STEPHEN C. TODD (MANCHESTER)

EPITADEUS AND JURIDICE. A RESPONSE TO SIMA AVRAMOVIĆ*

[1] Epitadeus and his *Rhêtra*

The only mention of Epitadeus in our sources comes in the form of an anecdote in Plutarch's much later *Life* of the revolutionary king Agis IV (c.244-241 B.C.), a work which is often thought to be based on the lost *Histories* of the third-century historian Phylarkhos.[1] As part of the background to Agis' own proposed reforms, Plutarch here attributes the decline of Sparta to two causes: first, to the influx of gold and silver following immediately after Sparta's defeat of Athens in the Peloponnesian War, and secondly to the legislative activity as ephor of a quarrelsome individual named Epitadeus.[2] Motivated by his bad relations with his own son, we are told, Epitadeus proposed and carried a *rhêtra* (law) permitting any Spartan to leave his *oikos* (household) and his *klêros* ("lot", i.e. his landed property) to anybody – which in context presumably means any Spartan – of his choice.[3] The rhetorical context of this passage is one in which Spartan decline is seen as a function of the loss of a presumed or inferred system of previous equality: Plutarch himself emphasizes that prior to Epitadeus,[4] the number of *oikoi* laid down by Lykourgos

---

* My thanks are due to the organisers of the Symposion for inviting me to throw a few pebbles into the (to me) uncharted waters of Spartan law, to my colleague Steve Hodkinson for wide-ranging bibliographical and other advice on Sparta, and to the participants in the conference (particularly Douglas MacDowell and Sima Avramović) for much friendly and stimulating disagreement.

1 In addition to Phylarkhos' notorious penchant for sensationalising, it has been suggested that his (and therefore Plutarch's) treatment of Agis' reforms has been influenced by presuppositions derived from the political theory of Plato: thus Schütrumpf (1987: esp. 446-47), exploring in detail the parallels between Plutarch, *Agis*, § 5 and Plato, *Republic*, book 8.

2 ἀνὴρ δυνατός, αὐθάδης δὲ καὶ χαλεπὸς τὸν τρόπον, Ἐπιτάδευς ὄνομα (Plut., *Agis*, § 5.2): the last two words may suggest that the reader is not expected to be familiar with the name.

3 ῥήτραν ἔγραψεν ἐξεῖναι τὸν οἶκον αὐτοῦ καὶ τὸν κλῆρον ᾧ τις ἐθέλοι καὶ ζῶντα δοῦναι καὶ καταλιπεῖν διατιθέμενον (Plut., *Agis*, 5.2). For the possible verbal parallels with Aristotle, *Politics*, 1270a19-21, see below at n. 7.

4 Plutarch claims that the number of households continued to be maintained even after the introduction of gold and silver, and declined only after Epitadeus: this may mean that he sees Epitadeus' activity as happening some time after the defeat of Athens,

had been maintained apparently without change, with father transmitting his *klêros* to son down the generations.[5]

The *rhêtra* of Epitadeus is a notorious crux for historians of Sparta. It raises important and much-debated questions about the extent of continuity and the chronology of change in Spartan social and economic structures, and indeed about the transmission of property and therefore of active citizen rights within Sparta. It also raises broader methodological questions about the Spartan mirage and the reliability of such late anecdotal evidence. One question which has received relatively little attention, however, is the precise juristic significance of Epitadeus' *rhêtra*, and it is here that Avramović's paper offers a stimulating new perspective.

Plutarch, as we have seen, is the only ancient author to mention Epitadeus by name, but there is one other ancient text which has been taken to refer to him. This is a passage in Aristotle's *Politics* which states that property-acquisition is one of the badly-organised features of the Spartan legal system, "for he rightly made it dishonourable to buy, or to sell one's existing property, but he permitted those who wished both to give it and to leave it at death".[6] The assumed subject of these clauses is clearly an unnamed law-giver, and scholars have been struck by the verbal parallels between this passage and Plutarch's account of Epitadeus: whereas Aristotle uses the verbs *didonai* ("to give") and *kataleipein* ("to leave at death"), Plutarch speaks of Epitadeus' *rhêtra* with the phrases *zônta dounai* ("to give during one's lifetime") and *katalipein diatithemenon* ("to leave at death by will"). Many scholars have regarded these parallels – in each case the same verb (albeit both times with aorist as opposed to present aspect), and in each case glossed with an explanatory participle – as more than coincidental, and have taken them as evidence that Aristotle here is referring to Epitadeus. One of the fullest statements of this position can be found in MacDowell's *Spartan Law*: if accepted, it would follow that Aristotle (a near-contemporary) knew of the *rhêtra*, which would serve to confirm its historicity.[7]

Avramović follows the majority of earlier scholars[8] in accepting the verbal parallels between *Politics* and Plutarch, but unlike them he focuses on the linguistic

---

but not necessarily that the gap was a significant one. For MacDowell's somewhat different reading of the chronology, see § 2 of this paper at n. 13.

[5] οὐ μὴν ἀλλὰ καὶ τῶν οἴκων ὃν ὁ Λυκοῦργος ὥρισε φυλαττόντων ἀριθμὸν ἐν ταῖς διαδοχαῖς, καὶ πατρὸς παιδὶ τὸν κλῆρον ἀπολείποντος (Plut., *Agis*, 5.1). In context, this appears to mean only one son: *paidi* is certainly singular, and the emphasis is on maintaining the number of *oikoi*, with no sense that this might be increased by the division of a father's *klêros* between two or more sons. On the implications of this passage for "unigeniture", see § 3 of this paper.

[6] ὠνεῖσθαι μὲν γάρ, ἢ πωλεῖν τὴν ὑπάρχουσαν, ἐποίησεν οὐ καλόν, ὀρθῶς ποιήσας, διδόναι δὲ καὶ καταλείπειν ἐξουσίαν ἔδωκε τοῖς βουλομένοις (Arist., *Pol*., 1270a19-21).

[7] MacDowell (1986: 103-4). My own views on this subject are set out more fully in § 2 of this paper.

[8] References in Avramović, this vol., nn. 13-16.

differences rather than the similarity between these two sources. His predecessors had generally described Epitadeus as for the first time making it possible for Spartans to bequeath property by will, on the basis of Plutarch's use of the participle *diatithemenon*. Such a position does of course raise further questions about the nature of such a will: for instance, whether it allowed the testator to bequeath individual items of property (what Roman law would call legacies), or only to bequeath a sole or joint share in the whole estate including its liabilities (the principle of universal succession); and whether it required the testator to adopt his heir-to-be (as was common at Athens).

The views of those earlier scholars who have discussed these complex questions are outlined in some detail by Avramović, but the thrust of his paper is that such baggage is rendered unnecessary by a close reading of Aristotle's and Plutarch's texts. The fact that Plutarch alone names Epitadeus does not in Avramović's view justify our regarding his account as juridically the more reliable: indeed the reverse, given that Aristotle was a near contemporary and a philosopher writing for a more specialist audience than the biographer Plutarch. Against that background, Avramović finds it significant that Aristotle uses the simple verb *kataleipein* ("leave at death", without specifying the manner of disposition), and he suggests that Plutarch's *diatithemenon* ("dispose specifically by will")[9] is no more than a gloss by a non-jurist for the general reader. If correct, this has considerable juristic significance: Epitadeus' innovation will have been freedom of disposition after death, rather than the legal form this might have taken.

[2] Historicity

Whereas the majority of historians (followed by Avramović) have accepted as historically accurate Plutarch's anecdote about Epitadeus, a number particularly of recent scholars[10] have challenged this, regarding it as Hellenistic fictionalising propaganda invented directly or indirectly to support the third-century land redistribution proposed by Plutarch's subject, the revolutionary King Agis IV. Such a conclusion would not invalidate Avramović's paper, the focus of which is more juristic than historical, but it might cause modifications, so the question of historicity deserves discussion here.

The revisionist reading of Epitadeus is in my opinion attractive for several reasons. For one thing, Plutarch appears inconsistent in his various accounts of land-acquisition and land-tenure.[11] In the *Agis* – as we have seen and to which we shall

---

[9] He takes the same view of *zônta* in Plutarch's phrase *zônta dounai*, "to give [during one's lifetime]", though this is less central to his argument because it is a putatively accurate gloss, rather than an inaccurate one like *diatithemenon*.

[10] Thus e.g. Schütrumpf (1987, cf. n. 1 above); Cartledge (1987: 167); and most fully Hodkinson (2000: 90-94).

[11] I leave aside the interpretation of the contested number of *klêroi* that Plutarch attributes to Lykourgos' original allocation (Plut., *Lyk*., § 8, himself prefers a

return – Plutarch presupposes a system of unigeniture, with *klêroi* passing undivided from father to sole son; whereas in the *Life of Lykourgos* (*Lyk.*, § 16) he has land allocated at birth by tribal elders, a system which makes the holder in effect the life-tenant of state-owned land. Reconciling these views is not without difficulty: one would have to assume for instance that allocation by tribal elders was a system that applied only to younger sons who would be granted untenanted property (presumably the *klêroi* of those who had died without an heir and whose estate had putatively escheated to the *polis*), but the natural reading of the passage is that it refers to every infant. In addition, as Hodkinson (2000: 73) points out, a system of allocation at birth contains its own implausibilities: it would require a reserve of *klêroi* to match an unpredictable birth-rate; it would tie up large amounts of land which would have to remain militarily unproductive during the minority of the tenant; and perhaps most crucially, by relieving parents of the need to fund their children, it would have tended to drive up the birthrate, which is something that the Spartans at all times failed to achieve.

There are, secondly, a number of chronological problems. We have seen that Plutarch's account of the *rhêtra* of Epitadeus is based on a rhetoric of decline through the loss of hypothetical prior equality, but there are already indications of social inequality at a date that surely antedates Epitadeus. Most famous of these is Herodotos' description (relating to an episode during the reign of Xerxes, and written no later than 430) of Sperthies and Boulis being "Spartiates who were well born and outstanding in wealth (*khrêmata*)"; there is also the anecdote told of Agesilaos, that on becoming king he gave away a large amount of his (by implication substantially larger than the average) property, at a date c.400 which leaves little room for Epitadeus' legislation.[12]

This however brings us on to perhaps the most significant chronological difficulty, that of finding a date for the *rhêtra* itself. Plutarch, as we have seen, appears to locate Epitadeus' activity in the aftermath of the Peloponnesian War, while simultaneously depicting him as the original cause of a gradual decline in citizen numbers that had reached catastrophic proportions by 371. It is possible to stretch the chronology a bit, for instance by reading Plutarch's sequence of events as

figure of 9,000 Spartiates and 30,000 *perioikoi*, but notes that other sources say 6,000 Spartiates with 3,000 more added by Polydoros, or that they both allocated 4,500). On this question, however, my views are closer to those of Hodkinson (2000: 70) than those of MacDowell (1986: 99). Hodkinson sees the figures as another invention of third-century propaganda, arising out of Agis' own programme to distribute 4,500 *klêroi* among Spartiates and 15,000 among *perioikoi* (*Agis*, § 8.1), and doubled to take account of Sparta's loss of Messenia during the fourth century.

[12] Sperthies and Boulis: Hdt., 7.134.2; Agesilaos' giving half of his inheritance from Agis to his mother's family: Xen., *Agesilaos*, § 4.5.

referring not to the passing of Epitadeus' *rhêtra* but to its bad effects,[13] but the chronology is still very tight given that Spartan awareness of *oliganthrôpia* seems visible already in the 420s. We may note in this context the extreme diplomatic efforts made to recover the 292 Spartiates captured at Pylos in 425; the recruitment of helots to serve as hoplites on an experimental basis under Brasidas in 424 and as *neodamôdeis* by at the latest 421;[14] and perhaps also the secrecy with which the Spartans appear to have surrounded their numbers at the First Battle of Mantineia in 418 – or at any rate Thucydides' difficulties, presumably within the next decade or so, in acquiring such information from them.[15]

Finally, there is in my view significant room for doubting whether the alleged linguistic parallels between Plutarch, *Agis*, § 5 and Aristotle, *Politics*, 1270a19-21 can carry the weight of inference that the majority of scholars have attributed to them. The parallels themselves were set out in detail at the end of the first section of this paper: they boil down to the use of use of two words (*didômi* and *kataleipô*), both of which are fairly obvious choices in the disposition of property. If it were not for the fact that scholars have tended to approach this passage of the *Politics* with Plutarch's anecdote about Epitadeus in mind, the unspecified third person who is the subject of Aristotle's clauses here would I suspect more naturally have been seen as a reference to Lykourgos himself, in his capacity as the presumed originator of the entire Spartan legal system. As MacDowell (1986: 103) himself argues, by using the unspecified third person in the context of the discussion of a legal system, Aristotle is "attribut[ing] intentions or actions to *ho nomothetês*, 'the legislator'". But that description – as Hodkinson (2000: 92) rightly notes – fits Lykourgos much better than Epitadeus, the proposer of a single piece of legislation.

The likelihood that Aristotle here is referring not to Epitadeus but to Lykourgos is supported by broader considerations about the structure and function of the argument in book 2 of the *Politics*. As is well known, this book is a critique of a series of constitutions (real and hypothetical): Plato's *Republic* (2.2-2.5) and *Laws* (2.6); the lost ideal constitutions of Phaleas (2.7) and Hippodamos (2.8); Sparta (2.9); Crete (2.10); Carthage (2.11); Solon and others (2.12). What these have in common is that they have all been held up by one or more of his predecessors as ideal states, but there is also a tendency for utopia to be perceived as the consistent planning of a constitutional system by some one person known or unknown.[16] If so, this may be a further indication that Aristotle is likely to have had Lykourgos rather

---

[13] Thus MacDowell (1986: 105), who on this basis tentatively dates the *rhêtra* to "the last third of the fifth century".

[14] Cartledge (1987: 39).

[15] Thuc. 5.68.2-3, with Gomme, Andrewes & Dover (1970: 111): "when he enquired further, one may suppose, ... silence fell, and he got no more".

[16] It is notable for instance that Aristotle does not speak of a legislator anywhere in 2.10, presumably because Crete is not a single *polis* and therefore cannot be a planned constitutional system.

than Epitadeus in mind as the legislator (named or unnamed) throughout *Politics*, 2.9. It is worth emphasizing also the unusual nature of Aristotle's critique of the Spartan constitution. Whereas most ancient authors regard Sparta as an originally perfect Lykourgan structure that had declined, Aristotle's analysis in book 2 of the *Politics* sees its flaws as intrinsic to the original design (Schütrumpf 1994: 334). Given such premises, he is unlikely to be looking to cast the blame on recent innovation. Finally, we may think more broadly about ancient attitudes towards legislative change and the organic unity of a legal system. It is of course notorious that the Attic Orators attribute laws to Solon with a reckless disregard for chronology, and attribute to him motives in framing such legislation that simply encode the perceived contemporary effect of the law.[17] But oratory is a more oral genre, and its need to persuade is more strident; and even the Attic Orators tend to wait a couple of generations before attributing laws to Solon.[18] It is difficult against this background to imagine that Aristotle, writing in the 330s-320s, would have spoken about a reform putatively within living memory as if it were part of the fundamental structure of the legal system.

There is therefore in my view serious room for thinking that Aristotle's assumed subject at *Politics*, 1270a19-21, is Lykourgos rather than Epitadeus; and indeed, for doubting whether Epitadeus was even known to Aristotle.[19] As Cartledge (1986: 167) points out, Plutarch's anecdote of Epitadeus is found in the *Agis* (a life which draws heavily on Phylarkhos) rather than in the *Lykourgos* (in which he seems to have used Aristotle's lost *Constitution of the Lakedaimonians* and may have relied heavily on it: he cites Aristotle as the source for such details as the interpretation of the Great Rhêtra at § 6.2, and in total on seven occasions in this *Life*).

Historicity, of course, is for Avramović something of a side-issue, which is a reasonable position. Indeed, my reason for entitling this paper "Epitadeus and Juridice" is precisely that although I am fairly convinced that Epitadeus' *rhêtra* itself is a phantom, nevertheless the attempt to bring back its juridical significance from the Hades to which it might otherwise have been confined by revisionist scholarship is a worthy enterprise. Even if we cannot pose juristic questions to the putatively fictitious Epitadeus, it is legitimate to ask the same questions about fictionalising propagandists: what did Agis and his supporters or his opponents regard as a credible

---

[17] On the problem of identifying genuine from misattributed or fictitious laws of Solon, see Ruschenbusch (1966). There is a good discussion of the fourth-century orators' use of Solon in Thomas (1994).

[18] It is only in the second half of the fourth century that the legal reforms of 403/2 begin to be attributed to him, for instance, as at Dem. 20.90; Dem. 24.212; and Hyp., *Athenogenes*, § 22.

[19] A passage of Herakleides Lembos referring to the *arkhaia moira* ("ancient portion") has often been thought to derive from Aristotle's *Constitution of the Lakedaimonians*, and Marasco (1980: e.g. 131 n. 1) uses it to argue that Aristotle was aware of Epitadeus' reform. On this passage, however, see Hodkinson (2000: 85-90).

account of the history of Spartan land-tenure?[20] What did Plutarch think he was describing when he used terms like *diatithemai*?[21] Here however we face a problem, which does I think call for some modification in Avramović's thesis. If Epitadeus is genuine, then it is reasonable to use Aristotle's wording to identify putative glosses in Plutarch's account. However, if Epitadeus is a fiction, then that can no longer be done because Aristotle ceases to be Plutarch's source. Which leaves us (on the fictionalising hypothesis) with *diatithemenon* in our only text, from which it can no longer so readily be excised.

[3] Patterns of inheritance

I return finally and briefly to the question of unigeniture, if I may re-use the term adopted by Hodkinson to denote the assertion in Plutarch's *Agis* that Spartan *klêroi* had traditionally passed undivided from father to sole son (presumably the eldest). This raises two questions, the first of which is whether such a system would have been culturally conceivable in a world of *poleis* where partible inheritance seems to have been the norm,[22] and in which unpredictable mortality created a pressure to have more than one son rather than to risk the family being wiped out. What gives particular point to this question, however, is the fact that to my knowledge Plutarch's putative Spartan system of unigeniture passes without comment from any ancient analyst before Plutarch himself.

Linked to this, however, is a second question, which relates to language found not infrequently in our sources throughout the classical Greek world about the desirability of "preserving the *oikoi*" (the verb used is normally *sôzô* or *diasôzô*). For if that phrase is read in its strictest sense – i.e. that it is desirable to preserve every existing *oikos* without allowing any of them either to perish or to subdivide (and the possibility of subdivision is a necessary function of partible inheritance) – then it is necessary for every father to have precisely one heir, whether by birth or by some mechanism like adoption. But there is room for ambiguity here, and I suspect the

[20] It is worth bearing in mind that partible inheritance (for which see § 3 of this paper) would have tended to lead towards inequality of wealth even if landholdings had originally been equal, not least because different families would have different numbers of sons. If this objection occurred to Agis IV and his propagandists, they may have seen unigeniture of *klêroi* as the only way to escape making Lykourgos look a fool.

[21] Avramović, this vol., pp. 178-79.

[22] Contrast Asheri's assertion (Asheri 1963: 6) that unigeniture was characteristic of what he calls "moderate (or "agricultural") constitutions", with the principle of the single heir disappearing in favour of partible inheritance only in radical democracies and radical oligarchies: he cites very little evidence for this sweeping theory apart from Sparta's alleged state-enforcement of the principal of the indivisibility of family land. (Aristotle, *Pol*., 1270b3-6, claims that privileges for fathers of three or four sons at Sparta were rendered pointless as an incentive because of the need to divide the estate. This implies a belief that Sparta practiced partible inheritance at the time of writing, with no hint that the situation had ever been different.)

phrase is most often used in a weaker sense, either of keeping the numbers up or alternatively of ensuring that one is not left without legal descendants.

In texts where the word *arithmos* is added to the equation, however, – "to preserve the *number* of households" – we may I submit be talking about preservation in its stricter sense. An example can be found in Aristotle's *Politics*, where he claims that the laws about *paidopoïïa* (child-begetting), also known as *nomoi thetikoi* (adoption laws) at Thebes were a legislative device peculiar to the legislator Philolaos to preserve the number of *klêroi*.[23] How this was to be achieved, and whether it would directly have involved unigeniture, we are not told. One could imagine a system in which unigeniture was practiced through the back door, with surplus sons not being formally disinherited so much as being redistributed e.g. by being offered for adoption. This indeed is very much what Plato proposes, in the course of his provisions on inheritance in *Laws*, 923c-d, though he is realistic enough to make clear that there might be a mis-match of numbers, leaving other sons who would have to be sent out to join colonies in order to maintain the principle of unigeniture as he is determined to do at Magnesia.[24] But whether it is genuine legislation, or utopianising fiction after the manner of Plato's *Laws*, the fact that Aristotle predicates "preserving the number of *oikoi*" as the legislative ideal specifically and uniquely of a Theban legislator may perhaps imply that he would not have recognised the putative existence of unigeniture as a reality at Sparta.

BIBLIOGRAPHY

Asheri, D. (1963), "Laws of Inheritance, Distribution of Land and Political Constitutions in Ancient Greece", *Historia*, 12: 1-21.

Cartledge, P. A. (1987), *Agesilaos and the Crisis of Sparta*. London.

Gomme, A. W., A. Andrewes, & K. J. Dover (1970), eds., *A Historical Commentary on Thucydides*. vol. 4 (of 5). Oxford.

Hodkinson, S. (2000), *Property and Wealth in Classical Sparta*. Duckworth: Classical Press of Wales.

MacDowell, D. M. (1986), *Spartan Law*. Edinburgh.

Marasco, G. (1980), "La retra di Epitadeo e la situazione sociale di Sparta nel IV secolo", *Antiquité Classique*, 49: 131-45.

---

[23] Arist., *Pol*., 1274b1-5: νομοθέτης δ' αὐτοῖς [sc. τοῖς Θηβαίοις] ἐγένετο Φιλόλαος περί τ' ἄλλων τινῶν καὶ περὶ τῆς παιδοποιίας, οὓς καλοῦσιν ἐκεῖνοι νόμους θετικούς· καὶ τοῦτ' ἐστὶν ἰδίως ὑπ' ἐκείνου νενομοθετημένον, ὅπως ὁ ἀριθμὸς σῴζηται τῶν κλήρων.

[24] It is interesting, incidentally, to note that for Plato the choice of which son is to succeed as sole heir is made by the father, rather than by any system of primogeniture.

Ruschenbusch, E. (1966), *ΣΩΛΟΝΟΣ NOMOI. Die Fragmente des Solonischen Gesetzeswerkes = Historia*, Einzenschrift, 9. Wiesbaden.

Schütrumpf, E. (1987), "The Rhetra of Epitadeus: a Platonist's fiction", *GRBS*, 28: 441-57.

Schütrumpf, E. (1994), "Aristotle on Sparta", in Hodkinson & A. Powell, eds., *The Shadow of Sparta*, pp. 323-45. Routledge: Classical Press of Wales.

Thomas, R. (1994), "Law and the Lawgiver in the Athenian Democracy", in R. Osborne, & S. Hornblower (1994), *Ritual, Finance, Politics: Athenian Democratic Accounts presented to David Lewis*, pp. 119-33. Oxford.