

I. LITERARY TRADITION AND EARLY
GREEK CODE-MAKERS

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THE literary tradition about the makers of early written codes in Greece presents so many contradictions and inconsistencies that it is natural to take refuge in complete scepticism. But if the tradition is analysed, it appears that there are two strata, the first reasonably consistent, matter-of-fact and credible, the second progressively vitiated by influences which can be isolated and explained. The division between the two strata lies about the year 300 B.C. and the primary tradition is not necessarily less credible because of the existence of the secondary tradition, which proves not that the primary tradition was false, but that truth itself could not prevail against the pseudo-history which set in after Aristotle. The primary tradition about the personalities of the early makers of codes cannot be lightly rejected; the content of their codes, as far as it is given in the primary tradition, is not inconsistent with the general character of early Greek lawgiving as it can be reconstructed from other evidence.

For other evidence we must look first to inscriptions. The laws of Gortyn, especially the older of them, are the laws of a class-state; their aim at justice is limited by considerations of class. Penalties fixed are comparatively small. The moral quality of offences is not indifferent, but is far from being the chief factor which governs the penalties. For instance, a man who seduces a free woman is fined 10 staters; the man taken in adultery in the house of a free woman or of her relatives is fined 100 staters, taken in anyone else's house, 50 staters. If a man seduces the wife of an *aphetairos* he pays only 10 staters. The evidence necessary to prove a particular offence against a free man is that of four witnesses, to prove an offence against an *aphetairos* two witnesses. The law is detailed, leaving nothing to the magistrate. In case of a clash of evidence it is laid down whose witness "shall be nearer," that is, shall prevail. This reflects, in fact, not so much the search for truth as the ordeal by battle discounted by the axiom that God is on the side of the big

battalions¹. The Draconian law of homicide (*I.G.* 1. 61 = *I.G.*² 1. 115) is entirely matter-of-fact. Of almost equal value as evidence is the passage from Theophrastus *περὶ συμβολαίων*, fortunately preserved in Stobaeus, XLIV. 22². For we may fairly assume that we have here the solutions which various states had found for the problem of regularizing sales and bargains with the authority of the state. Beneath the variation lies the common characteristic of a matter-of-fact common sense.

The funeral law of Iulis in Ceos of the fifth century (*Inscriptions juridiques grecques*, 1. 10 sqq.) guarantees the credibility of the tradition that early Greek codes were concerned to impose a certain civic simplicity and to regulate the behaviour of women. The few laws referred to in the *Politics* of Aristotle³ or quoted in Heracleides' abstract of the *Politeiai*⁴, though mostly chosen because of some striking peculiarity, may be taken as fair evidence of the laws which actually existed not later than the fourth century. For example, Aristotle quotes as an absurd survival at Cyme a law that in cases of homicide the defendant was held to be guilty of the crime if the prosecutor produced a certain number of his own kinsmen as witnesses. The analogy of the *Eideshelfer* of Germanic law and the attitude towards evidence implied by the code of Gortyn are good security for the trustworthiness of Aristotle's account.

Herein lies a criterion of the content of early law as described in the earlier and later traditions. When we come to the personalities and careers of early lawgivers, the tradition down to Aristotle is fairly consistent and credible. But even the existence of these early lawgivers as human historical personalities has been challenged⁵ and it is necessary to consider how far the challenge is justified. It must make all the difference whether or not we accept the ancient tradition that Charondas, Zaleucus and Draco were real men who drew up codes for their cities. If we believe that there was a definite period somewhere between 650 and 550 B.C. when real people in Greek states made written codes, however much these drew upon older practice, we can explain the fact by the accepted view that written codes stood for a reaction against the arbitrary quasi-inspired decisions of nobles, that in colonial Greece the appearance of written codes was hastened by the fact that in colonies with mixed populations the force of tradition was weak⁶, and that the

¹ See Kohler and Ziebarth, *Das Stadtrecht von Gortyn*, pp. 5 sqq.; R. M. E. Meister, "Eideshelfer im griechischen Rechte," *Rhein. Mus.* LXIII (1908), p. 564.

² See also Polybius, XII. 16.

³ 1. 2, p. 1252 b, 13; II. 12, p. 1274 a, 22; VI. (IV.) 3, p. 1297 a, 13; II. 8, p. 1269 a, 1.

⁴ 4, 7, 9, 11, 14, 15, 25, 30, 40 (*F.H.G.* II. 208-24).

⁵ Beloch, *Griechische Geschichte*, I.³ 1. 350; I.² 2. 256 sqq.

⁶ Cp. Plato, *Laws*, p. 708 c-d.

written code derived its authority from the authority of the state as a political body, that Codes are rather Dike than Themis. But if the pre-Solonian lawgivers were really gods who were later euhemerized, then the whole process is put much further back and is less conscious, less rationalized, less mundane, and, perhaps, less intelligible.

Early figures like Minos who communed with Zeus and the just Rhadamanthys and even Lycurgus do not concern us here. For we are not bound to argue from them to the group of those who made written codes, of whom, according to Ephorus, Zaleucus was the earliest. Even if it were proved to demonstration that Lycurgus was a light-god we should reach no more than a slight antecedent probability that the Greeks connected lawgiving with gods of light. Such indeed Beloch believes Zaleucus and Charondas to have been. The names of both Zaleucus and Charondas can be connected etymologically with the idea of Brightness, and if there was good ground for supposing them gods, their names would settle what kind of gods they were. But there is no ancient evidence that anyone in antiquity ever thought of Zaleucus and Charondas as gods¹ or that they were associated with cults. It cannot be denied that the coincidence of the names with this meaning has force, but it seems worth while to adduce evidence that these names might quite well be applied to mere mortals, such as I believe Zaleucus and Charondas to have been.

There seems no reason to doubt the equation of Hoffmann² whereby Zaleucus and Seleucus are dialectic variants of the same name, and Seleucus as a man's name is common enough though, it must be admitted, the name is not attested earlier than Philip of Macedon³. The same is true of Charondas, which is a patronymic "son of Charon." According to some, Charon is the name of what was originally a sun-god. Therefore, it is urged, Charondas may be the name of a god. Heracles was more than mortal and the name Heracles was not apparently taken by any mere man in historical times, but, according to Pauly-Wissowa, there are sixty-four real people known who bore the name Heracleides, not to count eight who were called Heracleidas. So even if Charon was a name exclusively divine, it would be hazardous to argue from that to Charondas. But there are some six known mortals who were called Charon. However divine it may have been, the name soon

¹ Aristotle, fr. 548. Rose (Schol. ad Pind. *Ol.* XI. 17; cp. Clem. Alex. *Strom.* 1. 352) says that Zaleucus received his laws from Athena in a dream. This does not suggest that he was thought of as a god any more than Hyperides' client in the *Euxemippus*.

² *Die Makedonen*, pp. 174 sqq.; cp. Kühner-Blass, *Griech. Gramm.*³ 1. 1, p. 641.

³ At Athens there was at least one Zaleucus Archon c. 150 B.C. (*B.C.H.* x. 33 n.) and perhaps another in the first century. Kirchner, *Pros. Att.* 1. 403.

came down to earth. The poet Archilochus in the seventh century knew of a man called Charon¹, and there seems no reason against the name Charondas as a human name at the same time. Charondas appears as a man's name in inscriptions at Tanagra², Orchomenos³, Chaeronea⁴ and at Eretria⁵—the neighbour of Chalcis the mother-city of Catana.

Beloch points out that Draco means a snake and so may be originally the snake-god whom the Athenians worshipped as Erechtheus or Cecrops. But, in the absence of any tradition to that effect, Draco, like Dracontides or Leon, may quite well be a man's name and nothing more⁶. The argument from the names alone of these lawgivers seems then, at best, inconclusive.

The theory that they were gods is, however, reinforced by the contention that they cannot well have been men. It is urged that Charondas is said to have made laws not only for Catana but also for the other Chalcidian colonies of the west, and that the name appears in the Second Mime of Herodas as apparently that of the lawgiver of Cos. Since Cos, as well as the Chalcidian cities of the west, attributed their laws to him, he must be a god and not a mere man. As regards Cos, it is worth observing that the name in the form Chaerondes (which is also found existing in Stobaeus, XLIV. 40) is the only name of a famous lawgiver which suits Herodas' metre at this point, *ταῦτ' ἔγραψε Χαιρώνδης*. But even if we take it that Cos ascribed its laws to Charondas, we are not bound to draw any deduction except that the laws of Charondas were borrowed by states other than his own. The view that only the civil head of a state could make laws for it is refuted by the common practice of Greek states of calling in outsiders to make both laws and constitutions for them, e.g. Demonax at Cyrene. It is true that at Athens Solon was Archon as well as lawgiver, but that is explained by the fact that it was convenient to vest in him executive authority, and especially the care of property, for his reforms were in part directed at the rights of property.

¹ See Aristotle, *Rhetoric*, III. 17.

² *I.G.* VII. 537 (fifth century), 585 (fourth or third century).

³ *Ibid.* 3175 (third century).

⁴ *Ibid.* 3379, 3408.

⁵ *I.G.* XII. 9, 245; a by-form Chaeriondes is also found *ibid.* no. 241; also Charonides, *I.G.* II. 722. The name Charon has probably the same meaning as *χαροπός* and Charops or Charopos is a good Attic name. Charops appears e.g. on an early red-figured vase, and one Charopides was an Athenian official in 424/3 B.C., *I.G.*¹, I. 324, l. 27, while another fell in Thrace in 440/39 B.C., *ibid.* 943, l. 78. Holm, *Gesch. Siciliens*, I. 154, pointed out that Charondas is a Boeotian form, and it would be strange if Chalcidian colonists called this alleged god by a Boeotian name. But besides Charondas and Chaeriondes found at Eretria, we find in Demosthenes, XLIX. 26, a Megarian metoec at Athens with the name Philondas.

⁶ The name Draco as a man's name is quoted in Pauly-Wissowa, s.v., of eight people, the earliest from the beginning of the fourth century.

Draco was not Archon according to the Athenian tradition, for that tradition places his code in the Archon year of Aristaechnus. It seems, however, more reasonable to suppose that the Athenians were right in thinking that there could be a lawgiver who was not Archon, than that there was a universal Hellenic practice to the contrary which they ignored. Draco may quite well have been Basileus or vested with extraordinary powers limited in time and in scope. If the Athenians in quite early times had attributed their first written code to a snake-god called Draco (and not Erechtheus or Cecrops) it is hard to understand why the later euhemerizing tradition triumphed so completely, and why Draco was put by the tradition so late as the second half of the seventh century. The fact that we do not know his father's name has no special significance, for the same is true of the undoubtedly human figures of Damasias and Cylon.

There remains Diocles of Syracuse. Diodorus (XIII. 33 sqq.), our sole authority, who perhaps follows Timaeus, describes him as a demagogue who arose in 413 B.C. and *τοὺς νόμους ἀνέγραψε τοῖς Συρακοσίοις*. He was one of a commission of *νομοθέται εἰς τὸ τὴν πολιτείαν διατάξαι καὶ νόμους καινοὺς ἰδίᾳ συγγράψαι*. He was so much the most eminent and intelligent that the code which they all drew up in common was called by his name. He killed himself to vindicate one of his laws which he had inadvertently broken, and the Syracusans built a temple in his honour, which Dionysius I pulled down when he extended the fortifications of the city (c. 402 B.C.). Many cities adopted these laws and in the time of Timoleon, and later in the time of King Hiero, the people made laws but neither was called *νομοθέτης* but only *ἐξηγητὴς τοῦ νομοθέτου*, because the laws, being in old-fashioned speech, were thought unintelligible. In XVI. 82 (under 339 B.C.) Diodorus says of Timoleon *τοὺς προϋπάρχοντας νόμους ἐν ταῖς Συρακούσαις, οὓς συνέγραψε Διοκλῆς, διώρθωσε*. As Costanzi¹ and De Sanctis² have pointed out, it is incredible that a comparatively unsuccessful demagogue like Diocles should have a temple, built apparently immediately after his death and destroyed almost before there was time to build it. They attribute the temple to a hero Diocles known at Megara³, a friend of Philolaus and so connected with Corinth⁴. The further deduction is then made that as the laws at Syracuse were written in such an archaic diction that subsequent legislators were called *ἐξηγηταί*, not *νομοθέται*, and as Syracuse cannot have

¹ *Riv. di storia antica*, II. (1896), fasc. 1.

² *Studi italiani di filologia classica*, XI. (1903), 433 sq.

³ Aristophanes, *Ach.* 774; Theocritus, XII. 27 *cum schol.*

⁴ Aristotle, *Polit.* II. 12, p. 1274 a.

done without laws until 413 B.C. the truth is that Diodorus has been misled by the name and the laws of Syracuse were really ascribed to the hero Diocles. The story of his death is also told of Charondas and Zaleucus, and is a floating legend attached to lawgivers.

This further deduction is ingenious and attractive, but when allowance is made for the "writing-up" which introduces the final tragedy of Diocles' death it will be seen that what Diodorus' source attributes to Diocles and his colleagues is little more than such a revision and posting up of the laws as was happening at Athens about the same time and perhaps for like reasons. Had fate been kinder, Nicomachus, Lysias' *bête-noire*¹, might have been a household name at Athens as Diocles at Syracuse. The words which Diodorus uses, *ἀναγράφειν, συγγράφαι*, betray the truth and *νομοθέτης* may, in his source, have borne the secondary Attic meaning of a commissioner to revise laws. The revision may have been political and incomplete and some laws would remain in their archaic form, as at Athens, requiring elucidation. It is hard to see why Diocles' colleagues should be invented if they did not exist, and it is equally hard to see why, when the hero Diocles is mentioned as Philolaus' friend in the lawgiver section of the *Politics* (II. 12) there is no mention of the fact, if fact it was, that the hero Diocles was regarded as the original lawgiver of so notable a city as Syracuse. There seems, therefore, no sufficient reason to turn the hero Diocles into a lawgiver, or the nomothetes Diocles into a hero.

I would therefore suggest that the thesis that the early makers of written codes were originally gods or heroes is at least not proven, and would now take the notices of the two lawgivers Zaleucus and Charondas as these show most clearly the difference between the primary and secondary tradition.

The resultant of the primary tradition is as follows:

Zaleucus is a Locrian—according to Aristotle quoted in a scholium on Pindar, *Ol.* XI. 17, a shepherd—by which, it would seem, Aristotle meant a respectably substantial shepherd in view of the generalization that the best lawgivers belonged "to the middle class".² He was the first to make written laws—so Ephorus—and, if pseudo-Scymnus (312 *sqq.*, 345 *sqq.*) is reproducing Ephorus, his laws made for Locri were adopted but somewhat neglected by the Sybarites. His laws about contracts were simple; penalties were fixed³; according to Aristotle, *Pol.* II. 7, p. 1266 b, the Locrians had a law forbidding a man to sell his

¹ Lysias, *Or.* xxx.

² τῶν μέσων. *Politics*, VI. (IV.) 11, p. 1296 a, 19.

³ Ephorus *ap.* Strab. VI. 260.

plot of land unless he proved himself to be the victim of some notorious ill-fortune¹. According to Heracleides' abstracts there was a law against excessive mourning at funerals: according to Theophrastus (*ap.* Athen. x. 429 A) *περὶ μέθης* against drinking unmixed wine except under doctor's orders, with death as the penalty. About this last law there might be some legitimate doubt, though the attribution of a similar law to Pittacus (*Politics*, II. 12, p. 1274 b, 20) and the discussion in Plato's *Laws* prove how much the question had exercised earlier lawgivers. Finally, as early as Demosthenes (Timocrates, § 141) is found the story that anyone who pleaded for a new law or to alter an old one, must do so with an ominous noose round his neck, a procedure which reminds one of Orgetorix in the First Book of Caesar's *Gallie War*².

Demosthenes declares that in more than 200 years only one law has been changed. This is an indication of date. Demosthenes was speaking in 353 or 352 B.C., therefore he puts Zaleucus at least as early as 550. Ephorus declared that Zaleucus was the first to make written laws, that is to say, he puts him before Draco. For that reason, it is to be assumed, Eusebius assigns him to 663/2, Hieronymus to 662/1, some forty years before their dates for Draco. There is no other statement among the chronological writers. In the *Politics*, II. 12, the writer rejects as too heedless of chronology a tradition which would make a catena of lawgivers, viz. Lycurgus and Zaleucus, pupils of Thales, whom one tradition connected with 665 B.C., and Charondas a pupil of Zaleucus. The chronological heedlessness apparently finds expression in the position of Lycurgus: at least there is nothing in the passage inconsistent with the tradition that Zaleucus belonged to the seventh century, and that Charondas was later than Zaleucus. We may conclude that, while there was no means of fixing the date of Zaleucus exactly, he was regarded as being early but not very early, and as having made laws which do not seem inconsistent either with what we know of early Greek codes or with the character of Locri as a quiet, well-ordered agricultural community³.

The primary tradition about Charondas is slighter. He belonged to Catana. He made laws for the Chalcidian states of Italy and Sicily. His laws passed current in Rhegium; he imposed a fine on those who did not attend the public courts—this would suit such an aristocratic state as Rhegium was, at any rate, when Anaxilas made himself tyrant; there

¹ It seems more likely that Aristotle is here referring to the famous code of Zaleucus than to the institutions of the Locrians of Old Greece.

² So Hirzel, *Themis, Dike und Verwandtes*, p. 357 n. 1.

³ See Heracleides, *F.H.G.* II. 221.

was in his code nothing ἴδιον—peculiar to him—except a law to punish false witness. Aristotle¹ quotes the word ὁμοσίπνοι which suggests that there were in existence laws attributed to Charondas¹ which, as might be expected, took account of the social structure of Catana. In the passage from Theophrastus *περὶ συμβολαίων*, to which I have already referred, Charondas and Plato are quoted together as providing that all bargains should be completed on the spot and that if a man gives credit he has no redress in law: for he himself is the cause of the wrongdoing. The reference to Plato is to the *Laws*, VIII. 849 E, and it is of course possible that Plato is here adopting for his ideal state the old-fashioned practice which Charondas enforced at Catana, possibly adding to it the reason αὐτὸν γὰρ εἶναι αἴτιον τῆς ἀδικίας. Such was the primary tradition as far as we can reconstruct it, in itself not at all incredible, but not anchored by the association of these code-makers with any great historical events, and connected with cities which in the fifth and fourth centuries lost their independence and very likely failed to preserve their institutions, a tradition not supported as far as we can tell by any famous literature either by or about these lawgivers. Even Solon, with every possible advantage, does not escape the new learned mythopoeia or unscrupulous literary fiction of the third and second centuries. It is not to be wondered at that presently Zaleucus and Charondas come off far worse.

Thus we come to the secondary tradition on the other side of the Aristotelian watershed. This secondary tradition has three main characteristics: (a) the dates of these lawgivers go adrift and they are brought into connexion especially with philosophers in defiance of chronological probability; (b) their laws take on an ethical not to say moralizing complexion and the matter-of-factness which is found preserved in laws cited in inscriptions disappears from these fictitious or ethicized enactments; (c) laws are attributed now to this lawgiver, now to that, until we cannot say with any certainty where, if anywhere, they belong (see below, p. 104).

The reason for the change is not far to seek. It seems to lie in the claim of philosophy to be the parent of statecraft, in the influence of such works as Plato's *Laws*, in the tendency to moralizing which affected the third and second centuries and in the unscrupulous disregard of historical truth in the pursuit of literary or philosophical ends.

The most notable illustration of these characteristics of the secondary

¹ A like deduction may be drawn from the generalization that Charondas, in point of exactness, was subtler (γλαφυρώτερος) than modern lawgivers (*Polit.* II. 12, p. 1274 b).

tradition is in Diodorus, XII. 11 *sqq.*¹ After describing the founding of Thurii under the Archon year 446 B.C. he indulges in a long digression on Charondas whom he declares to have made a code for the new city. "At its founding," he says, "they chose, too, as lawgiver the best of those citizens who were admired for their education (τὸν ἄριστον τῶν ἐν παιδείᾳ θαυμαζομένων), namely, Charondas. And he examined the codes of all states and chose out the best points and arranged them in his laws: and by his own mental exertions he discovered many points peculiarly his own, which it is not out of place to mention for the edification of my readers." With that laudable purpose in view, Diodorus then gives us a series of laws of which some afford obvious grounds for scepticism.

The first of these laws is to the effect that if a man who had children married a second time and so imposed upon them a stepmother, he was disqualified from public life on the ground that those who took such ill counsel about their own children would give ill counsel to the state; and that those whose first marriage was fortunate were fools not to be content, and those whose first marriage was not successful were fools to tempt providence again. I do not presume to comment on this as a piece of the philosophy of life, but would point out that a little further on appears another law which implies that there was no prohibition of marrying again provided that a man did not take a younger woman to wife. Somewhere beneath the surface there may well be a vein of truth: either at Catana or at Thurii there may have been a law protecting the rights of children by a first marriage, but what we have here in Diodorus is the kind of thing which the secondary tradition did not hesitate to insert in the highly practical codes which had really existed.

The second law is that sycophants, that is, informers, shall sit in the market-place crowned with tamarisk. Such a law seems hardly to belong to the early youth of lawgiving, and is probably a picturesque form of a later penalty of Atimia. The third law is against κακομιλία, consorting with the base. In Diogenes Laertius, I. 60, Solon is credited with the dictum μὴ κακοῖς ὁμίλει. The dictum is a commonplace²; it belongs to gnostic writers or to copybooks, not to courts. The fourth law is that the state must provide education and the young must receive it. This is apparently a deduction from the assumed philosophy of the lawgiver.

Diodorus attributes to Charondas and to Thurii the rule about the noose which the earlier tradition attached to Zaleucus (p. 101) and then

¹ See on this passage and the corresponding passages in Stobaeus, Bentley's *Dissertation on the Epistles of Phalaris*, 1777 ed., pp. 247 *sqq.*

² E.g. Theognis, 31, κακοῖς, δὲ μὴ προσημιλεῖ.

tells the same story about Charondas' tragic end as was told of Diocles (p. 99), and after that continues: "I will now take Zaleucus, because he had a similar *προαίρεσις τοῦ βίου*. Zaleucus was a native of Italian Locri, a man of noble birth *κατὰ παιδείαν τεθνασμένος* and a pupil of Pythagoras the philosopher." Then follows a preamble to the code beginning with the dictum that those who dwell in the city must first of all suppose and be persuaded that the gods exist. The preamble continues with a series of maxims which show such striking verbal resemblances to the extract called *Ζαλεῦκου προοίμιον νόμων* in Stobaeus (XL. 20) as to make highly probable a common source for both¹. After the preamble the two accounts, in Diodorus and in Stobaeus, diverge. Stobaeus gives the story of the noose; Diodorus, who had already assigned that to Charondas, gives a series of laws. The offences against which the laws are directed are those of which early lawgivers did in fact take cognizance (p.), but instead of exactly defined penalties we are presented with the following: (1) A free woman is to be followed by only one maidservant, *if she is not drunk*; (2) A free woman is not to go out of the city by night *if not for adultery*; (3) A free woman is not to wear gold ornaments or a bordered robe, *if not a courtesan*; (4) Men are not to wear a ring or a robe of the Milesian kind *unless they are prostitutes or bent on adultery*². The difference between this kind of thing and laws given in inscriptions may be compared with the difference between the notice of a Golf Club that gentlemen will always replace the turf and the bye-laws of a railway company.

There was then a tradition which contained preambles to the codes of Charondas and Zaleucus and made both of them pupils of Pythagoras the philosopher *par excellence* of Magna Graecia, and, having thus transferred them to the late sixth or early fifth century, went further and made Charondas the lawgiver of the new city of Thurii, founded in 443 B.C. A variant gives to Zaleucus this last honour, for in Suidas, s.v. Zaleucus, he is said to have been a Pythagorean, a Locrian, *ἐκ Θουριῶν*, and in Athenaeus (XI. 408 A), a passage of which the source cannot be detected, it is said that Zaleucus brought the people of Thurii to abide by

¹ On these preambles see the valuable discussion of A. Delatte, *Essai sur la politique Pythagoricienne*, Bibl. de la Fac. de Phil. et Lettres de l'Univ. de Liège, Fasc. XXIX, pp. 177 sqq. I find it difficult, however, to accept his view of the crucial passage, Plato, *Laws*, IV. 722 E, cited below.

² One historical parallel may be quoted from Heyne's *Opuscula*, II. 33 n. An edict of Henry IV of France in 1601 is recorded as forbidding the use of gold and silver on dresses to all men and women, "excepté pourtant aux filles de joye et aux filoux en qui nous ne prenons pas assez d'intérêt pour leur faire l'honneur de donner notre attention à leur conduite." The parallel is made closer by the fact that in the most official version of the edict the words do not occur.

his laws. We may suspect that the laws of Charondas already current in Rhegium or of Zaleucus which had been in vogue at Sybaris¹, may have been in some measure drawn upon for Thurii; beyond that, charity can go no further. Such a tradition, which must stand or fall as a whole, is inconsistent with the tradition down to the time of Aristotle. Heraclides Ponticus, Aristotle's contemporary, gives to Protagoras of Abdera the credit for the laws of Thurii². In the passage from Theophrastus' *περὶ συμβολαίων*, already referred to, the laws of Thurii are distinguished from those of Charondas. Demosthenes' story that the laws of Locri had remained unchanged for more than 200 years implies a date for Zaleucus which would prevent him from being a follower of Pythagoras. Finally Plato, in his *Laws* (IV. 722 E), complains that earlier lawgivers have not composed *prooimia*, yet the *prooimia* quoted in Diodorus might satisfy any philosopher.

On the other hand, the secondary tradition already held the field in the first century B.C. Apart from the source of Diodorus and Stobaeus, it was accepted by Poseidonius and Cicero. In Seneca (*Epist.* 90, § 6) we read: "The laws of Zaleucus and of Charondas are praised. It was not in the forum or the consulting halls of jurists but in the quiet and hallowed retreat of Pythagoras that they learned laws which they made for Sicily and Italian Greece then at the height of their prosperity. Thus far I go with Poseidonius (*hactenus Poseidonio adsentior*)." Cicero (*de legibus*, II. 15) says that he proposes to commend his laws by a preface, as do Zaleucus and Charondas. This tradition is also reflected in Diogenes Laertius' Life of Pythagoras (VIII. 16), Iamblichus' Life of Pythagoras (33, 104, 130, 172³), and the Scholium to Plato, *Rep.* x. 599 E.

The rise of the secondary tradition appears to lie between the years 300 B.C. and 50 B.C., and the fact that it had won general acceptance by the first century B.C. suggests that it originated not later than the third century. It is even possible that it was the existence of two rival traditions, one putting Zaleucus in the seventh century and the other in the fifth, which caused Timaeus to deny his historical existence. The actual work which underlies Diodorus and Stobaeus' extracts cannot be determined with certainty. It cannot be either Ephorus or Timaeus, writers whom Diodorus used for the history of Magna Graecia. For Ephorus regarded Zaleucus as the earliest maker of a written code and

¹ See Busolt, *Griech. Gesch.* III. 1, 534 n., and above, p. 100.

² *Ap.* Diog. Laert. VIII. 50. The claims of Protagoras are accepted by E. Meyer (*Gesch. d. Alt.* IV. § 398) and Menzel (*Sitzungsberichte der Sächs. Ges. d. Wiss.* LXII. (1910), 201 sqq.) and are most probably well founded.

³ It is possible (so Delatte, *op. cit.* p. 177 n. 1) that these passages are derived from Aristoxenus in the fourth century, but not, I think, provable.

Timaeus denied his existence. Busolt¹ would urge the claims of Poseidonius, adducing the passage already quoted from Seneca, and Cicero, *de nat. deorum*, II. 5. 13 *sqq.*, which contains a Stoic argument for the existence of the gods which may come from Poseidonius and in phrasing resembles a passage in the *prooimion* of Zaleucus as given in Diodorus.

Neither argument is conclusive, and it appears to me equally probable that Diodorus is using a writer who had a wide influence, namely, Hermippus the pupil of Callimachus. The whole excursus is plainly derived from a source with the general subject of lawgivers and there is no evidence that Poseidonius wrote on that subject as a whole. The digression about Charondas in Diodorus arises out of the narrative, but the part about Zaleucus is strictly irrelevant and most probably arises from the fact that both lawgivers were treated of in succession in whatsoever work Diodorus was using. Charondas was treated of in Hermippus' book *περὶ Νομοθετῶν* as appears from Athenaeus, XIV. 619 B, ἡδοντο δὲ Ἀθήνησι καὶ οἱ Χαρώνδου νόμοι παρ' οἶνον ὡς Ἑρμιππὸς φησὶν ἐν ἑκτῷ περὶ Νομοθετῶν². Hermippus wrote of Demonax in Bk. I and Triptolemus in Bk. II, and if Charondas was dealt with in Bk. VI it is likely at least that Charondas was put late rather than early. The view that Charondas and Zaleucus were pupils of Pythagoras is found in Diogenes Laertius' Life of Pythagoras (VIII. 16), a life in which Hermippus, who also wrote a life of Pythagoras in at least two books, is freely quoted. Further, both these lawgivers are expressly described, one as *ἐν παιδείᾳ θαυμάζομενος*, the other as *κατὰ παιδείαν τεθαυμασμένος*, and one of the variant titles of Hermippus' writings is *περὶ τῶν ἐν παιδείᾳ διαλαμπνάντων*. At least so much may be said with fair probability that Hermippus wrote about these lawgivers, that he regarded them as pupils of Pythagoras and that his book on lawgivers was widely read and used, as is shown by the fact that he is cited, apparently at first hand, by Plutarch, Diogenes Laertius, Sosicrates, Favorinus and Apollodorus.

Whatever the source may be, we can here see at work a tradition of a moralizing kind which would turn these early makers of codes into the ideal lawgiver of Plato's *Laws*, that is, one who seeks to persuade, to convince, not simply to forbid and to punish, and in this good cause time and space are annihilated.

Even Draco, who in the earlier tradition was simply a figure of harsh

¹ *Jahrbücher für Klass. Philol.* CXXXIX. (1889), 308 n. 6.

² Compare the rule cited as of Charondas in Stobaeus that the laws should be sung after hymns at feasts. For the practice of singing laws or possibly moral maxims associated with lawgivers see also Strabo, XII. 529 (of Mazaca in Cappadocia), Ephorus ap. Strabo, x. 482, and Aelian, *Varia Hist.* II. 39 (of Crete).

austerity, suffers a sea-change and ceases to be a name of fear¹. Despite the fact that his lawgiving, apart from his laws about homicide, was superseded by the code of Solon, Porphyry, *de Abstinencia* (IV. 22), is able to quote as follows: "Since there is a law also of Draco which is remembered: It runs thus: An ordinance (*θεσμός*) eternal, laid down for those who dwell in Attica, valid for ever. Honour the gods and heroes of the land in common, following the laws of our fathers, each man privately as he is best able in holy silence and with first fruits and yearly offering²."

Solon, though he might have been protected by the old Athenian tradition, the existence of some of his laws in their original form, the general character of Athenian law based upon his code and his own poems, did not entirely escape. It must, of course, be remembered that Solon was one of the Seven Sages who appear to have spent so much of their time in borrowing each other's epigrams. But besides that, we may well suspect that Solon was provided not only with the epigrams but with the laws of others. If I am right in suggesting that Hermippus played no small part in the spread of this secondary tradition about the early lawgivers, we may expect to find traces of his work in that curious medley, Diogenes Laertius' Life of Solon. For a comparison with Plutarch's Solon, in which Hermippus is quoted fairly freely, makes it likely that Hermippus here, as so often elsewhere, has been drawn upon³.

We find there attributed to Solon at least two laws which may fairly be regarded as suppositions. The first, quoted as *κάλλιστος*, is that a guardian shall not marry the mother of his wards, nor shall the man, who would get the estate if the orphan heirs died, be their guardian (Diog. Laert. I. 56). This law, with its simply ingenious removal of temptation from guardians, goes counter to what we know of Athenian practice. It is, of course, possible to suppose that such a law once existed at Athens and was repealed, but when we read in the Diodorus passage (XII. 15) that Charondas of his own cleverness invented a law that, while the estate of orphans should be in the charge of their relatives on the father's side, the orphans themselves should be in the charge of their relatives on the mother's side, that is, of those who would not profit by their death, it does appear likely that we have simply the transference to Solon of a law which may either be a law of Thurii or a law attributed to Charondas. A second case is in the next section in Diogenes Laertius where Solon is said to have made a law with singular foresight that,

¹ The evidence for this is collected by A. C. Schlesinger in *Class. Philol.* XIX. (1924), pp. 369-72.

² Cp. the fictitious preamble attributed to Zaleucus, p. 104, above.

³ See Nietzsche, "De Laertii Diogenis Fontibus," *Rhein. Mus.* XXIII. 163 *sqq.*, XXIV. 181 *sqq.*, XXV. 181 *sqq.*; and F. E. Adcock, *Class. Rev.* XXVIII. 38 *sqq.*

if a man knocks out the eye of a one-eyed man, he shall have both his own eyes knocked out. In Diodorus we have the story that at Thurii, in all the succeeding time after its founding, only three laws were revised, and the revision of the first turned on precisely this point, that the one eye of a one-eyed man is to him worth two. This story about the revision of the law is bound up with the tradition that those who proposed a revision pleaded with a noose round their necks, and that is better attested of Locri and of Zaleucus. But, whichever its more probable home, it seems that here, too, we have a neat juridical point credited to Solon. There is no other evidence at all that "an eye for an eye" or "two eyes for one" ever figured in Athenian jurisprudence.

Finally, one instance may be given to show how Solon's own career has suffered some violence to suit a literary purpose. It is, of course, a commonplace that the tradition of the Seven Sages has played fast and loose with chronology in order to bring these notables into contact with one another. The fictitious letters in Diogenes Laertius, in which the Sages invite each other to visit the court of Lydia, are a mockery of history. In Plutarch's Life of Solon we find a like operation in progress with the object of making possible between Solon and Peisistratus the intriguing half-ironical relationship of lovers, as well as the famous interview of the sage with Croesus. The received Attic tradition was that Solon died a year after the first *coup d'état* of Peisistratus in 561/0, and that Solon was a man of note as early as 594 or 591, at a time when Peisistratus can only have been a small boy. This fact leads Aristotle to remark (*Ath. Pol.* 17) "wherefore those are manifestly talking nonsense who pretend that Solon was the lover of Peisistratus, for their ages do not admit of it." The asperity of the phrase suggests that Aristotle had no love for those who took this view. Now this view is implied in three places in Plutarch's Solon and each time Heracleides Ponticus, whom Aristotle had no reason to love, is concerned¹. In chap. 1 Plutarch says that, according to Heracleides Ponticus, Solon was a connexion of Peisistratus, hence their friendship. In chap. 31 Peisistratus, when he had made himself tyrant, kept sending after Solon (*μεταπεμπόμενος*) and sought to secure him as his counsellor, and in chap. 31 Heracleides says that Solon lived "a considerable time" (*συχρόν χρόνον*) after the *coup d'état* of Peisistratus.

Here, then, is a variant of the Attic tradition apparently invented by Heracleides with a literary purpose, and this variant has been acutely used by Blass (*loc. cit.*) to identify the fragments of a dialogue in Oxy-

rhynchus Papyri, IV. 64. The first fragment implies exactly this variant, and, as Heracleides Ponticus is known to have written fictitious dialogues¹, in one of which Periander was mentioned as in the Oxyrhynchus fragment², we may have here the literary *raison d'être* of this variant tradition.

¹ See Pauly-Wissowa, s.v., and Voss, *de Heraclidis Pontici vita et scriptis*, Diss. Rostock, 1896.

² The mention of Periander in the second fragment does not necessarily imply, as the editors assume, that the tyranny of Periander and of Peisistratus are made to coincide in time. The supposed date of the dialogue proper may be earlier than that of the introduction (cp. Plato's *Theaetetus*). Peisistratus in the dialogue proper may be only a boy, hence the dramatic justification of the passage about the establishment of the Cypselids which would be well known to Peisistratus the tyrant of Athens.

¹ See Wilamowitz, *Aristoteles und Athen*, I. 265, and Blass, *Archiv für Papyrusforschung*, III. (1906), 497-9.