

## THE MEANING OF *MĒ MNĒSIKAKEIN*

When the warring parties made peace at Athens in 403, they concluded their agreement with the oath *mē mnēsikakein*, and when Attica was reunited in 401/0 they reaffirmed that commitment. It is a formula of treaty and contract that had sometimes been invoked in the decades leading up to the Athenian settlement, but the latter became the defining example in antiquity. Cicero cited this precedent for his amnesty decree absolving the killers of Caesar (*Phil.* 1.1), later writers embraced that interpretation, and modern scholars have followed that tradition.<sup>1</sup> When the major text of *Athēnaiōn politeia* was published in the 1890s, it presented a more complicated picture of the agreement but did not much alter the prevailing sense of this phrase. As the Second World War came to an end, Dorjahn explained it as a pledge of ‘political forgiveness’, a general reprieve for the rank and file, while the leadership remained accountable. A better view of the workings of the Amnesty emerged from two dissertations of the 1980s, Loening’s and Todd’s.<sup>2</sup> More recently, the ideology of forgiveness has been the focus of a series of papers by Loraux, drawing perspective from the post-War and the post-Soviet eras.<sup>3</sup> That approach is also important in Wolpert’s study, which deals with the practical complications more squarely. Then, in 2002, in a study of Andocides’ account of the Amnesty and the reforms that followed, I offered a new interpretation of the pledge *mē mnēsikakein*,<sup>4</sup> drawing a distinction between the moral sense of this phrase and those passages where it is invoked as a legal obligation. In the context of a detailed agreement – treaty or private settlement – the context naturally implies that the ‘amnesty clause’ is specifically relevant to the covenants of that agreement: ‘not to recall’ the claims that are hereby resolved. Thus, ‘as a rule of some legal effect’, *mē mnēsikakein* conveys finality, not forgiveness.

<sup>1</sup> Especially influential were E.P. Hinrichs, *De Theramenis, Critiae et Thrasybuli virorum tempore belli Peloponnesiaci inter Graecos illustrium rebus et ingenio commentatiuncula* (Hamburg, 1820); R. Grosser, *Die Amnestie des Jahres 403 v. Chr.* (Minden, 1868); J.M. Stahl, ‘Ueber athenische Amnestiebeschlüsse’, *RhM* 46 (1893), 250–86 and 481–7 (before and after publication of the London papyrus of *Ath. Pol.*); A. Dorjahn, *Political Forgiveness in Old Athens: the Amnesty of 403 B.C.* (Evanston, IL, 1946). Translations are my own except where noted. ‘Not to recall wrong’ serves for *mē mnēsikakein* (‘not to remember’ and ‘not to remind’); ‘Amnesty’ (upper case) indicates the settlement of 403. ‘RO’ refers to P.J. Rhodes and R. Osborne, *Greek Historical Inscriptions 404–323 BC* (Oxford, 2003).

<sup>2</sup> S.C. Todd, ‘Athenian internal politics 403–395 BC with particular reference to the speeches of Lysias’ (Diss. Cambridge, 1985); T.C. Loening, *The Reconciliation Agreement of 403/2 B.C. in Athens* (Stuttgart, 1987).

<sup>3</sup> Collected in C. Pache and J. Fort (trr.), *The Divided City: On Memory and Forgetting in Ancient Athens* (New York; = *La cité divisée. L’oubli dans la mémoire d’Athènes* [Paris, 1997]); cf. A. Wolpert, *Remembering Defeat. Civil War and Civic Memory in Ancient Athens* (Baltimore, 2001).

<sup>4</sup> E. Carawan, ‘The Athenian amnesty and the scrutiny of the laws’, *JHS* 122 (2002), 1–23. Cf. id., ‘Amnesty and accountings for the Thirty’, *CQ* 56 (2006a), 57–76; ‘The Athenian law of agreement’, *GRBS* 46 (2006b), 339–74. For a similar construction, see now R. Waterfield, *Why Socrates Died* (New York, 2009), 131–4.

Now, in a recent issue of *Classical Quarterly*, Christopher Joyce has defended the conventional understanding of the Athenian oath as a general amnesty, a pledge of political forgiveness, ‘not to dredge up the past’.<sup>5</sup> Joyce emphasizes the ‘uniqueness of the Athenian case’ and warns against ‘overuse of comparanda’ (513). At Athens, in contrast to other examples,

it was the returning fugitives from the Thirty who promised to desist from hostilities against those they defeated. In the Athenian example the oath had nothing to do with the restoration of *atimoi*. Its aim is to restrain a victorious party that had reasserted its power and political position by force of arms.

Thus he reads the Athenian amnesty oath as a vow of forgiveness by the victors, ‘self-contained’ and independent of the covenants; it is in itself a ‘ban ... on legal retribution’ (514). Joyce’s essay is useful as it serves to articulate some of the assumptions that are broadly shared, and it emphasizes some features of the comparanda that I treated rather casually. But he is never very clear about what *mē mnēsikakein* means in practical terms.

Much of the Athenian testimony suggests that this formula conveys a legal principle that should be enforced, not merely an article of faith. That is the theme of Andocides’ defence, where he reports a program of legislation from the first months of the new regime, dealing with recriminations that were not stopped by the Amnesty. Andocides relies particularly upon the rule ‘to apply the laws from Euclides’ (87), and that statute at least is not likely to be a fabrication. Even for old laws, which remain valid under the new regime, no one should attempt to apply the law to events before the settlement of 403. As MacDowell recognized, this measure, ‘to apply the laws from Euclides’, is ‘the law carrying out the decision [that Andocides describes in §81], *μη μνησικακεῖν ἀλλήλοις τῶν γεγενημένων*’.<sup>6</sup>

Andocides says that this limitation governed ‘all the laws’ which had to be inscribed ‘at the stoa’. In this regard I argued (n. 4 [2002], 16) that Andocides means ‘all the laws’ in context: he is not describing a complete review and re-inscription of all laws on all matters but is simply referring to the set of laws relevant to such cases as his. These were the laws that provide for arrest or other summary remedies against *atimoi* in the broadest sense. Ordinarily anyone who might be liable for a past crime or unpaid obligation could be denounced or seized, held for trial or summarily punished, if he were found trespassing in the public areas where such wrongdoers were prohibited – and he is threatened with such treatment even if he was never actually condemned by verdict of the court.<sup>7</sup> Some restriction, to bar or limit these procedures, would be crucial after 403; for

<sup>5</sup> C.J. Joyce, ‘The Athenian amnesty and scrutiny of 403’, *CQ* 58 (2008), 507–18; esp. 512, at nn. 21 and 23: ‘None of the examples suggests that it amounted to a pledge not to go back on specific covenants; that is a prejudicial interpretation based on questionable statements of Andocides’; it is ‘an assurance by the winning to the losing side that all would be forgiven’.

<sup>6</sup> D.M. MacDowell, *Andokides On the Mysteries* (Oxford, 1962), 128; at 119–20 he explains the ‘decision’ in §81 as ‘a general vote’ confirming the agreement; similarly Stahl (n. 1), 284–5.

<sup>7</sup> Joyce (n. 5) misconstrues the procedural complications (508): ‘Carawan argues that the oath prohibited redress of former crimes not in the first but in the second instance ... It was now impossible to pursue a former *atimos* for misdeeds already tried and punished.’ Carawan (n. 4 [2002]) never says that. Andocides was not ‘tried and punished’; his *atimia* arose automatically from his confession and the decree of Isotimides. If not for the limitation ‘from Euclides’, others would be liable in the same way, for old charges that had never come to trial (as in the examples of Cephisius and Epichares, *Andoc.* 1. 92–101, discussed below). Neither was Andocides

the covenants made no provision for people in this situation. So the laws regarding such remedies were written up at the stoa (presumably the *stoa basileios*) under the limitation, to apply from the archonship of Euclides. That limitation is the linchpin of Andocides' defence, and he treats it as the conclusion to a series of measures to safeguard those who had no legal protection under the Amnesty. He does not seem to regard the oath *mê mnêsikakein* as conveying, in itself, a blanket amnesty; such protection had to be constructed through legislation.

Joyce, to the contrary, defends the old view that Andocides is referring to a complete reinscription of all the laws that continue in force. But that view has always been problematic: we never again hear of this compendium of 'all the laws', and no one has been able to explain just why all the laws, valid on all matters, would have to be reinscribed or how that 'recodification' could have been so quickly completed.<sup>8</sup>

This is a complicated set of issues. For clarity's sake, in this essay let us focus on the first question: What is the meaning of the oath *mê mnêsikakein* in the era of the Amnesty? In order to follow the implications, let us begin with the testimony that is both contemporary and complete with context, especially cases where the application of the amnesty oath is at issue – where the litigants argue over how or whether the rule *mê mnêsikakein* applies. In the earlier study I offered a few comparanda of this sort but did not follow the implications far enough. Joyce discounts much of that testimony as 'prejudicial', as he treats the formula as a vow against vindictiveness, independent of the other clauses. Of course the oath may sometimes be invoked as a broad moral commitment, where there is no obligation to enforce.<sup>9</sup> But if it is, in itself, a binding ban on retribution, we should be able to identify some criterion: what reprisals does it bar or punish, independent of the covenants? We begin with the literary evidence, and then turn back to the few comparanda in the inscriptions, where the implications are not so clear.

## I

The decree of Patroclides of 405 is treated by Andocides as prologue to the Amnesty of 403. Here we have a credible document inserted in the speech, as well as the orator's comments to confirm the content. And the record of this decree is all the more reliable because it has no bearing on Andocides' case in 400/399.<sup>10</sup>

'arrested' in 400, as Joyce supposes (507); he was left at liberty (Andoc. 1.2), as his accusers apparently hoped he would withdraw into exile.

<sup>8</sup> Joyce (n. 5), 516 insists, 'there is little reason to doubt that Teisamenus' decree resulted in a complete and exhaustive statement of the valid laws'. N. Robertson, 'The laws of Athens, 410–399 B.C.: the evidence for review and publication', *JHS* 110 (1990), 43–75, esp. 46–51, argues that Tisamenus' provision, 'writing up the laws on the wall where they were written up previously', refers to temporary publication of supplements; on this point P.J. Rhodes is inclined to agree, 'The Athenian code of laws, 410–399 B.C.', *JHS* 111 (1991), 87–100, at 99.

<sup>9</sup> E.g., where Demosthenes defends rapprochement with Athens' former enemies: 23.191, 193; 18.94–9, 185.

<sup>10</sup> If Andocides' *atimia* had been affected by any of the provisions of Patroclides, surely he would have said so, as MacDowell observed (n. 6), 201. The date of the trial is not quite certain, but late autumn of 400 seems more likely than autumn of 399; cf. S.C. Todd, *A Commentary on Lysias, Speeches 1–11* (Oxford, 2007), 399 n. 2.

This earlier amnesty specified, at length, the persons who were then exempt from their past and pending liabilities: all those listed with the *practores* or the treasurers or with the Archon Basileus; all those who were disfranchised or indebted for a judgment that was reached in accountings, or whose indictments for official wrongs had not yet come to court; those who were liable as sureties for others who owed some debt or penalty; all those who were listed anywhere as party to the regime of the Four Hundred – excepting those inscribed as public enemies by judgment of the Areopagus or Ephetae (etc.). With those few exceptions, all record of debts and misdeeds, by which a citizen might be disfranchised, were to be deleted, and any privately held copy must be handed over to the officials: the slate is wiped clean, literally. ‘No one is permitted to possess (any such record) **nor ever to recall wrong**’. If anyone violates this rule, he is liable to the same penalties as those condemned by the Areopagus.

Here the one penalty applies to those who retain old records and to those who ‘recall wrong’. So it seems reasonable to read the rule *mē mnēsikakein* together with the provisions that precede it. The natural implication is that the ‘wrongs’ one must not recall are the ones hereby deleted. If anyone violates these provisions, by keeping any record of past liabilities or acting upon it (= *mnēsikakein*), that violator is subject to the same remedies as the outlaws. If the rule ‘not to recall wrong’ is not specific to its context in this way, what sort of vindictive act does it forbid?

Patroclides’ settlement cut across party lines. It was not a unilateral pledge by the victors, promising to spare the defeated, as Joyce is inclined to read *mē mnēsikakein* in later examples. Andocides reminds the jury that on this occasion (in 405) the Athenians pledged solidarity to one another.<sup>11</sup> Of course they did not all in unison recite the full text of the decree. Presumably, they swore to abide by these provisions and ‘not to recall wrong’.<sup>12</sup> Andocides has a good deal more to say about what that pledge means in 400/399, but let us depart from his narrative to follow the chronological sequence.

The oaths and covenants of 403 are the next item in the dossier. Andocides only alludes to a few of those provisions indirectly, as they are reinforced by the amnesty legislation; for none of them directly affects his case. From the account in *Ath. pol.* and scattered references elsewhere, however, we can see that the covenants of 403 constituted a fairly detailed instrument. The main excerpt, in *Ath. pol.* 39, is largely preoccupied with the arrangements for relocation to Eleusis; it tells us relatively little about the covenants that applied specifically at Athens. Of crucial importance is the rule against prosecuting for homicide against the ‘planner’ or accomplice (§5; cf. Andoc. 1.94); as though to emphasize that protection, the elaborate provision ‘not to recall wrong except against the Thirty (et al.)’ follows that clause. But also vital are the covenants protecting property rights: *Ath. pol.* 39.1 includes the rule regarding the property of those who relocate to Eleusis. From other testimony we learn that those who returned from exile could reclaim their land and houses (*Lysias Against Hippotherses* = fr. 165 Carey, 38–47). Those returnees would also be tempted to seize property from their enemies, by lawsuit or self-help, to compensate for other losses; but anyone who does so is in violation

<sup>11</sup> Andoc. 1.76: ‘You decreed to erase all the decrees ...’ (πάντα τὰ ψηφίσματα); here he clearly means ‘all the decrees’ that fit this context, those affecting *atimoi* (not ‘all’ absolutely).

<sup>12</sup> On the protocol, cf. E. Carawan, ‘Oral agreement, written contract, and the bonds of law at Athens’, in C. Cooper (ed.), *The Politics of Orality* (Leiden, 2007), 321–41.

of the agreement.<sup>13</sup> By my reading, the oath *οὐ μνησικακήσω* is a vow to abide by those commitments, not to dredge up the past that those covenants disposed of. If that is not the meaning, if the oath functions as a promise of forgiveness, over and above the specific guarantees in the agreement, it is fair to ask, again: what constitutes a violation?

The Aristotelian testimony continues with the report of one renegade who ‘began to **recall wrong**’: Archinus dragged him before the council and persuaded them to put the violator to death, without trial; ‘and thereafter **no one ever again recalled wrong**’ (40.2). *Ath. pol.* does not tell us what the violation was, but scholars have often supposed that the *mnēsikakôn* was simply bringing vindictive lawsuits.<sup>14</sup> That explanation may seem more plausible if we suppose that it was really the new procedure for *paragraphê* that put an end to partisan litigation (at least formally). But as we see in the case *Against Callimachus* (below) the basis for the *paragraphê* was not forgiveness, in the usual sense; it relied on specific covenants of the reconciliation agreement. In any event, it seems absurd to claim that ‘no one ever again recalled wrong’, if the oath of amnesty really promised forgiveness, regardless of the covenants.

To take reprisal by litigation would require the approval of some magistrate, yet here the *mnēsikakôn* is treated as an outlaw. If the punishment is commensurate with the crime, he was probably resorting to violence,<sup>15</sup> not the lawcourts: he was using force to retaliate, in violation of the covenants. And if we read the example in this way, as ending such violence, then Xenophon seems to confirm the gist of it, in his testimony on the settlement with Eleusis in 401/0, when Attica was at last reunited: at least from that point on, ‘having sworn indeed not to recall wrong, they govern themselves even now, and the people abide by their oaths’. Presumably he does not mean that there were no lawsuits against those with oligarchic associations (as in the case of Socrates) or that there was no resentment against those who served the oligarchy (as in his own case).<sup>16</sup> He seems to mean that the people at last honoured their covenant to keep the peace.

Much that neither *Ath. pol.* nor Xenophon can tell us we find in the continuation of Andocides’ account. He says that soon after the democrats returned from Piraeus, the Athenians showed their solidarity (81):

<sup>13</sup> For summary of the covenants see, for now, Loening (n. 2), 30–58. On property guarantees, implicit in Xenophon’s *ἀπιέναι δὲ ἐπὶ τὰ ἑαυτῶν*, see R. Lonis, ‘La réintégration des exilés politiques en Grèce: le problème des biens’, in P. Goukowsky and C. Brixhe (edd.), *Hellénika Symmikta I* (Nancy, 1991), 91–109.

<sup>14</sup> Thus Dorjahn (n. 1), 38. On the timing of this episode and the likely implications, see now D. Phillips, *Avengers of Blood: Homicide in Athenian Law and Custom from Draco to Demosthenes* (Stuttgart, 2008), 148–9.

<sup>15</sup> Carawan (n. 4) lists passages where *mnēsikakein* refers to violence ([2002], 9 with n. 39); acknowledged by Joyce (n. 5) but discounted, 514 n. 34.

<sup>16</sup> The official justification for his banishment was bound to be his service with the Spartans, but his accusers would inevitably recall his service with the Thirty. On the *eisangelia* against Xenophon, see now M. Dreher, ‘Der Prozess gegen Xenophon’, in C. Tuplin (ed.), *Xenophon and his World* (Stuttgart, 2004), 55–69. Xenophon’s précis of the original agreement (*Hel.* 2.4.38) includes the main commitments in abbreviated form: to keep the peace; both sides to recover their property and citizen rights (except the Thirty et al.); those at risk relocate to Eleusis.

though it was in your power to take vengeance, you decided (ἔγνωτε) to let go of the past, you made it more of a priority to keep the city safe than to take vengeance personally. It seemed best (ἔδοξε) **not to recall wrong** against one another for what is past, and with that decision (δόξαντα δὲ ἑμῖν), you chose twenty men to take charge of the city.

Joyce (n. 5) translates ἔδοξε ... δόξαντα as indicating a decree that made amnesty the law of the land (508). MacDowell (as we noticed, at n. 6) argued otherwise, and his explanation is persuasive. If this passage does refer to a *psêphisma*, it is not a ‘decree of amnesty’, such as later tradition envisioned, but the enabling decree for the interim government of the Twenty. That measure would draw upon the reconciliation agreement, with the sort of resumptive clause that is standard where one commitment builds on another.<sup>17</sup> That is the natural implication whenever Andocides refers to the relevant oaths, in the aftermath of the reconciliation agreement.

Thus Andocides refers to ‘the common oath for the whole city, which you all swore after the *diallagai*, “I shall not recall wrong against any citizen, except the Thirty”’ (et al.): ὁ μὲν κοινὸς τῇ πόλει ἀπάσῃ, ὃν ὁμωμόκατε πάντες μετὰ τὰς διαλλαγάς, καὶ οὐ μνησικακήσω τῶν πολιτῶν οὐδενὶ πλὴν τῶν τριάκοντα ... (90). This suggests a mass oath-taking after the Reconciliation was concluded, an affirmation of that agreement by both sides.<sup>18</sup> The oath was understood as a shared commitment, by all parties – not a pledge of forgiveness by the victors alone. Then, in the same context, Andocides cites the oaths of council and court (90–1) where, in each case, the reconciliation agreement seems to have been recognized in a preamble. Thus the incoming council swears not to authorize summary arrest for past crimes (with exceptions); and the jury members swear ‘not to recall wrong, nor shall I be persuaded by anyone else (who does so), but I shall cast my ballot according to the established laws’. Each pledge reaffirms a crucial covenant of the agreement: council shall undertake no summary prosecution (Isoc. 18. 21–2); and the people will abide by the established laws.

There was no covenant of the agreement that addressed the situation of men like Andocides, and no amnesty for other *atimoi* as there had been in 405. The focus of the agreement in 403 was upon those disputes that would arise from the recent civil conflict; only later did the Athenians realize how easily old liabilities could serve as pretext for reprisals (so Andocides says), and at that point they listed the relevant laws under the limitation, ‘to apply from Euclides’. The oath *mê mnêsikakein* in itself gave no protection against a lawsuit to settle a grudge.

Among the examples that Andocides cites (92–101), perhaps most instructive is the case of Epichares, who had served in council under the Thirty; for his predicament was that of many among the city party, all those who had served the regime in some official capacity. The decree of Demophantus declared all such collaborators outlaws, *atimoi* in the strong sense. That stele stood guard at the entrance to the council chamber, valid against any who subvert the democracy. But it does not apply against Epichares and those like him who served under the recent ‘tyranny’,

<sup>17</sup> Similarly at Mytilene, *IG* 12.2.6 (= RO 85B), 18–29, the provision for electing *diallaktai* (ten from each side) and the rules for settling property disputes are introduced as a measure affirming the commitment to *homonoiia* and compliance ‘with the settlement which the king adjudged in the transcript’ (28–9, RO).

<sup>18</sup> *Ath. pol.* 39.4 also indicates that those who returned to Athens after the initial agreement were to swear the oath before they could register to relocate to Eleusis (with the oligarchs).



because the enforcement procedures were subject to the rule ‘to apply the laws from Euclides’ (99). Here Andocides tells us in no uncertain terms: the Amnesty itself gave no immunity to many like Epichares; that protection had to be constructed in later legislation. It is that amnesty legislation that shielded *atimoi* of all stripes, including those who were complicit in the crimes of civil conflict. The Athenians had resorted to the same sort of amnesty in the past (Andocides insists), and the key to surviving the crisis is adhering to that resolution once again, ‘not to recall wrong’ (... τοὺς ἀτίμους ἐπιτίμους ποιῆσαι. τί οὖν ὑμῖν ὑπόλοιπόν ἐστι ...; μὴ μνησικακῆσαι, 108–9). What is required is not forgiveness but integrity, for the Athenians to abide by the rules that they have recognized.

Andocides’ predicament is also indicated in the Lysianic speech against him. There the prosecutor anticipates Andocides’ appeal to the Amnesty, but he proceeds as though the covenants are at issue, not the oath. He says, rather plainly, that there was nothing in the covenants that has anything to do with Andocides (οὐδὲν προσήκει Ἀνδοκίδῃ τῶν συνθήκων), ‘neither in the covenants you made with the Lacedaemonians, nor those the men of Piraeus made with those in the city’ (37–8).<sup>19</sup> This argument is usually understood to mean that Andocides would invoke a blanket promise of forgiveness (= *mē mnēsikakein*) to which he has no right because he was not party to the Amnesty. Most commentators insist upon this interpretation, only to dismiss the argument as obvious nonsense. But in fact, if we read the argument on its own, without invoking an oath that is never mentioned in the Lysianic speech, it says only that there was no clause in the covenants that would shield Andocides. And that appears to be the case.

The other testimony of this era gives no indication of any decree of amnesty, such as Cicero supposed, and certainly no suggestion of a unilateral pledge of forgiveness. The basis for allowing some remedies and barring others is the package of ‘oaths and covenants’.

Such are the grounds for the plea to bar litigation in Isocrates’ *Against Callimachus* (or. 18, esp. 3–4, 21–4). Here the effect of the rule ‘not to recall wrong’ is discussed at length, because the new procedure for *paragraphē* was based expressly upon the oaths and covenants.

After returning from Piraeus, you saw that some of your fellow citizens were eager to bring vexatious lawsuits and were **trying to undo the covenants** (τὰς συνθήκας λύειν), and you wanted to put a stop to them and show the others that you had not been coerced into making the agreement but were convinced that it was in the city’s best interest. Archinus proposed a law and you enacted it: **if anyone bring suit in violation of the oaths** (ἂν τις δικάζηται παρὰ τοὺς ὄρκους), the defendant shall have the right to a ‘plea in bar’ of litigation; the magistrates shall bring this matter to court first, and he who pleads to bar the lawsuit shall speak first; (3) whichever party loses shall owe the *epōbelia*, so that **those who dare to recall wrong** (οἱ τολμώντες μνησικακεῖν) not only be convicted of betraying their oaths, to await their punishment from the gods, but also be promptly fined ... (4) I shall show not only that Callimachus is bringing suit in **violation of the covenants** (παρὰ τὰς συνθήκας δικάζόμενον) and lying about the claims he has against me, but moreover that there was an arbitrated settlement about these claims.

<sup>19</sup> For the various problems surrounding this speech, see now Todd (n. 10), 403–11 and ad loc. He is right to emphasize the obligation to the Spartans as brokers of the agreement of 403. But, like most commentators, he dismisses the argument in §§37–9 as entirely specious.

Isocrates' client argues that the case against him is barred by the covenants on two counts: (1) he is being charged as the informant who led authorities to confiscate money from Callimachus, but the covenants expressly bar any prosecution of 'informants or denouncers'; and (2) the claim had been settled in arbitration, and it was expressly guaranteed by the covenants that such settlements be binding.<sup>20</sup> Throughout the speech, he treats the basis for the *paragraphē* as violation of the covenants and of the oath that sealed them; the two are interchangeable. The obligation is created by *synthēkai* (Isoc. 18. 25–8), not by a promise of forgiveness.

Thus he has the relevant covenants read out to the court (19). The document is not preserved in the speech but Isocrates emphasizes the point, that 'the covenants expressly acquit informants or denouncers' (τῶν μὲν συνθηκῶν διαρρηθῆν ἀφεισῶν τοὺς ἐνδείξαντας ἢ φήναντας) or anyone guilty of mere complicity. And then he has the oaths read out (20) and triumphantly demands, 'As this is the effect of the covenants and such are the oaths, isn't it outrageous for Callimachus ... to think ... he can persuade you to vote against them?' (21). Even the most powerful men in the new regime do not violate these obligations: 'Thrasylulus and Anytus ... though much property was stolen from them and they know the men that listed their property (for confiscation), none the less do not dare to bring suit or **recall wrong** against them' (ὁμῶς οὐ τολμῶσι αὐτοῖς δίκας λαχχάνειν οὐδὲ μνησικακεῖν). Here again, to violate specific covenants and 'to recall wrong' seem to mean much the same thing.<sup>21</sup>

The speech *Against Callimachus* came early in the Amnesty era,<sup>22</sup> and it seems especially valuable, therefore, as indicating how the oaths and covenants were applied before Andocides' arguments were heard or circulated. In this case both litigants belonged to the city party, yet the speaker invokes the oaths and covenants without any suspicion that (someone might claim) the oath 'not to recall wrong' does not apply in such cases. It is assumed that the covenants were crafted to deal with the inevitable complications.

Thereafter, in the 390s, we have isolated references to the rule *mē mnēsikakein* in two speeches of Lysias, *On the Property of Nicias' Brother* and *Against Nicomachus*. In the former case (Lys. 18) all we have of the argument is the epilogue, but the covenants at issue appear to be those protecting property rights on both sides.<sup>23</sup> Thus the speaker protests (15) 'Wouldn't it be shameful for you to confirm the agreement you made with the Lacedaemonians, while those that you decided for yourselves you undo so easily, making valid the covenants with them (τὰς μὲν πρὸς ἐκείνους συνθήκας κυρίας ποιήσετε), while those for yourselves (you make) invalid?' Then he refers to the property guarantees (§17, 'some keep their own, ἔχειν τὰ αὐτῶν, while others have their wealth wrongly confiscated'). And, after amplification on the virtues of the Amnesty and *homonoia*, the speaker protests that there was better reason to forgive those who took reprisal soon after

<sup>20</sup> Confirmed by Andoc. 1. 87–8; cf. Dem. 24. 56.

<sup>21</sup> Similarly Isoc. 16 (*De bigis*) 43: 'Though you served in council under the Thirty, do you dare to recall wrong against others (τολμᾶς ἑτέροις μνησικακεῖν) and show no shame at transgressing the covenants (τὰς συνθήκας παραβαίνων) that allow you to live in the city?'

<sup>22</sup> D. Whitehead, 'Athenian laws and lawsuits in the late fifth century B.C.', *MH* 58 (2002), 3–28, dating the case as early as 402/1; followed by Carawan (n. 4 [2006a]), noting that Isocrates' speech antedates the preamble to the jurors' oath as cited by Andocides.

<sup>23</sup> On the issues, see S.C. Todd, *Lysias* (Austin, 2000), 191–7.



returning from exile (*πλείων συγγνώμη μνησικακεῖν νεωστὶ κατεληλυθόσω*) than now, years afterward.

In the case against Nicomachus (Lys. 30. 8–9), the accuser anticipates charges of complicity that the defendant will (supposedly) make against him: ‘Nicomachus expects to recall wrong against others unjustly, whereas I shall expose him for plotting against the *plēthos*.’ Also in this instance, the speaker treats *mē mnēsikakein* as enforcing the crucial covenant against prosecuting accomplices: for Nicomachus produced the statute that led to the execution of Cleophon, so he would be as guilty as any of those who served the regime.<sup>24</sup>

In later generations, we find the amnesty oath of 403 treated as an ennobling commitment, perhaps to forgive and forget.<sup>25</sup> But the rule ‘not to recall wrong’ is also remembered as no less historic a precedent, as a bar against further claims in disputes that are settled once and for all: thus in a long-running family quarrel, the speaker defends the finality of their settlement (*πέρας τοῦ διαλυθῆναι*) and invokes the historic Amnesty as a bar against reviving settled claims (Dem. 40.40–6).<sup>26</sup> And that practical sense may often have been reinforced in *diallagai* of an ordinary and less ennobling sort, where the pledge ‘not to recall’ simply finalizes an agreement.<sup>27</sup>

## II

Thus for the early restoration, in the literary evidence and the documents embedded in it, the basic sense of obligation conveyed by the pledge *mē mnēsikakein* seems to be contractual: it is a kind of ‘closing’, like the settlement of a lawsuit or a real estate transaction. What it means in practical terms is essentially this: for all matters specifically addressed by the covenants, one must follow those specified remedies and restrictions (as Isoc. 18 emphasizes); conversely, one must not resort to any remedy that is not authorized in the covenants (as the *mnēsikakôn* apparently did in *Ath. pol.* 40.2). These are the rules that everyone must respect in order to avoid a resurgence of civil conflict: it is not enough to renounce vindictiveness; it is more important not to take any of those small steps which, however innocent of the forbidden motive, would lead inevitably to renewed hostilities. It is that practical dimension that makes the commitment viable, as I see it. But Joyce discounts the contractual implications altogether and tries to disprove them from the remains of inscribed treaties of the later fourth century.

<sup>24</sup> Cf. E. Carawan, ‘The case against Nikomachos’, *TAPHΑ* 140 (2010), 71–95, at 91–3.

<sup>25</sup> Aeschin. 2.176; 3.208, τὸ κάλλιστον ἐκ παιδείας ῥήμα ... μὴ μνησικακεῖν.

<sup>26</sup> ‘For it would be outrageous if you yourselves, having reconciled with those who put many citizens to death without trial, abide by your agreements (*ἐμμένετε ταῖς διαλλαγαῖς*) – as honourable men must – but this fellow, who reconciled with our father while he was alive and took great advantage of him, you allow in this instance to recall wrong (*μνησικακεῖν*) and speak ill of him.’ (46)

<sup>27</sup> Thus in [Dem.] 59.45–7, Stephanus settled with Phrynion, agreeing to share the favours of Neaera, and sealed the deal with the usual pledge to end their quarrel and ‘not recall wrong’; cf. A. Scafuro, *The Forensic Stage: Settling Disputes in Greco-Roman New Comedy* (Cambridge, 1997), 121–2; followed by Carawan (n. 4 [2002]), 12 n. 50. A similar formula is indicated in Stephanus’ quarrel with Epaeetus ([Dem.] 59. 71): after settling the latter’s claim for unlawful detention, they reached a further agreement in arbitration, beginning with the resumptive clause, τῶν μὲν γεγενημένων περὶ τὸν εἶργμόν μηδεμίαν μνείαν ἔχειν.

As prologue, there is the settlement for the Bottiaean towns (*IG* 1<sup>3</sup>.76 = Tod 68), dated to 422/1. The cities affected by the decree had been in revolt against Athens for ten years, and undoubtedly they were subject to the same sort of *stasis* that the larger conflict seems to have inspired everywhere. So the settlement recorded in our decree probably has as much to do with resolving the quarrels between the parties as with reaffirming Athenian hegemony. That seems to me the best context for the fragmentary lines regarding lawsuits: presumably there was a rule to have some cases decided at Athens, which would protect Athenian interests but also have served as a safeguard against partisan reprisals in the towns. As a bulwark against rebellion, there was some arrangement for hostages to be ‘exchanged’ or restored, as we see at the end of the decree (just before the rider).<sup>28</sup> And in this settlement we have the exchange of oaths, by the Athenians and their allies, largely preserved, in symmetrical terms. First the Athenian representatives swear: ‘I shall defend the Bottiaeans who join in the alliance and I shall zealously preserve the alliance with the Bottiaeans honestly and without deception, **according to the covenants**, and **I shall not recall wrong** for what is past’ (14–16). Then the Bottiaean representatives, after promising ‘to be friends and allies of the Athenians honestly and without deception’, to give no aid to their enemies (and so on), swear the same oath (21–2): οὐδὲ μνσικ[ακήσω τῶν παροιχομένων]ων ἔνεκα. There are provisions for publishing ‘these covenants’ along with ‘the oath’ that confirms them. Of those covenants very little remains legible to us from what may have been a fairly elaborate document. The wording of the oath itself is quite succinct: for treaties and other contracts, the oath takers are not obliged to repeat the *ipsissima verba* of every clause. The oath formula embraces the covenants and it is clearly a reciprocal commitment.<sup>29</sup> Here Joyce acknowledges the implications only to dismiss them.

Still some years before the Athenian Amnesty (probably) there is also the settlement involving Thasos, Neapolis and Paros, *IG* 12.5.109.<sup>30</sup> This text is even more fragmentary than the last, but one feature seems fairly certain: this instrument comes as a sequel to some prior agreement. Thus in lines 5–6 we find reference to covenants sworn under an earlier board of officers, and then the next two lines refer to the current oath-taking, by other officers. There the pledge<sup>31</sup> ‘not to

<sup>28</sup> This may be the most basic sense of *diallagē* in treaties: the ‘exchange’ or restoration of hostages; cf. Y. Garlan, ‘Études d’histoire militaire et diplomatique I’, *BCH* 89 (1965), 332–48, at 332–7, in regard to the decree for Chalcis, *IG* 1<sup>3</sup>.40 (Tod 42), 49–51.

<sup>29</sup> Cf. Carawan (n. 12). Here Joyce (n. 5), 509 acknowledges the reciprocal oath-taking but dismisses the evidence as too fragmentary: ‘*Prima facie*, the text preserved does not elucidate the nature of the oath sworn’. He is not always so strict: see below, at nn. 32, 39 and 42.

<sup>30</sup> J. Pouilloux, *Recherches sur l’histoire et les cultes de Thasos* I (Paris, 1954), 178–89 argued that Paros was involved only as *diallaktēs* (assigned that role by Delphi). The first oath of a reciprocal pair begins (following the text of *IG* 12.5.109. 3–5): βοηθήσω παντὶ σθένει τοῖς ἐμμένουσι τῆς συνθήκης μετὰ [Θασιῶν γενομένης ἐπὶ θεωρῶν] Ἀριστάρχο ... Pouilloux offers another restoration but also treats the oath as sequel to an earlier agreement. Cf. B. Isaac, *The Greek Settlements in Thrace until the Macedonian Conquest* (Leiden, 1986), 67–8.

<sup>31</sup> ... καὶ οὐ παραβ[ή]σομαι οὐδενὶ τρόπῳ, οὔτε τέχνην οὐδεμίαι οὐ]-

(10) δὲ μηχανῆ οὔτε λόγῳ οὔτε ἔργῳ τοὺς ὄρκους τούτους καὶ τὰς συνθή]-  
 -κας, οὐδὲ ἄλλῳ ἐπιτρέψω παραβῆναι εἰς τὸ δυνατόν οὔτε ἄρχοντι οὐ]-  
 -[τέ] ἀστάσι οὔτε ξένῳ οὔτε δούλῳ, καὶ οὐ μνησικακήσω οὐδενὶ ἔνεκα τ]-  
 -ῶμ παρικότων ὅσα [ἐγένοντο ὑπ’ αὐτῶν πρὸ τῶν συνθηκῶν τῶνδε καὶ τοῦ]  
 -ὄρκο τούδε οὔτε ἰδ[ιώ]τῃ οὔτε ἄρχοντι . . .

‘Not to recall wrong’ is entirely restored but the concluding phrase of the formula (τῶμ παρικότων = τῶν παροιχομένων) makes the restoration most probable. For other examples outside the Athenian sphere, cf. Hdt. 8. 29; Diod. Sic. 14. 34.6 (at Cyrene).

recall wrong' is indicated at the head of what appears to be the one substantive adaptation (governing lawsuits). If the restoration is right, the parties, who now swear to this second settlement, pledge to aid and defend those who abide by it henceforth, not to recall wrong for what happened before 'these covenants and this oath'. That feature may have been fairly common: when *diallagai* come undone, the new agreement must build on the old.

Such is almost probably the case with *IG* 2<sup>2</sup>.111 (= *RO* 39), the arrangements for Iulis (363/2). Here Joyce objects most strenuously,<sup>32</sup> but his reading of the document is very puzzling.

The inscription begins with the decree of Aristophon reporting the recent rebellion, honouring the Iulians who are now in control of their city, and making certain adaptations to an earlier settlement. Aristophon's decree calls for 'the agreement that Chabrias made and swore' (*RO*) to be reinscribed where the rebels had demolished the stele at Iulis, 'just as it is inscribed at Carthaea', and that text is also to be inscribed now at Athens, *κατὰ ταυτὰ* (23–6). The leaders of the recent insurrection, who violated the agreement that Chabrias concluded, are now outlaws both in Athens and in Ceos, their property to be confiscated by the Iulian generals; their names will be deposed and published at Athens, but any who insist upon their innocence may provide sureties and stand trial in Ceos and at Athens, 'according to the oaths and covenants' (42–9). After Aristophon's decree comes to its end (and most of a line is left blank), there follows the text of an agreement with the cities of Ceos, which appears to be the treaty of Chabrias.<sup>33</sup> It begins abruptly with the pledge by Athenian generals and allies (57–61):

τάδε συνέθεντο καὶ ᾤμοσαν οἱ στρατηγοὶ οἱ Ἀθηναίων πρ-  
ὸς τὰς πόλεις τ[ὰ]ς ἐν Κέωι κα[ὶ] οἱ σύμμαχοι vacat ὁ μνησικακήσω  
[τῶ]ν πα[ρ]εληλυθότων πρὸ[ς] Κείως οὐδ[ε]νὸς οὐδὲ ἀποκτενῶ Κ-  
[είων] ὀ[δ]ένα οὐδὲ φυγάδα ποιήσω τῶν ἐμμενόντων τοῖς ὄρκο-  
[ις καὶ τ]αῖς συνθήκαις ταῖσδε, ...

The terms that follow also rely on a prior settlement or a more detailed document. The Athenians merely guarantee that those who do *not* wish to return to Ceos may settle *elsewhere* in the alliance and have their property secure.<sup>34</sup> The one provision

<sup>32</sup> Joyce discounts the prior settlement and amnesty oath by the Ceans (discussed below). Comparing *IG* 1<sup>3</sup>.76 he concludes (511): 'The compact in 422 was contracted on a theoretical principle of equality, where it lay in the interest of each party to forgive the other for what had been done a decade earlier. In the case of Ioulis, the peace is manifestly unequal, and the pledge *mē mnēsikakein* is taken unilaterally.'

<sup>33</sup> There is room for doubt, whether the 'attachment' is a copy of Chabrias' treaty, 'just as inscribed at Carthaea' (before the recent insurrection). B. Guagliumi, 'Il racconto di una *stasis* nel decreto ateniese per Iulis (*IG* II<sup>2</sup> 111)', *Quaderni del dipartimento di filologia e tradizione classica* (Bologna) NS 2 (2003), 25–47, recognizes the difficulties but emphasizes the symbolic importance of the original text; C. Cooper, 'Hypereides, Aristophon, and the settlement of Ceos', in id. (ed.), *Epigraphy and the Greek Historian* (Toronto, 2008), 31–54, puts a question mark beside the attribution (33).

<sup>34</sup> Without considering a prior or more detailed agreement, Köhler originally misconstrued this guarantee (64–6): ('Attischen Psephismen aus der ersten Hälfte des vierten Jahrhunderts', *MDAI* (A) 2 [1877], 183–54): εἰ δέ τις (65) [βούλεται κατοικεῖν ἐν Κέωι, εἴσω αὐτὸν ὅπο ἂν βόληται τῶν συμμαχίδων πόλ]εων οἰκοντα τὰ ἑαυτῷ καρπῶσθαι. Sauppe promptly observed that the first restoration – 'if anyone [wishes to resettle]' on Ceos – does not fit and the reverse is most likely: Athens and the allies offer relocation to anyone who does **not** wish to return to Ceos --[μὴ βούλεται οἰ]κεῖν ἐν Κέωι.

that is crucial, the guarantee that those whom the rebels have driven out may return to Ceos and recover their property *there*, is not set forth among the covenants in this ‘attachment’ to Aristophon’s decree. Joyce discounts the complications, but it seems clear that this deal repairs an earlier one or relies on a more comprehensive document elsewhere.

The details go beyond the scope of this essay, but consider, for the moment, the most relevant part of the attachment: the commitments of the Ceans (69–82). Here we find repeated references simply to the oaths and covenants, in a manner that naturally suggests that those commitments are spelled out in some other text. First there is the reference to the arrangement for ‘appeal’ (or final judgement) of lawsuits involving Athenians (?), if the amount at issue is over 100 drachmas (73–5).<sup>35</sup> The procedure is apparently indicated only as ‘according to the covenants’. The restoration is not quite certain but Aristophon refers to a similar rule in the decree (48–9): those now proscribed also have the right to name sureties and stand trial, in Ceos and at Athens, ‘according to the oaths and covenants’. Those covenants, then, including rules for trying various cases at Athens, belong to a more detailed agreement than we find anywhere in this text.<sup>36</sup> The Ceans then pledge to aid and defend any of the returnees, against anyone who wrongs them ‘contrary to the oaths and covenants’ (75–9).<sup>37</sup> It is sometimes assumed that these references must allude either to the original treaty of alliance or to this very document. But the natural implication is that there was a more detailed settlement of the conflict, and those clauses in the attachment reaffirm the relevant parts of that agreement.

After this short list of adaptations, we find the beginning of the oath for some contingent representing Ceos. The amnesty formula is clearly indicated at the end of the line (82), and Köhler’s restoration has been followed by all subsequent editors: [τὰδε ὤμοσαν Κείων ὅς κατήγαγον Ἀθηναίωι vacat οὐ μν]ησικακ[ήσω].<sup>38</sup> It is not altogether certain that ‘the Ceans whom the Athenian restored’ are the party here designated to take the oath, and what follows is doubtful. But it seems at least reasonably clear that some contingent(s) swore on behalf of the Ceans, in much the same wording as the Athenian generals and allies had sworn. Joyce seems to have overlooked this detail or oddly discounts it: ‘Much of the Ceian oath is reconstructed, but the phrase *mē mnēsikakein* does not feature in it.’<sup>39</sup>

Along with this symmetrical feature, Joyce dismisses any contractual implications. Regarding the initial oath by the Athenian generals and allies, he explains as follows (510):

<sup>35</sup> M. Dreher, *Hegemon und Symmachoi. Untersuchungen zum zweiten Athenischen Seebund* (Berlin, 1995), 122 n. 42 rejects Dittenberger’s supplement in 74, κατ’ Ἀθηναίωι, perhaps rightly.

<sup>36</sup> As noted by Dreher, ‘Zu IG II<sup>2</sup> 404, dem athenischen Volksbeschluss über die Eigenstaatlichkeit der keischen Poleis’, in G. Thür (ed.), *Symposion 1985: Vorträge zur griechischen und hellenistischen Rechtsgeschichte (Ringberg, 14.–26. Juli 1985)* (Cologne, 1989), 263–81, at 275 with n. 54; cf. 279 at n. 75.

<sup>37</sup> ‘If [anyone dares to do wrong to those Ceans who returned], or to Athenians [or any of the allies, against the oaths and] covenants, [I shall not allow it ...] but shall come to their aid ...’

<sup>38</sup> P. Krech, *De Crateri Ψηφισμάτων Συναγωγῇ* (Berlin, 1888), filled in the rest of the formula (from 58–60), οὐ μν]ησικακ[ήσω τῶν παρεληλυθότων ὀδενός, οὐδὲ ἀποκτενώ Κείων ὀδέ[να: ‘I shall not harbour grudges for anything that is past, nor shall I kill any of the Ceans – – -’ (RO).

<sup>39</sup> Joyce (n. 5), 511 n. 14, quotes the translation of Rhodes and Osborne but simply omits the rendering of Köhler’s restoration for the dangling μν]ησικακ[ήσω. The surviving letters, -ησικακ-, make it practically certain that the amnesty formula was used.

What does *mē mnēsikakein* here mean? First, it cannot mean that Ceans who commit to the terms of settlement are to be free from further reprisal. That promise is made in the subsequent lines of the oath (59–60). The force of *mē mnēsikakein* is not future looking but retrospective. It relates not to those who choose in future to respect this settlement but rather to those who, in the past, decided to support those who had violated the terms set out by Chabrias. Excepting those directly answerable for the rebellion, all are to be let off the hook. It is, in fact, a pledge of forgiveness.

So, supposedly, the Athenian pledge *mē mnēsikakein* does not require any commitment or compliance by the Ceans. Where the Athenians and allies swear not to kill or exile ‘any ... who abide by these covenants’, that is an entirely separate commitment. If *mē mnēsikakein* must mean forgiveness, then, that is the only viable solution: *mē mnēsikakein* does **not** mean that parties who comply with the agreement are free from reprisal; it is a unilateral pledge of forgiveness by the victors (whether their subjects comply or not).

But the initial commitment, by Athenian generals and allies (quoted above), is introduced in such a way as naturally to link together the oath of no reprisal and the covenants that follow: it begins, ‘These covenants [they] made and swore ...’ (τάδε συνέθεντο καὶ ὄμοσαν); and it concludes with the pledge not to kill or exile ‘those who abide by these oaths and covenants’ (τῶν ἐμμενόντων τοῖς ὄρκο[ις καὶ τ]αῖς συνθήκαις ταῖσδε). The chiasmic arrangement naturally suggests that the whole sequence should be read together: the parties swear to what they have agreed. And that oath by the Athenians (and allies) is answered by a pledge for the Ceans, probably linking oaths and covenants in similar wording. It is not a unilateral promise.

Moreover, if we may consider the parallels at Athens, then the most natural reading of that pledge at Ceos is that it relies upon a package of covenants. Thus, as we saw, the decree of Patroclides links the provisions cancelling old liabilities with the pledge not to recall wrong: to violate one is to violate the other. And the case *Against Callimachus* gives the same implication.

The decree disposing of affairs at Ceos is a peculiar document: the syntax is very odd;<sup>40</sup> and it includes the only instance in the inscriptions where the pledge *mē mnēsikakein* is introduced at the beginning of the covenants. If we had more comparanda to work with, we would probably find other examples. But this instance in itself suggests that the oath of amnesty comes first precisely because it reaffirms the essentials of an earlier agreement.<sup>41</sup>

Where one commitment builds on another, it makes sense to begin by reaffirming what is crucial about the prior obligation. Thus in 403, when the Athenians as a body swore to the settlement that Spartan *diallaktai* had devised, they acknowledged the package of covenants, affirming that they would abide by them and not recall wrong. Thus Andocides refers to ‘the common oath for the whole city’ that was sworn ‘after the *diallagai*’. Xenophon’s report of the second settlement (in 401/0)

<sup>40</sup> On the syntax of the decree see K.J. Dover, ‘The language of Classical Attic documentary inscriptions’, in *Greek and the Greeks. Collected Papers, vol. 1: Language, Poetry, Drama* (Oxford, 1987), 31–41; on the odd arrangement (inscribing Chabrias’ treaty after it was violated), Guagliumi (n. 33).

<sup>41</sup> This is consistent with the explanation in Aristophan’s decree regarding the stelae at Iulis that were demolished in the recent insurrection (31–3): those stelae recorded not only the terms of Chabrias’ treaty but also a list of those who violated ‘oaths and covenants’ – presumably prior to that treaty.

gives the same impression. In the speech *Against Callimachus*, Isocrates explains the new law for *paragraphê*, treating the covenants as grounds for barring a lawsuit and *mê mnêsikakein* as embodying that principle: one must not go back on what has been resolved in the covenants.

In the early examples that linkage seems implicit, wherever the oath *οὐ μνησικακήσω* stands alongside a package of remedies and restrictions. For us, however, it is a reflex of literate thinking to parse the clauses and read each for separate meaning. The same reflex would not be so strong among a people who learn their rules in the flow of speech and rarely analyse them as discrete elements in text. So, for Athenians at the turn of the fourth century, where the oath stands at the close of a list of covenants for reclaiming property or remedying other losses, the pledge 'not to recall wrong for what is past' naturally applies to the grievances resolved in those covenants.

If that linkage does not hold, then, we should be able to point to some example where the rule *mê mnêsikakein* is invoked and no other rule stands behind it. Joyce may have found an instance in the settlement at Tegea, 324/3 (Tod 202; RO 101), where the oath seems to be more broadly construed. But here again, the pledge *mê mnêsikakein* comes after extensive provisions for settling property disputes. And this is sequel to Alexander's decree recalling the exiles. The oath is mostly readable, as follows (57–61):

εὐνοήσω τοῖς κατηνθηκόσι τοῖς ἔδοξε τᾷ πόλι καταδέχεσθαι, καὶ οὐ μνασικακήσω τῶννυ οὐδεν[ι] τ[ᾷ] ἄν ἀμπ[ε]ίση ἀπὸν τᾷ ἀμέραι τᾷ τὸν ὄρκον ὤμοσα, οὐδὲ διακωλύσω τὰν τῶν κατηνθηκότων σωτηρίαν ...

Rhodes and Osborne translate the beginning and end: 'I shall show goodwill to those who have returned whom the city has resolved to receive back, and I shall not harbour grudges against any of them ... from the day on which I have sworn the oath, nor shall I hinder the safety of those who have returned.' The clause that stands in the middle, in place of the usual time frame (*τῶν γεγενημένων*, vel sim.), is obscure: τ[ᾷ] ἄν ἀμπ[ε]ίση. The translators treat it with caution: 'for what he may have plotted (?)'.<sup>42</sup> If that rendering is on the right track, the pledge may have much the same effect as the rules against prosecuting the 'planner' or accomplice in the Athenian Amnesty; for wrongs committed by one's own hand, one is likely to be liable. After all, the Exiles Decree denied amnesty to those guilty of homicide or sacrilege; and the Tegean decree sets forth elaborate rules for reclaiming property and settling the inevitable disputes. To this extent the Tegean example is consistent with the contractual model: the oath is not simply a pledge of forgiveness for wrongs that are not redressed, but a guarantee against any reprisal beyond the remedies that have been authorized. Joyce however, rather than yield an inch of common ground, insists that the oath bears no relation to those 'legal practicalities of repatriation' (512): it is 'a simple promise ... not to plunge the city

<sup>42</sup> One might have expected the usual corollary, not to comply with another (who recalls wrong), as in the jury oath (Andoc.1. 91, οὐδὲ ἄλλω πείσομαι) and in the Paros settlement (n. 31), οὐδὲ ἄλλω ἐπιτρέψω. Joyce (n. 5), 512 n. 20, ignores the doubtful letters and the translators' question mark and finds the implications 'absolutely plain'. On the problems see esp. A.J. Heisserer, *Alexander the Great and the Greeks* (Norman, OK, 1980), 204–29; on property arrangements, Lonis (n. 13), 99–103; A. Maffi, 'Regole matrimoniale e successorie nell'iscrizione di Regea sul rientro degli esuli', in H.-J. Gehrke, *Rechtskodifizierung und soziale Normen* (Tübingen, 1994), 113–33.



into civil war'. Here, at last, he seems to conclude that the oath of amnesty really has no legal effect. Of course we have no other evidence from which to determine how the rule was applied or interpreted at Tegea. So it seems to be, indeed, a poor comparandum for the settlement at Athens nearly eighty years earlier.<sup>43</sup>

In the era of the Athenian Amnesty, *mē mnēsikakein* was consistently treated as the closing to the agreement. That is not all that it meant. The Athenians recognized that this pledge was crucial to ending the civil war. But in their quarrels over property and personal losses, as in their recriminations against those who served as councilmen or other officers under the oligarchs, the oath had to be honoured as a bar against violating the covenants that disposed of those claims. After all, these were the small provocations that could easily lead to wider conflict. So, in the arguments and decisions of that era, *mē mnēsikakein* is regularly treated as an obligation to abide by the covenants, not as a promise to forgive all wrongs of the past (however that might be construed). To violate the oath is to break a rule that can be readily defined, such as the provisions cancelling old liabilities that Patroclides listed, or the clauses protecting accomplices that Andocides and Isocrates confirm. Those rules were fixed in *synthēkai*, and the oath that stood at the close of those covenants was understood as a guarantee, not to go back upon them. Thus, in its original context the pledge 'not to recall wrong for what is past' (τὰ παρεληλυθότα or the like) would naturally refer to what the agreement has resolved. When that pledge was reaffirmed in the years after 403, as preamble to the oaths of court or council, it would properly stand for the package of rules which those bodies must uphold. Of course, later generations would remember it only as the key to preserving their community, when the covenants were nearly forgotten. So, in time, the oath became a heroic vow to forgive old quarrels, like the god-given oblivion at the end of the *Odyssey*. And if we ignore the inevitable revision, it is easy to dismiss the legal arguments of the original context, to suppose that the oath embraces a virtue of forgiveness that is unconstrained. But in the documents of that crisis there is little to suggest that this was yet the prevailing value.

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<sup>43</sup> Joyce (n. 5), 513 n. 26, suggests that Patroclides' decree of 405 'presents the best parallel to the case of Tegea'. From Athenian inscriptions in the late fourth century the only instance is *JG* 2<sup>2</sup>.281, with little more preserved than the key features: *diallaktai* and the oath, οὐ μ[υ]ν[η] σ[υ]κακήσω. Against the authenticity of Patroclides' decree, see now M. Canavaro and E. Harris, 'The Documents in Andocides' *On the Mysteries*', *CQ* 62 (2012) 100–109.