

‘Thanks, but No Thanks’: *Oikêia Kaka* and Theramenes’ Failed *Dokimasia*

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Some thirty years ago George Adeleye suggested that Theramenes’ failure to successfully pass his *dokimasia* and enter the office of *strategos*, to which he had been elected, should come as no surprise: his former political association with the oligarchs of 411 BC would have automatically disqualified him from holding any office, based on the law proposed by Demophantes and ratified by the Assembly in 410/9 (Andoc. 1.96-98). Steven Todd, however, strongly rejected this explanation, in part because he did not accept Adeleye’s argument about the purpose of the *dokimasia*.¹ As I hope to demonstrate in the following discussion, although there may have been very good grounds on which to suspect Theramenes’ commitment to the democracy after the battle of Arginousai and its aftermath, the strongest motivation for Theramenes’ rejection may be far less politically grounded than has been previously thought.

Oikêia Kaka and the Demos

The Athenians did not like to remember painful incidents from their past nor did they appreciate being reminded of their failure to exercise their democratic power justly. So much, at least, is clear from the decision made by the people against Phrynichos in the late 490s. When he staged his tragedy based on the recent sack of Miletos by the Persians, the Athenians were so aggrieved by this reminder of *oikêia kaka* (‘their own misfortunes’ or ‘family troubles’) that they fined the playwright 1000 drachma and passed a decree that the play never be staged again. The dramatization of a tragedy that hit too close to home so impacted the psyche of both audience and playwrights that, to the best of our knowledge, no tragedian ever attempted to produce a play based on Athenian suffering again.²

In a similar vein, in the early years of the democracy, another incident occurred which managed to generate two decidedly different accounts. In the one conveyed by the non-Athenian, Herodotus (9.5), when in 479 BC, Lykides, a member of the *boulê*, recommended to his fellow *bouleutai* that the Persian proposal brought by Murychides be presented to the people, all those who heard him were immediately angered and spontaneously stoned him to death. On hearing the news of this stoning, the women on Salamis then took it upon themselves to kill Lykides’ wife and children by the same means. However, later appeals to this event have wholly eliminated any sense of what Herodotus represents as ‘mob violence’

¹ G. Adeleye, ‘The Purpose of the *Dokimasia*’, *GRBS* 24 (1983) 295-306; S. Todd, *The Shape of Athenian Law* (Oxford, 1993) 288-9; accepted by P. Rhodes, *The Athenian Boule* (Oxford, 1972) 12. Cf. G. Adeleye, ‘The Arginusae Affair and Theramenes’ Rejection at the *Dokimasia* of 405/4 BC’, *Mus. Afr.* 6 (1977) 94-9.

² See D. Rosenbloom, ‘Shouting ‘Fire’ in a Crowded Theater: Phrynichos’s *Capture of Miletos* and the Politics of Fear in Early Attic Tragedy’, *Philologus* 137 (1993) 159-96.

from their accounts: Lykides' stoning has become a legally imposed death sentence, voted on after careful deliberation, and carried out by a determined and emotionless *boulé* (Lykurgus *Leok.*122; cf. Dem. 18.204). As Vincent Rosivach suggests, the story as 'remembered' by later writers reflects how the Athenians have chosen to deal with this shameful event in their nascent democracy: they have opted to 'forget' the facts of the matter as preserved in Herodotus' account by removing that which is too painful to recall—their impulsive and brutally illegal murder of a fellow citizen.³

Finally, we need only think of the 'amnesty' declared by the restored democracy of 403 BC, which required all Athenian citizens to swear an oath not to remember their recent ills (Xen. *Hell.* 2.4. 43; cf. [Ar] *Ath.Pol.* 39.4, 40.2).⁴ Despite the brutality of the Thirty and their supporters against the proponents of democracy, when the latter regained control they opted to impose a collective amnesia on everyone through means of this oath.⁵ While this may have been an astute political move designed to contribute to the stability of the *polis* and prevent the re-emergence of *stasis*, it too reveals an unwillingness to acknowledge their past failures and the sufferings those failures generated.⁶

I would suggest that this repeated tendency to suppress (or eliminate) anything that might bring *oikêia kaka* to mind had a part to play in the decision to reject Theramenes' candidature for *strategos* at his *dokimasia* in 405/4 BC.

Arginousai and Its Aftermath

At the time of the election of their archons, including the *strategoí*, for 405/4 BC, the Athenians had once again been reminded of the fallibility of their decision-making process. Only a few months prior to these elections, they had collectively tried and condemned to death all eight of their generals who had guided their fleet to a most welcome victory over the naval forces of Sparta and her allies at Arginousai. Two of these generals did not return to Athens when recalled, going into voluntary exile, apparently straight from the field; but the six who did return were soon condemned and put to death. Theramenes, who had served under these generals at Arginousai as a trierarch, had been actively involved in their prosecution, even (according to Xenophon) going so far as to encourage the men of his phratry to shave their heads and dress in mourning clothes when they attended the next

³ V. Rosivach, 'Execution by Stoning in Athens', *CA* 6 (1987) 239 also suggests that the revisionist process had begun well before Aeschylus produced his *Septem* in 476 BC.

⁴ Cf. N. Loraux, *The Divided City: On Memory and Forgetting in Ancient Athens*, (New York, 2002); A. Wolpert, *Remembering Defeat: Civil War and Civic Memory in Ancient Athens* (Baltimore and London, 2002).

⁵ There were some exceptions to the amnesty: the Thirty, the Eleven and the Ten were not granted immunity from prosecution (Andoc.1.90; [Arist] *Ath.Pol.*39.6) unless they submitted to and passed their *euthyna*.

⁶ However, even though a man might not be prosecuted directly for his involvement with the Thirty, as P. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* (Oxford, 1981) 421 observes, his participation could be indirectly raised by his opponents should he become involved in a lawsuit on other matters or required to stand for a *dokimasia* on becoming an archon-elect. Cf. Wolpert (n. 4)

Assembly at which a crucial vote determining the fate of the generals was to be taken.⁷ Shortly after the people had carried out their decision to execute these generals, they began to regret this emotion-fueled and hastily enacted condemnation. Moved by this regret, they decided to arrest and prosecute all those who had deceived them into collectively trying and executing the generals (Xen. *Hell.* 1.7.35; cf. Diod. 13.103.1-2). If anything should count as *oikêia kaka*, surely this whole event is such.

Nevertheless, when they undertook this action, the Athenians did not include Theramenes among the five men they subsequently imprisoned for their role in the generals' trial and execution. I am of the opinion that they did not prosecute him because he brought to light the less-than-candid report submitted to the people by the generals, in which they failed to name those charged with the task of recovering the dead, wounded and shipwrecked.⁸ The information that Theramenes was among those so charged became public knowledge only when the generals were forced to name the men to whom they had assigned the recovery task in the course of defending themselves against Theramenes' demand that they explain the loss of so many Athenian lives before the Assembly (1.7.4-6).⁹ At this point in the proceedings, the people were encouraged to believe that the generals had (mistakenly) thought that the storm made the naming of those assigned the recovery task moot. The generals had done what was required by organizing a rescue mission and this would have been accomplished had not the storm prevented its success. Thus, the people were initially sympathetic because the generals emphasised that the violence of the storm directly prevented the men from carrying out their orders, and so refused to condemn Theramenes and the others. But Theramenes would not let the matter rest (1.7.8).

When the Assembly reconvened, Euryptolemos revealed in his address, which advocated for the trial of each general individually, that Diomedon and Pericles were responsible for dissuading the rest of the generals from formally denouncing Theramenes and Thrasybulus in their official communiqué (*Hell.* 1.7.17). Although he probably believed that this was to

⁷ For discussion of the trial, see: M. Lang, 'Theramenes and Arginousai', *Hermes* 120 (1992) 267-79; R. Bauman, *Political Trials in Ancient Greece*, (London, 1990) 69-75; B. Due, 'The Trial of the Generals in Xenophon's *Hellenica*', *C&M* 34 (1983) 34-44; A. Andrews, 'The Arginusai Trial', *Phoenix* 28 (1974) 112-22.

⁸ Neither of our sources (Xen. *Hell.* 1.7.1-35; Diod. 13.101-102) is especially clear on the timeline of events once the battle was over. M. Munn, *The School of History: Athens in the Age of Socrates*, (Berkeley, 2000) 183, has argued that Erasinides was recalled before the others on suspicion that he was misappropriating funds and that in the process of this inquiry, he revealed things about the aftermath of the battle that reflected poorly on the other generals. This, in turn, led to them being recalled as well. Such a situation seems highly probable given that in Xenophon's account no indication is given of what lay behind the recall of the other generals, and that: (a) Archedemos charged Erasinides with both embezzlement and some other (unspecified) misconduct in relation to his generalship (1.7.2), for which he was imprisoned; and, (b) two of the generals, upon receiving the recall, went into voluntary exile. This last piece of information suggests either that they expected the *demos* to treat them poorly on account of their failure to rescue their compatriots or that they suspected, as Diodoros indicates, that someone had revealed something potentially damning about their deliberations over the rescue mission.

⁹ It would seem that the generals first revealed this information at their meeting with *Boulê* and, in light of this information, Theramenes was forced to defend himself before the people.

their credit, such a revelation may well have been seen by the people as an attempt by these two elected officials to protect two other wealthy men from prosecution by failing to provide an accurate account of events. As Debra Hamel (99) has observed, because 'command decisions were made by majority vote, each general participating fully and equally in the deliberative process', in the eyes of the people, all the generals became culpable for agreeing to conceal the names of those who failed to rescue their compatriots.¹⁰ But more than this, Eurypolemos (*Hell.*1.7.29) also revealed that during the course of the generals' deliberations Erasinides had advocated for the immediate pursuit of the fleeing enemy's fleet. It must surely have struck the Assembly as loathsome that the generals felt it necessary to deliberate over whether or not to attempt the retrieval of the dead, wounded and shipwrecked at all. Such revelations were clearly more egregious to the people than the actual loss of life which resulted from the trierarchs' legitimate failure to recover the dead and wounded because of the storm. Thus, despite their initial anger at Theramenes (Diod 13.101.2-4), when, in his effort to defend himself, he contributed to bringing the machinations behind the generals' less-than-complete report to public attention, it was counted to his credit: he had done a service to the people.¹¹

Theramenes' Election and Dokimasia

As a result, the Athenians did not consider Theramenes amongst those who had intentionally deceived them during their somewhat irregular 'trial' of the Arginousai generals, and, in fact, shortly thereafter he garnered enough votes to become *strategos*-elect in early 405/4 BC. Nevertheless, those responsible for conducting his confirmation hearing were not sufficiently satisfied to allow him to take up the post. Lysias (13.10) intimates that Theramenes' rejection was based on his allegedly anti-democratic sentiments, which in itself seems rather odd, given that such does not seem to have been a concern for the people in the years immediately following the restoration of the democracy in 410/9: even though Theramenes had assisted both the oligarchs in their short-lived coup in the last months of 411 (Thuc 8.68.4) and the democrats in their ouster of the oligarchs in early 410 (Thuc.8.89.2-94.1),¹² he became a *strategos* under the oligarchs' régime (Lys. 12.66) and continued to be

¹⁰ D. Hamel, *Athenian Generals: Military Authority in the Classical Period*, (Leiden, 1998). This may have informed the Assembly's decision to try the generals collectively rather than individually: just as the majority vote in the Assembly was presented as indicating that the whole *demos* was in agreement, so it was taken for granted that a decision collectively enacted in the field indicated full agreement among the generals (even though not all may have endorsed the proposition). P. Hunt, 'The Slaves and Generals of Arginusai', *AJP* 122 (2001) 359-80, locates the *demos'* hostility to the generals in their resentment over the emancipation of slaves and attendant promise of citizenship; Munn (n.8) 181 argues that the largest number of the ships lost in the battle were manned by citizen Athenians, rather than allies, which made the grief at their loss all the more acute.

¹¹ I share Munn's view (n.8, 403 n.26) that Diodoros here has confused the official report sent by the generals from the field to the *Boulê* (Xen. *Hell.* 1.7.4) with the later indictment which they raised against Theramenes and Thrasybulus when they first appeared before the *Boulê* (*Hell.* 1.7.3-4).

¹² For the debate on the character of Theramenes see J. Frank and S. Monoson, 'Lived Excellence in Aristotle's *Constitution of Athens: Why the Ecomium of Theramenes Matters*', in *Ancient Greek Political*

elected to and confirmed in that office for several consecutive years thereafter (Diod. 13.47.4-8, 49-51).¹³ If the people did not think that his (so-called) 'moderate' political views were sufficiently 'anti-democratic' to prevent him from serving as one of their ten *strategoi* for four years, even when he had assisted in bringing into being the less-than-fully democratic intermediate régime of the Five Thousand, it is hard to explain why, in 405/4, his political leaning were now subject to suspicion.¹⁴

Perhaps his former ties with leading *aristoi*, such as Alkibiades, had become a cause for concern for some of his fellow citizens around this time: he had served alongside Alkibiades during his years as general and had actively advocated for his recall from self-imposed exile (Diod.13.38.1.2). Whether it was in the best interests of preserving a democratic Athens to invite Alkibiades back was very much on the minds of the Athenians in 405/4 BC; Aristophanes' *Frogs* bears witness to the topicality of the issue. Given that some were concerned that Alkibiades might still harbour hopes of tyranny,¹⁵ Theramenes may have been considered guilty by association. This, in combination with his prior association with the Four Hundred, might well have given rise to doubts about his commitment to the preservation of a democratic constitution which included the lowest property class in the decision-making processes of the Assembly and, thus, become subject to more direct scrutiny at his *dokimasia*. From a legal perspective, if Theramenes had not been able to address these concerns to the examiners' satisfaction, there is no need to propose other grounds for his rejection.¹⁶

And yet, in light of the mixed reviews Theramenes has received in our sources, (not to mention modern scholarship) this conclusion does not wholly satisfy.

Something else, unrecorded in our sources, seems to have been informing the board's decision to reject Theramenes as a suitable candidate for the office of *strategos*. And I would

Thought, ed. S. Salkever (Cambridge, 2009) 243-70; W.J. McCoy, 'The Political Debut of Theramenes' in *Polis and Polemos: Essays on Politics, War and History in Ancient Greece in Honor of Donald Kagan*, ed. Ch. Hamilton and P. Krentz (Claremont, CA., 1997) 171-93; R.J. Buck, 'The Character of Theramenes', *AHB* 9 (1995) 14-23; C. Ehrhardt, 'Lysias on Theramenes', *AHB* 9 (1995) 125-6; M. Lang, (n. 7); G. Adeleye, 'Theramenes: The End of a Controversial Career?' *Mus. Afr.* 5 (1976) 9-19; P. Harding, 'The Theramenes Myth', *Phoenix* 28 (1974) 101-11; G. Adeleye, 'Theramenes and the Overthrow of the "Four Hundred"', *Mus. Afr.* 2 (1973) 77-80; S. Usher, 'Xenophon, Critias and Theramenes' *JHS* 88 (1968) 128-35.

¹³ He lost the generalship only after the navy failed to emerge victorious in their engagement at Notion in 407/6 (Xen. *Hell.* 1.4.16).

¹⁴ It seems clear that in electing Theramenes to serve as general after the overthrow of the Four Hundred, the *demos* considered him exempt from the restrictions imposed by Demophantes' law, a point which Adeleye (n.1) did not take into consideration in his argument.

¹⁵ Cf. Lys. 14.37-38, 21.7; Diod. 13.73.3-74.1; Plut. *Alk.* 36.1-3, with discussion in Munn (n.8) 178-9.

¹⁶ Given that Ps-Aristotle (*Ath. Pol.* 44.4) indicates that the time between election and assumption of office could be as much as four prytanies, the time between the election and the *dokimasia* was surely sufficient to allow the people to consider the results, reflect on the pros and cons of each candidate-elect, and prepare questions to be raised about each candidate's fitness for office at the *dokimasia*. Cf. C. Fornara, *The Athenian Board of Generals from 501 to 404*, (Wiesbaden, 1969) 40; Hamel (n.10) 15.

suggest that it has to do with the *demos'* aversion to being reminded of *oikêia kaka*, especially those associated with past errors in collective judgement. Is it likely that the representatives of the *demos*, charged with the examination of *strategoi*-elect in 405/4 BC, would have endorsed the installation of anyone who had contributed in any way to their decision-making processes in the execution of the Arginousai generals, especially installation into the very office which had been rendered vacant by their own action? To replace one or more of their executed generals with someone who had actively contributed to their condemnation would have been to accept, in the very person of that individual, a highly visible reminder of an action which they had begun to regret very soon after they had enacted it.

So although under the law, the desire to avoid the pain of being reminded of past errors has no legal merit, that desire was no less real, and it would seem that Theramenes' own recent past offered the technical grounds on which he could be disqualified.¹⁷ However grateful they may have been for his prior service, Theramenes' presence among the generals would have served as too poignant a reminder of the *demos'* own recent failure to exercise their power in accordance with their own laws.¹⁸ They were already taking steps to eliminate from amongst themselves (and from their memory) those who had misled them during the Assembly at which they condemned the victorious generals of Arginousai to death. To confirm Theramenes as a *strategos* for 405/4 BC would have been, figuratively, like rubbing salt in an open wound: purifying, but far too excruciatingly painful to be endured.

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¹⁷ It is also possible that the examiners viewed his rejection as a lesser form of punishment (a type of social death rather than actual) than they intended to impose on those arrested earlier for misleading the Assembly during the trial of the generals. I would like to thank Gil Davies for this suggestion.

¹⁸ It is possible that the comic references to Theramenes in Aristophanes' *Frogs* (533-41, 967-70), which was produced shortly before the elections for the *archai* of 405/4, as someone with an astute ability to avoid danger by quickly aligning himself with the winning side, played some part in the people's reassessment of Theramenes' reliability at his confirmation hearing. See A. Allan, 'Turning Remorse to Good Effect? Arginusae, Theramenes, and Aristophanes' *Frogs*', in C. W. Marshall and G. Kovacs (eds.), *No Laughing Matter. Studies in Athenian Comedy* (London, 2012) 101-14.