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Ἄκυρον ἔστω: LEGAL INVALIDITY IN GREEK INSCRIPTIONS

In modern law,[1] invalidity clauses are frequent[2] in most areas of law: constitutional law, family law, successions, property, contracts, corporate law and procedural law.[3] In contract law, invalidity or nullity means that a contract, or a particular clause in it, is regarded as non-existent.[4] Legal invalidity in ancient Greek legal texts is expressed, among other terms, by ἄκυρος, ἄκυρον ἔστω, ἀτελὲς ἔστω.[5] Ἄκυρος, in Liddell-Scott, is the semantic opposite of κύριος or κυρία, translating as *without authority*. Regarding laws, decrees and sentences it means more particularly *invalid, uratified, obsolete*.[6] Ἄκυρον ποιεῖν or καταστῆσαι, is to *set aside*.[7] Νόμους ἀκύρους χρωμένη is understood as *not enforcing the laws*.[8] When the term is characterizing a person (ἄκυρον ποιεῖν/καθεστάναι τινά) it means *not having authority*.[9] The verb ἀκυρόω means to *cancel, set aside* and it is used with both ψήφισμα (decree)[10] and ἀποφάσεις (decisions).[11] However, several aspects of legal invalidity in the Greek legal sources still remain to be investigated. Was invalidity limited to contracts and to the protection of private parties or was the public interest also taken into consideration? Were some contracts *ipso facto nulli*, while others had to be declared null and void by a court of law? Was there a distinction equivalent to

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1 In modern law a distinction is made between absolute and relative nullity. Nullity is absolute when there is contravention of a rule of law relating to public order, i.e. involving matters of public policy; nullity is relative when the interest protected is only of a private nature. Where absolute nullity is concerned, anyone can allege nullity and the courts must automatically invoke nullity. Where relative nullity is concerned, only the person protected can invoke nullity.

2 The Greek Civil Code contains 168 references to the term "άκυρο" in the sense of invalid.

3 Greek Constitution, art. 14.9, 57.1.ε, 73.2.

4 As a general principle, an invalid contract is considered as not having taken place, according to article 180 of the Greek Civil Code.

5 IG V,1 1390.

6 And. 1.8 (ψήφισμα/decree), Pl. Lg. 954c (δίκη/trial), Lys. 18.15 (συνθῆκαι/ agreements).

7 Is. 1.21 (διαθήκη/testament).

8 Th. 3.37.

9 X. HG 5.3.24.

10 Din. 1.63.

11 D.S. 16.24.

our notion of absolute and relative nullity? Could nullity have an *ex tunc* ("from the outset") effect, or were legal acts only rescinded *ex nunc* ("from now on")? Could nullity be used at court as either a sword or a shield? Was there an action available for annulment? And who could invoke nullity? Can we speak of the equivalents of a *lex perfecta, imperfecta* and *minus quam perfecta*[12] regarding Greek legal rules? The attempt to collect information on some of these questions proves a difficult task, taking into account not only the lack of a systematic and uniform Greek legal theory, but also that legal invalidity remained largely unspecified even by Roman law, posing several terminological and conceptual problems for the Roman jurists as well.[13]

In Greek inscriptions, statutory prohibitions invested with the sanction of invalidity concern a wide variety of cases, throughout periods and geographical areas.[14] Occurrences of the ἄκυρον clause can be broadly distinguished in three categories: a) judicial (or similar) decisions and rights, b) legal statutes (international agreements, laws, decrees, decree propositions, entrenchment clauses), c) private legal acts (bilateral contracts, testaments, manumissions). In absence of a clear doctrine on legal invalidity, the epigraphic instances of ἄκυρον may offer some indications on the concept and on the operation of legal invalidity in ancient Greek legal thought and praxis.

1. Nullity and Nullification of Judicial Decisions and Related Rights

Trials and Sentences

During a trial, the casting of valid votes[15] in a copper urn led to a (valid) judicial sentence.[16] The rule of majority[17] was considered an expression of the democratic

[12] Jolowicz, H.F. 1932: 87, "A *lex perfecta* forbids an act and invalidates it if done; a *lex minus quam perfecta* does not invalidate the forbidden act but imposes a penalty on the person doing it; a *lex imperfecta* forbids the act but neither invalidates it nor imposes a penalty."

[13] See Zimmermann, R. 1990: 679, according to whom, about 30 different Latin terms survive in Roman sources to describe invalidity, such as *nullum*, *nullius momenti*, *non esse*, *invalidum*, *nihil agere*, *inutile*, *inane*, *irritum*, *imperfectum*, *vitiosum*. See p. 680: "All that one may perhaps say by way of generalization is that the label 'invalidity' usually implied that a transaction was denied its natural (or typical) consequences. As a rule, this type of 'civilian' invalidity could be invoked by anybody and at any time. But there were exceptions." On the evolution of the *quasi nullus* concept, see Quadrato, R. 1983: 79–107.

[14] This paper is far from exhaustive; it does not cover other terms and expressions that may denote invalidity, or the invalidity of contracts as a result of violence, mistake, duress, influence or fraud. On these see Biscardi, A., 1982:136–151.Velissaropoulos, J. 2011:220–222.

[15] Each judge had two tokens, one for conviction and one for acquittal. He cast one, the valid (*kyrios*) token in an urn made of copper, the invalid (*akyros*) one in an urn made of wood, according to the procedure described in the Athenaion Politeia 68.3–69.1.

principle applied in a court of law. In the absence of any right of appeal, invalidating judicial decisions was viewed as something highly irregular.[18] As Demosthenes (in a *graphe nomon me epitideion theinai*) states, "*I take it that everybody will agree that to invalidate judicial decisions is monstrous, impious, and subversive of popular government*" (24.152). The nullification of trials and sentences ex post should though be possible, according to Plato (Leg. 954b6), in case of a verdict obtained after obstructing by force the other party or his witnesses from attending the trial. Verdicts happened also to be overturned in cases of change of the political regime under which they had been rendered.[19]

The invalidity of irregularly obtained sentences was a clause included in some *symbolon* agreements by which two cities agreed upon the dispute resolution procedures among their citizens. The earliest epigraphic occurrence of an invalidity clause comes in fact from the *symbolon* agreement of Athens with the city of Phaselis in Lycia (IG I^3 10, SEG 35:2, dating from 469–450 B.C.), where it is stated that in case a trial is brought against any citizen of Phaselis, his conviction contrary to the terms of the jurisdiction agreement shall be invalid (ε]ὶ μὲν καταδικάσ[θέντι ηε δίκ]η ἄκυρος ἔστω [ἄν δέ τις παραβ]α[ί]νηι τὰ ἐψη[φισμένα).[20] In a decree of Miletos (Miletos 54, c.1, lines 5–13, dating from 228/7 B.C.) accepting the judgment of *synedroi* concerning the sharing of citizenship with Cretans, in view of the reconciliation that took place, it is forbidden for anyone to be brought to trial regarding past events and if so, the trial shall be invalid (ἡ δίκη ἄκυρος [ἔστω]).

Invalidating an otherwise binding judicial or arbitrary decision could come in two ways: *de iure,* if a different decision was reached on the same dispute and *de facto,* if one of the parties was allowed not to comply with the prior decision. In 164 B.C., after Sparta refused to comply with a decision regarding a territorial dispute with Megalopolis and appealed to the Achaean League, the latter imposed a fine on Sparta, which still refused to give up the contested territory and offered to submit to Roman arbitration.[21] In their decision,[22] the arbitrators stress that their aim is not to

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[16] On the use of κύριος and ἄκυρος in this process see Velissaropoulos-Karakostas J. 2001, 107–108.

[17] On the majority principle see Maffi, A. 2012: 21–31 and on judicial votes Todd, S.C. 2012: 33–48.

[18] The nullification of trials by citizens is considered by Plato as a sign of corruption of the city. See Crit. 50b4.

[19] Andocides (1.87–88) states that in the Reconciliation Agreement of 403/2 B.C. the legal decisions and arbitrations obtained under democracy were considered valid, official decisions under the Thirty, invalid.

[20] How such an annulment of a trial or sentence would take place is not clear. An (unorthodox) nullification of the Amphictyonic decisions by Philomelus is recorded by Diodorus (16.24): he simply erased the convictions he considered unjust from the *stele*. Destroying the publicly displayed sentences equaled to having them nullified by force, since without such record the decisions were practically nonexistent.

[21] Ager, S., 1996: no 137.

render previous judgments ἄκυρα, confirming thus the principle of *res iudicata* (i.e., a matter already judged). Invalidity is also mentioned as a *de facto* result the arbitrators wish to avoid, by not allowing the Spartans to invalidate previous decisions by bringing forth new accusations.[23] In another arbitration, between the cities of Melitaia and Narthakion (ca. 140 B.C.), regarding a long territorial dispute (which is uncommon, as Ager points out,[24] in being conducted by the Roman Senate itself), the senatorial decree regarding this conflict underlines that invalidating previous rulings, decided according to the law, is something that must not be done lightly.[25] A different kind of annulment concerning a Roman sentence is mentioned in an honorary decree from Kolophon (ca. 130–110 B.C.) for a benefactor named Ptolemy. The city is grateful, among many other reasons, because when one of its citizens was condemned in a Roman court in the province (of Asia), the benefactor undertook an embassy to the (Roman) general and managed to have the condemnation annulled (ἄκυρον ἐποίησεν),[26] saving thus both the citizen and the city's laws.

The annulment of prior decisions and pending accusations, as well as of debts, are extraordinary measures corresponding to times of crisis, in view of an imminent danger for the *polis*. In a law of the city of Ephesos, voted in preparation of an expected invasion by the King of Pontus Mithridates (86/85 B.C.), after the Ephesians pledge allegiance to the Romans, in order to rally the population, they decide, in what constitutes a complicated amnesty arrangement,[27] to cancel all debts of those registered by the sacred or public treasurers as debtors and *atimoi,* to waive accusations and penalties of those registered as accused for religious or public offences or any kind of debt, to proclaim void any execution against them[28] and,

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[22] IvO 47, lines 16–21: μήτε τὰ κεκριμένα ἄκυρα . . . αἴ τ' ἐν τοῖς Ἕλλασιν καὶ συμμάχοις γεγενημέναι πρότερον κρ[ί]σεις βέβαια[ι] καὶ ἀκήρατοι δ[ι]αμένωντι εἰς τὸν ἀεὶ χρόνον (not to invalidate the verdicts... so that the decisions rendered previously among the Greeks and their allies remain valid and non-reversed forever).

[23] IvO 47, lines 40–41: εἰ] τὰ κριθέντα παρ' αὐτοῖς μηκέτι γίνοιτο ἄκυρα δι' ἑτέρων ἐγ[κλημά]των (if the cases judged are not invalidated by new accusations).

[24] Ager, S., 1996: no 157.

[25] IG IX, 2 89, lines 28–32: ὅσα κεκριμένα ἐστὶν κατὰ νόμους, οὓς Τίτος Κοΐγκτιος ὕπατος ἔδωκεν, ταῦτα καθὼς κεκριμένα ἐστίν, οὕτω δοκεῖ κύρια εἶναι δεῖν, τοῦτό τε μὴ εὐχερὲς εἶναι ὅσα κατὰ νόμους κεκριμένα ἐστὶν ἄκυρα ποιεῖν. (... all the verdicts rendered according to the laws issued by the Consul Titus Quinctius, all of those will remain valid as they have been judged, in order not to facilitate the invalidation of verdicts rendered according to the law).

[26] SEG 39:1243, II.1, lines 51–58.

[27] Arnaoutoglou, I. 1998:105–107. Harter-Uibopuu, K. 2014: forthcoming.

[28] IEph 8, lines 29–33: καὶ ἠκυρῶσθαι τὰς κα[τ'] αὐτῶν ἐκγραφὰς καὶ ὀφειλήμ[ατα], τοὺς δὲ παραγεγραμμένους πρὸς [ἱερ]ὰς καταδίκας ἢ δημοσίας ἢ ἐπίτειμα ἱερὰ ἢ δημόσια ἢ ἄλλα ὀφειλήματ[α] ὡιτινιοῦν τρόπωι παρεῖσθαι πάντας καὶ εἶναι ἀκύρους τὰς κατ' αὐτῶν πράξεις.

furthermore, to cancel and render void all religious and public prosecutions unless concerning boundary and inheritance disputes.[29]

Invalidity of Legal Action

Ἄκυρον ἔστω in international treaties sometimes refers to a limitation of the right to bring suit[30] which may be either absolute or occur after a set period of time, the equivalent of a statute of limitations. In the treaty of *sympoliteia* between Smyrna and Magnesia ad Sipylus (dated around 245–243 B.C.), the citizens of both of cities would swear an oath to abide by the treaty terms. The parties seal their peace agreement by also declaring a priori invalid any potential accusation among their citizens regarding war crimes.[31] In the decree of the city of Nagidos concerning the *isopoliteia* with Arsinoe (included in a letter of Thraseas to this city, dated after 238 B.C.), all trials among citizens of both cities must take place within the year following the crime, a period after the lapse of which they are declared invalid.[32] Equal to statute of limitations is also the sense of ἄκυρον in the treaty between Delphi and Pellana, where (according to the proposed reconstitution of the missing lines) the right of reference of a claimant to a third party (*anagoge*) is invalid if not exercised within the time limit set by the treaty.[33]

2. Legal Statutes and Invalidity Clauses

The second broad category of ἄκυρον clauses in inscriptions concerns the invalidity of legal statutes—that is, international treaties, laws, decrees and proposed decrees.

International Treaties

In general, international treaties remained valid as long as they were respected by all parties involved, in spite of the usual clauses aiming to secure the parties' adherence

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[29] IEph 8, lines 41–43: λελύσθαι δὲ καὶ εἶναι ἀκύρο[υς] τάς τε ἱερὰς καὶ δημοσίας δίκας, εἰ μή τινές εἰσιν ὑπὲρ παρορισμῶν χώρας ἢ δι' ἀμφ[ισ]βητήσεως κληρονομίας ἐζευγμέναι·

[30] On limitations of actions, see Jones, J. W. 1956: 233–234.

[31] Smyrna 14, lines 41–43: συντελεσθέντων δὲ τῶν ὅρκων τὰ μὲν ἐγκλήματα αὐ|τοῖς τὰ γεγενημένα κατὰ τὸμ πόλεμον ἤρθω πάντα καὶ μὴ ἐξέστω [μηδὲ] ἑτέροις ἐγκαλέσαι περὶ τῶγ κατὰ τὸν πόλεμον γεγενημένων μή[τε]| διὰ δίκης μήτε κατ' ἄλλον τρόπομ μηθένα· εἰ δὲ μή, πᾶν τὸ ἐπιφερόμε[ν]ον ἔγκλημα ἄκυρον ἔστω·

[32] SEG 39:1426, lines 49–52: ἔστω δὲ αὐτοῖς πάντων τῶν ἀδικημάτων [ἐξ οὗ ἂ]ν χρόνου γένηται τὸ ἀδίκημα προθεσμία ἐνιαυτός, ἐὰν δέ τις [διελθ]όντος τοῦ χρόνου γράψηται δίκην ἢ ἐγκαλέσηι, ἄκυρος ἔστω αὐ[τῶι ἡ δίκη]· (... and the statute of limitations for all crimes shall be one year starting from the time the crime was committed, and if someone after this period initiates a trial or accusation, this shall be invalid.)

[33] FD III 1:486 (Staatsverträge III 558), II, A.1, line 19: αἱ δέ [κ]α μὴ ἀνάγηι ἐν τῶι χρόνω[ι τῶι γεγραμμένωι ὁ ἔχων]|[ά ἀναγωγὰ ἀτελὴς καὶ ἄκυρ]ος ἔστω.

to their terms "forever."[34] Their annulment was rarely decided in legal terms,[35] but came as a consequence either of the lack of commitment of the contracting parties, or of their straightforward violation, or by concluding a new or conflicting treaty with a third party.[36] One rare example of annulment is included in the *isopoliteia* agreement between Messene and Phigaleia (dating from 240 B.C.), where, in case of non-abidance of the citizens of Phigaleia to the pre-existing agreements between Messene and the Aitolians, the current agreement shall also be invalidated.[37]

Invalidation of Official Decisions and of City Laws

An invalidation clause (although not using the word *akyros*) appears, already, in what is considered to be the earliest legal inscription from Greece, the law of Dreros in Crete limiting the iteration of the office of the *Kosmos.*[38] All actions of the *Kosmos* taken under the illegal tenure will be annulled (μηδὲν ἅμην) and he will also be subject to a fine.[39] This invalidity of official acts seems to have had an immediate effect. Invalidity thus aims, early on, to safeguard citizens from illegal decisions of public officials. Later on, the law against tyranny and oligarchy of Ilion (dated from 281 B.C.) forbids any manipulation of the city's legislation (κακοτεχνῶν περὶ τοὺς νόμους) "as in a democracy." The decisions obtained in this way, even if the city's highest authorities and the *boule* are involved, are declared a priori invalid and the person responsible for this shall be punished as the instigator of an oligarchy.[40]

Unenforced Laws as Invalid

According to Cleon, in one of the arguments advanced in the Mytilenean Debate (427 B.C.) in favor of the harsh punishment of the Mytileneans for their revolt against Athens, if laws are not properly applied they are rendered invalid.[41] Later,

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[34] On entrenched provisions regarding alliances and treaties, see Schwartzberg, M. 2004:315–318, 322–323.

[35] On the (different) question of annulment of older decrees as a result of treaties of alliance or other positive relationships, see Rubinstein L., 2008: 116.

[36] Lys. Περὶ τῆς δημεύσεως τῶν τοῦ Νικίου ἀδελφοῦ ἐπίλογος, 15.4.

[37] IPArk 28 = IG V,2 419: εἰ δέ κα μὴ ἐν]μένωντι οἱ Φιαλέες ἐν τᾶι φιλ[ίαι τᾶι πὸτ τὼς Μ]ε̣σανίως καὶ Αἰτωλώς, ἄκυρος ἔ[σστω ἄδε ἀ ὁμολο]γία. In this instance, ἄκυρος ἔστω holds the sense of nullification of the agreement operating *ex nunc* (from now on) and concerns all contracting parties.

[38] Youni M., 2010:152–153.

[39] Nomima I.80: ἆδ' ἔϝαδε | πόλι· | ἐπεί κα κοσμήσει | δέκα ϝετίῶν τὸν ἀ|ϝτὸν | μὴ κόσμε̄ν, | αἰ δὲ κοσμησιε, | ὀ(π)ε̄ δικακσιε, | ἀϝτὸν ὀπῆλεν | διπλεῖ | κᾶϝτὸν ἄκρηστον | ἦμεν, | ἆς δο̃οι, | κο̃τι κοσμησιε | μηδὲν ἅμην. ὀμόται δὲ | κόσμος | κῶι δάμιοι | κῶι | ἴκατι | οἰ τᾶς πόλ[ιο]ς.

[40] IMT Skam|NebTaeler 182, I.1, lines 111–116.

[41] Th. 3.37. On citations regarding the laws rendered valid (κυρίους) only if actually applied by the courts, see Harris E. M. 2013: 99. On the reasons proposed on why the Athenians did not repeal unenforced laws, see Wallace, R.W. 2012: 117–123.

the verb ἀκυρόω is used of a law, in the meaning "to be disregarded," in the Greek transcription of the *lex romana de piratis persequendis*[42] found in Delphi (ca. 101–100 B.C.),[43] ordering the Roman Governors of the Provinces of Macedonia and Asia to take measures against pirates and to insure the collection of public revenues.

Conflicting Laws as Invalid

Direct invalidation of enactments referred to as νόμοι or θεσμοί are rare.[44] One such example is a law of Kyme (Aeol.), dating from the third century B.C., regarding a serious crime and judgments rendered by the *dikasopoi*.[45] If any other law included any clause contrary to this one, it is declared invalid.[46] This term did not aim at a particular statute, but resolved the matter of potential conflicts of laws by stating the supremacy of this legal rule over any conflicting one.

Invalidation of Decrees and Petitions

According to a law passed in Athens in 403/2 B.C., a decree was declared invalid if it conflicted with a law.[47] New legislation sometimes incorporated provisions that nullified previous or inconsistent statutes,[48] but, most often, this was done by giving instructions to physically remove or destroy the older *stele* containing the law.[49] This was the simplest method for invalidating a city's decision *de facto*. In an honorary decree of Priene for Euandros Sabyllou from Larisa in Thessaly (ca 300/290 B.C.),[50] the invalidity clause not only prohibits any proposal that would

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[42] Giovannini, A. – Grzybek, E. 1978: 33–47.

[43] FD III 4:37, C, lines 15–16.

[44] On this matter see Rubinstein L., 2008: 115.

[45] The law allowed the person guilty of the crime to be declared atimos and killed by anyone.

[46] IK Kyme 11, lines 10–13: αἰ δ[ὲ (μὴ) — — —]ι [ἄτιμος θνασ]κέτω, κτεινέτω δὲ αὐτὸν ὁ θέλων· ὁ δὲ ἀ[ποκτείναις]ι [εὐάγης ἔστω κ]αὶ καθαρός· αἰ δέ ποι ἐν νόμῳ τινὶ ἄλ[λο τι γράφηται]ι[ἐνάντιον τῷ ν]όμῳ τούτῳ, ἄκυρον ἔστω· (If not ... he may be killed with impunity and his killer shall be free from pollution and undefiled. If anything contrary to this law is written in another law, it shall be invalid.)

[47] Hyp. Ath. 3.22: καὶ ὁ μὲν Σόλων οὐδ' ὃ δικαίως ἔγραφεν ψήφισμά τις τοῦ νόμου οἴεται δεῖν κυριώτερον εἶναι. See MacDowell 1962: 128.

[48] In Athens, the decree of Isotimides, which barred anyone who had confessed to an act of impiety from entering the temples and the agora, invalidated a former decree guaranteeing indemnity for disclosures. This decree was the basis for Andocides' conviction and exile from Athens. When the Amnesty of 403 B.C. finally allowed Andocides to return home, he was put on trial in 400 for violating Isotimides decree; he won an acquittal with his defense speech *On the Mysteries*, proving that Isotimides' decree had been annulled, And. 1.8: ἢ περὶ τοῦ ψηφίσματος τοῦ Ἰσοτιμίδου, ὡς ἄκυρόν ἐστιν.

[49] For examples, see Sickinger, J. P. 2008:103, n. 21, 22.

[50] Priene 46, lines 7–10: [ἐὰν δέ τις περὶ τ]ού[το]υ τοῦ ψηφίσματος ἢ τῆς στή̣ι[λης τῆς νῦν ἀ]πο[κα]θισταμένης ἢι ἄρχων προτιθῆι[ι ἢ ἰδιώτης, συ]γ[κα]ταλύειν βουλόμενος τὴν δωρεὶ[ὰν τοῦ δή]μου, ἄ̣[κ]υρα ἔ̣σ̣τ̣ω· (If anyone, magistrate or private person,

invalidate the current decree, but also guarantees the physical integrity of the *stele* containing it, which had been just re-erected.

In general, in decrees, *akyron* is used in the sense of nullifying the legal effects of an act.[51] The act is not "non-existent," but its effects are revoked. On one occasion, a petition to dedicate a statue in a public space is invalidated by a decree. The decree concerns the *temenos* of Asklepeios in Rhodes (date unknown); it prohibits anyone from submitting a petition to erect a statue or other dedication at a certain area of the *temenos*, in order not to obstruct the walks, and policemen are instructed to remove to another place any dedication erected in spite of the interdiction.[52] Sometimes, a specific action or proposal that may diminish the impact of a donor's benefaction may also be declared "invalid." In a dedication inscription from Cos (dated from the end of the first or beginning of the second century A.D.), a donor prescribes that no other statue may be erected on the same platform and that any attempt to contravene this shall be immediately "null and void."[53]

Entrenchment Clauses

The most frequent occurrence of the ἄκυρον term in decrees concerns entrenchment clauses, provisions that make decisions unamendable,[54] which, as Rubinstein has correctly noted,[55] can be read as "a *guarantee issued to a particular individual, group of individuals, or to another community*" regarding decisions that directly affect them.[56] The decree of the city of Nagidos concerning the *isopoliteia* with Arsinoe invalidates any proposal by an archon or a rhetor that contests the land

makes a proposition regarding this decree or the stone which is now restored, aiming at undoing the demos' donation, this shall be invalidated.)

[51] Invalidity concerned actions. A judicial verdict could, although indirectly, annul a previous refusal to act, as it illustrated in the speech by Lys. 9.19. The speaker (Polyaeunus) had been fined by the generals for slander, a fine which was subsequently reported to the treasurers to collect as unpaid debt, the latter refusing to do so, on the grounds (if we are to believe the speaker) that it had been irregularly and maliciously imposed. The speaker is asking the jury not to "invalidate the decision of those who have acted on a better, and on a just, consideration" (μήτε τοὺς βέλτιον καὶ δικαίως βουλευσαμένους ἀκύρους καταστήσητε).

[52] Suppl. Epig. Rodio 1, lines 10–22.

[53] Iscr. di Cos ED 257, frg. bcd.1, lines 3–30.

[54] On entrenchment clauses in Athens, see Schwartzberg, M. 2004: 311–25, who maintains that "the Athenians used entrenchment in highly restrictive contexts: in certain financial decrees and in alliances and treaties. ... exclusively for narrow, strategic purposes in both the international and the domestic contexts, and did not extend them to laws regulating the democracy."

[55] See Rubinstein L., 2008:117–118, identifying and categorizing a total of 80 examples of entrenchment clauses.

[56] IC II v 35.

given to the Nagidians.[57] In Thasos of early imperial times, the same clause guarantees measures regarding the donation of lands.[58]

When a future decree proposal (γνώμη) is declared invalid, this invalidates the whole decree voting procedure.[59] Detailed terms in entrenchment clauses[60] often mention both private persons (ἰδιώτης) and city officials (such as ἄρχοντες, ῥήτορες, ἐπιμήνιοι) who may be involved, the bodies before which such propositions may take place (ἐμ βόλλα μηδὲ ἐν δάμω) as well as all the steps leading to the adoption of new decisions (such as εἴπηι ἢ πρήξηται ἢ προθῆι ἢ ἐπιψηφίσηι ἢ νόμον προθῆι), orally or in writing (ἢ ὑπογραμματεὺς ἀναγνῶι ἢ γραμματεὺς ἀναγράψηι) sometimes adding, for the sake of exhaustivity, the annulment of decisions "in any other possible way" (τρόπωι τινὶ ἢ παρευρέσει ἡιοῦν). The legislation process being an expression of the sovereignty of the demos, the invalidity clause attempts to act as a kind of limitation, for future times, of the operation of the majority principle,[61] in order to ensure that no valid decision shall be reached in the future regulating the same matter in a different way, although the extent to which this measure was indeed effective is dubious. Examples of rules that include a detailed enumeration of all possible ways of obtaining amendments, declared a priori invalid, include the law of Teos regulating the salaries of instructors for the youth[62] and a decree of Chios forbidding the use of funds for other purposes than the ones prescribed.[63]

In entrenchment clauses, invalidity is either explicit or may be implied, if (only) penalties or curses are directed against anyone who tries to annul the current provisions.[64] Because invalidity was apparently not always thought to be sufficient to deter citizens from introducing changes in the future, penalties were sometimes provided[65] in order to add a financial risk and ensure the effectiveness of the entrenchment clause. Combined sanctions (invalidation plus fine) are included in sacred laws[66] from the Asklepieion of Kos (dated from the end of the first century

[57] SEG 39:1426, lines 39–45.

[58] IG XII, Suppl. 364, lines 7–20.

[59] Cf. the use of ἄκυρον in the Athenaion Politeia, on the lack of sovereignty of the Boule to decide by itself. Arist. Ath.Pol. 45.4: τούτων μὲν οὖν ἄκυρός ἐστιν ἡ βουλή· προβουλεύει δ'εἰς τὸν δῆμον, καὶ οὐκ ἔξεστιν οὐδὲν ἀπροβούλευτον οὐδ' ὅ τι ἂν μὴ προγράψωσιν οἱ πρυτάνεις ψηφίσασθαι τῷ δήμῳ. κατ' αὐτὰ γὰρ ταῦτα ἔνοχός ἐστιν ὁ νικήσας γραφῇ παρανόμων.

[60] On entrenchment clauses and different measures aiming to preserve important resources and to guarantee compliance with relevant rules in late Hellenistic and imperial times, see Harter-Uibopuu, K. 2013 (forthcoming).

[61] The interdiction and nullity clause for future decree propositions may have constituted, in Athens, grounds for a *graphe paranomon*, although we have no such concrete example.

[62] Chios 27, lines 5–8.

[63] Teos 41, lines 40–46.

[64] On examples of such inscriptions, see Sickinger, J. P. 2008: 104, n. 24, 25.

[65] See Rubinstein, L., 2012:329–354.

[66] IK Kalchedon 10, lines 10–13.

B.C.), concerning the sale of the priesthoods of Aphrodite Pandamos and Pontia[67] and of Asklepios,[68] invalidating any decree proposing a different use of the *thesauros* of the sanctuary. The penalties are not linked to any concrete damage (βλάβη) that may be incurred by any party,[69] to any demand for restitution, or to any unjust enrichment or transfer of property, but rely upon the (implied) public interest and the collective (moral) damage of the community or the sanctuary, in case the current regulations are changed.[70] The combination of legal invalidation and penalties thus introduces to Greek law the concept of what latter would be defined by the Romans as a *lex perfecta,* namely, the inclusion of both a sanction and the nullity of anything contrary to a particular clause of the law, as well as the interdiction of future amendments of the statute. The earliest Greek occurrences of such provisions date from the early fourth century B.C., in an honorary decree from Athens for Sthorys the Thasian (dated 394/3), where invalidation combined with penalties is threatened against anyone "nullifying" these honors.[71] Where penalties are combined with invalidation, in some decrees concerning matters of particular importance for the city, the collection procedure for the fines was also defined ad hoc, as in a fourth century B.C. citizenship decree from Thasos[72] and in a decree of Miletus[73] (205/4 B.C.) instituting a public *eisphora* (contribution) for the citizens in order to cover public deficit.[74] The penalties associated with the invalidation clause may also be escalating according to the importance of the matter regulated or the person honored by the decree. A decree by the Nasiotai, bestowing honors to Thersippos (ca 315 B.C.) for his benefactions in connection with Alexander's campaigns, invalidates all future amendments in combination with severe penalties, such as fines, threats of *atimia* and treason charges for acting against the democracy, plus a curse against anyone proposing their abolition.[75]

Invalidity clauses may also be included in decisions issued by private associations, forbidding that any of the honors bestowed upon their benefactors may be "postponed or cancelled"[76] and this, as it is stated in one decree, "in view of the

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[67] SEG 50:766, back face.1, lines 20–24.

[68] SEG 51:1066, frg. ab, lines 31–35.

[69] On *blabe* initially limited in cases of damages included in the law, see Velissaropoulos-Karakostas, J. 1993:191.

[70] On the notion ἀδικεῖν τὴν πόλιν ("injure the polis"), see Velissaropoulos-Karakostas, J. 1993:91–94.

[71] IG II² 17, lines 31–33.

[72] IG XII 8, 267, lines 11–16. On this inscription see Fournier, J. 2012: 360–361. Cf. also, the invalidity clause in IG XII,8 264 from Thasos (beginning fourth century B.C.).

[73] See Migeotte, L. 1984: no 97.

[74] Miletos 41 Lines 24–29.

[75] IG XII,2 645, b.1: lines 32–58.

[76] Examples include an honorary decree from Rhodes (second century B.C.) of the κοινὸν τὸ Ἀλιαδᾶν καὶ Ἀλιαστᾶν for their benefactor Dionysodoros IG XII,1 155, face III.85, lines 95–100.

importance of making an example of the benefaction."[77] Invalidity in entrenchment clauses in relation to endowments is aimed at preventing any different use of the funds or of the property donated by the benefactor,[78] as in the testament of Epicteta (dated around 210–195 B.C.).[79] It also guarantees that no alteration of the exact terms of use of the donation[80] will take place and nullifies any transaction that may jeopardize the capital donated.[81] The invalidity clause prohibiting future decree proposals that differed was aimed at preserving the benefactor's instructions and will (κατὰ τὴν τοῦ ἀναθέντος βούλησιν), as is clearly stated in an honorary decree from Eretria (ca 100 B.C.).[82]

Invalidity of future decrees or deliberations was sometimes mentioned as having "immediate" effect.[83] The expression οὐδὲν ἔλασσον (no less), preceding in some decrees the invalidity clause, shows it was considered the last, but not least, necessary complement of entrenchment clauses.[84] In Roman times, in view of the change of political settings, invalidity is now sometimes aimed at the archons' orders or the city's *ekdikos* (who represented the city's interests) proposals (or anybody else's), and the fines are collected by the Roman *fiscus*.[85] In a decree from Miletus concerning the city's and the imperial cults, any different use of the funds

[77] Honorary decree (dated after 153/2 B.C., found in Delos) of the *koinon* of the Βηρυτίων Ποσ[ειδω\νιαστῶν ἐμπόρω]ν καὶ ναυκλήρων [καὶ ἐ]γδοχέων for their Roman benefactor, the banker Marcus Minatius Sextus, ID 1520, lines 57–61.

[78] A decree from Eresos in Lesbos (dating from the middle of the third century B.C.), on Agemortos' donation of some income to be used for sacrifices, forbids and invalidates any encumbrance or any other use of the income and any such proposal before the council or the assembly, IG XII,2, 529, lines 3–9.

[79] In the inscription recording the legacy she left to her daughter Epiteleia, Epicteta provided for the founding of a sanctuary to the Muses and her own deceased ancestors and for the establishment of an association dedicated to the worship of the Muses. Her will included an invalidity clause for future amendments by third parties, IG XII, 3 330, B1, lines 263–267.

[80] Decree of Didyma establishing annual distribution of food on the occasion of the birthday of Eumenes II (dated 159/8 B.C.), Didyma 13, lines 41–49.

[81] The decree of Delphi of 160/59 B.C. regulating the usage of a donation by king Attalos of an important amount of money to the city to be used for the children's education and for sacrifices, invalidates and punishes by fine any proposal or decision for a different use than the one prescribed by the decree, Syll.³ 672, lines 15–19.

[82] IG XII,9 236, lines 51–61.

[83] SE 241, frg. h.col. 2.1, lines 7–8.

[84] In one instance, in a decree of Mytilene instituting celebrations in the context of the imperial cult, the city threatens with invalidity all actions or proposals of private citizens or magistrates contravening the celebrations and relevant procedures, these being considered synonymous with the safeguard of the city's "liberty and democracy and *sympoliteia*," since the city had recently seen its status as an ally of Rome confirmed by Augustus, IG XII,2 59, lines 6–12.

[85] In an honorary decree of the boule and demos for Gaius Caninius Synallasson found at Iasos, regulating the foundation he established for the gymnasium of the *neoi* (ca. 117–138 A.D.), Iasos 21, lines 54–67.

and any act contravening the purpose "secured" by this statute (τοῖς διὰ τοῦδε τοῦ ψηφίσματος ἠσφαλισμένοι[ς]), would be invalid and the archon introducing such a proposal would be guilty of impiety against the gods and guilty ὡς ἐκ καταδίκης (as if sanctioned by a court of law) of the payment of a fine.[86] Three documents from Ephesus, all dating from A.D. 104, show how invalidity had become a standard term aiming to secure the proper execution of the will of the benefactor, which was ratified both by the Roman official's and by the city's decisions. The invalidity clause of future amendments is first mentioned in the letter of Caius Vibius Salutaris offering several benefactions to the boule and demos of Ephesus in form of a legal document,[87] second, the proconsul Gaius Aquillius Proculus, in his letter to the *archontes,* boule, and demos of Ephesus, approves the benefaction of Gaius Vibius Salutaris and ratifies the invalidity clause[88] and third, in the honorary decree of Ephesos for Gaius Vibius Salutaris, legal invalidity strikes any contrary decree proposal.[89]

3. Invalidation of Transactions and Private Legal Acts

In the third category, we will examine legal invalidation clauses in inscriptions that affected private transactions and legal acts, except for contracts, which will be examined in Section 4. First, transactions might be invalidated for being imposed upon individuals under a different political regime than the one currently in place. In the so-called "constitution" of Cyrene, imposed or accorded by Ptolemy I (before 321 B.C.), in a mutilated passage, the invalidation of sales of houses and fields is prescribed, most probably concerning sales forced upon the parties.[90]

The prescriptions of the law against tyranny and oligarchy of Ilion (dated from 281 B.C.) are quite explicit. They include a series of clauses invalidating several legal acts involving the collaborators of an undemocratic regime. Forbidden transactions include the sale and lease of land, houses, animals, slaves (or anything else), as well as the dowries, which benefitted any person who served under a tyrant or an oligarchy.[91] The acquisition of property through any transaction involving these persons, as it is (twice) stated in the law, will be invalid. Anyone who has suffered such an injustice can pursue the offender[92] and the property will be returned

[86] Miletos 15, lines 18–33.
[87] Ephesos 212, lines 315–325.
[88] Ephesos 213, lines 357–365.
[89] Ephesos 115, lines 106–116.
[90] SEG 18:726, lines 69–70.
[91] IMT Skam|NebTaeler 182, I.1, lines 53–70, 106–111. Archons include those having served as a *strategos*, or any other archonship subject to *logodosia* (the procedure of control after the end of their term) or who is responsible for registering on a public list the names of the citizens and metics.
[92] Clauses as the above may have followed solutions adopted on other occasions regarding the well-known problem of disposition of the properties the exiles under a previous

to its former owner. The invalidity clause was thus protecting the citizens and metics from transactions, which, in spite of having all the external elements of legality, may not have been freely negotiated and may have been a product of duress. The particular circumstances of any such transaction are considered irrelevant, as long as one of the contracting parties is a person involved in the undemocratic government.

Under different conditions, invalidation of a sale of land is threatened as a preemptive measure destined to secure compliance of the citizens with the city's settlement decisions with another community and constitutes part of the decision's implementation procedure. In the *symbolon* agreement between the cities of Stymphalos in Arkadia and Sikyon-Demetrias in Corinthia[93] (dated around 303–300 B.C.), regulating the process of adjudicating disputes between citizens, a procedure for reaching agreements between the parties is set out, which will be drafted in writing (σύνγραφον) in presence of three witnesses possessing property, whereas, any other agreement or transaction shall be invalid. In the decree of Miletus concerning the sharing of citizenship with Cretans, lands in the vicinity of Myous are granted to the new citizens and it is forbidden to sell these plots of land for twenty years. If any such sale takes place, it shall be invalid. A trial may also be brought by any citizen of Miletus against both the seller and the buyer for committing an injustice against the city, by following the same procedure as under the *xenikos nomos*.[94]

Although it does not target private transactions but possession of land by sovereign cities, it is worth mentioning that in the peace treaty between Miletus and Magnesia ad Maiandros (dating from 175 B.C.), the two cities, in order to avoid any potential future conflict regarding contested areas, mutually forbid any possession of the land, of the *peraia* and of the citadels belonging to each other, under any pretext, declaring invalid any "*bequest, dedication, consecration or possession, under any pretext or in any way, performed at any time by the contracting parties or through intermediaries*."[95]

The disputed occupation of public territory within a community was the object, in Roman times, of the decree of the Battynaioi[96] from Macedonia (144/145 or 192/193 A.D). Distinguishing three categories of inhabitants, the Battynaioi, the Orestes and the *Eparkhikoi*, the *ekklesia* of the Battynaioi decides to prohibit the sale of public land to the *eparkhikoi* (with one exception), imposing a fine in case of

regime, for which several solutions had been adopted in Greek cities, following the return of the exiles under Alexander.

93 IPArk 17, B, lines 102–108. Arnaoutoglou, I. 1998:133–137.

94 Miletos 54, e.1, lines 1–11.

95 Miletos 60 (Milet I 3, 148) lines 45–47. This clause takes care to enumerate all lands included in the cities' respective territories and to include reference to what must have been notorious and usual legal tricks in border conflicts, such as the declaration of an occupied territory as sacred, its dedication to a divinity, or the acquisition of lands through intermediaries.

96 Papazoglou, F. 1979:363.

transgression and invalidating all the sales already executed, the objects of which must be returned by the buyers.[97]

In other instances, private legal acts and contractual rights may be invalidated if one of the parties does not comply with the terms of an agreement. The earliest such occurrence is found in two inscriptions from Attica, dating from the end of the fourth century B.C., containing lease documents, by which the members of a religious association (*orgeon*) lease for an indefinite period of time a private sanctuary to an individual and to his descendants. In the first,[98] the lessees undertake several obligations, such as the payment of the rent at a set date each year and to maintain the sanctuary in a specific state regarding the cult. In case they fail to make the agreed use of the sanctuary, or if they fail to make payment, the lease will be annulled and the *orgeones* may claim back the *temenos*. In the second lease document,[99] the lessee may use the sanctuary and the houses built within it, but he must perform some maintenance work and he is allowed to make any construction he likes. He must pay the rent agreed upon on the set dates and to offer "open house" during the celebration of the *orgeones*'s rites. In case he fails to comply with any of these obligations, his lease shall be invalidated, he will lose all the materials that were added to the building and the *orgones* will be free to lease the property to anyone they like.

In a similar manner, at the end of a document from Mylasa concerning a lease of land, invalidation is threatened against any cession of the property to a third party.[100] In Mylasa again, a series of prohibitions regarding the lease of land to Thraseas by the *phyle* of Otorkondeis include, in case of nonpayment of the rent, the annulment of the lease and the invalidation of any "cession," by which perhaps a sub-lease is meant.[101] In such case, the current lease "will not exist anymore" (οὐχ ὑπάρξει αὐτῶι ἡ μίσθωσις), whereas any cession will be invalid (ἄκυρος ἔστω ἡ παραχώρησις).[102] Such invalidity clauses may have constituted a standard provision in lease agreements, aiming to protect owners from the frequent refusals of lessees to comply with the terms of the lease, thus permitting them to easily recover their property.

In other inscriptions, transactions forbidden by law may also be invalidated. A decree from Halasarna in Cos, dating from the middle of the third century B.C., prohibits the priest and the *timouchoi* from receiving or offering any loan by pledging the sacred vessels of the sanctuary of Apollo.[103] If any loan is granted

[97] EAM 186, lines 39–40.
[98] IG II² 2501.
[99] IG II² 2499.
[100] IMyl 221, lines 2–3.
[101] See also IMyl 218 l. 8.
[102] IMyl 208, lines 1–12.
[103] SEG 54:743. On this and other interdictions to give surety, see Velissaropoulos-Karakostas, 2011:153–156.

contrary to the terms of the decree, any such security shall be invalid. The debt would thus remain unsecured and both the lender and the debtor would receive, in addition to fines, the wrath of the god, so they may know better in the future and refrain from concluding loans contrary to the terms of the decree.

A particular case of invalidity is included in the law of Aegiale in Amorgos dating from the late second century B.C., regulating the administration of the endowment[104] of Kritolaos, who bequeathed a sum of 2000 drachmae to fund a festival to commemorate the heroisation of his deceased son, Aleximachos. The extraordinary terms on the lending of the capital prescribe that it will be lent in shares of up to 200 drachmae, with an interest of 10% and real securities provided by the debtors, worth 2000 drachmae (ten times the amount lent). Any repayment of the capital was forbidden and for any such payment received by any *archon*, he would be personally liable to pay a fine of 1000 drachmae to the city. In what constitutes a unique instance, such payments are declared "invalid," but the debtor's obligation remains valid. This complicated arrangement turned what were individual loans into perpetual payments of interests on a capital never returned, thus securing new sources of income and financing, in perpetuity, the scope of the foundation.[105]

Invalidity is also threatened in sepulchral inscriptions, by which the deceased reserves the right of use of a grave monument for himself and his family, forbids any selling of the grave, and declares invalid any such transaction, often also adding a fine for transgressors. Such terms are included in the *Mnemeion* inscription by Hermogenes Menodorou[106] in Aphrodisias, in a funerary inscription from Didyma[107] and in the inscription by Apollonios Symmacchou from Smyrna, who is reserving the *mnema* for himself and his relatives and forbids any future sale of the grave.[108] In another inscription from Thebes in Thessaly, forbidding any foreign corpse to be buried in the tomb under threat of a fine payable to the city of Thebes, the expression used is that "this *attempt* shall be invalid."[109]

Among private legal acts, testaments were the ones most likely to be nullified ex post. Obtaining the nullification of testaments by heirs claiming the inheritance was an issue often brought before the Greek courts, as illustrated, among others, by Isocrates' *Aeginiticus*[110]:19 and Isaios' *Cleonymus*aeus1.[111] One late example of the

[104] Harter-Uibopuu, K., 2011:119–139, spec. 126.
[105] IG XII,7 515, lines 27–29.
[106] LW 1639, lines 6–12.
[107] Didyma 644*5, with penalty, line 3.
[108] Smyrna 347, line 9–15.
[109] AE (1929) 145,18, lines 3–7.
[110] Isocr. Aegin. 3.6:19.: Νῦν δ'αὐτῇ τοσούτου δεῖ μεταμέλειν ὧν εἰς ζῶντ' ἐξήμαρτεν, ὥστε καὶ τεθνεῶτος αὐτοῦ πειρᾶται τήν τε διαθήκην ἄκυρον ἅμα καὶ τὸν οἶκον ἔρημον ποιῆσαι. 15.8:19.: Καίτοι τίνος ἂν ὑμῖν ἀποσχέσθαι δοκοῦσιν, οἵτινες ζητοῦσι πείθειν ὑμᾶς ὡς χρὴ τὰς διαθήκας ἀκύρους ποιῆσαι τῶν μὲν νόμων οὕτως ἐχόντων, ὑμῶν δὲ κατ' αὐτοὺς ὀμωμοκότων ψηφιεῖσθαι; 44.4:19.44: Πολλοῦ <γ'> ἂν

testator wishing to avoid such post mortrem complications is the testament of Epikrates from Lydia (second century A.D.),[112] a long document in which the testator also curses anyone who may contravene or annul his will (μου τὴν ⌊προγεγραμμένην διάταξιν). On the other hand, a previous will could be nullified in vivo if the testator himself decided to change it. In an inscription from Lycia, dating before A.D. 43, bearing on one of its sides a testament by Artapates, the testator, who now wishes to leave all his immovables to the gods Leto, Apollo and Artemis to be "*sacred, inalienable, and not subject to serve as real securities*," starts by declaring null all testaments of his prior to this one, "*in any way these may have been drafted*."[113] Inheritances could also be invalidated if they were executed against the law. In an inscription from Thisbe in Boeotia, dating from in the third century A.D., regarding the grant of the right of *emphyteusis* (a long-term lease of land) regulated by the Roman authorities, it is stated that if any person, to whom such a right over the land is granted, bequeaths by testament the land to a third party, this so-called "donation" shall be null and the plot of land will revert to the city.[114]

Invalidity is also frequently attested in manumission inscriptions. In a "sacral" manumission by means of an *iera oni* from Delphi (dated 168 B.C.),[115] a fictive sale and consecration of a female slave to the god, Sostrata having entrusted her sale to Apollo, the next day the sale is declared revoked (ἠρμένη) and null (καὶ ἄκυρον). As a result, she gains her freedom and independence for life, and is now free to do and to go as she pleases. In other cases it is the manumission that will be invalidated and the *apeleutheros* (freedman) will revert to his former status of slavery if he does not comply with the terms set out in the manumission act by his former master, especially the *paramone* condition (the obligation sometimes imposed upon the freedman to remain close to his former master and offer him services),[116] or if he fails to pay back the *eranos*,[117] the loan that financed his manumission. Similar conditions included obligations such as not to move out of town and to seek the master's advice,[118] to stay at the master's house until the daughter of the family

δεήσειεν ἀχθεσθῆναι κατὰ τοὺς νόμους ὑμῶν ψηφισαμένων, ἀλλὰ πολὺ ἂν μᾶλλον εἰ τὰς τῶν παίδων διαθήκας ἀκύρους ἴδοι γενομένας.

[111] Is. 1.21aeus1.21.

[112] SEG 54 1221, lines 94–105.

[113] TAM II 261, face b.1, lines 7–10.

[114] IG VII 2226, frg. D.1, lines 5–9.

[115] SGDI II 1746, lines 4–6, καθὼς ἐπίστευσε Σωστράτα τῶι θεῶι τὰν ὠνάν, ὥστε τὰν προτερασίαν ὠνὰν ἀρμέναν εἶμεν καὶ ἄκυρον, ἐφ' ὥιτε ἐλευθέραν εἶμεν καὶ ἀνέφαπτον ἀπὸ πάντων τὸμ πάντα βίον, ποιέουσα ὅ κα θέληι καὶ ἀποτρέχουσα οἷς κα θέληι. See Zelnick-Abramovitch, R. 2005:86f.

[116] FD III l. 6; 3:6; 3:8; 6:87; 6:92; SGDI II 1689; 1702; 1721; 1747; 1804; 1811; 1819; 1832; 1884; 1944; IG IX,1² 3:640; 3:639,4 ; Darmezin, Affranchissements 100,135.

[117] SGDI II 1791; FD III 6:95

[118] Cf. invalidity in case of violation of the obligation to remain in Delphi, SGDI II 1830 and the case of a Syrian lady named Asia (ca. 170–157/6 B.C.), SGDI II 1718, lines 10–14.

came of age and got married,[119] to bury the masters when they die and to perform their funeral rites.[120] In one inscription from Beroia (ca 239–229 B.C.), it is the liberty of their women and children that is declared "invalid," if the former slaves do not comply with whatever the master ordered.[121] Property transfers by the *apeleutheroi* to third parties, other than the master, if they had no heir of their own, could also be invalidated.[122] On the other hand, in one case, the decree states that if the *apeleutheroi* are arrested and reduced to slavery by a third party, their enslavement would be "invalid" and the offender would be liable to pay a fine.[123]

4. Invalidity and Contracts in Athens

To what extent do the ἄκυρον clauses in inscriptions add to our understanding of contractual obligations, as referred to in Athenian literary sources? One point on which no consensus has been reached is whether contractual liberty could extend to include even agreements that were forbidden by the law. The basis of Athenian contractual commitment was agreement,[124] according to the commonly cited law ὅσα ἄν ἕτερος ἑτέρῳ ὁμολογήσῃ κύρια εἶναι (whatever one agrees with another is legally valid).[125] One part of the modern doctrine considers that "whatever" included even what was prohibited by law or by decree. The thesis of Gernet,[126] that contracts in Athens did not have to be in accordance with the laws, and that consensus could thus override the law, has, I think, rightly been criticized.[127] The argument in favor of total contractual liberty puts forth passages of Demosthenes, which seem to stress

[119] FD III 3:21, lines 17–20.

[120] IG IX,1 42, lines 8–17.

[121] EKM 1. Beroia 45, lines 24–27.

[122] SGDI II 1891, lines 26–33.

[123] Cf. also the same in IG IX,1 39, dated in the second century A.D.

[124] On this law, thought to have originated from judicial procedure, see Pringsheim, F. 1950:13–34; Thür, G. 1977:180–185. On *homologia* as contract, see Velissaropoulos-Karakostas, J. 1993:163–65.

[125] Hyp. 3.13: ἐρεῖ δὲ πρὸς ὑμᾶς αὐτίκα μάλα Ἀθηνογένης, ὡς ὁ νόμος λέγει, ὅσα ἂν ἕτερος ἑτέρῳ ὁμολογήσῃ, κύρια εἶναι. τά γε δίκαια ὦ βέλτιστε· τὰ δὲ μὴ τοὐναντίον ἀπαγορεύει μὴ κύρια εἶναι. ἐξ αὐτῶν δέ σοι τῶν νόμων ἐγω φανερώτερον ποιήσω. Dem. 47.77: ἀνάγνωθί μοι τὸν νόμον καὶ τὴν μαρτυρίαν, ὅς κελεύει κύρια εἶναι ὅ τι ἄν ἕτερος ἑτέρω ὁμολογήση; 48.54: πῶς γὰρ οὐ μαίνεται ὅστις οἴεται δεῖν, ἃ μὲν ὡμολόγησεν καὶ συνέθετο ἑκὼν πρὸς ἑκόντα καὶ ὤμοσεν. 56.2: καὶ τοῖς νόμοις τοῖς ὑμετέροις, οἳ κελεύουσιν, ὅσα ἄν τις ἑκὼν ἕτερος ἑτέρῳ ὁμολογήσῃ, κύρια εἶναι. Pl. Symp. 196c: ἃ δ' ἂν ἑκὼν ἑκόντι ὁμολογήσῃ, φασὶν "οἱ πόλεως βασιλῆς νόμοι, δίκαια εἶναι." Din. 3.4: καὶ ὁ μὲν κοινὸς τῆς πόλεως νόμος, ἐάν τις ἑνὸς ἐναντίον τῶν πολιτῶν ὁμολογήσας τι παραβῇ τοῦτον ἔνοχον εἶναι κελεύει τῷ ἀδικεῖν.

[126] Gernet, L. 1937: 111–44. See also Phillips D. D. 2009:89–112; Aviles, D. 2011:27–28, "all available evidence points to the wording of the general law of contracts not imposing any limitation on the validity of agreements and thus validating even such agreements that were obviousy at odds with justice."

[127] Cantarella, E. 1966:88–93.

the omnipotence of contracts concluded in the correct form,[128] in the presence of witnesses or sworn by oath. Contracts may have included the standard provision[129] "κυριώτερον δὲ περὶ τούτων ἄλλο μηδὲν εἶναι τῆς συγγραφῆς,"[130] mentioned in the speech of Demosthenes against Lacritos: "ἡ μὲν γὰρ συγγραφὴ οὐδὲν κυριώτερον ἐᾷ εἶναι τῶν ἐγγεγραμμένων, οὐδὲ προσφέρειν οὔτε νόμον οὔτε ψήφισμα οὔτ' ἄλλ' οὐδ' ὁτιοῦν πρὸς τὴν συγγραφήν."[131] The debate about the sense of the *kyria syngraphe* ("a contract is valid") is a long one.[132] One of the most plausible explanations is that it declares the written document to be the most valid instrument of proof before a court of law.[133] The document was meant to constitute the most authentic embodiment of the contracting parties' mutual obligations, against which no law or decree may serve as proof of different obligations;[134] it did not mean that this document could override legal rules and agree that something forbidden by law was valid.[135] Otherwise, it would suffice to introduce the οὐδὲν κυριώτερον (lit. "nothing is more valid") clause, for example, in private loan agreements, in order to set aside rules such as the Solonian *seisachtheia*,[136] if we are to presume that this law did not explicitly declare invalid all borrowing against one's liberty as security.[137] If absolute contractual liberty was in Athens set above the rule

[128] Dem. 42.12: τὸν κελεύοντα κυρίας εἶναι τὰς πρὸς ἀλλήλους ὁμολογίας, ἃς ἂν ἐναντίον ποιήσωνται μαρτύρων.

[129] Lanni, A. 2006: 163–164. Among the few similar references in pre-hellenistic times, see the loan inscriptions of Arkesine in Amorgos, cf. IG XII, 67; 69; 70.

[130] Dem. 35.13: And in regard to these matters nothing shall have greater effect than the agreement.

[131] Dem. 35.39: The agreement does not permit anything to have greater effect than the terms contained in it, nor that anyone should bring forward any law or decree or anything else whatever to contravene its provisions.

[132] For further references and a presentation of different views, see Velissaropoulos-Karakostas J. 2001:103–115.

[133] For this sense of the clause and relevant bibliography see Velissaropoulos-Karakostas, J. 1993:176–179.

[134] Beauchet, L. 1897:80–82, argues that the *syngraphe* could not override the laws of "public interest." On the *homologia* as a preparatory step of court proceedings, by which the parties are merely agreeing that the contents of a statement must not be denied to the dikasterion, see Thür, G. 1977:157.

[135] Cf. Wolff, H. J. 1966:575, "A partir de là, les contrats grecs se sont développés sous forme de «disposition destinée à des fins déterminées» (Zweckverfügung). Les parties contractantes étaient libres d'en fixer le but, à la seule condition de ne pas violer les dispositions légales." Pringsheim, J. 1950:497–500, also agrees that "A contract of sale is void if one of its essential elements is missing or if the sale is forbidden by law." See also Velissaropoulos-Karakostas J. 2001:108, "la renonciation à tout autre texte législatif ou contractuel dont le contenu se heurte à celui de la syngraphè n'a aucun effet lorsque le contrat est illicite."

[136] Ar. Ath. Pol. 6.1.

[137] Phillips D. (2009:107) argues that Solon's laws, such as the law banning the export of agricultural produce other than olive oil "presumably rendered contracts concluded for

of law, the whole edifice of the city's legislation would prove inefficient and inapplicable. Such a total contractual "laissez-faire" is incompatible with what we know about the respect for the rule of law,[138] as an expression of the will of the people and of democracy itself, particularly in a city where the "legality" even of decree propositions could be questioned by anyone, through the *graphe paranomon* procedure.[139] Plato in the *Laws* argues in favor of excluding from binding contracts those forbidden by law or decree (ὅσα τις ἂν ὁμολογῶν συνθέσθαι μὴ ποιῇ κατὰ τὰς ὁμολογίας, πλὴν ὧν ἂν νόμοι ἀπείργωσιν ἢ ψήφισμα),[140] and this cannot be a rule of his own devising. The invalidity clauses included in decrees and *symbola* agreements, as early as the mid-fifth century B.C., show that Plato's statement has been wrongfully dismissed as not corresponding to Athenian legal reality.[141] Further evidence in the same direction can be found in the statute attributed by Gaius to Solon, allowing contractual liberty to members of associations "*unless forbidden by public statutes*,"[142] in Demosthenes' statement that only adoptions which are conform to the law are valid,[143] and in Hyperides' argument that both betrothals and testaments were nullified if illegal.[144] We may also note that the various legal conditions for a valid sale and transfer of property described by Theophrastus[145]

such purposes invalid." This invalidity may have been rather implicit than *expressis verbis*.

[138] See Aes. 1.6, 3.6–7, where the rule of law is considered one of the characteristics of democracy.

[139] On the place of *nomos* in Athenian law and rhetoric, see Carey, C. 1996:33–46.

[140] Pl. Leg. 920d.: whenever a man undertakes and fails to fulfill his agreement—unless it be such as is forbidden by the laws or by a decree.

[141] Pringsheim, F. 1950:40, "Plato's descriptions, on the other hand, must not be taken as simply reproducing actual law," 42 "The texts of Plato … must not be taken as giving strict legal rules," Phillips D. 2009:89–122, who maintains that (p. 95) this law stated by Plato "is a measure of his own devising."

[142] D. 47.22.4 (Gaius 4 ad l. xii tab.): *Sodales sunt, qui eiusdem collegii sunt: quam Graeci hetaireian vocant. His autem potestatem facit lex pactionem quam velint sibi ferre, dum ne quid ex publica lege corrumpant. Sed haec lex videtur ex lege Solonis tralata esse. Nam illuc ita est:* ἐὰν δὲ δῆμος ἢ φράτορες ἢ ἱερῶν ὀργιῶν ἢ ναύται ἢ σύσσιτοι ἢ ὁμόταφοι ἢ θιασῶται ἢ ἐπὶ λείαν οἰχόμενοι ἢ εἰς ἐμπορίαν, ὅτι ἂν τούτων διαθῶνται πρὸς ἀλλήλους, κύριον εἶναι, ἐὰν μὴ ἀπαγορεύσῃ δημόσια γράμματα.

[143] Dem. 44.7: ὁμολογοῦμεν δ'ἐναντίον ὑμῶν δεῖν τὰς ποιήσεις κυρίας εἶναι, ὅσαι ἄν κατὰ τοὺς νόμους δικαίως γένωνται.

[144] Hyp. 3.16: ἀλλὰ μὴν οὐκ ἀπέχρησε τῷ νομοθέτῃ τὸ ἐγγυηθῆναι τὴν γυναῖκα ὑπὸ τοῦ πατρὸς ἢ τοῦ ἀδελφοῦ, ἀλλ' ἔγραψε διαρρήδην ἐν τῷ νόμῳ, ἢν ἀνέγγυήσῃ τις ἐπὶ δικαίοις δάμαρτα ἐκ ταύτης εἶναι παῖδας γνησίους, καὶ οὐκ ἐάν τις ψευσάμενος ὡς θυγατέρα ἐγγυήσῃ ἄλλην τινά. ἀλλὰ τὰς μὲν δικαίας ἐγγύας κυρίας, τὰς δὲ μὴ δικαίας ἀκύρους καθίστησιν.

[145] Pringsheim J. 1950:156.

imply to the contrary that, if one of these conditions was not met, the sale would be invalid and that no agreement could override the law.[146]

On the other hand, in a legal system where legislation was far from exhaustive, leaving unregulated several aspects of private life and enterprise, a very large margin was left to contractual liberty. Whether the facts of a specific case corresponded to what was forbidden by the law was a question open to forensic debate and would, at the end, be subject to the jury's decision. Since all laws either prescribe some form of action or forbid some other, we may distinguish two forms of legal invalidity: invalidity for what is an illicit *causa* (the underlying legal motive),[147] in the general sense of anything contrary to public statutes (*ex publica lege* as Gaius puts it for Solon's law on associations)[148] and invalidity *expressis verbis*, as a sanction attested in some decrees (as the ones already mentioned in the sections above). In the first case, invalidity was implied, in the second, it was clearly stated. What was the utility of an *expressis verbis* invalidity clause? If we accept the definition of συμβόλαιον,[149] as an agreement that serves as the basis of legal action,[150] no (valid) legal action could arise from an agreement invalidated by law.[151] This principle is illustrated by the law on the interdiction regarding maritime loans not destined to serve the import of grain or other merchandise in Athens, which, in case of transgression, deprived the plaintiff of an action and prevented such action from being introduced to court.[152] Whether or not an agreement was prohibited by law and was to be non-effective remained though to be proven at court. If the invalidity of an act or agreement was not *expressis verbis* declared by law or by the terms of the agreement, such a proof may present a great degree of

[146] St. Fl. 4.2.20: Κυρία δὲ ἡ ὠνὴ καὶ ἡ πρᾶσις εἰς μὲν κτῆσιν, ὅταν ἡ τιμὴ δοθῆι καὶ τἀκ τῶν νόμων ποιήσωσιν, οἷον ἀναγραφὴν ἢ ὅρκον ἢ τοῖς γείτοσι τὸ γιγνόμενον· εἰς δὲ τὴν παράδοσιν καὶ εἰς αὐτὸ τὸ πωλεῖν, ὅταν ἀρραβῶνα λάβηι· σχεδὸν γὰρ οὕτως οἱ πολλοὶ νομοθετοῦσιν·

[147] The notion of illicit *causa* had not though been isolated by the Greeks, as it would later be by the Romans, a point on which see Beauchet, L. 1897:38–39.

[148] This expression may imply a notion of *ius absolutum*, of certain laws of public interest, i.e., norms that cannot be dispensed with and against which no private agreement stands, contrary to *ius dispositivum*, which may apply only if the parties have not agreed otherwise, as known in civil-law systems. Aviles D., 2011:33 argues, correctly I think, that "there is little to suggest that Athenian lawgivers ever meant any statute they enacted to be only *ius dispositivum* rather than a fully binding norm expressing the will of the polis."

[149] On the sense of the word as "contract" see Mirhady, D. C. 2004:51–63.

[150] Todd S. 1993:265.

[151] In Rome, if someone had promised something contrary to the prescriptions of a *lex imperfecta*, he could not be successfully sued by the promisee, the praetor intervening with a *denegatio actionis* (refusal to grant a right to sue).

[152] Dem. 35.51. Beauchet, L. 1897:41 thinks that invalidity did not have to be clearly stated in the law, provided the law was "d'ordre public." It is doubtful though that this notion had been formulated in ancient Greek law.

difficulty. Thus, introducing the invalidity clause in decrees or contracts offered the advantage of facilitating the process of proof, since all one would have to do is read at court the relevant clause forbidding such agreements. The laws and contracts were, according to Aristotle,[153] two of the main "inartificial proofs" (ἄτεχναι πίστεις) properly belonging to forensic oratory. The law or the contract forbidding a particular agreement and declaring it invalid, read out in court by a clerk, left little room for forensic speculation on whether an act or obligation was indeed lawful or not.

On the other hand, in view of the lack of clear legal definitions in ancient Greek Law, if the legal invalidity of an act or of an agreement was not clearly stated in a law or contract and had to be proven only on the basis of the facts of the case applied to general legal principles,[154] the problems of interpretation that could arise in court may have been very complex. These problems are illustrated in the *Rhetoric*, when Aristotle, speaking both about laws and contracts, offers advice on argumentative technique.[155] He explains how their importance may be magnified or minimized, depending on the side for which one is arguing and advises to "*see whether the law is contradictory to another approved law or to itself; for instance, one law enacts that all contracts should be binding, while another forbids making contracts contrary to the law*."[156] Aristotle's mention of the second law has been criticized as not corresponding to an actual Athenian law,[157] in spite of the uncontested existence of the first law. Both of these laws may have existed in Athens without any statutory conflict,[158] since the one in fact complements the other,

[153] Arist. Rhet. 1375a 15.

[154] Such as illegality, conflict between different laws, a law being obsolete and the notions of fictitiousness, error, fraud, menace, immorality.

[155] On the argument that Aristotle's ideas "do not really correspond to the actual practice of law courts and forensic oratory in fourth-century Athens" see Aviles, D. 2011:22, 27. See also Phillips, D. 2009:93–106, who rules out philosophers' views as concerning hypothetical cases. On the contrary, the extant orator's forensic speeches illustrate Aristotle's arguments put, literally, to trial, showing how the laws and contracts were indeed being manipulated by the orators according to the side one was arguing for. This is exactly the point Aristotle is making in the Rhetoric, offering examples of arguments, rather than analyzing legal issues. On the other hand, as the orators are presenting their client's side of the story, their speeches offer only a partial view of the rules of law, limited to the ones favorable to their case.

[156] Arist. Rhet. 1375b: καὶ εἴ που ἐναντίος νόμῳ εὐδοκιμοῦντι ἢ καὶ αὐτὸς αὑτῷ, οἷον ἐνίοτε ὁ μὲν κελεύει κύρια εἶναι ἅττ' ἂν συνθῶνται, ὁ δ ἀπαγορεύει μὴ συντίθεσθαι παρὰ τὸν νόμον.

[157] Pringsheim, J. 1950: 39: "For a general statute forbidding illegal agreements seems neither necessary nor adequate to the then prevailing legal thought."

[158] The real "contradiction" revealed by Aristotle is indeed one of arguments, not of laws. On the procedures that, in Athens, would secure there were no contradictions and inconsistencies among the laws see Sickinger, J. P. 2008, Canevaro M. 2013:139–160.

in the sense that "all contracts—that are not forbidden by law—are binding."[159] What Aristotle proposes is how to make the best of the worst case, by putting forth the argument "*the contract is a law, special and partial*" if the contract is on our side and the law is ambiguous. A different line of argumentation is to be followed if the contract is against us. "*In addition to this, we must examine whether the contract is contrary to any written law of our own or foreign countries, or to any general law, or to other previous or subsequent contracts. For either the latter are valid and the former not, or the former are right and the latter fraudulent; we may put it in whichever way it seems fit*."[160] What is apparent from Aristotle's argumentation is not that contracts could, in Athens, circumvent the law, but rather that a margin of forensic argumentation was always left to litigants and that legal validity or invalidity were subject, precisely, to an interpretation of the facts. Introducing ἄκυρον ἔστω in a decree limited this margin of argumentation and thus served the interest of legal security and judicial efficiency: since no further argument could be made on matters of law, this left only the facts to be proven.[161]

Why then did only some decrees include the invalidity clause, whereas other did not? Given Greek laws seldom present a similar structure and elements are often missing, invalidity may not have been included *expressis verbis* in many instances, but may have been a presumed consequence. The lack of the invalidity clause in some cases may be explained by the very perception of the law as being binding for all, without the need for the legislator to annul agreements contrary to its terms, such a sanction being considered superfluous and unnecessary. In other instances, the invalidity clause may have been included in matters considered of particular importance, in order to deter, ad hoc, future legal contestations as to which acts were valid or not. Or, more simply, the invalidity clause contained only in some decrees

[159] Beauchet, L. 1897:40, n. 4, tentatively suggests that Aristotle may be referring to the difference between "une loi formelle (ob iniustam causam)" and "une loi d'ordre public."

[160] Arist. Rhet. 1376a–b: περὶ δὲ τῶν συνθηκῶν τοσαύτη τῶν λόγων χρῆσίς ἐστιν ὅσον αὔξειν ἢ καθαιρεῖν, ἢ πιστὰς ποιεῖν ἢ ἀπίστους—ἐὰν μὲν αὐτῷ ὑπάρχωσι, πιστὰς καὶ κυρίας, ἐπὶ δὲ τοῦ ἀμφισβητοῦντος τοὐναντίον. ….· ἡ γὰρ συνθήκη νόμος ἐστὶν ἴδιος καὶ κατὰ μέρος, καὶ αἱ μὲν συνθῆκαι οὐ ποιοῦσι τὸν νόμον κύριον, οἱ δὲ νόμοι τὰς κατὰ νόμους συνθήκας, καὶ ὅλως αὐτὸς ὁ νόμος συνθήκη τίς ἐστιν, ὥστε ὅστις ἀπιστεῖ ἢ ἀναιρεῖ συνθήκην τοὺς νόμους ἀναιρεῖ. ἔτι δὲ πράττεται τὰ πολλὰ τῶν συναλλαγμάτων καὶ τὰ ἑκούσια κατὰ συνθήκας, ὥστε ἀκύρων γιγνομένων ἀναιρεῖται ἡ πρὸς ἀλλήλους χρεία τῶν ἀνθρώπων. … πρὸς δὲ τούτοις σκοπεῖν εἰ ἐναντία ἐστί τινι τῶν γεγραμμένων νόμων ἢ τῶν κοινῶν, καὶ τῶν γεγραμμένων ἢ τοῖς οἰκείοις ἢ τοῖς ἀλλοτρίοις, ἔπειτα εἰ ἢ ἄλλαις συνθήκαις ὑστέραις ἢ προτέραις· ἢ γὰρ αἱ ὕστεραι κύριαι, ἄκυροι δ' αἱ πρότεραι, ἢ αἱ πρότεραι ὀρθαί, αἱ δ' ὕστεραι ἠπατήκασιν, ὁποτέρως ἂν ᾖ χρήσιμον.

[161] Todd, S. C. (1993:264–268 and 1994:138) argues that the lack of a clear doctrine of contract together with the use of contracts as "persuasive supporting argument" would allow a court to distinguish which contractual agreements were legally binding. However, if a law explicitly declared such agreements invalid, proof of invalidity would have been rendered easier.

may be attributed to the diligence and forward thinking of the proposer of a specific decree and to the circumstances surrounding its vote. This does not mean necessarily that, in Greek law, the laws or decrees that did not include the invalidity clause were considered a kind of *lex imperfecta,* left on purpose without a sanction.[162] We cannot be sure, for example, whether the law on testaments setting some exceptions (πλὴν ἢ) to the general rule, explicitly declared invalid testaments obtained through improper influence or whether invalidity was only implied and further confirmed by a court of law, when such an inheritance case was brought to a hearing.[163] In case a legal act was executed contrary to the general terms of the law, it seems that its validity remained a matter open to interpretation, to be challenged before a court of law. This left a wide margin for maneuvering by litigants, who could support their claim that an act was valid or not, by interpreting both the law and the facts of the case.[164] The case of Hyperides' *Against Athenogenes*yperides[165] illustrates how difficult it was to overlook the terms of a written contract, if an *ad hoc* rule of law did not invalidate contracts concluded under dubious circumstances of honesty,[166] in view of the general law on contracts attributed to Solon (ὅσα ἄν ἕτερος ἑτέρῳ ὁμολογήσῃ, κύρια εἶναι).[167] Epikrates, who was fooled into taking over unspecified debts incurred by the perfume business of a slave he bought from Athenogenes,[168] argues that "unjust contracts" should not be binding (τά γε δίκαια, ὦ βέλτιστε: τὰ δὲ μὴ τοὐναντίον ἀπαγορεύει μὴ κύρια εἶναι), but in the absence of a specific

[162] On the explanation given regarding the Roman prototype of a *lex imperfecta*, the *lex Cincia de donis et muneribus* of 204 B.C., which prohibited donations exceeding a certain amount, without invalidating those exceeding the limit and not permitting an enrichment claim against the recipient, see Zimmerman, R. 1990: 699, "one did not want to embarrass the leading circles of society by exposing them to court proceedings and the concomitant publicity."

[163] Hyp. 3.17–18yperides: ἔτι δὲ καὶ ὁ περὶ τῶν διαθηκῶν νόμος παραπλήσιος τούτοις ἐστίν: κελεύει γὰρ ἐξεῖναι τὰ ἑαυτοῦ διατίθεσθαι ὅπως ἄν τις βούληται πλὴν ἢ γήρως ἕνεκεν ἢ νόσου ἢ μανιῶν ἢ γυναικὶ πειθόμενον ἢ ὑπὸ δεσμοῦ ἢ ὑπὸ ἀνάγκης καταληφθέντα. ὅπου δὲ οὐδὲ περὶ τῶν αὑτοῦ ἰδίων αἱ μὴ δίκαιαι διαθῆκαι κύριαί εἰσιν, πῶς Ἀθηνογένει γε κατὰ τῶν ἐμῶν συνθεμένῳ τοιαῦτα δεῖ κύρια εἶναι; καὶ ἐὰν μέν τις ὡς ἔοικεν τῇ ἑαυτοῦ γυναικὶ πειθόμενος διαθήκας γράψῃ ἄκυροι ἔσονται…

[164] On the method of interpretation, in this speech, of the few Athenian statutes regulating contracts, by examining other laws in order to discover general principles and the intent of the lawgiver, see Harris, E. 2000:47–54 [=2013(b):198–205].

[165] Cohen, E. 2012:213–224.

[166] Epikrates is accusing the defendant of trying to impose an unjust agreement to the detriment of the laws ([σὺ δὲ καὶ τ]ὰς ἀδίκους συνθ[ήκας ἀξιοῖς κρατεῖν πάντων] τ̣ῶν νόμων). In order to refute his adversary's expected argument on the law on contract attributed to Solon (ὅσα ἄν ἕτερος ἑτέρῳ ὁμολογήσῃ, κύρια εἶναι), he argues that "unjust contracts" should not be binding, Hyp. Ath.10.23yperides.

[167] Hyp. Ath. 6.5–6yperides.

[168] Cohen E. 2012:213–224.

law[169] vitiating agreements on account of fraud or concealment, he tries to establish that "unjust" equals "illegal," by referring to similar laws (ν[όμο]ς παρ[α]πλήσιος) that set a standard of "just" behavior expected in other transactions.[170] Investing statutory prohibitions with the sanction of invalidity may have come as a development dictated by such procedural incidents, in legal cases where the rule of law and general legal principles proved insufficient to effectively prohibit certain unjust transactions or behaviors, and thus would be intended to facilitate proof in a court of law. Plato is implying that agreements forbidden by law are to be non actionable: "*Touching agreements, whenever a man undertakes and fails to fulfill his agreement—unless it be such as is forbidden by the laws or by a decree, or one made under forcible and unjust compulsion, or when the man is involuntarily prevented from fulfilling it owing to some unforeseen accident,—in all other cases of unfulfilled agreements, actions may be brought before the tribal courts, if the parties are unable to come to a previous settlement before arbitrators or neighbors*."[171] Rendering thus legal acts already concluded against the terms of the law voidable[172] may have been an important legal development, although, in the absence of any direct evidence, the means of procedure and any specific legal actions by which this invalidation could be achieved or recognized are not clear. An example[173] of such an action may have been related to the above case of Epicrates in *Against Athenogenes*. Epicrates, who has not yet paid the perfume shop's creditors, but merely promised to Athenogenes to undertake these debts,[174] seems to be launching before an Athenian

[169] The fact that Epikrates, after stating that the law declares invalid the unjust agreements, proceeds to quote statutes that are not directly relevant to his case, has been interpreted as a proof that no statute of this wording existed (Kästle, D., 2012:193, 202, Aviles, D., 2011:28–29). But, the existence of a general legal principle forbidding illegal agreements (referred to also by Aristotle in Rhet. 1375b, ὁ δ' ἀπαγορεύει μὴ συντίθεσθαι παρὰ τὸν νόμον) is one thing; the (non) existence of a law forbidding an agreement as the one concluded with Athenogenes, where the fraud claimed by the plaintiff consisted in the lack of full disclosure by the seller of the amount of the slave's debts the buyer was fooled into promising to take over is something different. Even by contemporary legal standards, such a behavior would fall under general legal principles forbidding dishonesty and bad faith in transactions, even without a specific prohibition.

[170] Such as laws on the sale of slaves, on marriage and testaments.

[171] Pl. Laws, 920d: ὅσα τις ἂν ὁμολογῶν συνθέσθαι μὴ ποιῇ κατὰ τὰς ὁμολογίας, πλὴν ὧν ἂν νόμοι ἀπείργωσιν ἢ ψήφισμα, ἤ τινος ὑπὸ ἀδίκου βιασθεὶς ἀνάγκης ὁμολογήσῃ, καὶ ἐὰν ἀπὸ τύχης ἀπροσδοκήτου τις ἄκων κωλυθῇ, δίκας εἶναι τῶν ἄλλων ἀτελοῦς ὁμολογίας ἐν ταῖς φυλετικαῖσιν δίκαις, ἐὰν ἐν διαιτηταῖς ἢ γείτοσιν ἔμπροσθεν μὴ δύνωνται διαλλάττεσθαι.

[172] Such as the law mentioned by Epicrates, Hyp. 3.16yperides: ἀλλὰ τὰς μὲν δικαίας ἐγγύας κυρίας, τὰς δὲ μὴ δικαίας ἀκύρους καθίστησιν.

[173] For a discussion of the arguments concerning the invalidity of the agreement of Demosthenes' Against Olympiodorusemosthenes, see Carawan, E. M. 2006:361–374.

[174] Hyp.3.7yperides: εἰ δὲ πριαίμην ὠνῇ καὶ πράσει, ὁμολογήσας αὐτῷ τὰ χρέα ἀναδέξεσθαι, ὡς οὐθενὸς ἄξια ὄντα, διὰ τὸ μὴ προειδέναι, καὶ τοὺς πληρωτὰς τῶν ἐράνων ἐν ὁμολογίᾳ λαβών: ὅπερ ἐποίησεν.

court a preemptive legal action against Athenogenes,[175] the object of which may have been, not a *dike blabes* as the *communis opinio* has it, but a *graphe bouleuseos* for the annulment of the contract.[176]

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[175] Epikrates is claiming that he would have been liable for payment, only if he had been informed of the extent of the debts. Hyp. 3.14yperides: ἐπεὶ ἐὰν δείξῃς προειπὼν ἐμοὶ τοὺς ἐράνους καὶ τὰ χρέα, ἢ γράψας ἐν ταῖς συνθήκαις ὅσους ἐπυθόμην, οὐδὲν ἀντιλέγω σοι ἀλλ'ὁμολογῶ ὀφείλειν. 3.15yperides: ὅσα δ' οὐκ ἤκουσα παρὰ τοῦ πωλοῦντος ταῦτα οὐ δίκαιός εἰμι διαλύειν.

[176] On the nature of the action of Epikrates against Athenogenes as a *graphe bouleuseos* for the annulment of the contract, contra the *communis opinio* of a *dike blabes* (Osborne, R. 1985:57, Whitehead, D. 2004:268–269), see Maridakis, G. S. 1963:398–524, Cantarella, E. 1966: 88–93, Dimopoulou, A. 2012:226. Regarding the *graphe bouleuseos* see Harrison, A. R. W. 1972:78 "the main effect of which, if the defendant was convicted, was to release the plaintiff from bondage or from payment (though there may of course have been a penalty attached as well)."

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