

David C. Mirhady

## THE DIKASTS' OATH AND THE QUESTION OF FACT

---

The dikasts' oath embodied the fundamental statement of Athenian jurisprudence. In swearing it, Athenian dikasts solemnly declared what reasoning guided their judicial decisions. The oath included two key elements: first, that they cast their votes 'according to the laws' (κατὰ τοὺς νόμους), and second, that they do so by their 'most just understanding' (γνώμη τῆ δικαιοσύνη). The meaning of the first clause has been problematic enough as scholars debate what it means that Athenian dikasts follow the 'rule of law'.<sup>1</sup> But the meaning of the second clause has been a greater puzzle, from antiquity to the present. Interpreters generally divide over whether the 'most just understanding' comes into play only where there are no laws covering a particular situation,<sup>2</sup> or if it represents a general application of equity governing all the dikasts' considerations.<sup>3</sup> In this article I wish to consider a third possibility. In classical Athenian forensic practice, the 'most just understanding', I propose, referred, *generally*, neither to gaps in the laws nor to equity considerations but to the question of fact, which corresponds to the first clause, which deals with the question of law. (I say 'generally', for there are exceptions.) The simple way to distinguish questions of fact and law in modern legal systems is to say that jurors decide the former and judges the latter, but that begs the underlying principle, especially in Athens, where dikasts play both roles. Generally speaking, a question of fact is answered without reference to law, but rather by hearing and evaluation of evidence; a question of law is answered with reference to the law, what it means, and what its consequences are.<sup>4</sup> Questions of fact clearly deal with the particular; questions of law with the general.

I shall begin by going through what we know about the dikasts' oath and its formulation in order to sort out potential stumbling blocks for my interpretation, and then look at historical background for the phrase γνώμη τῆ δικαιοσύνη. Following that, I shall survey several passages that seem to echo the phrase in various ways and support the interpretation that the 'most just understanding' referred, generally, to questions of fact.

The oath nowhere survives from the classical period in its complete form, or even in one that includes both key elements in a single text. Nevertheless consensus has formed around the reconstruction by Max Fränkel.<sup>5</sup>

ψηφιοῦμαι κατὰ τοὺς νόμους καὶ τὰ ψηφίσματα τοῦ δήμου τοῦ Ἀθηναίων καὶ τῆς βουλῆς τῶν πεντακοσίων, περὶ δ' ὧν ἂν νόμοι μὴ ὦσι γνώμη τῆ δικαιοσύνη, καὶ οὔτε χάριτος ἕνεκ οὔτ' ἐχθρας. καὶ ψηφιοῦμαι περὶ αὐτῶν ὧν ἂν ἡ δίωξις ἦ καὶ ἀκροάσομαι τῶν τε κατηγορουμένων καὶ τῶν ἀπολογουμένων ὁμοίως ἀμφοῖν. ὄμνυμι ταῦτα νῆ τὸν Δία, νῆ τὸν Ἀπόλλων, νῆ τὴν Δήμητρα, καὶ εἴη μὲν μοι εὐορκοῦντι πολλὰ καὶ ἀγαθὰ, ἐπιορκοῦντι δ' ἐξώλεια αὐτῶ τε καὶ γένει.

I will vote according to the laws and the votes of the Demos of Athenians and the Council of the Five Hundred, and concerning matters about which there are no laws by the most just understanding, and for the sake of neither favour nor enmity. And I will vote concerning the very matters about which the prosecution is, and I will listen to both the accusers and defendants, both of them equally. I swear these things by Zeus, Apollo, and Demeter, and may I have many good things if I swear well, but destruction for me and my family if I forswear.

Despite its elegance and strong support among scholars, Fränkel's reconstruction is a complex pastiche. He combines no less than six elements from many sources, hardly any of which offer more than one or two of the six—only Pollux, a second-century AD lexicographer, offers both key elements together<sup>6</sup>—and almost every element provokes some doubt.

Fränkel derives the name 'Heliastic Oath' from Hyperides and Harpocration, although Aeschines calls it 'the oath of the dikasts', and some late lexicographers call it 'the dikastic oath'.<sup>7</sup> The differing names raise the issue of the oath's origins, whether it was Solonian, and indeed whether or not its formulation, as well as its name, changed over time.

Fränkel draws the oath's opening, 'I will vote according to the laws', etc., from Dem. 24, which purports to offer the entire oath.<sup>8</sup> The wording 'according to the laws' is in fact explicitly attested as belonging to the oath twenty-six times in the orators,<sup>9</sup> and there are a further sixteen passages that seem to imply its inclusion.<sup>10</sup> Fränkel also points out equivalent wordings,

such as that the dikasts swore ‘to obey the laws’ (πεισεσθαι τοῖς νόμοις).<sup>11</sup> The evidence for its inclusion is thus unassailable.

The relative clause ‘concerning matters about which there are no laws’, on the other hand, appears in only two Demosthenic texts and in Pollux, who likely relies on Demosthenes.<sup>12</sup> Fränkel thinks these citations leave no doubt about its inclusion in the oath. I think there is room for doubt, about which more later.

The wording ‘by the most just understanding’ stems verbatim or close to verbatim from five classical texts.<sup>13</sup> Fränkel suggests that Demosthenes also offers an echo in saying that none of the *dikasts* has sworn to vote anything other than ‘what he thinks is just’,<sup>14</sup> and Isocrates offers similarly divergent wording.<sup>15</sup> Aristotle uses it in the *Politics*, but strangely changes the wording to ‘best understanding’ when he mentions it, four times, in his *Rhetoric*.<sup>16</sup> I shall come back to this wording also.

One of the five Demosthenic texts that mention γνώμη τῆ δικαιοσύνη, Dem. 57, actually refers not to the law courts *per se* but to the voting of demesmen acting in a judicial capacity as they review their membership.<sup>17</sup> Fränkel nevertheless includes it as evidence for the dikasts’ oath, and there seems no reason not to follow him. However, this text is also the only one to include the explicit wording ‘not for the sake of favour or enmity’. Fränkel supports it partly because it gives the oath implicit reference to the possibility of bribery,<sup>18</sup> but that does not seem a compelling reason for its inclusion. Where a close parallel appears in Aeschines, it is applied particularly to legislating and not to judicial decision-making.<sup>19</sup> In Plato’s *Apology*, Socrates argues that ‘the judge is not here to play favourites with justice, but to make trial of these matters. And he has sworn not to do favours to whoever has a good reputation, but to judge according to the laws.’<sup>20</sup> Socrates does not imply here that the wording of the oath is ‘not to do favours’; he only wants to stress that the oath binds the dikasts to judge according to the laws. This, he infers, means that they are not to do favours.<sup>21</sup> The motivation of favour is a rhetorical commonplace of forensic oratory. It should not be surprising to see it appearing, as in Dem. 57.26, in an *explanation* of γνώμη τῆ δικαιοσύνη.

Fränkel’s formulation of the oath makes a full stop at this point and begins again, ‘and I will vote concerning the very matters about which the prosecution is’. This wording is explicitly supported by three texts and draws indirect support from a fourth.<sup>22</sup> However, Fränkel’s positioning of it after the other main clauses is curious. It seems a primary point, that is, that the vote should be about the prosecution’s charge. That it occurs first in Demosthenes and Aeschines and not in earlier orators raises suspicion that it was added after the oath’s initial formulation. A passage from Lycurgus, which makes the same rhetorical point, that the dikasts have sworn to consider only the matter at hand, does not use this wording.<sup>23</sup> His departure from logographers contemporary with him would be unsettling itself, but

Demosthenes himself also makes the same point elsewhere without this wording.<sup>24</sup> The *Ath. Pol.* reports that litigants swore to speak 'to the subject itself'.<sup>25</sup> The language of this, the litigants' oath, occurs more commonly in the orators.

The next segment of Fränkel's text has the dikasts listening to both sides equally. The passage enjoys the explicit support of five texts.<sup>26</sup> (One of them, Isoc. 15.21, also mentions that the oath is sworn yearly and suggests that it was not sworn immediately before a trial.<sup>27</sup>) Demosthenes offers several insights into Solon's reasons for including this wording: 'not only that you shall discard all prejudice, not only that you shall return equal goodwill, but also that you allow each litigant to employ arrangement and defense as he has wished and chosen.'<sup>28</sup> This sort of elaboration must have complicated the job of later interpolators, such as the one who formulated Dem. 24.149–51. Although Demosthenes' language here is quite clear, it must often have been difficult for them, as it is for us, to sort out which phrases actually belonged to the oath and which came from such elaborations by the logographers. It seems likely that the logographers themselves also often borrowed phrases and ideas from rhetoricians' handbooks.<sup>29</sup> Some wording that recurs may thus not have been in the oath but will have become canonized through the rhetoricians. We must then be cautious even about wording, such as this, that appears in more than one orator. Other wording for the same point (e.g. ἐξ ἴσου ἀκροᾶσθε) also appears.<sup>30</sup>

The last element of the oath deals with invocations to the gods and imprecations of the dikasts against themselves. Andocides and Demosthenes support the view that these were included in the oath, but only Dem. 24.151 names the gods.<sup>31</sup> Later in the same speech, Andocides throws in a different wrinkle. In a survey of different oaths the dikasts swore, he also mentions that sworn by all the Athenians after the reconciliation of 403 and that of the Boule. Then he makes the claim that the dikasts have sworn to the words, 'I will not recall wrongs nor obey another (law), but I shall vote according to the existing laws.'<sup>32</sup> Fränkel makes no claim that this wording actually belongs to the dikasts' oath, but according to his method he might have. Participants at the Nottingham conference rightly suggested that some such wording may have been included in the oath *for a time*. In this case, however, there is no other support for this wording as part of the oath. It seems rather that Andocides saw implications in the reconciliation oath and integrated its wording with the dikasts' oath. As in Plato's *Apology*, the speaker invents first what the dikasts swear not to do, as if the wording belonged to the oath, and then confirms this interpolation by saying what the dikasts have sworn in fact to do, namely, to vote according to the laws.

The purpose of this step-by-step analysis of Fränkel's reconstruction has been to underline how diffuse the evidence is. Aside from its opening clause, 'I will vote according to the laws', explicit support for every other element is quite modest. The central point I want to make is that the wording γνῶμη

τῆ δικαιοσύτῃ generally referred, in practice, to the dikasts' deciding questions of fact. One impediment to this interpretation is the clause in Fränkel's reconstruction that says that the γνώμη τῆ δικαιοσύτῃ is to be used 'in matters about which there are no laws'. Perhaps one could argue that questions of fact are precisely those about which there are no laws. But that is not the point Demosthenes makes in 39.40 and 20.118. In these passages, he, like many scholars who have investigated this question, sees the γνώμη τῆ δικαιοσύτῃ within the realm of the question of law. If Fränkel is right about the presence of this clause in the oath, my interpretation of the γνώμη τῆ δικαιοσύτῃ cannot also be right.

But what Demosthenes appears to be doing in 39.40 and 20.118, the only passages that give any support for the gaps-in-the-law wording, is not citation of the oath, but interpolation about the role of the γνώμη τῆ δικαιοσύτῃ. He is not wrong to *extrapolate* that if there were a gap in the law or if the laws were ambiguous, the dikasts could rely on their 'most just understanding'. But the presence of such wording in the oath itself would limit its application in ways that conflict with other evidence. Demosthenes gives an altogether different interpretation in 23.96: 'the thought of their *gnome* will be formed from what they will hear and when in fact they place their votes according to this (*gnome*) they will be acting piously.'<sup>33</sup> Here the *gnome* is related to the facts of the case, about which the dikasts hear, not to gaps in the laws. In both Dem. 23.96–97 and 57.26, the γνώμη τῆ δικαιοσύτῃ is identified with not following favour or enmity, again an interpretation, and one that is at odds with its being related only to gaps in the law. Although Aristotle's use of the phrase in the *Politics* is consistent with the gap-in-the-laws passage, none of his uses of the idea in the *Rhetoric* corresponds to it.<sup>34</sup> Several forensic passages also show that the orators interpolate, especially negative, clauses into the oath. They say something negative ('they do not swear this') before including the authentic clause. Dem. 20.118 seems to be just such a text: 'according to the laws not of Sparta. . .' The same might be said also for Dem. 39.40. The clause stating that the γνώμη τῆ δικαιοσύτῃ was to be used in matters about which there were *no laws* seems an *interpretation* by Demosthenes that covers only limited situations. In reality, the laws and the γνώμη τῆ δικαιοσύτῃ were generally to be used simultaneously.

It might be argued that the phrase 'concerning which there are no laws' is necessary in order to cover situations in which the juror believes either that a law is unjust, or that in a particular case its application will result in injustice being done. In such a case, if he is sworn *both* to judge according to the law *and* to judge according to his most just understanding, it will be impossible for him to keep his oath. The oath thus specifies that one of these obligations trumps the other if they conflict. Since no speaker ever claims that the juror's obligation to apply the law is less than absolute, the law took priority. The wording 'in matters about which there are no laws' would thus provide a statement of priority: only where the law is silent is the juror's 'most

just understanding' to prevail. The areas where the law is silent include, but are not limited to, the area that we call 'questions of fact'. They might include, for example, questions of how to interpret the wording of a law, e.g. the question about which much is made in *Lysias* 10 whether the law of slander applies only to the specific words mentioned in its text or to all expressions conveying the same meaning, issues that we would call questions of law, but on which the Athenian dikast had no authoritative guidance and had to rely on his own 'understanding'.<sup>35</sup>

These arguments are important, but it seems unlikely, first, that the oath was formulated in anticipation of a case in which application of the law resulted in injustice. The conceit of the oath and the legal system it served seems to be that application of the laws results in justice, every time. Second, the laws and 'just understanding' are complementary, and not just in the sense of the latter filling gaps in the former; again, it would be odd if the oath's formulation even admitted gaps in the law. Third, the phrasing 'about which there are no laws' actually excludes situations like that in *Lysias* 10, for there were laws in that case, even if they were ambiguous; the application of the most just understanding to interpretation of laws is actually easier without the phrase. While the most just understanding *generally* refers to questions of fact, it clearly also refers to cases like this. It seems better to understand that the clause 'in matters about which there are no laws' did not appear in the oath, despite Fränkel's authority, and thus represents no obstacle for interpreting γνώμη τῆ δικαιοσύνη as having to do, generally, with the question of fact.

There is little evidence for the early history of the dikasts' oath. The term 'heliastic' is associated with Solon as his term for the popular court. That suggests a provenance of the oath from his time, as does Dem. 18.6, but it does not reveal much more. The oath may have changed in significant ways, first with the introduction of representative *dikasteria*, and then certainly with the reference to the *psephismata* of the Demos and Council, an innovation of the late fifth century.<sup>36</sup> Previous scholars have pointed out that many of the elements in Dem. 24.149–51 that Fränkel excludes may have been in the oath for a limited time. Here I am most interested in the wording γνώμη τῆ δικαιοσύνη, which in fact seems the oath's earliest element.

Its terminology seems reflected in the fragment of Draco's law: 'The Kings judge (δικάζειν) to be causative of murder the agent or planner, and the Ephetai decide (διαγνώσκειν)'.<sup>37</sup> The terms δικάζειν and διαγνώσκειν make a similar distinction—between rulings based on law (and procedure) and the decision of the particular issue itself—as in the oath, where they are consolidated into the phrase γνώμη τῆ δικαιοσύνη. The kings, acting on information sworn to by the victim's family, make a judgement (δικάζειν) about the cause of death, and then the Ephetai decide (διαγνώσκειν) whether or not the killing was voluntary, as the subsequent text makes clear. Not only in Draco's law, but also in other passages, determinations of motive are

referred to using the verb διαγιγνώσκειν. In later Athenian law, public arbitrators are said to render a γνώσις.<sup>38</sup> What both they and the Ephetai have in common is a certain freedom in their judgement. Whereas the kings form their judgement according to sworn statements of the prosecution, the Ephetai make a determination about the much more elusive question of motive, as the *dikasterion* of the Palladion does, whose verdict is also called a γνώσις (Dem. 23.71). Likewise, arbitrators need not select either the prosecutor's side or the defendant's but can freely formulate a compromise. Whenever a judge or arbitrator has such free judgement, the terms γνώμη, διαγνώναι, or γνώσις seem to appear. In the Law Code of Gortyn, the dikast is to judge (κρίνειν) on oath only if there is no witness to a point or if witnesses appear on both sides; otherwise he 'judges' (δικάδδεν) according to what the witness says.<sup>39</sup> The Code does not use the language of γνώμη, but it employs a similar distinction whereby the judge has freedom on points of fact and so swears an oath regarding them. Herodas uses the phrase γνώμη δικαίηι of someone who must similarly arbitrate without witnesses.<sup>40</sup>

Hesiod has a suggestive passage, that whoever understands (γιγνώσκων) what is just and speaks it should win the gods' blessing.<sup>41</sup> He is discussing witness testimony and not dikasts but is nevertheless concerned with the specific facts about which witness testimony is given and judicial decisions are made. Aeschylus also offers language similar to the oath: his dikasts are 'to cast their vote from their just *gnome*.'<sup>42</sup> In the *Eumenides* the dikasts are making a determination about motive, the justice of Orestes' particular act, which is consistent with the Draco text.

The dikastic oath of the Amphictyonic league (*IG* ii<sup>2</sup> 1126.3–4) places the γνώμη τῇ δικαιοτάτῃ first:<sup>43</sup> 'I shall judge the suits by as just an understanding as possible, with regard to those things written according to the laws, but concerning those things that have not been written according to my own understanding, and I shall not receive wages for a suit. . . .' Here clearly the ὡς καὶ δ[ικαιοτάτ]α γνώμαι ('as just an understanding as possible') is not limited to gaps in the law, although the personal *gnome* comes into play in the absence of laws. An inscription found at Eresus from c. 336 (*IG* xii[2] 526 = Rhodes & Osborne 83) contains the following: 'The citizens who are judging shall swear: 'I shall judge the case as far as lies within the laws according to the laws but in other respects with care as well as possible (ἐκ [κηδεμ]ονίας ὡς ἄριστα) and most justly. And if I condemn (κατάγνω), I shall assess the punishment correctly and justly' (iii.9–19). The inscription has the same distinction between laws and 'other things' (τὰ δὲ ἄλλα) that we see in the Athenian oath, but there seems emphasis on the limits of law that is absent from the Athenian oath. Instead of γνώμη τῇ δικαιοτάτῃ there are two expressions, ἐκ [κηδεμ]ονίας (or [φιλοπ]ονίας) and ὡς ἄριστα καὶ δικαιοτάτα. Although we can only speculate about the former, the latter seems to split the difference between the Athenian oath's δικαιοτάτῃ and Aristotle's ἀρίστη, γνώμη being absent (cf. Dem. 48.58

below). A cognate form does, however, seem to surface in the next sentence, when referring to condemnation (κατάγνω). A papyrus from Ptolemaic Egypt c. 226 (Hunt and Edgar 256) reports that their law code laid down that judgements be made first by the regulations (*diagrammata*) of King Ptolemy, and failing them, the civic laws, and, the other things (τὰ δὲ ἄλλα), by the γνώμη τῆ δικαιοσύνη. Here, at last, a text makes recourse to the γνώμη τῆ δικαιοσύνη in the absence of laws. Finally, the *Athenaion Politeia* reports that the archons swear that they will be archon 'justly and according to the laws'.<sup>44</sup> The language resembles the dikasts' oath. Perhaps it reflects especially the judicial function of the archons. The *Ath. Pol.* also tells us that in 501, as part of the Cleisthenic reforms, the Athenians began using the oath of the Council of Five Hundred that was still in use (22.2). That suggests that a dikastic oath was also introduced then, though one that may have changed.

The historical background is thus fragmentary, but it suggests a long history for the language of the γνώμη τῆ δικαιοσύνη and its association with judicial decisions and oath swearing. It even predates statutory laws.<sup>45</sup> Before their introduction, judges relied on such a concept for their jurisprudence. Customs also offered vague guides, but judges were ultimately expected to form an understanding of the inherent issues of justice (γνώσεσθαι τὰ δίκαια) in particular situations. Aeschines argues that the Athenian democracy not only introduced laws into the oath but put them in the primary position: 'therefore the lawgiver also placed this first in the dikasts' oath, "I will vote according to the laws." For he certainly knew this well, that if the laws are upheld for the *polis*, the democracy is also preserved.<sup>46</sup> That is, the democracy required that the dikasts deal with the question of law (the *quaestio iuris*) 'according to the laws'. In general, that will have left the γνώμη ἢ δικαιοσύνη to apply only to questions of fact. The Athenians did not make the distinction as strictly as, for instance, Aristotle wished: 'the only business of the litigant is to prove that the fact (*pragma*) in question is or is not so, that it has happened or not. But whether it is important or minor or just or unjust, as much as the legislator has not defined, the dikast must really understand (γινώσκειν) by himself and not learn from the disputants.'<sup>47</sup> In deciding, for instance, which *pragmata* are even relevant to the truth or falsity of the prosecution's charge, the dikasts must necessarily have had to decide the *dikaia*, issues relevant to the justice of the case. In a sense, the *dikaia* correspond to what appears in *Black's Law Dictionary* under 'merits': '1. The elements or grounds of a claim or defense; the substantive considerations to be taken into account in deciding a case as opposed to extraneous or technical points, esp. of procedure.'<sup>48</sup> 'Merits' may even be an appropriate translation for τὰ δίκαια in many cases. But 2. in *Black's* lemma identifies 'merits' also with 'equity (3)', i.e. 'the recourse to principles of justice to correct or supplement the law as required by particular circumstances'.<sup>49</sup> This second meaning from *Black's* does not seem to be what the Athenian logographers are referring to in passages such as Hyp. Dem. 39, where 'the



laws' and the *dikaia* appear side by side.<sup>50</sup> The 'equity' of the *dikaia* is to conform to the laws. The emphasis of the logographers in such phrases is generally on the particular *facts* of the case. The distinction between questions of fact and law is made strikingly at the beginning of the *Second Tetralogy*: 'where the facts are agreed upon, the laws and decrees, which are sovereign over the entire *politeia*, decide, but where there is disagreement over facts, the dikasts must form an understanding.'<sup>51</sup>

Several passages in which the wording γνώμη τῆ δικαιοσύνη is loosely echoed seem to illustrate the general understanding of the phrase in the orators. In some, the complementary nature of acting according to the laws and acting justly is emphasized.<sup>52</sup> Many passages include the phrase 'according to the laws' and give only implicit reference to the 'most just *gnome*'. For instance, Demosthenes argues, 'all of you, if you wish to learn correctly about these matters and to judge the suit according to the laws *justly*, must not only direct your attention to what terms are written into the decree, but also look at their consequences.'<sup>53</sup> Here, as in several other passages, the adverb δικαίως seems to stand in for the phrase γνώμη τῆ δικαιοσύνη. In order to judge *justly* the dikasts must, as the passage says, 'learn correctly about these matters' and 'look at their consequences'. That is, they must go beyond the legal language to knowledge of the specific circumstances.

In Dem. 43.34 the dikasts are urged to vote for 'whoever seems to speak more according to the laws and more justly'.<sup>54</sup> From subsequent passages we learn that in a previous trial the dikasts were deceived (43.38) and that, through lies, the opponents 'said nothing just' (δικαίον δὲ οὐδὲν ἔλεγον 43.42). A 'just' statement here would apparently have given the dikasts accurate information about the facts. At the end of the speech the speaker appeals, 'help the laws and take care for the dead. . . ; by doing these things you will vote what is just (τά δίκαια) and what is consistent with your oaths.'<sup>55</sup> By a chiasmic arrangement τά δίκαια seems to refer to the specific facts related to the interests of the deceased. But, interestingly, adherence to the laws is referred to as εὐορκά ('consistent with the oath'), which suggests a closer connection between the oath and adherence to the laws than between the oath and the 'just understanding'. Hyperides provides a similar formulation: 'having looked at the *eisangelia* and the laws vote whatever to you seems just and consistent with the oath.'<sup>56</sup> The laws are explicitly mentioned in the oath, so there is a connection between 'laws' and εὐορκά. The *eisangelia* will have included a statement of facts, leaving again a connection between a statement of the facts and the phrase 'what seems just'. In the Athenian oath the laws appear first, as Aeschines emphasizes. Fidelity to them seems the primary criterion for consistency with the oath. Some passages reflect the phrase by offering the word *gnome* in its verbal form, e.g. Dem. 33.38 κατὰ τοὺς νόμους γινώσκετε τὰ δίκαια, which illustrates the laws' guidance of the *gnome*. Isaeus 3.12 is one of a number of passages in

which *gnome* appears in its verbal form and rests on witness testimony about facts.<sup>57</sup> Andocides says he has confidence that the dikasts will understand (γνώσεσθαι) τὰ δίκαια and thus rescue him 'justly and according to the laws'.<sup>58</sup> The specific object of their understanding is the unjust treatment Andocides has suffered. Later, he makes reference to the dikasts *understanding* the justice of his case, about the παραθέντα, the facts (8–9). Antiphon makes a similar connection between the dikasts understanding justice and having regard to the facts of the case even without reference to the law.<sup>59</sup>

Apollodorus closely connects just γνώμη and deciding (διαγνώνα) a case without partisan bias: 'I ask of you then, if ever you judged some other matter itself by itself, not by taking either side in your *gnome*, neither the prosecutors' nor the defendants', but having looked at the justice, in this way come to an understanding also now.'<sup>60</sup> Besides making clear the absence of partisan bias, the text also makes clear the close connection between just *gnome* and the *pragma* itself, the question of fact. In Dem. 58 the young speaker argues, 'if I speak just things (δίκαια) and according to the laws, help me.'<sup>61</sup> Again the surrounding passage draws a connection between the *dikaia* and the facts of the case as opposed to the laws. He urges the dikasts to look at the matter itself and not at the fact that he is only a young man speaking and not Demosthenes. The laws, he says, have the same authority regardless.

In some contexts, the *gnome* represents not only the dikasts' understanding of the particular facts, but also their judicial decision as a whole. That seems to be what Isaeus is getting at when he says that his opponents are persuading the dikasts 'to vote opposite to the laws, to justice, and to the *gnome* of the deceased'.<sup>62</sup> He draws a parallel between the *gnome* of the deceased and the dikasts' *gnome*. In Dem. 24.78, since a specific law is under debate, *politeia* replaces laws.<sup>63</sup> The *gnome*, however, is concerning the particular matters upon which the dikasts have voted. Again, that seems other than the question of law.

Lysias 9.19 refers to a judgement by Treasury officials, but the language is similar. He writes, 'don't invalidate those who have deliberated better and *justly*; for they did everything both according to the laws and according to what was probable.'<sup>64</sup> The laws are linked here with what is better (βέλτιον) and 'justly' with what is probable (τὸ εἰκός), a determination of fact. Two sections later, he makes a clearer connection between 'just things' and *gnome*, saying that he has confidence in the dikasts' *gnome* that he will achieve 'just things'. Lysias elsewhere offers συγγνώμη in place of γνώμη,<sup>65</sup> but the συγγνώμη would be 'contrary to the laws'. The point is qualified later, where the speaker explains that the lawgiver gives no συγγνώμη to what is said in anger, unless what is said is true, again, a question of fact.<sup>66</sup>

An extended passage at the end of Lysias 15 seems to exploit the dikasts' oath repeatedly.<sup>67</sup> Starting in §8 he suggests that understanding justice (τὰ

δίκαια γνώσεσθαι) means not giving special attention to what a person or group of people says, or doing favours for anyone. In §9 he turns to the laws and says that the dikasts must vote according to the existing laws, even if their punishment seems harsh. In §10 he adds a twist and says that the dikasts have sworn to vote *what is best for the city* without regard to an individual, a variant of the justice argument. In §11 he turns back to the laws, saying that they must be more important than the requests of individuals.<sup>68</sup> Finally, in §12 he turns back to *gnome* again, insisting that the dikasts have the same *gnome* that they had when in great danger, an argument akin to that in §10, concerning what is best for the city. In this politically charged speech, questions of justice and benefit to the city merge. Dem. 48.58 is similar, and strongly reminiscent of a sort of verbal merging recommended by Aristotle.<sup>69</sup> He asks the dikasts to remember to vote what is best (βέλτιστον) and most just (δικαιότατον) and then reformulates in such a way that ‘understanding justice’ (τά δίκαια γνώσεσθε) is substituted for ‘most just’ and ‘what is beneficial’ (τὰ συμφέροντα) stands in for ‘best’.<sup>70</sup>

In Isaeus 6.65, the speaker emphasizes the religious implications of an inheritance and thus the piety of the dikasts in casting their votes on the basis of demonstrated facts.<sup>71</sup> In his formulation there is no reference to *gnome*, but τὰ δίκαια still appear as a composite of factual information and the laws. In Isaeus 7.3, a sharp division is made between questions of law and questions of fact.<sup>72</sup> The speaker explains that he could have demonstrated through witnesses that he had been legally adopted, but that the settling of that legal question would not have given him an opportunity to have the justice understood (γιγνώσκεσθαι) about the facts (πεπραγμένων). Hyperides bases his argument in *Eux.* 4 on the distinction between the two questions: the dikasts are not to consider the individual facts asserted in the prosecution speech (τὰ καθ' ἕκαστα τῆς κατηγορίας) before examining whether or not the charge is legally valid (τὴν ἀντιγραφὴν ἐξετάσωσιν εἰ ἔστιν ἐκ τῶν νόμων ἢ μή). In the following sentence he invokes Zeus, as if reminding the dikasts of their oath's guarantor. Later in the speech he attacks his opponent's cynicism in assuming that the dikasts will direct their understanding elsewhere than on the issue (τοῦ πράγματος).<sup>73</sup>

In Dem. 32.23, the speaker argues that it would be shameful if Athenian dikasts decided (γνώητε) that the property of Athenian citizens was to be given to pirates.<sup>74</sup> Then he mentions a vote about things being actionable, which amounts to a reference to laws, as is made clear in the next section. Finally, he invokes the gods, as the dikasts do when swearing their oath. The passage seems an extended reference to the oath, mentioning both the major clauses as well as the invocation. Here, however, he avoids the language of a ‘just’ *gnome* and opts instead for the moral vocabulary οὐκ αἰσχρὸν καὶ δεινόν.

The orators emphasize legal conformity far more than the ‘just *gnome*’, but there are hints of it in references to ‘justice’, ‘just things’, ‘justly’, etc.

The thrust of this article has been that the 'just *gnomé*' refers generally to the determination of the facts of a case. The oath and a consistent pattern of argumentation indicate that the dikasts were expected to use a well-understood methodology of jurisprudence in order to achieve their 'just understanding': they were to avoid prejudice, enmity, or favour; they were to hear out both sides equally; and they were only to consider matters relevant to the prosecution charge. In the Athenian legal context the question of fact is not as valueless as we might suppose it. The recurring phrase τὰ δίκαια γνῶσεσθαι indicates that what the dikasts 'understand' is not just the 'plain' facts but also the issues of justice inherent in them, the 'merits' of the case. For this reason, when they use their 'most just *gnomé*', they not only claim an accurate understanding of the facts, but also make a judgment, to some extent, about justice, though this aspect of their judgment must conform to the laws. That generally leaves the question of fact as the primary reference for γνώμη τῆ δικαιοτάτη.

- best, was willing then, and is now, to swear (καὶ τότε καὶ νῦν βούλεται ὁμόσαι ἢ μὴν etc.) that Euphiletus here is his son by a lawfully married Athenian woman. [10] In addition, gentlemen of the jury, I was thirteen, as I said, when he was born, and I am ready to swear (ἔτοιμος δ' εἰμὶ ὁμόσαι ἢ μὴν etc.) that Euphiletus here is my brother by the same father. Thus you should rightly consider our oaths more credible than their words (τοὺς ἡμετέρους ὄρκους πιστοτέρους νομίζοιτε ἢ τοὺς τούτων λόγους), for we have precise knowledge and are willing to swear oaths concerning him (ὁμόσαι περὶ αὐτοῦ θέλομεν), whereas they are just repeating what they have heard from his enemies or are fabricating it themselves.' Note that all three oaths that are offered begin with ἢ μὴν, giving the impression that actual oaths are being stated.
- 12 'The mother of Euphiletus took an oath as to his paternity before the arbitrator; she too swore at the Delphinion' (Harrison 1971, 151). So too Usher 1999, 168: 'The prominence given to oaths sworn by the principals (9–10) is, at first sight, puzzling.' Usher adds (1999, 169) that the oath of 'a mother confirming the paternity of her child commanded exceptional respect.'
- 13 The scenes are *Iliad* 1.233–46 (see below), 15.33–46 (Hera to Zeus); *Odyssey* 14.148–73 (see below), 19.302–11 (Odysseus to Penelope), 20.226–37 (Odysseus to Philoetius); *Hymn to Hermes* 273–80, 373–90 (see below).
- 14 ἀλλ' ἔκ τοι ἑρέω καὶ ἐπὶ μέγαν ὄρκον ὁμοῦμαι·  
ναὶ μά τόδε σκήπτρον, τὸ μὲν οὐ ποτε φύλλα καὶ ὄζους  
φύσει . . . (233–35)
- 15 ὁ δέ τοι μέγας ἔσσεται ὄρκος. (240)
- 16 So Callaway 1988, 160–61, 1993, 18.
- 17 ἀλλ' ἐγὼ οὐκ αὐτως μυθήσομαι, ἀλλὰ σὺν ὄρκῳ,  
ὡς νεῖται Ὀδυσσεύς. (151–52)
- 18 ἴστω νῦν Ζεὺς πρῶτα θεῶν ξενίη τε τράπεζα,  
ἴστίη τ' Ὀδυσῆος ἀμύμονος, ἦν ἀφικάνω·  
ἢ μὲν τοι τάδε πάντα τελείεται ὡς ἀγορεύω. (158–60)
- 19 εἰ δὲ θέλεις, πατρὸς κεφαλὴν μέγαν ὄρκον ὁμοῦμαι· / μὴ μὲν ἐγὼ μήτ' αὐτὸς ὑπίσχομαι  
αἴτιος εἶναι, / μήτε τιν' ἄλλον ὄπωπα βοῶν κλοπὸν ὑμετεράων, / αἴ τινες αἰ βόες εἰσί·  
τὸ δὲ κλέος οἶον ἀκούω. (274–77).
- 20 μέγαν δ' ἐπιδώσομαι ὄρκον· / οὐ μά τὰδ' ἀθανάτων εὐκόσμητα προθύρῃα / μὴ ποτ'  
ἐγὼ τούτω τείσω ποτὲ νηλέα φωρῆν / καὶ κρατερῶ περ' ἐόντι· σὺ δ' ὀπλοτέροισιν ἄρηγε  
(383–86).
- 21 The speakers in Antiphon 1 and 6 cite their opponent's oath in order to refute it but not as a reminder to observe it. This may indicate that in the fifth century these oaths were taken more seriously than later and oaths in homicide cases more seriously than in other cases—though the speaker in Lysias 3, which also follows homicide procedure, refers only to what his opponent 'says' (e.g. 3.27–28).

#### 4 The Dikasts' Oath and the Question of Fact

- 1 See, most recently, E.M. Harris 2004a, 19–34 and 2004b, 12–13, in the latter of which he puts emphasis on the plural 'laws' in the oath.
- 2 Meyer-Laurin 1965, 28–31, Wolff 1957, 34, Meinecke 1971, 280.
- 3 Hirzel 1900, 51, Vinogradoff 1922, 68, Bonner 1927, 73, Paoli 1933, 39, Gernet 1955, 67. Biscardi 1970, 219–32 and O'Neil 2001, 20–29 have championed a middle path. See also J.W. Jones 1956, 135 and Plescia 1970, 28.
- 4 *Black's* (Garner 1999) 1260.
- 5 Fränkel 1878, 464. See also Lipsius 1905, 151–53, Cronin 1936, 18, Bonner & Smith 1938, 152–56, Hansen 1991, 182, Scafuro 1997, 50–51. This translation, and all others, are my own.

- 6 Pollux 8.122 ὁ δ' ὄρκος ἦν τῶν δικαστῶν, περὶ μὲν ὧν νόμοι εἰσί, κατὰ τοὺς νόμους ψηφιεῖσθαι, περὶ δὲ ὧν μὴ εἰσί, γνώμη τῇ δικαιοτάτῃ.
- 7 Hyp. *Eux.* 40 τὸν ὄρκον τὸν ἡλιαστικόν. Harpocration (p. 57.5–6), *s.v.* Ἀρδηττός· ἐν τούτῳ, φασι, δημοσίᾳ πάντες ὤμνουσ' Ἀθηναῖοι τὸν ὄρκον τὸν ἡλιαστικόν. Cf. Dem. 24.148. Contrast Aeschines 3.6 ὁ νομοθέτης τοῦτο πρῶτον ἔταξεν ἐν τῷ τῶν δικαστῶν ὄρκῳ; *Et. Mag.* p. 147.12 τὸν δικαστικὸν ὄρκον; *Lex. Seg.* 184.11, 207.1.
- 8 Demosthenes 24.149–51 Ὁρκός Ἠλιαστῶν ψηφιοῦμαι κατὰ τοὺς νόμους καὶ τὰ ψηφίσματα τοῦ δήμου τοῦ Ἀθηναίων καὶ τῆς βουλῆς τῶν πεντακοσίων. Cf. Dem. 19.179. Fränkel rejects almost three more whole sections of text from this source on the grounds that they are a mistaken elaboration by the late interpolator who inserted the oath into the Demosthenic text. Although Westermann 1858–59 and Drerup 1898 attempted to support Dem. 24.149–51 as entirely authentic, most scholars follow Fränkel in this exclusion.
- 9 Other explicit references to the dikasts swearing to vote 'according to the laws' Aeschines 3.6, 31, 198; Andoc. 1.2; Ant. 5.85; Dem. 18.121, 20.118, 21.42, 21.211, 22.43, 23.101, 24.188, 34.45, 36.26, 46.27, 58.25, 36, 59.115; Din. 1.17; Hyp. *Phil.* 5; Isaeus 11.6; Isoc. 15.173, 19.15; Lys. 22.7. Note also Hyp. *Dem.* 1 τὰ ψηφίσματα τοῦ δήμου, καθ' ἃ ὑμεῖς μὲν ὁμωμόκατε τὴν ψῆφον οἴσιν.
- 10 Implicit references: Isaeus 6.65 ὑμεῖς τε τὴν ψῆφον ὅσῃαν καὶ κατὰ τοὺς νόμους θήσεσθε. Demosthenes 8.2, 22.7, 22.20, 23.2, 34.52, 39.41, 43.34, 52.33, 58.56; Hyp. *Dem.* 39; Isocrates 19.44, 46; *Lyc. Leoc.* 143; Lys. 9.19, 10.32.
- 11 Din. 1.84 τῶν ὁμωμοκότων πείσεσθαι τοῖς νόμοις καὶ τοῖς τοῦ δήμου ψηφίσμασι. Cf. Andoc. 4.9; Lys. 10.32, 14.22.
- 12 Dem. 39.40 ἀλλὰ μὴν ὧν γ' ἂν μὴ ὧσι νόμοι, γνώμη τῇ δικαιοτάτῃ δικάσειν ὁμωμόκατε, ὥστ' εἰ μηδεὶς ἦν περὶ τούτων κείμενος νόμος, κἂν οὕτω δικάσις πρὸς ἐμοῦ τὴν ψῆφον ἔθεσθε. Dem. 20.118 νῦν ὁμωμοκότες κατὰ τοὺς νόμους δικάσειν ἤκετε, οὐχὶ τοὺς Λακεδαιμονίων οὐδὲ Θηβαίων, οὐδ' οἷς ποτ' ἐχρήσανθ' οἱ πρῶτοι τῶν προγόνων, ἀλλὰ καθ' οὓς ἔλαβον τὰς ἀτελείας οὓς ἀφαιρεῖται νῦν οὗτος τῷ νόμῳ, καὶ περὶ ὧν ἂν νόμοι μὴ ὧσι, γνώμη τῇ δικαιοτάτῃ κρινεῖν. καλῶς. τὸ τοίνυν τῆς γνώμης πρὸς ἅπαντ' ἀνεπέγκατε τὸν νόμον. Pollux 8.122.
- 13 Dem. 23.96 γνώμη τῇ δικαιοτάτῃ δικάσειν ὁμωμόκασιν, ἡ δὲ τῆς γνώμης δόξα ἀφ' ὧν ἂν ἀκούσῃσι παρίσταται ὅτε τοίνυν κατὰ ταύτην ἔθεντο τὴν ψῆφον, εὐσεβοῦσιν. Dem. 39.40–41 see above καὶ κατὰ τὴν δικαιοτάτην γνώμην καὶ κατὰ τοὺς νόμους καὶ κατὰ τοὺς ὄρκους καὶ κατὰ τὴν τούτου προσομολογίαν ἐγὼ μὲν μέτρι' ὑμῶν, ὧ ἄνδρες Ἀθηναῖοι, δέομαι. Dem. 20.118 χρῆ τοίνυν, ὧ ἄ. Ἀθ., κάκειν' ἐνθυμείσθαι καὶ ὄραν, ὅτι νῦν ὁμωμοκότες κατὰ τοὺς νόμους δικάσειν ἤκετε, οὐχὶ τοὺς Λακεδαιμονίων . . . ἀλλὰ καθ' οὓς ἔλαβον τὰς ἀτελείας οὓς ἀφαιρεῖται νῦν οὗτος τῷ νόμῳ, καὶ περὶ ὧν ἂν νόμοι μὴ ὧσι, γνώμη τῇ δικαιοτάτῃ κρινεῖν. καλῶς. τὸ τοίνυν τῆς γνώμης πρὸς ἅπαντ' ἀνεπέγκατε τὸν νόμον. See Aristotle and Dem. 57.63 below (nn. 16 and 17).
- 14 Dem. 21.94 (οὐ) ψηφιεῖται τις ὑμῶν ὁμωμοκῶς ἄλλο τι πλὴν ὅ τι ἂν δίκαιοι ἡγήται.
- 15 Isoc. 19.15–16 τῶν μὲν νόμων οὕτως ἐχόντων, ὑμῶν δὲ κατ' αὐτοὺς ὁμωμοκότων ψηφιεῖσθαι; . . . μὴ μόνον ὡς κατὰ τοὺς νόμους ἀλλ' ὡς καὶ δικαίως.
- 16 Arist. *Pol.* 3.1287a26 ὅσα γε μὴ δοκεῖ δυνασθαι διορίζειν ὁ νόμος, οὐδ' ἄνθρωπος ἂν δύναιτο γνωρίζειν. ἀλλ' ἐπίτηδες παιδεύσας ὁ νόμος ἐφίστησι τὰ λοιπὰ τῇ δικαιοτάτῃ γνώμῃ κρινεῖν καὶ διοικεῖν τοὺς ἄρχοντας. Cp. *Rhet.* 1375a29, b16, 76a19, 1402b33 γνώμη τῇ ἀρίστη.
- 17 Dem. 57.26 διαψηφίσεις ἐξ ἀνάγκης ἐγένοντο τοῖς δημόταις ὁμόσασιν καθ' ἱερῶν . . . 63 ἕκ τε γὰρ τοῦ ὄρκου ἐξήλειψαν τὸ ψηφιεῖσθαι γνώμη τῇ δικαιοτάτῃ καὶ οὔτε χάριτος ἕνεκ' οὔτ' ἔχθρας. Cf. Dem. 23.97 πᾶς γὰρ ὁ μήτε δι' ἔχθραν μήτε δι' εὐνοίαν μήτε δι' ἄλλην ἄδικον πρόφασιν μηδεμίαν παρ' ἃ γιγνώσκει θέμενος τὴν ψῆφον εὐσεβεῖ. Cf. the demesmen's oath in *Ath. Pol.* 42.1.
- 18 Bonner & Smith 1938, 154 follow Lipsius 1905, 152 in rejecting the phrase but include

the more explicit reference to bribery in Dem. 24.150 οὐδὲ δῶρα δεξομαι τῆς ἠλιάσεως ἔνεκα οὐτ' αὐτὸς ἐγὼ οὐτ' ἄλλος ἐμοὶ οὐτ' ἄλλη εἰδότος ἐμοῦ, οὔτε τέχνη οὔτε μηχανὴ οὐδεμιᾶ. No other passages support this wording.

- 19 Aeschines 1.178 τοὺς μὲν νόμους τίθεσθε ἐπὶ πᾶσι δικαίοις, οὔτε κέρδους ἔνεκ' ἀδίκου, οὔτε χάριτος οὐτ' ἔχθρας, ἀλλὰ πρὸς αὐτὸ μόνον τὸ δίκαιον καὶ τὸ συμφέρον ἀποβλέποντες. Cf. 176 τὴν αὐτὴν ἔξετε γνώμην νομοθετοῦντες καὶ δικάζοντες.
- 20 Πλ. *Apol.* 35c οὐ γὰρ ἐπὶ τούτῳ κᾶθηται ὁ δικαστής, ἐπὶ τῷ καταχαρίζεσθαι τὰ δίκαια, ἀλλ' ἐπὶ τῷ κρίνειν ταῦτα· καὶ ὁμῶμοκεν **οὐ χαριεῖσθαι** οἷς ἂν δοκῇ αὐτῷ, ἀλλὰ δικάσειν κατὰ τοὺς νόμους. Cf. Isoc. 7.33 ἐώρων γὰρ τοὺς περὶ τῶν συμβολαίων κρίνοντας οὐ ταῖς ἐπιεικείαις χρωμένους, ἀλλὰ τοῖς νόμοις πειθόμενους. Aeschines 3.233 ὁ μὲν ὄρκος ὃν ὁμῶμοκῶς δικάζει, συμπαρακολουθῶν αὐτὸν λυπεῖ· δι' αὐτὸν γὰρ οἶμαι γέγονε τὸ ἀμάρτημα· ἡ δὲ χάρις πρὸς ὃν ἐχαρίζετο ἄδελφος γεγένηται; Dem. 21.211; Din. 1.17 δίκαιῶς ἂν καὶ συγγνώμης καὶ χάριτος ἐτύγχανε παρὰ τῶν ἐν ἐκείνοις τοῖς χρόνοις συμπεπολιτευμένων; Isoc. 2.18 τὰς κρίσεις ποιού περὶ ὧν ἂν πρὸς ἀλλήλους ἀμφισβητῶσι, μὴ πρὸς χάριν μηδ' ἐναντίας ἀλλήλαις, ἀλλ' ἀεὶ ταῦτα περὶ τῶν αὐτῶν γίγνωσκε· καὶ γὰρ πρέπει καὶ συμφέρει τὴν τῶν βασιλέων γνώμην ἀκινήτως ἔχειν περὶ τῶν δικαίων, ὡσπερ τοὺς νόμους τοὺς καλῶς κειμένους; Isoc. 18.34 οὐκ ἄξιον οὔτε κατὰ χάριν οὔτε κατ' ἐπιείκειαν οὔτε κατ' ἄλλ' οὐδὲν ἢ κατὰ τοὺς ὄρκους περὶ αὐτῶν ψηφίσασθαι; (Andoc. 1.91 τί ὁμόσαντες δικάζετε; "καὶ οὐ μνησικακῆσω, οὐδὲ ἄλλω πείσομαι, ψηφιοῦμαι δὲ κατὰ τοὺς κειμένους νόμους).
- 21 Note that both the major clauses seem to be reflected. κρίνειν ταῦτα contrasts with καταχαρίζεσθαι τὰ δίκαια and reflects γνώμη τῇ δικαιοσύνῃ, and χαριεῖσθαι contrasts with δικάσειν κατὰ τοὺς νόμους.
- 22 Aeschines 1.154 ὑμεῖς δὲ τί ὁμῶμοκατε; ὑπὲρ αὐτῶν ψηφιεῖσθαι **ὧν ἂν ἡ δίωξις ἦ** (cf. 170, 175–6, 179.). Dem. 45.50 δικάσειν γὰρ ὁμῶμοκαθ' ὑμεῖς οὐ περὶ ὧν ἂν ὁ φεύγων ἀξιοί, ἀλλ' ὑπὲρ αὐτῶν **ὧν ἂν ἡ δίωξις ἦ**. Dem. 24.151 above Cf. Dem. 29.13 ψευδομαρτυρίων διώκων, καὶ περὶ τούτου τὴν ψῆφον ὑμῶν μελλόντων οἴσειν καὶ ὁμῶμοκότων. Dem. 18.56.
- 23 Lys. *Leoc.* 13 δεῖ καὶ ὑμᾶς ἀποβλέποντας μὴ ἐπιτρέπειν τοῖς **ἔξω τοῦ πράγματος** λέγουσιν· οὕτως γὰρ ἔσται τοῖς τε κρινόμενοις ἄνευ διαβολῆς ὁ ἀγών, καὶ τοῖς διώκουσιν ἥκιστα συκοφαντεῖν, καὶ ὑμῖν εὐορκωτάτην <τὴν> ψῆφον ἐνεγκεῖν. Cf. Hyp. *Eux.* 31. See Rhodes 2004.
- 24 Dem. 22.43 οὐ περὶ τούτων δικάσειν ὁμῶμοκατε, ἀλλ' εἰ κατὰ τοὺς νόμους τὸ ψήφισμ' εἶπεν, and Dem. 44.14 τὰ γὰρ κεφάλαια τοῦ ἀγῶνος, καὶ ὑπὲρ ὧν ὁμῶμοκότες οἴσετε τὴν ψῆφον, σχεδὸν τι ταῦτ' ἔστιν.
- 25 *Ath. Pol.* 67.1 καὶ διομύουσιν οἱ ἀντίδικοι εἰς αὐτὸ τὸ πρᾶγμα ἐρεῖν.
- 26 Dem. 18.1–2 τοῦτο παραστήσαι τοὺς θεοὺς ὑμῖν, μὴ τὸν ἀντίδικον σύμβουλον ποιήσασθαι περὶ τοῦ πῶς ἀκούειν ὑμᾶς ἐμοῦ δεῖ . . . ἀλλὰ τοὺς νόμους καὶ τὸν ὄρκον, ἐν ᾧ πρὸς ἅπασιν τοῖς ἄλλοις δικαίοις καὶ τοῦτο γέγραπται, τὸ **ὁμοίως ἀμφοῖν ἀκροάσασθαι**. τοῦτο δ' ἔστιν οὐ μόνον τὸ μὴ προκατεγνωκῆναι μηδὲν, οὐδὲ τὸ τὴν εὐνοίαν ἴσην ἀποδοῦναι, ἀλλὰ τὸ καὶ τῇ τάξει καὶ τῇ ἀπολογία, ὡς βεβούληται καὶ προήρηται τῶν ἀγωνιζομένων ἕκαστος, οὕτως ἐᾶσαι χρήσασθαι. 6 δέομαι πάντων ὁμοίως ὑμῶν ἀκούσαι μου περὶ τῶν κατηγορημένων ἀπολογουμένου δικαίως, ὡσπερ οἱ νόμοι κελεύουσιν, οὗς ὁ τιθεὶς ἐξ ἀρχῆς Σόλων, εὖνους ὧν ὑμῖν καὶ δημοτικός, οὐ μόνον τῷ γράψαι κυρίους ἔπετο δεῖν εἶναι, ἀλλὰ καὶ τῷ τοὺς δικάζοντας ὁμῶμοκῆναι (cf. 18.7). Isoc. 15.21 ὁμῦναι μὲν καθ' ἕκαστον τὸν ἐνιαυτὸν ἢ μὴν **ὁμοίως ἀκροάσασθαι** τῶν κατηγορούντων καὶ τῶν ἀπολογουμένων (cf. 15.17). Dem. 24.151. Aeschines 2.1 ὁμῶμοκότας τῶν ἀντιδίκων **ὁμοίως ἀμφοτέρων ἀκούσεσθαι**. Hyp. *Lys.* fr.1 τῷ ὄρκῳ, ὃς κε[λεύει] ὑμᾶς **ὁμοίως [ἀκούειν]** τῶν τε κατη[γόρων καὶ τῶ]ν ἀπο[λογουμένων] Cf. Lys. 15.1; Dem. 34.1. Ar. *Wasps* 724–25, and Eur. *Heracl.* 179–80, make no reference to the oath.
- 27 Bonner & Smith 1938, 156 point out Lysias 14.47, where the speaker instructs that the

- laws, oaths, and charge (*graphe*) be read out, but see Dem. 24.2 and 191.
- 28 Dem. 18.2 οὐ μόνον τὸ μὴ προκατεγνωκέναι μηδέν, οὐδὲ τὸ τὴν εὐνοίαν ἴσῃ ἀποδοῦναι, ἀλλὰ τὸ καὶ τῆ τάξει καὶ τῆ ἀπολογίᾳ, ὡς βεβούληται καὶ προήρηται τῶν ἀγωνιζομένων ἕκαστος.
- 29 On canonization of arguments regarding different forms of evidence, see Mirhady 1991a and Mirhady 1996, 128–131.
- 30 Aeschines 2.7 ἴση τῆ εὐνοίᾳ ἀκούοντας, 3.57, Andoc. 1.6, Dem. 29.4, Lys. 19.3.
- 31 Andoc. 1.31 ὄρκους μεγάλους ὁμόσαντες οἴσετε τὴν ψῆφον περὶ ἐμοῦ, καὶ ἀρσάμενοι τὰς μεγίστας ἀρὰς ὑμῖν τε αὐτοῖς καὶ παισὶ τοῖς ὑμετέροις αὐτῶν, ἢ μὴν ψηφιεῖσθαι περὶ ἐμοῦ τὰ δίκαια. Dem. 18.217 νῦν ὑμᾶς ἀξιοῖ ψηφίσασθαι τοὺς ὁμοωκότας τοὺς θεούς. Dem. 24.151 actually names Poseidon in place of Apollo. *Anecd. Gr.* (Bekker 1.443.31) names Helios. Poll. 8.122 ὠμυσαν δὲ ἐν Ἀρδηττω δικαστηρίῳ **Ἀπόλλω πατρῶν καὶ Δήμητρα καὶ Δία βασιλέα**. Cf. Din. 1.86, Ar. *Knights* 941, Dem. 32.23, 52.9, Lys. *Leoc.* 146.
- 32 Andoc. 1.91 ὑμεῖς δ' αὖ, ὦ Ἀθηναῖοι, τί ὁμόσαντες δικάζετε;” καὶ οὐ μνησικακήσω, οὐδὲ ἄλλω πείσομαι, ψηφιοῦμαι δὲ κατὰ τοὺς κειμένους νόμους.” Cf. Isoc. 18.34 περὶ ταύτης δυ' ὄρκους ὁμόσαντες δικάζετε, τὸν μὲν, ὄνπερ ἐπὶ ταῖς ἄλλαις εἴθισθε, τὸν δ' ὄν ἐπὶ ταῖς συνθηκαῖς ἐποίησαθε. ταύτην ἀδίκως γνόντες οὐ τοὺς τῆς πόλεως μόνον νόμους ἀλλὰ καὶ τοὺς ἀπάντων κοινούς παραβήσαθε. ὥστ' οὐκ ἀξίον οὔτε κατὰ χάριν οὔτε κατ' ἐπιείκειαν οὔτε κατ' ἄλλ' οὐδὲν ἢ κατὰ τοὺς ὄρκους περὶ αὐτῶν ψηφίσασθαι.
- 33 See note 12 above.
- 34 Arist. *Rhet.* 1375a29–30 καὶ ὅτι τὸ γνῶμη τῆ ἀρίστη' τοῦτ' ἐστίν, τὸ μὴ παντελῶς χρῆσθαι τοῖς γεγραμμένοις. 1375b16 τό τε γνῶμη τῆ ἀρίστη' λεκτέον ὅτι οὐ τοῦ παρὰ τὸν νόμον ἔνεκα δικάζειν ἐστίν, ἀλλ' ἵνα, **ἐὰν ἀγνοήσῃ τί λέγει ὁ νόμος, μὴ ἐπιορκῇ**. 1376a19 μάρτυρας μὲν μὴ ἔχοντι, ὅτι **ἐκ τῶν εἰκότων δεῖ κρίνειν** καὶ τοῦτ' ἐστὶ τὸ γνῶμη τῆ ἀρίστη'. Cf. 1402b33.
- 35 I gratefully borrow this paragraph from Alan Sommerstein's comments on an earlier draft.
- 36 Thanks to Julia Shear for pointing this out.
- 37 *IG* i<sup>2</sup> 115 (i<sup>3</sup> 104) 11–13 (Stroud, modified) **δικάζεν** δὲ τὸς βασιλέας αἴτιο[ν] φόν[ο] εἴ[τε τὸν αὐτόχειρα εἴ]τε [β]ολεύσαντα, τὸς δὲ ἐφέτας **διαγνῶν[α]ι**. Cf. Lys. 3.28, 43.
- 38 On public arbitrators see *Ath. Pol.* 53.1–2. Sometimes they simply 'make known their arbitrations' on oath (οἱ διαιτηταὶ ὁμόσαντες ἀποφαίνονται τὰς διαίτας *Ath. Pol.* 55.5).
- 39 *IC* iv 72, 1.14–15, 24–25, 38–39, 2.55–3.1, 5.42–44. Cf. Arist. *Pol.* 3.1285b10–12 καὶ πρὸς τούτοις τὰς δίκας ἔκρινον. τοῦτο δ' ἐποιοῦν οἱ μὲν οὐκ ὁμνούντες οἱ δ' ὁμνούντες· ὁ δ' ὄρκος ἦν τοῦ σκήπτρου ἐπανάτασις.
- 40 Herodas 2.85 ἀμαρτύρων εὐντων γνῶμη δικαίηι τὴν κρίσιν διαιτᾶτε.
- 41 Hes. *WD* 280–84 εἰ γάρ τις κ' ἐθέλη **τὰ δίκαι'** ἀγορεύσαι | **γιγνώσκων**, τῶ μὲν τ' ὄλβον διδοῖ εὐρύοπα Ζεὺς· | ὅς δέ κε **μαρτυρίησι** ἐκῶν ἐπίορκον ὁμόσσασας | ψεύσεται, ἐν δὲ δίκην βλάψας νήκεστον ἀσσηῆ, | τοῦ δέ τ' ἀμαυροτέρη γενεὴ μετόπισθε λέλειπται. Note Isaeus 12.9, a father swearing to what he knows best (ἄριστα . . . γιγνώσκειν); cf. Aristotle (n.34 above).
- 42 Aeschylus, *Eum.* 674–5 ἀπὸ γνῶμης φέρειν ψῆφον δικαίας. See Sommerstein 1989, 212. Cf. 709–10 καὶ ψῆφον αἶρειν καὶ **διαγνῶναι** δίκην αἰδουμένους τὸν ὄρκον. See also an approximation of a dikastic oath at 488–9: διαιρεῖν τοῦτο πρᾶγμ' ἐτητύμως, ὄρκον περώντας μηδὲν ἐκδίκους φρεσίν, and 573 καταγνωσθῆ δίκη.
- 43 Δικα[ξέω τ]ὰς δίκας ὡς κα δ[ι]καιοτάτα[ι] γνῶμαι, τ[ὰ] μὲν γεγραμμ[έ]να κατὰ τὸς νόμος, περὶ ὧν δὲ μὴ γέ[ι]ργρα[πται κ]ατὰ γνῶμαν τὰν αὐτ[οῦ] καὶ ἔγχερα ἀ[νὰ τὰν δ[ί]κ[αν] οὐ [δεξόμαι] . . .
- 44 *Ath. Pol.* 55.5 ὁμνύουσιν δικαίως ἄρξειν καὶ κατὰ τοὺς νόμους.
- 45 There seems another early tradition of Greek jurisprudence in Homer and Hesiod that uses the language of δίκας ἰθείας (*WD* 225–26), etc. Its relationship to the tradition that



- includes γνώσεσθαι τὰ δίκαια will have to be explored in another context.
- 46 Aeschines 3.6 διόπερ καὶ ὁ νομοθέτης τοῦτο πρῶτον ἔταξεν ἐν τῷ τῶν δικαστῶν ὄρκῳ, ψηφιοῦμαι κατὰ τοὺς νόμους, ἐκεῖνό γε εὐεῖδώς, ὅτι ἂν διατηρηθῶσιν οἱ νόμοι τῇ πόλει, σώζεται καὶ ἡ δημοκρατία. Cf. Aeschines 1.4–5, Dem. 24.5, 59.115, Lyc. *Leoc.* 1.79, Hyp. *Phil.* 5.
- 47 Arist. *Rhet.* 1354a27–31 τοῦ μὲν ἀμφισβητοῦντος οὐδὲν ἔστιν ἔξω τοῦ δεῖξαι τὸ πρᾶγμα ὅτι ἔστιν ἢ οὐκ ἔστιν, ἢ γέγονεν ἢ οὐ γέγονεν· εἰ δὲ μέγα ἢ μικρόν, ἢ δίκαιον ἢ ἀδίκον, ὅσα μὴ ὁ νομοθέτης δῶρικεν, αὐτὸν δὴ που τὸν δικαστὴν δεῖ **γιγνώσκειν** καὶ οὐ μανθάνειν παρὰ τῶν ἀμφισβητούντων.
- 48 *Black's* (Garner 1999) 1003. Many thanks to Edwin Carawan for this suggestion.
- 49 *Black's* (Garner 1999) 560.
- 50 Hyp. *Dem.* 39 ἐὰν δὲ ἡ ψήφος μὴ ἀκόλουθος γένηται τοῖς νόμοις καὶ τοῖς δίκαιοις, τοῦτο δὴ, ὡς ἄνδρες δικασταί, παρ' ὑμῖν ἔσται καταλειμμένον.
- 51 Ant. 3.1.1 τὰ μὲν ὁμολογούμενα τῶν πραγμάτων ὑπὸ τοῦ νόμου κατακέκριται ὑπὸ τε τῶν ψηφισαμένων, οἱ κύριοι πάσης τῆς πολιτείας εἰσίν· ἐὰν δὲ τι ἀμφισβητήσιμον ἦ, τοῦτο ὑμῖν, ὡς ἄνδρες πολῖται, προστέτακται **διαγνῶναι**. Thanks to Edwin Carawan for pointing out this passage. Cf. 3.4.1.
- 52 See, e.g. Isoc. 19.16 αἰσχυνθεῖν γὰρ ἂν ὑπὲρ τοῦ τετελευτηκότος, εἰ μὴ πάντες πεισθεῖτε, μὴ μόνον ὡς κατὰ τοὺς νόμους ἀλλ' ὡς καὶ **δικαίως** ταῦτ' ἔπραξεν.
- 53 Dem. 23.2 δεῖ δὴ πάντας ὑμᾶς, εἰ βούλεσθ' ὀρθῶς περὶ τούτων μαθεῖν καὶ κατὰ τοὺς νόμους **δικαίως** κρίναι τὴν γραφήν, μὴ μόνον τοῖς γεγραμμένοις ἐν τῷ ψηφίσματι ῥήμασιν προσέχειν, ἀλλὰ καὶ τὰ συμβησόμεν' ἐξ αὐτῶν σκοπεῖν. Cf. Dem. 52.33.
- 54 Dem. 43.34 καὶ ὁπότερος τούτων **δικαιότερα** λέγειν δόξει καὶ **κατὰ τοὺς νόμους μᾶλλον**.
- 55 Dem. 43.84 **τοῖς τε νόμοις** βοηθεῖτε καὶ τῶν τετελευτηκῶτων ἐπιμελεῖσθε, . . . καὶ ταῦτα ποιοῦντες **τὰ τε δίκαια** ψηφιεῖσθε καὶ **τὰ εὖορκα**.
- 56 Hyp. *Eux.* 40 ἐκ δὲ τῆς εἰσαγγελίας καὶ **τῶν νόμων** σκεψάμενοι ὅτι ἂν ὑμῖν δοκῇ **δίκαιον** καὶ **εὖορκον** εἶναι, τοῦτο ψηφίσασθε. Cf. Hyp. *Eux.* 10 τοὺς δικαστὰς ὑπὲρ τοῦ πράγματος τὰ δίκαια διδάξει. 29 τὴν εἰσαγγελίαν ἔγραψα **δικαίαν** καὶ ὡςπερ ὁ **νόμος** κελεύει and Dem. 21.24.
- 57 Isaeus 3.12 ἀκουσαντες δὲ καὶ ὑμεῖς αὐτῶν τῶν μαρτυριῶν, **γνώσεσθε** ὡς οὐτός τε περιφανῶς τὰ ψευδῆ μεμαρτύρηκε, καὶ **ὀρθῶς** καὶ κατὰ τοὺς νόμους οἱ δικάσαντες τὴν δίκην **ἐγνώσαν** τὴν κληρονομίαν μὴ προσήκειν τῇ μὴ ὀρθῶς γεγεννημένῃ γυναικί.
- 58 Andoc. 1.2 πιστεύσας δὲ μάλιστα μὲν τῷ δικαίῳ, ἔπειτα δὲ καὶ ὑμῖν, **γνώσεσθαι τὰ δίκαια** καὶ μὴ περιόψεσθαι με ἀδίκως ὑπὸ τῶν ἐχθρῶν τῶν ἐμῶν διαφθαρέντα, ἀλλὰ πολὺ μᾶλλον σώσειν **δικαίως κατὰ τε τοὺς νόμους** τοὺς ὑμετέρους καὶ τοὺς ὄρκους οὓς ὑμεῖς ὁμόσαντες μέλλετε τὴν ψήφον οἴσειν. . . [8] ἂν γὰρ ὀρθῶς μάθητε **τὰ πραχθέντα**, ῥαδίως **γνώσεσθ'** ἃ μου κατεψεύσαντο οἱ κατηγοροί. [9] τὰ μὲν οὖν **δίκαια γινώσκειν** ὑμᾶς ἡγοῦμαι καὶ αὐτοὺς παρεσκευάσθαι, οἷσπερ ἐγὼ πιστεύσας ὑπέμεινα, ὁρῶν ὑμᾶς καὶ ἐν τοῖς ἰδίοις καὶ ἐν τοῖς δημοσίοις περὶ πλείστου τοῦτο ποιουμένους, ψηφίζεσθαι κατὰ τοὺς ὄρκους. Cf. 1.123.
- 59 Antiphon 5.8 κἂν ἀνωμότοις ὑμῖν καὶ μὴ κατὰ νόμον μηδένα ἐπιτρέψαιμι περὶ τοῦ σώματος τοῦ ἐμοῦ διαψηφίσασθαι, ἐνεκά γε τοῦ πιστεῦναι ἐμοί τε μηδὲν ἐξημαρτῆσθαι **εἰς τὸδε τὸ πρᾶγμα** καὶ ὑμᾶς **γνώσεσθαι τὰ δίκαια**. Cf. 5.86.
- 60 [Dem.] 52.2 θέομαι οὖν ὑμῶν, εἴπερ τι καὶ ἄλλο πώποτε **πρᾶγμα** αὐτὸ καθ' αὐτὸ ἐδίκασατε, μηδὲ μεθ' ἐτέρων τὴν **γνώμην** γενόμενοι, μήτε μετὰ τῶν διωκόντων μήτε μετὰ τῶν φευγόντων, ἀλλὰ τὸ **δίκαιον** σκεψάμενοι, οὕτω καὶ νῦν **διαγνῶναι**.
- 61 Dem. 58.41 οἶμαι δεῖν ὑμᾶς, ὡς ἄνδρες δικασταί, ὑπὲρ **αὐτοῦ τοῦ πράγματος** σκεψαμένους, εἰ μὲν **δίκαια** λέγω καὶ κατὰ τοὺς νόμους, βοηθεῖν μοι. Cf. 58.61.
- 62 Isaeus 1.26 πειθουσιν ὑμᾶς ἐναντία καὶ τοῖς νόμοις καὶ τῷ δικαίῳ καὶ τῇ τοῦ τετελευτηκότος **γνώμῃ** ψηφίσασθαι (cf. 1.51 γνῶναι).
- 63 Dem. 24.78 εἴπερ ὑμῶν ἐκάστῳ μέλει τι τῆς **πολιτείας** καὶ δεῖν οἶεται κυρίαν εἶναι τὴν αὐτοῦ **γνώμην περὶ ὧν** ἂν ὁμωμοκῶς ψηφίσηται, λυτέος καὶ οὐκ ἐατέος οὗτος ὁ

- τοιούτος νόμος κύριος νυνὶ γενέσθαι. Cf. Andoc. 1.3.
- 64 Lys. 9.19 μήτε τοὺς βέλτιον καὶ δικαίως βουλευσαμένους ἀκρούς καταστήσητε. οἶδε μὲν γὰρ ἅπαντα καὶ κατὰ τοὺς νόμους καὶ κατὰ τὸ εἶκος ἔπραξαν. 9.21 τυχῶν μὲν γὰρ τῶν δικαίων (πιστεύω δὲ τῇ ὑμετέρα γνώμῃ) μείναιμι ἂν (ἐν) τῇ πόλει.
- 65 Lys. 10.26 μὴ τοῖνυν ἀκούσαντά <τε> Θεόμνηστον κακῶς τὰ προσήκοντα ἐλεεῖτε, καὶ ὑβρίζοντι καὶ λέγοντι παρὰ τοὺς νόμους συγγνώμην ἔχετε. Cf. 30.
- 66 See Mirhady 1990, 398, and Arist. *EN* 1143a19–20 ἡ δὲ καλουμένη γνώμη, καθ’ ἣν συγγνώμονας καὶ ἔχειν φαμέν γνώμην, ἡ τοῦ ἐπεικούς ἐστὶ κρίσις ὀρθή.
- 67 Lys. 15.8 οὐκ ἂν δικαίως χαρίζοισθε αὐτοῖς . . . ὁμωμόκατε τὰ δίκαια γνώσεσθαι, ἀλλ’ οὐχ ὅτι ἂν οὗτοι κελεύωσι ψηφιεῖσθαι, ὥστε οὐδένα χρὴ τῶν δεομένων περὶ πλείονος ὑμῶν αὐτῶν καὶ τῶν ὄρκων ποιεῖσθαι. . . 9 εἰ τῷ δοκεῖ μεγάλη ἡ ζημία εἶναι καὶ λίαν ἰσχυρὸς ὁ νόμος, μεμνησθαι χρὴ ὅτι οὐ νομοθετήσαντες περὶ αὐτῶν ἦκατε, ἀλλὰ κατὰ τοὺς κειμένους νόμους ψηφιοῦμενοι. . . 10 οὕτως ὑμᾶς ἀμελήσαντας τούτου τῇ πόλει τὰ βέλτιστα ψηφίσασθαι, ἀλλως τε καὶ ὄρκους ὁμωμόκτας . . . 11 τὰς τούτων δεήσεις περὶ ἐλάττωνος (τῶν νόμων) ποιησάμενοι τὰ δίκαια ψηφίσασθε. 12 δέομαι τὰ δίκαια ψηφίσασθαι ὑμᾶς δὲ χρὴ τὴν αὐτὴν γνώμην ἔχοντας τὴν ψήφον φέρειν, ἥνπερ ὅτε ὤρεσθε πρὸς τοὺς πολεμίους διακινδυνεύσειν.
- 68 In §11 editors have inserted (τῶν νόμων): ‘vote what is just, having made their requests of less account <than the laws>.’ The emendation is wrong. Since the requests would tend to create favour, they would corrupt understanding of τὰ δίκαια. As in §8, the speaker means, ‘having made their requests of less account (than τὰ δίκαια)’. In §9, comparison is made between existing laws and whatever the dikasts might legislate if they were legislators. The factual and legal questions are kept separate in §8 and §9. Cf. Isaeus 11.18.
- 69 Dem 48.58 ψηφίσεσθαι ὅτι ἂν ὑμῖν δοκῇ βέλτιστον καὶ δικαιοτάτον εἶναι. καὶ ταῦτα ποιούντες τὰ τε δίκαια γνώσεσθε καὶ τὰ συμφέροντα. On Aristotle, see Mirhady 1990, 400–3.
- 70 Note that the passage has no reference to the laws. By ‘best’ and ‘what is beneficial’ he seems to be referring partly to the legislation of Solon as a guide (§§52, 57); by ‘most just’ he seems to be referring largely to the factual issues (§48).
- 71 Isaeus 6.65 ἔαν περὶ αὐτοῦ τούτου κελεύητε ἐπιδεικνύναί ὥσπερ καὶ διεμαρτύρησεν, ὑμεῖς τε τὴν ψήφον ὅσῃαν καὶ κατὰ τοὺς νόμους θήσεσθε, τοῖσδέ τε τὰ δίκαια γενήσεται.
- 72 Isaeus 7.3 μὴ ἐπίδικον εἶναι τὸν κληρὸν ὡς ποιησαμένου με ὑὸν Ἀπολλοδώρου κατὰ τοὺς νόμους. ἐπειδὴ δ’ οὐ διαφεύγει τὰ δίκαια μὴ οὐ κατὰ τούτον γινώσκεισθαι τὸν τρόπον, αὐτὸς ἦκα διαλεξόμενος περὶ τῶν πεπραγμένων. On the linkage between *nomoi* and *dikaia* cf. also Ar. *Clouds* 1038–40, where the Worse Argument says he earned his name by becoming the first to understand how τοῖσιν νόμοις καὶ ταῖς δίκαις τὰναντί’ ἀντιλέξει.
- 73 Hyp. *Eux.* 32 τοῦ δὲ λέγοντος κακοηθία καὶ ὑπόληψις εἰς τοὺς δικαστὰς οὐ δίκαια, ὡς ἄλλοθι που οὗτοι τὴν γνώμην ἂν σχοίησαν ἢ ἐπ’ αὐτοῦ τοῦ πράγματος, καὶ πότερον ἀδικεῖ ὑμᾶς ὁ κρινόμενος ἢ οὐ. Cf. 36 ἀλλ’ ὅμως οἱ δικασταὶ οὐ πρὸς τὰς τοῦ κατηγοροῦ ὑποσχέσεις ἀποβλέποντες, ἀλλὰ πρὸς τὸ δίκαιον, ἔγνωσαν ἴδιον εἶναι τὸ μέταλλον, καὶ τῇ αὐτῇ ψήφῳ . . .
- 74 Dem. 32.23 πῶς γὰρ οὐκ αἰσχρὸν καὶ δεινὸν ἂν γένοιτο, εἰ Κεφαλλῆνες μὲν, . . . , ὑμεῖς δ’ ὄντες Ἀθηναῖοι τὰ τῶν πολιτῶν τοῖς καταποντίσῃ βουλευθεῖσιν δοῦναι γνώητε, καὶ ἂ μὴ καταπλεῖν ὅλως οὗτος δεῦρ’ ἔπραττεν, ταῦτ’ εἰσαγώγιμα τούτῳ ψηφισαίσεσθε; μὴ δῆτ’ ὦ Ζεῦ καὶ θεοί. . . 24 ὅτι μὲν τοῖνυν ἐκ τῶν νόμων παρεγραψάμενη μὴ εἰσαγώγιμον εἶναι τὴν δίκην, ἰκανῶς οἶμαι δεδειχθαι.

## 5 Could a Greek Oath Guarantee a Claim Right?

- 1 But it does not follow that something unnamed in the language does not exist in popular thought. Cf. Sommerstein (forthcoming) n. 6: the Greeks had no single word for the