

The Demosthenic βασιλεύς: a Phantom in the *Ath. Pol.*?

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Abstract

The Athenian βασιλεύς was one of the canonical nine archons of Athens and traditionally listed as third in the hierarchy of the nine after the Archon and the Polemarch and before the six Thesmothetai. Modern scholarship has portrayed the office of βασιλεύς as having religious significance, giving the βασιλεύς titles such as 'high priest of the nation' and referring to him as a 'pre-eminent religious authority'. An analysis of the literary sources contemporaneous with the Demosthenic period does not support the proposition that the office of βασιλεύς was especially significant relative to all others in matters of religion, or that the office was in itself one that was predominantly concerned with religious matters. Much depends on how we define religion. Moreover, the want of support in the contemporary sources is as much to do with what the sources do not say as with what they do say. If the βασιλεύς had ever been the 'high priest of the nation', or a 'pre-eminent religious authority', by the Demosthenic period he is largely invisible to us.

In 1851 Leonhard Schmitz wrote of the institution of the annual archonship which he dated to 682 BCE, asserting that “at the same time the various powers which had hitherto been possessed by one, were distributed among nine new magistrates. The first of these bore the distinguishing title *the* archon, and the year was marked by his name. He represented the majesty of the state, and exercised that kind of jurisdiction which had formerly belonged to the king, as the common parent of his people, the protector of families, the guardian of orphans and heiresses, and the general rights of inheritance. The second archon received the title of king (ἄρχων βασιλεύς), because he represented the king in his capacity of high priest of the nation, decided all causes connected with religion, and protected the state from the pollution which it might incur through the heedlessness or impiety of individuals.” Schmitz went on to describe the third archon, the *polemarchos* who, he wrote, “supplied the place of the king as the leader of the people in war”, and finally, he described the six *thesmothetai*

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who “by their decisions as judges, established precedents equivalent to laws in a variety of cases, which did not fall under the cognizance of their colleagues.”²

In 1895 B. E. Hammond wrote of the demise of the monarchy in ancient Athens and of the institution of the nine archons, amongst whom, according to Hammond, it “was the Archon Basileus, who performed the religious rites.”³ In the 1960s Lewis Mumford was asserting that royal power in Athens had been “divided among elective magistrates with a war lord, a law lord and a shrine lord—though Robert J Bonner reminds us, the religious head of the state was still known as *archon basileus*, or chief king.”⁴

In 1961 George Mylonas defined the βασιλεύς as follows: “ARCHON-BASILEUS: King-archon. Magistrate in Athens in charge of the religious and priestly functions of the state. Since his office inherited the priestly prerogatives of the early kings, this magistrate was especially entrusted with the traditional ceremonies of the people of Athens.”⁵

As recently as 1996 a leading scholar of Athenian religion, Robert Parker, referring to Archaic Athens and what he called its “three main magistracies”, ascribed to the βασιλεύς “pre-eminent religious authority”, distinguishing him from the Archon in whom was invested “immediate political power”.⁶

Finally, consider MacDowell: “The basileus, or ‘king’, was the official in charge of all homicide cases.” And: “The basileus was ‘in charge of all the most important matters’ (Lys.26.11). Most of his duties were connected with religion. For example, he was head of the organization of almost all state sacrifices, and of processions and contests of various kinds at various religious festivals (*Ath. Pol.* 57.1), and he supervised leases of sacred land (*Ath. Pol.* 47.4). He took charge of legal cases concerned with religious offences, such as

² Schmitz, Leonhard (1851): *A History of Greece*, London, p. 155. Cf. Smith, William (1888): *A Smaller History of Greece*, London, pp. 29—30 wherein the βασιλεύς is described in identical terms.

³ Hammond, Basil, Edward (1895): *The Political Institutions of the Ancient Greeks*, London, p. 58.

⁴ Mumford, Lewis (1961): *The City in History: Its Origins, Its Transformations, and Its Prospects*, Harcourt Brace & World, New York, p. 144.

⁵ Mylonas, George E (1961): *Eleusis and the Eleusinian Mysteries*, Princeton New Jersey, at p. 317.

⁶ Parker, Robert (1996): *Athenian Religion, A History*, Oxford, New York, p. 26.

sacrilege or impiety (ἀσέβεια) and false claims to a priesthood (And.1.111, D. 22.27, 35.48, *Ath. Pol.* 57.2).⁷

In his role in Demosthenic Athens as portrayed in the contemporaneous sources, how much remained of the Athenian βασιλεύς as ‘high priest of the nation’, or as Athens’ ‘pre-eminent religious authority’, assuming there was a period in respect of which he could ever be so described?

(A) The Sources

There are only two sustained narratives in the whole of the ancient sources, leaving aside the lexicographers, which expressly deal with the Athenian office of βασιλεύς. These narratives are roughly contemporaneous: chapter 57, 1—4 of the *Athenaion Politeia* (the ‘*Ath. Pol.*’) dated to c.330 BCE, whose author cannot be securely identified, and 59, 72—87 of the forensic speech *Against Neaira*, found in the Demosthenic canon but now believed to be the work of Apollodoros, dated to c.343 BCE.⁸ The extant *Ath. Pol.*’s contribution was not fully available to us until c.1890.⁹ Until that time apart from *Against Neaira*, only in Lysias, *Against Andocides* and *On the Scrutiny of Evandros*, do we find contemporaneous texts of any significant length concerning the βασιλεύς.¹⁰ Certainly it was not unreasonable for it to have been inferred from the material available prior to 1890 that if there had at some time been in Athens a custodian of the state’s religious affairs it was the βασιλεύς. No doubt the ascription of such a function was based also on an intuitive presupposition that *there must have been someone* with that responsibility in Athens. The Archon was perceived as political

⁷ MacDowell, Douglas, M. (1999): *Athenian Homicide Law*, first published 1966, Sandpiper Books, Manchester, pp. 33—34.

⁸ It was never generally regarded, even by ancient scholars, as being a work of Demosthenes. See Blass, F. (1893): *Die attische Beredsamkeit*, 2nd edition, Leipzig; Kirk, W. H. (1895): *Demosthenic Style in the Private Orations*, Baltimore; Pearson, Lionel (1966): “Apollodoros, the Eleventh Attic Orator”, *The Classical Tradition*, Editor Luitpold Wallach, Ithaca, New York, 347—359.

⁹ Part of the text was discovered as a papyrus codex in Egypt in 1879 and a far more complete part came to light in 1890. The first modern edition, that of F. G. Kenyon, was published in 1891. The text quoted in the present paper is from Kenyon’s Oxford Classical text of 1920.

¹⁰ Thus, *Against Andocides* 6.4: φέρε γάρ, ἐὰν νυνὶ Ἀνδοκίδης ἀθῶος ἀπαλλαγῆ <δι> ὑμᾶς ἐκ τοῦδε τοῦ ἀγῶνος καὶ ἔλθῃ κληρωσόμενος τῶν ἐννέα ἀρχόντων καὶ λάχῃ βασιλεύς, ἄλλο τι ἢ ὑπὲρ ὑμῶν καὶ θυσίας θύσει καὶ εὐχὰς εὐξεται κατὰ τὰ πάτρια, τὰ μὲν ἐν τῷ ἐνθάδε Ἐλευσινίῳ, τὰ δὲ ἐν τῷ Ἐλευσίνι ἱερῷ, καὶ τῆς ἐορτῆς ἐπιμελήσεται μυστηρίοις, ὅπως ἂν μηδεὶς ἀδικῆ μηδὲ ἀσεβῆ τὰ ἱερά; *On the Scrutiny of Evandros*, see especially 26.6, 8 and 11.

leader, and the Polemarch as military leader. However, titles suggesting a religious role may have been too readily applied to the βασιλεύς.¹¹

From the time of early modern scholarship, the few words supplied by the ancient sources have been supplemented by intuition and analogy. Schmitz combined these methodological supplements when in relation to the conferral of the title of 'king' on the 'second archon' he wrote: "In like manner, the title *rex sacrorum* was retained at Rome after the abolition of kingly power; probably because in matters relating to the gods it was thought impious to make any important change, even if it should be merely a matter of form."¹²

The aim of the present paper is to review what can reliably be said on the basis of what is available to us in the ancient sources from Demosthenic Athens (the period from c.384 BCE to c.322 BCE) about the Athenian office of βασιλεύς. The principal relevant extant writing for the present purpose from that period is from Aristotle, Demosthenes, Aeschines, the author of *Against Neaira*, and the author of the *Ath. Pol.*

Direct references to the βασιλεύς can be taken to include references by the phrase οἱ ἐννέα ἄρχοντες (the nine archons). There is nothing to suggest that in any particular instance of its use that phrase excluded the βασιλεύς.

(B) The Word ἄρχων

Undoubtedly the phrase οἱ ἐννέα ἄρχοντες has heuristic value but the position is not so clear in relation to the word ἄρχων. To begin with, Schmidt's "ἄρχων βασιλεύς" is a confection in that it does not occur in the extant ancient sources.¹³ More importantly, the word ἄρχων, save insofar as it refers to ὁ ἄρχων (*the Archon*), and its plural form οἱ ἄρχοντες, along with the synonymous feminine, ἡ ἀρχή and αἱ ἀρχαί, are used so loosely in the sources that they

¹¹ There was never any basis in the literary record to conceive of the βασιλεύς at any time as performing the role of a cleric or a theologian of some sort. In this context it is worth noting references in the sources, for example, Plato's *Euthyphro* at 4c, to a religious or spiritual advisor (ἐξηγητής). We cannot say that that was a role performed by the βασιλεύς. Hence, it is one thing to be a person with political responsibility for religion, a role that can be performed by an atheist, but quite another to be a person with authority in matters of religious doctrine. A person designated "religious authority" could be either. It is hard to know if scholars such as Robert Parker (see note 6 above), who refers to the βασιλεύς as having been a "pre-eminent religious authority", when adopting such designations for the βασιλεύς, are completely content with the obvious ambiguity.

¹² Op. cit., footnote 1, at p. 155 second footnote.

¹³ Nor until the Roman period does Schmidt's "ἄρχων ἐπώνυμος", *ibid.*

do not enable any useful distinction to be made between the officials to whom they are applied. Consider the *Ath. Pol.* at 55.1 and 55.2:

55.1 οἱ δὲ καλούμενοι ἐννέα ἄρχοντες τὸ μὲν ἐξ ἀρχῆς ὄν τρόπον καθίσταντο, εἴρηται· νῦν δὲ κληροῦσιν θεσμοθέτας μὲν ἐξ καὶ γραμματέα τούτοις, ἔτι δ' ἄρχοντα καὶ βασιλέα καὶ πολέμαρχον, κατὰ μέρος ἐξ ἐκάστης φυλῆς.

55.2 δοκιμάζονται δ' οὗτοι πρῶτον μὲν ἐν τῇ βουλῇ τοῖς φ', πλὴν τοῦ γραμματέως, οὗτος δ' ἐν δικαστηρίῳ μόνον ὥσπερ οἱ ἄλλοι ἄρχοντες (πάντες γὰρ καὶ οἱ κληρωτοὶ καὶ οἱ χειροτονητοὶ δοκιμασθέντες ἄρχουσιν), οἱ δ' ἐννέα ἄρχοντες ἐν τε τῇ βουλῇ καὶ πάλιν ἐν δικαστηρίῳ.

The nine archons (οἱ . . . ἐννέα ἄρχοντες) are here distinguished as a group but 'archon' was not an honorific reserved exclusively for the nine archons. By reason of the phrase ὥσπερ οἱ ἄλλοι ἄρχοντες in line 5 it is open to argue that even the *grammateus* (γραμματεύς) to the *thesmothetai* is to be regarded as being an archon. It is clear that an archon can be someone elected either by lot or by show of hands (καὶ οἱ κληρωτοὶ καὶ οἱ χειροτονητοὶ).

If a *grammateus* to the *thesmothetai* was an archon we should consider what his functions might have been. Let us assume for the present that the *thesmothetai* were, as the modern scholarship tends to portray them, a judicial body. An official connected to a person exercising judicial functions can today be called a clerk, an associate, a tipstaff or an orderly, and no doubt there are other titles. But the *Ath. Pol.* does not say what the *grammateus* actually did. Whatever the *grammateus* did, it must have been different from, and presumably only ancillary to, what the *thesmothetai* did. We do not know though whether what he did was much or only a little less important. As a *grammateus* he might be expected to have had duties relating to writing, but as he was chosen by lot we cannot be sure that he was literate. No such risk was taken with the clerk to the demos; he was elected by show of hands in the Assembly (χειροτονεῖ δὲ καὶ ὁ δῆμος γραμματέα).¹⁴ He had to be literate because his only job, according to the *Ath. Pol.*, was to inform the Assembly and the *boulê* of the contents of documents (54.5). Whatever the duties of a *grammateus* to the

¹⁴ Ath. Pol. 54.5.

thesmothetai, an archon in Demosthenic Athens cannot be assumed to be an official whose job description necessarily included more than mere mundane duties.

Mundane work might have been the portion for all archons chosen by lot. Although the *Ath. Pol.* at 43.1 says that, in general, officials (αἱ ἀρχαί) chosen for ordinary (ἐγκύκλιος) administration are chosen by lot, this does not preclude the possibility that officials chosen for extraordinary administration may, in some cases at least, also have been chosen by lot. The problem is that a review of the *Ath. Pol.* for the officials chosen by lot, and the functions ascribed to them, does not disclose a basis for distinguishing officials by reference to degrees of exception.¹⁵ The *Ath. Pol.*, by reason of its want of detail, leaves open the possibility that every one of the archons chosen by lot, including the βασιλεύς, had no more than, or mainly, mundane tasks to perform.

Aeschines referred to a law that proscribed any person “whether archon or private person” (ἢ ἀρχῶν ἢ ιδιώτης) from seeking to have certain laws rendered ineffectual or to be amended.¹⁶ The implication of the distinction ἢ ἀρχῶν ἢ ιδιώτης is that it was not sufficient for someone to attract the designation ‘archon’ simply for that person to be acting in the public sphere. According to Aeschines the law defined an archon as anyone whether appointed by lot or by election, having the care of some public matter for more than 30 days; people responsible for public works; and, anyone appointed to preside at court.¹⁷ If this was so the word ἀρχῶν is semantically no richer than say the word ‘politician’ about which the only universal agreement as to its meaning would probably not go beyond its use as a reference to a person who is elected. Similarly, the word ἀρχῶν seems to have meant no more in most cases than that the person to whom it applied was appointed by election or by

¹⁵ Among the distinctions between offices in the *Ath. Pol.* beyond the mode of appointment are that the *athlothetai* have a 4 year term (60.1); the *dokimasia* and oath in respect of the nine archons is portrayed as exceptionally elaborate compared to what is required for other officials (55.1—5); and, the archon, βασιλεύς and polemarch are entitled to two *paredroi* each (56.1). These differences may or may not be material by reference to some notion of the importance of the respective offices.

¹⁶ Aeschines, *Against Ctesiphon*, 5.3. See also Demosthenes, *Against Aristocrates*, 23.62 and see *IG II*² 1629: 233—236 and *IG II*² 43: 1—53.

¹⁷ Aeschines, *Against Ctesiphon* 3.14. Thus, according to Aeschines referring to the law: φησίν, “ἀρχάς,” ἀπάσας ἐνὶ περιλαβῶν ὀνόματι καὶ προσειπῶν ἀρχάς ἀπάσας εἶναι ὡς ὁ δῆμος χειροτονεῖ, “καὶ τοὺς ἐπιστάτας,” φησὶ, “τῶν δημοσίων ἔργων.” . . . “καὶ πάντας ὅσοι διαχειρίζουσι τι τῶν τῆς πόλεως πλέον ἢ τριάκονθ’ ἡμέρας, καὶ ὅσοι λαμβάνουσιν ἡγεμονίας δικαστηρίων.” οἱ δὲ τῶν ἔργων ἐπιστάται πάντες ἡγεμονία χρωῶνται δικαστηρίου. At 3.29 Aeschines is more succinct: ἔστι γάρ, ὧ ἄνδρες Ἀθηναῖοι, τῶν περὶ τὰς ἀρχάς εἶδη τρία, ὧν ἓν μὲν καὶ πᾶσι φανερώτατον οἱ κληρωτοὶ καὶ οἱ χειροτονητοὶ ἀρχοντες, δεύτερον δὲ ὅσοι τι διαχειρίζουσι τῶν τῆς πόλεως ὑπὲρ τριάκοντα ἡμέρας καὶ οἱ τῶν δημοσίων ἔργων ἐπιστάται, τρίτον δ’ ἐν τῷ νόμῳ γέγραπται, καὶ εἰ τινες ἄλλοι.

lot for the performance of duties in public administration.¹⁸ In short, the very frequent reference in the modern literature to the βασιλεύς as ‘the king archon’ or the ‘archon *basileus*’ is not more informative in terms of what it says about the importance of the office of βασιλεύς than to indicate that the βασιλεύς was an official appointment.

Aristotle was not at ease with the way the word ἄρχων was used. Hence, “it is not easy to determine what should be called ‘offices’ (ἀρχάς); for many functionaries (ἐπιστατῶν) are required for the political community, so that it is not appropriate to consider all of them officials (ἄρχοντας), whether elected by vote or by lot.”¹⁹ He thus went on to distinguish, for example, the office of priests (ἱερεῖς): τοῦτο γὰρ ἕτερόν τι παρὰ τὰς πολιτικὰς ἀρχὰς θετέον²⁰ “for this office must be considered as something different from the ‘political’ offices”, chorus leaders (χορηγοί), and heralds (κήρυκες). For him the title of archon was to be applied to offices to which were attached responsibility for deliberation and judgment about specific matters and especially to issue orders.²¹ Aristotle was clearly angling at a criterion of *political* office that had to do with real political power and at the use of the word ἄρχων only for such offices.

The notion of power is elusive but there is clearly a distinction between a public and a private office and their associated respective spheres of power. There are numerous references in the ancient sources to the distinction between private and public status.²² In political terms public status touches on the prerogative of the state to interfere with the freedom of its citizens. In a state which operates by the rule of law the interference is required to be in accordance with law, but the prerogative remains nonetheless. Rousseau expressed the issue in terms of sovereignty, holding that to be an official of the state as opposed to being a private citizen is to participate in the sovereignty of the state.²³ Hence, we may say that to exercise political power, whether as executive, legislative, or judicial

¹⁸ This is not to overlook formal requirements of age, gender, citizen and class status. A βασιλεύς, for example, was a male citizen at least 30 years old, and although formally he should have been of a class above that of the *thêtes* it is not impossible that he could be drawn from that class: see below at p. 34.

¹⁹ ἔστι δὲ οὐδὲ τοῦτο διορίσαι ῥάδιον, ποίας δεῖ καλεῖν ἀρχάς· πολλῶν γὰρ ἐπιστατῶν ἢ πολιτικῆ κοινῶνια δεῖται, διόπερ οὐ πάντας οὔτε τοὺς αἰρετοὺς οὔτε τοὺς κληρωτοὺς ἄρχοντας θετέον. *Politics*, 1299a.15.

²⁰ μάλιστα δ’ ὡς ἀπλῶς εἰπεῖν ἀρχὰς λεκτέον ταύτας ὅσαις ἀποδέδοται βουλευσασθαί τε περὶ τινῶν καὶ κρῖναι καὶ ἐπιτάξαι, καὶ μάλιστα τοῦτο· τὸ γὰρ ἐπιτάττειν ἀρχικώτερον ἔστιν. Ibid. 1299a.25.

²¹ Ibid.

²² In addition to the references above to Aeschines and Demosthenes, see for example Herodotus, including at 1.59 and at 7.3.

²³ “. . . car chaque magistrat est presque toujours chargé de quelque fonction du gouvernement; au lieu que chaque citoyen pris à part n’a aucune fonction de la souveraineté.” Rousseau J. J. (1772): *Contrat Social*, Librairie Garnier Frères, Paris, p. 278.

power, is to exercise the prerogative of the state, or the sovereignty of the state, by interfering with the freedom of those affected, to act, or to refrain from acting, in accordance with their own volition.

As the word 'archon' is so loosely applied in the ancient sources we cannot take it to have been the case that because the βασιλεύς is associated in the *Ath. Pol.* with the archonship he necessarily possessed political power so defined. In short, we do not discover in the word 'archon' anything particularly useful about the βασιλεύς in terms of political power.

(C) The *Ath. Pol.*

(a) The βασιλεύς by reference to the Πολιτεία.

Where the *Ath. Pol.* in chapters 42 to 69 addresses the πολιτεία of Demosthenic Athens its author refers to some 50 office holders and groups of office holders, an aggregate of some 300 officials of various sorts. These officials are not organized in the *Ath. Pol.* around a constitutional model; no such model reveals itself in the *Ath. Pol.*²⁴

Chapters 42—69 of the *Ath. Pol.* purport to describe the Athenian *politeia* at the time of the *Ath. Pol.*'s writing. They give a list of persons and some institutions that are stated to perform functions, some of which we can recognize as necessary for the operation of a state, but they do not reveal the unifying principles that we envision by the notion of constitutional order, or which we refer to by the term 'constitutionalism'. We are, therefore, not able in constitutional terms epistemologically to 'locate' the βασιλεύς in the *Ath. Pol.*²⁵

If we take an overall view of chapters 42—69 of the *Ath. Pol.* we find the βασιλεύς rubbing shoulders with a motley collection of persons and groups from flute girls (50.2) and dung-collectors (κοπρολόγοι, 50.2) to the 500 members of the *boulê* (43.1). In between, along

²⁴ Indeed as Wilamowitz recognized soon after the first modern edition of the *Ath. Pol.* was published, there is no real order in the work at all: "Ein solches chaos gibt Aristoteles statt einer ordnung. soll man annehmen, er klebe einen haufen zettel, wie sie ihm in die hände fallen, hinter einander." Wilamowitz-Moellendorff, Ulrich von, (1893): *Aristoteles und Athen*, Weidmannsche Buchhandlung, Berlin, Book 1, p. 233.

²⁵ A near universally respected (if often only by way of lip service) model today, albeit a model not without serious theoretical and practical difficulties, is the 'separation of powers' model of constitutional order. Consider, for example, how that model locates within legislative, executive and judicial powers the persons and institutions referred to in sections 1, 61 and 71 of the Australian Constitution.

with other types of office, is a variety of clerks including the public clerk (ὁ δημόσιος, 47.5) who was possibly a slave. The immediate company of the βασιλεύς are the other members of the group of nine archons, but the overall picture is more in the style of a Jackson Pollock than a Pheidias. We cannot be sure exactly who is who in the Ionic frieze of the Parthenon, but we can at least discern arguable narratives and distinct hierarchies.

(b) The βασιλεύς by reference to his manner of being appointed

Can we distinguish the βασιλεύς by his manner of being appointed? We find that the βασιλεύς, like most of the rest of the officials referred to the *Ath. Pol.*, is appointed by lot and in that respect clearly considered, like the rest who are similarly so appointed, to be less concerned about in terms of his qualifications for his office than the likes of the members of the board of the state's boat builders (46.1), and the official with responsibility in relation to wells (κρηγῶν ἐπιμελητής, 43.1). These latter officials were members of a relatively small class of persons referred to in the *Ath. Pol.* who were deemed singular enough for whatever reason (no doubt a reason to do with some special skill or experience) for it to be required that they be appointed by a vote in the Assembly than that they be a random choice.

(c) The βασιλεύς by reference to political power

We are also left frustrated if we consider the βασιλεύς by reference to what the *Ath. Pol.* tells us, or fails to tell us, about his absolute and relative political power. The *Ath. Pol.* leaves us uncertain as to whether he had such power and, if he did, how much of it he had relative to other persons or bodies referred to in the work. The author of the *Ath. Pol.* uses a variety of words to connect people to functions. Consider for its particular relevance

57.1:

ὁ δὲ βασιλεὺς πρῶτον μὲν μυστηρίων ἐπιμελεῖται μετὰ τῶν ἐπιμελητῶν ὧν ὁ δῆμος χειροτονεῖ, δύο μὲν ἐξ Ἀθηναίων ἀπάντων, ἓνα δ' ἐξ Εὐμολπιδῶν, ἓνα δ' ἐκ Κηρύκων. ἔπειτα Διονυσίων τῶν ἐπὶ Ληναίῳ· ταῦτα δὲ ἐστὶ πομπή τε καὶ ἀγών. τὴν μὲν οὖν πομπὴν κοινῇ πέμπουσιν ὃ τε βασιλεὺς καὶ οἱ ἐπιμεληταί, τὸν δὲ ἀγῶνα διατίθησιν ὁ βασιλεὺς. τίθησι δὲ καὶ τοὺς τῶν λαμπάδων ἀγῶνας ἅπαντας· ὡς δ' ἔπος εἰπεῖν καὶ τὰς πατρίους θυσίας διοικεῖ οὗτος πάσας.

The *Ath. Pol.* in this one short passage uses the verb ἐπιμελέομαι (care for, be responsible for, attend to, manage, superintend, *vel sim.*) to condition the relationship of the βασιλεύς with the Mysteries; the preposition μετά followed by the genitive to describe what is presumably a working (in the sense of ‘cooperative’) relationship between the βασιλεύς and the *epimelêtai* (ἐπιμεληταί) (function organizers?), the Eumolpidae (Εὐμολπίδαι) and the Kerykes (Κήρυκες); the verb πέμπω (send off, attend, escort, conduct, *vel sim.*) to condition the relationship of the βασιλεύς (and the *epimelêtai*) with the procession of the Lenaia; the verb διατίθημι (arrange, manage, influence, *vel sim.*) to condition the relationship of the βασιλεύς with the Lenaian competition; the verb τίθημι (place, set, ordain, establish, fix, cause, effect, appoint, *vel sim.*) to condition the relationship of the βασιλεύς with the torch races; and the verb διοικέω (administer, manage, direct, *vel sim.*) to condition the relationship of the βασιλεύς with the conduct of the ancestral sacrifices.²⁶

The semantic range of each of the specified verbs to a degree overlaps with that of the others so that in words such as ‘attend’, ‘arrange’, ‘manage’, ‘direct’, ‘organize’, ‘conduct’ and ‘supervise’, the βασιλεύς may be contemplated to have had, in relation to the functions mentioned in the passage, legislative, executive or judicial powers, or some combination of such powers, or he may be contemplated to have had no political power at all. That is, we do not know whether, for example, his powers extended as far as the power to make rules in relation to the specified events and to impose penal sanctions on parties who broke them,²⁷ or whether in respect to some at least of the functions specified in 57.1 he had no more than a ceremonial role. Thus, it is claimed that the βασιλεύς can be recognized in a vase painting (c.430—420 BCE) as the priest standing before an altar in connection with the torch race at

²⁶ A particular problem with allowing ‘responsible’ to translate any of these verbs (cf. Rhodes’ translation of ἐπιμελέομαι: Aristole (1984): *The Athenian Constitution*, trans. P. J. Rhodes, Middlesex, Penguin, at p. 103) is that for someone to be truly responsible, failure should be attended with adverse consequences. For the want of recorded cases, we do not know for sure if the conduct that could be impugned in a *euthyna* was confined to wilful misconduct in the nature of acts alleged to be corrupt or nefarious, or whether it could go so far as conduct in the nature of mere incompetence. Some inscriptions concerning sacred land contemplate monetary penalties for specified officials who failed to do acts decreed by the inscription for them to do: see, for example, *IG*³ 84, dated to 418/417 and referring amongst other officials to the βασιλεύς. If a βασιλεύς was accountable for incompetence was he vicariously accountable also for the incompetence of his delegates, if any, or those who were appointed by him, for example, his *paredroi*?

²⁷ Aeschines, like the author of the *Ath. Pol.* (see below p. 18) suggests that some archons at least (Aeschines is not clear: “καθάπερ οἱ ἄλλοι ἄρχοντες” – “and like other archons”) had the power to impose penalties (ἐπιβολὰς ἐπιβάλλειν): *Against Ctesiphon*, 3.27. In regard to the βασιλεύς in this context see note 37 below at p.13.

the Panathenaia.²⁸ Is that all that the *Ath. Pol.* is to be taken to refer to when it connects the βασιλεύς by τίθημι with the torch races?

The *Ath. Pol.* does not tell us what the βασιλεύς actually did in terms that enable us to define him politically. The difficulty is compounded where the *Ath. Pol.* by implication weakens the power of the βασιλεύς at 47.1 and 49.4. In each passage reference is made to the *boulê* by the words: συνδιοικεῖ δὲ καὶ ταῖς ἄλλαις ἀρχαῖς τὰ πλεῖστα. With these words the *Ath. Pol.* takes from the βασιλεύς with one hand before, in chapter 57, it gives with the other, and worse, it does so ambiguously. Thus, the *boulê*, according to the *Ath. Pol.*, participated in the jurisdiction of the βασιλεύς but quite to what degree, other than largely, we do not know.

(d) The βασιλεύς by Reference to his Jurisdictions:

Religion

The meaning of the word 'religion': It is striking that the major works given over to the study of Greek religion, amongst them leading works such as Walter Burkert's *Greek Religion*, there is no rigorous definition of the subject matter. Gilbert Murray, in his classic work, *Five Stages of Greek Religion*, expressly eschewed definition: "I shall not start with any definition of Religion. Religion, like poetry and most other living things, cannot be defined."²⁹ But in the absence of agreement as to what religion is, and what religious matters are, assertions connecting the βασιλεύς with the religion (in respect of whatever aspects) of Demosthenic Athens are essentially worthless. If no attempt is made at a precise definition there can be no useful discussion of the issue of whether or not the βασιλεύς played some special role. Besides, vagueness permits assumptions to be hidden and unjustified. For example, Donald Kyle asserted that by reason of the fact that "the Archon Basileus was in charge of all torch races (*Constitution of Athens 57.1*)" this implied "both the antiquity and the sacral nature of the event."³⁰ Here there are two unstated assumptions: first, that the

²⁸ See Neils, Jennifer (1992): *Goddess and Polis, The Panathenaic Festival in Ancient Athens*, Princeton, p. 179 and references therein. It is noteworthy in the present context that the only role the *Ath. Pol.* gives (albeit only implicitly) to the βασιλεύς in the Panathenaia, the most significant event in the Athenian festival calendar, is the torch race. If he is the central figure in the East Ionic frieze of the Parthenon, his role seems there to be only ceremonial. Even if the βασιλεύς was conceived of as a priest, Isocrates by implication would have it that he would not have been exceptional in any way: see, Isocrates, *To Nikokles*, 2.6.

²⁹ Murray, Gilbert (2002): *Five Stages of Greek Religion*, Dover edition, first published 1912, New York, p. 4.

³⁰ Kyle, Donald G. 'The Panathenaic Games: Sacred and Civic Athletics' in Neils, op. cit., p. 96.

βασιλεύς had some special connection with the religion of the state; an ancient connection that relevantly related to torch races, and second, that a torch race was a religious event because the βασιλεύς had responsibility for it. It plainly does not follow necessarily that the nature of an office will confer the same nature on whatever is organized by the office holder.³¹ Similarly, it does not follow necessarily that the organizers of an event with religious significance have responsibility for religious matters.³² Kyle's assumptions may be correct of course, but his citation without more of 57.1 of the *Ath. Pol.* is not a sufficient reference for them. Besides he leaves us wondering what he means by 'the sacral nature of the event'. How and when does an event have a sacral nature, and what is religion?

If we take a heuristic approach to the difficult matter of defining religion we could say that religion like sport is an activity; it involves physical actions by those engaged in it, most usually regularly attending at designated open or enclosed sacred spaces, saying certain (usually formulaic) things, making certain hand gestures, adopting obeisant postures of various sorts and so on.³³ There is a mental element just as there is with sport. The sportsman is driven by a desire to win and the contemplation of the sense of associated satisfaction. The religious person is driven by a desire to appease, propitiate or otherwise satisfy a supernatural or superhuman being or beings and the contemplation of the sense of associated calm generated by the belief that satisfaction has been given. Just as with sport, being responsible for religion is to be responsible for the facilitation of the activities which define it. But does it also entail being responsible for the cultivation of the mental elements that motivate those activities by encouraging participation in religious activity, and promoting its personal and social benefits? Would we, for example, be entitled to say that the βασιλεύς cannot be said to have been responsible for religion because there is no

³¹ An egg and spoon race at a church picnic does not have a sacral nature simply because organized by the parish priest. The torch race (λαμπαδηδρομία) is attested for a number of Athenian festivals—see Deubner, Ludwig (1956): *Attische Feste*, Akademie-Verlag, Berlin, pp. 211 et seq.

³² The organizers of a Christmas pageant do not have religious responsibilities simply because of being responsible for an event associated with a religious observance.

³³ In defining 'religion' the cultural anthropologist Melford E. Spiro said this: "On the assumption that religion is a cultural institution, and on the further assumption that all institutions – though not all of their features – are instrumental means for the satisfaction of needs, I shall define "religion" as 'an institution consisting of culturally patterned interaction with culturally postulated superhuman beings'." 'Religion: Problems of Definition and Explanation' in Banton, Michael (1966): *Anthropological Approaches to the Study of Religion*, Tavistock, London, pp. 85—126, at p. 96. The narrow approach in the present paper would seek to focus on evidence in the historical sources which is open to be construed as the observed or observable signs of the 'culturally patterned interaction' contemplated by Spiro.

evidence that he was responsible for the cultivation of religious attitudes?³⁴ We need not go that far, although there would be a clear qualitative difference between an office charged with merely organizing religious activities and an office charged with promoting religious convictions. In modern terms, it could be a difference as wide as that between a secular bureaucrat and a cardinal.

What constitutes religion defined purely as an activity will expand or contract with what we include in the category of relevant activities. For some, religious activity will be considered to be confined to whatever they do within the confines of a designated sacred space. It is a subjective matter. Did the Athenians think they were engaged in religious activity when they processed, or when they merely watched the torch races? A test would be whether it would have been an indictable impiety to, for example, hold a mock torch race,³⁵ or engage in some form of levity during the Panathenaic procession.³⁶ As we are not entitled to ascribe *our* perspectives in such matters to the Demosthenic Athenians, at best we can only guess at what for them was sacred in our sense.

It has been argued that religion was embedded in Athenian society.³⁷ But this is to suggest that all aspects of Athenian life had for the Athenians a religious dimension. This invites a widening of the definition of religious activity such as to make otiose the discussion of it separate from discussion of socio-political activity generally. The βασιλεύς would be discovered, like any other official, to have had no more than special responsibility for a particular aspect of the socio-political activity of Demosthenic Athens. That would hardly be

³⁴ In a negative sense he was insofar as he might be said to have protected favourable attitudes to religion by playing some role in actions for impiety (57.2 of the *Ath. Pol.*): discussed below.

³⁵ Was Aristophanes able to satirize the Panathenaic torch race with impunity? See *Frogs* 1078—1098.

³⁶ A law or decree concerning the conduct of the Mysteries as restored and published by Kevin Clinton and for which he gives a *terminus post quem* of 368/7 purportedly gives the βασιλεύς the power to impose a fine: Clinton, Kevin (1980): *A Law in the City Eleusinion Concerning the Mysteries*, Hesperia Vol. 49, No. 3, pp. 258—288 esp. p. 283 The events in Athens in the summer of 415 BCE tell us that in pre-Demosthenic Athens it was a grave matter to mock or parody the Mysteries just as it was to mutilate the herms. See Andokides *On the Mysteries*. In Aeschines *Against Ctesiphon* at 3.52 it is reported, how reliably we cannot know, that Demosthenes was assaulted in public by Meidias in the theatre of Dionysos and that Meidias was on that account censured by an assembly of the people in the theatre. In the associated speech Demosthenes *Against Meidias* it is alleged that there was a law against, or at least a procedure in respect of, profanation of a festival. See for example 21.26. But whether the assault upon Demosthenes was deemed such a profanation we cannot be sure.

³⁷ “Religion was indeed ‘embedded’ in Athenian society and the Athenian state.” Rhodes, P. J. ‘State and Religion in Athenian Inscriptions’ (2009), *Greece & Rome*, Vol. 56, No. 1, 1—13, at p. 13. Whilst expressly stating that Athens was not a theocracy, Rhodes bases his conclusion on the fact that the organs of the state involved themselves, or could involve themselves, in religion: “every major aspect of religion in Athens was, or could be, controlled by the organs of the state.” *Ibid.*

a dramatic discovery—it would permit us to say no more than that the βασιλεύς was a public official in a religious state. Whoever was engaged in the lawful regulation of any aspect of Athenian society would have to be regarded as exercising authority in relation to religious activity. But Demosthenic Athens was not a theocracy, and it is only in respect of a theocracy that we can usefully say that religion is embedded, and in that case it would simply be a statement of the obvious. Consider in this regard the Islamic Republic of Iran. The Islamic Republic of Iran is a model today of a state constituted in religion: a society in which, in theory at least, all aspects of life have a religious dimension; religion is not a separable element amongst a set of elements that form the whole. Article 4 of the constitution of the Islamic Republic of Iran in effect includes, inter alia, the provision that all laws and regulations concerning all aspects of the Iranian society must be based on Islamic criteria. Ultimate power lies with the supreme leader, the *wilayat al-'amr*, head of the Guardian Council. He is inevitably an Ayatollah, an heir in effect to the authority of Husayn ibn Ali, the fourth caliph and grandson of Mohammad. Shia Islam subscribes to the idea that legitimate political leadership has its basis in biological descent of the leader from Mohammad through Ali. The political arrangement of the Islamic Republic of Iran invites comparison with an ecclesiastical monarchy: the supreme religious leader in practice, if not in theory, overarches the constitution.³⁸

This is not surprising because a state constituted in religion, a state in which religion is truly embedded, will inevitably have an ultimate diviner of its religious tenets, that is, a person (or body) who will be the head of state, or who will have the state's unconditional endorsement, at least formally. No such person or body is identifiable in Demosthenic Athens. There is no evidence that the βασιλεύς (or anyone else) was head of an ecclesiastical hierarchy. In a theocratic state there has to be set of religious doctrines under which all aspects of life are subsumed: a *Codex iuris canonici*, a Koran and the Hadiths (*Ahadith*), or a Talmud. There was no such set of doctrines in Demosthenic Athens. It is not seriously argued that some person had, or even might have had, such a role in Demosthenic Athens, but if there had been an office for such a person, presumably we might expect that he would have been portrayed in the *Ath. Pol.* as having been appointed after the manner of say one of the *stratêgoi*, chosen by show of hands in the assembly. He would, like a *stratêgos*, not have

³⁸The official religion of Iran is Twelver Shiism, that branch of Shiism which subscribes to the chiliast belief that the 12th Imam (Muhammad al-Muntazar (12th century CE)) in the line of succession from Husayn ibn Ali is in 'occultation' in that he did not die: he is simply insensible to us and will at some unknown time triumphantly reappear.

been barred from serving successive terms and, as with a *stratêgos*, there would have been no rotational tribal right of representation. In short, he would like a *stratêgos* (a custodian of national security), have had a demonstrated capacity or potential to perform an indispensable specialist role.³⁹

There is some evidence at least in Demosthenic Athens that a distinction was drawn *in principle* between the sacred and the secular. The distinction was recognized in the separate financial administration of sacred and secular institutions. We thus have for example a treasurer for funds for Athena (Ath. Pol. 47.1) separate from one for, for example, theatre funds (Ath. Pol. 43.1). That could of course be explained as simply a matter of administrative convenience, but the distinction was clear in the practice of the Assembly to deal specifically with sacred matters (Ath. Pol. 43.6) as being expressly distinct from secular matters (αἱ δὲ δύο περὶ τῶν ἄλλων εἰσὶν, ἐν αἷς κελεύουσιν οἱ νόμοι τρία μὲν ἱερῶν χρηματίζειν, τρία δὲ κήρυξιν καὶ πρεσβείαις, τρία δὲ ὀσίων). For all that, religion cannot be said to have been of secondary importance in Demosthenic Athens; if the order of the text in 43.6 is significant, it was the sacred matters that were dealt with first. It should also be observed that there was a religious test for public office (55.3).

Religion as festival participation: If we allow that Athenian religious activity is to be taken as including participation in the Athenian festivals, we have to allow that a substantial part of the *Ath. Pol.*'s treatment of Demosthenic Athens is about religious activity. In the *Ath. Pol.*, religious activity so defined appears to be the most important subject of public administration in Demosthenic Athens. In almost every instance in which officials are responsible in some way for a festival it is that responsibility that is first addressed by the author of the *Ath. Pol.* In the case of the Archon, the βασιλεύς and the Polemarch, matters concerned with judicial administration come second in the order of attention given. But at first glance no sense is given that the βασιλεύς has a pre-eminent role in respect of religion defined as festival participation. Of the 9 festivals held in Athens that are mentioned in chapters 42—69 of the *Ath. Pol.*,⁴⁰ the Eleusinia (54.7), the Hephaestea 54.7), the Great

³⁹Who then performed that role in the Demosthenic state? It seems irresistible to conclude from the manner of appointment of those to whom responsibility for religion is ascribed in the *Ath. Pol.* that it was the male citizen body as a whole.

⁴⁰The *Ath. Pol.* mentions a number of festivals held elsewhere: Delos (54.7), the *Brauronia* (54.7), held in honour of Artemis at Brauron, the *Heracleia* (54.7) held at Marathon, the *Dionysia* at Piraeus and the *Dionysia* at Salamis (54.8).

Dionysia (56.3—5), the Thargelia (56.3—5), the Asclepieia (56.4), the festival in honour of Zeus Soter (56.3), the Mysteries (59.1), the Lenaian Dionysia⁴¹ (59.1), and the Panathenaia (43.1, 49.3, 54.7, 60.1—4) only two, the Mysteries and the Lenaian Dionysia, are connected in the *Ath. Pol.* with the βασιλεύς. And in neither case is the βασιλεύς portrayed as having an exclusive role. In relation to the Mysteries his role is in conjunction with the *epimelêtai*, *Eumolpidai* and *Kerykes* and in relation to the Lenaian Dionysia his role (at least in relation to the procession) is in conjunction with the *epimelêtai*. There is no elaboration in the text that permits any assessment of the scope of the role of the βασιλεύς, or of his authority, either absolute or relative, with respect to the other officials mentioned. There is nothing that can be pointed to in the *Ath. Pol.* that permits the conclusion that his role must have been something more than symbolic, and whether or not it was only symbolic, that it must have been a role with religious as opposed to secular significance. Consider in that regard Mylonas, who holds in separate passages of his work concerning Eleusis that in respect of the Mysteries the βασιλεύς “had the supreme direction of the celebration”,⁴² but that the role of the βασιλεύς was in respect to the “order of the celebration, not its religious content.” (emphasis added).⁴³

In short, in relation to the festivals for which a role is ascribed to the βασιλεύς, he may have been an active decision maker in respect of all the minutiae, or he may have been no more than the nominal state official presiding, with no actual ‘hands on’ involvement. The latter possibility could include a range of situations, from the βασιλεύς merely setting policy, to the βασιλεύς as no more than a ceremonial presence. In any event, the degree and nature of his involvement must have varied from one function to the next.⁴⁴

Religion as participation in sacrificial activity: If, as seems eminently reasonable, we allow that Athenian religious activity is to be taken as including sacrificial activities, we may then refer to the following passages in the *Ath. Pol.* At 54.6 and 54.7 two groups of 10 *hieropoioi* are referred to, the first group responsible in respect of sacrifices prescribed by oracle and sacrifices for undertakings or enterprises and the second for unspecified

⁴¹The Dionysia held in January/February. The Attic word for the 7th month of the Athenian calendar, our January/February, is *Gamêliôn* (called *Lênaiôn* in most of Ionia).

⁴² Op. cit. 247.

⁴³ Op. cit. 229.

⁴⁴ He may have had some policing role, including the power to impose fines in relation to the behaviour of festival participants: see above note 37.

sacrifices. At 57.2 the βασιλεύς is referred to in relation to ancestral sacrifices. At 58.1 the Polemarch is referred to in relation to sacrifices to Artemis and Enyalios, and offerings made in memory of the tyrannicides Harmodios and Aristogeiton.

Again, the βασιλεύς is not portrayed in the *Ath. Pol.* as having an exclusive role. Even in respect of those sacrifices (the ancestral sacrifices) that he was enjoined according to the *Ath. Pol.* to administer or manage (διοικέω), the terms used in the *Ath. Pol.* convey a degree of ambivalence; hence the author's conditioning of the enjoiner by ὡς δ' ἔπος εἰπεῖν ('speaking generally').⁴⁵ We are thus compelled to consider that in respect of ancestral sacrifices there were some ancestral sacrifices for which the βασιλεύς had no responsibility at all. As with the festivals, we are not told by the *Ath. Pol.* what was entailed by the responsibility for ancestral sacrifices ascribed to the βασιλεύς.

Ancillary religious matters: There are other jurisdictions ascribed in the *Ath. Pol.* to the βασιλεύς which we may categorize as ancillary to religion. In 57.1 'the torch races' are ascribed to him. And 57.2 ascribes to him proceedings for impiety, disputes in relation to hereditary priesthods, disputes in relation to cult issues,⁴⁶ proceedings for homicide and proscription of persons "from things specified in the laws".⁴⁷ Finally, 47.4 has the βασιλεύς presenting to the *boulê* the leases of sacred land. In respect of these jurisdictions it is by no means clear what the extent of the powers of the βασιλεύς was, or even what the subject of the jurisdiction was about. In relation to dispute resolution, did the βασιλεύς have a judicial or quasi-judicial power of final determination, or did he merely preside over a jury of some sort?⁴⁸ In any event, we may include the matters in 57.1, 57.2 and 47.4 under the heading of religion, but the *Ath. Pol.* refers to other such matters that we may describe as ancillary to religion and for which no duties are ascribed to the βασιλεύς. The *Ath. Pol.* does not, for example, ascribe a role to the βασιλεύς in relation to the maintenance of sanctuaries (50.1), decisions in relation to the Panathenaic peplos (49.3), the manufacture of Nike statuary

⁴⁵ The Author of the *Ath. Pol.* uses this qualification twice in the *Ath. Pol.*. The other instance is at 49.4: συνδιοικεῖ δὲ καὶ ταῖς ἄλλαις ἀρχαῖς τὰ πλεῖσθ' ὡς ἔπος εἰπεῖν, about which see further at p. 11 above. Compare with the Stranger in Plato, *Statesman*, 290e, referring to the annual basileus: ". . . βασιλεῖ φασι τῆδε τὰ σεμνότατα καὶ μάλιστα πάτρια τῶν ἀρχαίων θυσιῶν ἀποδεδόσθαι."

⁴⁶ Cf. Rhodes *Commentary* regarding 57.2 at pp. 639—640.

⁴⁷ Cf. the translation of Fritz & Kapp: "and he is the one who proclaims that a person is excluded from all customary religious rites". But compare that with Rhodes *Commentary* *ibid.*, at p. 641.

⁴⁸ Rhodes, *ibid.* at p. 640, says of the words διαδικάζει . . . ὑπὲρ τῶν ἱερῶν that they do not imply that the βασιλεύς "was empowered to give a personal ruling rather than preside over a court." The issue of judicial powers is discussed further below.

(49.3) and Panathenaic prizes (49.3). Nor does the βασιλεύς figure in financial administration concerning religious matters such as that carried out by the Treasurers of Athena (47.1).

The jurisdictions of the βασιλεύς in respect of impiety and homicide (because of the religious notion of pollution) can also be considered to relate to religion, but it is appropriate to consider them separately under the heading of judicial powers.

Judicial Powers

The Ath. Pol. Generally: For present purposes the issue to be addressed is not whether the βασιλεύς was part of a judicial hierarchy, but whether he had judicial power: the power sanctioned by the state to make a finding of guilt in connection with a claim of criminal wrongdoing, or liability in respect of a claim of a civil or administrative wrongdoing, combined with a power to impose a penalty, or to make an order for compensation.

It is clear that the juries of the citizen courts in Demosthenic Athens exercised judicial power, but we find that so also did the *boulê* (45.2, 46.2, 48.1, 48.2, 49.1), the Eleven (52), the *apodektai* (52.3), the Forty (53.1), the arbitrators (53.2), the Archon (55.7), and the *stratêgoi* (61.2). The power ascribed to these other bodies by the *Ath. Pol.* is a full judicial power, albeit in many instances, but not always, with a right of a person so convicted to appeal to the citizen courts. The *boulê*, for example, according to the *Ath. Pol.*, acted as a court in respect of, *inter alia*, (i) alleged misconduct by officials (45.2); (ii) misconduct in respect of buildings (presumably in regard to construction issues); (iii) misappropriation of monies (48.1 and 2); and (iv), failure of those with the care of a horse to exercise proper care (49.1). Depending on the nature of the case, the *boulê* had the power to imprison, impose fines, and to withhold benefits or privileges.

The *Ath. Pol.* does not ascribe judicial power as above defined to the polemarch or the *thesmothetai*.⁴⁹

⁴⁹ The assertion by Leonhard Schmitz (see page 1 above) that the *thesmothetai* were judges who made law by precedent (as if anticipating the English system of common law) appears to be pure fantasy, or at least an unjustified elaboration of 3.4 of the *Ath. Pol.*: θεσμοθέται δὲ πολλοῖς ὕστερον ἔτεσιν ἠρέθησαν, ἤδη κατ' ἐνιαυτὸν αἰρουμένων τὰς ἀρχάς, ὅπως ἀναγράψαντες τὰ θέσμια φυλάττωσι πρὸς τὴν τῶν ἀμφισβητούντων κρίσιν . . .

In the *Ath. Pol.* judicial power is everywhere and nowhere; there is no judicial bureaucracy headed by an attorney general, a solicitor general, or a director of public prosecutions. In Demosthenic Athens the law, like religion, was everybody's business to regulate but no one can be identified in the *Ath. Pol.* as having overarching responsibility.

The βασιλεύς and Judicial Power—Impiety: In 57.2 of the *Ath. Pol.* the βασιλεύς is connected to actions for impiety (ἀσέβεια). The critical verb in the *Ath. Pol.* is λαγχάνω, the passive λαγχάνονται giving the sense that indictments for impiety *fell to* (*were allocated to*) the βασιλεύς. It should be noted that although the *Ath. Pol.* uses the word 'all' (πᾶς) in relation to the torch races, to the ancestral sacrifices,⁵⁰ to adjudications in respect of disputes between priests over religious matters, and to private actions for homicide, it does not use it for impiety indictments, notwithstanding that such indictments are referred to in the midst of these other matters. We may therefore be entitled to suspect that not *all* impiety matters fell to him.

In any event, as to what this jurisdiction actually entailed for the βασιλεύς we do not know. We cannot with full confidence go beyond the assertion that he received notice of indictments for impiety. We have no basis for assuming or presuming that the βασιλεύς judged such matters, and that he was empowered to make a final and binding determination, and thus we cannot say that the βασιλεύς had judicial powers in relation to such actions.⁵¹

The βασιλεύς and Judicial Power—Homicide:⁵² The critical verb in the *Ath. Pol.* is again λαγχάνω, and again the passive λαγχάνονται gives the sense that all *private* (hence, δίκη) actions for homicide *fell to* (*were allocated to*) the βασιλεύς. However, the most we can say with reasonable confidence from this is that the βασιλεύς received notice of such actions. Beyond that we must rely on speculation concerning what he did thereafter in relation to

⁵⁰ Albeit ambiguously in this case: see above.

⁵¹ We have it from Plato's *Euthyphro* (at 2a) that Socrates reported to the βασιλεύς but again we do not know what precisely the role of the βασιλεύς was. In the sources contemporaneous with the Demosthenic period there are a number of trials, or accusations concerning impiety or sacrilegious acts, but the βασιλεύς is not stated to have played any official role. For Example, see again Demosthenes *Against Meidias* 21. 8-11, 147, 175-6 and Demosthenes *Against Neaira* 59; *Against Andocides*, 22.2; *Against Aristogeiton* 1, 25.79—80; and, *On the Embassy*, 281, referring to a priestess who according to the scholiast Ulpian was executed for making a love potion. Note also that in *Against Neaira*, at 59.82, Theogenes declares that it would be impiety on his part to breach his undertaking to the Areopagus Council and at 59.81 it was the Areopagus Council which would have fined him (for impiety?).

⁵² See, in general, Gagarin, Michael, 'The *Basileus* in Athenian Homicide Law' in Flensted-Jensen, Pernille, Nielson, Thomas Heine, Rubinstein, Lene (Eds) (2000): *Polis and Politics*, Museum Tusulanum Press, Copenhagen, 569—579.

such matters. We certainly cannot say that the words accommodate MacDowell's claim, 'he had charge of all homicide cases'.⁵³ He certainly did not 'have charge of' all *trials* of homicide in the sense of having the conduct of all such trials. It is the case that the *Ath. Pol.* at 57.3—4 ascribes some trials of homicide by specific type to the βασιλεύς, but it also ascribes homicide trials by specific type to the Areopagus, to the *boulê*, and to the *Ephetai*. The βασιλεύς is connected in the *Ath. Pol.* (again by the verb λαγχάνω) only with trials of homicide in respect of which there was no identifiable perpetrator, or the death was known to be due to the action of a non-human agent.

There is no contemporaneous source concerning the actual role of the βασιλεύς in connection with homicide other than the *Ath. Pol.* at 57.3—4.⁵⁴ The only detail given there as to what he actually did at a trial is the reference at 57.4 — he took off his crown, thus: καὶ ὁ βασιλεύς ὅταν δικάζη περιαιρεῖται τὸν στέφανον.

When we examine the relevant verbs used, apart from λαγχάνω, all we have is εἰσάγω so that there is the assertion in the *Ath. Pol.* that the βασιλεύς 'brought in', 'brought on', or 'introduced', the case. In modern legal systems this is what a court orderly does. In any event, there is nothing in the *Ath. Pol.* or in any other contemporary source that enables us to say confidently that the βασιλεύς exercised anything in the nature of actual judicial power.⁵⁵ Nor can it be said that the known role, such as it is, of the βασιλεύς in matters of impiety and homicide in a clear way sets the office of βασιλεύς apart as one for which there was a particular foundation in Athenian religious belief or practice.

Ironically, the only religious event for which we have some evidence of a crucial or indispensable connection with the Demosthenic βασιλεύς, the *Antheateria*, is not mentioned in chapter 57 of the *Ath. Pol.* For that we need to turn to the forensic speech, *Against Neaira*.

⁵³ Op. cit.

⁵⁴ With respect to Demosthenic Athens there are non contemporaneous sources in connection with pre-trial procedures. Note especially Antiphon, 6.42, alleging that the βασιλεύς was obligated to facilitate three preliminary procedures or hearings (*prodikasiai*) over a period of three months following an indictment for murder, before bringing the case to trial in the fourth month. What the preliminary procedures were all about is a mystery. We do not know in any detail what constituted the precise role of the βασιλεύς and it would be unwise in any event to form general conclusions from this one source.

⁵⁵ Cf. MacDowell op. cit. at 38 after reviewing the sources: “. . . nevertheless it is clear that these passages are not adequate evidence that the basileus was a member of the jury and had a vote.”

(D) *Against Neaira*

(a) The Ritual Marriage at *Limnai*

There is a great deal in *Against Neaira*, but only a relatively small part is of direct interest for present purposes. What it tells us directly about the βασιλεύς is very little. It tells us more in an elliptical manner, but still it does not tell us much, if anything, that is unquestionably reliable. It is of particular interest in the present context where it is concerned with religious rites which, if the Speech is to be believed (since the Speech is our only contemporary source), were performed at *Limnai* in Athens in the month of *Anthestêriôn* (February/March) each year in honour of Dionysos, and involved a ritual marriage between the wife of the βασιλεύς and Dionysos.⁵⁶

(b) Reliability of the Forensic Speeches.

In considering *Against Neaira* it is necessary to make some observations as to the reliability of the source. *Against Neaira* (hereinafter referred to as 'the Speech') purports to be a prosecution speech prepared for what may or may not have been an actual trial. The formal charge described in the Speech is that Neaira had broken the law by being an alien women living with a citizen. As the Speech develops it becomes apparent that the charge includes the claim that Neaira was a prostitute so notorious and villainous that she was a threat to the state. The document cannot be used as proof of anything and it is patently absurd that it could be thought to be so usable. Even as mere evidence in respect of any facts asserted about Neaira, let alone proof of her actual guilt or innocence, it is all but worthless.⁵⁷

As evidence not of what it asserts about the parties who are its subject matter but as evidence of contemporaneous social conditions and attitudes it may have some value. However, even for that purpose it has a number of serious shortcomings. There are at least twelve reservations that warrant consideration where *Against Neaira* is used as a foundation

⁵⁶ 59.76 (all references and quotations hereinafter are from the Loeb edition). Where *Limnai* was is not certain. There is a very brief mention of the sacred marriage aspects of the rites in the *Ath. Pol.* at 3.5.

⁵⁷ This fact seems to have eluded Debra Hamel insofar as she felt she could conclude that Apollodoros had a weak case: Hamel, Debra (2003): *Trying Neaira, The True Story of a Courtesan's Scandalous Life in Ancient Greece*, Yale University Press.

for assertions about the role and status of the βασιλεύς in Demosthenic Athens. The first six are general and most of them apply to all the so-called 'forensic speeches'.

The first reservation is that by its very nature the content of the Speech may be materially biased. The Speech purports, after all, to be a prosecution speech, whose purpose is to effect victory at trial. It may therefore (but in no way can it be proved of *this* or any particular speech) exaggerate, distort and omit as best suits the case being advanced.⁵⁸ This possibility in the present Speech is exacerbated by the fact that the prosecutor had a pecuniary interest in the outcome (one-third of the assets of the accused).

The second reservation is that we do not have the defence and the different picture of social conditions and attitudes that, relative to the opposing view, defences tend to portray. Note in that regard the statement in the Speech itself (unctuous though perhaps it is) extolling the values of truth and justice, and therefore the need to have regard to the defence as much as to the prosecution.⁵⁹

The third reservation is that we do not have argument on the law. Where the Speech purports to state the law, is the law correctly and fully stated? Was it applied to everybody, or only to those who were not wealthy enough to evade it? To what extent, if any, was the law enforced?⁶⁰

The fourth reservation is that the Speech was prepared for oral delivery, and of course we do not have access to unwritten comment that can be supplied by ironic emphasis. Consider the following selection of alleged facts of the case: Nikarete, a brothel madam, purchased Neaira as an infant for future trading stock; a crowd of male citizens consorted and cavorted with Neaira and bought and sold her; and, two of this crowd purchased Neaira outright from Nikarete in accordance with the law because they believed, according to the Speech, that

⁵⁸ We can say that the Athenians were probably no different to us in how they handled the truth, but we cannot prove in any particular case that it was wilfully mishandled, and nor should we so assume. Cf. Hamel: "We can assume that Apollodoros, like any Athenian orator, was less than truthful in his speech when he needed to be and when he thought he would not be found out." Ibid. at xii.

⁵⁹ 59.15: δεῖ δ' ὑμᾶς ἐξ αὐτῆς τῆς ἀληθείας, τὴν ἀκρίβειαν ἀκούσαντας τῆς τε κατηγορίας καὶ τῆς ἀπολογίας, οὕτως ἤδη τὴν ψῆφον φέρειν ὑπὲρ τε τῶν θεῶν καὶ τῶν νόμων καὶ τοῦ δικαίου καὶ ὑμῶν αὐτῶν.

⁶⁰ It would be foolish to seek to determine the values even of modern societies solely by reference to their criminal codes because the codes almost invariably include obsolete laws, or laws that are not enforced, or laws that are in various ways enforced inconsistently.

they were being charged too much by Nikarete for Neaira's services to them.⁶¹ These facts are alleged in the Speech without any expression of any colour of indignation or condemnation. It may be that the conduct described was acceptable to public standards, or it may be that it was a matter in respect to which public standards would have been indifferent. However, we cannot make any assumptions merely from the absence of express comment. Hence, it may have been intended for the behaviour to be described in ironic tones to an audience which the advocate anticipated would be indignant at hearing such allegations.

The fifth reservation is that the only opinion (other than that expressed in curses and perhaps graffiti) that was expressed in writing in 4th century Athens was, as far as we know from extant sources, that of males. Hence, even if the Speech were a mirror to 4th century Athenian society it might be expected that it would bequeath to us a very singular, gender specific, reflection.

The sixth reservation is that the Speech may be less a pointer to the social conditions and attitudes of the day than a skilful exercise in artifice. This is not to say with Cicero: "Iudicis est semper in causis verum sequi, patroni non numquam veri simile, etiamsi minus sit verum, defendere",⁶² or to say with Iris Murdoch: "We have to mix a little falsehood into truth to make it more plausible",⁶³ but it is the case that successful advocates either advance arguments that conform to or synchronize with public opinion, or, if necessary, arguments that are able skilfully to distort or even to subvert public opinion when the advocate argues a case that public opinion would otherwise oppose. However, in respect of *Against Neaira* we cannot infer anything as to how likely or otherwise the Speech might have appealed to, or sought to distort or to subvert, the attitudes of the day.

The six remaining reservations are specific to the use of the Speech as a basis for assertions about the office of the βασιλεύς and discussion of them needs to await a digression on facts of the Speech that directly concern that office.

⁶¹ 59.29—59.30.

⁶² "Whilst it is always the task of the judge to find the truth, counsel may occasionally have to make a case on assertions that have the appearance of truth whilst not precisely corresponding with it." *De Officiis*, Book II, 51.

⁶³ (1995): *Metaphysics as a Guide to Morals*, Penguin, London, p. 105.

(c) Phano and the βασιλεύς

The critical factual issue in *Against Neaira* for present purposes is the alleged marriage of Phano, the alleged daughter of Neaira, to Theogenes who, the Speech alleges, was the holder of the office of βασιλεύς. The speech asserts that Stephanos passed Phano off to Theogenes as being his legitimate daughter thereby causing Theogenes to marry a woman who, as the daughter of Neaira, was not fit to be the wife of a βασιλεύς. As Theogenes' wife, Phano was entitled, indeed duty bound, to perform the sacred rituals held in the month of *Anthestêriôn* in honour of Dionysos, including the ritual marriage between the wife of the βασιλεύς and Dionysos. She is alleged in the Speech to have done precisely these things and so to have engaged in grave acts of impiety.

None of this would have any relevance whatsoever but for the actual strategy of the prosecution, as opposed to the formal strategy. Under the formal strategy, stated at the outset of the speech, the prosecutor of Neaira, Theomnestos, prosecuting on behalf of himself and his family, asserts that his prosecution concerns the cohabitation of Neaira, an alien, with Stephanos, a citizen.⁶⁴ But it is Apollodoros rather than Theomnestos who, according to the Speech, conducts the prosecution. Apollodoros sets out the indictment and then states the alleged relevant law, the crucial alleged part of which proscribes an alien woman from cohabiting (συνοικέω) with a citizen under penalty of enslavement and dispossession of property for the woman, and a 1000 drachmai fine for the man.⁶⁵

Under the actual as opposed to the formal strategy stated in the Speech, the forensic methodology adopted by Apollodoros is one of subterfuge, namely, defamation of Neaira's character and the exploitation of fear and sentiment, and even xenophobia. After a long series of muck-raking anecdotes, by far most of which would in modern Western legal systems be dismissed out of hand as scandalous and irrelevant having regard to the formal terms of the indictment, the Speech turns to the matter of citizenship. It alleges that citizenship is held to be sacred. The proof asserted for this is the alleged difficulty confronting those who, otherwise not entitled to it, seek to have citizenship conferred on them. To that end the Speech refers in an historical analysis, lengthy relative to the weight given to other elements in the speech, to the bestowal of citizenship on Plataian fugitives of

⁶⁴ 59.14.

⁶⁵ 59.16.

a battle between the Plataians, loyal allies of Athens, against the Spartans, but providing that even for them individual scrutiny was required.⁶⁶ It is clear by this stage of the Speech that whether or not Neaira was an alien is of marginal interest. The Speech metamorphoses from a prosecution of Neaira for being an alien living with a citizen to a defence of the state against the prospect of Neaira being declared a citizen by default of conviction, with all the alleged implications of that having regard to her alleged lifestyle. One of the implications alleged in the Speech is that indiscreet citizen women would be led astray by the message that would be sent by an acquittal of Neaira.⁶⁷ According to the Speech an acquittal of Neaira would not be a mere finding of non-guilt but a positive finding that Neaira was a citizen.⁶⁸

Hence, the more important charge against Neaira was that Neaira's alleged character and behaviour was a threat to the safety and integrity of the state and its religious practices, in respect of which citizenship is alleged in the Speech to be a safeguard, a matter that Apollodoros made the subject of lengthy alleged evidence. That it is this for which she is on trial is made explicit by the author: τοὺς νόμους καὶ Νέαιραν ταυτηνὶ περὶ τῶν πεπραγμένων αὐτῇ πρὸς ἀλλήλους δικάζεσθαι.⁶⁹

With these substituted or augmented terms of indictment the otherwise almost entirely irrelevant alleged evidence in the Speech, including the story about Phano and the βασιλεύς, becomes relevant, and whether or not Neaira was an alien becomes largely irrelevant. This is important for a variety of reasons, not least that ancillary facts in a forensic speech might be expected to be less likely to be false or distorted. We might expect that the more material the facts are to the charge, the more guarded we might be about their probative value. In short, had the charge against Neaira been what it was stated to be at the outset of the Speech we would have been entitled to be less guarded about what the Speech says concerning the βασιλεύς, because those matters would have been ancillary, and presumably Apollodoros would have known that. Instead, the story so far as it concerned the βασιλεύς was put at the heart of Apollodoros' strategy by his augmentation of the charge.

⁶⁶ 59.107. If citizenship was as valued as the Speech suggests it should be, it might be wondered why the Speech had to take so much trouble in the argument. In Demosthenes *Against Euboulides* at 57.59, the prosecutor laments that citizenship could be purchased for 5 drachmai!

⁶⁷ 59.113.

⁶⁸ 59.108.

⁶⁹ See 59.115.

An obvious implication of the forensic methodology of the Speech is that the author of the Speech believed that citizenship and the good character of Athenian women were valued by the male citizenry. It is hard to think that he could have been wrong, but whilst for present purposes that is a necessary finding, it is far from sufficient.

Thus, the seventh reservation requires it to be possible to conclude that it is more probable than not that:

(A), the following facts alleged in the Speech would have been on the whole believed to be true by the people of Demosthenic Athens, had those alleged facts been presented to the people:⁷⁰

- the office of βασιλεύς had its origins in the ancestral kingship of Athens under which the king performed the sacrifices save for the most sacred which were performed by the king's wife, the queen (59.74); and,
- the successors to Theseus were elected from the most valorous of candidates (59.75);

and

(B), that the following alleged facts were true:

- the king's wife was required by law to be of Athenian birth and upon marriage to the king to be a virgin (59.75);
- the law with respect to the king's wife was inscribed on stone and the stone was setup in the sanctuary of Dionysos at Limnai where it could still be seen, even though the writing could be seen only barely (59.76);
- the sanctuary of Dionysos at Limnai was opened only once each year on the 12th of *Anthestêriôn* (February/March) (59.76); and,
- Theogenes held the office of βασιλεύς and he was worthy by birth for the office, but poor (πένης) and inexperienced (ἄπειρος) (59.72 and 81);

and

(C), that if the people of Demosthenic Athens had been presented with what the Speech alleges about Neaira, Stephanos and Phano, and also with the following alleged facts, and the people believed all these allegations to be true:

⁷⁰ It is hard to imagine a scenario where the people, as a whole, could have been presented with such facts, but that is of course irrelevant. What is important is that if we are to obtain a useful picture of how the βασιλεύς was perceived, we cannot confine the survey to the male citizenry who served on juries.

- Stephanos funded Theogenes' accession to office, and by having put Theogenes in his debt had himself appointed as a *paredros* to Theogenes (59.72);
- Stephanos betrothed Phano to Theogenes, holding out Phano as being his own daughter(59.72);
- Phano was an alien, who on behalf of Athens:
 - performed sacrifices (so sacred as not permitted to be named), and administered the oath to their presiding priestesses (59.73 and 79);
 - saw and performed religious rites (so sacred as not permitted to be named or described) (59.73 and 79); and,
 - engaged in a ritual marriage to Dionysos (59.74);
- the Council of the Areopagus upon inquiring into the identity of the wife of Theogenes resolved in secret to impose upon Theogenes the highest fine which was within their power to impose (59.81);
- Theogenes pleaded with the Areopagus claiming that he did not know that Phano was the daughter of Neaira; that Stephanos had deceived him; that he had lawfully married Phano believing that Phano was the legitimate daughter of Stephanos; that it was his inexperience and his trusting nature that caused him to make Stephanos, whom he regarded as a friend, his *paredros* (59.81);
- Theogenes avoided the penalty imposed by the Areopagus by promising to evict Phano which he immediately did (59.83); and,
- Theogenes also immediately dismissed Stephanos as his *paredros* (59.83);

then

(D), the people of Demosthenic Athens would on the whole have agreed with the following opinions and sentiments expressed in the Speech:

- that it was an insult to them and to their laws that Stephanos had betrothed Phano to Theogenes as his own daughter (59.72);
- that Phano was not fit even to see, let alone perform, the sacrifices she was alleged to have in fact performed (59.72, 73 and 85);
- that Phano's behaviour in relation to the sacrifices and rites was impious or sacrilegious (59.72, 73 and 85);
- the sanctuary of Dionysos at *Limnai* was most ancient and most sacred (59.76—77); and,

- the rites performed at *Limnai* were sacred (59.77);

and then also

(E), the people of Demosthenic Athens would on the whole have agreed with the following opinions and sentiments expressed in the Speech:

- the law with respect to the king's wife which was set up in the sanctuary of Dionysos at *Limnai* testified to the piety of the people towards the god Dionysos and to their desire that only a few would have knowledge of the inscription (59.76);
- it was the duty of the citizens of Athens piously to maintain sacred rites associated with the sanctuary of Dionysos at *Limnai* and to punish those who dishonoured them (59.77);
- the Areopagus Council acted with respect to Theogenes out of concern for the sanctity of the rites held at *Limnai* (59.80); and,
- the Areopagus Council acquitted Theogenes only because they believed his good nature had been taken advantage of by Stephanos and that Theogenes would immediately rid himself of Phano (59.83).

Since *Against Neaira* is proof of nothing, we cannot know for sure if the assertions set out under (B) above were in fact true, and in all likelihood we shall never know if the assertions referred to in (C) were true or false. It does not matter of course whether the assertions listed under (C) were true or false; what matters is what would have been the response of the people (not just the male citizens, but also the women, the metics, the emancipated slaves and slaves) if they were presented with such facts and believed them to be true.

Although we have some corroboration in other sources of some of the alleged facts in (A) and (B) (those which are to do with what the people believed about the historical past of the Athenians) on the whole we have to rely on supposition. We may thus suppose that because the alleged facts and the existence of the beliefs seem to be of a nature that would have been in the public domain at the date of the Speech, it is less likely that they would have been misrepresented or invented in the speech. However, we have to allow for the possibility of invention and distortion by the public domain itself. Apollodoros may have been exploiting the false but widely held substance of misconceptions about what went on in the annual ritual at *Limnai*. But we have no grounds for thinking there were such misconceptions.

The author of the Speech could not have thought that he could easily present a false or distorted version of what the people believed about the historical past of the Athenians, and the facts under (B), to hundreds of citizen jurymen and, accordingly, we have reasonable grounds to believe that it is more probable than not that the alleged historical beliefs would have in general been held by the male citizenry, and that the facts under (B) were probably true.

(d) Opinion and Sentiment:

Much the same argument can apply to the items of opinion and sentiment listed under (E). Opinion and sentiment concerning matters of public interest are less easy to miscalculate than matters that are of essentially private fact.⁷¹ The author of the Speech will have been able to assess the likely response of male citizens to the matters referred to because they are to do with public attitudes towards matters of public interest. But in respect of opinion and sentiment there are four further reservations.

Therefore, the eighth reservation is that opinion and sentiment, unlike established facts, can vary both in substance and degree and we cannot know that the author of the Speech read public opinion and sentiment correctly, or that if he did, that these had not changed before or after the Speech. Moreover, even if we knew, which we do not, that there was a trial of Neaira, and that she was convicted on the basis of the matters in the Speech, we do not know that the perceptions that we wish to gauge through the Speech in order to know something about the office of the βασιλεύς, were not short-lived perceptions, mere aberrations. We cannot necessarily generalize from the Speech so to say that whatever it says to us that we think is reliable was always so, and was so for the people as a whole.

The ninth reservation concerns what we might infer about opinion and sentiment from the fact of the detail in the Speech about the alleged ritual marriage at *Limnai*. The Speech actually gives the reason that the detail will enable the jurors to know how important, sacred and ancient the rites were.⁷² The suspicion created by this, that the ritual marriage at *Limnai* was not a significant or sacred event in the Athenian religious calendar, is deepened by the

⁷¹ It is a well known major problem of modern jury trials that the jurors will have been influenced by media reporting in cases that have attracted broad public interest with the consequent formation of related and not necessarily sound public opinion.

⁷² 59.76. There is no contemporaneous textual basis for the designation 'sacred marriage'.

allegation in the text that the law in relation to the wife of the βασιλεύς was intended to be known only by a few, and for that reason it was set up on a stone at *Limnai*, apparently for its inscription there to be allowed to suffer the ravages of time.⁷³ It is noteworthy in this context that *Against Neaira* is our only contemporaneous source for the ritual marriage apart from the very brief allusion to it in the *Ath. Pol.* It is not referred to in the passages in which the *Ath. Pol.* refers to the role of the βασιλεύς in Demosthenic Athens.⁷⁴ There are a number of 5th century BCE vase paintings that are claimed to portray the marriage of the βασίλιννα with Dionysos.⁷⁵ One of the vase paintings is a pornographic depiction of copulating donkeys.⁷⁶ If the claim is correct, we have to consider the possibility that the so-called 'sacred marriage' was considered by at least some to be a proper subject matter for ridicule.

The tenth reservation is to do with what we might infer about the strength of opinion and sentiment in what the speech says about adultery. The Speech turns suddenly from Theogenes' exoneration by the Areopagus Council to the law of adultery and its implication for the adulteress.⁷⁷ The law is alleged to render the adulteress who, despite her adultery, attends at public sacrifices, liable to suffer with impunity any abuse short of death so that she will be caused to live modestly (σωφρονεῖν), not to do wrong (ἀμαρτάνειν), and to stay at home (οἰκουρεῖν), for fear of the consequences if she does otherwise.⁷⁸ There is no express comment in the Speech, although the language overall indicates approval of such a law, and it is open to be argued that such a law, if it existed, and the policy expressed implicit such a law, were acceptable, or at least tolerable. The insight that gives to prevailing attitudes to women is obvious enough, however we do not know the degree to which the alleged law was observed, and we might wonder why the jurors would have needed to be reminded, or perhaps it is the case, *informed*, of its terms. In any event, how is this to be reconciled with the fact that the Speech expresses no indignation where it alleges (i) that whilst living in Athens with Stephanos, Neaira carried on a life of prostitution charging a

⁷³ 59.76.

⁷⁴ Nor is the Anthesteria. It is not universally accepted that the ritual marriage was connected with the Anthesteria. See Hamilton, R. (1992): *Choes and Anthesteria: Athenian Iconography and Ritual*, Anne Arbor, 55—56.

⁷⁵ *Lexicon Iconographicum Mythologiae Classicae*, Vol. III (1), pp. 491—492, Nos. 820—826. See also Erika Simon 'Ein Anthesterien – Skyphos des Polygnotos' (1963), *Antike Kunst* 6, 6—22.

⁷⁶ Deubner, *Attische Feste*, op. cit., pp. 100 et seq.

⁷⁷ *Lexicon Iconographicum Mythologiae Classicae* op. cit. No 826, according to Ludwig Deubner, *ibid.* at 120.

⁷⁸ 59.86.

⁷⁸ 59.86. Cf. Lysias *Against Simon*, 3.6—3.7.

higher fee because she purported to be a respectable wife;⁷⁹ and, (ii) that Nikarete in relation to the young girls she raised for prostitution, promoted them as her daughters so that she, a freedwoman herself, could charge a higher fee for them as free women?⁸⁰ If the market for prostitution in Demosthenic Athens included supply by respectable married women, who because of their status as married women, were able to charge at a premium, we have to be guarded in relation to the purported indignation in the Speech in regard to Phano's conduct as wife of the βασιλεύς, given that that indignation is couched in terms of a portrayal of citizen Athenian women as being piously and dutifully attached to home and hearth.⁸¹ Again, silence in the Speech cannot be taken for approval, nonetheless, if the Speech has any probative value at all it seems at least to say that there was no shortage of hypocrisy, or perhaps cynicism, in Demosthenic Athens.⁸² That has to be considered in what we might presume the Speech has to say about the office of βασιλεύς.

The eleventh reservation is as to whether we can assume that the opinion and sentiment of male citizens towards religious belief and practice did not differ materially from that of the people as a whole. This does not seem an unreasonable assumption, but it is an assumption nonetheless.

The twelfth and final reservation concerns another aspect of the Speech that draws attention to the matter of adultery. *Against Neaira* at 59.73 says of Phano that she was given to Dionysos as bride (ἐξεδόθη δὲ τῷ Διονύσῳ γυνή). The author of the *Ath. Pol.* refers to the union and marriage to Dionysos (ἡ σύμμειξις . . . τῷ Διονύσῳ καὶ ὁ γάμος).⁸³ It is an irony, given the strident terms in which the Speech excoriates adulterous women, that the ritual

⁷⁹ 59.41: Διεγγυηθεῖσα δ' ὑπὸ Στεφάνου καὶ οὔσα παρὰ τούτῳ τὴν μὲν αὐτὴν ἐργασίαν οὐδὲν ἤττον ἢ πρότερον ἠργάζετο, τοὺς δὲ μισθοὺς μείζους ἐπράττετο τοὺς βουλομένους αὐτῇ πλησιάζειν, ὡς ἐπὶ προσχήματος ἤδη τινὸς οὔσα καὶ ἀνδρὶ συνοικοῦσα.

⁸⁰ 59.19: προσειπούσα δ' αὐτὰς ὀνόματι θυγατέρας, ἴν' ὡς μεγίστους μισθοὺς πρᾶττοιο τοὺς βουλομένους πλησιάζειν αὐταῖς ὡς ἐλευθέραις οὔσαις . . .

⁸¹ For all that at 59.122 the author refers to the mistresses that Athenian men have for pleasure, the concubines that they have to attend their daily needs, and the wives they have to produce their legitimate offspring, and to guard their households.

⁸² Cf. Aristophanes: in counselling Pheidippides on the skilful use of the wrong (that is, morally wrong) argument, 'Wrong' says to him: "... if you come and learn from me, then you can do as you like and get away with it . . . indulge your desires, laugh and play, have no shame. And then suppose you get caught with somebody's wife, you can say to him cool as a cucumber, 'what have I done wrong? Look at Zeus; wasn't he always the slave of his passions, sexwise? And do you expect a mere mortal like me to do any better than a god?'. (The Clouds: translated by Alan H. Sommerstein).

⁸³ *Ath. Pol.* 3.5.

marriage is *prima facie* a ritual adultery, indeed, the more perfect the wife of the βασιλεύς the more perfect the adultery.⁸⁴

Should the Speech therefore be wholly dismissed for present purposes, by reason that it is incredible because it portrays participation of the Athenians in a seemingly perverse and irrational ritual immersed in what appear to be moral ambiguities? Yet such ironies are at the centre of a great many religious constructs, not least those of Christianity, where the ontological and moral issues relating to the doctrines of the Annunciation and Incarnation, events whose elements also impinge on intimate connection of human and divine, are no less a challenge, but they are events nonetheless considered a proper subject of good public taste and ones worthy of solemn annual observance.

(e) The βασιλεύς as Portrayed in *Against Neaira*

Subject to the twelve reservations expressed above, it can be said that *Against Neaira* tells us the ritual marriage of the wife of the βασιλεύς with Dionysos was to the people of Demosthenic Athens a sacred event related to the very foundations of the state.

It tells us also that the βασιλεύς was the custodian of sacred duties by way of inheritance from the ancestral kings, and his wife's character was thus required, out of due regard for the status of the βασιλεύς, and the importance of the ritual marriage, to be commensurate with the highest aspirations of the state with respect to the character of its female citizens. *Against Neaira* thus tells us that the office of βασιλεύς in Demosthenic Athens was one of special significance to the people of Demosthenic Athens at least as far as it touched upon the ritual at *Limnai*: quite how special the significance depends on what need in the Athenian of the time was sought to be satisfied by the ritual marriage of the wife of the βασιλεύς to Dionysos; how deep that need was; and, to what degree the ritual satisfied the need. *Against Neaira* does not illuminate those matters.

An ancillary or bonus contribution by *Against Neaira* is the description of Theogenes as poor (πένης) and naive (ἄπειρος). This confirms, if confirmation were needed, that the office

⁸⁴ Much depends on how σύμμιξις is to be translated. For a range, compare the refined perspective of Kerényi, Carl (1976): *Dionysos Archetypal Image of Indestructible Life*, translated by Ralph Manheim, Princeton New Jersey, 309—310 with the very crude perspective of Deubner, op. cit., at 102.

of βασιλεύς was not one requiring to be filled by someone with particular expertise. It also assists to confirm a number of references in the *Ath. Pol.* that leave open the possibility that a member of the class of *thêtes* could be appointed a βασιλεύς in Demosthenic Athens, notwithstanding the formal exclusion of that class from eligibility.⁸⁵

However, if we take an overall view of the contemporary βασιλεύς in *Against Neaira*, we see him in the form of Theogenes, presented as a party mired in an ugly scandal; his office sullied by people portrayed as from the society's less than salubrious quarters. There is not here an image of an exalted office occupied by a patrician, but of an office capable of being drawn through the mud and occupied by a man who is naive at best and even stupid.

CONCLUSION

The βασιλεύς of Demosthenic Athens, as portrayed in the contemporaneous sources is an enigma at best. If the *Ath. Pol.* is to be relied upon, the βασιλεύς is merely one of a list of officials whose real political power, if he had any at all, cannot be reliably determined. In respect of the administration of religion, the βασιλεύς does not stand out especially in the contemporaneous literary record of the Demosthenic period. The record we have is of a diffused responsibility for religion, with the βασιλεύς playing a not particularly significant part. Nor does the βασιλεύς stand out as a judicial authority. The record does not ascribe to him any actual power of judicial determination. And the Demosthenic βασιλεύς in *Against Neaira* is not an unambiguous image. What is described there as the alleged custodian of Athens' deepest values is represented by a fool, in respect of whom we cannot be sure that he was not typical of his kind. In the final analysis, even if it was the case that he once had been 'a high priest of the nation', or a 'pre-eminent religious authority', the βασιλεύς of Demosthenic Athens as portrayed in the contemporaneous literary record is what Charles the 1st feared he would become if he acceded to the wishes of the Long Parliament:

"If I granted your demands, I should be no more than the mere phantom of a king."⁸⁶

⁸⁵ See *Ath. Pol.* 6.4, 26.2 and 47.1. There is another insight offered by *Against Neaira* at 59.92, that only a native-born Athenian could be appointed as one of the nine archons. However, as a statement of fact it suffers the same limitations as those other assertions in the Speech which allege the existence of laws, in respect of which general comment is made above at 23.

⁸⁶ Green, John Richard (1896): *History of the English People*, Volume VIII, Macmillan, London, p. 1140.