tr. Nick Nicholas/SOL). David Whitehead (ad SOL α 608 Adler) compares Tib. 2.6.19-20: credula uitam / spes fouet et fore cras semper ait melius.

778 Kirk et al. 1983:84; White S 2002.

779 Mosshammer 1981, Panchenko 1994, Couprie 2004, Graham/Hintz 2007:320,331-332,336n47,339, Burkert 2013; for political/military historical context of the battle at the Halys river, cf. Leloux 2016.

(wisdom/skill: *sophia*) (Arist. *Pol.* 1.11.8-9 1259a7ff.).⁷⁸⁰ This is then generalized in Aristotle's account through equation with an iron monopoly under Dionysius of Syracuse. Noteworthy in this instance is the conflict between a (tyrannical) state-monopoly and a private monopoly (Arist. *Pol.* 1.11.11-12 1259a23-33),⁷⁸¹ which raises questions of central planning and resource allocation.⁷⁸²

Hippodamus, legal and landscape standardization, incentives to legal innovation

Many of these very issues are central to the career of Hippodamus of Miletus. Aristotle, our primary source, gives Hippodamus only qualified priority as a political philosopher (Arist. *Pol.* 2.8 1267b22-1269a28):⁷⁸³ he may not have been the first to reflect on an ideal constitution, but he was at least the first without practical experience to do so (2.8.1 1267b29-31: *πρῶτος τῶν μὴ πολιτευομένων ἐνεχείρησέ τι περὶ πολιτείας εἰπεῖν τῆς ἀρίστης*). Whether this makes him the first political philosopher or (pejoratively) the first political dilettante (but certainly either an *idiotēs* or a *philosophos*, 2.7.1 1266a31-32: *εἰσὶ δέ τινες πολιτεῖαι καὶ ἄλλαι, αἱ μὲν ἰδιωτῶν αἱ δὲ φιλοσόφων καὶ πολιτικῶν*) in Aristotle's eyes is unclear. If Thales is atypical of the Sages in his natural scientific speculation, while also engaged in mercantile exploits, Hippodamus is similarly outside the norm in his turn to political theory without requisite

780 Note Plutarch's remark (*Sol.* 3.8) that Thales was the only one of the wise men who extended his philosophical engagement beyond the realm of the practical (*καὶ ὅλως ἔοικεν ἢ Θάλεω μόνου σοφία τότε περαιτέρω τῆς χρείας ἐξικέσθαι τῇ θεωρίᾳ· τοῖς δ' ἄλλοις ἀπὸ τῆς πολιτικῆς ἀρετῆς τοῦνομα τῆς σοφίας ὑπῆρξε.*).

781 Machlup 1952:185; Ladas 1975 [I]:4n13 ("The existence of state monopolies of a strictly fiscal character is affirmed by Aristotle (*Politics*, I, 1259 a 20)").

782 Cf. Jones NF 1987; Grady/Alexander 1992.

783 Cf. Taylor T 1822:1-10, 17-18; Hermann 1841; Oncken 1870:213-218; Henkel 1872:162-165; Susemihl/Hicks 1894:105-106,331-334; Gorman 1995; Höcker 2006; Gill DWJ 2013; Triebel-Schubert/Muss 1983 and Paden 2001 wrestle with Hippodamus' dual career as constitutional theorist and urban-planner. Schuller et al. 1989 collects chapters from a conference on the theme "Hippodamean polis-construction and the birth of democracy."

practical experience, simultaneously employed in the most concrete of urban problems. He is associated in Aristotle's treatment with the somewhat later Phaleas of Chalcedon (Arist. *Pol.* 2.7.1266a-1267b; thus Phaleas and Hippodamus are jointly encompassed within 39 DK),⁷⁸⁴ advocate of equal division of land, redistributive dowries, and communal ownership of slave-craftsmen. Both are notable as authors of the first political utopias (again, Hippodamus must have been the first of the two). Hippodamus' lost writing(s)⁷⁸⁵ thus would have belonged to an inherently progressivist genre.⁷⁸⁶ Phaleas' emphasis on property is central to Aristotle's account, which credits Phaleas as the first to situate the rational disposition of property as the foundation of sound governance (2.7.2 1266a38-41: τὸ περὶ τὰς οὐσίας εἶναι μέγιστον τετάχθαι καλῶς ... Φαλέας ὁ Χαλκηδόνιος τοῦτ' εἰσήνεγκε πρῶτος· φησὶ γὰρ δεῖν ἴσας εἶναι τὰς κτήσεις τῶν πολιτῶν). Furthermore, his provision for uniform education (cf. Arist. *Pol.* 2.7.8 1266b33-35: δυοῖν τούτοιω ἰσότητα δεῖν ὑπάρχειν ταῖς πόλεσιν, κτήσεως καὶ παιδείας) and public servitude of artisans (*dēmósioi*), if not that of property, "suggest[s] that egalitarian ideas were connected with an elitist attitude."⁷⁸⁷

Not necessarily (Aristotle makes no overt connection) at odds with such potentially democratic/leveling tendencies is the marked eccentricity/individuality which Aristotle finds worthy of notice (Arist. *Pol.* 2.8.1 1267b24-28):⁷⁸⁸

784 Cf. Henkel 1872:162-165 (Hippodamus), 165-6 (Phaleas); Susemihl/Hicks 1894:261-262 ad 2.7.2 1266a39; Dawson Do 1992: 21-26 (Hippodamus), 29-31 (Phaleas).

785 Stobaeus quotes from two spurious works which circulated under Hippodamus' name: a *Περὶ εὐδαιμονίας* by Hippodamus of Thurii and a *Περὶ πολιτείας* by Hippodamus the Pythagorean (Susemihl/Hicks 1894:332). For Hippodamus' situation within Pythagoreanism (signaled by the lost *Περὶ ἀρετῆς Ἴπποδάμου Θεουρίω* attributed to Theano at Suda s.v. Θεανώ θ 83 Adler), see further Hildenbrand 1860:59-61 (situating Hippodamus within Pythagorean tradition).

786 Winiarczyk 2011:8, 16-17, 219.

787 Leppin 2006.

788 Falciai 1982, Paoletta 1984.

γενόμενος καὶ περὶ τὸν ἄλλον βίον *περιττότερος* διὰ *φιλοτιμίαν* οὕτως ὥστε δοκεῖν ἐνίοις ζῆν περιεργότερον τριχῶν τε πλήθει καὶ κόσμῳ πολυτελεῖ, ἔτι δὲ ἐσθῆτος εὐτελοῦς μὲν ἀλεεινῆς δέ, οὐκ ἐν τῷ χειμῶνι μόνον ἀλλὰ καὶ περὶ τοὺς θερινοὺς χρόνους).

I suggest that the discussion of cultural and scientific innovation evolves in tandem with the elaboration of several related stereotypical characteristics of the inherently atypical innovator (such as witnessed by biographical Thales testimonia). Here, *καὶ περὶ τὸν ἄλλον βίον* casts the preceding innovation and industry (b23-24: *τὴν τῶν πόλεων διαίρεσιν εἶρε καὶ τὸν Πειραιᾶ κατέτεμεν*) themselves as abnormal but also equivalent to other forms of deviation (using similar language [*περιττότερος*] to that employed for the Sybaritic culinary patent at Athen. 12.20.521c: *ἴδιον ... καὶ περιττόν*). This eccentricity is explained, not in relation to inventive activity or cultural enterprise per se, but as the outcome of a particular character flaw (*φιλοτιμίαν*) tending toward a kind of excess (*περιεργότερον*)—which may express itself in intellectual activity as odious, futile and transgressive (e.g. Arist. *De resp.* 480b27: *ἰατρῶν ὅσοι κομβοὶ καὶ περιέργοι*; Hdt. 2.15.2: *τί περιεργάζοντο δοκέοντες πρῶτοι ἀνθρώπων γεγονέναι*; Hdn. 4.12.3: *περιεργότατος γὰρ ὢν οὐ μόνον τὰ ἀνθρώπων πάντα εἰδέναι ἤθελεν, ἀλλὰ καὶ τὰ θεῖά τε καὶ δαιμόνια πολυπραγμονεῖν*), but applies readily to sins of fashion (LSJ s.v. *περιέργος* II), as in Hippodamus' case, in quite superficial and non-intellectual form: the intellectual cultivates certain conceits of fashion, stylistic or personal affectations irrelevant to his “legitimate” claim(s) to fame, which, fictive or otherwise find employment as social or literary tools of critique and discipline (ὥστε δοκεῖν ἐνίοις). At the same time, such characters suggest an urbane cultivation of personal development and self-identification. It is a means by which intellectual (creative, inventive) activity is caricatured, but also reflects the terminology of

sumptuary regulation of the urban individual's conspicuous consumption and superfluous expenditures.

Just as it is unclear to what extent (if at all) Hippodamus integrated his tripartite class- and land-divisions into any concept of an ideal orthogonal town plan, so too is there no indication whether Hippodamus' concept of the artisan class (*technitai*, *demosioi*) corresponds to Aristotle's conceptions of that class. We can note briefly that Aristotle is critical of Hippodamus' tripartite division of the land into sacred (to support cult of civic deities), public (for public use, to support the military class) and private (to be distributed to the farmers); neither the military class nor the artisan class receive any land (*Pol.* 2.8.2-3, 2.8.8); Aristotle expects that private land ownership means the farmers farm for private benefit (2.8.10), and instead proposes (2.8.13) that the farmers farm everything, each cultivating his share as a single plot, if the expectation is that this effort is to sustain the military class as well. Incapable of comprehending Hippodamus' precise scheme, Aristotle condemns it as terribly confused (2.8.13). Yet, it would seem that Aristotle resists the logic of the most obvious interpretation, that the farmer class does indeed tend to all the agricultural labor, but retains for private administration only that third of the land division which is so designated. Their cultivation of the sacred land would thus accrue to public cult and of the public land to military expenses. In absence of Hippodamus' writing, however, it must be conceded that Aristotle is in a much better position than we are to judge Hippodamus' poor state of confusion (2.8.12 1268b4: *ταῦτα δὴ πάντα πολλὴν ἔχει παραχῆν*). More germane to my present interests is Aristotle's observation in the course of discussing the land-distribution aspect of Hippodamus' constitution, that specialized craftsmen (*technitai*) are universally needed and employable (*Arist. Pol.* 2.8.10 1268a29-32: *τεχνίτας μὲν γὰρ ἀναγκαῖον*

εἶναι (πᾶσα γὰρ δεῖται πόλις τεχνιτῶν), καὶ δύνανται διαγίγνεσθαι καθάπερ ἐν ταῖς ἄλλαις πόλεσιν ἀπὸ τῆς τέχνης).

Hippodamus is most widely remembered for his contributions to urban planning⁷⁸⁹ (Arist. *Pol.* 2.8.1,2 1267b22-23,30-37, cf. 7.11-12 1330a-1331b on the general urban planning and spacial arrangement of civic amenities; labeled ἀρχιτέκτων by Photius s.v. Ἴπποδάμεια ι 111, Suda s.v. Ἴπποδάμεια ι 555 Adler, but not by Aristotle, for whose use of the term in the *Pol.*, cf. 1.13.8 1260a18, 7.3.8 1325b23, 3.11.11 1282a3-4 (ἀρχιτεκτονικός, of a doctor as specialist)),⁷⁹⁰ credited (doubtless, falsely) as originator of orthogonal town-planning, where a rectangular grid of broad and narrow streets (*plateiai* and *stenopoî*) define structural *insulae* and

789 For the more modern concerns surrounding urban planning, a useful starting point is Dunham 1958 (cited at Michelman 1967:1166n3), formulating an economic and legal basis for city planning (the “orderly development of the community,” including determinations of the “location of public and private works”), with particular concern for the problem of takings (eminent domain). Klosterman 1985 examines various theoretical justifications for planning (which rests, he determines, on its fulfillment of particular essential social functions). For the aesthetic implications of planning law (with its effects on “visual beauty” as well as “cultural stability-identity”), cf. discussion of zoning, historic/environmental preservation, and urban design in Costonis 1982. Karp 1990 further develops these issues with respect to land-use regulation, rejecting the equation of aesthetics with “visual beauty” or “prevention of community harm,” but also rejecting Costonis’ concept of “shared human values of a community,” relating aesthetics instead to humanity’s “growing desire to achieve harmony between the natural and human environments, to balance human needs with the role of humankind as a part of the natural ecosystem” (Karp 1990:307-308). (Note, appreciating the high transaction costs of urban planning, Pigou [1920] 1932:195: “It is idle to expect a well-planned town to result from the independent activities of isolated speculators as it would be to expect a satisfactory picture to result if each separate square inch were painted by an independent artist. No ‘invisible hand’ can be relied on to produce a good arrangement of the whole from a combination of separate treatments of the parts. It is, therefore, necessary that an authority of wider reach should intervene and should tackle the collective problems of beauty, of air and of light, as those other collective problems of gas and water have been tackled.”) On general theories of land use relevant aesthetics, see further Brooks/Lavigne 1985. While changes to the natural landscape raise preservation concerns typically categorized as environmentalist (Linder 1990), more specifically architecture-oriented urban approaches focus on issues ranging from historic landmark preservation (Nivala 1996, Lewinsohn-Zamir 1997) to nuisance-type social harms (Smith/Fernandez 1991) and the potential free-speech implications of their remedies (Poole 1987, Pak 1991); cf. Garnett 2012 (on urban public space as a commons—the “urban commons”—and the problems of its management). (One might consider such built-environmental concerns as at least complementary to, hardly exclusive of, the array of copyright-related aesthetic issues addressed in Yen 1998).

790 Erdmann 1884; Cultrera 1924 (on Hippodamus as “architect”); von Gerkan 1924:42-61; Castagnoli 1956, 1971; Wycherley 1962:17-18, 19/21 and at *CAH*² 5 (1992):202-205; Burns 1976; Shipley 2005; Cursaru 2006; Gruet 2008; Mazza 2008, 2009; Zenzen 2015; Barbera 2017; cf. Robinson BA 2016 on city-planning more generally; Saunders 1976 and Akkerman 2014 on the philosophical reflex of city-planning in Plato.

the distribution of structures among them. Aristotle, who credits Hippodamus' originality on this score (Arist. *Pol.* 2.8.1 1267b22-23: ὅς καὶ τὴν τῶν πόλεων διαίρεσιν εὔρε, cf. *taxis* for his constitutional arrangements at 2.8.7 1268a15: τῆς Ἴπποδάμου τάξεως) refers to the "Hippodamian style/manner" (Arist. *Pol.* 7.11.6 1330b21-25: ἡ δὲ τῶν ἰδίων οἰκίσεων διάθεσις ἡδίων μὲν νομίζεται καὶ χρησιμωτέρα πρὸς τὰς ἄλλας πράξεις, ἂν εὐτομος ᾗ καὶ κατὰ τὸν νεώτερον καὶ τὸν Ἴπποδάμειον τρόπον), and his name has long since become synonymous with this general design in Greek urban topography.⁷⁹¹

Hippodamus (born too late, it is assumed) is regarded as less personally responsible for, so much as, if anything, influenced by, the reconstruction (on a regular, orthogonal lines) of his hometown of Miletus in the wake of Persian aggression (479 BCE), whereas his role as *ktistēs* in foundation (presumably, especially the planning) of Rhodes (resulting from the synoecism of Lindos, Kamiros, and Ialysos) in 408/7 BCE (Strab. 14.2.9 C.654) has been seen as too late.⁷⁹² Hippodamus is most securely associated with two mid-century Athenian projects: the renovation of the Piraeus⁷⁹³ (ca. 450/45, unless in the 430's BCE), where the *agora* was referred to by his

791 Cf. Wycherley 1962:18: "Hippodamus remains little more than a name to us; a convenient name, however, and I shall feel justified in labelling the Greek method Hippodamian,"—thus, Wycherley's chapter is occupied more with "Hippodamian" (i.e. orthogonal) Greek town-planning than with the career of Hippodamus himself.

792 Wycherley 1964 argues in favor of Hippodamus' involvement; see also Wycherley at *CAH*² 5 (1992):184 ("Hippodamus [...] lived through almost the whole of the century"), 203, 204 w/ n23.

793 Cf. J.K. Davies at *CAH*² 5 (1992):299 w/ n46, M. Ostwald at *CAH*² 5 (1992):315-316, Steinhauer 2000, Gill DWJ 2006, Papadopoulou 2015.

name,⁷⁹⁴ and Pericles’ “panhellenic” colonization of Thurii⁷⁹⁵ (variously dated to 445/4/3 BCE),⁷⁹⁶ near the already established site(s) of Sybaris on the Italian Adriatic coast (on Thurii’s founding by the *mantis* Lampon⁷⁹⁷ and Xenocritus, cf. Diod. Sic. 12.10.3-7, briefly describing (12.10.7) its division by streets into an orthogonal grid; Plut. *Per.* 11.5-11.6; Plut. *Praec. ger. reip.* 15.812d; Σ Ar. *Nub.* 332; Hesych. and Phot. s.v. *θουριομάντεις*).⁷⁹⁸ Putting Hippodamus’

794 Cf. Xen. *Hell.* 2.4.11 (τὴν Ἴπποδάμειον ἀγορὰν), Arist. *Pol.* 2.8.1 1267b23-24 (τὸν Πειραιᾶ κατέτεμεν); Andoc. 1.45; Harpokration s.v. Ἴπποδάμεια, Hesych. s.v. Ἴπποδάμου νέμησις (“allocation”) (τὸν Πειραιᾶ Ἴπποδάμος, Εὐρυφῶντος παῖς, ὁ καὶ μετεωρολόγος, διέειλεν Ἀθηναίους. οὗτος δὲ ἦν καὶ ὁ μετοικίσας εἰς Θουριακοὺς, Μιλήσιος ὄν), Photius ss.vv. Ἴπποδάμου Νέμησις ἐν Πειραιεῖ ι 111 (ἦν δὲ Ἴπποδάμος Εὐρυκόοντος Μιλήσιος· ἢ Θούριος μετεωρολόγος· οὗτος διέειπεν Ἀθηναίους τὸν Πειραιᾶ.), Ἴπποδάμεια ι 111 (ἀγορᾶς τόπος καλούμενος οὕτως ἐν Πειραιεῖ, ὑπὸ Ἴπποδάμου τοῦ Μιλησίου ἀρχιτέκτονος, τοῦ τὸν Πειραιᾶ κατασκευάσαντος καὶ τὰς τῆς πόλεως ὁδοὺς.), Suda s.v. Ἴπποδάμεια ι 555 Adler (ἀγορὰ ἐν Πειραιεῖ, οὕτω καλουμένη ἀπὸ Ἴπποδάμου Μιλησίου ἀρχιτέκτονος, τοῦ οἰκοδομησαμένου τοῖς Ἀθηναίους τὸν Πειραιᾶ).

795 On Hippodamus and the urban plan of Thurii, cf. García Quintela 2000, Cerchiali et al. 2004:119-120 (noting an “important innovation” in a correspondence between street layouts and the efficient distribution of sanctuaries throughout the settlement), Greco 2009; for Thurii’s foundation story and historical context, see further Freeman K 1941, Ehrenberg 1948, Gehrke 2000:170-171, Dillery 2005:195-7.

796 Thus the Piraeus project falls potentially before or after the foundation of Thurii; cf. M. Ostwald at *CAH*² 5 (1992):315 on Σ *vet*^{VERGOM} *Eq.* 327 (κατὰ τὰ Μηδικὰ); Gill DWJ 2013 citing the three-barred sigmas of the Piraeus *horoi* as permitting a lowering of the date thanks to recent dating of the Segesta inscription to 418/7 BCE.

797 Kett 1966 no. 46.

798 Lampon comes in for ridicule more overtly at Ar. *Av.* 521 (Λάμπων δ’ ὄμνυσ’ ἔτι καὶ νυνὶ τὸν χῆν’, ὅταν ἐξαπατᾶ τι), which, together with Ar. *Nub.* 332, brings him quite close to the oracle-monger (χρησιμολόγος) caricature lampooned at Ar. *Av.* 958-991, immediately prior to the appearance of the parodic city-planning Meton at Ar. *Av.* 992-1020. Geo-measuring the air (995-996: γεωμετρήσαι βούλομαι τὸν ἀέρα / ὑμῖν διελεῖν τε κατὰ γύας—κατὰ γύας Dawes, corr. MSS: κατ’ ἀγνιάς; cf. 1006-7: ὁδοὶ ὀρθαί; Dunbar 1998:374 ad v. 996), according to a plan that will be circular and radiating rather than squarely orthogonal and perpendicular, he is likened to Thales (999-1009: ἄνθρωπος Θαλῆς), and obviously bears comparison to the intellectual ἀλαζών (Dunbar 1998:372) Socrates of the *Clouds* (another meteorologist, who also invokes Thales: *Nub.* 180). The portrayal Meton either shares common sources with or directly influenced the language of later lexographers on Hippodamus (particularly with regard to his re-design of Piraeus); as the historical Meton, an astronomer, is not elsewhere credited with an interest in town-planning (cf. Dunbar 1998:372) it seems his adoption here of Hippodamian qualities has resulted in the meteorological Hippodamus of Hesychius and Photius (though note Arist. *Pol.* 2.8.1 1267b28-29: λόγιος δὲ καὶ περὶ τὴν ὅλην φύσιν εἶναι βουλόμενος—an expression which has suggested to some mere affectation rather than diligent research or a sincere devotion, though this interpretation must depend on the δὲ-clause continuing the critique of his tonsorial and sartorial eccentricity); noteworthy perhaps that the only overt mention of Hippodamus in Aristophanes, though not certainly identifiable as the famous Milesian, serves as an exemplar of civic-mindedness, supposedly by having opened his home in Piraeus to the public in some way (cf. Σ *vet*^{VERGOM} *Eq.* 327 ὁ δ’ Ἴπποδάμου λείβεται θεώμενος & Suda s.v. λείβεται τοῖς δακρύοις λ 357 Adler: τὴν οἰκίαν δημοσίαν ἀνήκε).

career in wider context of ancient city-planning in general,⁷⁹⁹ and Magna Graecia in particular,⁸⁰⁰ further undermines confidence in his status as a *protos heurtes* of urban design, where sites such as Megara Hyblaea (est. ca. 735 BCE, cf. Strab. 6.2.2, ps.-Scymn. 271ff.; or ca. 728 BCE, cf. Thuc. 6.4)⁸⁰¹ are widely recognized as among the first (again, too early for Hippodamus' likely *floruit*) examples of orthogonal planning (cf. Jos. *Bel. Iud.* 3.5.1-3 for military camp as model of regular city-like layout). Hard to say, regardless, to what extent Hippodamus' personal preoccupation with the orthogonal standardization of the urban landscape stands in relation to, with any broader implications for, other ancient efforts (theoretical or otherwise) toward standardization or efficiency (orthogonal layout as improving efficient distribution of urban shrines has at least been remarked). The association with Phaleas is suggestive for (admittedly questionable) reading of Sybaris IV/Thurii (its legislation variously attributed to Charondas (Diod. Sic. 12.11.3-4) or Protagoras (Heracl. Pont. *Περὶ νόμων* fr. 150 Wehrli ap. D.L. 9.50)⁸⁰² as a utopia in praxis⁸⁰³ (cf. also unfounded assertions for Pythagoreans at Croton).⁸⁰⁴ The utopian reading is tenable, however, as a matter of literary history, just as much as the idea of Sybaris was perpetuated and evolved as a literary topos of sumptuary excess. My working assumption is that fictions—pseudepigraphic, biographical, fantastic and otherwise—have been just as consequential as historical action in the prehistory of the IP-relevant conceptual toolbox.

Hippodamus, Aristotle suggests, was just as preoccupied with matters of legal interpretation, providing jurors more freedom to exercise legal interpretation through equity and

799 Haverfield 1913, von Gerkan 1924, Weickert 1927, Martin R 1956, Wycherley 1962; Hammond 1972 (esp. Ch. 17, pp. 221-235); Ward-Perkins 1974; Laurence 1994.

800 Mertens/Greco 1996, Mertens 2006.

801 Dunbabin 1948:46, Miller M 1970:18-20, 276-278.

802 Muir 1982:18-23.

803 Winiarczyk 2011:23-25.

804 Manuel 2009:94, Winiarczyk 2011:17-18.

qualified verdicts (Arist. *Pol.* 2.8.13 1268b4-6: *ὁ περὶ τῆς κρίσεως ... νόμος, ... τὸ κρίνειν ἀξιοῦν διαιροῦντα, τῆς δίκης ἀπλῶς γεγραμμένης, καὶ γίνεσθαι τὸν δικαστὴν διαιτητὴν*). This enabled in practice by substitution of a writing tablet (facilitating the dicast's writing) for the voting-pebble (*ψηφος*) (2.8.5 1268a3-5: *πινάκιον, ἐν ᾧ γράφειν, εἰ καταδικάζοι ἀπλῶς, τὴν δίκην, εἰ δ' ἀπολύοι ἀπλῶς, κενόν, εἰ δὲ τὸ μὲν τὸ δὲ μή, τοῦτο διορίζειν*), whereby it is not clear exactly how much freedom this scheme allowed a jurist to indulge in formulations of equity. If only three options were intended—condemn, acquit, and partially so—presumably pebbles could have still been accommodated. Aristotle's objections, however, which begin with the distinction between arbitration and jury trials, are clear (2.8.13-15 1268b). The issues here involve freedom of, or formal constraints on, (court rulings as) functional speech—guided by law, fixed in writing, and validated by state authority: jurors are normally constrained by the charges, complaints and pleas as well as the legally prescribed penalties as to how they may respond (convict/acquit, or approve/reject a penalty), without freedom to alter their voice beyond its value in registering a binary choice. Moreover, unlike arbitrators (*κοινολογοῦνται γὰρ ἀλλήλοις περὶ τῆς κρίσεως*), jurors may not confer with one another (*τοῦναντίον τούτου τῶν νομοθετῶν οἱ πολλοὶ παρασκευάζουσιν ὅπως οἱ δικασταὶ μὴ κοινολογῶνται πρὸς ἀλλήλους*) (2.8.13). Nor does Aristotle find in Hippodamus any express practical method for managing the potential quantity and diversity of such qualified verdicts (2.8.14-15).⁸⁰⁵

More profound than Hippodamus' suggested nuance to juristic legal interpretation is a provision regarding something closer to legal authorship. As formulated by Aristotle, Hippodamus seems in fact to suggest incentivizing innovation in service of the public good

805 Cf. *infra* on Zaleucus, per Ephorus *FGrH* 70 F 139 ap. Strab. 6.1.8.

generally (Arist. *Pol.* 2.8.6 1268a7-8: νόμον ἐτίθει περὶ τῶν εὕρισκόντων τι τῇ πόλει συμφέρον, ὅπως τυγχάνωσι τιμῆς; 2.8.16 1268b22-23: τοῖς εὕρισκουσί τι τῇ πόλει συμφέρον ὡς δεῖ γίνεσθαι τινα τιμῆν). Though incentivising innovation in service of the public welfare by promise of some kind of reward, key elements of the Sybaritic patent missing here are: a monopoly privilege for the private practice of the novel idea, an understanding that the idea can be practiced to one's own benefit (profit), and a time-limit on the exclusive right to practice it. Proximity in Aristotle's treatment of this issue to Hippodamus' (immediately subsequent) welfare provision for war-orphans (8-9: τοῖς παισὶ τῶν ἐν τῷ πολέμῳ τελευτώντων ἐκ δημοσίου γίνεσθαι τὴν τροφήν)⁸⁰⁶ offers a clue for public welfare/subvention as 1) perhaps proximal within Hippodamus' own writing(s) to this matter of reward for invention in state-service, 2) perhaps directly relevant to this issue in Aristotle's mind, and/or 3) widely understood as being connected in ancient Greek political theory generally. Aristotle rejects Hippodamus' apparent claim that such a provision were unique, it being well established at Athens as elsewhere (2.8.6 1268a8-9). Curiously, we find similar proximity of topics (promotion of citizen activity to public benefit alongside public maintenance of war-orphans: Arist. *Pol.* 2.8.6 1268a7-9: τῇ πόλει συμφέρον / τοῖς παισὶ τῶν ἐν τῷ πολέμῳ τελευτώντων ἐκ δημοσίου γίνεσθαι τὴν τροφήν) in the case of Solon, capping rewards to athletes, who are in fact a drain on society, in favor of war-casualties and their children, thus incentivizing bravery (D.L. 1.55-56):⁸⁰⁷

806 Orphans enjoyed some kind of protected status (or at least, lip-service thereto) already in Hesiod's day (cf. *Op.* 330).

807 Cf. Diod. Sic. 9.2.5: ἀθλητὰς μηδὲν ἀξιόλογον συμβάλλεσθαι ταῖς πόλεσι πρὸς σωτηρίαν, τοὺς δὲ φρονήσει καὶ ἀρετῇ διαφέροντας μόνους δύνασθαι τὰς πατρίδας ἐν τοῖς κινδύνοις διαφυλάττειν; Plut. *Sol.* 31 cites Heraclides Pont. fr. 149 Wehrli noting a law of Pisistratus providing for the public maintenance [δημοσίου τρέφεσθαι] of those maimed in war as anticipated by one of Solon.

... τὸ ἐξαίρειν τὰς τούτων τιμάς, ἀλλὰ μόνων ἐκείνων τῶν ἐν πολέμοις τελευτησάντων, ὧν καὶ τοὺς υἱοὺς δημοσίᾳ τρέφεσθαι καὶ παιδεύεσθαι. ... ἀθληταὶ δὲ καὶ ἀσκούμενοι πολυδάπανοι, καὶ νικῶντες ἐπιζήμιοι καὶ στεφανοῦνται κατὰ τῆς πατρίδος μᾶλλον ἢ κατὰ τῶν ἀνταγωνιστῶν κτλ.

Though without addressing war-casualties and their children, Xenophanes too addresses both issues of proper allocation of resources and publicly beneficial incentives in questioning the prioritization of rewards for athletic rather than intellectual virtue.

Though Hippodamus' provision (as Aristotle first formulates it, as again at 2.8.16 1268b22-23) seems quite general in scope, Aristotle's critique (2.8.16-25 1268b22-1269a27) treats it as a matter of strictly (written) legal innovation or reform.⁸⁰⁸ Either for Hippodamus or for Aristotle, *τῇ πόλει συμφέρον* necessarily implies an innovation not intended for private, for profit exploitation (in contrast to a novel culinary product at Sybaris or Thales' olive-press monopoly), and that any innovation of service to the state inherently implicates its legal mechanics. Even this limited conception of Hippodamus' proposal Aristotle swiftly rejects (2.8.16 1268b23-25: *οὐκ ἔστιν ἀσφαλὲς τὸ νομοθετεῖν, ἀλλ' εὐόφθαλμον ἀκοῦσαι μόνον· ἔχει γὰρ συκοφαντίας καὶ κινήσεις, ἂν τύχη, πολιτείας*; cf. Socrates' question to Hippias at Xen. *Mem.* 4.4.11, ap. Stob. 3.9.57 Wachsmuth/Hense 1894 [III]:375.10-12: *ἢ ψευδομαρτυροῦντος ἢ συκοφαντοῦντος ἢ φίλους ἢ πόλιν εἰς στάσιν ἐμβάλλοντος ἢ ἄλλο τι ἄδικον*), on two counts: 1) as concealing, behind the charms of a synaesthetic "specious sound" (tr. Barker), a dangerous potential for fostering false accusations of subversion and ultimately for actual revolution, and 2) by engaging a preexisting quandary (2.8.16 1268b26-27: *ἀποροῦσι ... τινας*; 32-33: *ἔχει ... ἀπορίαν*) as to whether the abandonment (*κινεῖν*: 2.8.16 1268b28,30, 2.8.18 1268b34, etc.) of a

808 Hogan 1959; cf. Boegehold 1996 (on resistance to legal innovation in Athens); Prager 1952:112-114 (citing Hippodamus just after mention of prizes in antiquity for aesthetic as well as utilitarian purposes). Polansky 1991 treats the topic of Aristotle's philosophy of political change in general.

traditional/established law (28: *τοὺς πατρίους νόμους*)⁸⁰⁹ in favor of a new one is inherently beneficial or harmful to “the common good” (2.8.17 1268b31: *κοινὸν ἀγαθόν*).⁸¹⁰ The lack of any reliable, generalizable evaluation procedure(s) for the likely public benefit of new laws is the basis of the latter dilemma no less than the first, such that they might seem one and the same; as it turns out, however, Aristotle is too committed to his particular legal conservatism to care about exploring the feasibility of legislative public-benefit heuristics (though aware of the potential danger of Hippodamus’ scheme, 2.8.16 1268b30-31: *ἐνδέχεται δ’ εἰσηγεῖσθαι τινὰς νόμων λύσιν ἢ πολιτείας ὡς κοινὸν ἀγαθόν*); instead, he raises very basic questions about the nature of and possibility for progress in the arts (in the broadest sense), as in human behavior and culture generally, before dismissing the notion as inappropriate to the law; in Hippodamus’ scheme (as Aristotle transmits it) there is only talk of discovery and benefit (*εὕρισκειν, σύμφερον*), not change (whether in general or of laws in particular), though this is certainly a logically necessary element of any definition of innovation or progress. In his critique, it is now not just a matter of *κινεῖν τοὺς πατρίους νόμους*, but generalized: *τὰ πάτρια* are any case of superseded received wisdom or obsolete practice in some specialized branch of human endeavor, their replacement has proven beneficial, Aristotle concedes in seemingly all the arts, even politics (2.8.18 1268b35-38: *οἷον ἰατρικὴ κληθεῖσα παρὰ τὰ πάτρια καὶ γυμναστικὴ καὶ ὅλως αἱ τέχναι πᾶσαι καὶ αἱ δυνάμεις, ὥστ’ ἐπεὶ μίαν τούτων θετέον καὶ τὴν πολιτικὴν, δηλονότι καὶ περὶ ταύτην ἀναγκαῖον ὁμοίως ἔχειν*). Aristotle admits that even in law examples of the absurdly outmoded are to be found, interestingly glancing even all the way back to the age of

809 Here is where the scope becomes suddenly limited to legal reform rather than innovation in general, as Hippodamus’ proposal might have seemed in Aristotle’s presentation up to this point.

810 I.e. that of the *polis* citizen body, given the centrality of *κοινωνία* to the *Pol.*, from 1.1.1 1252a1 on, as the genus of which the *polis* represents a particular species.

primeval man (2.8.21 1269a4-5: *τοὺς πρώτους, εἴτε γηγενεῖς ἦσαν εἴτ' ἐκ φθορᾶς τινοσ ἐσώθησαν*) to explain the risible simplicity of early social forms and rules (*ὁμοίους εἶναι καὶ τοὺς τυχόντας καὶ τοὺς ἀνοήτους*). It is clear, however, that he conceives of human arts as well as early society in terms of unwritten rules and norms (*τὰ πάτρια* as *nomima*). Where he concedes that imprecision is the nature of the written law and that experience must naturally suggest its clarification and improvement (change in the law, ergo, seemingly necessary; cf. 2.8.22 1269a13: *κινητέοι καὶ τινὲς καὶ ποτὲ τῶν νόμων εἰσίν*), moreover, he stipulates that the written law is inherently different, deriving validity and strength from habituation, such that legal innovation of any sort is to be treated with suspicion and indulged in only very rarely, even where improvement is the expected outcome (yet, unsurprisingly, he offers no heuristic for legal imperfection nor recommended rate or degree of change). He then explicitly rejects the analogy to change in the arts (2.8.24 1269a19-24):

ψεύδος δὲ καὶ τὸ παράδειγμα τὸ περὶ τῶν τεχνῶν· οὐ γὰρ ὅμοιον τὸ κινεῖν τέχνην καὶ νόμον· ὁ γὰρ νόμος ἰσχύει οὐδεμίαν ἔχει πρὸς τὸ πείθεσθαι παρὰ τὸ ἔθος, τοῦτο δ' οὐ γίνεται εἰ μὴ διὰ χρόνου πλῆθος, ὥστε τὸ ῥαδίως μεταβάλλειν ἐκ τῶν ὑπαρχόντων νόμων εἰς ἑτέροισ νόμοισιν καινοῖσ ἀσθενῆ ποιεῖν ἐστὶ τὴν τοῦ νόμου δύναμιν.

Thus does he refute Hippodamus' incentive scheme, by stipulating the written law's dependence on its own immutability. As to the appropriate conditions for legal change, and its qualified agents, Aristotle stresses the significance of such determinations just as he evades their further examination (2.8.25 1269a28: *ἄλλων γὰρ ἐστὶ καιρῶν*).

Though Aristotle rejects Hippodamus' legal-innovation incentive, suggestive of the motivational power of law generally is Aristotle's conviction (expressed in his critique of Phaleas) of the necessity of law in conditioning (through habituation) human desires and their consequent behaviors (Arist. *Pol.* 2.7.8 1266b29-32: *μᾶλλον γὰρ δεῖ τὰς ἐπιθυμίας ὁμαλίζειν ἢ*

τὰς οὐσίας, τοῦτο δ' οὐκ ἔστι μὴ παιδευομένοις ἱκανῶς ὑπὸ τῶν νόμων).⁸¹¹ (His formulation here has in mind the purpose of moderating the destabilizing potential of man's—sometimes limitless—acquisitiveness; cf. Arist. *Pol.* 2.7.19 1267b1-5, 7.1.5 1323a36-38). Thus, we may accept this aspect of Hippodamus' vision, even as critically filtered by Aristotle, as further testimony to an ancient awareness of the power of law (however underutilized) to incentivize innovation according to the same general principles by which it guides much other human behavior.

Zaleucus & Charondas: legal standardization, conservatism, and sumptuary restraint

In several instances, Hippodamus may be seen to have been reacting against impulses central to the careers of Zaleucus (Timaeus *FGrH* 566 F 130; Ephorus *FGrH* 70 F 138 = ps.-Scymn. 312, 139 = Strab. 6.1.8; Σ Pind. *O.* 11.17; Diod. Sic. 12.20-21; Clem. Alex. *Strom.* 1.26.152)⁸¹² and Charondas (Arist. *Pol.* 2.12.11 1274b, cf. 4.11.15 1296a21, 4.13.2 1297a23; Diod. Sic. 12.11-19),⁸¹³ often treated together (Arist. *Pol.* 2.12.6-7 1274a22-31; 29-30 reports the claim that Zaleucus was a student of Thales, Charondas a student of Zaleucus—ἀλλὰ ταῦτα μὲν λέγουσιν ἀσκεπτότερον τῶν χρόνων λέγοντες),⁸¹⁴ just as several floating anecdotes and novelties are given now to one, now the other, depending on the source. The two are often associated with other early law-givers in the sources, and, given their south Italian context, often integrated into the Pythagorean sphere of influence (Zaleucus as student of Pythagoras at Diod.

811 Note that for Aristotle, philosophy has, as its liberating end, freedom from legal compulsion (D.L. 5.20): ἐρωτηθεὶς τί ποτ' αὐτῷ περιέγονεν ἐκ φιλοσοφίας, ἔφη, «τὸ ἀνεπιτάκτως ποιεῖν ἃ τινες διὰ τὸν ἀπὸ τῶν νόμων φόβον ποιοῦσιν.» Cf. Xenocrates ap. Cic. *De rep.* 1.3: ut id sua sponte facerent, quod cogerentur facere legibus.

812 Taylor T 1822:46-50, Gerlach 1858:49-68, von Fritz 1967, van Compernelle 1981, Link 1992, Papakonstantinou 2012.

813 Taylor T 1822:38-45, Gerlach 1858:77-92, Vysokii 2013.

814 Mühl 1929 (cf. Ure 1929), 1933; Szegedy-Maszak 1978.

Sic. 12.20.1). Their careers as constitutional reformers and legislators (legal authors) find points of connection with the ideas of Hippodamus treated above, rather than simply because of the shared hint of Pythagoreanism.

Zaleucus, legislator at Epizephyrian Locris, is credited as being the first to use written laws (not merely initiating the literary recording of pre-existing law, but engaging in original legal authorship: Ephorus *FGrH* 70 F 139 ap. Strab. 6.1.8; further credited as *ἐν δὲ τοῖς κατὰ μέρος νομοθετήμασι πολλὰ παρ' ἑαυτοῦ προσεξεύρε μάλα σοφῶς καὶ περιττῶς* at Diod. Sic. 12.20.3). Charondas' legislation for Catana was perhaps widely copied by other legislators and *poleis*, but otherwise also directly legislated himself for other colonies of Chalkis in Sicily and Magna Graecia (Pl. *Resp.* 10.599e: Ἰταλία καὶ Σικελία; Arist. *Pol.* 2.12.6 1274a22-25: Ζάλευκός τε Λοκροῖς τοῖς ἐπιζεφυριοῖς, καὶ Χαρώνδας ὁ Καταναῖος τοῖς αὐτοῦ πολίταις καὶ ταῖς ἄλλαις ταῖς Χαλκιδικαῖς πόλεσι ταῖς περὶ Ἰταλίαν καὶ Σικελίαν.). In the testimonia to their legislative activity can be found suggestions of νομογραφία both in the sense of codification or revision as an anthologizing/adaptive process (Zaleucus: Ephorus *FGrH* 70 F 139 ap. Strab. 6.1.8: τῆς δὲ τῶν Λοκρῶν νομογραφίας μνησθεὶς Ἐφορος, ἣν Ζάλευκος συνέταξεν ἔκ τε τῶν Κρητικῶν νομίμων καὶ Λακωνικῶν καὶ ἐκ τῶν Ἀρεοπαγικῶν; Charondas: Diod. Sic. 12.11.4) as well as *de novo* creation from scratch (Zaleucus at Diod. Sic. 12.20.1: καταβαλόμενος ἐξ ἀρχῆς καινὴν νομοθεσίαν).

As primary authors at the birth of written law, they will have been (at least in the sources that treat them as such) necessarily original, though even their innovations show a strain of conservatism at odds with, say Hippodamus' suggestion of greater leeway in jurors' verdicts. Demosthenes recalls (Dem. *Contr. Tim.* 24.139) that among the Locrians the law (without

naming the legislator/author of this provision, though Zaleucus would be the most obvious candidate) dictates that the proposer of a new law must do so with a noose (*βρόχος*) around his neck under penalty of death should the motion not be carried (the same provision is ascribed to Charondas at Diod. Sic. 12.17.1-3).⁸¹⁵ As evidence of its efficacy (Dem. 24.140-141) Demosthenes cites the Locrians' adoption of only one⁸¹⁶ new law in over 200 years (at Diod. Sic. 12.17.3 only three men among the Thuriians from the time of Charondas to that of Diodorus have dared or survived the process). The rationale behind the provision comes close to Aristotle's concerns with Hippodamus' scheme of promoting legal innovation (*οἴονται δεῖν τοῖς πάλαι κειμένοις χρῆσθαι νόμοις καὶ τὰ πάτρια περιστέλλειν καὶ μὴ πρὸς τὰς βουλήσεις μηδὲ πρὸς τὰς διαδύσεις τῶν ἀδικημάτων νομοθετεῖσθαι*).⁸¹⁷ Whereas Aristotle merely presents the rationale for not indulging in over-hasty legal innovation (reform), in Zaleucus and Charondas we find innovation as capital offense.

Like Hippodamus, Zaleucus and Charondas are preoccupied with the standardization of legal interpretation/arbitration, though in the opposite direction. According to Polybius (Polyb. 12.16, in what is a variation on the trope at Dem. *Contr. Tim.* 24.139) on judicial decisions according to a law of Zaleukos at Locrii, challenging the ruling and thus legal interpretation of the *kosmopolis* entailed both the appellant and *kosmopolis* arguing, each with a noose around the

815 Note the self-imposed capital prohibition on revision of one's own laws at Diod. Sic. 12.19.1-2, similar to the tradition of self-imposed exile to avoid altering one's own legislation in the aftermath of constitutional reform, a device associated most famously with Solon. Note too the role at Athens of the five public advocates (*συνήγοροι*: cf. LSJ II.1 citing Dem. 24[*In Tim.*].36) appointed by the state to defend established laws in the Heliaia against proposed changes.

816 The initiator of this exceptional legal innovation, Demosthenes' *ὁ ἑτερόφθαλμος* (Dem. *Contr. Tim.* [24].141), is misconstrued by Suda s.v. *Ἐτερόφθαλμος* ε 3295 Adler (*ὁ ἐν Λοκροῖς νομοθετήσας*, citing Demosthenes), if, that is, they are right who take Suda to mean Zaleukos. The same law is attributed by Diod. Sic. 12.17.3-5 to Charondas as in place at Thurii, and by D.L. 1.57 to Solon.

817 Cf. Camassa 1994 on the processes of writing down and of altering laws. Legal change in practice, rather than theory, will be examined later when considering the Athenian *nomothesia* at the end of the 5th c. BCE.

neck under penalty of death, before the court of a thousand (χίλιοι). Per Ephorus *FGrH* 70 F 139 ap. Strab. 6.1.8 it seems that, not only did Zaleukos ease interpretation in contract law at Locrii by simplifying the respective statutory language (τὸ ἀπλουστέρωσ ἀπτόν περὶ τῶν συμβολαίων διατάξαι; cf. Arist. *Pol.* 2.12.11 1274b7-8 of Charondas: τῇ δ' ἀκριβείᾳ τῶν νόμων ἐστὶ γλαφυρώτερος καὶ τῶν νῦν νομοθετῶν; Diod. Sic. 12.12.4-12.13.4: mandated citizen-literacy, supported by state-sponsored teachers,⁸¹⁸ just as the sick were already treated at state expense), but also, as his particular innovation (ἐν τοῖς πρώτοις καινίσαι τοῦτο), by inclusion of explicitly defined penalties within the laws themselves, thus forcing uniformity on and taking discretion away from the judges (ἐκεῖνος ἐν τοῖς νόμοις διώρισεν, ἡγούμενος τὰς μὲν γνώμας τῶν δικαστῶν οὐχὶ τὰς αὐτὰς εἶναι περὶ τῶν αὐτῶν, τὰς δὲ ζημίας δεῖν εἶναι τὰς αὐτάς). This he offered in reaction to a pre-existing chaos in the rendering of verdicts—precisely of the sort Aristotle feared from Hippodamus' rejection of the dicast's pebble in favor of a writing tablet—if nothing else, an earlier tradition of just such over-diversity and intractable conflict of opinion at trial and sentencing, and Zaleucus' solution of penalty- and sentencing-uniformity,⁸¹⁹ explains Aristotle's reaction to Hippodamus. Similarly, note that the only⁸²⁰ specific innovation with which Aristotle credits Charondas (Arist. *Pol.* 2.12.11 1274b5-7: Χαρώνδου δ' ἴδιον μὲν οὐδὲν ἐστὶ πλὴν αἱ δίκαι τῶν ψευδομαρτυριῶν (πρῶτος γὰρ ἐποίησε τὴν ἐπίσκηψιν); cf. Diod. Sic. 12.12.2) is a precaution against false accusation, such as he fears from Hippodamus' legal innovation incentive cited above (Arist. *Pol.* 2.8.16 1268b23-25: συκοφαντία; cf. Xen. *Mem.*

818 Cf. Curren 1993a,b, 1994, 2000, and Götz 2003 on Plato's and Aristotle's theories of state-funded education.

819 From a theoretical standpoint, one hardly expects any self-evident or *a priori* happy medium between explicitly elaborated legal prescription, on the one hand, and juristic discretionary equity, on the other. In light of such relevant factors as citizen literacy and legal encoding (considered more closely below regarding forensic legal citation), note the transaction costs associated with codification as discussed in Stevenson 2014.

820 Yet, note Diod. Sic. 12.17.1 describing Charondas' law on legal revision: παραδοξότατον νενομοθετηκέναι περὶ τῆς διορθώσεως τῶν νόμων ... ἴδιόν τι καὶ παντελῶς ἐξηλλαγμένον νομοθετῆσαι.

4.4.11 ap. Stob. 3.9.57 Wachsmuth/Hense 1894 [III]:375.10-12: ἢ ψευδομαρτυροῦντος ἢ συκοφαντοῦντος).⁸²¹

Their sumptuary legislation is further worth consideration (for Zaleucus, cf. Diod. Sic. 12.21, Suda s.v. Ζάλευκος ζ 12 Adler). Instances of punitively imposed attire in Charondas' laws include the more dire consequences of public shaming of sycophants (forced to wear a myrtle crown) as contributing to political stability, at first indirectly through their suicide, ultimately by banishment of the remaining offenders, at Diod. Sic. 12.12.2:

τοὺς δ' ἐπὶ συκοφαντία καταγνωσθέντας προσέταξε περιπατεῖν ἐστεφανωμένους μυρική, ὅπως ἐν πᾶσι τοῖς πολίταις φαίνονται τὸ πρωτεῖον τῆς πονηρίας περιπεποιημένοι. διὸ καὶ τινὰς ἐπὶ τούτῳ τῷ ἐγκλήματι καταδικασθέντας τὸ μέγεθος τῆς ὕβρεως οὐκ ἐνεγκόντας ἐκουσίως ἑαυτοὺς ἐκ τοῦ ζῆν μεταστήσαι. οὐ συντελεσθέντος ἐφυγαδεύθη πᾶς ἐκ τῆς πόλεως ὁ συκοφαντεῖν εἰθώς, καὶ τὸ πολίτευμα μακάριον εἶχε βίον τῆς τοιαύτης κακίας ἀπηλλαγμένον.

—with which contrast Charondas' provision for public shaming of war-deserters through punitive transvestism at Diod. Sic. 12.16.1-2 as preferable to e.g. execution or banishment because it preserves the offender (τοὺς ἀμαρτάνοντας οὐκ ἠφάνισεν) in hopes of his future rehabilitated usefulness to the state. This latter attitude corresponds to Zaleucus' doctrine of leniency toward, preservation of and reconciliation with enemies at Diod. Sic. 12.20.3. Moreover, a most efficient use of shaming is employed by Zaleucus at Diod. Sic. 12.21.1-2 in a series of sumptuary and sumptuary-adjacent “imperfect” laws,⁸²² where certain deprecated fashions, symbols or other accoutrements of undesirable behavior are permitted only if precisely

821 One gets the sense, whether from a policy or a doctrinal perspective, of being stuck with choice between two intractable extremes once observed by A.N. Whitehead: “Mere change without conservation is passage from nothing to nothing. [...] Mere conservation without change cannot conserve.” (Whitehead AN 1929:250, quoted in application to industrial property policy at Ladas 1975 [I]:vii).

822 For the concept of the “imperfect” law, Oldfather ad Diod. Sic. 12.21.2 cites Pufendorf *De jur. nat. gent.* (1672) 1.6.14; see also Pufendorf [1660] 1672 [*Elem. iurispr. univ.*] 1 deff. 14.2 [imperfect law] (Oldfather 1931:168-169 ~ Oldfather/Behme 2009:230), cf. 7.1 [imperfect authority] (Oldfather 1931:55 ~ Oldfather/Behme 2009:87), 8.2,5 [imperfect right] (Oldfather 1931:58,59-60 ~ Oldfather/Behme 2009:92,93), 12.3,6,7 [imperfect(ly mutual) obligation] (Oldfather 1931:73,75,78 ~ Oldfather/Behme 2009:110,112-113,116-117), etc.

this behavior is being indulged (e.g. *μηδὲ περιτίθεσθαι χρυσία μηδὲ ἐσθήητα παρυφασμένην, ἐὰν μὴ ἑταίρα ἦ, μηδὲ τὸν ἄνδρα φορεῖν δακτύλιον ὑπόχρυσον μηδὲ ἱμάτιον ἰσομυλήσιον, ἐὰν μὴ ἑταιρεύηται ἢ μοιχεύηται*). Thus, by guaranteeing public censure and humiliation, precisely the permitted behavior is eliminated without the need for its prosecution. Noteworthy here is the law’s subtle use of informal means to regulate fashion as a vehicle of personal expressions and their implied social threats.

Xenophanes’ progressivism and social welfare privileging intellectuals

(Extra-legal) guidelines to expressive behavior of a different sort, the sympotic rules (21 B 1 DK = Athen. 11.7.462c-f, cf. 21 B 5 DK)⁸²³ of Xenophanes⁸²⁴ (*fl.* mid-late 6th c. BCE) (D.L. 9.18-20) belong to a tradition⁸²⁵ of poetic-philosophical sympotic rule-making (“legislation”). The cultural background to such rules in Homeric sympotic-rhapsodic tradition⁸²⁶ is noteworthy in Xenophanes’ case in light of his engagement as a perhaps itinerant (21 B 8.2: *βληστρίζοντες ἐμὴν φροντίδ’ ἀν’ Ἑλλάδα γῆν, 45: ἐγὼ δὲ ἐμαυτὸν πόλιω ἐκ πόλεως φέρων ἐβλήστριζον*), if not Homeric,⁸²⁷ rhapsode of his own verse⁸²⁸ (21 A 1 DK ap. D.L. 9.18: *αὐτὸς ἐρραψώδει τὰ ἐαυτοῦ*).⁸²⁹ One might well categorize him as anti-Homeric⁸³⁰ due to his Homer/Hesiod-criticism (21 B 1 DK ap. Athen. 11.7.462f22),⁸³¹ faulting earlier poetry and its irrational fantasies

823 Bowra 1938b, Marcovich 1978, Collins 2004:147-151 (II.11), Akritidou 2013:113-121 (Ch. 2.2).

824 General treatments include Fränkel 1925, Finkelberg A 1990, Leshner 1992, 2013, Ford AL 2002:46-66.

825 Slater 1981:212n10.

826 Bielohlawek 1940, Colesanti 1999, Ford AL 1999, Wecowski 2002, Mawhinney 2012.

827 Kirk et al. 1983:164; cf. Reinhardt 1916:126, 132-140.

828 Akritidou 2013:105-113 (Ch. 2.1); cf. Granger 2007b on Xenophanes’ use of verse rather than the prose of his philosophical contemporaries.

829 Cf. 21 A 11 DK ap. Athen. 14.632c-d, D.L. 9.22: *καὶ αὐτὸς* (sc. Parmenides) *δὲ διὰ ποιημάτων φιλοσοφεῖ, καθάπερ Ἡσίοδος τε καὶ Ξενοφάνης καὶ Ἐμπεδοκλῆς*.

830 See 21 B 11 DK (Sext. Emp. *Adv. Math.* 9.193), 21 B 12 DK (Sext. Emp. *Adv. math.* 1.289); D.L. 2.46, 9.18: *Ξενοφάνη θ’ ὑπάτυφον Ὀμηραπάτην ἐπικόπτῃν* (quoting Timon 9 B 60.1 Diels 1901:200); *γέγραφε δὲ ἐν ἔπεισι καὶ ἐλεγείαις καὶ ἰάμβους καθ’ Ἡσίοδου καὶ Ὀμήρου, ἐπικόπτων αὐτῶν τὰ περὶ θεῶν εἰρημένα*.

831 Diels/Kranz 1960:128.2.

(πλάσματα τῶν προτέρων) as lacking utility (τοῖς οὐδὲν χρηστὸν ἔνεστι)—critical discussion of value in the arts and its selective promotion. His supposed *Silloi* (Strab. 14 C.643, Procl. ad Hes. *Op.* 284, Σ Hom. *Il.* 7 ap. *P.Oxy.* 1087.41; Σ^{ABT} ad *Il.* 2.212; Σ Ar. *Eq.* 408), taken as “satires” (cf. Apul. *Florid.* 20 “*satiras*”—unless Crates is intended) or “parodies” (Athen. 2.44.54e: ἐν παρωδίαῖς) (perhaps part of one and the same work, or group of works) fit the picture of a critic and polemicist.⁸³² His renegade theology⁸³³ (21 B 11, 12, 14-16 DK), too, is an extension of his Homer-criticism, representative of the kind of budding rationality⁸³⁴ against which Homer-allegory appears to have evolved in pious reaction. It is on the strength of such a developed critical stance vis-a-vis his predecessors that Xenophanes, in 21 B 2 DK (Athen. 10.6.413f-414c), makes a forceful plea for the privileging of intellectuals (13-14: ... οὐδὲ δίκαιον / προκρίνειν ῥώμην τῆς ἀγαθῆς σοφίης), particularly himself⁸³⁵ (11-12: οὐκ ἔων ἄξιος ὥσπερ ἐγώ. ῥώμης γὰρ ἀμείνων / ἀνδρῶν ἢδ’ ἵππων ἡμετέρη σοφίη), over athletes in the system of competition and (state-sponsored) rewards.⁸³⁶ Similar critiques were expressed by Xenophanes’ supposed student⁸³⁷ (Sotion ap. D.L. 9.5 = 22 A 1 DK, Suda s.v. Ἡράκλειτος η 472 Adler)

832 For Xenophanes as parodist, cf. Lelièvre 1954:76-77; as satirist/polemicist, cf. Rudberg 1948. To the extent the notion of oral-textual re-use inheres in the concept of parody (in some kind of limited, genre-specific sense), it may as well (however forced) be here further suggested that Xenophanes’ mind/body distinction (21 B 23 DK ap. Clem. Alex. *Strom.* 5.109.1: δέμας/νόημα), developed from Homeric antecedents, be viewed as part of the ancient prehistory of the idea-expression dichotomy central to the modern construction of protected expression.

833 Cf. Jaeger 1947 (Ch. 3).

834 Feyerabend 1984, 1987.

835 Reinhardt 1916:134-135, Bowra 1938a, Babut 1974, Tarrant 2003, Harris JP 2009, Akritidou 2013:121-128 (II.3).

836 Cf. Papakonstantinou 2002; Currie 2005:139-152 (esp. 142-143 on *σίτῆσις*, 143-148 on victory statues, 148-19 on victory odes); Tell 2007; Slater 2012, 2013, 2015; Harter-Uibopuu/Kruse 2014. On the respective prizes of the several panhellenic games, cf. e.g. Max. Tyr. 1.4 Hobein 1910:6f. and Luc. *Anach.* 9-10, explaining symbolic prestige as more highly valued than the prizes’ inherent material/monetary value (σημεῖα τῆς νίκης καὶ γνωρίσματα οἷτινες οἱ κρατήσαντες).

837 Xenophanes’ own intellectual credentials may be those of the autodidact (D.L. 9.18: δῆκουσε δὲ κατ’ ἐνίου μὲν οὐδενός); otherwise he is the student of Boton of Athens or Archelaos (D.L. 9.18: κατ’ ἐνίου δὲ Βότωνος Ἀθηναίου ἢ, ὡς τινας, Ἀρχελάου; ps.-Luc. *Macrob.* 20: Ἀρχελάου δὲ τοῦ φυσικοῦ μαθητῆς).

Heraclitus⁸³⁸ and by Euripides in his satyr play *Autolycus* (fr. 282 N² = Xenophan. 21 C 2 DK ap. Athen. 10.5.413c, where Athenaeus explicitly cites 21 B 2 DK as Euripides' model).⁸³⁹

It is important that Xenophanes is measuring the service of athletes, hence that too of the intellectual, by its *public* cost and benefit (21 B 2 DK):

ἀστοῖσιν κ' εἶη κυδρότερος προσορᾶν,	6
καί κε προεδρίην φανερίην ἐν ἀγῶσιν ἄροιτο,	7
καί κεν σῖτ' εἶη δημοσίων κτεάνων	8
ἐκ πόλεως, καὶ δῶρον ὃ οἱ κειμήλιον εἶη	9
ταῦτά κε πάντα λάχοι,	10
(οὐ) τούνεκεν ἂν δὴ μᾶλλον ἐν εὐνομίῃ πόλις εἶη·	19
σμικρὸν δ' ἂν τι πόλει χάρμα γένοιτ' ἐπὶ τῷ,	20
οὐ γὰρ πιαίνει ταῦτα μυχοῦς πόλεως.	22

The utilitarianism in Solon's capping of athletic rewards, already noted above, bears comparison (D.L. 1.55-56):

συνέστειλε δὲ καὶ τὰς τιμὰς τῶν ἐν ἀγῶσιν ἀθλητῶν, ...· ἀπειρόκαλον γὰρ τὸ ἐξαίρειν τὰς τούτων τιμὰς, ἀλλὰ μόνων ἐκείνων τῶν ἐν πολέμοις τελευτησάντων, ὧν καὶ τοὺς υἱοὺς δημοσίᾳ τρέφεσθαι καὶ παιδεύεσθαι. ὅθεν καὶ ἐξήλουν πολλοὶ καλοὶ κἀγαθοὶ γίνεσθαι κατὰ πόλεμον· ὡς Πολύζηλος, ὡς Κυνέγειρος, ὡς Καλλίμαχος, ὡς σύμπαντες οἱ Μαραθωνομάχαι· ἔτι δ' Ἀρμόδιος καὶ Ἀριστογείτων καὶ Μιλτιάδης καὶ μυρῖοι ὄσοι.

Its aim of ensuring welfare for children of war casualties serves in turn to incentivize greater bravery in battle (cf. ps.-Pisistratus' epistle to Solon on tax-based subvention of state expenses at D.L. 1.53).⁸⁴⁰ Just as Xenophanes (21 B 2.17-24 DK) finds athletes benefit the *polis* neither in

838 Babut 1976. On the influence of Xenophanes on Heraclitus, cf. Bröcker 1937 (reviewing Gigon 1935). Xenophanes is elsewhere also credited as the founder of the Eleatic school (Pl. *Soph.* 242d, Clem. Alex. *Strom.* 1.64.2; cf. D.L. 9.18 crediting him with a poem entitled τὸν εἰς Ἑλέαν τῆς Ἰταλίας ἀποικισμὸν—cf. Dougherty 1994:39-40) and teacher of Parmenides (Arist. *Metaph.* 1.5.986b21-22, Theophr. ap. Simplic. *In Phys.* 22.26, Clem. Alex. *Strom.* 1.14.64.3 Stählin 1906 [II]:40, D.L. 9.21, Suda s.v. Παρμενίδης π 675 Adler) and Zeno (Suda s.v. Ζήνων ζ 77 Adler), but also of Empedocles (D.L. 8.56: Ξενοφάνους δὲ γεγονέναι ζηλωτὴν, ᾧ καὶ συνδιατρίψαι καὶ μιμήσασθαι τὴν ἐποποιίαν).

839 In his investigation into 5th c. BCE Greek heroization of the living, Bruno Currie provides a convenient juxtaposition of two examples, athletic and literary, in the persons of the boxer Euthymos and the philosopher-poet Empedocles (at Currie 2005:166-168; cf. 130-131 on legends of divine birth, 151-152 on athletic victors' "aura"). It is clear that athletes' pursuit of prestige and status was partially modeled on and influenced by Homeric and otherwise heroic-legendary precedent (Currie 2005:133-139).

840 Cf. Whitehead D 1983 on φιλοτιμία (applied by Aristotle to Hippodamus) as guiding Athenian competitive outlay and community profit.

terms of increased εὐνομίη nor material wealth (οὐ γὰρ παιίνει ταῦτα μυχὸς πόλεως), deriving only a slight joy (συμκρὸν δ' ἄν τι πόλει χάρμα), the moral element of Solon's disparagement of athletes is more explicit in its continuation at D.L. 1.56:

ἀθληταὶ δὲ καὶ ἀσκούμενοι πολυδάπανοι, καὶ νικῶντες ἐπιζήμιοι καὶ στεφανοῦνται κατὰ τῆς πατρίδος μᾶλλον ἢ κατὰ τῶν ἀνταγωνιστῶν· γέροντές τε γενόμενοι κατὰ τὸν Εὐριπίδην (Eur. *Autolycus* fr. 282.12 N²) «τρίβωνες ἐκλιπόντες οἴχονται κρόκας.» ὅπερ συνιδῶν ὁ Σόλων μετρίως αὐτοὺς ἀπεδέξατο.

Comments of a similar bent are found at Diod. Sic. 9.2.5:

ὅτι ὁ Σόλων ἠγάειτο τοὺς μὲν πύκτας καὶ σταδιεῖς καὶ τοὺς ἄλλους ἀθλητὰς μηδὲν ἀξιόλογον συμβάλλεσθαι ταῖς πόλεσι πρὸς σωτηρίαν, τοὺς δὲ φρονήσει καὶ ἀρετῇ διαφέροντας μόνους δύνασθαι τὰς πατρίδας ἐν τοῖς κινδύνοις διαφυλάττειν.

It is no great step from such a point to indulging in the condemnation of rewards, prizes, (civic) honors as inherently (morally) corrupting (Pl. *Resp.* 8.550d-551a, 9.592a *τιμάς*, cf. 8.545b). There is an inherently moral dimension in their regulation, as with all other objects of sumptuary constraint.⁸⁴¹

The theme of “technical” (in-)expertise in determination of (athletic) rewards is addressed by other authors, e.g. Diogenes Laertius’ Anacharsis (in a passage otherwise concerned with the restraint of immoderate behavior, by hybriatic athletes and alcoholics, including speech under the influence of alcohol—interesting, to the extent connections may be drawn to sympotic rule-making on the one hand and sumptuary regulation, which concerned itself also with public drunkenness, on the other) (D.L. 1.103):

θαυμάζειν δὲ ἔφη πῶς παρὰ τοῖς Ἑλλησιν ἀγωνίζονται μὲν οἱ τεχνῖται, κρίνουσι δὲ οἱ μὴ τεχνῖται. ... θαυμάζειν τε ἔλεγε πῶς οἱ Ἕλληνες νομοθετοῦντες κατὰ τῶν ὑβριζόντων, τοὺς ἀθλητὰς τιμῶσιν ἐπὶ τῷ τύπτειν ἀλλήλους.

841 For the accoutrements of athletics as luxurious expenditure and profitable commodity, cf. e.g. Plin. *NH* 15.5.19 on *gloios* (usum eius [i.e. olei] ad luxuriam vertere Graeci, vitiorum omnium genitores, in gymnasiis publicando: notum est magistratus honoris eius octogenis sestertiis strigmenta olei vendidisse.).

Anacharsis' befuddlement at Greek athletics becomes an elaborate parody in dialogue with Solon (attempting to bridge the Scythian-Athenian cultural divide) in Lucians' *Anacharsis* (Ἀνάχαρσις ἢ Περὶ γυμνασίων). (Note how, at the point where Solon is forced to explain to Anacharsis that not all competitors, but only the winners, receive prizes at the games, discussion shifts to an explanation by Solon of the entire political system (*politeia*), based on systematic differential rewards as pedagogical incentives (*philotimia*)⁸⁴² to youths tasked with conquering *ponoi* and *askēseis*). A case might be made for relating a fear of inexpert misallocation in such a process to Xenophanes' limited faith in the beneficence of tyrants (if viewed as allocators of private or municipal welfare) (D.L. 9.20 & Suda s.v. ἥκιστα η 174 Adler). The advice τοῖς τυράννοις ἐντυγχάνειν ἢ ὡς ἥκιστα ἢ ὡς ἥδιστα is coupled in Suda with the suggestion of tyrants' philosophical bad-faith or mental incapacity (καὶ αὐθις· ἥκιστα μελήσαν αὐτοῖς τῆς ἀληθείας.),⁸⁴³ and indeed in Diogenes the surrounding context consists of assertions of human cognitive limitation, in particular (extensible, one might think, to discussions of flawed judgment in a broad variety of senses, including the sporting, by the κριτής, γνώμων/γνωριστής, δικαστής, διαιτητής, βραβεύς, ἀγωνάρχης/ἀγωνοθέτης, ῥαβδοῦχος, etc.) Xenophanes' answer to Empedocles that it takes a wise man to recognize another (Ἐμπεδοκλέους δὲ εἰπόντος αὐτῷ ὅτι ἀνεύρετός ἐστιν ὁ σοφός, «εἰκότως,» ἔφη· «σοφὸν γὰρ εἶναι δεῖ τὸν ἐπιγνωσόμενον τὸν σοφόν.»)—precisely the key frustration expressed by 21 B 2 DK (but also central to issues of *kleos*- and wealth-allocation and peer-review, which still await optimal solution).

842 Note again Whitehead D 1983.

843 The apparently original context of these latter remarks, however, Marcel. *Vit. Thuc.* 27 (οἱ πολλοὶ τοῖς ἰδίοις πάθεσι συνέθεσαν τὰς ἱστορίας, ἥκιστα μελήσαν αὐτοῖς τῆς ἀληθείας), faults various historians (Herodotus, Timaeus, Philistus, Xenophon) compromised in their accounts by personal passions (in contrast to Thucydides' measured integrity: ὁ δὲ μέτριος καὶ ἐπιεικὴς τῆς ἀληθείας ἦτταν).

Xenophanes 21 B 18 DK ap. Stob. 1.8.2 (οὗτοι ἀπ' ἀρχῆς πάντα θεοὶ θνητοῖσ' ὑπέδειξαν, / ἀλλὰ χρόνῳ ζητοῦντες ἐφευρίσκουσιν ἄμεινον)⁸⁴⁴ holds an important place in tradition of ancient conceptions of progress,⁸⁴⁵ a key concept in the philosophical justification of modern IP (especially where governed by U.S. Const. I.8.8). The Greek vocabulary of progress, as in Latin, is based largely on locative terms, e.g. *προάγω*, *προβῆναι*, *προκοπή/προκόπτειν*, *προέλασις*, (τεχνολογική) *πρόοδος*, *προχώρημα/προσχώρησις/προχωρεῖν*; developmental/evolutionary: *αὔξησις*; *ἐξέλιξις*. 21 B 18 DK might suggest cultural progress in the form of collective learning, but certainly at least progress of the individual over a finite stretch of time, perhaps the course of a single lifetime (though note, critically, significant limitations to insight and its communication imposed by Xenophanes' views expressed in 21 B 34-36 DK). Expressions of individual intellectual progress are often encountered in accounts of philosophical education, for which Diogenes Laertius is a naturally rich source (frequently with forms of *προκοπ-*).

Diogenes remarks the studious progress of Sphaerus of Bosphorus, for example (D.L. 7.177: *προκοπήν ἱκανὴν περιποιησάμενος λόγων*), and in Diogenes' life of Aristippus, the Cyrenaics expressly admit the attainability of progress in philosophy as in all else (i.e. all human arts and endeavors generally, D.L. 2.93: *προκοπήν τε ἀπολείπουσι καὶ ἐν φιλοσοφίᾳ καὶ ἐν τοῖς ἄλλοις*). Zeno's philosophical studies progressed over stages of increasing access, in service, interestingly enough, of a kind of intellectual theft (D.L. 7.25: *ἤδη δὲ προκόπτων εἰσῆει καὶ πρὸς Πολέμωνα ὑπ' ἀτυφίας, ὥστε φασὶ λέγειν ἐκεῖνον, «οὐ λανθάνεις, ὦ Ζήνων, ταῖς*

844 Babut 1977 (w/ 38 DK); Leshner 1991; Tulin 1993; O'Brien MJ 1985 (X., Aeschylus).

845 Delvaille 1910, Bury 1920, Inge 1920, Edelstein 1967, Dihle 1969, Dodds 1973, Nisbet 1973, 1994, Olson 1982, Blundell 1986, Lasch 1991 (cf. Mazrui 1996), Mazlish 1996, Burkert 1997a = 2008:240-259; cf. Motto 1984 (Seneca), Wallis WD 1929:454 ("Though no comparable view of evolutionary progress is found in the civilizations which antedate Lucretius, most of them had a concept of progress.").

κηπαίαις παρεισρέων θύραις καὶ τὰ δόγματα κλέπτων Φοινικικῶς μεταμφιεννύς.»). This kind of pushiness accords with Aristotle's progress, with its edge of (potentially intergenerational, or at least age-differentiated) competitiveness (D.L. 5.20: ἐρωτηθεὶς πῶς ἂν προκόπτοιεν οἱ μαθηταί, ἔφη, «ἐὰν τοὺς προέχοντας διώκοντες τοὺς ὑστεροῦντας μὴ ἀναμένωσι.»). Thus, progress for the group may be serial and cumulative, but also relative or differential, as Epicurus taught (D.L. 10.75):

ἀλλὰ μὴν ὑποληπτέον καὶ τὴν φύσιν πολλὰ καὶ παντοῖα ὑπὸ αὐτῶν τῶν πραγμάτων διδαχθῆναί τε καὶ ἀναγκασθῆναι, τὸν δὲ λογισμὸν τὰ ὑπὸ ταύτης παρεγγυηθέντα ὑστερον ἐπακριβοῦν καὶ προσεξευρίσκειν ἐν μὲν τισὶ θάττον, ἐν δὲ τισὶ βραδύτερον καὶ ἐν μὲν τισὶ περιόδους καὶ χρόνοις †ἀπὸ τῶν ἀπὸ τοῦ ἀπείρου <Usener: μείζους λαμβάνειν ἐπιδόσεις>, ἐν δὲ τισὶ κατ' ἐλάττους.

The philosophical takes on a moral sense of progress, e.g. further on in the life of Zeno, when Posidonius invokes the language of progress in evidence for the reality of virtue (D.L. 7.91: τεκμήριον δὲ τοῦ ὑπαρκτῆν εἶναι τὴν ἀρετὴν φησιν ὁ Ποσειδώνιος ἐν τῷ πρώτῳ τοῦ Ἠθικοῦ λόγου τὸ γενέσθαι ἐν προκοπῇ τοὺς περὶ Σωκράτην, Διογένην, Ἀντισθένην.).⁸⁴⁶ Yet, individual philosophical progress may be confounded by certain psychological barriers, conceit, for example, as observed by Bion of Borysthenes (D.L. 4.50: τὴν οἴησιν ἔλεγε προκοπῆς ἐγκοπήν), elsewhere attributed to Heraclitus (fr. 209 Sternbach: ὁ δέ γε Ἡράκλειτος ἔλεγε τὴν οἴησιν προκοπῆς ἐγκοπήν; cf. 22 B 46 DK: τὴν τε οἴησιν ἱερὰν νόσον ἔλεγε καὶ τὴν ὄρασιν ψεύδεσθαι).

Other senses of progress in Xenophanes, where not expressed in moral terms (is it forced to understand a concept of progress as necessary to his athlete/intellectual-rewards or Homer critiques?), might be better sought in his natural-scientific fragments (cf. esp. 21 B 23-41 DK,

846 Note too the Plutarchean title of Lamprias Cat. no. 87: Πῶς ἂν τις αἰσθοίτο ἑαυτοῦ προκόποντος πρὸς ἀρετὴν;

ascribed to his supposed *Περὶ φύσεως*).⁸⁴⁷ Here, if anywhere, a temporal-materialist (evolutionary, transformative) aspect of progress is to be expected, such as might be identified elsewhere in primitivist narratives of a Golden Age and its sequel (e.g. Hes. *Op.* 106-201, *Pl. Pol.* 270d-271c);⁸⁴⁸ in theories of physical change (transformation),⁸⁴⁹ decline and decay;⁸⁵⁰ or in linear or cyclical approaches to cosmological and human history⁸⁵¹ (cosmologically, e.g. Heracl. ap. D.L. 9.8 *γεννᾶσθαι τε αὐτὸν (sc. τὸν κόσμον) ἐκ πυρὸς καὶ πάλιν ἐκπυροῦσθαι κατὰ τινὰς περιόδους ἐναλλάξ τὸν σύμπαντα αἰῶνα*; politically, e.g. *Pl. Leg.* 3.767ff.; or in combination, e.g. at *Pl. Tim.* 22f.). Empedocles periodic cosmic cycle (*genesis, diallaxis, apoleipsis*, etc.),⁸⁵² its governing principles of *philia* and *neikos* (31 B 21, 26, 30 DK), offer a useful picture of one author's well developed philosophy of a kind of progress (however idiosyncratic, however susceptible to analysis under other terms of discussion).⁸⁵³ In Xenophanes (D.L. 9.19: *κόσμος δ' ἀπίερος, οὐ παραλλακτὸς δέ. ... πρῶτός τε ἀπεφήνατο ὅτι πᾶν τὸ γινόμενον φθαρτὸν ἐστί*) we do indeed find fragments of relevant natural philosophic reflection. 21 B 18 DK, however, strikes me as best integrated into the conceptual history of progress (at least, in a sense most useful to IP discourse) in relation to Hesiod's dual *Erides* (in which, admittedly, something might be detected of the Empedoclean *neikos/philia* tension; see above), implying a rational cosmic order requiring something of laborious human zeal in the extraction of cultural value

847 Kirk et al. 1983:166-167.

848 Lovejoy/Boas 1935; Sihvola 1989 (Hesiod, Protagoras).

849 Cf. Classen 1977 (Anaximander, Anaximenes); Simonds 1927 (distinguishing biological from social evolution as forms of progress), Shanahan 2000 (on progress as a concept in biological evolution).

850 El Murr 2010, Rowe 2010.

851 On Heraclitus' cosmic periods and birth-cycles, cf. Reinhardt 1916:155-201 (Ch. 3.4); cf. Nakayama 1997 (on Chinese cyclic outlook versus Japanese progressivism).

852 Cf. von Arnim 1902, Hölscher [1965] 1968:173-212, O'Brien D 1969, Kirk et al. 1983:287-294, Alt 1987 (note p. 402: Evolution, 'Darwinismus', stetigen Fortschritt); 31 B 17.3-5 DK (Mansfeld 1972, van der Ben 1984), 21, 26 DK, 30 DK.

853 Solmsen 1975, Curd 2013.

(though such diverse formulations as Heracl. 22 B 93 DK *ὁ ἄναξ, οὗ τὸ μαντεῖόν ἐστι τὸ ἐν Δελφοῖς, οὔτε λέγει οὔτε κρύπτει ἀλλὰ σημαίνει*, or Solon's fr. 18 W (ap. ps.-Pl. *Amat.* 133c) *γηράσκω δ' αἰεὶ πολλὰ διδασκόμενος* are perhaps no less apposite to Xenophanes' fr. 18).

Thus, beyond Xenophanes as a representative early test case, further discussion of ancient progress must examine *inter alia* the celebration of (invention/dissemination of) new art/craft knowledge (e.g. *h.Vulc.* Allen 1912 [V]:84) and *πρῶτοι εὐρέται*;⁸⁵⁴ distinctions between economic (technical, scientific) progress (and antiquity's supposed lack of support for/interest in invention),⁸⁵⁵ natural-scientific/technological⁸⁵⁶ vs. ethical/moral⁸⁵⁷ or aesthetic progress.⁸⁵⁸ Though Deweyite progressivism is hardly exhaustive of all that might fall under even some of the above perspectives (and hardly the most state of the art thinking on such matters), the frequently encountered ancient concern for social welfare ("common good") in pursuit of appropriate expressive forms will at least excuse recourse to Dewey's language when considering the many difficulties of definition (mere arbitrary/non-utilitarian innovation, or proliferation of expression, i.e. content-increase?) which thereby arise. We find in antiquity forms of *ad hoc* incentivization (e.g. prize-rewards) measures which in modern times may be linked to nothing more than market impact (adoption/emulation). Yet I find more interesting to the topic at hand (more so than ancient speculation on the mere physical mechanisms of change and its material or immaterial objects) ancient intimations of progress as planning (not

854 Eichholtz 1867, Stemplinger 1912:10-12 (I.I.2) (in relation to plagiarism), Kleingünther 1933.

855 Finley [1965] 1981:176-195,273-275, Hall JJ 1983, Greene K 2000, Lo Cascio 2006; generally, cf. Mokyr 1990, 2017:247-266 (Ch. 14), Heilbronner 1996; cf. Itay 2009 (competing current conceptions of economic development and social welfare).

856 Feyerabend 1978a,b (cf. Watkins 1978:339-344), Radnitzky/Andersson 1978:3-19, Pera 1984; cf. Bird 2007, Mladenović 2017:136-164 (Ch. 6) on progress in Thomas Kuhn's history of science.

857 Macklin 1977.

858 Gilbert 1920, Beebe 2014; cf. Yen 1998, Stoneman 2010.

spontaneous evolution, but the product of “constructive social engineering,”⁸⁵⁹ guided by “a contriving and constructive intelligence”⁸⁶⁰). Any examination of social, cultural progress will search for “the existence of social change,” seek to determine “the direction which human beings deliberately give that change,” and wish to measure the “ease of social change [a]s a condition of progress.”⁸⁶¹ In such a project, broad agreement can be found, it is hoped, in the sentiment that “the guarantee of progress lies in the perfecting of social mechanisms corresponding to specific needs.”⁸⁶²

CHAPTER 5

Forensic citation, indexing, and archiving

I here attempt a review of the mechanisms of knowledge management which facilitated the archiving, citation, quotation, re-versioning and appropriation of literary works, with a particular focus on Athenian forensic oratory. An anthropological analysis of proprietary impulses in ancient Greek authorship which proceeds from the author as charismatic persona must consider the contingencies of attribution. The question as to the circumstances under which an oral or written work becomes identified with a particular author might also query the conditions of anonymous authorship. One might adopt, as a preliminary working assumption, the view that, given a sufficiently intimate setting, in a face-to-face society, the immediacy of performance prompts little concern for matters of attribution, its necessity or problematics.

859 Dewey 1916:319.

860 Dewey 1916:318.

861 Dewey 1916:313-314.

862 Dewey 1916:322.

Opportunities for attribution are equally opportunities for mis-attribution, and one might just as well seek to appreciate the extent of indifference or obliviousness to attribution *per se*. Within a competitive-performative context (such circumstances as might best lend themselves to the cultivation and display of an authorial persona) an authorial identifier need not attach itself to the performance, at least not as a persistent identifier (just as the performance itself need not persist). This would be even less likely should the context entail co-production and the recycling of pre-existing material (the latter to some extent always inevitable), or where the performer, in adherence to expectations of genre, adopts a persona and character wholly traditional and not of his or her own design. Alternatively, a creator might find opportunity to distinguish him-/herself in performance even where the performed work itself does not become attached to his/her identity. In theory, the performer's/author's identity may be characterized along an onomastic spectrum extending from complete anonymity to various shades of pseudonymity up to the point of a completely unambiguous orthonymic identification. True authorial anonymity (pseudonymity, etc.), however, might best be understood as an epiphenomenon of literacy, a result of the opportunity for distribution of expression in material forms removed from the physical agent of authorship and its momentary performance.

Such considerations dovetail with other questions of authorial identity, in particular the overlapping issues of specialization and professionalization of cultural production. Incentivization and subvention (not necessarily identical concepts, if we unhinge motivation from material means of support) of literary production may (but need not) be monetary and reciprocated; regardless the form, sources of support for creative works may be further characterized in terms of public/private and individual/collective distinctions. Even if the

relevant decision-making is private and unilateral, the management of such distributions (though the shunting of resources may also be undirected) further suggests consideration of cultural commons as well as group-effects (social utilitarianism). When considering legal rhetoric as literary production, a further though not necessarily relevant reflex of such concerns may be noted in the *topos* of appeal to past service in the form of liturgies—a rhetorical device aimed at obtaining a favorable outcome, but also one of the most well defined opportunities for (authorial?) self-presentation of service in the public interest (a theme developed elsewhere e.g. in the adversarial literary criticism exercised on the Athenian comic stage, often entwined with *ad hominem* assault). Elsewhere, the Orators’ public deliberations entail similar constructions of public welfare in weighing the benefits of proposed legislation (and in this too can trace a lineage back to epic tradition).

The first public inscriptions of the Greek Archaic period (appearing about a half-century after private inscriptions first attest to Greek alphabetic literacy) are predominantly legal and these exclusively laws: there are, at the first stages of Greek legal writing, essentially no other legal documents than the laws themselves.⁸⁶³ According to Gagarin, these appear for two reasons: (1) for the sake of communal self-memorialization of the legal enactment, and (2) to ensure the detailed preservation of increasingly complex rules without change over time.⁸⁶⁴ The latter impulse (2) suggests constraints common to the control of comparatively more monumental literary texts of the Homeric variety: in terms of word-count alone, literary fixation becomes an increasingly attractive relief to un-aided memory, but poses the problem of agreement upon a standard text (as well as the cost of labor and materials). H.L.A. Hart’s rules

863 Gagarin 2008:43.

864 Gagarin 2008:85-86.

(in particular, that a law be recognizable as such) are usefully applied by Gagarin. Publicly inscribed laws (being in Archaic practice substantially unique) will be generally free of this burden once inscribed and displayed. More problematic, no doubt, would be a law's practical implementation and interpretation (necessarily adversarial in Athens' self-help-based system of self-representation). A point of distinction between the legal and the literary then should be based on some sense of functionality, which may well entail recognition (in the Hartian sense: for example, legal prescripts and the particular syntax of enactment formulae, consistently applied, having the character of speech-acts).⁸⁶⁵ For purposes of discussion, I provisionally separate such analysis from the question of legal authority and authorship suggested by motive (1) above.

Legal (legislative) authorship, one might argue, receives much of its impetus not from a ready-made author so much as from a desire to cultivate a collective identity. Yet just as similar considerations have been raised respecting so-called guilds of Homeric bards, so too do we find ample testimony to single- or dual-author legal codes (e.g. Charondas, Protagoras). Certainly, the (political) moment of legislation contributes toward an understanding of (distinction between) single- and multi-party authorship, just as it does toward collective identity. So, too, do Gagarin's dual motivations meet in a single phenomenon, that of the publicly inscribed and displayed text. Questions of legibility rarely enter into discussions of the Homeric text save as considerations of forms of the early alphabet, its ability to represent Greek vowels, and the practical value of an inscriptively fixed text as a script (even as "scripture," in Nagy's sense) in guiding performance. Such private (non-state-authored) texts as the "Nestor's" cup and Dipylon inscriptions reflect an early preoccupation with punctuation; similarly, the earliest examples of

⁸⁶⁵ Cf. as applied by Gagarin 2008:5-6, 31, 185.

Greek (Cretan) legal inscriptions show a concern for legibility (emphasized by Gagarin), in terms of formatting/layout (visually distinct lines and columns coincident with syntactic units and legal clausulae, sufficiently sized letters, etc.) as well as prominent display. Yet the survival of the Homeric epics in their monumental vulgate uniformity demonstrate that substantial texts had no need of public display (fixed-visual, as opposed to aural performance) to ensure their survival. The scribal fixation itself (and attendant care for manuscripts) was sufficient, and moreover not genre-dependent. Just as any significant Homeric text will have required a portable substrate (papyrus, “parchment”), legal texts similarly preserved (I return to Hebrew scriptures shortly) could have been just as viable. The public dependence for access to a given text, however, likely varies significantly and inversely with the degree of its public display.

For the moment, however, turning away from questions of textual materiality (e.g. explaining the turn from what seems to moderns as early attempts at legibility by means of spacing and punctuation, and toward such impractical Classical approaches as stoichedon, whereby Gagarin’s causes (1) and (2) above are no less useful), I wish to take a broader look at the *Iliad*’s role (its alleged citation by Solon) in the Athens/Megara dispute over Salamis to consider the role of the law in the formation of canonical texts. A steadfast disavowal of meaningful correlations between modern IP law and ancient practices or statutes need not prohibit the search for legal and legalistic currents in the evolution of proprietary authorship and its texts in antiquity. To this end, I first look to commonplacing and literary citation in forensic oratory; I then consider the notion of official literacy in the form of legal literacy (*graphē*, logography) and state archiving (*Metroön*), particularly as informing an understanding of what we have come to understand as “literary” as opposed to more functional or practical speech.

The simple occurrence of (semi-)public speech can attain a legal dimension through its prohibition (censorship vs. *parrhēsia*, *isēgoria*). As suppressing any manner of cultural self-expression, this can be understood as an element of sumptuary regulation of the sort already discussed. A strong example can be taken from Plato's (albeit theoretical) exercises in regulating the arts; a focus on the control of funeral oration (*epitaphios logos*) and lament (*threnos*) is typical subject matter of sumptuary law.⁸⁶⁶ It will be worth further discussion to better understand the limits of speech in terms of what is appropriate speech, in which settings, and how such constraints would have been determined and enforced in ancient Greece. On the other hand, an understanding of a distinct category of speech as legal (legalistic) will be for a given society historically contingent, dependent on an ability to "recognize" laws (rules of recognition) as distinct from other similar rules, norms and their formulations (e.g. maxims), as well as from more disparate non-normative, less overtly utilitarian speech. An obvious setting for the interaction of the legal and literary is the Athenian court, where legal contests attracted innovations in legal professionalism just as disputants (or their *logographoi*) had occasion to cite literary authors in support of their cause. Regardless any recognized distinctions between legal and non-legal texts, literature beyond the law was permitted among the witness statements, oaths, contracts, wills, and similar documentary addenda.

Not entirely distinct from his categories of *topoi*, Aristotle treats the orator's citation of literary sources as witnesses adduced in a manner of atechnic *pisteis*, and I suggest that forensic literary citation functions in the manner of commonplacing as it developed in a none-too-technical sense over the course of later Western legal history. It is an interesting, if perhaps

⁸⁶⁶ Bouvier 2008 notes Plato's prohibition of both *epitaphios logos* and funeral lament as exceptional in light of previous legal reformers only having limited, but not abolished, the dirge as part of sumptuary regulations.

unanswerable question, as to the point at which a phrase or even an elaborated theme passes into an inalienable proprietary form worthy or needful of attribution, at which point its further use deserves the label appropriation or misappropriation. Certainly, to some extent the forensic citation of particular works lent them elevated status just as the cited works in turn were adduced in an attempt to appropriate their renown to legitimate the speaker and his appeal. Forensic literary citation in Athens served as a semi-official vehicle for multi-lateral literary canonization and creative recycling and co-authorship.

Literary-intellectual specialization, it might be expected, will be reflected in various group identities (e.g. professional affiliations), and leave a corresponding trace in the vocabulary of the time. The notion of bardic guilds (e.g. Xenophanes 21 B 6 DK) has already been addressed. Discussion of legal rhetoric in Classical Athens requires acknowledgement of philosophical and sophistic schools and trends, modes of literary professionalism serving educational roles and creating and supplying a market for practical manuals (*technai*).⁸⁶⁷ Of particular interest are literary distinctions to be gleaned from legal professionalism, e.g. along lines dividing *nomothetai/thesmothetai* (lawgivers, guardians/revisers of the law) from *mnēmones* (recorders, registrars) from *grammateis* (clerks) from *proēgoroi*, *sundikoi*, or *sunēgoroi* (various flavors of advocate) from *logographoi* (speech-writers)—which suggest further consideration of the roles of memorization (of scripts or oral “texts,” perhaps with only the stylistic pretense of improvisation) and collaboration (especially contentious that between *logographoi* and their clients). Aside from a nod to the influence of sophistic professional training in rhetoric and the professional services of logographers, I will for the moment omit

⁸⁶⁷ Not necessarily a cohesive genre, given the diversity of topics ranging from rhetoric and medicine to culinary arts.

narrower discussion of education *per se*. At a minimum, consider Xen. *Sym.* 3.6 to note the daily accessibility of oral performance in Classical Athens as an aid to memorization of the Homeric texts,⁸⁶⁸ in addition to a lively market for book rolls,⁸⁶⁹ available to the literate for a non-prohibitive sum. The institution of dramatic contests at the Dionysia ensured wide spread “oral literacy” among Athenian citizens.

The distinctness of the line between the vaunted Attic transition at the end of the 5th c. BCE to strictly written law is questioned by such observations as Calhoun’s that “After the introduction of written law there was still a time during which the procedure was entirely oral and there was absolutely no use of written instruments in connection with pleading, evidence, or judgment.”⁸⁷⁰ Procedure in the Gortyn code, at least, is “entirely oral.”⁸⁷¹ Procedure being for some time at least not exclusively literate, the question arises to what extent it makes sense to theorize literary works as sources of law in an oral society. Beyond the obvious distinctions based on inscriptive evidence and materiality (physical vs. oral documents), I wish to approach legalism in Archaic and later Greece in terms of ordered referentiality and citation, the organization and storage of documents, organization within documents themselves as well as their individual cross-referentiality. This will entail a temporary disregard for familiar modern boundaries between archiving and librarianship, between bibliography, cataloging and indexing, in pursuit of the means by which (particularly with reference to legal contexts) literary (and this category too is to be taken loosely) texts were stabilized and canonized. Treating legal quotation as just another instance of quotation denies the special public sanction of legal authority. Beyond

868 Robb 1994:211n19.

869 Cf. Pl. *Ap.* 26d-e on the availability of Anaxagoras; Eupolis fr. 327 KA (οὐ τὰ βιβλῆ ὄνια) referring to the corner of the Agora reserved for sale of books (D’Angour 1999:121); Ar. *Ran.* 1114 suggesting (however fancifully) the general availability of books.

870 Calhoun 1919:178.

871 Calhoun 1919:178n9.

authentication, the legal contribution to textual preservation need not be so fragmentary as merely occasional forensic passing mention. Legal no less than any other purposes played a significant role in the early organization and storage of literary information; it will be worthwhile to review some relevant context which may aid later discussion of legal-literary commentary and commonplacing, itself a contributing factor to the organization of rhetorical speech and composition. This should be construed with a view to the manipulation of documents in court by the official agency of the clerk, who (like those pleading) had to consider *inter alia* witness statements, oaths, laws, and contracts (all of which perhaps serves by way of contradistinction to foster the understanding of the category of “literary” as opposed to other forms of document), as well as para- or meta-legal works such as the poets quoted by the orators. The later phenomenon must further be considered as a potential mode of official validation (both textually, to the extent clerically rigorous with respect to the quality of the exemplar used, as well as rhetorically in terms of the authority and esteem attached to the cited work by the speaker) as well as an opportunity for textual deviation or even intentional falsification.

Guido Pfeifer, taking Old Babylonian legal collections as “an almost ideal object of research,” examines their textual coherence (“textbezogene Kohärenz von Rechtssammlungen”), understood as “texts with a normative character in a more or less technical sense.”⁸⁷² In particular, Pfeifer regards such textual normativity as implicit in the conditional formulations of

⁸⁷² Pfeifer 2014:215/216 (“Texten, die einen im mehr oder weniger technischen Sinn normativen Charakter aufweisen”). Note that Pfeifer reckons “law collections” as representing only a small fraction of cuneiform legal documents (which together—including procedural/practical documents such as contracts, trial documents, receipts, legal correspondence and testimonia to temple-bureaucracy—represent fully three-quarters of all surviving cuneiform writings), precisely the opposite ratio to that attested for Archaic Greece (Gagarin 2008:43).

the casuistic law typical of such collections,⁸⁷³ indicative of a juristic understanding of “Tatbestand und Rechtsfolge.”⁸⁷⁴ At the margins of his topic, Pfeifer further considers the didactic traditionalism of generations of copies as well as non-juristic literary elements such as theological topoi embedding legal information within a greater historical-political context.⁸⁷⁵ Pfeifer further asks “ob mit der Abfassung dieser Textkorpora auch eine Änderung des Rechts verbunden ist.”⁸⁷⁶ Pfeifer analogizes this long-term Mesopotamian process of replication and revisionary compilation to that of the Justinian codifiers.

Similar to Pfeifer (in his reflections on Justinian revisionist legal compilation), Raymond Westbrook, seeing the success of legal textual canonization as serving contemporary interests in its obscuring of origins, concludes codification to be “as much a function of reading texts as of their composition.”⁸⁷⁷ Looking at the same Near Eastern material,⁸⁷⁸ Westbrook starts from an understanding of “law code” as defined by two necessary elements: normativity and exclusivity.⁸⁷⁹ He defines a law as a text serving as “a normative source of law which a court is bound to obey,” as opposed to a merely respected source of legal information;⁸⁸⁰ it is not published as (part of) a scientific reference work available for consultation, but rather stipulates as an “autonomous” source (as indicated by systematic citation);⁸⁸¹ law’s “legislative” authority is suggested by publication by a central authority.⁸⁸² Westbrook defines codification as “an

873 Pfeifer is focussed on Mesopotamian writings from the late-3rd to early-1st millennium BCE, but in particular the Old Babylonian Codex Eshnunna (19th c. BCE) and Codex Hammurabi (18th c. BCE) as the two most comprehensive and well preserved legal collections from the ancient orient.

874 Pfeifer 2014:217.

875 Pfeifer 2014:217-218.

876 Pfeifer 2014:221.

877 Westbrook 2000:47.

878 Westbrook 2000:34 counts seven cuneiform “law codes” (with dates at 34n1).

879 Westbrook 2000.

880 Westbrook 2000:33.

881 Westbrook 2000:37.

882 Westbrook 2000:37.

exclusive source of the law,” “a comprehensive statement of the relevant law” such that “anything omitted from the text is omitted from the law.”⁸⁸³ As suggestive of exclusive normativity, Westbrook quotes from Hammurabi’s code (xlvi 3-19):⁸⁸⁴

Any man wronged who has a case, may he ... have read to him the inscription of my stele, may he hear my words sublime and may my stele reveal the case to him. May he see his judgment and his mind be eased In the future, may any king who arises in the land keep the just words that I have written on my stele. May he not change the judgements of the land that I judged, the decisions of the land that I decided ...

Westbrook situates Mesopotamian legal casuistry within the “wider literary genre” of Mesopotamian “science,” which “organiz[ed] knowledge by compiling lists of like examples,” a more sophisticated form of which listed individual cases (medical, mantic, legal, etc.) together with a corresponding “solution,” in a form of hypothetical expression “that for the Mesopotamians was the hallmark of their scientific method.”⁸⁸⁵ The casuistic legal expression of later Mediterranean texts such as the Great Code of Gortyn and the Twelve Tables thus originated in a tradition of late-3rd millennium BCE Sumer.⁸⁸⁶ As a “primitive” “proto-science,” however, Westbrook sees casuistic law as by definition limited: “unable to reason vertically; it could only proceed horizontally by cumulating examples.” Hence, “codes” based on such a system “could not hope to be exhaustive, except at the point of infinity.”⁸⁸⁷

Yet, Westbrook makes the important point that exhaustiveness is not necessarily an objective value: “in native eyes at least,” the lists of the Codex Hammurabi “met the requirements of comprehensiveness.” Notably, in support of this claim, he cites a copy in which

883 Westbrook 2000:34 (cf. 36, 40: “comprehensiveness”).

884 Westbrook 2000:34, 35. Westbrook’s Hammurabi Code citations are to the text in Roth 1997 (cf. Roth 2000:10-11n2, in the same volume), here to Roth 1997:134 (earlier editions of Hammurabi’s code place these statements—the “epilogue,” w/ references to the monument itself—near cols. 40-42). On such appeals to publicly inscribed legal texts in Old Assyria, cf. Veenhof 1995.

885 Westbrook 2000:35.

886 Westbrook 2000:35, citing (35n3) Westbrook 1988; Gagarin 2008:49.

887 Westbrook 2000:36.

exempla are “consciously grouped by topic,” paragraphs grouped under sub-heading (though the latter are “not strictly analytical,” being themselves “list examples”).⁸⁸⁸ He further notes that these exempla were selected and arranged such that topical groups would be marked off at “suggestive points” so as to approximately indicate their boundaries; moreover, within such a group, sequential paragraphs can follow a chronological arrangement: e.g. in a section treating litigation, first discussing initial claims, then the trial, then provisions for judgment. Thus, “the parameters of the topic are set and the principles [of decision-making] at least adumbrated, if not expressed.”⁸⁸⁹ We need not take Westbrook’s brief discussion as conclusive, but suffice it to suggest the difficulty of setting too sharp a conceptual boundary between inductive casuistry and some ideally more rational, finite deductive regime which might generate appropriate responses to an infinite range of possible legal stimuli. Certainly, the textual apparatus of human self-governance must be finite. Yet, literary texts (according to modern understanding) are no less closed in their compass. To the extent broad generic distinctions between literary and legal authorship prove at all worthy of pursuit in the early stages of Greek literary history, they might best be sought in the particular places of publication; in material substrates and textual formatting; and in the sources of textual authority (who authors and publishes, in what capacity). Regarding the latter, an obvious quandary (especially in considering the nature of democratic legislation in the early polis) is the attribution of legislation: where do legislative compilation and group authorship part ways with single-authorial ambition (perhaps in ways which bolster a legal/literary dichotomy)? From a different perspective, one must extend the above considerations of “reading”—by which (following Westbrook) we have distinguished casuistic

888 Westbrook 2000:36 citing (36n4) Finkelstein 1967.

889 Westbrook 2000:36-37.

from later law—to further query the distinctiveness of legal literature from other genres: does legislative authorship and/or reading presume a special kind of textual functionality? Related to this question is the degree of interpretive freedom foreseen by a text. Westbrook understands an authoritative law as the faithful embodiment of legislative intent: “the text is not mere evidence of the order of the lawgiver; once promulgated, it becomes the lawgiver itself, the messenger as well as the message.”⁸⁹⁰ This may well suggest the necessity of an expert class of *iurisprudentes* (legal professionalism) to ensure “correct” interpretation, as he concludes lies at the origin of “that much-maligned practice of *legalistic* interpretation.”⁸⁹¹ But this does not seem to be a necessity in Greek (Athenian) legal tradition, which, in stark contrast to Roman law (at least in the Archaic and Classical periods) was firmly grounded in self-help and a lay-dikastry. Westbrook explains the absence of legal interpretation as a discrete discipline within Mesopotamian society in part as owing to an inability of contemporary “science” to define concepts (“conceptualization”).⁸⁹² Presuming interpretation to require concepts and definitions, one might conversely ask whether (or at what particular stage of sophistication) distinct Greek literary genres (beyond the more obvious pursuits of mathematics and philosophy) might also be thus dependent. As more important Westbrook cites Mesopotamian codes’ insufficient degree of autonomy,⁸⁹³ as evidenced by the absence of citation or obedience to the texts of the Mesopotamian law codes.⁸⁹⁴ Westbrook suggests that the absence of evidence for Mesopotamian “legalism” cannot be entirely ascribed to transitory oral procedure. His citation of Hammurabi’s

890 Westbrook 2000:38.

891 Westbrook 2000:38.

892 Westbrook 2000:38, 40.

893 Westbrook 2000:38.

894 Westbrook 2000:39-40; note however his citation (40n13) to Veenhof 1995. Gagarin 2008:146ff. analogizes such formulations as the Gortyn Code’s *ai egrattai* (“as is written”) to Hammurabi’s references to “the commands I have written on this stela.”

cautions against textual tampering and disobedience suggests the personal quality of legal practice of the time, dependent upon the ruler's persona and presence (col. xlix 18-35):⁸⁹⁵

If that man pays no heed to my words which I wrote on my stele, disregards my curses, does not fear the curses of the gods, and annuls the judgments that I judged, replaces my words, removes my engraved image, erases my inscribed name and writes his name...

Similarly, law codes could not hope to outlive their authoring rulers, as they could ever be retrospectively nullified by subsequent royal decrees (citing as an example the “royal debt-release decree” as “the most sophisticated of ancient Near Eastern legislation”).⁸⁹⁶ By the 7th c. BCE (when even at its most sophisticated under Assyrian hegemony Mesopotamian science still fell short of an “analytical jurisprudence”), Hebrew tradition signaled a shift toward de-personalization of Near Eastern law in rendering such debt-relief (Deut. 15:1-11) “automatic and cyclical.” Similarly, Westbrook also assigns Solon's supposed abolition (Plut. *Sol.* 15.3) of debt-slavery (preventing himself from repeating such debt-release in the future) to this Mediterranean trend toward detachment of the law from the legislative person (symbolized by Plato's vision of personified laws in the *Crito*).⁸⁹⁷ The permanence of written law registered at Dan. 6:9 (regarding a decree of Darius)⁸⁹⁸ is anticipated by the “one definite reference to the power of the written word” found in an inscription of Esarhaddon (son of Sennacherib; father and predecessor of Ashurbanipal; reg. 681-669 BCE), which presumes the fixity of written characters as well as the possibility of their re-interpretation.⁸⁹⁹ Citing the characterization of Medieval theology as

895 Westbrook 2000:40 w/ n11.

896 Westbrook 2000:39.

897 Westbrook 2000:42-43, citing Pl. *Crit.* 11.

898 מִבְּעַן מַלְכָּא תְּקִים אֲסָרָא וְתַרְשָׁם בְּתַבְּרָא דִּי לָא לְחַשְׁנָנָהּ בְּדַת מְדִי וּפְרַס דִּי לָא תַעֲבָדָא = “Now, O king, establish the decree, and sign the writing, that it be not changed, according to the law of the Medes and Persians, which altereth not.” (KJV) Cf. Westbrook 2000:43; note Plato's inclusion of Darius in a trinity of lawmakers alongside Lycurgus and Solon at *Phdr.* 258c1.

899 Cf. Westbrook 2000:41, citing (41n15) Borger 1956:15no10a.

queen of sciences,⁹⁰⁰ Weinberg identifies an attitude within Jewish philosophy traceable back to Philo⁹⁰¹ (noting a Greek dictionary of Biblical proper names ascribed to him),⁹⁰² but with Biblical precedent (Deut. 4.2):

לֹא תִסְפוּ עַל הַדְבָר אֲשֶׁר אֶנְכִי מְצַוֶּה אֶתְכֶם וְלֹא תִגְרַעוּ מִמֶּנּוּ

οὐ προσθήσετε πρὸς τὸ ῥῆμα, ὃ ἐγὼ ἐντέλλομαι ὑμῖν, καὶ οὐκ ἀφελείτε ἀπ’ αὐτοῦ

Ye shall not add unto the word which I command you, neither shall ye diminish ought from it (KJV)

She finds this conservative bent in Josephus (*Contr. Ap.* 1.42):

Δῆλον δ’ ἐστὶν ἔργῳ πῶς ἡμεῖς πρόσιμεν τοῖς ἰδίῳις γράμμασι· τοσούτου γὰρ αἰῶνος ἤδη παρωχηκότος οὔτε προσθεῖναι τις οὐδὲν οὔτε ἀφελεῖν αὐτῶν οὔτε μεταθεῖναι τετόλμηκεν....

We have given practical proof of our reverence for our own Scriptures. For, although such long ages have now passed, no one has ventured either to add, or to remove, or to alter a syllable.... (trans. Thackeray)⁹⁰³

Josephus (who here may serve as an example to illustrate several devices of literary authentication employed within a context appealing to legalistic rhetoric) proceeds to contrast this attitude with Greek indifference to the integrity and veracity of their literature as mere trifling stories (1.44-45), but this turns into a rhetorical ploy on Josephus’ part aimed at bolstering the credibility of his own (eye-witness) account (1.47). This theme extends further throughout the *Contra Apionem*. Later on, he identifies one mode of literary authentication in the appeal to antiquity, a device (among the many identified by Speyer) also used by those who present their own fictive works pseudonymously as the work of (often more famous) predecessors (passing-off, in modern parlance) (*Contr. Ap.* 2.[15.]152):

900 Weinberg 1999:115 & 2004:126, citing Taylor A 1966:31, Haberman 2003:29.

901 Weinberg 2004:126 citing Wolfson 1947 [I]:156-157.

902 Weinberg 1999:113 citing Bacher 1912.

903 Levy BB 2001:3: “It is clear, indeed, how we take most seriously the very letters [of our holy texts], for, although such a long time has already passed [since their having been recorded?], no one has dared to add anything, or to remove anything, or to change anything.”

ἀμέλει πειρῶνται τὰ παρ' αὐτοῖς ἕκαστοι πρὸς τὸ ἀρχαιότατον ἀνάγειν, ἵνα μὴ μιμῆσθαι δόξωσιν ἑτέρους, ἀλλ' αὐτοὶ τοῦ ζῆν νομίμως ἄλλοις ὑφηγήσασθαι.

each nation endeavours to trace its own institutions back to the remotest date, in order to create the impression that, far from imitating others, it has been the one to set its neighbours an example of orderly life under law. (trans. Thackeray)

Josephus proceeds to do just this (*Contr. Ap.* 2.15.154-155):

Φημί τοίνυν τὸν ἡμέτερον νομοθέτην τῶν ὀπουδηποτοῦν μνημονευομένων νομοθετῶν προάγειν ἀρχαιότητι. Λυκοῦργοι γὰρ καὶ Σόλωνες καὶ Ζάλευκος ὁ τῶν Λοκρῶν καὶ πάντες οἱ θαυμαζόμενοι παρὰ τοῖς Ἕλλησι ἐχθὲς δὴ καὶ πρόην ὡς πρὸς ἐκείνον παραβαλλόμενοι φαίνονται γεγονότες, ὅπου γε μὴδ' αὐτὸ τοῦνομα πάλαι ἐγγινώσκετο τοῦ νόμου παρὰ τοῖς Ἕλλησι. καὶ μάρτυς Ὅμηρος οὐδαμοῦ τῆς ποιήσεως αὐτῷ χρησάμενος. οὐδὲ γὰρ ἦν κατὰ τοῦτον, ἀλλὰ γνώμαις ἀορίστοις τὰ πλήθη διωκεῖτο καὶ προστάγμασι τῶν βασιλέων· ἀφ' οὗ καὶ μέχρι πολλοῦ διέμειναν ἔθεσι ἀγράφοις χρώμενοι καὶ πολλὰ τούτων αἰεὶ πρὸς τὸ συντυγχάνον μετατιθέντες.

Now, I maintain that our legislator is the most ancient of all legislators in the records of the whole world. Compared with him, your Lycurguses and Solons, and Zaleucus, who gave the Locrians their laws, and all who are held in such high esteem by the Greeks appear to have been born but yesterday. Why, the very word "law" was unknown in ancient Greece. Witness Homer, who nowhere employs it in his poems. In fact, there was no such thing in his day; the masses were governed by maxims not clearly defined and by the orders of royalty, and continued long afterwards the use of unwritten customs, many of which were from time to time altered to suit particular circumstances. (trans. Thackeray)

Here he introduces, to emphasize the contrast to the Western pagan world, aside from distinguishing the central cultural property of the Greeks as emphatically non-legal, derogatory remarks on the informal and non-systematic (*γνώμαις ἀορίστοις*) character of the principles of decision derived from this literary precedent. Indeed, we might seek here once witness to a stage of distinguishing between the literary and non-literary (in Josephus, sacred-legal) in cultural works. The quality of inevitable self-contradiction of such rule-by-maxim has been particularly emphasized by Gagarin as an inherent component of oral culture, and the ancients themselves (Josephus here included) had early on developed the danger (and the supposed realization of such fears) of instability in oral unfixed legal tradition as an aetiology for the earliest legal writings (the Twelve Tables being a case in point). This also shades an indeterminate line

distinguishing normativity from strict legalism. Eventually, the Athenians reached a turning point with the anagraphic office of Nicomachus and his collaborators in the last decade of the 5th c. BCE (culminating during the archonship of Euclides with the local official transition to the Ionic alphabet) at which the only legally functional documents became those fixed in writing, a decisive factor in distinguishing (along Hart's line) between legal and other expression (scholars of literacy such as Robb have made much of this transition, and I readily accept it as an important stage in the development of literary as well as legal culture, without necessarily following e.g. Robb in all his conclusions).

We may cite Josephus' further elaboration of his theme as an important testimonium to the concept of an oral tradition as a mode of public display of (hence, access to, even for the illiterate) a written text (*Contr. Ap.* 2.[17.]175):⁹⁰⁴

Οὐδὲ γὰρ τὴν ἀπὸ τῆς ἀγνοίας ὑποτίμησιν κατέλιπεν, ἀλλὰ καὶ κάλλιστον καὶ ἀναγκαϊότατον ἀπέδειξε παιδεύμα τὸν νόμον, οὐκ εἰσάπαξ ἀκροασομένοις οὐδὲ δις ἢ πολλάκις, ἀλλ' ἐκάστης ἑβδομάδος τῶν ἄλλων ἔργων ἀφεμένους ἐπὶ τὴν ἀκρόασιν ἐκέλευσε τοῦ νόμου συλλέγεσθαι καὶ τοῦτον ἀκριβῶς ἐκμανθάνειν· ὁ δὲ πάντες εὐόκασιν οἱ νομοθέται παραλιπεῖν.

For ignorance he (2.[17.]173: 'Ο δ' ἡμέτερος νομοθέτης "our (sc. the Jewish) legislator" = Moses) left no pretext. He appointed the Law to be the most excellent and necessary form of instruction, ordaining, not that it should be heard once for all or twice or on several occasions, but that every week men should desert their other occupations and assemble to listen to the Law and to obtain a thorough and accurate knowledge of it, a practice which all other legislators seem to have neglected. (trans. Thackeray)

Josephus (*Contr. Ap.* 2.18.176-21.184):

Καὶ τοσοῦτον οἱ πλείστοι τῶν ἀνθρώπων ἀπέχουσι τοῦ κατὰ τοὺς οἰκείους νόμους ζῆν, ὥστε σχεδὸν αὐτοὺς οὐδ' ἴσασιν, ἀλλ' ὅταν ἐξαμάρτωσιν, τότε παρ' ἄλλων μαθάνουσι, ὅτι τὸν νόμον παραβεβήκασι, οἱ τε τὰς μεγίστας καὶ κυριωτάτας παρ' αὐτοῖς ἀρχὰς διοικοῦντες ὁμολογοῦσι τὴν ἀγνοίαν· ἐπιστάτας γὰρ παρακαθίστανται τῆς τῶν πραγμάτων οἰκονομίας τοὺς ἐμπειρίαν ἔχειν τῶν νόμων ὑπισχνουμένους. ἡμῶν δὲ ὄντινούν τις ἔροιτο τοὺς νόμους ῥᾶον ἂν εἴποι πάντας ἢ τοῦνομα τὸ ἑαυτοῦ. τοιγαροῦν ἀπὸ τῆς πρώτης εὐθὺς αἰσθήσεως αὐτοὺς ἐκμανθάνοντες ἔχομεν ἐν ταῖς

904 On the Jewish lectionary cycle, synagogical haftarah reading and midrash, cf. Deut. 31.10, Luke 4.16-30, Talm. Jer. Megilla 4.1 (Thackeray's footnote e [1926[LCL367]:363] further cites "A. xvi. 43"), Philo *De opif. mund.* 128 Cohn; Büchler 1893a & 1893b, Crockett 1966, Monshouwer 1991.

ψυχαῖς ὡσπερ ἐγκεχαραγμένους, καὶ σπάνιος μὲν ὁ παραβαίνων, ἀδύνατος δ' ἡ τῆς κολάσεως παραίτησις. Τοῦτο πρῶτον ἀπάντων τὴν θαυμαστὴν ὁμόνοιαν ἡμῖν ἐμπεποίηκεν· τὸ γὰρ μίαν μὲν ἔχει καὶ τὴν αὐτὴν δόξαν περὶ θεοῦ, τῷ βίῳ δὲ καὶ τοῖς ἔθεσι μηδὲν ἀλλήλων διαφέρειν, καλλίστην ἐν ἡθεσιν ἀνθρώπων συμφωνίαν ἀποτελεῖ. παρ' ἡμῖν γὰρ μόνοις οὔτε περὶ θεοῦ λόγους ἀκούσεται τις ἀλλήλοις ὑπεναντίους, ὅποια πολλὰ παρ' ἑτέροις οὐχ ὑπὸ τῶν τυχόντων μόνον κατὰ τὸ προσπεσὸν ἐκάστῳ λέγεται πάθος, ἀλλὰ καὶ παρὰ τισι τῶν φιλοσόφων ἀποτετόλμηται ...· οὔτ' ἐν τοῖς ἐπιτηδεύμασι τῶν βίων ὄψεται διαφορὰν, ἀλλὰ κοινὰ μὲν ἔργα πάντων παρ' ἡμῖν, εἰς δὲ λόγος ὁ τῷ νόμῳ συμφωνῶν περὶ θεοῦ πάντα λέγων ἐκείνον ἐφορᾶν. καὶ μὴν περὶ τῶν κατὰ τὸν βίον ἐπιτηδευμάτων, ὅτι δεῖ πάντα τᾶλλα τέλος ἔχειν τὴν εὐσέβειαν Ὅθεν δὴ καὶ τὸ προφερόμενον ἡμῖν ὑπὸ τινων ἔγκλημα, τὸ δὴ μὴ καινῶν εὐρετὰς ἔργων ἢ λόγων ἀνδρας παρασχεῖν, ἐντεῦθεν συμβέβηκεν· οἱ μὲν γὰρ ἄλλοι τὸ μηδεὶ τῶν πατρίων ἐμμένειν καλὸν εἶναι νομίζουσι καὶ τοῖς τολμῶσι ταῦτα παραβαίνειν μάλιστα σοφίας δεινότητα μαρτυροῦσιν, ἡμεῖς δὲ τοῦναντίον μίαν εἶναι καὶ φρόνησιν καὶ ἀρετὴν ὑπειλήφαμεν τὸ μηδὲν ὅλως ὑπεναντίον μήτε πράξαι μήτε διανοηθῆναι τοῖς ἐξ ἀρχῆς νομοθετηθείσιν. ὅπερ εἰκότως ἂν εἴη τεκμήριον τοῦ κάλλιστα τὸν νόμον τεθῆναι· τὰ γὰρ μὴ τοῦτον ἔχοντα τὸν τρόπον αἱ πείραι δεόμενα διορθώσεως ἐλέγχουσι. Ἡμῖν δὲ τοῖς πεισθείσιν ἐξ ἀρχῆς τεθῆναι τὸν νόμον κατὰ θεοῦ βούλησιν οὐδ' εὐσεβὲς ἦν τοῦτον μὴ φυλάττειν· τί γὰρ αὐτοῦ τις ἂν μετακινήσειεν ἢ τί κάλλιον ἐξεῦρεν ἢ τί παρ' ἑτέρων ὡς ἄμεινον μετήνεγκεν;

[18] Indeed, most men, so far from living in accordance with their own laws, hardly know what they are. Only when they have done wrong do they learn from others that they have transgressed the law. Even those of them who hold the highest and most important offices admit their ignorance; for they employ professional legal experts as assessors and leave them in charge of the administration of affairs. But, should anyone of our nation be questioned about the laws, he would repeat them all more readily than his own name. The result, then, of our thoroughly grounding in the laws from the first dawn of intelligence is that we have them, as it were, engraven on our souls. A transgressor is a rarity; evasion of punishment by excuses an impossibility. [19] To this cause above all we owe our admirable harmony. Unity and identity of religious belief, perfect uniformity in habits and customs, produce a very beautiful concord in human character. Among us alone will be heard no contradictory statements about God, such as are common among other nations, not only on the lips of ordinary individuals under the impulse of some passing mood, but even boldly propounded by philosophers Among us alone will be seen no difference in the conduct of our lives. With us all act alike, all profess the same doctrine about God, one which is in harmony with our Law and affirms that all things are under His eye. ... [20] This, in fact, is the origin of the reproach brought against us by some critics of our having produced no inventors in crafts or literature. In the eyes of the world at large there is something fine in breaking away from all inherited customs; those who have the temerity to defy them are credited with the possession of consummate ability. To us, on the other hand, the only wisdom, the only virtue, consists in refraining absolutely from every action, from every thought that is contrary to the laws originally laid down. This may fairly be claimed as a proof of their excellent draftsmanship; codes which are not of this character are proved by experience to need amendment. [21] For us, with our conviction that the original institution of the Law was in accordance with the will of God, it would be rank impiety not to observe it. What could one alter in it? What more beautiful one could have been discovered? What improvement imported from elsewhere? (trans. Thackeray)

Josephus proceeds to draw a strict authoritative hierarchy from God via the supreme high-priest to the body of priests (*Contr. Ap.* 2.[21.]186), and this (much like the absence of professionalism from Greek law in contrast with the evolution of Roman tradition) may serve the further characterization of the Greek system as well:

οὓς οὐ κατὰ πλοῦτον οὐδέ τισιν ἄλλαις προύχοντας αὐτομάτοις πλεονεξίαις τὸ πρῶτον εὐθὺς ὁ νομοθέτης ἐπὶ τὴν τιμὴν ἔταξεν, ἀλλ' ὅσοι τῶν μετ' αὐτοῦ πειθοὶ τε καὶ σωφροσύνη τῶν ἄλλων διέφερον ... ἦν καὶ τοῦ νόμου καὶ τῶν ἄλλων ἐπιτηδεύματων ἀκριβῆς ἐπιμέλεια· καὶ γὰρ ἐπόπται πάντων καὶ δικασταὶ τῶν ἀμφισβητουμένων καὶ κολασταὶ τῶν κατεγνωσμένων οἱ ἱερεῖς ἐτάχθησαν.

who owed their original promotion by the legislator to their high office, not to any superiority in wealth or other accidental advantages[, but rather] were pre-eminently gifted with persuasive eloquence and discretion. But this charge further embraced a strict superintendence of the Law and of the pursuits of everyday life; for the appointed duties of the priests included general supervision, the trial of cases of litigation, and the punishment of condemned persons. (trans. Thackeray)

He concludes with praise for this monotheocratic regime, wherein “the whole administration of the state resembles some sacred ceremony” (*ὥσπερ δὲ τελετῆς τινος τῆς ὅλης πολιτείας οἰκονομουμένης*):

ἃ γὰρ ὀλίγων ἡμερῶν ἀριθμὸν ἐπιτηδεύοντες ἄλλοι φυλάττειν οὐ δύνανται μυστήρια καὶ τελετὰς ἐπονομάζοντες, ταῦτα μεθ' ἡδονῆς καὶ γνώμης ἀμεταθέτου φυλάττομεν ἡμεῖς δι' αἰῶνος.

Practices which, under the name of mysteries and rites of initiation, other nations are unable to observe for but a few days, we maintain with delight and unflinching determination all our lives. (trans. Thackeray)

With Josephus' Homeric criticism in mind, consider Westbrook's observation of the Greek transition to legal textualism as the result of democratic impulses as marked by the terminological shift from *thesmos* (as an individual ruler's decree) to *nomos* (written statute);⁹⁰⁵ further, by the 4th c. BCE jury oaths referred to the upholding of written laws, which were cited in court by the speakers (*Dem. Contra Tim.* 149-151) and legitimate by virtue of the particular

905 Westbrook 2000:42 citing (42n18) Ostwald 1969:158-160, MacDowell 1978:44.

political process which had formulated and passed them.⁹⁰⁶ Furthermore, Westbrook treats canonization as the product of an ascendant jurisprudential class within Roman law which applied the tools of Greek philosophy to inherited legal collections (“codes”) to create more comprehensive legislation. As he defines it, canonization of such existing texts consisted in “read[ing] them as if they were codes created on the basis of the new legal science,” whereby “the old code would be given the status of *normative legislation* and a suitable historical pedigree, namely promulgation at a critical juncture in the early history of the nation.”⁹⁰⁷ He cites the Pentateuch and Twelve Tables (which he regards as in “form and content” marked “as a typical product of Mesopotamian science”) as parallel examples, but also refers (apropos the Biblical divine revelation of law) to Aristotle’s report on Zaleucus’ legislation for Locri (Arist. fr. 548 Rose).⁹⁰⁸ In the Pentateuch and Twelve Tables, he finds, “the legislative text as an autonomous source of law” is no longer (like the ancient casuist texts) merely descriptive, but prescriptive.⁹⁰⁹ Here then an important point of contact and common ancestry even (to balance Josephus’ depiction) between Judaeian and Hellenic legal criticism.

The “horizontal” which Westbrook attributes to Mesopotamian law is only transcended by analytical tools derived from Greek philosophy, which facilitated legal formulation “in a vertical manner, with subsidiary rules being derived from general principles”⁹¹⁰ and categories which generalized them. These tools include division into categories (*διαίρεσις, μερισμός*) and definition (*λόγος τῆς οὐσίας*).⁹¹¹ The contrivance of

906 Westbrook 2000:42.

907 Westbrook 2000:44.

908 Westbrook 2000:44n20.

909 Westbrook 2000:33.

910 Westbrook 2000:43.

911 In Plato, for example, cf. *Phdr.* 266b4 (*διαίρεσεων καὶ συναγωγῶν*), 273e1 (*κατ’ εἶδη τε διαίρεισθαι*), *Soph.* 253d1 (*τὸ κατὰ γένη διαίρεισθαι*), *Charm.* 163d4 (*Προδίκου μυρία τινὰ ἀκήκοα περὶ ὀνομάτων διαιροῦντος*), *Prot.* 358a6-7 (*διαίρεσιν τῶν ὀνομάτων*), *Resp.* 534a6 (*ἀναλογίαν καὶ διαίρεσιν*), *Leg.* 768c7-8 (*ἡ δικῶν*

legitimation via a post hoc historical pedigree is illustrated by Cicero's recourse (*Top.* 2.9-10, 3.13-14, 4.26.28; cf. Pliny *NH* 34.21)⁹¹² to the Twelve Tables for corresponding Latin terminology (*definitio, divisio, forma, genus, partitio*).⁹¹³ The argument for a historical watershed or at least a trend toward distinction between personally (individually) and publicly (collectively = democratically) authorized law seems easier than drawing too firm a line between open versus closed legal corpora. On Westbrook's terms, where a casuistic rule is deemed "comprehensive" ("what is omitted" is "to be excluded"), "the door is opened to extremely creative readings."⁹¹⁴ Yet, whereas (Roman) jurists may have "adopted a teleological rather than an historical interpretation" of legal canon in approaching "the practical problems of their own day," thus "throw[ing] a veil over" original textual meanings, it is hard to imagine a time free of any struggle "to make an inadequate text cover (in theory) every possible contingency"⁹¹⁵ which of necessity must to some degree take on a teleological hue. Westbrook proposes the alternative to be the "rewrit[ing of] the text itself on the basis of the same principles that were applied to its interpretation"⁹¹⁶ (apparently exemplified by the procedure adopted in compiling the Justinian code). We are left then with a (historically contingent) spectrum between closed text (with necessarily broad interpretive demands) and open text (which can be adapted to accommodate the widest possible range of eventualities, and eases the demands of ad hoc interpretation).

ἀκριβῆς νόμων θέσις ἅμα καὶ διαίρεσις); *Polit.* 261c2-5 (διαιρήσεται δίχα [...] μερισώμεθα εἰς δύο τὸ σύμπαν), *Parm.* 131c5 (μεριστὰ [...] τὰ εἶδη), 144d2-5 (μεμερισμένον/μέρεσιν/μεριστὸν; ὅλον/μέρη), *Tim.* 37a4 (ἀνὰ λόγον μερισθείσα καὶ συνδεθείσα).

912 Westbrook 2000:44n20.

913 Westbrook 2000:43, 44-45, citing (44n21) Nörr 1972 ("esp. pp. 45-53"), Méléze-Modrzejewski 1993:1-25.

914 Westbrook 2000:46.

915 Westbrook 2000:46, 47.

916 Westbrook 2000:4.

It should perhaps be questioned whether Greek legalism, to the extent its history can be traced under this rubric at all, proceeded along entirely non-professional channels. The influence of not only philosophy, but also sophistry and rhetoric and logography on the course of Greek law cannot be denied.⁹¹⁷ Whether or not any official executors of political will (democratic or otherwise) were salaried techocrats, specialization (division of labor)⁹¹⁸ as well as social distinction can be illustrated by the Spensitheos/*poinikastas* inscription (BM 1969.4-2.1).⁹¹⁹ We must in the context of such official (and officially inscribed) documents further consider the contributions of scribal authorship (cf. Westbrook’s characterization of ancient international treaties as a “triumph of the scribe’s, not the lawyer’s, art”) to collective authorship by official agents of governance.⁹²⁰ Gehrke suggests literary transcription/fixation of laws opens it to questioning while exposing its mutability/historicity (perhaps ironic if the expectation is that inscription makes a (more or less) permanent fixation). In terms of attribution, Greek law was not immune to the general Greek demand for *protoi heuretai* (note Josephus’ observations above, combined with Aristotle’s review of lawmakers in the *Politics*, for example). Further factors conditioning legal authorship and readership/interpretation will be textual access (whether inscriptions are public and legible, or even audible in the case of bardic performance or the Jewish liturgical cycle). Issues of textual sequestration overlap with professionalization (defining professions by not just income and specialization but also if dependent on literary

917 Without overlooking typical irony, note the conflation in Plato’s *Phaedrus* (a dialog otherwise devoted to the blurring of genre-boundaries) of legislative and rhetorical authorship (e.g. 257e-258d, 278c3-4: Σόλωνι καὶ ὅστις ἐν πολιτικοῖς λόγοις νόμους ὀνομάζων συγγράμματα ἔγραψεν).

918 Cf. Westbrook 2000:38n8 (citing Parpola 1993:xiii-xiv): “The correspondence of scholars with Assyrian kings of the 7th century B.C. names five scholarly disciplines: *tušarru* ‘astrologer/scribe,’ *bārū* ‘haruspex/diviner,’ *āšipu* ‘exorcist/magician,’ *asū* ‘physician,’ and *kalū* ‘lamentation chanter.’”

919 “[T]he earliest record of the creation of high technical office in a Greek polis” (Gorlin 1988:159); cf. Jeffery/Morpugo-Davis 1970, LSAG 315.14b.S468, SEG 27.631, Edwards GP/RB 1977, Pébarthe 2006, Tribulato 2017.

920 Westbrook 2000:39.

goods and the extent to which their proprietors controlled access, perhaps with a view to their monetization). Hence, archiving and libraries, and the means of making these accessible (texts themselves, both between separate works as well as internally within discrete/cohesive individual texts) contribute significantly to constructions of proprietary authorship in antiquity.

Ancient evidence of documentary reference and citation practices (with an ultimate view to the manipulation of established literary documents in Attic legal rhetoric) might be cited from Ashurbanipal's (reg. 668-ca. 627 BCE) famous library at Nineveh, which (suitable to the reference-function of such centralized repositories) included "syllabaries [analogous to] bilingual dictionaries showing lists of Sumerian and Akkadian signs, explanatory lists which include something like grammatical paradigms among other things, and catalogs of subject divisions of the library."⁹²¹ Redundancy and transformation coexist where translations are collected, conceivably in the case of the Gilgamesh epic at Nineveh, the Akkadian twelfth tablet of which translates an earlier Sumerian telling. (Alternatively, within a single tablet rather than across several constituting a single work, one might compare a document like the Rosetta Stone, where simultaneous multi-lingual versioning not only aides communication but also facilitates reconstruction and deciphering—per "Rosetta Stone attack,"⁹²² in modern cryptographic parlance.) An inscription at the end of one grammatical work from Nineveh declares:⁹²³

Palace of Sardanapalus, king of the world, king of Assyria, to whom the god Nebo and the goddess Ourmit have given ears to hear and eyes to see what is the foundation of government. They have revealed to the kings my predecessors this cuneiform writing. The manifestation of the god Nebo ... of the god of supreme intellect—I have written it

921 Witty 1974:101-102, citing Bezold (vol. 5) xxiv, xxvii-xxviii & (vol. 6) xxix-xxx.

922 Cf. Felten 2006.

923 Edwards E 1864:12, translating (with added emphasis) from Oppert 1856:179: "Palais de Sardanapale, roi du monde, roi d'Assyrie, à qui le dieu Nebo et la déesse Ourmit ont donné des oreilles pour entendre, et ouvert les yeux pour voir, ce qui est la base du gouvernement. Ils ont révélé aux rois, mes prédécesseurs, cette écriture cunéiforme. La manifestation du dieu Nebo ... du dieu de l'intelligence suprême, je l'ai écrite sur des tablettes, je l'ai signée, je l'ai rangée, je l'ai placée au milieu de mon palais pour l'instruction de mes sujets."

upon tablets,—I have signed it,—I have put it in order,—*I have placed it in the midst of my palace for the instructions of my subjects.*

Winger⁹²⁴ notes the ruler's claim to the otherwise uncredited palace labors of collecting, copying, cataloging, logically arranging and storing. By contrast to Mesopotamian authorial anonymity, Witty claims “[the] Greeks ... appear to have ‘invented’ personal authorship and, consequently, the author entry”⁹²⁵ This should be considered in evaluating such claims as Edward Edwards’ (unsupported) assertion that “[a]mongst the Greeks, as amongst other nations, the first libraries consisted merely of archives, deposited, for better preservation, in the temples of the gods.”⁹²⁶ We have already examined such claims in dealing with the notion of temple-publication more broadly in light of the testimonia about Heraclitus.

The profound discontinuity with later developments in the Greek-speaking world discourage a glance to Mycenaean precedent in the Linear B archives of Knossos, Pylos and elsewhere in the Bronze Age Aegean, though closer to home than (later) Near Eastern exempla like the Nineveh library. Nevertheless, noteworthy features of such centralized (widely portrayed as “oriental”/Near Eastern) palace administration in the history of Greek accountancy and archiving are the use of “double-writing” (logograms alongside corresponding phonetic signs) to disambiguate and/or to aid (speed of) recognition, thematic-grouping of tablets within separate labeled baskets/boxes; further, sealed “documents authentifiés” accounting for *a-pu-dosi* (“due contribution”) and *o-pa* (“labor service,” “work to be performed”).⁹²⁷ Without suggesting any direct connection to later approaches to accounting, it is worth noting similarly

924 Winger 1961:321 (w/ superfluous “0” to the end of the page number in citing Edwards E 1864).

925 Witty 1974:102; but note Witty 1974:116 (respecting medical literature) his primary stated interest “in the more practical manuals precludes most of the famous names”.

926 Edwards E 1864:12.

927 Cf. Ferrara 2010:18-23 (citing Piteros et al. 1990:115, Melena 1983).

sophisticated accounting systems in democratic⁹²⁸ Athens, e.g. as in the Aristotelian *Ath. Pol.*: nothing so close to a paper cataloging system as the duties performed by the “Commissioners for Public Contracts” (47.2: οἱ πωληταί, tr. Kenyon), public clerk (47.5: ὁ δημόσιος), and “Receivers-General” (48.1: ἀποδέκται) described at *Ath. Pol.* 47-48, where contractual labor, levies and taxation are recorded “in the presence of the Council” (ἐναντίον τῆς βουλῆς) and entered on whitened tablets (ἀναγράφαντες εἰς λελευκωμένα γραμματεῖα), separate lists on multiple tablets presented to the council and entrusted to the clerk and receivers (*paradid-*, *apodid-*), debts recorded, filed (*epistulíōn*), annotated and erased (*-aleiph-*) over time, as appropriate:

εἰσφέρεται μὲν οὖν εἰς τὴν βουλήν τὰ γραμματεῖα κατὰ τὰς καταβολὰς ἀναγεγραμμένα, τηρεῖ δ' ὁ δημόσιος· ὅταν δ' ἢ χρημάτων καταβολή, παραδίδωσι τοῖς ἀποδέκταις αὐτὰ ταῦτα καθελὼν ἀπὸ τῶν ἐπιστυλίων, ὧν ἐν ταύτῃ τῇ ἡμέρᾳ δεῖ τὰ χρήματα καταβληθῆναι καὶ ἀπαλειφθῆναι· τὰ δ' ἄλλα ἀπόκειται χωρὶς, ἵνα μὴ προεξαλειφθῇ. [48] ... ἀποδέκται δέκα ... δὲ παραλαβόντες τὰ γραμματεῖα, ἀπαλείφουσι τὰ καταβαλλόμενα χρήματα ἐναντίον τῆς βουλῆς ἐν τῷ βουλευτηρίῳ, καὶ πάλιν ἀποδιδόασιν τὰ γραμματεῖα τῷ δημοσίῳ. κὰν τις ἐλλίπη καταβολήν, ἐνταῦθ' ἐγγέγραπται, ...

The tablets containing the lists of the installments are carried into the Council, and the public clerk takes charge of them. Whenever a payment of installments is to be made he takes from the pigeon-holes the precise list of the sums which are to be paid and struck off on that day, and delivers it to the Receivers-General. The rest are kept apart, in order that no sum may be struck off before it is paid. [48] [The] ten Receivers-General ... receive the tablets, and strike off the installments as they are paid, in the presence of the Council in the Council-chamber, and give the tablets back to the public clerk. If any one fails to pay his installment, a note is made of it on the tablet ... (tr. Kenyon)

Similar procedures are then related for the auditors (*logistai*) of magistrates' accounts; the examiner (*euthunos*) and assessors (*paredroi*) who hear private and public charges against magistrates and register them (on *leukomata*) with the *thesmothetai*; the military enrollment

928 From a legal perspective, as suggestive of the normative function of central archives in general consider the constraints on executive privilege evidenced even at Nineveh: one document preserved solely in Assurbanipal's library—and for Tadmor, a “decisive expression of the self-importance of the inhabitants of the temple cities” (Tadmor 2011:123)—circumscribing the behavior of kings is quoted at Tadmor 2011:123-124 (from Lambert 1960:112-114, lines 19-30, 36, 51-59).

commissioners (*catalogeis*) transmit the names of the enrolled to the council on sealed tablets (one of the few mentions of such a precaution in the *Ath. Pol.*'s treatment of these procedures (*Ath. Pol.* 49).

I mean to draw a parallel between such (fiscal, administrative, military, etc.) accounting practices, on the one hand, and bibliographic indexing, cataloging, anthologizing, and other approaches to literary publication, distribution and preservation, on the other, taking usage of legal texts in the Classical period as a model. In literate cultures, more often than not, laws eventually become physical documents. These must be disposed of one way or the other, with or without an archival eye to persistence, access and re-use. Most if not all documents subject to rigorous controls will have benefited from similar techniques, and the historical growth of bibliographic protoscience will have contributed to the sense of the literary work as an integral and valued document. Legal documents were an important category of documents subject to specialized procedures in their drafting and implementation, including, even if incidentally, in the hearing of lawsuits. Moreover, the category of legal texts encompasses more than simply laws. Oratory forensic and otherwise admits of quotation, paraphrase and parody of literary texts, alongside laws, oaths, contracts, and other witness testimony. Again, the margins between literary and documentary are here blurred, poetry being cited in Attic oratory often just as are laws, oratory is itself performed and afterward circulated as a commercial literary product occasioned by legal theater and conditioned by its strictures. At the same time, the legal setting prompts further refinement of our definition of literature by comparison with legal expression as part of the broader "law and literature" discussion, here in an ancient context.

Thus, the creation and edition of legal texts could have informed contemporary notions of literary rigor. In the legal setting, for example, textual scrutiny includes the joint-authorship processes of ratification/enactment and review/re-enactment, and the voting process itself will have had (a variety of) procedures and associated vocabulary, e.g. ἐπιχειροτονία τῶν νόμων (e.g. Dem. 24.20-23, 26)⁹²⁹ vs. διαχειροτονία (e.g. Dem. 24.24, 25, 33);⁹³⁰ κύριος, κείμενος vs. ἄκυρος for established (valid, authoritative) vs. invalidated law.⁹³¹ Officially sanctioned text mirrors as much as supplies a precondition for authoritative precedent.⁹³² Yet, we should not overestimate the significance of official over unofficial practice: Athens' adoption of the Ionic alphabet by decree, for example, was behind the pace of already widespread practice.⁹³³ D'Angour notes Archinus'⁹³⁴ adherence to the aristocratic moderates under Theramenes, who sought to uphold the πάτριος πολιτεία⁹³⁵ (*Ath. Pol.* 34.4) in the wake of Aegospotami in 405 BCE, then his adherence to democratic opposition to the Thirty, whence he emerged as "an Athenian patriot and a champion of political consensus."⁹³⁶ The Athenian reforms subsequent to the fall of the Thirty have been characterized as the pursuit of "a newly-revised if traditionally-minded 'ancestral constitution'," Euclides' archonship as marking "a year for renovation rather than innovation, or at any rate for innovation in the guise of restoration."⁹³⁷

929 Canevaro 2013:151-156.

930 Canevaro 2013:144: "never used in Athenian sources for a vote by judges in court"; cf. Canevaro 2013:156f.

931 Cf. Dimopoulou 2014.

932 Bix 2012:155ff.; for theoretical approaches to the concept of legal precedent, cf. Landes/Posner 1976, Siltala 2000; Harris EM 2007:344 relates this principle to Classical Athenian law.

933 D'Angour 1999:109-110, though citing the "pivotal significance" of Archinus' "unprecedented" orthographic decree.

934 Strauss 1986:97 (cited by D'Angour 1999:112n24): Archinus, a prominent political figure in his day, several times general (Dem. 24.135), died "shortly after" 403.

935 Cf. Fuks 1953 on the notion of the "ancestral constitution" (*patrios politeia*).

936 D'Angour 1999:111.

937 D'Angour 1999:110, though citing (110n11) as "strong" Hansen's argument (Hansen MH 1983:179-205, 1989:73-84) that "the politicians of 403/2, under a shield of relative anonymity, instituted a remarkably radical agenda in changing traditional legislative procedures and restructuring the system of bouleutic representation of the demes."

The physicality of legal documentation means that it can (potentially) be accounted for spatially, regardless the official sanction of the particular text at hand (perhaps inscribed in stone) or the overall degree of centralized concentration. To the extent laws attain a “literary” tradition, however, where inscriptive evidence does not survive, this will be all the more difficult to reconstruct. Though Carawan finds the decrees of Patrocleides and Demophantus “substantially authentic,” for example, he suggests the versions preserved in Andoc. 1 likely derive from the *psephismaton synagoge* of Craterus (321-ca.263 BCE) or some similar collection.⁹³⁸ Habicht holds the dating of Craterus’ work for “ganz unbekannt,”⁹³⁹ Carawan putting it “probably at the turn of the third century (or later).”⁹⁴⁰ Habicht rejects the “*opinio communis*” of his day that Craterus relied on stelae and archival research (“nicht Krateros, sondern Polemon ist der *στηλοκόπας* gewesen”) so much as he will have drawn on literary (the orators) and peripatetic sources (without himself demonstrably belonging to Aristotle’s school), though nevertheless in good faith, his material reaching back to the second-half of the 5th c. BCE possibly quite authentic.⁹⁴¹

The physical, spatial, will have a temporal aspect, as well. Rhodes follows Homolle in distinguishing between archival texts, temporarily displayed texts, and permanently displayed texts.⁹⁴² Obviously, as already illustrated by the passages from the *Ath. Pol.* cited above, *leukomata* were as capable as wax tablets of shedding outdated text; or they sometimes made the transition to stone permanence after a period of public display (such as foreseen by the procedures of nomothesia established late in the fifth century). Petrovic addresses a particularly

938 Carawan 2002:22, w/ n.83 citing Robertson 1976, Habicht 1961 (“esp. 28, on Craterus”), Thomas R 1989:90-91.

939 Habicht 1961:28.

940 Carawan 2002:22n83.

941 Habicht 1961:28-29.

942 Rhodes 2001a:33 (citing Homolle 1887:12-14).

interesting subset of literary quotations within the Classical Attic orators: inscribed epigram. These, analogous to law in the topographic specificity of their public location, are also part of the earliest edited volumes of poetic works, e.g. of Simonides. Such cases illustrate two ontologically distinct modes of collection, the book (copies unhinged from geographic locality) and the archive (a precise location within a physical structure, e.g. *Metröon*), both of which effect manuscript tradition. Petrovic, for example, considers the forensic use made of the earliest collections of epigrams. Citing Craterus' *συναγωγή* (and before him “[p]ossibly already during Ephorus’ day”) as well as Philochorus of Athens’ “Attic epigrams” (4th/3rd c. BCE), Petrovic further adduces Neoptolemus of Parium’s “On the epigrams in Chalcedon” (3rd c. BCE), Aristodemus of Alexandria’s “Theban epigrams” (2nd/1st c. BCE), and Polemon Periegetes’ “On the epigrams found in cities” (2nd c. BCE)—as including public epigrams of local historical significance or focused on locally important historical or mythological persons.⁹⁴³

A further special character of legal texts is exclusivity, not just as versions of a single work but exclusivity (in terms of legal authority) between mutually-exclusive laws: Though the decree of Menippus was supposedly nullified by the decree of Isotimides, the former was apparently at the time of Andocides Or. 2 still (displayed?) in the council chamber: *ἔτι γὰρ καὶ νῦν ἐγγέγραπται ἐν τῷ βουλευτηρίῳ* (Andoc. 2.23).⁹⁴⁴ Or consider Nicomachus’ sole authority for legal texts during the scrutiny, in particular of those texts which he supplied on his own authority because not yet publicly inscribed.⁹⁴⁵ Further consider the consequences for inscriptive practice: e.g. Carnevaro observes that “The law of Nicophon (SEG 26.72, lines 55–6) of 375/4

943 Petrovic 2013:209-210.

944 Cf. for other properties of the council-house Antiph. 6.45 (shrines to Zeus & Athena of the Council, at which the Councilors pray).

945 Cf. Carawan 2010:81-2, 86n42, 92.

shows that the texts of contradictory laws were actually destroyed when new measures were enacted.”⁹⁴⁶ In temporal terms, mutually exclusive laws exhibit “non-simultaneity”. Carnevaro cites Aeschines (3.37–40) as arguing no two contradictory laws can be simultaneously valid;⁹⁴⁷ Aeschin. 3.38-40 (re procedure for ensuring no contradiction among the laws, removing contradictory ones), noting the unclear relationship between this passage and the ad hoc commissioners elected for removal of contradictory laws (mentioned at Dem. 20.91) which says new legislation “first place a copy of one’s proposed law in front of the monument of the Eponymous Heroes for everyone to see (σκοπεῖν τῷ βουλομένῳ),” and that “all opposing laws must be repealed (λύειν τοὺς ἐναντίους)” (Dem. 24.34-39).⁹⁴⁸ Such observations from law suggest investigating the ways in which literary texts can replace, displace, or destroy one another.⁹⁴⁹

Private libraries, such as that of Euripides (Ar. *Ran.* 943, 1409), are somewhat nebulous entities for Classical Greece, where we depend largely on literary evidence, including with respect to more non-literary documents in what might instead be referred to as private or personal archives (“papers”): Rhodes cites as evidence for the retention of private archives Thucydides’ quotation from a letter of Themistocles to the Persian King (Thuc. 1.137.4), the possible survival of correspondence between Pausanias and the Persian King (Thuc. 1.128.6-129), and Agesilaus’ consultation of Lysander’s papers for record of an alliance and discovery therein of the latter’s plans for reform of the Spartan kingship (Eph. 70 F 207 ap. Plut. *Lys.* 30.3-

946 Carnevaro 2013:159-160, citing Sickinger 2008:107.

947 Carnevaro 2013:160.

948 Carnevaro 2013:139 w/ n.2, 143.

949 Cf. Guy Debord & Asger Jorn’s *Mémoires* (Copenhagen: Editions Situation International, 1959), and subsequent emulations (Tony Wilson’s sleeve design for *The Return of the Durutti Column* (Manchester: Factory Records, 1980).

5; cf. Plut. *Apophth. Lac.* 229 F) .⁹⁵⁰ Thus discussion of literary collecting and librarianship usually proceeds swiftly to the Roman evidence. Skipping-over Greek sources, one might begin by citing as “the first known work on libraries”⁹⁵¹ the (now lost) 1st c. BCE *De bibliothecis* of M. Terentius Varro, who was commissioned by Caesar to create Rome’s first public library,⁹⁵² but also C. Asinius Pollio as establishing Rome’s first public library (“sometime after [Augustus]’ victory of 39 B.C.”).⁹⁵³ He further notes Artemon of Cassandreia’s (2nd-1/2 2nd c. BCE) work(s) on “book collecting” (*Περὶ βιβλίων συναγωγῆς*) and the “use of books” (*Περὶ βιβλίων χρήσεως*).⁹⁵⁴ The *Mirabilia Urbis Romae*, Witty notes, attests the presence of 28 public libraries in Rome itself,⁹⁵⁵ and Pliny the Younger the presence of public libraries in the provinces.⁹⁵⁶ Thus Vitruvius (6.4.1), early in Augustus’ reign, takes it for granted that every private home “of any importance” would have a library.⁹⁵⁷

Of Varro’s *Res rusticae* (37 BCE), Witty claims he “was well aware of the problems of the researcher, used various subject headings with subdivisions to make his work easier to use.”⁹⁵⁸ Witty cites⁹⁵⁹ Varro’s “Arts and Sciences” (now known only through quotations) as an encyclopedia of the liberal arts (traditionally in seven books, Varro’s in nine due to the addition of two chapters on medicine and architecture), Aulus Cornelius Celsus’ (early 1st c. CE) encyclopedia (of which only the medical treatise survives intact), Pliny’s *HN* (1st c. CE; 1st of its

950 Rhodes 2001a:33.

951 Witty 1974:103n7 (citing Jerome, *Epist.*, 33.2).

952 Witty 1974:103n8 (citing Suet. *Vit. Iul.* 44.2, Isid. *Etym.* 6.5.1).

953 Witty 1974:103; cf. Reynolds/Wilson 1991:23.

954 Witty 1974:106; Athenaeus 15.49 694, FGH iv 342f.

955 Witty 1974:103, n9 (citing Clift 1945 ch.1).

956 Witty 1974:103-104n10 (citing Pliny the Younger *Ep.* 1.8.2, Cagnat 1906).

957 Witty 1974:104. Interesting in this passage is Vitruvius’ concern for architectural influences on climatic conditions favorable to book-preservation.

958 Witty 1974:104-105.

959 Witty 1974:110.

37 books headed by “a list of topics and sources”), Aulus Gellius’ *Noctes Atticae* (2nd c. CE compendium of especially literary lore “in haphazard arrangement” provided with “a list of chapter headings for ease of reference”), in the 3rd c. CE cites Lucius Ampelius, Athenaeus of Naucratis, and Julius Africanus; of Athenaeus’ work, Witty notes “its 15 books have no overall order and no list of topics is provided; in fact the individual books do not even have headings”;⁹⁶⁰ further, 5th c. CE Martianus Capella’s *De nuptiis Philologiae et Mercurii* (for Witty, a “fantastically boring mélange”) and Macrobius’ *Saturnalia* (“a symposium which, like the *Marriage*, has a definite arrangement, but no headings for reference use”), Isidore of Seville’s *Etymologies* (aka *Origins*), a work systematic but not alphabetically arranged.⁹⁶¹ Witty cites⁹⁶² for chronology Eratosthenes (whose work provided the basis for Apollodorus of Athens’ (b. ca. 180 BCE) fuller *Chronika*, covering 1184-144 BCE) as its first scientific practitioner; Ennius’ *Annals* (hexameter); the Roman Pontifical Tables on which P. Mucius Scaevola (pont. max. 130-115 BCE) based his *Major Annals* (from founding of Rome to his own times), cites further Atticus (per Nepos’ *vita*), Eusebius of Caesarea’s *Chronicles* (chronological tables treating the period from the birth of Abraham to the author’s own day), the Greek original surviving only in Jerome’s Latin translation, which extended it to 381 CE; Julius Africanus’ *Chronographies* (from creation to 221 CE), John Malalas of Antioch’s *Chronography* (creation to 565 CE).

Cicero’s friend Atticus (per Nepos) as a genealogist (none such work under his name survives), and Andron of Halicarnassus’ (4th c. BCE) *Genealogies* (“a subject apparently popular in his day”).⁹⁶³ On divisions of biographic compilations, Witty describes Cornelius Nepos’ (ca.

960 Witty 1974:111.

961 Witty 1974:111.

962 Witty 1974:113-114.

963 Witty 1974:112.

99-ca. 24 BCE) *De viris inlustribus* (“final edition” published before 27 BCE) as “systematically divided among classes of people (generals, orators, poets, *et al.*),” likely inspired by Varro’s ca. 39 BCE *Imagines* (aka *Hebdomades*), 700 *imagines* of famous Greeks and Romans each accompanied by a corresponding (biographical) epigram (*titulus*)—would have been even easier to navigate...];⁹⁶⁴ Witty notes Suetonius’ *De vir. ill.* as similarly arranged in classes, as opposed to the chronological arrangement of his *De vit. caes.*⁹⁶⁵ Witty considers that the (“chronologically first”) astronomical works of Autolycus of Pitane and Aristarchus of Samos will not have been designed for ease of use: “their works would not have lent themselves to easy reference”; whereas by contrast Claudius Ptolemy “compiled astronomical tables which undoubtedly were employed for ready reference”; further, “The astronomical works of the Greek Aratus of Soli (*Phaenomena*) and of the Roman Marcus Manilius (*Astronomica*) are in verse and consequently do not concern us here.”⁹⁶⁶ Nevertheless, Witty takes note of Ovid’s *Fasti* (“a verse calendar,”⁹⁶⁷ “In the same vein” as the latter half of Hesiod’s *Works and Days*, and as building on Gnaeus Flavius’ 304 BCE first publication of the Republican *fasti*, a legal publication);⁹⁶⁸ further, the *Chronicles* of Apollodorus of Athens: “Although composed in verse, it nevertheless could have been easier to use than the usual history in literary prose.”⁹⁶⁹

Acknowledging data on ancient reference works “reflect to a large extent the bibliographic situation during the height of the [Roman] Empire,” Witty further omits from his review “[m]any historical, medical, and other works” to the extent they were “definitely” designed to “be used for ready reference”; hence (and making some exceptions where “the only

964 Witty 1974:106.

965 Witty 1974:107.

966 Witty 1974:105.

967 Witty 1974:108.

968 Witty 1974:107.

969 Witty 1974:113.

works known to the writer on a particular subject are in literary prose”), he disregards narrative histories in favor of “only the chronological lists of events, annals, *fasti*, etc. which could be quickly consulted even in the format of the papyrus roll!”⁹⁷⁰ Witty cites the *Acta Senatus* and *Acta diurna*, published daily from 59 BCE (used by Tacitus in his *Annals* and Suetonius’ *Life of Caesar*).⁹⁷¹ Witty cites as “listing of various herbs, drugs, poisons and their antidotes” compilations by 3rd c. BCE Alexandrian physicians Andreas and Apollodorus, and by 2nd c. BCE Nicander (poisons, antidotes), as well as Dioscurides’ *Materia medica* in the *Codex Julia Anicia* (wherein the plants and drugs are in alphabetical order);⁹⁷² further, Philon of Byzantium’s *Μηχανικὴ σύνταξις* (late-3rd c. BCE)⁹⁷³

Some ancient *abecedaria*, such as those in both Greek and Latin recovered from the walls of Pompeii,⁹⁷⁴ reach a level of perilous virtuosity (school exercises rehearsing the alphabet not only reverse order, but even simultaneously forwards and backwards in alternation: AXBVCT....),⁹⁷⁵ but alphabetization as a general ordering principle predates the Latin and Greek alphabets themselves (an inherent property of their Semitic precursor).⁹⁷⁶ An ancient predilection for listing can be traced back to the Bronze Age palace-inventories as well as to the Near Eastern genealogies which influenced the earliest Greek literature.⁹⁷⁷ In genres of more scholarly enterprise, Greek precedent can be cited in victory lists for athletic (Hippias of Elis, 5th c. BCE) and dramatic (*didaskaliai*) (Aristotle, 4th c. BCE) contests, which will have been necessarily

970 Witty 1974:104; cf. p. 113 on absence of *capitulationes* motivating epitomizers, p. 114 citing Tacitus’ *Annals* as “being without headings it is not an easy work for reference,” despite its “elegant prose.”

971 Witty 1974:117.

972 Witty 1974:116.

973 Witty 1974:117.

974 *CIL* 5452-5506 = Mau 1909:600-603; illustrated at Wallace RE 2005:106, Facsimile 8.

975 Wallace RE 2005:xxii.

976 Cf. Daly 1967 on ancient and medieval history of alphabetization generally.

977 For baskets-sorting in Knossos at Chadwick 1976.

chronological. D'Angour, who suggests standardization as “a sign of the times” in late-5th c. BCE Athens, hypothesizes that the creation of the public archive (*δημόσιον*) in the Athenian *Metróon* at the end of the 5th c. BCE may have suggested the need for alphabetic organization, though the documents therein (in principle, “centrally available for the first time”) were not consulted until well into the 4th c. BCE.⁹⁷⁸ At the end of the Classical period, Aristotle organized his collection of *polis* constitutions alphabetically by city. The alphabetic division of Homeric books is likely an Alexandrian contrivance, and the works of scholars such as Zenodotus and Callimachus suggest the holdings of the Library of Alexandria⁹⁷⁹ itself may have been alphabetically arranged.⁹⁸⁰

Callimachus' (early 3rd cent. BCE) *Pinakes* sought, in 120 volumes, to organize the best, if not all, of Greek literature in alphabetized entries arranged by genre, author (with brief biographical information), then work (title and, particularly if the title alone was ambiguous, *incipit*, notices of questionable authorship, and line count), and so is touted as a catalog to the Alexandrian library.⁹⁸¹ Papyrological finds from Egypt attest to such modes of bibliographical listing:⁹⁸² *P.Oxy.* XLVII 3360 (late 2nd, early 3rd c. CE) rehearses the titles and *incipitia* of the speeches of Hyperides, and *P.Oxy.* 3724⁹⁸³ provides, along with other complete epigrams, a list of *incipitia* more comprehensive than the ca. 35 attributed to Philodemus in the Greek Anthology (suggesting the kinds of papyrus rolls which could yet be exhumed from the Herculaneum Villa's highly prosaic-philosophical collection). Callimachus' own reference

978 D'Angour 1999:126 w/ n93 (citing Boegehold 1972, Thomas R 1992:68-72).

979 Cf. Canfora 1989, Bagnall 2002, MacLeod 2004.

980 On the early modern history and theory of (card) cataloging, cf. Krajewski 2011 (beginning from the 16th c. CE).

981 Witty 1958:136, citing Pfeiffer vol. 2, “addenda et corrigenda” to fr. 453. On Callimachus' *Pinakes*, cf. Schmidt F 1922; Blum 1977, 1983, 1991; Fakas 2006.

982 Cf. Longo Auricchio 1971, Otranto 2000.

983 Cf. Sider 1997:203-225.

works included the (now lost, local calendar-synchronizing) “Names of Months by Nationality and Cities”⁹⁸⁴ and “Collection of Wonders of the Whole World Topographically Arranged” (Θαυμάτων τῶν εἰς ἅπασαν τὴν γῆν κατὰ τόπους ὄντων συναγωγή),⁹⁸⁵ gathered from Aristotle and others, wherefore Callimachus (along with his contemporary Bolus) is counted as a co-founder of paradoxography; Witty also cites Artemidorus Daldianus (late 2nd c. CE) on the Interpretation of Dreams, Palmistry, and Omens from Birds.⁹⁸⁶ Suda s.v. Καλλίμαχος κ 227 Adler lists among Callimachus’ works three with “pinax” in the title: Πίνακες τῶν ἐν πάσῃ παιδείᾳ διαλαμψάντων, καὶ ὧν συνέγραψαν (Tables of Men Distinguished in Every Branch of Learning, and their Works); Πίναξ καὶ ἀναγραφὴ τῶν κατὰ χρόνους καὶ ἀπ’ ἀρχῆς γενομένων διδασκάλων (Table and Description of Teachers in Chronological Order from the Beginning);⁹⁸⁷ Πίναξ τῶν Δημοκράτους γλωσσῶν καὶ συνταγμάτων (Table of Democrates’ Rare Words and Compositions).⁹⁸⁸ Winger notes of Callimachus’ *Pinakes* the uncertainty in distinguishing between bibliography and catalog.⁹⁸⁹ Witty observes that of the ten separate classes into which Pfeiffer argues Callimachus classed works in his *Pinakes*, only three of twenty-five fragments overtly suggest a genre- or subject-based organization.⁹⁹⁰ Certainly, Attic oratory (cf. fr. 430-432, 443-448 Pfeiffer) had a distinct place within Callimachus’ inventory,⁹⁹¹ while elsewhere more legalistic bookkeeping is suggested by a “Pinax of the Laws” at fr. 433 = Athenaeus 13.48.20 (585b) (ἀνέγραψε δ’ αὐτὸν Καλλίμαχος ἐν τῷ τρίτῳ πίνακι τῶν Νόμων); thirdly, a

984 Witty 1973a:241 (cited by Witty 1974:107/119n14).

985 Witty 1973a:240 (cited by Witty 1974:112/119n15).

986 Witty 1974:112.

987 Witty 1974a:242-243.

988 Witty 1974a:243; English rendered by Malcolm Heath (29 Jan 2002), <<http://www.stoa.org/sol/>>.

989 Winger 1961:322n2 (citing Witty 1958).

990 Witty 1958:136.

991 Cf. esp. the “Register of Orators” at fr. 430 = Athenaeus 15.9.6 (669d-e) (ἀνέγραψε Καλλίμαχος ἐν τῇ τῶν Ῥητορικῶν Ἀναγραφῇ) & “Rhetorical Pinakes” at fr. 432 = Dion. Hal. Amm. 4.13 (οἱ τοὺς ῥητορικοὺς πίνακας συντάξαντες).

category of “miscellany” or “miscellaneous” literature occurs at fr. 434 Pf. = Athen. 6.6.43.30 (244a) (σύγγραμμα ἀναγράφει Καλλίμαχος ἐν τῷ τῶν παντοδαπῶν πίνακι) & 435 Pf. = Athen. 14.51.3-5 (643e) (Καλλίμαχον ἐν τῷ τῶν παντοδαπῶν συγγραμμάτων Πίνακι ἀναγράψαντα πλακουντοποικᾶ συγγράμματα).

Markus Krajewski quotes Porstmann’s (all-too-)“brief history of mercantile recording techniques since antiquity”⁹⁹² as summing up the origins of the card index thusly: “There have always been paper slip arrangements; the medieval trader worked with them as well as the Greeks and Romans. The Roman trader carried a number of wax tablets on his belt to write on. These individual pages are a precursor of the book and of the card index.” Nevertheless, in part due to “lack of information” on earlier systems (“though one could have started earlier,” he concedes),⁹⁹³ Krajewski declines to reach back to “the dawn of history,” skipping over “Mesopotamian, Egyptian, Greek, or Roman methods of cataloging stored texts.” In particular, looking ahead to an only somewhat arbitrary starting point of paper catalogs in the sixteenth century, he expressly overlooks⁹⁹⁴

the famous library of Alexandria with its equally famous librarian Callimachus, who affixed inventories of texts on clay *pinakes* on the shelves, as well as the Roman *laterculi* or administrative registers. For neither are paper machines—both use different materialities, the by far more valuable and costly papyrus on the one hand and clay on the other.

The programmatic titular terminology of his *Paper Machines*, a historical study of card-cataloging, “demands,” he tells us, “situating the card index in a media archeology” focused on universality. With a nod to Turing’s universal machine, Krajewski examines card catalogs as a

992 Krajewski 2011:178n69 (cf. 134: “highly compressed economic history, losing sight of the discursive origins”), quoting Porstmann 1928:9 (though without a qualifying letter-suffix may be citing either Porstmann 1928a or 1928b).

993 Krajewski 2011:6.

994 Krajewski 2011:6.

manner of “(preelectronic) data processing” exhibiting discrete functions of “storing, processing, and transferring.”⁹⁹⁵ As a storage technology Krajewski suggests a card catalog genealogy punctuated by “several technology transfers” between the “discourses.”⁹⁹⁶ Citing Callimachus’ Pinakes as “presumably the first large-scale alphabetization of a library’s holdings,”⁹⁹⁷ Krajewski sharply differentiates this work from the modern card catalog format: “Even if the pinakes were on papyrus, they could not be viewed as precursors of the card catalog because—owing to their materiality—the pinakes lack mobility”⁹⁹⁸ Krajewski also distinguishes between card catalog and codex based on “a simple and obvious principle: information is available on separate, uniform, and mobile carriers and can be further arranged and processed according to strict systems of order.”⁹⁹⁹ In light of Alexandrian practice of collating e.g. commentaries (*ὑπομνήματα*) and glosses (*γλωσσαι*) in volumes (rolls) separate from their object texts, as well as the other early evidence for inventories and accounting, this position seems overstated.¹⁰⁰⁰ In this instance, it seems, while pursuing his mission to write the history of the card catalog “*from the material*” (“tying together episodes involving an arrangement of paper slips and their respective links, ... allow[ing] index cards to lead the way”),¹⁰⁰¹ Krajewski has confounded Callimachus’ catalog with the Library’s shelf-labels (“*pinakes*” otherwise suggests wood, not clay)—hence his specific equation¹⁰⁰² of burning down of Library (AD 640) to the loss of the Pinakes—as well as underestimating the mobility of texts within and between

995 Krajewski 2011:1-3.

996 Krajewski 2011:3; cf. Krajewski 2011:6: “discursive transfers between institutions”] of library operations and “efficient [office] management,” particularly between the first and second World Wars. On his analogy to computing machinery and its limits, cf. 2011:146n15.

997 Rhodes 2001b:142 asserts Callimachus’ primacy as library-cataloger.

998 Krajewski 2011:145-146n8; see further Krajewski 2011:6, 178n69.

999 Krajewski 2011:3.

1000But cf. Page FGE Sim. III + commentary in *P.Oxy.* 31.2535 = LDAB 4378 (noted by Petrovic 2013:210).

1001Krajewski 2011:6.

1002Krajewski 2011:145n8.

papyrus rolls as well as in other early tablet and codex formats. Regardless, he appreciates a step toward the functionality latter-day paper card systems in a non-literary example from Roman administrative bureaucracy: the *laterculum* (“brick, tile”; Krajewski renders “burned stone”) in which was entered a continuous list of roles and responsibilities of magistrates. Krajewski emphasizes the flexibility of the “carrier medium” in supporting the necessary revision of such a registry, its¹⁰⁰³

loose leaves held together by a clamp or a cord, allowing for additions and insertions. In contrast to Callimachus’s catalog, which creates order only in copying mobile elements, with the *laterculi* what is noted can itself be moved. A second important characteristic is the necessity of creating an unambiguous link between carrier medium and idea or process—one man, one word; one office, one page. An idea or process must have its own carrier medium so it can be handled flexibly.

Witty considers the appropriateness of Callimachus’ famous apophthegm *mega biblion mega kakon* (fr. 465 Pfeiffer) to multi-volume works, suggesting the challenges to cataloging and reference posed by works which require more than one papyrus roll, whereby each manuscript version of the work may not predictably encompass the same number of rolls or break at the same position within the work at the jump between rolls.¹⁰⁰⁴ Certainly, the distribution of bibliographic data across multifarious unwieldy documents is no less an encumbrance to accounting.

Suda attributes (s.v. *Κεκίλιος* κ 1165 Adler) to Caecilius i.a. a *Κατὰ Φρυγῶν δύο· ἔστι δὲ κατὰ στοιχείον. Ἀπόδειξις τοῦ εἰρηῆσθαι πᾶσαν λέξιν καλλιρρημοσύνης· ἔστι δὲ ἐκλογὴ λέξεων κατὰ στοιχείον* (“*Against the Phrygians*, 2 books (it is alphabetically arranged); *Demonstration that Every Word of Elegant Language has been Spoken* (it is a selection of words, alphabetically arranged),” tr. Heath). Alphabetization of this sort remained a common

1003Krajewski 2011:146n9, citing Seeck 1924.

1004Witty 1973b:195; cf. Witty 1958, 1973a.

technique down to the tenth-century Suda compendium and beyond, but not to the exclusion of other non-alphabetical bibliographical approaches, as in the case of Photius' 9th cent. "Library" (*βιβλιοθήκη*), consisting of some 280 entries summarizing over 380 individual works from his own personal reading, organized by subject and author. The organization of any substantial ancient library will have been aided by the papyrus-tags (*sillyboi*) often attached to one end of individual papyrus-rolls, identifying author or work, sparing the curious the necessity of removing a given roll from its shelf or its transport/storage case (*capsa*).¹⁰⁰⁵ Given that identifiable Latin authors in the Herculaneum Villa library begin with C, E and L, it has been suggested that the majority of them derive from a single *capsa* (strengthening the impression that the total collection of Latin authors was indeed small).¹⁰⁰⁶ Sider further cites Galen, in reference to his own lost library, as listing Anaxagoras, Andromachus, and Aristotle, presumably corresponding to an *α capsa* (and a corresponding alphabetic arrangement in their library shelves/pigeon-holes).

Use of the word *index* to translate the Greek *σίλλυβος* can be traced as far back as Cicero (Cic. Att. 4.4a): *membranulam, ex qua indices fiant, quos vos Graeci, ut opinor, σιλλύβους appellatis*.¹⁰⁰⁷ As the sillybus bore the title (and/or author-name) of the work to which it was attached, *index* came to be used as synonymous with "title" (e.g. Suet. *Calig.* 49.3 referring to two "hit lists," Sen. *Ep.* 39 to a list of philosophical works as an *index philosophorum*),¹⁰⁰⁸ not to

1005Color photo of *P.Oxy.* 301 at Sider 2005:31, fig. 32.

1006Cf. Sider 2005:94-95, w/ references at 112n183.

1007The dramatic setting for this dialog is Antium, April/May 698 AUC = 56 BCE. Cf. Witty 1973b:193, Wellisch 1983:149. Wellisch 1983 reviews a full range of English usages of the term "index"; Weinberg 1999:112 notes ambiguities in the relevant Hebrew terms *mafteah* ("key" [< Heb. root "to open"], cf. L. *clavis*; key, index, table of contents) and *mar'eh makom* (reference to earlier source, citation in later source), citing Lyons/Smith 1910:186 on overlapping usages of the English terms *index*, *dictionary* and *concordance*.

1008Wellisch 1983:149.

be conflated with a table of contents¹⁰⁰⁹ (certainly not of the expansive summary variety prefacing Pliny the Elder's *NH*). In response to a request from his friend Baebius Macer for a list of his uncle's books, Pliny the Younger (*Ep.* 3.5.2) promises a chronological bibliography (*fungar indicis partibus, atque etiam, quo sint ordine scripti [libri] notum tibi faciam*).¹⁰¹⁰

According to Wellisch, “[t]he need to indicate a word or a passage in a written document of some length so that it can be found easily and quickly must have existed as soon as such documents came into existence.”¹⁰¹¹ Similarly, Witty, in a tentative review of early “indexing and abstracting” from antiquity through the Middle Ages, presumes the origins of such activity in man's first attempts “to do something to make information in written records more easily accessible, either by arranging the salient features in a known order, or by condensing long documents into convenient abstracts or epitomes.” Just as tables of contents have been considered a forerunner of the index in early modern print editions,¹⁰¹² *epitome* and *hypothesis* have similarly served bibliographic abstraction. Witty finds both of these forms first evidenced in Mesopotamian inscribed clay envelopes.¹⁰¹³ Just as Greek prose abstracts (with their admixture of supplementary literary criticism and historical *didascaliae*) were appended in the Hellenistic period to Classical Attic dramas,¹⁰¹⁴ so too did similar such versified summaries later

1009Witty 1973b:193 (correcting Wheatley 1902:6); Weinberg 1999:112: “a list of section headings arranged under chapter numbers” amounts to a table of contents.

1010Wellisch 1983:149.

1011Wellisch 1994:268 (Wellisch depends heavily on Witty 1973b).

1012Weinberg 1999:111 citing Knight 1968:14. *The Indexer* aggregates its past articles on the history of indexing at <http://www.theindexer.org/contents/indexing-history.htm>.

1013Witty 1973b:193/198n3 (citing Contenau 1966:177) describes these as “cuneiform”; since the isolated discovery of a cuneiform-inscribed envelope at Nuzi (reported in Lacheman 1958:88, tablet 311 (2096)), envelopes employing pre-cuneiform signs have been traced back to the second half of the 4th c. BCE: cf. Schmandt-Beserat 1980 (claiming “to present the first comprehensive documentation on the clay envelopes”), Schmandt-Beserat 1996:42-54.

1014Witty 1973a; Witty 1974:115 (citing [sic: at 119n17, not 119n18] Witty 1973a) notes the influence of the Aristotelian work on Callimachus' *Pinax* and list of Attic playwrights (cf. Blum 1991) and on Amaranthus of Alexandria's *Περὶ σκηνηγῆς*, further citing L. Accius' *Didascalía*.

introduce the comedies of Plautus and Terence, while in a documentary context (reminiscent of the Mesopotamian envelopes) we find the abstracting of business transactions in evidence for 3rd c. BCE Tebtunis (*P.Teb.* 3.1.814-15).¹⁰¹⁵ At the “primitive origins” of indexing proper Witty places “the arrangement of chapter heads or summaries at the beginning of historical or other non-fiction works” (*capitulatio*),¹⁰¹⁶ citing as examples of such the apparatus of *tituli* (*capitula, capita, kephalaia*) integrated into the Bible early in the common era, as well as similar proto-indexing and summary structures in Pliny the Elder’s *HN*, Josephus’ *Antiq. Jud.*, Gellius’ *Noct. Att.*, Cassiod. *Inst.*, and Bede’s *Hist. Eccl.*¹⁰¹⁷ Witty credits Eusebius of Caesarea’s division of the Gospels into sections and numbered subunits, along with the organization of his ten *Canones Evangeliorum*, as serving (in function if not in form) the “relatively quick consultation of data hidden in long, connected textual matter.”¹⁰¹⁸ His *Onomasticon*, moreover, has been credited as the first Biblical dictionary (though not alphabetized).¹⁰¹⁹

Indexing (in the modern sense¹⁰²⁰ of an ordered register aiding the navigation of a particular text), claims Wellisch, was not practiced in antiquity and only rarely before the invention of printing.¹⁰²¹ This he attributes to a dependence on two factors: 1) “a widely known and not too cumbersome ordering system,” and 2) “a suitable physical form of written documents.”¹⁰²² The first of these demands was early met by the numerical use of alphabetic symbols (with their ready-made “fixed order”). That it was the second challenge of a convenient

1015Witty 1973b:195-196.

1016Witty 1973b:193, 195; cf. Witty 1974:113 (noting absence of *capitulationes*, chapter lists and book headings from narrative histories as a barrier to their consultation as reference works, hence motivating later epitomizers).

1017Witty 1973b:194.

1018Witty 1973b:196, citing Wallace-Hadrill 1960:70.

1019Weinberg 1999:113 citing Richardson EC 1939:844.

1020Wellisch 1983:149: “giving exact locations of names and subjects in a book.”

1021Wellisch 1994:269 identifies the first printed index as appearing in Peter Schoeffer’s 1467 edition of Augustine’s *De arte praedicandi*.

1022Wellisch 1994:268.

material form which delayed the evolution of indexing, is suggested by the emergence of indexes¹⁰²³ from the 4th c. CE once the codex became predominant.¹⁰²⁴ These factors are of course interrelated. Wellisch notes the absence in papyrus rolls of page numbers, sheet numbers and line counts (without consideration of such papyrologic-conceptual terms as *stichoi*, *selides*, *kollemata*, and stichometrics);¹⁰²⁵ on the other hand, he ascertains that, regardless the number of copies of a given work, because papyrus rolls were all hand-made “no two of them would be exactly the same, so that an index could at best have been made to chapters or paragraphs, but not to exact pages.”¹⁰²⁶ Whereas Witty and Wellisch consider the transition from roll to codex significant,¹⁰²⁷ challenges to comprehensive indexing will have thus persisted in the codex format, indeed to some extent even after identical copying became at least theoretically possible with the advent of printing in the mid-15th c. CE. Thus, in the Medieval period we find marginal summaries of page contents (one might think this feasible for columns of text in papyrus rolls) in works of scholarly prose as well as e.g. in 9th and 10th c. MSS of the Justinian Code,¹⁰²⁸ whereas non-uniformity in bookbinding inhibited foliation as a means of indexing works in codex even in the print era.¹⁰²⁹ But as long as the base text is itself articulated into sufficiently

1023On the basis of Shakespeare’s *Troilus and Cressida* (Act I, Sc. 3, wherein Nestor uses “indexes” for the plural; cited by Wheatley 1902:11), Knight determines “We must [...] leave the Latin ‘indices’ to the mathematicians” (Knight 1968:14); Wellisch 1983:148 remarks that the Latin plural “is now generally thought to be obsolete and archaic, except in mathematics and occasionally in other scientific applications. The Latin plural should certainly not be used in the bibliographic sense, where it would be utterly stilted to say ‘I compiled the indices to several books’” (on the usage of “index” in mathematics, cf. further Wellisch 1983:150).

1024Wellisch 1994:268 (as at Wellisch 1983:149; earlier, Witty 1973b:196) comparing the papyrus roll to microfilm in terms of search convenience and the placement of an index at either end (cf. Weinberg 1999:111 citing Witty 1965:43, that early print codices sometimes placed the index at the front of the work, as in the Nuremberg Chronicle).

1025Witty 1958:134 (commenting on Callimachus fr. 433 = Athenaeus 13.48.20 (585b)) notes the commercial significance of line counts in the ancient book trade.

1026Wellisch 1983:149.

1027Witty 1973b:196.

1028Witty 1973b:196 (citing Chatelain): plates 184, 186; cf. Witty 1974:114-115: “Because the *Code* was furnished with lists of headings, it could be consulted with relative ease.”

1029Wellisch 1994:269: “Although foliation was known and used to mark the sequence of folios [of early print books], it could not be employed for locators, since no two copies of a book were exactly the same, so that the

discernible sections and subsections, such supplementary information as might accompany text on its “page” may be cross-referenced, not only alphanumerically but even symbolically. Witty cites Aristophanes of Byzantium and Aristarchus for their editorial symbols (which could point to commentary in physically distinct *hypomnemata*) alongside Cassiodorus, whom he credits with an “elaborate system of symbols to be used in biblical commentaries” and fostering the pursuit of cross-references by references not only to chapter number but also chapter *titulus* (indicative of a “book consciousness” which Witty deems, however, “almost a unique phenomenon for antiquity”).¹⁰³⁰

Understanding an index as defined by the “two main characteristics” of 1) keywords 2) listed in alphabetical order, Wellisch cites as “the earliest known” an “alphabetical subject index to” the 4th c. CE *Apophthegmata* of the Greek Church Fathers¹⁰³¹ (though Witty’s reference suggests that he considers this texts’ 5th c. CE alphabetical rearrangement itself as the object of his attention,¹⁰³² at most an “alphabetically arranged tool” rather than a discrete “subject index to a narrative text”).¹⁰³³ “[W]hat amounts to an alphabetized subject index” is appended to the 8th c.

locator system was based on numbered sections or paragraphs and on marginal lettering”; cf. also Weinberg 1999:111-112 on bibliographical inconsistency in the registering *signatures* of quires/gatherings and in distinguishing *foliation*, *pagination*, and *columniation*.

1030Witty 1973b:194, 195 (citing Witty 1967:46-49), 196; Witty points particularly to Cassiod. *Inst.* 1.2.13 [Mynors 1961:18], 1.6.5 [Mynors 1961:27], 1.15.10 [Mynors 1961:47]; Witty 1974:106 (cf. 118) refers to Cassiodorus’ *Institutiones* as “a systematic bibliographical treatise,” “a systematic bibliography for Biblical scholars, with a few added items about scribes, symbols, abbreviations, etc.,” and notes Cassiodorus “being very book conscious included chapter summaries at the beginnings of his works as an aid to quick reference.” Cf. Winger 1961:322-323, Staikos 2010.

1031Wellisch 1994:268.

1032Witty 1973b:196; the reference is to the *Apophthegmata Patrum*, the result of an originally oral tradition of the sayings of Coptic-speaking hermit-sages from the Egyptian desert; we are to understand “Greek” church fathers as referring to this influence of this tradition on the Greek church in its Greek translation.

1033Per Weinberg 1999:113.

CE *Sacra parallela* by John of Damascus, whose introductory remarks refer to “his summaries or table of contents”:¹⁰³⁴

διὰ τὸ εὐληπτον δὲ, καὶ ῥαδίως εὐρίσκειν τὰ ζητούμενα, ὁ πίναξ τῶν κεφαλαίων, ἡγουν οἱ τίτλοι, κατὰ στοιχεῖον σύγκειται· καὶ ἕκαστον ζητούμενον κεφάλαιον εὐρεθήσεται κείμενον ἐν τῷ γράμματι ἀφ’ οὗ καὶ ἄρχεται

the easier to find what is sought, a list of headings or summaries in alphabetic order has been compiled; and each subject that is sought will be found under its initial letter (tr. Witty)

Witty cites a further example of alphabetizing re-arrangement in the case of the Vienna Dioscorides manuscript: inclusive prefatory *capitulatio*, whereas each material treated receives numbered paragraphs, the work “requires no index.”¹⁰³⁵ After a period of neglect between the 8th and late 12th centuries, the art of indexing was revived by Scholastic interest in theological and philosophical source material.¹⁰³⁶

Suffice the forgoing historical inquiry (left here necessarily incomplete) to suggest the relevance of textual formatting to accessibility. Similar to physical disposition of manuscripts, the MSS’ ownership and the terms of their use, so too do their literary articulation (in terms of orderly oral presentation or literary mark-up) determine the relative ease of their consumption by the public (and by how broad a segment of that public). The great attention given to differentiation of “chapter and verse” reflects a given work’s status as a canonical work worthy of citation; conversely, such attention, when resulting in a well-articulated work, results in its

1034Witty 1973b:196 (citing Migne *PG* 95.1039-1588, 96.9-442; Daly 1967:63-64) [note the two separate texts in Migne’s *PG*: the *Sacra parallela* and the (over 50% larger) *Sacra parallela recensiones secundum alphabeti*]; cf. Witty 1974:118 (noting the comparatively late systematization of theology versus other fields which became the focus of compendia earlier in antiquity), Wellisch 1994:268. Witty 1965:141 (w/ n3) suggests the *Sac. par.* itself “could be called an alphabetic subject index to the Bible and the Fathers” (here further citing “the *Milleloquia* of Augustine and Ambrose compiled by Bartholomew of Urbino, with quotations from these authors arranged alphabetically by subject”—a work disregarded by Witty 1973b; cf. Arbesmann 1976, 1980).

1035Witty 1973b:196-197; cf. Witty 1965:143.

1036Wellisch 1994:268; cf. Witty 1973b:197, who would push the gap farther out: Witty 1973b:196 finds, after that of John of Damascus, no other similar indexes until the 14th c. CE (citing [as also in Witty 1965:141] confirmation at least for the Vatican archives at Daly 1963:486).

easier, perhaps wider, use and citation. Attentions of this sort constitute an important part of the history of a work's transmission (indeed, its cumulative authorship) as well as of its specialist (or broader cultural) authority. Such considerations are necessarily supplementary to discussion of such physical constraints to textual use and re-use as the dedication or sequestration of an author's personal manuscript.

CONCLUSION

It is hoped that the above discussions has suggested some promising avenues of approach to the ancient prehistory of contemporary IP concepts and principles, not as transparently direct antecedents, but as independently conceived, oftentimes even undirected and unintentional in their evolution. These have been sought in objects both oral as well as epigraphically fixed, and the immaterial notions they embodied and elaborated, including as well in often times murky historical practices which may have inspired later purely literary elaborations hard to connect to more concrete historical realities. Such objects are preferable for IP prehistory where little by way of formal law as such is to be expected from the historical record. When explicit legal doctrine and meaningful regulation of properties yet to be even conceived of as such are lacking, it is advisable to search rather for alternate avenues of operation of the same underlying principles and forces as might be expected to apply across time, between the widest possible variety of anthropological scenarios. The universal human desire for in-group identity as well as self-expression in the elaboration of a personal identity have suggested to me some minimal analogy to IP doctrine's current preoccupation with ireregulation of intangible forms as well as of the sumptuary code and fashion cycle in the post-

Gutenberg, digital world—precisely objects that, though well studied in current legal thought have proven equally impervious to perfect (or any) formal IP regulation and enforcement, just as obtains in pre-modern, especially ancient times, where, again, relevant doctrine, codification and enforcement will all have been lacking anyway.

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GRUR = *Gewerblicher Rechtsschutz und Urheberrecht*

JCSUSA = *Journal of the Copyright Society of the U.S.A.*

JPOS = *Journal of the Patent Office Society*

JPTOS = *Journal of the Patent and Trademark Office Society*

LQ = *The Library Quarterly: Information, Community, Policy*

UFITA = *Archiv für Urheber-, Film-, Funk- und Theaterrecht*; later: *Archiv für Urheber- und Medienrecht*

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