NOTES AND DISCUSSIONS

WITNESSES IN THE ASSEMBLY: THUCYDIDES 6. 14
AND [XENOPHON] *ATHENAION POLITEIA* 2. 17

In the debate at Athens about the dispatch of the Sicilian Expedition in the summer of 415 B.C., Nicias ends his first speech before the Athenian assembly with the following words (Thuc. 6. 14):

Καὶ σύ, ὦ πρύτανι, ταῦτα, εἴπερ ἡγεῖ σοι προσήκειν κήδεσθαί τε τῆς πόλεως καὶ βούλει γενέσθαι πολίτης ἀγαθός, ἐπιψήφιζε καὶ γνώμας προτίθει αὖθις Ἀθηναίοις, νομίσας, εἰ ὀρρωδεῖς τὸ ἀναψηφίσαι, τὸ μὲν λύειν τοὺς νόμους μὴ μετὰ τοσῶνδ᾽ ἂν μαρτύρων αἰτίαν σχεῖν, τῆς δὲ πόλεως κακῶς βουλευσαμένης ἰατρὸς ἂν γενέσθαι, καὶ τὸ καλῶς ἄρξαι τοῦτ᾽ εἶναι, ὃς ἂν τὴν πατρίδα ὠφελήσῃ ὡς πλεῖστα ἢ ἑκὼν εἶναι μηδὲν βλάψῃ.[1]

For K. J. Dover, who discusses this passage at some length in both of his commentaries, the chief difficulty lies in the interpretation of the phrase λύειν τοὺς νόμους, in which he sees a problem of strictly constitutional technicality.[2] His own discussion shows, however, that there is nothing difficult or obscure about the meaning of the expression itself. With his customary erudition and cogent logic, Dover cites parallels which prove that, when taken by themselves, the words λύειν τοὺς νόμους may simply mean "to rescind an enactment," precisely the meaning which fits the context and which one would expect. This surely is correct. Dover, however, rejects his own interpretation on the eminently reasonable grounds that "since Nikias is asking the Chairman to put the issue of the expedition to the vote again, and hopes that the earlier decision will be rescinded . . . he cannot mean 'with so many witnesses you will not be accused of rescinding an enactment,' *for the more witnesses there are, the more clearly will the Chairman be seen to do what Nikias wants him to do*" (emphasis mine).

An alternative solution suggested by Dover must also be discarded, as it is by him, namely, that rescinding an enactment was in some way illegal. As a way out of the impasse, then, Dover suggests that λύειν τοὺς νόμους refers to the disruption of established procedure: with so many witnesses Nicias will not be accused of abolishing traditional practice by setting a precedent. This, however, is something of a *petitio principii,* for it remains to be shown that there was in fact such an established procedure.

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1. Cf. Hippoc. *Epid.* 1. 11 ἀσκεῖν περὶ τὰ νοσήματα δύο, ὠφελεῖν ἢ μὴ βλάπτειν.

2. A. W. Gomme, A. Andrewes, and K. J. Dover, *A Historical Commentary on Thucydides,* vol. 4 (Oxford, 1970), pp. 239–40; K. J. Dover, *Thucydides Book VI* (Oxford, 1965), pp. 21–22. J. Classen and J. Steup, *Thukydides VI* (repr. Berlin, 1963), ad loc., have no satisfactory solution either: "Our passage shows that the procedure was forbidden by law, although its use in the Mytilenaean question apparently was not found to be offensive. Perhaps the matter had been regulated by the courts in the meantime."

It should be obvious from what has been said so far that the real difficulty of
the passage lies not in the phrase λύειν τοὺς νόμους, which clearly means "to
rescind the enactment," but in the apparent paradox of Nicias' reminder to the
epistates that he need not be afraid of being blamed for his action because there
were so many witnesses present. This difficulty may be resolved by considering a
passage from the Pseudo-Xenophontic *Constitution of the Athenians* (2. 17).
The Old Oligarch, as usual, is contrasting oligarchic with democratic govern-
ments. Selecting as a specific example their treatment of alliances, he wishes to
show that it is easier to repudiate such agreements under a democratic than
under an oligarchic system: "Further, for oligarchic states it is necessary to keep
to alliances and oaths. If they do not abide by their agreements or you are
wronged by anybody, there are the names of the few who made the agreement."
The Greek text then continues as follows:[3]

ἅσσα δ᾽ ἂν ὁ δῆμος συνθῆται, ἔξεστιν αὐτῷ, ἑνὶ ἀνατιθέντι τὴν αἰτίαν τῷ λέγοντι
καὶ τῷ ἐπιψηφίσαντι, ἀρνεῖσθαι τοῖς ἄλλοις ὅτι οὐ παρῆν οὐδὲ ἀρέσκει οἵ γε τὰ
συγκείμενα πυνθάνονται ἐν πλήρει τῷ δήμῳ.

According to the Old Oligarch, in controversial matters of high policy (e.g.,
treaties) and doubtless in other issues having great but uncertain consequences
for the state (e.g., the Sicilian Expedition), a majority of the *ecclesia* could evade
their responsibility for such important decisions by simply denying their partici-
pation in the vote. They did so either with a claim of nonattendance, or by
alleging that the decision did not have their approval, that is, that they had not
voted for it. This permitted them to shunt all responsibility onto the chief
proponent of the measure (τῷ λέγοντι) or onto the *prytanis* in the chair (τῷ
ἐπιψηφίσαντι).

The dodge was fairly credible because there were actually occasions when an
experienced politician succeeded, by dint of skillful manipulation, in getting a
minority of the assembly to pass a measure which the majority might well have
rejected. That such practices were common in fifth-century Athens is shown by
Aristophanes, who alludes to just such a parliamentary trick at *Acharnians* 598:
Dicaeopolis tells Lamachus that he had been elected general by "three cuckoos,"
that is, by a minority and not by the entire *demos*.[4] A full and explicit descrip-
tion of the stratagem is given by Aeschines (3. 125–26). Demosthenes, says
Aeschines, "entered the council chamber, pushed aside its blundering members,
and, taking advantage of the inexperience of the mover, carried out a *probou-
leuma* to the assembly. He managed to get this motion put to the vote in the
assembly as well, and a decree of the *demos* was passed when the assembly had
already adjourned, and I had left—for I would not have allowed it—and the
majority had already dispersed." Demosthenes in his turn charged Aeschines
with a similar manipulation of the vote, saying that he had been elected by a
minority (18. 149): "No one, I think, either realized beforehand what was going

3. The text may not be wholly sound here, but the sense is clear; cf. E. C. Marchant and G. W.
Bowersock, *Xenophon: Scripta Minora* (London and Cambridge, Mass., 1968), p. 496.
4. Cf. B. B. Rogers, *The "Acharnians" of Aristophanes* (London, 1930), ad loc.: "Dikaiopolis is
careful not to blame τὴν πόλιν." "Three" and "three or four" in the passage from Demosthenes cited
below stand for a small number of people; cf. H. Wankel, *Demosthenes Rede für Ktesiphon "Über den
Kranz,"* vol. 2 (Heidelberg, 1976), pp. 799–800.

on, or guarded against it—that is how affairs are conducted here. Aeschines was nominated a delegate to the [Amphictyonic] council; three or four people held up their hands for him, and he was declared elected." Aeschines exploited the thoughtlessness and inattention of the assembly and, like Lamachus, was elected to office by a small minority. Demosthenes gained his end with shrewd timing and by employing the tactic of surprise.

Maneuvers such as these give substance to the Old Oligarch's charge; they also explain the difficulty of the "many witnesses" which Dover, and Classen–Steup before him, saw in Nicias' peroration. In order to escape the accusation of having rescinded the enactment with a few votes, it was important for the *prytanis* to have a majority of the assembly with him or, as the Greek literally and more precisely says, to have them *on his side* (μετὰ τοσῶνδ᾽ μαρτύρων). The greater the majority, in fact, the better, for the chairman's safety was in the numbers. Hence Nicias' remark that with so many witnesses the *prytanis* has nothing to fear.

Understood in this way, Nicias' words and the blunt criticism of the Old Oligarch shed an unexpected light on a less admirable side of political life in late fifth-century Athens. They tell us something else besides, namely, that the risk that the presiding officer of the Athenian assembly ran in the performance of his duties formed a topic of not inconsiderable debate in the last decades of the century. The two passages neatly complement each other: the statement in Pseudo-Xenophon represents the general and theoretical formulation of the topos, for which Nicias in his speech provides the specific and practical illustration. The two passages also permit us a glimpse of the diametrically opposed arguments which could be employed in the same political situation. The aristocrat sees in the Athenian *demos* a dissolute and irresponsible mob seeking a single scapegoat for its own decisions: an assembly of liars ready to invent a myriad of excuses with which to repudiate their solemn agreements.[5] The democratic leader before the assembly should regard his fellow Athenians (so argues Nicias) as responsible and upright citizens to whose patriotic judgment he can appeal, and as men capable of calm and rational deliberation, willing to accept advice, who loyally support the president in his efforts to undo a bad decision.[6]

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5. Cf. the remainder of [Xen.] *Ath. Pol.* 2. 17.
6. This practice of looking at the same thing from two opposing points of view was very much a part of the intellectual climate of the day. Cf. the *Dissoi Logoi* (Diels–Kranz, *Vorsokr.* 2⁹:405–16) and Antiphon *Tetralogies* 2, 3, 4.

THEOPHRASTUS FRAGMENT 70D: LESS, NOT MORE

In his expanded collection of Theophrastean fragments, F. Wimmer included as 70d a short excerpt from the commentary of Gregory of Corinth (*RhGr* vol. 7.2, p. 1154. 22–25 Walz) on Hermogenes' *De methodo* 5 (*RhGr* vol. 6, p. 418.