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Resisting and justifying changes II

Testifying and legitimizing innovation in
Indian and Ancient Greek Culture

ed. by

ELISABETTA PODDIGHE and TIZIANA PONTILLO

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il protocollo UPI

*To the Memory of
Alexander Dubyanskiy, Peter John Rhodes, Jaroslav Vacek*

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ELISABETTA PODDIGHE

**THE ATHENIANS' OATHS TO USE "WHATEVER LAWS
SOLON SHOULD MAKE" AND TO CHANGE NOTHING
FOR TEN YEARS: SHOULD WE BELIEVE HERODOTUS'
ACCOUNT?**

Abstract

In a volume focused on the problem of legitimizing change and innovation (political, legal, social, cultural) the Athenians' oaths to observe Solon's laws represent a case study worth discussing since they demonstrate (at least in some of our sources) an explicit commitment to accept the new laws of Solon (which thus replaced those previously in force), while at the same time including a pledge not to change them in the future. Herodotus' *Histories*, Aristotle's *Athenaion Politeia* and Plutarch's *Life of Solon* record the oaths and set the historical context, though they supply different details as to when and what the Athenians swore to. Herodotus tells us of "solemn oaths" taken by the Athenians *before* Solon laid down his laws and which contained the pledge to observe the code in its entirety for ten years. The Athenians, in the Herodotean account, accepted that Solon himself could abrogate any law, while they could not, because of their oaths. Aristotle and Plutarch record the oaths taken by the Athenians "to observe" the laws of Solon *after* his legislation (*nomothesia*), i.e. after he laid down his laws and when he decided to give them a validity of 100 years. Scholars almost uniformly overlap the account of the sources, substituting Herodotus' ten years for the *Athenaion Politeia's* (and Plutarch's) hundred years and so changing the account of the pledge to observe the code in its entirety for ten years (a relatively brief testing period) into the story that Solon's laws were intended to remain free from innovation for a hundred years. This chapter makes the point that we need to assess the different reconstructions of single sources and to distinguish when and what the Athenians swore to in their oaths. I will argue, on the one hand, that we should credit the Herodotean account of the pledge to observe the code in its entirety for ten years, and contend, on the other hand, that the oaths taken by the Athenians "to observe" the laws of Solon *after* his decision to give the laws the validity of 100 years did not mean that the laws could not be supplemented but only that they could not be cancelled or modified.

1. *The Athenian's oaths and Solon's departure (apodemia) from Athens: what Herodotus and later sources tell us*

Solon, the Athenian poet and lawgiver, was elected archon in 594/593 BCE¹. In the same year of his archonship² (or, according to some sources, immediately thereafter³) Solon wrote the laws for the Athenians who swore to uphold them. In his poems, Solon himself clearly stated that the (new) laws solved the problem of rampant injustice and illegality (*dysnomia*), and he explicitly recognized the binding force (*kratos*) of his new laws⁴. But it is the historian Herodotus who provides the earliest testimony that the Athenians considered the new laws to be effectively binding and that they took a solemn oath (*megas horkos*) to abide by them. According to Herodotus “Solon the Athenian, after making laws for the Athenians at their request, went abroad for ten years, sailing forth to see the world, he said. This he did so as not to be compelled to repeal any of the laws he had made, since the Athenians themselves could not do that, for they were bound by solemn oaths to abide for ten years by whatever laws Solon should make”⁵. The historical background and the context for the oaths are briefly outlined by Herodotus: Solon had made new laws for the Athenians “at their request” and the Athenians with solemn oaths compelled themselves for ten years to uphold “whatever laws Solon should make”. Herodotus tells us that Solon’s departure (his *apodemia*) was directly linked to the Athenians’ oaths as the purpose of his absence was to prevent his new laws from being repealed which the

¹ All dates are BCE unless otherwise indicated.

² The opinion of the ancient authors (*Ath. Pol.* 13. 1-2; *Marm. Par.*, *FGrHist* 239 A 38; *Sosikrates ap. Diog. Laert.* 1. 62) is widely accepted by modern scholars: Cadoux 1948: 93-99; Maddoli 1975: 45; Podlecki 1975: 34; Piccirilli 1977; Rhodes 1981: 120-122; Id. 1994: 168; Wallace 1983: 81-95; Id. 2016; Alessandri 1989; Raaflaub 2000: 40; Almeida 2003: 259-263; Camassa 2011: 119; Id. 2012: 31; Chiasson 2016: 28; Loddò 2018b: 10.

³ In the *Athenaion Politeia* (14.1) the beginning of the tyranny is placed 32 years after Solon’s reforms: these would therefore be completed in 592, two years after Solon’s archonship (Linforth 1919: 266; Hammond 1940). Recently Meyer (2016: 353) has argued the hypothesis of a rather long phase of elaboration and publication of the laws (between 590 and 580). For modern debate see Almeida 2003: 256-261; Nourissia 2010: 6-7; Rhodes 2016: 192-193; Bernhardt (2022: 418-419, 441) places Solon’s reforms “in the late 570s”.

⁴ See § 2.1.

⁵ Hdt. 1. 29. 1-2: Σόλων ἀνὴρ Ἀθηναῖος, ὃς Ἀθηναίοισι νόμους κελεύσασαι ποιήσας ἀπεδήμησε ἕτεα δέκα κατὰ θεωρίας πρόφασιν ἐκπλώσας, ἵνα δὴ μὴ τινα τῶν νόμων ἀναγκασθῆ ἴσασαι τῶν ἕθετο. αὐτοὶ γὰρ οὐκ οἶοί τε ἦσαν αὐτὸ ποιῆσαι Ἀθηναῖοι· ὀρκίοισι γὰρ μέγαλοισι κατεῖχοντο δέκα ἕτεα χρήσεσθαι νόμοισι τοὺς ἄνσφι Σόλων θῆται.

Athenians themselves had solemnly sworn not to do. What Herodotus implies here is that prearranged agreements already existed between the Athenians and Solon, and that the solemn oaths to respect the integrity of the *corpus* for ten years were part of these agreements.

Why, when and what the Athenians swore to in connection with Solon's reform are clearly stated. The Athenians swore because Solon considered the oaths to be essential in order to ensure the integrity of the new laws he would make for the Athenians; they swore before Solon had made the laws and their commitment was to observe the "code" in its entirety for ten years.

There are three highly significant aspects in Herodotus' account. First, if we arrange the facts chronologically, an oath is mentioned that preceded the *nomothesia* and according to which the Athenians agreed to use whatever laws Solon would write. This chronological interval between the preliminary oath and the *nomothesia* has not always been correctly identified by scholars⁶, yet it is crucial if we want to understand the nature of these agreements between the Athenians and Solon and this is clear from the verb tenses used: the Athenians ask for the laws and Solon agrees on condition that there is a *preliminary* (and sworn) commitment to observe for a period of ten years "the laws that Solon would give them"⁷. A second point. Herodotus' account establishes a clear cause-and-effect relationship between *nomothesia* and *apodemia*. *Apodemia* stems from Solon's wish that the Athenians should not abrogate (λῦσαι) even one of the laws that the *demos* has sworn to observe (χρήσεσθαι) for a decade⁸, and therefore his absence will last as long as necessary to keep the *corpus* unchanged and safe from the threat of imminent repeal. Observing the laws means not intervening in the

⁶ Cf. e.g., Harris 2006: 23: "According to Herodotus (1.29), Solon, after laying down his laws, made the Athenians swear an oath that they would not alter his laws for ten years". But see Markianos 1974: 1, and Rhodes 1981: 135; Id. 2016: 182, on the preliminary oath as "most likely". See also Rosivach 2010: 223. Bernhardt (2022: 441) does not distinguish between the preliminary oaths recorded by Herodotus and the subsequent oaths recorded by later sources: all of them are placed "in the late 570s". See below § 3.

⁷ See above fn. 5.

⁸ Cf. Markianos 1974: 16-17: "since between *apodemia* and *nomothesia* there is a casual relation, i.e. the *nomothesia* caused the *apodemia*, and Solon left Athens lest he should be compelled to repeal any of the given laws that the Athenians were bound by oath to keep for ten years, the *nomothesia* cannot precede the *apodemia* more than ten years". For this causal relation see Piccirilli 1977; McGlew 1993; Farenga 2006; Osborne 2002: 514; de Blois 2006: 437-438; Camassa 2011: 120. Cf. also Noussia 2010: 297, who about Solon's departure states that it "has the function of imposing the permanence of the new laws on the city".

corpus by repealing even one of them. This is explained by Herodotus: the Athenians agreed that for the next ten years the only person entitled to change the laws would be Solon himself. Third point, Herodotus recognizes the parties' different responsibilities in the agreements: that of the Athenians, who for a given period pledged to observe the laws they could not abrogate by themselves, not even one, and that of Solon, who could change the laws, but went away for ten years so as not to be "forced" to do so under pressure.

Solon's decision to leave Athens is also mentioned in later sources. These are Aristotle's *Athenaion Politeia* (hereafter *Ath. Pol.*) and Plutarch's *Solon* (hereafter Plutarch). All the sources use the word *apodemia* to describe Solon's departure, indicating a deliberate leave taking⁹. Solon's *apodemia* – our sources state – had a political reason: to prevent the repeal of his laws¹⁰. Once the laws had been written, Solon left so as not to be "forced" – Herodotus says – to "abrogate any of the established laws"¹¹. Each source in reporting and interpreting the relationship between Solon's act of lawgiving (*nomothesia*) and his departure (*apodemia*) provides additional information that is not always coincidental: for example, the reasons adduced by Solon to justify his departure from Athens are reported differently¹² with regard to the timing and content of the oaths taken by the Athenians and the time limit of the commitment not to change the laws. While Herodotus reports that *before* Solon started his legislative work the Athenians swore they would observe Solon's laws and change nothing for at least a decade¹³, *Ath. Pol.* and Plutarch mention another oath, taken after the *nomothesia*, i.e., after the legislation had been completed¹⁴. Again, that Solon secured his laws for a hundred years is recorded only by *Ath. Pol.* and

⁹ Hdt. 6. 130. 2; Plat. *Leg.* 949e; *Crit.* 52b; Xen. *Cyr.* 3.1.7; Aeschin. 1. 95. Cf. Montiglio 2000; 2005: 100, 132-135; Leigh 2013: 92-97.

¹⁰ Hdt. 1. 29. 1-2; Arist. *Ath. Pol.* 11. 1; Plut. *Sol.* 25. 4-6.

¹¹ Hdt. 1. 29. 1: Σόλων ἀνὴρ Ἀθηναῖος, ὃς Ἀθηναίοισι νόμους κελεύσασι ποιήσας ἀπεδήμησε ἔτεα δέκα κατὰ θεωρίας πρόφασιν ἐκπλώσας, ἵνα δὴ μὴ τινα τῶν νόμων ἀναγκασθῆ ἴδῃ τῶν ἔθετο.

¹² Hdt. 1. 29. 1: ἀπεδήμησε ἔτεα δέκα κατὰ θεωρίας πρόφασιν ἐκπλώσας; Arist. *Ath. Pol.* 11. 1: ἀποδημίαν ἐποίησατο κατ' ἐμπορίαν ἅμα καὶ θεωρίαν; Plut. *Sol.* 25. 6: πρόσχημα τῆς πλάνης τὴν ναυκληρίαν ποιησάμενος ἐξέπλευσε, δεκαετὴ παρὰ τῶν Ἀθηναίων ἀποδημίαν αἰτησάμενος.

¹³ Hdt. 1. 29. 2: αὐτοὶ γὰρ οὐκ οἶοι τε ἦσαν αὐτὸ ποιῆσαι Ἀθηναῖοι... ὀρκίοισι γὰρ μεγάλοισι κατειχόντο δέκα ἔτεα χρήσεσθαι νόμοισι τοὺς ἄν σφι Σόλων θῆται.

¹⁴ Arist. *Ath. Pol.* 7. 1: ἀναγράψαντες δὲ τοὺς νόμους εἰς τοὺς κύρβεις ἔστησαν ἐν τῇ στοᾷ τῇ βασιλείῳ καὶ ὤμοσαν χρήσεσθαι πάντες; Plut. *Sol.* 25. 2-3: ἐνιοὶ δὲ φασὶν ἰδίως ἐν οἷς ἱερὰ καὶ θυσίαι περιέχονται, κύρβεις, ἄξονας δὲ τοὺς ἄλλους ὀνομάσθαι, κοινὸν μὲν οὖν ὤμνουν ὄρκον ἢ βουλή τοὺς Σόλωνος νόμους ἐμπεδώσειν.

Plutarch¹⁵, not by Herodotus. More precisely, *Ath. Pol.* mentions that after Solon's laws were inscribed on the *kырbeis* the Athenians all swore to use them. *Ath. Pol.* also says that Solon secured his laws for a hundred years (7.1-2), and, in a separate place, mentions that because Solon was put under pressure, he went on his travels for ten years (11.1). In Plutarch's *Solon*, in connection with the inscription of the laws on the *axons* we are told that Solon gave them force for a hundred years, and the council (presumably the new council of four hundred) swore to uphold them, just as the *thesmothetai* (but we should read here: all the nine archons¹⁶) swore to dedicate a golden statue if they broke any of the laws (25.1-3). Plutarch also says that because Solon was put under pressure, he went on his travels for ten years (25.6-28.1). Thus, *Ath. Pol.* and Plutarch differ from Herodotus in reporting oaths that were taken after the *nomothesia* and after Solon completed his reform of the political institutions.

What do scholars make of Herodotus' account of the "great oaths" sworn by the Athenians before Solon produced his laws?

P.J. Rhodes argues that what Herodotus says is in every way plausible and he makes the point that the ten-year commitment is plausible precisely because a preliminary commitment could not be expected to be binding for too long in the form in which it was made, namely "to change nothing". According to Rhodes, Herodotus appears more credible than the later sources, and he observes that "Men who swore to keep Solon's laws for a hundred years would be dead before the hundred years had expired" and therefore "probably we should believe in an oath to change nothing for ten years, sworn before Solon produced his laws, as implied by Herodotus, rather than after, as implied by *Ath. Pol.* and Plutarch"¹⁷. Again, Rhodes states, "we should believe in a deliberate link between that" (i.e., the oaths) and "Solon's leaving Athens for ten years", a link that Herodotus acknowledges, but not the other sources. Finally, Rhodes finds Herodotus' account reliable also with respect to the fact that the preliminary oath was sworn by all Athenians. There would be no reason not to believe "that the oath was sworn by all the citizens", in fact "that was done later in Athens as well as in other, smaller states, so it should not be rejected here"¹⁸.

¹⁵ Arist. *Ath. Pol.* 7. 2: κατέκλεισεν δὲ τοὺς νόμους εἰς ἑκατὸν ἔτη καὶ διέταξε τὴν πολιτείαν τὸνδε τὸν τρόπον; Plut. *Sol.* 25. 1: ἰσχὺν δὲ τοῖς νόμοις πᾶσιν εἰς ἑκατὸν ἔνιαυτὸς ἔδωκε·

¹⁶ Cf. Rosivach 2010: 229 fn. 20.

¹⁷ Rhodes 2007: 16. On this point I propose a different reconstruction (below, § 3).

¹⁸ Rhodes 2007: 16.

Rhodes' position is, however, isolated. Indeed, scholars are mostly quite skeptical about whether Herodotus correctly reported such an important event in the history of Athenian democracy. They more often assume that Herodotus' account cannot be trusted and prefer the later versions¹⁹, though sometimes even these accounts are found to be unreliable²⁰. Mistrust of Herodotus' narrative is often explained by the remark that Herodotus was not interested in *nomothesia* nor in a political Solon²¹, but only in Solon as a Sage (*sophos*²²) and traveler²³. While it is undeniable that Herodotus was not interested in a political Solon, but only in Solon as a Sage, the corollary to this is very questionable: i.e., that Herodotus' version of the oath is fictional, and that the unreliability of Herodotus' account is due to its dependence on the unreliable tradition of the Seven Sages²⁴. Many studies have reached the conclusion

¹⁹ Piccirilli 1977: 23-30; Manfredini, Piccirilli 1995: 254-255; Leão 2010b: 25; Muñoz Gallarte 2011: 120 fn. 12. See also Almeida 2003: 2 fn. 4, who considers Herodotus' version "incidental to the fuller tradition preserved in *AP* and Plutarch", and Rosivach 2010: 230, who finds in the *Athenaion Politeia* "a more credible narrative". On the tendency of scholars to devalue Herodotus' reconstruction in comparison with later traditions see Osborne 2002: 514: "the Aristotelian *Athenaion Politeia* also derives items more or less directly from Herodotus, adding only an interpretation, shaped by fourth-century ideas of how politics worked, and where this is the case modern scholars' preference for the Aristotelian version seems perverse. Although their studies meant that the Attidographers were technically better equipped than Herodotus, their historical understanding was not necessarily superior, partly because many of the sorts of additional information available to them did not contribute directly to an understanding of why events happened".

²⁰ Rosivach 2010: 234-235; cf. below § 2.

²¹ Cf. Masaracchia 1958: 17, and Piccirilli 1977: 26 who think that Herodotus does not care about Solon's legislative work. Cf. also Osborne 2002: 514: "Despite his interest in the effects of democracy on Athens' strength, Herodotus displays no interest in the earlier constitutional arrangements at Athens". See also Almeida 2003: 241; Stehle 2006: 105; Rosivach 2010: 223; Hollmann 2015: 87, 108-109. On the Herodotean treatment of Solon cf. also Chiasson 1986; Id. 2016; Shapiro 1996; Rémillard 2009; Branscome 2015.

²² On the role of Solon as *Sophos* in the Seven Sage tradition (and Delphic wisdom) see Bollansée 1988; Flower 1991; Busine 2002; Leão 2010b; Tell 2015; Gazzano 2017.

²³ Herodotus may also have known this image of Solon through his verses (cf. McGlew 1993: 87-123; Farenga 2006: 302; Stehle 2006: 91; Nougia 2010: 297), but some scholars speculate that Herodotus' interest in the theme of travel led the historian to invent the story of Solon's travels. Thus Redfield 1985: 102; Montiglio 2005: 132-135; Leigh 2013: 95, who judges the investigations of Solon's travels "a surrogate for those of Herodotus himself". On Solon's travels see also Podlecki 1975; Piccirilli 1977; Alessandri 1989; Chiasson 2016; Porciani 2016.

²⁴ For this view see Podlecki 1975: 36; Pelling 2006; Stehle 2006; Hollmann 2015; Bernhardt 2022.

that Herodotus' version of the oath is entirely fictional, including the study by Vincent Rosivach, which is still the most comprehensive treatment, and which demolishes Herodotus' reconstruction²⁵. According to Rosivach, who has never really been questioned, Herodotus' account of the Athenians swearing a preliminary oath binding for ten years is not plausible. The oath would be intrinsically unbelievable because first, it is difficult to believe the Athenians' blind confidence in Solon, and second, because an oath that appeared to be without sanctions would be ineffective. I shall review both these troublesome aspects of Herodotus' account, but first we need to identify Rosivach's underlying arguments. Rosivach claims that Herodotus invented the entire narrative development of Book I, which includes the account of Solon's *nomothesia* and his *apodemia*. That story is part of the Lydios logos and is narrated in close connection with Solon's meeting with the Lydian King Kroisos, an episode that scholars are right to question²⁶. According to Rosivach, there are several "good reasons to doubt Herodotus' story" (Rosivach 2010: 234): first, Herodotus "is not at all interested in Solon's legislation"; second, Herodotus "is talking about Kroisos, and uses Solon's *apodemia* to explain how the lawgiver came to be in the court of the Lydian king" (Rosivach 2010: 223), which determines "the very real possibility that the whole story of why Solon left Athens, including the oaths that were a necessary condition of his departure, is part of the larger fiction of the lawgiver's meeting with Kroisos" (Rosivach 2010: 224). For all these reasons Rosivach considers Herodotus' version "of the tale of the oaths" to be "intrinsically incredible" and conforming to the archetypal "myth" or "legend" of the Greek lawgivers, which includes "some provision for making the new law code permanent, followed by the departure of the lawgiver"²⁷.

I have already dealt with the chronological and thematic questions arising from the connection of Solon's *apodemia* with Solon's encounter with Kroisos in Lydia in a recent article of mine to which I also refer with regard to the reassessment of Herodotus' relationship with

²⁵ Rosivach 2010.

²⁶ On problems encountered with the dialogue between Kroisos and Solon cf. Piccirilli 1977; Asheri 1988, 281-283; Lombardo 1990; Duplouy 1999; Leão 2000; Moles 2002; Rhodes 2003; Pelling 2006; Branscome 2015; Hollmann 2015; Gazzano 2016, 2017; Paradiso 2016. Specifically, on chronological difficulties in Herodotus' narrative of Solon's meeting with Kroisos a *status quaestionis* is in Almeida 2003: 259-263, and Asheri, Lloyd, Corcella 2007: 79-80. See most recently Porciani 2016; Wallace 2016; Poddighe 2020.

²⁷ Rosivach 2010: 223-4, 227. See also Rihll 1989: 281ff.; Bernhardt 2022. For a discussion of this argument see below § 4.

the traditions of the Seven Sages²⁸. In that article I argue that: (1) there is no reason to make the reliability of Solon's *apodemia* depend on the episode of the meeting with Kroisos²⁹; (2) with regard to the tradition of Solon as a Sage, it is more likely that Herodotus was a "catalyst" for that tradition, rather than a passive performer of it, also taking into account the chronology of the sources³⁰; (3) the comparison of the Solonian episode with the features of the "Myth of the Archaic Lawgivers" does not hold valid for several reasons: the first is that Solon mentions his political and legal reform in his poems which give us the precise information that the laws were written in order to bring order to the city and to establish control over "entropy"³¹; this information is not an invention of a legendary tradition and is largely compatible with the account of all the other sources, from Herodotus to *Ath. Pol.* to Plutarch's *Solon*; moreover, unlike the other lawgivers, Solon returned to Athens after ten years; finally, the case of Lycurgus, attested by both Herodotus and Plutarch, shows that Herodotus when dealing with Lycurgus draws on local Spartan traditions and not on the "legend of the archaic lawgivers", which Plutarch draws on³². In the second part of this chapter (§§ 4, 5), I will summarize these latter aspects in order to clarify the context in which Herodotus' account was developed and to explain the most important feature of Herodotus' reconstruction: his account of an agreement between the Athenians and Solon which clearly must have appeared credible to Herodotus' Athenian audience.

In the first and longest part of this chapter (§§ 1, 2, 3) I aim to discuss Rosivach's claim that Herodotus' version of the oath is intrinsically incredible. Rosivach stresses the implausibility of blind reliance on Solon and the weakness of an oath that does not provide for explicit sanctions. I would like to challenge both points. I am aware of the fact that any discussion of the terms of the agreements between the Athenians and Solon necessarily involves a high degree of speculation. But I still think it is necessary to go back to the question of whether Herodotus' account seems plausible and compatible with what we know of Solon's political persona, also bearing in mind what Solon himself tells us in his poems, and more generally with what we know about the solemn oath

²⁸ Poddighe 2020.

²⁹ Poddighe 2020: 29-36. The ancients, moreover, never questioned the first episode though they did doubt the second: see Rhodes 2003: 64; 2016: 195; Bernhardt 2022: 442.

³⁰ Poddighe 2020: 31-33, 51. See also Gazzano 2016; 2017.

³¹ On this point see now Canevaro 2022: 378-397.

³² Poddighe 2020: 48-55.

as "a quasi-religious instrument"³³ through which the demos affirmed and protected its sovereignty and identity by accepting the rule of new provisions and laws.

2. *A reappraisal of Rosivach's theory: a blind, weak, and intrinsically incredible pledge?*

Rosivach dismisses Herodotus' account as "intrinsically incredible" precisely because it reports that the Athenians committed themselves by "blind oaths" to observe the code in its entirety for ten years. His arguments are as follows: "it is quite incredible" that the Athenians would ever have accepted an agreement that allowed Solon to repeal the laws they had already sworn to uphold while pledging not to make any changes"³⁴; "it is likewise incredible that they would swear in advance to abide by whatever Solon legislated before even seeing what he would propose. Such blind oaths are more the stuff of folktale than of history"³⁵. In addition, Rosivach also doubts Herodotus' story (but *Ath. Pol.*'s and Plutarch's accounts as well) with regard to the following points: "it is hard to imagine anything Solon could do to make his laws binding" [...], and there are instead good reasons to think that "Solon did nothing, because he could not, to ensure that his laws would remain unaltered"; on this last point Rosivach affirms that "while Solon authored his laws, it is significant that the action implementing them was not a legislative act that the 'state' could enforce with appropriate penalties (fines, disenfranchisement, exile or worse)", given that "an oath without human sanctions is also a sign of weakness"³⁶. According to Rosivach, the poor credibility of Herodotus' account stems from the fact that the Athenians were unlikely to have committed themselves to blind obedience to new laws, and to have allowed Solon to repeal laws they had already sworn to obey, and that they are unlikely to have done so given the weakness of an oath without human sanctions.

So, in short, there are two major problems with Herodotus' account: why would the Athenians blindly trust Solon? How can an oath without sanctions be effective?

³³ See Giordano 1999: 64; McInerney 2010: 199; Fletcher 2012: 103; Konstantinidou 2014: 7-47.

³⁴ Rosivach 2010: 223.

³⁵ Rosivach 2010: 223.

³⁶ Rosivach 2010: 234-5.

Both issues need to be addressed from the perspective of the political and religious context within which the agreements between the Athenians and Solon were reached.

2.1. *Did Solon and the Athenians reach any agreement before Solon's reforms and nomothesia?*

According to all the sources, Solon laid down the laws at the request of the Athenians. On this point Herodotus is consistent with the *Ath. Pol.* which states that the Athenians “jointly chose Solon as arbitrator and archon, and entrusted the government to him”, and that they did so because the *stasis* (factional strife) was violent, and the parties had been “arrayed in opposition to one another for a long time”³⁷. The same version is in Plutarch, who states that the Athenians “begged” Solon to accept the role of mediator and to “put an end to their disagreements” (Plut. *Sol.* 14.1). Now, if we consider what *Ath. Pol.* states about the repealing of the laws of Draco, namely that “after Solon laid down his laws, the Athenians ceased to observe the ordinances of Draco, except those relating to homicide” (7.1), then M. Gagarin’s conclusion appears to be correct, that “this last was a matter on which the Athenians had to agree in advance especially if, as many scholars believe, Draco’s laws were entrenched”³⁸.

Our sources unequivocally draw a picture in which the agreements between the Athenians and Solon and his role as mediator are evident. That Solon acted as a mediator chosen by the parties is said by Solon himself in his poems. It is a point that Gagarin has rightly highlighted: “Solon saw himself as a mediator” and this role is explicitly reported in his poems “where he tells us that he favoured neither the common people nor the rich and powerful but stood holding a strong shield in front of each side and allowed neither to triumph unfairly”³⁹. We find the same topic in another poem where Solon himself “is the ὄρος, the boundary stone in a positive sense, between the warring factions (the δῆμος and the ruling elite)”. The image of the boundary stone “sug-

³⁷ Arist. *Ath. Pol.* 5.2. *Ath. Pol.*’s reconstruction is based on statements made by Solon himself in his poems: see Poddighe 2014: 131-132, 171-209.

³⁸ Gagarin 1986: 138-139. On Solon who “could safely repeal” Draco’s laws see also Rihll 1991: 285-286. We know from a quotation in Demosthenes’ *Against Aristocrates* that Draco’s homicide law was entrenched by prescribing *atimia* for whoever violated or modified the law (Dem. 23. 42) and almost certainly were other laws of Draco besides the homicide law (the only one which Solon retained) protected by similar prohibitions. See Canevaro 2015.

³⁹ Gagarin 1986: 138. Cf. Noussia 2010: 491, on Solon’s poem (31 G.P.² = 37 W.². 4ff.) as representing “Solon as a disinterested mediator”. See also Allan 2018: 7.

gests that there is a genuine distinction between the two parties, but also emphasizes that their conflict is best resolved not by civil war but by negotiated agreement, i.e. a lawful boundary-marker, a symbol of peace embodied by Solon himself" (Allan 2018: 11).

Indeed, Solon's poems appear to support Gagarin's assumption that Solon's appointment "had at least the tacit approval of both sides"⁴⁰.

But what does Solon say in his poems and how does his story differ from that of other archaic lawgivers who left no trace of their legislative work? In his poems Solon refers to *stasis*⁴¹, traces its causes and explains how he intended to settle it: by acting as an interpreter of a notion of divine justice that is achieved through law. Solon states that drafting equal laws for all, *agathoi* and *kakoi*, was the solution in order to create "straight justice for all". He says "These things I achieved by my power, combining force and justice, and I carried out all my promises. I wrote laws for the lowly and the noble man equally, creating straight justice for all" (30 G.P.²= 36 W.², vv. 18-20). There is no need to refer to legends of archaic lawgivers to determine the content of Solon's political action. The traditional paradigm according to which the legislator establishes control over entropy and restores order to the city is already in Solon's poems⁴². It is enough to read his poems, unless one assumes that they are later forgeries⁴³. If, on the other hand, one does not credit the rather extreme hypothesis that someone invented those verses *ad hoc* in order to ground later versions (and in particular that found in *Ath. Pol.*⁴⁴), it is easy to agree with K. Raaflaub who argued that in order to understand Solon's political action we must look at his words, rather than limiting ourselves to later sources which "lacked a real understanding of how even the conditions of the late fifth and fourth centuries differed from those of the early sixth"⁴⁵. In order to determine the character of Solon's legislation we should look at what Solon himself says of his "anti-dysnomic" programme, where in some of his poems he

⁴⁰ Gagarin 1986: 138-139.

⁴¹ Canevaro 2022: 384-385 recently argued that Solon "is not talking of an actual *stasis*, but "of the unavoidable effects of *khōros*, *hybris* and injustice". For a different opinion see Noussia 2010; Mülke 2002; Poddighe 2014: 171-209; Allan 2018. Solon in his poems refers to the difficulties of acting as a mediator, uniting a wounded and divided city, and he recalls the deep divisions within Athenian society (divisions that preceded and followed his reforms). See also Harris 1997 who thinks that lines 5-7 of fragment 36 West of Solon's poetry should be interpreted as a metaphor for Solon's suppression of *stasis* in Attica.

⁴² See now Canevaro 2022: 378-397.

⁴³ For this view see Stehle 2006.

⁴⁴ This is the opinion of Stehle 2006: 102-10.

⁴⁵ Raaflaub 2007: 144. See now Canevaro 2022: 377.

becomes “his own exegete”⁴⁶, since it is universally accepted that later sources reconstructed the historical context of Solon’s reform, as well as his reform’s aims and contents, by interpreting his poems⁴⁷.

Certainly, there is not enough information in Solon’s poems to shed light on all the contents of his reform. But the references to the social, political and legal problems addressed by his lawmaking are significant and show why his laws were expected to have a binding character.

As recently observed by M. Canevaro, Solon is explicit in defining the rule of his new laws:

“Solon is very clear about the role he envisions for himself as a lawgiver. As Solon is in fact giving laws to the Athenians, he describes Athens before his intervention as characterised by *dysnomia*, arbitrary power and abuse. It is he, with his laws, that establishes *eunomia*, and therefore the rule of law. The chance he had to grasp power for himself was due to the *dysnomia* that characterised Athens before his laws. Solon is not a monarch, not a tyrant, not a ruler. His position as lawgiver gave him the chance, instead of setting up laws for everyone, to grasp power for himself, but he did not take it. The reasons for his refusal to become an arbitrary ruler are clear – he refuses to accept that the arbitrary power of one man can be reconciled with the good order of the city (*eunomia*). [...] Another Solonian poem (fr. 36 West) is even more explicit in defining what his legislative activity implied – what were its purposes and pre-suppositions. In this poem, Solon defends his legislative action against criticism, and the argument starts from the defence of the freedom of the Athenians against enslavement (*douleia*) and turns then to the chief instrument to secure their freedom: enacting laws for everyone. It is a powerful statement of the centrality of equality before the law, and of the rule of law, as the main barrier to arbitrary power and political subjection. The poem opens with a rhetorical question to Solon’s critics: ‘Before achieving what of the goals for which I brought the demos together did I stop?’ A vindication of his achievements follows. His first claim is to have freed Dark Earth, the mighty mother of the Olympian gods, previously enslaved, removing the *horoi* (boundary markers) that burdened it. After this, Solon enters into detail. Many Athenians were reduced to slavery, sold abroad or working in Attica, and many were forced to flee abroad because of necessity. Solon restored them to their rightful sta-

⁴⁶ Martina 2007: 32. See Noussia 2010; Poddighe 2014: 131-132, 171-209; Canevaro 2022: 378-397.

⁴⁷ Cuniberti 2011: 9. See Almeida 2003; Blaise 2006; Martina 2007; Noussia 2010; Hendrickson 2013; Karachalios 2013; Poddighe 2014: 131-132, 171-209; Canevaro 2017a; Id. 2022. For the idea of a strong coherence between the character of the reform as it is evoked in Solon’s poems and the account of later sources see Blaise 2006: 128; for the compatibility with archaeological data see Valdés Guía 2002; 2008.

tus and made it secure. At ll. 18–20 Solon explains how he achieved this: he wrote laws (*thesmous*) that defined the rights, prerogatives, duties, *timai* of all citizens, the *agathoi* and the *kakoi* alike. Solon claims to have legislated for everyone, and this is a powerful statement of the importance of equality before the law. The argument is that an ordered society (*eunomia*) is one in which one is secure in his position and will be treated, and will receive justice, appropriately and in accordance with his rights and his status. [...]. For Solon, then, the arbitrary rule of man brings disorder (*dysnomia*) and slavery (*douleia*), and the alternative is the rule of law. This order [...] is guaranteed by equality before the law for officials and citizens alike, and by institutional devices to avoid the concentration of power. And, accordingly, the lawgiver himself needs to step aside, because the function of giving laws to the city cannot be performed by the same person who then administers the laws⁴⁸.

In his poems Solon emphasizes the non-tyrannical character of his role⁴⁹. Solon tells us that the reconciliation between the parties and the desired “eunomy” depended on his role as mediator and legislator. In Solon’s verses one finds that he was aware of his great assignment, of his responsibility of having to respond to all parties, that the law was a legitimate instrument for overcoming *stasis*. But in his poems Solon also makes it very clear that resolving the *stasis* required each side to play its part: in the agreement with the Athenians everyone played their part (see Allan 2018). The Athenians certainly recognized the role of the lawgiver entrusted with the task of writing the laws, without this representing a constraint on them other than that of their making a conscious and unanimous choice. It is the Athenians who asked for the laws; the Athenians were active participants in the agreement and were the ones who begged Solon to act as mediator.

In this context, the question whether it is credible that the Athenians “blindly” relied on Solon does not seem fair given that the documentation unambiguously attests that it was the Athenians who “begged” Solon to accept the assignment (cf. Plut. *Sol.* 14.1). Nor does Rosivach’s doubt about the weakness of the oaths sworn by the Athenians before and after Solon’s *nomothesia* seems appropriate. Regarding this point Rosivach affirms that Solon did not have the power to formally bind the Athenians. But the coercive power is that of the law. Solon calls it *kratos*. It is not his own *kratos* but the rule of law. M. Canevaro has made this point very clearly. Solon was not a tyrant who imposed his laws on

⁴⁸ Canevaro 2017a: 220–222.

⁴⁹ Canevaro 2017a: 218–222.

the Athenians⁵⁰. It was the Athenians who requested and obtained the laws from Solon, the legislator who they themselves had chosen. Since what was at stake was the resolution of the *stasis*, both sides relied on Solon. Solon in his poems considers the law, its *kratos*, mainly from the perspective of an imposed limit⁵¹, which all parties must learn to recognize and respect.

Ath. Pol. confirms the picture and identifies in Solon's poems proof that there was an agreement and the fact that the parties expected some provisions. *Ath. Pol.* seems to identify two distinct phases (5.2): first came *seisachtheia*, then *nomothesia*⁵². However one understands the meaning of *seisachtheia* (a reform which concerned control over land or a ban for the future on enslavement for debt⁵³) and however one interprets the nature of that interval between the *seisachtheia* and the *nomothesia*, whether only logically (as Rhodes suggests⁵⁴) or temporally, it is certain that *Ath. Pol.* gives an account of the critical reactions to the results of the *seisachtheia* and that it considers them credible because they are described by Solon in his poems (where he complains that his reforms did not obtain the consensus of the parties). Did anyone expect less radical measures? Solon claims that he kept his promises. All this points to the existence of preliminary agreements and interventions that were already planned, at least in broad terms, before the *nomothesia*.

The question here is whether, in this framework, what Herodotus calls the *megas horkos* was part of the preliminary agreements.

2.2. *What were the religious implications for those swearing a solemn oath (megas horkos)?*

Herodotus calls "great oaths" the solemn oaths sworn by the Athenians and by which they assured Solon that they would respect the integrity of the laws. The expression "great oath" (μέγας ὄρκος) is usually evoked by Greek writers in reference to solemn oaths taken under divine protection, in particular of Zeus, one of whose epithets was *Horki-*

⁵⁰ Canevaro 2017a: 218-222. A different view has been recently argued by Benrhardt 2022.

⁵¹ Noussia 2010: 489 is right when affirming that Solon may have conceived of the image of himself as the *horos* in order to let the members of his class understand that he substitutes the *kratos* of the city, of which Solon – the *horos* – becomes "a concrete incarnation", for the *kratos* of the leading aristocracy, which is expressed by the multiplicity of the *horoi* fixed in the earth.

⁵² See below fn. 74.

⁵³ For a thorough and up-to-date *status quaestionis* see Faraguna 2012. Cf. below fn. 74.

⁵⁴ Rhodes 2016: 192-193.

os, the god of solemn pacts⁵⁵. As early as Homer and Hesiod, but later still, the solemn oath finds a precise place in Greek society. The solemn oath was the quasi-religious instrument through which the demos affirmed and protected its sovereignty and identity⁵⁶: when the community wished to construct (and represent) itself as a unit, the solemn oath assumed a socially codified role which appears to have been clarified by the scholarship.

It was usually performed in a sacred place and in association with the "public sacrifice" and the curse of the polis (ἀρὰ πολιτική). The ritual sacrifice ratified its irrevocability. It was accompanied by an offering to Zeus, the *Horkios* god par excellence. Anyone responsible for perjury would incur the penalty referred to in the curse, which often consisted in his social death (*atimia*)⁵⁷. The oath placed a seal of sacredness on crucial social moments: the gods were witnesses and at the same time guarantors and defenders of oaths. Many social relationships depended on the oaths' sacredness, and Zeus, through his function as guarantor of oaths, automatically became the guardian of social morality⁵⁸.

Should we assume that the preliminary oath required by Solon and the agreement established between him and the Athenians were also placed under the protection of Zeus?

Cook and Naiden rightly drew attention to the epithets attributed to Zeus in the lexicographers' accounts of the oaths sworn by the Athenians to uphold Solon's laws⁵⁹. Pollux states that Solon instructed the Athenians to swear by Zeus *Hikesios*, *Katharsios* and *Exakester*⁶⁰. Hesychius adds that in the *axones* on which Solon's laws were inscribed Zeus appeared with exactly these three epithets⁶¹. All three epithets are significant here. As Cook already observed, the recognition of

⁵⁵ Parker 1996: 186; Giordano 1999: 37. On the oath as an inviolable "bond" (*desmos*) between mortals and immortals see Benveniste 1947; Dodds 1951: 28ff.; Plescia 1970; Burkert 1977; Lonis 1980: 273ff.; Aubriot-Sévin 1991; Sommerstein 2007; Koch-Piettre 2010; Van' t Wout 2011; Azoulay-Damet 2014; Sommerstein-Torrance 2014.

⁵⁶ On the oath as "a powerful and important ritual in the creation of Athenian civic identity" in the VI century see Fletcher 2012: 103ff. See also Woram 2022: 314ff.

⁵⁷ Cf. Van' t Wout 2011 on the formula "will be *atimos*" and on the exclusion from the community of anyone who raises his voice against the common agreements. See also Woram 2022: 314ff. and below fn. 91.

⁵⁸ Parker 1996: 186; Giordano 1999: 37.

⁵⁹ Naiden 2006: 123, following Cook 1925: 1093-1094 fn. 1.

⁶⁰ Naiden 2006: 123 fn. 115. Poll. 8. 142: τρεῖς θεοῦς ὀμνῦναι κελεύει Σόλων, Ἰκέσιον, Κάθαρσιον, Ἐξακεστῆρα. See also Pherecyd. 3 *FGrHist* F 175, who refers also to Zeus *Alastoros*.

⁶¹ Cook 1925:1093-1094 fn. 1.

Zeus *Exakester* is perhaps not unconnected with the fact that Solon's own father was Execestides. That epithet most likely recalls the *genos* of Solon who would have been, like Zeus, the guardian (*theoros*) of the Athenians' commitment to preserve his laws. The second epithet refers to Zeus' protective function of supplicants appealing to him⁶². What supplicants are we dealing with? It is difficult to know for sure. If we think of supplicants simply as those who make a supplication to an altar or a god, then we may find in our sources a brief reference to a collective supplication. Plutarch mentions a collective plea (Solon with the Athenians) to Zeus to give glory and fortune to Solon's laws at a stage when the laws were still being written and therefore *before* Solon completed his *nomothesia* (*Sol.* 3.4). The allusion to the purification of the city through the epithet *Katharsios* is also indicative, because, as Plutarch states, it was through expiatory and purifying sacrifices that the *polis* prepared itself for conciliation and declared itself subject to justice (*Plut. Sol.* 12.9). A fourth epithet of Zeus is recorded in connection with the Athenians' oaths by Pherecides: *Alaistoros*, i.e., executor of vengeance, which, in this case, is intended for those who break a promise⁶³.

Now, could such oaths in the name of Zeus have been sworn before the *nomothesia* (as Herodotus recounts) as well as afterwards (when they were sworn according to later sources)?

In Solon's poems, the role of Zeus is crucial, precisely in the preliminary phase of Solon's political reform. Scholars acknowledge Solon's role as the interpreter of Zeus' project. This is the role of one who realizes, after having performed it, the project of divine justice. Recent studies seem to be in line with Cook's stance on the subject, who argued that Solon's laws were presented as the manifest expression of the will of Zeus⁶⁴. Solon states in his poems that in providing the city with a new social and legal order his action needed divine assistance⁶⁵. For Solon, giving the "right order" to the *polis* meant interpreting the order intended by Zeus and to achieve it because the gods are well-disposed towards

⁶² On Zeus *Hikesios* as "protector of supplicants" in tragedy see Cassella D'Amore 2005: 121ff. On Zeus *Hikesios* or *Hiketios* as protector of foreigners and guests in the *Odyssey* see Muscianisi 2017: 776-780.

⁶³ On the etymology of *Alastor* cf. Dimartino 2003: 320ff.

⁶⁴ Cook 1925: 1095; see also Cook 1940: 949, where he affirms that "there are grounds for suspecting that the laws inscribed on Solon's *kyrbeis* and axons were held to be the very voice of Zeus". On this point see now Irwin 2005; Noussia 2010: 255-256; Cuniberti 2011; Dillon 2011.

⁶⁵ Cf. Noussia 2010: 255-256.

the city⁶⁶. When social conflict turns into civil war, the victory of Dike, i.e. of law, can only be realized if it is absorbed into the order of Zeus. Solon dedicated a short hymn to Dysnomia, which has clear parallels with Hesiod's hymn to Zeus: in both cases, the aim is to achieve a form of justice controlled by a divine personification⁶⁷. Given the centrality of Zeus in the preliminary phase of Solon's political reform, when Solon was committed to defining the meaning and direction of his political action, it is entirely plausible that Zeus was evoked as the guarantor of the agreement with the Athenians even before he laid down his laws.

Equally significant in understanding how Solon worked largely with and through rituals and sacred ceremonies is the association of Athena Polias. Athena Polias was one of the few deities who received cult epithets in oath-taking⁶⁸ and her role, in Solon's poems is that of guarantor of Zeus' justice. J. Neils affirms that "Solon created an Athenian Athena" who becomes, like Zeus, guarantor of law and justice⁶⁹. Considering what Neils calls the "Solonian construct of Athena", the recent attempt by E. Meyer to locate the place of the first exposition of Solon's laws in the sanctuary of Athena Polias is to be valued⁷⁰. She believes that, based on what archaeology attests about the existing monuments in 6th century Athens, it is necessary to rectify *Ath. Pol.* (7.1) where it says that the Royal Stoa was the place of the first exposition of the laws⁷¹. The Royal Stoa in fact was not built until after Solon's time. According to Meyer, the most plausible place for the exposition of Solon's laws is the temple of Athena Polias. The temple was completed between 590 and 580 and only then would the laws have finally been displayed in the wooden columns on which the temple roof rested and which, Meyer argues, represent the *kyrbeis* of the sources⁷². Whatever one's opinion of this original and far-reaching interpretation, it once again underlines the religious context that formed the background to the agreements between the Athenians and Solon and identifies Zeus and Athena Polias as its guarantors⁷³.

⁶⁶ Meier 1988: 82.

⁶⁷ Cf. Nougia 2010: 255-256. See also Irwin 2005: 172-173, 189-190; Dillon 2011.

⁶⁸ SEG LI 642.1-29. Cf. Konstandiniou 2014: 32 fn. 102.

⁶⁹ Neils 2001: 229 fn. 43; on the "Solonian construct of Athena" see also Neils 2001: 221-222, 231-232.

⁷⁰ Meyer 2016.

⁷¹ Meyer 2016: 336 fn. 59: "*Ath. Pol.* 7.1 claimed that the *kyrbeis* were set up in the Royal Stoa in the time of Solon, an impossibility, since the Royal Stoa was not built until after Solon's time". See also Davis 2011: 24 fn. 66.

⁷² Meyer 2016: 331-353; see also Davis 2011.

⁷³ To the best of my knowledge, none of the more recent studies devoted to Solon have considered or discussed this important study, except for a brief reference in Cane-

Is it plausible that even before Solon laid down his laws, at the stage when his task to give a new order to the city had begun but was not yet completed, the Athenians wanted to give a divine authority and therefore to guarantee the irrevocability of their agreements with Solon?

Plutarch (*Sol.* 16.5) asserts that there was in Athens a “common sacrifice” right after Solon’s *seisachtheia* (his first achievement) and that this “common sacrifice” preceded Solon’s *nomothesia*⁷⁴. Scholars credit Plutarch’s account of this common sacrifice and attribute to it the intention to guarantee the irrevocability of the agreements between the parties and to make the *seisachtheia* irrevocable⁷⁵. The Athenian people were united “in a state sacrifice that they called *Seisachtheia*”: this is what Plutarch says. It is a further indication that the Athenians wanted to give a divine authority to the agreements with Solon. In the 6th century it was common for Greeks committed to creating a regular, stable cultural co-existence under the rule of law to “acknowledge a universal, uncontested, apolitical authority: the gods”⁷⁶. Both the “public sacrifice” and the “great oaths” worked for this purpose. The context in which we could imagine a preliminary oath being taken, in combination with a sacrifice on behalf of all the Athenians, is typically one which the scholarship has identified for situations where there was a need to give a strong expression for reconciliation and unity in the city. The community that joins in the oath is the exact opposite of the community that Rosivach imagines unwilling to trust Solon and swear to abide by his laws.

varo 2022: 368 fn. 12 and Bernhardt 2022: 431 fn. 97.

⁷⁴ Diogenes Laertius (1.17) affirms that Solon’s “first achievement was the *seisachtheia*, which he introduced at Athens”. On Diogenes and the laws of Solon see Leão 2019: 232-240. If the *seisachtheia* is to be understood as a ban on enslavement for debt (as proposed by Harris 1997; Id. 2002 = 2006: 249-269), this ban would have been Solon’s first legal measure. The ancient sources (*Ath. Pol.* 5.2; *Plut. Sol.* 16.5) accredited this version: Solon would have devoted himself to the drafting of the other laws (*nomothesia*) only after this first legal measure. Cf. Manfredini, Piccirilli 1995: 201. For a discussion of Harris’ view (accepted by Canevaro 2022: 391) see Faraguna 2012: 172ff.

⁷⁵ Cf. Hammond 1940: 77; Connor 1987: 49 fn. 57; L’Homme-Wéry 1999: 110 fn. 7. According to Manfredini, Piccirilli (1995: 201) Plutarch here relies on Hermippus. Cuniberti (2011: 13 fn. 50) believes that Plutarch’s testimony is to be understood as evidence of the meaning we should attribute to the *seisachtheia*: “ritengo che la *seisachtheia* debba essere anzitutto riportata all’unico significato attestato ovvero quello di un sacrificio nel quale la comunità ateniese celebrava, in termini religiosi prima che economici, la possibilità di uno ‘scuotimento dei pesi’ che collettivamente la *polis* sentiva gravare su di essa”.

⁷⁶ McInerney 2010: 215.

Scholars have recognized in both literary and epigraphic documentation the evidence that an oath was a binding act, a speech act⁷⁷, whose function was expressed notably in the framework of bringing together a divided city.

Nor do comments on the practical difficulty of organizing a collective oath taking seem relevant, whether the oath took place through the phratries, as Rhodes has proposed, who also noted that the system of phratries was already developed by the time of Draco⁷⁸, or in the ecclesia, as some have suggested⁷⁹. Curses and collective sacrifices in the context of collective action were the norm and not the exception in archaic Greece, as Rhodes has pointed out. It is hard to see why the Athenian case should have been more difficult to organize. The evidence that oaths, supplications and sacrifices preceded the *nomothesia*, as Herodotus and Plutarch respectively affirm, is, moreover, entirely in keeping with what the sources say about the rituals that preceded the decisions taken in the *poleis* for the common good, whether it was a question of deciding a particularly important measure such as the foundation of a colony, as in the case of Thera (see below), or routine measures, as attested in Athens where rites systematically preceded and did not follow political deliberation⁸⁰. Nothing surprising, then, in our sources' story of a city united in its decision to appoint Solon to write the laws and which preventively joined in oaths, supplications and common sacrifices.

Rosivach's final argument against Herodotus' account is that the oaths taken by the Athenians are "intrinsically incredible" as they lack any sanctions or any legislative entrenchment⁸¹. There are two reasons why this argument is weak: (1) our sources do not always record the sanctions and (2) the oath is a speech act that formally binds even without the explicit evocation of the consequences of perjury.

Regarding the first point, it should be noted that the absence of explicitly formulated sanctions is not in itself evidence that Herodotus invented the oaths or that they were weak. Donald Lateiner, in his recent

⁷⁷ Benvéniste 1947; Plescia 1970; Thür 1996; Id. 2014; Koch-Piettre 2010. See also Fletcher 2012.

⁷⁸ Rhodes 2007: 16. See also Blok (2013: 166): "Drako's law on homicide of the late seventh century at Athens (*IG* 13 104) presupposes a developed system of phratries", and Canevaro 2017b: 54.

⁷⁹ Fletcher 2012: 103.

⁸⁰ Aeschin. 1. 22–23; Dem. 54. 39; Din. 2. 14, 16; Dem. 19. 70. See Harris 2006: 91–92; Woram 2022: 322–335.

⁸¹ Rosivach 2010: 223–224, 235. On this point it should be noted that Rosivach dismisses both Herodotus' and *Ath. Pol.*' account. See above § 2.

survey of oaths in Herodotus' *Histories* "as an index of legal analysis" embedded in ancient historical narrations states that "not all elements of an oath (declaration, specification of divine guarantor, curse) appear in Herodotus' or other accounts of covenants where one might expect oaths"⁸². In the approximately forty oaths recorded by Herodotus Lateiner found that "sometimes the consequences of perjury remain only implicit", and that "each oath sworn is validated, explicitly or implicitly, by human affirmation"⁸³. A remarkable case in the list considered by Lateiner is the oath pronounced by the citizens of Thera regarding the penalties that would be incurred by all those who failed to participate in the foundation of the colony of Cyrene. The oath is known to us through an inscription: the so-called "Pact of the Settlers" or "Cyrenean Foundation Decree"⁸⁴. It contains the original terms drawn up in the seventh century (c. 637) between the departing citizens on the one hand, and the entire Theran community on the other. The stele clearly displays all the penalties provided for in the preliminary oath for anyone failing to obey the order to leave and thus endanger the common interest of the Theran community: anyone refusing to sail when conscripted was liable to the death penalty, as was anyone who aided him. Both sides swore an oath to observe the Pact, uttering the customary formulae of curses on all who should break it and blessings on all who should keep it, and melted waxen puppets in a primitive magic ritual to strengthen the curse. Now in his *Histories*, Herodotus gives us (4. 150-158) two fifth-century versions (the Theran and the Cyrenean) of the foundation of the colony, and scholars have discussed the apparent verbal connection between Herodotus' account and this Pact. According to scholars, in the fifth century Herodotus may have been shown, in Thera or Cyrene, the original 7th-century text or a later copy – which makes it even more significant that Herodotus makes no mention of the penalties imposed by the Therans which we only learn of thanks to epigraphic documentation⁸⁵.

Regarding the second point, we should bear in mind that the act of swearing an oath was an important, powerful ritual which itself was binding for the community. Epigraphic evidence for the entrenchment of Athenian alliances and treaties (often sealed by a solemn oath to the gods) confirms that treaties and alliances that were entrenched (because

⁸² Lateiner 2012: 158 fn. 11.

⁸³ Lateiner 2012: 156 fn. 8.

⁸⁴ *SEG* 9. 3. See Graham 1960; Jeffery 1961; Faraone 1993; Malkin 2003; Van' t Wout 2011: 158-152; Woram 2022: 322-325. Lateiner (2012: 156 fn. 6) makes a brief reference to it.

⁸⁵ See Graham 1960; Jeffery 1961; Faraone 1993; Malkin 2003; Van' t Wout 2011: 158-152; Woram 2022: 322-325.

the references to the alliance lasting "forever" were intended to be taken literally and ought therefore to be counted as entrenched) could come without an explicit penalty for altering them⁸⁶. Oaths were frequently sworn on the entrails of a sacrificial victim, as if "the fear of perjury were a more reliable test of innocence than any dispositive evidence"⁸⁷.

In this context, it is possible either that a) the oaths sworn by the Athenians were validated by the simple act of affirmation and did not necessarily include penalties and/or entrenchment clauses; b) Herodotus' account omitted penalties and/or entrenchment clauses in the Athenians' oaths.

There is, however, ancient evidence, albeit scarce, that an entrenchment clause did exist for Solon's laws. According to Dio Chrysostom, the Athenians established a curse on anyone who attempted to overthrow the laws of Solon⁸⁸. He says:

'Besides, the curse that the Athenians established regarding those who attempted to overthrow Solon's laws, though you fail to see it, is even more authoritative when it regards the laws of him [Zeus]. In fact, any person who tries to overturn the law [of Zeus] will inevitably become *atimos* – with the difference that children and family of those who have transgressed will not be prosecuted, as happened there [i.e. in Athens]: on the contrary, each one is responsible for his own misfortunes'.

His testimony tends to be dismissed by scholars as confused and unreliable. For example, Gagarin affirms "it is possible that later writers confused Draco's provision against changing his laws with whatever law Solon may have written to the same effect" and he also affirms that what Dio reports here is that "Solon did not penalize the offender's family" which "is not reliable"⁸⁹. According to Gagarin, Dio claims here that the penalty the Athenians imposed did not include hereditary *atimia*, but Dio says exactly the opposite: that the Athenians punished with hereditary *atimia* anyone who attempted to suspend Solon's laws.

⁸⁶ See Schwartzberg 2007: 45-46, on the Athenian alliances with Rhegium and Leontini. Cf. also Van't Wout 2011; Woram 2022: 314ff.

⁸⁷ McInerney 2010: 199. See for example, Lykourgos, in *Leocrat.* 19; Isaios 9.18; Aischines 1.45; and Demosthenes 19.176. On sacrifice, terror, and the implicit warning against perjury cf. Dietrich 1988: 35; Thür 2014: 917ff.; Woram 2022: 322-325.

⁸⁸ Dio Chrys. *Or.* 80.6. Cf. Aul. Gell. *Noc. Att.* 2.12.1. For a brief commentary see Leão, Rhodes 2015: 149-50.

⁸⁹ Gagarin 1986: 76 fn. 115.

What Dio states is not, as Gagarin claims, a confused rendering of the entrenchment clause that protected Draco's laws⁹⁰, instead, it is perfectly compatible with the clauses protecting Greek legislation in that it envisages hereditary *atimia* for those who tried to suspend the laws. That hereditary *atimia* was the typical penalty is attested by Greek documentation⁹¹. There are also good reasons to believe that Dio was accurate in his statement and that the punishment was hereditary *atimia* without other additional penalties. I deal with these questions at length in a study to be published in a forthcoming volume in memory of P.J. Rhodes⁹². Here let me just briefly summarize my arguments. First, Dio uses this example to show that the positive law was much more severe than the unwritten, divine law; omitting high penalties would not have served his argument. Second, Dio shows in his speeches that he knows and understands *atimia* in its many forms and gradations. Finally, Dio is well informed about Solon's political events and in particular the context of his *nomothesia*. His testimony on the entrenchment clause should therefore not be dismissed too lightly.

Whether the curse refers to the preliminary "great oaths" or to the oaths sworn after the *nomothesia* is a question that remains open. Commentators of Dio's speech interpret it to be a curse that accompanied the oaths following the *nomothesia*⁹³, but there is no evidence that supports this with certainty, and it cannot be ruled out that this sanction was already included in the preliminary oath not to tamper with the integrity of the body of laws for the first 10 years. What seems clear is that Dio complements the picture that ancient sources have drawn regarding the legal-religious context in which oaths were sworn: a context in which the "great oaths" were accompanied by supplications, sacrifices, and public curses.

3. *The rationale of the ten-year term: Herodotus and later sources*

As we have seen, Herodotus' account has three distinctive elements. First, an oath that precedes Solon's *nomothesia* and by which the Athenians pledged to observe for ten years the laws that Solon would give them. Second, Solon's *apodemia* stems from the will not to abro-

⁹⁰ Gagarin 1986: 76 fn. 114, on Draco's homicide law that was entrenched by prescribing *atimia* for whoever violated or modified the law.

⁹¹ Cf. Van 't Wout (2011) on the formula "will be *atimos*" in entrenchment clauses attested in Greek inscriptions. See also Youni 2018; Maffi 2018; Esu 2021; Woram 2022: 314ff.

⁹² Poddighe forthcoming.

⁹³ See Cerro Calderón 2000: 230 fn. 5.

gate (λύσαι) even one of the laws that the demos pledged to observe (χρήσεσθαι) for a decade, in other words, as long as necessary to keep the corpus unaffected by rapid abrogative interventions. As Herodotus explains: the Athenians alone could not do this, because during that decade only the legislator could intervene in the corpus of the *nomoi*. Finally, a third important element: the reason publicly stated by Solon (what Herodotus calls *prophasis*) is *theoria*, i.e. the desire to undertake a journey of knowledge (the latter is also denoted by the term *theoria*) that took him first to Egypt⁹⁴. Thus, in Herodotus there is a more urgent and deep-seated political reason (the need to separate himself from the laws and from the demos which must enforce those laws without the power to abrogate them) along with his publicly stated reason. There is no need to regard the former as true and the latter as a mere pretext. As Gregory Nagy has observed, both are "true"⁹⁵. It is likely that Herodotus emphasized Solon's proposed journey of knowledge (*theoria*) because, as suggested by scholars, Solon himself evoked this in his poems⁹⁶. It is certain, however, that the relationship Herodotus establishes between Solon's *apodemia* and his *theoria* fits well with the meaning of *theoria* as a condition of vigilant distance.

The term *theoria* not only defines the journey but expresses a rich sphere of religious and cultural values related to the remote guardianship that the *theoros* offers⁹⁷. As James Ker observes, departing from Athens on a *theoria*, Solon realizes his desire not to add to or subtract from his laws and through this choice the legislator presents himself in

⁹⁴ Hdt. 1. 30. 1: αὐτῶν δὲ ὧν τούτων καὶ τῆς θεωρίας ἐκδημήσας ὁ Σόλων εἶνεκεν εἰς Αἴγυπτον ἀπῆκετο παρὰ Ἄμασιν καὶ εἰς Σάρδις παρὰ Κροῖσον.

⁹⁵ Nagy (1990:167 fn. 93): "At Herodotus 1.29.1, Solon the lawgiver of Athens gives *theōriā* as the pretext (pro-phasis) for his travels, but his other motive, as made explicit in the narrative, is to prevent his being compelled to undo any aspect of his law code. At 1.30.1, it is made clear that *theōriā* was indeed also his motive. So there are two motives, but only one is made explicit by Solon to his audience; the other motive is kept implicit by Solon but made explicit by Herodotus to his 'audience'". Ker (2000: 316): "Herodotus' term *prophasis* should not be taken to imply that Solon was hiding the other reason or that *theōria* was a shame excuse". It is not unlikely, however, that it was Plutarch who emphasised Herodotus' distinction by calling the decision to engage in trade a "pretext" (*proschema*), as Keaney (1992: 57) notes. Manfredini, Piccirilli 1995: 263, and Leão 2010a: 25, make a clear distinction between "real cause" and alleged reason.

⁹⁶ Thus Noussia 2010: 297: "F 11 G.-P.² = 19 W² with its Odyssey aura may have helped to birth the decennial *apodemia*". Cf. also Koller 1958: 281; Ker 2000: 316.

⁹⁷ Cf. Ker 2000: 309ff. In this sense, reconstructions that explain Herodotus' references to Solon's travels by the historiographer's interest in the theme of travel seem reductive: cf. Redfield 1985: 102; Montiglio 2005: 132-135; Leigh 2013: 94-95. See above fn. 23.

the role of the ideal oracular *theoros* who acts as a civic guardian whose duty is not to add nor to subtract from an oracle that he conveys to the city. Solon's laws are thus "analogous to the sacred utterances of an oracle, except that it is Solon himself who has uttered them"⁹⁸. Thus, the legislator gives the laws, the Athenian citizens apply them without altering them, the legislator is the guarantor of the agreements with the Athenian demos and, as he has departed from Athens, he is not in the position of being able to subtract or add any rules to the corpus of his *nomoi*. It is remarkable, that in the picture drawn by Herodotus, the *theoria* does not last for the rest of Solon's life⁹⁹ but only as long as his *apodemia* of ten years as was established by his agreements with the Athenians¹⁰⁰.

The version in *Ath. Pol.* partly agrees with Herodotus. Chapter 11 of *Ath. Pol.* states that "When Solon had organized the constitution in the manner stated, people kept coming to him and worrying him about his laws, criticizing some points and asking questions about others; as he did not wish either to alter these provisions or to stay and incur enmity, he went abroad on a journey to Egypt, for the purpose both of trading and of seeing the country, saying that he would not come back for ten years, as he did not think it fair for him to stay and explain his laws, but for everybody to carry out their provisions for himself"¹⁰¹.

There are three points here that coincide with Herodotus' version and on which *Ath. Pol.* evidently relies: the *apodemia* is ten years; the departure from Athens is also justified by the *theoria*, which takes Solon to Egypt¹⁰²; and the *apodemia* is functional not to change (κινεῖν) the laws.

With respect to the latter, there is a significant novelty. *Ath. Pol.* refers to the activity of interpreting laws as effectively altering them, and it is from this exegetical activity (ἐξηγεῖσθαι) that Solon considered it right to abstain¹⁰³. We have thus moved, in describing the reasons for *apodemia*, from the necessity of not abrogating any laws (Herodotus)

⁹⁸ Ker 2000: 317-318.

⁹⁹ Ker 2000: 321.

¹⁰⁰ Solon's return, after the decennial *apodemia*, put him in a position to intervene in the laws, if necessary, but without affecting their validity.

¹⁰¹ Arist. *Ath. Pol.* 11. 1: διατάξας δὲ τὴν πολιτείαν ὄνπερ εἴρηται τρόπον, ἐπειδὴ προσίοντες αὐτῷ περὶ τῶν νόμων ἐνώχλουν, τὰ μὲν ἐπιτιμῶντες τὰ δὲ ἀνακρίνοντες, βουλόμενος μήτε ταῦτα κινεῖν, μήτ' ἀπεχθάνεσθαι παρών, ἀποδημίαν ἐποίησατο κατ' ἐμπορίαν ἅμα καὶ θεωρίαν εἰς Αἴγυπτον, εἰπὼν ὡς οὐχ ἤξει δέκα ἐτῶν- οὐ γὰρ οἶεσθαι δίκαιον εἶναι νόμους ἐξηγεῖσθαι παρών, ἀλλ' ἕκαστον τὰ γεγραμμένα ποιεῖν.

¹⁰² Together with the commercial activity (*emporía*).

¹⁰³ Camassa 2011: 120; see also Camassa 2012: 32.

to that of not altering laws by interpreting them (*Ath. Pol.*). This is no small difference. Herodotus refers to a specific concern, a concern that is not recorded by *Ath. Pol.* I shall return to this point.

Further new elements compared to Herodotus also appear in chapter 7 of the *Athenaion Politeia*. Here the author states that Solon "established a constitution and made other laws, and they (scil. the Athenians) ceased to observe the ordinances of Draco, except those relating to homicide. They wrote up the laws on the Boards and set them in the Royal Stoa, and all swore to observe them [...]. And Solon fixed the laws for a hundred years"¹⁰⁴. Here there are two details absent from Herodotus' version: (a) Solon's decision to make his laws valid for a hundred years; (b) the oath the Athenians took after the *nomothesia*¹⁰⁵. *Ath. Pol.* does not link that oath to the *apodemia*, which it has given an account of in another chapter (11)¹⁰⁶. There is also no mention of any pledge sworn by the Athenians to respect Solon's laws "for ten years" – in other words that Solon's *apodemia* would make it impossible for the Athenians to repeal even one of his laws in the next ten years¹⁰⁷. Instead, the text says that Solon decided to make his laws valid for a hundred years. It is generally believed that for Solon's *nomothesia*, Aristotle drew on sources other than Herodotus' account, and that he obtained the report of a hundred years validity from attidographic tradition¹⁰⁸.

Attidographic tradition is also recognizable in Plutarch's version, who, in the *Life of Solon*, produces a sort of synthesis of the much ear-

¹⁰⁴ Arist. *Ath. Pol.* 7. 1-2: πολιτείαν δὲ κατέστησε καὶ νόμους ἔθηκεν ἄλλους, τοῖς δὲ Δράκοντος θεσμοῖς ἐπαύσαντο χρώμενοι πλὴν τῶν φονικῶν. ἀναγράψαντες δὲ τοὺς νόμους εἰς τοὺς κύρβεις ἔστησαν ἐν τῇ στοᾷ τῇ βασιλείῳ καὶ ὄμοσαν χρῆσεσθαι πάντες. οἱ δ' ἐννέα ἄρχοντες ὀμνύντες πρὸς τῷ λίθῳ κατεφάτιζον ἀναθήσειν ἀνδριάντα χρυσοῦν, ἐάν τινα παραβῶσι τῶν νόμων- ὅθεν ἔτι καὶ οὕτως ὀμνύουσι. κατέκλεισεν δὲ τοὺς νόμους εἰς ἑκατὸν ἔτη καὶ διέταξε τὴν πολιτείαν τόνδε τὸν τρόπον.

¹⁰⁵ Cf. Rhodes 2016: 182.

¹⁰⁶ Cf. Rosivach 2010: 226. See below p. 311.

¹⁰⁷ Cf. Rosivach 2010: 225.

¹⁰⁸ Cf. Piccirilli (1977: 24, 30) who affirms that the news of the Athenian commitment to observe the Solonian *nomoi* for a hundred years concerned the constitution (*politeia*) and is therefore of an antiquarian nature, typical of the *Atthides*. Cf. also Manfredini, Piccirilli 1995: 254, on the *Atthides* that clearly distinguished the hundred-year duration of Athenian observance of the laws from the ten-year duration of Solonian *apodemia*. For the problem of the dependence of the Aristotelian *Athenaion Politeia* on the Attidographers cf. Jacoby 1949: 75-8, 126ff., 153-7, 161, 386; Rhodes 1981: 15-20; Keaney 1992: 4, 54-55; Chambers 1993: 41ff.; Osborne 2002: 514; Rosivach 2010: 235; Poddighe 2014: 127-129, 159-161, 237ff. Rhodes (2016): XXII-XXIV, gives value to the hypothesis of an additional source, well informed about the Athenian constitution, that would have been used for chapters (5-12) devoted to Solon.

lier versions, describing Solon's *apodemia* in these words: "When the laws were published, every day someone went to Solon to express his approval or criticism, or to advise him to insert or repeal what was on his mind. Many were those who asked him for information, put questions to him or invited him to explain and clarify further what each rule meant and with what intention it had been formulated. Solon, therefore, seeing that not to consent would be inconvenient and to consent would be a harbinger of antipathy, wished to avoid the difficulties altogether and to escape the dissatisfaction and captiousness of his fellow-citizens (for 'in important affairs it is burdensome to please everyone', as he himself has said); he used a business transaction as a pretext for his journey and left, having asked the Athenians for permission to go abroad for ten years. He hoped that in this time they too would become accustomed to the laws. He first went to Egypt"¹⁰⁹. He also states that Solon "assigned validity to all laws for a hundred years"¹¹⁰ and that "the Council took a common oath to enforce Solon's laws"¹¹¹.

Like *Athenaion Politeia*, Plutarch's *Life of Solon* also contains similarities and divergences from Herodotus' version¹¹².

The similarities are Solon's ten-year *apodemia* and the explanation that the *nomothesia* was the reason for this, in which Plutarch reiterates Herodotus' point that Solon left Athens in order not to abrogate any of the laws. And yet Plutarch also takes up and develops the (Aristotelian) theme that interpreting the law ultimately means changing it.

In Plutarch's brief treatment, the real reasons for Solon's ten-year journey are his desire not to "insert" or "abrogate" what the Athenians

¹⁰⁹ Plut. *Sol.* 25. 6 - 26.1: ἐπει δὲ τῶν νόμων εἰσενεχθέντων ἔνιοι τῷ Σόλωνι καθ' ἑκάστην προσήεσαν ἡμέραν, ἐπαινοῦντες ἢ ψέγοντες συμβουλευόντες ἐμβάλλειν τοῖς γεγραμμένοις ὅ τι τύχοιεν ἢ ἀφαιρεῖν, πλεῖστοι δ' ἦσαν οἱ πυνθανόμενοι καὶ ἀνακρίνοντες καὶ κελεύοντες αὐτὸν ὅπως ἕκαστον ἔχει καὶ πρὸς ἣν κεῖται διάνοιαν ἐπεκιδιάσκειν καὶ σαφηνίζειν, ὁρῶν ὅτι ταῦτα καὶ τὸ πράττειν ἄτοπον καὶ τὸ μὴ πράττειν ἐπίφθονον, ὅλως δὲ ταῖς ἀπορίαις ὑπεκστῆναι βουλόμενος καὶ διαφυγεῖν τὸ δυσάρεστον καὶ φιλαίτιον τῶν πολιτῶν (ἔργμασι γὰρ ἐν μεγάλοις πᾶσιν ἀδεῖν χαλεπὸν, ὡς αὐτὸς εἴρηκε), πρόσχημα τῆς πλάνης τὴν ναυκληρίαν ποιησάμενος ἐξέπλευσε, δεκαετὴ παρὰ τῶν Ἀθηναίων ἀποδημίαν αἰτησάμενος. ἤλπιζε γὰρ ἐν τῷ χρόνῳ τούτῳ καὶ τοῖς νόμοις αὐτοῦ ἐσσεσθαι συνήθεις. πρῶτον μὲν οὖν Αἴγυπτον ἀφίκετο.

¹¹⁰ Plut. *Sol.* 25. 1: ἰσχὸν δὲ τοῖς νόμοις πᾶσιν εἰς ἑκατὸν ἐνιαυτοῦς ἔδωκε. Critics tend to trace the news about the oath after the *nomothesia* back to the *Attides* (*status quaestionis* in Manfredini, Piccirilli 1995: 261-261).

¹¹¹ Plut. *Sol.* 25. 2: κοινὸν μὲν οὖν ὤμνουν ὄρκον ἢ βουλή τοῦ Σόλωνος νόμους ἐμπεδώσειν.

¹¹² Cf. Piccirilli 1977; Keaney 1992: 56-57; Muñoz Gallarte 2011: 117-132.

demanded of him, as well as not to have to explain his laws which the Athenians would become accustomed to over the next ten years¹¹³.

Plutarch's account also contains other details that partly coincide with the Aristotelian account¹¹⁴: that Solon provided for the hundred-year validity of his laws and that there was an oath taking after the institutional reform. Finally, Plutarch's account differs in what he says about the oath, which is sworn by the Council¹¹⁵, and about unspecified commercial affairs (*naukleria*) that took Solon to Egypt¹¹⁶.

How do scholars assess the divergences between Herodotus' account and later sources?

The debate revolves mainly around the relationship between the ten-year validity in the preventive oath mentioned by Herodotus and the hundred-year validity that Solon attributed to his laws (which we find in later sources' account).

Scholars tend to overlap the data instead of giving due emphasis to the specific contents of these two pieces of information reported by the sources.

Sometimes the two-time intervals are conflated in the sense that Solon is thought to have assigned the laws a validity of one hundred years of which only the first ten were guaranteed by the oath. Thus, Szegedy-Maszak: "the laws that Solon made were intended to last for a period of one hundred years, and they were absolutely protected by oath for the first ten years"¹¹⁷, and Nagy: "the laws of Solon intended to last for a hundred years were absolutely protected by oath for these ten years"¹¹⁸.

Other scholars prefer to disregard the ten-year duration of the oath reported by Herodotus: the historian may have confused the two-time references, ten and one hundred years¹¹⁹, or he may have invented the oath and arbitrarily assigned it the same temporal validity as other

¹¹³ Cf. Rosivach 2010: 229.

¹¹⁴ Cf. Manfredini, Piccirilli 1995: 254, for the view that Plutarch depends on Aristotle for information on the duration of the *apodemia*.

¹¹⁵ In contrast, in the *Life of Lycurgus*, Plutarch distinguishes between oaths taken *παρὰ τῶν βασιλέων καὶ τῶν γερόντων*, i.e., by decision-makers, and those taken by the rest of the citizens (29. 3).

¹¹⁶ Plut. *Sol.* 25. 6: *πρόσχημα τῆς πλάνης τὴν ναυκληρίαν ποιησάμενος ἐξέπλευσε, δεκαετὴ παρὰ τῶν Ἀθηναίων ἀποδημίαν αἰτησάμενος*.

¹¹⁷ Szegedy-Maszak 1978: 207.

¹¹⁸ Nagy 1985: 31.

¹¹⁹ Piccirilli 1977: 23-30; Leão 2010a: 25) Muñoz Gallarte 2011: 120 fn. 12; Canavaro 2015: 14.

events known to him¹²⁰; or, again, Herodotus may have reworked the news of the *apodemia* “found” in the tradition of the Seven Sages¹²¹.

The tendency is to accept the hundred-year figure recorded by later sources as, it is argued, they depend on the more reliable Attidographic tradition of Solon’s *nomothesia*¹²².

What these interpretations share is that they superimpose the data relating to the validity of the prior oath (ten years) over the validity of the laws (one hundred years), suppressing Herodotus’ version of the account.

Instead, these reports should be treated separately as they relate to different events.

Unlike *Ath. Pol.* and Plutarch, who record an oath after the *nomothesia* and report the 100-year duration of the laws, Herodotus mentions a prior oath taken by the Athenians as part of agreements made before Solon’s *nomothesia*.

In the absence of proof to the contrary, there is no reason to regard that oath as invented or misreported¹²³. It is only by reason of that sworn pledge to observe (not abrogate) Solon’s laws for ten years that the legislator could by his absence see to it that his laws remained unaltered.

Solon’s problem is clearly described by Herodotus: Solon does not want to be forced to “repeal any” of his laws and goes away for ten years because he knows that the Athenians in that time cannot do this “alone”.

The *apodemia* lasted exactly as long as Solon’s laws were intended to remain unchanged¹²⁴.

¹²⁰ Cf. Diog. Laert. 1. 75 with Romer (1982: 37): “Solon resigned his extraordinary powers at the term or on completion of his special purpose. Similarly, ten years elapsed for Pittacus between leaving”.

¹²¹ Thus Piccirilli 1977: 27-30, according to whom while the news of Solon’s *apodemia* depends on the tradition of the Seven Sages, the news of the preliminary oath would be the product of an arbitrary deduction by Herodotus. Cf. also Leão 2010a: 25.

¹²² Extensive discussion of the problem in Manfredini, Piccirilli 1995: 254-255. Cf. also Almeida 2003: 1 fn. 4, who considers Herodotus’ version “incidental to the fuller tradition preserved in *AP* and Plutarch”, and Rosivach 2010: 230, who finds in the *Athenaion Politeia* “a more credible narrative”.

¹²³ As Hignett 1970: 97, 112, and Rhodes 1981: 169-170, rightly point out. Rhodes himself (2015: 155) states about *Ath. Pol.* 11. 1: “the Athenians perhaps undertook to leave his laws unchanged for those ten years rather than for the hundred years alleged in 7.2”; Id. 2016, 182 “Since none of those who swore would live a hundred years, the number of ten years is more likely”.

¹²⁴ Cf. Rhodes 2016: 195.

That relationship between the Athenians' promise not to alter the *corpus* of *nomoi* (by abrogating even one of them) and Solon's leave taking is missing from later sources.

Rosivach has rightly pointed out that in the *Ath. Pol.* the Athenian oaths' and Solon's *apodemia* "are two separate and unrelated events"¹²⁵.

I am not as certain as Rosivach that the author of the *Athenaion Politeia* makes no connection between the commitment to observe the laws for a hundred years and the commitment not to change them¹²⁶. The verb he uses is the same as that used by Herodotus (χρήσεσθαι) and any interpretation probably also depends on this: to observe the laws means not to change them. And not changing them for a hundred years means never changing them.

Studies are unequivocal as to the meaning of the 100-year duration of laws. It seems clear that from a certain period onwards, the term 100 years began to acquire the same meaning as "forever"¹²⁷. This usage is attested in inter-state relations from the middle of the sixth century¹²⁸. One hundred years, writes Camassa, corresponds to three generations, a time beyond which an oral culture, or a culture still marked by the customs of orality, does not normally go backwards or forwards¹²⁹.

The sources' reference to the hundred-year duration of Solon's laws has led scholars to recognize their perpetual inalterability. In this regard, Camassa affirms that setting a term of validity of one hundred years for the laws, as in the case of Solon, means committing the community that recognizes itself in them to unlimited obedience in time, never to change them¹³⁰. *Ath. Pol.*'s information is also consistent with the fourth-century tradition that Solon's laws were immutable.

But this should not be confused with the preventive oath reported by Herodotus whose special nature we still need to explain.

Herodotus, unlike the later tradition, reports that agreements were made in advance between the *politai* and Solon. The Athenians called on the lawgiver, who gave the laws, and demanded of them a ten-year

¹²⁵ Rosivach 2010: 226.

¹²⁶ Rosivach 2010: 227: "the *Ath. Pol.* says nothing about a connection with Solon's *apodemia*, and nothing anywhere about the not being able to change the laws if they collectively wished to do so".

¹²⁷ Cf. Manfredini, Piccirilli 1995: 255; Camassa 2011: 119-120; Id. 2012, 32; Canevaro 2015: 14.

¹²⁸ Cf. Manfredini, Piccirilli 1995: 255; Camassa 2011: 119.

¹²⁹ Camassa 2011: 119; Id. 2012: 31.

¹³⁰ Camassa 2011: 120.

commitment to respect their integrity. These were the terms of the “mutual agreements”¹³¹.

What distinguishes this version is the importance of protecting the entire *corpus* of *nomoi*, i.e. the prohibition of abrogating even one of them.

The fact that Herodotus does not mention the subject of the eternal inalterability of the *corpus* nor its hundred-year validity is highly original even when compared with contemporary documentation.

We know that the antiquity or eternity of the laws were already attested as reasons for their authority in the 5th century. The Athenians were convinced that the authority of a law depended on its antiquity (Antiphon states this for the homicide laws dating back to Draco¹³²) and the very possibility of giving eternal validity to a law is evoked in Aeschylus’ *Eumenides*¹³³. Outside Athens, epigraphic documentation confirms the concern that the laws should be immutable¹³⁴.

But Herodotus’ version only limits abrogation of the *corpus* for ten years.

How do we account for this different version, in terms of its content and duration, which was sworn by the Athenians beforehand?

Is it possible that Herodotus’ account of prior agreements indirectly points to the difficult task of resolving the *stasis*?

Solon’s poems provide concrete evidence of the deep divisions in Athenian society¹³⁵. *Ath. Pol.* (5-6) describes Solon’s complex efforts to reconcile opposing sides at the request of the Athenians, while Herodotus makes no mention of the difficulty of that historical phase.

Finley, starting with the case of Solon, has rightly raised the question of ancient historiographical accounts that are silent about events accompanying and preceding constitutional changes¹³⁶. More recently, Almeida has reconsidered this problem and assumes that there was no oral tradition in 5th century Athens regarding the pre-Solonian *stasis*, and Herodotus’ silence would appear to corroborate this¹³⁷. Indeed, Hero-

¹³¹ Camassa 2011: 120.

¹³² Antiph. 5. 14-15; 6. 2. Cf. Harris 2013: 106; Canevaro 2015: 15.

¹³³ Aesch. *Eum.* 690-695, with Canevaro 2015: 15.

¹³⁴ Camassa 2011: 123-129; Canevaro 2015, 20-21.

¹³⁵ Cuniberti 2011: 1-18 (especially 4ff.); Poddighe 2014: 132-181; Loddo 2018b; Stolfi 2020: 84-90, 192ff.

¹³⁶ Finley 1985: 151-159. Cf. also Id. 1986: 50.

¹³⁷ Cf. Almeida 2003: 241, who observes regarding the “relative silence of Herodotus on the political crisis faced by sixth century Athens and the work of Solon in relation to it” that “one may infer from Herodotus’ silence that there was a marked absence of an oral tradition touching upon the political upheaval which led to the legal, political, and constitutional changes instituted by Solon”.

dotus tells us nothing about the conflict that preceded the agreements between the Athenians and Solon, but depicts a situation in which the lawgiver before proceeding with the *nomothesia*, was concerned that his instrument of reconciliation, the *corpus* of his laws, would be respected in its integrity for long enough to verify its effectiveness, while for their part, the Athenians promised to do this for a reasonable period of time (though not forever). In this reconstruction, the fact that the oath preceded the *nomothesia* is crucial. It is easier to account for the oath's content if we consider that the agreements were reached before the *nomothesia*.

While strenuous efforts were being made to bring together the parties, the issue of preserving intact the *corpus* of the city's laws reveals a precise concern: that the Athenians might intervene on the *corpus* with targeted abrogations. What Camassa has defined as reluctance or reticence with regard to abrogation takes on particular relevance in the phase preceding the *nomothesia*¹³⁸.

Solon's body of laws, according to the agreements established with the Athenians, must acquire a founding status that prevents its (explicit) abrogation¹³⁹. Herodotus' version clearly points to Solon's concern that his laws would be rapidly altered or repealed by interventions which, serving private interests, would lessen their effectiveness¹⁴⁰.

Given this context, I agree with Hölkeskamp, who views the inviolability of the whole as an indispensable condition for the containment of conflicts and disputes which Solon would have perceived as detrimental to the integrity (or internal cohesion) of a sociopolitical community that was still undergoing a precarious process of consolidation¹⁴¹. This is not to say that Solon was aiming to create a systematic "code", an intrinsically logical arrangement and rational organization of all the statutes relating to a particular matter into a well-structured and comprehensive body of laws¹⁴².

Rather, it means that Solon's *nomoi* would have fulfilled the function entrusted to them by the 'mutual agreements' between himself and the Athenians only insofar as (and *if*) the Athenians were willing to keep them in force, as a whole, as a *corpus* understood as a comprehensive unit¹⁴³.

¹³⁸ Camassa 2011: 127.

¹³⁹ Camassa 2011: 126.

¹⁴⁰ Hölkeskamp 2005: 284.

¹⁴¹ Hölkeskamp 2005: 289. Cf. also Cuniberti 2011: 4ff.

¹⁴² Hölkeskamp 2005: 283; Farenga 2006: 269.

¹⁴³ Cf. Harris 2013: 201-202, and Canevaro 2015: 15 "the Athenians understood them as part of a system, carrying an inherent rationality, and as consistent and coherent".

The significance of the collective oath in later representations of reconciliation is clear. The Athenians all, this Herodotus tells us, had committed themselves “with great oaths” to respect the result of his political mediation. Those *nomoi*, according to Herodotus’ version, have efficacy as a complete set, not to be changed for a decade by any abrogation. The ten-year preservation of the *corpus*, which ensures its efficacy, does not contradict the report that Solon later assigned a hundred-year validity to his laws¹⁴⁴. In fact, the validity of Solon’s laws does not seem to have been undermined when the *corpus* was supplemented by later rules. If anything, as rightly observed by Louis Gernet, it was later and significant additions that created the concept of a “system”¹⁴⁵.

Here it quickly becomes clear – as Camassa has pointed out – that the Athenian polis was able to develop effective strategies to circumvent the problem of explicit abrogation.

When the community sees the need for a new rule, it does not formally repeal the previous law, instead both new and old are allowed to co-exist¹⁴⁶.

That this fate also befell Solon’s laws between the 6th and 5th centuries is well known, an example being Cleisthenes’ “new laws” (*kainoi nomoi*) which did not suspend those of Solon¹⁴⁷. Some of Solon’s laws fell into disuse, without being formally abolished¹⁴⁸. Between the 6th and 5th centuries, the *corpus* of Solon’s laws underwent numerous additions without, however, losing their unified character.

As a passage from Lysias attests, the coexistence of new and old (never repealed) laws later became a problem¹⁴⁹. Consequently, between the end of the 5th and the beginning of the 4th century, the Athenian democracy developed effective instruments to ensure that new laws would be compatible with existing laws. Through the procedure of *nomothesia*, which the *nomothetai* who were elected in Athens in 403 created for the purpose of giving new laws to the city¹⁵⁰, the people formally assumed the power to change the laws and set up committees of *nomothetai* who met – perhaps at special sessions of the assembly or

¹⁴⁴ According to McGlew 1993: 111-124, the resumption of *stasis* and the subsequent tyranny of Pisistratus (cf. Arist. *Ath. Pol.* 13) can be explained by the ineffectiveness of Solon’s laws in counteracting the *stasis* even though this was his declared intent.

¹⁴⁵ Cf. Gernet 2001 (1917): 42, on “la notion d’un *système* des lois” that is due to the elements added and continuously attributed to Solon’s work.

¹⁴⁶ Camassa 2011: 126. The theme is taken up and developed in Canevaro 2015.

¹⁴⁷ See Camassa 2011: 123-129; Canevaro 2015: 20-21.

¹⁴⁸ Manfredini, Piccirilli 1995: 255.

¹⁴⁹ Lys. 30. 3.

¹⁵⁰ And. 1. 80-89.

perhaps in the courts – to decide on the promulgation of new laws, the modification of existing laws and the repeal of contradictory laws¹⁵¹.

Subsequent accounts of this episode with Solon confirm that in the fourth century the concern about repealing laws must not have been a topical issue.

In fact, in the *Ath. Pol.* no mention is made about not being allowed to repeal laws while more space is devoted to how the act of interpreting law changes it, a very important issue in Aristotelian thought¹⁵² and perhaps a sign that theoretical discussion of the topic had evolved.

Plutarch is familiar with both Herodotus' and Aristotle's versions, and he provides a concise account that records the two distinct problems.

What seems relatively clear is that, according to Herodotus, Solon did not intend his *apodemia* to guarantee the *corpus* of his laws eternal inalterability: in order to do so he would have had to stay away for the rest of his life, while Aristotle says that he did return to Athens, although without intervening in its laws¹⁵³.

Thus, Herodotus' version, precisely because it limits the duration of Solon's *apodemia*, differs from the legendary tradition of archaic Greek lawgivers who, after they had given their laws and completed their task, rendered their laws immutable through perpetual exile or death.

4. Herodotus, Solon and the "Legend of the Early Greek lawgivers"

The special character of Herodotus' reconstruction is particularly noticeable when compared with other so-called "Lawgiver Myth" whose narratological format recurs in these biographies of archaic legislators, (Lycurgus of Sparta, Caronda of Catania, Zaleucus of Locri) and which have been studied in detail¹⁵⁴. The scheme of the tale is fixed: the legislator disappears after having bestowed laws on a certain political community which has sworn an oath not to modify them, as did the Spartans (i.e. not to replace the legislator) or because threatened by the legislator himself before he finally disappeared, either because he died or went

¹⁵¹ Canevaro 2013: 1-22; Id. 2015: 22-30; Id. 2016: 39-58. See also Camassa in this volume.

¹⁵² On the role of the interpretation of the law in Aristotle's reflection on the problem of legal change, see Poddighe 2019.

¹⁵³ Unless one interprets, as some scholars do, the *nomos arghias* as a late addition, after the journey to Egypt, but cf. Noussia 2010: 298. On the theme of the lawgiver's temporary departure in Plato's *Statesman* see Camassa 2012.

¹⁵⁴ Szegedy-Maszak 1978: 199-209; Nagy 1985: 36-41; Svenbro 1993: 131-135; Hölkeskamp 1992: 52-54; Id. 44-59; Farenga 2006: 264-272; Loddo 2018b: 19-24.

into permanent exile¹⁵⁵. The scholarship has identified the essential features of this scheme – aptly defined by Andrew Szegedy-Maszak as the “Legend of the early Greek lawgivers”¹⁵⁶. The narrative structure is divided into three phases: first political disorder in the community which the legislator is called upon to remedy, then correction of the disorder through orderly legislation, and finally the legislator’s own disappearance.

The “Legend” emphasizes the autonomy of laws: the disappearance of the legislator makes the laws stronger, which, by surviving him, acquire their own autonomous existence¹⁵⁷. Finally, the origin of the legend’s literary tradition has been identified, which does not seem to date back before the 4th century (Ephorus provides the earliest information on Zaleucus)¹⁵⁸.

In these mythographic constructions in which “facts shift into legend, and legend into myth”, *apodemia* is a recurring ingredient¹⁵⁹. The stories tend to place the *apodemia* before the *nomothesia*¹⁶⁰, with the exception of Solon and Lycurgus, whose *apodemia* stories share some common features: the *apodemia* follows the *nomothesia* (though for Lycurgus there was no written draft of the *nomoi*) and arises as the legislator’s response to the problems the community has with observing the new laws.

¹⁵⁵ For the many variants see Szegedy-Maszak 1978; Nagy 1985; Svenbro 1993: 129-144.

¹⁵⁶ Szegedy-Maszak 1978: 199-209. Cf. Nagy 1985: 36-41; Svenbro 1993: 131-135; Hölkeskamp 1992: 52-54. Rosivach (2010: 224): “the stories the Greeks told about their venerable lawgivers conform to a similar pattern of crisis and resolution, an archetypical ‘Myth of the Lawgiver’, as it were, the last steps of which include some provision of the new law code permanent, followed by the departure of the lawgiver”.

¹⁵⁷ Svenbro (1993: 135): “once independent from the lawgiver, the *nómos* assumes an auto-nomous existence, reigning over all ‘with a supreme hand’” Cf. also Szegedy-Maszak (1978: 207-208): “the fact that the lawgiver him-self retained the power to change the code made him, as we have seen, a potential threat to its operation. In the legends, the danger is relieved in two ways, by the death of the lawgiver or by his departure into self-imposed exile”. Cf. Camassa 2011: 120.

¹⁵⁸ *FGrHist* 70 F 139. Cf. Szegedy-Maszak (1978: 201): “the legend sprang from a conscious neglect of historical accuracy by post-Aristotelian authors”. Cf. also Hölkeskamp 1999: 44-59, and Farenga 2006: 264: “Starting in the mid-fourth century and continuing into the Hellenistic era, philosophers and historians looked back at least three hundred years to around 650, providing names like Zaleucus, Charondas, Diocles, Andromadas, and Philolaus, along with the better known Lycurgus, Draco, Solon and Pittacus, as writers of law codes for the colonial city-states of Italy, Sicily, and Thrace, as well as Corinth, Sparta, Athens, and Mytilene, respectively”.

¹⁵⁹ Szegedy-Maszak 1978: 201.

¹⁶⁰ Szegedy-Maszak 1978: 203.

However, the similarities end there and indeed the case of Lycurgus, in comparison with the story of Solon, is an excellent illustration of how far Herodotus' account diverged from the "legend".

In Plutarch's *Life of Lycurgus*, the Spartan legislator initially resorts to temporary *apodemia*, like Solon, but later decides to make his absence permanent with his death forcing the Spartans to "immortalize" his laws¹⁶¹. Lycurgus, like Solon, obtained from his fellow citizens the commitment to maintain the established laws, not to repeal or modify anything until his return to his homeland, and then he went away never to return¹⁶².

In the first phase, according to Plutarch, Lycurgus' story resembles Solon's, but later takes on the legendary contours and conforms to the myth of the legislator who, with his definitive departure (he leaves, then dies in exile) renders his laws immutable¹⁶³.

On the other hand, the fact that Solon did not leave Athens for life excludes him from the list of "legendary" legislators¹⁶⁴.

Scholars have made it quite clear that Plutarch's report of Lycurgus' lifelong absence is modelled on a "legend"¹⁶⁵. The fact becomes even more significant given that Herodotus also provides an account of Lycurgus. Massimo Nafissi has made the point very clear. What Herodotus (1.65.2–66.1) says is that Lycurgus "had brought the Spartans out of an era of extreme political disorder (*kakonomōtatoi*) and into one of good order (*eunomiē*), which in turn led to the city's increased power", and that Lycurgus changed "all the laws". But only later sources – as Nafissi rightly observes – tell of "the ruse devised by Lycurgus to protect his laws from being changed: after the citizens promised to keep

¹⁶¹ Plut. *Lyc.* 29. 3. On this decisive difference cf. Szegedy-Maszak (1978: 207-208): "Solon, vexed by constant demands for his judgement, left Athens for the ten years covered by the oath of his fellow citizens", while "Lycurgus added the further condition that the oath remain in effect until he came back from a journey to Delphi. He then made the promise, and the code, permanent, by never returning to Sparta". Cf. also Nagy 1985: 31-32, and Svenbro 1993: 130-131.

¹⁶² Camassa 2011: 118.

¹⁶³ Cf. Podlecki 1984: 106; de Blois 2008: 409: "Lycurgus applied the same means, when, going away from Sparta after he completed the new legislation, he made Spartan citizens promise not to change them until his return, but, according to one tradition, he let himself die abroad and never came back (*Lyc.*, 31.5)"; Camassa 2011: 119.

¹⁶⁴ It is indicative that Solon is excluded from the cases considered in Svenbro's study (Svenbro 1993: 130-135).

¹⁶⁵ Podlecki 1984: 106-107; Szegedy-Maszak 1978; Nagy 1985; Svenbro 1993: 130-131; Leão 2000. On Lycurgus' premature termination of his regency (recounted by Ephoros and Plutarch) as "highly appropriate to the economy of the 'legend of the lawgiver'" see Nafissi 2018: 105-106.

the laws unchanged during his absence, he visited Delphi, received by the oracle confirmation of their beneficial effect for the city, and then let himself die”¹⁶⁶.

Herodotus, however, does not mention an *apodemia* for Lycurgus, therefore, he does not reveal whether he was aware of a tradition that Lycurgus had left the city temporarily or permanently¹⁶⁷. In all probability Herodotus was relying on local Spartan traditions for his information¹⁶⁸. In those traditions he found the officially approved representation of the city’s origins, the one in which his audience recognized itself¹⁶⁹, and these traditions were evidently not the same as the “legend”.

Now, if this the case, it is, indeed, far from obvious – as Rosivach would have it – that Herodotus’ account of Solon’s *apodemia* proves that a historical event was absorbed by a mythological model¹⁷⁰.

If anything, the direction of mutual influences with legend should be the opposite of that assumed by Rosivach: Herodotus did not take from, but perhaps contributed the decisive motif of *apodemia* to the myth of the archaic legislator.

This hypothesis has been suggested in a recent work by Alexander Hollmann on Herodotus’ Solon, according to whom Herodotus’ account of Solon “activated” for the first time a narrative model that became traditional from the following century, the 4th¹⁷¹. Hollmann, who is mainly interested in Solon as a Sage does not pursue this possibility, though it is plausible, if what has been said so far has any foundation.

The question then arises: how did Solon’s *apodemia* enter the “great history” recounted by Herodotus? Which traditions could Herodotus depend on?

¹⁶⁶ See Nafissi (2016) on Nic. Dam. *FGrH* 90 F 56, Plut. *Lyc.* 29.1–5: the story may go back to Ephorus cf. *FGrHist* and *BNJ* 70 F 175 apud Ael. *VH* 13.23. See above fn. 158.

¹⁶⁷ Hdt. 1. 65-71.

¹⁶⁸ On the originality of Herodotus’ version in comparison with Plutarch’s cf. Podlecki (1984: 106-107), who points out Plutarch’s dependence on the legend of the early Greek lawgivers. On Herodotus’ Lycurgus cf. among others: Vannicelli 1993; Paradiso 2000. On Herodotus’ dependence on local Spartan traditions see now Blösel 2018: 262: “it is most likely that he had informants from Sparta”.

¹⁶⁹ What Murray (2001: 30) calls “an official polis view of the past”. See also Osborne 2002: 515-516.

¹⁷⁰ Rosivach 2010: 223; see also Rihll 1989: 281ff.

¹⁷¹ Hollmann 2015: 87 “This characterization of Solon activates a complex of ideas traditionally associated with *nomothetai*: these are figures who bring good order to their communities but who must leave them, whether temporarily and voluntarily, as in the case of the Herodotean Solon, or permanently, through permanent exile or even death (as in the case of Lycurgus)”.

The idea that the entire story of Solon's *apodemia* stems from a tradition that developed in Ionian circles at the end of the 6th century, perhaps traceable to Hecataeus of Miletus¹⁷², is not convincing.

According to this interpretation, Herodotus merely repeated an event described by Hecataeus, who invented the link between *apodemia* and *nomothesia*¹⁷³.

That the story can be traced back to a tradition preceding Herodotus, and that this tradition was gestated in the Ionian environment, is in itself possible, but it is hard to understand why Hecataeus should have invented the link between *apodemia* and *nomothesia* for the sole purpose of accounting for Solon's travels in Asia.

It is more likely that the story of Solon's *apodemia* was already structured in the Athenian oral tradition at the time of Herodotus, already incorporated in the polis' traditions, and that Herodotus therefore recorded those polis' traditions in his *Histories*.

5. *Solon's apodemia as recounted to the Athenians of Herodotus' time*

We cannot know for sure on what occasions the story of the Athenians' oath and of Solon's *apodemia* was told to the Athenians. Little information is available about Herodotus' stay in Athens. From a fragment of Diyllus we learn that Herodotus, on the motion of Anytus, received a gift of ten talents from Athens¹⁷⁴. Late testimony by Eusebius tells us that in 445/4 BC the historiographer was honoured by the Athenian Council for reading his books to them¹⁷⁵. It is not unlikely that Herodotus visited Athens and gave public readings of his work to the Athenians around the mid-440s¹⁷⁶.

What we can establish with relative certainty, however, is that Herodotus offered an account in which Solon had not yet become the symbol of the "different democracy" that the political debate at the end of the fifth century would lead to.

Herodotus addressed the Athenians before the debate on the best and ancestral constitution (*patrios politeia*) had begun¹⁷⁷, and perhaps even

¹⁷² Podlecki 1975: 31-40.

¹⁷³ Podlecki 1975: 31-40.

¹⁷⁴ Diyllus, *FGrHist* 73 F 3, with Ostwald 1991: 138.

¹⁷⁵ Eus. *Chron., Olymp.* 83. 4.

¹⁷⁶ Ostwald 1991: 138: "it remains credible that Herodotus visited Athens and delivered lectures in the mid-440s". See Powell 2018; Bernhardt 2022: 449.

¹⁷⁷ For the idea that that debate was developed after 413 cf. Poddighe 2014: 129, 135-136.

before the question of the laws' immutability began to occupy a central place in judicial rhetoric – as the *corpus* of Attic orators attests to¹⁷⁸.

Herodotus' account deals with themes and problems that came before that debate and rhetoric. Outside of that debate and that rhetoric, when Herodotus evokes the idea of the laws' inalterability, he does so with exclusive reference to the problem of the Athenians' formal oath not to repeal for a decade a single part of the *corpus*, while he does not touch on the question of how interpretation changes the law.

The problem of the commitment not to change the *corpus* of his laws in its integrity and entirety is older than the problem of interpretation that changes the law, nor is this surprising. The picture traced by the documentation (including epigraphy) is consistent and indicates that this was an earlier concern in the Greek world (and beyond)¹⁷⁹.

Now, if what Oswyn Murray says is true, that for every one of Herodotus' stories (*logoi*) we must look for the reason why it was preserved or determine the interest of the social group that preserved it¹⁸⁰, then it is through the content of Herodotus' version itself that we can identify his intended audience. As Nino Luraghi explains: Herodotus offered his audience the recognizable contents of "local knowledge". Herodotus' speeches reflect the experience of his audience, represent local knowledge of a given episode and make explicit his "social surface", i.e. the group to which the story belongs, the group that believes it to be true¹⁸¹.

This idea of the past as a shared possession is fundamental, because only insofar as the memory of a given event is shared does it have a function, is durable and does not need an official record¹⁸². Its duration is determined by the function it fulfils in relation to the "group" that preserves it and the importance of the group that preserves it¹⁸³.

In the case of the Athenian stories told by Herodotus, scholars have recognized the weight of aristocratic traditions, the so-called "family traditions", together with those of "popular traditions", in many cases not coinciding¹⁸⁴. But above all, scholars have recognized the contours of what Murray calls a "political tradition". A tradition of the polis that has no family orientation and that represents and legitimizes its own

¹⁷⁸ A review of passages from the *corpus* of Attic orators is in Harris 2013: 324-325. See also Boegehold 1996 and Canevaro 2015. For the idea that in 403 "the context for a rhetoric of the unchangeability of law" should be fixed, see Todd 1993: 130.

¹⁷⁹ See above p. 311.

¹⁸⁰ Murray 2001: 28.

¹⁸¹ Luraghi 2001: 150, 159-160.

¹⁸² Murray 2001: 25-27; Luraghi 2001: 149-150.

¹⁸³ Murray 2001: 25.

¹⁸⁴ Thomas 1989: 171-173, 264-281; Ostwald 1991: 140ff.; Murray 2001: 27-30.

past as a succession of events capable of demonstrating the rightness of current cultural values.

Within this "political tradition" the individual is subordinated to the *ethos* of the polis¹⁸⁵ and, in the case of Athens, legitimizes the role of the citizens in the democratic city. According to the shared memory of the Athenian citizens listening to Herodotus' account of the Solonian affair, it was the Athenians who "asked" Solon for a *corpus* of new laws. And it was the Athenians as a whole, within the framework of the agreements established with Solon, who committed themselves with "great oaths" to observe the laws that "Solon would give them"¹⁸⁶. This was to be a shared commitment, one that the *Athenaion Politeia* also records, although it only records an oath made after the *nomothesia*¹⁸⁷. The picture emerging from Herodotus' report of a formal sworn commitment by the Athenians not to repeal any of Solon's laws is that of a united city that trusted in its chosen lawgiver and, in all probability, his account depended on Athenian traditions rather than on the legend of Greek lawgivers.

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¹⁸⁵ Murray 2001: 30-31.

¹⁸⁶ Hdt. 1. 29. 1: Ἀθηναίοισι νόμους κελεύσασι; 1. 29. 2: ὀρκίοισι γὰρ μεγάλοισι κατείχοντο δέκα ἔτεα χρήσεσθαι νόμοισι τοὺς ἄν σφι Σόλων θῆται.

¹⁸⁷ Arist. *Ath. Pol.* 7. 1: ὤμοσαν χρήσεσθαι πάντες.

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