

The Cultural Origins and Significance of the γραφή παρανόμων and the γραφή νόμον μὴ ἐπιτήδειον θεῖναι

The γραφή παρανόμων and the γραφή νόμον μὴ ἐπιτήδειον θεῖναι—the procedures through which Athenian laws and decrees could have their own legality challenged in court—are intensely problematic in a number of ways. The γραφή παρανόμων is attested as early as 415 BCE, but the distinction between νόμος and ψήφισμα, upon which it relies, did not emerge until 403/2. The γραφή νόμον μὴ ἐπιτήδειον θεῖναι emerged after this distinction had been drawn, but still presupposes, paradoxically, the concept of an “illegal law,” a νόμος παράνομος. The problem is compounded by the use of the procedure as a blatant tool of political retribution among the elite rhetoricians of the fourth century BCE. The majority of known ψηφίσματα indicted under the γραφή παρανόμων were honorary decrees, and the anecdote that a certain Aristophon had been acquitted of this charge 75 times has led to a strong sense of its *realpolitische* nature. Finally, if the Athenians truly kept and abided by their νόμοι in the period before the introduction of these procedures, why did it take so long for them to develop?

Given the legal and political function of the γραφή παρανόμων and the γραφή νόμον μὴ ἐπιτήδειον θεῖναι, the scholarly attempts to understand the significance that they held for the Athenian people have, unsurprisingly, centered on their significance for law and politics. In particular, they have been viewed in terms of the question of political sovereignty: In what persons or institutions did political power in Athens rest? A great deal of headway has been made on this front (Wolff: 1970, Hansen: 1974, Ober: 1989, Cammack: 2014), but no fully satisfactory solution has been proposed for a crucial question: *Why* did these procedures emerge when they did? I believe that scholars have been looking for the answer in the wrong place. By focusing narrowly on the factual *function* of the γραφή παρανόμων and the γραφή

νόμον μὴ ἐπιτήδειον θεῖναι, they have assumed that their primary *meaning* must also be legal or political.

In general, the *cultural* context within which these procedures emerged and flourished has been lost in the long debate over the sovereignty issue. The legal developments coincided with a steadily increasing emphasis on the importance of writing and written documentation, manifest in the first serious revision of the νόμοι traditionally attributed to Solon, Draco, and Cleisthenes, as well as the establishment of a public repository for written statutes. In the fourth century, moreover, attempts were made to retrieve and preserve an Athenian past in such a way that the institutions of the city became the objects of a new civic mythology. This phenomenon is evident not only in legal and political contexts, but also, for instance, in Lycurgus' effort to establish the official texts of a tragic "canon" (Scodel: 2007, Hanink: 2014).

I argue that the γραφή παρανόμων and the γραφή νόμον μὴ ἐπιτήδειον θεῖναι can best be understood within this larger cultural narrative. Throughout the fifth century, Athenian cultural identity was characterized primarily in terms of the city's vibrant democratic praxis and its unmatched imperial might, which imbued this identity with remarkable stability and confidence. As a consequence, when a series of political crises that threatened both the democracy and the empire erupted between 415 and 403/2 BCE, the way in which the Athenians saw themselves was utterly destabilized. In their search for a source of cultural stability and continuity, they were compelled to *construct* a new identity for themselves by fundamentally *reconstructing* the identity of the past. They turned to their political institutions and newly "institutionalized" νόμοι, inventing an "ancestral constitution" (πάτριος πολιτεία) to fill the void that had been left behind. The γραφαί—which presupposed and protected this new, mythologized institutional self-conception—emerged as the crucial mechanisms through which the (re)construction of Athenian

identity *around* these very institutions was realized. The investigation of the origins of these procedures, therefore, reveals that they should be viewed not as isolated legal and political phenomena, but rather as reflective and co-constitutive of broader changes in the cultural identity of Athens.

Bibliography

Cammack, D. 2014. "Athenian Legal Reform Revisited." *Harvard Society of Fellows*. 1-42.

Hanink, J. 2014. *Lycurgan Athens and the Making of Classical Tragedy*. Cambridge, UK.

Hansen, M.H. 1974. *The Sovereignty of the People's Court in Athens in the Fourth Century B.C. and the Public Action against Unconstitutional Proposals*. Odense.

Ober, J. 1989a. *Mass and Elite in Democratic Athens*. Princeton.

Scodel, R. 2007. "Lycurgus and the State Text of Tragedy." in C. Cooper, ed. *Politics of Orality*: 129-54. Leiden.

Wolff, H.J. 1970. *"Normenkontrolle" und Gesetzesbegriff in der attischen Demokratie*. Heidelberg.