

idion kai peritton: The Sybaritic Culinary Patent and Ancient Intellectual Property

Thanks largely to Wikipedia's "History of Patent Law" article, an obscure factoid culled by Athenaeus (Deip. 12.521c-d) from the Hellenistic historian Phylarchus (FGrH 81) is receiving increasingly widespread recognition (e.g. Raustiala/Sprigman 2012:81) as evidence of the first system of patent-monopoly for the practice of an invention. Amidst a series of anecdotes exemplifying the luxury (*truphe*) cultivated by (and leading to the downfall of) the ancient Sybarites, we learn of their practice of rewarding any cook who should invent a peculiar and extraordinary new dish (*idion heuroi broma kai peritton*) with a year-long exclusive right to its exploitation in hopes of competitively stimulating further such innovation. Aside from suggesting a lesson on the digital diffusion of popular classical scholarship (note the resulting undue prominence currently accorded the same reference reproduced verbatim on Wikipedia's otherwise all-too-spare Athenaeus page), it is my intention to subject this locus to closer scrutiny than it is usually afforded in an attempt to better investigate its value in the pre-history of intellectual property (IP). Modern awareness of this passage as relevant to the historiography of IP systems seems to go back to German patent literature of the early 1920's (Cichorius 1922), while Giles Rich (as one of the principle architects of the modern American patent system) has perhaps done the most to integrate the culinary patent into the history of ancient monopoly rhetoric (Rich 2004[1990]). Yet, despite the near century of awareness, Athenaeus' testimony continues to be adduced as little more than a casual novelty within IP circles (e.g. Weyl/Tirole 2010:2n3) and has received no appropriately detailed treatment by philologists or ancient historians who might better situate it within Athenaeus' Sybaris narrative or identify further ancient anticipations of modern IP systems outside of Athenaeus to supplement the Deipnosophists' passing hint. Though Athenaeus explicitly cites (521b) Phylarchus' *Histories*, the

Suda (Φ 828 Adler) suggests the latter's particular interest in invention as author of a work *Peri Heurematon* (a title shared with the many other authors such as Theophrastus, Strato of Lampsacus, Ephorus and others who systematically pursued the long-standing Greek fascination with protoi heuretai). Athenaeus, however, is focused not on invention for its own sake, but on rehearsing a fable of inevitable doom resulting from luxury driven to excess (Gorman/Gorman 2007). Indeed, where reward for victory in culinary competition is mentioned (Deip. 519d-e) prior to the much-cited patent provision, the context emphasizes prestige for its own sake rather than as an instrumentalist-progressivist incentive toward a greater good. Certainly, public attribution is an indispensable component of modern IP, and Wolfgang Speyer has taken the crystallization 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 (Speyer 1971). 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 multiple genres down through the Classical period (e.g. by Collins 2004). I would like to move discussion of IP origins beyond authorial identity as well as prize incentives, including in the form of exclusive privileges as variously entertained by Xenophanes or Aristotle. Rather, taking a cue from Athenaeus (and without indulging his teleological moralizing), this paper considers the personal distinctions implicated by sumptuary regulation of fashion and luxury (Deip. 521b,c,d) to pursue an approach consonant with a view of the multifaceted and normative behavior of IP recently elaborated by Barton Beebe (Beebe 2010), thus by implication Carol Rose's description of property norms (Rose 1988) as well as Alan Hunt's portrait of the sumptuary code (Hunt 1996).

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