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TRUTH AND RECONCILIATION THE ATHENIAN WAY
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ABSTRACT

The restoration of democracy in the city of Athens in 403 BC required a reconciliation agreement to prevent a repetition of the judicial mayhem that had followed upon the restoration of democracy in 400 after the earlier spell of oligarchic government. Although Sparta had the power to dictate the terms of the agreement, it appears that the Athenians were allowed to draft the clauses and draw on their own experience, hence the echoes of the model which they had developed to seal off the helotry trials that arose from the confusion of 415. After the reconciliation of Athens under a democracy in 403 the vulnerability of the reconciliation agreement became more apparent, but it had facilitated the transition to a stable political system.

In military terms Athens’ war with Sparta and her allies effectively ended with her defeat at Argos in 405 BC, but the city of Athens was put under siege and the conflict continued at the military and political levels for several months. In a bid to create a united front against the Spartan investment of the city, the Athenians issued a bill that would give amnesty to those who had been convicted, or who faced trial, on a wide range of criminal and political charges. The Athenians’ bill proscribed the raising of any kinds of disturbances to past offenses, the key term being μάχημα (μάχημα, ἤμαθα 77, 9, esp. 79). The concept of a general amnesty was, of course, not new: there was a precedent in the crisis which Athens faced when Xerxes’ invasion was imminent, and, if we can trust...

Thucydides 4.7.4-2, the formulation phrase with γαμβρισθεὶς had been used in a similar amnesty agreement in Megara in the 420's.

As in 481, the amnesty of 405/4 was a simple plan to meet the greatest number of citizens possible to defend the city. But this strategy was obviously questionable for those who did not wish to see civil issues set aside, so who saw continued resistance to Sparta as suicidal. Thus the amnesty hoped to create the circumstances which led to the establishment of the rule of the Thirty in 404 BC.

The Thirty succeeded in turning oligarchy into a dirty word, which was to disappear from the Athenian political vocabulary after their demise.

Full political rights, including the right to possess weapons, were restricted to 3000 citizens; 30 metics were treated as enemies of the state and their wealth expropriated; some 1500 were liquidated by the Thirty and 2000 exiled; and their liquidation of the males caught in Eleusis survives in the tradition as a singular example of ruthless, if not psychotic, behaviour.

Their dependence on Sparta's support, their alienation of the majority of citizens and their lack of cohesion contributed to their rapid loss of power. By February 405 BC exiled democrats and their supporters were in control of the Peloponnese. The 3000 deposed the Thirty and established an emergency council of ten, one from each tribe, clearly to negotiate a peaceful settlement, since the 3000 realized that they could not prevail against the returning democrats. The Thirty took themselves off to Eleusis to await, as they hoped, Spartan intervention.

Although the battle of Mynychia occurred only five days after the failure of the oligarchs to retain Phile, and the latter coincided with a snowstorm, and was thus early in 403, the resolution of the political conflict was only formalized in the early part of the archon year 403/2. 12 Boedromion was celebrated as the date of the commensal return of the democrats to Athens, which should mean that the reconciliation agreement behaved to

4. P.A. Veyne, The Thirty of Athens (Cornell 1982) attempts a revision of the record of the war of the tyrants, but with arguments that are not compelling.
5. Xenophon, Hell. 2.4.8-10; Aristotle, Ath. Pol. 35.4-37; Arch. 7.77; 3.236; Isocrates, 7.67; 26.12.
6. Xenophon, Hell. 2.4.23 quotes Eusebius' charge that in the 8 months from to the time of the battle of Mythen the Thirty had killed nine Athenians than had the Spartans in ten years of war. The Thirty were appointed at the archon year 403/2 (Ath. Pol. 35.4). The following reference to snow further limits the dating.
7. Xenophon, Hell. 2.1.20-24.
8. Xenophon, Hell. 2.4.13-14.
10. Plutarch, Mor. 300F.
late September/early October 403. This in turn indicates that it took a considerable time to negotiate the settlement.

Although the agreement included amnesty elements, it was not like the situation in 481 and again in 405 when the Assembly voted to grant amnesty to those in exile and those who had lost, or were in danger of losing, citizen rights. Furthermore, it was not really a reconciliation agreement, in that its immediate goal was not the reunification of the city state, but the mutual recognition of an oligarchic enclave in Eлейsis and a democracy in the rest of Attica. The special elements in this political settlement were that Athens had lost the war and any deal between the oligarchs and the democrats required at least tacit acceptance by the Spartans; secondly, that the oligarchs fixed the military strength and political support to prevail against the democrats, and thirdly that the oligarchs were seen as responsible for criminal acts and unlawful measures, albeit under the protection of what might have been described as emergency regulations. In this last regard it was necessary to reestablish the rule of law.

The political and judicial clause which followed upon the earlier restoration of democracy in 410 BC was a grim memory and a warning that a better way had to be found to secure the return to democracy. In 410 there had been class penalties against soldiers who had remained in Athens during the rule of the 400 and against residents of the 400 and all who were charged with any wrongful action performed under the oligarchy. It would appear that there was not an adequate amnesty agreement. The issue was not properly addressed until Ptarchoclides’ bill of 405.

In 403 democrats and oligarchs in Athens might have reached a consensus on the need to formulate an amnesty agreement, but in any case Sparta surely insisted on a deal that would not see the liquidation or outright internment of her allies, the oligarchs. There were presumably two main elements in the agreement, first a treaty that bound the democrats to recognize the Spartans as allies, though this is not explicitly mentioned by the sources, and secondly an agreement which dictated to Sparta’s satisfaction, the terms on which the oligarchs would allow the democrats to reestablish democracy in Athens, and on which the democrats would indemnify oligarchs and allow those who wished to remain oligarchs, to establish their own enclave in Eleusis.

The terms of the reconciliation agreement can be reconstructed from references in a number of sources.

12. Ibbott, On the 400. 75 and 76.
13. T. C. Livesley, The reconciliation agreement of 403/402 B.C. in Athens (Wiesbaden 1977) 30-56 offers a reconstruction of the agreement with a full discussion of the relevant source material. For Aristotle’s account the key modern analysis is
I. Two groups swore to maintain peace with one another. Even as return to his own property, except for the 30, the 11 and the 10 Commissioners of the Peasantry, but even they could benefit from the amnesty, if they submitted to the regular magisterial audit. The invention of the audit procedure (the eduke) obviated the introduction of any special judicial commission, where standing and procedures might be called into question.

Of course, the Athenian troops had nothing of the state apparatus, security police and security legislation of the modern state; thus there was not the same demand for an investigative commission or truth commission, to establish the facts, as was established in Chile with the end of military rule. The facts were generally known; it was for the courts to establish criminal or civil liability.

1. Anyone remaining in Athens who wanted to settle in (oikarchic) Eleusis could do so, and with the benefits there of full citizen rights, full civic rights, an autonomous government, and full property rights (Ath. Pol. 39.1). Migration was to be within 20 days of the signing of the agreement.

2. An arbitration procedure was to be established to deal with cases where would-be settlers in Eleusis could not persuade owners to sell property to them (Ath. Pol. 39.2).

3. The Eleusis shrine was to be open to citizens from both communities (Ath. Pol. 39.2), and this constituted an exception to the general ban on movement between the two centres.

4. The Eleusinians were to contribute their dues to the military alliance, like the rest of the Athenians. (Ath. Pol. 39.2).

5. Returning exiles were to recover their property, if it had not been sold, but those who had purchased confiscated property were to retain it. (Lysias, Against Hypothekaires lines 39 sq.). Oikarchic leaders who had taken confiscated property were to forfeit it, for sale by public auction. Thus returning exiles were legally entitled to seek to recover their property.


7. The final term, xapnouyevo, would seem to cover the deriving of profit, interest and revenue from property.


but might have to pay the market rate to get it back. But what follows in the fragment of Lysias’ speech against Hypotheroses and a passage in Isocrates suggest that this provision only applied to moveable property, and that confiscated land was returned to its original owners (Isocrates XVI 46).

The legal, historical and technical complexities of property restitution will be appreciated by those who have knowledge of repARATION and restitution policies in post-apartheid South Africa.20

8. There were to be no retributions, or ‘vindictive actions’21—again the verb is peiraomai against anyone except the Thirty, the Ten and the Eleven and the officials at the Peiraecus, and not even against those, if they submitted to the audit (euthimia) and were cleared (Andocides, 1.90; Ath. Pol. 39.6). It is argued elsewhere that the formula with peiraomai may have been used in 415/4 to put an end to the hunt for those accused of involvement in the mutilation of the Heraus and the burlesquing of the Eleusinian mysteries.22

For all the talk of reconciliation, the democratic assembly in Athens did not hesitate to make it clear that the democrats had held the moral high ground. Thus, for example, in 403/2 Theophrades introduced a bill to provide for the upkeep of children of democrats who lost their lives at the hands of the oligarchs.23

The situation changed dramatically in the Athenian year 401/0,24 when the democrats in Athens received reports that the oligarchs were engaging mercenaries for an offensive. Preemptive action from the city sealed the fate of the oligarchic administration in the Eleusis. The oligarchic leaders were invited to talks and murdered. Athens was then reunited as a democracy.25

10. ‘The Truth and Reconciliation Committee, established in terms of the Promotion of National Unity and Reconciliation Act of 1995, has a sub-committee concerned with Reparations and Rehabilitation, and the Commission on the Restitution of Land Rights has added a dimension to the problems of the Ministry of Land Affairs and Agriculture, whose mandate includes land redistribution and restitution. The Commission handles claims to the point where they are submitted to the Land Claims Court. The Court may grant restitution or compensation, if a claim is upheld (Mac Brown et al., Land restitution in S. Africa [Cape Town, IDASA 1998].

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21. This translation of M. Ostwald, From popular sovereignty to the sovereignty of law (Berkeley 1986) 499.

22. J.F. Akkermans, ‘Curbing the commissions’, (Q) 42 (1992) esp. 61-64.

23. H.N. Stougl, Reparations (1971) 290-301. The document is translated in P. Harding, Translated Documents of Greece and Rome Vol. 2 (Cambridge 1985): no. 8. This too refers to the S. Africa experience where the Truth and Reconciliation Commission was empowered to recommend financial compensation to those who could demonstrate that they had materially suffered from the application of apartheid legislation.


25. New. Holl. 2.4.4.
The amnesty agreement was now revised and extended to include those who had settled in Eleusis.20

Any pretense that oligarchy as espoused by the group in Eleusis had no less a claim to respectability than democracy could now be abandoned. Not surprisingly numerous trials relating to the activities of oligarchs are attributed to the period after the final demise of the oligarchic order in Eleusis. Andocides was tried for impiety, and raised in his defense the issue whether the amnesty agreement of 403 BC released him from any previous penalty, and whether an unrecorded decree of 415 had any legal standing, after the passing of Tissamenus' bill relating to the laws and nomothetai.21

Lydas prosecuted Eratosthenes for murder. The date is not certain and the issue is linked with the problem of dating the law which gave benefits of citizenship to metics who assisted in restoring democracy in 404/3.22 The decree, probably of 401/0, may have affected Lydas' status as a metic, and thus allowed him to initiate a criminal action against Eratosthenes. It was necessary for Lydas to establish that Eratosthenes had not simply acted on orders, but had been a willing agent of death, and was thus not covered by the amnesty. The S. African law on amnesty makes a similar requirement: the difference is that the contemporary model also imposes on the applicant for amnesty the obligation of full disclosure. Lydas' speech written for the prosecution against Agoratus shows that it could take some ingenuity to get round the amnesty agreement, even after 401. Agoratus was charged with making false accusations against enemies of the Thirty and so bringing about their deaths. It was necessary for Lydas to convince the jury that Agoratus was a willing partner in the judicial murders,23 since murder was not covered by the amnesty. Another problem was the statute of limitations, since much time had elapsed since the crimes of which Agoratus was accused.24 The vulnerability of Lydas' case is underscored by the fact that Lydas resorted to the relatively arcane procedure of apagoge, which could be used against anyone caught in the act of murder, as was claimed against Agoratus (Lydas, 13.86-7), but was also a procedure that permitted the prosecution of any killer who was seen frequenting the shrines or agora (Demosthenes, 23.80).25 Lydas could call witnesses to the fact that Agoratus had been driven away when he tried to join a civic procession in honor of Athena.

26. Xen. Hell. 2.4.43; Ath. Pol. 40.4.
27. Andocides, 1.42.2.
28. IG 2' 9.10.
29. Lydas, 12.30.33.
30. Lydas, 13.83.
31. Lydas, 13.85-6; Demosthenes, 23.80.
In 400/399 Lysias prepared a speech (Lysias 25) for a candidate for office whom he had never been an active oligarch.

Finally we should refer to the trial of Socrates, which tends to be presented as the largest blot on the record of the reconstituted democracy. It seems likely that his prosecutors were motivated by a desire to distance themselves from past association with oligarchy. But we know too little of the political events of 400 BC and little about the man behind the Platonic myth. There may have been a good deal more to the trial of Socrates than we can learn from the Apology.

The reconciliation agreement was an ideological issue in antiquity, and modern interpretations have likewise often been driven by political motives. For critics of democracy the reconciliation agreement was a triumph for the common sense and reasonableness of all citizens. Andocides, 1.140 claimed that the Athenians won renown for nobility of spirit and good sense by working not for revenge but for consensus. Plato, Menexenos 243d comments on the pleasant and friendly way in which the two sides came together. Harmony (homenous) was the achievement: Lysias 2.64-66. The democratic perception was that the agreement was testimony to the benevolence of the people. Thus Isocrates stated that the noblest and strongest proof of the reasonableness or fairness of the people was that the democrats voted to settle out of the treasury the debt incurred by the oligarchs, when they borrowed 100 talents from the Lacedaemonians to pay for the blockade of the Princes after its occupation by the returning democrats.

In modern times there has been a similar divide. Liberals have taken the view that the agreement was a great success and worked. A.P. Durjahn, Political forgiveness in Old Athens (Evaston 1946) would attribute this to the influence of the moderates. C. Rigott offers a eulogistic note on the magnanimity of the Athenian demos after it had been 'purified by the trial through which it had passed'. In a more apologetic vein, P. Cloché, for example, tackles the difficult matter of the final assault on Eleusis and the murder of the oligarchic generals. Against many scholars who attributed the murders to the avenging fury of the democrats, Cloché raises the possibility that they were organized by aristocrats who had remained in Athens.


More conservative writers, such as Von Wilamowitz-Moellendorf, have represented the agreement as a failure.36 Although the agreement has generally been praised, it was imposed on the Athenians, or at least it came about because the democrats could not ignore the power of the Spartans. Secondly the amnesty was difficult to maintain.37 In the first place, while the guilt was concentrated on the oligarchic side, there were no doubt excesses on the democratic side too, and there was also the risk that hotheads might sabotage the agreement. There were problem areas, especially in the area of property rights, evidenced, for example, in Lysias Speech 18, for the family of Nicias’ teacher Eubrates, who were trying to ward off a second confiscation of their land.38 Then there was the problem of what Todd has referred to as the personal nature of Athenian justice. One could blacklist another’s character by referring to his record during the oligarchic regime, and this was often done in the course of dikastria proceedings, when orators sought to debar from office citizens who had been associated with the oligarchs.39 Furthermore the Athenian Assembly had the power to make enactments that could negate provisions of the reconciliation agreement. In the autumn of 403 Phormis, who had returned to Athens with the exiled democrats, proposed that on the return only those with land should qualify for citizenship. Lysias (with Dion, Hdt. 32) presents the case against the proposal, which would effectively have disfranchised c. 5000. It was defeated, but the very fact that the Assembly debated the proposal shows that the amnesty was vulnerable.

It does not make sense to judge the amnesty agreement by what happened long after the restoration of democracy in 401 BC. The political situation was not static, and democrats may have been entitled to think that, while the amnesty had freed oligarchs from the fear of arbitrary or vindictive punishment, the oligarchs had to accept that their constitutional experiment had failed and could not be repeated. The oligarchs had little chance of being regarded as the visionaries of the new order.

In negotiating the reconciliation agreement the Athenians showed that they had learnt from past mistakes and drew on devices which they had tested earlier. The agreement did not come out of nothing. It was successful in that it met the need to establish an amnesty without the sacrifice of 36. Aristotle and Athens (Berlin 1933) esp. vol. 2, 221 sq.
37. Here, as elsewhere in this paper, I gratefully acknowledge the influence of a paper by Stephen Todd ‘Amnesty and ideology in fourth century Athens’ delivered at the Institute of Classical Studies, London, on 26 November 1987.
38. Discuss by T.C. Longman (note 11) pp. 130 f.

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justice. It is best judged for what it was: an instrument for ending civil war and securing the return to constitutional government. It worked.
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