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UND HELLENISTISCHE RECHTSGESCHICHTE

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בהיסטוריה של המשפט היווני וההלניסטי
תל אביב, 20-23 באוגוסט 2017

Vorträge zur
griechischen und hellenistischen Rechtsgeschichte
(Tel Aviv, 20.–23. August 2017)

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גרהרד תור
אורי יפתח
רחל צלניק-אברמוביץ

herausgegeben von
Gerhard Thür
Uri Yiftach
Rachel Zelnick-Abramovitz



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IN MEMORIAM
JOSEPH MÉLÈZE
MODRZEJEWSKI



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פתח דבר

לראשונה מאז היווסדו ב-1971, התקיים ה"סימפוזיון" בישראל. המארגנים, אורי יפתח ורחל צלניק-אברמוביץ, ניצלו את ההזדמנות לסקירה היסטורית. תרומתם המחקרית של מלומדים ואינטלקטואלים ממוצא יהודי באירופה שלפני מלחמת העולם השנייה אינה זקוקה להוכחה. קביעה זו תקפה גם ביחס לחקר המשפט בעולם היווני וההלניסטי. בתחום זה, "הפיתרון הסופי" לא היווה שבר מוחלט. שלושה מלומדים, פריץ פרינגסהיים, רפאל טאובנשלאג והנס-יוליוס וולף, שגלו לבריטניה ולארצות הברית בזמן השלטון הנאצי, שבו לאחר 1945 לארצות מוצאם, שם תרמו תרומה מכרעת לתחייתו של חקר המשפט היווני. ה"סימפוזיון" הוא אחד הביטויים המרכזיים לפעולתם של חוקרים אלה: היו אלה הנס-יוליוס וולף ותלמידו של טאובנשלאג, יוזף מלז מודז'בסקי, גם הוא ממוצא יהודי, אשר יסדו ב-1971 את "סימפוזיון: האגודה לחקר ההיסטוריה של המשפט בעולם היווני וההלניסטי". מסיבה זאת, מארגני הסימפוזיון, אשר נערך בשנת 2017 לראשונה בישראל, ראו חובה לעצמם להקדיש מושב מיוחד לציון תרומתם המדעית של המלומדים האלה, מושב שבו מלז-מודז'בסקי התכוון לסקור את תורתו של מורהו טאובנשלאג. למרבה הצער, התוכנית האמורה לא באה לכדי מימוש, עקב מותו של מלז מודז'בסקי ב-30 בינואר 2017. מושב היסטוריוגרפי התקיים בכל זאת, אולם הוא הוקדש לציון חצי מאה של פעילות מדעית של חוקר דגול זה שהטביע את חותמו על חקר המשפט היווני בדורות האחרונים.

הכנס ה-21 להיסטוריה של המשפט בעולם היווני וההלניסטי – "סימפוזיון 2017" – התקיים באוניברסיטת תל אביב בין ה-20 ל-23 באוגוסט 2017. בשישה מושבים, על פני שלושה ימים ומחצה, נישאו שש-עשרה הרצאות (הרצאה נוספת כלולה עתה בספר; ואחת ההרצאות שנישאו לא נמסרה לפרסום), שכל אחת מהן לוותה, כנהוג ב"סימפוזיון", בהערות של מגיב (אחת הוצגה *in absentia*). חוקרים מעשר מדינות, מאירופה, מהמזרח התיכון ומצפון אמריקה השתתפו בכנס. כנהוג ב"סימפוזיון", לא הוגדר נושא כללי, אלא כל דובר/ת היה חופשי/ת להעלות לדיון נושא מתחום המחקר העכשווי שלו/ה. ההרצאות אורגנו על פי תחומיהן (חקיקה, סדר הדין, תעודות בחיי המשפט, עבדים, משפט וספרות), וביניהן שולב מושב לזכרו של מלז מודז'בסקי, שנזכר לעיל. סיור לירושלים היווה אתנחתא מרתקת לתכנית המדעית.

קיומו של הכנס "סימפוזיון 2017" התאפשר הודות לתרומותיהם הנדיבות של האקדמיה הלאומית הישראלית למדעים; ומאוניברסיטת תל אביב – הפקולטה למדעי הרוח ע"ש לסטר וסאלי אנטין, קרן סגן הנשיא למחקר ופיתוח, סגן הרקטור, ביה"ס להיסטוריה ע"ש צבי יעבץ, מכון ברג למשפט והיסטוריה, ומכון מינרבה להיסטוריה גרמנית. כמו כן תרמה למימון הכנס קרן אמריקנית, אשר מייסדה ביקש להישאר בעילום שם. לכל אלה נתונות תודותינו.

פרסום הספר לא היה מתאפשר ללא תמיכתה הכספית של האקדמיה הלאומית הישראלית למדעים וללא עבודתה המסורה של סוזנה לורנץ, שבתמיכת המכון להיסטוריה תרבותית של העולם העתיק באקדמיה האוסטרית למדעים עימדה את המאמרים והתקינה אותם לדפוס. תרומה רבה הרים גם רוברט פורינגר, מהוצאת האקדמיה האוסטרית למדעים. לבסוף, אנו מבקשים להודות לשני השופטים האנונימיים על הערותיהם המועילות.

גרהרד ת'ור, אורי יפתח, רחל צלניק-אברמוביץ

תל אביב ו-וינה, דצמבר 2018

VORWORT

Erstmals seit seiner Gründung im Jahre 1971 fand das “Symposion” in Israel statt. Die Veranstalter, Uri Yiftach und Rachel Zelnick-Abramovitz, nahmen die Gelegenheit wahr, Teilnehmer zu einem Rückblick zu inspirieren. Die wissenschaftliche Leistung europäischer Gelehrter und Intellektueller jüdischer Abstammung vor dem zweiten Weltkrieg bedarf keiner Ausführung. Das gilt auch im Bereich der Erforschung des antiken griechischen und hellenistischen Rechts. In diesem Bereich bildete die ‘Endlösung’ auch keinen völligen Bruch. Es waren drei Gelehrte, nämlich Fritz Pringsheim, Raphal Taubenschlag und Hans-Julius Wolff, die bald nach 1945 in ihre jeweiligen Heimatländer zurückkehrten. Sie leisteten dort einen bedeutenden Beitrag zur Neubelebung und Anerkennung der Erforschung des Rechts des griechischen Kulturkreises im Rahmen der antiken Rechtsgeschichte. Dies hat auch zur Begründung des “Symposion” geführt. Es waren Wolff und ein Schüler Taubenschlags, Joseph Méléze Modrzejewski, selbst jüdischer Abstammung, die mit dem “Symposion 1971” die “Gesellschaft für griechische und hellenistische Rechtsgeschichte” gründeten. Aus diesem Grunde sahen sich die Organisatoren des “Symposion 2017” veranlasst, eine eigene Sektion der wissenschaftlichen Würdigung den oben genannten Gelehrten zu widmen, worin auch Méléze Modrzejewski einen Beitrag zu seinem Lehrer Taubenschlag liefern wollte. Traurigerweise konnte er dieses Vorhaben nicht mehr umsetzen, da er am 30. Januar 2017 verstarb. Die historiographische Sektion fand dennoch statt, wurde aber der Diskussion und Würdigung von Méléze Modrzejewskis sich über mehrere Jahrzehnte hinweg erstreckendes Œuvre gewidmet.

Die 21. “Tagung für griechische und hellenistische Rechtsgeschichte” — Symposion 2017 — fand an der Universität Tel Aviv vom 20. bis 23. September 2017 statt. In sechs Sitzungen wurden, verteilt über dreieinhalb Tage, sechzehn Vorträge gehalten (ein weiterer Beitrag kommt nun in der Publikation hinzu, einer wurde nicht abgeliefert); fünfzehn “Antworten” (eine *in absentia*) wurden dazu vorgetragen. Vertreten waren Gelehrte aus zehn Ländern Europas, des Nahen Ostens und Nordamerikas. Wie in den “Symposia” üblich, war kein Generalthema vorgegeben, sondern es war jedem Sprecher bzw. jeder Sprecherin freigestellt, ein spezielles Thema aus dem jeweils aktuellen Arbeitsgebiet zur Diskussion zu stellen. Die angebotenen Vorträge wurden, sachlich gegliedert (Gesetzgebung, Prozess, Dokumente im Rechtsleben, Sklaven, Recht und Literatur), im Anschluss an die oben genannte Sektion zum Gedächtnis Méléze Modrzejewskis gehalten. Das wissenschaftliche Programm wurde ergänzt und aufgelockert durch einen intensiven und anregenden Ausflug nach Jerusalem.

Beiträge zu den Kosten der Tagung leisteten in großzügiger Weise The Israel Academy of Sciences and Humanities; an der Universität Tel Aviv: The Lester and

Sally Antin Faculty of Humanities, The Berg Foundation Institute for Law and History, the Vice President of Research and Development, the Vice Rector, The Zvi Yavetz School of Historical Studies, und The Minerva Institute for German History. Wir danken auch einer amerikanischen Stiftung, deren Identität (den Wünschen des Stifters gemäß) ungenannt bleiben soll.

Die Publikation des Bandes wäre ohne die finanzielle Hilfe seitens der Israelischen Akademie der Wissenschaften kaum möglich gewesen, ebenso wenig ohne die vorzügliche Arbeit von Susanne Lorenz, die unterstützt vom Institut für die Kulturgeschichte der Antike an der Österreichischen Akademie der Wissenschaft, die Beiträge druckreif formatiert hat; Helmut Lotz erstellte das Register. Bewährte Hilfe leistete wieder Robert Püringer, Verlag der Akademie. Ihnen allen sei hier gedankt. Schließlich danken wir auch den beiden anonymen Gutachtern, die wertvolle Hinweise gaben.

Gerhard Thür, Uri Yiftach, Rachel Zelnick-Abramovitz

Tel Aviv und Wien, im Dezember 2018

SARA FORSDYKE (ANN ARBOR, MI)

SLAVE AGENCY AND CITIZENSHIP IN CLASSICAL ATHENS¹

Abstract: This paper argues that slaves in classical Athens routinely sought to pass as free persons and citizens, and that they often succeeded in doing so. Comparative evidence from other slave-owning societies shows that successful passing leaves little trace in the historical record. Evidence can be found, however, in the laws that were passed to prevent it, as well as the records of trials concerning identity.

Keywords: Athenian law, slavery, citizenship, Demosthenes, Lysias

πολλοὶ δὲ νῦν μὲν εἰσιν οὐκ ἐλεύθεροι, εἰς αὐρίον δὲ Σουνιεῖς
Many are currently not free, but tomorrow they will be demesman of Sounion
– Anaxandridas, Fr.4

ἐν τῇ πολυανθρωπίᾳ...ξένοις καὶ μετοίκοις ῥᾶδιον μεταλαμβάνειν τῆς πολιτείας· οὐ γὰρ χαλεπὸν τὸ λανθάνειν διὰ τὴν ὑπερβολὴν τοῦ πλήθους
In a very populous state... it is rather easy for foreigners and metics to usurp the rights of citizenship. For it is not difficult to escape notice on account of the excess size of the masses.
– Aristotle *Politics* 1326b21

Recent work has challenged the long-standing consensus that there were sharp differences between citizens and non-citizens in classical Athens.² While most scholars still accept that such a distinction was an ideal upheld in theory, some have argued that the reality on the ground was much messier, and indeed that significant numbers of non-citizens, including slaves, slipped into the citizen ranks undetected.³

¹ I thank the audience of the conference at Tel Aviv for helpful feedback. This paper is one part of a two-part investigation of slave agency in ancient Greece. The companion paper will be published separately in S. Gartland and D. Tandy eds. *Voiceless, Invisible, and Countless: the Experience of Subordinates in Ancient Greece 800-300 BCE*.

² Jones 1999, Cohen 2000, Vlassopoulos 2007, Taylor and Vlassopoulos 2015.

³ Cohen 2000 takes the argument even further, suggesting that the Athenian citizenship law encouraged such social mobility by using specific vocabulary (ἄστος/ἄστη) that was intended to include non-citizens such as metics and even slaves who had “assimilated to Athenian life” (see e.g., p.48 and 72). I agree with Osborne (2002, 93) who argues that the Athenians were in fact concerned to keep citizen and slave identities distinct, even if in practice there was considerable slippage.

In this paper, I will build upon this recent work to try to capture the agency of slaves in either passing as free persons or actually gaining legal status as citizens. Specifically, I examine the law as evidence of slave efforts to become free and gain citizenship. I suggest that we can leverage the ways that the law responds to attempts by slaves to pass as free to understand slave strategies and give voice and substance to slave agency in Classical Athens. I will further argue that the examples that I will discuss are indicative of the striking sophistication of the tactics of some slaves, implying their familiarity with Greek law and their ability to build networks among citizens that could be called upon for support when opportunities arose.

Passing and the Problem of Evidence

Booker T. Washington tells the story of a man whose physical appearance was “so white” that he could have easily passed as white if he so chose. The event in question took place in the late 19th or early 20th century, after the end of legal slavery in America, but long before the end of discrimination and degradation of black people in everyday life.

There was a man who was well known in his community as a Negro, but who was so white that even an expert would have hard work to classify him as a black man. This man was riding in the part of the train set aside for coloured passengers. When the train conductor reached him, he showed at once that he was perplexed. If the man was a Negro, the conductor did not want to send him into the white people’s coach; at the same time, if he was a white man, the conductor did not want to insult him by asking him if he was a Negro. The official looked him over carefully, examining his hair, eyes, nose and hands, but still seemed puzzled. Finally, to solve the difficulty, he stooped over and peeped at the man’s feet. When I saw the conductor examining the feet of the man in question, I said to myself, “That will settle it;” and so it did, for the trainman promptly decided that the passenger was a Negro, and let him remain where he was.⁴

While the man in this story was not trying to pass as white, the conductor’s confusion is indicative of the potential for individuals to do so. Indeed, a recent study demonstrates that from colonial times to the present, American families “crossed the color line” undetected and often even unbeknownst to later generations of the family.⁵ A study of mulattoes in colonial America, however, astutely observes that it is impossible to tell how usual passing was because “the success of the passing mechanism depended on its operating in silence.”⁶

For 19th century America, however, there does exist a class of evidence from which some sense of the scale and mechanisms of passing can be gleaned, namely

⁴ Washington 1995, 48. Interestingly, the feet seem to have been considered a reliable marker of the difference between black and white in the 19th century, as the famous case of the Melungeons attests: Gross 2008, 64.

⁵ Sharfstein 2011, 3.

⁶ Jordan 2003, 646.

records of the so-called “racial identity trials” that survive in local archives and county courthouses.⁷ These trials took various forms. Some were freedom suits, that is, cases in which a person, who was being held as a slave, claimed that they were actually white and unjustly held as a slave. Other cases were inheritance suits – for example, when a white person claimed that a person was a slave and therefore could not inherit. A third type of racial identity trial occurred in cases of slander, when “a person sued someone who had called him ‘a negro.’ ”⁸ While such evidence may not capture all cases of uncertain identity and/or passing, it nevertheless reveals that such cases were sufficiently common to give rise to a particular class of legal trial.⁹

While there was not the same physical marker of difference between slave and free in ancient Greece, there is the same problem of evidence.¹⁰ Successful passing as a free person or citizen went unnoticed, and it is likely that even unsuccessful attempts at passing most often did not leave traces by which they can now be documented. However, in the case of ancient Greece, as in 19th century America, some of the best evidence for passing is the legal cases that arose in response. Indeed, a number of legal speeches survive that deal directly or indirectly with the identities of purported slaves or ex-slaves. Yet, as in the American examples, these cases most likely capture only a small fraction of occasions in which a slave crossed the status line. Arguably, this is even more true of the Greek case than the American case, since only a tiny fraction of the record of legal cases from classical Athens has survived. Nevertheless, while legal cases do not indicate the absolute numbers of slaves who tried or succeeded in passing as free persons or citizens, they at least demonstrate that the problem was common enough to leave some trace in our legal records.

Another piece of evidence for the attempts of slaves to pass is the laws themselves. As I shall demonstrate, a number of Athenian laws appear to respond to the efforts of slaves to pass as citizens. First among these laws is the citizenship law itself, which contained provisions for dealing with applicants who were “not free” and provided legal recourse for those whose identity as free was contested. A second set of laws responded to situations in which a special class of partially-freed slave refused to continue to perform the services that were still expected by their

⁷ See e.g., Gross 2008 and Sharfstein 2011. I thank Adriaan Lanni for pointing out the relevance of these books to this topic.

⁸ Gross 2008, 63-64.

⁹ Interestingly, these cases show how contested identity could become in 19th century America, and how uncertain the grounds upon which each side made their arguments. Gross 2008, in particular, demonstrates how important *behaviors* associated with particular identities, rather than the *facts* of one’s identity, played in determining the outcome of such trials.

¹⁰ Recent research has shown that even names are not reliable markers of status: Vlassopoulos 2015 and Lewis forthcoming.

former master. In such circumstances, the law provided legal remedies for the partially-freed slave in the form of a procedure known as the “assertion of freedom.” I shall suggest that these and other laws reveal not only that slaves attempted to pass as free or as citizens, but also that they sometimes used the law to do so.

The goal of this paper, therefore, is to illuminate the strategies and voices of slaves as they deployed the law in their efforts to cross status lines. As I will demonstrate, the success of these strategies often depended on the ability of slaves to build support among citizens, since slaves themselves lacked legal rights, and often also needed citizen witnesses to their identity. A further bonus of this study, then, is to illuminate the networks between citizens and slaves that have been the subject of much recent scholarship.¹¹

The Athenian Law on Citizenship

The Athenian law on citizenship was first adopted in 451/0 BCE and then reestablished in 403 BCE after a brief suspension during the Peloponnesian War. The text of the law is recorded in the *Constitution of the Athenians*, a work attributed to the school of Aristotle, describing the constitution in Aristotle’s time, that is c.330 BCE. The law reads as follows:

Μετέχουσι μὲν τῆς πολιτείας οἱ ἐξ ἀμφοτέρων γεγονότες ἀστῶν, ἐγγράφονται δ’ εἰς τοὺς δημότας ὀκτωκαίδεκα ἔτη γεγονότες. ὅταν δ’ ἐγγράφονται διαψηφίζονται περὶ αὐτῶν ὁμόσαντες οἱ δημόται, πρῶτον μὲν εἰ δοκοῦσι γεγονέναι τὴν ἡλικίαν τὴν ἐκ τοῦ νόμου, κἂν μὴ δόξωσι, ἀπέρχονται πάλιν εἰς παῖδας, δεύτερον δ’ εἰ ἐλεύθερός ἐστι καὶ γέγονε κατὰ τοὺς νόμους, ἔπειτ’ ἂν μὲν ἀποψηφίσωνται μὴ εἶναι ἐλεύθερον, ὁ μὲν ἐφήσιον εἰς τὸ δικαστήριον, οἱ δὲ δημόται κατηγοροὺς αἰροῦνται πέντε ἄνδρας ἐξ αὐτῶν, κἂν μὲν μὴ δόξη δικάως ἐγγράφεσθαι, πωλεῖ τοῦτον ἢ πόλις. ἐὰν δὲ νικήσῃ, τοῖς δημόταις ἐπάναγκες ἐγγράφειν.

Men who are born from two citizen parents and have obtained the age of eighteen are enrolled as citizens. And when they are enrolled, the men of the deme vote on them, having sworn an oath about them first as to whether they are the age required by law. And if they do not seem to be, they go back to the class of children. Secondly the men of the deme take an oath that the person is free and was born according to the laws. And if they vote against him on the grounds that he is not free, he makes an appeal to a court, and the men of the deme choose five men from among themselves as prosecutors. And if he seems not to be enrolled justly, the city sells him into slavery. But if he wins his suit, it is necessary for the men of the deme to enroll him as a citizen. (*Ath.Pol.*42)

¹¹ See especially the essays in Taylor and Vlassopoulos 2015.

While we cannot assume that the author “gives a complete and accurate account of the procedure,”¹² his account corresponds with criteria of citizenship in other sources, namely birth from citizen-parents and a minimum age of 18.¹³ What is significant for our purposes, however, is that this account includes explicit consideration of the status of the applicant as free as opposed to slave. The men of the deme are required to take an oath as to whether the applicant for citizenship “is free (ἐλεύθερος) and was born according to the laws.”¹⁴ Moreover, provision is made for an appeal to a court against a judgment by the deme that the applicant for citizenship is not free (μὴ... ἐλεύθερον).¹⁵ In the case of an appeal, the rules for selecting prosecutors are specified, and the consequences of conviction or acquittal are spelled out: the deme is to choose five prosecutors from their own membership and conviction is to result in sale into slavery; acquittal results in enrollment in the deme.

What I want to probe is the conditions that might have led to the enactment of these aspects of the procedure. For if legal procedures had to be developed for dealing with applicants whose status was “not free,” it is likely that this outcome was the result of actual attempts by the “not free,” i.e., slaves, to pass as citizens. Indeed, we know of several cases in surviving law court speeches that concern slaves or former slaves who allegedly attempted to pass as citizens. In *Lysias* 23, the speaker describes how he came to realize that his opponent, Panleon, was a slave, after first assuming that he was a metic and then learning that he claimed to be a citizen. In *Demosthenes* 59, Apollodorus accuses the former slave Neaera of masquerading as a citizen by living in marriage with a citizen and passing off her daughter as a citizen by marrying her to another citizen.¹⁶

¹² Rhodes 1981, 500.

¹³ Other sources for the citizenship law include *Ath.Pol.*26.4 and *Plut.Per.*37.2-5. For an excellent recent account of citizenship in classical Athens, see Blok 2017.

¹⁴ Harrison (1998) and others believe that “not free” means “not citizen with all the rights of citizenship” rather than literally a slave. However, Rhodes 1981, 499 and Scafuro 1994, 160 with n.43 and Cohen 2000 all defend its more usual meaning as “free as opposed to slave.” The requirement that the men of the deme first take an oath seems to correspond to the procedure followed in *Dem.*57.8-9 and 61, our best evidence for the procedure in the demes.

¹⁵ Scholars are divided on the question of whether the right of appeal is given only for cases in which an applicant is barred from citizenship by the deme on the grounds of being “not free” or whether applicants barred on the grounds of age or birth from citizen parents were also granted the right of appeal. Rhodes 1981, 500 favors the latter interpretation but notes that “Athenian law is not renowned for its tidiness.”

¹⁶ Demosthenes’ accusations against Aeschines regarding his slavish origins are often noted in this regard (*Dem.*18.129-31), although many scholars dismiss them as standard terms of abuse rather than a statement of fact. Cohen 2000, however, believes that such accusations should be taken at face value.

In these law court cases, however, there is no sign that the accused actually presented themselves as citizens through the formal processes in the deme. Rather, they simply tried to pass as citizens in everyday life. Pancleon, who claimed that he was a member of the deme of Deceleia, was exposed as a fraud, according to the speaker, when no one in that deme claimed to know him. Moreover, when the speaker took the further step of inquiring among the Plataeans (to whom Pancleon claimed to belong and who had been granted Athenian citizenship collectively), none of the Plataeans knew Pancleon. According to the speaker, then, Pancleon was not recognized as a citizen by a deme or even by the legally enfranchised Plataeans. Similarly, Neaera and her daughter apparently never gained formal recognition as citizens, but simply managed to pass as citizens for a considerable amount of time. It seems that it was only when Apollodorus sought to dig up dirt on his political rival Stephanus, with whom Neaera was living, that her pretense of citizenship was exposed. The parallel with the American South is again striking. According to Gross, “individuals lived a precarious existence in the borderlands between black and white, an existence that seemed to have depended on whether they had made someone ‘mad’ or not. Their success in surviving in these borderlands rested on the ways they performed whiteness.”¹⁷

In contrast to these examples of slaves passing as citizens in everyday life, the citizenship procedures outlined in *Ath.Pol.*42 suggest that slaves and former slaves not only tried to pass informally but also put themselves forward as citizens through formal legal channels. This implication might seem to be confirmed by the speaker in Demosthenes 57, who is concerned that the judges in his citizenship case will condemn him by association with “the many who have justly been expelled from all the demes” (57.2). The speaker here is referring to the results of the examination of the citizenship rolls in 346/5 BCE, when, he claims, many were found to be falsely enrolled as citizens.¹⁸ Later in the same speech, the speaker argues that his opponent has taken advantage of the fact that “the whole city is sharply angry with those who have insolently leapt into the demes (ἡ πόλις πᾶσα τοῖς ἀσελγῶς εἰσπεπηδηκόσιν εἰς τοὺς δήμους ὀργιζομένη παρῶζυντο).”¹⁹ Similarly, at 57.55, the speaker assumes that some men have in fact illegitimately entered the demes when he asks “Where did I do anything of the things which men who are not legitimately citizens are seen to be doing? (ποῦ τί ποιήσας ὧν ὅσοι μὴ καθαρῶς ἦσαν πολῖται πεποιηκότες φαίνονται;).” Among the dirty tricks that such false citizens are said to have engaged in, the speaker mentions making the rounds of the demes to find one

¹⁷ 2008, 70.

¹⁸ The fact that the Athenians periodically reviewed the deme rolls (510, 446 and 346 BCE, at a minimum) suggests at least a concern that non-citizens had infiltrated the citizenship ranks, if not the actual fact of it. At 57.60, however, the speaker mentions that one of the ten men whom his opponent’s father disenfranchised for a bribe, was not on appeal reinstated by the court (i.e., he was shown to not be a citizen).

¹⁹ Dem.57.49.

that will admit them. By contrast, the speaker emphasizes that he is a demesman in the same deme as his grandfather and father had been before him, and that he did not seek admission in any other deme.

If we accept that the procedures in *Ath.Pol.*42 were a response to the fact of enrollment of slaves in the citizenship rolls, then a further implication is that some slaves were knowledgeable enough about citizenship procedures to know when and how to present themselves for enrollment as citizens. The speaker in Demosthenes 57 argues that if he had really fabricated his claim to be born from citizen parents, he would have found much more plausible parents than his actual parents (his father spoke with a foreign accent due to a long period of enslavement abroad and his mother was employed in ‘slavish’ pursuits such as wet nursing due to their poverty) (57. 51). While the speaker clearly means to establish his legitimacy as a citizen through this argument, he nevertheless points to the fact that false applicants for citizenship would need to have the social and political knowledge to fabricate plausible citizen parents as part of the procedure.

But how would slaves get citizens to present themselves as their relatives and vote for their enrollment in the demes? Several law court speeches suggest that non-citizens could appeal to personal ties to get themselves or their children enrolled.²⁰ The speaker in Isaeus 6 suggests that a citizen, Euktemon, in his old age, became intimate with a freedwoman (*ἀπελευθέρρα*) and was persuaded by her to introduce her eldest child by another freedman into his phratry (6.21-22). When Euktemon’s legitimate son objected and the men of the phratry refused to admit him, Euktemon countered with a threat to remarry and produce new heirs. Euktemon’s son then relented and the child of the freedwoman was admitted to the phratry. Since enrollment in the phratry was a crucial precondition for enrollment in the deme, and men of the phratry often served as key witnesses and supporters in the citizenship procedure, this example illustrates how support for the citizenship procedures could be manufactured by non-citizens.²¹

This kind of personal appeal is also attested in Dem.59, although in this case it was ultimately unsuccessful. According to the speaker, the freedwoman Neaera and the citizen Stephanus applied pressure on the sickly citizen to whom they had illegally betrothed Neaera’s daughter, Phane, in order to have his child by Phane

²⁰ Alternatively, citizens themselves could pass off a slave child as their own, if the allegations in Aristoph. *Thesm.* 339-41, 407-8, 564-5 are anything more than a joke. See references in Austin and Olson 2004 ad loc. for more ancient testimony for this practice.

²¹ For the importance of the phratry in citizenship procedures see Lambert 1993. Another possible example of the enrollment of a non-citizen into a phratry is the case of Boeotus and Pamphilus in Dem.39. These boys were enrolled in a phratry through the agency of their mother, Plangon, who, while herself a citizen, seems to have given birth to them out of wedlock and then tricked her husband into accepting them as his own sons (see especially 39.3, 18). Boeotus himself allegedly suborned false witnesses when enrolling himself in the deme at a later time after the death of his father (39.18, 22).

enrolled in his phratry (59.55-61). In this case, the men of the phratry refused to enroll the boy, but the fact that the attempt was made suggests that it might have been successful.²²

When personal ties were not available, a slave, particularly a well-off one, might resort to bribery to gain relatives and supporters in citizenship proceedings. The speaker in Demosthenes 57 responds to his opponents' accusation that he had bribed men into presenting themselves as relatives and testifying at his enrollment as a citizen. Although the speaker refutes this accusation, his opponents clearly thought it was at least a plausible explanation of how a non-citizen came to be enrolled in the citizen ranks (24-25, 52-55). Indeed, the speaker suggests that his opponents have in fact accepted bribes from non-citizens and enrolled them in the deme (59-60). Since at least some slaves were well-off – especially public slaves and skilled craftsmen who worked on their own – the possibility of suborning witnesses was real. For example, in one of Aeschines' speeches, Pittalacus, a public slave, is noted to be well-off and to have lived extravagantly with his lover Timarchus.²³ And of course we know of several other slaves, such as Pasion and Phormion, who became very wealthy.²⁴

Moreover, these slaves must have been assimilated enough socially and politically to present themselves as plausible candidates for citizenship, not to mention well-connected enough to supply the necessary support of a significant number, if not the majority, of the citizens of a given deme. The story of Pittalacus, as told by Aeschines, is again suggestive: here we see citizens and wealthy slaves socializing together (1.55-56). Slave bankers, such as Pasion, had close connections

²² Another suggestive case is Lysias 4, where the speaker says that an unnamed slave girl, jointly owned by two men “declares at one time that she is crazy about him but at another time crazy about his opponent, seeking to be loved by both” (15). One might wonder whether the slave girl had ulterior motives in causing her master to become “inflamed” (παρωζυμμένος)? Indeed, we are told that the speaker's opponent tried to declare her free as a way of avoiding requiring her to give testimony under torture (12, 14). By creating sexual desire for her in both of her masters, the slave girl is able to play the masters off one another and ultimately, apparently, bestow greater favor on the speaker's opponent (17) perhaps as a means to induce him to declare her free. For further examples of masters allegedly liberating their slaves to avoid challenges to have them give testimony under torture see Isocrates 17.50 and Dem.29.14. For a further example of a slave allegedly inducing her master to free her, see Dem.48.53-56, and the comic examples discussed by Glazebrook 2014, 70-72, who notes in regard to the procedure of *πράσις ἐπ' ἐλευθερίᾳ* (p.74): “The slave herself may have actively sought freedom and convinced a regular customer to purchase it for her.” Comedy, due to the trope of the trickster slave, is one place where ancient literature acknowledges the active role that slaves might play in getting themselves freed: see especially Men. *Epit.* 432-562.

²³ Aeschin. 1.54 (εὐπορῶν ἀργυρίου) and 1.58 (τοσοῦτον ἀργύριον ἀνηλωκός).

²⁴ On the wealth of slaves such as Pasion and Phormion, who lived apart from their masters, see Trevett 1992 and Cohen 1992.

with citizens, who entrusted them with large sums of money. In some cases, citizens even intermarried with their banking slaves.²⁵

Turning to the citizen side of these arrangements, the speaker in Isaeus 12 observes that citizens sometimes falsely acknowledge children who are not their own for two reasons: either they do not have legitimate children of their own or, “compelled by poverty, they adopt non-citizens so that they can benefit from the ones who have become Athenians through them (διὰ πενίαν ἀναγκαζομένους ξένους ἀνθρώπους εἰσποιεῖσθαι ὅπως ὠφελῶνταιί τι ἀπ’ αὐτῶν δι’ αὐτοῦς Ἀθηναίων γεγονότων)” (2). While Isaeus here clearly presents the citizen perspective on this behavior (from which he, of course, distances himself), it is not difficult to imagine that slaves and freed persons could exploit these motivations for their own ends. The mention of poverty is particularly suggestive in light of the accusations of bribery in our other citizenship case, Demosthenes 57.

Turning back to the procedures in *Ath.Pol.* 42, finally, we may explore the implications of the provision for appeal in cases in which the deme rejected a claim of citizenship on the grounds that the applicant was not free. This provision implies that those who were accused of being slaves would be well-versed enough in the law not only to know that they could appeal the decision of the deme, but also had the ability to represent themselves competently before a court. The stakes, in such an appeal, moreover, would be very high. Success meant the official attainment of full citizens rights, while failure meant a return to slave status, though probably under a new master.²⁶ We have to imagine, therefore, a scenario in which an alleged slave is able to stand up in court and make a claim to citizenship using all the rhetorical skills and legal arguments that we see in such cases as Demosthenes 57 and Isaeus 12. We do not know the actual status of the speakers in these cases, but, if they were seeking to establish a false claim to citizenship, they certainly do so in ways that demonstrate their familiarity with Athenian law and culture.

Summing up, the legal procedures for citizenship in 4th century Athens presume a great deal of legal knowledge and sophistication on the part of slaves. Most importantly the procedures suggest that a significant number of slaves did actually try to pass themselves off as citizens, some of them presumably successfully.

The idea that a slave might present himself to a deme for citizenship might seem far-fetched. I have already addressed the obvious objection of how a slave would find citizens willing to attest to the citizen status of a slave. Yet there is a further objection. Even if a slave could, in principle, persuade or bribe citizens to falsely attest to his citizen status, wouldn’t such citizens be deterred from doing so by the threat of a suit for false-witnessing? Indeed, a key argument of the defense in our two surviving citizenship cases is precisely the idea that the relatives would not

²⁵ Cohen 1992.

²⁶ The law states that an unsuccessful appeal results in sale by the city, implying that the slave does not simply return to his former master.

have taken the risk of being prosecuted for false testimony if they were not the real relatives (Isaeus 12.6-8; Demosthenes 57.22). In a superb article, Adele Scafuro has argued that various procedures – including the *δίκη ψευδομαρτυρίων* and the *δίκη κακοτεχνιῶν* – became a remedy against such brazen attempts to enter the citizen ranks by suborning false witnesses.²⁷ Again, however, I would argue that the existence of such legal procedures for dealing with cases of false witnessing attests to the need to counter actual attempts by non-citizens, including slaves, to enter the citizen ranks by such means. Scafuro herself admits that the suit for false witnessing was an imperfect fix to a system that was very weak in its ability to police boundaries. She concludes her excellent study by noting that the fact that “litigants are able to impugn testimony on [issues of status identification] so frequently points to the functional incapacity of the Attic bureaucracy to identify its polis inhabitants.”²⁸

Assertions of Freedom

Let us turn now to a second example of passing and the attempts to become free or a citizen through legal means. Here we will examine several legal procedures that appear to respond to situations in which a freed slave abandoned his former master and attempted to live as a fully free person or even as a citizen. Before analyzing these procedures, however, it is important to note that these legal provisions are comprehensible only if we recognize that freed slaves were required to remain with their former master and not only register their former master as their legal representative (*προστάτης*) with the polemarch, but also perform certain privately agreed upon services for their former master.²⁹ As Rachel Zelnick-Abramovitz has persuasively shown, these former slaves were known as *ἀπελεύθεροι*, and this designation signaled both their free status and their continuing association with and obligations to their former masters. In this sense, such freed persons were still subject to slave-like relations with their former masters, and hence, as Zelnick-Abramovitz convincingly argues, are better understood as only partially free.³⁰

The legal procedures related to the condition of these slaves reveal that such partially free persons sometimes rebelled against their condition, abandoning their

²⁷ Scafuro 1994.

²⁸ Scafuro 1994, 184. It is interesting to note that the *δίκη κακοτεχνιῶν* crops up again in the context of slaves strategically using the law to improve their conditions in slavery: see Forsdyke forthcoming. Note also that the difficulty of status identification goes both ways: not only can slaves pretend to be citizens, but citizens can be demoted to freedmen, as in Isaeus 4.9, where two citizens are alleged to have claimed that another citizen was their freedman, and on this basis, argued that they should inherit his estate. Similar inheritance cases occurred in the American South, as husbands and others sought to disinherit allegedly black wives and their children (Gross 2008, 90-100).

²⁹ See for example, Pl. *Laws* 915a for a law describing the penalties for a freedman who abandons his master.

³⁰ Zelnick-Abramovitz 2005. Cf. Kamen 2011 and 2013, 32-42.

former masters and refusing to perform services for them. When this happened both former masters and former slaves could resort to certain legal remedies. First, the former master could attempt to lead the former slave back into slavery (ἄγειν εἰς δουλείαν). In response, the former slave could resist his or her re-enslavement by finding a citizen to affirm his freedom by “carrying [him/her] off into freedom” (ἀφαίρεσις εἰς ἐλευθερίαν).³¹ If the matter was not resolved through these publicly performed self-help measures, the master could file suit for abandonment (δίκη ἀποστασίου) with the polemarch.³² If the master won the suit, the former slave would be returned back into slavery, either to his former master or a new master.³³ If the former slave won the suit, then he/she would be declared fully free (ἐξελεύθερος/α), rather than simply partially free (ἀπελεύθερος/α). In this case, the former slave was released from any obligations to his former master and could live as a fully independent free person.³⁴

The question that I want to ask in relation to this reconstruction of procedures is the following: what was the slave’s role in the process of being granted (partial) freedom in the first place, and subsequently in having freedom affirmed in more absolute terms through the procedure of “carrying off into freedom” and/or obtaining an acquittal in a suit for abandonment? Most modern scholarship looks at these procedures from the point of view of masters and asks, “what were the masters’ motives for granting slaves partial or complete freedom?” Zelnick-

³¹ If, as Glazebrook 2014, argues, slaves freed by πρᾶσις ἐπ’ ἐλευθερίᾳ have no further ties to their former masters, then this procedure may be equivalent to the procedure of ἀφαίρεσις εἰς ἐλευθερίαν.

³² Literary sources for the δίκη ἀποστασίου are few. There are brief allusions to this type of suit in Dem. 34.7-9 and *Ath. Pol.* 58.8. More substantive are the late lexicographers: Harpocration s.v. ἀποστασίου· δίκη τίς ἐστι κατὰ τῶν ἀπελευθερωθέντων δεδομένη τοῖς ἀπελευθερώσασιν, ἐὰν ἀφιστῶνται τε ἀπ’ αὐτῶν ἢ ἕτερον ἐπιγράφονται προστάτην, καὶ ἂ κελεύουσιν οἱ νόμοι μὴ ποιῶσιν. καὶ τοὺς μὲν ἀλόντας δεῖ δούλους εἶναι, τοὺς δὲ νικήσαντας τελέως ἦδη ἐλευθέρους. πολλάκις δ’ ἐστὶ παρὰ τοῖς ῥήτορσι, παρὰ τῷ Λυσίᾳ ἐν τῷ πρὸς Ἀριστόδημον καὶ Ὑπερίδῃ ἐν τῷ κατὰ Δημητρίας ἀποστασίου. Ἀριστοτέλης δ’ ἐν Ἀθηναίων πολιτείᾳ περὶ τοῦ πολεμάρχου φράζει ταυτί· “οὗτος δὲ εἰσάγει δίκας τὰς τε τοῦ ἀποστασίου καὶ ἀπροστίου καὶ κλήρων καὶ ἐπικλήρων.” See also: *Lexicon Rhetoricum* 201 Bekker and Souda s.v. ἀποστασίου; Pollux 3.83 refers to the laws pertaining to partially free people (ἀπελεύθεροι) and fully free people (ἐξελεύθεροι), including the δίκη ἀποστασίου. See Zelnick-Abramovitz 2005, 274-292, 301. At p. 298, she observes that the evidence of surviving legal speeches suggests that these suits were often resolved through arbitration (e.g., Aeschines 3.63). There is also epigraphic evidence for the δίκη ἀποστασίου, if one accepts (as I do) that the phialai inscriptions were records of acquittals in such cases instead of the δίκη ἀπροστασίου, as argued by Meyer 2010. See Vlassopoulos 2010 for a convincing rebuttal of Meyer’s arguments.

³³ Zelnick-Abramovitz 2005, 280 notes that the law could mean either that they returned to their former masters or were sold to new masters. She suggests that the latter is implied by Dem. 25.65.

³⁴ My account of these procedures relies heavily on Zelnick-Abramovitz 2005.

Abramovitz's discussion is typical and considers both ties of affection that might lead a master to partially liberate his slave and the benefits that could be derived from offering slaves freedom in return for continued service after (partial) liberation.³⁵ While Zelnick-Abramovitz is not incorrect in these observations, they capture only part of the equation in a relationship which she herself stresses is social and human, not just one of property and ownership.³⁶

The first important observation to make is that all these procedures resulted from the freed slave's refusal to continue to act as the slave of his former master. While many former slaves may have been content to live as partially free, the existence of procedures to deal with situations in which they were not reveals that resistance to this condition was not an uncommon occurrence. Indeed, several surviving lawcourt speeches deal with such cases, or at least mention them in passing, despite the fact that most such cases were dealt with through arbitration.

We have already encountered the case of Pancleon, who claimed to be citizen while others claimed he was a metic or slave. As we have seen, the speaker in *Lysias* 23 says that he tried to find out the truth of Pancleon's status by interrogating the Plataeans to whom Pancleon claimed to belong and who had been granted citizenship en masse after the destruction of their city in 427 BCE. Instead of confirming Pancleon's claim, the Plataeans stated that they did not know him. All of the Plataeans, that is, except one man. This man, Nicomedes, said that he did not know any *citizen* by that name, but that a slave of his by the name of Pancleon had rebelled from him (ἀφεστῶτα). According to Nicomedes, his slave matched Pancleon in both age and in the profession he practiced (fulling) (5-7).

If these details are accurate, then it is likely that Pancleon was a partially freed slave (ἀπελεύθερος), living independently from his former master, working a trade, and obliged to perform certain services for his former master. It was from this partially freed status that Pancleon had rebelled. According to the speaker, when his former master, Nicomedes, learned about Pancleon's whereabouts, he sought him out and tried to lead him back into slavery. Indeed, the speaker says that a few days later he came across Nicomedes and Pancleon in a physical altercation in the street as Pancleon was being led away by Nicomedes (ἀγόμενον τουτονὶ Παγκλέωνα ὑπὸ Νικομήδους) (9). When the speaker interceded to ask what was happening, the two stopped fighting and some people in the crowd said that Pancleon had a brother who would "assert his freedom (ἐξαίρησιτο αὐτὸν εἰς ἐλευθερίαν) (9)." These men provided themselves as sureties that they would bring back Pancleon the next day along with his brother, and departed.

The speaker says that he made sure to be present with witnesses the next day to see the person who would assert Pancleon's freedom (τὸν ἐξαίρησόμενον) and to

³⁵ Zelnick-Abramovitz 2005, especially 130-183.

³⁶ For a powerful account of the human dimension of the master-slave relationship, with an emphasis on the agency of the slave even in this asymmetrical power relationship in America from colonial times to the revolutionary era, see Berlin 1998.

learn what he would say as he asserted his freedom (ὅ τι λέγων ἀφαιρήσοιτο). But neither a brother nor anyone else turned up. Instead a woman came saying that Pancleon was *her* slave. This woman started arguing with Nicomedes, refusing to permit him to lead Pancleon away (οὐκ ἔφη ἐάσειν αὐτὸν ἄγειν). Violence again broke out. Both Nicomedes and the woman said that they were willing to let Pancleon go if anyone turned up to assert his freedom (εἴ τις...εἰς ἐλευθερίαν τοῦτον ἀφαιροῖτο) or led him away saying he was his own slave (ἄγοι φάσκων ἑαυτοῦ δοῦλον εἶναι), but they were unwilling to give up their claim in the absence of such a person. The affair ended, apparently, with Pancleon being led back into slavery by both claimants.³⁷ We can only guess as to how these two resolved their parallel claims. Perhaps they reached an agreement to share him as a slave, not an uncommon arrangement in ancient Greece.³⁸

If the scenario presented in this speech is accurate, then it appears that Pancleon did not quite have the support among citizens that was required to make a claim to freedom and citizenship. While the bystanders to the altercation did offer to provide a vindicator of Pancleon's freedom in the form of a brother, they were unable ultimately to do so and Pancleon was led back into slavery. Nevertheless, it is perhaps a significant indication of the network of support that Pancleon had begun to build that some bystanders spoke up for him. His problem was that the affair came to a head before he had sufficient support in place to claim full freedom.

Indeed, it appears that Pancleon had taken the first step of abandoning his former master and passing as a citizen (or at least a metic) in the circles in which he moved. Pancleon must have known he was taking a risk in refusing to continue to serve his former master, who could at any time confront him in a public space and engage in the self-help procedure of leading him back into slavery. For this reason, Pancleon had begun to build a network of supporters who might be willing to engage in the counter-procedure of asserting his freedom. It was, of course, risky for these supporters – citizen or non-citizen – to assert Pancleon's freedom, since they could be prosecuted for false-testimony in subsequent suit for abandonment (δίκη ἀποστασίου), as Adele Scafuro has shown.³⁹ Indeed, it was perhaps this fear of a countersuit that deterred Pancleon's would-be brother from appearing to "assert his freedom," as Pancleon's supporters had promised.

It is important to emphasize that even if the speaker is fabricating his story, it is still significant that he judges his account to be plausible enough to convince the

³⁷ Allison Kemmerle (University of Michigan PhD dissertation in progress) has pointed out that it is striking that a woman is apparently able to lay claim to Pancleon herself, without a male representative.

³⁸ Naeaera is shared by two owners in [Dem.] 59.29, and an unnamed slave girl is said to be owned by two men at Lysias 4.1. Of course, this procedure was informal, so there is no reason to think that the woman is exercising formal legal rights.

³⁹ Scafuro 1994.

jurors. On these grounds, we can conclude the following points to be plausible facts about Panleon or a person like him in classical Athens:

he knew how to pass as a citizen, including fabricating Plataean descent and claiming Deceleia as his deme (2-3),

he had been passing for some time also as a metic (cf. the mention of previous suits before the polemarch [3]),

he had begun to build a network of supporters, who might be willing to assert his freedom if it were challenged by his former master (9).

* * *

The story of Pittalacus, a wealthy public slave or former slave, provides a further example of slave agency in the process of becoming free. As in the case of Panleon, it appears that Pittalacus did not initiate the events that led to his freedom being asserted, but rather was responding to the attempt of a citizen to reduce him to slavery, after he had already won partial freedom. Here is the shocking story (Aeschines 1.53-65):

Pittalacus was a wealthy public slave, or former slave, who ran a gaming house in Athens. When the young citizen Timarchus visited this gaming house, Pittalacus became enamored of him and brought him to live with him at his house as his lover. According to Aeschines, the men lived together for some time and engaged in debaucheries too obscene to describe. However, when the prominent politician Hegesandros visited Pittalacus' establishment, he also fell in love with Timarchus. Hegesandros then persuaded Timarchus to leave Pittalacus and come to live with him instead. Pittalacus was not happy with this turn of events, especially since he had spent so much money on Timarchus. He therefore harassed Timarchus and his new lover by frequenting their house and bothering them (54-58).

In response, one night Hegesandros and Timarchus got drunk and went with some others to Pittalacus' house. They smashed his furniture and threw it into the street. They also killed his beloved quails and fighting cocks. Finally, they tied Pittalacus to a column and whipped him for so long that the neighbors heard the screams (58-59). The next day, the distraught Pittalacus went naked into the agora and sat on the altar of the mother of the gods. When a crowd gathered around Pittalacus, Hegesandros and Timarchus became afraid that their bad behavior would become known throughout the city. They and their fellow gaming friends therefore hurried over to the altar and, standing around, begged Pittalacus to get up, saying that the whole matter was simply the result of a drunken revel. Timarchus even supplicated Pittalacus saying he would make amends in whatever way Pittalacus might wish. At last they persuaded Pittalacus to leave the altar, leading him to believe that he would receive some form of justice for his mistreatment. But

when Pittalacus left the agora, his attackers paid no more attention to him. Upset, he then filed suit for hubris against both men (60).

The fact that Pittalacus is able to file suit against Hegesandrus and Timarchus suggests that, despite Aeschines' emphasis on his slavish background, he is no longer a public slave but rather a freed person (ἐξελεύθερος) with some legal rights.⁴⁰ Subsequent events reinforce the impression that Pittalacus has managed to move from public slave to free person, perhaps, as Fisher notes, "as a result of having been able to accumulate some wealth as a public slave."⁴¹ For, in response to the suit filed against him, Hegesandrus tried to "lead [Pittalacus] into slavery (ἦγεν εἰς δουλείαν)," saying that Pittalacus was his slave. As many scholars have observed, the fact that Hegesandrus tries to claim Pittalacus as his private slave, rather than asserting that he belongs to the city, strongly suggests "that Pittalacus is, now at least, a freedman."⁴²

In response to Hegesandrus' resort to the public self-help procedure of "leading him into slavery (ἀγωγή εἰς δουλείαν)", Pittalacus in turn made use of a counter self-help procedure. To do so, he needed the assistance of a citizen, and he found one in Glaucus of the deme of Cholargos. Glaucus then "asserted [Pittalacus'] freedom" (ἀφαιρεῖται εἰς ἐλευθερίαν) (62). Although Aeschines gives us no hint as to the basis of Pittalacus' relation with Glaucus, it is likely that Glaucus was or became Pittalacus' legal representative (προστάτης), and had social relations with him through Pittalacus' gaming house. As in the case of Pancleon, it appears that Pittalacus had cultivated relations with citizens who were willing to defend his freedom, and even to establish it on more firm grounds through the legal procedure of "asserting his freedom" (δίκη ἀφαιρεσέως or ἀφάρισις εἰς ἐλευθερίαν).

At this point, formal legal actions were lodged (as opposed to the informal self-help procedures), and after some time, the parties turned the affair over to an arbitrator, Deiopeithes of Sounion (63). According to Aeschines, Deiopeithes was a fellow demesman of Hegesandros and an intimate of his from childhood. Out of favor towards Hegesandros, Aeschines alleges, Deiopeithes delayed making any

⁴⁰ The status of Pittalacus has aroused considerable scholarly controversy. Some scholars believe that he was still a public slave on the grounds that Aeschines emphatically asserts this several times: Cohen 2000, 137-139, Hunter 2006, Ismard 2015, 212-215. On the basis of this example, moreover, Ismard argues that public slaves had legal rights and were treated as "equals to free persons" in this regard. By contrast, Fisher 2001 and Lewis 2016 (see also earlier Jacob 1928) argue that Pittalacus was a freed slave or a lower class citizen. The fact that Pittalacus seeks a citizen to vindicate his freedom suggests to me that he is a partially free person (ἀπελεύθερος), like Pancleon and Neaera. As Lewis 2016 notes, moreover, "litigants sometimes referred to former slaves as if they were still slaves to drive home their servile origins (e.g., Alke in Is.6, 49; Lykidas in Dem.20.131-3; Phormion in [Dem.] 45.75-6, 83, etc.)..."

⁴¹ Fisher 2001, 191.

⁴² Fisher 2001, 191.

judgment, and eventually Pittalacus gave up realizing he could not win against such a powerful opponent (64).

What is interesting to observe in this fascinating story is how Pittalacus responded to Hegasandros' attempt to transform him from a partially freed slave to a private slave. For it appears that Pittalacus was not at all helpless, but well versed in the counter procedure to an attempt "to lead him into slavery (*ἀγωγή εἰς δουλείαν*)" namely an "assertion of freedom (*ἀφαίρεσις εἰς ἐλευθερίαν*)." Most striking, moreover, is the fact that Pittalacus was apparently easily able to find a citizen who was willing not only to defend his status as partially free person but even to go further and assert his complete freedom. Clearly, Pittalacus had longstanding and close relations with citizens, who were not his master or former master. As a (former) public slave, he had no private (former) master.

* * *

The well-known case of Neaera provides a final example of a partially freed slave refusing to continue to serve her former master, and, significantly, finding support from a citizen to have her full freedom affirmed.⁴³ Although the legal case against Neaera concerns events subsequent to the affirmation of her freedom (namely the fact that she lived in marriage with an Athenian citizen), it is worth starting our discussion with this earlier chapter of her life since it illustrates her own agency in the process of transforming herself from a slave to a free person. Indeed, these early events are the most significant part of Neaera's story for our purposes, since it does not appear that she ever tried to claim citizenship formally. Rather Neaera passed as a citizen informally, apparently, for some time after she had achieved full freedom.

Neaera begins life, according to the speaker in the law court speech that is our source, as a slave prostitute, rented out to various lovers. At a certain point, two of her lovers decide that it will be cheaper for them to purchase her themselves than to keep paying her owner, the freedwoman Nikarete, for her services. These two men paid the extraordinarily large sum of 30 mnai (= 3000 drachmae) for Neaera and kept her as their (sex) slave. When they were ready to marry, they told Neaera that they would be happy to take a loss on her purchase price if she acquired some benefit in return. They said that they were willing to forgive her 1000 drachmae towards her freedom (*εἰς ἐλευθερίαν*), if she could come up with the remaining 2000 drachmae of her purchase price (30).

The first point to note here is that the two men who purchased Neaera seem to feel some personal attachment and interest in her well-being in so far as they are willing to lose money on their investment if she can become free as a result. It is perhaps significant, however, that the speaker notes that the two men had their own

⁴³ The case of Rhodopis (c.550 BCE) roughly parallels Neaera's, but contains much less detail (Hdt.2.134-135).

motivation alongside their desire to do her some good: since she had been their courtesan, they did not want to see her working under a brothel keeper in Corinth in the future. To this end, they added this condition to their pledge to forgive 1000 drachmae of her purchase price (30,32).

Secondly, we might ask whether Neaera could have had an active role in getting these men to offer her freedom at a discount price. The speaker does not tell us, and indeed suggests the opposite, namely that her two owners proposed this opportunity to Neaera without any action on her part. We can only speculate, therefore, whether Neaera herself strategized to build up good will with these men with a view towards her freedom and even, perhaps, suggested to them the means by which they might help her become free. We might note, in this regard, that the perspective of Greek oratory (male, citizen, free) makes it likely that the speaker would neglect any role that Neaera herself played in initiating the deal.⁴⁴ Moreover, the fact that Neaera enthusiastically and ultimately successfully took up the challenge to raise the remainder of her purchase price may suggest that she played an active role also in formulating the terms of this agreement. In other words, Neaera's ultimate success in raising the money to purchase her freedom is suggestive of an initial negotiation between Neaera and her two owners as to what was a fair and realistic purchase price for her freedom.

As soon as the agreement was struck, Neaera made the rounds of her former lovers, collecting donations. It is significant that the speaker notes that Neaera herself contributed money from her own savings, suggesting that Neaera had some financial independence and may have been planning to buy her freedom for some time before this opportunity arose. Indeed, this opportunity arose because of the imminent marriage of the two owners, who apparently felt (or were made to feel by Neaera?) that the continued presence of their former courtesan in the town where they were soon to live as married men, was inappropriate. It is possible, then, that Neaera seized the occasion of her clients' marriage to maneuver for her liberation from slavery.

In any case, Neaera clearly showed herself able to negotiate when she appealed to Phrynion, an Athenian from the deme of Paiania. According to the speaker, Neaera begged Phrynion to contribute what was remaining of the required 2000 drachmae, and he gladly complied. Phrynion not only contributed the last portion of her purchase price, but he handed over the entire required sum of 2000 drachmae to her owners. He then took Neaera with him to Athens. As Zelnick-Abramovitz demonstrates, while Neaera was now free of her former owners, she enjoyed only a partial freedom since, as Phrynion's debtor, she was "considered to belong to him

⁴⁴ As I have argued in another paper, slaves did play active roles in negotiating the terms of their sale to new masters and even possibly the conditions of their freedom: see Forsdyke forthcoming.

until full repayment was made.”⁴⁵ It was for this reason that Neaera followed Phrynion to Athens and continued to live with him for some time. According to the speaker, it was ultimately Phrynion’s abusive treatment that led Neaera to flee him at a later time, and to seek refuge in Megara. The speaker notes that when she fled to Megara she took along with her some clothing and jewelry as well as two maidservants.

While it is clear that at this point that Neaera is taking action independently, it is hard to disentangle her motivations for leaving Phrynion. For on the one hand, the speaker says that she left because she was being outrageously mistreated by Phrynion (ἀσελγῶς προὔπηλακίζετο ὑπὸ τοῦ Φρυνίωνος, 35; cf. τὴν ὕβριν τοῦ Φρυνίωνος, 37). On the other hand, the speaker also reports that she was upset about not being loved as she expected and not being served as she wished (οὐχ ὡς ᾔετο ἠγαπᾶτο, οὐδ’ ὑπηρετεῖ αὐτῇ ἢ ἐβούλετο, (35). The mention of clothing, jewelry and serving maids (35) and even a male slave (42) also suggests that she did, after all, enjoy a certain standard of living with Phrynion.

Whatever Neaera’s motivations, it is clear that she was not happy with her condition of partial freedom in so far as she was still bound to Phrynion, and she decided to abandon him. She did this formally by finding a new legal representative (προστάτης), the Athenian Stephanus, whom she encountered when he was in Megara. By making Stephanus her legal representative, Neaera was violating the terms of partial freedom by which she was bound to have Phrynion her former/partial owner as her representative.⁴⁶ By doing so, she made herself liable to a suit for abandonment (δίκη ἀποστασίου). But it is also important to stress that by this move, she also set up the conditions for having her full freedom asserted. Moreover – if the details of the speech are accurate – she also provided the conditions for potentially getting her children enrolled as citizens at Athens and herself established as the citizen wife of a citizen, as Stephanus is said to have promised her (38). In the end, at least some of these developments took place.

As promised, Stephanus brought Neaera to Athens and set her up in his home. Predictably, once Phrynion learned of Neaera’s presence in Athens, he appeared at Stephanus’ house with a gang of young men and attempted to lead (ἄγειν) her back into slavery (40). In response, Stephanus “asserted her freedom according to the law” (ἀφαιρουμένου... τοῦ Στεφάνου κατὰ τὸν νόμον εἰς ἐλευθερίαν, 40, 41) and gave sureties for her with the polemarch. Next Phrynion obtained the right to bring a suit against Stephanus on the grounds that he had asserted Neaera’s freedom and had received the goods that Neaera had taken from his house (45). When friends persuaded them to resolve the dispute through arbitration, they put the matter

⁴⁵ Zelnick-Abramovitz 2005, 295. Other scholars, however, argue that there was no expectation that Neaera pay back the loan and that this was a purchase for the purpose of freedom (πῶσις ἐπ’ ἐλευθερίᾳ): see e.g., Glazebrook 2014, 59, Kapparis 1999, 231-232.

⁴⁶ Zelnick-Abramovitz 2005, 248-262.

before three arbitrators who confirmed Neaera's freedom (τὴν μὲν ἄνθρωπον ἐλευθέραν εἶναι) and her autonomy (αὐτὴν αὐτῆς κυρίαν) and allowed her to keep some of the items she had taken from Phrynion on the grounds that they were purchased for her. However, they also required her to live with each man on alternate days, unless they came to some other agreement (46).

According to the speaker, this agreement was accomplished amicably and the two men became friends, dining together with Neaera at each other's homes on alternate days. And we learn that Stephanus partially fulfilled his promises to Neaera by living in marriage with her and passing off her daughter as his own in marrying her to an Athenian citizen. While ultimately neither of these attempts to pass as a citizen were lasting, it is significant that Neaera made it as far as she did for as long as she did. Arguably, in fact, if the speaker did not have a political rivalry with Neaera's "husband," Stephanus, she might have passed as a citizen wife for the rest of her life.

Conclusion

In this paper, I have made the case that slaves in classical Athens made use of legal means to become free or even to pass into the citizen ranks. One might object, however, that at least some of my evidence attests only to the *fear* that some slaves might try pass as free or citizens, not the *reality* of such passing. Demosthenes' claim, for instance, that "many ... have justly been expelled from all the demes" might be dismissed as mere rhetoric, designed to appeal to the Athenians' sense of citizen solidarity against other groups. Similarly, laws providing for legal action against pretenders to citizen identity might be dismissed as the product of fear of infiltration, rather than the reality.

In response to such an objection, the following points can be made. First, the range and complexity of surviving legal procedures for dealing with slaves claiming freedom or citizenship – from provisions for appeal in citizenship cases, to suits for false-witnessing, to the class of actions involving leading a person back into slavery and the assertion of a person's freedom – suggest that the problem was a real one, not an imagined one. Secondly, we have several cases involving allegations of usurping freedom or citizen rights (Pancleon, Pittalacus, Neaera, among others) and these cases probably represent only the tip of the iceberg given the poor survival rate of evidence for legal actions in classical Athens. Thirdly, as stressed at the beginning of the paper, even in more recent, better documented slave societies, evidence is often lacking since successful passing generally did not leave traces in the historical record. Given this gap in the evidence, the comparative evidence that we *do have* should be given considerable weight. In this regard, we might note that there is direct evidence – not just the indirect evidence of the legal system – for slaves trying to pass in the American South. For example, slave

owners sometimes acknowledged in newspaper advertisements for runaway slaves that their slaves “might try to pass as free or as a ‘white man’.”⁴⁷

What I hope to have shown in this paper, however, goes beyond the mere fact of slaves passing, and tries to reconstruct the active role that slaves themselves played in this process. Specifically, I have argued that the laws reveal that slaves made use of legal means to become free and even to become citizens. Furthermore, these laws imply that slaves had considerable legal knowledge and sophistication. Finally, I have demonstrated that slaves built networks of support among citizens, and that they actively strategized to deploy both citizens and the law to maximize their chances of gaining freedom and also citizenship for themselves and for their children.

Such active strategizing is perhaps acknowledged indirectly in the opening lines of Aristophanes’ comedy *Birds*, where two citizens are depicted fleeing the bustling city of Athens to seek peace in a new city. They wryly note the irony of their departure from a city into which others were making great efforts to force their way:

We, spectators at this play, suffer the opposite sickness as Sacas: for that one, forces his way in, although he is not a citizen; we, by contrast, although honored in tribe and in birth, being citizens among citizens, we fled our country with both our feet and when no one was driving us away ...

ἡμεῖς γάρ, ὄνδρες οἱ παρόντες ἐν λόγῳ
νόσον νοσοῦμεν τὴν ἐναντίαν Σάκα
ὁ μὲν γὰρ ὢν οὐκ ἄστος ἐσβιάζεται,
ὕμεῖς δὲ φυλῇ καὶ γένει τιμώμενοι,
ἄστοι μετ’ ἄστων, οὐ σοβοῦντος οὐδενός
ἀνεπτόμεσθ’ ἐκ τῆς πατρίδος ἀμφοῖν... (30-35)

Aristophanes’ choice of the verb ἐσβιάζεται is a vivid evocation, I suggest, of the strenuous efforts and proactive agency of slaves.

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⁴⁷ Jordan 2003, 644-646.

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